



GUINEA

# “We Have Lived in Darkness”

A Human Rights Agenda for Guinea’s New Government

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# **“We Have Lived in Darkness”**

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## Summary

In June and November 2010, the Guinean people went to the polls and for the first time since the country's independence from France in 1958, elected their president in an atmosphere largely free of intimidation, fear, or manipulation. Many Guineans viewed these hugely significant elections as having the potential to end over 50 years of authoritarianism, human rights abuse, and corruption.

To sustain the momentum generated by the elections and fulfill the expectations of Guineans, Guinea's new president, Alpha Condé, must take decisive steps to address the profound human rights and governance problems he has inherited. These problems—a culture of impunity, weak rule of law, endemic corruption, and crushing poverty—have blighted the lives and livelihoods of countless Guineans. In the coming months, the new president and his government should implement policies that ensure Guinea's successful transformation from an abusive state into one that respects the rule of law and guarantees the rights of its people.

Since independence, Guinean presidents Ahmed Sékou Touré (1958-1984), Lansana Conté (1984-2008), and Captain Moussa Dadis Camara (2008-2009) have relied on ruling party militias and security forces to intimidate and violently repress opposition voices. Thousands of Guineans—intellectuals, teachers, civil servants, union officials, religious and community leaders, and businesspeople—who dared to oppose the government have been tortured, starved, beaten to death by state security forces, or were executed in police custody and military barracks. Other Guineans have been abducted from their homes and places of work and worship, or gunned down as they demonstrated for better governance or the chance to freely elect their leaders. Their bodies have been hanged from bridges, stadiums, and trees, strewn across roads and meeting places, or simply disappeared without a trace. Countless Guineans were forced to flee their homeland.

Guinea's judiciary, which could have mitigated some of the excesses, has been neglected, severely under-resourced, or manipulated, allowing a dangerous culture of impunity to take hold. As perpetrators of all classes of state-sponsored abuses and human rights crimes have rarely been investigated, victims have been left with scant hope for legal redress for even the most serious of crimes. Meanwhile, those who are accused of crimes by the authorities endure grossly inadequate due process guarantees, including chronic extended pre-trial detention and abysmal detention conditions.



A woman casts her vote at a polling station in Conakry on November 7, 2010. © 2010 Issouf Sanogo/AFP/Getty Images

Corruption within both the public and private sectors in Guinea has long been endemic. From the petty corruption and bribe-solicitation perpetrated by frontline civil servants to the extortion, embezzlement and illicit contract negotiations that take place in the shadows, those involved in bribery and various forms of corruption are rarely investigated, much less held accountable. Guinea's past rulers have also largely mismanaged, embezzled, and squandered the proceeds from the country's abundant natural resources, thereby denying the majority of the population access to even the most basic health care and education. As a result, Guinea is one of the world's poorest countries and suffers some of the world's highest rates of infant and maternal mortality and adult illiteracy, despite its natural resources.

To end Guinea's history of abuse and impunity, the new administration must adequately support and reform the judiciary as a key institution that can protect basic civil and political freedoms. The administration must also ensure that those responsible for past abuses—most urgently, the security forces responsible for gunning down and raping demonstrators in 2007 and 2009—are brought to justice. The government should establish a truth-telling mechanism to expose less well-known atrocities, notably those committed during the reign of Sékou Touré, and to explore the dynamics that gave rise to and sustained successive repressive regimes, and make recommendations to prevent their recurrence. To promote a

culture of respect for human rights, Guinea's new leadership must also ensure the independence of the national human rights institution it established on March 17, 2011.

Condé's government must also rein in, professionalize, and reform the security sector, and stop using the security forces for partisan ends, as has been past practice in Guinea. Behaving more as predators than protectors, soldiers have been allowed to get away with abuses ranging from isolated criminal acts to crimes against humanity. Members of the ill-trained and undisciplined police force have also been widely implicated in the torture of criminal suspects and unlawful behavior ranging from extortion to drug trafficking. Officials should adopt a zero-tolerance policy on such abuses, and create, staff, and support disciplinary structures to investigate, prosecute, and punish abusers. The Economic Community of West African States (ECOWAS) and United Nations have proposed a promising roadmap for reform to reduce the size of the army, bolster its civilian oversight, and reinforce discipline within the ranks. To create a more rights-respecting environment, the new government should implement their pertinent recommendations.

The new government should ensure that Guinea's population can materially benefit from the country's abundant natural resources by improving economic governance, establishing an independent anti-corruption commission empowered to investigate, subpoena, and indict those who siphon off public resources, and by providing stringent oversight over the budget and natural resource contracts.

Lastly, in order to ensure oversight of the executive and provide for adequate political representation of the Guinean people, President Condé should formulate, promulgate and adhere to a concrete timetable for legislative elections; ensure they are conducted in a free, fair and transparent manner; and take concrete steps to address the lack of neutrality demonstrated by the security forces during the elections which brought him to power.

The political future of Guinea hangs in the balance. The actions that President Condé and his government take, or fail to take, will either usher in urgently needed human rights improvements for Guinea's population or reinforce a dangerous and painfully disappointing status quo in which the new government and the people they serve remain trapped in the excesses and abuses that have characterized Guinea's recent past.



## **Recommendations**

### **To the New Government of Guinea and President**

#### *To Address Accountability for Past Abuses and Create a Culture of Respect for Human Rights*

- Prosecute in accordance with international fair trial standards members of the security forces responsible for the killings, rapes, and other serious human rights violations committed against pro-democracy protestors in September 2009, regardless of position or rank—including those liable under command responsibility for their failure to prevent or prosecute these crimes.
- Ensure that Guinean investigating judges and other judicial personnel tasked with adjudicating the September 2009 crimes are adequately resourced, protected, and supported by the Ministry of Justice.
- Seek international assistance if authorities find themselves lacking adequate capacity to carry out justice, involving credible, impartial and independent investigations and prosecutions, for the September 2009 crimes.
- Re-establish the national Independent Commission of Inquiry into the 2007 strike-related violence with a view toward making recommendations on accountability.
- Establish a truth-telling mechanism to expose less well-known atrocities, explore the dynamics that gave rise to and sustained successive authoritarian and abusive regimes, and make recommendations aimed at ensuring better governance and preventing a repetition of past violations.
- Support and guarantee the independence of the national human rights institution mandated by Guinea's new constitution, promulgated on April 19, 2010 and established by presidential decree on March 17, 2011. The commission should be established in line with the UN Principles relating to the Status of National Institutions (the Paris Principles).
- Formulate, promulgate and adhere to a concrete timetable for free and fair legislative elections.
- Enact legislation to abolish the death penalty, given its inherent cruelty and contradictions with Guinea's obligations under international law.
- Adopt national implementing legislation for the International Criminal Court's Rome Statute, ensuring, in particular, the inclusion of crimes against humanity provisions in Guinean law.
- Implement into domestic law the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Guinea in 1989.

### *To Strengthen the Judiciary*

- Ensure the Ministry of Justice has sufficient support to address deficiencies in the working conditions of judges and other key staff that severely undermine the dispensation of justice and rights of victims and the accused.
- Improve court and caseload management through the prompt establishment of recordkeeping, court reporting, and information control systems.
- Ensure the prompt establishment and independence from government control and direction of the 17-member Superior Council of Judges (*Conseil supérieur de la Magistrature*) tasked with the discipline, selection, and promotion of judges.
- Ensure all citizens accused of a crime have access to adequate legal representation of their choosing, regardless of their means.
- Establish a law reform commission to review the Penal Code, Code of Procedure, and Civil Code, among other principal legal instruments, and recommend the repeal or amendment of domestic laws that contradict international and regional human rights standards.
- Conduct regular and thorough reviews of all pre-trial detainees and provide increased resources to manage and prioritize their cases, in accordance with Guinean and international law limiting time allowed in pre-trial detention.
- Improve prison conditions by ensuring adequate nutrition, sanitation, medical care, and educational opportunities.

### *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.
- Implement without delay a comprehensive reform of the security sector. Begin with the formation of a steering committee on security sector reform and use as a roadmap the recommendations contained in the report by the ECOWAS/UN-led security sector reform initiative.
- Adequately support and resource the military tribunal so that it becomes a functional institution, mandated to try military personnel implicated in military crimes (treason, abuse of authority, desertion, disobedience, and insubordination). Ensure that officers of the court, including prosecutors, and defense counsel are fully independent of the military chain of command and of governmental interference.
- Establish a 24-hour telephone hotline, staffed by both civilians and members of the military police, for victims and witnesses to report acts of indiscipline, intimidation, criminality, corrupt practices, and other abuses committed by members of the security forces.

### *To Address Endemic Corruption*

- Declare a zero-tolerance policy on corruption and the use of state funds for personal enrichment by public officials at all levels.
- Establish a fully independent, well-funded, anti-corruption body empowered to investigate, subpoena, and indict public officials implicated in corrupt practices.
- Establish a 24-hour telephone hotline, staffed by members of the anti-corruption commission, to provide information about corrupt practices committed by public officials.
- Ensure complete transparency in the negotiation of contracts between the Guinean government and foreign and Guinean mining companies by providing public access to information on government revenues, and by eliminating confidentiality clauses from contracts before their ratification.
- Ratify and domesticate the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption, which Guinea signed in December 2003 and July 2005, respectively.
- Enact and rigorously implement a procurement legislation that is in line with international standards especially in terms of disclosure and transparency.
- Publish the national budget and issue regular updates that accurately detail expenditures. Information on government revenues and expenditures should be made easily accessible and presented in a form that can be understood by the public.

### **To the International Contact Group on Guinea**

- Maintain pressure on all relevant actors to ensure free, fair and transparent legislative elections, the implementation of a comprehensive security sector reform program, accountability for the September 2009 violence, and the strengthening of crucial rule of law institutions.

### **To Guinean Civil Society and Human Rights Groups**

- Undertake comprehensive campaigns to educate detainees about their due process rights.
- Pressure the government to abolish the death penalty and to implement into national law the Rome Statute of the International Criminal Court and the Convention against Torture.

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

- Frequently, consistently, and publicly press the new government to prioritize the fight against impunity, to improve its human rights record, and to ensure accountability for the serious human rights violations committed in 2007 and 2009.

- Improve coordination of efforts for security sector reform in support of the ECOWAS/UN-led initiative.
- Provide financial and technical support for the judiciary, including through the establishment of a case management system, witness protection program, and forensic capability.
- Provide financial and technical support for anti-corruption efforts, including an anti-corruption commission.

### **To the Economic Community of West African States (ECOWAS)**

- Continue to press the Guinean government to improve its human rights record.
- Extend the mandate of the ECOWAS special representative for Guinea.
- Push for the arrest and extradition from ECOWAS or AU member states to Guinea of Aboubacar Sidiki Diakité for whom an Interpol Red Notice was issued on January 19, 2011 based on a national arrest warrant issued in Guinea, and any other individual later subject to a warrant for suspected involvement in serious international crimes.

### **To the United Nations Office of the High Commissioner for Human Rights**

- Continue to monitor and report on ongoing human rights abuses, and ensure that findings are published.
- Train security service personnel and relevant criminal justice agents on legal interrogation techniques, crowd control, appropriate use of force, and international standards relating to investigations and prosecutions.
- Advise the government on the establishment of an independent national human rights institution that will comply with the Paris Principles and on the drafting of a national action plan for the promotion and protection of human rights.
- Provide technical assistance to enhance the expertise of national authorities, including judges and lawyers in the investigation, prosecution, and defense of crimes under international law.
- Provide technical assistance to the Guinean government for the establishment of a witness protection unit and to develop forensic expertise.

## Methodology

This report is based on over 200 interviews conducted by Human Rights Watch in Guinea during February, April, August and October 2009, and June 2010, as well as in Dakar, and Washington DC in August and September 2010. This research has been supplemented with dozens of telephone interviews conducted throughout the period and between October 2010 and April 2011. Human Rights Watch interviewed Guinean lawyers, judges, legal clerks, and Ministry of Justice personnel; victims of, and witnesses to, human rights crimes; remand and convicted prisoners and prison officials; members of the army, gendarmerie, and police force; and Ministry of Finance personnel and businessmen. Human Rights Watch also interviewed national and international humanitarian organizations; members of civil society, victims' associations, and human rights defenders; political party representatives; security sector analysts; Guinean and Dakar-based diplomats; officials from the United Nations, Economic Community of West African States (ECOWAS), and international financial institutions; and drivers, petty traders, and market sellers, among others.

Names of many of those interviewed have been withheld at their request to protect their identity, privacy, and security. Monetary figures throughout this report are calculated using the rate of 6605 Guinean francs (GF) to the US dollar.<sup>1</sup>

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<sup>1</sup> This conversion is current as of April 15, 2011. The rate of the Guinea franc fluctuates significantly and over the past year has ranged between about 5000 to 7500 GF to the US dollar.

## I. Background:

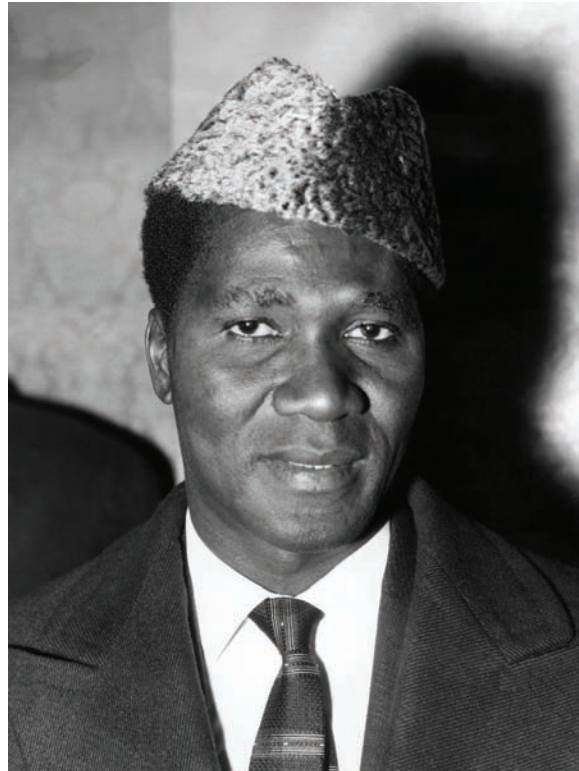
### Decades of Impunity from Independence to the Fourth Republic

Guinea is a West African country of approximately 10 million people. For over 50 years, successive authoritarian regimes systematically denied Guineans the realization of their basic human rights and allowed a climate of impunity for all classes of violations to flourish.

#### First Republic: Ahmed Sékou Touré's Reign of Terror

Ahmed Sékou Touré, a charismatic labor union leader, ruled Guinea from independence in 1958 until his death in 1984. Touré made Guinea a one-party dictatorship, maintained a stranglehold on all aspects of political and economic life, and used state-sponsored terror ruthlessly to suppress all real and perceived political opponents.<sup>2</sup>

Touré employed a vast network of informants, members of the secret police, party militia from his Democratic Party of Guinea (*Parti démocratique de Guinée*, PDG), and, to a lesser extent, members of the military to reinforce his authority under which thousands of real and perceived government critics were detained, tortured, and executed in public places, unofficial detention facilities and barracks.<sup>3</sup> The most notorious of these was the Camp



Sékou Touré's 26 year (1958-1984) reign left an indelible mark on Guinea and created a legacy of distrust and fear for those attempting to call their government to account. © 1959 AFP/Getty Images

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<sup>2</sup> Ladipo Adamolekun, *Sékou Touré's Guinea: An Experiment in Nation Building* (New York: Harper and Row, 1976).

<sup>3</sup> Claude Rivière, *Guinea: The Mobilization of a People*, trans. Virginia Thompson and Richard Adloff (Ithaca, NY: Cornell University Press, 1977).

Boiro National Guard Barracks in Conakry, Guinea's Gulag, where hundreds if not thousands are believed to have perished. Oppressed by the atmosphere of paranoia and repression that prevailed in the Touré era, tens of thousands of Guineans fled the country.<sup>4</sup>

The abuses under Touré's rule were concentrated around the state response to numerous plots—the majority believed to have been contrived—to overthrow his regime.<sup>5</sup> According to academics and historians, Touré used the plots to deflect criticism of his regime and its economic and social policies and eliminate real or perceived opponents.<sup>6</sup> After each reported plot, security forces and government officials carried out a wave of arbitrary detentions, disappearances, show-trials, and, in several cases, public executions. During one particularly bloody plot, the *Complot peul*, or Fulbe plot of 1976-77, well-respected Peuhl<sup>7</sup> intellectuals, including Boubacar Diallo Telli, the former secretary general of the Organization of African Unity, and countless others, were imprisoned, executed, or died in detention.<sup>8</sup> The violence provoked a mass exodus from Guinea of members of the Peuhl ethnic group and created a painful legacy of mistrust between the Peuhl and Guinea's second largest ethnic group, the Malinké, to which Touré and many of his key political allies in the PDG belonged.<sup>9</sup>

Committees largely comprising senior PDG officials, and in some cases Touré's relatives, determined the guilt or innocence of those accused of conspiring against him. The committees forced defendants, who were often tortured, to confess and were not able to

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<sup>4</sup> Martin Meredith, *The Fate of Africa*, (New York: Public Affairs, 2005), p. 271; and United States Department of State, Bureau of African Affairs, "Background Note: Guinea," March 12, 2010, <http://www.state.gov/r/pa/ei/bgn/2824.htm> (accessed September 20, 2010).

<sup>5</sup> Maurice Jeanjean, *Sékou Touré: un totalitarisme africain* (Paris: Editions L'Harmatan, 2005), [http://www.campboiro.org/bibliotheque/maurice\\_jeanjean/totalitarisme/chapo7.html](http://www.campboiro.org/bibliotheque/maurice_jeanjean/totalitarisme/chapo7.html) (accessed September 2, 2010), part 2, chapter VII.

<sup>6</sup> Martin Meredith, *The Fate of Africa*, (New York: Public Affairs, 2005), p. 271; Le Vine, Victor T., *Politics in Francophone Africa, Part 3. Structures, Processes, and Power*, (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2004), p. 222. Maurice Jeanjean, *Sékou Touré: un totalitarisme africain* (Paris: Editions L'Harmatan, 2005), [http://www.campboiro.org/bibliotheque/maurice\\_jeanjean/totalitarisme/chapo7.html](http://www.campboiro.org/bibliotheque/maurice_jeanjean/totalitarisme/chapo7.html) (accessed September 2, 2010).

<sup>7</sup> Guinea's 10 million inhabitants are from three major ethnic groups—the Peuhl, representing approximately 40 percent of the population; the Malinké, about 30 percent; and the Sousou, about 20 percent—as well as several smaller ethnic groups, including the Guerzé, Kissi, and Toma, which constitute the remaining 10 percent and live predominantly in the forest region in the southeast. See Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples: Guinea Overview," undated, <http://www.minorityrights.org/5503/guinea/guinea-overview.html> (accessed February 16, 2011).

<sup>8</sup> Maurice Jeanjean, *Sékou Touré: un totalitarisme africain* (Paris: Editions L'Harmatan, 2005), [http://www.campboiro.org/bibliotheque/maurice\\_jeanjean/totalitarisme/chapo7.html](http://www.campboiro.org/bibliotheque/maurice_jeanjean/totalitarisme/chapo7.html) (accessed September 2, 2010), part 2, chapter VII.

<sup>9</sup> "Le racisme peulh, nous devons lui donner un enterrement de première classe, un enterrement définitif: Une analyse géniale du chef de l'Etat sur les activités criminelles de la 5ème colonne," Ahmed Sékou Touré presentation before an informational meeting of the Central Committee of the People's Palace (*Comité Central au Palais du Peuple*), August 22, 1976, published in *Horoya*, no. 2237, August 29-September 4, 1976, [http://www.webguinee.net/bibliotheque/sekou\\_toure/discours/discours\\_anti\\_peul/astDisco82176.html#spf](http://www.webguinee.net/bibliotheque/sekou_toure/discours/discours_anti_peul/astDisco82176.html#spf) (accessed September 9, 2010), pp. 8-43.

appeal death sentences, which were frequently carried out within hours or days.<sup>10</sup> For example, on January 23, 1971, in the aftermath of a real plot,—namely, the military incursion by Portuguese troops based in Guinea-Bissau<sup>11</sup>—the Supreme Revolutionary Tribunal ordered 29 executions, 33 death sentences *in absentia*, and 68 life sentences of hard labor of Guinean government and military officials alleged to have supported it.<sup>12</sup> On January 25, 1971, following the ruling of the Tribunal, many of the alleged plotters were publicly hanged or executed in military camps, including four high-level government officials who were infamously hanged from an overpass in Conakry.<sup>13</sup>

To date not one individual implicated in the atrocious violations that characterized the 26-year regime of Sékou Touré has been held accountable in a credible judicial proceeding.<sup>14</sup> This impunity set the stage for further abuses, for which Guineans have not yet seen justice done. Mohamed Sampil, who completed his term as President of the Guinean Bar in January 2011, told Human Rights Watch:

Those who committed the [Touré-era] crimes were protected afterwards by the state system. Everyone knows there were many violations of human rights committed during this period, but there was never a trial. Why? Because the crimes were perpetrated for political reasons and with political protections: ‘justice’ was not independent; it was just for the service of the political regime. Continuing impunity set the stage for abuses of power in the following regime and transitional government. Now we must ask whether we will see it continue as before in Guinea’s future. In terms of this tradition of impunity, so far there has not been the political will to change.<sup>15</sup>

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<sup>10</sup> Almamy Fodé Sylla, *L’itinéraire sanglant* (Paris: ERTI, 1985), [http://www.campboiro.org/bibliotheque/almamy\\_fode\\_sylla/itineraire\\_sanglant/chap2.html#repression](http://www.campboiro.org/bibliotheque/almamy_fode_sylla/itineraire_sanglant/chap2.html#repression) (accessed August 31, 2010).

<sup>11</sup> The Portuguese Invasion, a real plot in 1970, involved Portuguese colonial troops and exiled Guinean dissidents who launched a failed bid to overthrow Touré and dislodge independence fighters from Guinea-Bissau, Portugal’s then colony to Guinea’s north, who were based in Guinea. It was followed by massive purges, during which nearly the entire cabinet, many senior military officers, countless other PDG officials and others were convicted of complicity.

<sup>12</sup> Maurice Jeanjean, *Sékou Touré: un totalitarisme africain*, (Paris: Editions L’Harmatan, 2005), [http://www.campboiro.org/bibliotheque/maurice\\_jeanjean/totalitarisme/chapo7.html](http://www.campboiro.org/bibliotheque/maurice_jeanjean/totalitarisme/chapo7.html) (accessed September 2, 2010), chapter VII. See PDG 1971a: 401-446 for the report of the Commission of Investigation, and 601-613 for the decision of the Supreme Revolutionary Tribunal.

<sup>13</sup> Maurice Jeanjean, *Sékou Touré: un totalitarisme africain*, (Paris: Editions L’Harmatan, 2005), [http://www.campboiro.org/bibliotheque/maurice\\_jeanjean/totalitarisme/chapo7.html](http://www.campboiro.org/bibliotheque/maurice_jeanjean/totalitarisme/chapo7.html) (accessed September 2, 2010), chapter VII.

<sup>14</sup> Human Rights Watch telephone interviews with Guinean lawyers, February 3 and 22, 2011.

<sup>15</sup> Human Rights Watch telephone interview with then-president of Guinean Bar Association, Mohamed Sampil, February 22, 2011.



## Second and Third Republics under Lansana Conté: Entrenching Impunity and Making the Criminal State

Shortly after Touré's sudden death from heart trouble in March 1984, Army Colonel Lansana Conté took over in a coup d'état the following month. Despite initial promises to ensure better respect for human rights, President Conté presided over another quarter century of state-sponsored abuses and repression, albeit far less extreme than those of his predecessor. From 1984 until his death in office in December 2008, also of natural causes, Conté's regime was punctuated by excessive use of force against unarmed demonstrators, torture of criminal suspects in police custody, prolonged pre-trial detention, arrests and detentions of opposition leaders and supporters, and harassment and arrests of journalists. While Conté made some initial progress on moving Guinea from a single-party dictatorship to multi-party democracy, these efforts were undermined by deeply flawed and non-transparent presidential polls in 1993, 1998, and 2003, designed to ensure Conté held on to political power.<sup>16</sup>

In response to worsening levels of corruption, poverty, and government abuses, various civil society and professional organizations at various times staged demonstrations across the country, many of which were violently repressed by Conté's security forces. In June 2006 security forces shot dead at least 13 protestors in Conakry.<sup>17</sup> In January and February 2007 security forces, notably the Presidential Guard, fired directly into crowds of unarmed protestors participating in a nationwide strike against deteriorating economic conditions and bad governance, resulting in at least 137 dead and over 1,700 wounded.<sup>18</sup>

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<sup>16</sup> United States Department of State, "Guinea: Profile of Asylum Claims and Country Conditions" (August 1995), [http://www.asylumlaw.org/docs/guinea/usdos95\\_guinea\\_profile.pdf](http://www.asylumlaw.org/docs/guinea/usdos95_guinea_profile.pdf) (accessed September 27, 2010); Amnesty International *1999 Annual Report for Guinea*, <http://www.amnestyusa.org/annualreport.php?id=ar&yr=1999&c=GIN/> (accessed September 27, 2010); BBC, "Timeline: Guinea," <http://news.bbc.co.uk/2/hi/africa/1032515.stm> (accessed September 27, 2010); Amnesty International, *Amnesty International 2004 Annual Report for Guinea*, <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2004&c=GIN> (accessed September 27, 2010); IRIN, "Guinea: Ailing Conté is sworn in for another seven term," <http://www.irinnews.org/report.aspx?reportid=48173> (accessed September 27, 2010). For poll results, see African Elections Database, "Elections in Guinea," [http://africanelections.tripod.com/gn.html#1993\\_Presidential\\_Election](http://africanelections.tripod.com/gn.html#1993_Presidential_Election) (accessed September 27, 2010).

<sup>17</sup> "Guinea: Security Forces Respond to Protests with Killings," Human Rights Watch news release, July 6, 2006, <http://www.hrw.org/node/71018>.

<sup>18</sup> For more on the government response to these protests, see Human Rights Watch, *Dying for Change: Brutality and Repression by Guinean Security Forces in Response to a Nationwide Strike*, vol. 19, no. 5(A), April 2007, <http://www.hrw.org/node/10974>.



Army Colonel Lansana Conté took over in a coup d'état in 1984. Despite initial promises to ensure better respect for human rights, President Conté presided over another quarter century (1984-2008) of state-sponsored abuses and repression, albeit far less extreme than those of his predecessor. © 2006 Seyllou/AFP/Getty Images

Conté and his government also presided over an increasing criminalization of the state in which members of the ruling party, his family, and security forces engaged in frequent criminal acts ranging from theft and embezzlement to drug trafficking.<sup>19</sup> By the end of Conté's regime, Guinea had become a major transit hub in West Africa for narcotics being trafficked from South America to Europe.<sup>20</sup>

The latter years of Conté's regime gave rise to a corrupt patronage network, which siphoned off resources that could have been used to address key economic rights such as basic

<sup>19</sup> "In TV confessions, curtain lifted on a narcostate," Associated Press, March 14, 2009. See also "Son of Guinea's late president confesses to drugs trafficking," Agence France-Presse, February 26, 2009; Amadou Touré, "Society: 'Biggest' drug trafficker's presence in Conakry: Police DG gives 'orders'," Guineenews, May 5, 2007, reproduced in BBC Monitoring Service: Africa; "20 Indicted on Drug Charges in Guinea," Associated Press, June 13, 2009.

<sup>20</sup> Human Rights Watch interview with UNODC official, Dakar, Senegal, July 29, 2009. UNODC, *Drug Trafficking as Security Threat in West Africa*, November 2008, <http://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf> (accessed September 17, 2010). Regarding official state involvement during the Conté era, the UNODC has described how "the presidential guard, commanded by one of the president's sons, appears to have been involved in drug trafficking, alongside a number of high-ranking public security officials, making use of diplomatic pouches and passports to move drugs." UNODC, *World Drug Report 2010*, <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2010.html> (accessed September 17, 2010), p. 244.

healthcare and education.<sup>21</sup> The illicit benefits enjoyed by the military's upper echelons led to a series of revolts by younger army officers, payoffs designed to placate them, and threats of further instability.

Despite symbolic gestures at the behest of Guinean civil society and the diplomatic community, Conté made no meaningful effort to hold those responsible for abuses to account. The gross neglect and politicization of the judicial sector further entrenched the impunity that had taken root under Sékou Touré. Like his predecessor, Conté and his government failed to bring to justice even one member of the security forces credibly implicated in killings and other serious abuses.<sup>22</sup> According to Kpana Emmanuel Bamba, President of the Guinea Chapter of Lawyers Without Borders (*Avocats Sans Frontières*):

Throughout Guinea's recent history, the security services have appeared to benefit from total protection. Those who committed abuses have not been sanctioned or judged in accordance with the law. There has been total impunity for the abuses under the Conté regime. His army was well paid, well protected: and not worried about any possibility of accountability measures. In the end, they were right: they were never held accountable.<sup>23</sup>

This concern was reiterated by the United Nations Special Adviser to the Secretary-General on the Prevention of Genocide after a mission to Guinea in March 2010:

"Impunity is the norm; perpetrators of past violence and human rights violations have gone unpunished, including those responsible for massive human rights violations committed during the previous regimes of Sékou Touré and Lansana Conté."<sup>24</sup>

## Fourth Republic: The "Dadis Show"

The bloodless coup in the hours after the death of President Conté on December 22, 2008, by a group of military officers calling themselves the National Council for Democracy and

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<sup>21</sup> For discussion of patronage under Conté in his later years, see International Crisis Group, *Guinea: Change or Chaos*, Africa report no. 121, February 14, 2007, <http://www.crisisgroup.org/en/regions/africa/west-africa/guinea/121-guinea-change-or-chaos.aspx> (accessed September 20, 2010), pp. 2-5.

<sup>22</sup> Human Rights Watch telephone interviews with Guinean lawyers, February 3 and 22, 2011.

<sup>23</sup> Human Rights Watch telephone interview with Kpana Emmanuel Bamba, February 22, 2011.

<sup>24</sup> UN Office of the Special Adviser on Genocide, "Report of the Special Adviser to the Secretary-General on the Prevention of Genocide on his Mission to Guinea from 7 to 22 March 2010," [http://www.un.org/en/preventgenocide/adviser/pdf/osapg\\_mission\\_report\\_guinea\\_mar\\_2010.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/osapg_mission_report_guinea_mar_2010.pdf) (accessed March 23, 2010).

Development (*Conseil national pour la démocratie et le développement*, CNDD) brought hope for improvement in Guinea's chronic human rights problems. The coup leaders, led by self-proclaimed president Captain Moussa Dadis Camara, pledged to hold elections in 2009 and to root out corruption.<sup>25</sup>



A bloodless coup in the hours after the death of President Conté on December 22, 2008, led by self-proclaimed president Captain Moussa Dadis Camara brought hope for improvement in Guinea's chronic human rights problems, however his one-year rule was characterized by serious abuses, including the bloody September 2009 massacre of some 150 opposition supporters. © 2009 AP Photo/Jerome Delay

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<sup>25</sup> Dadis Camara reiterated these pledges numerous times in the first several months of 2009. See "Guinea junta pledges 2009 polls," BBC, January 5, 2009; "Guinée: Le chef de la junte ne se présentera pas aux élections," Radio France Internationale, May 11, 2009.

However, this hope was extinguished as the military government consolidated control of the country's political and economic affairs, embezzled large amounts of state funds, failed to hold free and fair elections as promised, and steadily and violently suppressed the opposition. Throughout its one-year rule, the CNDD presided over a steady crescendo of abuses that culminated in the bloody September 2009 massacre of some 150 people and the public rape of over 100 female pro-democracy protesters.<sup>26</sup>

Throughout the CNDD's year in power, heavily armed groups of soldiers engaged in widespread acts of theft, extortion, and violence, including raiding and robbing shops, warehouses, medical clinics, and homes in broad daylight and at night. Dadis, as he is commonly known, ruled by decree, undermining and sidelining the national judicial system. The CNDD obliged former government ministers and others accused of embezzling state funds or engaging in drug trafficking to appear in televised confessions, colloquially referred to as the "Dadis Show," because of the CNDD president's frequent appearances to conduct interrogations personally.

CNDD officials called for vigilante justice against suspected thieves and, on several occasions, overtly intimidated members of the judiciary in an attempt to influence the outcome of proceedings.<sup>27</sup> The CNDD also set up a parallel judicial system within Camp Alpha Yaya Diallo, a military camp that served as the ad hoc seat of government, where, as part of the "proceedings," armed soldiers "invited" the accused and witnesses to stand before a panel of military officers. Hundreds of decisions for civil and criminal cases were pronounced and fines and penalties were assessed.<sup>28</sup> Meanwhile, the CNDD failed to investigate or hold accountable soldiers implicated in all classes of abuses.

As opposition parties increased their campaign activities in anticipation of promised elections, the CNDD increasingly restricted freedoms of assembly and expression by imposing bans on political activity, mobile phone text-messaging and political discussions

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<sup>26</sup> For more on abuses by the CNDD government and Guinean security forces in the lead up to the September 28, 2009 massacre, see "Guinea: Rein in Soldiers," Human Rights Watch news release, April 27, 2009, <http://www.hrw.org/node/82734>; "Guinea: Coup Leaders Undermining Rights," Human Rights Watch news release, July 8, 2009, <http://www.hrw.org/node/84328>; and "Guinea: Respect Rights of Opposition," Human Rights Watch news release, August 31, 2009, <http://www.hrw.org/node/85338>.

<sup>27</sup> Gendarme Captain Moussa Tiégboro Camara, later heavily implicated in the September 2009 violence, gained infamy in June 2009 when he called on youths to set up vigilante brigades and mete out vigilante justice against suspected thieves. "Burn armed robbers, says Guinea crime chief," Reuters, June 2, 2009; see also "Guinea: Coup Leaders Undermining Rights," Human Rights Watch news release, July 8, 2009.

<sup>28</sup> Human Rights Watch interview with Captain Issa Camara, Director of the Conflict Bureau, Conakry, April 2, 2009.

on radio phone-in shows. The CNDD summoned to a military camp and reprimanded opposition leaders who criticized it.<sup>29</sup>

The September 28, 2009 massacre of opposition supporters was both the signature atrocity and defining moment of Dadis Camara's regime. Responding to what had been a peaceful demonstration by tens of thousands of protestors gathered at the main stadium in the capital to protest continued military rule and Camara's presumed candidacy in planned elections, members of the Presidential Guard and other security units opened fire on the crowds, leaving about 150 people dead. Many were riddled with bullets and bayonet wounds, while many others died in the ensuing panic.<sup>30</sup> Security forces subjected over 100 women at the rally to brutal forms of violence, including individual and gang rape and sexual assault with sticks, batons, rifle butts, and bayonets. Subsequently, the armed forces systematically attempted to conceal the evidence of the crimes by removing numerous bodies from the stadium and hospital morgues and allegedly burying them in mass graves.<sup>31</sup>

Guinea's international partners harshly denounced the September 2009 violence. ECOWAS and the European Union (EU) imposed arms embargoes and the EU, United States, and the African Union (AU) imposed travel bans on CNDD members in addition to freezing their assets.<sup>32</sup> Speculation about whether the international condemnation and isolation of the CNDD regime would have forced Dadis Camara to step down was rendered moot by an assassination attempt by another military officer on December 3, 2009 that left Dadis Camara largely incapacitated.<sup>33</sup>

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<sup>29</sup> "Guinea: Respect Rights of Opposition," Human Rights Watch news release, August 31, 2009, <http://www.hrw.org/node/85338>.

<sup>30</sup> See Human Rights Watch, *Bloody Monday: The September 28 Massacre and Rapes by Security Forces in Guinea*, ISBN: 1-56432-584-9, December 2009, <http://www.hrw.org/node/87190>; and UN Security Council, *Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea*, S/2009/693, December 18, 2009, <http://www.unhcr.org/refworld/docid/4b4f49ea2.html> (accessed September 20, 2010).

<sup>31</sup> Ibid.

<sup>32</sup> For international denunciations of the violence, see "Guinea: Statement of the African Union on Events in Conakry," African Union press release, September 29, 2009; "Guinée: 'On ne peut plus travailler avec Dadis Camara', selon Kouchner," Agence France-Presse, October 4, 2009; and "Remarks With Pakistani Foreign Minister Shah Mehmood Qureshi After Their Meeting," United States Department of State transcript, October 6, 2009, <http://www.state.gov/secretary/rm/2009a/10/130314.htm> (accessed November 24, 2009). ECOWAS imposed an arms embargo on Guinea at a special summit convened on October 17, 2009 to discuss the situations in Guinea and nearby Niger. ECOWAS, "Final Communiqué," Extraordinary Summit of ECOWAS Heads of State and Government, Abuja, October 17, 2009. The US imposed travel restrictions on top Guinean leaders on October 23. "Guinea: Travel Restrictions," United States Department of State press release, October 29, 2009, <http://www.state.gov/r/pa/prs/ps/2009/oct/131047.htm> (accessed September 20, 2010). The EU and the AU followed by imposing comprehensive sanctions, including travel restrictions, an arms embargo, and asset freezes, on October 27 and 29, respectively. See "EU slaps arms embargo, sanctions, on Guinea junta," Agence France-Presse, October 27, 2009; and "African Union imposes sanctions on Guinea junta," Reuters, October 29, 2009.

<sup>33</sup> See "Guinea junta chief shot, injured by aide: military sources," Agence France-Presse, December 3, 2009.





To sustain the momentum generated by the elections and fulfill the expectations of Guineans, Guinea's new president, Alpha Condé, must take decisive steps to address the profound human rights and governance problems he has inherited. © 2010 Dirk-Jan Visser/Redux

After the medical evacuation of Dadis Camara from Guinea, the more moderate General Sékouba Konaté, then-Vice President and Minister of Defense, assumed power and began to bridge the increasingly volatile cleavages along ethnic, generational, and political lines within the army. Over the next 11 months, Guinean actors—including General Konaté and other members of the military and civil society who were determined to freely and fairly elect their leaders—ushered in, with the support of the international community, the political process leading to the presidential election of November 2010.

While the crisis of political transition set in motion by the CNDD coup has largely been addressed, it remains to be seen how seriously Guinea's new government will provide redress for the victims of state-sponsored crimes committed in the recent past and how swiftly they will move to ensure that impunity does not find a home in Guinea's Fifth Republic.

## II. Accountability for Past Abuses

*If the abuses under the First Republic of Sékou Touré had been dealt with—not through the execution of Touré supporters<sup>34</sup> but through proper trials—history would not have repeated itself during the Second and Third Republics [of Lansana Conté]. The September 28 [2009] violence of Dadis’s Fourth Republic is the direct result of the impunity of those who preceded him. Look at those who killed in September ‘09...they were the same ones who killed in 2007, who learned from those who had killed political opponents years before, who apprenticed and were party militants under Sékou Touré ... it happened because they were never stopped. It’s time all this came to an end.*  
—A family member of a victim of the Sékou Touré era<sup>35</sup>

The historical failure by successive regimes to ensure accountability for very serious crimes in large part served to embolden generations of perpetrators responsible for subsequent human rights abuses. Dismantling the architecture of impunity that has characterized Guinea’s violent history since independence and building a society based on the rule of law must be at the top of the agenda for both the new administration and Guinea’s international partners.

Importantly, the new government must bring to justice those responsible for the gross abuses of the past, most urgently the security forces responsible for the killing and raping of demonstrators in September 2009. It must also promptly re-establish and adequately support the national commission of inquiry responsible for investigating the 2007 killing of demonstrators that left some 140 dead.

To this end, Guinea’s international partners, notably the United Nations Office of the High Commissioner for Human Rights (OHCHR), which opened a country office in Guinea in July 2010,<sup>36</sup> and the EU, which has taken the lead in reinforcing and reforming the judicial system, should advise and assist the Guinean government in establishing a witness protection unit,

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<sup>34</sup> See, for example, Sennen Andriamirado, “Une Vingtaine D’Anciens Ministres et Compagnons de Sékou Touré ont été fusillés en Secret le 8 Juillet,” *Jeune Afrique*, no. 1291, October-December, 1985, pp. 32-33.

<sup>35</sup> Human Rights Watch interview with Hadiatou Barry Touré, secretary general of the Guinean Camp Boiro Victims Association (*Association guinéenne des victimes du Camp Boiro*, AGVCB), Conakry, June 9, 2010.

<sup>36</sup> Following a recommendation contained in the December 2009 report of the UN’s commission of inquiry into the September violence, the UN High Commissioner for Human Rights inaugurated an office in Guinea in July, to “support the Government’s efforts to protect human rights, to fight against impunity, which has bedeviled Guinea for decades, and to empower the Guinean people in the realization of all their rights, including economic, social and cultural rights.” “New UN human rights office to open in Guinea to help prevent abuses,” UN News Centre, May 5, 2010, <http://www.un.org/apps/news/story.asp?NewsID=34606&Cr=conakry&Cr1> (accessed September 9, 2010).



developing forensic expertise, and strengthening the independence of judges and prosecutors. Overall, these partners should work to enhance the expertise of national authorities and the domestic legal community in the investigation, prosecution, and defense of crimes in accordance with international standards.

## **Justice for the Victims of the 2009 Stadium Massacre, Sexual Violence and Other Crimes**

Human Rights Watch and the United Nations-led International Commission of Inquiry concluded that the killings, rapes, and other abuses committed by the security forces on and after September 28, 2009, were part of a widespread and systematic attack, and as such they very likely constituted crimes against humanity.<sup>37</sup> The violence appears to have been premeditated and organized by senior officials of the then CNDD government.

As a result of tremendous domestic and international pressure, the government of Guinea committed to investigate and bring to justice the perpetrators of the September 2009 violence. On October 20, 2009, the then-Minister of Foreign Affairs Alexandre Cécé Loua affirmed that the Guinean national judiciary was “able and willing” to render justice for the crimes committed,<sup>38</sup> and in early 2010 appointed three investigating judges to the case.<sup>39</sup>

Pressure to investigate the violence was likely encouraged by the October 14, 2009 confirmation by International Criminal Court (ICC) prosecutor Luis Moreno-Ocampo that the situation in Guinea was under preliminary examination by his Office.<sup>40</sup> In February 2010, the then-head of the Jurisdiction, Complementarity, and Cooperation Division of the Office of the Prosecutor, Béatrice le Fraper du Hellen, declared: “there is no alternative: either they [the government] must prosecute or we will.”<sup>41</sup>

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<sup>37</sup> Human Rights Watch, *Bloody Monday: The September 28 Massacre and Rapes by Security Forces in Guinea*, ISBN: 1-56432-584-9, December 2009, <http://www.hrw.org/node/87190>; and UN Security Council, “Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea,” S/2009/693, December 18, 2009, <http://www.unhcr.org/refworld/docid/4b4f49ea2.html> (accessed September 20, 2010).

<sup>38</sup> “Guinea Minister visits the ICC – Prosecutor Requests Information on National Investigations into 28 September Violence,” ICC OTP press release, October 21, 2009, [http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Guinea/Guinea+Minister+visits+the+ICC+\\_+Prosecutor+Requests+Information+on+National+Investigations+into+28.htm](http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Guinea/Guinea+Minister+visits+the+ICC+_+Prosecutor+Requests+Information+on+National+Investigations+into+28.htm) (accessed September 14, 2010).

<sup>39</sup> Ibid.

<sup>40</sup> “ICC Prosecutor confirms situation in Guinea under investigation,” ICC Office of the Prosecutor press release, October 14, 2009, <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/guinea/icc%20prosecutor%20confirms%20situation%20in%20guinea%20under%20examination> (accessed September 13, 2010). The ICC prosecutor undertakes a so-called “preliminary examination” in order to determine whether to open an investigation into a given situation or specific set of events. Other situations currently under preliminary examination by the Office of the Prosecutor include Afghanistan, Colombia, Côte d’Ivoire, Georgia, and Gaza.

<sup>41</sup> “ICC prosecutor to Guinea for massacre probe,” Agence France-Presse, February 15, 2010.



Women at Conakry's great mosque react as they look for the bodies of family members and friends that were killed during a rally on September 28, 2009. © 2009 AP Photo

At the time of writing there has been scant information regarding progress on the investigation and no evidence of government efforts to locate the over 100 bodies believed to have been disposed of secretly by the security forces. Unfortunately, the military hierarchy failed to put on administrative leave, pending investigation, soldiers and officers known to have taken part in the September 2009 violence. Human Rights Watch is also concerned about President Condé's appointment of two individuals implicated in the September 2009 violence into government positions: Lt. Colonel Claude Pivi who is the Minister of Presidential Security (*Ministre chargé de la sécurité présidentielle*) and Lt. Colonel Moussa Tiégboro Camara who serves as Director of the National Agency against Drugs, Organized Crime, and Terrorism (*Directeur de l'Agence nationale à la présidence chargé de la lutte contre la drogue, les crimes organisés et le terrorisme*).<sup>42</sup>

<sup>42</sup> Pivi has been credibly implicated in acts of torture committed in 2008, including of Guinean police officers, and criminal acts including theft and beatings. More recently, following the December 2009 assassination attempt against Dadis Camara, he was implicated in the killing of at least two soldiers close to Lt. Diakité. For his part, Lt.-Col. Tiégboro, in June 2009, publicly called on youth groups to mete out vigilante justice and "burn all armed bandits who are caught red-handed committing an armed robbery." He also has been implicated in illegally detaining suspects, some of whom have been abused and in several cases tortured, in the ad hoc detention center within Alpha Yaya Diallo military camp under his direct command. See "Guinea: Coup Leaders Undermining Rights," Human Rights Watch news release, July 8, 2009; "Guinea: Ensure Redress for Stadium Massacre Victims," Human Rights Watch news release, March 4, 2010.



From September 28, 2009 video footage given to Human Rights Watch.  
Top to bottom:

(1) Opposition supporters in Guinea demanding a return to civilian rule march on September 28, 2009, toward Conakry's main stadium. (2) Security forces near the entrance to the September 28 Stadium in Conakry clash with protesters. (3) Survivors of the September 28, 2009 massacre tend to victim's bodies. (4) Guinean security forces beat an opposition supporter taking part in a march and rally. (5) Opposition supporters flee Conakry's main stadium on September 28, 2009, after security forces stormed and opened fire on rally participants. (6) This image taken immediately following the September 28, 2009 massacre in Guinea shows bodies of victims lying at the entrance to Conakry's main stadium.

However, officials from the ICC Office of the Prosecutor who visited Guinea in February, May, and November 2010, and March 2011, to assess progress made in national investigations praised both the technical ability of the investigating judges and their demonstrated independence and freedom from government interference. In May 2010, the ICC officials reported that investigating judges had already interviewed 200 individuals and were satisfied with progress made in the investigation.<sup>43</sup> Guinean sources interviewed in June 2010 told Human Rights Watch that as of that time, two individuals had been detained for their alleged involvement in the September 2009 crimes.<sup>44</sup> Since then, a third person has been charged with crimes related to the September 2009 killings and rapes<sup>45</sup> and on January 19, 2011, Interpol issued a Red Notice (red notices allow an already issued domestic warrant to be circulated worldwide with the request that the wanted person be arrested with a view to extradition) for

<sup>43</sup> "World court 'satisfied' with Guinea massacre probe," Associated Press, May 21, 2010. ICC, Declaration to the Guinean Press, May 24, 2010, <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/guinea/d%C3%A9claration%20%C3%A0%20la%20opresse%20guin%C3%A9enne> (accessed September 20, 2010).

<sup>44</sup> Human Rights Watch interview with prison officials and Ministry of Justice official, Conakry, June 5 and June 9, 2010.

<sup>45</sup> Human Rights Watch interview with Ministry of Justice official, Conakry, November 27, 2010.



Aboubacar Sidiki Diakité, the then-head of the Presidential Guard, or red beret troops, who Human Rights Watch and the international Commission of Inquiry identified as one of those most directly implicated in the September 2009 crimes.<sup>46</sup>

On April 1, 2011, following a visit to Guinea, Bâ Amady, head of international cooperation in the ICC's Office of the Prosecutor, issued a declaration recognizing the cooperation of the Guinean authorities and the new government's commitment to bringing perpetrators to justice. However, he urged the government to increase accountability efforts and reiterated the ICC's responsibility to take action if the government fails to do so promptly and adequately.<sup>47</sup>



A policeman stands next to the bodies of people shot dead by Guinea junta forces on September 28, 2009 in front of the Conakry great mosque. © 2009 Seyllou/AFP/Getty Images

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<sup>46</sup> Interpol, "Wanted Notice: Aboubacar Sidiki Diakité (for Crimes Against Humanity, Crimes Against Life and Health, Fugitives, Sex Crimes)," [http://www.interpol.int/public/Data/Wanted/Notices/Data/2011/05/2011\\_205.asp](http://www.interpol.int/public/Data/Wanted/Notices/Data/2011/05/2011_205.asp) (accessed April 15, 2011).

<sup>47</sup> "La CPI se prononçant sur les événements du 28 septembre: 'si nul résultat tangible n'est atteint, le Bureau du Procureur prendra ses responsabilités'" *Le Jour*, April 2, 2011, [http://www.lejour.info/index.php?option=com\\_content&view=article&id=2176:la-cpi-se-prononcant-sur-les-evenements-du-28-septembre-qi-nul-resultat-tangible-nest-atteint-le-bureau-du-procureur-prendra-ses-responsabilitesq-&catid=3:societe&Itemid=4](http://www.lejour.info/index.php?option=com_content&view=article&id=2176:la-cpi-se-prononcant-sur-les-evenements-du-28-septembre-qi-nul-resultat-tangible-nest-atteint-le-bureau-du-procureur-prendra-ses-responsabilitesq-&catid=3:societe&Itemid=4) (accessed April 20, 2011).



Captain Moussa Dadis Camara, then-chief of the ruling junta, arrives for celebrations commemorating the Republic of Guinea's independence day on October 2, 2009. © 2009 Reuters

There is considerable disagreement among Guinean human rights defenders, victims, and others about whether the Guinean judiciary or the ICC should assume responsibility for investigating and trying those responsible for the September 2009 crimes. Guinea ratified the Rome Statute, the ICC's founding treaty, on July 14, 2003. As such, the ICC has jurisdiction over war crimes, crimes against humanity or genocide possibly committed in Guinea or by nationals of Guinea, including killings of civilians and sexual violence.<sup>48</sup> However, it is a court of last resort; under the principle of complementarity, it intervenes only when national jurisdictions are unwilling or unable to investigate or prosecute such crimes.<sup>49</sup>

Some members of the Guinean judiciary and Guinean Bar Association told Human Rights Watch they were confident in both the political will and the technical ability of the Guinean judiciary to deliver justice for the September 2009 crimes. As noted by a high-level Guinean judicial official familiar with the investigation, “[w]e are capable of ensuring justice is served

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<sup>48</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art.5. (Crimes within the jurisdiction of the Court) and art. 11 (Jurisdiction *ratione temporis*).

<sup>49</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 17 (Issues of admissibility, commonly referred to as “complementarity”).

in this matter. Rest assured we will leave no stones unturned in this investigation; we are looking at everyone—near and far.”<sup>50</sup>

However, this optimism is not shared by many Guinean human rights defenders, victims, and others who firmly believed the ICC should take responsibility for the case. A representative from a group of the September 2009 victims noted that “[t]here are too many things working against a sound and neutral judgment here in Guinea... We have our hopes in the ICC.”<sup>51</sup> Others were more cynical: “The government is neither capable nor willing to try the case. The three judges were appointed to avoid the case going to the ICC until the international community was distracted or lost interest; to make the world believe they’re serious about the case, but they’re not.”<sup>52</sup>

Human Rights Watch believes that the primary obligation to provide accountability for the perpetrators of the September 2009 violence rests with national authorities in Guinea. The ICC’s authority to act only when national authorities are unable or unwilling respects the principal role of national courts and encourages the development of credible and independent domestic judicial systems. Holding trials in Guinea would also provide the communities directly affected by the crimes access to the proceedings and serve as a deterrent to would-be perpetrators. This point was supported by several Guinean judges, lawyers and human rights defenders, one of whom noted that “[s]eeing the military humbled before a court of law would be very important for ordinary Guineans who have thus far seen them get away scot free.”<sup>53</sup> A Guinean judge reiterated this position:

Having the trial here in Guinea would serve as a stark reminder to currently serving military [officers] about what awaits them if they abuse human rights. It would also allow us as a people to regularly reflect on the role the judiciary should play in a proper democracy.<sup>54</sup>

Human Rights Watch has nevertheless identified several key challenges to ensuring that domestic investigations and prosecutions are conducted fairly, impartially, independently, and effectively. These challenges include deep-seated weaknesses within the judicial system, lack of adequate security for judicial personnel, the absence of a witness protection

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<sup>50</sup> Human Rights Watch interview with high-level justice ministry official, Conakry, June 9, 2010.

<sup>51</sup> Human Rights Watch interview with representative from victim’s association, Conakry, June 4, 2010.

<sup>52</sup> Human Rights Watch interview with victim, Conakry, June 4, 2010.

<sup>53</sup> Human Rights Watch Interview with human rights defender, Conakry, June 5, 2010.

<sup>54</sup> Human Rights Watch interview with lawyer, Conakry, June 9, 2010.

program, existence of the death penalty, and lack of a domestic law within the Guinean criminal code against crimes against humanity and torture. In order to ensure justice for the serious international crimes committed in 2009, the Guinean authorities must promptly and credibly address these challenges. Human Rights Watch believes Guinea and its international partners should push for the simultaneous progression of the investigation and trial of those responsible for the 2009 violence and much-needed improvements in the judicial system and the legislative framework which underpins it.

### **Weaknesses within the Judiciary**

Weaknesses within the Guinean judicial system that could undermine the quality of the investigation and prosecution of those implicated in the September 2009 violence include lack of independence from the executive, inadequate material resources to the judiciary, which renders personnel vulnerable to manipulation and corrupt practices, and inadequate knowledge of international law. These weaknesses are largely the result of a pattern of neglect and manipulation of the judiciary by successive governments and are dealt with in detail in a subsequent section of this report.

Dr. Thierno Maadjou Sow, president of the Guinean Organization of Human Rights (*Organisation guinéenne de défense des droits de l'homme et du citoyen*, OGDH), described his concerns about the ways in which these problems could undermine efforts to achieve accountability for the September 2009 crimes:

We have serious doubts about the ability of the Guinean judiciary to handle this dossier. The technical ability of our judges to handle international crimes with respect to law and procedure is not there. The perpetrators will have very strong defense lawyers, and the Guinean government needs to be prepared, or else they will lose the case and our efforts to combat impunity would backfire. There are so many things which undermine the independence of our judges including their conditions of service; they are very poorly paid which leaves them open to being bought off.<sup>55</sup>

Judicial personnel interviewed by Human Rights Watch acknowledged these weaknesses but believed they could be addressed through a combination of better funding and management of the judiciary together with technical assistance, training and funding from Guinea's international partners. Several judicial personnel specifically noted the urgent need for a

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<sup>55</sup> Human Rights Watch interview with Dr. Thierno Maadjou Sow, president of the Guinean Organization of Human Rights, (*Organisation guinéenne de défense des droits de l'homme et du citoyen*, OGDH), Conakry, June 5, 2010.

witness protection program, increased capacity in forensics, notably laboratories and expertise in ballistics and conducting exhumations to identify victims, and training in investigating and adjudicating international crimes.<sup>56</sup> They saw the 2009 case as an opportunity to make much-needed improvements in a judiciary that has suffered for decades from extreme state neglect.

## **Security of Judicial Personnel and Witnesses**

Human Rights Watch is concerned about what appears to be inadequate security provided to judges and witnesses, and urges national authorities to address this problem immediately. The potential threat would likely come from members of the security forces who were either directly implicated in the September 2009 violence or who were opposed to their colleagues being tried. The threat would likely take the form of threats and intimidation, or the destruction of evidence.

Judicial personnel, human rights defenders, and those close to the investigation echoed this concern, highlighting the ways in which the vast majority of officers and soldiers implicated in the September 28, 2009 violence are still members of the army and gendarmerie. A Guinean human rights defender explained:

We know very well the problems with military who can throw around a lot of influence. Do you really think those judges could convoke to testify the likes of Captain X or Major X? Things may seem calmer now, but those boys are still lurking around. We don't want our people to be double victims – of both the stadium violence and then on account of talking to the judges.<sup>57</sup>

Trials of serious international crimes are extremely sensitive and can generate considerable public emotion, as well as attract interference in the judicial process. These considerations underscore the importance of adequate security, including at the facilities where proceedings are being conducted, for staff working on the proceedings, for accused and defense counsel, and for witnesses.

The Ministry of Justice must adequately resource, protect, and support the three investigating judges, any judges who may conduct trials or other hearings, and other judicial personnel involved in the cases related to the September 2009 violence. Protective measures for judges are particularly vital to preserve their independence and ensure the

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<sup>56</sup> Human Rights Watch interviews with Ministry of Justice personnel, Conakry, June 5 and 9, 2010.

<sup>57</sup> Human Rights Watch interview with executive member of victim's association, Conakry, June 4, 2010.



integrity of the judicial process. Any perception that the judges are at risk may have a potential chilling effect on others who might participate in the proceedings, including victims and witnesses. Inadequate security could thus undermine the effectiveness of proceedings, as well as derail efforts to establish the rule of law in the long term.

The establishment of an effective witness protection program must be a top priority for the government of Guinea. This need has, until the present, been addressed informally by foreign diplomatic missions<sup>58</sup> and humanitarian organizations, which have provided protection, funding, and evacuation to those in need. A formal witness protection program should be implemented through a legal framework that satisfies key criteria including risk assessment, as well as provision of physical and psychological protection outside the court at all points before, during, and after testimony. The legal framework should also facilitate appearance before the court, including protective measures such as the use of pseudonyms and provision of private courtroom sessions to protect both the witnesses and defendants' right to a fair trial; and measures to protect the confidentiality, integrity, and autonomy of the proceedings.<sup>59</sup>

## The Need for Legal Reforms

Ministry of Justice personnel affirmed that those implicated in the September 2009 violence would be tried for the crimes of murder, assassination, rape, and destruction of property, among others.<sup>60</sup> Some judges and lawyers interviewed believed these charges were sufficiently serious to represent the seriousness of the crimes. As noted by one Guinean judge: "Our penal code can pronounce the death penalty for some of the infractions the alleged perpetrators of the September 2009 crimes will be charged with. You ask about gravity of the crime; is this not a reflection of how serious these crimes are? How much more serious can we get?"<sup>61</sup>

The seriousness of these charges highlights the need for legislative reform to address two key issues: the existence of the death penalty and the lack of a domestic law that criminalizes crimes against humanity and torture and establishes liability for the 2009 crimes, among others. Human Rights Watch urges the new government, human rights groups, and Guinea's international partners to push for these much-needed reforms.

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<sup>58</sup> Human Rights Watch interview with Ambassador for a European country in Guinea, Conakry, June 8, 2010; Human Rights Watch interview with justice sector reform expert, Conakry, June 9, 2010.

<sup>59</sup> Report of the United Nations High Commissioner for Human Rights on the Right to the truth, July 28, 2010, U.N. Doc. A/HRC/15/33 (2010), [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.33\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.33_en.pdf) (accessed November 16, 2010).

<sup>60</sup> Human Rights Watch interview with Ministry of Justice personnel, Conakry, June 7 and 9, 2010.

<sup>61</sup> Human Rights Watch interview with long-serving Guinean judge, Conakry, June 7, 2010.

Human Rights Watch opposes the death penalty in all circumstances due to its inherent cruelty. In addition, imposing the death penalty can send the message that the Guinean judiciary is exacting vengeance rather than rendering justice. Moreover, international human rights law, as codified in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), favors the severe restriction, if not the outright abolition of capital punishment.<sup>62</sup>

Recent state practice recognizing that the death penalty violates basic human rights has fuelled a growing movement around the world to eliminate it.<sup>63</sup> The statutes of various international and hybrid international-national justice bodies, as well as the Rome Statute, do not permit the death penalty. The divergence of these international standards with the Guinean penal code regarding the death penalty could mean that in the case of an ICC investigation in Guinea, those prosecuted as “persons bearing the greatest responsibility” by the ICC would receive less severe sentences than lower-level perpetrators prosecuted at the domestic level.

### **Lack of Law Criminalizing Crimes against Humanity or Torture**

Existing Guinean law does not adequately capture the nature of crimes committed in September 2009. To ensure that charges can be brought that reflect the scope and responsibility of the crimes committed, Guinea should act swiftly to enact legislation implementing the Rome Statute—including its core crimes and modes of liability, such as command responsibility—and codify a specific crime of torture.

As defined under international law, crimes against humanity go beyond multiple criminal acts such as murder and rape and are committed as “part of a widespread or systematic attack directed against any civilian population.”<sup>64</sup>

Furthermore, the prosecution of such grave international crimes as though they were merely serious ordinary crimes does not sufficiently address the conduct and responsibility of those involved in their commission and would fail, among other things, to expose the criminal structure beneath. Appropriate conceptions of criminal responsibility, for example “command responsibility,” are necessary for accountability at all levels, including for those whose responsibility extends beyond physical commission of the crime. For example, the concept of

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<sup>62</sup> International Covenant on Civil and Political Rights (ICCPR), 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, ratified by Guinea on January 24, 1978, art. 6.

<sup>63</sup> Moratorium on the Use of the Death Penalty, adopted December 18, 2008, G.A. Res. 63/168, U.N. Doc. A/RES/63/168 (2008); Moratorium on the Use of the Death Penalty, adopted December 18, 2007, G.A. Res. 62/149, U.N. Doc. A/RES/62/149 (2007).

<sup>64</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 7.

“command responsibility” enables military commanders and others in positions of authority to be held criminally liable when crimes are committed by forces under their effective command and control, when they should have known about the crimes, and when they fail either to prevent the crimes or prosecute those responsible. Guinea’s current penal codes are not adequately developed with respect to these international and human rights law concepts, presenting an additional judicial challenge for September 2009 accountability trials.



Protesters carry the body of a demonstrator who was killed by security forces during a demonstration on January 22, 2007 in which tens of thousands of Guineans in the capital city of Conakry attempted to march to the National Assembly building. The individual pictured here was one of at least 129 killed by security forces during the January and February, 2007 strike violence. © 2007 AFP/Getty Images

## **Independent National Commission of Inquiry into the 2007 Violence**

The new government should also re-establish the now-defunct Independent National Commission of Inquiry into the 2007 violence. Once this commission has completed its work and drafted its recommendations, those perpetrators deemed most responsible should be held accountable in accordance with international fair trial standards.

During the 2007 violence security forces fired directly into crowds of marching demonstrators protesting against bad governance and deteriorating economic conditions, and at demonstrators gathered near Conakry’s November 8 Bridge. Security forces later ransacked the offices of the trade unions that organized the strike and arbitrarily arrested, beat and threatened to kill journalists, union leaders, and many others. Security forces killed an estimated 130 people and wounded about 1,700 others.

The national commission of inquiry into the 2007 strike-related violence was established by the National Assembly in May 2007, for which 19 commissioners were sworn in. However, according to the commission’s well-respected chair, Mounir Hussein, the Guinean government did not fund it or provide logistical support.<sup>65</sup> The commission’s mandate expired in January 2009. It did not conduct any investigations.

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<sup>65</sup> Human Rights Watch interview with Mounir Hussein, Conakry, October 22, 2008.

### III. Truth-Telling Mechanism

*Guineans need to critically evaluate the behavior and abuses committed by each and every regime, and explore why history is repeating itself. A truth commission would help arrest the gangrene; it would help us put to one side what divides us, and reflect on what unites us. We must also take a closer look at the issue of ethnicity, which for decades has been used to control, divide, and sow mistrust and hatred among Guineans. We must also look at the role economic crimes and profiteers, who have operated throughout every regime, have played in benefitting from Guinea's resources at the expense of the population.*

—Gadiri Diallo, executive member of the Guinean Human Rights Organization (OGDH)<sup>66</sup>

Human Rights Watch believes the new administration should establish a truth-telling mechanism for several key reasons. First, it could help illuminate under-exposed atrocities committed since independence, notably during the reign of Sékou Touré. Second, this mechanism could explore the dynamics that gave rise to and sustained successive authoritarian and abusive regimes. Third, it could make recommendations aimed at ensuring better governance and preventing a repetition of past violations. Civil society leaders, human rights activists, and ordinary citizens interviewed by Human Rights Watch supported the establishment of a truth-telling mechanism.<sup>67</sup> One civil society leader expressed concern about what he referred to as “Guinea’s memory problem” and how a truth commission could help address it:

No one talks about what happened during the Touré years, or Conté’s killing of all those demonstrators in 2007; I went to an anniversary memorial for the victims of 2007 and hardly anyone showed up; people had already forgotten about it! Even now, no one, not even civil society is actively pushing for justice for the stadium massacre! I used to think there should be a line in the sand between what happened during our painful past and the future, but now I’m convinced we need to talk about, not forget, these things.<sup>68</sup>

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<sup>66</sup> Human Rights Watch interview with Gadiri Diallo of the Guinean Human Rights Organization, June 5, 2010.

<sup>67</sup> Human Rights Watch interviews with civil society leaders, human rights activists and others, Conakry, June 2-9, 2010.

<sup>68</sup> Human Rights Watch interview with Abdul Latif, Organization Synergie, Conakry, June 5, 2010.

The period of history most shrouded in secrecy and which could most stand to benefit from a truth-telling exercise is the regime of Sékou Touré. Although this period ended more than a quarter of a century ago, Sékou Touré's 26 year reign left an indelible mark on Guinea and created a legacy of distrust and fear for those attempting to call their government to account. One family member of a victim noted how, in the 2007 and 2009 episodes of violence, "the images of demonstrators being gunned down in the streets or stadium flew around the globe via the internet and mobile phone," whereas the extent of what happened during the Touré years "remains largely hidden."<sup>69</sup>

Members of the Guinean Camp Boiro Victim's Association (*L'Association Guinéenne des Victimes du Camp Boiro, AGVCB*), which represents the victims of the Touré era, noted that "the views and needs of the victims of the atrocities committed during the Sékou Touré years have never been properly considered. There is no monument to the victims; no official recognition, no report. We want recognition of who the perpetrators were, of who the victims were, of where their remains are, and of how they and their families have suffered."<sup>70</sup>

One man, whose father disappeared during Sékou Touré's regime, supported the idea of a truth-telling commission, not only to uncover hidden truths, but also to remind younger Guineans of what occurred during the Sékou Touré regime:

Our children are forgetting. They need to know people were hanged from bridges; that two sons of the same mother were killed on the same day; that countless people were tortured to death inside Camp Boiro and elsewhere while others were forced to eat rats, even their own feces, to survive. They need to be reminded so they will never allow history to be repeated.<sup>71</sup>

The era's persecution of members of the Peuhl ethnic group in particular left a legacy of anger and distrust, which played out with deadly consequences during the presidential elections. As recently as October 2010, ethnic tensions erupted following a report that Malinké supporters of presidential candidate Alpha Condé had been poisoned by Peuhl supporters of opposing candidate Cellou Dallein Diallo. The inter-communal violence, which left several dead, spread to a number of cities and continued into November 2010.

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<sup>69</sup> Human Rights Watch interview with Hadiatou Barry Touré, secretary general, Guinean Camp Boiro Victim's Association, Conakry, June 9, 2010.

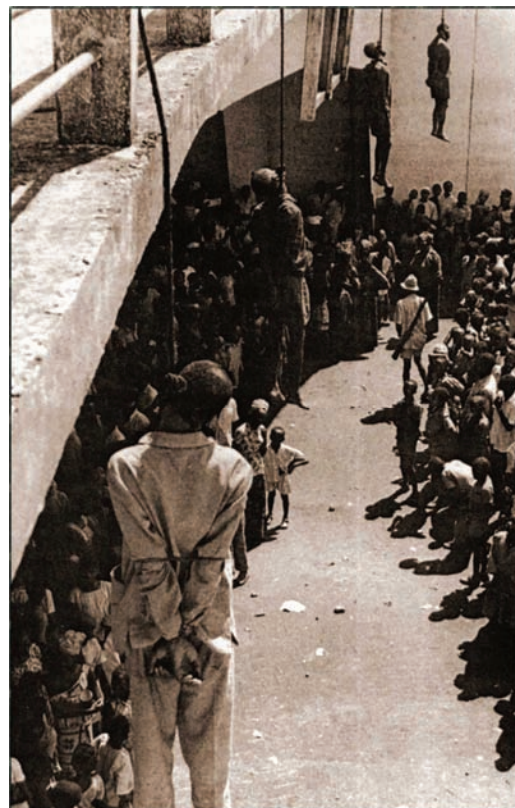
<sup>70</sup> Human Rights Watch interview with Ahmadou Tounkara, chief of communications, Guinean Camp Boiro Victim's Association, Conakry, June 9, 2010.

<sup>71</sup> Ibid.

One young woman described why she believes a truth commission could help Guineans address what she characterized as “the banality of violence:”

When I was child in Labé, I recall so well rushing to see the bodies of two men hanged near the stadium. They remained there all day. We as children ran to see them and watched as people whacked them with sticks and swore at them. At the time, I was shocked, but over the years the killing of our people has become less shocking. We wipe our memory of it and accept that it's just one of those things. Over time the fear is transformed into passivity. As we've seen, living without memory is dangerous.<sup>72</sup>

Truth commissions can serve important needs of accountability and reconciliation that are not addressed by prosecutions alone. For example, South Africa's truth and reconciliation commission has been heralded as a vital aspect of national healing and the country's successful transition out of apartheid. Sierra Leone's truth commission was credited with helping identify some of the issues that gave rise to that country's brutal armed conflict. As such, they are held up as an exemplar of the benefits of restorative and transitional justice mechanisms, which can respond to victim and community needs in ways that punitive justice alone may not. Nonetheless, as a matter of both treaty and customary international law, there is a duty to prosecute serious international crimes and pursue individual criminal responsibility. While truth commissions can be a meaningful complementary process, they are, by themselves, an inadequate response to grave human rights abuses.



Four of the dozens of people that were hanged on January 25, 1971. Pont du 8 Novembre in Conakry, from back to front: Ousmane Baldet (minister of finance); Barry III (secretary of state); Magassouba Moriba (minister); Keita Kara Soufiana (police commissioner). © Camp Boiro Memorial <http://www.campboiro.org>

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<sup>72</sup> Human Rights Watch interview with Guinean woman whose family fled Guinea during the Touré regime, Dakar, Senegal, April, 10, 2010.

## IV. Strengthening the Guinean Judiciary

*We in the judiciary lack even the most basic things needed to conduct an investigation or manage a case. It is easy to accuse a judge of being corrupt but what is he to do when he needs to buy paper, pens and dossier folders, to photocopy documents, or fuel his vehicle? All this affects the ability of judges to remain impartial; to conduct themselves professionally.*

–Kpana Emmanuel Bamba, President of the Guinea Chapter of Lawyers Without Borders<sup>73</sup>

The marginalization, neglect, and manipulation of the Guinean judiciary has led to striking deficiencies in the sector and served to fuel the impunity enjoyed by the perpetrators of all classes of abuses and human rights crimes. As observed by a lawyer interviewed by Human Rights Watch, “The Guinean judiciary has very serious problems of legitimacy, accessibility, speed, capacity and impartiality.”<sup>74</sup>

The Guinean judicial system is broadly based on the French civil law system. There are three levels within the hierarchy of courts hearing cases involving crimes (as opposed to lesser offenses equivalent to misdemeanors [*contraventions* and *délits*]).<sup>75</sup> A first instance court for crimes is called *cour d’assises*. Its decisions may be appealed to the *cours d’appel* (appeals court) and finally to the *Cour Suprême* (Supreme Court). There are only two *cours d’assises* and two *cours d’appel* in Guinea, one each in Kankan and Conakry. The single Supreme Court sits in Conakry and has until now been the Supreme Court for all legal matters, including administrative, financial, and judicial. Guinea’s new constitution further provides for a constitutional council (*conseil constitutionnel*), audit court (*cour des comptes*), and judicial supreme court (*cour de cassation*).<sup>76</sup>

The civil law system’s courtroom consists of a panel of judges (*juges du siège*), assisted by a jury at the *cour d’assises* level. The case against an accused is presented by public

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<sup>73</sup> Human Rights Watch interview with Kpana Emmanuel Bamba, Conakry, June 3, 2010.

<sup>74</sup> Human Rights Watch interview with lawyer, Conakry, June 9, 2010.

<sup>75</sup> Human Rights Watch telephone interview with Guinean human rights and private law attorney, February 8, 2010. For background on the civil law system, see French Ministry of Justice, “The Judiciary in France,” [http://www.justice.gouv.fr/art\\_pix/plaquette\\_justiceenfrance\\_angl.pdf](http://www.justice.gouv.fr/art_pix/plaquette_justiceenfrance_angl.pdf) (accessed February 7, 2011); Sciences-Po Bordeaux, “Guinea: Institutional Situation,” [http://www.etat.sciencespobordeaux.fr/\\_anglais/institutionnel/guinea.html](http://www.etat.sciencespobordeaux.fr/_anglais/institutionnel/guinea.html) (accessed February 7, 2011).

<sup>76</sup> Human Rights Watch telephone interview with Mohamed François Falcone, February 22, 2011.

prosecutors (*juges du parquet*) acting on behalf of the State and answerable to the Ministry of Justice. Defense attorneys (*avocats de la défense*) represent the accused. A case is initiated upon completion of either a police investigation or a judicial investigation (*information judiciaire*) led by investigating judges (*juges d'instruction*).<sup>77 78</sup>

Based on interviews with members of the Guinean Bar, magistrates, judicial personnel, UN and EU personnel, Human Rights Watch identified the following key problems within the Guinean judicial system. In order to facilitate accountability for past abuses and deter future ones, the new government must take urgent steps to address them.

### Insufficient Budget for the Judiciary

According to Ministry of Justice personnel, national budgetary allocations for the judiciary and the corrections sector have, for several years, stood at less than 0.5 percent.<sup>79</sup> The 2010 budgetary allocation was a mere 0.44 percent,<sup>80</sup> with similar allocations in previous years – 1.32 percent, 0.37percent, and 0.23percent, respectively for 2009-2007.<sup>81</sup> According to Ministry of Finance personnel interviewed by Human Rights Watch, as well as an in-depth study of the judiciary by the European Union, the disbursement rate to the Ministry of Justice of this very limited allocation is furthermore very low, with some jurisdictions going years without receiving any budgetary funds.<sup>82</sup>

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<sup>77</sup> Investigating judges are an inheritance of the French criminal law system. They work for the state but are less subject to instructions from the Ministry of Justice than the public prosecutors and perform their investigations with, theoretically at least, relative independence. They have the authority to interview any person, call on the police for assistance, issue warrants, take statements, appoint experts, carry out searches and seizures, order telephone tapping, etc. Their investigations are usually for more serious crimes and complex situations beyond the scope of a normal police inquiry. Investigations are initiated based on the investigating judges' own information or upon request by the police department or victims. At the end of the investigation, if there is enough evidence for a case, the investigating judge hands the file to the public prosecutors at the *cour d'assises* for the trial.

<sup>78</sup> It should be noted that the term *juge* (literally "judge") does not necessarily mean the individual makes the final judgment. Rather, it refers to the necessary training the individual has undergone. Thus, bench judges (*juges du siège*), public prosecutors (*juges du parquet*) and investigating judges (*juges d'instruction*) all have attended the same type of educational institution, therefore qualifying them as "judges," but only the former category actually judges the case as in, for instance, the American system's conception of "judge." Defense lawyers notably attend a different type of school. The term *juge* is sometimes replaced with *magistrats* (magistrates), as in *magistrats du siège*: the two terms are interchangeable.

<sup>79</sup> Human Rights Watch interview with then-*Procureur Général* (Attorney General equivalent) Paul Mastrazi Fofana, Conakry, June 9, 2010.

<sup>80</sup> Human Rights Watch email from Ministry of Finance official, February 11, 2011.

<sup>81</sup> Human Rights Watch email correspondence with Ministry of Finance official, September 21, 2010 and February 11, 2011; European Union provisional mission report, "Mission d'identification des axes d'intervention dans le secteur de la Justice en République de Guinée," July 2010, author's possession.

<sup>82</sup> European Union provisional mission report, "Mission d'identification des axes d'intervention dans le secteur de la Justice en République de Guinée," July 2010, author's possession; and Human Rights Watch telephone interview with Ministry of Finance official, February 2, 2011.



A regional expert on justice sector reform noted that an acceptable budget allocation to the judiciary should be at least 5 percent, adding, “less than one percent is low, even for this region [West Africa].”<sup>83</sup> As noted by a high-ranking official from the Ministry of Justice, “I think it’s pretty obvious; the Ministry of Justice is the bottom of the ladder in terms of state priorities.”<sup>84</sup>

Several members of the legal profession interviewed by Human Rights Watch believed that the low budgetary allocation to the judiciary was strategic. As noted by Mohamed Sampil, the outgoing president of the Guinean Bar: “Successive governments have shamefully neglected the needs of the MOJ...We don’t believe this chronic underfunding is an accident.”<sup>85</sup> Another lawyer explained why: “The political elite has for years benefitted from a weak judiciary. If judges could resist corrupt payoffs, if the judiciary were strong, it is these people—the ministers and those who benefit from their patronage network—who would be on trial!”<sup>86</sup> A vast array of other problems identified by those interviewed emanated from the insufficient fiscal support of the justice sector.

### *Inadequate Funds for Operations, Staffing and Infrastructure*

In conversations with Human Rights Watch, judges, lawyers, legal clerks, and correction workers complained bitterly of inadequate funds to conduct judicial investigations; adequately staff, supply, and run their offices; and feed, care for, and transport prisoners to court. They said Guinea also needed additional courtrooms, forensic labs, and a legal library.

The dire need to modernize operations, evidenced by the lack of computers, disorganized or non-existent record keeping, and the “archaic” method of court reporting (done by hand) was largely credited with creating huge backlogs and contributing significantly to the high numbers of detainees in extended pre-trial detention. Furthermore, many courthouses throughout the country are in need of repair or renovation after being pillaged, burned, damaged, or destroyed during protests or the 2000-2001 cross-border incursions by armed groups from Sierra Leone and Liberia.

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<sup>83</sup> Human Rights Watch interview with regional expert on justice sector reform, Conakry, June 9, 2010.

<sup>84</sup> Human Rights Watch interview with Ministry of Justice official, Conakry, June 9, 2010.

<sup>85</sup> Human Rights Watch interview with then-President of Guinean Bar Association Mohamed Sampil, Conakry, June 7, 2010.

<sup>86</sup> Human Rights Watch interview with Guinean lawyer, June 3, 2010.

Those interviewed by Human Rights Watch agreed that these chronic deficiencies adversely impact Guineans' access to justice. According to Kpana Emmanuel Bamba, president of the Guinea Chapter of Lawyers Without Borders:

The court system has become a simple calculation of costs: They don't have the money to transport the victims and accused to the trial, to pay clerks to take notes of the proceedings, to hire guards for the security of the courtroom, the list goes on and on. Proper organization and performance of the trials requires more expenditure by the State, and the Ministry of Justice doesn't have enough in its budget allocation to support this. Even the two criminal courts do not have the financial resources to operate functionally. The State thus far apparently feels fair trials aren't important enough and has been satisfied to keep the accused in prison indefinitely instead.<sup>87</sup>

Mohamed Sampil, the outgoing president of the Guinean Bar, added:

It is fundamentally a financial and logistical problem. The justice sector in Guinea cannot pay for justice! The budget allocated by the government is too low a percentage, so that the courts have become an institution that doesn't have the infrastructure and logistical support to function properly. For example, there isn't enough money even to transport the accused to the courthouse. Without dedicated vehicles, judicial personnel are often obliged to bring detainees to trial in a taxi. The Ministry of Justice cannot financially afford to bring the cases awaiting trial, and so people languish in prison. The national budget must be reformulated to carry out justice properly, including the creation of better jurisdictional accessibility—such as more courts sitting for trials closer to those who need them—and free legal counsel for those who cannot pay.<sup>88</sup>

Guinea is also in dire need of a case management system. Humanitarian workers and lawyers said that many cases of extended pre-trial detention occur because of ill-kept records. One man, who was detained, charged with assault, tried in absentia because the prison lacked a vehicle to transmit him to trial, and ultimately acquitted in 2005, nevertheless spent two and a half years in jail after his acquittal because the paper

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<sup>87</sup> Human Rights Watch telephone interview with Kpana Emmanuel Bamba, February 22, 2011.

<sup>88</sup> Human Rights Watch telephone interview with then-president of Guinean Bar Association Mohamed Sampil, February 22, 2011.

authorizing his release was never transmitted to the prison by the court.<sup>89</sup> Prison clerks demanded bribes from detainees to investigate their complaints. Other prisoners spent extra months or years in detention after having served their sentences due to what one lawyer described as “a combination of poor record keeping, incompetence, indifference, and corruption on the part of court and prison officials.”<sup>90</sup>

Numerous judicial personnel noted that the need for additional courthouses and trained personnel to staff them, was most urgent within the criminal court (*cour d’assises*), which deals with criminal offenses that carry a maximum sentence exceeding five years.<sup>91</sup> Those interviewed also stressed the need for the existing courts to sit more regularly, as mandated by law. At present, the two *cours d’assises*—in Conakry and Kankan—often go years without sitting for a session. The resulting extended pre-trial detention and case backlogs represent dire obstacles to access to justice. As Mohamed François Falcone of the anti-corruption commission said:

Each year, the *cours d’assises* are supposed to have special sessions to judge all crimes committed during a given period of the year. But in practice these sittings are very irregular. The budget allocation to the justice sector is clearly to blame. The irregularity in court sitting clearly translates into irregularity of justice, with procedural delays leading to prolonged detention. When someone has to wait two years to go to trial, it is a clear human rights abuse. The judiciary must better protect detainees. This has to begin with strengthening the judiciary’s capacity to actually hear cases, otherwise no justice is possible for Guinea’s citizens.<sup>92</sup>

While few ministries in Guinea’s government are well resourced, the dire lack of funds for the criminal justice system means that Guinea’s residents are denied the most basic civil and political rights protections, including due process.

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<sup>89</sup> Mêmes Droits pour Tous Press Release; Vincent Kaman, “Assignation en paiement de dommages et intérêts,” Appeals Court of Conakry, July 13, 2007.

<sup>90</sup> Human Rights Watch email exchange with lawyer who had worked for several years within the Guinean prisons, November 12, 2010.

<sup>91</sup> Human Rights Watch telephone interviews with Guinean lawyers, February 8 and 22, 2011.

<sup>92</sup> Human Rights Watch telephone interview with Mohamed François Falcone, February 22, 2011.

### *Inadequate Remuneration of Judges*

Monthly salaries for Guinean judges range from about 300,000 GF (US \$45) to 1,000,000 GF (US \$151), with the median around 500,000 GF (US \$76).<sup>93</sup> The monthly cost of living in Conakry for a family of four is estimated to be about 1,520,000 GF (US \$230). In some instances, judges' salaries are lower than those for equivalent government posts in other sectors, such as the executive or legislature, or even of their technical subordinates, the judicial police.<sup>94</sup> However, in most sectors civil servants have approximately the same salaries, in accordance with their level of training and education. Their salaries are in stark contrast with those of members of the military. According to Mohamed François Falcone of the anti-corruption commission, the highest salaries in Guinea go to the army: "an average salary in the army is about 2,000,000 GF [US \$302], meaning they are paid more than twice that of the highest paid judge. Civil servants, including judges, are paid too low to do their job correctly and survive. They turn to corruption instead."<sup>95</sup>

Judicial sector workers interviewed explained that the lack of adequate compensation for judges both undermined their independence and left them open to the solicitation or taking of bribes.<sup>96</sup> One judge with 36 years of service complained: "...my salary of 1 million GF (US \$151) per month is simply not enough to support a man and his family; to pay the electricity, the water, and school fees. If one day a judge's child is sick, it is not just temptation or weakness of character that makes him engage in unprofessional behavior."<sup>97</sup>

Kpana Emmanuel Bamba, president of the Guinea Chapter of Lawyers Without Borders, further explained:

Judges are not sufficiently paid. The military, however, is paid well—twice as much as judges—and regularly, including bonuses such as five sacks of rice each month! The salaries of judges are archaic and their offices are in poor conditions because of inadequate finances. It leads to corruption in the

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<sup>93</sup> According to UNDP's 2009 Human Development Report, the estimated average earned income in Guinea is US\$1,356 for men and US\$919 for women. Human Development Report 2009 - Guinea Country Factsheet, United Nations Development Fund, [http://hdrstats.undp.org/en/countries/data\\_sheets/cty\\_ds\\_GIN.html](http://hdrstats.undp.org/en/countries/data_sheets/cty_ds_GIN.html) (accessed November 10, 2010).

<sup>94</sup> European Union provisional mission report, "Mission d'identification des axes d'intervention dans le secteur de la Justice en République de Guinée," July 2010, author's possession.

<sup>95</sup> Human Rights Watch telephone interview with Mohamed François Falcone, February 22, 2011.

<sup>96</sup> Human Rights Watch interviews with Guinean judges, Conakry, June 3, 5, 7 and 9, 2010.

<sup>97</sup> Human Rights Watch interview with Guinean judge, Conakry, June 9, 2010; Human Rights Watch telephone interview with Guinean human rights and private law attorney, February 8, 2011; European Union provisional mission report, "Mission d'identification des axes d'intervention dans le secteur de la Justice en République de Guinée," July 2010, author's possession.

justice system, with judges accepting payment for deciding a case a particular way. Judges are not paid enough to pay rent, educate their children, take a car to go to the office, etc. The State is responsible for paying them and if it paid them adequately, they would be able to carry out justice transparently. Corruption is thus not just the judges' fault but also the State's. We must make this a priority in Guinea now, otherwise will keep seeing violations of justice and human rights.<sup>98</sup>

The outgoing president of the Guinean Bar Association said:

Judges insufficient salaries are completely derisory and corrupting, because judges feel the only option they have absent a decent salary is to turn to corruption if they want to keep their families alive. This doesn't justify corruption, of course; the position of judge is guided by oath and virtue, but it is hard to be true to it given the current levels of pay. For the justice system to be fair and functional, judges' salaries must be increased. The failure to correct this problem leads to endemic corruption and will have enormous implications for good governance.<sup>99</sup>

### *Lack of Funds for Defense*

Insufficient support for the judiciary also impacts the right to defense. There are no criminal defense lawyers affiliated with the Ministry of Justice. Any indigent adult defendant accused of a more serious crime and children accused of any class of crime have a legal right to defense counsel provided by the Guinean Bar, which by law is supposed to be remunerated by the Ministry of Justice. In practice, defense lawyers are rarely made available, largely because the Bar itself is under-resourced, having rarely been allocated funds by the Ministry of Justice.<sup>100</sup> Lawyers are supposed to receive 500,000 GF (US \$76) per dossier.<sup>101</sup> However, according to several lawyers interviewed by Human Rights Watch, the sum is far too low for the work they claim is required for the cases, and lawyers are rarely paid. One lawyer noted, "Indeed it's considered by us to be more like a gratuity."<sup>102</sup> More typically, defense lawyers are paid only if the client can afford it. Kpana Emmanuel Bamba, president of the Guinea

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<sup>98</sup> Human Rights Watch telephone interview with Kpana Emmanuel Bamba, February 22, 2011.

<sup>99</sup> Human Rights Watch telephone interview with the then-Head of the Guinean Bar Association Mohamed Sampil, February 22, 2011.

<sup>100</sup> Human Rights Watch telephone interview with Guinean human rights and private law attorney, February 8, 2011.

<sup>101</sup> Human Rights Watch interview with the then-Head of the Guinean Bar Association Mohamed Sampil, Conakry, June 7, 2010.

<sup>102</sup> Human Rights Watch group interviews with six lawyers, Conakry, June 7, 2010.

Chapter of Lawyers Without Borders, said the right to defense is often ignored: “The Ministry of Justice has grossly inadequate funds for judicial assistance. The absence of legal representation for indigent citizens is a real problem in Guinea; lawyers are rarely being paid for this function, a safeguard of the people’s rights.”<sup>103</sup>

This impacts directly on the quality of any defense counsel received by a defendant which many human rights defenders characterized as sorely lacking. A lawyer who worked within the *Maison Centrale* in 2007 cited as an example the case of a man on death row who said he had met his assigned lawyer for the first time at his trial. “His lawyer had never even bothered to meet with or interview him before the trial. At the trial the man was convicted and sentenced to death.”<sup>104</sup> Meanwhile, those tried for less serious crimes at the lower courts (the vast majority of cases) rarely have legal representation.<sup>105</sup>

## Independence of the Judiciary

Poor conditions of service and political interference regularly conspire to undermine the independence of the judiciary in both civil and criminal matters. Judges, prosecutors, and other lawyers told Human Rights Watch that during both the Conté and the CNDD regimes, they were regularly subjected, and in many cases, succumbed to pressure on how to act in a given case by members of government, the military, or businessmen.<sup>106</sup> This has contributed to the widely held perception that the powerful are above the law. Judicial personnel refusing to succumb to the pressure have at times been “punished” through transfers to other jurisdictions, often far from their home.<sup>107</sup> One judge explained that: “Under Conté we frequently got calls or they sent someone—at times a member of the army or a minister—to ‘discuss’ a case and let us know of their desired outcome.”<sup>108</sup> A lawyer representing a businessman from a mining company who had won a case against a competitor, said he received threatening phone calls, was followed by the military, and a group of armed soldiers stormed his office and threatened to detain him, his wife and his children unless he stopped representing his client, whose case was on appeal. The military similarly threatened the judge in the case, which occurred during the CNDD administration.<sup>109</sup>

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<sup>103</sup> Human Rights Watch telephone interview with Kpana Emmanuel Bamba, February 22, 2011.

<sup>104</sup> Human Rights Watch telephone interview with a lawyer, Washington DC, September 9, 2010.

<sup>105</sup> Human Rights Watch interviews with lawyers, Conakry, June 2-9, 2010.

<sup>106</sup> Human Rights Watch interviews with lawyers and judges, Conakry, April 2009 and June 2-9, 2010.

<sup>107</sup> Human Rights Watch interviews with lawyers, judges and Ministry of Justice personnel, June 2-9, 2010.

<sup>108</sup> Human Rights Watch interview with a Guinean judge, Conakry, June 9, 2010.

<sup>109</sup> Human Rights Watch interview with a lawyer, Conakry, April 2, 2009.

The potential for independence of the judiciary will be increased once the Superior Council of Judges (*Conseil supérieur de la Magistrature*), responsible for the discipline, selection, and promotion of judges, is established.<sup>110</sup> Human Rights Watch urges the government to constitute this body as quickly as possible.

### **Insufficient Numbers of Lawyers**

The rights of those who have been victim to or are accused of crimes, or who otherwise encounter the Guinean justice system are often left unprotected due to the limited number of lawyers, particularly outside of the capital Conakry. According to the head of the Guinean Bar Association, there were at this writing only 187 members of the bar, all but 10 of whom were based in the capital.<sup>111</sup> Nzérékoré, Guinea's second largest city with a population of 225,000 has four lawyers, while Kankan, Guinea's third largest city with a population of 200,000, has only three.

There are no focused legal aid clinics or other centralized providers in Guinea. Several NGOs help victims and detainees access free legal aid, but this is usually done intermittently, often with insufficient resources and only when the case falls into a particular group's subject-matter mandate. As a result, many victims are discouraged from taking their cases to court. Furthermore, a detainee whose right to legal defense is not met by the State has no obvious recourse to a known legal aid clinic or group.<sup>112</sup>

### **Need for Revision of Laws and Training**

Guinea needs to embark on a process to reform, codify into national law, revise or replace outdated laws that do not meet international human rights standards. Lawyers interviewed by Human Rights Watch gave as an example Guinea's very limited treatment of sexual abuse, which does not codify sexual harassment or other forms of aggression beyond rape. While Guinea has signed and ratified (or acceded to) nearly all major international laws and treaties, it has yet to codify many of them into national law. This is also true for many legal revisions of Guinean law and constitutional provisions that were never integrated into national law by way of an organic law or *décret d'application*. A key example is the 1991 law that created the Superior Council of Judges or *Conseil Supérieur de la Magistrature*, which aimed to make the judiciary independent but has never functioned because it lacks

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<sup>110</sup> Guinean Constitution, April 2010, chapter 8, arts. 111-112.

<sup>111</sup> Human Rights Watch interview with the then-president of Guinean Bar Association Mohamed Sampil, Conakry, June 7, 2010.

<sup>112</sup> Human Rights Watch telephone interview with Guinean human rights and private law attorney, February 8, 2011.

implementing law. Lawyers and judges also noted that their colleagues at times make decisions based on outdated laws, illuminating the need for training in Guinean law.<sup>113</sup>

## Detention-Related Abuses

Severe shortages of judicial personnel, poor record keeping, insufficient infrastructure and resources, and unprofessional conduct by individuals working in the judiciary and corrections sector has led to widespread detention-related abuses, notably prolonged pre-trial detention and dreadfully poor prison conditions.

### *Extended Pre-trial Detention*

An estimated 80 to 90 percent of those held in Guinea's largest prison, *Maison Centrale* in Conakry, have not been brought before a judge or been convicted of the offense which led to their detention; many have been held for more than five years without trial.<sup>114</sup> According to the Guinea chapter of *Avocats Sans Frontières*, about half, if not more, of detainees in the central prisons in Kindia, Faranah, and N'Zérékoré were being held in pre-trial detention as of April 2011. In Kindia, 108 out of 198 detainees were in pre-trial detention (54.54%); in Faranah, 18 out of 23 (78.26%); and in N'Zérékoré, 63 out of 134 (47.01%).<sup>115</sup> In 2006, Human Rights Watch interviewed a detainee who had been held for 15 years without trial.<sup>116</sup> The Guinean Code of Penal Procedure allows for those charged with more minor offenses or *délits* to be held in pre-trial detention for four months, while those charged with the most serious offenses or crimes can be held for six months.<sup>117</sup>

According to Dr. Soraya Laghfi, representative of the Support Association for Refugees, Displaced Persons, and Detainees (*Association de Soutien aux Réfugiés, Personnes*

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<sup>113</sup> Human Rights Watch interviews with lawyers, judges, Ministry of Justice personnel, Conakry, June 2-9, 2010.

<sup>114</sup> Human Rights Watch interviews with lawyers, judges and local and international humanitarian organizations, Conakry, June 2010. Extended pre-trial detention violates Guinea's obligations under international law. International Covenant on Civil and Political Rights (ICCPR), 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, ratified by Guinea January 24, 1978, art. 9(3) ("Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."); and African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Guinea February 16, 1982, art. 7 ("Every individual shall have [...] the right to be tried within a reasonable time by an impartial court or tribunal").

<sup>115</sup> *Avocats Sans Frontières* Guinée news release, N'Zérékoré, April 5, 2011.

<sup>116</sup> Human Rights Watch, *The Perverse Side of Things: Torture, Inadequate Detention Conditions, and Excessive Use of Force by Guinean Security Forces*, vol. 18, no. 7(A), August 2006, <http://www.hrw.org/node/11231>, p.12.

<sup>117</sup> Guinea Code of Penal Procedure, Law no. 037/AN/98 of December 31, 1998, sec. VII, arts. 142-1 (on correctional matters) and 142-2 (on criminal matters). Extensions by the investigating judge for additional time (four months for minor offenses and six months for serious crimes) can be requested, but this is very rarely done.



*Deplacées et Detenus*, ASWAR) only 168 out of the 998 detained at the time of writing in Guinea's *Maison Centrale* have been tried, convicted and sentenced. The situation is reported to be similar country-wide. Dr. Laghfiri described some of the more memorable cases:

We have people who've been in extended pre trial detention for four, five even six years for things as small as the theft of a chicken, a cell phone, or a pair of shorts. One man was here for so long we used to call him Nelson Mandela; he was in for 18 years on pre trial detention! A child was in for several years for stealing a mango. Another was in here for many years for stealing a small sack of charcoal, which he had returned.<sup>118</sup>

A major contributing factor to the problem of prolonged pre-trial detention is that, under Guinean law, individuals accused of a serious crime such as armed robbery, murder or rape may only be tried before the *cour d'assises*. Under Guinean law, a *cour d'assises* is required to hold a session once every four months and can sit for as long as needed. However, despite the growing caseloads, the *cours d'assises* meet very irregularly—several years in the last decade passed without a single session<sup>119</sup>—hearing only a small number of cases per session. Some 115 cases were programmed to be judged in 2010, however by November 2010, only one had been completed.<sup>120</sup> As a result, individuals accused of a serious crime are often made to wait years for a trial.

### *Inadequate Prison Conditions*

Prisons and detention centers in Guinea have for years been severely overcrowded and operate far below international standards for adequate nutrition, healthcare and sanitation.<sup>121</sup> Guinea's largest prison, the *Maison Centrale*, was built in 1930 for 250 to 300 detainees, but at this writing holds approximately one thousand detainees. Lawyers said in recent years it has been as high as 1, 400.<sup>122</sup> Representatives from ASWAR noted that prison officials in the *Maison Centrale* receive only three sacks of rice per day to feed the entire prison population; they said the high number of deaths in detention—35 in 2009 and 15 between January and November 2010—is in large part a result of chronic malnutrition, which

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<sup>118</sup> Human Rights Watch interview with Dr. Soraya Laghfiri, Conakry, June 5, 2010; and Human Rights Watch telephone interview with Dr. Soraya Laghfiri, September 8, 2010.

<sup>119</sup> Human Rights Watch telephone interview with Guinean human rights and private law attorney, February 8, 2011.

<sup>120</sup> Human Rights Watch telephone interview with a member of the Guinean Bar, Conakry, November 19, 2010.

<sup>121</sup> See Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990).

<sup>122</sup> Human Rights Watch interview with human rights lawyers, Conakry, June 3, 2010, and June 5, 2010.

leaves detainees unable to fight off often treatable illnesses.<sup>123</sup> While recent efforts by international organizations have led to improvements in health conditions in the *Maison Centrale*, conditions elsewhere remain deplorable. In a 2009 report, Doctors Without Borders (MSF) reported that one in three adult male prisoners held in the Guéckédou Prison, in south-eastern Guinea, suffered from malnutrition, with one in five suffering severe malnutrition.<sup>124</sup> Across the country, prisoners suffer from appalling hygienic conditions, which lead to rampant skin and respiratory infections.<sup>125</sup>

Other concerns include the failure by prison officials to separate pre-trial detainees and convicted prisoners, men from women, and, in some centers, children from adults. All prisons in Guinea house all categories of inmates together. During a visit to the *Maison Centrale* in June 2010, a Human Rights Watch researcher observed children as young as 13 milling about in the general prison courtyard with men who told her they had been convicted of capital crimes, including murder.<sup>126</sup> In Géckékou, MSF observed overcrowded cells housing minors together with adults and prisoners suffering from tuberculosis.<sup>127</sup>

Guinea's prisons were for many years staffed almost entirely by "volunteer" guards, several of whom told Human Rights Watch that they compensated themselves largely by extorting money from prisoners and their families. About 10 guards interviewed by Human Rights Watch in June 2010 confirmed this practice; most of them said they had not been paid by the Ministry of Justice, under whose authority they fall, for between seven to ten years.<sup>128</sup> While a corps of 600 professional prison guards was established in July 2010, they only began receiving monthly salary payments in December 2010.<sup>129</sup> According to sources in the anti-

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<sup>123</sup> Human Rights Watch interview with Dr. Soraya Laghfiri, Conakry, June 5, 2010; and email correspondence, September 24, 2010.

<sup>124</sup> Doctors Without Borders, "No food or medicine here until you die: MSF exposes emergency nutritional and medical needs in Guinean prisons," February 2009, [http://www.msf.org/source/countries/africa/guinea/2009/reports/MSF\\_prisons\\_guinea.pdf](http://www.msf.org/source/countries/africa/guinea/2009/reports/MSF_prisons_guinea.pdf) (accessed September 13, 2010).

<sup>125</sup> Ibid.

<sup>126</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted November 29, 1985, G.A. Res. 40/33, rule 13.4, which states: "that Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults."

<sup>127</sup> Doctors Without Borders, "No food or medicine here until you die: MSF exposes emergency nutritional and medical needs in Guinean prisons," February 2009, [http://www.msf.org/source/countries/africa/guinea/2009/reports/MSF\\_prisons\\_guinea.pdf](http://www.msf.org/source/countries/africa/guinea/2009/reports/MSF_prisons_guinea.pdf) (accessed September 13, 2010).

<sup>128</sup> Human Rights Watch interviews with prison guards, Conakry, June 5, 2010.

<sup>129</sup> Human Rights Watch interviews with prison guards and humanitarian organizations working in the prisons, November 20 and 21, 2010; Human Rights Watch telephone interviews and email correspondence with Dr. Soraya Laghfiri, February 3-8, 2011.

corruption commission and the Guinean Bar Association, however, these payments have now been regularized.<sup>130</sup>

President Condé's Minister of Justice, Christian Sow, has readily acknowledged the many serious problems within the judiciary.<sup>131</sup> From March 28-30, 2011, the Ministry of Justice organized a national forum (*Etats Généraux de la Justice*) which brought together justice ministry personnel, lawyers, judges, police, religious leaders, and international partners to analyze the current state of the judiciary. The forum concluded with numerous relevant and promising recommendations to improve the current state of affairs, including the prompt establishment of the Superior Council of Judges, an increase in the budget for the Ministry of Justice to address the low remuneration and insufficient material support for judges and other personnel, the establishment of two new criminal courts (*cours d'appel*) in Labé and N'zérékoré, and other measures to address corruption and lack of judicial independence.<sup>132</sup> Human Rights Watch urges the government to waste no time in implementing these very pertinent recommendations.<sup>133</sup>

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<sup>130</sup> Human Rights Watch telephone interviews with Mohamed François Falcone and Mohamed Sampil, February 22, 2011.

<sup>131</sup> "La Guinée opte pour les états généraux de la justice," Pana, March 3, 2011, <http://www.afriquejet.com/afrique-de-l'ouest/guinee/la-guinee-opte-pour-les-etats-generaux-de-la-justice-201103033465.html> (accessed April 20, 2011).

<sup>132</sup> "Fin des états généraux de la justice: les magistrats proposent, Alpha Condé s'engage," Guineenews, March 30, 2011, <http://www.guineenews.org/articles/detail.asp?num=201133022428.html> (assessed April 25, 2011).

<sup>133</sup> "Les grandes recommandations des états généraux de la justice guinéenne," GuineeTV1, March 31, 2011, <http://www.guineetv1.com/?p=4757> (accessed April 20, 2011).

## V. Independent National Human Rights Institution

Articles 146-148 of Guinea's new constitution, promulgated on April 19, 2010, mandates the establishment of Guinea's first-ever independent national human rights institution, responsible for the promotion and protection of human rights. The composition, organization, and precise duties are to be established by future legislation.<sup>134</sup>

An independent and impartial national human rights institution can play an important role in strengthening a culture of respect for human rights as Guinea transitions from a largely authoritarian government to one based on the rule of law. Not only can it monitor and report on any ongoing human rights violations, but also make recommendations to improve more chronic problems, such as the mistreatment of criminal suspects, substandard prison conditions, and abuses associated with child labor, trafficking, and mistreatment. The establishment of an official state body devoted to human rights can also create an official space for human rights discourse, build a bridge between local human rights groups and the government, and extend an umbrella of protection to human rights defenders.

On March 17, 2011 President Condé issued a presidential decree establishing the National Human Rights Commission (*Commission Nationale des Droits de l'Homme*) and appointing as Chairman Mamady Kaba, former president of the Guinea chapter of the African Assembly for the Defense of Human Rights (RADDHO).<sup>135</sup>

While Human Rights Watch encourages the president's commitment to a national human rights body, especially as called for by the new constitution, there are significant concerns about the decree process and its implications for independence and transparency. Notably, Human Rights Watch is concerned that the commission was established by the president rather than by parliament and in the absence of a proper consultative process with civil society, in contravention of the United Nations Principles relating to the status of national institutions (the Paris Principles).<sup>136</sup>

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<sup>134</sup> A former body created under President Conté, the National Observatory for Democracy and Human Rights was envisioned to be a precursor to a national human rights commission. However, it was plagued with lack of funding, logistical support and political will and was never made operational.

<sup>135</sup> "Décrets : Alpha Condé crée une Commission Nationale des Droits de l'Homme," Guineenews, March 18, 2011, <http://www.guineenews.org/articles/detail.asp?num=201131813928> (accessed April 15, 2011).

<sup>136</sup> Principles relating to the Status of National Institutions ("The Paris Principles"), adopted December 20, 1993, G.A. Res. 48/134, annex, <http://www2.ohchr.org/english/law/parisprinciples.htm> (accessed September 22, 2010).



Guinean police detain a supporter of UFDG presidential candidate Cellou Dalein Diallo during a an episode of election-related violence in Conakry, Guinea, Monday November 15, 2010. © AP Photo/Jerome Delay

Human Rights Watch urges the new government to ensure independence from the presidency in making the commission operational, including in appointments and financing, in compliance with the Paris Principles and best practices of human rights commissions. The creation of a strong, independent, and sufficiently-financed and impartial body can play a meaningful role in helping develop a culture of respect for human rights and the rule of law in Guinea.

## VI. The Security Sector: Vector of Instability or Guarantor of Security?

*During the Conté and CNDD years, the military were everywhere—patrolling the streets, within the offices of ministers, sitting on the boards of public companies, doing financial deals on extractive resources, controlling legitimate and illicit businesses. The political and economic power they had fueled impunity; their actions were accountable to few and had little to do with their mandate—defense and security. At present, the army is confused about what their new role in society should be—if it is purely defense, then what are the threats, and how many soldiers do they really need to respond? The army needs to do a lot of thinking about what they should and should not be doing in a truly democratic Guinea.*

—Security sector reform expert on the Guinean military<sup>137</sup>

President Condé has inherited a security sector steeped in a culture of unprofessionalism, indiscipline, and impunity. The security services—the army, the gendarmerie, and the police—have in recent years been more of a vector of instability than guarantor of national security. They have also enjoyed near-complete impunity for the very serious crimes in which they have been frequently and credibly implicated, including extortion, banditry, theft, kidnapping, racketeering, and excessive use of lethal force.<sup>138</sup>

Security sector analysts, members of the military, policemen, and civil society leaders signaled the historical use of the army for partisan ends as a key dynamic that the new administration must address. They noted how Guinea’s authoritarian presidents used the security services to consolidate their political control by repressing political opponents, influencing the outcome of elections, and intimidating the judiciary. As senior officers were made ministers, governors, and prefects, and others were rewarded with contracts or business opportunities to ensure their loyalty to the political elite, the upper echelons of the

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<sup>137</sup> Human Rights Watch interview with security sector analyst, West Africa, September, 2010.

<sup>138</sup> For a history of the Guinean military’s involvement in the apparatus of the state, particularly during the Sékou Touré era, see Mohamed Saliou Camara, “From Military Politization to Militarization of Power in Guinea-Conakry,” *Journal of Political & Military Sociology*, vol. 28, no. 2, 2000.

military hierarchy grew to wield an inappropriate degree of influence on the economic and political life of the country.<sup>139</sup>

Most recently, the security forces demonstrated a lack of neutrality when responding to election-related violence in October and November 2010. During the violence, many soldiers, gendarmes, and policemen, very few of whom come from the Peuhl ethnic group, appeared to disproportionately crack down on members of Peuhl ethnicity, which largely supported candidate Cellou Dallein Diallo. Additionally, they frequently used ethnic slurs against Peuhls, collaborated with civilian mobs from ethnic groups that largely supported Condé, and in several cases looted and stole property from people who were perceived to have supported Diallo during the violence.<sup>140</sup> Although the security forces may have sought to quell the violence that seized Guinea, they failed to provide equal protection to all Guineans.

Two other dynamics appear to have contributed to the persistent levels of abuses committed and impunity enjoyed by the security forces: the rapid growth of the army and the lack of political will to ensure discipline and accountability for abuses.

## Rapid Growth of the Army

Since 2001 the Guinean army has swelled from 10,000 troops to its current estimated size of 45,320.<sup>141</sup> A large number of soldiers who joined the army during this period of rapid expansion did not go through the established recruitment procedures and received inadequate, if any, training, including on human rights norms.<sup>142</sup> The largest increases followed a series of cross-border attacks on Guinea by Sierra Leonean rebels and Liberian

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<sup>139</sup> Human Rights Watch interviews Conakry; and see Mohamed Saliou Camara, "From Military Politization to Militarization of Power in Guinea-Conakry," *Journal of Political & Military Sociology*, vol. 28, no. 2, 2000.

<sup>140</sup> "Guinea: Ensure Fair Trials in Post-Election Violence: Investigate Death in Custody and Arbitrary Detentions at Unauthorized Site," Human Rights Watch news release, November 24, 2010, <http://www.hrw.org/en/news/2010/11/24/guinea-ensure-fair-trials-post-election-violence>; "Guinea: Witnesses Describe Security Force Excesses: New President Needs to Rein in Security Personnel, Ensure Political Neutrality," Human Rights Watch news release, November 29, 2010, <http://www.hrw.org/en/news/2010/11/29/guinea-witnesses-describe-security-force-excesses>; "Guinea: Ensure Restraint by Security Forces During Elections," Human Rights Watch news release, November 5, 2010, <http://www.hrw.org/en/news/2010/11/05/guinea-ensure-restraint-security-forces-during-elections>; "Guinea: Civil Society Groups Urge Restraint," Human Rights Watch news release, November 4, 2010, <http://www.hrw.org/en/news/2010/11/04/guinea-civil-society-groups-urge-restraint>.

<sup>141</sup> "Rapport d'évaluation du Secteur de Sécurité en Guinée: Avant-projet de rapport," Joint Project of the ECOWAS, African Union, and United Nations, May 2010, author's possession, art. 72 (The national armed forces are divided into three branches—the Army, the Navy (Armée de Mer or Marines Guinéennes, which includes Marines), and the Air Force (Force aérienne de Guinée)). The report noted the current numbers within the security sectors as follows: 2,675 in the army, 2,703 in the air force, 2,806 in the navy, and 13,059 in the national gendarmerie. Regional security sector analysts suggest these estimates, given by Guinean military officers, may be exaggerated in anticipation of recommendation to downsize; Human Rights Watch interview, Dakar, September, 9 2010.

<sup>142</sup> Human Rights Watch interviews with soldiers and military analysts, Conakry, April-October 2009 and June 2-9, 2010; and Dakar, September 9, 2010.



government forces (2000-2001), during which there were “waves of unregulated recruitment.”<sup>143</sup>

While the 2000-2001 threats undoubtedly necessitated some growth, analysts interviewed by Human Rights Watch believed that the insecurity was in large part used to further consolidate the ruling party’s hold on political power and justify unnecessary increases in military expenditures to secure that power.<sup>144</sup> One international security sector expert told Human Rights Watch that Guinea simply does not need a military of this size.<sup>145</sup> Interestingly, Senegal, whose population is two million more than Guinea’s 10.8 million<sup>146</sup> and has been fighting a separatist movement off and on since 1990, has only 18,620 troops (including paramilitaries).<sup>147</sup> Uganda, whose population is three times that of Guinea<sup>148</sup> and is still grappling with a vicious insurgency, has an estimated 46,800 troops (including paramilitaries), roughly the same size as the Guinean military.<sup>149</sup>

Largely as a result of this rapid growth, the army has consumed a large portion of the national budget. This disparity with justice, health and education is clearly illuminated in the relative budgets of these sectors. While the military was allocated 33.5 percent (2010), 24 percent (2009), 12.65 percent (2008) and 12.12 percent (2007) of the annual national budget over the past four years, the Ministry of Justice received about one-hundredth of these amounts: 0.44 percent, 1.32 percent, 0.37 percent, and 0.23 percent respectively for 2010-2007. With similarly low allocations in 2010, health care received just 1.7 percent and pre-university education 7 percent of the national budget.<sup>150</sup>

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<sup>143</sup> International Crisis Group: Guinea: Reforming the Army, report no. 164, September 23, 2010, <http://www.crisisgroup.org/en/regions/africa/west-africa/guinea/164-guinea-reforming-the-army> (accessed September 25, 2010), p. 7.

<sup>144</sup> Human Rights Watch interviews with Guinean military officers and military analysts, Conakry, June 4 and 8; and Dakar, September 9, 2010. See also Alexis Arieff, *Still Standing: neighborhood wars and political stability in Guinea*, Journal of Modern African Studies (Cambridge: Cambridge University Press, 2009), pp. 340-342.

<sup>145</sup> Human Rights Watch interview with military analyst, Conakry, June 8, 2010.

<sup>146</sup> Population Reference Bureau, “2010 World Population Data Sheet,” [http://prb.org/pdf10/10wpds\\_eng.pdf](http://prb.org/pdf10/10wpds_eng.pdf) (accessed September 8, 2010).

<sup>147</sup> International Institute for Strategic Studies, *The Military Balance 2009* (New York: Routledge, 2009), p. 316. A 2001 ceasefire and peace deal between the government of Senegal and the Movement of Democratic Forces of Casamance (MFDC) resulted in a significant reduction in hostilities. However, after the MFDC split, also in 2001, low-level fighting has continued in the region.

<sup>148</sup> The population of Uganda is 33.8 million as of mid-2010. Population Reference Bureau, “2010 World Population Data Sheet,” [http://prb.org/pdf10/10wpds\\_eng.pdf](http://prb.org/pdf10/10wpds_eng.pdf) (accessed September 8, 2010).

<sup>149</sup> International Institute for Strategic Studies, *The Military Balance 2009* (New York: Routledge, 2009), p. 324.

<sup>150</sup> Human Rights Watch email correspondence with Ministry of Finance official, September 21, 2010 and February 11, 2011; European Union provisional mission report, “Mission d’identification des axes d’intervention dans le secteur de la Justice en République de Guinée,” July 2010, author’s possession.

The army's rapid growth, combined with deep cleavages between poorly paid junior officers and better-paid senior officers resulted in a disintegration of effective command and control within the ranks. Junior officers accused their superiors of embezzling substantial sums of the budget that could have gone to improve the conditions of service for the rank and file. To address the inequity, younger officers used mutinies and threats of violence to leverage pay increases and promotions,<sup>151</sup> which were not tied to merit, years in service, training, or coursework.<sup>152</sup>

The vicious cycle of army revolts, payoffs designed to placate officers, and threats of further instability has contributed to an entrenched culture of indiscipline and insubordination by the rank and file and younger officers. For their part, senior officers have been reluctant or unable to discipline their subordinates, much less refer them to the national judiciary for prosecution for acts of indiscipline, criminality, or other abuses, while the overarching climate of impunity has led to the involvement of senior officers in serious crimes like drug trafficking.

### **Inadequate Political Will to Ensure Discipline and Accountability for Abuses**

The legal framework for investigating and sanctioning soldiers who engage in indiscipline, common crimes, and military offenses has rarely been utilized, reflecting a lack of political will to address lawlessness and impunity within the ranks. The result is a profound sense by ordinary Guineans that members of the security services are simply beyond reproach.

Lawyers and human rights defenders interviewed by Human Rights Watch said they were unaware of a single case in which a soldier implicated in a theft, beating, murder, or rape of a non-combatant had been held accountable by a court of law.<sup>153</sup> Victims of crimes perpetrated by soldiers explained that the only practical way for them to obtain some semblance of justice was by appealing informally to a superior officer who could wield influence over the

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<sup>151</sup> From 2007 through November 2009, the military received no less than four collective promotions (and corresponding pay rises); in July 2010, a subsequent promotion by one rank of corporals through majors was given to reward the military for maintaining discipline during the first round of the elections. "Guinea gives soldiers boost after peaceful election," Reuters, 4 July 2010.

<sup>152</sup> For example, in 1996, several thousand malcontent troops shelled and set on fire the presidential palace. In response, then-President Conté increased their salaries and benefits. In May 2008, junior officers staged another mutiny during which they took the official in charge of army finances hostage and demanded that all of the generals resign. In response, the government agreed to an immediate payment of one million Guinean francs (about 146 Euros or 226 USD) per soldier with promises of further increases. United States Department of State, Bureau of African Affairs, "Background Note: Guinea," <http://www.state.gov/r/pa/ei/bgn/2824.htm> (accessed September 9, 2010); "Guinea Soldiers Hold Paymaster in Mutiny," VOA News, May 27, 2008, <http://www.voanews.com/english/news/a-13-2008-05-27-voa48-66648257.html> (accessed September 21, 2010).

<sup>153</sup> Human Rights Watch interviews with lawyers and human rights defenders, Conakry, June 2-9, 2010.

alleged perpetrator.<sup>154</sup> For example, during the year of CNDD rule, a Human Rights Watch researcher visiting the Alpha Yahah military camp spoke with over a dozen civilians attempting to meet with senior officers to advocate for the return of their cars, computers, building materials, and other merchandise that armed men in uniform had stolen.<sup>155</sup>

In principle, members of the military who commit common crimes should be held accountable within the Guinean judicial system, while those that commit crimes such as treason, abuse of authority, desertion, disobedience, and insubordination, should be tried by a military tribunal, established by law in 1985.<sup>156</sup> In practice, the fear of reprisal from soldiers and lack of confidence in the judicial system prevents the vast majority of victims from reporting crimes to the judicial system. These factors, combined with the intimidation of plaintiffs and judicial personnel by members of the military and their allies, has resulted in few, if any cases of common crimes committed by soldiers, coming before the national courts.<sup>157</sup>

Meanwhile, authorities have never staffed, funded or made the military tribunal operational. As a result soldiers accused of military infractions are almost always arbitrarily detained in formal or informal detention centers—usually within gendarme or military camps—and denied access to due process.<sup>158</sup> Those accused of less serious crimes of indiscipline or insubordination are typically held for a number of days or weeks to penalize them, the “sentence” determined informally by their superiors.

Detained military personnel are typically subjected to physical abuse and inhumane conditions.<sup>159</sup> Those detained for committing more serious offenses like treason were, according to soldiers and lawyers, typically tortured or even extra-judicially executed.<sup>160</sup> An example was the torture and killing of at least seven soldiers allegedly implicated in the December 3, 2009 assassination attempt against Dadis Camara. Human Rights Watch interviewed about 25 soldiers detained in connection with this crime who described how they witnessed seven of their colleagues beaten, knifed, or strangled to death and were

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<sup>154</sup> Human Rights Watch interviews with lawyers, human rights defenders, and victims, 2009, and June 2-9, 2010.

<sup>155</sup> Human Rights Watch interviews, Conakry, March 30-April 1, 2009, and June 18-19, 2010.

<sup>156</sup> The military court in Guinea was created by Order No. 153/PRG/85, and it is based in Conakry.

<sup>157</sup> Human Rights Watch interviews with lawyers, prosecutors, judges, soldiers, and military analysts, Conakry, June 2-9, 2010.

<sup>158</sup> Human Rights Watch interviews with lawyers, soldiers, judicial sector experts, 2007-2009, June 2-9, 2010. See “Guinea: Plan Elections and Hold Rights Abusers Accountable,” Human Rights Watch press release and letter, January 21, 2009; “Guinea: Coup Leaders Undermining Rights – Six Months After Coup, More Abuses and Promised Restoration of Democracy Off Track,” Human Rights Watch press release, July 8, 2009.

<sup>159</sup> Human Rights Watch interviews with soldiers, lawyers, security sector analysts, 2008, 2009, June 2-9, 2010.

<sup>160</sup> Human Rights Watch interviews with lawyers, soldiers, judicial sector experts, 2007-2009; June 2-9, 2010.

themselves beaten and tortured inside Camp Alpha Yayah. Several had scars on their elbows, back, and elsewhere that they said were a result of the torture.<sup>161</sup>

## Police

Guinean policemen and women engage in frequent unprofessional and often criminal behavior including extortion, soliciting bribes from detainees, and excessive use of force, including torture. The police, which fall under the authority of the Ministry of Security (*Ministre de la Sécurité et de la Protection Civile*) is characterized by the same lack of internal and external oversight as the army. A Police Disciplinary Council, mandated to discipline and sanction policemen and women, is largely dysfunctional, as explained by the Director General of Police, Mohamed Gharé:

Members of the police force are severely underpaid, compared with other members of the security services, and we are in great need of training. These problems give rise to both moral and professional corruption. We have problems with discipline which are supposed to be addressed through a Disciplinary Counsel which can even relieve a policeman of his duties. However, this system has functioned very poorly; very few are disciplined, much less fired. These are some of the things we need to urgently deal with.<sup>162</sup>

Because of the small number of policemen—only 10,588—and chronic lack of logistics, they are unable to perform many traditional police functions: routine traffic checks, immigration formalities, and investigating organized crime and drug trafficking. The gendarmerie and military have taken over some of these functions, leading to demoralization in the police force and consequent strengthening of military control over state affairs.<sup>163</sup>

Police officers have also been victimized by the military. Ironically, a 2008 police mutiny for better conditions of service was violently put down by the same military that one month earlier had launched its own successful mutiny for the same reason. In the process, at least eight policemen were killed, many others were beaten and tortured, and several police stations were looted.<sup>164</sup>

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<sup>161</sup> Human Rights Watch interviews with detainees in Maison centrale prison, Conakry, June 5, 2010.

<sup>162</sup> Human Rights Watch interview with Director of Police Mohamed Ghare, Conakry, June 8, 2010.

<sup>163</sup> Ibid.; “Rapport d’évaluation du Secteur de Sécurité en Guinée: Avant-projet de rapport,” Joint Project of the ECOWAS, African Union, and United Nations, May 2010, author’s possession.

<sup>164</sup> Human Rights Watch interviews with policemen, February and March 2009.

## Need for Security Sector Reform

In 2009 ECOWAS, the UN, and the AU launched a security sector reform initiative envisioned to identify problems and recommend ways to address these problems. The effort is broadly aimed at subjecting the security services to civilian oversight, reducing the bloated numbers of the army, and ensuring fiscal transparency. Findings by the group were presented in a report to the Guinean transitional government in May 2010. The report's over 150 well-founded recommendations to professionalize the sector are meant to serve as the operational roadmap for reform.



Soldiers patrol on a vehicle near the international airport in Conakry, October 05, 2009. © Reuters/Luc Gnago (Guinea Military)

While the Guinean military has agreed in principle on the need for change within the security sector, there is a lack of consensus between international and Guinean actors about the precise definitions and goals of the reform effort. Many in the army who stand to lose from downsizing and the closure of erstwhile avenues of illicit enrichment are ambivalent about change and prefer to see the reform effort as a way to increase material resources to soldiers, including barrack refurbishment and upgrades in logistics and equipment. Others, long suspicious of civilian rule in general, are deeply opposed to subjecting the fiscal, operational, and policy aspects of the army to civilian control.

The new government should act quickly to build on the momentum created by the ECOWAS/UN-led initiative and recent efforts to improve discipline. Failure to address the impunity and indiscipline within the security services will not only embolden soldiers to commit continued abuses against civilians, but may also threaten Guinea's fragile transition to civilian rule and squash the chance for ordinary Guineans to be free of the state-sponsored abuses that have so tragically characterized the recent past.

## VII. Impunity for Economic Crimes

*Every contact we have with the state involves the illicit transfer of money. From the moment I step out of my house until the time I return I pay bribes. When I drop off my children at [the State] school the teacher says, “Don’t forget a nice little present or they may not get good marks.” To get into a meeting with an official, I have to pay the clerk. To get the paper I came to get, I have to pay the secretary. When I move from office to office, I get stopped and have to pay the police. When my cousin died, we had to pay the morgue attendant to take his body. In order for my wife to get a job at the ministry I had to pay 3 million [Guinean francs, or US\$454], no receipt. It’s relentless. If you’re an honest, moral man, you can’t survive in this system. It’s only God looking out for us.*

—Guinean businessman<sup>165</sup>

For decades Guineans’ access to basic health care, education, and other economic rights has been impeded by endemic corruption and the gross mismanagement of revenue from Guinea’s vast natural resources. From the petty corruption and bribe-solicitation perpetrated by frontline civil servants to the extortion, embezzlement, and illicit contract negotiations that take place in the shadows, the perpetrators of economic crimes are rarely investigated, much less held accountable.

Guinea’s new leaders and international partners must ensure that efforts to address impunity extend as well to the perpetrators of economic crimes. To do this, the new president must establish, adequately fund, and empower a credible and independent anti-corruption commission. He must also take preventative measures by demanding complete transparency in the negotiation of contracts between the Guinean government and foreign and Guinean mining companies; setting up effective revenue accounting mechanisms; and signing on to the Extractive Industries Transparency Initiative (EITI), a voluntary international effort to promote reporting of company payments and government profits from oil, gas, and mining resources through a coalition of governments, private companies, civil society groups, investors and international organizations.<sup>166</sup> The new government must also ensure information on government revenues and expenditures are made easily accessible and presented in a form that can be understood by the public.

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<sup>165</sup> Human Rights Watch interview with Guinean businessman, Conakry, June 4, 2010.

<sup>166</sup> See the webpage of the Extractive Industries Transparency Initiative, <http://eiti.org/eiti> (accessed February 16, 2011).



Guinea hosts one of the world's largest reserves of bauxite, the raw material used to make aluminum, and billions of dollars worth of iron ore, diamonds, and gold.<sup>167</sup> In September 2010 an oil exploration company suggested that its Guinea concession might hold some 2.3 billion barrels of prospective oil resources.<sup>168</sup> Despite these resource riches and its relatively small population, Guinea is one of the world's poorest countries, ranked 156<sup>th</sup> out of 169 countries on the United Nations Human Development Index<sup>169</sup> Guineans also suffer some of the world's worst quality-of-life indicators: adult literacy is only 29.5 percent,<sup>170</sup> while nearly one in 10 infants dies in its first year.<sup>171</sup>

These striking levels of poverty and Guinea's dismal infrastructure, in a state of near total collapse, suggest that the wealth derived from Guinea's resources has largely been squandered by a corrupt political elite. Guinea is one of the world's most corrupt countries and the seventh most corrupt country in sub-Saharan Africa, according to Transparency International.<sup>172</sup>

Ministry of Finance officials, foreign diplomats, businesspeople, and ordinary Guineans interviewed by Human Rights Watch described exceedingly high levels of corruption within both the public and private sectors. Guinean men and women described having to bribe civil servants in order to obtain birth certificates, land titles, driving licenses, and building permits. They also pay to secure entrance for children into public school, receive treatment in a public clinic, secure employment or file a police report.

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<sup>167</sup> "FACTBOX-Guinea's major mining operations," Reuters, June 24, 2010, <http://af.reuters.com/article/guineaNews/idAFLDE65M19Z2o10o624?sp=true> (accessed September 21, 2010).

<sup>168</sup> "Hyperdynamics Says Guinea Concession May Hold 2.3 Billion Barrels of Oil," Bloomberg, September 8, 2010, <http://www.bloomberg.com/news/2010-09-08/hyperdynamics-says-guinea-concession-may-hold-2-3-billion-barrels-of-oil.html> (accessed September 21, 2010).

<sup>169</sup> United Nations Development Programme, "Human Development Index (HDI) – 2010 rankings," 2010, <http://hdr.undp.org/en/statistics/> (accessed April 14, 2011); UNDP, "Guinea: Country profile of human development indicators," <http://hdrstats.undp.org/en/countries/profiles/GIN.html> (accessed April 14, 2011).

<sup>170</sup> United Nations Development Programme, "Guinea: Country profile of human development indicators," <http://hdrstats.undp.org/en/countries/profiles/GIN.html> (accessed April 14, 2011).

<sup>171</sup> Population Reference Bureau and United Nations Population Fund (UNFPA), "Country Profiles for Population and Reproductive Health: Policy Developments and Indicators 2009/2010," 2010, <http://www.prb.org/pdf10/unfpacountryprofiles.pdf> (accessed September 21, 2010), p. 56.

<sup>172</sup> In 2010, Transparency International ranked Guinea 164th out of 178 countries. Transparency International, "Corruption Perceptions Index 2010 Results," [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://transparency.org/policy_research/surveys_indices/cpi/2010/results) (accessed April 25, 2011).



Pigs look for food in a garbage dump behind an abattoir. Despite abundant natural resources, Guinea ranks among the world's poorest countries on the United Nations Human Development Index. © 2010 Dirk-Jan Visser/Redux Pictures

Ministry of Finance personnel and high-level government officials described how senior government civil servants, including ministers, embezzled huge sums of money, sometimes instructing payers to make deposits directly into their personal bank accounts.<sup>173</sup> They cited incidents that they alleged demonstrated falsification of receipts, ghost workers on the public payroll, and widespread failure by ministry officials to comply with procurement regulations. Officials from the finance and audit ministries complained that many contracts are decided without study or approval by the director of public procurement but rather, are “dished out in flagrant violation of the codes and on the basis of friendship, ethnicity, and political expediency.”<sup>174</sup>

They noted how the military budget in particular has for many years suffered from a complete lack of transparency: there have been no audits or record-keeping and there is no

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<sup>173</sup> Human Rights Watch interview with officials from the Ministry of Finance and Prime Minister's office, Conakry, June 8-10, 2010.

<sup>174</sup> Human Rights Watch interview with Ministry of Finance official, Conakry, June 8, 2010.

oversight of military spending from the Ministry of Finance and Parliament.<sup>175</sup> Contracts to purchase military equipment and uniforms and to improve infrastructure are rewarded without adherence to legal procurement procedures.<sup>176</sup> Ministry of Finance officials told Human Rights Watch that on several occasions military officers, serving under the regimes of both President Conté and Dadis Camara, withdrew money directly from the Central Bank, completely devoid of procedure.<sup>177</sup>

Meanwhile negotiations for huge natural resource contracts are often negotiated and signed without due adherence to the established procedure, which includes oversight by the Ministry of Finance and ratification by the National Assembly.<sup>178</sup> For their part, businesspeople said officials at all levels often demand bribes.<sup>179</sup> A foreign diplomat described yet another manifestation of corruption—the lack of control over public property:

When Conté died, many of his former ministers and their employees simply stole all the cars, computers, and office equipment they'd been using. When the CNDD came in, they had nothing. Then when the CNDD left, many of its people did the same. There is no control. We are loath to support the government's demands for more aid when we see former ministers from consecutive regimes running around in the state vehicles we donated the last time!<sup>180</sup>

The complete lack of financial control that is seen in Guinea today has been decades in the making. As noted by a senior civil servant who has worked within the Ministry of State Control, “During the latter years of Conté's time, corruption set in to such a degree—it was like the state was rotting from the inside out. Everyone was involved—members of government, the first family, the military. It was too much; there was nothing we could do to stop it.”<sup>181</sup>

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<sup>175</sup> “Rapport d'évaluation du Secteur de Sécurité en Guinée: Avant-projet de rapport,” Joint Project of the ECOWAS, African Union, and United Nations, May 2010, author's possession; and Human Rights Watch interviews with military analysts, Conakry, June 8, 2010, and with security sector analyst, Dakar, September 9, 2010.

<sup>176</sup> Human Rights Watch interview with Ministry of Finance official, Conakry, June 8, 2010.

<sup>177</sup> Human Rights Watch interview with Ministry of Finance official, Conakry, June 8, 2010.

<sup>178</sup> Human Rights Watch interviews with Ministry of Audits and State Control official and Ministry of Finance officials, Conakry, June 4 and 8, 2010.

<sup>179</sup> Human Rights Watch interviews with businessmen, Conakry, June 2009, June 2010, and in Dakar, October 2010.

<sup>180</sup> Human Rights Watch interview with diplomat, Conakry, June 7, 2010.

<sup>181</sup> Human Rights Watch interview with Ministry of Audits and State Control official, Conakry, June 4, 2010.



Pigs look for food in a garbage dump behind an abattoir while men wash themselves in the sea. Guinea ranked 156th out of 169 countries on the United Nations Human Development Index in 2010. Conakry, Guinea. © 2010 Dirk-Jan Visser /Redux

In large part as a result of pressure applied by the diplomatic community and international financial institutions, by 2009 Guinea had established many protocols, procedures, and laws to improve its economic governance. In terms of international protocols, Guinea has signed but not ratified the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption.

Many of the reforms were put in place with a view toward relieving its international debt under the Heavily Indebted Poor Countries Initiative (HIPC). These reforms included codes to govern public expenditures, public procurement, and negotiation of mining contracts. However, ministry personnel often circumvented and disrespected the protocols. As noted by a Ministry of Finance official:

We have a mining code, a code which governs procurement, an inspector general of finance, a ministry in charge of state expenditures, Court of Audit (*Chambre des comptes*) and a Good Governance Commission—all of the institutions a Francophone system usually has to ensure good economic

governance. But they are ignored. No, it is the political will to abide by them faithfully, and most importantly enforce them, which we lack.<sup>182</sup>

By late 2008 the International Monetary Fund acknowledged some progress on strengthening economic governance, including the publication of the audited accounts of the central bank, but remained concerned about the procedures involved in large procurement contracts.<sup>183</sup> Efforts to revise the “deeply flawed” public procurement code eventually fell flat.<sup>184</sup> In 2005 the government established a Steering Committee for the EITI, but again, insufficient progress has been made toward becoming a compliant country.<sup>185</sup>

While the CNDD vowed to address corruption, the party ironically went on an extra-budgetary spending spree that by and large benefitted the military and included the construction of barracks, vehicle purchases, across-the-board promotions for all soldiers, and travel for coup members. According to one international economic expert on Guinea, the CNDD “oversaw a veritable collapse of fiscal control.”<sup>186</sup> “When the transitional government took over in early 2010, the national debt had more than doubled.”<sup>187</sup>

Guinea’s 2010 constitution included several encouraging articles, which, if implemented, could improve governance and transparency. Article 36 requires public asset declarations by both the president, within 48 hours of taking his oath, and his ministers upon taking office and at the end of service. It also provides for a Court of Audit (*Cour des comptes*), a quasi-judicial body mandated to conduct yearly financial audits of public institutions, which reports to the parliament any irregularities in the handling of public money, and is vested with authority to exercise judicial power to prosecute those involved in financial crimes. At the time of this writing, the new President and a number of his ministers had declared their assets before the Supreme Court, which heard the declarations in the absence of a fully constituted constitutional court mandated by the new constitution to hear such declarations

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<sup>182</sup> Human Rights Watch interview with Ministry of Finance official, Conakry, June 8, 2010.

<sup>183</sup> Guinea was expected to reach the completion point under the HIPC initiative aimed at providing debt relief amounting to US\$2.2 billion in mid-2009. However, this was delayed by the December 2009 coup that brought the CNDD to power. “Statement by an IMF Mission to the Republic of Guinea,” IMF press release, no. 08/232, October 2, 2008, (accessed September 21, 2010); and Human Rights Watch interview with Ministry of Finance official, Conakry, June 4, 2010.

<sup>184</sup> Human Rights Watch telephone interview with international financial advisor, Conakry, September 22, 2010.

<sup>185</sup> Extractive Industries Transparency Initiative, “Candidate Country: Guinea,” <http://eiti.org/Guinea> (accessed September 13, 2010).

<sup>186</sup> Human Rights Watch interview with international financial institution expert, Washington DC, August 9, 2010.

<sup>187</sup> Human Rights Watch interview with Ministry of Finance official, Conakry, June 8, 2010.



in the future. The Court of Audit has also been established but is not yet functional, with interim members pending Supreme Court's approval.<sup>188</sup>

These measures and bodies, once fully established, can be complemented by the establishment of a truly independent anti-corruption commission. Guinea's current anti-corruption body—the National Agency for the Promotion of Good Governance and the Fight Against Corruption (*l'Agence nationale de promotion de la bonne gouvernance et de lutte contre la corruption*)—lacks the necessary independence, powers, and funding to effectively deter economic crimes. The commission, formed by decree by late President Conté at the behest of Guinea's donors, has been restricted by executive control and largely relegated to the uncontroversial role of public education. It was attached to the office of the president until 2004, and at present functions under the Ministry of Audits and State Control (*Ministère de contrôle de l'État*). Since its formation, only six cases of large-scale corruption investigated by the commission were sent to the judiciary. Of these six, only one was adjudicated.

According to the anti-corruption commission's executive director, Mohamed François Falcone, the commission is severely hampered by the lack of independent powers to subpoena witnesses and relevant evidence and prosecute matters on its own, rather than through the Office of the *Procureur Général* (Attorney General equivalent).<sup>189</sup> It is also limited by a restricted budget, currently 450,000,000 GF [US \$68,130] per year. Falcone has sought to address these deficiencies in a draft law that proposes the creation of an entirely independent commission. The draft law also expands the definition of corruption-related offenses, extends the mandate to cover the conduct of political parties and elections, and provides for a review by the proposed commission of all natural resource contracts.<sup>190</sup>

Human Rights Watch urges the new government and Guinea's international partners to take every opportunity to underscore both privately and publicly the importance of an effective anti-corruption commission and to address the continuing problem of corruption within the Guinean government. Guinea's vast natural resources must not continue to be plundered, but instead be used to address the very pressing economic needs of Guinea's population. As noted by a taxi driver, whose younger brother was killed during the 2007 demonstrations in Conakry, June 2010:

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<sup>188</sup> Human Rights Watch telephone interviews with Mohamed François Falcone, February 17 and 22, 2011. See also "Cour Suprême: Dépôt de déclaration de patrimoine du Ministre d'Etat aux Travaux Publics et aux Transports," Aminata News, January 3, 2011, <http://www.aminata.com/les-dernieres-24-heures/10691-cour-supreme-depot-de-declaration-de-patrimoine-du-ministre-detat-aux-travaux-publics-et-aux-transports> (accessed February 22, 2011)

<sup>189</sup> Human Rights Watch interview with Mohamed François Falcone, Conakry, June 7, 2010.

<sup>190</sup> Draft anti-corruption law, reviewed by Human Rights Watch.

For 52 long years, the people of Guinea have really suffered from the effects of impunity and corruption. We have lived in darkness—no electricity, no water, no opportunities for our children. Those in power have ruined the lives of generation after generation. The families who lost their sons and daughters during the Sékou Touré time, then in 2007, and again in 2009, have yet to finish crying. Those who have done this to us, to our country must know that they can't continue on as before.



## The National Assembly (*L'Assemblée Nationale*)

Legislative elections in Guinea are long overdue. The most recent legislative elections took place on June 30<sup>th</sup>, 2002 and were characterized by multiple delays, major opposition party boycotts, low voter participation, and strict governmental control.<sup>191</sup> Since the 2002 elections, the subsequent legislative election cycle, which was originally planned to take place in June 2007, was delayed several times. Following the December 23, 2009 coup, the Council for Democracy and Development (CNDD) suspended the constitution and dismissed the National Assembly.<sup>192</sup>

In January 2010, an ad hoc legislative body called the National Transition Council (*Conseil National de Transition, CNT*), was put in place under the government of General Sékouba Konaté. The CNT is comprised of representatives from political parties, unions, civil society, defense and security forces, youth organizations, the press, religious leaders, and Guineans living abroad, and it was mandated to issue recommendations on institutional reforms and assist in drafting legislation. In 2010, the CNT promulgated a new constitution with several provisions for increased respect for human rights and good governance. However, the ad hoc, appointed-based nature of the CNT meant it never acted as a fully functional, representative parliament. Thus, the previous dismissal of the National Assembly has effectively left the country without a legislative institution since 2008.<sup>193</sup>

In order to ensure adequate political representation of the Guinean people, as well as oversight of the executive, President Condé should formulate, promulgate and adhere to a concrete timetable for free and fair legislative elections. Condé and his government should ensure that Guineans are able to campaign and vote in an atmosphere free of fear, manipulation, and intimidation, including by taking meaningful steps to address the lack of neutrality demonstrated by the security forces during the elections that brought him to power.

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<sup>191</sup> The Conté government did not use an independent election oversight institution for the 2002 elections, and performed all registration and election procedures, including vote-counting. United States Department of State, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices: Guinea," February 28, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41607.htm> (accessed February 22, 2011).

<sup>192</sup> Ibid. For more information see, Congressional Research Service report dated 30 September 2009 (Arieff, A. & Cook, N. 2009, "Guinea's 2008 Military Coup and Relations with the United States," Congressional Research Service Report for Congress, Federation of American Scientists website, 30 September, pp. 9-12, <http://www.fas.org/sgp/crs/row/R40703.pdf> (accessed February 22, 2011).

<sup>193</sup> The Guinean legislative body, the National Assembly (*L'Assemblée Nationale*), is made up of 114 members. National Assembly elections utilize a mixed voting system: 38 members are elected by simple majority in single-member constituencies, and 78 members are chosen by proportional representation from a national list of candidates. Members of parliament serve 5-year terms, although frequent election delays have been known to extend legislators' terms for several years. United States Department of State, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices: Guinea," March 31, 2003, <http://www.state.gov/g/drl/rls/hrrpt/2002/18207.htm> (accessed February 22, 2011).

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## “We Have Lived in Darkness”

### A Human Rights Agenda for Guinea’s New Government

The 2010 elections, during which the Guinean people elected their president in an atmosphere largely free of intimidation, fear, or manipulation, were widely viewed as having the potential to end over 50 years of authoritarianism, human rights abuse, and corruption.

Guinea’s new president, Alpha Condé, inherited a country with profound human rights and governance problems including a culture of impunity, weak rule of law, endemic corruption, and crushing poverty. Since independence from France in 1958, successive Guinean presidents relied on ruling party militias and security forces to intimidate and violently repress opposition voices. Thousands of Guineans who dared to oppose the government have been tortured, starved, or beaten to death by state security forces, or were executed in police custody and military barracks. Guinea’s judiciary, which could have mitigated some of the excesses, has been neglected, severely under-resourced, or manipulated, allowing a dangerous culture of impunity to take hold. As perpetrators of all classes of state-sponsored abuses and human rights crimes have rarely been investigated, victims have been left with scant hope for legal redress for even the most serious of crimes.

In this report, Human Rights Watch identifies the key rule of law challenges faced by the new administration, explores some of the factors which have contributed to them, and makes recommendations on how to end this history of abuse and impunity and ensure Guinea’s successful transformation from an abusive state into one that guarantees the rights of its people. The report calls on the new administration to adequately support and reform the judiciary; ensure those responsible for state-sponsored massacres in 2007 and 2009 are brought to justice; establish a truth-telling mechanism to explore the dynamics that gave rise to and sustained successive repressive regimes; rein in, professionalize, and reform the security sector; and ensure Guinea’s population can benefit from the country’s abundant natural resources by establishing an independent anti-corruption commission.

*Front: Kadiatou Barry, 22, holds a photograph of her missing husband Alpha Oumar Diallo in Conakry October 4, 2009. Barry says her husband has been missing since the September 28 crackdown on opposition protesters.*

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*Above: Four of the dozens of people that were hanged on January 25, 1971. Pont du 8 Novembre in Conakry, from back to front: Dousman Baldet (minister of finance); Barry III (secretary of state); Magassouba Moriba (minister); Keita Kara Soufiana (police commissioner).*

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