

# ATTACKS ON JUSTICE – CÔTE D'IVOIRE

## *Highlights*

The absence of an operational judicial system in the Northern part of the country is the most worrying issue in Côte d'Ivoire since the political and military crisis in 2002 led to a *de facto* control of this area by the rebels. In the South, which is under control of the governmental forces, the 2002 crisis has aggravated already existing problems such as the pervasive influence of political forces and the rampant corruption in the judiciary. Magistrates went on strike to protest against their poor security conditions. National institutions are unable to address human rights violations, leading to a general climate of impunity. Following the *Linas-Marcoussis Peace Agreements*, the Office of the High Commissioner for Human Rights has set up an International Inquiry Commission in June 2004, entrusted with the investigation of the serious human rights violations that occurred since 19 September 2002, when the political and military crisis started.

## BACKGROUND

Following the 19 September 2002 coup attempt by rebel armed groups, the country is controlled in the South by the governmental National Armed Forces of Côte d'Ivoire (*Forces Armées Nationales de Côte d'Ivoire* - FANCI) and in the North by the rebel New Forces (*Forces Nouvelles*). A cease-fire line was established between the North and the South that materializes the division of the country. On both sides of the cease-fire line, a “confidence zone” was established, controlled by international peace keeping forces.

In spite of the *Linas-Marcoussis Agreement* signed on 24 January 2003 ([http://www.usip.org/library/pa/cote\\_divoire/cote\\_divoire\\_01242003en.html](http://www.usip.org/library/pa/cote_divoire/cote_divoire_01242003en.html)), the *Accra Agreement* signed on 8 March 2003 ([http://businessafrica.net/africabiz/ezine/wa/accra\\_agreement.php](http://businessafrica.net/africabiz/ezine/wa/accra_agreement.php)) and the establishment of a National Reconciliation Government by all parties to the conflict, the situation has remained volatile ever since. The *Linas-Marcoussis Agreement* provided for the establishment of the National Reconciliation Government. The agreement's aims included; the preparation of the electoral process and the organization of the disarmament of all forces with the support of the Economic Community of West African States (ECOWAS), the United Nations and France. These actors advocated some constitutional changes, particularly concerning Article 35, setting the conditions of eligibility for the President. The 2003 *Linas-Marcoussis Agreement* also called for the reconciliation government to undertake a series of 16 legal reforms to stabilize the peace process. None of the reforms were directly related to the judiciary. One of the draft bills, however, aims at increasing the independence of the judiciary in electoral matters by creating an Independent Electoral Commission competent for electoral disputes.

Besides the *Linás-Marcoussis Agreement's* 16-bills reform package, which was mostly adopted by the end of 2004, several reforms are underway to reinforce the independence of the judiciary. Over the examined period, the lack of confidence between the ruling party Ivorian Popular Front (*Front Populaire Ivoirien* - FPI) and the other members of the National Reconciliation Government, has continued to undermine the peace process, which is jointly supported by the United Nations Operation in Côte d'Ivoire (UNOCI) set up by *Security Council resolution 1528* of 27 February 2004, the ECOWAS and the African Union.

Political tensions undermined the functioning of the Government, which faced serious difficulties to maintain its integrity: since November 2004 the New Forces suspended their participation from the National Reconciliation Government. Ministers of the Patriotic Movement for Côte d'Ivoire (*Mouvement Patriotique de Côte d'Ivoire* – MPC) participate in the Government only sporadically; and the Democratic Party of Côte d'Ivoire (*Parti Démocratique Côte d'Ivoire* –PDCI) boycotted the Government from May to August 2004.

The [Accra III Peace Agreement](#) concluded on 30 July 2004 attempted to give a new impetus to the content of the *Linás-Marcoussis Agreements*. Key elements of the Agreement concerned the adoption of the reform on the Law on Nationality, as declared already in the *Linás-Marcoussis Agreements*, the reform of the president eligibility conditions set up in Article 35 of the Constitution, and an agreement calling for the beginning the disarmament process. In November 2004, military activities by the government targeting rebel groups and a French army base disrupted the peace process. South African President Thabo Mbeki was appointed as a mediator by the African Union and worked out another [peace agreement on 6 April 2005](#) in Pretoria. Following the Pretoria meeting, the parties to the conflict agreed to examine the proposition of the National Commission for Disarmament, Demobilization and Reintegration to start the disarmament process from 14 May 2005. But as of July 2005, the pro-government and rebel armed groups had still not agreed on starting the process.

Until recently, the leader of the Rally of Republicans (*Rassemblement des Républicains* - RDR) Alassane Dramane Ouattara, widely supported by the rebel factions, could not qualify as a legitimate presidential candidate without an amendment to Article 35 of the Constitution. The [amendment](#) was adopted by the National Assembly on 17 December 2004 and allows persons with only one Ivorian parent (instead of both) to stand as a candidate. President Gbagbo declared on 26 April 2005 that he would use his powers to adopt the amendment without submitting the constitutional amendment to a referendum, as required by Article 126 of the Constitution. This will enable Alassane Ouattara to present his candidacy for the October 2005 elections.

In March 2003, an independent Ministry for Human Rights was established. The human rights portfolio was until then under the authority of the Minister of Justice.

The Constitutional Council (*Conseil Constitutionnel*) provided for by the 2000 Constitution was set up in August 2003. The [Constitutional Council](#) is mainly entrusted with the verification of referendum and presidential election results and the verification of the constitutionality of national legislations.

On 8 August 2003, the National Assembly promulgated the [Amnesty Law](#) for all offences against the security of the state committed between 17 September 2002 and 19 September 2002 (*Loi portant amnistie*, Loi n° 2003-309 du 8 août 2003). This amnesty law was agreed upon by all political parties and represented a commitment to commence the peace process at the Marcoussis roundtable.

## THE JUDICIARY

The main challenge for the Ivorian judiciary currently is to restore its authority in the North of the country, presently under the control of the New Forces and in the “confidence zone” established on both sides of the cease-fire line. Because many judges and other judicial personnel left after September 2002, when the rebels established their authority in this area, the judiciary is not functioning in the North. Since then, there has been *de facto* no jurisdiction in this part of the country. The National Reconciliation Government now has to refill this gap by appointing new judges. The judges’ nomination crisis described below proves that the task is not easy amidst the political tension existing between the parties which constitute the government.

The rebels have an effective control on the Northern part of the country but do not deliver any form of satisfactory justice. The judges and prosecutors who fled the area after the violence of 2002 have not returned to their offices and the Ministry of Justice has not elaborated any relocation plan. In certain Northern areas, voluntary judiciary officers appointed by the rebel military authority have assumed the roles of police officers, prosecutors, judge and jury. The United Nations Secretary General reports that the judicial system in this area has completely collapsed (See, paras. 40 to 42 of the Fourth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, UN Doc. S/2005/186).

Some areas in the South are also deprived of judicial protection. Some judicial districts have ended up being divided in two by the ceasefire line. Where the courts in such districts previously were located on the northern side of the divided zone, they have not reconvened in the south, leaving the southern portion of this area without any effective judicial system.

In the rest of the South, the functioning of the judicial system is impaired by political interests. The National Reconciliation Government is composed of many opposition parties, making it difficult for the government to adopt a coherent position on certain issues. For example, Minister of Justice Henriette Diabaté, who is a leading member of the main opposition party Rally of Republicans (RDR), is often involved in serious disagreements with the President.

Unlike in the North, the judiciary continues to function in the South but it is slow, inefficient, and, overall, lacks independence. Courts operate under an important cases’ backlog; court premises are insufficient and dilapidated. Judges lack material such as libraries and legal codes. Although the judiciary acts independently in criminal cases, it follows the lead of the executive in national security or politically sensitive cases.

According to Article 5 of the *Statute of the Magistracy (Statut de la Magistrature*, Decree no. 78-662 of 4 August 1978 and modifications: <http://droit.francophonie.org/df-web/publication.do?publicationId=2055>), that defines the professions of judges and prosecutors, the President appoints judges on proposal of the Minister of Justice and in accordance with the opinion of the High Council of the Judiciary. Article 6 provides that judges cannot be appointed to a new position without their consent. As illustrated by the judge nomination crisis that has shaken the judiciary since the end of 2004, judges have been removed and relocated by application of simple ministerial decree, without consultation with the High Council of the Judiciary or even approval from the rest of the government. In practice, the requirements of the law are not systematically applied. The conditions of eligibility for higher positions in the judiciary (for example president of first instance tribunal, first president of appeal court, etc.) continue to be arbitrary and often depend on political affiliation.

Magistrates represent their professional interests in the Magistrate Union of Côte d'Ivoire (*Syndicat des Magistrats de Côte d'Ivoire* - SYMACI) and the Union Association for Magistrates (*Association Syndicale des Magistrats* – ASM)

Traditional courts operate in many rural areas, especially in the handling of minor matters and family law, and settle disputes in accordance with customary law. The Constitution specifically provides for a Grand Mediator to bridge traditional and modern methods of dispute resolution. In practice, formal courts are gradually replacing these traditional mechanisms.

### **Corruption**

Corruption in the judiciary is pervasive. In addition to political pressure from the executive, judges are often subject to financial influence and bribery from powerful financial groups. The relatively low income of judges and other judicial actors also makes it more tempting for them to accept bribes. In July 2003, several judges and lawyers created an organization to draw attention to the issues of corruption and bribery and to fight this phenomenon. A reform of the *Statute of the Magistracy* was underway by the end of 2005, which seeks to establish an *Ethics and Deontological Code for Magistrates*, with a view to reducing corruption.

### **Strike of magistrates**

The tensions between the government and the Minister of Justice became blatant in the Spring 2004. On **13 March 2004**, many judges called for an unlimited strike after two of their colleagues were assaulted three days earlier in the *Palais de Justice* by young students and alleged FPI militants. The latter were reportedly protesting against the decision of the Minister of Justice to appoint new judges whom the FPI militants deemed too close to the opposition party RDR. The president of the Union Association for Magistrates (*Association Syndicale de la Magistrature* – ASM) ordered the member of his association to stay home for security reason. In **June 2004**, judges organized their own security around the tribunals. The government subsequently took some measures to increase police security around tribunals too.

## **Tensions in the nomination of judges**

The process of nominating judges to the positions of presidents of tribunals has been in crisis over the the past few months. In **October 2004**, the Minister of Justice appointed five new presidents of tribunals by *Ministerial decrees n°81, 82 and 83*. These decisions sparked a wave of protests as the Minister of Justice had not obtained the approval of the President of the Republic and the High Council of the Judiciary (*Conseil Supérieur de la Magistrature*) to nominate these new judges. In **March 2005**, President Gbagbo invalidated these judicial appointments by issuing decrees and appointed five new presidents of Tribunals. One month later, the Minister of Justice called for the postponement of the implementation of the presidential decrees. The contradictory decrees have given rise to a confusing situation and have highlighted the political pressures at play within the judiciary.

## **Legal reforms**

The [2000 Constitution](#) attempts to reinforce the independence of the judiciary and in particular attributes greater powers to the High Council of the Judiciary (*Conseil Supérieur de la Magistrature*). Article 106 states that the High Council of the Judiciary convenes under the presidency of the President of the Republic to examine any issue pertaining to the independence of the Magistracy (judges and prosecutors – *Magistrats du siège* and *Magistrats du parquet* respectively). Under the chairmanship of its vice-president (who is also the President of the Supreme Court (*Cour de Cassation*)), the High Council of the Judiciary makes proposals for the promotion of judges to higher positions in the judiciary (judges in Court of Appeal or Supreme Court, and presidents of first instance tribunals); it also gives a binding opinion (*avis conforme*) on the appointment and promotion of other judges and acts as a disciplinary body for prosecutors (*magistrats du parquet*).

A reform of the *Statute of the Magistracy* was underway by mid-2005. The reform should further increase the independence of judges and continue to widen the scope of action of the High Council of the Judiciary. In addition, three-judge panels instead of the single judge composition, have been instituted to decide on cases, decisions should be more systematically computerized and swiftly published, and commercial judges now benefit from training, particularly from the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation du Droit des Affaires en Afrique - OHADA*). The forthcoming reform of the statute of the magistracy will also institute an *Ethics and Deontological Code for Magistrates*.

## **THE LEGAL PROFESSION**

In 2004, eight lawyers were dismissed from the Bar for being involved in a case of embezzlement of over 50 million CFA Francs (over 90,000 USD) from the registry. The court officers demanded a thorough inquiry into the matter in order to identify any person responsible in the court office / registry and restore the image of law clerks tarnished by the affair.

Overall, a dozen lawyers have been dismissed from the Bar as a punishment for corruption during 2004. During the year, court clerks went on strike on several occasions to demand improved working conditions and higher salaries.

In spite of the governmental decree prohibiting strikes, the National Union of Law Clerks in Côte d'Ivoire (*Union Nationale des Greffiers de Côte d'Ivoire* – UNAG-CI) went on strike on 2 June 2003. The strike was called in protest against the way in which the Minister of Justice and the State Minister conducted an audit of the management of the clerks' office budget. The demonstration was violently repressed by the police and three law clerks were beaten and put under arrest.

A year later, in June 2004, law clerks organized a sit-in to protest against the outcome of the trial of their colleague, Me Dakouri Roger, sentenced to a six-month prison term for expressing his unionist claim in the June 2003 demonstration. The law clerks demanded the suspension of the judge who had handed down the judgment.

## PROSECUTORS

Prosecutors (*magistrats du parquet*) in Côte d'Ivoire are subject to the same political influence as judges (*magistrats du siège*). Efforts to improve their accountability have been undertaken since the adoption of the 2000 Constitution that provides in Article 106 that the High Council of the Judiciary is a competent disciplinary body for prosecutors. Until then, they were accountable to the Prosecutor's Disciplinary Commission (*Commission de Discipline du Parquet*), which was subordinate to the Ministry of Justice. Since prosecutors belong to the same profession as judges, the reform of the *Statute of the Magistracy* mentioned above will also apply to prosecutors once it enters into force.

## ACCESS TO JUSTICE

Articles 20 and 22 of the 2000 Constitution provide for the right to free and equal access to justice for all, and for the right to public trial. The use of secret evidence during trial is reportedly a practice in the Ivorian justice system. While the right to presumption of innocence is also guaranteed in the Constitution, it is reportedly not always respected. Those convicted have the right of appeal, but in most cases, higher courts are said to rarely overturn verdicts. Free legal aid is awarded to defendants accused of felonies or capital crimes, but no free legal assistance is available on a general basis.

### **Impunity**

Access to justice has *de facto* been inexistent for the population living in the Northern part of the country. The lack of an effective judiciary in this region has led to many human rights abuses in the past few years, in particular mass arrests and arbitrary detention. Impunity has consequently become a major issue in the Ivorian justice system, since in this area, persons committing unlawful acts are not held responsible and brought to justice. In this region, authors of violations are free to operate, in particular military personnel, public forces agents, members of armed groups and

militias. The conflict has caused a serious deterioration of the human rights situation in the whole country since 2002 and no investigations have yet been carried out at the national level. Justice in Côte d'Ivoire fails to ensure the prosecution of perpetrators and allows pro-government forces, rebels forces and individuals to enjoy impunity.

Following the *2003 Linas-Marcoussis Agreement* and request of President Gbagbo, an International Inquiry Commission was set up in June 2004 by the Office of the High Commissioner for Human Rights (OHCHR) to investigate the serious violations of human rights that have occurred in the country since 19 September 2002. The commission produces regular reports documenting the serious human rights violations. The reports are not yet published but should constitute a basis for the government to decide who should be brought to justice and to take measures for victims' compensation and rehabilitation.

In April 2004, the UN Secretary General asked the OHCHR to appoint an independent commission of inquiry to investigate the violent repression of the demonstrations by the opposition in Abidjan in March 2004. As of August 2005, the report of the commission was not yet officially published. A first independent commission had been set up in 2000 to investigate the violence perpetrated during the 2000 presidential elections.

In **May 2004**, the National Reconciliation Government promulgated *the Law Creating and Organizing a National Human Rights Commission* ([\*Loi Portant Creation de la Commission Nationale des Droits de l'Homme de Côte d'Ivoire \(CNDHCI\)\*](#), Loi no. 84 du 23 Avril 2004). The creation of such a body was advocated in the 2003 Linas-Marcoussis Agreements and restated in the 2004 Accra III Agreements.

## LEGAL REFORMS DURING THE PERIOD

- 24 January 2003:** *Linas-Marcoussis Agreement*
- 8 March 2003:** *Accra Agreement*
- March 2003:** Establishment of Ministry for Human Rights
- August 2003:** Setting up of the Constitutional Council
- 8 August 2003:** Promulgation of the *Amnesty Law*
- May 2004:** Promulgation of the *Law Creating and Organising a National Human Rights Commission*
- 30 July 2004:** *Accra III Peace Agreement*
- 17 December 2004:** Amendment to article 35 of the Constitution on the nationality requirement for presidential candidates

## **General Country Information**

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 Ivorian Popular Front (*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 included until recently 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 Rally of Republicans (*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 on 24-25 March 2001.

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, he defines the policy of the country and presides over 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 other 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 time period set out above are decreed by executive order of the Constitutional Council, invested of the issue 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 cannot 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 people 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.

## LEGAL SYSTEM OVERVIEW

### The judiciary

#### Rule of Law and independence of the judiciary

The 2000 Constitution explicitly provides in Article 101 for the independence of the judiciary. It states that the judicial power is independent from the executive and legislative powers.

#### Judicial Structure

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 Supreme 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 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.

### **High Council of the Judiciary**

The High Council of the Judiciary 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 General Prosecutor of the Court of Cassation, six persons from outside the judiciary and three judges. The President of the Republic presides over the High Council of the Judiciary when it deals with matters concerning the independence of the judiciary. The President of the Court of Cassation presides over the High Council of the Judiciary when it proposes candidates for the justices of the highest jurisdiction, for the positions of presidents of the Courts of Appeal and of presidents of the first instance tribunals. The High Council of the Judiciary also submits its opinion on the nomination and the promotion of other magistrates and is the disciplinary authority within the judiciary for judges.

## **JUDICIAL ACTORS**

### **Judges**

#### **Qualifications, Appointment and Training**

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 High Council of the Judiciary (*Conseil Supérieur de la Magistrature*). The 2000 Constitution, under Article 102, provides that special legislation regulates the composition, organization and function of the judiciary. Article 106 of the 2000 constitution provides that the High Council of the Judiciary is competent to propose nomination for judges to higher jurisdictions and should give a binding opinion on the nomination of other judges (*magistrats du siège*).

#### **Security of Tenure**

Article 103 of the Constitution guarantees security of tenure to judges (*magistrats du siège*).

#### ***Discipline, Suspension and Removal***

The High Council of the Judiciary convenes as a disciplinary body for judges.

### **Prosecutors**

#### **Independence**

Prosecutors do not benefit from the security of tenure that judges enjoy under article 103 of the Constitution.

## **ACCESS TO JUSTICE**

### **Access to Justice**

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 [...]".

### **Legal Aid**

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 staffed by 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.