

Constitutionality of Criminal Procedure and Prison Laws in Africa

Côte d'Ivoire

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The aim of CSPRI is to improve the human rights of people deprived of their liberty through research-based advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes.

CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity-building.

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Disclaimer

The constitutionality of the legal provisions related to detention may be challenged through case law only if, in the course of a specific criminal case, a party challenges the constitutionality of such provisions. This situation would lead to a referral to the Constitutional Council, which would deliver a ruling. Alternatively, prior to the entry into force of a legal provision (here in criminal matters), the President of the Republic and the National Assembly are entitled to request and obtain the opinion of the Constitutional Council on draft legislation. Despite requests from the author to various persons (officials of the Ministry of Justice, members of the Bar association, representatives of international and local civil society organisations operating in Côte d'Ivoire), none of them has been able to confirm or deny whether such case law exists. The Constitutional Council has a website where all its decisions are published but to date there is no decision available on the subject matter of this study.

1. Introduction

The political, economic and social context of the last decade in Côte d'Ivoire has deeply changed the balance of power and the institutional framework. From 1999 to 2011, the dysfunction of public services resulted in a loss of authority and legitimacy of the State. The judiciary has been particularly affected by a slow-down in the work of many judicial and correctional services in the country, to the point of a total discontinuation of services for several years in the north of the country. The processing time of civil and criminal cases has lengthened. Corruption plagues all levels of the system: from the issuance of a basic certificate to judicial decisions that are influenced by such practices. Citizens' and economic actors' confidence in the judiciary is at a low ebb and has worsened. The public often perceives the judiciary as ineffective and lacking credibility. The paradox is that the judiciary is seen by some as generating inequality and injustice.

Furthermore, during this period detention conditions have notably deteriorated, particularly regarding access to health care and food. This is due mainly to overcrowding but also poor management of correctional facilities.

The conditions for the restoration of public services and state authority were created by the reunification of the national territory and the return to the democratic process that marked the end of the post-election crisis in 2010-11. The judiciary has a leading role to play in promoting good governance since its functions are to ensure the application of the legislation and to punish those who break the law. It must inspire confidence among the public by offering an objective and impartial resolution to legal disputes while ensuring the protection of the fundamental rights of every citizen.

2. General information

2.1. Recent constitution-making history

The *Loi n° 2000-513 du 1er août 2000 portant Constitution de la Côte d'Ivoire* (Law n° 2000.513 of 1st August 2000 establishing the Constitution of the Republic of Côte d'Ivoire) was adopted by referendum and created the second Republic of Côte d'Ivoire. This new Constitution replaces the former one, which dated from 3 November 1960 (the year of independence).

2.2. General constitutional principles

The supremacy of the Ivorian Constitution is guaranteed in particular by a jurisdictional mechanism in charge of constitutional review (the Constitutional Council), which may preclude the application of an international convention, legislation or regulation that would be contrary to the Constitution.¹ Moreover, the last paragraph of the Preamble to the Constitution states that the Constitution is the fundamental law.

This Preamble lists the core values supporting what is called the 'block of constitutionality' and refers to various universal principles related to human dignity and religious, ethnic and cultural diversity. The commitment to constitutionalism and democratic institutions is also mentioned. The Preamble proclaims the adherence of the Ivorian people to the rights and freedoms as defined in the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981.

The Constitution does not contain an express interpretative clause, therefore it could be assumed that judges will use the Preamble for guidance when interpreting it.

The Constitution contains no provision allowing derogations from or restrictions upon fundamental rights. Although it grants authority to the National Assembly to declare a state of emergency,² the Constitution does not mention the possibility of limiting fundamental rights in this situation.

The Constitution contains a clause that guarantees immunity to those who participated in the change of regime in 1999. Indeed, article 132 (the penultimate article of the Constitution) states that 'civil and penal immunity is granted to the members of the National Committee of Public Salvation (N.C.P.S.) and to all of the authors of the events having brought about the change of regime which intervened on 24 December 1999'. This immunity provision, still in force 15 years after the fact, could be lifted in a near future as it could be regarded as contrary to the general provisions of the Constitution.

¹ Constitution of the Republic of Côte d'Ivoire 2000, arts. 86 and 133.

² *ibid*, art. 71.

2.3. Overview of judicial system

Title VIII of the Constitution deals with the judicial branch and states that justice is rendered by the supreme jurisdictions: the Court of Cassation, the Supreme Administrative Court (*Conseil d'Etat*), the Court of Audit (*Cour des Comptes*), the Courts of Appeal and tribunals. The Court of Cassation is the highest judicial authority in the country. It is endowed with cassation powers against non-appealable judgments. It can review both legal findings (questions regarding legal interpretation) and factual findings. The Supreme Administrative Court issues opinions on draft legislation and also has jurisdictional powers as the highest administrative court of the state: it examines last resort appeals against administrative judgments. However, these supreme courts only exist on paper and their functions are still performed by the Supreme Court, which consists of an administrative chamber, a judicial chamber and an audit chamber.

Article 101 of the Constitution states that the judicial branch is 'independent of the executive and legislative branches'.³ The legislation on the organisation of the judicial branch establishes the composition, organisation and functioning of the courts, and the judges are only subject to the authority of the law.⁴ However, the President of the Republic is the guarantor of the independence of the judiciary and he presides over its regulatory body, which is the Superior Council of the Judiciary.⁵ Judges cannot be removed.

Apart from listing the various courts (see above), the Constitution does not specify their powers or outline the judicial system. The judiciary is regulated by the *Loi n° 99/435 du 6 juillet 1999 modifiant la loi n° 61/155 du 18 mai 1961 portant organisation judiciaire* (Law No. 99/435 of 6 July 1999 amending Law No. 61/155 of 18 May 1961 on judicial organisation). The Code of Criminal Procedure (CCP) specifies the powers of the criminal courts.

Regarding criminal matters, the Ivorian judicial system is structured as follows:

- nine courts of first instance; 35 sections of tribunals have also been added for the sake of better access to justice;
- three courts of second instance, namely the Courts of Appeal;
- the Court of Cassation is not considered as a third level of jurisdiction. It ensures compliance with the law through the review of judgments rendered by the Courts of Appeal.

As noted in the introduction, the author of this study was not able to assess whether the constitutionality of criminal legislation and criminal procedure legislation was regularly challenged before the courts and tribunals.

³ All legal provisions were translated by the translator and do not refer to any official translation.

⁴ Constitution of Côte d'Ivoire 2000, art. 103.

⁵ *ibid*, art. 4.

2.4. Overview of law enforcement structure

Chapters 2 and 3 of the CCP state that, in criminal matters, the law enforcement is vested:

- In the judicial police force (*police judiciaire*), which is in charge of recording and investigating infringements of the law, gathering evidence and identifying perpetrators:
 - Judicial police officers and judicial police agents. Police are under the command of the Ministry of the Interior and are in charge of protecting people and property, fighting violence, crime and insecurity. Police are divided into two groups: the administrative police force is in charge of public safety and the judicial police force assists with judicial matters (this is the key role of the Judicial Police Officer (JPO)).
 - Officers and agents of the gendarmerie. The gendarmerie is part of the Armed Forces and is under the command of the Ministry of Defence. However, it is responsible for general police duties (public safety) as well as judicial police duties and military duties in rural and suburban areas.
 - Specific public servants and agents also have judicial police powers in the conditions and limits set by the legislation granting them these powers (for example, Head of a correctional facility).
- In the Office of the Prosecutor, which is in charge of leading criminal prosecutions and ensuring the application of the law.
 - Attorney General (*Procureur Général*)
 - Prosecutor (*Procureur de la République*)
 - Trial Division Judge (*Juge de section*)
- In the investigating judge who carries out the investigation at the request of the prosecutor or following a referral order (*ordonnance de saisine*) or because a criminal case is brought before him by a private person who applies to open criminal proceedings and to join them as a civil party in order to claim civil damages (*plainte avec constitution de partie civile*).
- In the Courts:
 - The President of the Indictment Chamber (*Chambre d'accusation*)
 - Court of Police (*Tribunal de police*)
 - Criminal Court (*Tribunal correctionnel*)
 - Jury Court for very serious crimes (*Cour d'Assises*)
 - Court of cassation

- In the Prison Administration (Ministry of Justice).

2.5. Overview of criminal procedure legislation, prison laws and other legislation regulating arrested and detained persons

- Constitution of the Republic of Côte d'Ivoire:
 - Law No. 200-513 of 1st August 2000 establishing the Constitution of Côte d'Ivoire
 - Amendment: *Loi n° 2012-1134 du 13 décembre 2012 insérant au Titre VI de la Constitution l'article 85bis et relative à la Cour Pénale Internationale* (Law No. 2012-1134 of 13 December 2012 adding to Title VI of the Constitution article 85bis on the International Criminal Court in Title VI of the Constitution).
- Criminal Code (CC):
 - *Loi n° 81-640 du 31 juillet 1981 instituant le Code Pénal* (Law No. 81-640 of 31 July 1981 establishing the Criminal Code).⁶
- Code of Criminal Procedure (CCP):
 - *Loi n° 60-366 du 14 novembre 1960 portant Code de Procédure Pénale* (Law No. 60-366 of 14 November 1960 on the Code of Criminal Procedure).⁷
- *Décret n° 69-189 du 14 mai 1969 portant réglementation des Etablissements Pénitentiaires et fixant les modalités d'exécution des peines privatives de liberté* (Decree No. 69-189 of 14 May 1969 regulating the organisation of the Correctional Facilities and laying down implementing rules for custodial penalties (Prison Administration Decree or 'PA Decree')).
 - Amendment: *Décret n° 2002-523 modifiant le décret n° 69-189 du 14 mai 1969 portant réglementation des établissements pénitentiaires et fixant les modalités d'exécution des peines privatives de libertés* (Decree 2002-523 amending decree 69-189 of 14 May 1969 regulating the organisation of the Correctional Facilities and laying down implementing rules for custodial penalties).
- Code of Military Procedure:
 - *Loi n° 74-350 du 24 juillet 1974 relative à l'institution d'un code de procédure militaire* (Law No. 74-350 of 24 July 1974 establishing the Code of Military Procedure).

⁶ See in the bibliography, the list of amendments to the CC.

⁷ *ibid*

The bibliography contains the list of legislative amendments to the CC and the CCP. Both pieces of legislation were amended in 2015. The reform of the CCP actually amounts to the adoption of a new CCP. However, these new acts had not yet entered into force at the time of writing this study, and are therefore not included here.

3. Constitutionality of provisions relating to arrest

3.1. Policies leading to arrest

The Constitution of 2000 sets out general principles regarding the freedom of movement of individuals 'as long it is [in] compliance with the law'. Article 22(1) of the Constitution states that 'no one shall be arbitrarily detained'. Actually the Constitution refers to the specific provisions of the CCP of 1960 and its amendments, which do not specify the conditions and guarantees in case of arrest. There is no mention of the right to information of a person under arrest.

The Constitution does not mention the principle of non-discrimination. The right to non-discrimination is established in various international treaties ratified by Côte d'Ivoire, including articles 4 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which may be directly invoked before the competent courts. Indeed, article 87 of the Constitution recognises the monistic approach to international law in the Ivorian legal system.

The principle of legality is enshrined in article 21 of the Constitution, which states that 'no one shall be prosecuted, arrested, held in custody or charged, except by virtue of a law promulgated prior to the acts that he/she has allegedly committed'.

The Constitution contains no provision regarding the right to privacy.

The *Décret n° 69-356 du 31 juillet 1969 déterminant les contraventions de simple police et les peines qui leur sont applicables* (Decree No. 69-356 of 31 July 1969 determining minor offences and applicable penalties) contains a list of offences that allows the police to arrest individuals if they are identified as suspects, if they exhibit disruptive behaviour or even just for being destitute. Some of these offences are punishable by an administrative fine, but others may also result in imprisonment. Articles 2(8) and 2(11) in particular contain the second type of offence, and both provide for a prison sentence of up to 10 days. Article 2(8) prohibits letting 'wander lunatics or madmen under one's care or harmful or ferocious animals'. The association between persons suffering from mental illness and animals is very unfortunate and contrary to human dignity. Article 2(11) prohibits anyone to 'exhibit in public a behaviour that may incite to debauchery'.

Moreover, article 189 of the CC punished vagrancy (a vagrant is defined as 'one who has no fixed abode, no honest means of subsistence and no regular occupation or profession') with a penalty of up to six months of imprisonment. Article 190 of the CC prohibits begging, which is punishable by a prison sentence of three to six months. In addition, articles 191 to 194 impose tougher penalties for those practicing vagrancy or begging in aggravating circumstances (aggressive behaviour, carrying specific objects, and so on). However, the simple fact of vagrancy is very rarely used alone to initiate prosecution against an individual. Vagrancy is more often prosecuted if it is associated with another offence.

Witchcraft in itself is not punishable under Ivorian legislation. Witchcraft-related practices are only punishable if they disturb public order or cause harm to individuals.⁸ However, article 3(14) of Decree No. 69-356 prohibits ‘the trade related to guessing, predicting, or explaining dreams’, punishable by a fine and/or 10 days to two months of imprisonment.

In exceptional circumstances (for example, a state of emergency), Chapter III of the Code of Military Procedure applies. It has a broad scope and does not specify the measures that are applicable to the different stages of the procedure, such as the arrest stage. A law establishing the state of emergency would specify these measures. This law is to be drafted by the Government and passed by the National Assembly if the government decides on the necessity of implementing a state of emergency.

3.2. Rights during arrest

3.2.1. Prohibition of arbitrary or unlawful arrest

As stated above, articles 21 and 22(1) of the Constitution prohibit arrest for acts which did not constitute criminal offences at the time they were committed. The Constitution also prohibits arbitrary detention.

According to articles 12 and 17 of the CCP, the arrest of an individual for any type of criminal offence (minor, serious or very serious offences (*contraventions, délits, crimes*): the law sets a series of minimum and maximum sentences for each category) may only be ordered by a prosecutor, who represents the Public Prosecutions Office. To carry out the arrest, the prosecutor relies on judicial police officers and agents, as listed above in section 2.4.

During the investigation, an investigating judge may order the arrest of an individual.⁹ The same applies to a trial judge when an offence is committed by an individual during the trial hearing or established at the hearing.¹⁰

Article 72 of the CCP states that in the event of a criminal offence committed *in flagrante delicto*, ‘any person is entitled to apprehend the perpetrator and bring him/her before the nearest judicial police officer’.

Article 120 and subsequent articles of the CCP deal with judicial warrants and their execution. There are four types of warrants: the order to appear before a judge (subpoena); the order to bring the individual before a judge (the order allows law-enforcement forces to use coercive measures); the order to arrest the individual (the individual is taken to a prison and detained for no more than 24 hours before being brought to a judge); and the committal warrant (order given by the judge to the

⁸ CC 1981, art. 205.

⁹ CCP 1960, art. 52.

¹⁰ *ibid*, art. 646.

head of the correctional facility to place in pre-trial detention an individual who has been charged). The arrest without warrant is allowed only if the individual is caught *in flagrante delicto*.

Article 53 and subsequent articles of the CCP deal with individuals caught in the course of committing a criminal offence. In such an event, the judicial police officer, who finds or is told of the offence, informs the prosecutor and goes without delay to the location where the offence has been committed. He or she proceeds to the findings and takes the conservative measures that are relevant to the upcoming investigation while waiting for the arrival on site of the prosecutor or the investigating judge, if the latter has been called by the prosecutor. The judicial police officer may apprehend a suspect or suspects pending the issuance of a warrant by the prosecutor. If the criminal offence is not committed *in flagrante delicto*, the judicial police officer cannot apprehend an individual without a warrant of arrest or a warrant to bring the suspect before a judge. The same provisions apply to the military judicial police officers.¹¹

The legislation therefore complies with article 22(1) of the Constitution.

3.2.2. Obligation of law enforcement to use reasonable force

Article 3 of the Constitution prohibits slavery, forced labour, inhuman, cruel, degrading and humiliating treatment, physical or mental torture, physical violence and mutilation, and all forms of debasement of the human being.

Article 10 of the *Code de déontologie de la Police Nationale* (Code of Ethics of the National Police) states that 'any arrested person is under the responsibility and protection of the police; he/she shall not suffer from any form of violence or inhuman or degrading treatment from police officers or third parties'.

The right to life is protected by article 2 of the Constitution, which states that 'all human beings are born free and equal before the law. They enjoy the inalienable rights which are the right to life [...]'. The death penalty was abolished on 24 July 2000 and is echoed in the Constitution, which states that 'any punishment leading to the deprivation of human life is forbidden'.

Furthermore, regarding the use of firearms, the Code of Ethics of the National Police states that 'their use by police officers shall be strictly necessary and proportionate to the aim pursued'.¹²

The legal framework regarding the use of force by security forces at the time of arrest is based on the principles of the Constitution. The codes of ethics of the police, the gendarmerie and the military contain similar provisions, which leave a broad margin of appreciation to the judge if such use was challenged before the courts: the official can decide according to the facts of a specific case since the use of force is limited 'to the aim pursued'.

¹¹ Code of Military Procedure 1974, art. 44.

¹² Code of Ethics of the National Police, art. 9.

Regarding the use of force during demonstrations, there is only one anti-riot squad (*brigade anti-émeute*), which is based in Abidjan. This squad is part of the National Police and is comprised primarily of former Republican Forces of Côte d'Ivoire (*Forces Républicaines de Côte d'Ivoire*) from the demobilisation programme. To date, there is no specific legislation dealing with the squad and its members are subject to the same rules as that of the national police.

The use of drones is not dealt with by Ivorian legislation.

3.2.3. Right to be promptly informed of the reasons for arrest

In criminal matters, there is no legislation, no decree or code referring to the right to information of the person under arrest. Côte d'Ivoire has ratified the ICCPR, therefore its articles 9 and 14 apply and may be directly invoked before the courts if necessary.

3.2.4. Right to conditional release before being brought into police custody

The Ivorian legislation does not provide for conditional release at the stage of arrest and prior to the start of the judicial proceedings, that is to say, during the so-called police preliminary investigation or police custody. Later on, conditional release can be decided during the investigation by the prosecutor or the investigating judge.

When applicable, the payment of a lump-sum fine may be required and it amounts to an acknowledgment of the facts.¹³ The prosecutor can offer this, but not a judicial police officer. The classification and the amounts of fines are set by ministerial decree. The payment entails an implicit acceptance of responsibility so the person is not entitled to lodge an appeal against the sanction, with the exception of the offences listed in article 8 of the CCP.

3.2.5. Right to remain silent

There is no constitutional provision or other legal provision regarding the right to remain silent during police investigation.

3.2.6. Privilege against self-incrimination

There is no constitutional provision or other legal provision regarding the privilege against self-incrimination at the stage of arrest.

¹³ CCP 1960, art. 9.

3.2.7. Right to privacy

There is no constitutional provision or other legal provision regarding the right to privacy. Since Côte d'Ivoire has ratified the ICCPR, its articles 14 and 17 may be directly invoked before the courts if necessary.

3.2.8. Right to be informed of one's rights

The author found no law, decree or code referring to the right to be informed of the rights of a person under arrest. Since Côte d'Ivoire has ratified the ICCPR, its articles 14 and 17 may therefore be directly invoked, if necessary, before the courts.

3.3. Right to redress following rights violations

The author found no law, no decree or code mentioning the right to redress for illegal or wrongful arrest. Ivorian legislation contains no provision establishing the right to compensation from the state in criminal matters. The right to compensation is limited to the damages that can be recovered from the individual who is found criminally responsible for the offence.

Since Côte d'Ivoire has ratified the ICCPR, its article 9 must be applied by the state and may be directly invoked before the courts if necessary.

3.4. Regime applicable to children

According to article 40(1) of the Convention on the Rights of the Child, to which Côte d'Ivoire is a State Party,¹⁴ the criminal legislation 'takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.

Article 6 of the Constitution states that 'the State shall ensure the protection of children, the elderly and the disabled'.

Article 116 of the CC states that 'minors between 10 and 13 years of age shall only be subject to the measures of protection, assistance, supervision and education provided for by the law'.

The CC categorises minors according to their age group.¹⁵ The result is that minors under 10 years of age are exempt from criminal liability. Furthermore, the CC states that 'any person under the age of 18 at the time of committing the offence' is 'a minor according to criminal law' and as such, he or she shall enjoy a waiver or the mitigation of his or her criminal responsibility.

¹⁴ Côte d'Ivoire has also ratified the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the African Charter on the Rights and Welfare of the Child of 29 November 1999.

¹⁵ CC 1981, art. 116.

Title X of the CCP, which either uses the terms ‘child’ or ‘minor’, deals with ‘juvenile delinquency’. Article 766 of the CCP states that in any case the minor under 18 years of age shall not be prosecuted under the specific procedure for *flagrante delicto* or the summons procedure (*citation directe*). Moreover, article 789 of the CCP states that ‘minors under thirteen years of age may only be the subject of a reprimand’. However, the CCP does not contain provisions specifically dedicated to minors during police preliminary investigation, hence the general rules apply. There are specific provisions applicable to the trial and judgment phases only.

4. Constitutionality of provisions relating to custody prior to first court appearance

4.1. Outline of the different places of custody prior to first court appearance: police, secret services, special units, etc.

The only place of custody provided for by law is the police station, police precinct or police office, which has holding cells, police custody cells and administrative detention cells. In theory, these cells should accommodate different categories of arrested persons. However, the distinction does not exist in practice.

The author has not been able to find legal provisions providing for detention in other places of custody prior to the start of the judicial proceedings.

4.2. Rights in custody prior to first court appearance

4.2.1. Prohibition of arbitrary or unlawful detention

As stated above, article 22 of the Constitution states that ‘no one shall be arbitrarily detained’.

A regulation issued by the Minister of Justice¹⁶ establishes and categorises the list of correctional facilities (prisons, reformatories and other facilities).

Article 63 of the CCP sets out a maximum police custody period of 48 hours, which may be extended by 48 hours if requested by the prosecutor or the investigating judge.

¹⁶ Implementing *Loi n° 61-155 du 18 mai 1961 portant organisation judiciaire* (Law No. 61-155 of 18 May 1961 on judicial organisation), which was modified and completed by various pieces of legislation : *Loi n°64-227 du 14 juin 1964* (Law No. 64-227 of June 14, 1964), *Loi n°97-399 du 11 juillet 1997* (Law No. 97-399 of July 11, 1997), *Loi n° 98-744 du 23 décembre 1998* (Law No. 98-744 of 23 December 1998) and *Loi n° 99-435 du 6 juillet 1999* (Law No. 99-435 of July 6, 1999).

4.2.2. Right to be presumed innocent until proven guilty

Article 22(2) of the Constitution states that ‘every accused person shall be presumed innocent until proven guilty following a procedure offering all the necessary guarantees for his/her defence’. Although the CCP does not mention this right, article 2 of the PA Decree states that ‘all detainees who have not been the subject of a final judgment are designated as accused persons’. This article therefore reflects article 22(2) of the Constitution and the principles set out in article 14 of the ICCPR. However, the PA Decree only applies to penitentiary facilities and not to police detention.

4.2.3. Right to be promptly charged or released

Apart from the time-frame set out in the CCP for police custody, there is no specific provision providing for or limiting the time-frame to decide on either charging or releasing the person in custody.

If the person is not held in police custody, the CCP provides that the prosecutor has the power to issue a warrant to bring the person before a judge or to issue a committal warrant. He or she may also close a case without further action.¹⁷ The CCP provides that the investigating judge has the power to decide to charge the person or to dismiss the proceedings.¹⁸

4.2.4. Right to conditional release

The Ivorian legislation contains no provision on conditional release prior to the appearance before the investigating judge.

4.2.5. Right to be promptly brought before a judge (a court)

Police custody has a legal time-frame of 48 hours that is renewable once for 48 hours by the prosecutor or the investigating judge.¹⁹ Article 63 of the CCP also authorises a judicial police officer to detain, for a maximum of 48 hours, any witness or victim of a crime, ‘if the investigation necessitates it’. If the person is charged at the end of police custody, then the investigation begins, and its time-frame is specified in section 5.1.4. However, the current legislation does not limit the period between the end of the police custody and the appearance before a judge. A person who has been brought before the prosecutor can then be sent to a correctional facility without having been brought before a judge (because the prosecutor is considered as a judge for this matter) within a specific time-frame. Nevertheless, the accused person, as soon as he or she is transferred to prison, may submit an application for conditional release to the investigating judge or the Indictment Chamber.

¹⁷ CCP 1960, arts. 40, 69 and 70.

¹⁸ *ibid*, arts. 78 and 100.

¹⁹ *ibid*, arts. 63 and 76.

Since Côte d'Ivoire has ratified the ICCPR, its article 9.3 applies.

The author found no law, no decree or code establishing different proceedings for specific offences such as those relating terrorism.

4.2.6. Right to remain silent

There is no constitutional or legal provision in this matter.

4.2.7. Privilege against self-incrimination

There is no constitutional provision or other legal provision regarding the privilege against self-incrimination.

4.2.8. Right to communicate

There is no legal provision on the right to communicate with a family member or next of kin during police custody. However, article 64 of the CCP provides that a detained person may be examined by a doctor during the extended period of police custody, even if such examination is requested by the family. The CCP therefore recognises a role of the family, even if it is a secondary one.

4.2.9. Right to legal representation

Articles 76(1) and 76(2) of the CCP provide that any person 'against whom there is solid and consistent evidence of having participated in a criminal offence' has the right to be assisted by legal counsel of his or her own choosing. If the person in police custody informs the judicial police officer that he or she wishes to obtain legal representation, the judicial police officer shall immediately notify the lawyer or allow the person in custody to do so. If there is no lawyer in the area where the person is detained, he or she may be assisted by a relative or friend.²⁰

In the case of a minor, he or she or his or her legal guardian is not entitled to choose a defence counsel. Indeed, a defence counsel is appointed by the prosecutor or by the Chairperson of the Bar association on the prosecutor's request. If there is no lawyer in the area where the minor is detained, the prosecutor may appoint a person 'with all the required qualities'.²¹

Similarly, legal assistance is mandatory if the detained person is suffering from any kind of disability that may compromise his or her defence, or if an additional penalty may be imposed for repeat offences.²²

Legislation dealing with legal aid is currently being drafted.

²⁰ CCP 1960, art. 76(1).

²¹ *ibid*, art. 770.

²² *ibid*, art. 408.

4.2.10. Right to an interpreter

The law does not provide that an interpreter shall assist a person who does not speak French in communicating with the police. The right to an interpreter is only provided for at the stage of the judicial investigation and during the trial hearings.²³

4.2.11. Right to be separated from different categories of arrested persons

There is no legislation or regulation providing for the separation of men and women or minors and adults in police custody. However, since Côte d'Ivoire has ratified the ICCPR, its article 10 must be applied by the state and it may be directly invoked before the courts if necessary.

4.2.12. Right to safe custody

The person's right to protection by public authorities is guaranteed by article 2 of the Constitution, while article 6 refers more specifically to the protection of children.

However, beyond the principle that those in police custody fall under the responsibility of the police (see section 2.3.), the author could find no legal or regulatory provision guaranteeing the right to be detained in police custody under conditions that respect one's physical and moral integrity.

4.2.13. Right to humane conditions of detention

The Constitution establishes that the state ensures all citizens equal access to health.²⁴ The CCP provides that if the period of police custody is extended, the detained person has the right to be examined by a doctor.²⁵ For the first 48 hours of police custody, access to medical care has to be authorised by the prosecutor.

There are no specific provisions regarding food supply during police custody.

4.2.14. Right to be informed of one's rights

The Constitution does not mention this right. Côte d'Ivoire has ratified the ICCPR, hence its articles 9 and 14 apply. The investigating judge only has the legal obligation to inform the accused of the facts alleged against him or her.²⁶

²³ *ibid*, arts. 272, 344 and 397.

²⁴ Constitution of Côte d'Ivoire 2000, art. 7.

²⁵ CCP 1960, art. 64.

²⁶ *ibid*, art. 112.

4.3. Right to have one's case summarily decided upon before the first court appearance

The Constitution does not mention this right. The provisions regarding police custody and charging (*inculpation*) mentioned above are the only current legal framework.

4.4. Rights of foreigners

There is no legislation or constitutional provision regarding consular assistance to foreigners. Article 272 of the CCP referred to in section 4.2.10 provides for the assistance of an interpreter to individuals who do not speak French, which does not imply, however, that those individuals are foreigners. This provision does not apply during the police custody period.

A convention on judicial cooperation was signed in 1961 by states that are former French colonies. Regarding extradition, the convention states that 'the High Contracting Parties undertake to surrender to each other, according to the rules and under the conditions established by this Convention, individuals who are located on the territory of one of the signatory States, while being prosecuted or sentenced by the judicial authorities of another State'. It further states that '[t]he High Contracting Parties shall not extradite their respective nationals'.²⁷

The transfer of detained persons from Côte d'Ivoire to the International Criminal Court is organised by article 89.1 of the Rome Statute.

4.5. Right to redress following rights violations

No constitutional or other legal provision deals with this matter.

Côte d'Ivoire has ratified the ICCPR so its article 9.5 applies.

4.6. Complaints and oversight mechanisms

No constitutional or legal provision deals with this matter.

The *Commission Nationale des Droits de l'Homme* (National Human Rights Commission (NHRC)) was created in 2012 in Côte d'Ivoire. It has jurisdiction to receive complaints and denunciations regarding human rights violations, and to refer cases to the competent authorities after carrying out a non-judicial inquiry. In order to investigate after a complaint has been filed, the Commission is entitled to visit any place of police custody, prison, correctional facilities and other places of detention, but only

²⁷ Agreement between France and Côte d'Ivoire concerning cooperation in the field of justice, signed at Paris on 24 April 1961.

with the authorisation of the competent Prosecutor of the Republic. Therefore, the NHRC is not entitled to visit detention facilities on its own initiative or on a regular basis.

4.7. Regime applicable to children

The legal framework is the same as the one mentioned in section 3.4. There is no specificity regarding the stage of the police investigation (prior to the start of the judicial proceedings).

5. Constitutionality of trial-related provisions

5.1. Universal trial-related rights

5.1.1. Principle of legality

Article 21 of the Constitution states that ‘no one shall be prosecuted, arrested, held in custody or charged, except by virtue of a law promulgated prior to the acts that he/she has allegedly committed’.

Côte d’Ivoire has ratified the ICCPR so its article 15 may be invoked before the courts.

5.1.2. Right to be presumed innocent until proven guilty

The presumption of innocence is protected by the Constitution: article 22(2) states that ‘every accused person shall be presumed innocent until proven guilty following a procedure offering all guarantees necessary for his/her defence’. The CCP does not mention this right, but the PA Decree considers as accused persons all detainees who have not been the subject of a final judgment. This provision therefore indirectly reflects article 22(2) of the Constitution, but also the principle established in article 14 of the ICCPR.

5.1.3. Right to be promptly charged or released

The Constitution and the CCP do not provide for the right to be charged within a specific time-frame. However, since Côte d’Ivoire has ratified the ICCPR, its article 14.3(c) concerning undue delay applies.

Following police custody and once the investigation has begun, the detained person must be heard by the investigating judge within 48 hours of being transferred to prison, otherwise his or her detention may be declared arbitrary.²⁸

At the end of the investigation by the prosecutor and/or the investigating judge, the Indictment Chamber issues either a dismissal or an indictment.²⁹ The Indictment Chamber is located at the Court of Appeal and is constituted by the President of the Court of Appeal and two associate

²⁸ CCP 1960, arts. 124, 125 and 133.

²⁹ *ibid*, arts. 210-18.

judges.³⁰ The Indictment Chamber must rule within fifteen days.³¹ However, the CCP does not establish time limits for the duration of the investigation.

If the accused is held in pre-trial detention during the investigation, the CCP establishes the maximum period of pre-trial detention, depending on the offence for which the accused is prosecuted (but not yet formally charged). There is a five-day time limit if the offence is punishable by a maximum penalty of six months. Following the scale of offences, the pre-trial detention time-frame increases to three months, six months and up to 18 months for very serious crimes. Regarding serious offences, detention may only be decided by the investigating judge for periods of four months, and extended every four months in the most serious cases but without exceeding the maximum duration of 18 months.³²

However, article 140 of the CCP gives nuance to this provision by stating that the Attorney General may oppose the conditional release of the accused on the ground that compelling reasons exist to keep the person in custody during the investigation. In this case, the Indictment Chamber must rule within eight days, failing which the accused person is automatically released (theoretically at least). If the accused person stays in custody, the pre-trial detention cannot be extended beyond four months. This brings the indictment (but also pre-trial detention) time-frame respectively to 10 months (for serious offences) and 22 months (for very serious offences).

The accused person may lodge an appeal against his or her preventive detention, first before the investigating judge, who must rule within five days, and then before the Indictment Chamber, at any time.³³ The prosecutor may lodge an appeal against a conditional release decision on the ground that compelling reasons exist to keep the person in custody during the investigation. The Indictment Chamber must rule on his or her appeal within eight days.³⁴

The payment of bail can be an additional condition to a conditional release as provided in Article 144 and subsequent articles of the CCP.

5.1.4. Right to challenge custody

The Constitution does not establish this right. However, article 137 of the CCP states that ‘freedom is a right, pre-trial detention is an exceptional measure’.

The previous section set out the rules applying to the pre-trial detention time-frame. The accused can lodge an appeal against his or her detention during the investigative phase (before the

³⁰ *ibid*, art. 191.

³¹ *ibid*, art. 194(2).

³² CCP 1960, art. 138.

³³ *ibid*, arts. 141 and 186.

³⁴ *ibid*, art. 141.

Indictment Chamber) and during the trial (before the judge hearing the matter).³⁵ The Indictment Chamber has to rule within 15 days.³⁶

5.1.5. Right to remain silent

The right to remain silent is not protected by any legal provision.

5.1.6. Privilege against self-incrimination

There is no constitutional provision or other legal provision regarding the privilege against self-incrimination.

5.1.7. Right to equality before the courts

Neither the Constitution nor the CCP refers to the concept of 'equality' during the trial, unlike article 14.1 of the ICCPR. However, the CCP repeatedly mentions that both parties should be heard (see also section 5.1.9).

On the prosecutor's request, the investigating judge carries out all the necessary investigative measures to ascertain the truth.³⁷ He or she hears victims, witnesses and the accused person. He or she gathers a file (*le dossier*) on the accused person, putting together both incriminating and exonerating evidence. He or she has jurisdiction over the whole national territory.³⁸ The investigating judge systematically intervenes in cases of very serious offences, and on an optional basis in cases of serious offences.³⁹

There is no legal aid in Côte d'Ivoire, but an accused person may be assisted by a lawyer (see section 5.1.13).

If an accused person has no legal representation, he or she may not be able to present exonerating evidence, while the prosecutor only produces incriminating evidence.

The Jury Court (*Cour d'Assises*) has jurisdiction over very serious offences (offences designated as *crimes*).⁴⁰ It includes jurors (criminal jury) whose names are drawn up from a previously established list which is in force for three years.⁴¹ There is no possibility to appeal the Jury Court's judgments, with the exception of a cassation appeal in case of acquittal or in the interest of the law.⁴²

³⁵ *ibid*, art. 142.

³⁶ *ibid*, art. 194(2).

³⁷ CCP 1960, arts. 78 and 79.

³⁸ *ibid*, art. 83.

³⁹ *ibid*, art. 77.

⁴⁰ *ibid*, art. 124.

⁴¹ *ibid*, art. 259.

⁴² *ibid*, arts. 566 and 567.

This situation would need to be improved in the Ivorian legislation. However, it is important to note that the African Charter on Human and Peoples' Rights is singularly lacking in case law on this matter to inspire states in drafting their legislation.

5.1.8. Right to be declared not competent to stand trial

The Constitution does not mention this right.

However, article 105 of the CC provides that a person suffering from 'an impairment of his/her mental faculties, or abnormal delay of his or her development' and who was therefore not aware that he or she committed an offence cannot be held criminally responsible.

5.1.9. Right not to be tried in absentia

The Constitution does not mention this right.

The CCP permits the trial in absentia of any person charged with a *crime* (very serious criminal offence).⁴³ Following the indictment decision, the accused shall be notified twice to appear before the Jury Court within ten days of notification, otherwise he or she will be tried in absentia. The CCP does not require that the notice be delivered personally to the accused. An accused who fails to appear is not entitled to be represented by a lawyer, but his or her family or friends can submit an 'excuse' explaining the reasons for his or her absence. The excuse will be assessed by the court. The person tried in absentia is deprived of his or her civil rights.⁴⁴

A person charged with a *délit* (serious criminal offence) can also be tried in absentia, since the procedural measures to ensure his or her appearance for trial are less strict and the consequences of a judgment in absentia are less serious.⁴⁵

Moreover, if a person is charged with an offence punishable by a fine or a prison sentence of less than or equal to two years, he or she may request, in writing, to be tried in his or her absence.⁴⁶

5.1.10. Right to be tried and sentenced in a public and open court

The Constitution does not mention this right.

However, the CCP provides for public hearings for both serious offences⁴⁷ and very serious offences before the Jury Court.⁴⁸ The hearings can be held in closed session when they are 'dangerous to

⁴³ *ibid*, art. 270.

⁴⁴ CCP 1960, arts. 597ff.

⁴⁵ *ibid*, arts. 403 and 478.

⁴⁶ *ibid*, art. 407.

⁴⁷ *ibid*, art. 390.

⁴⁸ *ibid*, art. 306.

order and morality'. The decision for the hearing to be held in closed session is taken in a public session.

5.1.11. Right to be informed of an upcoming hearing

The Constitution does not mention this right.

In practice, the prosecutor summons the accused to appear at his or her next hearing. The time-frame varies from three days to two months depending on the place of residence of the accused person and the location of the competent court.⁴⁹ There is no reference to hearing postponements and adjournments.

5.1.12. Right to an individualised trial

This right is not mentioned in the Constitution or other legal provisions.

Given the series of political crises affecting the country since the 1990s and the numerous crimes which have been committed by gangs or armed groups, it would be appropriate for the legislation to isolate individual responsibility in such collective behaviour and include a principle according to which sentencing must be individualised. This would prevent or limit the influence of contextual factors during trial hearings and over the judgment.

5.1.13. Right to legal representation

The Constitution does not mention this right.

A defendant who appears before a court has the possibility of being assisted by a defence counsel. The defence counsel can only be chosen from the lawyers registered in Côte d'Ivoire.⁵⁰ However, in exceptional circumstances and in areas where there is no lawyer, the defendant may be allowed to be assisted by a relative or friend.⁵¹ In the case of a defendant being of minor age, he or she is systematically assisted by a person with all the required qualities.⁵²

Legislation dealing with legal aid is currently being drafted.

5.1.14. Right to an interpreter

The Constitution does not mention this right. The CCP provides for the appointment of an interpreter if the accused or the witnesses do not speak sufficient French or if the accused is deaf-

⁴⁹ *ibid*, arts. 180, 378 and 545.

⁵⁰ CCP 1960, art. 408.

⁵¹ *ibid*, art. 76(1).

⁵² *ibid*, art. 770.

mute and illiterate. The right to an interpreter is provided both for hearings before the Jury Court⁵³ and before other criminal courts.⁵⁴ There is no legal provision providing for that possibility before the Courts of Appeal.

5.1.15. Evidence-related rights

The Constitution does not mention this matter.

In the interest of strengthening the rights of the defence, provisions as clear as article 14(3)(e) of the ICCPR, to which Côte d'Ivoire is a party, should be added in future legislation.

Apart from one article (article 530), the CCP only deals with incriminating evidence. However, the CCP confirms that the accused and his or her defence counsel may present evidence after the prosecution, and the accused always has the final word.⁵⁵

During the hearings, the CCP (article 446) ensures that the accused and witnesses have access to evidence or exhibits, which they may comment on.

In relation to the presumption of law (meaning that all the records and reports established by a judicial police officer are supposed to be the truth), the burden of proof is reversed. It is then called rebuttal evidence, and it can only be submitted in writing or by witness evidence.⁵⁶

Every accused person has access to his or her file, which consists of copies of the police records regarding the infringement, written statements of prosecution and defence witnesses and expert reports when appropriate.⁵⁷

Before the Jury Court, the CCP authorises the prosecutor, the *partie civile* (plaintiff claiming damages) and the accused to examine witnesses.⁵⁸ However, the accused has to pay a stipend or fee to the witnesses he or she has called to testify.⁵⁹ The prosecutor may directly examine the accused and witnesses, but the accused and the *partie civile* may ask questions only through the President of the Jury Court.⁶⁰ The accused is therefore entitled to limited cross-examination. Jurors may ask questions directly of witnesses or the accused.⁶¹

The CCP does not provide for cross-examination before the other criminal courts.

⁵³ *ibid*, arts. 344 and 345.

⁵⁴ *ibid*, arts. 397, 398 and 434.

⁵⁵ *ibid*, arts. 346 and 506.

⁵⁶ *ibid*, art. 530.

⁵⁷ *ibid*, art. 279.

⁵⁸ CCP 1960, art. 281.

⁵⁹ *ibid*

⁶⁰ *ibid*, art. 312.

⁶¹ *ibid*, art. 311.

Ivorian legislation contains no provision regarding the right to prepare one's defence. There is no provision establishing the right to apply for a declaration of invalidity of evidence obtained in violation of the law or fundamental rights of the accused.

5.1.16. Right to privacy

The Constitution does not mention this right.

However, the CCP provides that 'any recording device or broadcasting equipment, television or cinema camera, photographic equipment' is prohibited throughout the hearings.⁶²

5.1.17. Right to be informed of one's rights

The Constitution does not mention this right at the stage of the trial. As Côte d'Ivoire has ratified the ICCPR, its articles 9 and 14 apply.

5.2. Rights of foreigners

There is no constitutional or other legal provision on this matter. Although there are bilateral agreements on judicial cooperation between Côte d'Ivoire and other states, the author has not been able to obtain copies of these agreements.

5.3. Rights specific to the trial

5.3.1. Right to a speedy trial

Neither the Constitution nor the CCP refers to a right to be tried within a certain time. As Côte d'Ivoire has ratified the ICCPR, its article 14(3)(c) applies. However, given the time-frame of pre-trial detention (see sections 5.1.3. and 5.1.4. above), the accused will be released after a fixed period of time, which creates an incentive to complete the trial within that time-frame. The remaining question on pre-trial detention is whether an acquitted person would be kept in custody if the prosecutor decides to appeal a judgment issued after the maximum period of pre-trial detention (18 or 22 months).

There is no constitutional or other legal provision on plea-bargaining. Plea-bargain does not exist in Côte d'Ivoire. However, the CCP allows for the initiation of an alternative settlement procedure (*transaction pénale*) until the judgment. It has to be initiated by the prosecutor and consists of a

⁶² *ibid*, art. 393.

lump sum paid by the accused to put an end to the case against him or her. It is permitted for cases involving minor offences and most of the serious offences.⁶³

The Constitution does not mention that the judgment has to be written and available within a specific time-frame. The CCP provides that the written version of a judgment shall be prepared within three days of the delivery of the judgment.⁶⁴

5.3.2. Protection against double jeopardy (non bis in idem)

There is no mention of this principle in the Constitution.

Nevertheless, the principle is clearly established in article 356 of the CCP, which states that ‘a person who has been legally acquitted shall not be held again or prosecuted for the same facts even under a different legal characterisation’.

5.3.3. Right to compensation for malicious prosecution

There is no constitutional or other legal provision on this matter.

5.4. Rights specific to sentencing proceedings

5.4.1. Right to submit evidence in mitigation of sentence

There is no constitutional or other legal provision on this matter.

5.4.2. Right to an individualised sentence

See section 5.1.12. above.

5.4.3. Right to life

The right to life is guaranteed by article 2 of the Constitution, which states that all human beings enjoy inalienable rights such as the right to life. The death penalty was abolished on 24 July 2000 and the abolition is echoed in the Constitution which states that ‘any punishment leading to the deprivation of human life is forbidden’. The criminal provisions providing for the death penalty have become obsolete and are no longer applied by judges. However, these provisions have not been modified. The corpus juris is therefore inadequate and should be amended.

⁶³ *ibid*, arts. 8, 9 and 40.

⁶⁴ *ibid*, arts. 367 and 477.

Even though Côte d'Ivoire ratified the ICCPR in 1992, the Second Optional Protocol aiming at abolition of the death penalty has not been ratified by the state. In its Resolution No. 136 issued during the 44th ordinary session held in 2008 in Abuja, the African Commission on Human and Peoples' Rights urged states that had not yet done so to ratify the Protocol.

The Ivorian legislation does not permit imposing a sentence of life imprisonment without the possibility of parole.

5.4.4. Right not to impose unusual or degrading punishment as a sentence

Article 3 of the Constitution states that 'slavery, forced labour, inhuman and cruel, degrading and humiliating treatment, physical or mental torture, physical violence and mutilation and all forms of debasement of the human being are forbidden and punishable by law'.

The author did not find any other references in existing legislation.

There is no provision establishing corporal punishment as a sentence.

5.4.5. Right to be sentenced to an appropriate facility, including a psychiatric hospital

There is no constitutional or other legal provision on this matter at the stage of sentencing.

5.4.6. Right to review or appeal one's sentence

The Constitution does not mention this right.

Article 487 and subsequent articles of the CCP deal with the right to appeal and fixes the conditions regarding proceedings for serious offences. To sum up, article 490 states that the accused has the right to appeal his sentence within 20 days from the date of notification of the judgment. If in addition to the appeal there is an application for conditional release, the detained defendant has 24 hours to lodge the appeal and he or she remains in custody until the court rules on the appeal, within a period of one month.

An appeal challenging the material findings is not allowed in the proceedings for very serious crimes, as they are tried before the Jury Court, with the exception of an appeal to the highest court (*recours en cassation*) in case of acquittal or in the interest of the law.⁶⁵

5.4.7. Right to a non-custodial sentence

The Constitution does not mention this right.

⁶⁵ CCP 1960, arts. 566 and 567.

The CC only provides for two main types of penalties, which are a prison sentence and a fine. The provision allowing the judge to impose an alternative to imprisonment is very limited and unique in its means of implementation. In addition to the fine, which is the main 'alternative' penalty, the CC provides for six ancillary penalties (*peines complémentaires*) and ten detention orders (*mesures de sûreté*). The CC establishes as detention orders (article 37-10), subject to conditions set out by the law, the 'good conduct bail' (*caution de bonne conduite*) issued by the judge. Other bail measures are provided for at later stages of the procedure (judgment, detention).

5.5. Regime applicable to children

The applicable regime is the same as mentioned in section 3.4 and in section 4.2.9. for legal representation.

The regime applicable to children during the trial is covered by Title X of the CCP. The judge of the juvenile court conducts the investigation of criminal allegations against minors. Minors who are accused of a serious offence (*délit*) or a minor offence (*contravention*) are tried by a juvenile court and minors over 16 years of age who are charged with a very serious offence (*crime*) are tried by a Juvenile Jury Court (*Cour d'Assises pour mineurs*).

Public hearings of juvenile courts are prohibited (except before the Juvenile Jury Court).⁶⁶

5.6. Right to redress following rights violations

There is no constitutional or other legal provision on this matter.

5.7. Impartiality and independence of the courts

See section 2.3.

5.8. Jurisdiction/competence of courts

See section 2.3.

⁶⁶ CCP 1960, art. 782.

6. Constitutionality of detention-related provisions

6.1. Universal detention-related rights

6.1.1. Right not to be arbitrarily or unlawfully detained

Article 22(1) of the Constitution is unequivocal in stating that ‘no one shall be arbitrarily detained’.

Article 685 of the CCP further specifies this provision of the Constitution, stating that an official of the Prison Administration may accept or hold a person solely on the basis of a duly dated, reasoned and signed order or judicial decision (for instance, a court decision, a sentence, a committal warrant, a warrant of arrest, a warrant to bring the individual before a judge, or an order to arrest). In all such cases, the Prison Administration has an obligation to record the person’s detention in an official prison register, stating the reason for detention, the name of the issuing judge, and the date of imprisonment.

Articles 215 to 220 of the CC specify that any public servant who ordered the arbitrary, illegal or abusive detention of a person, or who came to be informed of such an instance and failed to report it, faces a sentence of three months to one year’s imprisonment. This also applies to judges and judicial police officers who detain or order the detention of a person outside official detention facilities as determined by the government or the administration.

These provisions of the CCP and CC have often caused embarrassment to heads of correctional facilities who have knowledge of instances in which rules related to detention have been contravened, but dare not expose such cases to judges out of fear of possible consequences. New provisions to assist heads of correctional facilities are currently being considered.

6.1.2. Right to be informed of the reasons for one’s detention

The author found no law, decree or code making reference to the detainee’s right to be informed of the reasons for his or her detention. As Côte d’Ivoire has ratified the ICCPR, its articles 9 and 14 apply.

6.1.3. Right to challenge one’s detention

Prior to the start of the judicial proceedings and during the trial, the accused may challenge his or her detention, which is not suspended pending a ruling on this challenge. During the investigation such a complaint would have to be submitted to the Indictment Chamber, and during the trial to the judge hearing the case. If the detained person challenges his or her detention, he or she will later be prevented from applying for conditional release.

After the sentencing stage, the CC does not mention specifically the possibility to suspend the sentence, but it refers to a regime 'of supervision and assistance' that resembles a suspended sentence to the extent that a sentenced person may be awarded this regime. It consists in completing the sentence outside the prison and under the control and authority of the judge responsible for the execution of sentences (*juge de l'application des peines*). This regime is not considered as a form of parole that is defined by specific criteria. Articles 87 to 90 of the CC deal with the regime of 'supervision and assistance', but lack precision. This is the reason why it is rarely, if ever, used by judges. In addition, the CC considers this regime as an additional sentence, and not as a measure to reduce the length of the original sentence. However, those sentenced to life imprisonment can also, in theory, benefit from it.⁶⁷

Furthermore, a sentenced person has the right to apply for pardon. Pardon can only be granted by the President of the Republic. The decision cannot be appealed, pardon may be totally or partially granted and may be subject to conditions.⁶⁸

Title III of the CCP deals with parole, but does regard it as a detainee's right. The CCP considers that an inmate 'may' benefit from parole under specific conditions. The PA Decree goes further by stating that parole 'is the last stage of a gradual regime' and that it may be awarded to the prisoners who have proved themselves worthy of it. The head of the correctional facility is the one who may file the request. There is no legislation stating that the inmate may file a request for parole.

6.1.4. Right not to be detained for civil debt

If fines, court costs and damages have not been paid by the sentenced person or if a financial penalty imposed by a criminal court has not been paid, then he or she may have to serve a prison sentence as an alternative penalty. This is called *contrainte par corps* (imprisonment as a substitute for non-collectible fine).⁶⁹ However, this measure is not applicable if a defendant is required to pay a sum of money in a civil lawsuit.

6.1.5. Right to family visits

The Constitution does not mention this right.

Article 118 of the PA Decree establishes the right to family visits as long as the visitors provide a proof of their family relationship with the inmate. The visits are subject to the granting of a family visit permit.

⁶⁷ CC 1981, s. 692.

⁶⁸ CC 1981, art. 134.

⁶⁹ CCP 1960, Title 6.

6.1.6. Right to legal representation during detention (including post-sentence)

The Constitution does not mention this right.

The right to legal representation at this stage is supposed to be identical to the one that exists at early stages of the procedure, as examined above in section 4.2.9. Moreover, articles 31 and 125 of the PA Decree specify that the inmate is entitled to visits from a defence lawyer and that written communication between them is allowed.

Legislation dealing with legal aid is currently being drafted.

6.1.7. Evidence-related rights

There is no constitutional or other legal provision referring to the right to access one's judicial record after the sentence has been imposed. In practice, the inmate or his or her defence lawyer may access the inmate's personal file at the prison administrative office.

There is no constitutional or other legal provision establishing the right of an accused in custody to use a specific facility in order to prepare his or her defence or the right of a sentenced person to access such a facility to prepare his or her appeal.

6.1.8. Right to be separated from different categories of detainees

There is no constitutional provision on the right to be separated from different categories of detainees in prisons. Nevertheless, detainees must be separated according to their categories: prisoners awaiting trial from sentenced prisoners, women from men, minors from adults. These separations are however subject to the building specifics of detention facilities allowing it.⁷⁰

Côte d'Ivoire has ratified the ICCPR, hence its article 10 applies.

6.1.9. Right to safe custody

The person's right to protection by public authorities is guaranteed by article 2 of the Constitution.

There is no legislation granting the right to be detained with 'like-minded' inmates. But article 18 of the PA Decree provides that sentenced persons are detained according to three 'divisions': the normal division, the discipline division and the reform division. In practice, prisoners awaiting trial and sentenced prisoners of these different categories are sometimes detained together.

Article 3 of the Constitution prohibits physical violence to every human being and there is no legislation establishing corporal punishment as a sentence or disciplinary sanction in prison.

⁷⁰ PA Decree 1969, art. 7.

There is no legislation prohibiting solitary confinement. Article 6 of the PA Decree provides for the use of disciplinary or individual cells as a form of punishment. An inmate may be held in such cells from 10 days to two months. This punishment is also applicable to minors (for periods of time reduced by half).

All these (outdated) provisions are currently under review.

6.1.10. Right to humane conditions of detention

Article 3 of the Constitution states that ‘slavery, forced labour, inhuman and cruel, degrading and humiliating treatment, physical or mental torture, physical violence and mutilation and all forms of debasement of the human being are forbidden and punishable by law’.

Prisoners awaiting trial can receive food from outside (provided by their families). The same applies to minors who also benefit from a special diet put in place by the Prison Administration.⁷¹ However, if families do not bring food to the prisoners awaiting trial, they have access to the same meals as those served to sentenced prisoners.

There are no legal or regulatory provisions allowing a specific diet for prisoners who suffer from diseases (diabetes, HIV/AIDS) requiring such a diet.

Even if it is provided for by the law, there are no prison outfits distributed to prisoners in practice. The prisoners awaiting trial have the right to keep their own clothing.⁷²

Health care is not recognised as a prisoner’s right but as a responsibility of the Prison Administration.⁷³

Furthermore, it can be highlighted that ‘the Minister of Public Health, shall appoint, on request of the Minister of Justice, doctors and nurses in charge of medical care for inmates’.⁷⁴

Ivorian legislation does not provide for rehabilitation programmes or a specific detention regime for inmates suffering from mental or physical disabilities.

6.1.11. Right to be informed of one’s rights

The author found no law, decree or code referring to the inmate’s right to be informed of his or her rights. Since Côte d’Ivoire has ratified the ICCPR, its articles 9 and 14 apply.

6.2. Rights of foreigners

⁷¹ *ibid*, arts. 15 and 33.

⁷² PA Decree 1969, art. 11.

⁷³ *ibid*, arts. 151 and 154.

⁷⁴ *ibid*, art. 151.

See section 4.4. above.

6.3. Right specific to pre-trial detention: Right not to be detained awaiting trial

The Constitution does not provide for this right. However, article 137 of the CCP states that ‘freedom is a right, pre-trial detention is an exceptional measure’. A strict legal framework applies to pre-trial detention (see sections 5.1.3 and 5.1.4. above).

Moreover, article 150 of the CCP provides that a person charged with a very serious offence (*crime*) shall be detained for the duration of his or her trial.

6.4. Rights specific to detention while under appeal: Right not to be detained while the case is heard on appeal

An accused can request conditional release while the case is pending before the Court of Appeal or even before the Supreme Court.⁷⁵

In addition, the CPP does not suggest that the maximum periods of pre-trial detention, as set out in sections 5.1.3. and 5.1.4., should not also be respected during the appeal proceedings. Therefore, as noted in section 5.2.1., the remaining question is whether an acquitted person would be kept in custody if the prosecutor decides to appeal a judgment issued after the maximum period of the pre-trial detention (18 or 22 months).

Excepting the provisions dealing with time limits to lodge an appeal, there is no legislation precisely setting out the time-frame of appeal proceedings.

6.5. Specific rights of sentenced prisoners: Prohibition of unlawful detention

See section 6.1.1. above. The prison register must indicate the date of expiry of the sentence.⁷⁶ However, the CCP does not expressly state that the detention of a prisoner becomes arbitrary or unlawful when the sentence imposed on him or her expires.

6.6. Right to redress following rights violations

The author found no law, decree or code mentioning the right to redress for illegal or wrongful detention. Since Côte d’Ivoire has ratified the ICCPR, its article 9 applies.

⁷⁵ CCP 1960, arts. 142 and 496.

⁷⁶ CCP 1960, art. 685.

6.7. Oversight and complaints mechanisms

There is no provision on this matter in the Constitution, neither in the legislation nor in subordinate regulations. Since Côte d'Ivoire has ratified the ICCPR, its article 9.5 applies. However, the PA Decree states that judges control the legality of detention.

The NHRC, which was established in 2012, has jurisdiction to 'receive complaints and denunciations regarding human rights violations'. It has also the power to seize the competent authorities after a non-judicial investigation.

6.8. Regime applicable to children

Section V of the PA Decree deals with minors in detention. It complies with the main principles of the Convention on the Rights of the Child, which Côte d'Ivoire ratified.

Article 771 of the CCP provides that a minor aged between 13 and 18 may be held in pre-trial detention only if the measure is essential or if it is impossible to use other protection and security measures.

A sentence of imprisonment imposed on a minor is classified as 'prevention' by the CCP, which lists, in articles 783 and 784, the facilities where the 'prevention' of a minor may be served. The sentence varies depending on the age of the minor (under or over 13 years of age), and is applicable until the minor is 21 years of age.⁷⁷

However, a minor who is over 16 years of age and who 'by his/her poor and obstinate conduct, his/her continuous indiscipline or dangerous behaviour, makes inefficient the protection and surveillance measures already taken' may be held in a special wing of a correctional facility until he or she reaches the age of 21 years.

Finally, infants and young children can stay with their mothers in detention until the age of 2 years.⁷⁸

6.9. Impact of detention on all other fundamental rights

Article 66 of the CCP deals with the removal of specific civil rights as the result of a sentence of imprisonment.

The deprivation of the rights listed in article 66 is a mandatory additional penalty when a person is sentenced for a very serious offence (*crime*). It is optional when a person is sentenced for a serious offence (*délit*).

⁷⁷ *ibid*, art. 785.

⁷⁸ PA Decree 1969, art. 162.

The court may deprive the sentenced person of the right:

- To be appointed as juror, assessor, expert as well as being hired for a position in the public administration and other public service jobs;
- To obtain a permit to carry a firearm;
- To be appointed as a legal guardian, to wear official decorations and medals, to establish a school and perform any activity related to teaching, education or child care.

The deprivation may cover all or part of these rights.

In case of sentence in absentia, the sentenced person is deprived of his or her civil rights.

7. Conclusion and recommendations

The adoption by referendum of Law No. 2000.515 of 1 August 2000 establishing the Constitution of the Republic of Côte d'Ivoire must be understood against the political backdrop of that time. It resulted from the need to restore state's institutions after the coup of 24 December 1999 and to prepare for the presidential election of October 2000. Many national and international observers agree that the Ivorian Constitution of 2000 is an essential text establishing minimum standards. Observers also consider that the Constitution broadly incorporates the main principles established by the conventions and treaties that Côte d'Ivoire has signed since 1960. In criminal matters, none of the major pieces of legislation (the CCP, the CC and the PA Decree) has been modified and updated in the light of the new Constitution. The crisis of 2000-2010 has largely contributed to this situation. But nowadays, in 2016, five years after the return to the normal functioning of the state and the completion of a first presidential term, the legislation on criminal matters still needs to be remodelled. As stated in the introduction, justice is essential to good governance and to the realisation of the rule of law. There is a severe crisis of confidence of citizens in the judiciary and fundamental rights appear to everyone as a remote concept that is difficult to invoke.

In practice, the principle of 'equality of arms' in criminal proceedings does not exist. One of the first principles to implement would be to give to every citizen, of any age, the real opportunity to organise his or her defence, from the early stage of the police measures to the moment he or she is serving a sentence, in the case of a sentenced person. A suitable defence would entail the systematic implementation of the fundamental rights at stake.

Nowadays, any action, project, support and cooperation programme or advocacy plan to promote the implementation of fundamental rights in the context of criminal proceedings should be conceived and realised with a humanitarian approach. In a second phase it should be led by a developmental approach.

Bibliography

International instruments

African Charter on Human and Peoples' Rights

International Covenant on Civil and Political Rights

United Nations Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

United Nations Convention on the Rights of the Child

Agreement between France and Côte d'Ivoire concerning cooperation in the field of justice, signed at Paris on 24 April 1961

Legislation

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