

CÔTE D'IVOIRE

Côte d'Ivoire has experienced unprecedented social and political unrest during the preceding three years, which has had a devastating effect on its stability. Groups of military personnel have set up a parallel system of justice, arresting suspected offenders, harassing lawyers and judges, and threatening journalists.

Côte d'Ivoire gained independence from France in 1960. President Félix Houphouët-Boigny ruled until his death in 1993. Henri Konan Bédié, of the Democratic Party, was elected President in 1993. During that period the country, although lacking full democratic institutions, became an African model for economic growth and political stability. On 24 September 1999, General Robert Guei took power in a military coup and ousted President Bédié who then went into exile. General Guei promised to respect democratic rule, but subsequently dissolved the National Assembly and the Constitutional Court, suspended the Constitution, and formed a transitional government of military and civilian figures, the National Committee for Public Salvation (CNSP). A Constitutional and Electoral Consultative Commission, composed of major political parties and civil society members, drafted the new Constitution that was approved by a referendum on 23-24 July 2000. The new Constitution was approved by a huge majority and the Supreme Court declared the referendum valid on 28 July 2000.

Laurent Gbagbo of the *Front Populaire Ivoirien* (FPI) won the 22 October 2000 presidential election and General Guei had to relinquish power after two days of mass demonstrations in Abidjan, during which several people were killed. Legislative elections, held on 10 December 2000, were marred by irregularities and very low participation. Protesters clashed with the security forces over the exclusion of Alassane Ouattara's candidacy. His supporters boycotted the election.

The new Ivorian Constitution includes a restrictive presidential eligibility clause providing that presidential candidates must be born of Ivorian parents and may never have benefited from the use of another nationality. The public debate on citizenship focused on the nationality of Alassane Ouattara, leader of the opposition party *Rassemblement des Républicains* (RDR). RDR supporters contended that this constitutional provision was aimed directly at excluding Ouattara, whose candidacy constitutes the major threat to the Gbagbo government. On 30 November 2000, the Supreme Court's Constitutional Chamber declared Ouattara ineligible to run in the October presidential elections and the December legislative elections on the alleged grounds that the candidate was of Burkina Faso origin. The Supreme Court attracted heavy criticism, as it short-listed only five presidential candidates (all from the Southern part of the country) out of a possible 19 contenders from the various political parties. The party of President Gbagbo, the FPI, became the largest party in the 225-seat national Assembly, but failed to win an absolute majority. The RDR achieved a sweeping victory in the municipal election held in 24-25 March 2001.

The 1960 Constitution embodied the principle of the separation of powers. However, the new Constitution refers to this principle only in the Preamble. According to the 2000 Constitution, the executive power is exclusively vested in the President of the Republic who is both the head of state and head of government. The president is the chief of the army, defines the policy of the country and presides the Council of Ministers. He appoints the Prime Minister, who answers to the President. Under Article 41 of the Constitution, the President, with the advice of the Prime Minister, names other members of the government. The president has the power to dismiss the Prime Minister as well as the members of the government. The President may initiate laws together with the members of the National Assembly. He is responsible for promulgating the laws that are

transmitted to him by the President of the National Assembly, within 15 days of their adoption. This period of promulgation is reduced to 5 days in the case of an emergency. Any laws which are not promulgated by the President within the applicable period set out above are decreed by executive order of the Constitutional Council formed by the President of the National Assembly. The President of the Republic may, before the expiration of the above periods, demand that the National Assembly deliberate a second time on any particular Article, and this deliberation can not be refused. The president is elected for a term of five years and may only be re-elected once.

Legislative power is vested in the National Assembly. The members of the National Assembly are directly elected by the public for a period of five years. Under Article 71 of the Constitution, the National Assembly must approve legislation concerning the organisation of courts of law and administrative courts.

HUMAN RIGHTS BACKGROUND

International human rights mechanisms

Cote d'Ivoire has ratified the International Covenant on Civil and Political Rights and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Côte d'Ivoire is also a State Party to the African Union (formerly Organisation of African Unity).

On 1 November 2000, the Special Rapporteur on extrajudicial, summary or arbitrary executions, together with the Special Rapporteur on torture, transmitted an urgent appeal concerning 28 soldiers who had reportedly been arrested following an attack on the private residence of General Guei. The Special Rapporteur on summary executions also sent an appeal concerning the 55 bodies found in Yopugon in October 2000. On 7 November 2000, the Government of Côte d'Ivoire informed the Special Rapporteur that the new government was favourably disposed to the establishment of a commission of inquiry on the appeals received.

The Special Rapporteur on Religious Intolerance, in his report to the 57th session of the UN Commission on Human Rights, expressed concern regarding the religious tone characterizing the clashes between militants of FPI and RDR during the presidential elections of October 2000. Following these confrontations between Muslim Senufos and Dioulas from the North, who supported RDR, and Christians from the South, who supported FPI, several persons died, and mosques and churches were destroyed.

Cote d'Ivoire abolished the death penalty for all crimes on 23 July 2000 when the new Constitution was adopted. Article 2 of the Constitution stipulates that "All penalties resulting in the deprivation of human life are prohibited", and therefore, the courts can no longer hand down death sentences.

Child trafficking is a growing phenomenon in Côte d'Ivoire. Young girls have been transported from rural communities to the cities for domestic work and children have been brought into the country from neighbouring states. The new Constitution gives children special protection under Article 6 and also guarantees the right to seek asylum.

The security forces and impunity issues

Since the December 1999 coup, the country has experienced social tensions that sometimes lead to blatant violations of human rights. Impunity is enjoyed by members of the military who have committed human rights abuses since the coup. The authorities acknowledged at an early stage that violations had taken place, and in May 2000 General Guei asked the population to "forget the abuses" carried out by the military.

According to the Amnesty International report on Côte d'Ivoire published in September 2000, groups of military personnel have established a parallel system of justice marginalizing the legal judicial institutions. Military personnel frequently carry out inquiries and arrest political activists without warrant. The *Mouvement Ivoirien des Droits de l'Homme* (MIDH) contends that this parallel police carries out arbitrary arrests of suspected offenders, who end up in cells in the office handling "intelligence and co-ordination of information" situated in the building housing the presidency. There have also been allegations that the armed forces have summarily executed presumed lawbreakers, sometimes in public.

An unofficial gang of soldiers, known as *La Camora*, have allegedly committed a number of extrajudicial killings, sometimes in public. They are also said to have raided Douakro, the hometown of former President Bédié and detained and beaten several journalists from *La Référence* newspaper.

The CNSP set up the *Poste de Commandement de crise* (PC-crise) unit in order to cope with the increasing level of criminal behaviour in the country. The PC-crise, based mainly at the Akouedo military camp, was composed of military personnel whose mandate was to pursue offenders and to hand them over to the police and the justice system. Such policing activities carried out by military personnel without adequate training violates the UN General Assembly resolution on the Code of Conduct for Law Enforcement Officials. In fact, the PC-crise members have reportedly committed numerous extrajudicial killings with complete impunity. Moreover, the soldiers of the PC-crise acted as a special tribunal in numerous cases concerning their friends, relatives or other individuals, to help them resolve personal problems regarding debts, conflicts at work or even marital disputes. Groups of soldiers summoned civilians by force to the Akouedo military camp to try them at the first and last instance, thus acting in disregard of the law and in violation of the right of due process before an independent court. The Ivorian authorities tried to confine the role of the PC-crise to the pursuit of criminals and the unit was officially suspended in March 2000. However, to date the Government has failed to initiate independent inquiries on extrajudicial killings and practices of torture. It has therefore not met its obligation to ensure that members of the security forces who have committed human rights abuses be held accountable.

The new Constitution, under Article 132, grants immunity to all CNSP members and all participants in the December 1999 coup for all acts committed in connection with the coup, including criminal activity such as looting, robbery, car-jacking and intimidation. At the beginning of 2000, the Guei government granted amnesty for all offences committed during the September-October 1999 political demonstrations. This amnesty covered all RDR leaders who had been convicted under the previous regime's anti-vandalism law. During the 57th session of the United Nations Commission on Human Rights, the Ivorian Minister of Justice announced the firm decision of his government to combat impunity and to conform to all recommendations made by the UN Special Rapporteurs.

In April 2001, several human rights NGOs welcomed the indictment of six gendarmes for murder and assassination in connection with the Yopugon mass grave inquiry at the Abobo barracks. The

hearing began in July 2001 in Abidjan. The mass grave with 57 bullet-riddled bodies was discovered on 27 October 2000, in the midst of an uprising following the presidential elections.

Approximately 150 individuals with the help of the Belgian NGO *Prévention Genocide*, filed a suit for crimes against humanity against President Gbagbo, General Guei, Emile Boga Doudou, the Ivorian Interior Minister and Moïse Lida Kouassi, the Defence Minister. Under the 16-6-1993/36 Belgian law (amended in 1999), the country's courts can judge foreign leaders for war crimes committed anywhere. The plaintiffs complained in their capacity as "victims or relatives of victims of torture, rape or murder committed by the Ivorian security forces". Among the plaintiffs is one survivor of the massacre in Yopugon, in October 2000. Ivoirians reacted with mass demonstrations outside the Belgian embassy in Abidjan denouncing the Belgian NGO. The protesters grouped under an NGO umbrella named "the Collective for the restoration of the image of Côte d'Ivoire" asked the Belgian Government to refrain from involvement in what they said was an international campaign to destabilise their country.

Freedom of the press

The new Constitution provides for freedom of expression under Articles 9 and 10, but journalists continue to practice self-censorship. The Guei government used a law enacted in 1991 against a number of journalists. This law authorises the state to initiate criminal libel prosecutions against persons who are deemed to insult the Government. *Reporters sans frontières* (RSF) has denounced the sentencing of a number of Ivorian journalists to imprisonment for libel. According to RSF, in May 2001, the editor-in-chief and the publisher of *Le Patriote* were sentenced in absentia to three months' imprisonment for an article published in June 2000 implicating the President of the Ivorian Human Rights League in an alleged scandal concerning money transfer to Switzerland. RSF expressed its concern that the sentence was disproportionate to the prejudice caused and that neither the defendants nor their lawyers were invited to appear at the trial. International journalists have also been subject to Government harassment and intimidation throughout 2000.

On 20 March 2001, during the 57th session of the United Nations Commission on Human Rights, the Ivorian Minister of Justice announced that there were currently no journalists in the country's prisons and that the law organising the press no longer allowed for such detentions. He added that a presidential Decree, dated 2 August 2000, provided for an independent Observatory for the freedom of the press (OLPED).

Divisions among political, ethnic and religious factions have deepened over the past few years. In June 2001, the Government established the National Reconciliation Forum inviting all political parties to participate. One third of the population of the country is composed of foreign immigrants, as Côte d'Ivoire has hosted migrant workers mainly from Burkina Faso and Liberia. Clashes between indigenous groups and immigrants from Burkina Faso over land issues in the southwest have led to numerous killings in recent years.

THE JUDICIARY

The new Constitution explicitly provides in Article 101 for the independence of the judiciary. According to Article 104, the President of the Republic is the guarantor of this independence.

The court system

The judiciary is composed of a lower courts system (*tribunaux*), the Court of Appeal (*Cour d'Appel*), the Court of Cassation (*Cour de Cassation*), the *Conseil d'Etat*, and the *Cour des Comptes*. The Ivorian legal system is primarily based on French law and, as such, makes a distinction between administrative courts and civil and criminal courts. The Court of Cassation is the final instance for civil and criminal cases and reviews questions of law and not questions of fact in appeals from the Court of Appeal. The *Conseil d'Etat* is the highest court of appeal for cases concerning administrative acts. The *Cour des Comptes* controls matters related to the finances of the state.

Under Title IX, the Constitution provides for a High Court of Justice (*Haute Cour de Justice*). The High Court is composed of members of the National Assembly and is headed by the President of the Court of Cassation. The High Court of Justice is the only jurisdiction competent to deal with cases of high treason against the President of the Republic. The High Court, under Article 110 of the Constitution, has jurisdiction over crimes committed by members of the government in the exercise of their functions.

The Constitutional Court, under Articles 88-100 of the Constitution, has jurisdiction over matters arising under the Constitution or involving its interpretation. It is also competent to consider matters related to the presidential and legislative election disputes. The Constitutional Council decides on the eligibility of certain candidates and ratifies the election results. It may question the conformity of international treaties with the Constitution and monitors the referendum process. The Constitutional Court is composed of former presidents of the republic, and of six judges. The President of the Republic nominates the President of the Constitutional Court and three of the judges, and the National Assembly nominates the other three judges. The Court's decisions are binding on all administrative and public authorities and there is no possibility of appeal against them. Under Article 96, every citizen can question the constitutionality of a law during a trial and before any competent jurisdiction. Article 77 stipulates that officially registered human rights organisations can also challenge the constitutionality of legislation regarding fundamental rights before the Court. The rulings of the Constitutional Court are not subject to appeal.

The Constitution, under Article 113, provides also for an Economic and Social Council (*Conseil Economique et Social*) that gives advisory opinions on legislation concerning economic and social issues.

In many rural areas, traditional courts are operative, especially in the handling of minor matters and family law.

Court Administration

According to Article 60 of the 1960 Constitution (amended in 1998), judges were appointed by the President of the Republic, on proposal of the Minister of Justice and following approval by the Judicial Council (*Conseil Supérieur de la Magistrature*). The 2000 Constitution, under Article 102, provides that special legislation regulates the composition, organisation and function of the judiciary.

The Judicial Council is established under Article 105 of the Constitution to assist the President of the Republic in the guardianship of the independence of the judiciary. It is composed of the President of the Republic, the President of the Court of Cassation, the President of the *Conseil*

d'Etat, the President of the *Cour des Comptes*, the Public prosecutor of the Court of Cassation, six persons from outside the judiciary and three magistrates. The President of the Republic presides over the Judiciary Council when it deals with matters concerning the independence of the judiciary. The President of the Court of Cassation presides over the Judiciary Council when it proposes candidates for the justices of the highest jurisdiction, namely the presidents of the Courts of Appeal and the presidents of the first instance tribunals. The Judicial Council also submits its opinion on the nomination and the promotion of other magistrates and is the disciplinary authority within the judiciary for judges.

Article 103 of the Constitution guarantees security of tenure to judges (*magistrats du siège*). A similar guarantee with regard to prosecutors (*magistrats du parquet*) does not exist.

Lawyers

Although the practice is prohibited by law, police frequently restrict the access of lawyers to some prisoners, especially in case of political arrests. This practice constitutes a violation of Articles 7 and 8 of the UN Basic Principles on the Role of Lawyers. Article 7 provides that "governments shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention". Similarly, Article 8 stipulates that "all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality".

Members of the Bar provide pro bono advice to defendants for limited time periods. In April 2000, the Bar began operating a telephone line for free legal advice from volunteer attorneys. In November 2000, the President of the Bar announced that the Bar would not continue to provide free legal assistance to poor clients if their transportation and lodging expenses were not furnished by the government.

Soldiers of the PC-crise, which serve as special tribunals of first and last instance, (see above), were said to have often engaged in acts of intimidation against lawyers who were trying to assist their clients.

CASES

In January 2000, **Maître François Abondio**, was accompanying his client, a company director summoned to the Akouedo military camp following a workplace dispute. Members of the PC-crise unit insulted and physically abused the client. Maître François Abondio was also struck by the soldiers.

On 10 May 2000, **Maître Thomas N'Dri** was apprehended without warrant in his office by soldiers with no legal authority. The lawyer was taken to the camp, where he was confronted with one of his clients who was demanding money from him. Maître N'Dri immediately notified the President of the Abidjan Bar Association, Maître Luc Adjé, who asked him not to respond to these summons. Since then, Maître N'Dri has not been contacted again by soldiers of the PC-crise.

On 2 May 2000, in a similar case, **Maître Abou Soumahourou** was arrested at his home by soldiers carrying a machine-gun. The lawyer was released some hours later without having been physically ill-treated.

Lawyers have also been harassed as a consequence of defending officials of the government of former President Bédié. On 17 March 2000, six armed individuals entered the office of Maître Dirabou, one of the lawyers of the former Interior Minister, threatening those present in the office, and as the lawyer was not in his office, left, threatening "this is the man who defends thieves" and "we are the Red Brigades and we'll be back". Three days later, the soldiers re-entered the office shouting "we'll break his limbs, and drag him in the street to stop him defending thieves". On this occasion Maître Dirabou was in the office and managed to call the Solicitor General, and several lawyers arrived as a sign of support for Maître Dirabou. The then Public Prosecutor put an end to the harassment of the lawyer by the military.

The President of the Bar and certain magistrates' organisations have brought these cases to the attention of the Minister of Justice and the Head of State. Following the dismantling of the PC-crise units by General Guei in May 2000, cases of illegal dispute resettlement and intimidation of lawyers have been reduced significantly. However, charges have not been brought against soldiers who committed these acts.

Judges

It was reported that members of the military have intervened in court cases and attempted to intimidate judges. Military personnel have also intervened directly in labour disputes, arresting and intimidating parties. Ivorian judges engaged in a work stoppage from 20-22 May 2000 in protest against harassment by members of the military.

Aka Allou {Magistrate}: On 3 February 2000, in the town of Toumodi, members of the military fire brigade detained Judge Aka Allou and forced him to release their colleague, Kouanda Ismalia, who had been convicted of breach of trust and was serving his sentence at the time. The Guei government intervened following protests from magistrates' unions. Judge Allou was released and the military fireman was returned to prison.

Olivier Kouadio {Judge}: In May 2000, the judge was verbally harassed and threatened by members of the military after he rendered a decision in a labour dispute with which the military disagreed.