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Côte d'Ivoire

Accountability for Serious Human Rights Crimes Key to Resolving Crisis

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"Rule of law is at risk around the world. ... It is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict."

U.N. Secretary General Kofi Annan (addressing the General Assembly of the United Nations. September 21, 2004)

1. INTRODUCTION

In October 2004, after two months of investigations, a United Nations Commission of Inquiry will finish its report on serious violations of international human rights and humanitarian law perpetrated in Côte d'Ivoire since September 2002. These violations include war crimes and crimes against humanity such as numerous massacres, sexual abuse and the widespread use of child combatants. After input from the Ivorian government and rebel coalition, the United Nations Security Council and Secretary-General will then give consideration to the report and its recommendations.

Human Rights Watch believes that holding accountable those individuals on all sides most responsible for serious international crimes committed since 1999, is an indispensable part of combating the prevailing culture of impunity, and indeed ensuring that peace and stability within Côte d'Ivoire take root. The pursuit of justice for victims must play a central role in all future peace summits, negotiations and other efforts by the international community to end the conflict. Given serious concerns about the ability and willingness of the Ivorian national courts to try these crimes as well as concerns about the degree of social and political instability in the country, justice for victims of serious international crimes in Côte d'Ivoire requires significant support and engagement from the international community.

Since the military coup of 1999, Côte d'Ivoire has descended from its position as a beacon of socio-economic stability in Africa, to being one of the continent's most intransigent crises. The political and social climate is dangerously polarized and characterized by intolerance, xenophobia, and suspicion. The 1999-2000 military junta, 2002-2003 civil war between the government and northern based rebels, and the political unrest and impasse that followed have been accompanied by a persistent, pernicious, and deadly disintegration of the rule of law. The issues at the heart of the Ivorian conflict—the exploitation of ethnicity for political gain, competition over land and natural resources, and corruption—continue unabated.

From 1999 onward, the Ivorian military, gendarmes, police forces, pro-government militias and combatants from several rebel factions have committed serious violations of international humanitarian and human rights law with total impunity. Since 2000 the state security forces and their associated militias have largely ceased to work for the protection of the general population and have become partisan supporters of the ruling party and its economic interests. The 2002-2003 civil war, while short in duration, was marred by the perpetration of atrocities by both sides including numerous massacres, sexual abuse, the widespread use of child combatants. Neither the Ivorian government nor the rebel leadership has taken concrete steps to investigate and hold accountable those most responsible for these crimes. Perpetrators have no doubt been emboldened by the current climate of impunity that allows grave abuses to go unpunished.

Two incidents that occurred in March and June 2004 are particularly egregious examples of this deadly cycle of violence and impunity: In March 2004, a protest march by opposition groups in Abidjan was met with lethal force by members of the Ivorian security forces and pro-government militias. Local human rights groups and representatives of a victims' association interviewed by Human Rights Watch indicate that at least 105 civilians were killed, 290 were wounded, and some 20 individuals "disappeared" after being taken into custody by members of the Ivorian security forces and pro-government militias.¹ In June 2004, serious crimes were committed during clashes between rival rebel factions in the northern city of Korhogo leading to the deaths of some one hundred people. According to a fact-finding mission by the human rights section of the United Nations Operation in Côte d'Ivoire (UNOCI), many of those found in three mass graves had been executed or suffocated after being held in a make-shift prison.²

While there has been no relapse into full-scale war since 2003, the country remains divided; the north and most of the west of the country remain under the control of the rebel forces while the government retains control of the south. Some 4,000 French troops monitor the ceasefire line.

The future of Côte d'Ivoire and indeed the wider West African sub-region is in the balance. The precarious 'no war, no peace' situation has been accompanied by a 'start-stop' pace to the implementation of the peace process. Neither the faltering peace process nor the 6000-strong United Nations peacekeeping mission, the United Nations

¹ See "Human Rights Violations in Abidjan During an Opposition Demonstration – March 2004," Human Rights Watch Report, October 2004 (available October 7, 2004 at www.hrw.org).

² United Nations Security Council, Second report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, S/2004/697, August 2004, (paragraph 38.)

Operation in Côte d'Ivoire (UNOCI), established in April 2004, have been able to facilitate respect for human rights and the rule of law. The conflict in Côte d'Ivoire threatens to further draw in roving combatants from neighboring countries. If this happens, the crisis in Côte d'Ivoire would jeopardize the already precarious stability within the region.

The United Nations has played a key role in investigating serious crimes committed in Côte d'Ivoire and, since 2000, has dispatched three independent commissions of inquiry. The most recent commission, investigating allegations of serious violations of human rights and international humanitarian law perpetrated in Côte d'Ivoire since September 19, 2002, is currently preparing its report. Human Rights Watch believes the Commission of Inquiry report must include concrete recommendations on how to hold accountable those individuals most responsible for atrocities committed in Côte d'Ivoire. The Security Council and Secretary-General must then act on these recommendations without delay.

Human Rights Watch takes the view that national courts have primary responsibility for prosecutions of crimes committed within national borders; however, when national justice systems are unwilling or unable to prosecute serious violations of international law, alternative judicial mechanisms must be considered. There are serious concerns about the willingness and ability of the Ivorian national courts to prosecute serious international crimes committed since 1999. The Ivorian government has demonstrated little political will to hold accountable perpetrators within the government or security forces. Within rebel-held areas – thought to be at least fifty percent of the national territory – there are no legally constituted courts, nor has the rebel leadership established a legitimate judicial authority or shown any political will to try serious crimes in which their commanders or combatants were involved. While the constitution provides for an independent judiciary, the Ivorian judiciary has in practice succumbed to pressure from the executive branch and outside influences, most notably corruption. There are also frequent cases of arbitrary arrest and detention, and extended pre-trial detention without the benefit of public defenders. Lastly, the security situation in the country remains divided and polarized along ethnic, religious and political party lines, and would thus create huge challenges for the adequate protection of witnesses and court staff.

Human Rights Watch therefore urges the Commission of Inquiry to strongly consider recommending an international or hybrid accountability mechanism, and that the government lodge an ad hoc declaration accepting the exercise of jurisdiction by the International Criminal Court with the ICC Registrar pursuant to Article 12(3) of the Rome Statute. The Security Council could also refer the situation in Côte d'Ivoire to the ICC.

2. BACKGROUND TO THE IVORIAN CRISIS - 1999-2004

Côte d'Ivoire's status as francophone West Africa's economic powerhouse was shattered with the 1999 coup d'état by General Robert Guei, who presided over a government characterized by violence and impunity by the security forces. As the October 2000 elections neared, Guei's government allowed a growing sense of nationalism or 'Ivorianité' to flourish. Like the government of Henri Konon Bedie before him, Guei openly exploited ethnicity in an effort to eliminate his biggest political rival, Alassane Ouattara, a Muslim from the north who headed the Rally of Republicans party (*Rassemblement des Républicains*, RDR).

A controversial Supreme Court decision in October 2000 disqualified fourteen of the nineteen presidential candidates, including Ouattara, on citizenship grounds, and former president Bédié, for not submitting a proper medical certificate. On October 22, 2000, presidential elections were held. After early results showed Laurent Gbagbo, candidate from the Ivorian Popular Front (*Front Populaire Ivoirien*, FPI), leading in the polls, General Guei dissolved the National Electoral Commission and proclaimed himself the winner. On October 24, 2000, tens of thousands of protesters from several political parties took to the streets and descended on the city center. President Guei's elite Presidential Guard opened fire on demonstrators, killing scores. On October 25, 2000, after the military and police abandoned him, General Guei fled the country and Gbagbo declared himself president.

On October 26, 2000, as supporters of Gbagbo's FPI party celebrated the swearing in of their new president, Ouattara's RDR once again took to the streets, this time demanding fresh elections on the grounds that Ouattara and other candidates had been arbitrarily barred from running. The bloody clashes which ensued were characterized by religious and ethnic tensions as security forces and civilians supporting President Gbagbo clashed with the mostly Muslim northerners who form the core of support for the RDR.

During the October elections, there were scores of extrajudicial executions as well as "disappearances," sexual violence, hundreds of cases of torture, and the wanton destruction of property. The victims of these attacks were members of the RDR and to a less extent the FPI.

The October 27, 2000 discovery of the bullet-ridden bodies of fifty-seven young men, mostly RDR supporters, massacred in a forest on the outskirts of Abidjan by members of the gendarmerie, became the icon of the election violence. The incident, known as the *Charnier de Yopougon* (the mass grave of Yopougon), presented a test of President

Gbagbo's will to exert control over the security forces, stand up for the rights of all Ivorians regardless of ethnicity, and take a stand on the importance of the rule of law. After assuming the presidency in October 2000, President Gbagbo should have conducted meaningful investigations into the violence with a view to holding accountable those responsible for the unprecedented violence.

He failed to do so. Instead, the December 2000 parliamentary elections were characterized by a further breakdown in the rule of law as state agents and FPI political supporters, encouraged by the impunity they enjoyed, perpetrated numerous acts of violence. While there were fewer killings than in October 2002, there were more cases of arbitrary detention, sexual violence, and religious persecution. Also, by December 2000, a relationship between the security forces and the youth wing of Gbagbo's party had consolidated, with the latter enjoying complete immunity, even when they committed atrocities in the presence of gendarmes and police.³

On the morning of September 19, 2002, heavy shooting broke out in Abidjan while simultaneous attacks took place in the northern towns of Korhogo and Bouaké. The attacks were led by a number of junior military officers who had fled to Burkina Faso in 2000 after having been detained and tortured under then President Guei's government. The attackers formed part of an organized rebel movement, the Patriotic Movement of Côte d'Ivoire (*Mouvement Patriotique de Côte d'Ivoire*, MPCCI). Many were soldiers, including officers who had been sidelined under Gbagbo's government, while others were from northern ethnic groups, or were strong supporters of the opposition RDR. While unable to take the commercial capital Abidjan, the MPCCI had within weeks consolidated its control over much of the north of the country.

By the end of November 2002, the capture of Man and Danané and an attack on Toulepleu, all sizeable towns in the west near the Liberian border, marked the appearance of two new rebel groups working in coordination with the MPCCI, and a new military front. The new groups, the Movement for Justice and Peace (*Mouvement pour la justice et la paix*, MJP) and the Ivorian Popular Movement for the Great West (*Mouvement Populaire Ivoirien du Grand Ouest*, MPIGO) claimed to be Ivorian. However MPIGO was mainly composed of Liberian and Sierra Leonean fighters, including some former members of the Sierra Leonean rebel group, the Revolutionary United Front (RUF) and Liberian forces linked to then Liberian President Charles Taylor.

³ See "The New Racism: The Political Exploitation of Ethnicity in Côte d'Ivoire," Human Rights Watch Report, Volume 13, No 6(A) August 2001.

The internal armed conflict officially ended in January 2003, after the signing of the French-brokered Linas-Marcoussis Agreement. The agreement provided for the formation of a Government of National Reconciliation, which was to oversee disarmament, transparent elections, and the implementation of political reforms such as changes to citizenship and land tenure laws. During 2003 the country made only limited progress towards implementing the provisions of the agreement. Despite the inclusion of both sides in the new government of reconciliation, representatives of the Forces Nouvelles (a single politico-military movement made up of forces from the MPCI, MJP and MPIGO who merged in 2003) withdrew in September 2003 citing, among other reasons, President Gbagbo's lack of good faith in implementing the agreement.

Fears that the impasse would lead to a fresh outbreak of violence led the United Nations, the African Union and the Economic Community of West African States (ECOWAS) to organize a summit to jump-start the peace-process, which was held in July 2004 in Accra, Ghana. The summit resulted in the signing of the Accra III agreement which committed the government to adopt several key legal reforms by the end of August 2004, including one on citizenship for West African immigrants, one which would define eligibility to contest presidential elections, and another which would change rights to land tenure. The agreement also set October 15, 2004 as the starting date for disarmament, and agreed that the process should include all paramilitary and militia groups. However, at this writing, none of the key reforms had been passed by the Ivorian government, rebels have pledged to hold up disarmament, and the diplomatic community is once again expressing concern about the peace process.

3. VIOLATIONS BY GOVERNMENT AND PRO-GOVERNMENT FORCES

During the internal conflict from September 2002 through January 2003, and during the political impasse that has followed, Ivorian state security forces and other pro-government forces, including government-recruited Liberian mercenaries, frequently and sometimes systematically executed, detained, and attacked those perceived to be supporters of the rebel forces based on ethnic, national, religious and political affiliation. Militia groups, tolerated if not encouraged by state security forces, have engaged in widespread targeting of the immigrant community, particularly village-based Burkinabé agricultural workers in the west.

Violations of human rights and humanitarian law committed by state security forces and their associated militias include summary executions, political assassinations, torture,

rape and other sexual violence, violations of medical neutrality, the wanton destruction of civilian property, physical attacks and a crackdown on the press, and the use of child soldiers.⁴

Since 2000, the government has increasingly relied on pro-government militias for both law enforcement and, since 2002, to combat the rebellion. During the conflict in 2002-2003, the Ivorian government's policy of encouraging civilians to form self-defense committees and participate in security tasks such as manning checkpoints, and their failure to hold them accountable for abuses, has contributed to the growth and impunity of these groups in Abidjan and the rural areas. Drawn mainly from youth supporters of the FPI, these groups are a lightly-veiled mechanism to intimidate and abuse members of the political opposition and those, who by virtue of their religion, ethnicity and/or nationality, were thought to oppose the government (most notably Muslims, northerners, and West African immigrants mostly from Burkina Faso, Niger, Mali, and Guinea).

Since 2002, thousands of militant youth, the majority from Gbagbo's Bete ethnic group have enlisted into the state security forces, including the gendarmerie, police, and military. Some of the more militant members of these institutions simply refuse to obey orders from their superiors. This leads to a rather confusing picture with respect to the security forces responsible for recent abuses, especially given that perpetrators sometimes don't wear identifying insignia. Their numbers, estimated to be in the tens of thousands, could easily exceed the numbers of the national army or combatants from the Forces Nouvelles.⁵

Several notable atrocities allegedly committed by Ivorian security forces and other pro-government forces, are as follows:

- In an October 2002 police operation in Daloa, over fifty northern and immigrant civilians were executed, allegedly by the Anti-Riot Squad (*Brigade Anti-Emeute*, BAE.)
- In an attack by government forces on Monoko Zohi in November 2002, at least one hundred civilians, mainly West African immigrants, were killed and buried in mass graves.

⁴ See, Human Rights Watch Report, "Trapped Between Two Wars: Violence Against Civilians in Western Côte d'Ivoire," August 2003.

⁵ Human Rights Watch interview with French military source, New York, July 19, 2004.

- During the government occupation of Man in December 2002, dozens of opposition and suspected rebel supporters were executed in reprisal killings.
- In 2002-3, government security forces carried out both indiscriminate and targeted attacks on civilians, killing at least fifty civilians in the west through their use of helicopter gunships.
- Liberians from the Ivorian refugee camps and from the Movement for Democracy in Liberia (MODEL) rebel faction participated in dozens of killings, rapes, and other acts of violence against civilians in and around Toulepleu, Bangolo and Blolékin. At least sixty civilians were killed in the worst single incident documented in Bangolo in March 2003.
- Between March 24-26, 2004, at least 105 civilians were killed, 290 were wounded, and some 20 individuals "disappeared" after being taken into custody by the security forces (military, gendarmes, and police), pro-government militias, and FPI party militants around the time of an anti-government demonstration planned by opposition groups.

4. VIOLATIONS BY IVORIAN REBEL FORCES

The *Forces Nouvelles* have also attacked and killed civilians suspected of supporting the government or ruling political party, enemy combatants and officials and, more recently, suspected rivals and their supporters in clashes between two rebel factions. In 2002-2003 Liberian and Sierra Leonean fighters allied to the MPIGO and MJP committed numerous abuses against civilians in the west, including killings, rape, and systematic looting of civilian property. All Ivorian rebel factions have frequently recruited and used child combatants.⁶ The New Forces presently exercise military, economic, and administrative control over some fifty percent of the country. Several notable incidents involving rebel factions are as follows:

- MPCFI forces summarily executed over fifty gendarmes and members of their families in Bouaké in October 2002, and executed dozens of other government officials, government supporters, and members of civilian self-defense committees in other locations in the north and west.
- Members of the Ivorian rebel groups and Liberian recruits allied to the MPIGO group were responsible for the summary executions of dozens of Ivorian

⁶ See "Trapped Between Two Wars," pp. 24-41.

civilians in the west, including at least forty civilians killed in Dah village in March 2003.

- In 2002-2003 Liberian fighters linked to the former government in Liberia of Charles Taylor and allied to the MPIGO rebel groups systematically looted the property of civilians around Danané, Zouan-Hounien, and Toulepleu and committed numerous executions and other serious acts of violence against civilians.
- Some 100 people were allegedly executed or died in detention in and around Korhogo in June 2004 during clashes between supporters of rebel leader Guillaume Soro and rival counterpart Ibrahim Coulibaly.

5. IVORIAN GOVERNMENT EFFORTS TO PROVIDE ACCOUNTABILITY FOR HUMAN RIGHTS CRIMES

Since President Gbagbo took office in 2000, there has been scant effort to hold members of state security forces and pro-government forces alleged to be involved in serious crimes accountable. The only cases of politically motivated violence to be properly investigated and tried by Ivorian authorities were those in which the victims were foreigners, notably the October 2003 killing of French journalist Jean Helene by an Ivorian policeman; the April 2004 disappearance of French/Canadian economic journalist Guy-Andre Kieffer; and the June 2004 killing of a French peacekeeper by an Ivorian soldier.

Despite considerable evidence that government forces were responsible for massacres and other atrocities committed during the 2000 election,⁷ not one member of the security forces was ever convicted.⁸ Instead Gbagbo responded to calls for

⁷ See "The New Racism: The Political Exploitation of Ethnicity in Côte d'Ivoire," Human Rights Watch Report, Volume 13, No 6(A) August 2001.

⁸ On April 13, 2001, six gendarmes were charged with murder in connection with the massacre of the Chamier de Yopougon. One of the six was the commander of the Gendarmerie Camp of Abobo, Major Be Kpan who was a captain at the time of the October events and subsequently promoted. Two more gendarmes were later charged and on July 24, 2001 the trial before a military tribunal of the eight gendarmes began inside the Agban Gendarmerie Camp. However, the prosecution's case was seriously weakened by the failure to conduct ballistics tests on bullets found in the bodies, and of the failure of several key witnesses to show up, including two survivors of the massacre, allegedly because of fears for their safety. During the trial, a lawyer for the victims' families, Ibrahima Doumbia said, "The witnesses don't feel secure. And without them, I don't think this trial will establish the truth." During the trial, defense lawyer Banti Kakou implied that impunity for the gendarmes was a requirement for stability in the Côte d'Ivoire by saying, "[b]y convicting them, you would needlessly undermine morale in the gendarmerie and therefore in Côte d'Ivoire." All eight gendarmes maintained their innocence and defendant Sergeant Nguessan Ble said, "I was surprised even to hear about the killings." On August 3, 2001, all

accountability by making a series of symbolic gestures such as the establishment of a committee to promote national reconciliation and a national day of prayer. While the government stated in October 2002 its intention to investigate the killing of over fifty civilians by an elite police unit in Daloa, they have yet to publish a report, let alone make any arrests. Following the March 25, 2004 demonstration, the Ivorian General Prosecutor ordered that autopsies be performed on the ninety-six bodies in government custody; to date there have been no arrests.⁹ In September 2004, the Ivorian Parliament set up two multiparty commissions to investigate the violence surrounding the March 2004 demonstration and human rights violence committed since September 19, 2002.

6. THE WAY FORWARD FOR JUSTICE IN COTE D'IVOIRE

Key international actors working to resolve the crisis in Côte d'Ivoire, namely France, the United Nations, the African Union and the Economic Community of West African States (ECOWAS), must work to develop a concrete strategy to bring to justice those who bear the greatest responsibility for the most serious human rights crimes committed in the country since 1999. Only then can the rule of law be established and political stability take root. Justice is an indispensable element to building long-term stability and sustainable peace in Côte d'Ivoire. Symbolic gestures, like those employed by the Ivorian government in the past, will do nothing to stop the vicious cycle of violence that has engulfed the country.

Members of the United Nations have at several levels and on numerous occasions asserted the importance of seeking accountability for serious crimes committed in Côte d'Ivoire. The connection between ongoing violations and accountability was most recently noted in the August 27, 2004 Second Report of the Secretary-General on the United Nations Operation in Côte d'Ivoire which stated that, "While there have been some recent positive political developments, there remain deep concerns about the human rights situation throughout the country.... It is only by ensuring that the perpetrators of those atrocities are brought to justice and through effectively addressing the prevailing culture of impunity that a significant improvement in the country's human rights situation will be achieved."¹⁰ The Linas-Marcoussis Agreement also calls for

eight gendarmes were acquitted by Judge Delli Sepleu, who ruled that the prosecutors had failed to produce any evidence directly linking the gendarmes to the killings.

⁹ Human Rights Watch interview with Ivorian General Prosecutor Damou Kouyaté, Abidjan, June 2, 2004.

¹⁰ United Nations Security Council, Second Report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, S/2004/697, August 2004, (paragraph 63.)

perpetrators of summary executions and other serious international crimes by “death squads” and those who ordered them to be brought to justice “before an international criminal jurisdiction.”¹¹

For its part, the United Nations has taken a proactive role in investigating serious international crimes committed in Côte d’Ivoire. Since 2000 the Office of the United Nations High Commissioner for Human Rights (OHCHR) has dispatched three independent commissions of inquiry into the grave human rights situation in Côte d’Ivoire; the first following the election violence of October 2000; the second following the violent crackdown of an opposition demonstration in March 2004; and the third, following a request by all parties to the Linas-Marcoussis Agreement to investigate all serious violations of human rights and humanitarian law perpetrated in Côte d’Ivoire since September 19, 2002, which began in July 2004.

However diplomats working to resolve the Ivorian crisis have expressed concern that pursuing justice could undermine the precarious peace process. One diplomat interviewed by Human Rights Watch said, “Accountability is too much to bring as a priority to a divided country. It simply can’t be done now.”¹² Another diplomat was more direct, “Justice sounds great, but making it happen presents very difficult political dilemmas. At present, the most important thing is getting Accra III moving; getting the peace to hold. For now, justice should take a back seat.”¹³ Yet another speculated that the United Nations assertions about the importance of holding those responsible for violations accountable might be just a tool to encourage the warring parties to more fully cooperate with the peace process. As one diplomat put it, “We believe threats of sanctions and judicial action are now motivating both sides to be more cooperative. Do we proceed with justice and jeopardize the entire peace process by indicting them? And besides, the militant youths are still active. Do we want to put the United Nations operations at risk of further attacks for the sake of pursuing justice right now?”¹⁴

In the August 2004 Report of the Secretary-General on “The rule of law and transitional justice in conflict and post-conflict societies,” Secretary-General Kofi Annan asserts that, “Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and

¹¹ Linas-Marcoussis Agreement: Côte d’Ivoire (Part VI, paragraph 3) in Annex “Programme of the Government of National Reconciliation.”

¹² Human Rights Watch interview, New York, September 14, 2004.

¹³ Human Rights Watch telephone interview, New York, September 13, 2004.

¹⁴ Human Rights Watch interview, New York, July 19, 2004.

accountability, but rather when and how.” Human Rights Watch recognizes that sequencing the pursuit of peace and justice must be carefully done. However, delaying justice can deepen the culture of impunity, embolden perpetrators, and create increasingly negative sequelae which render the pursuit of peace and stability ultimately more complicated.

In light of these concerns, there is much anticipation about what recommendations the current commission of inquiry will make. While the terms of reference for the commission did not explicitly include making recommendations on ensuring accountability, Human Rights Watch believes this to be an essential aspect of the commission’s work.

There is discussion among the international community regarding the degree of international involvement needed to achieve accountability for serious international crimes committed in Côte d’Ivoire. There appear to be several options under consideration including: 1) pursuing justice using the existing criminal justice system within Côte d’Ivoire; 2) creating a purely international criminal tribunal; 3) creating a mixed international-national tribunal similar to the Special Court for Sierra Leone; 4) establishing a chamber within the domestic justice system of Côte d’Ivoire that includes the participation of international judges and staff; and 5) prosecutions by the International Criminal Court. [Crimes falling under the jurisdiction of the ICC could be tried by the ICC if Côte d’Ivoire ratifies the Rome Statute. Prior to ratification, however, the ICC could prosecute crimes in Côte d’Ivoire if the Office of the Prosecutor decides to proceed with an investigation following the lodging by Côte d’Ivoire of an ad hoc declaration accepting the exercise of jurisdiction by the ICC with the ICC Registrar pursuant to Article 12(3) of the Rome Statute. The Security Council could also refer the situation in Côte d’Ivoire to the ICC.]

Reports, declarations and statements from different United Nations bodies, including the Security Council and OHCHR, have so far differed in their recommendations regarding which option would be most appropriate for achieving justice for serious human rights crimes in Côte d’Ivoire:

- The recommendations in the April 29, 2004 OHCHR Report of the Commission of Inquiry on the Events Connected with the March Planned for 25 March 2004 in Abidjan recommended a high level of international involvement and stated that the international community “should give priority attention to...[t]he establishment of a mixed human rights court, with the participation of international judges, mandated to prosecute all past massive

human rights violations including those committed prior to 25 March 2004....”
(Paragraph 90.)

- In a May 25, 2004 statement, the President of the Security Council reiterated its demand that the Ivorian government “bring to justice those responsible for those human rights violations.” The statement “expressed its complete readiness to encourage possible international assistance to the Ivorian judicial authorities towards that goal and asked the Secretary-General to submit recommendations on the various possible options for such assistance.”
- The Security Council’s Report of the Security Council Mission to West Africa, 20-29 June 2004 issued on July 2, 2004, affirms that following the issuance of the international commission of inquiry’s report, ‘the Government [of Côte d’Ivoire] should ensure that those responsible for human rights violations are identified and brought to justice. The Security Council should encourage possible international assistance to the Ivorian judicial authorities to this end”
(Paragraph 21(i).)

7. JUSTICE FOR COTE D’IVOIRE – INTERNATIONAL ENGAGEMENT ESSENTIAL

Human Rights Watch takes the view that national courts have primary responsibility for prosecutions of crimes committed within national borders. However, when national justice systems are unwilling or unable to prosecute serious violations of international law, alternative judicial mechanisms, such as an international or mixed national-international tribunal may be necessary to ensure that justice is done. In assessing whether using the Ivorian national courts would be appropriate, there must be careful consideration given to the government’s ability and willingness to try the cases, the government’s effective control over the territory where some of the crimes took place, and the current political and social context within which the trials would take place. Several other crucial factors within the Ivorian national justice system which must be given careful consideration include their adherence to international fair trial standards; independence and impartiality of the chambers and prosecution; relevant experience of judges, prosecutors and investigators; witness protection; and security.

Human Rights Watch believes that justice for victims of serious human rights crimes in Côte d’Ivoire, including war crimes and crimes against humanity, can not be achieved without significant support and engagement from the international community.

Some of the reasons for this are as follows:

1) The Ivorian government has demonstrated very little political will to hold accountable members of the security forces, political parties or militias believed to be responsible for serious crimes.

2) Within the rebel-held part of the country – thought to be at least fifty percent – there are no legally constituted courts, nor has the rebel leadership established a legitimate judicial authority. The rebel leadership has shown no political will to try serious crimes where their commanders or combatants are implicated. There have been numerous reports of rebels summarily executing suspected looters and rapists without trial and of suspected criminals and rival combatants dying in detention. The rebel leadership is very unlikely to subject themselves or their subordinates to the jurisdiction of Ivorian government courts, without significant international involvement.

3) While the Cote d'Ivoire constitution provides for an independent judiciary, the Ivorian judiciary has in practice succumbed to pressure from the executive branch and outside influences, most notably corruption. More politically sensitive cases are reported to be subject to pressure from the executive branch, ruling party or ethnic interests. Fairness in criminal cases are often undermined by corrupt magistrates and judges.¹⁵ There are also concerns that the overt political activity or affiliation of some justice ministry personnel might create the perception of bias or, in some cases compromise their independence in politically sensitive cases.

4) There are frequent, albeit not systematic, cases of arbitrary arrest and detention, and pre-trial detention in both criminal and politically sensitive cases often exceeds the statutory limit.¹⁶ While not systematic, Human Rights Watch has documented numerous cases of civilians and unarmed combatants who have been brutally tortured, raped, "disappeared," forced to confess and sometimes killed while detained within police and gendarme stations.¹⁷ Also, while the judicial system provides for court-appointed counsel, there are very few public defenders to provide this service.

¹⁵ Human Rights Watch telephone interview, New York, September 17, 2004. See also, e.g. Country Reports on Human Rights Practices, Released by the United States Bureau of Democracy, Human Rights and Labor, February 25, 2004, Section 1(e).

¹⁶ Human Rights Watch telephone interview, New York, September 17, 2004.

¹⁷ See, "The New Racism: The Political Exploitation of Ethnicity in Côte d'Ivoire" and "Trapped Between Two Wars," pp.23-24.

5) The security situation in the country remains polarized along ethnic, religious and political party lines, which is also the case in the justice system. This creates huge challenges for the adequate protection of witnesses and other court staff. On several occasions the security forces have been either unwilling or unable to control attacks on judicial and government institutions. For example on March 10, 2004, scores of youth from a pro-government militant group called the "Young Patriots," stormed the Ministry of Justice in Abidjan to protest recent appointments made by the Justice Minister, who is also the president of one of the key opposition parties.

As one Ivorian lawyer living in exile explained, "The problems within the Ivorian judicial system reflect the same divisions and weaknesses that characterize Ivorian society today. Independence and impartiality of our judges and magistrates are severely compromised not only by corruption, but also by ethnic favoritism, political party affinities and religious prejudice. The society is divided by deep ethnic rivers and these rivers flow through the judicial system itself."¹⁸

8. RECOMMENDATIONS

To the Government of Côte d'Ivoire:

- Take all necessary measures to ensure that the security forces respect international humanitarian and human rights law. Take immediate steps, including disciplinary action, to end all attacks by members of the security forces and militias on civilians.
- Stop using and supporting militias and political party members for security functions legally reserved for the police and gendarmes, including checkpoint supervision; investigate and prosecute members of any such group against whom there are allegations of abuse.
- Ratify the Rome Statute of the International Criminal Court and urge passage of necessary legislation to ensure its implementation.
- Lodge an ad hoc declaration accepting the exercise of jurisdiction by the International Criminal Court with the ICC Registrar pursuant to Article 12(3) of the Rome Statute.
- Cooperate fully with any possible ICC investigation.

¹⁸ Human Rights Watch interview with Ivorian Lawyer, New Jersey, September 22, 2004.

To the Forces Nouvelles:

- Take necessary steps to end human rights abuses and violations of international humanitarian law, particularly attacks on civilians.
- End the recruitment of all children under the age of 18 and ensure that child soldiers are promptly disarmed, demobilized, provided adequate humanitarian assistance and handed over to child protection agencies for reintegration into their communities.
- Cooperation fully with any possible ICC investigation

To the U.N. Commission of Inquiry:

- Include in the commission's final report concrete, specific recommendations to the U.N. Security Council on holding accountable all persons responsible for serious violations of human rights and international humanitarian law committed since 1999.
- In light of concerns about the Ivorian government's ability and willingness to try these crimes, ensure that the recommendations include a judicial mechanism with significant support and engagement from the international community.
- Ensure that a complete version of the commission's final report be made available to the public.

To the United Nations Secretary-General:

- Upon completion of the U.N. Commission of Inquiry, and as requested in the May 25, 2004 statement by the U.N. Security Council president, present recommendations to the Security Council on possible options for international assistance in support of justice.

To the Security Council:

- Follow through with the commitment to pursue a path of accountability for the perpetrators of serious human rights crimes in accordance with previous statements by the Council.
- Act promptly to follow through with recommendations made by the U.N. Secretary-General on possible options for international assistance in support of justice.

To the African Union and the Economic Community of West African States:

- Ensure adequate support for the second fact-finding mission to Côte d'Ivoire by the African Commission on Human and Peoples' Rights.
- Support efforts by the international community to establish a mechanism to ensure an end to impunity for the serious human rights crimes that have taken place in Côte d'Ivoire since 1999.

To the United States, France, the European Union, and other donors:

- Condition provision of all military or police assistance to the Ivorian government, with the exception of human rights training programs, until the government has demonstrated that it will investigate and prosecute in accordance with international standards alleged human rights and humanitarian law violations by security forces.
- Should the government demonstrate a commitment to bring genuine reform to its criminal justice system, prioritize programs to strengthen the Ivorian judiciary and other institutions essential to establish the rule of law.
- Provide adequate financial and political support to any judicial mechanism set up to ensure accountability for perpetrators of serious crimes.