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## “To Consolidate This Peace of Ours”

A Human Rights Agenda for Côte d’Ivoire





# **“To Consolidate This Peace of Ours”**

A Human Rights Agenda for Côte d’Ivoire

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## A Human Rights Agenda for Côte d’Ivoire

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## Abbreviations

<b>AFJ-CI</b>	<i>Association des Femmes Juristes de Côte d'Ivoire</i> (Association of Women Jurists for Côte d'Ivoire)
<b>CDVR</b>	<i>Commission Dialogue, Vérité et Réconciliation</i> (Commission on Dialogue, Truth and Reconciliation)
<b>CGFR</b>	<i>Comité de Gestion Foncière Rurale</i> (Committee for Rural Land Management)
<b>CNE</b>	<i>Commission Nationale d'Enquête</i> (National Commission of Inquiry)
<b>CONARIV</b>	<i>Commission Nationale pour la Réconciliation et l'Indemnisation des Victims</i> (National Commission for Reconciliation and Indemnification of Victims)
<b>CSEI</b>	<i>La Cellule Spéciale d'Enquête et d'Instruction</i> (Special Investigative and Examination Cell)
<b>CSM</b>	<i>Conseil Supérieur de la Magistrature</i> (High Judicial Council)
<b>CVGFR</b>	<i>Comité Villageois de Gestion Foncière Rurale</i> (Village Committee for Rural Land Management)
<b>DAP</b>	<i>Direction de l'Administration Pénitentiaire</i> (Direction of Prison Administration)
<b>DDR</b>	Disarmament, demobilization and reintegration
<b>DST</b>	<i>La Direction de la Surveillance du Territoire</i> (National Surveillance Directorate)
<b>FN</b>	<i>Forces Nouvelles</i> (New Forces)
<b>FRCI</b>	<i>Forces Républicaines de Côte d'Ivoire</i> (Republican Forces of Côte d'Ivoire)
<b>ICC</b>	International Criminal Court
<b>OGE-CI</b>	<i>L'Ordre des Géomètres Experts de Côte d'Ivoire</i> (Order of Expert Land Surveyors)
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>ONUCI</b>	<i>Opération des Nations Unies en Côte d'Ivoire</i> (United Nations Operation in Côte d'Ivoire)
<b>PNCS</b>	<i>Programme National de Cohésion Sociale</i> (National Program for Social Cohesion)
<b>RDR</b>	<i>Rassemblement des Républicains</i> (Rally of the Republicans, President Ouattara's political party)
<b>RTI</b>	<i>Radiodiffusion Télévision Ivoirienne</i> (Ivorian Radio and Television)

# Map of Côte d'Ivoire



Côte d'Ivoire. © 2013 John Emerson / Human Rights Watch

## Summary

On October 25, 2015, the Ivorian people elected President Alassane Ouattara to a second term, in an election deemed free and fair by the African Union (AU) and the Economic Community of West African States (ECOWAS). The election was largely devoid of the violence that had accompanied previous polls in 2000 and 2010.

Côte d'Ivoire is still less than five years removed from a decade of conflict and unrest, rooted in both political discord and ethno-communal tensions, which culminated in the 2010-2011 post-election crisis. The refusal of then-president Laurent Gbagbo to accept Ouattara as the winner of the 2010 election led to an armed conflict during which at least 3,000 civilians were killed and more than 150 women were raped, with serious human rights violations committed by both sides.

In advance of the October election, President Ouattara campaigned on a promise to consolidate peace and security and to do more to ensure ordinary Ivorians benefit from economic growth. To distance Côte d'Ivoire from the conflict and instability that have characterized the country for so many years, President Ouattara's government should use his second term to ensure much needed progress on strengthening the rule of law and addressing the deep-rooted problems that gave rise to violence in the first place.

During three research missions in October 2014 and May and July 2015, Human Rights Watch assessed the government's progress in addressing the legacies of the country's violent past and asked Ivorians about the key human rights priorities for the next five years. Human Rights Watch interviewed more than 200 victims of human rights violations, local government officials and traditional leaders, Ivorian lawyers and judges, members of the security forces, national and international civil society organizations, human rights defenders, humanitarian organizations, journalists, government officials in key ministries, diplomats, and officials from the United Nations (UN) and international financial institutions.





A woman walks past campaign posters in Abidjan on October 21, 2015, only a few days before the October 25 presidential election. © 2015 Luc Gnago/Reuters

## Ouattara's First Term in Office

Interviewees told Human Rights Watch that much of President Ouattara's first term was devoted to dealing with the immediate consequences of the 2010-2011 post-election crisis. They cited as progress improved security country-wide, fewer abuses by security forces, increased support for investigations into past atrocities, the reopening of courts and prisons across Côte d'Ivoire, and the successful mediation of land conflicts by traditional leaders and local government officials.

Human Rights Watch found, however, that while there has been progress in certain key areas, in many cases the positive steps taken during President Ouattara's first term only marked the beginning of a long road to meaningful reform. In others, the government failed to properly address more deep-rooted issues. President Ouattara's government needs to do more to ensure impartial accountability for past human rights abuses, confront persistent weaknesses within the justice system, complete the security sector reform process, provide reparative justice to victims, and address land dispossession in western Côte d'Ivoire.

## Accountability for Past Human Rights Abuses

During the decade of conflict and unrest that culminated in the 2010-2011 post-election crisis, serious human rights abuses were committed by all parties, including Gbagbo-era security forces and the *Forces Nouvelles* (“New Forces”) rebels who eventually helped bring Ouattara to power. The culture of impunity that allowed perpetrators to escape justice for atrocities was a key factor in perpetuating abuses.

No one responsible for the human rights violations committed during election-related violence in 2000 or the armed conflict in 2002-2003 was convicted for their alleged crimes. Similarly, five years after the 2010-2011 post-election crisis, the vast majority of the commanders and leaders implicated in serious human rights violations—on both sides of the military-political divide—have not been properly held to account for those abuses.

President Ouattara has said that he is committed to ensuring the prosecution of those who perpetrated atrocities during the post-election crisis, and that all future trials will occur in national courts. However, although Ivorian judges have recently made progress in investigations, it remains unclear whether Ouattara’s government sufficiently supports the judiciary in bringing perpetrators to justice, particularly commanders from pro-Ouattara forces.

In 2011, the government created the Special Investigative Cell (since renamed the Special Investigative and Examination Cell, *Cellule Spéciale d'Enquête et d'Instruction*, CSEI), a taskforce of judges and prosecutors to investigate crimes committed during the post-election crisis. After years of inadequate government support, the CSEI received increased resources in late 2014 and in 2015 charged more than 20 perpetrators—including high-level commanders from both sides of the conflict—for their role in human rights abuses during the post-election crisis. The government’s support for the CSEI, however, is fragile. In mid-2015, the CSEI faced pressure from the executive to finish key investigations prematurely.

At the international level, in early 2016 the International Criminal Court (ICC) is due to begin the trial of former president Laurent Gbagbo and Charles Blé Goudé, a former youth minister and leader of a pro-Gbagbo militia group. The ICC has also charged Gbagbo’s

wife, Simone, with crimes against humanity committed during the post-election crisis, but Côte d'Ivoire has refused to transfer her to The Hague to face trial.

Until now, however, the ICC has yet to bring charges against anyone for abuses committed by pro-Ouattara forces during the post-election crisis. The one-sided focus of the ICC's cases has polarized opinion about the court and undermined perceptions of its legitimacy, particularly among Gbagbo supporters. The ICC Prosecutor's office has only recently intensified its on-the-ground investigations into pro-Ouattara forces. Although President Ouattara has said that no further suspects will be transferred to the ICC, these investigations remain a vital lever to push for impartial justice at a national level.

During his second term in office, President Ouattara should provide adequate support to the CSEI and avoid political interference in human rights cases, particularly those involving commanders who fought on his side of the post-election crisis. His government should also cooperate with the ICC's investigations and transfer suspects the ICC seeks to try. In addition, Ouattara should state publicly and unequivocally that he will not grant pardons to anyone convicted of human rights crimes.

## **Rebuilding the Justice System and Improving Prison Conditions**

President Ouattara has made progress in rebuilding a justice system devastated by Côte d'Ivoire's successive crises, and he has successfully redeployed judicial personnel to areas in the north that were, prior to the 2010-2011 post-election crisis, outside government control.

However, not enough has been done to address the underlying and less visible problems that have plagued Côte d'Ivoire's courts since before the post-election crisis. While the government's failure to implement some of the reforms scheduled to be completed during Ouattara's first term—such as the adoption of laws to strengthen the independence of the judiciary—was reflective of a lack of political will, other reforms were hamstrung by the limited budget allocated to the courts and judiciary. In 2014, the justice sector budget was just 1.4 percent of the overall national budget.

As President Ouattara's government begins its second term, several priority areas deserve urgent attention if the justice system is to adequately protect the rights of Ivorians,

including the lack of independence of the judiciary, corruption, excessive prolonged pretrial detention, poor prison conditions, and lack of access to legal representation.

President Ouattara's government has made little progress in ensuring that the judiciary is independent of the executive arm of government. The Ministry of Justice has not finalized laws initially drafted in 2012 that would strengthen the independence of the High Judicial Council (*Conseil Supérieur de la Magistrature*, CSM), the body responsible for the appointment and discipline of magistrates, and protect against political interference in the promotion and evaluation of judges.

Furthermore, the government has done too little to address corruption in the justice sector. Despite Ouattara's 2011 promise that corrupt judges would be fired, Ivorian jurists told Human Rights Watch that they were not aware of any judges being disciplined or prosecuted for corruption since 2012.

Ivorian courts also continue to place far too many people in pretrial detention, with approximately 40 percent of people in Ivorian jails in pretrial detention. The prevalence of pretrial detention and the slow pace of case resolution exacerbate over-crowding, with almost half of the country's prisons severely overpopulated. Once in detention, many detainees, particularly those accused of serious offenses, wait years before being tried or released. The Ivorian government has also failed to adequately address chronic problems within the corrections sector, including lack of adequate nutrition, poor sanitation, and insufficient access to medical care.

President Ouattara's government has also done little to address Côte d'Ivoire's ailing legal aid system. Many defendants in criminal cases only receive legal representation at the trial phase; others do not receive it at all. Indigent litigants in both civil and criminal cases have the right to request free legal assistance, but very few know the procedure for doing so – the National Legal Aid Bureau receives only a few hundred requests each year. Much of the burden for providing litigants with legal advice and representation therefore falls on nongovernmental organizations (NGOs), particularly legal clinics supported by international donors.

President Ouattara should make building a justice system that respects and protects rights a priority for his second term, including by ensuring the justice sector has sufficient

resources. In light of President Ouattara's promise to revise Côte d'Ivoire's constitution, the government should use the constitutional reform process to bolster the independence of the CSM and protect judges from executive interference. The government should also urgently review the National Action Plan for the Justice Sector, a roadmap for reform adopted by the Council of Ministers in June 2013, to create a revised plan for 2016-2020, including new target dates for the completion of key reforms not yet implemented.

## Reforming the Security Sector

Security sector reform was a priority in President Ouattara's first term, and the conduct of the security forces, including the military, has improved since the 2010-2011 post-election crisis. The government has also made progress in transferring law enforcement responsibilities from the armed forces to police and gendarmes, although they often lack sufficient equipment and training to protect citizens from criminality.

Despite the progress made, however, ongoing violations by security forces and the lack of accountability for them continued during President Ouattara's first term in office. In 2012, the mass arrests, illegal detention and torture committed by the army in response to attacks on military installations by Gbagbo sympathizers demonstrated the challenge Ouattara faced in addressing the security forces' human rights record.

Although the army's conduct has since improved, as recently as 2014 soldiers responded to attacks on military outposts by holding suspects in unauthorized detention facilities and torturing multiple detainees. Multiple sources also expressed concerns about illegal detentions by the National Surveillance Directorate (*La Direction de la Surveillance du Territoire*, DST), a national security-focused intelligence service under the jurisdiction of the Ministry of the Interior. In the lead up to the 2015 presidential election, the DST detained several opposition activists in unauthorized locations and without access to legal assistance.

Furthermore, although overall the conduct of the security forces has improved, soldiers, police, and gendarmes continue to extort money while manning illegal checkpoints, particularly in rural areas. Several Ivorian army commanders are also enriching themselves through extortion, smuggling, and parallel tax systems that they impose on the export of natural resources, mirroring the military-economic network that the *Forces Nouvelles* rebels operated when northern Côte d'Ivoire was under their control.

The failure to investigate and prosecute these commanders is indicative of wider impunity within the security forces. Even when soldiers commit serious crimes outside the course of their duties, such as sexual violence, they are rarely prosecuted in civilian courts. The military justice system, which currently has jurisdiction over police, gendarmes and soldiers, is under-resourced, with only one military tribunal for the whole country. The system is in need of comprehensive reform to strengthen its independence and to limit its jurisdiction to military offenses committed by military personnel.

During his second term, President Ouattara should complete the security sector reforms necessary to professionalize the armed forces and prevent future abuses, such as the promulgation of a new law on the organization of the national defense and armed forces, and the creation of a more effective, rights-respecting military justice system. The role played by former *Forces Nouvelles* commanders in ongoing abuses also underscores the importance of holding them accountable for the human rights violations they committed during the 2010-2011 post-election crisis.

## Truth-Telling and Reparations

In the aftermath of the 2010-2011 post-election crisis, Côte d'Ivoire established a Commission on Dialogue, Truth, and Reconciliation (*Commission Dialogue, Vérité, et Réconciliation*, CDVR) to promote reconciliation, uncover the truth about past human rights violations, and provide recommendations on how to prevent future abuses and provide reparations to victims.

The CDVR, whose mandate ended in September 2014, took testimony from more than 72,000 Ivorians, including over 28,000 women. In December 2014, the commission's president, former Prime Minister Charles Konan Banny, presented the CDVR's final report to President Ouattara.

The CDVR's report, however, has not been made public, and the presidency has never provided an explanation for the delay in doing so. The only concrete action President Ouattara took upon receiving the CDVR report was to commit to making 10 billion FCFA (approximately US \$16.2 million) available for the indemnification of victims, an important step but not a substitute for a fuller discussion of the report's recommendations.

In March 2015, the government created a successor to the CDVR, the National Commission for Reconciliation and Indemnification of Victims (*Commission Nationale pour la Réconciliation et l'Indemnisation des Victims*, CONARIV), to oversee a reparations program for victims of abuses committed from 1990 to 2012. Another government agency, the National Program for Social Cohesion (*Programme National de Cohésion Sociale*, PNCS), is to execute the reparations program.

CONARIV is working to compile an initial list of victims and determine who will be eligible for reparations and what they will receive. An initial round of reparations, however, which began in August 2015 before CONARIV had even finalized guidelines for reparations, raised expectations among victims as to when they will receive reparations and how much they will get. This first round of reparations will cost 6-8 billion FCFA (US \$10-13 million) of the 10 billion FCFA Ouattara said would initially be available, leading to concerns that the government will ultimately struggle to meet victims' expectations.

To trigger dialogue on how to further national reconciliation and prevent future abuses, President Ouattara should publish the CDVR report, and the National Assembly should debate it in a special committee and in a plenary session. The government should also publish an official response to the CDVR report, including details on which recommendations it endorses and how it is implementing them.

To manage victims' expectations over reparations, CONARIV and the PNCS should expedite consultations on, and the adoption of, a law defining who is eligible for reparations and what they will receive. CONARIV should also increase its outreach to and communication with victims' associations.

## **Addressing Land Dispossession in the West**

Deep inter-communal tensions linked to land dispossession are one reason why western Côte d'Ivoire has played host to many of the worst atrocities committed in the country.

The 2010-2011 crisis triggered a new wave of land dispossession, as landowners from pro-Gbagbo ethnic groups, who had fled in fear of reprisals from advancing pro-Ouattara forces, returned to find that their land had been illegally sold or occupied.

Although land conflicts in western Côte d'Ivoire have since become less prevalent, land dispossession remains a key driver of inter-communal tensions and local-level violence between western ethnic groups, immigrants from neighboring countries, and communities from other regions of Côte d'Ivoire.

The government's land policy during President Ouattara's first term focused on the implementation of a 1998 rural land law that sought to provide landowners with more security by converting customary claims to land certificates and eventually legal title. However, as of May 31, 2015, only 978 land certificates had been issued nationwide, and community leaders told Human Rights Watch that the process for obtaining them was too expensive and too complicated, making certificates inaccessible to ordinary Ivorians. The government has also made little progress in mapping village boundaries, so as to prevent fraudulent sales that exploit uncertain borders between villages.

Much of the burden for resolving land disputes currently falls on village chiefs and local administration officials, who have played a key role in mediating land dispossession cases related to the 2010-2011 post-election crisis.

However, the settlements reached before customary authorities are increasingly difficult to enforce, often discriminate against women, and frequently allow even those who occupied land in bad faith to remain on the land. Those implicated in illegal or fraudulent sales are rarely prosecuted.

As President Ouattara begins his second term, his government's land policy faces two related challenges: the lack of implementation of the 1998 law and the continued reliance on customary dispute resolution mechanisms; and the recognition that customary authorities may find it increasingly difficult to find durable, rights-respecting solutions to land disputes.

In July 2015, the Ivorian government circulated a draft land policy that aims to facilitate implementation of the 1998 law by streamlining the steps necessary to obtain a land certificate and reducing the cost of doing so. The government has said that Ivorian NGOs and community leaders will have an opportunity to comment on the draft land policy in spring 2016, and it should ensure that men and women from all political and ethnic groups are able to fully participate in the consultation process.



As a key part of these consultations, the government should assess how to ensure that land disputes that arise during the implementation of the 1998 law are resolved fairly and in a timely manner. This may involve modifying or better supporting the village and sub-prefectural land committees that currently resolve disputes during the land certification process, or may require a new mechanism. The government should also ensure that anyone whose property rights have been violated by the decision of a customary or local government authority, including the village and sub-prefectural land committees created pursuant to the 1998 law, can appeal to the court system.

## **The Challenge for Ouattara’s Second Term**

Although President Ouattara has only just begun his second term, many Ivorians are already looking towards the 2020 presidential election and fear the political fight to succeed him could once again lead to violence and instability. Côte d’Ivoire’s history shows that politicians are often willing to exploit ethnic tensions, weak judicial institutions, and ill-disciplined security forces in the battle for power.

President Ouattara must use his second term to combine economic growth and an effort to protect and fulfill economic and social rights with an equal commitment to fighting impunity, strengthening the rule of law, completing security sector reforms, and addressing the land conflicts at the root of many inter-ethnic tensions. If the new government fails to do so, the political uncertainty that could be triggered by President Ouattara’s departure will once again threaten the advances in rule of law and security on which Côte d’Ivoire’s economic recovery has been built.

## Recommendations

### To President Ouattara and the Government of Côte d'Ivoire

#### *To Address Accountability for Past Abuses*

- Support efforts by the Ivorian judiciary to prosecute in accordance with international fair trial standards all those responsible for killings, rapes, and other serious human rights violations, including those committed during the 2010-2011 post-election crisis, regardless of position, rank, or political affiliation.
- Ensure that the investigating judges and other judicial personnel tasked with investigating and adjudicating the human rights violations committed during the 2010-2011 post-election crisis are adequately resourced, protected, and supported by the Ministry of Justice.
- Cooperate with the ICC's ongoing investigations and cases in Côte d'Ivoire in compliance with the government's obligations under the Rome Statute, including by surrendering Simone Gbagbo to the ICC.

#### *To Strengthen the Judiciary and Improve Prison Conditions*

- Review the National Action Plan for the Justice Sector to create a revised plan for the period 2016-2020, including new target dates for the completion of key reforms not yet implemented. Prioritize actions to improve the independence and impartiality of the judiciary and tackle corruption.
- As part of a constitutional reform process, eliminate the president's role as the head of the CSM and establish a process for appointing members of the CSM that is independent of executive influence.
- Finalize and submit to the National Assembly the codes and laws essential to rule of law reform that were drafted during President Ouattara's first term, including the criminal procedure code and laws on the profession of magistrates, the prison system, and legal assistance.
- Empower the Inspector General of Judicial and Penitentiary Services to refer magistrates suspected of corruption directly to the CSM and prosecutor's disciplinary commission, without the permission of the Minister of Justice. Make public the Inspector General's reports and any disciplinary or criminal sanctions imposed against judges and prosecutors.

- Take concrete measures to address the extensive imposition of pretrial detention, including by providing the judiciary with the resources necessary to hold sessions of the *Cour d'Assises* at least every three months.
- Ensure all accused in criminal cases have access to adequate legal representation, regardless of their means.
- Finalize and adopt the Plan to Improve Prisons Conditions to address prisoners' nutrition, sanitation, medical care, and access to educational opportunities and ensure sufficient resources are available for its implementation.

### *To Address Indiscipline and Impunity within the Security Forces*

- Introduce a zero-tolerance policy on criminal behavior and human rights abuses by the army, police, and gendarmes.
- Investigate and prosecute, in accordance with international standards, members of the security forces against whom there is evidence of criminal responsibility for abuses.
- Increase the resources of the anti-racket unit to enable it to operate nationwide, and instruct the unit to focus on investigating commanders who are implicated in or facilitate extortion and racketeering.
- Adequately support and resource the military tribunal so that it becomes a functional institution, and limit its scope to the trial of military personnel implicated in military crimes. Ensure that officers of the court, including prosecutors and defense counsel, are fully independent of the military chain of command and governmental interference.
- Complete the return of primary authority over internal security to the police and gendarmerie, including through providing sufficient training and material support so that these forces can effectively undertake security functions.
- Cease immediately the holding and interrogating of civilians at military camps or unauthorized detention locations.
- Ensure that any civilian arrested is promptly brought to a police or gendarme station and that, in accordance with Ivorian and international law, any person arrested appears before a judge within 48 hours to consider the legality of detention and the charges against him or her.

### *To Respect Victims' Rights to Truth and Reparations*

- Publish the final report and recommendations of the CDVR and encourage the National Assembly to debate its contents and recommendations.
- Ensure that the conclusions of the CDVR report are accessible to Ivorians, including through the dissemination of a synopsis of the report's findings.
- Draft and publish a white paper as an official response to the CDVR report, including details on which recommendations the government endorses and how it is implementing them.
- Expedite consultations on, and the adoption of, a law defining who is eligible for reparations and what they will receive. Instruct the leaders of CONARIV and the PNCS to negotiate terms of reference governing their relationship, with President Ouattara personally intervening to mediate areas of disagreement.
- In partnership with victims' associations, assist CONARIV and the PNCS to conduct increased outreach to victims of human rights violations, including outside of Abidjan, to ensure victims are informed about the reparations process.

### *To Address Land Dispossession in Western Côte d'Ivoire*

- Ensure that men and women from all political and ethnic groups are able to fully participate in consultations concerning the government's draft land policy.
- As part of consultations over the draft land policy, assess how to ensure that land disputes related to the implementation of the 1998 rural land law are resolved fairly and in a timely manner. This may involve modifying or better supporting the village and sub-prefectural land committees created pursuant to the 1998 law or may require a new mechanism.
- Ensure, in accordance with the Ivorian constitution and international human rights law, that there is no discrimination against women, in law or in practice, in regards to the ability to formalize land ownership rights under the 1998 rural land law.
- Instruct sub-prefects, police, judicial police, and prosecutors to work together to investigate and prosecute fraudulent land sales. Penalties should ensure, at a minimum, that the bad-faith seller does not retain a profit from his fraud.
- Ensure that anyone whose property rights have been violated by the decision of a customary or local government authority, including the village and sub-prefectural land committees created pursuant to the 1998 law, can appeal to the court system.

- Accelerate the demarcation of village boundaries. Prioritize areas where land and inter-communal conflict are closely linked, including in western Côte d'Ivoire.

### **To the National Assembly**

- Pass codes and laws essential to rule of law reform, including the criminal procedure code and laws on the profession of magistrates, the prison system, and legal assistance.
- Create a special multi-party committee, in accordance with the National Assembly bylaws, responsible for examining the report of the CDVR. Request the committee to report back to the full National Assembly and schedule time for debate in plenary sessions of the CDVR's report.
- Conduct a public hearing into the activities of the DST, with a view to making recommendations on how to improve the DST's human rights record.
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, and implement the Protocol through establishing an independent national body to carry out regular and ad hoc unannounced visits to all places of detention.

### **To France, the European Union, the United States, International Financial Institutions and Other International Partners**

- Continue to prioritize the fight against impunity for past human rights abuses in political dialogue with the Ivorian authorities, reinforcing the importance of cooperation with the ICC and consistent government support for independent and impartial national justice.
- Support training and technical assistance for the staff of the CSEI.
- Monitor and speak out publicly more often against abuses by security forces, including detentions in unauthorized locations and without judicial oversight.
- Support the government's formulation of a revised National Action Plan for the Justice Sector for the period 2016-2020, and advocate for the inclusion of reforms to improve the independence and impartiality of the judiciary and tackle corruption. Consider linking future funding for infrastructure improvement, with the exception of prison rehabilitation, to demonstrated progress in these areas.
- Continue to provide financial and technical assistance to the government's security sector reform process, and include support for the reform of the military justice system.

- Provide financial and technical assistance to CONARIV and the PNCS on the design and implementation of reparations programs, including improved outreach to victims.
- Support consultations on the Ivorian government's draft land policy to ensure that men and women from all political and ethnic groups are able to fully participate in the consultation process. Continue to support the demarcation of village boundaries.

### **To the United Nations Operation in Côte d'Ivoire**

- Continue with private and public diplomacy pressing the government to maintain its support for fair and impartial justice for past human rights abuses.
- Monitor and speak out publicly more often against abuses by security forces, including detentions in unauthorized locations and without judicial oversight.
- Continue to provide financial and technical assistance to the government's security sector reform process, and include support for reform of the military justice system.
- Provide financial and technical assistance to CONARIV and the PNCS on the design and implementation of reparations programs, including improved outreach to victims.
- In light of ONUCI's impending drawdown, solicit the support of the Ivorian government and international donors for the maintenance of a United Nations Office of the High Commissioner for Human Rights (OHCHR) mission in Côte d'Ivoire.

### **To the United Nations Independent Expert on Capacity-Building and Technical Cooperation with Côte d'Ivoire in the Field of Human Rights**

- Carefully monitor and speak out forcefully against human rights violations, and include dedicated sections in upcoming research and reports on abuses by the military in response to threats to state security, unlawful detention and mistreatment of detainees by the DST, and executive interference and corruption within the judiciary.

### **To the International Criminal Court, Office of the Prosecutor**

- Continue with investigations against all sides of the 2010-2011 post-election crisis.
- Strengthen working-level relationships with Ivorian judges and prosecutors, particularly in the CSEI, in order to facilitate the sharing of information relating to investigations and identify opportunities for training the staff of the CSEI.

## Methodology

Based primarily on information gathered during three research missions conducted in Côte d'Ivoire by Human Rights Watch between October 2014 and August 2015, this report assessed the government's progress in addressing the legacies of the country's violent past and asked Ivorians about the key human rights priorities for the next five years.

Human Rights Watch visited northern Côte d'Ivoire (Bouaké and surrounding areas) and towns in the west of the country (Bloléquin, Duékoué, Daloa, and Guiglo), as well as nearby villages. This research was supplemented with interviews conducted in Abidjan during each research mission and numerous telephone interviews undertaken between October 2014 and November 2015. In total, Human Rights Watch interviewed more than 200 people during the research for this report. The majority of interviews were conducted individually, although some group interviews were organized where participants preferred to be interviewed in groups and where there was no identifiable risk that this would put interviewees in danger of reprisals from any party. Human Rights Watch did not offer interviewees any incentive for speaking.

When traveling outside of Abidjan, Human Rights Watch interviewed customary and traditional leaders from diverse ethnic and immigrant groups; soldiers, police officers and gendarmes; local government officials; local civil society groups; humanitarian workers; and traders, bus owners, drivers and passengers, among others.

In Abidjan, Human Rights Watch interviewed Ivorian government officials in the Presidency, Prime Minister's office, Ministry of Justice, Ministry of the Interior, and Ministry of Agriculture; Ivorian prosecutors, judges and lawyers; and senior military and law enforcement officials. Human Rights Watch also interviewed representatives from victims' groups; international and national civil society groups; humanitarian organizations; diplomats; officials from the United Nations, international financial institutions, and the International Criminal Court; and journalists.

Many of the individuals interviewed wanted to speak candidly, but wished to retain their anonymity given the sensitivity of the issues they discussed. Many international and Ivorian officials were concerned that being identified in this report would expose them to sanctions from their superiors. As a result, we have used generic descriptions of interviewees throughout the report to respect the confidentiality of these sources.

# I. Accountability for Past Abuses

Justice reestablishes balance. It was two people who fought, not just one side. Does the fact that you won give you the right to kill people? How can reconciliation happen if justice is not impartial? That justice can't bring peace.

–Ivorian civil society activist<sup>1</sup>

Dismantling the architecture of impunity that underscored Côte d'Ivoire's violent recent history needs to be at the top of the agenda for President Ouattara's second term.

During the decade of conflict and instability that culminated in the 2010-2011 post-election crisis, Ivorians suffered unspeakably brutal crimes, including peaceful protestors gunned down, villagers dragged from their homes and executed in cold blood, detainees brutally tortured, men set alight in front of their families, and girls who were gang raped.<sup>2</sup>

And yet the vast majority of the commanders and leaders implicated in these abuses—on both sides of the military-political divide—have not been properly held to account.

Victims from all sides expressed frustration with the lack of accountability. An Ouattara supporter in Abobo who was a victim of sexual violence during the post-election crisis told Human Rights Watch, “The people responsible for abuses must be punished. We have suffered too much.”<sup>3</sup> A civilian from Yopougon who voted for Gbagbo in 2010 said, “We speak about justice, but where is the justice?”<sup>4</sup>

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<sup>1</sup> Human Rights Watch interview with Ivorian civil society activist, Yopougon, Abidjan, August 4, 2015.

<sup>2</sup> Human Rights Watch, *“They Killed Them Like It Was Nothing”: The Need for Justice for Côte d'Ivoire's Post-Election Crimes*, October 5, 2011, <https://www.hrw.org/report/2011/10/05/they-killed-them-it-was-nothing/need-justice-cote-divoires-post-election-crimes>; Human Rights Watch, *“Because they have the guns... I'm left with nothing”: The Price of Continuing Impunity in Côte d'Ivoire*, vol. 18, no. 4(A), May 2006, <http://www.hrw.org/node/11314>; *Country on a Precipice: The Precarious State of Human Rights and Civilian Protection in Côte d'Ivoire*, vol. 17, no. 6(A), May 3, 2005, <https://www.hrw.org/report/2005/05/03/country-precipice/precarious-state-human-rights-and-civilian-protection-cote>; Human Rights Watch, *Trapped Between Two Wars: Violence Against Civilians in Western Côte d'Ivoire*, vol. 15, no. 14(A), August 2003; Human Rights Watch, *The New Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire*, vol. 13, no. 6(A), August 28, 2001, <https://www.hrw.org/report/2001/08/28/new-racism/political-manipulation-ethnicity-cote-divoire>.

<sup>3</sup> Human Rights Watch interview, Abobo, Abidjan, August 1, 2015.

<sup>4</sup> Human Rights Watch interview, Yopougon, Abidjan, August 4, 2015.



Opposition supporters are skeptical that Côte d'Ivoire's courts will ever hold high-level perpetrators from pro-Ouattara forces accountable for the abuses that they committed during the 2010-2011 post-election crisis, with one saying, "It's the party who wins that writes its history."<sup>5</sup> Several opposition supporters told Human Rights Watch that the absence of impartial justice was a key reason for their continued hostility towards President Ouattara's government, with one noting, "If reconciliation has not succeeded, it's because of the lack of justice."<sup>6</sup>

International human rights law requires that states investigate human rights violations effectively, promptly, thoroughly, and impartially and, where appropriate, take action against those allegedly responsible.<sup>7</sup> International criminal law requires such criminal investigations and prosecutions to be carried out for the most serious crimes, including war crimes, crimes against humanity, and torture.<sup>8</sup> Several victims told Human Rights Watch that it was important to pursue accountability against all sides to prevent future abuses and further reconciliation, with one saying: "We must sort out this question of impartial justice so that the post-election crisis doesn't repeat itself."<sup>9</sup>

## A History of Impunity

On December 24, 1999, soldiers disgruntled over low pay seized power from Côte d'Ivoire's then-president, Henri Konan Bédié, and asked General Robert Guei, the president's chief of staff, to lead the government. Although Guei's government organized presidential elections in 2000, a controversial constitutional amendment prevented Ouattara from contesting the election.<sup>10</sup> Later that year, following an October presidential election won by

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<sup>5</sup> Human Rights Watch interview, Yopougon, Abidjan, August 4, 2015.

<sup>6</sup> Human Rights Watch interview with village chief and elders, Guiglo, May 24, 2015; interviews with opposition supporters, Yopougon, Abidjan, August 4, 2015.

<sup>7</sup> United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter, "UN Basic Principles on Reparation for Victims"), adopted December 16, 2005, U.N. Doc. A/RES/60/147, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> (accessed November 11, 2015), para. 3(b).

<sup>8</sup> Rome Statute of the International Criminal Court ("Rome Statute"), U.N. Doc. A/CONF.183/9, July 17, 1998, entered into force July 1, 2002; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention against Torture"), adopted December 10, 1984, G.A. res 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc A/39/51 (1984), entered into force June 26, 1987.

<sup>9</sup> Human Rights Watch interview, Yopougon, Abidjan, August 4, 2015.

<sup>10</sup> The Constitution as amended stipulated, "The candidate for the presidency must... be of Ivorian origin, born of father and mother who are also of Ivorian origin. He must never have renounced his Ivorian nationality, nor have ever claimed he was of another nationality." Constitution of Côte d'Ivoire, "Chapter III: The President of the Republic and the Government," July 23, 2000, [http://democratie.francophonie.org/IMG/pdf/Cote\\_d\\_Ivoire.pdf](http://democratie.francophonie.org/IMG/pdf/Cote_d_Ivoire.pdf) (accessed November

Laurent Gbagbo and December parliamentary elections, bloody clashes between security forces, Gbagbo sympathizers, and Ouattara supporters killed more than 200 people and injured hundreds.<sup>11</sup>

In September 2002, an attempted coup d'état against Gbagbo's government by northern rebel groups triggered an armed conflict in which both the *Forces Nouvelles*<sup>12</sup> rebels and Gbagbo-aligned forces committed serious human rights crimes, including summary executions, indiscriminate attacks against civilians, sexual violence, and torture.

No one responsible for human rights violations committed during the 2000 election-related violence or the 2002-2003 armed conflict has been convicted for their alleged crimes.<sup>13</sup> A UN commission of inquiry report into human rights abuses committed during the 2002-2003 conflict, which included a confidential annex that reportedly listed 95 individuals deemed most responsible and deserving of criminal investigation, has never been made public by the UN.<sup>14</sup>

Many of those who escaped prosecution for abuses again played prominent roles in the 2010-2011 post-election crisis, when Gbagbo's refusal to accept Ouattara as the winner of the 2010 poll triggered violence and a resumption of armed conflict, during which at least 3,000 civilians were killed and more than 150 women raped.

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11, 2015), art. 35. For discussion of Guei's manipulation of the referendum process, see International Crisis Group, "Côte d'Ivoire: 'The War is Not Yet Over,'" no. 72, November 28, 2003, <http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/072-cote-divoire-the-war-is-not-yet-over.aspx> (accessed November 11, 2015), p. 7.

<sup>11</sup> Human Rights Watch, *The New Racism*, p. 1.

<sup>12</sup> The *Forces Nouvelles*, who fought on Ouattara's side during the 2010-2011 post-election crisis and were instrumental in bringing him to power, were a collection of three rebel groups who began a rebellion against President Laurent Gbagbo's government in September 2002. The rebellion was motivated by a desire to end political exclusion and discrimination against northern Ivorians and remove Gbagbo, whose presidency they perceived as illegitimate due to flaws in the elections. Human Rights Watch, *Trapped Between Two Wars*; Human Rights Watch, "*Because they have the guns... I'm left with nothing*". For a discussion of Gbagbo-era policies that discriminated against northern Ivorians and immigrants, see: International Crisis Group, "Côte d'Ivoire: The War is Not Yet Over," no. 72, November 28, 2003, <http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/072-cote-divoire-the-war-is-not-yet-over.aspx> (accessed November 10, 2015), pp. 7-8.

<sup>13</sup> Human Rights Watch, "*They Killed Them Like It Was Nothing*," p. 16-23.

<sup>14</sup> *Ibid*, p. 110.



In this photo dated Sunday, Jan. 16, 2011, pictures of various people who were allegedly maimed and killed for being suspected Ouattara supporters during the 2010-2011 post-election crisis lay strewn on a desk at the mayor's office in Abobo neighborhood, Abidjan. © 2011 Rebecca Blackwell/AP Photo

## Avenues to Justice

Côte d'Ivoire is an example of the potential for close cooperation between national and international justice in the effort to fight impunity for human rights abuses, with International Criminal Court (ICC) proceedings operating in parallel to cases in Ivorian courts.

At a national level, serious human rights abuses committed during the 2010-2011 post-election crisis fall within the remit of the *Cour d'Assises* — a special court with jurisdiction over serious offences. In early 2015, the *Cour d'Assises* tried former first lady Simone Gbagbo, together with more than 75 defendants, for crimes against the state committed during the post-election crisis.<sup>15</sup> Simone Gbagbo was convicted and sentenced to 20 years' imprisonment. The trial, however, did not concern the grave human rights violations Gbagbo is alleged to have committed during the crisis, and was criticized by Ivorian and

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<sup>15</sup> "Ivory Coast's former first lady Simone Gbagbo jailed," *BBC News*, March 10, 2015, <http://www.bbc.com/news/world-africa-31809073> (accessed September 4, 2015).

international human rights groups, which said that convictions were obtained “on the basis of little persuasive evidence.”<sup>16</sup>

National investigations into crimes committed during the post-election crisis are conducted by the Special Investigative Cell (since renamed the Special Investigative and Examination Cell, *la Cellule Speciale d’Enquête et d’Instruction*, CSEI), a taskforce of investigating judges and prosecutors created in June 2011. In the first half of 2015, the CSEI charged more than 20 perpetrators—including high-level commanders from both sides of the conflict—for their role in human rights abuses during the post-election crisis.<sup>17</sup> However, at the time of writing there have yet to be any civilian trials or convictions of those who committed human rights abuses during the crisis.

The beleaguered Ivorian military justice system has tried a small number of pro-Gbagbo officers and soldiers implicated in killing civilians during the crisis, but has been criticized by international and local human rights groups for the lack of rigor with which it pursues these cases.<sup>18</sup> In March 2015, military prosecutors were forced to discontinue the prosecution of two pro-Gbagbo commanders for the indiscriminate shelling of residential areas of Abobo in March 2011, in which more than 20 people were killed, after failing to produce sufficient evidence.<sup>19</sup> Military courts should not, in any case, have jurisdiction over serious human rights abuses committed by the military against civilians.<sup>20</sup>

At the international level, the ICC began an investigation into the crimes committed during the 2010-2011 post-election crisis in October 2011. The ICC has so far brought cases against three individuals: Laurent Gbagbo, his wife Simone Gbagbo, and Charles Blé Goudé,

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<sup>16</sup> “Ivory Coast: Concerns over a questionable trial,” International Federation for Human Rights (FIDH) press release, March 12, 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/Africa/cote-d-ivoire/ivory-coast-concerns-over-a-questionable-trial> (accessed September 4, 2015).

<sup>17</sup> “Côte d’Ivoire : deux anciens chefs rebelles pro-Ouattara inculpés,” *Le Monde*, July 8, 2015, [http://www.lemonde.fr/afrique/article/2015/07/08/cote-d-ivoire-deux-anciens-chefs-rebelles-pro-ouattara-inculpes\\_4675895\\_3212.html](http://www.lemonde.fr/afrique/article/2015/07/08/cote-d-ivoire-deux-anciens-chefs-rebelles-pro-ouattara-inculpes_4675895_3212.html) (accessed November 11, 2015).

<sup>18</sup> Human Rights Watch interview with international human rights group, Abidjan, May 29, 2015.

<sup>19</sup> “Crise postélectorale ivoirienne: 2 militaires du camp Gbagbo acquittés,” *Radio France Internationale (RFI)*, March 17, 2015, <http://www.rfi.fr/afrique/20150317-crise-postelectorale-ivoirienne-deux-militaires-acquittes-bombardements-abobo/> (accessed November 11, 2015). The chief military prosecutor, Commissioner Ange Kessy, is appealing to the *Cour de Cassation* the military tribunal’s failure to give the prosecution more time to produce witnesses. Human Rights Watch interview with Commissioner Ange Kessy, Abidjan, May 29, 2015.

<sup>20</sup> UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, A/68/285, August 7, 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/421/29/PDF/N1342129.pdf?OpenElement> (accessed November 13, 2015), paras. 63-71.

Gbagbo's former youth minister and close ally, and the longtime leader of a violent pro-Gbagbo militia group. The trial of Laurent Gbagbo and Blé Goudé is scheduled to begin before the ICC in January 2016, while the ICC's Office of the Prosecutor has yet to lay charges before the court for crimes committed by perpetrators allied with Ouattara during the post-election crisis. Simone Gbagbo remains in Côte d'Ivoire as the government has refused to surrender her to the ICC.

## Progress in National Courts

President Ouattara has repeatedly promised that all those responsible for atrocities during the 2010-2011 post-election crisis will be prosecuted, regardless of political affiliation or military rank.<sup>21</sup> He has also said all future trials relating to the post-election crisis would occur in national courts and that he would not transfer any future suspects to the ICC.<sup>22</sup>

The charges brought in 2015 by the CSEI against high-level perpetrators from both sides of the post-election crisis represent meaningful progress in national prosecutions.<sup>23</sup> The United Nations Independent Expert, as well as Human Rights Watch and other international and national human rights organizations, has publicly acknowledged the progress in the CSEI's investigations as a significant step towards impartial justice.<sup>24</sup>

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<sup>21</sup> See televised speech, "Message à la nation de SEM. Alassane Ouattara Président de la république Mercredi 31 décembre 2014," President Alassane Ouattara, December 31, 2014, broadcast by *Abidjan.net*, <http://news.abidjan.net/h/519533.html> (accessed November 11, 2015); see televised speech, "San Pedro: le Président Ouattara fait le bilan de sa visite d'Etat dans les régions du Bas Sassandra et du Gbôklè," President Alassane Ouattara, San Pedro, March 8, 2015, broadcast by *Abidjan.net* Radio, <http://news.abidjan.net/v/23467.html> (accessed November 11, 2015); see also Ouattara's remarks during a trip to Odienné that "tous les responsables des crimes" de la crise post-electorale "seront jugés" et qu'il n'y aurait "pas d'impunité" en Côte d'Ivoire, in article "Côte d'Ivoire: Ouattara souhaite une campagne présidentielle apaisée," *Abidjan.net*, May 25, 2015, <http://news.abidjan.net/h/552520.html> (accessed November 5, 2015). See also President Ouattara remarks, June 27, 2015, as reported in *Nouveau Réveil* (PDF on file with Human Rights Watch).

<sup>22</sup> "Côte d'Ivoire: personne ne sera plus transféré à la CPI, selon Ouattara," *Jeune Afrique*, April 13, 2015, <http://www.jeuneafrique.com/Article/ARTJAWEB20150413112851/laurent-gbagbo-ouattara-crise-post-lectorale-justice-ivoirienne-cote-d-ivoire-personne-ne-sera-plus-transf-r-la-cpi-selon-ouattara.html> (accessed September 4, 2015); "Côte d'Ivoire: Ouattara refuse tout nouveau transfert devant la CPI," *RFI*, April 14, 2015, <http://www.rfi.fr/afrique/20150413-cote-ivoire-ouattara-cpi-justice-internationale-crise-post-electorale/> (accessed September 4, 2015).

<sup>23</sup> "Côte d'Ivoire : deux anciens chefs rebelles pro-Ouattara inculpés," *Le Monde*; see also "Côte d'Ivoire : inculpations tous azimuts dans l'armée," *Jeune Afrique*, July 6, 2015, <http://www.jeuneafrique.com/mag/241746/societe/cote-divoire-inculpations-tous-azimuts-dans-larmee> (accessed November 11, 2015).

<sup>24</sup> "Côte d'Ivoire: L'Expert de l'ONU exhorte le gouvernement à assurer l'exercice des libertés publiques pour garantir des élections apaisées," UN OHCHR press release, May 29, 2015, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16024&LangID=F> (accessed November 11, 2015); "Côte d'Ivoire: deux anciens 'com-zone' inculpés par la justice," *RFI*, July 8, 2015, <http://www.rfi.fr/afrique/20150708-cote-ivoire-inculpations-anciens-chefs-rebelles> (accessed November 11, 2015); "Côte d'Ivoire: Don't Shut Down Investigations: Support Justice for Grave Post-Election Abuses," Human Rights Watch news release, June 26, 2015, <https://www.hrw.org/news/2015/06/26/cote-divoire-dont-shut-down-investigations>.

However, since its creation in June 2011, the Ivorian government's financial and political support for the CSEI has been inconsistent, resulting in staffing shortages and inadequate financial resources.<sup>25</sup> In late 2013, the very existence of the CSEI hung in the balance, with an Ivorian government spokesman at one stage proclaiming its imminent closure.<sup>26</sup> Only in late 2014, after significant pressure from national and international human rights groups and diplomats, did the government provide the CSEI with the financial and material support that it needs to conduct effective investigations – a key factor in facilitating the subsequent progress in investigations.<sup>27</sup> Even then, in mid-2015 credible reports emerged that the CSEI faced pressure from the executive to finish key human rights investigations prematurely.<sup>28</sup>

Furthermore, some of the commanders that have been charged by the CSEI retain key positions within the Ivorian military, including Chérif Ousmane, commander in the Presidential Guard, and Losseni Fofana, who commands the Ivorian army in the country's west.<sup>29</sup> Several international observers expressed skepticism that President Ouattara will ultimately support prosecutions of such high-level perpetrators from his side of the 2010-2011 post-election crisis.

## Support for the Special Investigative and Examination Cell

It is vital that the CSEI continues to receive the resources needed to conclude its investigations.<sup>30</sup> Maintaining the CSEI's staffing levels, and ensuring that the CSEI's current investigating judges and prosecutors remain in place, is particularly important to guarantee continuity in the investigations.<sup>31</sup> The CSEI's staff, as well as the *Cour d'Assises* judges who will ultimately hear human rights cases, would also benefit from further

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<sup>25</sup> Human Rights Watch, *Turning Rhetoric into Reality: Accountability for Serious International Crimes in Côte d'Ivoire*, April 2013, <https://www.hrw.org/report/2013/04/03/turning-rhetoric-reality/accountability-serious-international-crimes-cote-divoire>; International Federation for Human Rights (FIDH), "Ivory Coast: Choosing between Justice and Impunity," December 2014, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/16634-ivory-coast-choosing-between-justice-and-impunity> (accessed November 11, 2015), p. 9.

<sup>26</sup> *Ibid.*, p. 9.

<sup>27</sup> Human Rights Watch interview with Ivorian legal expert, Abidjan, May 28, 2015; interview with international human rights group, May 29, 2015.

<sup>28</sup> "Côte d'Ivoire: Don't Shut Down Investigations: Support Justice for Grave Post-Election Abuses," Human Rights Watch news release, June 26, 2015, <https://www.hrw.org/news/2015/06/26/cote-divoire-dont-shut-down-investigations>.

<sup>29</sup> "Côte d'Ivoire: deux anciens 'com-zone' inculpés par la justice," *RFI*.

<sup>30</sup> Human Rights Watch interview with Ivorian legal expert, Abidjan, May 28, 2015; interview with international human rights group, Abidjan, May 29, 2015.

<sup>31</sup> Human Rights Watch interview with international human rights group, Abidjan, July 29, 2015.

technical assistance on the process of trying complex human rights crimes involving multiple accused.<sup>32</sup>

The slow pace of national investigations underscores the importance of the ICC pursuing expeditiously its investigation of pro-Ouattara forces. Multiple interviewees suggested that the government's increased support for the CSEI is partly motivated by a desire to strengthen the argument that Côte d'Ivoire's courts are willing and able to prosecute perpetrators from the pro-Ouattara side (and so avoid the ICC's jurisdiction).<sup>33</sup> The ICC investigation remains a vital lever to push the Ivorian government to support efforts to pursue perpetrators from both sides of the 2010-2011 post-election crisis.

Numerous international diplomats are concerned that President Ouattara will eventually pardon high-level perpetrators found responsible for crimes during the post-election crisis, with pardons for pro-Ouattara commanders offset by a similar gesture for certain high-profile Gbagbo allies.<sup>34</sup> President Ouattara himself said in October 2015, "We want justice to do its job. And then once that's been done, our laws permit the consideration of amnesties and pardons."<sup>35</sup>

Pardons for high-level perpetrators from either side of the 2010-2011 post-election crisis would, however, deny victims—who have now waited almost five years to see perpetrators brought to account—meaningful justice. Drissa Soumahoro, president of a coalition of victims' groups, told Human Rights Watch that were Ouattara to grant pardons, "It would

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<sup>32</sup> Human Rights Watch interview with international human rights group, Abidjan, May 29, 2015

<sup>33</sup> Human Rights Watch interview with ONUCI official, Abidjan, May 26, 2015; interview with diplomat, Abidjan, May 27, 2015; interview with civil society activist, Abidjan, May 29, 2015.

<sup>34</sup> Blaise Akame, "Ivory Coast: eventual presidential pardon for the pro-Gbagbo," *Africa Top Success*, January 13, 2015, <http://www.africatopsuccess.com/en/2015/01/13/ivory-coast-eventual-presidential-pardon-for-the-pro-gbagbo/> (accessed November 11, 2015); "Crise postélectorale: le président conditionne la grâce au pardon," *RFI*, April 14, 2015, <http://www.rfi.fr/afrique/20150414-crise-postelectorale-cote-ivoire-president-ouattara-conditionne-grace-pardon/> (accessed November 11, 2015); and "Côte d'Ivoire: pas de nouveau transfèrement à la CPI (Ouattara)," *Abidjan.net*, April 13, 2015, <http://news.abidjan.net/h/548916.html> (accessed November 11, 2015).

<sup>35</sup> Cyril Bensimon, "Côte d'Ivoire : le président Ouattara promet une nouvelle Constitution s'il est réélu," *Le Monde*, October 23, 2015, [http://www.lemonde.fr/afrique/article/2015/10/23/cote-d-ivoire-le-president-ouattara-promet-une-nouvelle-constitution-s-il-est-reelu\\_4795712\\_3212.html#xtor=AL-32280270](http://www.lemonde.fr/afrique/article/2015/10/23/cote-d-ivoire-le-president-ouattara-promet-une-nouvelle-constitution-s-il-est-reelu_4795712_3212.html#xtor=AL-32280270) (accessed November 11, 2015). While the Ivorian criminal code (Code Pénal, art. 140-142) rules out amnesties for genocide, crimes against humanity, and war crimes, it does not prohibit pardons. The president's power to grant pardons is set out in the Constitution of Côte d'Ivoire (art. 49) and the criminal code (Code Pénal, art. 134).

be like saying he doesn't care at all about victims. Perpetrators must pay the penalty, and victims must have justice."<sup>36</sup>

Victims' groups also said that, while there is a need for perpetrators to seek forgiveness as part of Côte d'Ivoire's reconciliation process, that does not diminish victims' desire to see high-level perpetrators of human rights abuses prosecuted and, if convicted, punished. "Forgiveness doesn't mean there shouldn't be justice," Soumahoro told Human Rights Watch. "We need justice—impartial justice—so that these crimes aren't repeated."<sup>37</sup> Civil society activists said that pardons for high-level perpetrators would perpetuate the cycle of impunity that has fueled Côte d'Ivoire's past conflicts, and "would be an encouragement for recidivism by perpetrators and vengeance by victims."<sup>38</sup>

President Ouattara said as recently as October 2015 that "reconciliation does not mean no justice."<sup>39</sup> He should state publicly and unequivocally that he will not grant pardons to anyone convicted of serious human rights crimes. The ICC Prosecutor is likely to consider any such pardons as evidence that Côte d'Ivoire is unwilling and unable to prosecute human rights crimes at a national level.<sup>40</sup>

## Role of the International Criminal Court

The ICC's failure to so far bring charges against perpetrators allied with President Ouattara during the 2010-2011 post-election crisis is due to a large extent on the ICC Prosecutor's initial decision to first investigate former President Gbagbo and his allies before moving

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<sup>36</sup> Human Rights Watch interview with Drissa Soumahoro, President of the Confédération des organisations des victimes de la crise ivoirienne (COVICI), Abidjan, October 10, 2015.

<sup>37</sup> Ibid.

<sup>38</sup> Human Rights Watch telephone interview with head of civil society organization, Abidjan, October 15, 2015.

<sup>39</sup> "Côte d'Ivoire : interview exclusive du président Alassane Ouattara," TV5MONDE, October 28, 2015, <http://information.tv5monde.com/afrique/cote-d-ivoire-interview-exclusive-d-lassane-ouattara-63229> (accessed November 13, 2015).

<sup>40</sup> The Office of the Prosecutor has in the past made clear its position that "a sentence that is grossly or manifestly inadequate, in light of the gravity of the crimes and the form of participation of the accused, would vitiate the genuineness of a national proceeding, even if all previous stages of the proceeding had been deemed genuine." International Criminal Court (ICC), "Report on Preliminary Examination Activities 2014," December 2, 2014, <http://www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf> (accessed November 5, 2015), para. 114.



onto pro-Ouattara forces,<sup>41</sup> a decision consistent with a policy of “sequencing” investigations followed by the Office of the Prosecutor in its earliest years.<sup>42</sup>

Court staff also told Human Rights Watch that resource constraints resulting from cases in other countries before the court have affected its ability to conduct investigations into pro-Ouattara forces.<sup>43</sup>

Many Ivorian civil society activists told Human Rights Watch that the one-sided focus of ICC cases to date has undermined perceptions of its legitimacy.<sup>44</sup> As one Ivorian human rights advocate said, “The ICC is not working to take into account all the victims... Victims that belong to the other side [victims of abuses by pro-Ouattara forces] do not believe in the ICC. It is painful to say this because normally a victim does not have a side.”<sup>45</sup>

The ICC investigations are also limited in their geographic scope. Laurent and Simone Gbagbo and Blé Goudé are only charged in connection with four or five incidents, all of which took place within Abidjan.<sup>46</sup> As a result, to date, the ICC’s cases do not address any of the atrocities committed in western Côte d’Ivoire.<sup>47</sup> Several community leaders in the west underscored their concern about this geographic limitation to Human Rights Watch: “Since 2002, we’ve really suffered, and yet there’s been complete impunity for all the abuses... people don’t really know what happened in the heart of the country.”<sup>48</sup>

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<sup>41</sup> Human Rights Watch, *Making Justice Count: Lessons from the ICC’s Work in Côte d’Ivoire*, August 4, 2015, <https://www.hrw.org/report/2015/08/04/making-justice-count/lessons-iccs-work-cote-divoire>, p. 40.

<sup>42</sup> *Ibid.*, p. 40.

<sup>43</sup> Human Rights Watch group interview with ICC staff, The Hague, June 10, 2015, and email correspondence, June 17-24, 2015; group interview with ICC staff, The Hague, September 2015. Human Rights Watch, *Making Justice Count*, p. 42.

<sup>44</sup> According to a December 2013 survey of 1,000 Abidjan residents, of the 94 percent of respondents who had heard of the ICC, 47 percent had positive impressions of the court, while 46 percent had negative impressions. Those surveyed with negative impressions of the ICC most frequently cited perceptions of bias as the reason for their opinion. Specifically, “respondents most frequently cited the perception that the Court (1) is pursuing only one group (24%) or (2) being biased toward the government (9%), the military (1%) or unspecified biases (6%).” See Phuong N. Pham and Patrick Vinck, Harvard Humanitarian Initiative, Harvard School of Public Health, “Fragile Peace, Elusive Justice: Population-Based Survey on Perceptions and Attitudes about Security and Justice in Abidjan,” *Series on Peace, Justice and Reconstruction*, July 2014, [http://www.peacebuildingdata.org/sites/m/pdf/Abidjan\\_2014\\_Fragile\\_Peace\\_Elusive\\_Justice.pdf](http://www.peacebuildingdata.org/sites/m/pdf/Abidjan_2014_Fragile_Peace_Elusive_Justice.pdf) (accessed June 5, 2015), pp. 45-47.

<sup>45</sup> Human Rights Watch interview with representative of an Ivorian civil society organization, Abidjan, September 25, 2014; Human Rights Watch, *Making Justice Count*, p. 43.

<sup>46</sup> Human Rights Watch, *Making Justice Count*, p. 32-33; p. 38-40.

<sup>47</sup> *Ibid.*, p. 5. See also: Human Rights Watch, “*They Killed Them Like It Was Nothing*,” pp. 5-6, 59-63, 75-90.

<sup>48</sup> Human Rights Watch interview with village chief and elders, Guiglo, May 24, 2015.

The ICC's work in Côte d'Ivoire was further complicated by public statements by President Ouattara in April 2015 that he would not transfer any future suspects to the ICC.<sup>49</sup> Despite in May 2015 losing an appeal over the admissibility of the ICC's case against Simone Gbagbo (the Ivorian government argued that she could be tried in Ivorian courts), the government has refused to transfer Gbagbo to the ICC.<sup>50</sup>

The ICC's Office of the Prosecutor scaled up its investigations into pro-Ouattara forces in the second half of 2015. A senior Ivorian official told Human Rights Watch that the government's position on future transfers would not affect the Ivorian government's cooperation with ICC investigators examining abuses by pro-Ouattara forces,<sup>51</sup> although one international official said that it was "too soon" to be sure about the extent of the government's cooperation.<sup>52</sup>

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<sup>49</sup> "Côte d'Ivoire : personne ne sera plus transféré à la CPI, selon Ouattara," *Jeune Afrique*, April 13, 2015, <http://www.jeuneafrique.com/Article/ARTJAWEB20150413112851/laurent-gbagbo-alassane-ouattara-crise-post-lectorale-justice-ivoirienne-cote-d-ivoire-personne-ne-sera-plus-transf-r-la-cpi-selon-ouattara.html> (accessed September 4, 2015); "Côte d'Ivoire: Ouattara refuse tout nouveau transfert devant la CPI," *RFI*, April 14, 2015, <http://www.rfi.fr/afrique/20150413-cote-ivoire-alassane-ouattara-cpi-justice-internationale-crise-post-electorale/> (accessed September 4, 2015).

<sup>50</sup> "Appeals Chamber confirms admissibility of the ICC's Simone Gbagbo case," ICC press release, ICC-CPI-20150527-PR1112, May 27, 2015, [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/pages/pr-1112.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/pr-1112.aspx) (accessed September 8, 2015).

<sup>51</sup> Human Rights Watch interview, Abidjan, May 28, 2015.

<sup>52</sup> Human Rights Watch telephone interview, September 2015.

## II. Building a Justice System That Respects and Protects Rights

We need to decide what justice we want for this country. The reforms that have already been implemented are welcome, but our country, with all its resources, can do much more to facilitate access to quality justice. The reform of the justice sector can't happen in five years, but needs a longer-term vision to accomplish meaningful change.

—Manlan Ehounou Laurent, Ivorian magistrate and president of Transparency Justice<sup>53</sup>

When President Ouattara assumed office in 2011, his government inherited a judicial system that had been devastated by conflict and years of neglect. His government has since made progress in repairing infrastructure and has successfully redeployed judicial personnel to areas in the north that were, prior to the 2010-2011 post-election crisis, outside of the government's control.

Many Ivorians, however, still lack faith that the justice system will respect their rights and provide an effective remedy when these rights are violated. A December 2013 survey in Abidjan found that 64 percent of respondents have “little or no trust in the justice system.”<sup>54</sup> A representative of an international donor which has invested heavily in the justice sector told Human Rights Watch, “People only see court buildings as something you go to when you're in trouble, not to get solutions to problems.”<sup>55</sup> An Ivorian jurist working at a legal clinic in the northeast said: “The population don't really have confidence in the justice sector; they think that nothing will happen and the file will just sit there and there will be no action.”<sup>56</sup>

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<sup>53</sup> Human Rights Watch interview with Manlan Ehounou Laurent, Ivorian magistrate and president of Transparency Justice, Abidjan, October 16, 2015.

<sup>54</sup> Phuong N. Pham and Patrick Vinck, “Fragile Peace, Elusive Justice: Population-Based Survey on Perceptions and Attitudes about Security and Justice in Abidjan,” pp. 36-37.

<sup>55</sup> Human Rights Watch interview with official from international development agency, March 2015.

<sup>56</sup> Human Rights Watch interview with Ivorian jurist, October 8, 2015.

## The Need to Rebuild

The decade of intermittent conflict and instability that followed the 1999 coup severely undermined efforts to improve access to justice, with one international donor describing the 2000s as a “lost decade” for justice sector reform.<sup>57</sup> From 2002, many courts did not operate in the areas in the north and west controlled by the *Forces Nouvelles*. Political instability and underinvestment meant that courts in the government-controlled areas were over-burdened, outdated, and inefficient.<sup>58</sup> The justice system was further weakened during the 2010-2011 post-election crisis, when 17 of the country’s 37 courts and 22 of its 33 prisons were damaged.<sup>59</sup>

Early in his presidency, President Ouattara told magistrates that there was a need to repair the “loss of confidence” in the justice system.<sup>60</sup> In June 2013, the government, on the basis of a proposal from the Ministry of Justice, adopted a National Action Plan for the Justice Sector, which laid out reforms envisioned to both aid the justice system’s short-term recovery and address long-standing problems, including improved judicial independence and better access to justice.<sup>61</sup> Pursuant to this plan, numerous court buildings and detention facilities have been upgraded.<sup>62</sup> Judicial personnel have been redeployed and courts reopened across the country.<sup>63</sup> Significant emphasis has also been placed on improving training for the judiciary.<sup>64</sup>

Much of the National Action Plan, however, is yet to be implemented. Ivorian lawyers and judges, as well as international donors, told Human Rights Watch that the government’s failure to implement some planned reforms, such as legislative changes to strengthen the

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<sup>57</sup> Agence Française de Développement (AFD), “Note de Communication Publique d’Opération : Projet de renforcement du système judiciaire et pénitentiaire et de la protection des droits de l’homme en Côte d’Ivoire,” <http://www.afd.fr/base-projets/downloadDocument.action;jsessionid=1D1DA8BADCC41E671F82EF5A160D9942?idDocument=1733> (accessed November 11, 2015), p. 2.

<sup>58</sup> UN Operation in Côte d’Ivoire (ONUCI), “Rapport sur l’état des lieux de la justice en Côte d’Ivoire 2008-2009,” p. 1-2, cited in AFD, “Note de Communication: Publique d’Opération, Projet de renforcement du système judiciaire et pénitentiaire et de la protection des droits de l’homme en Côte d’Ivoire,” p. 2.

<sup>59</sup> AFD, “Note de Communication: Publique d’Opération, Projet de renforcement du système judiciaire et pénitentiaire,” p. 2.

<sup>60</sup> “Yamoussoukro / Alassane Ouattara aux magistrats : ‘La justice ivoirienne n’est ni rassurante, ni sécurisante,’” *Abidjan.net*, November 5, 2011, <http://news.abidjan.net/h/415846.html> (accessed November 5, 2015).

<sup>61</sup> Human Rights Watch interview with international legal expert, Abidjan, May 27, 2015.

<sup>62</sup> “Table de Suivi de l’Exécution du Plan d’Action de la Politique Sectorielle de la Justice,” September 2015 (on file with Human Rights Watch).

<sup>63</sup> *Ibid.*

<sup>64</sup> Human Rights Watch interview with head of international development organization active in the justice sector, Abidjan, July 28, 2015.

independence of the judiciary, reflects a lack of political will; others, they said, were hamstrung by the limited budgetary allocation available for the courts and judiciary.<sup>65</sup>

As President Ouattara's government begins its second term, several priority areas—discussed in more detail below—deserve urgent attention if the justice system is to adequately protect the rights of Ivorians. These notably include the lack of independence of the judiciary, corruption, excessive prolonged pretrial detention, poor prison conditions, and lack of access to legal representation.

In light of President Ouattara's promise to revise Côte d'Ivoire's constitution early in his second term, the government should use the constitutional reform process to bolster the independence of the High Judicial Council (*Conseil Supérieur de la Magistrature*, CSM) and protect judges from executive interference.

The government should also urgently review the National Action Plan for the Justice Sector to create a revised version for 2016-2020, including new target dates for the completion of key reforms not yet implemented.

The revised action plan should include a timeline for the passage of codes and laws essential to rule of law reform that were drafted during President Ouattara's first term, but have not yet been finalized and adopted.<sup>66</sup> This includes the criminal procedure code and laws on the profession of magistrates, the prison system, and legal assistance.

In formulating the revised plan, the Ministry of Justice should also identify the reasonable cost of planned reforms and programs, and should advocate for increased investment in the justice sector to support key reforms. In November 2011, President Ouattara said “sufficient financial resources are essential if the justice system is to function properly,” and that he would increase the Ministry of Justice's budget to three percent of the state budget.<sup>67</sup> In 2014,

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<sup>65</sup> Human Rights Watch interview with international legal expert July 29, 2015; interview with Ivorian magistrate, October 2015; interview with Ivorian civil society leader, October 15, 2015.

<sup>66</sup> The Ministry of Justice's section on research, legislation, and documentation is typically responsible for drafting laws related to the justice sector. Draft laws are approved by the Minister of Justice and then sent to the Secretary-General of the government, before being examined by the Council of Ministers (equivalent, in many countries, to a cabinet meeting) and sent to the National Assembly for review and adoption.

<sup>67</sup> “Yamoussoukro / Alassane Ouattara aux magistrats : ‘La justice ivoirienne n’est ni rassurante, ni sécurisante,’” *Abidjan.net*.

however, the Ministry of Justice’s budget was 90.6 million euros (US \$96.4 million), just 1.4 percent of the overall budget of the Ivorian state.<sup>68</sup>

International donors, including France, the United States, and the European Union (EU), should apply more pressure to the Ivorian government to make progress in areas, such as improved judicial independence, where the government may lack the political will to implement reforms.<sup>69</sup> The French government, for example, which is currently evaluating how to invest a further 8 million euros (\$8.5 million) in the justice sector, should include in its programming support for reforms to the constitutional provisions and laws governing the CSM and the profession of magistrates.<sup>70</sup>

## Lack of Judicial Independence

Political interference in judicial decision-making in Côte d’Ivoire predates President Ouattara’s government. Ivorian government officials cite the Constitutional Court’s nullification of the 2010 presidential election results announced by the Independent Electoral Commission as reflective of the perceived lack of independence of the judicial system during the Gbagbo era.<sup>71</sup>

Numerous interlocutors, including Ivorian civil society groups and diplomats, expressed concerns about what they perceive as continued executive interference in the independence of the judiciary during Ouattara’s first term.<sup>72</sup> One Ivorian human rights

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<sup>68</sup> AFD, “Note de Communication: Publique d’Opération, Projet de renforcement du système judiciaire et pénitentiaire,” p. 4. The Ministry of Justice also doesn’t necessarily disburse all this money – in 2013, only 79% of the budget was actually spent.

<sup>69</sup> Since 2011, the EU has spent approximately 18 million euros (approximately US \$19.1 million) in support of the government’s justice sector reform efforts. Human Rights Watch interview with international official, May 28, 2015. The French government, which is in the process of finalizing a partnership with the Ministry of Justice through which 23 million euros (approximately US \$24.3 million) will be invested in the justice sector over two years, will become the Ministry of Justice’s primary technical partner in this area. This program is part of the French government’s Debt Repayment and Development (“C2D”) program, in which debt repayments owed to France by the Ivorian government are used for development projects – agreed between the French and Ivorian governments – in Côte d’Ivoire. The US government will also continue its \$19 million ProJustice program until 2018. “USAID Launches ProJustice, a Flagship Project for Côte d’Ivoire,” USAID press release, November 19, 2013, <https://www.usaid.gov/cote-divoire/press-releases/usa-id-launches-projustice-flagship-project-cote-divoire> (accessed November 5, 2015).

<sup>70</sup> Human Rights Watch telephone interview with diplomat, June 18, 2015.

<sup>71</sup> Human Rights Watch, *Turning Rhetoric into Reality*, p. 41.

<sup>72</sup> In March 2015, the UN Human Rights Committee, in its final report on Côte d’Ivoire’s implementation of the ICCPR, expressed concern about the judiciary’s lack of independence because of executive interference. See UN Human Rights Committee, “International Covenant on Civil and Political Rights: Concluding observations on the initial report of Côte d’Ivoire,” April 28, 2015, CCPR/C/CIV/CO/1, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/)

activist said that the independence of the judiciary is somewhat stronger than under Gbagbo's presidency, when the executive's control over the judiciary was such that it was "truly justice on order."<sup>73</sup> He cautioned, however, that there "remain structural problems which prevent judges from having the courage to act independently."

Soon after taking office, President Ouattara said that his ambition was to create a justice system that was "independent and impartial."<sup>74</sup> Promoting independent and impartial justice is a key pillar of both the National Action Plan for the Justice Sector<sup>75</sup> and Côte d'Ivoire's National Security Strategy.<sup>76</sup> However, the government has failed to implement two reforms identified in the Action Plan that would protect against executive interference in the judiciary.

First, the government has not finalized a draft law that would strengthen the independence of the CSM, the body mandated to make judicial appointments and discipline judges.<sup>77</sup> Under the constitution, the Ivorian president is the head of the CSM, giving the executive a key role in how the institution operates. In 2012, the Ministry of Justice drafted a law that would have increased the independence of the CSM, without requiring a constitutional amendment, by requiring the president to follow the CSM's advice when selecting judges.<sup>78</sup>

Similarly, the Ministry of Justice has not finalized a draft law that would modify the laws regulating the magistrate profession, which as currently applied allow the executive to determine the court to which a judge is posted.<sup>79</sup> A justice sector expert told Human Rights Watch that, at present, judges fear that they will be "sent to Odienné," a particularly remote town, if they make a ruling that displeases the executive.<sup>80</sup>

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C/CIV/CO/1&Lang=En (accessed November 11, 2015), para. 20. Côte d'Ivoire became a party to the ICCPR in 1992; see UN OHCHR, "Ratification of 18 International Human Rights Treaties," <http://indicators.ohchr.org/> (accessed November 5, 2015).

<sup>73</sup> Human Rights Watch interview with Ivorian civil society leader, October 15, 2015.

<sup>74</sup> "Yamoussoukro / Alassane Ouattara aux magistrats: 'La justice ivoirienne n'est ni rassurante, ni sécurisante,'" *Abidjan.net*.

<sup>75</sup> Plan d'action de la politique sectorielle de la justice 2013, Axe Stratégique 2 (on file with Human Rights Watch).

<sup>76</sup> Côte d'Ivoire National Security Strategy, p. 25 (on file with Human Rights Watch).

<sup>77</sup> Note that the term "magistrates" in Côte d'Ivoire, as in many legal systems with roots in the French tradition, denotes both prosecutors, known as *magistrats du parquet*, and the judges who decide cases, known as *magistrats de siege*. The comments in this section relates to the appointment and discipline of *magistrats de siège*.

<sup>78</sup> Human Rights Watch interview with international legal expert, July 29, 2015.

<sup>79</sup> Human Rights Watch email correspondence with international legal expert, September 27, 2015; ONUCI, "Etude d'Evaluation du Système Juiciaire Ivorien: L'Organisation et le Fonctionnement du Système Judiciaire en Côte d'Ivoire," Rule of Law, June 2007, <http://www.onuci.org/pdf/rulesrapport6.pdf> (accessed November 5, 2015), p. 11.

<sup>80</sup> Human Rights Watch email correspondence with international expert, September 27, 2015. Odienné is a town in northwestern Côte d'Ivoire, approximately 700km from Abidjan.

Manlan Ehounou Laurent, the head of Transparency Justice, a group of Ivorian magistrates, lawyers, and court officials committed to improving access to quality justice, told Human Rights Watch that the government's failure to pass a law on the CSM and the profession of magistrates had impacted negatively the independence of the judiciary. He said: "The control that the executive continues to exercise over the nomination of magistrates has significant consequences for the impartiality of judges. If I'm appointed thanks to somebody, clearly it will be difficult for me to refuse them something when they ask me to do it."<sup>81</sup>

One diplomat told Human Rights Watch that the government's failure to make progress on the laws on the CSM and the profession of magistrates was "a political decision," which reflected a "lack of desire to change the level of control that the executive currently has over judges."<sup>82</sup>

International standards require that judges be able to adjudicate cases without any improper influences, threats, or interferences, direct or indirect, from any quarter or for any reason.<sup>83</sup> The process used to appoint judges should safeguard the independence and impartiality of the judiciary.<sup>84</sup>

Prior to the October 2015 presidential election, President Ouattara said that if elected, his government would propose changes to Côte d'Ivoire's constitution.<sup>85</sup> His government should use the constitutional reform process to eliminate the president's role as the head of the CSM and establish a process for appointing members of the CSM that is independent of executive influence. The government should also revise the laws on the profession of magistrates to ensure that it is the CSM, and not the executive, that determines the courts to which judges are posted.

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<sup>81</sup> Human Rights Watch interview, October 16, 2015.

<sup>82</sup> Human Rights Watch interview with diplomat, July 29, 2015.

<sup>83</sup> United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), art. 2. See also Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, African Commission on Human and People's Rights, DOC/OS(XXX)247, 2003, <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/> (accessed November 13, 2015), Principle A, para. 5 (a).

<sup>84</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle A, para. 4(h). See also UN Basic Principles on the Independence of the Judiciary, art. 10.

<sup>85</sup> "Côte d'Ivoire: Ouattara espère «une nouvelle Constitution,»" *RFI*, October 22, 2015, <http://www.rfi.fr/afrique/20151022-cote-ivoire-ouattara-souhaite-une-nouvelle-constitution> (accessed November 16, 2015).



## Corruption

Ivorian lawyers, judges, human rights organizations, and international legal experts said that corruption remains a significant problem within the judiciary, which has a direct impact on rights protection.<sup>86</sup> Judge Manlan, the head of Transparency Justice, told Human Rights Watch: “Corruption is part of Ivorian society, and the problems to be found in public administration, including corruption, are also found in the justice sector. But the justice sector is supposed to be society’s check and balance, and so if we’re corrupt, our society is out of balance.”<sup>87</sup>

Interviewees said that in criminal cases, corruption fuels impunity by allowing people with means to escape prosecution.<sup>88</sup> An Ivorian lawyer also told Human Rights Watch that whether an accused remains in pretrial detention in Côte d'Ivoire is often determined by what they can afford to pay. “It’s the real criminals who get out, while the poorest people stay in detention,” he said. “If you want to avoid or get out of pretrial detention, you just have to pay the prosecutor or the investigating judge and you’ll be out.”<sup>89</sup>

In November 2011, President Ouattara said that corruption in the judiciary “must be banished” and that corrupt judges would be fired.<sup>90</sup> The government and international donors have strengthened the Inspector General of Judicial and Penitentiary Services (*Inspection Générale des Services Judiciaires et Pénitentiaires*), the individual appointed by the government to provide oversight of the judicial and corrections services. The Inspector General’s office, having been dormant for many years, now conducts inspections of courts and prisons in Abidjan and the interior.<sup>91</sup> In 2012, the government also adopted rules that allow the Inspector General’s office to initiate its own investigation into a particular tribunal or official, without an instruction to do so from the Ministry of Justice.<sup>92</sup>

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<sup>86</sup> More than half of respondents to a December 2013 survey in Abidjan, when asked what needed to be done to improve the justice system, cited the need to fight corruption. See Phuong N. Pham and Patrick Vinck, “Fragile Peace, Elusive Justice: Population-Based Survey on Perceptions and Attitudes about Security and Justice in Abidjan,” pp. 39.

<sup>87</sup> Human Rights Watch interview, Abidjan, October 16, 2015.

<sup>88</sup> Human Rights Watch interview with ONUCI official, Bouaké, October 7, 2014; email correspondence with Ivorian magistrate, October 22, 2015.

<sup>89</sup> Human Rights Watch interview with Ivorian lawyer, Abidjan, July 30, 2015.

<sup>90</sup> “Yamoussoukro / Alassane Ouattara aux magistrats : ‘La justice ivoirienne n’est ni rassurante, ni sécurisante,’” *Abidjan.net*.

<sup>91</sup> Human Rights Watch interview with diplomat, Abidjan, July 28, 2015; interview with international legal expert, Abidjan, July 29, 2015.

<sup>92</sup> Human Rights Watch interview with Ivorian magistrate, Abidjan, October 19, 2015; email correspondence with international legal expert, Abidjan, November 5, 2015.

The reports compiled by the Inspector General are submitted to the Minister of Justice, who should, where there is evidence of wrongdoing by a judge or prosecutor, refer the case for disciplinary proceedings before the CSM (for judges) or a disciplinary commission (for prosecutors).<sup>93</sup> Ivorian jurists, however, told Human Rights Watch that they were not aware of any judges being disciplined or prosecuted for corruption since 2012, when the new rules allowing the Inspector General to initiate investigations were adopted.<sup>94</sup>

Ivorian and international legal experts told Human Rights Watch that, because it is the Minister of Justice who refers wrongdoers identified by the Inspector General to disciplinary proceedings, there is the potential for the executive to block disciplinary cases against judges and prosecutors.<sup>95</sup>

Furthermore, because neither the reports of the Inspector General nor the outcome of disciplinary proceedings against judges or prosecutors are made public, it is extremely difficult for parliamentarians and civil society organizations to provide oversight of the extent to which corruption is reported and sanctioned.<sup>96</sup>

In the lead up to the 2015 presidential election, President Ouattara again acknowledged that corruption is widespread in the judiciary, promising “to get to grips with it.”<sup>97</sup> He said that corrupt judges would be fired, and that he will propose legislation to make public disciplinary sanctions against judges.<sup>98</sup> This would be a positive step, although at least one Ivorian magistrate said it was important that judges accused of misconduct receive appropriate legal representation and are presumed innocent until disciplinary proceedings have been completed.<sup>99</sup>

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<sup>93</sup> Human Rights Watch interview with Ivorian magistrate, Abidjan, October 19, 2015.

<sup>94</sup> Human Rights Watch interview with Ivorian lawyer, Abidjan, July 30, 2015; interview with Ivorian magistrate, Abidjan, October 19, 2015.

<sup>95</sup> Human Rights Watch interview with Ivorian magistrate, Abidjan, October 16, 2015; interview with international legal expert, Abidjan, July 29, 2015.

<sup>96</sup> Human Rights Watch interview with Ivorian magistrate, Abidjan, October 19, 2015; interview with international legal expert, Abidjan, July 29, 2015.

<sup>97</sup> “Côte d’Ivoire/Corruption: les noms des juges indéclicats seront publiés (Ouattara),” *Abidjan.net*, October 16, 2015, <http://news.abidjan.net/h/567044.html> (accessed November 11, 2015).

<sup>98</sup> “Côte d’Ivoire/Corruption: les noms des juges indéclicats seront publiés (Ouattara),” *Abidjan.net*.

<sup>99</sup> Human Rights Watch interview with Ivorian magistrate, Abidjan, October 19, 2015.

President Ouattara’s new government should empower the Inspector General to refer magistrates suspected of misconduct directly to the CSM and prosecutor’s disciplinary commission, without the permission of the Minister of Justice. The government should also pass a decree requiring the Inspector General’s office to release public versions of their inspection reports, with the names of individuals suspected of wrongdoing redacted pending the completion of disciplinary proceedings. Increased public outreach is also necessary to inform the public that they can bring complaints about corrupt practices directly to the Inspector General.

## Excessive and Prolonged Pretrial Detention

Ivorian courts continue to place far too many accused in pretrial detention, with approximately 40 percent of people in Ivorian jails in pretrial detention.<sup>100</sup> Because of the time it takes to try cases involving serious crimes, many detainees spend several years in pretrial detention before being tried or released.<sup>101</sup> Excessive and prolonged pretrial detention was also a severe problem during Gbagbo’s presidency,<sup>102</sup> but President Ouattara’s government has so far done too little to address it – doing so should be a priority for his second term.

The prevalence of pretrial detention and the slow pace of case resolution exacerbate overcrowding within Ivorian prisons.<sup>103</sup> Prior to the 2010-2011 post-election crisis, Côte d’Ivoire squeezed 12,000 prisoners into a national prison system designed for no more than

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<sup>100</sup> Human Rights Watch interview with Ivorian NGO active in prison reform, Abidjan, July 30, 2015. Email correspondence with international legal expert, October 16, 2015. In September 2014, according to figures from the Direction de l’Administration Pénitentiaire of the Ministry of Justice, 4,187 of Côte d’Ivoire’s 10,071 detainees (41.57%) were in pretrial detention. Numerous interviewees cited excessive pretrial detention as a major human rights issue. Human Rights Watch interview with Me. Aimée Zebeyoux, President of the Association des Femmes Juriste de Côte d’Ivoire, Abidjan, August 3, 2015; interview with Yacouba Doumbia, President of the Ivorian Movement for Human Rights, Abidjan, July 30, 2015.

<sup>101</sup> Human Rights Watch interview with international legal expert, Abidjan, May 27, 2015. Mouvement Ivoirien des Droits de l’Homme (MIDH), “Evaluation et formation pour l’amélioration des conditions de vie des personnes privées de liberté en Côte d’Ivoire,” Evaluation Report, February - January 2015, p. 7.

<sup>102</sup> ONUCI, “Actes de la Journée de Réflexion sur la Détention Préventive, Dans le Cadre du Stage de Lancement du Volet ‘Accès au droit’ du Projet P3-7 de l’ONG Prisonniers Sans Frontières, En collaboration avec le Ministère de la Justice et des Droits de l’Homme et la section Etat de Droit de l’ONU,” April 28, 2009, Unity/Peace Hall, Seboko, <http://www.onuci.org/pdf/ACTESDELAJOURNEEDEREFLEXIONSURLADETENTIONPREVENTIVE.pdf>.

<sup>103</sup> UN Human Rights Council, “Report of the Independent Expert on capacity-building and technical cooperation with Côte d’Ivoire in the field of human rights, Mohammed Ayat,” U.N. Doc. A/HRC/29/49, April 27, 2015, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/49](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/49), para. 70; MIDH, “Evaluation et formation pour l’amélioration des conditions de vie des personnes privées de liberté en Côte d’Ivoire,” p. 14 (on file with Human Rights Watch).

5,000.<sup>104</sup> Although prisoners escaped in massive numbers during the crisis, the prison population now varies between 8,000-12,000 detainees, with 9,500 prisoners detained in June 2015.<sup>105</sup> Prisoners are distributed unequally among the country's 34 prisons, with almost half severely overpopulated.<sup>106</sup>

Under Ivorian law, the decision as to whether to impose pretrial detention is taken by the judge responsible for investigating the alleged crime (*juge d'instruction*). Although the law stipulates that pretrial detention should be an exceptional measure, it provides no guidance on the criteria judges should apply in determining whether to place someone in detention and does not require judges to provide reasons for their decision.<sup>107</sup>

As a result, judges too often simply decide to impose pretrial detention even if there is no compelling reason to do so. As Yacouba Doumbia, President of the Ivorian Movement for Human Rights, explains, "Because there are no guidelines as to how the decision to impose pretrial detention is determined by the investigating judge, pretrial detention becomes the rule and not the exception as provided for by the criminal procedure code."<sup>108</sup> International human rights law makes clear that pretrial detention should be the exception, not the general rule.<sup>109</sup>

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<sup>104</sup> AFD, "Note de Communication: Publique d'Opération, Projet de renforcement du système judiciaire et pénitentiaire et de la protection des droits de l'homme en Côte d'Ivoire," p. 3.

<sup>105</sup> Human Rights Watch email correspondence with international legal expert, Abidjan, July 31, 2015.

<sup>106</sup> Ibid; MIDH, "Evaluation et formation pour l'amélioration des conditions de vie des personnes privées de liberté en Côte d'Ivoire," p. 6. When MIDH in April 2014 visited Abidjan's central prison (*Maison d'arrêt et de correction, MACA*) they reported that it housed over 4,900 detainees, including more than 2,000 people in pre-trial detention. The MACA is only supposed to hold 1,500 people. When the group visited again in January 2015, the number of detainees had risen to 5,500, although approximately 1,330 were subsequently released following a February 2015 presidential pardon.

<sup>107</sup> Code de Procédure Pénale, No. 60-366 of November 14, 1960, Côte d'Ivoire, [https://www.unodc.org/res/cld/document/civ/1960/loi-no-60-366-du-14-novembre-1960-portant-code-de-procedure-penale\\_html/Cote\\_dlvoire\\_Loi\\_No\\_60-366\\_du\\_14\\_Novembre\\_1960\\_portant\\_code\\_de\\_procedure\\_penale.pdf](https://www.unodc.org/res/cld/document/civ/1960/loi-no-60-366-du-14-novembre-1960-portant-code-de-procedure-penale_html/Cote_dlvoire_Loi_No_60-366_du_14_Novembre_1960_portant_code_de_procedure_penale.pdf) (accessed November 5, 2015), art. 137-138.

<sup>108</sup> Human Rights Watch interview, July 30, 2015.

<sup>109</sup> International Covenant on Civil and Political Rights (ICCPR), article 9(3), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Côte d'Ivoire on March 26, 1998. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa similarly state that unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses, or posing a clear and serious risk to others, states must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail. See Principle M(1)(e).

In July 2013, the Ministry of Justice, pursuant to the National Action Plan for the Justice Sector, established an expert committee to reform the country's legal codes.<sup>110</sup> The subcommittee examining the criminal procedure code in 2015 drafted provisions that would specify the grounds according to which a judge can impose pretrial detention and would require judges to provide reasons for doing so. The revised code would also permit judges to impose conditions on defendants released prior to trial, such as the requirement to periodically check in at a police station.<sup>111</sup> The Ministry of Justice should expedite the review and adoption of the committee's proposed changes to the criminal procedure code.

To address the slow pace of justice that contributes to prolonged pretrial detention, the Ministry of Justice, with support from the United States Agency for International Development (USAID), has developed and piloted an improved case management system to help courts track the progress of criminal cases.<sup>112</sup> However, efforts to expedite cases are often undermined by the requirement that individuals accused of a serious crime, such as murder or rape, can only be tried before a *Cour d'Assises*, a specially convened court with 3 judges and a 6-person jury.<sup>113</sup> Under Ivorian law, the *Cour d'Assises* is required to convene every three months.<sup>114</sup> However, despite the backlog of cases, the logistical and financial challenges associated with convening the *Cour d'Assises* mean that it meets very irregularly – Côte d'Ivoire held its first *Cour d'Assises* sessions in 10 years in 2014.<sup>115</sup>

International human rights law requires that anyone who is arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release.<sup>116</sup> One option to reduce delays in the adjudication of serious criminal cases would be the creation of a permanent criminal chamber within Côte d'Ivoire's three courts of appeal, a change

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<sup>110</sup> "Table de Suivi de l'Exécution du Plan d'Action de la Politique Sectorielle de la Justice," March 2015 (on file with Human Rights Watch). In March 2015, the National Assembly adopted bills amending the Ivorian criminal code and criminal procedure code to ensure conformity with the Rome Statute of the ICC. However, these reforms did not deal with issues of pretrial detention or the *Cour d'Assises*. See UN Security Council, "Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire," U.N. Doc. S/2015/320, May 7, 2015, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/320](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/320) (accessed November 5, 2015), para. 19.

<sup>111</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015.

<sup>112</sup> Human Rights Watch interview with head of international development organization active in the justice sector, Abidjan, July 28, 2015.

<sup>113</sup> Code de Procédure Pénale, Côte d'Ivoire, art. 240, 243, 288. See Human Rights Watch, *Turning Rhetoric into Reality*, p. 50 for a detailed explanation of Ivorian criminal procedure for serious crimes.

<sup>114</sup> Code de Procédure Pénale, Côte d'Ivoire, art. 235.

<sup>115</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015.

<sup>116</sup> International Covenant on Civil and Political Rights (ICCPR), art. 9(3); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, art. 3(a).

that has yet to be integrated into the ongoing reform of the criminal procedure code.<sup>117</sup> The criminal procedure code should also establish time limits within which courts should hear criminal cases, with an accused released from pretrial detention and given compensation if held beyond the time limits.<sup>118</sup>

## Prison Conditions

According to Ivorian NGOs and international experts working on prison reform in Côte d'Ivoire, prisoners routinely lack adequate nutrition, sanitation, and access to medical care.<sup>119</sup> Some prisons, such as the civil prison in Bouaké, fail to separate adult and juvenile detainees.<sup>120</sup> To its credit, the Ministry of Justice's Direction of Prison Administration (*Direction de l'Administration Pénitentiaire*, DAP) has acknowledged the problems facing the prison system and in 2015 elaborated a draft Plan to Improve Prison Conditions (*Plan d'Amélioration des Conditions de Detention*) to address overcrowding, improve hygiene, healthcare, and nutrition, and increase access to legal and social services. The DAP has also said that it will regularly convene a workshop with civil society organizations to discuss progress.<sup>121</sup> Implementing the plan will, however, require a significant increase in the budget allocated to the Ivorian prison system, something that multiple justice sector experts told Human Rights Watch would be difficult to achieve within the Ministry of Justice's current budget.<sup>122</sup>

The Ministry of Justice is also in the process of drafting a new law on the prison system as well as decrees that would specify how the law should be implemented. In finalizing this law and decrees, the Ministry of Justice should consider innovations—such as imposing probation as an alternative to custody—that would ease prison overcrowding.<sup>123</sup>

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<sup>117</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015.

<sup>118</sup> Human Rights Watch email correspondence with international legal expert, Abidjan, July 31, 2015.

<sup>119</sup> Human Rights Watch interview with representative of Ivorian NGO active on prison reform, Abidjan, July 30, 2015; MIDH, "Evaluation et formation pour l'amélioration des conditions de vie des personnes privées de liberté en Côte d'Ivoire," pp. 8-12.

<sup>120</sup> MIDH, "Evaluation et formation pour l'amélioration des conditions de vie des personnes privées de liberté en Côte d'Ivoire," p. 9.

<sup>121</sup> Human Rights Watch interview with Ivorian NGO active on prison reform, Abidjan, July 30, 2015; interview with international legal expert, Abidjan, July 29, 2015.

<sup>122</sup> Human Rights Watch interview with international diplomat, Abidjan, July 30, 2015; interview with Ivorian NGO active on prison reform, July 30, 2015; interview with international legal expert, Abidjan, July 29, 2015.

<sup>123</sup> Human Rights Watch email correspondence with international legal expert, Abidjan, September 27, 2015.

## Lack of Access to Legal Representation

The lack of legal representation for the accused in criminal cases is a key factor contributing to excessive and prolonged pretrial detention, and also compromises the fairness of defendants' eventual trials.<sup>124</sup>

Under Ivorian law, defendants only have access to mandatory legal representation for cases going to trial before the *Cour d'Assises*, which deals with the most serious criminal cases.<sup>125</sup> For indigent defendants, the *Cour d'Assises* is required to appoint a lawyer, who receives a set fee provided by the state.<sup>126</sup> Those tried for lesser crimes outside the jurisdiction of the *Cour d'Assises* are only represented if they can pay for a lawyer, which many litigants cannot afford.<sup>127</sup> There are approximately 500 lawyers active in Côte d'Ivoire—all but a handful based in Abidjan—making it particularly difficult for those in the interior to obtain legal representation.<sup>128</sup>

That indigent defendants accused of crimes before the *Cour d'Assises* often only receive legal representation at the trial phase severely affects the fairness of the proceedings. Because key decisions in the case—such as which witnesses are interviewed by the investigative judge—occur during the investigative phase, one Ivorian lawyer told Human Rights Watch, “To have a lawyer at the *Assises* trial, but not during the investigation, is pointless.”<sup>129</sup> International human rights law requires that defendants receive the assistance of a lawyer from the time of arrest.<sup>130</sup>

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<sup>124</sup> Human Rights Watch interview with Ivorian lawyer, Abidjan, July 30, 2015.

<sup>125</sup> Code de Procédure Pénale, Côte d'Ivoire, art. 274-276.

<sup>126</sup> This fee is known as a *commission d'office*. Many lawyers, however, refuse to take these cases because of the low fees and because they are often paid a long time after having finished the case. Human Rights Watch interview with international justice sector expert, July 29, 2015.

<sup>127</sup> Human Rights Watch interview with international legal expert, July 29, 2015. See also, ONUCI, “Etude d'Évaluation du Système Judiciaire Ivoirien,” p. 47.

<sup>128</sup> “Human Rights Committee considers report of Côte d'Ivoire,” UN OHCHR news release, March 19, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15722&LangID=E> (accessed November 5, 2015); Ordre des Avocats, “Liste complete des Avocats du Barreau de Côte d'Ivoire,” <http://www.ordredesavocats.ci/liste.html> (accessed November 5, 2015).

<sup>129</sup> Human Rights Watch interview with Ivorian lawyer, Abidjan, July 30, 2015.

<sup>130</sup> UN Human Rights Committee (HRC), “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant [ICCPR]: Concluding Observations of the Human Rights Committee, Slovakia,” U.N. Doc. CCPR/C/79/Add. 79, August 4, 1997, available at: <http://www.refworld.org/docid/3ae6b032c.html> (accessed 11 November 2015), para. 19. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, art. M(2)(f).

Indigent defendants who want legal representation before their case reaches the *Cour d'Assises*, or who are charged with less serious offenses, must rely either on Côte d'Ivoire's flawed legal aid system, which is supposed to help indigent litigants in all civil and criminal cases, or nongovernmental organizations (NGOs).<sup>131</sup> However, an Ivorian jurist and an international legal expert said that very few litigants in Côte d'Ivoire know about the possibility of obtaining legal aid, or the procedure for doing so, and the National Legal Aid Bureau, the Ministry of Justice office in Abidjan that adjudicates these requests, receives only a few hundred each year.<sup>132</sup>

In the absence of adequate state-supported legal aid, much of the burden for providing legal representation has fallen on NGOs. During President Ouattara's first term in office, the EU and the UN supported the opening of six legal clinics in the country's interior by the Association of Women Jurists for Côte d'Ivoire (*Association des Femmes Juristes de Côte d'Ivoire, AFJ-CI*).<sup>133</sup> As Aimée Zebeyoux, President of AFJ-CI, explained to Human Rights Watch: "The clinics are designed to make justice more accessible. We're trying to reassure litigants who are scared to approach the justice system without our help."<sup>134</sup>

Although several interviewees said that the NGO-run legal clinics provided essential services, the responsibility for providing legal assistance to indigent Ivorians, particularly in criminal cases, lies with the Ivorian government.<sup>135</sup> In early 2014, the UN Operation in Côte d'Ivoire (ONUCI), the EU, and a USAID-funded program jointly drafted and proposed a new law on government-provided legal assistance that sought to make legal aid more

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<sup>131</sup> Code de Procédure Civile, no. 72-833 of December 21, 1972, Côte d'Ivoire, [http://droitivoirien.info/files/2.4.1.-Loi-du-21-decembre-1972\\_Code-de-procedure-civile,-commerciale-et-admin..pdf](http://droitivoirien.info/files/2.4.1.-Loi-du-21-decembre-1972_Code-de-procedure-civile,-commerciale-et-admin..pdf) (accessed November 5, 2015), art. 27 – 31.

<sup>132</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015; interview with Ivorian jurist, Bouaké, August 10, 2014.

<sup>133</sup> Human Rights Watch interview with Me. Aimée Zebeyoux, President of the Association des Femmes Juristes de Côte d'Ivoire, Abidjan, August 3, 2015. The clinics are in Man, Guiglo, Bouaké, Korhogo, San Pedro and Bondoukou. Interview with international diplomat, Abidjan, July 28, 2015. The bulk of the clinic's work is done by non-lawyers (albeit who often have a law degree), who provide litigants with basic advice about how to navigate the justice system.

<sup>134</sup> Human Rights Watch interview with Me. Aimée Zebeyoux, Abidjan, August 3, 2015. Multiple interviewees told Human Rights Watch that, given the scarcity of lawyers in country's interior, the legal clinics have been an effective way to provide Ivorians with access to basic legal advice. Interview with Me. Yacouba Doumbia, President of the Ivorian Movement for Human Rights, Abidjan, July 30, 2015; interview with international legal expert, Abidjan, July 29, 2015; interview with ONUCI official, Abidjan, July 27, 2015; interview with international diplomat, Abidjan, May 28, 2015. Although the EU's financial backing for the clinics has ended, the French government, as part of a new partnership with the Ministry of Justice, has agreed to fund them, and will support the opening of clinics in three further locations. Interview with international diplomat, June 18, 2015. UNICEF will support the clinic in San Pedro.

<sup>135</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015; interview with ONUCI official, Abidjan, July 27, 2015.



accessible by creating state legal aid offices within every first instance court (both *tribunaux de première instance* and *sections détachées*).<sup>136</sup> The law, however, remains under review within the Ministry of Justice.<sup>137</sup> The Ministry of Justice has also so far been reluctant to commit its own funding to supporting legal aid.

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<sup>136</sup> “Projet de Loi Relatif à l’Assistance Juridique et Judiciaire,” version proposed by financial and technical partners to Côte d’Ivoire government, January 2014 (on file with Human Rights Watch.) International donors have offered to support trainings to help magistrates, lawyers, and litigants apply and understand the new law once it is adopted. Human Rights Watch interview with head of international development organization active in the justice sector, Abidjan, July 28, 2015.

<sup>137</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015.

### III. Reforming the Security Sector

For 10 years, there was no police, no government, no justice... No one was concerned with human rights. We are now trying to reestablish the rule of law here.

–Police commander, northern Côte d’Ivoire<sup>138</sup>

Several interlocutors told Human Rights Watch that the conduct of the security forces, including the military, had improved since the 2010-2011 post-election crisis. One senior ONUCI official said that the Ivorian army is “less the brutes towards the population that they used to be.”<sup>139</sup> The government has also made progress in transferring law enforcement responsibilities from the armed forces to police and gendarmes, although they often lack sufficient equipment and training to protect citizens from criminality.

Despite the progress made, however, ongoing violations by security forces, including arbitrary arrests and detentions, and, in some cases, torture, continued during President Ouattara’s first term in office.<sup>140</sup> Racketeering and extortion, predominantly at illegal checkpoints, remain widespread among all branches of the security forces, including the police and gendarmerie.

ONUCI officials, Ivorian police officers, and civil society activists told Human Rights Watch that members of the security forces are very rarely criminally prosecuted or sanctioned for human rights abuses by either the civilian courts or the military justice system.<sup>141</sup> When soldiers are prosecuted in civilian courts, one Ivorian jurist said that, “Too often, because it’s the military, the cases don’t go anywhere.”<sup>142</sup> Côte d’Ivoire’s military justice system is severely under-resourced and is in urgent need of reform to make it independent from the executive.

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<sup>138</sup> Human Rights Watch interview with police commander, northern Côte d’Ivoire, October 8, 2014.

<sup>139</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 3, 2015.

<sup>140</sup> ONUCI reported that between December 1, 2014 and May 1, 2015, FRCI, some gendarmerie, police and other State agents were reportedly involved in one extrajudicial killing, cases of torture and ill treatment against 35 people and cases of arbitrary arrest and illegal detention of 46 people. UN Security Council, “Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire,” U.N. Doc. S/2015/320, May 7, 2015, para. 44. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/320](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/320) (accessed November 11, 2015), p. 9.

<sup>141</sup> Human Rights Watch interview with ONUCI official, Abidjan, October 6, 2014; interview with international official, October 23, 2015; interview with police official, Abidjan, May 26, 2015.

<sup>142</sup> Human Rights Watch interview with Ivorian jurist, Bouaké, October 8 2014.

## A Legacy of Abuses

When President Ouattara first came into office, he became commander-in-chief of fragmented security forces with a long record of human rights abuses. The Ivorian army, known as the Republican Forces of Côte d'Ivoire (*Forces Républicaines de Côte d'Ivoire*, FRCI), was comprised of former *Forces Nouvelles* rebels and Gbagbo-era security forces.<sup>143</sup> FRCI leaders drawn from the *Forces Nouvelles* viewed the police, who fall under the Ministry of Interior, and gendarmes, under the Ministry of Defense, as closely connected to the former Gbagbo regime.<sup>144</sup>

All these forces had been implicated in serious human rights crimes during the decade of instability that culminated in the 2010-2011 post-election crisis. Gbagbo's security forces committed widespread abuses following the 2000 presidential election, in the course of the 2002-2003 conflict, and during the post-election violence.<sup>145</sup>

The *Forces Nouvelles* rebels were implicated in summary executions, widespread sexual violence, and torture during the 2002-2003 conflict and, years later, massacred hundreds of people as they swept south and fought to take control of Abidjan during the 2010-2011 post-election crisis.<sup>146</sup> The rebels had also long reaped enormous profits from parallel taxation of businesses and at roadblocks during their control of northern Côte d'Ivoire.

## Some Progress

According to ONUCI officials, security sector reform was a key priority of Ouattara's first term in office.<sup>147</sup> In September 2012, Côte d'Ivoire adopted a National Strategy for Security

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<sup>143</sup> International Crisis Group, "A Critical Period for Ensuring Stability in Côte d'Ivoire," Africa Report no. 176, Aug. 1, 2011, <http://www.crisisgroup.org/en/regions/africa/west-africa/cote-divoire/176-a-critical-period-for-ensuring-stability-in-cote-divoire%20.aspx> (accessed November 5, 2015), p. 4.

<sup>144</sup> International Crisis Group, "Defusing Tensions," Africa Report N°193, November 26, 2012, <http://www.crisisgroup.org/~media/Files/africa/west-africa/cote-divoire/193-cote-divoire-defusing-tensions-english.pdf> (accessed November 11, 2015), p. 3.

<sup>145</sup> Human Rights Watch, *The New Racism*; Human Rights Watch, *Government Abuses in Response to Army Revolt*, vol. 14, no. 9(A), November 2002, <https://www.hrw.org/report/2002/11/28/government-abuses-response-army-revolt>; Human Rights Watch, *Trapped Between Two Wars*; "Human Rights Violations in Abidjan during an Opposition Demonstration," Human Rights Watch briefing paper, March 2004, <https://www.hrw.org/report/2004/10/14/human-rights-violations-abidjan-during-opposition-demonstration-march-2004>; Human Rights Watch, "Because they have the guns... I'm left with nothing"; Human Rights Watch, *Afraid and Forgotten - Lawlessness, Rape, and Impunity in Western Côte d'Ivoire*, October 2010, <https://www.hrw.org/report/2010/10/22/afraid-and-forgotten/lawlessness-rape-and-impunity-western-cote-divoire>.

<sup>146</sup> Human Rights Watch, "They Killed Them Like It Was Nothing," p. 75, 90; Human Rights Watch, *Government Abuses in Response to Army Revolt*; Human Rights Watch, *Trapped Between Two Wars*; "Human Rights Violations in Abidjan during an Opposition Demonstration," Human Rights Watch briefing paper; Human Rights Watch, "Because they have the guns... I'm left with nothing"; Human Rights Watch, *Afraid and Forgotten - Lawlessness, Rape, and Impunity in Western Côte d'Ivoire*.

<sup>147</sup> UN Security Council, "Final report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 27 of Security Council resolution 2153 (2014)," 1572 Sanctions Committee on Côte d'Ivoire, U.N. Doc. S/2015/252, April 13, 2015,

Sector Reform, which sets out 108 reforms designed to transform the security forces, so that they accomplish their mission “in a framework that respects democratic principles and rules of good governance.”<sup>148</sup>

Security sector reform experts, ONUCI officials, and diplomats pointed to several developments as evidence of progress in professionalizing the security forces, bringing them under civilian control, and addressing their legacy of indiscipline and abuse.

First, the government has made progress in transferring responsibilities for law enforcement from the FRCI to police and gendarmes. After the 2010-2011 post-election crisis, the FRCI—and armed “volunteers” loyal to them—took over many functions of the Gbagbo-era police and gendarmes. The government has since succeeded in deploying police and gendarmes throughout the country, although the FRCI continue to perform law enforcement tasks in areas with particular security risks.<sup>149</sup> One ONUCI official cited the government’s method of securing the October 2015 presidential election, which utilized 4,000 FRCI in support of 11,500 gendarmes and 11,500 police, as indicative of the extent to which the FRCI is still needed to ensure security in sensitive areas.<sup>150</sup>

Second, an FRCI initiative to reduce gender-based violence was cited as evidence of efforts by army leadership to improve discipline.<sup>151</sup> In July 2014, the FRCI established a committee of national experts on conflict-related sexual violence, who subsequently developed an action plan for the FRCI on addressing sexual violence.<sup>152</sup> More than 900 members of the FRCI and over 300 police officers and gendarmes have since been trained on gender-based violence,<sup>153</sup> although one ONUCI official said the committee could do more to fulfill its mandate.<sup>154</sup> ONUCI officials also referenced as a positive development a new reporting mechanism through

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[http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_252.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_252.pdf) (accessed November 11, 2015), p. 15. Human Rights Watch interview with ONUCI official, August 3, 2015.

<sup>148</sup> Côte d’Ivoire National Security Strategy, p. 7 (on file with Human Rights Watch). See also: “A la découverte de la Réforme du Secteur de la Sécurité (RSS),” *Abidjan.net*, April 30, 2015, <http://news.abidjan.net/h/550518.html> (accessed November 11, 2015).

<sup>149</sup> UN Security Council, “Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire,” U.N. Doc. S/2015/320, May 7, 2015, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2015/320](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/320) (accessed November 11, 2015), p. 7-8.

<sup>150</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 3, 2015.

<sup>151</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 3, 2015; interview with senior FRCI officer, Abidjan, July 31, 2015.

<sup>152</sup> UN Security Council, “Conflict-related sexual violence: Report of the Secretary-General,” para. 71.

<sup>153</sup> *Ibid.*, para. 71.

<sup>154</sup> Human Rights Watch email correspondence with ONUCI official, Abidjan, November 5, 2015.

which ONUCI and the FRCI will work together to identify human rights violations committed by soldiers and track efforts to investigate and sanction those responsible.<sup>155</sup>



Côte d'Ivoire soldiers in a military parade in Abidjan on August 7, 2015, commemorating the country's Independence Day. © 2015 Luc Gnago/Reuters

Diplomats also praised the adoption in March 2015 of a law on the organization of the national defense and armed forces, although the law has yet to be promulgated.<sup>156</sup> The law seeks to further professionalize the FRCI by defining clear criteria for promotion, social benefits, and retirement. The law may also help to further clarify the role of the FRCI in internal security, as it stipulates the conditions under which military intervention in law enforcement will be permitted.<sup>157</sup>

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<sup>155</sup> Human Rights Watch email correspondence with ONUCI official, Abidjan, November 5, 2015. See also: ONUCI, “Allocution de la Représentante spéciale du Secrétaire général de l’ONU pour la Côte d’Ivoire, Mme Aïchatou Mindaoudou à la cérémonie de lancement du mécanisme de collaboration entre les Forces Républicaines de Côte d’Ivoire et l’ONU dans le domaine des droits de l’homme,” Abidjan, August 24, 2015, <http://www.onuci.org/spip.php?article12695> (accessed November 13, 2015).

<sup>156</sup> UN Security Council, “Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire,” p. 8; Human Rights Watch interview with ONUCI official, Abidjan, August 3, 2015.

<sup>157</sup> UN Security Council, “Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire,” p. 8.

## Arbitrary Arrests and Detention

The most serious violations in President Ouattara's first term occurred when the military responded to cross-border incursions and other attacks against state targets. In 2012, a wave of attacks on villages and military installations launched within Côte d'Ivoire and from neighboring Liberia and Ghana—likely planned and carried out by militant supporters of former President Laurent Gbagbo—led to widespread rights abuses by the Ivorian military, including mass arbitrary arrests and illegal detentions of perceived Gbagbo supporters, cruel and inhuman treatment, and, in some cases, torture.<sup>158</sup>

One senior ONUCI official told Human Rights Watch that the FRCI's conduct had improved since the 2012 attacks. However, as recently as 2014, the military again committed unlawful detentions and, at times, torture when responding to attacks against military installations.

In February 2014, following the arrest of 32 people in relation to attacks against FRCI positions close to the Liberian border, in which four soldiers died, ONUCI found that FRCI soldiers held suspects in unauthorized detention facilities and tortured multiple detainees.<sup>159</sup> The Human Rights Division of ONUCI observed serious injuries on at least 15 detainees.<sup>160</sup> In September 2014, in response to an attack on the Akouédo military camp in Abidjan in which four soldiers died, four of 15 men arrested were detained in an unauthorized detention facility for more than a month in Abidjan.<sup>161</sup> At least one detainee told ONUCI that he had been tortured.<sup>162</sup> Although the Ivorian constitution states that torture is prohibited and punished by law, no provision of the Ivorian criminal code explicitly defines and criminalizes torture.<sup>163</sup>

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<sup>158</sup> Human Rights Watch, *A Long Way from Reconciliation*, November 2012, <https://www.hrw.org/sites/default/files/reports/cotedivoire1112webwcover.pdf>, p. 6.

<sup>159</sup> On February 23, 2014, armed individuals attacked FRCI positions in Fete and Grabo, near the border with Liberia, killing four FRCI soldiers and a civilian. UN Security Council, "Thirty-sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire," paras. 17, 38-39.

<sup>160</sup> UN Human Rights Council, "Rapport de l'Expert indépendant sur la situation des droits de l'homme en Côte d'Ivoire, Doudou Diène," U.N. Doc. A/HRC/26/52, May 15, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_26\\_52\\_.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_26_52_.pdf) (accessed November 5, 2015), para. 23.

<sup>161</sup> UN Security Council, "Thirty-fifth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire," U.N. Doc. S/2014/892, December 12, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_892.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_892.pdf) (accessed November 11, 2015), para. 21; UN Human Rights Council, "Report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, Mohammed Ayat," para. 67.

<sup>162</sup> UN Human Rights Council, "Report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, Mohammed Ayat," para. 67.

<sup>163</sup> Constitution of Côte d'Ivoire, art. 3. "Des ODH demandent la sanction des actes de torture et le rétablissement des victimes dans leurs droits," *Abidjan.net*, June 26, 2015, <http://news.abidjan.net/h/556199.html> (accessed November 13, 2015). See also Fédération Internationale de l'Action des Chrétiens pour l'Abolition de la Torture (FIACAT) and Action de

Multiple sources also expressed concerns to Human Rights Watch about detentions by the National Surveillance Directorate (*La Direction de la Surveillance du Territoire, DST*), a national security-focused intelligence service under the jurisdiction of the Ministry of the Interior, that occurred in unauthorized locations and were not subject to judicial review.<sup>164</sup>

Leading up to the 2015 presidential election, at least three opposition members arrested for their role in organizing prohibited demonstrations were detained in secret for weeks by the DST, with no possibility of obtaining legal counsel.<sup>165</sup> At least two of the detainees were eventually tried for public order offenses without their lawyers being informed of the trial date, and they did not receive representation at trial.<sup>166</sup> An international legal expert told Human Rights Watch that the authority of the DST to detain individuals derives from an old law that has since been abrogated.<sup>167</sup>

## Ongoing Economic Crimes

Although overall the conduct of the security forces has improved, soldiers, police, and gendarmes continue to extort money from residents of Côte d'Ivoire at illegal checkpoints, restricting Ivorians' freedom of movement and arbitrarily seizing property. In July 2015, a Human Rights Watch report found that while checkpoint extortion has decreased in Abidjan and the major roads traveled by foreign businessmen and investors, it remains pervasive on secondary roads in rural areas, particularly in the north and west.<sup>168</sup>

A specialized anti-racket unit set up in 2011 to tackle extortion and racketeering, composed of police, gendarmes, and military personnel, has been undermined by inconsistent financial support from the government, a problem Human Rights Watch first reported in July

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Chrétien pour l'Abolition de la Torture de la Côte d'Ivoire (ACAT CI), "Rapport de la FIACAT et de l'ACAT Côte d'Ivoire sur la mise en œuvre du Pacte international relatif aux droits civils et politiques en vue de l'adoption de la liste de question par le Comité des droits de l'homme des Nations Unies," Avril 2014, [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CIV/INT\\_CCPR\\_ICO\\_CIV\\_17196\\_F.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CIV/INT_CCPR_ICO_CIV_17196_F.pdf) (accessed November 13, 2015), p. 11.

<sup>164</sup> UN Human Rights Council, "Rapport de l'Expert indépendant sur la situation des droits de l'homme en Côte d'Ivoire, Doudou Diène," para. 26; Human Rights Watch interview with ONUCI Official, Abidjan, October 6, 2014; interview with Ivorian lawyer, Abidjan, August 4, 2015.

<sup>165</sup> Human Rights Watch email correspondence with ONUCI official, Abidjan, November 5, 2015. "Côte d'Ivoire: Respect Rights During Elections – An Appeal From 15 Ivorian, International Groups," Human Rights Watch news release, October 21, 2015, <http://www.hrw.org/news/2015/10/21/cote-divoire-respect-rights-during-elections>.

<sup>166</sup> Ibid.

<sup>167</sup> Human Rights Watch interview with international legal expert, Abidjan, July 29, 2015.

<sup>168</sup> "Côte d'Ivoire: Extortion by Security Forces - Prosecute Violators; Strengthen Anti-Racket Unit," Human Rights Watch news release, July 29, 2015, <https://www.hrw.org/news/2015/07/29/cote-divoire-extortion-security-forces>.

2013.<sup>169</sup> At time of writing, the anti-racket unit has still not received its operational budget for 2015, and, having for the first time deployed agents to three towns outside of Abidjan in late 2014, has been forced to again limit its activities to Abidjan.<sup>170</sup>

Security analysts and diplomats expressed particular concern about the economic crimes committed by several FRCI commanders who have continued the extortion and racketeering they practiced while prominent in the *Forces Nouvelles*.<sup>171</sup> The funds generated by these commanders, as well as their willingness to allow their subordinates to profit from checkpoint extortion, helps them retain the loyalty of fighters and resist government efforts to hold them accountable for abuses.<sup>172</sup>

The UN Group of Experts has in particular highlighted the role of two prominent commanders in economic crimes – Losseni Fofana (also known as “Loss”), the FRCI commander for western Côte d’Ivoire, and Issiaka Ouattara (“Wattao”), a Lieutenant Colonel in the FRCI who was in charge of the center-west of the country for the *Forces Nouvelles*.<sup>173</sup>

Loss, whose illicit activities include profits from cocoa illegally produced in Mont Peko national park,<sup>174</sup> is one of the commanders charged by the CSEI for human rights abuses committed during the post-election crisis.<sup>175</sup> The UN Group of Experts has extensively

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<sup>169</sup> “Côte d’Ivoire: Extortion by Security Forces,” Human Rights Watch news release; “Côte d’Ivoire: Security Force Extortion - Serious Consequences for Health, Livelihoods in Country’s West,” Human Rights Watch news release, July 1, 2013, <https://www.hrw.org/news/2013/07/01/cote-divoire-security-force-extortion>.

<sup>170</sup> Human Rights Watch email correspondence with Ivorian official, Abidjan, November 3, 2015.

<sup>171</sup> Many *Forces Nouvelles* rebel commanders reaped enormous profits from parallel taxation of businesses and at roadblocks during their control of northern Côte d’Ivoire. These commanders, now integrated into the FRCI, extended this practice into the south during the 2010-2011 post-election crisis, creating what the UN Group of Experts has described as a “military-economic network” worth millions of dollars. The network mirrors the zone commander system the *Forces Nouvelles* had used in the north, which divides the country into economic zones controlled by an individual commander, known as a “comzone.” See UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire pursuant to paragraph 16 of Security Council resolution 2045 (2012),” 1572 Sanctions Committee on Côte d’Ivoire, U.N. Doc. S/2013/228, April 17, 2013, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_228.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_228.pdf) (accessed November 11, 2015), paras. 102-109, 150-154. UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire pursuant to paragraph 19 of Security Council resolution 2101 (2013),” 1572 Sanctions Committee on Côte d’Ivoire, U.N. Doc. S/2014/266, April 14, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_266.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_266.pdf) (accessed November 11, 2015), paras. 62-63.

<sup>172</sup> UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire,” 2014, para. 69; UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire,” 2015, p. 3; Human Rights Watch interview with UN official, Abidjan, August 7, 2015.

<sup>173</sup> UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire,” 2014, para. 69.

<sup>174</sup> Human Rights Watch interview with diplomat, Abidjan, May 2015. See also UN Security Council, “Final report of the Group of Experts on Côte d’Ivoire,” 2015, para. 222.

<sup>175</sup> “Côte d’Ivoire: deux anciens ‘com-zone’ inculpés par la justice,” *RFI*.



documented the role of Wattao in illegal diamond and gold mining and smuggling in the center-west.<sup>176</sup>

The financial, political, and military interests of several FRCI commanders formerly in the *Forces Nouvelles* were further strengthened by the apparent power they wielded over aspects of Côte d'Ivoire's disarmament, demobilization, and reintegration (DDR) process. Although the bulk of ex-combatants participating in DDR received vocational training and financial assistance, several thousand obtained coveted public sector jobs, including as prison guards, customs officers, or in the forestry service.<sup>177</sup> The lists of ex-combatants chosen for these roles were largely controlled by former *Forces Nouvelles* commanders in the FRCI.<sup>178</sup>

For example, one ONUCI official told Human Rights Watch that of the 2,000 people recruited into the customs agency, approximately 60 percent were not on the list of ex-combatants maintained by the government's DDR authority.<sup>179</sup> Where that was the case, the official explained, "The ex-FN commander who put the individual's name forward essentially vouched that the person was indeed an ex-combatant, and there was little ONUCI or the national DDR commission could do to challenge this."<sup>180</sup> Similar practices allowed the commanders control over who obtained jobs in the prisons and forestry services, creating potential future opportunities for extortion and racketeering, expanding the commanders' power base, and further complicating efforts to hold them accountable for past abuses.<sup>181</sup>

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<sup>176</sup> UN Security Council, "Final report of the Group of Experts on Côte d'Ivoire," 2015, summary and paras. 163-164, 173-174, 188, 191-192, 217; "Special Report: Why gold threatens Ivory Coast's peace," Reuters, May 7, 2015, <http://www.reuters.com/article/2015/05/08/us-ivorycoast-gold-army-specialreport-idUSKBN0NSoV620150508#hoitvEphBwOsaXj.97> (accessed November 5, 2015). The Group of Experts have also documented Wattao's involvement in racketeering in the transport sector in Abidjan, where he was the head of security for the city's south until July 2014. UN Security Council, "Final report of the Group of Experts on Côte d'Ivoire," 2014, paras. 32-38. See also UN Security Council, "Final report of the Group of Experts on Côte d'Ivoire," 2015, paras. 251-252.

<sup>177</sup> In 2013, 1,996 people were integrated into the prison service, 1,000 the forestry services, and 2,000 as customs officers. L'Autorité de Désarmement, Démobilisation et Réinsertion des Ex-combattants, "Tableau Reinsertion-Reintegration to September 2014" (on file with Human Rights Watch).

<sup>178</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 7, 2015; telephone interview with diplomat, April 30, 2015.

<sup>179</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 7, 2015.

<sup>180</sup> Ibid.

<sup>181</sup> The Group of Experts stated in October 2013 that the former *Forces Nouvelles* commanders' control over the DDR process meant that they are capable of "maintaining control over military networks inside and outside the FRCI for the benefit of their own financial, military, and political interests." UN Security Council, "Midterm report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 19 of Security Council resolution 2101 (2013)," U.N. Doc. S/2013/605, October 14, 2013, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_605.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_605.pdf) (accessed November 5, 2015), para. 6.

## Lack of Capacity to Respond to Rampant Criminality

Although politically-motivated violence is currently relatively rare in Côte d'Ivoire, violent crime, such as banditry on roads, is a huge problem impacting the lives and livelihoods of many Ivorians. While crime has decreased in Abidjan, banditry remains common on roads in the west and, in particular, the north.<sup>182</sup>

Victims of crime and Ivorian and international officials told Human Rights Watch that the security forces routinely fail to protect residents from criminality and too infrequently conduct investigations after it happens.<sup>183</sup> Human Rights Watch and other organizations have documented scores of incidents of banditry in the north and west, very few of which were ever properly investigated.

One victim of an armed robbery near Bouaké, who ran to a checkpoint to get help for a friend who had been shot, told Human Rights Watch: “There were about 10 gendarmes, two with *kalash*. They told me, ‘There is no vehicle to go and find the perpetrators.’ So they stayed at the checkpoint... There were military there but no one from the armed forces went to help.” His friend later died.

Gendarmes and police often lack the equipment and, to some extent, operational capacity to operate effectively, a key reason the FRCI are still present in insecure areas.<sup>184</sup> One local government official in Bouaké told Human Rights Watch, “The police and the gendarmes do not have enough equipment to respond to bandits. The FRCI has the arms, and so that is why we put them together in patrols.”<sup>185</sup> An FRCI officer in Duékoué described soldiers deployed in the area as “the armed branch of the gendarmerie,” and noted that “in Daloa, where there is less risk, you won’t see soldiers in the street.”<sup>186</sup>

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<sup>182</sup> “Côte d'Ivoire: Nowhere to Turn for Protection - Violent Crime Marks Daily Life in the North,” Human Rights Watch news release, December 15, 2014, <https://www.hrw.org/news/2014/12/15/cote-divoire-nowhere-turn-protection>; “Côte d'Ivoire: Extortion by Security Forces,” Human Rights Watch news release, July 29, 2015.

<sup>183</sup> Human Rights Watch interview with staff member of international humanitarian organization, Abidjan, August 2, 2015; interview with local government official, Bouaké, October 8, 2014; interview with Ivorian NGO, Bouaké, October 10, 2014; interview with ONUCI official, Bouaké, October 7, 2014; interview with international diplomat, October 13, 2014.

<sup>184</sup> Human Rights Watch telephone interview with international diplomat, Abidjan, April 30, 2015; interview with ONUCI official, Abidjan, August 3, 2015.

<sup>185</sup> Human Rights Watch interview with local government official, Bouaké, October 8, 2014.

<sup>186</sup> Human Rights Watch interview with FRCI officer, Duékoué, May 25, 2015.

To better protect civilians from criminality, and make further progress in returning law enforcement duties to police and gendarmes, the Ivorian government should ensure that these forces receive the training, support, and resources required to effectively carry out their mandate.<sup>187</sup>

## Impunity within the Security Forces

For over 15 years, alleged crimes committed by members of the security forces, ranging from war crimes to checkpoint extortion have, with few exceptions, gone uninvestigated and the perpetrators unpunished. An ONUCI official told Human Rights Watch, “When crimes are committed by the FRCI, they are still acting with impunity. A lot more needs to be done to bring people to justice.”<sup>188</sup>

One Ivorian jurist said that even when soldiers commit serious crimes outside the course of their duties, such as sexual violence, they are rarely prosecuted in civilian courts. “Soldiers are often implicated in rapes, but the families involved are too scared to denounce them,” he said. “Last year there were so many cases, but because it was the military nothing happened.”<sup>189</sup> One international official said that while at least two FRCI soldiers accused of sexual assaults in the region where he works had been convicted since 2014, civilian judges and police were often intimidated by the FRCI and reluctant to investigate and prosecute soldiers.<sup>190</sup>

ONUCI officials also cited a need for comprehensive reform of the military justice system, which has jurisdiction over the army, police, and gendarmes.<sup>191</sup> In particular, they noted the need to address the tribunal’s lack of independence from the ministers of interior and defense, who must give permission before a prosecution or trial can begin.<sup>192</sup> The military tribunal’s jurisdiction is also currently too broad.<sup>193</sup> Under the Principles and Guidelines on

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<sup>187</sup> Human Rights Watch, *A Long Way from Reconciliation*, p. 56.

<sup>188</sup> Human Rights Watch interview, ONUCI official, Bouaké, October 7, 2014.

<sup>189</sup> Human Rights Watch interview with Ivorian jurist, Bouaké, October 7, 2014.

<sup>190</sup> Human Rights Watch telephone interview, October 23, 2015.

<sup>191</sup> Human Rights Watch interview with ONUCI official, Abidjan, October 6, 2014; interview with ONUCI official, Abidjan, August 3, 2015.

<sup>192</sup> Human Rights Watch interview with ONUCI official, Abidjan, October 6, 2014; interview with international human rights group, Abidjan, May 29, 2015.

<sup>193</sup> Human Rights Watch interview, ONUCI official, Abidjan, October 6, 2014; interview with international human rights group, Abidjan, May 29, 2015.

the Right to a Fair Trial and Legal Assistance in Africa, issued by the African Commission on Human and Peoples' Rights, the jurisdiction of military courts should be limited to military personnel and to strictly military issues and should not extend to the police.<sup>194</sup> The military justice system is also severely under-resourced, with only one military tribunal in Abidjan for the whole country.<sup>195</sup>

Beyond the need to reform the military tribunal, however, the question remains as to whether President Ouattara's government has the political will to challenge the FRCI commanders allegedly implicated in many of the security forces' worst abuses, from the crimes committed by pro-Ouattara forces during the 2010-2011 post-election crisis to ongoing economic crimes. Multiple diplomats told Human Rights Watch that in the aftermath of the post-election crisis, President Ouattara was unable and unwilling to challenge the authority of former *Forces Nouvelles* commanders without destabilizing security.<sup>196</sup> However, five years after the crisis, the government's failure to investigate and prosecute the myriad and ongoing abuses allegedly committed by these commanders has not only allowed several to maintain and expand their power, but also undermined Ouattara's oft-stated commitment to ending Côte d'Ivoire's culture of impunity.<sup>197</sup>

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<sup>194</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle L.

<sup>195</sup> Human Rights Watch interview with Commissioner Ange Kessy, Abidjan, May 29, 2015; interview with ONUCI official, Abidjan, October 6, 2015.

<sup>196</sup> Human Rights Watch interview with ONUCI official, Abidjan, August 7, 2015; telephone interview with diplomat, Abidjan, April 30, 2015; interview with ONUCI official, Abidjan, August 3, 2015.

<sup>197</sup> On November 18, 2014, separate groups of FRCI soldiers erected barricades and blocked streets outside barracks in Abengourou, Abidjan, Aboisso, Bouaké, Daloa, Korhogo, Odienné, and Yamoussoukro, protesting against unpaid salaries and other unpaid financial entitlements. In Bouaké, the demonstrators briefly took over the national television and radio stations, and also broke into the FRCI armory and looted police stations. UN Security Council, "Trente-cinquième rapport du Secrétaire général sur les opérations des Nations Unies en Côte d'Ivoire," U.N. Doc. S/2014/892, December 12, 2014, [http://www.un.org/fr/documents/view\\_doc.asp?symbol=S/2014/892](http://www.un.org/fr/documents/view_doc.asp?symbol=S/2014/892) (accessed November 16, 2015), para. 22. Several diplomats told Human Rights Watch that they suspected that former *Forces Nouvelles* commanders now prominent in the FRCI might have played a key role in organizing the protests. The UN Group of Experts, in their April 2015 report, stated that: "The authority of the military command structure remains undermined by influences based on former affiliations," and stated that the November 18, 2014 protests, "might have been planned." UN Security Council, "Final report of the Group of Experts on Côte d'Ivoire," 2015, paras. 55-56.

## IV. Truth-Telling and Reparations

If we want to consolidate this peace of ours, truth, justice, and reparations are essential.

–Drissa Soumahoro, President of the Confederation of Organizations of Victims of the Ivorian Crisis (COVICI)<sup>198</sup>

In July 2011, in the aftermath of the post-election crisis, Côte d’Ivoire established a Commission on Dialogue, Truth, and Reconciliation (*Commission Dialogue, Vérité, et Réconciliation*, CDVR) to “work toward reconciliation and the reinforcement of social cohesion between all communities” by “seeking the truth on the violations committed in Côte d’Ivoire.”<sup>199</sup> Led by Charles Konan Banny, a former prime minister and longtime politician, the CDVR was composed of 10 commissioners representing constituencies across Côte d’Ivoire and the diaspora.<sup>200</sup>

The creation of the CDVR was an important step, and a chance to generate dialogue and recommendations that could prevent future human rights abuses. By giving victims the chance to tell their stories, it also created an opportunity for catharsis. One Ivorian who lived in Yopougon during the 2010-2011 post-election crisis told Human Rights Watch, “When you’re listened to, it’s good for you. We need to break down the doors that are between us.”<sup>201</sup> Another Ivorian said, “When you’re listened to, it calms your pain a little.”<sup>202</sup> The CDVR was also asked to make recommendations on how to provide reparations to victims.<sup>203</sup>

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<sup>198</sup> Human Rights Watch telephone interview with Drissa Soumahoro, President of the Confederation of Organisations of Victims of the Ivorian Crisis (COVICI), Abidjan, October 16, 2015.

<sup>199</sup> Summary of the final report of the Commission Dialogue, Vérité et Réconciliation (CDVR), p. 21 (on file with Human Rights Watch). See also “Ordonnance n°2011-167 du 13 juillet 2011 portant création, attributions, organisation et fonctionnement de la Commission Dialogue, Vérité et Réconciliation,” Côte d’Ivoire, available at *Abidjan.net*, <http://www.abidjan.net/gouv/p.asp?id=11> (accessed November 5, 2015), art. 5.

<sup>200</sup> Summary of CDVR final report (on file with Human Rights Watch), p. 17. The CDVR also established 37 local commissions, 6 in Abidjan at one in each administrative region, to support its work.

<sup>201</sup> Human Rights Watch interview, Yopougon, Abidjan, August 4, 2015.

<sup>202</sup> *Ibid.*

<sup>203</sup> The CDVR was charged with “proposing measures, of whatever nature, capable of addressing the trauma suffered by victims.” See “Ordonnance n°2011-167 du 13 juillet 2011,” Côte d’Ivoire, article 5. In a later ordinance, the word “reparations” was mentioned specifically. See “Ordonnance N° 2014-32 du 04 Février 2014 relative à la poursuite des missions de la Commission Dialogue, Vérité et Réconciliation,” Côte d’Ivoire, art. 1. See also Summary of CDVR final report (on file with Human Rights Watch), p. 20.

With a team of close to 350 investigators, the CDVR eventually took testimony from more than 72,000 Ivorians, including over 28,000 women.<sup>204</sup> The CDVR's final report, which Banny presented to President Ouattara on December 15, 2014,<sup>205</sup> includes analysis of the human rights abuses committed in Côte d'Ivoire from 1990 to 2012, as well as recommendations on how to address the underlying causes of Côte d'Ivoire's decade of political violence, provide reparations to victims, and pursue national reconciliation.<sup>206</sup>



In September 2015, a month prior to the October presidential election, an Ivorian man from a village near Gagnoa touches a picture of his mother, who was killed during 2010-2011 post-election violence. © 2015 Issouf Sanogo/Getty Images

The CDVR's report, however, has never been made public, and the presidency has never provided an explanation for the delay in doing so. The only concrete action President

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<sup>204</sup> See Summary of CDVR final report (on file with Human Rights Watch), pp. 74, 79.

<sup>205</sup> Government of Côte d'Ivoire, "Remise du Rapport Final de la CDVR: Charles Konan Banny Recommande des Journées Nationales de la Mémoire, et du Pardon," news release, [http://www.gouv.ci/actualite\\_1.php?recordID=5153](http://www.gouv.ci/actualite_1.php?recordID=5153) (accessed November 11, 2015).

<sup>206</sup> Summary of CDVR final report (on file with Human Rights Watch), part 4.

Ouattara took upon receiving the CDVR report was to commit to making 10 billion FCFA (approximately US \$16.2 million) available for the indemnification of victims.<sup>207</sup>

In March 2015, the Ivorian government created a national reconciliation and reparations commission (*Commission Nationale pour la Réconciliation et l'Indemnisation des Victimes des Crises survenues en Côte d'Ivoire*, CONARIV) to succeed the CDVR and oversee a reparations program.<sup>208</sup> Another government agency, the National Program for Social Cohesion (*Programme National de Cohésion Sociale*, PNCS), is charged with executing the reparations program.<sup>209</sup>

Focusing only on reparations, however, to the exclusion of meaningful discussion of the CDVR report's findings, undermines not only the mandate of the CDVR and the resources devoted to it, but also the broader goal of examining and addressing the root causes of Côte d'Ivoire's past political violence.

## The CDVR's Disappointing Legacy

Victims told Human Rights Watch that they were disappointed with what had been achieved by the CDVR. The head of a pro-Ouattara victims' association said, "If you talk to victims from our side, they'll tell you that the CDVR failed – it didn't have concrete impact on the ground, whether in terms of reconciliation, truth, or reparations."<sup>210</sup> A Gbagbo supporter told Human Rights Watch, "The CDVR has failed lamentably – it hasn't produced any results."<sup>211</sup>

When Banny was first appointed as the head of the CDVR, foreign diplomats and members of Ivorian civil society said that there had been little consultation in regards to the creation of the CDVR and who should lead it.<sup>212</sup> One Ivorian academic told Human Rights Watch that

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<sup>207</sup> "Remise du Rapport Final de la CDVR: Charles Konan Banny Recommande des Journées Nationales de la Mémoire, et du Pardon," Côte d'Ivoire.

<sup>208</sup> "Ordonnance No. 2015-174 du 24 Mars 2015 portant creation, attributions, composition et fonctionnement de la Commission Nationale pour la Réconciliation et l'Indemnisation des Victimes des Crises survenues en Côte d'Ivoire, dénommé CONARIV," Côte d'Ivoire, art. 2 (on file with Human Rights Watch). Banny was replaced by the archbishop of Bouaké, Paul Siméon Ahouana, although seven of CONARIV's nine commissioners were also on the CDVR.

<sup>209</sup> "Ordonnance No. 2015-174 du 24 Mars 2015," Côte d'Ivoire, art. 14-17 (on file with Human Rights Watch).

<sup>210</sup> Human Rights Watch interview with head of victims' association, Abidjan, August 5, 2015.

<sup>211</sup> Human Rights Watch interview with opposition activist, Guiglo, May 24, 2015.

<sup>212</sup> Human Rights Watch, *"They Killed Them Like It Was Nothing,"* p. 118.

the fact that the CDVR president was a politician affected the perception of the institution in the eyes of victims.<sup>213</sup> He said “everyone suspected Banny of using the CDVR as a political instrument, and so it really affected the legitimacy of the institution.”<sup>214</sup> The leader of a pro-Ouattara victims’ group said, “We didn’t have much confidence in him. It’s not because you’re a former prime minister that you can do reconciliation.”<sup>215</sup>

As well as taking private statements from victims, the CDVR organized public hearings, during which victims confronted perpetrators in front of CDVR commissioners. These events were designed to allow victims to “let out their anxiety and frustrations,” as well as to further wider reconciliation.<sup>216</sup> From September 8-30, 2014, the CDVR’s public hearings discussed 81 “emblematic cases,” spanning human rights violations committed from 1999 to 2012.<sup>217</sup>

The CDVR planned to disseminate extracts of the public hearings in the Ivorian media, particularly on television.<sup>218</sup> Ultimately, however, none of the hearings were broadcasted by Radiodiffusion Télévision Ivoirienne (RTI), the state television agency.<sup>219</sup> The failure to televise the extracts exacerbated the already secretive nature of the public hearings, which were held in an inaccessible location in a room with only 70 seats – far fewer than the number of victims who might potentially have wished to attend.<sup>220</sup>

The UN Security Council has said that it “encourages” the Ivorian government to publish the CDVR’s report.<sup>221</sup> One ONUCI official said that the publication of the report would be an opportunity for dialogue within Côte d’Ivoire as to how to further promote national

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<sup>213</sup> Human Rights Watch interview, Ivorian academic working on transitional justice issues, Abidjan, May 7, 2015.

<sup>214</sup> Ibid.

<sup>215</sup> Human Rights Watch interview with head of victims’ association, Abidjan, August 5, 2015.

<sup>216</sup> Summary of CDVR final report (on file with Human Rights Watch), pp. 93-94.

<sup>217</sup> Ibid, p. 95.

<sup>218</sup> Summary of CDVR final report (on file with Human Rights Watch), p. 100.

<sup>219</sup> An Ivorian academic said that Banny’s presence on the broadcasts was a factor in preventing them from being aired, but also said that “those in power feared that some elements of the public hearings would call into question their own responsibility for crimes that were committed.” Human Rights Watch interview with Ivorian academic working on transitional justice issues, Abidjan, May 7, 2015.

<sup>220</sup> FIDH, “Ivory Coast: Choosing between Justice and Impunity,” p. 12. Human Rights Watch interview with transitional justice expert, Abidjan, July 31, 2015.

<sup>221</sup> United Nations Security Council, Resolution 2226 (2015), U.N. Doc. S/RES/2226 (2015), adopted June 25, 2015, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2226.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2226.pdf) (accessed November 11, 2015), p. 2.



reconciliation and prevent future abuses.<sup>222</sup> The decision not to release the report has led some Ivorians to assume that the government is suppressing information unfavorable to Ouattara's regime. One opposition leader in western Côte d'Ivoire told Human Rights Watch, "The report hasn't been published – do you really think that means it's favorable to the regime in power?"<sup>223</sup>

Human Rights Watch supports the publication of the report and recommends that both the government and the National Assembly respond to its contents and recommendations. A National Assembly hearing and debate of the report would give political parties and others called to testify an opportunity to discuss the report's recommendations, including, importantly, those concerning justice, accountability, and the deep-rooted causes of Côte d'Ivoire's past violence.

## The Promise of Reparations

As well as investigating and prosecuting those responsible for human rights violations, states have a responsibility under international human rights law to provide redress to victims, including adequate, effective, and prompt reparation for harm suffered.<sup>224</sup>

President Ouattara has said that providing redress to victims was "a moral obligation that the state cannot avoid."<sup>225</sup>

Almost five years after the 2010-2011 post-election crisis, several victims expressed frustration to Human Rights Watch that they had not yet received any financial or in-kind assistance. One victim, who lived in the Abobo neighborhood of Abidjan during the post-election violence, said: "After the crisis, no one looks after victims. Our lives are very difficult. Our houses were pillaged, and we lack even good food and healthcare. We hear that our money is going to come, but so far, we haven't seen anything."<sup>226</sup>

Several women who suffered sexual violence during the 2010-2011 post-election crisis told Human Rights Watch that they had not received even the basic medical assistance

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<sup>222</sup> Human Rights Watch telephone interview, ONUCI official, Abidjan, November 9, 2015.

<sup>223</sup> Human Rights Watch interview, opposition activist, Guiglo, May 24, 2015.

<sup>224</sup> UN Basic Principles on Reparation for Victims, para. 11(b).

<sup>225</sup> Alassane Ouattara, "Fête de l'indépendance: Message du Président de la République à la Nation," televised speech, August 7, 2015, <http://www.ado.ci/accueil.php> (accessed November 5, 2015).

<sup>226</sup> Human Rights Watch interview, Abidjan, August 1, 2015.

necessary to treat the injuries they had suffered as a result of the abuse. One woman, who was targeted by Gbagbo supporters because she was an organizer for President Ouattara's political party, the *Rassemblement des Républicains* (RDR), during the 2010 election, said: "They said that they would look after us, but so far, there's nothing. I want somebody to come to help me. I want us to be cared for."<sup>227</sup>

CONARIV is compiling an initial list of victims who could be eligible for reparations based on its own registration process and records provided by the CDVR, victims' associations, human rights groups, government agencies including the PNCS, and international organizations.<sup>228</sup> Taken together, the lists provided to or collected by CONARIV include close to 200,000 potential victims, although there is likely a lot of duplication among the various victim lists.<sup>229</sup> CONARIV is also formulating a draft law that would set out who will be eligible for reparations, and what the nature of the reparations will be.<sup>230</sup>

While CONARIV works to finalize a reparations framework, however, the presidency in July 2015 asked the PNCS to disburse an initial round of reparations, including one-off payments and medical assistance, to 4,500 victims identified in the report of Côte d'Ivoire's National Commission of Inquiry (*Commission Nationale d'Enquête*, CNE).<sup>231</sup>

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<sup>227</sup> Human Rights Watch interview, Abidjan, August 1, 2015.

<sup>228</sup> Human Rights Watch interview with CONARIV official, Abidjan, August 7, 2015; interview with international expert on reparations, Abidjan, July 31, 2015; telephone interview with ONUCI official, Abidjan, August 27, 2015. CONARIV conducted its own nationwide victim registration process, intended as a further chance for victims to come forward, from May 18-June 30, 2015. "Côte d'Ivoire: l'indemnisation des victimes de la crise postélectorale démarrera en juillet (Commission)," *Abidjan.net*, May 5, 2015, <http://news.abidjan.net/h/550862.html> (accessed November 5, 2015). The registration period was initially to be May 18 to June 18, 2015 but was extended to June 30, 2015. "Côte d'Ivoire: le recensement des victimes des crises prorogé jusqu'au 30 juin," *Abidjan.net*, June 20, 2015, <http://news.abidjan.net/h/555726.html> (accessed November 5, 2015). CONARIV has since organized another 1-month registration period, from early September to early October, and plans to give victims one final chance to register in late 2015 or early 2016.

<sup>229</sup> Human Rights Watch interview with international reparations expert, Abidjan, July 31, 2015; telephone interview with UN official, Abidjan, August 27, 2015. CONARIV is now in the process of creating a definitive list, archived in a specially created database, which will ensure a single victim does not appear multiple times. CONARIV is also conducting a verification process to assess each victim's claims, which will include reference to supporting documentation and, where necessary in specific cases, on-the-ground investigations. Human Rights Watch interview with CONARIV official, Abidjan, August 7, 2015.

<sup>230</sup> "Loi portant identification des victimes et réparation des dommages de guerre /crises survenues en Côte d'Ivoire," (copy of draft on file with Human Rights Watch). At the time of writing, CONARIV planned to hold a consultation process on this law in December 2015.

<sup>231</sup> Human Rights Watch telephone interview with ONUCI official, Abidjan, August 27, 2015. The 4,500 victims comprised 3,500 people who had lost family members, who each received 1 million FCFA (approximately US \$1,615), and 1,000 people who were injured, whose reparations package included free medical assistance and 150,000 FCFA (US \$242) to cover their transport costs.

President Ouattara presided over an August 4, 2015 ceremony to mark the first payments and medical assistance for victims.<sup>232</sup>

Professor Mariatou Koné, the Director-General of the PNCS, told Human Rights Watch that the initial round of reparations was intended to demonstrate that the government was serious about helping victims, and that it had encouraged other victims to register with CONARIV. She said that “victims had started to doubt the effective implementation of the reparations process,” and that the August 4 ceremony was “an important step” leading to an “increased desire among victims to register with CONARIV.”<sup>233</sup> International experts on reparations and at least one victims’ groups said that the decision to begin reparations was also a political gesture by President Ouattara prior to the 2015 presidential election.<sup>234</sup>

This initial round of reparations raised expectations among victims as to when they will receive reparations and how much they will get. The head of a well-known victims’ group told Human Rights Watch that “victims were calling him from everywhere” after they heard about the disbursements, and he told victims, “You will be taken care of, any victim who lost something will get reparations.”<sup>235</sup>

By giving victims lump sum payments, the government has also established a baseline that future reparations will be expected to match.<sup>236</sup> Given that the first round of reparations will cost between 6-8 billion FCFA (US \$10-13 million),<sup>237</sup> it seems likely that the total reparations program will cost substantially more than the 10 billion FCFA (US \$16.2 million) President Ouattara said would initially be available.

Victims groups told Human Rights Watch that CONARIV, and the Ivorian government in general, should be more transparent in its dealing with victims.<sup>238</sup> Experts on reparations

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<sup>232</sup> “Cérémonie officielle d’indemnisation des victimes : l’allocution du Président Alassane Ouattara,” *Abidjan.net*, August 4, 2015, <http://news.abidjan.net/h/560901.html> (accessed November 18, 2015).

<sup>233</sup> Human Rights Watch telephone interview, Abidjan, November 17, 2015.

<sup>234</sup> Human Rights Watch telephone interview with ONUCI official, Abidjan, August 27, 2015; interview with international reparations expert, Abidjan, July 31, 2015; interview with leader of victims’ group, Abidjan, August 5, 2015.

<sup>235</sup> Human Rights Watch interview, head of victims’ association, Abidjan, August 6, 2015.

<sup>236</sup> Human Rights Watch telephone interview with ONUCI official, Abidjan, August 27, 2015.

<sup>237</sup> “Visite d’Etat : six à huit milliards pour l’indemnisation de près de 4500 victimes de la crise postélectorale (Ouattara),” *Abidjan.net*, July 26, 2015, <http://news.abidjan.net/h/560284.html> (accessed November 5, 2015).

<sup>238</sup> Human Rights Watch interview with Drissa Soumahoro, Président of the Confédération des organisations des victimes de la crise ivoirienne (COVICI), Abidjan, August 6, 2015; interview with leader of victims’ association, Abidjan, August 5, 2015.

programs have said that they almost always fall short of victims' expectations, and governments therefore need to be proactive in explaining to victims who will receive what, and why.<sup>239</sup> CONARIV should convene monthly town hall meetings with victims' groups, in both Abidjan and in key regional capitals, to increase awareness of its activities and discuss how victims' groups can participate in, and assist, CONARIV's work.

ONUCI officials and international experts on reparations also told Human Rights Watch that the government should expand its reparations program beyond financial payments to include measures that would benefit a broader category of victims, including public apologies, memorials, and community development projects.<sup>240</sup> CONARIV officials, and Professor Koné, the Director-General of the PNCS, said that the government is considering including a broader range of reparations in the draft law on reparations.<sup>241</sup>

To clarify its plans for reparations, the Ivorian government should expedite consultations on the draft law defining who is eligible for reparations and what they will receive. To facilitate the drafting of the law, and in light of ongoing disagreement between CONARIV and the PNCS over their respective roles in the reparations process, President Ouattara should instruct the leaders of the two institutions to negotiate and present to him terms of reference governing their relationship and should personally intervene to mediate areas of disagreement.

International donors should support the reparations process by continuing to provide technical assistance to CONARIV and the PNCS and by providing increased funding to victims' groups to communicate information about the process to victims.<sup>242</sup>

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<sup>239</sup> International Center for Transitional Justice (ICTJ), "Reparations in Theory and Practice," *Reparative Justice Series*, <https://www.ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf> (accessed November 5, 2015), p. 4; UN OHCHR, "Rule-Of-Law Tools For Post-Conflict States: Reparations programmes," U.N. Doc. HR/PUB/08/1, 2008, <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf> (accessed November 5, 2015), p. 10.

<sup>240</sup> The UN Basic Principles on Reparation for Victims set out five different types of reparations, of which financial compensation is only one. The five different types are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. UN Basic Principles on Reparation for Victims, paras. 19-23. Human Rights Watch interview with ONUCI official, November 5, 2015; interview with international reparations expert, Abidjan, July 31, 2015.

<sup>241</sup> Human Rights Watch interview with CONARIV official, Abidjan, August 7, 2015; telephone interview with Professor Mariatou Koné, Abidjan, November 17, 2015. Professor Koné said that the government's reparations program will ultimately include, "collective reparations, symbolic reparations, free schooling for orphans and allowances for widows."

<sup>242</sup> The International Center for Transitional Justice (ICTJ), with support from the European Union, is currently advising CONARIV on the design of a reparations program, while ONUCI is planning to deploy an expert in reparations to CONARIV.

## V. Land Dispossession in Western Côte d'Ivoire

No one can be satisfied with the current situation, neither the customary landowners nor the occupiers of land in rural areas. We need another approach— one that takes into account the interests of all parties.

—Théodore Dagrou, Supreme Court justice and land expert<sup>243</sup>

Deep inter-communal tension linked to land dispossession has for many years driven periodic bloody episodes of violence in western Côte d'Ivoire, and was a key factor in many of the worst abuses during the 2010-2011 post-election crisis.

The population movements and displacement caused by the 2010-2011 violence triggered a new wave of land dispossession. Although many cases have since been resolved, community leaders told Human Rights Watch that disputes over land remain a key driver of inter-communal tensions and local-level violence, with one saying, “The biggest problem that we face, it’s this question of land. It’s land that is at the root of conflicts in this zone.”<sup>244</sup>

During President Ouattara’s first term, the government’s land policy focused on the implementation of a 1998 law that sought to provide landowners with more security by requiring them to convert customary land claims to legal certificates and eventually legal title. The process for obtaining a land certificate, however, is too complicated and expensive and very few landowners have even tried to do so.

The burden for resolving land disputes currently falls on customary authorities and local government officials, who have played a key role in mediating land dispossession cases that resulted from the post-election crisis. Community leaders told Human Rights Watch, however, that the settlements reached before customary authorities are increasingly difficult to enforce, frequently discriminate against women, and often allow even those

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<sup>243</sup> Human Rights Watch interview with Me. Théodore Dagrou, Supreme Court justice, Abidjan, July 27, 2015.

<sup>244</sup> Human Rights Watch interview with community leader, Bloléquin, western Côte d'Ivoire, May 22, 2015. Between January and March 2015, a series of cross-border raids in southwestern Côte d'Ivoire appeared targeted against immigrant communities, and led to a series of alleged reprisal attacks against native community leaders. The Danish Refugee Council (DRC) in May 2015 said that the armed incursions and conflicts that occurred in western Côte d'Ivoire in early 2015 showed that the region was “vulnerable to intercommunity tensions” and that “access to land, the major and repeated cause of conflicts, is the backbone of these tensions.” DRC Protection Report, January-February 2015; DRC Protection Report, March-April 2015.

who occupied land in bad faith to remain on the land, violating the owners' property rights. Those implicated in illegal or fraudulent sales are rarely prosecuted.

International law requires that Côte d'Ivoire guarantee the right to property.<sup>245</sup> It also requires a fair hearing for any case involving a person's "rights and obligations," which would include a case over land rights.<sup>246</sup> While traditional or administrative mechanisms established by law can be used to resolve such disputes, they must be "competent, independent, and impartial" – including by giving fair treatment to women.<sup>247</sup>

As President Ouattara begins his second term, his government's land policy faces two related challenges: first, the lack of implementation of the 1998 law and the continued reliance on customary dispute resolution mechanisms; and second, the recognition that customary authorities may find it increasingly difficult to find durable, rights-respecting solutions to land disputes.

## Continued Land Dispossession

Land, politics, and violence have been closely linked in western Côte d'Ivoire for at least two decades. As the economy recessed in the 1980s and 90s and productive land grew scarce, Ivorian politicians exploited the resulting tensions between ethnic groups "native" to the west (the *autochtones*, in French) and populations who had come from neighboring countries (*allogènes*) and other regions of Côte d'Ivoire (*allochtones*) to work the region's cocoa and coffee fields.<sup>248</sup> When armed conflicts erupted from 2002-2003 and again in 2010-2011, deep inter-communal tensions linked to land dispossession were one reason why western Côte d'Ivoire played host to many of the worst atrocities.<sup>249</sup>

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<sup>245</sup> African Charter on Human and People's Rights (ACHPR), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 14.

<sup>246</sup> International Covenant on Civil and Political Rights (ICCPR), art. 14.

<sup>247</sup> Ibid, art. 14. See also United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons ("Pinheiro Principles"), U.N. Doc. E/CN.4/Sub.2/2005/17 (2005), endorsed Sub-Com. res. 2005/21, U.N. Doc. E/CN.4/2006/2 at 39 (2006), Principle 12.

<sup>248</sup> Human Rights Watch, "*That Land Is My Family's Wealth*": Addressing Land Dispossession after Côte d'Ivoire's Post-Election Conflict, October 9, 2013, <https://www.hrw.org/report/2013/10/09/land-my-familys-wealth/addressing-land-dispossession-after-cote-divoires-post>, pp. 14-20.

<sup>249</sup> Ibid, p. 14.

The population movements that resulted from the 2010-2011 post-election crisis paved the way for a new round of land dispossession. As pro-Ouattara forces advanced toward Abidjan, members of the Guéré ethnic group native to much of the region fled en masse in fear of reprisals, many of them to Liberia.<sup>250</sup> Upon returning home, hundreds of Guéré landowners found someone occupying land that they had never sold or ceded.

Although many Guéré alleged that “non-natives”—meaning West African immigrants and Ivorians from ethnic groups native to other regions of Côte d’Ivoire—had unlawfully seized their land, a Human Rights Watch report in October 2013 found that, in the majority of cases, land dispossession resulted from illegal sales by other Guérés, although some non-native buyers were aware that they were not buying the land from its rightful owner.<sup>251</sup>

Illegal land sales and occupations remain a major cause of land dispossession in 2015. A Burkinabé community leader from a village near Bloléquin told Human Rights Watch, “We still see lots of cases in which a Guéré sells land which doesn’t fully belong to them, and then their brother arrives and tells the farmer, ‘that land doesn’t belong to you.’ It’s also true that, from our side, there are people who simply start farming a field, without worrying who it belongs to.”<sup>252</sup> A Guéré community leader said, “Our youth sell land belonging to the elders, who can’t go into the fields to check on their holdings, and they do it without asking the village chief to authorize the sale... The forest of our elders is being sold.”<sup>253</sup>

Illegal land sales and occupations violate the property rights of the true landowners.<sup>254</sup> The illegal sale or seizure of land also has serious consequences on people’s livelihoods, making the failure of the Ivorian government to ensure timely land restitution a potential violation of the rights to food and livelihood.<sup>255</sup>

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<sup>250</sup> Around 200,000 Ivorians fled to Liberia, primarily from western Côte d’Ivoire. Human Rights Watch, *“That Land is My Family’s Wealth,”* p. 24.

<sup>251</sup> *Ibid.*, p. 2.

<sup>252</sup> Human Rights Watch interview with Burkinabé community leader, village near Bloléquin, May 22, 2015.

<sup>253</sup> Human Rights Watch interview with Burkinabé community leader, village near Duékoué, May 25, 2015.

<sup>254</sup> ACHPR, art. 14 on the right to property. For more details, see Human Rights Watch, *“That Land is My Family’s Wealth,”* pp. 93-95. In all cases of illegal occupation of land—whether the buyer obtained the land through an illegal sale or through force—the rightful owner has been denied this right.

<sup>255</sup> International Covenant on Economic, Social, and Cultural Rights (ICESCR), art. 11, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No 16) at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.

## Challenges to Implementation of the 1998 Law

During President Ouattara's first term, the government's land policy focused on the implementation of the 1998 land law, which gave customary landowners 10 years to convert their customary rights into a land certificate and then to record their ownership in the land registry.<sup>256</sup> Converting customary claims to land certificates and legal title will, the government says, increase certainty as to who is the rightful owner of land and so reduce the prevalence of land dispossession and land disputes.<sup>257</sup>

In August 2013, the National Assembly adopted modest reforms to the 1998 law and the country's nationality law, giving landowners an additional 10 years to convert their customary rights into legal title, a reflection of the fact that very few landowners had registered land since the 1998 law was passed. The reforms also opened Ivorian citizenship—a pre-condition for registering land—to foreign-born residents and their descendants who fulfilled certain criteria.<sup>258</sup>

However, community leaders in western Côte d'Ivoire told Human Rights Watch that since 2013 very few landowners have used the 1998 law to obtain land certificates. One chief from a village near Bloléquin, whose views echoed those of several village chiefs, told Human Rights Watch, "Nobody has done that yet in the village. It's just too complicated, too expensive. A few have started the process, but no one has finished it."<sup>259</sup>

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<sup>256</sup> Human Rights Watch interview with Ivorian government official, Abidjan, August 3, 2015; interviews with diplomats, Abidjan, July 28 and 31, 2015. See also Dr. Frédéric Varlet, "Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI, Rapport Final," Côte d'Ivoire Ministry of Agriculture, Direction du Foncier Rural, August 2014, pp.17, 31 (On file with Human Rights Watch).

<sup>257</sup> Human Rights Watch interview with Ivorian government official, Abidjan, August 3, 2015. See also Frédéric Varlet, "Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI," p. 11, para. 4. International donors, including the EU, France, the World Bank and the African Development Bank, have provided significant funds to projects designed to raise awareness of the 1998 law at a local level and to support the local institutions responsible for land registration. Human Rights Watch interview with Ivorian government official, Abidjan, August 3, 2015; interview with international diplomats, Abidjan, July 28 and 31, 2015.

<sup>258</sup> This change sought to remedy the situation facing non-Ivorians who believed they had purchased customary rights to land, but who could not register their title under the 1998 law. The changes opened Ivorian citizenship to foreign-born residents who had lived in Côte d'Ivoire since before independence, as well as to their descendants, and to people born to foreign nationals in Côte d'Ivoire between December 1961 and January 1973, as well as to their descendants. The law also allows these people to make their claim for Ivorian citizenship through a declaration, rather than the normal naturalization process. "Loi portant dispositions particulières en matière d'acquisition de la nationalité par déclaration," Assemblée Nationale de Côte d'Ivoire, adopted August 23, 2013, <http://www.assnat.ci/sites/default/files/PROJET%20DE%20LOI%20ACQUISITION%20DE%20LA%20NATIONALITE.pdf> (accessed November 9, 2015); Ange Aboa, "Ivory Coast lawmakers pass critical land, nationality laws," Reuters, August 23, 2013, <http://www.reuters.com/article/2013/08/23/us-ivorycoast-laws-idUSBRE97MoY120130823> (accessed November 5, 2015).

<sup>259</sup> Human Rights Watch interview with village chief, village near Bloléquin, May 23, 2015.



The process for obtaining a land certificate and legal title is not accessible to ordinary Ivorians.<sup>260</sup> The process for obtaining a land certificate has 19 stages, takes between 6-18 months, and costs an average of 764,500 FCFA (approximately \$1,240).<sup>261</sup> The form required to begin the process can only be obtained from a Ministry of Agriculture office in Abidjan.<sup>262</sup>

The government has also done too little to support the village-level committees that play a key role in the land certification process. Decrees subsequent to the 1998 land law create committees overseen at the village level (*Comités Villageois de Gestion Foncière Rurale*, CVGFR) and sub-prefectural level (*Comités de Gestion Foncière Rurale*, CGFR), whose roles are to validate the landowner's claim to the land and, if land disputes arise during the course of the certification process, to try to resolve them.<sup>263</sup> However, once installed, the village committees are not sufficiently trained or resourced. A 2014 study commissioned by the Ministry of Agriculture found that only 153 of the 550 committees it examined were still functional.<sup>264</sup>

The reluctance of western Ivorians to seek land certificates reflects a similar situation across Côte d'Ivoire. As of May 31, 2015, only 978 land certificates had been issued nationwide (only 119 to women),<sup>265</sup> with approximately 500,000 certificates needed to cover Côte d'Ivoire.<sup>266</sup> Constant Delbé Zirignon, the Director of Rural Land in the Ministry of Agriculture, acknowledged that there was “a long way to go” to implement the 1998 law,

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<sup>260</sup> Human Rights Watch telephone interview with international land expert, Paris, July 22, 2015.

<sup>261</sup> Frédéric Varlet, “Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” pp. 32, 37, 39, 42, 43.

<sup>262</sup> *Ibid.*, pp. 32, 37.

<sup>263</sup> Décret n°99-593, “Portant Organisation et Attributions des Comités de Gestion Foncière-Rurale (C.G.F.R),” October 13, 1999, available at <http://faolex.fao.org/docs/texts/ivc69126.doc> (accessed November 13, 2015); Décret n°99-594, “Modalités d'application au domaine foncier rural coutumier,” October 13, 1999, available at <http://www.foncierural.ci/reglementation-fonciere-rurale/13-decrets-d-application/45-decret-n-99-594-du-13-octobre-1999-fixant-les-modalites-d-application-au-domaine-foncier-rural-coutumier-de-la-loi-n-98-750-du-23-decembre-1999> (accessed November 13, 2015). There is a lack of clarity as to the relationship between the village committees created pursuant to the 1998 law and the village chiefs who typically resolve customary land disputes unrelated to land certification. One Ivorian expert told Human Rights Watch that Ivorian law clearly does not give village land committees jurisdiction over land disputes not related to the certification process, which remain the purview of village chiefs. It is difficult, however, for village land committees to successfully resolve disputes related to land certification – which focus on who has the customary rights to the land – when they play no such role when similar disputes arise in normal circumstances. Human Rights Watch interview with land specialist from international humanitarian organization, Abidjan, August 3, 2015.

<sup>264</sup> Frédéric Varlet, “Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p.56.

<sup>265</sup> Ministry of Agriculture policy document, July 2015 (on file with Human Rights Watch), p. 6.

<sup>266</sup> Frédéric Varlet, “Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p. 17.

although he noted that progress has been made since November 2013, when just over 300 certificates had been issued.<sup>267</sup>

The government has also made little progress in mapping village boundaries (known as demarcation), so as to prevent fraudulent sales that exploit uncertain village borders. As of May 31, 2015, the government had demarcated 177 of Côte d'Ivoire's 8,571 villages.<sup>268</sup> Côte d'Ivoire's lack of land surveyors, whose professional body—the Order of Expert Surveyors (*l'Ordre des Géomètres Experts de Côte d'Ivoire*, OGE-CI)—has a monopoly on performing geometric surveys related to demarcating village and individual property lines, continues to be an obstacle to demarcation.<sup>269</sup>

## Role of Village Chiefs and Local Government Officials

In the absence of an effective system of land registration, the burden for resolving disputes over the alleged dispossession of land from customary landowners falls on customary authorities and local administration officials.

Most cases of alleged land dispossession are first brought to the village chief, a customary leader (usually from the native community) and administrative authority recognized by Ivorian law.<sup>270</sup> In making decisions on land conflicts, village chiefs act in consultation with other village elders and the village land chief—an elder with an often encyclopedic knowledge of families' plots. Both native and non-native community leaders told Human Rights Watch that village chiefs had played a vital role in resolving disputes over land dispossession related to the 2010-2011 post-election crisis.<sup>271</sup> One village chief in the west

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<sup>267</sup> Human Rights Watch interview, Constant Delbé Zirignon, Abidjan, August 2015.

<sup>268</sup> Ministry of Agriculture policy document, July 2015 (on file with Human Rights Watch), p. 6.

<sup>269</sup> Ibid, p. 17. Human Rights Watch, *That Land is My Family's Wealth*, p. 87. Human Rights Watch interview, international land expert, Abidjan, July 28, 2015.

<sup>270</sup> "Ordonnance n°2011-262 du 28 septembre 2011 portant orientation de l'organisation générale de l'Administration Territoriale de l'Etat," Côte d'Ivoire, <http://www.dgddl.interieur.gouv.ci/?page=cadre&cat=ordonnances> (accessed September 3, 2013). Human Rights Watch interview, land specialist from international humanitarian organization, Abidjan, August 3, 2015. Human Rights Watch, *That Land is My Family's Wealth*, p. 64. For more on the role of village chiefs, see Frédéric Varlet, "Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI," p. 55.

<sup>271</sup> Human Rights Watch interview with Guéré community leader, village near Bloléquin, May 23, 2015; interview with Burkinabé community leader, village near Guiglo, May 23, 2015; interview with Burkinabé community leader, village near Duékoué, May 25, 2015; interview with local government official, Bloléquin, May 22, 2015; interview with Ivorian academic working on land issues, Abidjan, July 27, 2015; interview with staff member of international humanitarian organization, Abidjan, July 28, 2015.

said that whereas in 2012 he was being asked to resolve six land disputes a day, he now intervenes in three to four per week.<sup>272</sup>



Ivorian traditional chiefs attend a workshop on May 22, 2014 in Bangolo, western Côte d'Ivoire, to discuss the role of traditional and community chiefs in intercommunal dialogue and the management of land. © 2014 Issouf Sanogo/Getty Images

Land conflicts that cannot be resolved at the village level are usually brought to sub-prefects, administrative authorities under the Interior Ministry who oversee village chiefs within a certain number of villages. Sub-prefects also chair the sub-prefectural land committees that help manage the implementation of the 1998 law.<sup>273</sup> An Ivorian land specialist working with an international humanitarian organization praised the role of sub-

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<sup>272</sup> Human Rights Watch interview with village chief, village near Bloléquin, May 23, 2015.

<sup>273</sup> The hierarchy is not always followed, as some people go directly to the sub-prefect. Human Rights Watch, *That Land is My Family's Wealth*, p. 62; Frédéric Varlet, "Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI," p. 12, para. 11; Norwegian Refugee Council (NRC), "Land Conflict and Food Security in the Liberian-Ivorian Border Region," December 2012, [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Cote\\_d\\_Ivoire/files/HLP%20AoR/Land\\_Conflict\\_and\\_Food\\_Security\\_Liberian\\_Ivoirian\\_Border\\_Region\\_2012\\_EN.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Cote_d_Ivoire/files/HLP%20AoR/Land_Conflict_and_Food_Security_Liberian_Ivoirian_Border_Region_2012_EN.pdf) (accessed November 5, 2015), p. 17. Like village chiefs, sub-prefects often try to resolve land conflicts by negotiating a consensus, although they will arbitrate disagreements if necessary. See Frédéric Varlet, "Étude d'impact social du volet d'appui à la mise en œuvre de la loi sur le foncier rural du PARFACI," p.55.

prefects in mediating land dispossession cases related to the 2010-2011 post-election crisis.<sup>274</sup> He said that there has been a “real improvement” in sub-prefects’ mediation of land dispossession cases and that, because village chiefs are resolving more disputes, sub-prefects’ workload has reduced, increasing the time that they can spend on each case.<sup>275</sup>

### *No Consequences for Illegal Transactions*

Several native and non-native community leaders, however, expressed frustration with the mediation methods used by customary leaders. A Burkinabé leader from a village near Bloléquin complained that mediation doesn’t result in a clear decision regarding who the land belongs to. He said, “We ask the village chief to decide who the land belongs to, but he doesn’t do that. He just says, ‘sort it out between yourselves,’ and doesn’t say, ‘this is for you, and that is for you.’”<sup>276</sup> He also said that some village chiefs allowed bribes to influence their decisions.

A Guéré community leader from Duékoué complained that because village chiefs try to seek a compromise in which each party derives an advantage from the ruling, the outcome of mediation often allows even people who occupied land in bad faith to stay on the land, with the true landowner under pressure to accept the chief’s solution.<sup>277</sup> He said, “I’m not happy in the way that these cases are resolved, because too much emphasis is given by the authorities to the person who is actually exploiting the land. Our parents come to find their land occupied, and then it’s difficult for them to have any recourse. They have lost in advance.”<sup>278</sup>

One sub-prefect told Human Rights Watch that anyone unhappy with the result of mediation by customary authorities or local officials could always bring the case to the justice system, which is not bound by the settlement reached before the village chief or sub-prefect.<sup>279</sup> Community leaders, however, said that litigation takes too long and is too expensive, and so

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<sup>274</sup> Human Rights Watch interview with land specialist from international humanitarian organization, Abidjan, August 3, 2015. See also Frédéric Varlet, “Étude d’impact social du volet d’appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p. 55.

<sup>275</sup> Human Rights Watch interview with land specialist from international humanitarian organization, Abidjan, August 3, 2015.

<sup>276</sup> Human Rights Watch interview with Burkinabé community leader, village near Bloléquin, May 22, 2015.

<sup>277</sup> Human Rights Watch interview with Guéré community leader, village near Duékoué, May 25, 2015.

<sup>278</sup> Ibid.

<sup>279</sup> Human Rights Watch interview with local government official, Bloléquin, May 22, 2015; interview with Ivorian land specialist from international humanitarian organization, Abidjan, August 3, 2015.

people generally don't have recourse to courts.<sup>280</sup> Lack of sufficient access to legal advice and representation also prevents Ivorians from filing cases. The justice system itself struggles to execute decisions unless both parties accept the outcome.<sup>281</sup>

Community leaders also told Human Rights Watch that very few people involved in illegal land sales are investigated and prosecuted, a key factor in perpetuating abuses.<sup>282</sup> One village chief said that while some people are arrested by the gendarmerie for illegal land sales, they are usually released after two or three days, as "there's usually an agreement found with the family involved. There are not cases here which are sent to the justice system."<sup>283</sup> Another village chief said, "The person who sold the land illegally should be prosecuted. There is no sanction against the buyer or the seller. If the administration doesn't punish illegal sales, what can the village do?"<sup>284</sup>

### *Lack of Enforcement Power*

Community leaders also said that customary authorities are increasingly struggling to get illegal sellers or occupants to appear at hearings or accept the outcome of mediation. One village chief told Human Rights Watch, "In the past, new arrivals would come to see me, as the head of the village, when they arrived in the village looking for land parcels, but now many of them don't even do that... They don't respect my authority."<sup>285</sup> An Ivorian land specialist and at least one village chief also said that Guéré youth are increasingly questioning how land is being managed by older family members and the manner in which conflicts are resolved by the village chief.<sup>286</sup>

Théodore Dagrou, a Supreme Court Justice with particular expertise on land issues, told Human Rights Watch that the population movements triggered by the 2010-2011 post-election crisis, as well as the continued flow of migrants to the region, are undermining the

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<sup>280</sup> Human Rights Watch interview with community leader, village near Bloléquin, May 23, 2015; interview with Ivorian academic working on land issues, Abidjan, July 27, 2015.

<sup>281</sup> Human Rights Watch interview with Ivorian academic working on land issues, Abidjan, July 27, 2015; interview with Ivorian land specialist from international humanitarian organization, Abidjan, August 3, 2015.

<sup>282</sup> Human Rights Watch interview with community leader, village near Bloléquin, May 23, 2015; interview with community leader, village near Duékoué, May 25, 2015. See also Human Rights Watch, *That Land is My Family's Wealth*, p. 87.

<sup>283</sup> Human Rights Watch interview with village chief, village near Bloléquin, May 23, 2015.

<sup>284</sup> Human Rights Watch interview with village chief, village near Duékoué, May 25, 2015.

<sup>285</sup> Human Rights Watch interview with village chief, village near Guiglo, May 24, 2015.

<sup>286</sup> Human Rights Watch interview with Ivorian land specialist from international humanitarian organization, Abidjan, August 3, 2015; interview with village chief, village near Duékoué, May 25, 2015.

authority of customary chiefs.<sup>287</sup> “The customary system relies, by definition, on customs based on local traditions. And peaceful land management depends on knowledge of the history of each locality,” he said. “With the displacements caused by the crisis and the massive influx of people who don’t always understand these things, or who choose to ignore them, the management of land has only become more difficult.”<sup>288</sup>

Ivorian and international land experts also pointed to demographic factors that are affecting “the balance of power” in villages in western Côte d’Ivoire,<sup>289</sup> making it increasingly difficult to compel illegal sellers or occupants from immigrant groups to attend hearings or respect the results of mediation.<sup>290</sup> Several Guéré leaders told Human Rights Watch about the demographic changes in their villages during Côte d’Ivoire’s various crises. One village chief, from a village near Bloléquin, said: “In 2011, there were 6,000 habitants in the village, with very few Burkinabé. Now we’re 7,000 or 8,000 people, with only 3,000 Guéré.”<sup>291</sup>

### *Exclusion of Women*

International land experts expressed concern that the settlements reached before customary authorities discriminate against women, who face particular barriers in obtaining access to land.<sup>292</sup> Although humanitarian and civil society groups have been trying to convince village chiefs to include women in the dispute resolution process, a land specialist working with a humanitarian organization in the west acknowledged that in the majority of villages, the village chief and elders who mediate land conflicts are all men.<sup>293</sup>

The obstacles that women face in participating in the resolution of land disputes at the village level are illustrated by their lack of representation on the land committees

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<sup>287</sup> Human Rights Watch interview with Ivorian land specialist from international humanitarian organization, Duékoué, May 25, 2015; interview with village chief, village near Duékoué, May 25, 2015.

<sup>288</sup> Ibid.

<sup>289</sup> Human Rights Watch interview with international land expert, Abidjan, July 28, 2015.

<sup>290</sup> Human Rights Watch interview with staff member of international humanitarian organization, Abidjan, July 31, 2015.

<sup>291</sup> Human Rights Watch interview with village chief, village near Bloléquin, May 23, 2015. That immigrant communities often live in *campements* (camps) some distance from the native village also makes it hard for the village chief to maintain his authority over the entire population. Human Rights Watch interview with Ivorian land specialist from international humanitarian organization, Abidjan, August 3, 2015.

<sup>292</sup> Human Rights Watch interview with international land expert, Abidjan, July 28, 2015; interview with international land expert, Abidjan, July 22, 2015; Human Rights Watch, “*That Land is My Family’s Wealth*,” p. 67.

<sup>293</sup> Human Rights Watch interview with land specialist of international humanitarian organization, Abidjan, August 3, 2015; interview with NGO representative, Abidjan, August 1, 2015.

established to assist in the implementation of the 1998 law. Of 116 functioning village land committees that a 2014 Ministry of Agriculture study was able to observe, almost 40 percent had no women members and 55 percent had fewer than two women among their approximately 13 members.<sup>294</sup> The vast majority of village land committees examined by the study also had either zero or a small minority of immigrant members.<sup>295</sup>

A key finding of Human Rights Watch’s 2013 report on land dispossession in western Côte d’Ivoire was that village-level committees are more effective in resolving land disputes when they include women, representatives from immigrant communities, and Ivorians from other regions.<sup>296</sup>

## Doubling Down on the 1998 Law

As President Ouattara begins his second term, his government should find a way to ensure a just and timely resolution of land disputes.

Although some international experts are pushing for a comprehensive reform of the 1998 law, the government has so far indicated that it will continue to focus on its implementation.<sup>297</sup> The government in July 2015 circulated a draft land policy that proposes reforms designed to streamline the steps necessary to obtain a land certificate and reduce the cost for doing so.<sup>298</sup> One land specialist from an international donor that has supported the implementation of the 1998 law argued that the certification process should be free for the poorest Ivorians.<sup>299</sup>

If the government proceeds with implementation of the 1998 law, it should be mindful of the risk that the process of land certification may uncover, and even provoke, land disputes that had simmered, but not boiled over, under the customary system.<sup>300</sup> Under the customary system, multiple parties frequently have diverse (and sometimes

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<sup>294</sup> Frédéric Varlet, “Étude d’impact social du volet d’appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p. 72.

<sup>295</sup> Ibid, p. 73.

<sup>296</sup> Human Rights Watch, *“That Land is My Family’s Wealth,”* p. 66.

<sup>297</sup> Côte d’Ivoire, Ministry of Agriculture policy document, July 2015 (on file with Human Rights Watch).

<sup>298</sup> Human Rights Watch interview with Ivorian Ministry of Agriculture official, Abidjan, August 4, 2015.

<sup>299</sup> Human Rights Watch interview with diplomat, Abidjan, July 31, 2015; interview with international land expert, Abidjan, July 28, 2015.

<sup>300</sup> Frédéric Varlet, “Étude d’impact social du volet d’appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p. 69.

contradictory) interests over a single parcel of land.<sup>301</sup> There are many situations, for example, where the occupier of land cohabits with the landowner who installed him, both believing they are the rightful owner and both taking some benefit from the land.<sup>302</sup>

Unless disputes that arise during the certification process are resolved fairly, there is a risk that the implementation of the 1998 law will provoke further cases in which the rightful landowners are dispossessed, violating their right to property. One community leader from Duékoué told Human Rights Watch that when the government in the past asked people to get land certificates, “It created lots of problems. The number of land conflicts increased, as in many cases the nature of the relationship between landowner and tenant is not well defined.”<sup>303</sup> One international land expert told Human Rights Watch that he believed some Ivorians farmers had not applied for a land certificate because they feared that the process might put at risk the relatively peaceful occupation of land they enjoyed under the customary system.<sup>304</sup>

A government official told Human Rights Watch that Ivorian NGOs and community leaders would have an opportunity to comment on the draft land policy in the spring of 2016.<sup>305</sup> The government should ensure that men and women from all political and ethnic groups are able to fully participate in the consultation process.

As a key part of the consultations, the government should assess how to ensure that any land disputes arising during the certification process are resolved fairly and in a timely manner. This may involve modifying or better supporting the village and sub-prefectural land committees established pursuant to the 1998 law, or it may require a new mechanism. Increasing the representation of women, immigrant populations, and non-native Ivorian ethnic groups on the committees, so that they are able to participate in the resolution of land disputes on an equal basis, is an essential first step. However, this may not on its own be sufficient to protect against discrimination.

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<sup>301</sup> Frédéric Varlet, “Étude d’impact social du volet d’appui à la mise en œuvre de la loi sur le foncier rural du PARFACI,” p. 69.

<sup>302</sup> Ibid, p. 74.

<sup>303</sup> Human Rights Watch interview with community leader, Duékoué, May 25, 2015.

<sup>304</sup> Human Rights Watch interview with international diplomat, Abidjan, July 31, 2015.

<sup>305</sup> Human Rights Watch interview with Ministry of Agriculture official, Abidjan, August 4, 2015.



The government should also consider establishing an independent oversight mechanism to monitor the operation of village and sub-prefectural land committees. Committee members who engage in discrimination or who act in violation of the law should face disciplinary measures, including, ultimately, removal from the committee.

The government should also ensure that anyone whose property rights have been violated by the decision of a customary or local government authority, including the village and sub-prefectural land committees created pursuant to the 1998 law, can appeal to the court system.

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## “To Consolidate This Peace of Ours”

A Human Rights Agenda for Côte d'Ivoire

On October 25, 2015, President Alassane Ouattara won a second term in Côte d'Ivoire's first presidential election since the country's devastating 2010-2011 post-election crisis, the bloody denouement of more than a decade of political instability and ethno-communal tensions. The largely peaceful election and strong economic growth that Côte d'Ivoire enjoyed during President Ouattara's first term led many to praise the country's recovery from its violent past. Scratch beneath the surface, however, and many of the key human rights challenges that contributed to past political violence remain, including lack of accountability for past human rights abuses, persistent weaknesses within the justice system, a need to complete security sector reforms, and inter-communal conflicts over land.

During three research missions in October 2014 and May and July 2015, Human Rights Watch assessed the government's progress in addressing the legacies of the country's violent past and asked Ivorians about the key human rights priorities for the next five years. Based on more than 200 interviews, “To Consolidate This Peace of Ours” recommends that President Ouattara uses his second term to combine economic growth with an equal commitment to fighting impunity, strengthening the rule of law, completing security reforms, providing reparations to victims of abuses, and finding a lasting and rights-based solution to land conflicts in western Côte d'Ivoire.

Failure to introduce meaningful reforms may reverse any progress on human rights and threaten the peace and security on which Côte d'Ivoire's economic recovery has been built.

*(above) A woman walks past campaign posters in Abidjan on October 21, 2015, only a few days before the October 25 presidential election.*

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*(front cover) Visitors look at a photo on March 19, 2014 during an exhibition on the 2010-2011 post-election crisis in Abidjan, Côte d'Ivoire.*

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