

**Topic:**

**The International Criminal Justice and Violence against  
Women during crisis in Africa: The cases of Guinea and  
Cote d'Ivoire.**

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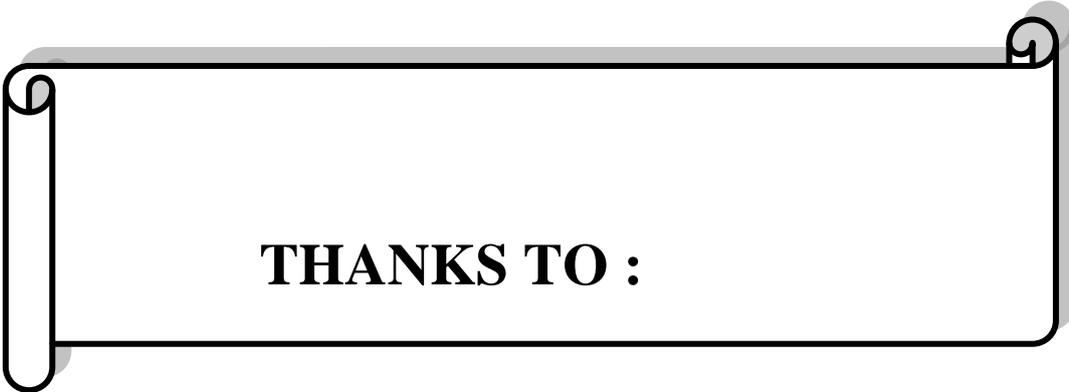
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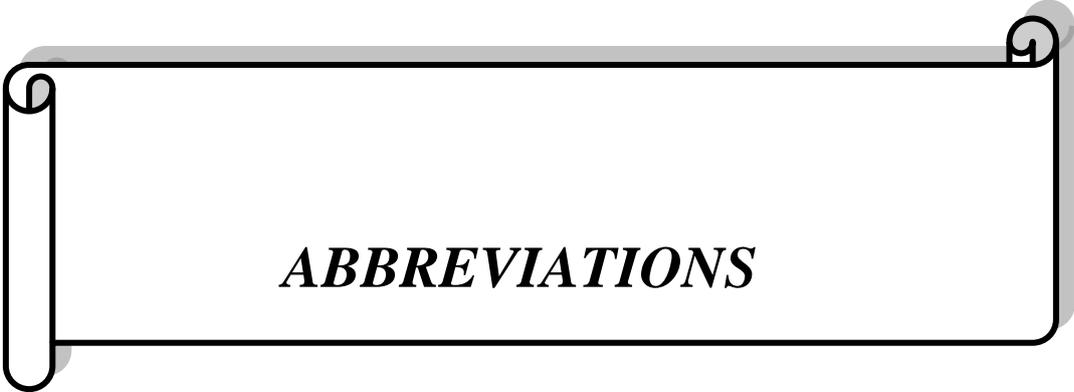
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## ***ABBREVIATIONS***

AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women.
ECOWAS	The Economic Community of West African States.
FIDH	Fédération Internationale des Droits de l'Homme
GC I	Geneva Convention N°2
GC II	Geneva Convention N°2
GC IV	Geneva Convention N°4
GF	Guinean Franc
HRW	Human Right Watch
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia

NGO	Nongovernmental Organisation
OGDH du Citoyen	l'Organisation Guinéenne de Défenses des Droits de l'Homme et du Citoyen
OTP	Office of the Prosecutor
PA I	Protocol Additional N°I
PA II	Protocol Additional N°2
PTC	Pre-Trial Chamber
SC	Security Council
UN	United Nations
UNCAT	the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## ***ABSTRACT***

The objective of this thesis is to examine the link between international criminal justice and violence against women during conflicts in Africa, more particularly in Guinea and Cote d'Ivoire.

The first chapter enlightens the situations and tries to describe the events. In Guinea, I focus mainly on the demonstration organised by political and civil societies on September 28, 2009; while, in Cote d'Ivoire, I talk about the armed conflict occurred between 2002 and 2007. In both States, rapes, sexual slavery, forced prostitution, harassment...etc. were perpetrated by security forces and by rebel groups.

The second chapter analyses the International instruments that are protecting women in Guinea and Cote d'Ivoire. It examines also the national instruments, such as the constitutional laws and penal codes of both States. The chapter shows that women in Guinea and Cote d'Ivoire are well protected by laws, although the lack of implementation of these laws increases their vulnerability.

The third chapter explains how the acts of sexual violence committed against Guinean and Ivorian women became international crimes, under international human rights laws and international humanitarian law. According to these laws, the crimes of rape, sexual slavery and forced prostitution committed in a country should be prosecuted by a domestic court or by an international court. The chapter shows, also, the efforts made by the national authorities and the international community to

fight against impunity of sexual violence and the difficulties affecting their willingness to investigate and prosecute the crimes.

The last chapter aims to identify the challenges Guinea and Cote d'Ivoire should face, in order to fight against impunity of sexual violence towards women. In this context, the States should make some legal reforms and, in the meantime, enhance the position and role of women in their society.

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## INTRODUCTION

### 1/ Background to Research Topic

Despite the efforts made by the international community to combat violence against women during armed conflicts since 1990, the use of rape and others forms of sexual violence persist. In many Countries in the world as Kosovo (1998- 1999), Bosnia and Herzegovina (1992- 1995), East Timor (1975- 2002), Rwanda (1994), Democratic Republic of Congo, Sierra Leona...<sup>1</sup>, violence against women was used by military forces and rebels group as a tactic of war to terrorise and control civilian population. However sexual violence in war is not a new phenomenon. Indeed, documentation proves that during the World War II sexual violence was committed by army forces. For example documentation on rapes committed by German or Russian armies, the “Rape of Nanking” and the use of “comfort women” during World War II indicates that vanquishing armies often perpetrated systematic sexual violence against local populations in the areas that were conquered. In Asia also, violence against women was often used during armed conflicts or during political tension. For example “*The use of targeted sexual violence against Muslim Bengali women during Bangladesh’s nine month war of independence from Pakistan in 1971 was the first case in which conflict-related rape was internationally recognized as having a political-military-strategic function*”<sup>2</sup>. In 1980, NGO’s active in conflict- ridden regions of Africa, Asia or America have documented rape and sexual violence related to the conflicts. During the 1990’s, when ethnical conflicts started everywhere in the world, perpetrators of violence engaged in acts of rape and other forms of sexual violence in order to eliminate the opposing groups. However, despite women’s suffering during armed conflicts, violence against women was not seen as a major issue by the international community<sup>3</sup>. It was considered as an issue for national governments (national criminal law) rather than international law (international criminal law). Nevertheless some efforts were made to

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<sup>1</sup> Suk Chun, “Sexual violence in armed conflicts”, international peace research institute, Oslo, (PRIOR), 1<sup>2010</sup>

<sup>2</sup>Suk Chun, *ibid.*

<sup>3</sup> A Edward, *Violence against Women under international human rights law*, New York, Cambridge University Press, 2011, p. 7

fight violence against women in general but also particularly during armed conflicts. On this way, I can enumerate:

Firstly, an international instrument relating to violence against women, focused on trafficking of white women for the purpose of sexual enslavement was elaborated in 1905. But it has been criticised by many states for their protective rather than empowering character, and for their racist undertones<sup>4</sup>, and in the end this instrument was forgotten. An instrument focused on international humanitarian law, which has a similar approach after the world war, was elaborated.

Secondly, in 1975 and 1980 global women's conferences was organised but violence against women was a peripheral issue.

Thirdly, in 1979 the UN Convention on the Elimination of All forms of Discrimination against Women (CEDAW) was adopted by the international community. However it's important to underline that violence against women was not included in this instrument.

Finally, in 2008, the Security Council has issued several resolutions on violence against women in armed conflicts, describing such violence as a threat to international peace and security<sup>5</sup>.

Nowadays efforts continue to be made to eradicate violence against women at an international level (campaigns mounted by UN agencies but also NGO's) but also at a regional level. For example African's countries have elaborated the Protocol to the African Charter on Human and People's Rights on Human Rights of Women<sup>6</sup>. Despite this instrument of protection of women, women are still a vulnerable subject in Africa due to cultural and traditional reason and the situation is becoming increasingly worrying. Thus, in Africa many countries are engaged in a democratic process since the end of the cold war<sup>7</sup>. However, the transitional process in many African's states has not been easy. Very often, it was violent. States as Guinea and the Ivory Coast are affected by political tension but also by armed conflict. In this contribution I would like to focus

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<sup>44</sup> A Edward, Ibid.

<sup>5</sup> A Edward, Ibid, p. 11

<sup>6</sup> This protocol was adopted in 2003 and entered into force in 2005.

<sup>7</sup> M BRATTON , N van de Walle, *Democratic Experiments in Africa: Regime transitions in comparative perspective*, Cambridge, Cambridge University Press, 1997.

on these two countries (Guinea and Ivory Coast) by talking about the international criminal justice and violence against women.

In 2009 during a pacific demonstration organised by Guinean opposition parties and civil societies, in the national stadium (Stade du 28 septembre), the military forces decided to attack civilians. Women were raped, tortured and killed. On 19 September 2002 a group of people organised a coup d'état in Cote d'Ivoire to depose Laurent Gbagbo. However, the failure of the coup leaders to overthrow the President saw the rebels, Mouvement Patriotique de Cote d'Ivoire retreating to the north of the country while the government forces occupied the southern half. During eight years, both of them used the sexual violence as tactic of war to terrorise and control the civilian population. In 2010, the political situation became instable again in Cote d'Ivoire. The presidential election was held but after year the country was plunged into a crisis due to the electoral contestation. Many NGOs described series of sexual violence, murder, torture committed by the security forces on one hand but also by rebels on the other. However, in order to understand the events of 2009 (Guinea) and 2002 (Cote d'Ivoire) it's important to retrace the political statement in these two countries and the place of women society.

Firstly what is the particularity of Guinea? Guinea is a poor country in western Africa. It's localised between six States, to the north- south it is limited by Mauritania, to the East by Cote d'Ivoire, to the south by Sierra Leone and Liberia to the western by Guinea Bissau and to the north- west by Senegal; Guinea is also delimited by the Atlantic Ocean. It gained independence in 1958, after a referendum organised by France. Concerning population, they are estimated around 10 million, which three major ethnic groups: the Peulh, representing 40 percent; Malinke, 30 percent; and the Sossou, 20 percent; and a number of smaller ethnic groups, including the Guerzé, Kissi, and Toma (10 percent and living in the forest regions in the Southeast)<sup>8</sup>. Each ethnic group has its own language, but French is still the official language. The most frequently

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<sup>8</sup> Human Rights Watch, " *Bloody Monday: the 28 September massacre and rape by security forces in Guinea* ", Report of December 2009, [www.hrw.org](http://www.hrw.org)

spoken language is Sousou. 85 percent of Guineans peoples are Muslim and the rest practice Christianity or indigenous beliefs.

Concerning the human rights situation in Guinea, it needs to be improved. Indeed human rights have been systematically undermined under the successive leaderships of President Seckou Toure (first president of the State from 1958 to 1984), and then Lansana Conteh, who led the State from 1984 until December 22, 2008. Both died when they were in the power. After this, a bloodless coup was organised (in the meantime) by a group of military officers calling themselves the National Council for Democracy and Development (Conseil national pour la démocratie et le développement, CNDD). The military officers were led by Captain Moussa Dadis Camara who proclaimed himself President. Then some hope for greater protection of democracy and respect for human rights was brought<sup>9</sup>. However, this hope was soon forgotten after a few months. Their first act is to suspend the country's constitution, dissolve the government and declare a ban on political and union activity. They refused to hold elections and increasingly restrict freedoms of political expression and assembly. Also, the military officers opposed a ban on mobile phone text- messaging in August but also a ban on political discussions on radio talk shows in September. To respond to this situation, opponents to the regime, which include unions, civil society leaders, and all of Guinean's major political parties (the Union of republic Forces URF, the Union of Democratic Forces of Guinea UDFG, the Union for Progress of Guinea UPG, the United Front for Democracy and Change UFDC, the New Democratic Forces NDF, the Union for Progress of Guinea UPG, banded together to form the umbrella Forum of The Forces Vives of Guinea. This big organisation planned to hold a demonstration across the country. The biggest of these was planned for September 28, 2009 in Conakry Stadium. But, for military body, the event could not be held. Then, the military regime decided to send troops to the stadium to attack civilians. Sexual violence, torture, murder began minutes after the security forces stormed the stadium gates. After this event Moussa Dadis Camara (former president) was aggressed by his bodyguard and was replaced by Sekouba Konate another military who decided to hold elections in

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<sup>9</sup> Human Right Watch Report, Ibid

2010. Concerning the place of women in Guinean's society, they are still very fragile and discriminated. The situation can be explained by the following reasons:

The patriarchal mentality of the society is the first reason. According to this mentality, women should stay at home; do domestic activities like cleaning, cooking, washing clothes, and taking care of children. It's "forbidden" for Guinean men to exercise these kinds of activities. For this reason, in Guinea women have not been able to go to school. As a consequence, it has been difficult for them to occupy important posts in the Guinean's administration<sup>10</sup>. For example between 2000 and 2002, in Guinean's Government, they were only three women ministries against nineteen men. In the National Assembly only twenty two women were deputies at that time and men were hundred and fourteen. During this period there was no woman as a governor in Guinea<sup>11</sup>.

The second explanation is related to the religion. As I already mentioned in the beginning, 85 percent of Guinean populations are Muslims. Regarding to this religion, women have to obey their husbands and to respect them. For example in the Koran, it's indicated that woman must obey her husband if she wants to go to heaven.

Finally, women's fragility in Guinea derives from the education they received and from the general thinking of the society they are living in. Therefore, it's difficult for them to escape violence in this society, despite the fact that the Guinea State took part of many international treaties that protect women and has laws in this field: for example, the new constitution adopted in 2010, when General Seckouba Konate was in power (replacing Moussa Dadis Camara), contains some articles related to women rights.

Unfortunately, Guinea is not the only State in this situation in Africa, its neighbour the Ivory Coast was also in crisis since 2002. As I will describe below, Cote d'Ivoire occupy an important position in Africa but also in the world due to its cacao.

Geographically, Cote d'Ivoire or Ivory Coast (is the same) is localised between Mali and Burkina Faso (north) Guinea and Liberia (west) and Ghana (east), it also has access

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<sup>10</sup> M Doumbouya, *Changement culturel et développement social : La nouvelle place des femmes en Guinée*, Thèse de sociologie a l'Université de Toulouse 2 P. 39. [www.whep.info](http://www.whep.info)

<sup>11</sup> More information about this statistik, M Doumbouya, *Ibid.* p. 386.

to the Atlantic Ocean<sup>12</sup>. In 1998, the population was estimated about 15.4 million with sixty ethnic groups<sup>13</sup>, but the major groups are Bete and Baoule. According to the last population census held in 1998, thirty nine percent of the population is Muslim, thirty percent catholic and twelve percent practice animism<sup>14</sup>.

Concerning the political situation, since 1960, year that it got its independence, Cote d'Ivoire was run by Houphouët Boigny. While he was in the power Cote d'Ivoire was stable and economically powerful. However, when he died in 1993, the political tension started. First, Henry Konan Bedie who replaced Mr Boigny in power introduced the issue of nationality and of "ivorite"<sup>15</sup> to eliminate Alassane Ouattara the opposition leader in the electoral process. The notion of "ivoirite" means if your parents are not born in Cote d'Ivoire you cannot be a candidate to the presidential election. Second, in 1999 a coup d'état was held by General Robert Guei, who promised to organise election, delete "ivoirite" notion in the constitution and will not be a candidate. In 2000 the presidential election took place but the issue of "Ivorite" played up. Focusing on this issue proved explosive and violence. According to the Human Rights Watch report, people who died during this post-electoral contestation can be estimated at two hundred<sup>16</sup>. However, Mr. Laurent Gbagbo became the new President. Third, on September 19, 2002 Abidjan (the capital of the country) and the northern towns of Bouake and Korogho were attacked again by armed men. The aim of the rebels was the redress of recent military reforms, new elections, an end to political exclusion and discrimination against northern Ivorian and the removal of President Laurent Gbagbo<sup>17</sup>. After this attack, they retreated to the north of Cote d'Ivoire while the government forces occupied the southern half. They were joined by two others westerns factions and formed with them a political- military alliance called the Forces Nouvelles (New

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<sup>12</sup> For more information, cf. Wikipedia, "Geographical situation of Cote d'Ivoire", [www.wikipedia.org](http://www.wikipedia.org).

<sup>13</sup> Bassett Thomas J, « Nord musulman et sud chrétien : les moules médiatiques de la crise ivoirienne », *Afrique contemporaine*, 2003/2 no 206, p. 13-27.

<sup>14</sup> Cf. Bassett Thomas J, *ibid*.

<sup>15</sup> Upon the death of Houphouët-Boigny in 1993, Henri Konan Bédié became the second president of Côte d'Ivoire. Within a few years of assuming the presidency and after winning scheduled elections in 1995, Bédié and his counselors reversed Houphouët-Boigny's 'open door policy' to immigrants, replacing it with the philosophy of "Ivoirité," and sending the once immigrant-friendly nation into a downward spiral of ethnic discrimination.

<sup>16</sup> Human Rights Watch "My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire" Volume 19, No. 11, report August 2007, p. 15, [www.hrw.org](http://www.hrw.org).

<sup>17</sup> Human Rights Watch, report, *Ibid*, p. 16

Forces). The sub-region started to be fragile and easy circulation of arms and mercenaries from Liberia or Sierra Leone was facilitated.

Concerning the humanitarian situation during this armed conflict, a lot of violence was committed by rebels but also by governmental forces. *For example, "Human Rights Watch believes that, hundreds if not thousands women and girls have been subjected to one or more incidents of sexual violence"*<sup>18</sup>.

In Cote d'Ivoire, as in Guineas, the society is characterised by patriarchal structures, in which the role of women is to submit to customary codified tribal systems that naturalise the idea that women are inferior.

## **2/ Definition and delimitation of Research Topic.**

Since the CEDAW does not have a definition on violence against women or any provision to that effect, it's possible to focus on Declaration on the Elimination of Violence against Women<sup>19</sup> that argues: *"violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*<sup>20</sup>. It's also possible to focus on the Protocol of African Charter on Human and Peoples' Rights on the Rights of women in Africa that defines violence against women as: *all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situation of armed conflicts or a war*<sup>21</sup>.

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<sup>18</sup> HRW, Ibid.

<sup>19</sup> United National Declaration on the Elimination of Violence against Women, " *General Assembly Resolution 48/104*", 20 December 1993.

<sup>20</sup> See article 1 of the United Nation Declaration, Ibid.

<sup>21</sup> See article 1 of the Protocol of African Charter on Human and Peoples' Rights on the Rights of women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo , 11 July 2003

In this contribution I would like to focus mainly on the Protocol of African Charter, because as Roselyn Karugonjo- Segawa has pointed out, it does not cover only the acts of violence but also the threat to commit violence. Furthermore, it particularly provides for both private and public life in peace time and situations of armed conflicts or war, with regard to the circumstances of women in Africa<sup>22</sup>. Concerning delimitation, the thesis will cover the time from 2002 when the armed conflict begun in Cote d'Ivoire to 2007 will it end. My objective is to explain what kind of violence was committed by rebels but also by government forces. In Guinea my topic will concern all acts committed by military forces since 2008. But the events of September 28, 2009 will have more attention. International criminal justice means the international jurisdictions as ICC but also domestic courts. The qualification depends here to what kind of crime is committed. If the crime is an international crime as torture, genocide or slavery, the prosecution becomes international. According to article 3 of the African protocol, violence against women is an international crime that can be prosecuted by international court but also by domestic courts.

### **3/ Statement of Research Topic**

This thesis addresses the issue of violence against women during armed conflict in Guinea and Cote d'Ivoire. The project introduces and discusses the fight against impunity of violence against women in these countries. In particular, I discuss the effort that is made by international justice to prosecute the crimes against women committed during the crises in Guinea and in Cote d'Ivoire.

A central issue to discuss is the role of justice to fight against violence against women in Guinea and Cote d'Ivoire. How are women protected by the law in Guinea and Cote d'Ivoire? Is this protection is sufficient? How can international justice intervene in these countries to fight against violence against women? What are the obstacles to judge crimes against women there? Finally, what are the challenges of international criminal

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<sup>22</sup> Cf. Roselyn karugonjo- segawa, *How African law protects women: The Maputo Protocol*, in Stephanie Lagoutte and Nina Svaneberg (ed), *Les droits de la femme et de l'enfant: Reflexions africaines, Women and children rights: African views*, Paris, Karthala, 2011, p. 36.

justice in order to increase the protection of women against abuses that can be committed against them? In the other word if it's possible to focus on international criminal justice to improve women's conditions in Guinea and Cote d'Ivoire?

#### **4 / Thesis Outline and Methodology**

Chapter one will describe the nature of violence against women committed in Guinea and Cote d'Ivoire. In other words I will see what kind of sexual violence was committed during the crises in Guinea and Cote d'Ivoire. In chapter two, I will look at the sources that protect women in Guinea and Cote d'Ivoire in general but during armed conflicts or political crises in particular. In chapter three, I will discuss about efforts that were made to investigate crimes but also what are the obstacles to punish people who committed these crimes. I will conclude with chapter four in which I will explain the challengers of the international criminal justice to protect women during situation of armed conflicts but during also of peace time.

Concerning data collecting, I will focus on official documents as government to see how are the women social conditions, I will also use the ONG's reports as human rights watch, or Amnesty International but also ICC (international criminal court) that are involving in these conflicts, women organisations and Master's thesis and Ph d.

I will use the qualitative research approach that one focuses on methods such as observations and text analysis. However, the quantitative data can be used in this study if I come to find it.

## **CHAPTER I/ The Scope of Violence Committed Against Women during Crisis In Guinea and Cote d'Ivoire.**

This chapter describes the violence against women in Guinea and Cote d'Ivoire. In Guinea, I will focus only on the demonstration organised by political people and civilian societies on September 28, 2009 in Conakry stadium. While, in Cote d'Ivoire, the period of suffering for women was longer. It started at 2002 and continues to produce effects.

### **Section I/ 28 September 2009: An Unforgettable date for Guinean Women.**

The demonstration organised by political peoples and civilian societies on September the 28<sup>th</sup> was a big manifestation. From the early hours, tens of thousands of opposition supporters walked towards the Conakry stadium from the capital suburbs. Few hours after the beginning of the demonstration, security forces entered the stadium in order to repress the demonstrators. The women were the main target of the military. The security forces committed rapes and other sexual assaults against women (**Paragraph 1**). Nowadays, the victims continue to suffer psychological effects of that trauma (**Paragraph 2**).

### **Paragraph 1: Rapes and Other Sexual Assaults Committed by Security Forces On September the 28<sup>th</sup> in Conakry.**

Today it's very difficult to determine the exact number of women who were raped, killed or suffered during the 28<sup>th</sup> September demonstration. The reasons are:

- Concealment of evidence: the significant number of victims in Conakry stadium pushed security forces to try to conceal evidence. Firstly, by denying all access to the stadium to the relatives of the missing persons, who began to arrive there at 5 pm<sup>23</sup>. Secondly, by removing bodies from the stadium and the morgues and burying them in mass graves. According to two journalists: *“within 24 hours, the Presidential Guard also took control of the two main morgues in Conakry, at*

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<sup>23</sup> United Nations, “Report of the international commission inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea”, 18 December 2009, [www.un.org](http://www.un.org).

*Donka and Ignace Deen Hospitals, and removed bodies for burial in mass graves*<sup>24</sup>. Some bodies disappeared from the stadium carried away by military trucks.

- Culture of victims: in Guinea, as in many African countries, the topic of sex is still taboo and victims can be ostracised by the local community and immediate family members. In order to protect themselves, abused women prefer to hide themselves and not being identified. The same thing happened in Guinean case. According to the UN Commission medical and legal experts sent to Guinea to investigate the happenings “*the number of the victims infected by HIV through rape or other forms of sexual violence will probably never be determined, since many victims did not seek medical treatment*”<sup>25</sup>.

However, the UN Commission Report mentioned many types of violence committed against women by security forces. The commission confirmed one hundred and nine<sup>26</sup> cases of rape or other sexual violence acts. The violence can be described as following:

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<sup>24</sup> Reporters without Borders release “Two Reporters for foreign media go into hiding after getting deaths threats”, September 30, 2009, [www.rsf.org](http://www.rsf.org).

<sup>25</sup> United Nations, “Report of the international commission inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea”, 18 December 2009, [www.un.org](http://www.un.org).

<sup>26</sup> United Nations, Ibid.

## 1- Sexual violence other than Rape



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

Here, I would like to describe the sexual violence committed but different to the rape. Witnesses testified that women were abused by security forces (generally by the red beret and gendarmes). For example, they testified that women “*were underdressed, often by force, and the use of knives and even scissors in some cases. They were forcibly touched in the vagina, breast and buttocks area. At least five of them were beaten in the abdomen and genital area with batons clubs, rifle butts or knives*”<sup>27</sup>. The commission confirmed that twenty one cases of sexual violence other than rape were committed in the stadium. Moreover, many women lost their clothes and left the stadium half or completely naked. For many witnesses, that attended the demonstration, the pain experienced by women that day is indescribable. However, the most common sexual violence used by security forces was rape.

## 2- Rapes

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<sup>27</sup> United Nations report, Ibid.

In this part, I will distinguish between simple rape and complex rape. By simple rape, I mean a rape committed by an individual person, while, by complex rape, I refer to a rape committed by several perpetrators.

- Simple rape: the simple rape was largely used by security forces.

According to the UN Commission Report, *“thirty- five women were raped, twelve of them by hand or objects, such as bayonets, batons, pieces of metal, clubs and/ or rifles barrels”*<sup>28</sup>. The perpetrators did not only rape women, they also injured them. In many cases women were hurt in the vagina, they were threatened with death while being raped and beaten up before or after being raped. In some cases women were deliberately injured with blades.

- Complex rapes

The September 28 demonstration in Conakry stadium has the particularity that many victims were raped by several perpetrators. The security forces raped women in turns. According to the Report *“forty- two women were raped by more than one soldier. These rapes were sometimes accompanied, before or after, by penetration with objects or the hand”*<sup>29</sup>. The rapes were also committed with abuse. For example some women were raped while one or two soldiers held the victim, often squashing her legs. Objects, such as weapons, were sometimes used by soldiers to threaten the victims. After being raped, some women were killed by security forces during the demonstration or few days after. According to evidence given to Human Rights Watch by a 30- year- old businesswoman, who was raped by two red berets on the stadium pitch; a young woman was raped and then shot point- blank in the head<sup>30</sup>. A 26- year- old housecleaner, who was also raped by the same perpetrators, testified an identical scenario. She described seeing a woman raped and then shot in the abdomen<sup>31</sup>. Finally, a 41- year-old civil servant, who was severely beaten by a group of soldiers and raped by one, described the

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<sup>28</sup> United Nations report, op cit,

<sup>29</sup> United Nations report, Ibid.

<sup>30</sup> Human Rights Watch, “Bloody Monday: the 28 September massacre and rape by security forces in Guinea”, Report of December 2009, [www.hrw.org](http://www.hrw.org).

<sup>31</sup> Human Rights Watch, Bloody Mondy, ibid.

rape and murder of a young woman who was shot through her vagina<sup>32</sup>. Sexual mutilations were also committed. According to certain reports, at least six victims of rape were sexually mutilated and after, weapons were inserted fired into their vaginas<sup>33</sup>. The other particularity of Guinean case is the fact that the event was not limited only one day. Many days after, the perpetrators continued to rape women hidden in unknown places.

- Sexual Slavery:

In two different places (private houses) in Conakry women were held and raped by several different armed perpetrators. These victims were confined for three to five days. They suffered also other forms of sexual violence, such as repeated beatings and death threats. Some victims were taken directly to a military camp such as Alpha Yaya Diallo camp. The Human Rights Watch report mentioned five women who were victims of these practices. However, the number is not exact according to the same report. Many women, who were initially hiding, testified that there were other victims raped in their same location, who refused to go and see a doctor. Nobody, therefore, could know how many women were captured by perpetrators, how many private houses were used as prisons and what happened to all these victims. For example in the UN Commission report, one of the victims explained that, where she was kept, there were initially twenty women, but, after five days, only six of them remained. Another testified that *“she has been freed with the same seven to eight women with whom she had been transported in the same vehicle”*<sup>34</sup>.

The violence of September 2009, in Guinea, caused many consequences for women. They were raped, beaten, suffered sexual mutilations, sexual slavery and were killed. Nowadays, the victims manifest different kinds of trauma and are waiting for justice.

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<sup>32</sup>Human Rights Watch, Bloody Mondy, ibid.

<sup>33</sup> United Nations report, op cit,

<sup>34</sup> United Nations report, ibid.

## **Paragraph 2 The Impact of Sexual Violence on Guinea Women.**

The September 28, 2009 massacre and rapes by security forces in Guinea produced two effects on the population in general and women in particular. These impacts are internal or psychological but also external or impacts related to health.

### **1- The internal or Psychological impact of the sexual violence on Guinean Women.**

Most of the victims alleged feeling profound levels of shame and humiliation, after the event. Some of them were rejected by their family members. According to the Guinean culture it is unacceptable to share a house with a woman who has being raped by somebody else, a woman who becoming pregnant without being married and a woman that having contracted sexually transmitted diseases such as HIV.



**Guinea: Bloody Monday/ *The September 28 Massacre and Rapes by Security Forces in Guinea.***

In Guinea the discrimination between man and woman persists despite the large number of legal instrument prohibiting this practice. According to the alternative NGO report on

the implementation of CEDAW in Guinean, the reasons are: women's ignorance of their own rights, the low enrolment of women, economic dependence of women to men and the persistence of negative prejudices against women in the society<sup>35</sup>. This discrimination against women has greatly increased the suffering of victims. In order to protect themselves against the society reject many women decided not to admit what happened. The girls decided not to tell their parents, husbands or boyfriends that they were abused by security forces. The old women also refused to disclose themselves, for fear of being abandoned or rejected by their children or husbands. Moreover, in number of cases their husbands didn't limit just to abandon or reject them, they also forced the community to turn against them. Nowadays, most of the victims are affected by two fears:

The first trauma that affected women was the problem of virginity. Indeed, as I mentioned it in my introduction, the major ethnic group in Guinea is Peulh. It represents forty (40) percent of the population. This ethnic has the particularity to be Muslim but also to give great importance the woman's virginity. Within Peulh culture, the virginity of a young woman on the night of her marriage is essential to maintain family honour. It is also viewed as a way for girls to express gratitude to her parents, and for ensuring that her married life will be blessed<sup>36</sup>. According to Human Rights Watch report, some of the most visibly distraught girls and women were those who had been virgins prior to the attack, all of whom were members of the Peulh ethnic group<sup>37</sup>. As example of the importance of the virginity, the final words of a young Peulh woman who perished after having been raped by soldiers and penetrated by a rifle poignantly: As she lay dying, she said "*auntie, please do one thing...tell to my mother that I saved my virginity until this day...please tell her*"<sup>38</sup>.

The second problem that affected the victims is HIV. Few days after the sexual assault, some of the victims tested were already announced that their result was positive. However, as I already mentioned, the number of women infected by this disease will never known. The reason is many victims didn't want to see a doctor due to the causes

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<sup>35</sup> Rapport Alternatif des ONG sur l' Application de la CEDEF en Guinée, [www.iwraw-ap.org](http://www.iwraw-ap.org)

<sup>36</sup> M Doumbouya, p. 77.

<sup>37</sup> Human Rights Watch, Bloody Monday, op, cit

<sup>38</sup> Human Rights Watch, Bloody Monday, ibid.

that I identified. Despite the fact that they didn't go to do the HIV test, the women were suffering. They were shared by the fear of rejection and the need for effective screening in order to save their husbands. For example, a 42- year-old professional woman who was raped testified that: *"I will never tell him. In our culture it is so shameful and my children are young. If he leaves me....but I can't tell him. I think so much about AIDS- do I have it, will I infect him"*<sup>39</sup>?

## **2- The impact related to health of the Sexual assault on Guinean women.**

After the event in the stadium, the health of victims becoming worth due to two things: The first thing is the restriction of access to hospitals. After finishing rape women in the stadium, the soldiers refused also to the Guinean Red Cross to help the wounded. They blocked ambulances from picking up the wounded until late in the afternoon. It is can be a violation of international humanitarian law, notably the Geneva Conventions of 1949. According to some witnesses, the soldiers' actions were motivated by their intention to erase the evidence. Thus many wounded women waited too long for help to arrive. As a result of this lack of emergency, some persons died where they had been assaulted<sup>40</sup>.

The second thing is the restriction of access to medical care. After being raped, some victims arrived in Donka hospital without any help. Donka is the closest hospital from the stadium. However, few minutes after, the soldiers arrived there and removed wounded who were waiting medical attention. They intimated and sometimes beat doctors or nurses who hid some wounded women. This attitude of soldiers is a violation of Guinean constitutional law, because according its article 15 *"everyone has the rights to health and well-being"*<sup>41</sup>.

Finally, overcome this event, I think the woman in Guinea is a subject from many things. Despite the legal instrument existing in Guinea and protect them, the reality is different. The society does not recognise their rights or cannot accept certain rights for women. For example Guinea has ratified the Convention of Civil and Political Rights. However many women who had being raped testified that the soldiers were asking to

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<sup>39</sup>Human Rights Watch interview (name withheld), Conakry, October14, 2009. [www.hmrw.org](http://www.hmrw.org)

<sup>40</sup> United Nations report, op cit.

<sup>41</sup> Article 15 of Guinean constitutional law, Constitution du 7 Mai 2010, [www.mjp.univ-perp.fr](http://www.mjp.univ-perp.fr)

them “why you are here? Your place is at home but not in a stadium to express your political opinion. It can also raise the problem of implementing the CEDAW that Guinea has also ratified. However in the second chapter I will talk about all these international or national instruments. Now I would like to explain the violence against women in Cote d’Ivoire during the armed conflict.

## **Section 2/ Violence against Women in the political and Military Crisis in Cote d’Ivoire.**

As I mentioned in the introduction, the Ivorian case is different from that of Guinea. In Cote d’Ivoire sexual violence was used by rebels and pro governmental forces as a tactic of war. This situation is similar to many others situations in African countries engaged in armed conflicts. According to Innocent Biruka, women’s bodies have become part of the battlefield in African.<sup>42</sup>In Cote d’Ivoire, women suffering can be divided into two parts. The first part corresponds the armed conflict time and it started at 2002 and end at 2007. The second period is related to the electoral dispute. However, in this thesis I will only describe the suffering of women happened during the armed conflict. I will also divide this section into two paragraphs. In the first **paragraph (1)**, I will talk about the sexual violence during the armed conflict in Cote d’Ivoire, in the second **paragraph (2)**; I will explain the consequences of the sexual violence on Ivoirian women.

### **Paragraph 1: Sexual Violence as a Weapon of War in Cote d’Ivoire.**

Few days after the conflict began; Ivorian territory was divided into two parts. The north was led by rebels notably les Forces Nouvelles (The New Forces) while the south remained in the hands of Ivorian government. Both parties requested the support of external forces; generally they were from the neighbouring states such as Liberia or Sierra Leone. All these forces have contributed to the deteriorating status of women in Cote D’Ivoire. However, I will divide them in two main groups: the rebels group and its allies on the one hand and pro- governmental forces on the other hand.

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<sup>42</sup> I Biruka, *La protection de la femme et de l’enfant dans les conflits armés en Afrique* , Paris l’Harmattan, 2006, p. 64.

***1: The Sexual Violence against women committed by Rebels group and its allies.***

In order to fight against the pro- government forces, the Ivorian rebels recruited the combatants from Liberia and Sierra Leone. According to human rights watch, the most horrible sexual violence was committed by these combatants. They carried out horrific sexual abuse against women and girls in the north of the country, e. g in areas under their control, including rape, gang rape, sexual assault, forced miscarriages, and forced incest<sup>43</sup>. In Cote d'Ivoire, unlike in Guinea, the sexual abuses were committed in houses, in the forest where women or girls sought refuge and sometime in the checkpoints. In Cote d'Ivoire such as in many African countries that are affected by armed conflicts, the main reasons why the women and girls are targeted are the same:

The first reason is related to the deterioration of traditional mechanisms to protect women. Indeed, the vulnerability of women and girls increases during the conflicts time in Africa. After being attacked by rebels, the families and communities are destroyed and separate from its members. Also, the fact that men are missed because they can be killed or sometimes they are engaged in the conflicts, expose women to dangers. They can't benefit protection and traditional security from these men. In this context, women become easier to achieve. They become target of rebels, individual and sometimes the members of mission peacekeeping<sup>44</sup>. In the case of Cote d'Ivoire, many women and girls were raped in the forest, according to human rights watch<sup>45</sup>.

The second reason concerns the strategy of war. In order to eliminate the opponent, the sexual violence is often used during armed conflicts. Here, women are targeted because for the rebel groups, the best way to fight the enemy is to reduce the reproduction of the group. In this case, they will try to fertilise women and girls or to mutilate them. The goal of these practices is not to give women and girls the possibility to have children. In Cote D'Ivoire, *"Human Rights Watch documented numerous cases in which wives,*

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<sup>43</sup> Human Rights Watch "My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire" Volume 19, No. 11, report August 2007, p. 15, [www.hrw.org](http://www.hrw.org).

<sup>44</sup> Agir pour l'égalité des sexes, "l'autonomisation des femmes et l'élimination de la violence contre les femmes en Afrique », Mettre un terme à la violence contre les femmes en Afrique, Sixième forum pour le développement de l'Afrique (ADF VI), Adis Abeba, Centre de Conférences des Nations Unies, 19 Novembre 2008.

<sup>45</sup> Human Rights Watch, Ibid.

*daughters, sisters, and mothers of members of the ruling Popular Ivorian Front (Front Populaire Ivoirien, FPI) party and pro- government security forces, including members of the police, gendarmes, and army, were sexually assaulted because of the position held by a male relative*<sup>46</sup>.

The last reason why women are targeted is to humiliate and demoralise the opponent. The goal of the rebel groups is generally to reach the society in its heat by dishonouring the opponent or by terrorising all the communities. The rebels need also to install a sense of helplessness and fear that will stay rooted in the families of victims by destroying their social fabric<sup>47</sup>. In this context, many women and girls were raped in front of their family members. According to Human Rights Watch, numerous cases of husbands, fathers, mothers, and children who were forced to watch the sexual assault against their wives, daughters, and mothers, while they were helpless to do anything, have being documented<sup>48</sup>. Moreover, men, women and children were forced to watch sexual violence as punishment, in order to terrorise them. For example one twelve-year-old recounted to Human Rights Watch how she was forced to witness the raping of several women by rebels at the age of eight<sup>49</sup>. In the same time, the pro-government forces were used also sexual abuses to avenge the rebel groups.

## ***2: The Abuses Committed by Pro-government Forces.***

As the rebels in the north, the pro-government security forces were abusing women and girls in areas under their control. By pro-government security forces, it means here, those implicated in acts of sexual violence include members of the official armed forces and law enforcement institutions, numerous pro-government armed militias...etc. All these forces have been responsible for numerous acts of sexual violence against women and girls, including rape, gang rape, sexual torture, and sexual slavery<sup>50</sup>. The reasons

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<sup>46</sup> Human Rights Watch” My heart is cut: Sexual violence by rebels and pro- government forces in Cote d’Ivoire”, op cit.

<sup>47</sup> Agir pour l’égalité des sexes, l’autonomisation des femmes et l’élimination de la violence contre les femmes en Afrique, Mettre un terme à la violence contre les femmes en Afrique, Sixième forum pour le développement de l’Afrique (ADF VI), op cit.

<sup>48</sup> Human Rights Watch, ibid.

<sup>49</sup> Human Rights Watch, ibid.

<sup>50</sup> Human Rights Watch” ibid.

why the pro-government forces practice sexual violence in armed conflicts are generally three:

The first is justified by the small numbers of women in the armed forces<sup>51</sup>. In many African countries, the women are regarded as weak individuals incapable of performing military service. The impact of the absence of women in the security forces is they are exposed against men attacks when an armed conflict rises. They become vulnerable because unable to defend themselves. In Cote d'Ivoire, if there were women in military security forces during the crisis, the situation would be different. They would not accept to see their friends violating without react.

The second is usually political reason. Here women are targeted because they are assumed to be members of an opposition party. For example in Guinean, women were violated in the stadium because they were supporting the opposition party. In Cote d'Ivoire case, the most vulnerable to attack were members of or were related to political leaders from a leading opposition party, the Rally of Republicans (Rassemblement des Républicains, RDR)<sup>52</sup>. Sometimes sexual violence can be committed during period of peace. For example six of the fifteen cases of sexual violence documented by Human rights Watch took place during the time of demonstration organised by political parties<sup>53</sup>.

The last reason is related to the ethnicity and was happened in Cote d'Ivoire and Guinea. In some conflicts, women and girls can be violated sexually very often by rebel groups because their ethnicity. Therefore, both Cote d'Ivoire and Guinea women were raped by security forces because of their affiliation ethnics. In Guinea for example, the most targeted ethnic group was the Peulh group because the opposition leader is a Peulh (Cellou Dalein Diallo). In the same way, women from ethnic groups such as the Dioula

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<sup>51</sup> A N Makubuya, Women in the Armed forces in Uganda : Human Rights Issues in W Benedek, E M Kisaakye and G Oberleitner, Human rights of women : International instruments and African experiences, London, Zeb Books LTD, New York, in association with World University Service, Austria, 2002, pp 295- 301.

<sup>52</sup> Human Rights Watch " My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", Ibid.

<sup>53</sup> Human Rights Watch " My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", Ibid.

and Sénoufo were targeted in Cote d'Ivoire<sup>54</sup>. Here again the Dioula group was attacked because the opposition leader is a Dioula and this group is also the major ethnic group in the north controlled by the rebels.

After the description of the sexual violence committed by both security forces and rebels group during the armed conflict in Cote d'Ivoire, I will now see the consequences of these attacks on women.

## **Paragraph 2: The Consequences of the sexual violence on Ivoirian women.**

Sexual violence generally produces the same consequences or impacts on the victims. During all their live the victims will suffer shame, humiliation, physical and mental depression, fear...etc. In Cote d'Ivoire, numerous cases of victims described frequent psychosomatic problems like headaches, insomnia, and nightmares<sup>55</sup>. In order to describe the impact of sexual violence on Ivorian women, I will divide this paragraph into two parts. Firstly, I will see the direct effects of the abuses on the victims and secondly, I will explain the indirect effects of the attacks on the women and girls.

### **1: The Impact of Abuses on the Victims or direct effects.**

By direct effects, I mean the physical and psychological impact that the abuses occurred on the women and girls. I will talk about the impact without taking into consideration the family members such as the children, the husbands and the parents. Usually sexual violence occur two direct effects on the victims:

Firstly, the abuses produce psychological effects on the victims. As I mentioned at the beginning, all the victims of sexual violence committed during an armed conflict will suffer for the rest of their life about trauma. Very often, the victims are abandoned after the conflict by their families or by the community. Also in numerous cases, the women who survived after the conflict are rejected by their husbands because the men can feel humiliate if the rape happened in front of them. Sometimes the husbands left or divorced their wives just because they don't want be contaminated by HIV. The

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<sup>54</sup> Human Rights Watch" My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", Ibid.

<sup>55</sup> Cf. Human Rights Watch" My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", op cit.

testimony of this woman of 18 years old can illustrate this practice. *“I was in Danané before the war, in 2002. I fled the war and got to the border of Logouatou with my husband and my five-month-old daughter. I was 18. We encountered some rebels while we were fleeing. They rape me in front of my husband. My husband doesn’t want me anymore. He says it is an abomination in our custom. He divorced me. I live in very difficult conditions”*<sup>56</sup>. Another thing, most of the victims after the end of the conflict has the intention to commit suicide. They felt trapped by their past, unable to move one. One woman who was raped during the war said: *“I want to kill myself. I want to kill myself. I can’t get out of this. I wasn’t like this before. I suffer. I want to kill myself. I want to kill myself (sobbing). I sit down, I do nothing, I have thoughts, bad things that come in my heart. I want to kill myself. Because I can’t do anything”*<sup>57</sup>. One of the most tragic aspects of these victims or women psychological anguish is that many of them suffer alone, without benefit of support or understanding.

Secondly, the violence affects victims physically. Most of the women raped during the war have sanitation problems as the internal and external bleeding. For example in Ivorian case, doctors working with victims rape listed some of the worst physical consequences as being internal and external bleeding, discharge, and uterine prolapses, when the uterus descends into the vagina beyond<sup>58</sup>. After the conflict, in many African areas where women were affected by sexual violence, their mortality rate increases. After being raped by several people, women become vulnerable. They need more assistance especially when they become pregnant. However, after the end of the war, more often the health centres and hospitals are destroyed and cannot support the difficulties related into given birth. As consequences of this, the deaths in childbirth and the miscarriages increase. Meanwhile, the illegal abortions also increase. The large numbers of woman and girls, who become pregnant after a rape, don’t want the child. They prefer make abortion in order to avoid to the child problems in the meantime to

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<sup>56</sup>Human Rights Watch” My heart is cut: Sexual violence by rebels and pro- government forces in Cote d’Ivoire”, Ibid.

<sup>57</sup> Human Rights Watch” My heart is cut: Sexual violence by rebels and pro- government forces in Cote d’Ivoire”, op cit.

<sup>58</sup> Human Rights Watch Interviews with the Interim Country Director of Medecins Sans Frontières- Belgium (MSF), The Country Director of MSF- B staff, Abidjan and Man, Cote d’Ivoire, September 2006.

save her marriage. Nevertheless, since in many countries, the abortion is still prohibited, the women prefer to do it themselves. For example, in Cote d'Ivoire, the abortion remains illegal. According to article 366 of the penal code, "*whosoever, by food, drink, medicine, surgical procedures, violence, or any other means, procures or attempts to procure an abortion of a pregnant woman, whether or not with her consent, will be punished by imprisonment of one to five years and a fine of 150, 000 (US dollars 238.76) to 1,500, 000 CFA francs (US dollars 2,387.81)*"<sup>59</sup>.

## **2: Social Impact of Rape.**

Social impact means the effects that the rapes occur in the family of victims. Numerous of cases, the families dislocated, children born after the rapes can also affect.

The dislocation of families after the war: In rare cases, the family may have intention to support women and girls raped. According to Human Rights Watch, 36 percent of victims polled characterised the response of the family as supportive<sup>60</sup>. However, the society or the community pressure pushes more often the families to reject their daughters or wives who being raped. Once a family rejects a victim of sexual violence, it can be difficult to facilitate her re-entry into the family unit. As a consequence women and girls rejected engage themselves in prostitution or drug. In Cote d'Ivoire case, after the war, the sexual exploitation rise. Several children's rights organisations noted the increase in the number of children as young as eight involved in selling sex<sup>61</sup>. A woman who was gang raped in 2002 by security forces and now engages in survival sex said: I fled to Mali. We hid ourselves to escape, in a big truck. I live alone in my room, with a Malian family, I pay when I can...I have to prostitute myself to eat. Many girls do this but they won't tell you. I want to kill myself, I want to commit suicide<sup>62</sup>.

Children born from the rape: while a baby born after a sexual assault, the consequences are immense. Firstly, the child born of forced pregnancy is regarding as a punishment for her mum. Very often, the perpetrators began by killing the family members such as the husband of the woman who has being raped. In this case, the child will represent

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<sup>59</sup> See Article 366, Ivorian Penal Code, 1981-31- 08.

<sup>60</sup> Anonymous ONG, *Sexual Violence in 18 Montagnes*.

<sup>61</sup> Human Rights Watch Interviews with Joseph Djitro, a staff member of United nations High Commissioner for Refugees (UNHCR), Guiglo, Cote d'Ivoire, September 29, 2006.

<sup>62</sup> Human rights Watch Interviews, Bamako, Mali, October 2006.

this bad image that destroyed the family of his mother. He will be born in a family where He's not welcome. Sometimes the family members consider him as an enemy. Secondly, concern the child who will be born himself, his life is compromised. He represents the humiliation that the family members suffered<sup>63</sup>.

To finish this chapter, I can say that women suffered in Guinea and Cote d'Ivoire. The demonstration in Conakry stadium and the armed conflict in Cote d'Ivoire prove that women are still very vulnerable. They need more protection during the war time in Africa specially. The legal instruments that protect them exist but very often to implement these mechanisms is still a problem. As consequence the crimes committed against women can stay unpunished.

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<sup>63</sup> I Biruka, «*La protection de la femme et de l'enfant dans les conflits armés en Afrique* » Paris l'Harmattan, p.94.

## **Chapter II: Legal Instruments for Protection of Women in Guinea and Cote d'Ivoire during Crises.**

This chapter aims to identify the legal instruments that protect women in times of crisis. It will try to show how international, regional and national laws are protecting women in Guinea and Cote d'Ivoire. In Guinea and Cote d'Ivoire, such as the rest of the world many efforts have been made to fight against sexual violence. These efforts can be justified by two things: firstly the accession of women in the international level by occupying very important positions. For example, in 1993, two women, Gabrielle Kirk McDonald (US) and Elisabeth Odio- Benito (Costa Rica) were elected the judges of the international criminal tribunal for the former Yugoslavia (ICTY) and, in 1995, Judge Navanethem Pillay (South Africa) become the only woman judge of the international criminal tribunal for Rwanda (ICTR)<sup>64</sup>. Secondly is the establishment of international jurisdictions such as the international criminal court (ICC). The chapter will be divided into two parts. In the first part I will describe the protection standards of women in Guinea and Cote d'Ivoire in relation to human rights law and international humanitarian law. In the second part I will emphasise on the criminalisation of sexual violence under international criminal law.

### **Section 1: Protection Standards of Sexual Violence in Guinea and Cote d'Ivoire.**

Standards mean here all legal texts that prohibit sexual violence during peacetime but also during war time. As pointed out by Radhika Coomaraswmy and Lisa M Kois “*violence against women is not only a criminal justice issue. It is recognized as a violation of human rights and States are under a due diligence standard to ensure the prosecution, investigation and punishment of perpetrators*”<sup>65</sup>. Therefore, I will mention human rights law on the one hand and the other hand criminal law that exist in Guinea and Cote d'Ivoire and recognize sexual violence as crimes. This section will be divided

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<sup>64</sup> Kelly D Askin, Dorean M Koenig *woman and international human rights law, volume 1*, New York, Transnational Publishers, INC, 1999, p. xxvi.

<sup>65</sup> Radhika Coomaraswmy and Lisa M Kois “ Violence against women” in Kelly D Askin, Dorean M Koenig « *woman and international human rights law, volume 1* », New York, Transnational Publishers, INC, 1999, pp. 177- 178.

into two paragraphs. In the first paragraph, I will talk about the protection of women under human rights law. In the second paragraph, I will underline international humanitarian law.

### **Paragraph 1: Protection under Human Rights law.**

Nowadays many human rights instruments prohibit violence against women. We have international instruments on the one hand but also regional instruments on the other hand.

#### **1/ International Legal Instruments.**

International human rights instruments that are dealing with violence against women and that I want to enumerate here are:

The UN, Declaration on the elimination of violence against women. According to article 2 of this declaration, violence against women such as physical violence, sexual and psychological violence, forced prostitution, rape...etc committed or tolerated by state inside of families or collectivises is still prohibited<sup>66</sup>. In article 4 (c) of the same declaration it's mentioned, the States parties should "*exercise due diligence to prevent, investigate, in accordance with national legislation, punish acts of violence against, whether those acts are perpetrated by the State or by private person*"<sup>67</sup>. In the case of Guinea the violence was committed by security force according to the human rights watch report and the UN reported. As a consequence the Guinean state has obligation not only, to prevent sexual violence but also to prosecute them if these acts were committed. However, as we can see in the third chapter Guinea hasn't respect this obligation and that is the reason why the international community is engaged there in order to prosecute the perpetrators. What happened in Guinea can be also qualified as a violation of right to life because women were raped and then killed. The right to life is guaranteed by article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that Guinea has already ratified. This right is also recognised by article 6(2) of

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<sup>66</sup> See Article 2 of the General Assembly « Declaration on the elimination of violence against women” Resolution 48/104 of General Assembly of the 20<sup>th</sup> December, 1993, [www.un.org](http://www.un.org).

<sup>67</sup> See Article 4(c), Ibid.

Guinean fundamental law<sup>68</sup>. Cote d'Ivoire has also ratified the ICCPR since 1992<sup>69</sup>. It recognised the right to life in article 2 of the fundamental law<sup>70</sup>. However, in these declarations, as we can see, express references to sexual offense and sexual violence are limited.

The second international human right instrument I would like to indicate here, which can belong to sexual violence, is The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>71</sup>. This convention prohibits sexual violence and as Anne- Marie L .M. de Brouwer argues, "*Torture has been outlawed under treaty law and customary international law, in times of peace and armed conflict, either international or non- international*"<sup>72</sup>. Nowadays violence against women is qualified as a crime of torture. The qualification of rape and other forms of sexual violence as torture has been confirmed in the ICTY and ICTR case laws<sup>73</sup>. The reason why rape is distinguished from other forms of mistreatment and can be examined as torture is because "*rape causes severe pain and suffering, both physical and psychological*"<sup>74</sup>. In the cases of Guinea and Cote d'Ivoire all the report made by the ONGs and the international organisations such as UN has mentioned that women were raped and they were suffering both physical and psychological<sup>75</sup>. Moreover both states have already ratified the UNCAT<sup>76</sup>. It means Guinea like Cote d'Ivoire have obligation to respect this convention by prosecuting the perpetrators.

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<sup>68</sup> For the ICCPR and Guinean Fundamental Law, see, Rapport conjoint des organisations de la société civile à l'Examen périodique universel du conseil des droits de l'homme des nations unies, Dégradation de la situation des droits de l'homme en République de Guinée, 8eme session du groupe de travail en mai 2010.

<sup>69</sup> Cote d'Ivoire has ratified the ICCPR on 26th June 1992, see, fidh, l'élection présidentielle en Cote d'Ivoire: une échéance hypothéquée? Note de situation sur le processus électoral en Cote d'Ivoire Septembre/Octobre 2008, [www.fidh.or](http://www.fidh.or).

<sup>70</sup> See Article 2 of Ivorian fundamental law of 23th July 2000, [www.democratie.francophonie.org](http://www.democratie.francophonie.org).

<sup>71</sup> This Convention was adopted at 10 December 1984 and entered into force at 26 June 1987.

<sup>72</sup> A M L M Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Antwerpen- Oxford, Intersentia, 2005, p. 181.

<sup>73</sup> A M L M Brouwer, p.187.

<sup>74</sup> A M L M Brouwer, pp. 185- 186

<sup>75</sup> See Human Rights Watch reports in Guinea and Cote d'Ivoire.

<sup>76</sup> For Guinean see, conjoint des organisations de la société civile à l'Examen périodique universel du conseil des droits de l'homme des nations unies, Dégradation de la situation des droits de l'homme en République de Guinée, 8eme session du groupe de travail en mai 2010. While Cote d'Ivoire case see, Cote d'Ivoire has ratified the ICCPR on 26th June 1992, see, fidh, l'élection présidentielle en Cote d'Ivoire: une échéance hypothéquée? Note de situation sur le processus électoral en Cote d'Ivoire Septembre/Octobre 2008, [www.fidh.or](http://www.fidh.or).

## **2/ Regional Legal Instruments.**

I will firstly talk about the Inter- American Convention of 1994 on the Prevention, Punishment and Eradication of Violence against Women. Secondly, I will mention the Protocol of African Charter on Human and Peoples' Rights on the Rights of women.

The Inter- American Convention of 1994 on the Prevention, Punishment and Eradication of Violence against Women will be reference not because Guinea and Cote d'Ivoire have ratified this instrument but because the preamble of the Protocol of African Charter on Human and Peoples' Rights on the Rights of women recognises regional and international human rights instruments<sup>77</sup>. It means that The Inter-American Convention can indirectly be applied to the Guinean and Ivorian cases since both of them have already signed or ratified the African Charter on Human and Peoples' Rights<sup>78</sup>. The reason why I choose the inter-American convention is that it expressly makes references to sexual offenses and sexual violence. It expressly covers physical, sexual and psychological violence occurring within the family or community or perpetrated or tolerated by the state or its agents<sup>79</sup>. Focusing this instrument, the events in Guinea and Cote d'Ivoire are a violation of human rights and states have the right to prosecute.

The Protocol of African Charter on Human and Peoples' Rights on the Rights of women may also be applied here. Therefore, I would like to analyse articles 4 and 11. According to article 4 (1) of this protocol women have right to life and all forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited. In my idea exploitation can be sexual exploitation such as enforced prostitution, the rest

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<sup>77</sup> See the Preamble of the Protocol of African Charter on Human and Peoples' Rights on the Rights of women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003.

<sup>78</sup> Guinea ratified this Charter at 16 February 1982 and Cote d'Ivoire at 6 January 1992, See, African Union, List of countries which have signed, ratified/acceded to the African union convention on African charter on human and people's rights, 26 May 2007, [www.africa-union.org](http://www.africa-union.org).

<sup>79</sup> Charlotte Lindey-Curter, Florence Tercier Holst- Roness and Letitia Anderson, répondre aux besoins des femmes affectées par les Conflits armés: Un guide pratique du CICR, CICR Novembre 2004, [www.icrc.org](http://www.icrc.org).

means every kind of acts which can make suffering women, for example rape, torture, abortion...etc. Concerning the right to life as I already explained it's an absolute rights that states have obligation to respect because there is no derogation from this right. So killing women or raping them in Guinea and Cote d'Ivoire was a violation of women's rights that States Parties shall take appropriate and effective measures to identify causes and to eliminate them (article 4, c)<sup>80</sup>. Furthermore, article 11 of this protocol argues that States Parties undertake to protect women against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction<sup>81</sup>. In accordance to this instrument, Guinean and Ivorian states have the obligation to protect women against violence and to prosecute perpetrators if these acts were committed within their territory.

To finish this paragraph, I would say that women in Africa particularly in Guinea and Cote d'Ivoire are protected by international and regional instruments. However the fact that the states are not respecting these instruments, women are always still vulnerable.

## **Paragraph 2: Protection under International Humanitarian Law.**

International humanitarian law protects women during situation of armed conflict. Indeed, in the four Geneva Conventions of 1949 and the two 1977 Additional Protocols, women benefit a particular protection. Nevertheless, a distinction must be made between international armed conflicts and non international armed conflicts. In our case I will talk only about non international armed conflicts. As I will mention below; Geneva Conventions and its protocol additional contain many dispositions which protect women in conflict time. Although, according to some authors such as Judith G. Gardam<sup>82</sup>, this protection is still enough. However it possible to find nineteen articles in these instruments which is related to sexual violence in a general way.

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<sup>80</sup> For more information see, the Protocol of African Charter on Human and Peoples' Rights on the Rights of women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo , 11 July 2003.

<sup>81</sup> See Article 11 of the Protocol, Ibid.

<sup>82</sup> J G Gardam, Femmes droit de l'homme et droit international humanitaire, Revue internationale de la croix- rouge, 181, 30- 09- 1998, [www.icrc.org](http://www.icrc.org).

Firstly, the article 12 § 4 of Geneva Convention I (GC I), article 12 § 4 of GC II require generally that women shall be treated with all consideration due to their sex<sup>83</sup>. In the same sense, article 27§ 2 of GC IV provides that “*women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution and any form of indecent assault*”<sup>84</sup>.

Secondly, the GC IV makes a distinction between women involved in the conflict and other who taking no active part in the hostilities. Thus article 3 § 1 argues that women who do not involve in the conflict shall, in all circumstances be treated humanely, without any adverse distinction founded on sex or any other consideration<sup>85</sup>.

Thirdly the second protocol additional (PA II) participates also to the protection of women during armed conflicts. The article 4 § 2 PA II prohibits expressly rape, enforced prostitution and any form of indecent assault against women<sup>86</sup>. The paragraph 2 (a) recognises the right to life that can be applied for women during armed conflicts but also during peace time. Because right to life as we have already seen, is an absolute right that all States have obligation to respect. So it means it is not necessary that a conflict occurs to protect the life of women. This paragraph prohibits also torture. It stipules that “*violence to the life, health and physical or mental well-being of person (here I can say, particularly women), in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment*”<sup>87</sup> is prohibit. Article 4 § 2 adds that in a case of an armed conflict, women will be held in quarters separated from men and immediately placed under the supervisor of women.

Finally, Protocol Additional N°I also enhances the protection of women against violence in times of conflict. Article 76 announces that women “*shall be the object of respect and shall be protected in particular against rape, forced prostitution any other*

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<sup>83</sup> Daniela- Anca Deteseanu, La protection des femmes en temps de conflits armé, [www.drept.unibuc.ro](http://www.drept.unibuc.ro).

<sup>84</sup> Daniela- Anca Deteseanu, La protection des femmes en temps de conflits armé

<sup>85</sup> See article article 3 § 1 of Convention (IV) relative to the protection of civilian persons in time of war, Geneva, 12 August 1949, [www.icrc.org](http://www.icrc.org).

<sup>86</sup> See article 4 § 2 Protocol Additional to the Geneva Convention of 12 August 1949, relating to the protocol of Victims of Non- International Armed Conflicts, (Protocol II), 8 June 1977, [www.icrc.org](http://www.icrc.org).

<sup>87</sup> See, Article 4 § 2 (a) Protocol Additional to the Geneva Convention of 12 August 1949, relating to the protocol of Victims of Non- International Armed Conflicts, (Protocol II), 8 June 1977, [www.icrc.org](http://www.icrc.org).

*form of indecent assault*”<sup>88</sup>. This article has added new concepts namely respect and it is important. Usually, the perpetrators committed their acts just because they want to humiliate and disgrace women. Women also, after being raped or violated, they need help and respect in their families on the one hand but in the community on the other hand. Women need respect not only during period of armed conflict but also during of peace time. That is why article 76 is still important, as it is possible to apply it at any time. Concerning torture, it is important to underline that Article 147 the Fourth Geneva Convention specifies that “torture or inhuman treatment” and “wilfully causing great suffering or serious injury to body or health” are grave breaches of the conventions<sup>89</sup>. Generally, article 3 common to the Geneva Conventions applies to all parties in an internal armed conflict, including armed opposition groups. Through its prohibition of “outrages upon personal dignity, in particular humiliating and degrading treatment”, common article 3 implicitly condemns sexual violence<sup>90</sup>. All these standards can be applied in Guinean and Ivoirian situation. For example rape and sexual assault are forms of torture and other prohibited ill-treatment. Sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence became crimes against humanity which covers acts committed in peacetime or wartime<sup>91</sup>. Finally an enforced disappearance is a continuing crime until the “disappearance” is resolved and fate of the affected person is established<sup>92</sup>. In the case of Guinea, the event was not qualified such as an armed conflict because it was just a demonstration; however, all these crimes were committed during the demonstration. In Ivorian case, article 4 of Protocol II, which governs internal armed conflicts applied directly to the conflict. However, many other standards of international humanitarian law are still valid in Cote d’Ivoire.

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<sup>88</sup> See Article 76 Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the protection of victims of International Armed conflicts (Protocol I), 8 June 1977; [www.icrc.org](http://www.icrc.org).

<sup>89</sup> See Article 147 Fourth Geneva Convention.

<sup>90</sup> Human Rights Watch” My heart is cut: Sexual violence by rebels and pro- government forces in Cote d’Ivoire”, op cit.

<sup>91</sup> Human Rights Watch, Bloody Monday, op, cit

<sup>92</sup> Human Rights Watch, Bloody Monday, Ibid.

## **Section 2: Sexual violence in Guinea and Cote d'Ivoire as an International Crime.**

Violence against women committed in Guinea and Cote d'Ivoire are considered as crimes under their penal codes. For example article 137 of Ivorian penal code recognises crime of genocide, article 138 also prohibits crimes against the civilian population during wartime or occupation, and article 354 qualifies rape as an indecent assault that can be prosecuted by courts<sup>93</sup>. In Guinea also all these acts are forbidden by the penal code. For example, article 321 recognises rape as an indecent assault and it is punishable by imprisonment in time from 5 to 10 years and article 282 admits that murder is crimes against persons that are punishable by death under article 288<sup>94</sup>. Nevertheless, in order to prosecute at the supranational criminal law level, violence against women must be recognised as a constituent crime of genocide, crime against humanity and war crime<sup>95</sup>. Nowadays progresses have been made by criminalising sexual violence under international criminal law (**Paragraph I**) and by the jurisprudence of international courts (**Paragraph II**).

### **Paragraph 1: Sexual violence in Guinea and Cote d'Ivoire as violation of international criminal law.**

I will discuss in this paragraph, the nature of crime committed in Guinea and Cote d'Ivoire. As we will see, many acts of violence against women are qualified now as genocide, crime against humanity and war crime. The customary law and the statutes of international courts specially the Statute of ICC have contributed to this effort.

#### **1. The Events in Guinea and Cote d'Ivoire as crime against humanity.**

Crimes against humanity, under international customary law and the Rome Statute of the International Criminal Court, are certain acts, including murder, rape, and any other forms of sexual violence of comparable gravity, committed as part of a widespread systematic attack against a civilian population<sup>96</sup>. Here, we can see that the ICC Statute

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<sup>93</sup> For more information, see Ivorian Penal Code adopted at 31th August 1981.

<sup>94</sup> For more details, see Guinean Penal Code, Loi N 98/036 du 31 Decembre 198 portant Code Penal

<sup>95</sup> A M L M Brouwer, p. 39.

<sup>96</sup> For more details see Article 7 of Rome statute, Rome Statute of the International Criminal Court, [www.icc-cpi.int](http://www.icc-cpi.int).

has significantly developed the law on crimes against humanity, and it has especially expanded on crimes of sexual violence nature. Furthermore, the Statutes of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) make explicit mention of rape, when committed as part of a widespread attack against the civilian population, as a crime against humanity<sup>97</sup>. As a consequence of this development, unlike war crimes, crimes against humanity can also be committed during times of peace, if they are widespread or systematic attack against civilian population<sup>98</sup>. However, despite these efforts, it is important to underline that there is no single international treaty that provides an authoritative definition of crimes against humanity, but such crimes are generally considered to be serious and inhuman acts committed as part of a widespread attack against the civilian population, during peacetime or war<sup>99</sup>. The only treaty that I can make reference to here is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa that specifically mention rape as a human rights violation<sup>100</sup>.

In Guinea case, the evidence of the scale of the killings and severity of other abuses committed by security forces on and after September 28, 2009 as documented in Human Rights Watch report but also in United Nations report suggests that these abuses amount to crimes against humanity<sup>101</sup>. According to Human Rights Watch report, "*acts of sexual violence committed as part of widespread attacks against civilians in Cote d'Ivoire can be qualified as crimes against humanity and prosecute such*"<sup>102</sup>. Finally, as argues Human Rights Watch report, crimes against humanity, as serious international

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<sup>97</sup>See Article 5 of the Statute of the international criminal tribunal for the former Yugoslavia names rape as a crime against humanity. The Statute of ICTY, S-C-Res-827, UN- Doc S/RES/ (1993), as amended, [www.un.org](http://www.un.org). See Article 3 of the Statute of the international criminal tribunal for Rwanda names rape as a crime against humanity. The Statute of ICTR, S-C-Res-955, UN- Doc S/RES/ (1994), as amended, [www.un.org](http://www.un.org).

<sup>98</sup> Human Rights Watch, Bloody Monday, op, cit.

<sup>99</sup> Cf. Human Rights Watch" My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", op cit.

<sup>100</sup>See Article 4 of the Protocol of African Charter on Human and Peoples' Rights on the Rights of women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo , 11 July 2003.

<sup>101</sup> Human Rights Watch, Bloody Monday, Ibid.

<sup>102</sup> Human Rights Watch" My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire", Ibid.

crimes, may also be subject to universal jurisdiction, meaning that national courts (national courts of Guinean and Cote d'Ivoire) can be given jurisdiction to try a person suspected a crime against humanity even if neither the suspect nor the victim are nationals of the country where the court is located and the crime took place outside that country<sup>103</sup>. The second international crime that committed in Guinea and Cote d'Ivoire is crime of torture.

## 2. Sexual Violence in Guinea and Cote d'Ivoire as Torture.

I will talk about torture by focusing under international criminal law. In the other words, I will try to show how torture became an international crime under the customary law, under Rome Statute and under ICTY and ICTR statutes. Torture is a grave breach under customary law and its prohibition has furthermore acquired the status of jus cogens<sup>104</sup>. In article 8(2) (ii) of the International criminal Court Statute, torture or inhuman treatment, including biological experiments are listed as grave breaches<sup>105</sup>. According to the same Statute, torture can be qualified as crimes against humanity and would also apply to the context of war crimes<sup>106</sup>. To define torture as crimes of war, there are two elements to take into account:

- *The perpetrator inflicted severe physical or moral pain or suffering upon one more persons.*
- *The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind<sup>107</sup>.*

However the elements of the war crime of torture were not unanimous admitted during the 1984 Convention of Torture negotiation: according to Ms Anne- Marie Brouwer, some people argued that “ *a purposive and / or official capacity element was necessary to distinguish torture from the crime of inhuman treatment, whereas others felt, with*

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<sup>103</sup> Human Rights Watch” My heart is cut: Sexual violence by rebels and pro- government forces in Cote d'Ivoire”, Ibid.

<sup>104</sup> A M L M Brouwer, op, cit, pp. 181-182.

<sup>105</sup> For more details see Article 8 (2) (ii) of Rome statute, Rome Statute of the International Criminal Court, op, cit, [www.icc-cpi.int](http://www.icc-cpi.int).

<sup>106</sup> See Article 7 (2) (e) of Rome statute, Rome Statute of the International Criminal Court, op, cit, [www.icc-cpi.int](http://www.icc-cpi.int).

<sup>107</sup> A M L M Brouwer, ibid, p. 182.

*reference to the case law of the European Court of Human Rights on torture, that the severity of the pain or suffering inflicted should be the factor to differentiate between the two crimes*”<sup>108</sup>.

The most important is the fact that today it is admitted that rape and other forms of sexual violence may qualified as torture. The extension has been made by the jurisprudence of the ICTY and ICTR. For example, the Furundzija Trial Chamber argues that “rape may also amount to a grave breach of the Geneva Convention ...if the requisite elements are met, and may be prosecuted accordingly”<sup>109</sup>. Finally, the Akayesu Judgment before the ICTR added new elements to define rape. The Trial Chamber defined rape as: ...as physical invasion of sexual nature, committed on a person under circumstances which are coercive. The tribunal considers sexual violence, which includes rape, as any act of sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact<sup>110</sup>. By focusing on this judgment, many acts committed in Guinea and Cote d’Ivoire may be qualified as sexual violence and may constitute an international crime that can prosecute before a court.

## **Paragraph 2: The Contribution of ICTY and ICTR case Law on the Definition of Sexual Violence: The case of Rape.**

I would like to discuss in this paragraph about case law of ICTY and ICTR. In the first paragraph I mentioned the Akayesu Judgment without developing. I would like to comment three cases where three principal definitions of rape emerged.

### **1. The Akayesu Judgement in 1998.**

Jean- Paul Akayesu a former bourgmestre of Taba commune (Gitarama Prefecture, Rwanda), married with five children, was charged with rape as crime against humanity (Article 3 (g) of the ICTR Statute) and “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, and any form of indecent assault” as

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<sup>108</sup> A M L M Brouwer, ” Ibid, pp. 182- 183

<sup>109</sup> A M L M Brouwer, op cit, p. 181.

<sup>110</sup> A M L M Brouwer, Ibid, p. 105.

violations of Article 3 common to the Geneva Convention and of Article 4 (e) of Additional Protocol II (Article 4 (e) of the ICTR Statute). The Tribunal Chamber was also asked to examine whether rape and other forms of sexual violence could qualify as genocide<sup>111</sup>. In this trial, the Tribunal rejected explicitly a mechanical definition of rape as found in many national laws. For the Tribunal “*it is not limited to conventional notions of rape requiring penetration, nor does it require lack of consent as an element of the crime of rape*”<sup>112</sup>. Thus, the Tribunal took into consideration the concept of rape, which, in its view, would more accurately provide for the full protection of vulnerable persons in situation of mass violence. The Akayesu Judgment arrived in the following decision: “*...like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of person dignity...*”<sup>113</sup>. So we can see the conditions and the aim of the rape are important to qualify the crime. According to this judgment, certain acts committed against Guinean and Ivorian women may be qualified such as crime of rape. However, the Akayesu judgment has been criticised as being too broad, not specific enough to take into account situation beyond penetration, thereby possibly violating the legality principle.

## **2. The Furundzija judgment.**

Anto Furundzija was born in Travnik in 8<sup>th</sup> July 1969. He was charged with rape. In this judgment, the second principal definition of rape was established. However it is important to understand that the Trial Chamber focused on principles of criminal law common to the legal system of the world to define rape. The Trial Chamber finally stated the following element of rape:

- *The sexual penetration, however slight:*
  - (a) *Of the vagina or anus of the victim by the penis of the perpetrator or any object used by the perpetrator; or*
  - (b) *Of the mouth of the victim by the penis of the perpetrator;*

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<sup>111</sup> ICTR, « *Jean- Paul Akayesu, Summary of the Judgment* », Source: ICTR- 96-4-T Delivered on 2 September 1998, [www.uniurb.it](http://www.uniurb.it).

<sup>112</sup> A M L M Brouwer, op cit p. 107.

<sup>113</sup> A M L M Brouwer, ibid, p. 106.

- *By coercion or force or threat of force against victim or a third person*<sup>114</sup>.

As it is possible to notice, the Trial Chamber focused more on penetration to define rape. As points out Ms Anne- Marie Brouwer, the definition of rape in this case includes the sexual penetration of the women's vagina or the women's or man's anus by the penis of the perpetrator or any object used by the perpetrator, as well as the sexual penetration of the mouth of the man or women by the penis of the perpetrator<sup>115</sup>. The judgment distinguishes rape from other forms of sexual violence. It is important because rape lay down as a separate crime that may be prosecuted. This definition of rape has not been followed up in subsequent judgments. Instead, a third definition of rape, more or less similar to the Furundzija one, was established in the Kunarac, Kovac and Vukovic case.

### 3. **The Kunarac, Kovac and Vukovic Judgment.**

On 22 February 2001, the Kunarac, Kovac and Vukovic judgment, established the third definition of rape in the international law. According to this case, the first part of the Furundzija definition of rape; i.e. it gives the identical mechanical description of body parts and objects involved was acceptable. However, for the Trial Chamber, the second parts of the definition of rape as established in the Furundzija case (ii) "by coercion or force or threat of force against the victim or third person", was although appropriate to the circumstances of that case ,more narrowly stated than required by international law<sup>116</sup>. The Judges noted that "*in stating that the relevant act of sexual penetration will constitute rape only if accompanied by coercion or force or threat of force against the victim or a third person, the Furundzija definition of rape does not refer to other factors which would render an act of sexual penetration non-consensual or non- voluntary on the part of the victim*"<sup>117</sup>. In this case, the Trial Chamber concluded that the definition of rape established in Furundzija judgment was too restrictive because it focused on

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<sup>114</sup> ICTY Judgment Summary, «*Statement of the Trial Chamber at the Judgment Hearing: The Prosecutor v. Anto Furundzija 10 December 1998* », [www.icty.org](http://www.icty.org).

<sup>115</sup> A M L M Brouwer, Ibid, pp. 114- 115.

<sup>116</sup> A M L M Brouwer, Ibid, p. 116.

<sup>117</sup> A M L M Brouwer, Ibid, P. 116.

coercion or force only. The judges argued that, in order to constitute a crime of rape, three broad categories of circumstances need to be established:

- (i) *The sexual activity is accompanied by force or threat of force to the victim or a third party;*
- (ii) *The sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or*
- (iii) *The sexual activity occurs without the consent of the victim*<sup>118</sup>.

Thus, as points out Anne-Marie Brouer, besides (threat of) force, the Kunarac, Kovac and Vukovic judges held that, the circumstances as indicated in (ii) and (iii) will render the sexual acts criminal as well<sup>119</sup>.

By focusing on these three elements to define rape as a crime, the Kunarac, Kovac and Vukovic case contributes to fight against sexual violence which can be committed during crisis such as in Guinea and Cote d'Ivoire.

As we have seen in this chapter, the acts committed in Guinea and Cote d'Ivoire as documented by many reports may be qualified as grave breaches. They are human rights violation under international human rights law and under regional instruments. Furthermore these acts can be considered as crimes against humanity, crimes of torture and crimes of war under the international criminal law. In the following chapter I will talk about the prosecution of the crimes.

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<sup>118</sup> ICTY Judgment, « *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* », Case N° IT-96-32-T§ IT-96-23/1-T of 22 February 2001, [www.icty.org](http://www.icty.org).

<sup>119</sup> A M L M Brouwer Ibid, p. 117.

### **Chapter III: Violence against Women Committed in Guinea and Cote d'Ivoire between Impunity and Need of Justice.**

The justice sector is responsible for providing justice for victims of sexual violence and other human rights violations, ensuring accountability for the crimes committed during the time of trouble. It's the way how the justice can also support the long-term process of rebuilding the communities.<sup>120</sup> However victims rarely receive adequate justice or reparation for the injury and suffering that they have endured and continue to experience. Guinean and Ivorian cases are not an exception to this rule. Indeed many survivors are waiting for justice and reparation. Some effort was made by the domestic jurisdictions and ICC, to try individuals who committed crime. This chapter aims to show the first responsibility of national courts to prosecute crimes (**Section I**) and what should be the role of the ICC in Guinea and Cote d'Ivoire (**Section II**).

#### **Section I: The Responsibility of Guinean and Ivorian Domestic Courts to Prosecute and Provide Justice for Survivors.**

As we have already known, acts of sexual violence committed in Guinea and Cote d'Ivoire can be qualified as international crimes. According to Article 17 of the Rome Statute, such crimes are admissible before the Court in a case, when it is not being investigated or prosecuted by a State which has jurisdiction over it<sup>121</sup>. It means that the ICC should intervene in Guinea and Cote d'Ivoire only if the concern States are not investigating or prosecuting. This section starts by considering the efforts made by such states to bring the cases before their national courts (**Paragraph I**). It then considers the obstacles that both states are confronted (**Paragraph II**).

#### **Paragraph I: The Guinean and Ivorian Initiatives to prosecute Sexual Violence.**

I will divide this paragraph into two parts. In the first part I will talk about the situation in Guinea and in the second part, I will focus on the Ivorian case.

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<sup>120</sup> Megan Bastick, Karin Grimm and Rahel Kunz, «*Sexual violence in armed conflicts: Global overview and implications for the security sector*», Geneva center for the democratic control of armed forces, 2007, p. 155.

<sup>121</sup> See Article 17 of the Rome Statute, [www.Icc-cpi.int](http://www.Icc-cpi.int).

### **1- The beginning of the prosecution of perpetrators of September 28.**

The extent of violence of the events of September 28 has pushed the military authorities and the international community to react.

The first reaction is the establishment of an International Commission of Inquiry. This commission was created by a decision taken by M Banki Ki-Moon the Secretary General of United Nations on the October 28, 2009. The commission would be mandated to establish the facts and circumstances of the events of 28 September 2009 and the related events in their immediate aftermath, qualify crimes perpetrated, determine responsibilities and, where possible, identify those responsible<sup>122</sup>. After two months of investigation in Guinea, the commission came to the following conclusion: As we already knew, concerning the qualification of violation and crimes; the acts were recognised as violation of human rights and as violation of international criminal law. These acts can also be qualified as crimes against humanity and crimes of torture. Concerning individual responsibility for violation of international criminal law, the Commission concludes that there are reasonable grounds to suspect individual criminal responsibility in connection with the events of 28 September 2009 and the days that followed on the parts of:

- (a) The President, Captain Moussa Dadis Camara ( shoot by his bodyguard but still alive);
- (b) Lieutenant Aboubacar Cherif Diakite ( known as “Touma”), the President ‘s aide-de- camp and the Commander of his bodyguards;
- (c) Commander Moussa Thegboro Camara, Minister in charge of the Special Services responsible for combating drug trafficking and organised crime<sup>123</sup>. However there are also other responsible persons and the Commission: “believes *that other people may be held criminally liable for their involvement in the event of 28 September and the days that followed*”<sup>124</sup>.

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<sup>122</sup>United Nations, Security Council, ”Letter dated on 28 October 2009 from the Secretary- General addressed to the President of Security Council”, S/2009/556, 28 October 2009, [www.securitycouncilreport.org](http://www.securitycouncilreport.org).

<sup>123</sup>See United Nations report, op cit.

<sup>124</sup> See United Nations report, Ibidem.

The second reaction is to establish a national commission. This commission was established by Guinean Government on October 7, 2009 and received mandate to shed light on events. It is composed by people coming from the civil society organisations and by judges<sup>125</sup>. In the meantime, in February 8, 2010, three other judges were empowered for establishing individual criminal responsibility in the events of September 28. These three judges are still working on the event in order to prosecute the perpetrators. Last February, they decided to prosecute Commander Moussa Thegboro Camara. It was recognised by the international community as a big progress to bring justice to victims.

## **2- A Dialogue, Truth and Reconciliation Commission to Bring Justice for Ivorian Victims.**

Since 2002, Cote d'Ivoire has been affected by two crises. The first was the armed conflict that I'm talking about in this thesis (from 2002 to 2007). The second is the post electoral contestation that started at 28 November 2010 and end at 11 April 2011 by arresting the former President M Laurent Gbagbo. During these two crises many crimes against women were committed without being prosecuted. In 4 May, when the new authorities took place, they decided to establish a non-judicial mechanism.

The Dialogue, Truth and Reconciliation Commission was established under order N° 2011-167 of 3 July 2011. Its purpose is to work independently to ascertain the truth about the past and recent national socio-political events in order to achieve national reconciliation based on respect for the Ivorian people's differences and coexistence<sup>126</sup>. As we can see, the Commission has mandate to investigate the sexual violence committed during the first crisis (the armed conflict, from 2002 to 2007). However, many are upset that this commission has tended to focus solely on post-electoral violence. Nowadays, it's early to appreciate the job of this commission. Nevertheless, it's importance to underline that the problem is very complex in Cote d'Ivoire. Many

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<sup>125</sup> For more details see, Amnesty International, "Guinée: vous ne voulez pas de militaires, on va vous donner une leçon : Les événements du 28 septembre 2009 au stade de Conakry» Rapport du 10 Février 2010, [www.amnesty.org](http://www.amnesty.org).

<sup>126</sup> United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène», A/HRC/19/72, 9 January 2012, [www.un.org](http://www.un.org).

people believe that it will be difficult to prosecute all the crimes committed and it's better to focus on forgiveness.

The Ivorian government has also established on 24 June 2011 the Special Investigate Unit at Abidjan's court of first instance. According to the Abidjan public prosecutor, more than 5, 000 individuals had already been questioned and more than 830 persons in the country's western part<sup>127</sup>. However the mandate of this Special Investigate Unit is limited and it not cover the crimes committed before 2010. It has a renewable 12-month mandate to investigate events that occurred in the country on or after 4 December 2010. Finally, any particular investigation on sexual violence has been initiated in Cote d'Ivoire. Nevertheless, many believe that salvation will come from the ICC<sup>128</sup>.

## **Paragraph II: The Limits of Domestic Courts to Prosecute Crimes of Sexual Violence in Guinea and Cote D'Ivoire.**

Neither the Guinean State nor the Ivorian State has the necessary means to bring justice to the victims.

### **1- Weaknesses of Guinean Judiciary system.**

It's difficult for the judiciary system to bring justice for the victims of sexual violence in Guinean. The reasons are the followings:

- A culture of impunity within the State. The Guinean State such as many African countries the different regimes are characterised by the commission of crimes and the impunity of the perpetrators. Since its independence in 1958, all Guinean regimes are qualified as dictatorial. For example between 1958 and 1984, the first President Seckou Toure, has never hesitated to eliminate the opponents who

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<sup>127</sup> United Nations, General Assembly, "Report of the Independent expert on the situation of human rights in Cote d'Ivoire", Doudou Diène, Ibidem.

<sup>128</sup> Amnesty International, «Cote d'Ivoire : Note au compte des nations unies pour l'élimination à la discrimination à l'égard des femmes», 50<sup>e</sup> session Octobre 2011, [www.amnesty.org](http://www.amnesty.org).

were against his power or put them in prison The first democratic election assumed held in 2010 it was also the first time that a civilian president was elected. According to the Fédération International des Droits de l'Homme (FIDH) and l'Organisation Guinéenne de Défenses des Droits de l'Homme et du Citoyen (OGDH) report, ten thousand opposent were tortured<sup>129</sup>. Some of the perpetrators of these crimes are still alive but no one is prosecuted by the new authorities.

- The second limitation is related to the access to justice in Guinea. For many reasons to access to justice is very difficult. Firstly the corruption is very high and the judges cannot work independently<sup>130</sup>. As a consequence of this situation, population doesn't trust to the tribunals and prefer not to bring their cases before the courts. Secondly, the victims themselves don't have a culture of justice. In Guinea such as many African countries, the population doesn't have habit to prosecute the perpetrators. It's means people prefer to solve their problems or crimes by mediation, conciliation or by negotiation. Finally the judicial institution is affected of the lack of financial resources and the lack of political motivation of the authorities. According to the FIDH and OGDH report, the executive power does not have the volunteer to make the judicial system efficacy because it would be a danger against them<sup>131</sup>.

For all these reasons it is difficult to believe that the victims of September 28 of sexual violence will receive justice from the national courts.

## **2- The limits of the Ivorian judicial system.**

The Ivorian judicial system is affected by many limits. In this part, I will enumerate three of them.

- Victim's unwillingness to pursue the perpetrators. The survivors of sexual violence refused often to push the perpetrators to be held accountability in a court

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<sup>129</sup>(FIDH) and OGDH report, "Guinée- Conakry 1 an après le massacre du 28 septembre 2009: Nouveau pouvoir, espoir de justice?", Septembre 2010 N 546f.

<sup>130</sup> FIDH) and OGDH report, idem.

<sup>131</sup> FIDH and OGDH report, Op cit.

of law. According to the Human Rights Watch report, the disinclination of victims in Cote d'Ivoire may be due to a number of factors. Firstly many survivors feels shamed of what happened to them, often blame themselves for the assaults and will not accept to talk about the rape before a court. Secondly some of them fear reprisals by the perpetrators. Finally few survivors of sexual violence interviewed by HRW have faith in either the criminal justice system or the customary law system and their capacity to provide justice<sup>132</sup>.

- Intimidation and harassment of victims and legal professionals. Both victims and legal professionals (lawyers) attempting to pursue cases of crimes committed by pro-governmental militias or sometime by rebels in the north have faced intimidation and harassment. Many perpetrators appears to be shielded from prosecution, no matter how grave the crimes they commit.

Prohibitive legal expenses. The Ivorian judicial system is also affected by corruption and according to HRW report “...*those few cases of sexual violence that are brought to the attention of legal authorities do not escape its reach*”<sup>133</sup>. According also to the United States Department of States Bureau of Democracy, Human Rights Law, Cote d'Ivoire country Reports “*from the moment that rape victims register a complaint with the police, they must contain corrupt practices by police and judicial personnel, factors which virtually ensure that cases will not be pursued*”<sup>134</sup>.

To finish this section, I would say some effort is made to pursue perpetrators of sexual violence in Guinea and Cote d'Ivoire. However, these efforts are still very insufficient. The international criminal court is also involved for seeking justice for sexual violence.

## **Section II: The Role of the International Criminal Court in Guinea and Cote d'Ivoire.**

I would like to explain in this section, the effort of the international criminal justice particularly, the ICC in Guinea and Cote in order to prosecute the perpetrators. In both states, the ICC is involved but differently. In Guinea it didn't engage any pursue, it just

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<sup>132</sup> Human Rights Watch Report, op cit.

<sup>133</sup> Human Rights Watch Report, Idem.

<sup>134</sup> United States Department of State Bureau of Democracy, Human Rights, and Labor, Côte d'Ivoire: Country Reports on Human Rights Practices - 2005, March 8, 2006. <http://www.state.gov.com>.

assisting the local justice (**Paragraph I**). However in Cote d'Ivoire, the Court is involved to the investigation and the prosecution of the crimes (**Paragraph II**).

### **Paragraph I: Cooperation between the Guinean Justice and the ICC to Prosecute Sexual Violence.**

The international community was very shocked and terrified to the sexual violence committed in Guinea. The first reaction came from the United Nations Secretary General M Banki- Moon who condemned the violence and in the meantime ordered the opening an investigation by establishing an International Commission of Inquiry<sup>135</sup>. This commission published its report on 21 December 2009. The report comes into the conclusion that the sexual violence can be qualified as crimes against humanity. Therefore, the ICC had also the duty to react. And according to the article 7 of Rome Statute, the ICC is competent to prosecute these crimes<sup>136</sup> if they are perpetrated in a State Member such Guinea<sup>137</sup>. Nowadays the ICC does not yet engage any pursue in Guinea, but it is helping, assisting and sometimes putting pressure to the national commission of inquiry. Here following are the various efforts made by the ICC in Guinea.

Firstly is the "situations under Analysis". In this case the Office of the Prosecutor (OTP) is assessing to determine whether a formal ICC investigation is necessary<sup>138</sup>. The Prosecutor M Luis Moreno Ocampo placed the case of Guinea situation under analysis on 14 October 2010. The aims of this opening preliminary analysis is: to determine whether the crimes of 28 September 2009 and the days that followed can be prosecuted by ICC. In the other word the aim is to know whether the ICC is competent to investigate in Guinea. The second aim is to see whether the Guinean authorities are really motivated or they are willing to prosecute the crimes. In the case where the Prosecutor would conclude that the local justice is not doing effort to judge the

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<sup>135</sup> See United Nations, Security Council, "Letter dated on 28 October 2009 from the Secretary- General addressed to the President of Security Council", Op, cit.

<sup>136</sup> See Article 7 of the Rome Statute, Op, cit.

<sup>137</sup> Guinea has already ratified the Rome statute since 1er October 2003.

<sup>138</sup> Human Rights Watch, "Course correction: Recommendations to the ICC Prosecutor for a more effective approach to situations under analysis" June 2011, [www.hrw.org](http://www.hrw.org).

perpetrators, he can ask to the Court to allow him to an investigation prior to the commencement of proceedings<sup>139</sup>.

Secondly, is influencing national authorities through preliminary examinations. The preliminary examinations are different activities undertaken by the Office of the Prosecutor that consist to afford opportunities to the national authorities to conduct their own investigations. Here, the Office will seek to encourage where feasible genuine national investigations and prosecutions by the State(s) concerned and to cooperate with and provide assistance to such State(s)<sup>140</sup>. Nowadays, the OTP is monitoring national proceedings in Guinea, Georgia, and Colombia and seeking to encourage those proceedings, as it did in Kenya<sup>141</sup>. Concerning the Guinean State, the OTP has sought to keep pressure on the authorities. Therefore, since 2009 after the September 28 events, the OTP made three missions over the course of 2010 and a fourth in 2011. The last mission was held on 5 April 2012<sup>142</sup>. According to Guinean new paper “Le Jour”, “*each mission was marked by public statements, including during press conference, encouraging national authorities to carry out investigations and prosecutions*”<sup>143</sup>. On few occasion, ICC representatives Ms Fatoumata Bensouda and M Amady Ba challenged the Guinean authorities, saying “either they (the government) must prosecute or we will”<sup>144</sup>.

All these efforts are pushing to the Guinean authorities to undertake initiatives to bring justice for victims. Otherwise the perpetrators will prosecute by ICC and it similar as a fail of their domestic courts.

## **Paragraph II: The ICC Prosecutes the Crimes of Sexual Violence in Cote d’Ivoire.**

ICC is very active in Cote d’Ivoire. The court is involving in the prosecution by assisting, helping, keeping pressure the national commission of inquiry and by

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<sup>139</sup> FIDH and OGDH report, Op cit.

<sup>140</sup> Human Rights Watch, Ibidem.

<sup>141</sup> Human Rights Watch, Ibidem

<sup>142</sup> United Nations Entity for Gender Equality and the Empowerment of Women, “*Justice for the victim of 28 September in Guinea, a personal priority says ICC Chief Prosecutor*”, 25 April, 2012, [www.unwomenwestafrica.blog.com](http://www.unwomenwestafrica.blog.com).

<sup>143</sup> La CPI se prononçant sur les événements du 28 septembre : « Si nul résultat tangible n’est atteint, le Bureau du Procureur prendra ses responsabilités », le Jour, April 2, 2011, [www.lejourguinée.com](http://www.lejourguinée.com).

<sup>144</sup> Agence France-Press, “ICC prosecutor to Guinea for massacre probe”, February, 15, 2010, [www.rnw.nl](http://www.rnw.nl).

investigating the crimes of sexual violence perpetrated. Therefore, the job of ICC in Cote d'Ivoire can be divided into two phases:

- **Phase one concern the crimes committed after November 2010 or during the post-electoral contestation.**

During this period many crimes were perpetrated by pro- governmental forces and by opposition forces led by M Alassane Ouattara the current President. For the international community and also for the new Ivorian authorities these crimes may be prosecuted or by the domestic courts or by ICC. Therefore, the new authorities decided that few crimes can be prosecuted by their own jurisdictions and other will transfer into the ICC. Indeed, despite the fact that Cote d'Ivoire is not a State member of the Rome Statute, the court is still competent to intervene there. Because, according to the article 12(3) of Rome Statute, a State not a party to the Statute, may, by declaration lodged with registrar, accept the exercise of jurisdiction by the Court with respect to a crime<sup>145</sup>. On 18 April 2003, under the Government of M Laurent Gbagbo, Cote d'Ivoire had accepted the ICC jurisdiction over acts committed in their territory since 19 September 2002<sup>146</sup>. M Alassane Ouattara has confirmed the acceptance of the jurisdiction of the ICC in two letters addressed to the Prosecutor, respectively, 14 December 2010 and May 3, 2011<sup>147</sup>. By focusing to the recognition given by the Ivorian authorities, the Prosecutor decided to intervene in Cote d'Ivoire. Thus, on 3 October 2011, Pre-Trial Chamber III (PTC) had authorised the ICC Prosecutor to open an investigation into war crimes and crimes against humanity allegedly committed in Cote d'Ivoire following the Presidential election of 28 November 2010<sup>148</sup>. November 23, 2011 the ICC issued an arrest warrant against the former President M Gbagbo. November 29, 2011, M Laurent Gbagbo was surrendered to the ICC by Ivorian authorities. He is prosecuting for crimes against humanity involving murder, rape and other sexual violence, acts of persecution

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<sup>145</sup> See article 12(3) of Rome Statute, op, cit.

<sup>146</sup> United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène, op, cit.

<sup>147</sup> United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène, Ibidem.

<sup>148</sup> Coalition for the international criminal court, "ICC expands scope of Cote d'Ivoire investigation to 2002- 2010: ICC prosecutor can consider wider scale of alleged war crimes and crimes against humanity in Cote d'Ivoire", Media advisory 24 February 2012, [www.coalitionfortheicc.org](http://www.coalitionfortheicc.org).

and other inhuman acts committed in the territory of Cote d'Ivoire between 16 December 2010 and 12 April...etc.<sup>149</sup>. M Gbagbo bore individual criminal responsibility, as an indirect perpetrator, for these four counts of crimes.

- **Phase two concern the crimes committed between 19 September 2002 and 28 November 2010.**

As we know this period concern the armed conflict time. Many crimes were perpetrated by the rebels group and the pro-governmental forces. Neither the “dialogue, truth and reconciliation commission” nor the “national commission of inquiry” are really involved to prosecute of these crimes. However, for the Prosecutor of ICC all the crimes committed in Cote d'Ivoire since 2002 must be prosecuted. Therefore on 22 February 2012, the Pre-trial Chamber III (PTC III) of the international criminal court decided to expand its authorisation for the ICC prosecutor's investigation in Cote d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010. According to the Chamber, there is a reasonable basis to believe that the violent events in Cote d'Ivoire during this period; including alleged acts of murder and rape, could amount to war crimes or crimes against humanity<sup>150</sup>. This decision is very important for the victims of the armed conflict especially the victims of sexual violence. Because the Ivorian judicial mechanisms and non-judicial mechanisms, for many reasons are limited to prosecute the crimes of sexual violence committed during this period. For the Coalition of the International Criminal Court, “*the expanded jurisdiction granted by the Chamber makes it possible for the ICC prosecutor to investigate possible Rome Statute Crimes committed in Cote d'Ivoire from 19 September 2002 onwards. The prosecutor may also seek to amend or add charges related to the ongoing Laurent Gbagbo case as result of the expansion of jurisdiction*”<sup>151</sup>. We should also stress that hope is born for victims: for example Ali Ouattara, the Coordinator for the Cote d'Ivoire Coalition for the International criminal Courts, declared: “*it is a great step forward in the fighting against impunity in Cote*

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<sup>149</sup> United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène, op, cit.

<sup>150</sup> Coalition for the international criminal court, op, cit.

<sup>151</sup> Coalition for the international criminal court, Ibidem.

*d'Ivoire. This is an opportunity for all victims, regardless of when they were victimised or which side in the Ivorian conflict they support, to get justice*"<sup>152</sup>.

I would like to conclude this chapter by saying that in Guinea and in Cote d'Ivoire the new regimes are doing some efforts to bring justice for victims of sexual violence. However, the situation is very complex. Both States come out from dictatorial regimes, where many crimes were perpetrated. In Guinea the military continue to have big influence, in Cote d'Ivoire, some of the new authorities were involved into the perpetration of the crimes. It is always difficult, for every country coming out from a dictatorship or an armed conflict, to implement a democratic regime, being, at that time, very fragile and vulnerable. Nevertheless, it is good that the ICC is involved into the prosecution of crimes, assisting and keeping pressure to them.

Now I will talk about the challenges of the international criminal justice in Guinea and Cote d'Ivoire.

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<sup>152</sup>Coalition for the international criminal court, Ibidem.

## **Chapter IV: The Challenges of fighting impunity of Sexual Violence in Guinea and Cote d'Ivoire.**

This chapter aims to identify the challenges which Guinean and Ivorian States should face in order to fight against impunity of violence towards women. In my opinion, the vulnerability of women in Guinea and Cote d'Ivoire is mainly due to the fact that most of their rights are not recognised by these States. The same women are still ignorant about their own rights and for cultural reasons; they are not taking advantage of the judicial mechanisms.

The chapter will be divided into two sections. In the first section, I will talk about the challenge of fighting impunity of sexual violence in Guinea and the second section will concern the challenges in Cote d'Ivoire.

### **Section I: The Challenge of fighting impunity of Sexual Violence in Guinea.**

What is the challenge of the Guinean State to fight impunity of sexual violence? It is not easy to answer this question, since everything is still an emergency in Guinea. However, I will try to talk only about the things that I think are the most important for Guinean women and that can contribute to improve their social conditions. Thus, it is important to prosecute the perpetrators of sexual violence, but it is even more important to prevent their perpetration. This prevention must pass through the promotion of women rights (**Paragraph I**) and the improvement of judicial body (**Paragraph II**).

#### **Paragraph I: Promoting Women Rights in Guinea.**

The main instruments that are protecting women in Africa are the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and its optional Protocol and The Protocol of African Charter on Human and Peoples' Rights on the Rights of Women. Guinea has signed the CEDAW convention in 1981 and has ratified it on 2 August 1982<sup>153</sup>. Guinean State has just signed The Protocol of African Charter on Human and Peoples' Rights on the Rights of Women on 16 December 2003, but did

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<sup>153</sup> Nanfadiam Magassouba, " Rapport alternatif des ONG sur l'application de la CEDEF en Guinee", Janvier 2007, [www.iwraw-ap.org](http://www.iwraw-ap.org).

not yet ratify it<sup>154</sup>. I believe that the first challenge of the new authorities is to increase the legal protection of women and to implement them.

- **Increase the legal protection of women**

The Guinean State should increase the legal protection of women by ratifying the Optional Protocol to the Convention on the Elimination of all forms Discrimination against Women. This protocol, adopted by the United Nations General Assembly on 6 October 1999 and entered into force on 22 December 2000, is an important instrument to fight violence against women. As I already explained, the CEDAW convention, ratified by Guinea in 1982, does not make any specific reference to violence against women, while the Protocol does and, the Guinean State has not yet ratified it. If Guinea wants to improve the legal protection of women, as a first thing, it should ratify this protocol. Secondly, even though, as mentioned, the CEDAW convention is recognised by Guinean laws (in the preamble of the constitutional law, for instance, is proclaimed equality between men and women)<sup>155</sup>, implementing this convention in Guinea is difficult. In some codes there are laws that continue discriminating women. For example, in Guinean Civilian Code, women cannot exercise the parental authority. It means that women and men do not have the same rights on their children. This issue is a big problem in many African countries. The second discriminatory issue in the Civilian Code concerns the choice of the marital home. The Guinean women do not have the possibility to choose where they want to live with their husband. The challenge is, for the new authorities, to make laws and modify the civilian code in order not to discriminate women. By doing so they would, in the meantime, also respect their international engagement, notably the CEDAW convention.

The third effort that the new regime should do is to ratify the Protocol of African Charter on Human and Peoples' Rights on the Rights of Women. This instrument is still the only treaty that defines crimes against humanity; in this treaty, rape is specifically

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<sup>154</sup> African Commission of Human and Peoples' Rights, "Ratification Table: Protocol to the African charter on human and peoples' rights on the rights of women in Africa", Legal instruments, [www.achpr.or](http://www.achpr.or).

<sup>155</sup> Preamble of Guinean constitutional law, Constitution du 7 Mai 2010, op, cit.

referred to as a human rights violation<sup>156</sup>. According to article 11 of this protocol, the violence against women, committed during armed conflict or peacetime, should be brought before a competent criminal jurisdiction<sup>157</sup>. The ratification of this protocol may be a good thing for the Guinean State, since many women are facing a lack of justice.

- **Take measures to criminalising the sexual violence.**

Existing Guinean law does not adequately identify the nature of certain crimes committed in September 2009. There is also no law that gives possibility to the Rome Statute to apply directly in Guinea. Finally the crimes of torture are not defined in Guinean penal code. According to Human Rights Watch: *“as defined under international law, crimes against torture go beyond multiple criminal acts such as murder and rape and are committed as part of widespread or systematic attacks directed against any civilian population”*<sup>158</sup>. We can see that, whenever a national prosecution will fail, there will be a problem to bring some acts before the international criminal court. In my opinion, to ensure that the correct accusation against perpetrators (reflecting the crimes committed) is made, Guinea should act quickly to enact legislation to implement the Rome Statute, including its core crimes and mode of liability (such as command responsibility) and to codify a specific crime of torture, this could solve the main difficulties in prosecuting the crimes of September 28. Today the main problem of the Guinean domestic courts is the command responsibility. For example, after the September event, two versions were given by the military body. The first was given by the President and his collaborators, they stated that they did not authorise the soldiers to intervene in the stadium and kill people. The soldiers, on the other hand, claimed that they were just executing an order from their hierarchical superiors. The big issue now is: who must be prosecuted in Guinea? According to the first result of the investigation of the national commission of inquiry, both, officers and

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<sup>156</sup> See Article 4 of the Protocol of African Charter on Human and Peoples’ Rights on the Rights of women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo , 11 July 2003

<sup>157</sup> See Article 11, of the Protocol, op, cit.

<sup>158</sup> Human Rights Watch, « *We have lived in darkness: A human rights agenda for Guinea s’ new government*”, 1-56432-772-8, May 2011, [www.hrw.org](http://www.hrw.org).

soldiers, will be prosecuted (e.g. Commander Moussa Thegboro Camara case is before a domestic court, although he continues to benefit immunity as a minister).

Nowadays, the challenge for Guinea is to clarify the concept “command responsibility” in order to include it in the penal code. According to Human Rights watch, “*Guinean current penal codes are not adequately developed with respect to these international and human rights concepts, presenting an additional judicial challenge for September 2009 accountability trials*”<sup>159</sup>. Finally, Guinea needs to revise its law. It needs to undertake a process of reformation, codify new laws, revise or replace outdated norms that do not meet international human rights standards. In particular, the norms on sexual abuse are still very limited in the Guinean legislation. For example, the State does not codify sexual harassment or other forms of aggression. Therefore, while Guinea has signed or ratified nearly all major international laws and treaties, it has yet to transfer many of them into its national law<sup>160</sup>.

## **Paragraph II: Need of Improvement of the Judicial Sector.**

The Guinean judicial sector is affected by five main problems: lack of independence, lack of impartiality, lack of effectiveness, lack of accessibility and lack of legitimacy. Today these defects are not affecting only the individuals, but also the people working within the judicial system, such as gendarmerie, police, etc. However, by analysing the different political regimes, I can see that none of them made a really effort to improve this sector. Any political power was motivated to strengthen the judiciary sector or to ensure the independence of the judicial institutions by providing them adequate human, material and financial resources<sup>161</sup>. In this paragraph I will enumerate some challenges for the new regime to improve the judicial sector.

### **- Independence of judiciary personnel.**

Without a real independence of the judiciary personnel, it's impossible to give justice to the citizens in a country. In Guinea the judicial personnel are affected by problem of

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<sup>159</sup> Human Rights Watch, Ibidem.

<sup>160</sup> Human Rights Watch, op, cit.

<sup>161</sup> AU, ECOWAS, UN, « Rapport d'évaluation du secteur de la sécurité en République Guinée », Mission conjointe de la communauté économique des états de l'Afrique de l'ouest, de l'union africaine et de l'organisation des nations unies, Mai 2010, [www.gn.undp.org](http://www.gn.undp.org).

independence. According to the Human Rights Watch interviews, judges, prosecutors, and others lawyers are affected by lack of independence. They are regularly subjected of corruption or intimidation. In some cases, they succumbed to pressure on how to act in a given case by members of government, the military, or businessmen<sup>162</sup>. In the same way, judicial personnel who refuse to succumb to the pressure have at times been “punished” through transfers to other jurisdictions, often from their home<sup>163</sup>. In order to fight against the impunity of sexual violence, the new authorities should first restore the independence of judicial personnel by stopping to keep them pressure or control them. Finally the State should increase the training of the magistrates and lawyers, because some of them declared to Human rights watch that due to the lack of training in Guinean law, they at times make decisions based on outdated laws<sup>164</sup>.

- **Increase the number of judicial personnel.**

To ensure that the women will benefit better protection from their judicial sector, Guinea should: firstly increase the number of judicial personnel such as magistrates, clerks, secretaries of prosecutors...etc by recruiting new stall. The problem is not only the fact that these staffs are insufficient but they are also aging<sup>165</sup>. Secondly, increase the number of lawyers but also to encourage them to exercise their function in the other cities different than Conakry the capital. According to the head of the Guinean Bar Association declaration, in 2010 there were only 187 members of the bar, all but 10 of whom were based in the capital Conakry<sup>166</sup>. While the report made by ECOWAS, AU and UN, mentioned 180 lawyers. Nevertheless, the concentration of lawyers in Conakry is still a great issue in Guinea. For example, Nzérékoro, Guinean’s second largest city with a population of 225,000 has only four lawyers, while Kankan, Guinean’s third largest city with a population of 200,000, has three<sup>167</sup>. As result of this bad distribution, many victims are discouraged from taking their cases to courts. Furthermore, this limit can also discourage the women affected by sexual violence to bring their case under a

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<sup>162</sup> Human Rights watch interviews with lawyers and judges, Conakry, April 2009 and June 2-9, 2010, [www.hrw.org](http://www.hrw.org).

<sup>163</sup> Human Rights Watch, Ibid.

<sup>164</sup> Human Rights Watch, Ibid.

<sup>165</sup> AU, ECOWAS, UN, Ibid.

<sup>166</sup> Human Rights Watch, interview with the then-president of Guinean Bar Association Mohamed Sampil, Conakry, June 7, 2010.

<sup>167</sup> Human Rights Watch, op, cit.

court. Thirdly, the State should encourage women to work in the judicial sector, police and the army. It could be a challenge for the women to fight against their own perpetrators.

- **Increase the budget for the judiciary.**

The lack of importance to the judicial sector is also justified by the allocation that it receives every year from the State. All the judiciary personnel have complained, in Human Rights Watch report, the very low national budgetary allocations to them for several years. For example, the 2010 budgetary allocation was a mere 0.44 percent<sup>168</sup> of the national budget. To carry out well their job, as to investigate cases, to prosecute or to judge, the State should increase the budgetary allocation. It could help the judiciary personnel to receive an adequate remuneration. In the meantime it could also restore their independence from the Government. The very low monthly salary of the judiciary personnel is causing corruption or a heavy interference of the executive power. For example, the monthly salary for a Guinean judge ranges from about 300,000 GF (US \$ 45) to 1,000,000 GF (US \$ 151), with an average value of around 500, 000 GF (US \$ 76)<sup>169</sup>.

To finish this section, I would say that to fight impunity against sexual violence in Guinea, the State should, first, improve the legal instruments that protect women, then improve the working conditions of the judiciary personnel.

I would like now to talk about the challenge of impunity of sexual violence in Cote d'Ivoire.

**Section II: The Challenge of fighting impunity of Violence against women in Ivorian Society.**

To bring justice to the sexual violence victims in Cote d'Ivoire is still a big challenge for the new regime. The State comes out from an armed conflict and a political crisis. Many infrastructures were destroyed. According to M Doudou Diene, the UN independence expert, *“the violence following the second round of the Presidential elections of November 2010 had damaged 17 of 34 courthouses. Twenty- two of 33*

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<sup>168</sup> Human Rights Watch, email from the Ministry of Finance official, February 11, 2011

<sup>169</sup> Human Rights Watch, *ibidem*.

*prisons were also damaged and looted*”<sup>170</sup>. In this section I will talk about strengthening the legal protection of Ivorian women (**Paragraph I**). I would like also to propose to the national commission of inquiry to take into consideration in its investigation or prosecution the sexual violence perpetrated during the armed conflict (**Paragraph II**).

### **Paragraph I: Strength the Legal Protection of Ivorian Women.**

The legal protection of Ivorian women is not so bad. However to investigate or prosecute certain crimes related to the sexual violence under Ivorian laws could rise some difficulties.

#### **- Define rape in the penal code.**

As I already mentioned in the Chapter II, the Ivorian penal code makes reference to rape. Thus article 354 of the penal code qualifies rape as an indecent assault that can be prosecuted by courts. It adds that this crime is punishable by 20 years imprisonment and life imprisonment if the author was assisted by one or more persons or if the victim is a minor under 15 years<sup>171</sup>. However this article is very limited, it just speaks about the sentence without giving any definition of rape. In my opinion it will be better to let know people what is rape before talking about the sentence. It can help the victims of sexual violence to understand that the acts committed against them are rape. Then they will be able to bring such acts before a court. The challenge of the Ivorian authorities is to modify the penal code and to give a definition of rape. For me the best thing would be to take into consideration the following elements to fight against rape in the country:

- The penetration element. The best way to define this element is to refer to the Furundzija case that argued: *The sexual penetration, however slight: Of the vagina or anus of the victim by the penis of the perpetrator or any object used by the perpetrator; or of the mouth of the victim by the penis of the perpetrator*<sup>172</sup>.

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<sup>170</sup> United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d’Ivoire, Doudou Diène, op, cit.

<sup>171</sup>For more information, see Ivorian Penal Code, op, cit.

<sup>172</sup> ICTY Judgment Summary, «*Statement of the Trial Chamber at the Judgment Hearing: The Prosecutor v. Anto Furundzija 10 December 1998* », op, cit

- To take into consideration the concept of rape. It can give full protection to the women. Therefore it would be good if this concept should be integrated in the penal code. The best would be to refer to the definition given by the Akayesu judgment that decided “...like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of person dignity”<sup>173</sup>. Integrating these elements in the Ivorian penal code could increase the protection of women, in the meantime combat impunity of sexual violence that are affected to them.
- **Repeal the amnesty laws.**

In many countries coming out from a war or an armed conflict, the amnesty laws are problematic. Generally, these laws are conditions to sign a peace agreement. For example, in Sierra Leone the Lome Agreement included amnesty for some perpetrators of crimes, but it was criticised by the victims and also by some NGOs<sup>174</sup>. In any case the amnesty laws are not contributing to fight against impunity of sexual violence, as, after the end of a conflict, it is very difficult for the victims, who are still suffering the crimes they undergone, not to see the perpetrators being punished. In Cote d’Ivoire in April 2007, the former President M Laurent Gbagbo has signed an amnesty law. In my opinion, this law is an obstacle to investigate and to prosecute the crimes committed between 2002 and 2007. Repealing this law could benefit both, the former regime that controlled the south (where many abuses were perpetrated) and the new regime that was accused to cooperate with the rebels group in the north. Nowadays the challenge is to remove this law and to make sure that every crime especially the sexual violence crimes can be prosecuted.

- **Ratify the ICC Statute.**

Cote d’Ivoire does not yet ratify the Rome Statute. It just gave an acceptance to the court to investigate the acts happened there during the armed conflict time and during the post electoral contestation. For me this acceptance is not enough to bring justice for all the victims. Either it can limit the intervention of ICC in Cote d’Ivoire. That can be

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<sup>173</sup>A M L M Brouwer, “Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR”, Antwerpen Oxford, Intersentia, 2005, p. 106.

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the reason why only few people are before the ICC, despite the great number of perpetrators. In order to facilitate the ICC job in Cote d'Ivoire, it would be good to ratify the Rome Statute in the meantime to increase the protection of women.

**Paragraph II: Extend the National Commissions Competence down to 2002.**

Two commissions were established in Cote d'Ivoire after the end of the crisis. The Dialogue, Truth and Reconciliation Commission and the Special Investigate Unit. Both of them have the aim to bring justice and reparation to the victims. However, in the mandate they received, the commissions are not asked to investigate or to take care of the events happening during the armed conflict. In my opinion, this limitation of their mandate may frustrate the victims and it may look as a "winner justice".

In order to make sure that all the victims will get the same treatment, it will be good to extend the Dialogue, Truth and Reconciliation Commission and the Special Investigate Unit mandates, as I will, here following, describing.

**- Extend the Dialogue, Truth and Reconciliation Commission mandate.**

At the end of the electoral crisis at April 2011, the Ivorian government decided to establish the Dialogue, Truth and Reconciliation Commission. This commission has as objective to achieve national reconciliation based on respect for Ivorian people's differences and coexistence<sup>175</sup>. However despite the fact that the commission has received mandate to investigate the acts committed during the post-electoral crisis, this mandate is very limited. According to Professor Francis Akindes, the mandate of the commission is unclear; because each commission truth and reconciliation must determinate the types of investigation that must be fought. Professor Akindes adds each commission must say if it will emphasise only on the healing or only on the justice or on both<sup>176</sup>. In the case of Cote d'Ivoire, the commission didn't give this precision. In my idea, the challenge of each truth reconciliation commission is first to bring justice to the victims. How the society can be reconciled if there are some people who continued to

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<sup>175</sup>United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène, op, cit.

<sup>176</sup> Francis Akindes, « Commission Dialogue, Vérité et Réconciliation : Banny ne doit pas échouer » Abidjan Direct, [www.abidjandirect.net](http://www.abidjandirect.net).

suffer in the meantime see their perpetrators are not punishing. The role of each society is to protect vulnerable people such as women or children against attacks. Nevertheless if these attacks happened due to the lack of protection or sometimes for political reason, the State has obligation to punish the perpetrators. In the Ivorian case, I'm not against the Commission, moreover, I think the only way for the State to break the vicious circle perpetuated by the repetition of human rights violations in the country since 1999, is to have a good non-judicial justice mechanism. Therefore, the challenge of this commission is not to focus only on the post-electoral crisis as it has been already criticised by some people. The most heinous crimes of sexual abuse have occurred when the country was divided into two parts.

- **Extend the Special Investigate Unit mandate.**

As we know, this national commission of inquiry was established by decree by President Alassane Ouattara on 24 June 2011<sup>177</sup>. But this commission has clearly received mandate to investigate and prosecute the people allegedly committed crimes during the political crisis. It's also a limit for this commission. It would be good to extend its competence until 2002 when the armed conflict started. Furthermore not to investigate only the financial offences but to launch also an investigation into crimes against the physical integrity and assets of individuals as recommended the independent expert Mr Doudou Diene<sup>178</sup>. The investigation should also cover throughout the Cote d'Ivoire territory and not to limit itself in the south controlled in the past by Mr Laurent Gbagabo troops. Mr Kouadio the military Prosecutor of this commission said: "*I will, if I'm able, to send investigation teams back to the west to look into crimes that were allegedly committed there during the post-electoral crisis*"<sup>179</sup>. However for many people the main explanation not to investigate in the west is a political reason. During the crisis the west was under control of the new regime and if the crimes perpetrated in this part are investigated, many Ivorian new authorities will be arrested. I believe the big challenge for this commission to combat impunity against sexual violence is not to

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<sup>177</sup>United Nations, General Assembly, «Report of the Independent expert on the situation of human rights in Cote d'Ivoire, Doudou Diène, op, cit.

<sup>178</sup> Ibidem.

<sup>179</sup> Ibidem.

discriminate victims for political reason but to treat all the victims as victim and to judge all the perpetrators as perpetrator.

To conclude this chapter, I would say that in Guinea such as in Cote d'Ivoire the new regimes are madding effort to bring justice for the victims of sexual violence. they established new organs to judge these violence. However for many reasons theses organs are not functioning well. For this reason, the lack of protection of women in these countries is still always a real problem. In order to improve the fight of impunity, it will be good for both States to increase the competences of the national commissions, since the ICC can't prosecute all the perpetrators.

## CONCLUSION

This thesis discusses the question of international criminal justice and violence against women, committed during armed conflicts or crisis in Africa, with a particular attention to Guinea and Cote d'Ivoire. Behind the sexual violence committed by security forces and rebels groups in Guinea and Cote d'Ivoire, one may consider the vulnerability of women in a patriarchal society. In these societies, women are usually victims of discrimination and easily become subject of many types of violence such as rape, harassment, mutilation...etc. During political tension or armed conflicts, their situation worsens, as their traditional protection is destroyed. Economic dependence and ignorance of their own rights do not also help Guinean and Ivorian women to improve their living conditions. In this context, justice must be prominent, since it becomes the only refuge for women. However, the crimes committed during the September 28 demonstration in Guinea and the armed conflict in Cote d'Ivoire, together with the following difficulties in investigating and prosecuting these acts, clearly show that the judicial sector needs improvements.

In Guinea, the weakness of the judicial sector can be ascribed to many causes: the judges lack of training, the lack of independence, the existence of inadequate laws and regulations, the continuous will of the army to control and to intimidate the staff, political manipulation...etc. Moreover, since 1958, when Guinea became independent, the State developed a culture of impunity, fed by the many military regimes. Nevertheless some efforts were made to fight this impunity, with particular reference to sexual violence. These efforts can be shown by the fact that Guinea is, today, taking part of many international conventions related to violence against women. Guinea recognises also certain African legal mechanisms for protection of women, such as the Protocol of African Charter on Human and Peoples' Rights on the Rights of Women. In addition, a new hope was born in Guinea in 2010: for the first time, in the history of the country, "a democratic election was held" and a civilian person was elected as a President. It was also the first time that a national commission of inquiry was established to investigate violence committed against women. Even though, according to certain opinions, this commission was created under pressure from the international

community such as the Security Council of United Nations and the International Criminal Court. Finally, the decision of the commission to prosecute Commander Moussa Thegboro Camara for his involvement in the events of September 28 is a great signal for fighting impunity of sexual violence related crimes.

In Cote d'Ivoire, the fragility of the State, in general, and the judicial sector, in particular, comes from the political instability that affected the system since the death of Houphouet Boigny in 1993. All the political regimes were motivated to control the judiciary in order to maintain the notion of "ivorite" in the constitution. This concept caused a civil war in 2002, during which many crimes of sexual violence were perpetrated by rebel groups, pro governmental forces and some militias from the neighboring countries (e.g. Liberia and Sierra Leone). The punishment of these crimes by the international criminal justice is still a problem; since many judicial infrastructures were destroyed during the post electoral contestation which occurred in 2010. Therefore, despite the fact that the Ivorian government had accepted the jurisdiction of the ICC to intervene in their territory, and the prosecution of the former president Laurent Gbagbo, the investigation of the crimes such as rape, sexual slavery, or forced prostitution is still limited. In addition, neither the dialogue, truth and reconciliation commission nor the special investigate unit, set up after the political crisis, has the possibility to bring justice to all the victims of sexual violence. However, the fact that Cote d'Ivoire is now engaged in a transitional process of democracy brings a new hope to the country. Moreover, by establishing two national commissions, the new authorities prove that they are motivated to fight against impunity in the country. Nowadays, the big challenge for the government is to increase the legal protection of women by introducing some international crimes in the penal code such as torture, by repealing the amnesty law voted in April 2007 and by ratifying the Rome Statute. It would be also good for the Ivorian State to increase the knowledge of women of their own rights it could help them to bring their case before a court every time that they become victims of violence.

Finally, the situation in Guinea and in Cote d'Ivoire shows that the need of democracy and the fight to get it heavily affect the vulnerable people, such as women, nevertheless,

it is always good to have a democratic system in a country, as, only within this system, people can get more freedom and justice can become more independent. The fact that both States have reached a certain degree of democracy, since 2010 and 2011, could lead to the end of impunity for sexual violence.

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