

HUMAN RIGHTS WATCH

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16 May 2011

Mr. Alassane Dramane Ouattara
President of the Republic of Côte d'Ivoire
Presidential Palace
Abidjan, Côte d'Ivoire

Dear President Ouattara,

We at Human Rights Watch, a leading independent international human rights organization, congratulate you on your internationally-recognized election victory in November 2010. Unfortunately, those elections, which held the promise of reuniting the country geographically, politically, and militarily divided since 2002, instead sparked five long months of violence and rights abuses that have aggravated and created new tensions in the country. We understand, as a result, that the challenges are considerable as you finally assume office. Human Rights Watch looks forward to collaborating with your administration in the months and years ahead in ensuring that human rights have a central role in reuniting and rebuilding the country.

We write today to highlight several key recommendations for your administration during its initial months – urging you to swiftly address Côte d'Ivoire's chronic human rights problems and attendant weaknesses in rule of law that have been pervasive during the last decade and have come to the fore since last November's presidential election. The human costs, as you are well aware, have been disastrous, with the UN now reporting between 2,000 and 3,000 dead in the postelection violence, though the final toll may still be higher.

For more than a decade, Human Rights Watch has conducted in-depth research on a wide array of human rights issues in Côte d'Ivoire, including political violence, violations of international humanitarian law, sexual violence, the role of violent student and militia groups, the failure of rule of law institutions, land conflict, extortion and racketeering, and corruption.

Since last November's presidential run-off, we have undertaken multiple research trips to Abidjan and the Ivorian-Liberian border, documenting grave abuses by armed actors on both sides of the political and military divide. These include massacres committed by both sides, enforced disappearances, targeted killings and sexual violence in which victims were targeted for their perceived political support or ethnicity, the widespread recruitment of militias and mercenaries, and the indiscriminate use of heavy weaponry against the civilian population.

We have highlighted key perpetrator groups involved in these crimes, including CECOS; the Republican Guard; pro-Gbagbo militia, particularly the Young Patriots and FESCI; the Republican Forces of Côte d'Ivoire; the Dozo; Liberian mercenaries, including a group led by a person who goes by the nom de guerre "Bob Marley"; and a group of militant Burkinabé led by a man named Amadé. Our reports and findings, based on hundreds of interviews with victims and eyewitnesses, have been made publicly available, including on our website. We have attached a compendium of our post-election work to this letter for you and your office.

We believe that addressing human rights issues that are among the root causes of Côte d'Ivoire's conflicts and divisions should be among your government's top priorities. We urge you to make an unambiguous commitment to respect the fundamental human rights of all Ivorians and to exercise bold leadership in guaranteeing those rights. Discussed in more detail below, we call on you to:

- Send a clear signal that the crisis of impunity that has fueled human rights violations in Côte d'Ivoire has ended, in particular by taking prompt steps to ensure fair, credible prosecutions for serious crimes committed in violation of international law, especially at the highest levels of responsibility and regardless of rank or political allegiance.
- Solidify the rule of law and develop democratic institutions that will respect the rights of all who reside in Côte d'Ivoire, and provide redress when those rights are violated.
- Take immediate steps to confront security issues throughout the country, including the disarmament of militia groups.
- Establish a Truth and Reconciliation Commission that operates transparently, with a broad mandate, and in open dialogue with international institutions and monitoring bodies.

Accountability for Past Abuses

Human Rights Watch welcomes your public commitment to shed light upon the crimes committed during the postelection period and to ensure that those responsible are punished. We are particularly encouraged by your pledge to guarantee credible and impartial investigations into abuses by both sides and to prosecute perpetrators regardless of their political affiliation, and note your public call to the International Criminal Court (ICC) to investigate the massacres in the far west. At the same time, we are concerned by mixed messages that have been sent by some officials with regard to your government's commitment to impartially prosecute serious crimes.

Impunity for human rights violations has been a deep and enduring problem for the last decade in Côte d'Ivoire. No one has been credibly prosecuted for any of the grave abuses that we and others have documented since the 2000 election-related violence, including during the 2002-2003 armed conflict and its aftermath. Many of the violations committed amount to war crimes and crimes against humanity, offenses of the gravest kind under international law.

The ability of perpetrators to commit atrocities with no fear of being held accountable has helped fuel abuses, along with a general mistrust in Ivorian legal institutions. Any failure to reverse this trend will only embolden those who might contemplate committing human rights violations in the future. While some people may advise you to forego accountability, in speaking with hundreds of victims, we assure you that victims demand and deserve credible and impartial justice. Moreover, experience across many different country situations has reinforced that justice is a critical component for establishing durable peace.

In fulfilling your promise of accountability, Human Rights Watch believes that the investigation and prosecution of those responsible for the most serious crimes in violation of international law committed during the entire Ivorian crisis is crucial – beginning with the 1999 coup d'état by General Gueï, the violence-marred 2000 elections, and the 2002-2003 armed conflict. Accountability for the heinous crimes perpetrated since last November is urgent and essential, but should comprise part of a broader effort to establish truth and provide justice for past and present violations.

A worthwhile starting point would be for your government to request the UN Security Council to publish the 2004 UN Commission of Inquiry report either prior to or in conjunction with the publication of the 2011 Commission of Inquiry report. The decision of the UN Security Council at the behest of those negotiating an end to the hostilities to bury the 2004 report and eschew accountability contributed to allowing many of the same actors deemed most responsible for serious crimes in violation of

international law committed during the 2002-2003 armed conflict to again oversee and commit atrocities against the civilian population in 2010-2011.

With regard to accountability, impartial justice as exhibited by prosecutions of those involved in crimes committed by both forces associated with Gbagbo and by the Republican Forces will be crucial in showing that all Ivorians have access to justice – no matter the victim or the perpetrator involved. More than 100 Guéré refugees interviewed by Human Rights Watch in Liberia, the majority of whom had either witnessed or were victim to a war crime perpetrated by the Republican Forces, made clear that such efforts would strongly influence their decision on whether they can safely return to Côte d'Ivoire.

As you know, possible investigation and prosecution by the International Criminal Court is an issue. The Ivorian government submitted a declaration to the ICC in 2003 giving the court jurisdiction over events after September 19, 2002 in Côte d'Ivoire. We understand that this declaration has recently been reaffirmed or resubmitted by your government. Although such declarations confer jurisdiction, they are not sufficient to trigger the opening of an ICC investigation, which requires either a referral by an ICC state party or the Security Council to the court, or the prosecutor acting on his own initiative.

The ICC prosecutor said publicly during the week of May 5 that he intends to open an investigation on his own initiative into crimes committed in Côte d'Ivoire. Such a step could make an important contribution to ensuring accountability. Should the ICC prosecutor open an investigation, your government's cooperation will be crucial. The ICC has no enforcement mechanism and thus relies on states' cooperation to conduct its work, including in the arrest of suspects.

Even if the prosecutor moves forward and secures the necessary approval by the ICC's judges to open an investigation into Côte d'Ivoire, the ICC is likely to prosecute only a small number of alleged perpetrators in relation to the crimes committed after September 19, 2002. Domestic prosecutions of serious crimes will thus remain important and can enhance opportunities for justice to have local resonance. Domestic prosecutions should, however, meet benchmarks consistent with international standards and practice. These include credible, independent, and impartial investigation and prosecution of crimes, regardless of affiliation or rank; adherence to international requirements for fair trials; adequate protection for witnesses; and penalties that reflect the gravity of the crimes while not representing cruel or inhuman punishment.

The new government should seek international assistance to ensure adequate domestic investigation and prosecution of serious crimes. Donors should be able to assist with an assessment of the Ivorian justice system's capacity to handle such cases. Human Rights Watch has previously expressed a number of concerns

regarding the domestic justice system that would likely create challenges with regard to the prosecution of serious crimes. These include: pressure by the executive branch on the judiciary; perceived bias by some justice ministry personnel; frequent instances of arbitrary arrest and detention; corruption; instances of physical abuse of persons detained by police and gendarmes; and inadequate access to defense counsel by accused.

On accountability issues, we thus specifically call on you to:

- Ensure that accountability efforts include those implicated at the highest levels of responsibility, and that crimes committed by both sides during the Republican Forces' military offensive – including those documented by Human Rights Watch in the country's far west – are among those credibly investigated and prosecuted.
- Seek assistance from key donors to ensure fair, credible domestic investigations and prosecutions of serious crimes, in addition to cases that may be pursued by the International Criminal Court. This should include requests for assessments of the Ivorian justice system's capacity to pursue cases involving serious crimes as well as assistance based on such assessments.
- Cooperate fully with the ICC, including in the arrest of suspects, should the court prosecutor open an investigation of crimes committed in Côte d'Ivoire.
- Cooperate fully with the 2011 Commission of Inquiry established by the United Nations Human Rights Council and allow it to work without interference, conducting investigations around the country and interviewing victims, alleged perpetrators, and other interested parties from both sides.
- Ask the UN Security Council to make public the 2004 Commission of Inquiry report on crimes committed during the 2002-2003 armed conflict.
- Ensure that all members of the newly appointed Ivorian government are thoroughly vetted for any past involvement in human rights abuses, corruption, or other serious crimes.

Finally, the arrest and detention of former president Laurent Gbagbo and his closest allies presents an immediate test for your administration. Their internationally-guaranteed rights must be safeguarded, demonstrating that humane treatment and a fair trial will be afforded to all. As such, we call on your government to:

- Take all necessary measures to ensure the humane treatment of anyone in custody, including former President Gbagbo, his family, and military, paramilitary

and political leaders loyal to him. Cooperate fully with international and domestic bodies, including the UNOCI human rights division and the International Committee of the Red Cross, who seek to monitor detention conditions.

- Ensure those who are detained are promptly brought before a judge and presented with a legal basis for their detention, in accordance with international and Ivorian law.
- Ensure adequate time and resources for the preparation of a vigorous defense by competent counsel for any accused.

Building the Rule of Law

Côte d'Ivoire's rule of law sectors – the judiciary, policing and corrections – are marked by unprofessional practices including corruption and lack of independence. In the northern and western regions of the country, a judicial system has been almost wholly absent since the de facto partition of the country in 2002. Addressing these deficiencies, and returning the country to the rule of law, needs to be an immediate priority of your government.

We urge you to start by making an explicit commitment to the principles that no person is above the law and that only the state may punish individuals for a breach of the law. Vigilante justice, including by groups like FESCI and the Dozo, must end. To precipitate that, your government needs to build a professional and independent judiciary that is free of corruption as well as an effective, rights-respecting police and military force. The days of endless checkpoints where civilians – particularly those of the “wrong” ethnic group or national origin – are subject to extortion, harassment, and at times physical and sexual abuse, must end. The fiefdoms of former Forces Nouvelles zone commanders in the north and of FESCI leaders in Abidjan – where rule of law was replaced by the power of guns and intimidation – must likewise end.

To strengthen the rule of law in Côte d'Ivoire, we specifically call on you to:

- Ensure disciplinary action against, and, if necessary, prosecution of, members of the Republican Forces, police, and gendarmerie who engage in criminal behavior including extortion, racketeering, pillaging, and arbitrary arrest and detention.
- Establish functioning legal institutions in the north and far west of the country, in particular by rehabilitating court buildings in Guiglo and the north, constructing and rehabilitating detention facilities, and deploying trained judicial and correctional officials.

- Prioritize efforts to combat sexual violence, which remains pervasive throughout the country and is particularly acute in the far west. In particular, improve the response of law enforcement personnel and the judiciary to sexual and gender-based violence, including by recruiting more female police officers to act as focal points in police stations and by training judicial and security personnel. Ensure access to health care, psychosocial support, legal assistance, and socio-economic reintegration services for victims of sexual violence, including those who have been targeted for political and ethnic reasons during the conflict.
- Commit publicly to work with the next session of the National Assembly to ratify key international treaties that Côte d'Ivoire is not a party to, including: the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
- Make an immediate declaration that Côte d'Ivoire will allow individuals and NGOs to submit cases to the African Court on Human and Peoples' Rights, under article 34 of the Protocol establishing the Court.

Security

Human Rights Watch reiterates its previous calls for your government to ensure absolute control over the Republican Forces and to ensure that they respect the rights of everyone, including those who supported and fought on behalf of former President Laurent Gbagbo. The loose coalition of fighters that became the Republican Forces, as well as related groups like the Invisible Commando, are implicated in war crimes and other grave abuses. Control needs to be established, training in human rights and humanitarian laws needs to be undertaken, and those who continue to target civilians need to be removed from the security forces and prosecuted.

In addition, militia and mercenaries, who have been recruited by armed forces on both sides, need to be immediately demobilized and disarmed. Ivorian authorities made minimal effort to disarm former combatants after the previous armed conflict, allowing for the continued abundance of arms that contributed to the recent violence's scale. Credible reports suggest that many more arms entered Côte d'Ivoire in recent months, some distributed to armed groups which have been implicated in very serious recent abuses.

To address these and other security concerns, we specifically call on you to:

- Promptly undertake a full and thorough Demobilization, Disarmament, and Reintegration (DDR) program in line with the Integrated DDR Standards (IDDRS) and other internationally recognized best practices. Request the assistance of the United Nations and other international actors and ensure that DDR is performed credibly and impartially – disarming those from all sides of the conflict who are not entering the reconstituted armed forces. Focus particular attention on the Young Patriot and FESCI militia groups in Abidjan as well as the numerous militia groups in the far west.
- Request that the French Force Licorne and the UN peacekeepers and police continue undertaking joint patrols with Ivorian security forces, with training and instruction on human rights obligations.
- Ensure that the security forces do not become bloated, threatening stability and crippling the government's ability to fulfill other basic rights. According to the International Peace Institute, there were around 20,000 Defense and Security Forces (FDS) and 9,000 police officers prior to the outbreak of hostilities in 2002. By the 2010 election, Gbagbo had expanded these to around 60,000 FDS and 18,000 police officers. Combined with the approximately 30,000 members of the Forces Nouvelles armed forces, the number of armed personnel in Côte d'Ivoire has increased almost fourfold over the last decade – even excluding militia and mercenary elements.
- Ensure that media is no longer used as a tool for hate speech and incitement to violence, in particular in guaranteeing that TCI and other state-operated media do not resort to incitement to violence against real and perceived supporters of Gbagbo and those who still belong to the *Front populaire ivoirien* (FPI) political party. Set out clear rules that both guarantee freedom of expression but prohibit incitement to violence. Guarantee also that journalists have the freedom to operate and are not subject to harassment and threats by security forces or government officials, including by ensuring that the National Press Council (CNP) and the High Authority for Audiovisual Communication (HACA) are independent.

Truth and Reconciliation

Côte d'Ivoire and its residents are deeply scarred by over a decade of violent political divisions, ethnic tensions, gross human rights abuses, and xenophobic rhetoric. West African nationals and those from northern Côte d'Ivoire were stopped at pro-Gbagbo checkpoints in Abidjan and on numerous occasions killed for their name or style of dress alone – violence that was inflamed nightly on *Radiodiffusion Télévision Ivoirien*. Guéré civilians – young and old, men and women – in Duékoué, Doké, and elsewhere in the west were executed at point-blank range because of their perceived

support for Gbagbo. The challenges in uniting a country with such deep cleavages along political, ethnic and religious lines are significant, and the failure to address security issues could further threaten the country's fragile stability.

Human Rights Watch supports your efforts to establish a Truth and Reconciliation Commission to address these divisions, including through your May 1 appointment of former Prime Minister Charles Konan Banny to head the commission. We urge you to ensure the commission includes a broad mandate in terms of the period and the crimes that it covers – giving voice to victims of grave abuses dating back to at least the 1999 coup by General Gueï. The formation of the TRC, including the selection of commissioners and mandate, should be done through an open and consultative process, with assistance from Ivorian civil society, victims, and the international community. The TRC should draw on successes and failures in TRCs that have been established elsewhere in the region. For the commission to be credible, it should operate transparently and in dialogue with international organizations and monitoring bodies.

Any TRC needs to be given the power and assistance to investigate all suspected violations of human rights, regardless of the rank or political allegiance of the alleged perpetrators. It should ultimately seek to identify key perpetrators on both sides most responsible for the violence.

Finally, truth telling and reconciliation processes are not and should not be treated as a substitute for justice. Credible and impartial investigations and the just punishment of those implicated in crimes remain essential.

As part of truth telling and reconciliation efforts, we call on you and your government to:

- Establish a truth-telling mechanism to expose less well-known atrocities and to give voice to victims on all sides of the longstanding politico-military divide. Ensure open and meaningful consultation is carried out with civil society and victims in the drafting process.
- Introduce transparent appointment procedures, such as public hearings of the commissioners to ensure the independence and impartiality of the commission.
- Ensure that the commission explores the dynamics that have given rise to cyclical violence, ethnic tensions, and pervasive corruption, with a view to making recommendations aimed at ensuring better governance and preventing a repetition of past violations.

- Respect international human rights standards with regard to granting of amnesties. This means excluding amnesties for international crimes such as crimes against humanity, war crimes, extrajudicial killings, enforced disappearances, and torture.
- As a complementary institution that can help advance the human rights agenda in the future, support and guarantee the independence of Côte d'Ivoire's national human rights institution, which at present does not meet the standards laid out by the Paris Principles.

Land Rights

Land rights issues have been a persistent source of inter- and intra-communal conflict in southern and western Côte d'Ivoire. The failure to resolve these disputes through the rule of law has sparked repeated outbursts of violence and, during both the 2002-2003 and 2010-2011 armed conflicts, contributed to the large-scale killings that took place in the far west of Côte d'Ivoire. Understanding and solving land rights issues will be crucial to reducing the tension in that particularly volatile region of the country. We therefore call on your government to:

- Undertake a meaningful review of land rights issues as well as the judicial system's chronic failure to resolve such disputes.

Conclusion

The Ivorian government has legal obligations under several international and African human rights treaties – including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights – that require it to respect the rights to life, bodily integrity, and liberty and security of the person, as well as freedoms of expression, association, and assembly. Human Rights Watch urges you to publicly reiterate your country's commitments to these legal obligations and to instruct your officials to conduct themselves accordingly.

Human Rights Watch welcomes your stated commitments regarding accountability, even-handed justice, and truth telling. It is now essential that you take action to fulfill these commitments and show strong leadership in addressing the chronic problems that have undermined the civil, political, social, and economic rights of the Ivorian population for years. We share your hope that, with such action, a new and brighter chapter will be written in Côte d'Ivoire's history.

We look forward to a constructive dialogue with your government and to the prospect of the advancement of human rights in Côte d'Ivoire. We stand ready to support your government's efforts to strengthen the rule of law and to ensure accountability for human rights abuses.

Please do not hesitate to contact me should you have any questions or comments.
Sincerely,

A handwritten signature in black ink, appearing to read 'CDH', with a stylized, cursive script.

Corinne Dufka
West Africa Project Director
Human Rights Watch