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Enforcement Spotlight: Côte d'Ivoire

On October 31, 2020, just days before the highly anticipated U.S. presidential election, Côte d'Ivoire's citizens went to the polls to choose their own country's next leader. With the recent conviction of a former prime minister and controversy swirling about the incumbent president's decision to seek a constitutionally questionable third term, the election and its immediate aftermath promise to be a key moment in the nation's modern political history. This alert provides a brief overview of Côte d'Ivoire's anti-corruption enforcement landscape, an update on the recent presidential election, and the election's potential implications for enforcement actions in the country moving forward.

Côte d'Ivoire: Quick Facts¹

- Government Type: Presidential republic
- Capital: Abidjan (administrative); Yamoussoukro (legislative)
- Population: 27,481,086 (July 2020 est.)
- GDP: USD 97.16 billion (2017 est.)
- Official Language: French
- Main Exports: Cocoa, coffee, timber, petroleum, cotton, bananas, pineapples, palm oil, fish

Public perceptions of corruption

In the last several years, Côte d'Ivoire has improved slightly in Transparency International's Corruption Perceptions Index (CPI) rankings, going from a score of 27 in 2012 to a score of 35 in 2019.² Even so, perceptions among the country's populace remain skeptical at best, if not cynical: 40 percent of surveyed Ivoirians believed corruption had increased in the past year, and 34 percent of public service users reported paying a bribe to obtain a public service within the same period.³ Other recent surveys indicate that 59 percent of Ivoirians believed that the government has performed badly in the fight against corruption.⁴ Roughly 30 percent of Ivoirians thought that most or all of the people involved in the federal and local government, including the president, prime minister, parliament, judges, and magistrates, were corrupt.⁵

Current enforcement regime

Multilateral agreements

Côte d'Ivoire ratified the United Nations Convention Against Corruption (UNCAC) in 2012 and joined the African Development Bank Group's Partnership on Illicit Finance in 2016, which obliges it to develop an action plan to combat corruption.⁶

Côte d'Ivoire is also a member of the Economic Community of West African States (ECOWAS).⁷ Established in 1975 to promote economic cooperation, raise living standards, and further economic development, ECOWAS implemented a free trade area in 1990 and a common external tariff in 2015.⁸ ECOWAS's specialized agencies include the inter-governmental Action Group against Money Laundering and Terrorist Financing (GIABA).⁹ While ECOWAS does not play an enforcement role in anti-corruption efforts, it has developed a Protocol on the Fight Against Corruption and called on members to enact whistleblower protection measures.¹⁰ ECOWAS and the Network of Anti-Corruption

Institutions in West Africa (NACIWA) work together on corruption risk assessment and anti-corruption training.¹¹ NACIWA brings together national anti-corruption institutions from ECOWAS member states, including Côte d'Ivoire, to exchange information and training resources.¹²

Internal legal framework

Ordinance number 2013-660 is Côte d'Ivoire's principal piece of legislation related to the prevention of and the fight against corruption. It defines foreign bribery in the Ivoirian Penal Code and prohibits corruption of public officials, undue influence or trading in influence, abuse of public function, embezzlement and misappropriation, and illegal gratuities.¹³ It criminalizes corrupt private sector practices, including misuse of corporate assets, solicitation of bribes, use of undue influence, and overcharging or inflating the costs of public projects.¹⁴ The ordinance further established the High Authority for Good Governance (HABG, *Haute Autorité pour la Bonne Gouvernance*), which began operating in 2014 as an independent administrative authority charged with creating a national strategy and campaign to combat corruption.¹⁵ Its effectiveness and independence have been the subject of public debate.¹⁶

CENTIF, Côte d'Ivoire's financial intelligence office, has broad authority to investigate suspicious financial transactions, including those entered into by public officials.¹⁷ The BLC (*Brigade de Lutte contre la Corruption*) division within the specialist General Finance Inspectorate unit of the Ministry of Economy and Finance is tasked with combatting abuses of Côte d'Ivoire's public finances.¹⁸ The BLC has limited authority outside of public finances, however, and is hampered by often-late releases of annual audit reports from the Court of Auditors.¹⁹

Code of Public Procurement No. 259 and associated directives govern conflicts of interest in government procurement and contract awards.²⁰ The National Agency for the Regulation of Public Procurement (ANRMP, *Autorité Nationale de Régulation des Marchés Publics*), established in 2009, conducts government audits to ensure compliance with procurement regulations.²¹ Many companies still cite corruption as having a significant impact on contract awards and point to the government's lack of transparency and failure to follow its own procedures in concluding that bribery is involved in such awards.²²

2020 presidential election

After pledging to stand down following his second term, incumbent President Alassane Ouattara reversed course when his chosen successor candidate, Amadou Gon Coulibaly, died unexpectedly in July.²³ The decision to seek a third term sparked controversy, especially because Ouattara had overseen the adoption of a new constitution in 2016 limiting presidents to two terms.²⁴

Representing the Rally of Houphouëtists for Democracy and Peace (RHDP) party, Ouattara was on the October 31 ballot against former president Henri Konan Bédié of the Democratic Party of Ivory Coast – African Democratic Rally (PDCI); former prime minister Pascal Affi N'Guessan of the Ivoirian Popular Front (FPI); and independent candidate Kouadio Konan Bertin.²⁵ Notably absent from the ballot were former president Laurent Gbagbo and former prime minister Guillaume Soro, both of whom the country's Independent Electoral Commission struck from the electoral lists due to prior criminal convictions.²⁶ The Criminal Trial Court of Abidjan convicted Soro (in absentia) in April 2020 for embezzlement and money laundering in connection with the 2007 purchase of a residence in Abidjan during his term as prime minister.²⁷ Sentenced to 20 years in prison and facing penalties totaling more than USD 10 million, Soro had been living in exile in France and reportedly left for an unknown destination after pressure from French authorities following his calls for post-election uprisings in Côte d'Ivoire.²⁸ In total, the Constitutional Council, Côte d'Ivoire's top court, rejected forty candidates for various failures to satisfy candidacy criteria.²⁹ Although the African Court on Human and Peoples' Rights issued rulings requiring Côte d'Ivoire to approve the candidacies of Gbagbo and Soro, the decision was not enforced as Côte d'Ivoire withdrew from the court's jurisdiction in April 2020.³⁰

After calls from the opposition candidates for civil disobedience and a boycott of the election in protest of Ouattara's candidacy, the Independent Electoral Commission declared that Ouattara had been reelected with 94.27% of the vote and a 53.9% participation rate.³¹ The Constitutional Council confirmed these results despite the closure of 5,000 of the

country's 22,000 polling locations, allegedly as a result of civil disobedience.³² N'Guessan and Bédié denounced the "sham election" and announced the formation of a "National Transitional Council" chaired by Bédié to prepare for a transparent, fair, and inclusive election.³³ Following protests that resulted in the deaths of dozens of people and the arrests of N'Guessan and several of Bédié's close associates, Ouattara and Bédié have engaged in talks with the hopes of stemming further violence and achieving a peaceful resolution to the crisis.³⁴ Looming in recent memory is the terrible violence that resulted in the deaths of more than 3,000 people following Ouattara's first presidential victory in 2010, when then-President Gbagbo refused to leave power.³⁵

Anti-corruption enforcement implications

Despite the existence of watchdog agencies, anti-corruption enforcement in Côte d'Ivoire has been relatively minimal to date. The judiciary is responsible for prosecuting corruption violations, and though it is formally independent, it is in practice subordinate to the executive and subject to executive intervention.³⁶

With Ouattara's apparent re-election to a third term, the government reportedly plans to implement new measures to fight corruption and strengthen Côte d'Ivoire's economic competitiveness, building on the foundation of laws and organizations established during his previous terms.³⁷ The government has pledged to continue to reform policy to attract investment and promote intra-regional trade while further developing infrastructure, human resources, and entrepreneurship.³⁸ A representative of Côte d'Ivoire's embassy in South Africa recently stated that Ouattara's third term will seek to build on the governance improvements of his prior terms, as anti-corruption efforts are key for improving foreign direct investment inflows.³⁹

Such efforts no doubt will be welcomed by foreign companies that feel they have been subject to unfair treatment in Côte d'Ivoire. The Ivoirian government was criticized in 2013 for awarding a contract for construction of an Abidjan container port to a French company despite receiving a lower bid from a Swiss company.⁴⁰ The continued government practice of approaching specific companies rather than using a competitive bid process is a repeated grievance raised by foreign companies.⁴¹

Of course, regardless of political and policy developments *within* Côte d'Ivoire, companies seeking to do business in the country must remain ever mindful of the risks of running afoul of other countries' extraterritorial anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (FCPA). In 2019, the U.S. Department of Justice (DOJ) announced a settlement with Fresenius Medical Care in connection with FCPA violations for allegedly paying bribes to publicly employed medical professionals and failing to maintain reasonable internal accounting controls and accurate books and records.⁴² In a non-prosecution agreement with Fresenius, the DOJ asserted that the company used fictitious consulting agreements and provided gifts and other benefits to publicly employed doctors in exchange for obtaining contracts.⁴³ These practices allegedly spanned Morocco, Angola, Saudi Arabia, Spain, Turkey, and numerous countries in West Africa, including Côte d'Ivoire, and resulted in over USD 140 million in profits.⁴⁴ Fresenius agreed to pay USD 231 million in connection with the non-prosecution agreement and to settle related charges with the U.S. Securities and Exchange Commission.⁴⁵

1. CIA, *The World Factbook: Cote d'Ivoire* (Nov. 24, 2020), <https://www.cia.gov/library/publications/the-world-factbook/geos/iv.html>.
2. Transparency Int'l, *Corruptions Perceptions Index: Cote d'Ivoire 2019*, <https://www.transparency.org/en/cpi/2019/results/civ> (last visited Nov. 29, 2020); Transparency Int'l, *Country Data: Cote d'Ivoire*, <https://www.transparency.org/en/countries/c%3%B4te-divoire> (last visited Nov. 29, 2020).
3. Transparency Int'l, *Country Data*, *supra* note 2.
4. Afrobarometer, *Countries: Cote d'Ivoire*, <https://www.afrobarometer.org/countries/c%3%B4te-divoire-0> (last visited Nov. 29, 2020).
5. Coralie Pring & Jon Vrushi, *Global Corruption Barometer Africa 2019, Citizens' Views and Experiences of Corruption* 31, Transparency Int'l (July 2019), https://images.transparencycdn.org/images/2019_GCB_Africa3.pdf.
6. U.S. Dep't of State, Bureau of African Affairs, *Exec. Summary: 2019 Investment Climate Statements: Cote d'Ivoire* (2019), <https://www.state.gov/reports/2019-investment-climate-statements/cote-divoire/>; U.N. Office on Drugs & Crime, *Signature & Ratification Status* (Feb. 6, 2020), <https://www.unodc.org/unodc/en/corruption/ratification-status.html>; African Dev. Bank Grp., *Partnership on Illicit Finance*, <https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/partnership-on-illicit-finance> (last visited Nov. 29, 2020).
7. Econ. Cmty. of W. African States (ECOWAS), *Member States* (Aug. 29, 2019), <https://www.ecowas.int/member-states/>.
8. Office of The U.S. Trade Representative, *ECOWAS*, <https://ustr.gov/countries-regions/africa/regional-economic-communities-rec/economic-community-west-african-states> (last visited Nov. 29, 2020).
9. ECOWAS, *Basic Information* (2016), <https://www.ecowas.int/about-ecowas/basic-information/>.
10. The Carter Center, Election Obligations & Standards Database, *Economic Community of West African States Protocol on The Fight Against Corruption* (Dec. 21, 2001), https://eos.cartercenter.org/uploads/document_file/path/406/ECOWAS_Protocol_on_Corruption.pdf; African Centre for Media & Information Literacy, *ECOWAS Commission Calls for Whistleblower Protection Laws* (Aug. 9, 2019), <https://www.africmil.org/ecowas-commission-calls-for-whistle-blower-protection-laws/>.
11. ECOWAS, *ECOWAS Commission Holds Consultative Meeting with Regional Anti-Corruption Network on Risk Assessment* (Apr. 25, 2019), <https://www.ecowas.int/ecowas-commission-holds-consultative-meeting-with-regional-anti-corruption-network-on-risk-assessment/>.
12. U.N. Office on Drugs & Crime, West & Central Africa, *The Network of National Anti-Corruption Institutions in W. Africa (NACIWA) Elects New Exec. Comm. & Adopts a Strategic Plan (2015-2017) with Support from UNODC* <https://www.unodc.org/westandcentralafrica/en/the-network-of-national-anti-corruption-institutions-in-west-africa-naciwa-elects-new-executive-committee-and-adopts-a-strategic-plan-2015-2017-with-support-from-unodc.html> (last visited Nov. 29, 2020); U.N. Office on Drugs & Crime, West & Central Africa, *Network of National Anti-Corruption Institutions in W. Africa (NACIWA) Gathers in Cotonou, Benin*, <https://www.unodc.org/westandcentralafrica/en/2016-07-15-naciwa-general-assembly-cotonou.html> (last visited Nov. 29, 2020).
13. LEX Africa, *Anti-Corruption Laws in Cote d'Ivoire* (Apr. 10, 2014), <https://www.lexafrika.com/2014/04/anti-corruption-laws-in-cote-divoire/>; Ordinance No. 2013-660, Inspection Generale des Finances, *Official Texts* (Sept. 25, 2013), <http://www.igf.finances.gouv.ci/IgfAdmin/textesofficiels/doc/ord2013-660%20et%202013-661.pdf>.
14. LEX Africa, *supra* note 13.
15. *Présentation*, La Haute Autorité Pour La Bonne Gouvernance, <https://www.habg.ci/habg.php?ID=2> (last visited July 1, 2020); *Missions Générales de la HABG*, La Haute Autorité Pour La Bonne Gouvernance, <https://www.habg.ci/habg.php?ID=1> (last visited July 1, 2020).
16. Safiatou Ouattara, *Côte d'Ivoire: Une lutte de façade contre la corruption*, Libre Afrique (Dec. 20, 2017), <http://www.librefrique.org/Safiatou-Ouattara-corruption-Côte-ivoire-201217>.
17. U.S. Dep't of State, *supra* note 6; Cellules Nationales de Traitements des Informations Financières (CENTIF), *Missions* (June 2013), <https://www.centif.ci/missions.php>.
18. Thomas Shipley, *The Role of Civil Society in Fighting Corruption in Côte d'Ivoire*, Transparency Int'l (May 17, 2018), <https://knowledgehub.transparency.org/helpdesk/the-role-of-civil-society-in-fighting-corruption-in-c%3%B4te-divoire>; Inspection Generale des Finances, *Brigade de Lutte contre la Corruption (BLC): Who Are We?*, <http://www.igf.finances.gouv.ci/blc-qui-sommes-nous.php> (last visited Nov. 29, 2020).
19. *In law, There is an Independent Body/Bodies Mandated to Receive and Investigate Cases of Alleged Public Sector Corruption*, Global Integrity (2018), <https://africaintegrityindicators.org/data>; Shipley, *supra* note 18.
20. U.S. Dep't of State, *supra* note 6; Code of Public Procurement No. 259 (2009), <http://www.droit-afrique.com/upload/doc/cote-divoire/RCI-Code-des-marches-publics-2009.pdf>

21. Shipley, *supra* note 18; Autorité Nationale de Régulation des Marchés Publics (ANRMP), *Missions* (July 4, 2020), <https://www.anrmp.ci/presentation-27711/missions-4884>.
22. U.S. Dep't of State, *supra* note 6.
23. *Ivory Coast Ex-President Bedie Says He Will Run in 2020 Election*, Reuters (June 20, 2020, 3:08 AM), <https://www.reuters.com/article/us-ivorycoast-politics/ivory-coast-ex-president-bedie-says-he-will-run-in-2020-election-idUSKBN23R0SF>; Kizzi Asala, *Ouattara and Only 3 More Approved to Run for Ivorian Presidency*, Africa News (Sept. 15, 2020), <https://www.africanews.com/2020/09/15/ouattara-and-only-3-more-approved-to-run-for-ivorian-president/>.
24. Asala, *supra* note 23.
25. Sam Bradpiece, *Who Are the Four Candidates Standing in Ivory Coast's Presidential Election?*, France 24 (Sept. 25, 2020), <https://www.france24.com/en/20200925-who-are-the-four-candidates-standing-in-ivory-coast-s-presidential-election>; Decision No. CI-2020-EP-009, *Final List of Candidates for the Election of the President of the Republic of Oct. 31, 2020* (Sept. 14, 2020), <http://www.conseil-constitutionnel.ci/archives-et-decisions/decision-ndeg-ci-2020-ep-00914-09ccsg-du-14-septembre-2020-portant-publication>.
26. Nyawira Mwangi, *Cote d'Ivoire Rejects Election Bids of Ex-President Gbagbo, Ex-Rebel Leader Soro*, CGTN (Aug. 22, 2020), <https://africa.cgtn.com/2020/08/22/cote-divoire-rejects-election-bids-of-ex-president-gbagbo-ex-rebel-leader-soro/>; Decision No. CI-2020-EP-009, *supra* note 25.
27. Nicolas Boring, *Cote d'Ivoire: Former Prime Minister Sentenced to 20 Years in Prison for Corruption*, Library of Congress, Global Legal Monitor (May 15, 2020), <https://www.loc.gov/law/foreign-news/article/cte-divoire-former-prime-minister-sentenced-to-20-year-sentence-for-corruption/>.
28. Dreyfus Polichinelle, *Guillaume Soro Refuses "Hypocrisy" Around the Ivorian Crisis*, Afrique Sur 7 (Nov. 24, 2020), <https://www.afrique-sur7.fr/444518-guillaume-soro-hypocrisie-crise-ivoire>; Africa News, *Not Here, Not There: Questions Swirl Over the Whereabouts of Guillaume Soro* (Nov. 21, 2020), <https://www.africanews.com/2020/11/21/not-here-not-there-questions-swirl-over-the-whereabouts-of-guillaume-soro/>.
29. Asala, *supra* note 23; Decision No. CI-2020-EP-009, *supra* note 25.
30. Jeune Afrique, *Cote d'Ivoire: Gbagbo to be Reinstated for Polls Says African Human Rights Court*, The Africa Report (Sept. 30, 2020), <https://www.theafricareport.com/43817/cote-divoire-gbagbo-to-be-reinstated-for-polls-says-african-human-rights-court/>; Africa News, *Pro-Gbagbo EDS Coalition Calls for Protests Against Ouattara's Third Term* (Sept. 17, 2020), <https://www.africanews.com/2020/09/17/pro-gbagbo-eds-coalition-calls-for-protests-against-ouattara-s-third-term/>; Ruling (Provisional Measures), *Gbagbo v. Republic of Cote d'Ivoire*, Application No. 025/2020, Sept. 25, 2020, <https://www.african-court.org/en/images/Cases/Orders/LAURENT%20GBABGBO%20-%20%20JUDGEMENT%20-%20NGL..pdf>; Ruling (Provisional Measures), *Soro v. Republic of Cote d'Ivoire*, Application No. 012/2020, Sept. 15, 2020, https://www.african-court.org/en/images/Cases/Orders/GUILLAUME_KINGBAFOR.pdf.
31. Florence Richard, *Cote d'Ivoire: Alassane Ouattara Reelected for a Third Term with 94.27%*, The Africa Report (Nov. 3, 2020), <https://www.theafricareport.com/48878/cote-divoire-ouattara-re-elected-for-a-3rd-term-with-94-27/>; Decision No. CI-2020-EP-010, *Proclaiming the Final Results of the Election of the President of the Republic of Oct. 31, 2020* (Nov. 9, 2020), <http://www.conseil-constitutionnel.ci/archives-et-decisions/decision-ndeg-ci-2020-ep-01009-11ccsg-du-09-novembre-2020-portant-proclamation>; Geraldine Boechat, *Cote d'Ivoire: Constitutional Council Confirmed the Reelection of Alassane Ouattara for a Third Term* (Nov. 10, 2020), <https://medafricatimes.com/21451-cote-divoire-constitutional-council-confirmed-the-reelection-of-ouattara-for-a-third-term.html>.
32. Boechat, *supra* note 31; Krista Larson, *Ivory Coast Opposition Asserts 12 Dead in Election Violence*, Herald Bulletin (Oct. 31, 2020), https://www.heraldbulletin.com/news/nation_world/ivory-coast-opposition-asserts-12-dead-in-election-violence/article_1f27abc2-6a09-579a-875c-199aabb387c.html.
33. Richard, *supra* note 31.
34. Benjamin Roger, *Cote d'Ivoire: Guillaume Soro Calls on Army to Block Alassane Ouattara*, The Africa Report (Nov. 5, 2020, 2:38 PM), <https://www.theafricareport.com/49300/cote-divoire-guillaume-soro-calls-on-army-to-block-ouattara/>; Juliet Norah, *Ivory Coast – Former Prime Minister Arrested After Disputed Election*, Communal News (Nov. 8, 2020), <https://communalnews.com/ivory-coast-former-prime-minister-arrested-after-disputed-election/>; Al Jazeera, *Ouattara Meets Bedie for Talks on Ivory Coast Election Crisis* (Nov. 11, 2020), <https://www.aljazeera.com/news/2020/11/11/ouattara-meets-bedie-for-talks-on-ivory-coast-election-crisis>.
35. Sam Bradpiece, *Ivory Coast's High-Stakes 2020 Election Raises Old Fears, New Likely Scenarios*, France 24 (Aug. 21, 2020, 8:12 PM), <https://www.france24.com/en/20200821-ivory-coast-s-high-stakes-2020-election-raises-old-fears-new-likely-scenarios>; Heritage Foundation, *2020 Index of Economic Freedom: Cote d'Ivoire* (2020), <https://www.heritage.org/index/country/cotedivoire>.

36. *Côte d'Ivoire Overall Results*, Transformation Atlas (2018), https://atlas.bti-project.org/share.php?1*2018*CV:CTC:SELCIV*CIV*REG:TAB.
37. Jonisayi Maromo, *Alassane Ouattara's Win at Polls Sees Cote d'Ivoire Implementing Measures to Fight Corruption, Strengthen Competitiveness*, IOL (Nov. 9, 2020), <https://www.iol.co.za/pretoria-news/news/world/alassane-ouattaras-win-at-polls-sees-cote-divoire-implementing-measures-to-fight-corruption-strengthen-competitiveness-975fc6d0-423b-4509-975a-a6f41cf52214>.
38. *Id.*
39. *Id.*
40. Marie Chêne, *Overview of Corruption and Anti-Corruption in Côte d'Ivoire*, Transparency Int'l (Mar. 14, 2016), https://www.transparency.org/files/content/corruptionqas/Country_profile_Côte_divoire_2016.pdf.
41. *Id.*
42. *Fresenius Medical Care Agrees to Pay \$231 Million in Criminal Penalties and Disgorgement to Resolve Foreign Corrupt Practices Act Charges*, U.S. Dep't of Justice (Mar. 29, 2019), <https://www.justice.gov/opa/pr/fresenius-medical-care-agrees-pay-231-million-criminal-penalties-and-disgorgement-resolve>.
43. *Id.*
44. *Id.*
45. *Id.*; Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Medical Device Company with FCPA Violations* (Mar. 29, 2019), <https://www.sec.gov/news/press-release/2019-48>.