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# Côte d'Ivoire: From Justice Sacrificed in the Name of "Reconciliation" to Justice Exploited as a Political Instrument

Report

Cover photo: A group of victims of the 2010 post-election crisis in Côte d'Ivoire hold placards during a demonstration on May 10, 2021 outside the *Palais de Justice* in Abidjan, against the return of former Ivorian president Laurent Gbagbo, after his acquittal at the International Criminal Court (ICC). © Issouf SANOGO/AFP

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# ACRONYMS

<b>ACtHPR</b>	African Court on Human and Peoples' Rights
<b>CDVR</b>	<i>Commission Dialogue, Vérité et Réconciliation</i> (Dialogue, Truth and Reconciliation Commission)
<b>CEI</b>	<i>Commission électorale indépendante</i> (Independent Electoral Commission)
<b>CNE</b>	<i>Commission nationale d'enquête</i> (National Commission of Inquiry)
<b>CNT</b>	<i>Conseil national de transition</i> (National Transition Council)
<b>CONARIV</b>	<i>Commission nationale pour la Réconciliation et Indemnisation des Victimes</i> (National Commission for Reconciliation and Compensation of Victims)
<b>COVICI</b>	<i>Confédération des Organisations de Victimes des Crises ivoiriennes</i> (Confederation of Organisations of Victims of the Ivorian Crises)
<b>CSE</b>	<i>Cellule spéciale d'enquête</i> (Special Inquiry Unit)
<b>CSEI</b>	<i>Cellule spéciale d'enquête et d'instruction</i> (Special Inquiry and Investigation Unit)
<b>CSEI</b>	<i>Cellule spéciale d'enquête et d'instruction et de lutte contre le terrorisme</i> (Special Inquiry and Investigation and Counter-Terrorism Unit)
<b>DST</b>	<i>Direction de la Surveillance du Territoire</i> (Directorate of Territorial Surveillance)
<b>FDS</b>	<i>Forces de défense et de sécurité</i> (Defence and security forces)
<b>FIDH</b>	International Federation for Human Rights
<b>FPI</b>	<i>Front populaire ivoirien</i> (Ivorian Popular Front)
<b>FRCI</b>	<i>Forces républicaines de Côte d'Ivoire</i> (Republican Forces of Côte d'Ivoire)
<b>ICC</b>	International Criminal Court
<b>IPU</b>	Inter-Parliamentary Union
<b>LAG</b>	FIDH's Litigation Action Group
<b>LIDHO</b>	<i>Ligue ivoirienne des droits de l'Homme</i> (Ivorian League for Human Rights)
<b>LMP</b>	<i>Ligue des mouvements pour le progrès</i> (League of movements for progress)
<b>MIDH</b>	<i>Mouvement ivoirien des droits humains</i> (Ivorian Movement for Human Rights)
<b>MVCI</b>	<i>Mouvement pour la promotion des valeurs nouvelles en Côte d'Ivoire</i> (Movement for the promotion of new values in Côte d'Ivoire)
<b>PDCI</b>	<i>Parti démocratique de Côte d'Ivoire</i> (Democratic Party of Côte d'Ivoire)
<b>RHDP</b>	<i>Rassemblement des Houphouétistes pour la démocratie et la paix</i> (Rally of Houphouetists for Democracy and Peace)
<b>UN</b>	United Nations

# INTRODUCTION

On the eve of the legislative elections in Côte d'Ivoire held on 6 March 2021, Alassane Ouattara, who was beginning his third term as President of Côte d'Ivoire, declared: *"I hope that the unfortunate episodes of the 2010 and 2020 presidential elections are definitively behind us"*,<sup>1</sup> thus confirming civil society's fear that victims' need for justice would be neglected in favour of a national reconciliation policy focused on forgiveness.

The legislative elections which took place in March 2021 were the first elections since the end of 2010 in which the three main Ivorian political parties participated without any serious incidents. The spiral of violence experienced by the country during the 2010 presidential election, which began at the end of the second round in November 2010, persisted until April 2011.<sup>2</sup> The clashes between supporters of Alassane Ouattara, then opposition candidate, and those of Laurent Gbagbo, incumbent president and candidate, resulted in more than 3,000 deaths.<sup>3</sup> Today, the severity and consequences of this violence are still being felt. In 2020, after nearly 10 years of almost total impunity for crimes committed during this period,<sup>4</sup> the country again experienced major clashes between pro-government groups, calling for the October 2020 presidential election to go ahead, and opposition groups seeking a transitional process. This violence resulted in more than 100 deaths and nearly 300 injured.<sup>5</sup>

In 2010 and the following years, at the beginning of his first term in office, Alassane Ouattara had repeatedly proclaimed that the country was *"at the dawn of a new era of hope"*<sup>6</sup> to be marked by the establishment of the rule of law. Despite the government's numerous commitments in the name of justice, such promises have failed to deliver results. Several measures adopted by the government, such as the creation of a dialogue, truth and reconciliation commission, or the initiation of legal proceedings against the alleged perpetrators of the crimes, raised the hopes of the population, including victims and survivors of the violence. Yet, their hopes have been gradually extinguished, as the political will expressed at the end of the crisis has constantly been weakened. This has been reflected in increased executive intervention in judicial matters, culminating with the adoption of an Amnesty Ordinance in 2018 covering all crimes perpetrated during the post-election crisis of 2010-2011.

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1. *Jeune Afrique*, "Législatives en Côte d'Ivoire : après un scrutin apaisé, l'opposition revendique la victoire", 7 March 2021, <https://www.jeuneafrique.com/1132732/politique/cote-divoire-les-legislatives-se-deroulent-dans-le-calme/>.

2. On 11 April 2011, Laurent Gbagbo was arrested "following an attack on his residence in Abidjan by the forces of his rival Alassane Ouattara, backed by the aircraft and armoured vehicles of the French forces and the United Nations mission (UNOCI), marking the end of four months of post-electoral crisis in Côte d'Ivoire". *Le Monde*, "La chute de Laurent Gbagbo", 11 April 2011, [https://www.lemonde.fr/afrique/article/2011/04/11/a-abidjan-une-arrestation-dans-une-ambiance-electrique\\_1506159\\_3212.html](https://www.lemonde.fr/afrique/article/2011/04/11/a-abidjan-une-arrestation-dans-une-ambiance-electrique_1506159_3212.html).

3. According to official sources, there were at least 3,000 deaths. See FIDH, MIDH et LIDHO, *Côte d'Ivoire : Choisir entre la justice et l'impunité. Les autorités ivoiriennes face à leurs engagements*, December 2014 (2014 Report), [https://www.fidh.org/IMG/pdf/co\\_te\\_d\\_ivoire\\_652f\\_web.pdf](https://www.fidh.org/IMG/pdf/co_te_d_ivoire_652f_web.pdf). See also International Center for Transitional Justice, Report, *Disappointed Hope. Judicial Handling of Post-Election Violence in Côte d'Ivoire*, April 2016, p. 1, <https://www.ictj.org/sites/default/files/ICTJ-Report-CDI-Prosecutions-2016-English.pdf>.

4. With the exception of trials held for crimes against state security.

5. Human Rights Watch, "Côte d'Ivoire : Violences postélectorales et répression", 2 December 2020, <https://www.hrw.org/fr/news/2020/12/02/cote-divoire-violences-postelectorales-et-repression>.

6. *Le Monde*, "La chute de Laurent Gbagbo", 11 April 2011, *op. cit.*

The 2010 crisis, marked by the perpetration of crimes under international law,<sup>7</sup> and rooted in persistent impunity prevailing in Côte d'Ivoire, particularly for crimes committed during the 2002-2003 conflict, presented the country with the enormous and inescapable challenge of delivering justice.

More than ten years after the post-electoral crisis, FIDH, LIDHO and MIDH note that the facts of these events have not been fully clarified, that responsibilities have not been clearly established, and that the overwhelming majority of the alleged perpetrators have not been brought to justice. What have become of the promises of justice and combating impunity repeated by the authorities of Côte d'Ivoire over more than ten years?

While the cycle of impunity continues, the justice system has increasingly faced executive interference in judicial proceedings. During the 2020 election campaign and elections, the prosecution and imprisonment of political opponents led to strong regional and international criticism. The rejection of Guillaume Soro's candidacy in the presidential election, after he was accused of financial crimes and attacks on state security, was the subject of a complaint to the African Court on Human and Peoples' Rights (ACtHPR), which called on the state of Côte d'Ivoire to reconsider this decision and accept his candidacy.<sup>8</sup>

In addition, the Ivorian institutions are severely hampered by accusations of corruption against judges, prosecutors and other judicial officers. It appears that the justice system in Côte d'Ivoire tolerates corruption and executive control as an integral part of the operation of the judicial system.

Based on an analysis of developments in management of judicial proceedings in relation to the 2010-2011 post-election crisis by the Ivorian authorities over the last ten years, this report by the International Federation for Human Rights (FIDH), the *Ligue ivoirienne des droits de l'Homme* (Ivorian League for Human Rights - LIDHO) and the *Mouvement ivoirien des droits humains* (Ivorian Movement for Human Rights - MIDH), seeks to demonstrate, on the one hand, how the authorities, through their disengagement, frustrated efforts to bring justice for crimes committed during the post-election crisis; and on the other hand, the degree of interference of political power in judicial matters, with the justice system used as a political instrument.

In this context, FIDH, MIDH and LIDHO carried out an advocacy mission from 6 to 10 December 2021, led by Alexis Deswaef, FIDH Vice-President and lawyer, together with Drissa Traoré, FIDH Secretary-General, MIDH Honorary President and lawyer, Drissa Bamba, MIDH President, Willy Neth, LIDHO President, Hassatou Ba-Minté, Head of FIDH Africa Desk and Maria Teresa Tienda Rivera, FIDH International Justice Desk, Programme Officer. During the mission, our organisations met with representatives of the national authorities, civil society, diplomats, and international partners, in order to discuss issues related to the national reconciliation process, and more specifically, the situation of victims of serious human rights violations and the state of the justice system.

Based on a review of judicial proceedings at the national and international level, particularly since 2014,<sup>9</sup> when the last joint FIDH-MIDH-LIDHO report was published, including the most recent judicial cases, this report concludes with a list of recommendations addressed to the Ivorian state and international actors to respond to the needs of victims and combat persisting impunity.

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7. International Criminal Court, *Investigation, Situation in the Republic of Côte d'Ivoire*, <https://www.icc-cpi.int/cdi>.

8. African Court on Human and Peoples' Rights, *In the matter of Guillaume Kigbafori and Others v. Republic of Côte d'Ivoire*, Application No. 012/2020, Ruling, Provisional Measures, 15 September 2020, <https://www.african-court.org/cpmt/storage/app/uploads/public/5f7/5ac/240/5f75ac2408e8e209811250.pdf>.

9. FIDH, MIDH and LIDHO, 2014 Report.

# 1. Amnesties extinguish hopes for justice at the national level for crimes committed during the 2010-2011 post-election crisis

Since the post-election crisis of 2010-2011, the Ivorian population has witnessed the government's assertion of its political will to fight impunity. However, it appears that political will has gradually weakened, to the point of disappearing.

## A. Crimes committed during the 2010-2011 post-election crisis

In November 2010, disagreement over the results of the presidential elections led to violent clashes between supporters of Laurent Gbagbo, the president in office at the time, and those of the current president, Alassane Ouattara, claiming more than 3,000 lives.

On 31 October and 28 November 2010, there Ivorian voters turned out on a massive scale to elect the President of the Republic. While the results of the first round were widely accepted, those of the second round, which pitted Laurent Gbagbo, the incumbent president, as the candidate of the *Majorité Présidentielle* (LMP - Presidential Majority), against Alassane Ouattara, representing the *Rassemblement des Houphouétistes pour la démocratie et la paix* (RHDP - Rally of Houphouetists for Democracy and Peace), were strongly contested. When Alassane Ouattara's victory was declared by the *Commission électorale indépendante* (CEI - Independent Electoral Commission), whose representative had been accepted by the parties as certifier of the results, and recognised by the international community,<sup>10</sup> Laurent Gbagbo's supporters refused to accept defeat.

Following several weeks of stalemate, and amid a retaliation campaign led by the *Forces de défense et de sécurité* (FDS - Defence and Security Forces) with the support of pro-Gbagbo militias against RHDP supporters or those suspected of being RHDP supporters based on ethnicity, language or place of residence, the violence degenerated into armed clashes in several localities in the west and south of the country. While pro-Gbagbo forces multiplied abuses against the civilian population and used heavy weapons in Abidjan, violations were also committed by pro-Ouattara forces against civilians suspected of being pro-Gbagbo.

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10. On 2 December 2010, the CEI declared Alassane Ouattara the winner with 54.10% of the votes, compared to 45.90% for Laurent Gbagbo. The following day, the Constitutional Court invalidated the results of seven departments in the north and declared Gbagbo the winner. For more information on the elections in Côte d'Ivoire and the ensuing crisis, see FIDH Urgent Appeal, 27 January 2012, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/COTE-D-IVOIRE-2010-2011>; See also *Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire*, 30 March 2011, <https://digitallibrary.un.org/record/700278?ln=es>; European Union Election Observation Mission in Côte d'Ivoire, *Final Report – 2010 Presidential Election* (in French), [http://www.eods.eu/library/FR%20IVORY%20COAST%2025.01.2011\\_fr.pdf](http://www.eods.eu/library/FR%20IVORY%20COAST%2025.01.2011_fr.pdf); Commission nationale d'enquête, *République de Côte d'Ivoire, Rapport d'enquête sur les violations des droits de l'homme et du droit international humanitaire survenues dans la période du 31 octobre 2010 au 15 mai 2011* (2012 Report), July 2012, p. 15, [https://www.fidh.org/IMG/pdf/cne\\_resume\\_rapport\\_d\\_enquete.pdf](https://www.fidh.org/IMG/pdf/cne_resume_rapport_d_enquete.pdf).

Pro-Gbagbo militia and elite security forces targeted hundreds of Ouattara supporters, beating them to death, executing them or burning them alive. Forces loyal to Ouattara, meanwhile, executed and tortured hundreds of men from ethnic groups seen as pro-Gbagbo. Both sides also committed sexual crimes.<sup>11</sup> The toll of the clashes was heavy: *“More than a thousand people were summarily executed. Civilians have been killed by indiscriminate shelling and shooting of the belligerents. [The] population lived in fear and suffered [...] acts of looting, lack of food and medicine, and the forced displacement of hundreds of thousands of them. These serious human rights violations were the result of armed conflict on both sides and their responsibility should be established.”*<sup>12</sup>

In mid-March 2011, the pro-Ouattara *Forces républicaines de Côte d'Ivoire* (FRCI - Republican Forces of Côte d'Ivoire) launched a military offensive, in which extrajudicial killings, rape, looting and reprisal attacks were perpetrated against civilians. Despite the arrest of Laurent Gbagbo and some of his supporters on 11 April 2011, following clashes in Abidjan over several days, the violence continued, particularly in the Yopougon district of Abidjan and in the west of the country.

On 12 April 2011, President Ouattara announced the opening of legal proceedings against Laurent Gbagbo, members of his family and his entourage, as well as the creation of a *Commission nationale d'enquête* (CNE - National Commission of Inquiry) into crimes committed during the post-election crisis. For its part, the UN Human Rights Council decided on 25 March 2011 to create an independent international commission of inquiry to investigate post-election violence.<sup>13</sup>

On 3 October 2011, the International Criminal Court (ICC) authorised the Prosecutor to open an investigation into the situation in Côte d'Ivoire, following several declarations by the Ivorian authorities (in particular by Laurent Gbagbo and Alassane Ouattara) recognising the Court's jurisdiction. The ICC considered that murders, rape, other inhuman acts, attempted murders and acts of persecution were committed during the post-election crisis as part of systematic and widespread attacks against the civilian population, and that they constituted crimes against humanity, giving rise to the Court's jurisdiction.<sup>14</sup>

## **B. Inadequate truth-telling mechanisms and measures of reparation for victims**

Shortly after his inauguration in 2011, Alassane Ouattara made a commitment to delivering impartial justice for all crimes perpetrated by forces loyal to former President Laurent Gbagbo, as well as those who supported him, declaring that *“Justice will be the same for all. There are no exceptions, there is no discrimination, the law is the same for all. We will carry out these trials”*.<sup>15</sup> Several mechanisms to establish the facts and contribute to reconciliation were put in place: the *Commission nationale d'enquête* (CNE) and the *Commission Dialogue, Vérité et Réconciliation* (CDVR – Dialogue, Truth and Reconciliation Commission) in July 2011; followed by the *Commission nationale pour la Réconciliation et Indemnisation des Victimes* (CONARIV - National Commission for Reconciliation and Compensation of Victims) in March 2015.

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11. CNE, 2012 Report, p. 15.

12. FIDH, Press Release, “Côte d'Ivoire: Dignity, justice and reconciliation must be a priority after the arrest of Laurent Gbagbo”, 12 April 2011, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/Cote-d-Ivoire-Dignity-Justice-and>; FIDH, Report, *Côte d'Ivoire: It Is Urgent to Prevent the Escalation to a Civil War*, March 2011, [https://www.fidh.org/IMG/pdf/Coted\\_ivoire558a2011web.pdf](https://www.fidh.org/IMG/pdf/Coted_ivoire558a2011web.pdf).

13. FIDH, Urgent Appeal, 27 January 2012, *op. cit.*

14. ICC, *Investigation, Situation in the Republic of Côte d'Ivoire*, <https://www.icc-cpi.int/cdi>.

15. Open letter to H.E. Alassane Ouattara, President of the Republic of Côte d'Ivoire, sent by 10 NGOs on 7 May 2018, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/as-justice-for-2010-11-crimes-stagnates-10-rights-groups-urge>.



The CNE was created<sup>16</sup> to “shed light on the various violations”<sup>17</sup> and was “responsible for conducting non-judicial investigations throughout the country into violations of human rights and international humanitarian law”.<sup>18</sup> The Commission initially had six months to submit its report, but the deadline was extended, since the Commission only began its activities in January 2012.<sup>19</sup> From 4 January to 17 March 2012, twenty teams of investigators composed of lawyers, doctors, cartographers, statisticians and sociologists were deployed to carry out field investigations in 112 localities.

The report submitted to the government in August 2012<sup>20</sup> initially formed the basis for the activity of the *Cellule spéciale d'enquête* (CSE - Special Inquiry Unit), which was created the same year to conduct judicial investigations into offences related to the post-election crisis (see below). The short-term recommendations of the report called for the opening of judicial proceedings against alleged perpetrators of the violations, regardless of their level of responsibility.<sup>21</sup> The report also made specific recommendations on the fight against impunity.<sup>22</sup> Despite the lack of guidance in the conclusion and recommendations of the CNE report, the information gathered in the files was used by the CSE to launch several legal cases.

Meanwhile, the creation of the *Commission Dialogue, Vérité et Réconciliation* (CDVR - Dialogue, Truth and Reconciliation Commission) on 13 July 2011 conveyed a message of hope for the population and gave the government an element of legitimacy. However, the politicised composition of the Commission, headed by Charles Konan Banny, a prominent politician and member of the *Parti démocratique de Côte d'Ivoire* (PDCI - Democratic Party of Côte d'Ivoire), as well as a lack of communication on its activities and methodology,<sup>23</sup> tainted the symbolic significance of the whole process and limited its impact. In addition, hearings were marked by the presence of former soldiers and warlords in the 2010 conflict who had been reintegrated into the regular army after receiving bonuses from the government.<sup>24</sup> This presented serious obstacles to victims' presence and testimony and was seen as a reward for perpetrators who had fought on behalf of Ouattara. The initial two-year mandate of the CDVR, which ended in September 2013, had to be extended by one year to allow local commissions and the national commission to complete nationwide victim hearings, including public hearings of 80 selected victims held in Abidjan in September 2014. Local commissions were responsible for carrying out fieldwork, enabling numerous victims to be heard. After hearing more than 70,000 individuals, the Commission

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16. CNE, 2012 Report.

17. *Ibid.*, Summary.

18. *Ibid.*

19. RFI, “Côte d'Ivoire : le FPI rejette par avance le rapport d'enquête sur les violences postélectorales”, 9 February 2012, <https://www.rfi.fr/fr/afrique/20120209-cote-ivoire-le-fpi-rejette-avance-le-rapport-commission-nationale-enquete>. See also Human Rights Watch, “Côte d'Ivoire: Inquiry's Shortcuts Raise Red Flags”, 23 February 2012, <https://www.hrw.org/news/2012/02/23/cote-divoire-inquirys-shortcuts-raise-red-flags>.

20. *Abidjan.net*, “Commission nationale d'enquête : Rapport d'enquête sur les violations des droits de l'Homme et du droit international humanitaire survenues dans la période du 31 octobre 2010 au 15 mai 2011, juillet 2012 », 13 August 2012, <https://news.abidjan.net/articles/438749/commission-nationale-denquete-rapport-denquete-sur-les-violations-des-droits-de-lhomme-et-du-droit-international-humanitaire-survenues-dans-la-periode-du-31-octobre-2010-au-15-mai-2011-juillet-2012>.

21. CNE, 2012 Report, p. 31.

22. *Ibid.*

23. See FIDH, MIDH and LIDHO, 2014 Report, *op. cit.*, p. 12: During public hearings, the selection criteria were not defined or explained. “The hearings took place in a very small room, offering only 70 seats, in a luxury sports club in Abidjan, which was difficult to access and did not facilitate the publicity of testimonies. This was all the more the case since the television broadcast of the hearings, announced at some point, did not take place and now seems compromised, making the hearings confidential and inaccessible to the Ivorian population. Furthermore, the conduct of the hearings highlighted the lack of psychological support for victims before and during public hearings. In addition to this lack of transparency, there was confusion about the victim hearing process at the national level. Indeed, victims were heard for several months, from May to October 2014. But many of them were heard after the announcement of the end of the CDVR's work, with some local commissions continuing hearings until 10 October”.

24. Information gathered through interviews during the advocacy mission conducted by FIDH, LIDHO and MIDH in December 2021.

issued its report in December 2014,<sup>25</sup> but it had very little impact, to the extent that some political actors believed that it had never been published.<sup>26</sup>

The public hearings before the Commission, which were intended to “contribute to the establishment of the truth”, focused on “emblematic cases”, defined as cases involving “facts characterised by the seriousness of the violations committed, that have shocked the national conscience, and that have caused great human suffering by their brutality and their consequences. This is the case of arbitrary executions, torture and sexual violence”.<sup>27</sup> However, acts that could constitute crimes against humanity or war crimes were explicitly excluded from the emblematic cases, i.e., from the cases studied, since, according to the Commission, they gave rise to international jurisdiction.<sup>28</sup> There was no reference in the Commission’s work to criminal justice, beyond the assertion that all the human rights violations identified were actionable.<sup>29</sup> All other references to justice were linked to the notion and principles of transitional justice, and the report made a point of differentiating the process of victims’ hearings from any procedure that might resemble a criminal trial. The recommendations were grouped by theme: root causes of the crisis, policy measures, reparations, administrative and institutional reforms, actions needed to eradicate the cycle of violence, and commemoration. According to the Commission’s report, the implementation of these recommendations was intended to foster reconciliation. It contained no mention of criminal justice.<sup>30</sup>

Finally, the *Commission nationale pour la Réconciliation et Indemnisation des Victimes (CONARIV - National Commission for Reconciliation and Compensation of Victims)* was created in March 2015, after the conclusion of the CDVR’s work, to focus on compensation of victims of the crisis. CONARIV’s mandate was to “produce a consolidated single list of all victims of the Ivorian crisis and supervise the implementation of the reparations program assigned to the PNCS [Programme national de cohésion sociale - National Social Cohesion Programme]”.<sup>31</sup> During its mandate, it received 874,056 claims for compensation, of which 316,954 (36%) were approved.<sup>32</sup> A pilot compensation project was conducted in 2015, pending the finalisation of the consolidated list.<sup>33</sup> CONARIV’s mandate ended in 2017, leaving the Ministry of Solidarity and Social Cohesion in charge of dealing with pending issues.<sup>34</sup>

The reparation process lacked visibility and transparency. Criteria on conditions for the payment of compensation, eligible beneficiaries, government entities responsible, etc., were not made public. A consolidated list of beneficiaries, with victim or successor status, was produced following consultations carried out by CONARIV, which included the names of 316,954 individuals entitled to compensation.<sup>35</sup>

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25. CDVR, Republic of Côte d’Ivoire, Final Report (in French), December 2014 (2014 Report), [https://www.gouv.ci/doc/presse/1477497207RAPPORT%20FINAL\\_CDVR.pdf](https://www.gouv.ci/doc/presse/1477497207RAPPORT%20FINAL_CDVR.pdf). According to the acknowledgements at the beginning of the report, the aim of the Commission’s work and of the final report was to “highlight the underlying causes of the Ivorian crisis in order to better understand it, to identify the victims and perpetrators of past human rights violations in Côte d’Ivoire, to recommend reparations that will help heal the wounds suffered by the victims, to suggest measures to prevent the recurrence of violations and to ensure that citizens are educated on the respect of human rights and democratic culture”

26. Information gathered through interviews during the advocacy mission conducted by FIDH, LIDHO and MIDH in December 2021.

27. CDVR, 2014 Report, para. 6.1, p. 81-82.

28. *Ibid.*, para. 6.1, p. 82.

29. *Ibid.*, para. 5.2, p. 73.

30. *Ibid.*, p. 103 et sq.

31. International Center for Transitional Justice, *Disappointed Hope. Judicial Handling of Post-Election Violence in Côte d’Ivoire*, April 2016, p. 28-29, <https://www.ictj.org/sites/default/files/ICTJ-Report-CDI-Prosecutions-2016-English.pdf>.

32. *Jeune Afrique*, “Côte d’Ivoire : la Commission nationale pour la réconciliation et l’indemnisation a remis son rapport”, 21 April 2016, <https://www.jeuneafrique.com/319997/societe/cote-divoire-commission-nationale-reconciliation-lindemnisation-a-remis-rapport/>.

33. *Ibid.*

34. *Jeune Afrique*, “Côte d’Ivoire : fin de mandat de la Commission nationale pour la réconciliation”, 4 July 2017, <https://www.jeuneafrique.com/453885/politique/cote-divoire-fin-de-mandat-de-commission-nationale-reconciliation/>.

35. According to information gathered through interviews during the advocacy mission conducted by FIDH, LIDHO and MIDH in December 2021 at the Ministry of Reconciliation.

They had to wait until 2017 for the government to start delivering the compensation promised to the victims of the 2010-2011 post-election crisis, with the launch of the “Yako” operation. This operation, initiated by the Ministry of Women, Solidarity and Social Cohesion, drew on a government fund of 15 million EUR and involved the distribution of individual assistance grants of one million CFA francs (about 1,500 EUR). These sums were described by Abdoulaye Doumbia, a prosecution witness in the ICC trial against Laurent Gbagbo, as derisory<sup>36</sup> given the victims’ suffering.

To date, serious questions remain about the process of identification and selection of beneficiaries of these “reparations for harm” resulting from “the rights violated, the damage suffered, and the abuses endured” during the post-electoral crisis. In particular, no information was made public to explain how the 874,055 claims processed by CONARIV were reduced to 316,954 beneficiaries. According to information gathered by our organisations, this list was shared with the President, but the selected beneficiaries and the victims’ associations supporting them have never received notification. It is therefore impossible for those who participated in CONARIV’s consultations to know whether they are among the beneficiaries identified by the Ministry of Women, Solidarity and Social Cohesion, and if so, whether their right to reparation has been recognised by the Ivorian state. On the other hand, in relation to more than 500,000 other files processed by CONARIV, no feedback has been provided to the individuals concerned on the status of their claim for compensation. The list of victims has yet to be made public. This lack of transparency contributes to the sense of abandonment felt by the victims and their families in relation to the Ivorian state.

During the international advocacy mission carried out in December 2021, our organisations observed the extent to which responsibilities within the different ministries are blurred and diluted. It is unclear whether the Ministry of Solidarity or the Ministry of Reconciliation is primarily responsible for the implementation of reparations.<sup>37</sup> Furthermore, during our exchanges with representatives of these ministries, our organisations were informed that a decision had been taken to suspend the individual reparations process and instead to put in place collective reparations, to the great disappointment of the Ivorian population, the majority of whom expressed their wish to see the individual reparations process strengthened. During this mission, our organisations learnt that the measures already undertaken in relation to collective reparations had been decided and implemented without consulting the victims, and very often concerned the provision of services among the functions of the state, such as the construction of wells or roads. However, these collective reparations have also been suspended, and no other form of reparation has yet been planned or implemented. Today, civil society organisations, including the *Confédération des Organisations de Victimes des Crises ivoiriennes* (COVICI - Confederation of Organisations of Victims of the Ivorian Crises) continue to highlight the work that remains to be done and denounce the state’s lack of a clear and transparent methodology on reparations.

### **C. Establishment of the CSE, followed by the CSEI, and initiation of the first proceedings on crimes committed during the post-election crisis**

The national justice system initiated several proceedings in the aftermath of the post-election crisis. Following significant advocacy conducted by civil society, in particular FIDH, MIDH and LIDHO, a *Cellule spéciale d’enquête* (CSE - Special Inquiry Unit) was created by inter-ministerial decree on 24 June 2011,

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36. Justice Info, “Réparations : les victimes jugent le ‘yako’ ivoirien insuffisant”, 21 May 2019, <https://www.justiceinfo.net/fr/41484-reparations-les-victimes-jugent-le-yako-ivoirien-insuffisant.html>.

37. According to the information gathered through interviews during the advocacy mission conducted by FIDH, LIDHO and MIDH in December 2021. The responsibility for direct reparations is said to lie with the Ministry of Solidarity and the role of the Ministry of Reconciliation is not to intervene but to ensure that justice is done.

as a temporary body in charge of legal proceedings related to the post-election crisis.<sup>38</sup> Its mandate was to investigate the offences perpetrated in the aftermath of the declaration of the results of the second round of the presidential election, and since 4 December 2010.<sup>39</sup> At the time of its creation, this unit was composed of 7 judges and prosecutors (including three investigating judges), 20 judicial police officers and 6 registrars. It centralised “*all open judicial investigations on crimes committed during the post-electoral crisis, except for the cases which fall under the jurisdiction of the military court*”.<sup>40</sup>

Under the inter-ministerial order, the CSE was given an initial 12-month mandate. Its mandate was later extended until the end of 2013. The CSE heard a total of several thousand victims, both at the preliminary investigation stage and in the course of the subsequent investigations. According to information gathered by FIDH, MIDH and LIDHO, investigating judges in charge of the various cases issued numerous indictments.<sup>41</sup> Despite progress accomplished by the CSE, its second term did not lead to the launch of trials. The CSE’s mandate was called into question, and before any trials could be initiated, the Minister of Justice announced the termination of the CSE in September 2013.<sup>42</sup>

Many Ivorian and international civil society organisations, including FIDH, MIDH and LIDHO, underlined the need to maintain a permanent mechanism such as the CSE.<sup>43</sup> This unit was eventually replaced on 30 December 2013 by the *Cellule spéciale d’enquête et d’instruction* (Special Inquiry and Investigation Unit - CSEI).<sup>44</sup> On 8 January 2014, following a meeting of the Council of Ministers, the Ivorian government announced the creation by presidential decree of the CSEI, a permanent mechanism to replace the CSE.<sup>45</sup> The mandate of this new body was to investigate and carry out judicial investigations into “*offences committed during the crisis following the 2010 presidential election, as well as all related or connected offences*”.<sup>46</sup> In 2014, our organisations noted that, despite the creation of the CSEI, judicial progress remained insufficient. In addition to the initial six-month delay before the unit became fully operational, and a lack of communication and visibility in relation to its activities, the operation of the CSEI revealed serious shortcomings. In particular, the first trial that took place only concerned Gbagbo supporters and failed to address human rights violations, since it was limited to crimes against state security. Moreover, there were obstacles to ongoing investigations against members of the FRCI (loyal to Alassane Ouattara), including alleged perpetrators who did not respond to summonses issued by the judicial authorities, with no support provided to ensure that they were honoured. Finally, the progress of proceedings in relation to crimes perpetrated in the west of the country following the post-election crisis was severely hampered, especially by the lack of an adequate budget adapted to the needs of judges, which prevented them from carrying out proper investigations.<sup>47</sup>

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38. Decree No. 020/MEMJ/DSJRH/MEF of 24 June 2011 on the Creation, Organisation, Powers, and Operation of a Special Inquiry Unit on the Post-Election Crisis.

39. International Center for Transitional Justice, *Disappointed Hope. Judicial Handling of Post-Election Violence in Côte d'Ivoire*, April 2016, *op. cit.*, p. 10.

40. FIDH-MIDH-LIDHO, Report, *Ivory Coast: The Fight Against Impunity at a Crossroad*, 2013, p. 14, <https://www.fidh.org/IMG/pdf/cotedivoire617uk2013basdef.pdf>.

41. This information relates to the year 2013. There were 67 suspects indicted in cases concerning “*violent crimes*” and four in the case opened following the transmission of the CNE report (these figures do not take into account national and international arrest warrants issued by investigating judges from the Special Inquiry Unit). See FIDH-MIDH-LIDHO, Report, *Ivory Coast: The Fight Against Impunity at a Crossroad*, 2013, *op. cit.*, p. 16.

42. International Center for Transitional Justice, *Disappointed Hope. Judicial Handling of Post-Election Violence in Côte d'Ivoire*, April 2016, *op. cit.*, p. 10.

43. See for example *Abidjan.net*, “*Crise ivoirienne : La FIDH pour la prorogation du mandat de la cellule d’enquête*”, 22 October 2013, <https://news.abidjan.net/articles/478308/crise-ivoirienne-la-fidh-pour-la-prorogation-du-mandat-de-la-cellule-denquete>.

44. FIDH, MIDH and LIDHO, 2014 Report, p. 9.

45. FIDH, “*Côte d'Ivoire/Post-electoral crisis: Special Investigation Unit term extended*”, 14 January 2014, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/14477-ivory-coast-post-electoral-crisis-special-investigation-unit-term-extended>.

46. Article 2, Decree No. 2013-915 of 30 December 2013 on the Creation, Powers, Composition and Operation of the Special Inquiry and Investigation Unit, [https://www.fidh.org/IMG/pdf/upload\\_decretprci\\_csei.pdf](https://www.fidh.org/IMG/pdf/upload_decretprci_csei.pdf).

47. FIDH, MIDH and LIDHO, 2014 Report, p. 10. The unit was not fully constituted until six months after its creation. Several donors and international partners expressed their willingness and availability to strengthen the CSEI’s capacity to act, but they did not receive a sufficiently favourable response from the Ministry of Justice.

In 2016, following the March 2016 attack in Grand-Bassam by the terrorist group AQIM (Al-Qaeda in the Islamic Maghreb), the government expanded the scope of the CSEI's jurisdiction to include the fight against terrorism.<sup>48</sup> The CSEI was renamed *Cellule spéciale d'enquête, d'instruction et de lutte contre le terrorisme* (CSEI-LCT - Special Inquiry, Investigation and Anti-Terrorism Unit), reflecting its expanded mandate,<sup>49</sup> but also a shift in government priorities.

### **i. Prioritisation of "state security" cases, failing to reflect the reality of crimes committed against the civilian population**

The first trial organised by the CSEI involved 83 defendants identified as pro-Gbagbo, including Simone Gbagbo, wife of former president Laurent Gbagbo.<sup>50</sup> The trial at the Abidjan Assize Court opened on 29 December 2014 and concerned the following offences: undermining national defence, attacking or plotting against the authority of the state, forming armed gangs, directing or participating in an armed gang, participating in an insurrectional movement, disturbing public order, forming a coalition of public officials, rebellion, usurpation of office, tribalism and xenophobia, all of which were allegedly committed by Gbagbo supporters during the post-election crisis.

Despite the number of defendants and seriousness of charges, this trial highlighted weaknesses in the investigation procedure and the prosecution's case file, which made little or no attempt to substantiate the charges brought against the defendants, given the lack of convincing evidence, and the weakness of the prosecution witnesses and the prosecution's case as a whole.<sup>51</sup> This trial focused exclusively on offences of "undermining state security", and did not include any crimes of which the Ivorian population was the direct victim.

In January 2016, the Assize Court decided to sever proceedings against Simone Gbagbo and to indict her individually. This surprising move seemed to respond to international pressure, notably from the International Criminal Court, which had issued an international arrest warrant against her. At the time, our organisations decided not to participate in this trial, which failed to meet international standards and to respect the rights of victims.<sup>52</sup> The trial lacked formal and substantive fair trial guarantees and was a missed opportunity for the Ivorian justice system, ending with Simone Gbagbo's acquittal.<sup>53</sup>

### **ii. Investigations into and indictments for serious crimes**

Crimes under international law committed during the 2010-2011 clashes were the subject of two separate investigations. FIDH, LIDHO and MIDH joined as civil parties in April 2012, alongside

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48. *Le Monde*, "Attentat en Côte d'Ivoire : qui sont les victimes des attaques du 13 mars ?", 15 March 2016, [https://www.lemonde.fr/afrique/article/2016/03/15/attentat-de-grand-bassam-qui-sont-les-18-victimes-des-attaques-du-13-mars\\_4883424\\_3212.html](https://www.lemonde.fr/afrique/article/2016/03/15/attentat-de-grand-bassam-qui-sont-les-18-victimes-des-attaques-du-13-mars_4883424_3212.html).

49. *Journal officiel de la République de Côte d'Ivoire* (Official Gazette of the Republic of Côte d'Ivoire), 22 September 2016, <http://ekladata.com/mxz6wpxn3H26MHRQ3-OjJSVU8.pdf>. See also *News Abidjan*, "La Côte d'Ivoire étend les attributions de sa Cellule d'instruction d'enquête et de lutte contre le terrorisme", 21 July 2016, <https://news.abidjan.net/articles/594780/la-cote-divoire-etend-les-attributions-de-sa-cellule-dinstruction-denquete-et-de-lutte-contre-le-terrorisme>; Statement of the Council of Ministers, 20 July 2016, [https://www.gouv.ci/rss\\_conseil\\_rss.php?recordID=274](https://www.gouv.ci/rss_conseil_rss.php?recordID=274).

50. FIDH, MIDH and LIDHO, 2014 Report, p. 15.

51. FIDH, "Ivory Coast: Concerns over a questionable trial", 12 March 2015, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/ivory-coast-concerns-over-a-questionable-trial>.

52. FIDH, "Côte d'Ivoire : Pourquoi nous ne participerons pas au procès de Simone Gbagbo", 30 May 2016, <https://www.fidh.org/fr/regions/afrique/cote-d-ivoire/avocats-des-parties-civiles-nous-ne-participerons-pas-au-proces-de>.

53. FIDH, "Acquittement de Simone Gbagbo : une occasion ratée de rendre justice", 29 March 2017, <https://www.fidh.org/fr/regions/afrique/cote-d-ivoire/acquittement-de-simone-gbagbo-une-occasion-ratee-de-rendre-justice>. See also Human Rights Watch, "Côte d'Ivoire: Simone Gbagbo Acquitted After Flawed War Crimes Trial", 29 March 2017, <https://www.hrw.org/news/2017/03/29/cote-divoire-simone-gbagbo-acquitted-after-flawed-war-crimes-trial>; International Justice Monitor, "Simone Gbagbo Acquitted by the Abidjan Assize Court: Between the Independence of the Judiciary and a Political Twist to Save the Day", 5 May 2017, <https://www.ijmonitor.org/2017/05/simone-gbagbo-acquitted-by-the-abidjan-assize-court-between-the-independence-of-the-judiciary-and-a-political-twist-to-save-the-day/>.

75 victims. These investigations were subsequently severed, following a request submitted by our organisations, in order to distinguish investigations on the basis of the facts and to ensure more consistency in future trials.

### **Investigations into “violent crimes”**

The first investigation, which opened on 6 February 2012 at the 8th Cabinet of the Court of First Instance of Abidjan, was aimed at the most serious crimes committed during the crisis. These “violent crimes” (*“crimes de sang”*) were defined as “serious allegations of crimes against the civilian population, genocide, violation of personal freedom, assassinations, murders, rapes, intentional assault causing bodily harm, death threats, assault and battery, tribalism and xenophobia”.<sup>54</sup> Throughout the proceedings, the legal representatives of the victims, who were members of the FIDH’s Litigation Action Group (LAG), insisted that the investigations should cover crimes committed by both sides. However, the investigation suffered considerable delays and very few investigative acts were carried out, testifying to the lack of political will to try the perpetrators of these crimes or to target perpetrators from the pro-Ouattara camp.<sup>55</sup>

Since 2015, there have been no other investigations into violent crimes. Although other indictments were issued, such as those against two major zone commanders (“comzones”), who supervised zones controlled by the *Forces nouvelles de Côte d’Ivoire* (New Forces of Côte d’Ivoire) and were loyal to Alassane Ouattara during the post-election crisis, in 2015,<sup>56</sup> no other trials have been held.<sup>57</sup> The fact that investigations were carried out against Alassane Ouattara’s supporters suggests that, had the government shown the political will, trials could have been conducted targeting perpetrators of crimes committed on both sides.

### **“CNE” investigation**

The second investigation opened on 6 November 2012 at the 9th Cabinet of the Court of First Instance of Abidjan, which was part of the CSE. Based on the report produced by the CNE (see above), this investigation focused on perpetrators of crimes falling under the same definitions as those in the “violent crimes” case file, committed over the period from 31 October 2010 to 15 May 2011. In the context of this investigation, 26 persons were charged, including five who were subject to a detention warrant. Most of the defendants were the subject of an arrest warrant.<sup>58</sup>

All indictments in the cases initially opened by the CSEI were aimed exclusively at pro-Gbagbo alleged perpetrators. As a result of the work conducted by FIDH and our member organisations in Côte d’Ivoire, LIDHO and MIDH, including fact-finding missions, putting together case files and filing statements in support of 75 victims, combined with relentless advocacy efforts at the local and national level, some case files concerning pro-Gbagbo alleged perpetrators were strengthened and several indictments against individuals from the pro-Ouattara camp were issued.

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54. FIDH-MIDH-LIDHO, Report, *Ivory Coast: The Fight Against Impunity at a Crossroad*, 2013, *op. cit.*, p. 14.

55. FIDH, MIDH and LIDHO, 2014 Report, p. 18.

56. *Jeune Afrique*, “Crise postélectorale en Côte d’Ivoire : la justice avance à tout petits pas”, 20 February 2017, <https://www.jeuneafrique.com/mag/402654/politique/crise-post-electorale-cote-divoire-justice-avance-a-petits/>.

57. *Jeune Afrique*, “Massacre de Duékoué en Côte d’Ivoire : Amadé Ouérémi, ‘le bandit de la forêt classée’ face à la justice”, 26 March 2021, <https://www.jeuneafrique.com/1143922/politique/massacre-de-duekoue-en-cote-divoire-amade-oueremi-le-bandit-de-la-foret-classee-face-a-la-justice/>.

58. *Ibid.*

## Inclusion of sexual crimes

As mentioned in the introduction to this report, all parties to the clashes during the 2010-2011 post-election crisis committed sexual and gender-based crimes. However, these crimes were ignored in the prosecution's bill of indictment, as well as in the initial investigative measures taken by the CSEI, and they were not sufficiently documented. As a result of the fact-finding and advocacy activities undertaken by our organisations, the CSEI's investigation eventually included sexual crimes of rape as defined in Ivorian criminal law. Additionally, on 20 March 2015, our organisations filed a memorandum requesting that 43 women victims of sexual violence join the CSEI as civil parties, thus paving the way for the future prosecution of alleged perpetrators of these sexual crimes and providing an opportunity for these women to have access to justice.<sup>59</sup> Unfortunately, the investigation in these cases was not completed.

## Associations recognised as civil parties

An important outcome of the advocacy and litigation activities carried out by FIDH, MIDH and LIDHO in relation to the post-election crisis is the recognition of the possibility for "legally constituted associations" to act as civil parties in criminal proceedings, under Law No. 2018-975 of December 2018 (later integrated into the Code of Criminal Procedure),<sup>60</sup> as a result of jurisprudence of 25 March 2013, by an order of the senior investigating judge Makouéni Delphine Cissé in the CNE investigation.

Data on activities carried out by the CSEI since its creation in 2014 vary greatly and the exact number of individuals indicted in relation to crimes committed during the post-election crisis by supporters of both Alassane Ouattara and Laurent Gbagbo cannot be known with certainty.<sup>61</sup> In investigations into these crimes more than 50 individuals were reportedly indicted for attacks perpetrated in Duékoué in March 2011 (where more than 800 people<sup>62</sup> were killed by pro-Ouattara forces)<sup>63</sup> and for the repression of demonstrations in Abidjan by pro-Gbagbo defence and security forces. However, very few of these investigations or indictments led to trials.

## iii. Pre-emptive closure of investigations with no perspective of trial

At the beginning of 2015, our organisations represented more than 130 victims in judicial proceedings related to the post-election crisis. Following an international mission to Côte d'Ivoire in 2015, FIDH, MIDH and LIDHO expressed concern in relation to consistent reports of possible pre-emptive closure of investigations into the most serious crimes by the end of June 2015, thereby preventing the completion of satisfactory trial proceedings.<sup>64</sup> The pre-emptive closure of some of these investigations and the referral of the accused to trial resulted in superficial, ill-prepared trials and poorly substantiated charges that failed to deliver justice to the victims.

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59. FIDH, "Côte d'Ivoire: 43 women who suffered sexual violence during the post-election crisis finally access justice", 20 March 2015, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/ivory-coast-43-women-who-suffered-sexual-violence-during-the-post>.

60. Law No. 2018-975 of 27 December 2018, Art. 8, <http://www.caidp.ci/uploads/997a8149124ebaffe41282e96908d822.pdf>.

61. A report published in 2016 by the International Center for Transitional Justice refers to 1,038 indictments in 2014, including 458 for violent crimes before the 8th Cabinet. See International Center for Transitional Justice, *Disappointed Hope. Judicial Handling of Post-Election Violence in Côte d'Ivoire*, April 2016, *op. cit.*, Annex 3, p. 40. However, an article published in August 2018 by Amnesty International refers to 150 individuals indicted for "blood crimes". See Amnesty International, "Côte d'Ivoire: No Amnesty for Serious Crimes of 2010-11 Crisis", 7 August 2018, <https://www.amnesty.org/en/latest/news/2018/08/cote-ivoire-no-amnesty-for-serious-crimes-of-crisis/>.

62. There is reportedly disagreement over the figures that were made public during the trial of Amadé Ouérémi: 817 according to the ICRC, 300 according to the UN. See VOA, "Procès de la 'terreur de l'ouest ivoirien': Amadé Ouérémi nie toute responsabilité", 9 April 2021, <https://www.voafrique.com/a/5846951.html>.

63. FIDH, "Côte d'Ivoire: Massacre in Duekoue and serious abuses against the civilian population all over the country", 2 April 2011, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/Cote-d-Ivoire-Massacre-in-Duekoue>.

64. FIDH, "Côte d'Ivoire: Don't Shut Down Investigations", 25 June 2015, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/cote-d-ivoire-don-t-shut-down-investigations>.

#### iv. Amnesty Ordinance

With the launch of the abovementioned cases, the first steps towards justice, although uneven, were seen as encouraging by victims of the post-election crisis. However, on 6 August 2018, their hopes were dashed. On that date, President Ouattara announced an amnesty in favour of 800 citizens, which was more broadly applicable to *“persons prosecuted or convicted for offences related to the 2010 post-election crisis or offences against state security committed after 21 May 2011, with the exclusion of individuals on trial before an international criminal court, as well as military personnel and members of armed groups”*.<sup>65</sup> Implementation of the amnesty measures, including the identities of those to whom it applied and those who would be kept in detention, and the reasons, was carried out without transparency, with no information being made public. It was therefore very difficult to determine the exact number of people who benefited, and how many remained in detention, as in the case of Amadé Ouérémi (see below). Moreover, Article 2 of the Amnesty Ordinance provided that the government should prepare a list of individuals who should be excluded from the scope of the amnesty, and who could therefore be prosecuted for crimes committed during the post-election crisis.<sup>66</sup> Our organisations were unable to find any official public document mentioning this list. During the advocacy mission carried out by our organisations in December 2021, the various ministries interviewed were asked about the preparation and publication of this list (in particular the Ministries of the Interior, Justice and Defence). All those met indicated that they had not been informed of measures taken to implement Article 2 of the Amnesty Ordinance and pointed to the responsibility of other ministries in preparing this list. Once again, our organisations deplored the inconsistencies and the opacity of Ivorian state departments, to the detriment of an effective fight against impunity for the crimes committed during the 2010-2011 post-election crisis.

The Ordinance, as drafted, failed to provide for the exclusion of international crimes from the scope of amnestied crimes, in violation of Côte d'Ivoire's international commitments in the area of criminal justice. Yet, the Ministry of Justice argued that these crimes could still be prosecuted, although they were not explicitly excluded in the text of the ordinance, on the basis of Article 2 and the publication of the list of persons to be excluded from the amnesty.<sup>67</sup> These remarks suggested that this list could contain the names of people suspected of having committed international crimes during the post-election crisis, randomly chosen by the government in advance, outside any judicial procedure, constituting a flagrant violation of the principles of presumption of innocence under Ivorian constitutional law and national and international criminal law.

In light of this explicit demonstration of the Ivorian state's unwillingness to seek justice for the serious crimes committed, on 5 October 2018, FIDH, MIDH and LIDHO submitted an objection against the ordinance to President Alassane Ouattara,<sup>68</sup> underlining that the ordinance applies to prominent military and political leaders from both parties to the conflict. Our organisations called on the Ivorian authorities to reverse this decision, in order to guarantee victims of serious human rights violations the right to justice, in accordance with the obligations binding the Ivorian state. However, the ordinance gave rise to a ratification law on 27 December 2018, transforming this presidential act into law.

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65. Ordinance No. 20/8-669 of 6 August 2018 on amnesty, Article 1, *Journal officiel de la République de Côte d'Ivoire* (Official Gazette of the Republic of Côte d'Ivoire), <http://ekladata.com/TxC5zZfOUAFDYvBKDtc4GlfFouw.pdf>.

66. Ordinance No. 20/8-669 of 6 August 2018 on amnesty, Article 2: *“The list of military personnel and members of armed groups excluded from the benefit of the amnesty provided for in Article 1 shall be established by the Ministers of Defence, Justice, Interior and Security.”*

67. Based on information gathered through interviews during the advocacy mission conducted by FIDH, LIDHO and MIDH in December 2021. Interviews with the Directorate for Human Rights of the Ministry of Justice.

68. FIDH, “Three organisations lodge an appeal against presidential amnesty”, 15 November 2018, <https://www.fidh.org/en/region/Africa/cote-d-ivoire/cote-d-ivoire-three-organisations-lodge-an-appeal-against>.



In the absence of a response from the Presidency of Côte d'Ivoire, on 4 April 2019, our organisations submitted a complaint to the Council of State (formerly the administrative chamber of the Supreme Court of Côte d'Ivoire), requesting the annulment of the presidential Amnesty Ordinance of 6 August 2018, on the grounds that the President of the Republic was not empowered to issue an ordinance in the area of justice or amnesty. Additionally, an amnesty for international crimes, such as the one adopted in 2018, is contrary to Côte d'Ivoire's international commitments.<sup>69</sup>

In the year following the amnesty announced in August 2018, proceedings initiated at the national level by the Special Inquiry and Investigation Unit were closed without notification to the civil parties, thus depriving them of the possibility to appeal.

On 28 January 2021, our organisations received the statement of defence from the Presidency of the Republic, in which the state argued that the Council of State lacked jurisdiction to hear the appeal lodged in 2019 since the ordinance had been ratified by a law and therefore could not be challenged in illegality proceedings. Our organisations argued that the first petition had been lodged when the act was still in the form of an ordinance, and that the ratification law was passed after the petition had been filed. Additionally, according to the Ivorian Constitution, the President can only legislate by ordinance when empowered to do so by the National Assembly. In such cases, the ordinances adopted can later be considered as having legislative form (since they were taken on the basis of a law). However, the President of the Republic has never been empowered by the National Assembly to legislate by ordinance in relation to amnesty. For these reasons, our organisations argue that the Council of State has jurisdiction to hear the application for annulment of the amnesty ordinance adopted in August 2018 in illegality proceedings and are still awaiting a date to be set for a hearing before the Supreme Court.

## **v. The Ouérémi trial: a short burst of justice for some of the victims of the 2010-2011 post-election crisis**

Amade Wuermi, known as Amadé Ouérémi, is a former militia leader of Burkinabe origin,<sup>70</sup> considered to have been close to the pro-Ouattara FRCI during the 2010-2011 post-election crisis. Significant investigative measures taken in the context of the second investigation into violent crimes opened in November 2012 by the CSEI's 9th investigative cabinet, which took over the CNE's case files, led to the arrest and indictment of Amadé Ouérémi on 22 May 2013, in relation to his participation in atrocities committed in Duékoué on 28 and 29 March 2011.<sup>71</sup>

Amadé Ouérémi did not fall under the scope of the amnesty granted by the 2018 Amnesty Ordinance, since the ordinance states in its first article that it is applicable to *"individuals prosecuted or convicted for offences related to the 2010 post-election crisis or offences against state security committed after 21 May 2011, with the exclusion of individuals on trial before an international criminal court, as well as military personnel and members of armed groups"*.<sup>72</sup>

When interviewed in the course of the investigation, Amadé Ouérémi acknowledged his participation in the capture of Duékoué. He also shared key information about the operation of the armed group he led, the instructions he received from his hierarchy, as well as the role of other individuals who

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69. FIDH, "La Cour suprême saisie de l'amnistie présidentielle", 4 April 2019, <https://www.fidh.org/fr/regions/afrique/cote-d-ivoire/la-cour-supreme-saisie-de-l-amnistie-presidentielle>.

70. *Jeune Afrique*, "Côte d'Ivoire – Massacre de Duékoué : Amadé Ouérémi condamné à la prison à vie", 16 April 2021, <https://www.jeuneafrique.com/1155680/politique/cote-divoire-massacre-de-duekoue-amade-oueremi-condamne-a-la-prison-a-vie/>

71. FIDH, MIDH and LIDHO, 2014 Report, p. 19.

72. Emphasis added. Ordinance No. 20/8-669 of 6 August 2018 on amnesty, Article 1, *Journal officiel de la République de Côte d'Ivoire* (Official Gazette of the Republic of Côte d'Ivoire), *op. cit.*

were members and leaders of the FRCI in the west of the country.<sup>73</sup> On 13 June 2014, FIDH, MIDH and LIDHO filed a request for investigative measures to be carried out in order to corroborate Amadé Ouérémi's statements. In October and November 2014, other FRCI elements were summoned by the CSEI to be interviewed. However, although additional indictments were issued,<sup>74</sup> no trial took place.<sup>75</sup>

Having been remanded in custody since 2013, Amadé Ouérémi's trial on charges of crimes against humanity was eventually held in Abidjan from 24 March to 15 April 2021. He was sentenced to life imprisonment. Our organisations, involved in proceedings as civil parties alongside 34 victims, including 15 who were present at the hearing, actively participated in this trial, which, due to the adoption of the Amnesty Ordinance<sup>76</sup> by President Ouattara in August 2018, will remain the only genuine trial to take place in Côte d'Ivoire for crimes committed against the civilian population during the post-election crisis.<sup>77</sup> The trial of one of Alassane Ouattara's supporters appears to have been purely symbolic, since the objective of the government was to close down future trials related to the post-election crisis by claiming that trials had been held against those responsible for crimes from both sides of the conflict. This claim distorts reality in the service of an arbitrary justice system that turns a blind eye to the horror experienced by thousands of victims.

## vi. Assessment of proceedings

More than ten years after the 2010-2011 post-election violence in Côte d'Ivoire, very little progress has been made in terms of judicial proceedings for the crimes committed. Since 2011, a series of different (investigative, judicial, compensatory) mechanisms have been put in place, and yet they have either ended their mandates without fulfilling their original mission, or, in the case of the CSEI, still exist but their functions and activities fail to effectively correspond to the initial reason for their creation.

Some progress has been made, including inquiries conducted by the CNE, investigations into certain cases conducted by the CSE and then the CSEI, the inclusion of sexual crimes in the investigations, the recognition of associations as civil parties, and key indictments issued against senior officials in the government structure. However, to date, few trials have been held before the Criminal Court (formerly the Assize Court). The evidence shows that this meagre track record of judicial proceedings and mechanisms adopted fails to match the government's promises of justice, victims' expectations, or the seriousness of the violence to which they were supposed to provide a remedy and just reparation, both judicial and social.

Furthermore, the adoption of the Amnesty Ordinance in 2018 extinguished victims' hopes for justice, blocking the possibility of future prosecutions and closing the door to the initiation of impartial inquiries and investigations into crimes committed by all parties to the conflict against the civilian population in Côte d'Ivoire. The victims' wait for all these years has been indefinitely prolonged.

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73. FIDH, MIDH and LIDHO, 2014 Report, p. 19.

74. *Jeune Afrique*, "Crise postélectorale en Côte d'Ivoire : la justice avance à tout petits pas", 20 February 2017, *op. cit.*

75. *Jeune Afrique*, "Massacre de Duékoué en Côte d'Ivoire : Amadé Ouérémi, 'le bandit de la forêt classée' face à la justice", 26 March 2021, *op. cit.*

76. FIDH, "Côte d'Ivoire/crise post-électorale: Amadé Oueremi condamné à la perpétuité – un verdict salué par les victimes, qui vient clore dix années de quête de justice", 16 April 2021, <https://www.fidh.org/fr/regions/afrique/cote-d-ivoire/cote-d-ivoire-crise-post-electorale-amade-oueremi-condamne-a-la>.

77. It should however be noted that Laurent Gbagbo was sentenced to 20 years' imprisonment for the robbery of the Central Bank of West African States in Abidjan (BCEAO) during the post-election crisis, and that this sentence was being maintained by the government at the time of publication of this report. RFI, "Côte d'Ivoire : Laurent Gbagbo reste poursuivi par la justice, rappelle le gouvernement", 21 October 2021, <https://www.rfi.fr/fr/afrique/20211021-c%C3%B4te-d-ivoire-laurent-gbagbo-reste-poursuivi-par-la-justice-rappelle-le-gouvernement>.

## D. Impact of ICC proceedings on domestic proceedings and failure of the “complementarity test”

The Ivorian state recognised the ICC’s jurisdiction over its territory from April 2003, without ratifying its Statute, pursuant to Article 12.3 of the Rome Statute. President Alassane Ouattara reiterated recognition of the ICC’s jurisdiction in two declarations, one shortly after the announcement of the election results in December 2010, the other in May 2011, extending its temporal scope. On 3 October 2011, the ICC’s Pre-Trial Chamber III responded positively to the request of the Office of the Prosecutor to open an investigation *proprio motu* into international crimes committed during the post-election crisis, and in February 2012 extended the investigation to crimes committed on the territory of Côte d’Ivoire since 19 September 2002.<sup>78</sup>

The arrest of Laurent Gbagbo on 11 April 2011 marked the end of the post-election crisis. Alassane Ouattara, the new President of Côte d’Ivoire, first agreed to cooperate with the ICC by handing over Laurent Gbagbo, who was the subject of an international arrest warrant, to the ICC in The Hague in November 2011.<sup>79</sup> In May 2011, Alassane Ouattara had sent a letter to the ICC Prosecutor, Luis Moreno Ocampo, confirming his “wish” for the Office of the Prosecutor to “undertake independent and impartial investigations in Côte d’Ivoire into the most serious crimes committed since 28 November 2010 throughout Ivorian territory and to ensure that those persons bearing the greatest criminal responsibility for these crimes are identified, prosecuted and brought before the International Criminal Court”.<sup>80</sup> This letter was an acknowledgement of the lack of capacity of the Ivorian justice system to bring to justice the most senior officials, given that it “might encounter a wide array of difficulties”.<sup>81</sup>

Cooperation between the state and the ICC seemed to be on track when, in February 2013, Côte d’Ivoire ratified the Rome Statute. Subsequently, the ICC took jurisdiction over two other cases related to the post-election crisis concerning Simone Gbagbo and Charles Blé Goudé, respectively wife and former minister of Laurent Gbagbo, against whom the Court issued arrest warrants.

Although Côte d’Ivoire handed over Charles Blé Goudé to the ICC in March 2014, it refused from 2013 to hand over Simone Gbagbo, claiming that proceedings in relation to the same facts were ongoing at the domestic level. Côte d’Ivoire’s objection to admissibility was rejected by the Pre-Trial Chamber I in 2014 and by the Appeals Chamber in 2015. In response, President Ouattara declared that Côte d’Ivoire would not transfer any further individuals to The Hague.<sup>82</sup>

Trials were conducted at the domestic level, first by the CSE and then by the CSEI. However, subsequent events suggested that these proceedings were merely superficial and aimed at removing the alleged perpetrators from the jurisdiction of the ICC (see above).

At the ICC, proceedings against Laurent Gbagbo and Charles Blé Goudé were joined in March 2015.<sup>83</sup> Following the joinder of the two cases, the opening of the trial in The Hague on 28 January 2016 represented an important step in the fight against impunity. Four charges of crimes against humanity were brought against Laurent Gbagbo and Charles Blé Goudé: murder, rape, other inhumane acts

78. ICC, *Situation in the Republic of Côte d’Ivoire*, <https://www.icc-cpi.int/cdi>.

79. *Jeune Afrique*, “Côte d’Ivoire : les secrets du transfert de Gbagbo à la CPI”, 15 December 2011, <https://www.jeuneafrique.com/189048/politique/c-te-d-ivoire-les-secrets-du-transfert-de-gbagbo-la-cpi/>.

80. ICC, *Situation in Côte d’Ivoire, The Prosecutor v. Laurent Gbagbo*, Annex 15, Public Document, Letter from Alassane Ouattara to the Prosecutor of the ICC dated 3 May 2011, ICC-02/11-01/11-129-Anx15-tENG, <https://www.legal-tools.org/doc/3a2dcf/pdf/>.

81. *Ibid.*

82. *Jeune Afrique*, “Côte d’Ivoire : personne ne sera plus transféré à la CPI, selon Ouattara”, 13 April 2015, <https://www.jeuneafrique.com/229061/politique/c-te-d-ivoire-personne-ne-sera-plus-transf-r-la-cpi-selon-ouattara/>.

83. ICC, *Case of Gbagbo and Blé Goudé*, <https://www.icc-cpi.int/cdi/gbagbo-goude>.

and persecution. A total of 727 victims participated in the trial.<sup>84</sup> However, when only the witnesses for the prosecution had presented their evidence, Gbagbo and Blé Goudé's legal representatives filed motions in July and August 2018 for the acquittal of their clients. The ICC judges decided to acquit Laurent Gbagbo and Blé Goudé on 15 January 2019,<sup>85</sup> dealing a heavy blow to the victims, who had pinned their last hopes on this international court. The Trial Chamber considered that *"the Prosecutor has failed to submit sufficient evidence to demonstrate the responsibility of Mr Gbagbo and Mr Blé Goudé for the incidents under the Chamber's scrutiny. In particular (...) the Prosecutor has failed to demonstrate several core constitutive elements of the crimes as charged, including the existence of a 'common plan' to keep Mr Gbagbo in power, which included the commission of crimes against civilians 'pursuant to or in furtherance of a State or organisational policy'; and the existence of patterns of violence from which it could be inferred that there was a 'policy to attack a civilian population'".*<sup>86</sup>

The trial of Laurent Gbagbo and Charles Blé Goudé could have laid the foundations for effective complementarity between national and international jurisdictions. However, this decision, confirmed on appeal by a majority decision (two of the five judges dissented) on 31 March 2021,<sup>87</sup> reinforced the ICC's crisis of credibility and legitimacy and signalled the loss of any potential positive impact of its action in Côte d'Ivoire.

Ten years after the opening of the ICC investigation, the Office of the Prosecutor has still not indicted any of the alleged perpetrators from the pro-Quattara camp who were involved in the massacres and rapes committed by their forces, despite the fact that a Côte d'Ivoire II investigation has been ongoing since 3 October 2011.<sup>88</sup> This reinforces the impression of a justice system lacking credibility and impartiality.

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84. ICC, *Situation in Côte d'Ivoire, The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, ICC-02/11-01/15, Case information sheet, <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/gbagbo-goudeEng.pdf>.

85. FIDH, "Towards total impunity for 2010-2011 crimes after acquittal of Laurent Gbagbo and Charles Blé Goudé", 15 January 2019, <https://www.fidh.org/en/issues/international-justice/icc-cote-d-ivoire-towards-total-impunity-for-2010-2011-crimes-after>.

86. ICC, Press Release, "ICC Trial Chamber I acquits Laurent Gbagbo and Charles Blé Goudé from all charges", 15 January 2019, <https://www.icc-cpi.int/news/icc-trial-chamber-i-acquits-laurent-gbagbo-and-charles-ble-goude-all-charges>.

87. RFI, "La chambre d'appel de la CPI confirme l'acquittement de Laurent Gbagbo et Charles Blé Goudé", 31 March 2021, <https://www.rfi.fr/fr/afrique/20210331-la-chambre-d-appel-de-la-cpi-confirme-l-acquittement-de-laurent-gbagbo-et-charles-bl%C3%A9-goud%C3%A9>.

88. ICC, *Situation in the Republic of Côte d'Ivoire*, <https://www.icc-cpi.int/cdi?ln=fr>.

## 2. Domestic justice used as a political instrument: cases against political opponents

### A. Diversion of the CSEI away from its original purpose and mandate

Since 2015, the CSEI's work has been strewn with obstacles, including the pre-emptive closure of investigations into the crimes of the post-election crisis in 2015, changes in the unit's mission and priorities as a result of the expansion of its jurisdiction to the investigation and prosecution of perpetrators of terrorism, and the adoption by the government of the Amnesty Law in 2018, which directly resulted in a sharp reduction in the CSEI's activities. This situation is all the more alarming as the few cases currently being investigated seem to be driven by political interests. Despite calls from civil society to allow the CSEI to carry out its work effectively and in line with its mandate, in recent years, having been side-lined from its primary mission (to carry out judicial investigations into offences committed during the post-election crisis, as well as all related or connected offences), the unit's expertise, mandate, which now includes the fight against terrorism, resources and the cases brought before it, have been diverted to serve the authorities' partisan objectives.

Today, investigations underway at the CSEI-LCT are no longer related to crimes committed during the post-election crisis, rather they fall within the CSEI-LCT's expanded mandate on the fight against terrorism, which has now become the unit's major focus. In July 2021, at a ceremony the Minister of Justice and Human Rights handed over seven new vehicles to the CSEI-LCT and underlined that the unit must establish the criminal responsibility of those arrested<sup>89</sup> in connection with the terrorist attacks that took place in Kafolo, Kolobougou, Tougbo and Tehini between May and June 2021, resulting in 22 deaths.<sup>90</sup> This further demonstrates that the priority for the unit's work is far from its original mandate, focusing almost exclusively on counter-terrorism issues.

### B. Political opponents in the dock during the period surrounding the 2020 presidential elections

#### i. Cases against Guillaume Soro and his entourage

Guillaume Soro, who had been a public figure since 1995 as leader of a student union, became the secretary general of the Forces Nouvelles de Côte d'Ivoire, an entity bringing together three rebel movements from different regions. During the socio-political turmoil in the 2000s and the 2010-2011

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89. On 7 July 2021, the Prosecutor of the Republic and Director of the CSEI-LCT announced that individuals who had been arrested for these terrorist attacks had been released due to the lack of evidence, <https://www.gouv.ci/doc/1625727288Communique-du-Procureur-de-la-Republique-relatif-aux-enquetes-liees-aux-attaques-terroristes-perpetrees-dans-les-localites-de-Kafolo-et-Kolobougou.pdf>.

90. Agence ivoirienne de presse, "Côte d'Ivoire -AIP / La cellule spéciale d'enquête lutte contre le terrorisme équipée en véhicule", 27 July 2021, <https://www.aip.ci/cote-divoire-aip-la-cellule-speciale-denquete-lutte-contre-le-terrorisme-equipee-en-vehicule/>.

post-election violence, Guillaume Soro was very close to Alassane Ouattara,<sup>91</sup> and supported his political projects until a split in 2019, when Guillaume Soro announced his candidacy for the 2020 presidential election, thereby challenging his former ally who ended up running for a controversial third term.

Two months after the announcement of Guillaume Soro's candidacy for the presidential elections, on 23 December 2019, when he declared that he was returning to Côte d'Ivoire, the Ivorian authorities issued an arrest warrant against him and several MPs close to him who were still in office at the time.<sup>92</sup> Between 23 and 31 December 2019, 19 supporters of Guillaume Soro, including two of his younger brothers (Simon and Rigobert Soro) and MP Alain Lobognon, one of his right-hand men, were detained, "on suspicion of conspiring against the regime", in the words of the Prosecutor of the Republic a few months later.<sup>93</sup> In the international arrest warrant issued against him, Guillaume Soro was accused of "attempting to undermine the authority of the state and the integrity of the national territory". He was also the subject of another judicial investigation for "embezzlement of public funds, concealment of the proceeds and money laundering in the sum of 1.5 billion CFA francs".<sup>94</sup> Guillaume Soro was therefore unable to return to Côte d'Ivoire and has remained in exile ever since. Of the 19 individuals arrested in December 2019, nine were released on 24 September 2020.<sup>95</sup> MPs whose immunity had not been lifted were also arrested and remanded in custody.

The Inter-Parliamentary Union (IPU) criticised the fact that the parliamentary immunity of Guillaume Soro and five MPs was not lifted until 20 January 2020, i.e. one month after the arrest warrants were issued.<sup>96</sup> The Bureau of the National Assembly is the only authority with the power to lift parliamentary immunity in Côte d'Ivoire. The fact that the arrest warrant for Guillaume Soro was announced, and that the arrests of five MPs were made in violation of this procedure, represents a significant irregularity.

On 22 April 2020, in response to a complaint submitted by Guillaume Soro and his entourage, the African Court on Human and Peoples' Rights (ACtHPR) issued an interim decision ordering the suspension of the arrest warrant against Guillaume Soro. The Court ordered the provisional release of the other detained political opponents.<sup>97</sup> The Court also highlighted concerns that "the freedom and political rights of the applicants could be seriously compromised"<sup>98</sup> in the run-up to the presidential elections, scheduled for October 2020.<sup>99</sup>

Despite this decision, on 28 April 2020, Guillaume Soro was sentenced by the Abidjan Criminal Court to 20 years in prison. "Soro, who lives in France, was accused of having bought his Abidjan residence in 2007

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91. BBC News Afrique, "Mandat d'arrêt émis contre Guillaume Soro en Côte d'Ivoire", 23 December 2019, <https://www.bbc.com/afrique/region-50896189>.

92. France 24, "Côte d'Ivoire : mandat d'arrêt international contre le candidat à la présidentielle Guillaume Soro", 23 December 2019, <https://www.france24.com/fr/20191223-c%C3%B4te-d-ivoire-mandat-d-arr%C3%AAt-international-contre-guillaume-soro>. See also *Le Monde*, "Côte d'Ivoire : mandat d'arrêt international contre Guillaume Soro pour 'atteinte à l'autorité de l'État'", 24 December 2019, [https://www.lemonde.fr/international/article/2019/12/24/cote-d-ivoire-mandat-d-arret-international-contre-guillaume-soro-pour-atteinte-a-l-autorite-de-l-etat\\_6023914\\_3210.html](https://www.lemonde.fr/international/article/2019/12/24/cote-d-ivoire-mandat-d-arret-international-contre-guillaume-soro-pour-atteinte-a-l-autorite-de-l-etat_6023914_3210.html).

93. RFI, "Côte d'Ivoire : le procès de Guillaume Soro et 19 proches s'ouvre à Abidjan", 18 May 2021, <https://www.rfi.fr/fr/afrique/20210517-c%C3%B4te-d-ivoire-le-proc%C3%A8s-de-guillaume-soro-et-19-proches-s-ouvre-cette-semaine>

94. *Ibid.*

95. RFI, "Côte d'Ivoire : des proches de Guillaume Soro libérés", 24 September 2020, <https://www.rfi.fr/fr/afrique/20200924-c%C3%B4te-divoire-proches-guillaume-soro-lib%C3%A9r%C3%A9s>.

96. The IPU's Committee on the Human Rights of Parliamentarians, "Case CIV-COLL-01: Decision adopted by the Committee on the Human Rights of Parliamentarians under Rule 12.4) of its Rules and Practices", 29 May 2020.

97. ACtHPR, *Guillaume Kigbafori Soro and others v. Republic of Côte d'Ivoire*, Order for Provisional Measures, 22 April 2020, <https://www.african-court.org/cpmt/storage/app/uploads/public/62b/5c5/08a/62b5c508af58a889145908.pdf>.

98. *Ibid.*

99. See also France 24, "Côte d'Ivoire : Guillaume Soro privé de présidentielle et condamné à 20 ans de prison", 28 April 2020, <https://www.france24.com/fr/20200428-c%C3%B4te-d-ivoire-guillaume-soro-priv%C3%A9-de-pr%C3%A9sidentielle-et-condamn%C3%A9-%C3%A0-20-ans-de-prison>.

with public funds and was sentenced to 'twenty years in prison, fines of 4.5 billion CFA francs' (6.8 million EUR), the confiscation 'of his house and the deprivation of his civic rights'. He was also ordered to pay 2 billion CFA francs (3 million EUR) in damages to Côte d'Ivoire.<sup>100</sup>

The trial on charges of undermining state authority and plotting against the regime opened on 19 May 2021 at the Abidjan Criminal Court, and involved, among others, Affoussiata Bamba Lamine, a former minister and Guillaume Soro's lawyer; Moussa Touré, his director of communication; Sess Soukou Mohamed, alias Ben Souk, former MP and Mayor of Dabou; Alain Lobognon, former minister and former MP; Félicien Sekongo, President of the *Mouvement pour la promotion des valeurs nouvelles en Côte d'Ivoire* (MVCI - Movement for the Promotion of New Values in Côte d'Ivoire); Souleymane Kamaraté Koné, alias Soul To Soul, Soro's former chief of protocol; and two of Guillaume Soro's brothers, Simon and Rigobert Soro.<sup>101</sup> Following postponement to communicate the case documents to the defence,<sup>102</sup> the trial resumed on 26 May, and on 23 June 2021 Guillaume Soro was sentenced to life imprisonment. Toure Moussa, Affoussiata Bamba Lamine and Souleymane Kamaraté Koné as well as several military personnel were sentenced to 20 years in prison. The other defendants were sentenced to lesser terms, which for the most part corresponded to the period already spent in pre-trial detention.<sup>103</sup>

## ii. Other opponents targeted

The case involving Guillaume Soro and his entourage was not the only case targeting political opponents during the 2020 election period. Other political leaders faced prosecution, including Pascal Affi N'Guessan, leader of the *Front populaire ivoirien* (FPI - Ivorian People's Front) and Henri Konan Bédié, President of the *Parti démocratique de Côte d'Ivoire* (PDCI - Democratic Party of Côte d'Ivoire).

Prior to the publication of the presidential election results on 3 November 2020, opposition leaders announced the creation of a Conseil national de transition (CNT - National Transition Council), which aimed to set up a transitional government and organise an alternative presidential election. This Council was created in reaction to Alassane Ouattara's third presidential term, deemed contrary to the Ivorian constitution.<sup>104</sup> This initiative did not last long, however, as a little over a month after its creation, Henri Konan Bédié put an end to the "transitional regime" and the CNT, calling for national dialogue.<sup>105</sup>

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100. *Le Monde*, "Côte d'Ivoire : Guillaume Soro condamné à vingt ans de prison pour 'recel de détournement de deniers publics'", 28 April 2020, [https://www.lemonde.fr/afrique/article/2020/04/28/cote-d-ivoire-soro-condamne-a-20-ans-de-prison-pour-recel-de-detournement-de-deniers-publics\\_6038046\\_3212.html](https://www.lemonde.fr/afrique/article/2020/04/28/cote-d-ivoire-soro-condamne-a-20-ans-de-prison-pour-recel-de-detournement-de-deniers-publics_6038046_3212.html). See also RFI, "Côte d'Ivoire : Guillaume Soro condamné à 20 ans de prison ferme", 28 April 2020, <https://www.rfi.fr/fr/afrique/20200428-c%C3%B4te-d-ivoire-guillaume-soro-condamn%C3%A9-%C3%A0-20-ans-prison-d%C3%A9tournement-fonds>.

101. RFI, "Côte d'Ivoire : le procès de Guillaume Soro et 19 proches s'ouvre à Abidjan", 18 May 2021, *op. cit.* See also 7Info.ci, "Procès, Guillaume Soro et ses proches à nouveau devant le juge", 19 May 2021, <https://www.7info.ci/proces-guillaume-soro-et-ses-proches-a-nouveau-devant-le-juge/>.

102. 7Info.ci, "Procès de Guillaume Soro et ses proches, voici les raisons du report", 20 May 2021, <https://www.7info.ci/proces-de-guillaume-soro-et-ses-proches-voici-les-raisons-du-report/>.

103. BBC, "Guillaume Soro condamné à la prison à vie : émotions et réactions diverses", 23 June 2021, <https://www.bbc.com/afrique/region-55826165>. See also IvoireBusiness.net, "Procès contre Guillaume Soro et ses proches : les avocats de la défense claquent la porte de l'audience", 27 May 2021, <https://ivoirebusiness.net/articles/proces-contre-guillaume-soro-et-ses-proches-les-avocats-de-la-defense-claquent-la-porte-de>.

104. *Jeune Afrique*, "Côte d'Ivoire : l'opposition annonce la formation d'un 'Conseil national de transition' présidé par Bédié", 2 November 2020, <https://www.jeuneafrique.com/1068098/politique/cote-divoire-lopposition-annonce-la-formation-dun-conseil-national-de-transition-preside-par-bedié/>. See also RFI, "Côte d'Ivoire : l'opposition annonce la création d'un Conseil national de transition", 2 November 2020, <https://www.rfi.fr/fr/afrique/20201102-côte-d-ivoire-opposition-annonce-création-conseil-national-transition>.

105. France 24, "En Côte d'Ivoire, l'opposant Henri Konan Bédié met fin au régime de 'transition'", 10 December 2020, <https://www.france24.com/fr/afrique/20201209-en-c%C3%B4te-d-ivoire-l-opposant-henri-konan-b%C3%A9di%C3%A9-met-fin-au-r%C3%A9gime-de-transition>.

Following the announcement of the creation of the CNT on 3 November 2020, the Ivorian authorities arrested approximately twenty individuals present at Henri Konan Bédié's residence, on charges of sedition.<sup>106</sup> The Abidjan Prosecutor referred the case to the senior investigating judge on 30 November for the opening of a judicial investigation. Like the arrests that took place in December 2019, several MPs were arrested or were sought by the authorities despite the fact that their immunity had not been lifted by the Bureau of the General Assembly. Pascal Affi N'Guessan was arrested on 7 November 2020 and transferred to the *Direction de la Surveillance du Territoire* (DST - Directorate of Territorial Surveillance). After two months in pre-trial detention, Affi N'Guessan was released under judicial supervision on 30 December 2020,<sup>107</sup> although the charges against him had not been withdrawn.

Along with four other MPs sought by the authorities after the announcement of the creation of the CNT, Pascal Affi N'Guessan was accused of, among other things, conspiracy against state authority, insurrectional movement, murder and acts of terrorism<sup>108</sup> in connection with violence perpetrated before, during and after the 2020 presidential election. The IPU observed that, "(...) *the effective exercise of their parliamentary mandate remains impeded*".<sup>109</sup> During our international advocacy mission in December 2021, our organisations learned that Pascal Affi N'Guessan was banned from leaving the country and that his movements within the country were conditional on obtaining government permission.

## C. Politicised cases within a justice system used as a political instrument

The prosecution of political opponents, notably Guillaume Soro and Pascal Affi N'Guessan and their colleagues, are clear examples of justice being used as a political instrument. The judicial persecution of these individuals, political opponents of President Ouattara, coincided with the 2020 electoral calendar. In its provisional order of 22 April 2020, the ACTHPR stated:

*"The Court further notes that in the instant case, the execution of the arrest or detention warrant against political personalities amongst whom is one who has already declared his intention to stand for elections and the fact that the elections are just a few months away, could seriously compromise the freedom and political rights of the Applicants. To that end, the Court notes that this is a situation of extreme urgency since the said elections are scheduled to take place less than six months from the date of this application."*<sup>110</sup>

Furthermore, the speed with which some of the decisions were taken appears to be a strategy to block the participation in the 2020 electoral process of those targeted. The failure to waive parliamentary immunity before the arrests, in addition to being a violation of the rule of law, demonstrated the political dimension of these actions and the desire to eliminate political opponents. Sentences handed down for undermining state authority and plotting against the regime were also disproportionate, ranging from life imprisonment for Guillaume Soro to 20 years for his closest collaborators and a few months for others.

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106. According to the Abidjan Prosecutor, Henri Konan Bédié was not arrested due to his age and poor health. RFI, "Côte d'Ivoire: les opposants Mabri et N'Guessan recherchés par la justice", 6 November 2020, <https://www.rfi.fr/fr/afrique/20201106-c%C3%B4te-divoire-mabri-et-nguessan-recherch%C3%A9s-la-justice>.

107. France 24, "Côte d'Ivoire : Pascal Affi Nguessan libéré sous contrôle judiciaire", 31 December 2020, <https://www.france24.com/fr/afrique/20201231-c%C3%B4te-d-ivoire-pascal-affi-nguessan-lib%C3%A9r%C3%A9-sous-contr%C3%B4le-judiciaire>. *Le Point Afrique* with AFP, "Côte d'Ivoire : Pascal Affi N'Guessan libéré sous contrôle judiciaire", 30 December 2020, [https://www.lepoint.fr/afrique/cote-d-ivoire-pascal-affi-n-guessan-libere-sous-controle-judiciaire-30-12-2020-2407692\\_3826.php](https://www.lepoint.fr/afrique/cote-d-ivoire-pascal-affi-n-guessan-libere-sous-controle-judiciaire-30-12-2020-2407692_3826.php).

108. The IPU's Committee on the Human Rights of Parliamentarians, "Case CIV-COLL-01: Decision adopted at its 163th session", 1-13 February 2021.

109. *Ibid.*

110. African Court on Human and People's Rights, *Guillaume Kigbafori Soro and others v. Republic of Côte d'Ivoire*, Order for Provisional Measures, 22 April 2020, para. 35.



The few random releases that followed convictions in 2020 and 2021 do not provide reassurance and cannot be a reason to hope for a change in government posture, as they do not meet criteria consistent with the rule of law. They are meant to be a symbol of the government's conciliatory position and proof of its efforts towards national reconciliation, but they are not based on due process of law and do not guarantee the rights of victims. Justice seems to be used more as an instrument of blackmail, and judicial decisions vary according to the context. It is interesting to note, however, that since 2021 President Alassane Ouattara has been meeting and negotiating with some of his opponents, including Henri Konan Bédié, Laurent Gbagbo and Pascal Affi N'Guessan.

The return of Laurent Gbagbo to Côte d'Ivoire shortly after his acquittal, as well as that of Charles Blé Goudé, is in keeping with this tendency.

## **D. Côte d'Ivoire avoids its regional and international human rights obligations and commitments**

In recent years, national and international bodies have raised the alarm about the lack of impartiality and independence of the justice system in Côte d'Ivoire. In 2015, at the start of President Ouattara's second term, the UN Human Rights Committee issued its conclusions on Côte d'Ivoire's fulfilment of its commitments under the International Covenant on Civil and Political Rights. The Committee expressed concern about "*the lack of independence of the judiciary owing to interference by the executive branch in the administration of justice*" and "*the bias and lack of fairness allegedly displayed by judges in handling cases concerning the post-election crisis of 2010–2011*".<sup>111</sup>

The path taken by the government is a departure from the commitments it made more than ten years ago, at the beginning of Alassane Ouattara's first presidential term, to promote and protect human rights and combat impunity. Furthermore, the government's decision to withdraw the jurisdiction granted to the ACtHPR pursuant to Côte d'Ivoire's declaration under Article 34(6)<sup>112</sup> is further damning evidence of executive interference in the judiciary. Article 34(6) of the Protocol provides for the possibility for states to make a declaration allowing individuals and NGOs with observer status before the ACHPR to bring complaints directly to the Court, after having exhausted domestic remedies. Côte d'Ivoire, which made this declaration in 2003,<sup>113</sup> was among the first Member States of the African Union to recognise the importance of this key element in African regional justice that strengthens the protection of human rights and the fight against impunity in Africa, and allows individuals to access this justice mechanism.

The decision to withdraw the jurisdiction granted to the ACtHPR by Côte d'Ivoire on 28 April 2020<sup>114</sup> occurred during the election period, and followed the complaint submitted to the Court by the lawyers of Guillaume Soro and his entourage, which led to the ACtHPR's interim decision ordering the suspension of the arrest warrants issued against Guillaume Soro and his entourage and the release of other political opponents. The withdrawal of the Court's jurisdiction to receive complaints from individuals and NGOs has been effective since the end of April 2021.

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111. UN Human Rights Committee, "Concluding observations on initial report of Côte d'Ivoire", CCPR/C/CIV/CO/1, 28 April 2015.

112. Under this article, the State Party to the Convention accepts the jurisdiction of the Court to receive applications from individuals and non-governmental organisations. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Article 34(6), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>.

113. Executive Council of the African Union, *Report of the activities of the African Court on Human and Peoples' Rights for the period 1 January to 31 December 2016*, Thirtieth Ordinary Session 22-27 January 2016 in Addis Ababa, Ethiopia.

114. On 28 April 2020, Côte d'Ivoire became the fourth state to withdraw its declaration under Article 34(6) of the ACHPR Protocol. The latest ratification list for the Protocol lists only eight states that have made the required declaration. This decision took effect one year later, in April 2021. This withdrawal is bad news for human rights defenders and victims of violations, who will lose access to the main judicial forum for the protection of human rights on the African continent.

# CONCLUSION

At the end of the post-election crisis, Alassane Ouattara's initial declarations as new president, calling for the promotion of justice for all raised the hopes of Ivorians in the aftermath of violent political, social and economic breakdown across the country, which left a population scarred by the terrible crimes committed by both sides.

An initial push for justice by the new government in 2011 led to the creation of mechanisms for truth-telling and reparation measures for victims (the CNE, the CDVR and later, in 2015, the CONARIV) as well as judicial mechanisms in charge of prosecuting cases (the CSE, then the CSEI). But these institutions, which appeared to be part of a comprehensive system of justice and reconciliation, soon faced obstacles in fulfilling their mandate, or were emptied of their original mission.

The establishment of the CSE did not live up to the expectations raised. Partisan trials following uneven investigations earned it much criticism and seemed to justify the government's decision to end its mandate in 2013. Civil society action and strong advocacy in support of the institution and the need to strengthen its capacity successfully convinced the government to create the CSEI, this time as a permanent institution to investigate crimes of the post-election crisis and all related crimes. However, emphasis on state security cases, the investigation of serious crimes targeting mainly one faction of the conflict and their closure without trial called into question the new unit's role and effectiveness, which was subsequently designated as the main investigative body for terrorism cases, diluting its mandate on crimes committed in the post-election crisis. This is all the more regrettable given that significant progress had been made in investigations into the post-election crisis, resulting in the hearing of a large number of victims and key indictments against alleged perpetrators among senior officials from both sides.

However, the failure of these mechanisms, showing the authorities' lack of real political will to judge the crimes of the past, was cemented in the adoption of the Amnesty Ordinance by Alassane Ouattara in August 2018, preventing any possibility of organising trials at the national level against those bearing the greatest responsibility for these crimes. The trial of Amadé Ouérémi, a burst of justice 10 years after the crisis, only marked the end of national proceedings. These impediments to justice have also been replicated at the international level, with the withdrawal of Côte d'Ivoire from the jurisdiction of the African Court on Human and Peoples' Rights to receive complaints directly from civil parties.

The most recent presidential elections held in 2020 and the first year of Alassane Ouattara's third term in 2021 demonstrated the extent to which justice has been used as a tool of control and power under the influence of the executive. In addition to having completely forgotten commitments made to victims of the post-election crisis, sabotaging the fight against impunity at the national level, the prosecution of political opponents and the recent signs of rapprochement with former enemies, consolidate a landscape of insecurity and instability in Côte d'Ivoire in the area of justice.

The disappointments linked to the conduct of investigations and trials at the ICC, which resulted in only two cases in which the suspects, Laurent Gbagbo and Charles Blé Goudé, were acquitted, and 10 years of investigations at the national level without the issuance of a single arrest warrant against alleged perpetrators close to Alassane Ouattara, mean that the prospects for justice for the victims of the 2010-2011 post-election crisis are seriously diminished.

# RECOMMENDATIONS

In view of the poor progress in the area of justice for crimes committed in Côte d'Ivoire during the post-election crisis, as well as recent events which demonstrate a lack of political will and the use of the justice system as a political instrument by the government, our organisations make the following recommendations:

## **TO THE IVORIAN AUTHORITIES:**

### **To the government of Côte d'Ivoire:**

- Stop executive interference in Côte d'Ivoire's judicial system to ensure maximum independence of judges;
- Drop all unsubstantiated and politically motivated charges against political opponents and release those accused who are in detention;
- Allocate the budget necessary to allow the Ministry of Solidarity to resume individual and collective reparations for victims of the post-election crisis of 2010-2011 and publish the list of victims approved as beneficiaries;
- Implement the decisions of the African Court on Human and Peoples' Rights and ensure close cooperation with the Court; in particular, reverse the decision to withdraw the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, by reinstating this declaration to enable the Court to receive applications from individuals and civil society organisations;
- Guarantee an effective and equitable administrative presence of state apparatus throughout the Ivorian territory, rather than concentrating a disproportionate presence in the capital, particularly with regard to judicial services, to prevent the most serious crimes from benefiting from impunity under community justice based on forgiveness, without criminal justice proceedings being carried out to establish the facts, punish the perpetrators and provide justice and reparation to the victims;
- Repeal the Law of 27 December 2018 which ratifies the Amnesty Ordinance of August 2018.

### **To the Ministry of Justice:**

- Notify the victims of the closure of the criminal cases initiated by the CSEI on the crimes committed during the post-election crisis, resulting from the adoption of the Amnesty Ordinance of August 2018 so that they can exercise all remedies provided for by law;
- Coordinate action with the Ministries of Interior and Defence, to prepare and draft the list of persons excluded from the scope of the amnesty, as established in Article 2 of the Ordinance, and to justify the basis for this exclusion, ensuring the respect of the principles of criminal and constitutional law;
- Clarify and reorganise jurisdiction and functions within the CSEI to ensure that the fight against terrorism is not detrimental to the progress of proceedings relating to crimes committed during the post-election crisis, which is the primary purpose for the creation of this permanent body;

- Resume proceedings related to violence committed in the post-election crises of 2010-2011 and 2020.

#### **To the Ministry of Solidarity:**

- Clarify and make public the process of preparing the list of 316,954 individuals who have been identified as entitled to reparations in relation to the violence of the 2010-2011 crisis, as a follow-up to consultations carried out by CONARIV;
- Notify individually all the people on the list, so that all victims know whether they are entitled to reparation, and to allow their access to the corresponding processes; inform associations supporting these victims;
- Resume the process related to individual and collective reparations, in direct consultation and coordination with the victims, so that the implementation of reparation mechanisms meets the needs and expectations of survivors and families of victims of the 2010-2011 post-election crisis.

#### **To the Ministry of Reconciliation:**

- Coordinate with the Ministry of Solidarity on the resumption of individual and collective reparations;
- Ensure that the judicial component is not excluded from the reparation policy and the strategy for national reconciliation;
- Ensure that the memorial policy is representative of the reality of the events of the last 12 years, including stories of all victims and the reality of the judicial proceedings.

### **TO INTERNATIONAL INSTITUTIONS AND ORGANISATIONS:**

#### **To the African Union:**

- Condemn in the strongest terms Côte d'Ivoire's decision to withdraw its declaration under Article 34(6) accepting the jurisdiction of the Court to receive applications from individuals and civil society organisations; make every effort to ensure that the state of Côte d'Ivoire reinstates this declaration;
- Condemn the politicisation of the justice system and the prosecution of political opponents as well as arbitrary imprisonment contrary to established legal procedures.

#### **To the International Criminal Court:**

- Put in place the means to strengthen the activities carried out in the context of the investigation in Situation of Côte d'Ivoire II to enable the Prosecutor to make significant progress towards the prosecution of the most senior perpetrators of international crimes committed during the post-election crisis, irrespective of their camp, and thus combat the perception of two-tier justice;
- Conduct outreach and information campaigns in Côte d'Ivoire, on the confirmation of the acquittal of Laurent Gbagbo and Charles Blé Goudé and ongoing investigations, to work on the credibility crisis faced by the ICC and strengthen its action pursuant to the principle of complementarity.

### To the Assembly of States Parties to the Rome Statute:

- Allocate an adequate budget to meet the needs of the Office of the Prosecutor enabling it to conduct a thorough and effective investigation into the situation in Côte d'Ivoire.

### TO CÔTE D'IVOIRE'S INTERNATIONAL PARTNERS AND THE INTERNATIONAL COMMUNITY:

- Continue to support Côte d'Ivoire in its reconstruction efforts following the post-election crisis, including by prioritising the issues of justice, the fight against impunity, the strengthening of the rule of law and promoting independent, fair and impartial justice, linking support for the consolidation of social cohesion and peace with needs related to the fight against impunity;
- Continue to pay particular attention to the political and human rights situation in Côte d'Ivoire, including by adopting coordinated and/or concerted action strategies at regional and international level;
- Support civil society and human rights defenders in their efforts to promote justice and the rule of law and to combat impunity; in particular, by strengthening their capacity for action and their physical and psychological security.



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## LIGUE IVOIRIENNE DES DROITS DE L'HOMME (LIDHO)

The *Ligue ivoirienne des Droits de l'Homme* (LIDHO - Ivorian League for Human Rights) has been in existence since 21 March 1987 and was officially recognised by receipt of association declaration No. 293 INT. AT.AG 5 of 14 June 1990. It has no political, trade union or religious affiliation and focuses on the promotion, protection and defence of human rights. LIDHO has a governing board of five members, an executive board of sixteen members and currently has sixty-three branches spread across all regions of Côte d'Ivoire. LIDHO's action is structured around the following principles:

- Effective application of the legislation in force subject to the strict respect of human rights;
- Equal application of the law;
- Combating all forms of discrimination, including racial, tribal, ethnic, religious, sexual, trade union, economic and political discrimination;
- Combating corruption, nepotism and trading in influence;
- Combating all abuses by monopoly companies;
- Defending all human rights wherever they are violated.

LIDHO has been a member of FIDH since 1989 and has observer status at the ACHPR.

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## MOUVEMENT IVOIRIEN DES DROITS HUMAINS (MIDH)

The *Mouvement ivoirien des Droits humains* (MIDH – Ivorian Movement for Human Rights) is a non-profit association, created on 8 October 2000.

After twenty years of existence, MIDH now has more than three hundred members and ten branches inside the country, in Bouaké, Daloa, Gagnoa, Korhogo, San Pedro, Yamoussoukro, Dimbokro, Toumodi, Odienné and Katiola.

MIDH is a member of several national networks (coalitions), including the *Convention de la société civile ivoirienne* (CSCI), and international networks, in particular the International Federation for Human Rights (FIDH).

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The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

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