

**Original citation:**

Jones, Briony and Adou, Djane Di Fatogoma. (2017) Reading the 'uncivil' in civil society resistance to transitional justice in Cote d'Ivoire. Political Geography .

**Permanent WRAP URL:**

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*As with many other contexts civil society in Côte d'Ivoire is not a space or set of actors and practices neatly distinct from the state. Political parties, politicians and party political agendas infuse civil society activism and ensure that being a civil society actor is a contested identity which can be leveraged for diverse and competing political projects. This paper is based on qualitative fieldwork with civil society actors who position themselves as 'resisting' the state-sanctioned transitional justice process following the 2010-2011 election violence and armed ousting of former President Laurent Gbagbo. Claiming and mobilizing their civil society identity such actors seek to create distance from what they claim is an illegitimate state and to lend credence to their project of resistance, read by some Ivoirian and non-Ivoirian commentators as mere political machinations by those who refuse to give up power and behave democratically. However, reading this 'uncivil' behavior is a complicated empirical and analytical task. In this article we explore the potential of analyzing such 'disorder' from the perspective of an expansion of the public in Côte d'Ivoire and how such a study of an actually existing civil society can challenge any notion of an easy instrumentalisation of civil society to serve the ends of transitional justice.*

Keywords: Civil society, Côte d'Ivoire, transitional justice, democracy.

Abbreviated Title: Reading the 'Uncivil' in Côte d'Ivoire.

## **INTRODUCTION**

“Today, Civil Society is involved in the citizens’ resistance, which should not be confused with citizens’ opposition. Citizens’ opposition targets power, while the citizens’ resistance means citizens’ independence, making proposals on national issues”.<sup>i</sup>

These words, spoken by a member of a civil society organisation in Côte d’Ivoire were prompted by a discussion with the authors over the purpose, effectiveness and legitimacy of organised opposition to the Presidency of Alassane Ouattara and the state-sanctioned transitional justice process; a process which has thus far primarily addressed crimes committed by supporters of the former President Laurent Gbagbo. For the interviewee the role and responsibility of civil society in Côte d’Ivoire today is to provide a space in which citizens can express themselves and act ‘independently’ and participate by ‘making proposals’ on ‘national issues’. Taking this quote out of context, these aspirations for civil society coincide with those expressed in much of the literature on transitional justice and civil society: “civil society organisations (CSOs), play a critical role in deconstructing authoritarianism, rebuilding the state and establishing a firm foundation for strong democracies” (Hovil and Okello, 2011, p.333). However, the interviewee’s words refer to a civil society which is intermingled with the state, political parties and histories of colonialism in ways which distort these aspirations. Furthermore, the interviewee expresses views which are articulated by a group of actors aligned with the former President and considered by many to demonstrate facets of the ‘uncivil’: protest outside the International Criminal Court (ICC); road blocks; refusal to participate in the Dialogue, Truth and Reconciliation Commission (CDVR);<sup>ii</sup> and public circulation of literature which questions the role of the United Nations (UN) and France’s ‘illegitimate’ and ‘neo-colonial’ influences on Côte d’Ivoire.

At first glance this appears to be an impasse: transitional justice demands a civil society capable of delivering on the promises of a more just, democratic and peaceful future, but certain parts of civil society in Côte d’Ivoire instead introduce the uncivil in their attempts to unsettle and block

transitional justice. It is not clear that scholarship on transitional justice can fully address this impasse with its liberal approach to civil society operating as a “largely autonomous sphere of freedom and liberty” (McIllwaine, 1998, p.417). The result is that there is limited analysis of the ‘uncivil’ itself, or, perhaps more importantly, little interrogation of what constitutes the ‘civil’ or ‘uncivil’ in transitional justice contexts. And so when we come to reflect on the civil society actors who are the focus of this article we reach the limits of current transitional justice scholarship. These actors self-identify as ‘good’ civil society and as ‘good’ citizens upholding Ivorian democracy, and yet are viewed by others as disruptive. This gap in perspectives on what constitutes the civil or uncivil means that we must do more than analyse this as a case of ‘when civil society goes wrong’. Instead this article poses two connected questions: (1) why is the civility/non-civility of these actors contested and (2) what implications does this have for civil society at times of transitional justice? In order to answer these questions we follow many other scholars by looking at actually existing civil society in Côte d’Ivoire, and how certain actors themselves understand their activities and agendas.

Bah has highlighted two unique features of Côte d’Ivoire in the modalities of war and peace in the West African region: firstly, the war and political crises since independence from France on the 7<sup>th</sup> August 1960 can be attributed to contestations over citizenship rather than the factors of political economy and state failure which are so often used to explain African civil wars; and secondly, there has been a high level of domestic ownership of the peace process (2010, p.597-598). Coupled with the significance of *Ivoirité* – a notion of autochthony which relies on a controversial distinction between indigenous Ivoirians and immigrants (Ibid, 2010, p.602) - the figure of the citizen and its continually dynamic and contested boundaries looms large in analyses of the country. Successive failures to address the citizenship issues underpinning violence have led to a series of failed peace agreements, and prompt the question of whether the transitional justice process will fall foul of the same blind spot. This renders even more significant research on civil society given the disconnect between a transitional justice policy which favours and indeed expects a liberal civil society to flourish in post-crisis Côte

d'Ivoire and the realities of a civil society shaped by colonialism, *Ivoirité* and competing understandings of the nature and role of the 'good' citizen and her or his civil or uncivil behaviour.

Our analysis presented in this article allows us, we argue, to unsettle the notion that civil society necessarily holds the potential to support a given transitional justice process whether in our case study or elsewhere. This happens in two main ways. Firstly we re-assert the knowledge that the 'uncivil' is present in civil society, and secondly we highlight the disjuncture between how different actors will interpret the variously identified roles for civil society during transitional justice processes. In doing so we draw on work on civil society by political geographers. Learning from Staeheli's (2010) discussions of the disorderly public, and studies which focus on the idea of actually existing civil society (see for example Mohan, 2002; Jeffrey and Jakala, 2015) we focus on the contexts of the civil society actors we have interviewed, and on how they link the differing scales of the local, national and geopolitical in what we would describe as their attempt to use disorder to expand the notion of the public in Côte d'Ivoire. This approach enriches discussions on transitional justice and civil society beyond the specific case of Côte d'Ivoire and allows us to turn the observed disconnect between policy and experience into an opportunity for learning more about competing visions of justice, peace and democracy. We suggest that these are necessarily present at times of transitional justice but are largely inadequately understood or taken into account by those supporting and advocating for such processes.

### **TRANSITIONAL JUSTICE, CIVIL SOCIETY, AND THE LIMITS OF CIVILITY**

Transitional justice, meaning the mechanisms and processes designed to address mass human rights violations of the past, can be understood in a plethora of overlapping and divergent ways. Without wanting to rehearse the extensive debates here it is possible to say that in recent years there has been an increase of critiques of both transitional justice practice and research. This includes, inter alia, lack of theory (Buckley-Zistel, Beck, Braun and Mieth, 2014), a tendency to seek closure (Weinstein, 2010), a desire to discipline and order transitional societies (Iliff, 2012) lack of cultural sensitivity (Kagoro, 2012) and power imbalances between those who speak and those they speak on

behalf of (Madlingozi 2011). As part of these discussions there has been an increasing focus on ensuring that transitional justice processes have legitimacy with the local population, not least by engaging civil society actors in outreach, consultation processes and other such activities. As Hovil and Okello describe “civil society ‘consultation and participation’ have metamorphosed into an article of faith in the practice of transitional justice” (2011, p. 333).

Given the strong connection between both justice-seeking (the law) and democratic transition (politics) (Bell, 2009, p.22) which has animated the development of the field of transitional justice it makes sense that a focus on an engaged civil society is seen as key to both supporting individual transitional justice mechanisms and fostering a democratic culture capable of underpinning the ‘new’ society and its democratic institutions. Indeed, Backer argues that the input of civil society and its relationship to the state acts as a barometer of what a transitional justice process has accomplished and the future direction of political society (2003, p. 306). Such faith in the potential of civil society to support, enhance and ensure the legacy of transitional justice has informed an increasing support for civil society organisations by donors and transitional justice advocates (Jeffrey and Jakala, 2015, p.44).

However, the literature constructs a very particular idea of what civil society is and its role in transitional justice processes. Andrieu highlights that in contexts of transitional justice the central state is often weak and the common focus on the national level – for example institutions of government, national-founding myths, national solidarity – is not capable alone of creating comprehensive community...or ensuring perceived legitimacy of the state (2010, p.541). Instead, what is required is a process of building a democratic culture in small parts, identifying ‘islands of civility’ at the grassroots (Ibid, pp.545-547). In doing so a Habermasian approach to civil society is proposed, emphasising an “unhindered communicative process in the public sphere” as such “[d]ialogic processes have a civilizing effect on actors, encouraging new understandings, values and attitudes” (Ibid, p.547). This is a familiar argument which we can also read in the work by Chambers and Kopstein that “a robust, strong and vibrant civil society strengthens and enhances liberal democracy” (2001, p.837).

Chambers and Kopstein point out however that the important question is not so much one of participation of civil society but rather what type of civil society will promote values such as democracy (2001, p. 838). Their definition of “bad civil society” as those organisations whose “stated values, beliefs, creed, agenda, ideology, or platform is clearly incompatible with a belief in equal moral consideration” (Ibid, p. 840) leads them to distinguish between particularist civility which contains all of the goods associated with association but only between members of a particular group, and democratic civility which extends the good learned in participation to all citizens (Ibid, p. 841). Such ideas about ‘good’ and ‘bad’ civil society align neatly with a human rights based transitional justice seeking to advocate and engender support for supposedly universal values. However, the same challenge faces definitions of ‘bad’ civil society as face transitional justice advocacy: what to do when people disagree over the content and meaning of these values?

In his work on the “gentrification” of civil society in post-1995 Bosnia-Herzegovina Jeffrey argues that “the concept of civility draws our attention to the idea of a set of principles and assumptions relating to social behaviour set out by elite arbiters that serve as key elements of social and political ordering” (2008, p.741). In Tazreiter’s work on decency and civil society she argues that decency is a normative virtue that can be more easily related to universal values while civility is a set of standards that may vary between nations and peoples (Ibid, pp.100-101). To understand the construction of the ‘civil’ and ‘uncivil’ in such relational terms is helpful for setting up the rest of this article. For whilst transitional justice advocates and scholars point out the potential role of civil society in supporting and enhancing transitional justice processes, the concrete practices of labelling certain actors and behaviours legitimate or illegitimate betrays a subjective construction of civility which relies on tropes of ‘good’ and ‘bad’ civil society mapped onto the moral and normative claims of transitional justice advocates themselves.

This has led to a narrowing of the concept of civil society in transitional justice “to a contingent, ideologically preferential sub-set” which assumes that all civil society is by definition composed of groups working for the public good – in this case peace and justice – and that there is in fact a unified

concept of the good towards which they strive (Waters, 2015, pp.165-166). Waters describes this as the “*ethical* reduction of civil society” which denies the realities of “how human collectives work, by similar means, towards radically different ends” (Ibid, p.171). This has been referred to in the literature on civil society more generally as the concept’s ‘reification’ as ‘uncivil’ elements are either not taken into account (McIllwaine, 1998, p.417) or are “typically conceived negatively, as a falling away from the antecedent of civility, an absence rather than a presence” (Edyvane, 2017, p.352).

Attempts to address this problem and to develop accounts of a more heterogeneous civil society have led to terms such as ‘semi’, ‘active’ or ‘latent’ civil society which recognise that “civil society is neither, by its nature, democratic nor participatory” (Ibid, p.419). Studies which seek a more nuanced analysis of civil society in peace building and transitional justice contexts often focus on what has been described as “actually existing civil society” (Mamdani cited in Mohan, 2002, p.125). In this way it is possible to bring into the analysis questions of context and scale which are important for unpicking and interrogating distinctions between the civil and uncivil. As Mohan suggests, an approach is required “which captures the intended and unintended uses of civil society which is also attentive to the role of space and place” (Ibid, p.131). Culture, history and geography will determine any actually existing civil society and thus must also form part of our framework of analysis. Mohan’s emphasis on the importance of critical case studies is one which this article takes seriously, offering as it does an analysis of the words and actions of those who self-identify as resisting the transitional justice process in Côte d’Ivoire.

Here it is helpful to draw on the work of Staeheli and her discussion of the political geography of democracy and the disorderly public. Importantly for this article and the study of (un)civil society in Côte d’Ivoire Staeheli writes that “while disorder *can* undermine the process of democratization by making participation in public life and governing impossible, the erasure or suppression of disorder is an equal threat to democratization. This is because disruption is often a strategy in expanding the field of public address and an important element in broader struggles to expand and reorder the democratic public” (2010, 68). With reference to disenfranchised minorities Zerrilli writes “the charge of incivility



was a way of masking and managing disruptive demands to inclusion in the public realm” (cited in Edyvane, 2017, p.350). The discussion on civility, particularly among ‘sceptics’ is wary of the way in which civility norms may function as mechanisms of power and domination which preserve hierarchies (Ibid).

Transitional justice, as highlighted above, does not cope well with disorder, instead seeking closure and reconciliation of the past in order to achieve a political settlement for the future. We take forward through this article the ideas of disorder, expansion of the public realm, and a scepticism of how civility norms interact with power and hierarchies. We look at whether the civil society actors we have interviewed can be understood as engaged in a struggle to expand the democratic public, and what implications this has for civil society and transitional justice.

#### **A NOTE ON METHODOLOGY AND THE DILEMMAS OF RESEARCHING THE UNCIVIL**

The research which is the focus of this discussion was part of a larger project on resistance to transitional justice<sup>iii</sup> which included one year of qualitative fieldwork in 2014, in Côte d’Ivoire and with Ivoirian diaspora living in the United States of America and the United Kingdom. The methods chosen included semi-structured interviews and elite interviews, focus groups, ongoing observation of local community meetings, and development of an archive of press articles from Ivoirian newspapers. Our methodological choice was informed by our epistemological ambition to research understandings, perspectives and subjectivities of actors’ words and acts. Our intention was to talk with actors who self-identified as resisting the transitional justice process which began in 2011, with those who self-identified as supporting the process, and with those who held positions which were shifting and located somewhere in between. In doing so we have listened to, analysed and repeated statements made by actors who have placed themselves, or been placed by others, in opposition to many of the normative and moral claims of transitional justice advocates.

In research on perpetrators of war crimes convicted by the International Criminal Tribunal for the Former Yugoslavia, Rauschenbach et al frame their research as giving “perpetrators a voice and

the opportunity to tell their version of the story without the constraints posed by their legal counsels or by the procedural framework of international criminal justice” (2015, p.2). This is primarily informed by a research objective to address a gap in the literature which rarely, if at all, seeks to analyse how perpetrators give meaning to their actions and experiences. They go on to state that “Our analysis does not require that we judge the perpetrators accounts as valid or invalid, true and false; we are simply interested in their subjective account of the events for which they are accused” (Ibid, p.4). This is certainly true of the stated immediate goals of their paper, but the conclusion in which the implications of the research are described, including raising questions about our ability to delineate boundaries between legitimate violence and unlawful aggression, or to define what is moral and immoral, suggest that such a ‘neutral’ positioning may be difficult to maintain when dealing with such subject matters. Indeed, the words of Smith and Jenkins in reference international development scholars could hold true for those of us researching transitional justice: “Ideas of ‘responsibility’ and ‘solidarity’ and notions of emotional as well as political engagement, are often at play in the motivations of many academic researchers and practitioners...Research on and in international development is seldom ‘just a job’ but involves a complex entanglement of personal and political commitments towards a more just and equitable world” (2012, p.75).

In previous work, [REDACTED] has reflected on the role which emotion plays in research, drawing on a body of scholarship which understands emotions as central to human society and as an essential and insightful conduit to knowledge ([REDACTED]). Negotiating this as a researcher when working on violations of human rights, meanings of justice, and references to morality, will inevitably shape research interactions and analysis. This is brought into even starker relief when one’s interlocutor in an interview is considered to be on the ‘wrong’ side of the moral dividing lines drawn by transitional justice. In our research we faced a methodological challenge in that we wished to simultaneously complicate the simplistic division between those who support and those who contest transitional justice, as a way of uncovering different understandings of justice which may reside in the population at large, and also to identify these ‘uncivil’ actors as interviewees. Our acts of labelling could

inadvertently reproduce the moral dividing lines we sought to challenge. In our interviews we employed open, qualitative interview methods which allowed the interviewee to self-identify as 'resisting' the process or not and to give meaning to that action themselves.

A key ethical dilemma we faced in the interviews, which is certainly not unique to our research, was the need to establish a rapport with interviewees. This was especially sensitive given the content we were discussing. As will be discussed in the analysis, some interviewees considered the interviews to be a platform, a legitimate opening into the public space and a way to communicate their views on the current transitional justice process. In these contexts emotion can be used productively, telling us as researchers something about the framing narratives which provide the content to the interview itself. It is not uncommon in such research to begin interviews with certain pre-formed opinions on the actors or events to be discussed. In particular we had to ask ourselves as researchers whether our emotions shifted when 'reassured' by interviewees of their 'good' intent. Indeed, the surprise when confronted with the same views being expressed by those actors considered 'civil' and 'uncivil' prompted a re-thinking of labelling as actors not in terms of their de facto participation in or self-exclusion from transitional justice, but rather in terms of how the shifting political context cast certain views expressed in certain ways as more or less legitimate. Being attuned methodologically to these issues was vital in our research. Considering these issues led us to work with the interview material in different ways. We became less interested in what was said by whom but rather in how overlaps and differences in articulation of views mapped onto the 'civil' and 'uncivil' lines drawn by the transitional justice process in discourses of its advocates as well as material practices in the truth commission hearings or courtrooms.

### **CIVIL SOCIETY IN COTE D'IVOIRE**

In 2010 the Presidential election, which had been postponed from 2005, was supposed to unify within the country and mark the formal end of a peace process which had begun in 2003. In 2002 a civil war had split the country with a buffer zone between the north and south. This was a civil war

defined by disputes over *Ivoirité*, fuelled by years of economic instability following a fall in the price of cocoa, and political instability following the introduction of multiparty politics in 1993. However, contested results in the second round of the presidential run-off in 2010 led to both the incumbent Laurent Gbagbo and his opponent Alassane Ouattara declaring victory. The African Union (AU), the Economic Community of West African States (ECOWAS) and the UN supported the election of Ouattara amidst high levels of postelection violence from 2010-2011. The crisis finally ended on the 11th April 2011 after the house arrest of Gbagbo.

In line with a now powerful international norm (Andrieu, 2010), Ouattara and his government quickly implemented a transitional justice process combining both legal redress and truth seeking measures. The ICC has issued indictments for crimes against humanity against Gbagbo and former leader and founder of the Young Patriots<sup>iv</sup> Charles Blé Goudé. Their cases, in which they are accused of the four crimes against humanity of murder, rape, other inhumane acts and persecution, were joined on the 11<sup>th</sup> March 2015. Gbagbo appeared before the court on the 28<sup>th</sup> January 2016 and pleaded not guilty. The former president's wife Simone Gbagbo has also been accused of crimes against humanity by the ICC but has not been transferred to The Hague and was instead convicted, and recently acquitted, in the Ivoirian national courts for crimes against the state and of disturbing the public order. In addition to the ICC indictments there has been a state-sponsored truth-seeking mechanism the CDVR, a national commission of enquiry, and national prosecutions.

What is noteworthy in the case of Côte d'Ivoire is that despite the contested elections, the government has been able to quickly implement a strong response to the human rights violations of the 2010-2011 period. The multiple mechanisms described here conform to the UN pillars of transitional justice, and the strong international and regional support for Ouattara lends a certain level of legitimacy to the state sanctioned process. However, there is a divergence between this state level response and the activities of civil society actors, many of whom contest not only the transitional justice process but the legitimacy of the government which is implementing it. Key issues of debate include the fact that thus far it is only supporters of Gbagbo who have been accused or prosecuted by

the ICC or national courts, that the CDVR final report has not been made widely publicly available, and that the transitional justice process in Côte d'Ivoire is mere victor's justice. Moreover, reactions to the transitional justice process in Côte d'Ivoire are often understood by Ivoirians and international actors as based on two main 'camps' of pro-Gbagbo and thus anti-transitional justice, or pro-Ouattara and thus in support of the transitional justice process being implemented. This division is replicated in civil society, but in some ways is also challenged. Before moving onto this we first provide some broader context for civil society in Africa and then turn to its development and dynamics in Côte d'Ivoire.

### **Civil society and the paradox of the publics in Africa**

Contemporary civil society in Africa is strongly linked in the literature to experiences and histories of colonialism (Ekeh, 1994), as well as defined by the optimism of donors concerning the ability of civil society to hold the state to account while implementing development programmes (Chabal and Daloz, 1999, pp.22-23). Complicating these discussions is a continuing debate over the very applicability of the term 'civil society' to African contexts (Orvis, 2001, Obadare 2004, Obadare 2005). Sceptics focus on the tendency to define civil society according to liberal democratic norms which exclude as uncivil the ethnic and religious associations which have nonetheless defined associational life in Africa since before colonialism (Kasfir, 1998, p.126 and pp.137-138). Attempts to reconcile this debate call for a re-thinking or expansion of the concept of civil society to refer to "a space where groups and individuals can interact and organise social life" (Obadare, 2004, p.13) and thus incorporate both "old and new associations" (Kasfir, 1998, pp.137-138).

Indeed, according to many scholars of civil society and Africa a narrow definition of civil society is blind to the richness of associational life in which "[c]ollective activity guided by the norms of moral ethnicity and taking the form of ethnic or patronage organizations is every bit as much a part of African civil society as are trade unions, professional associations or churches" (Orvis, 2001, p.18). Ekeh distinguishes between the primordial and civic public in order to offer an explanation for why primordial attachments have remained fundamental to the structuration of civil society (1994). In

particular, his work enables us “to see why civil society has functioned more or less as an exit site and shadow state; why, unlike civil society in the West, ethnic forces feature prominently in its structuration; and why civil society is an arena of fundamental contradictions and contestations and, therefore, why it is far from the cohesive or consensual formation sometimes sketched in the literature” (Osaghae, 2006).

The major constituents of Ekeh’s primordial public are ethnic, communal, and hometown development associations, which owe their origins to the alienating nature of the colonial state and its failure to provide for the basic welfare and developmental needs of the majority of people. Social exchanges are based on the mutual reciprocity between rights and duties, and ensuring the collective and individual well-being of members of the group (1975). By contrast the civic public is characterized by an endemic crisis of ownership. Partly as a consequence of the independence strategies pursued by nationalists, most people are not able to claim ownership of the civic public in the same way as they can claim ownership of the primordial public. Many challenges and questions remain about the constitution of civil society and especially whether ethnic associations can be regarded as constituents; about the relations between the state and civil society; and about the ability of civil society to serve as a reform agent. As Ekeh (1992; 1994) has argued in his later writings on the subject, these questions cannot be adequately answered until civil society has been historicized and contextualized in the light of African experiences (Osaghae 2006).

Tracing the development of African civil society into the post-colonial phase, civil society in the pathways of independence and democratization in Africa is often presented as a critical agent providing a counterweight to state power. However, this taken for granted dichotomy between state and civil society does not, according to Chabal and Daloz, reflect realities on the continent (1999, p.17). According to Fatton (1995) and Kanyako (2010) the reality is that the state penetrates civil society as the ruling classes seek to appropriate it for the benefit of their own positions of power and to implement divide and rule. But we should not only think of state control over civil society. Markovitz, among others, has written of the complex relationship between state and society in Africa, being

“intertwined” through the “embeddedness” of civil society in the state and through “establishing and realigning *networks*” (1998, p.22, emphasis in original). These relationships of capture, domination and control flow in both directions and may also reflect divisions between different elements of civil society (Ibid, p.24 and p.26). Indeed Chabal and Daloz have written of “the myriad ways in which political actors, within both ‘state’ and ‘civil society’, link up to sustain the vertical, infra-institutional and patrimonial networks which underpin politics on the continent” (1999, p.22). In amongst these complex relationships and networks scholars have found that Ekeh’s distinction between the primordial and civic publics continues to be renegotiated and contested (Datzberger, 2014, p.3) with the civic realm often designated as civil while the primordial is dismissed as uncivil (Kasfir, 1998, p.137).

### **The Dynamic of Civil Society in Côte d’Ivoire**

Following similar patterns as identified for African civil society more generally, in Côte d’Ivoire the role played by civil society during the political struggle against colonization was reversed and redirected by political elites following independence in 1960. This resulted in a strategy of restraint and control over freedom of expression by the new Ivorian leaders throughout thirty years of one-party rule. The Democratic Party of Côte d’Ivoire African Democratic Rally (PDCI-RDA) either squeezed out or absorbed its rivals, dominating many different parts of society, and particularly associational space (Fauré, 1982; Marie, 1998).

One particularly effective mechanism was control of workers and society more broadly through unions which were statutory bodies of PDCI-RDA. Only one central union was allowed to operate, that of the General Union of Workers of Côte d’Ivoire (UGTCI), with a similar logic in other sectors such as the single union of pupils and students named the Movement of the Pupils and Students of Côte d’Ivoire (MEECI), a single Ivorian Women’s Association (AFI), or the one union of transport the National Union of the Carriers of Côte d’Ivoire (SNTCI). However, economic crises of the 1980s, and the social and political fallout, eroded these mechanisms of control (Akindès, 2000). With the bankruptcy of the state and its ‘development model’ the social balance which had been assured

through clientalist cooption of 'elites' and 'counter-elites' (Fauré, 1991) was challenged and thus the supervision of the population by the one party state was eroded. It is in this context of crisis that the country revived multiparty democracy and with it emerged a seemingly more diffuse and active civil society.

Between 1990 and 1999 over 264 civil society organizations were registered (PNUD 2004). However, the return to multiparty politics and the opening of associational space, with freedoms of association, gave birth to a civil society apparatus that retained and even enhanced the reflexes of the one party political system. Civil society structures developed which re-created those which had been in place during one party rule, closely aligned with the PDCI-RDA. In addition, civil society coalesced around the political opposition. The proliferation of civil society organizations provided an opportunity for the coming together of oppositional voices and it is through civil society organizations that opposition parties were formed. Professors and researchers coming through the National Union of Research and Higher Education (SYNARES) established parties such as the Ivorian Popular Front of future President Laurent Gbagbo (FPI), the Ivorian Labor Party (PIT), the Union of Social Democrats (USD), and the Ivorian Socialist Party (PSI). As described by Konaté "it happens that in a single day, the activism of a teacher or of a student leads him alternately to a union meeting of SYNARES or of FESCI, to a meeting of LIDHO, to finish with a meeting of one of the four opposition parties where he finds the same comrades" (2003, p. 63).

### **Civil Society and the Political Agenda in Côte d'Ivoire**

The policy choice made after independence to eschew democratic freedom for economic growth and political stability is a legacy that continues to shape the field of civil society in the twenty years following the return to multiparty politics. Indeed, those in power continue to adopt a strategy to control this space while opponents use it as a resource to weaken the regime and to claim state power. While particular civil society organizations may be aligned with a particular political party,



others have experienced camps developing within them which become relatively more or less powerful over time.

Indeed, after a coup in 1999 and the defeat of the 'republican front' (the political alliance between the RDR and FPI opposition against PDCI-RDA from 1995-1999), FESCI was split by a confrontation between factions of the RDR and the FPI. These two camps continued to divide key civil society organizations during the political and military crises from 2002-2011 (Goin Bi, 2011; Konaté, 2003). The birth of human rights organizations also follows this trend. Judge Zoro Bi Epiphane who was dismissed in 1999 for having signed the certificate of nationality of Ouattara<sup>v</sup> established the Ivorian Movement for Human Rights (MIDH). He was later exiled due to the political tensions and 'repression' against Ouattara supporters:

"The period of transition after the military coup of 24 December 1999 was characterized by a precarious situation. The MIDH, new movement, will not escape the intimidation, threats and other pressures. For various reasons, MIDH is "wrongly" labeled as close to certain political parties and a section of the population (northerners and foreigners)" (<http://www.midhci.org/nous/>).

Indeed, during a later period of rebellion following an attempted coup on the 19<sup>th</sup> September 2002 civil society was once again restructured according to support for the belligerents as well as humanitarian activities (Adou Djané, 2016). In this context, organizations such as Actions for the Protection of Human Rights (APDH) were established:

"Since 19<sup>th</sup> September 2002, Côte d'Ivoire has had a sad episode in its history. Indeed this date marks the war imposed by an armed rebellion. Three months after the outbreak of this serious crisis, Ivorian youth, created a structure. Outraged at the atrocities, inhuman and degrading treatment suffered by the victims of this war, these intellectuals, lawyers decide to protect human rights. Hence the birth in 2003 of Actions for the Protection of Human Rights (PADH)" (APDH, 2011:3, authors' own translation).

In the same vein, similar coalitions of civil society organizations were established. This includes the Convention of Ivorian civil society (CSCI) established in 2003, the Coalition of Civil Society for Peace and Democratic Development in Côte d'Ivoire (COSOPCI) established in 2004, and the Coalition of Ivorian Actors for Human Rights (RAIDH) established in 2005. Each coalition contained within it several members aligned to one of the two 'camps'. Following the same pattern, in 2006, all political, trade union organizations and movements born due to the political-military crisis of 2002 and which supported Gbagbo set up the National Congress of Resistance for Democracy (NDRC). In this way the contemporary dynamics of civil society in Côte d'Ivoire include a series of coalitions forged in the changing political and military contexts and increasingly divided by two 'camps' which have come together in coalitions closely aligned with either humanitarian work or one of the two main political camps.

From these details of the development of civil society in Côte d'Ivoire there are some observations which are particularly important when attempting to research the 'uncivil'. From the point of independence of Côte d'Ivoire associational space was heavily controlled by a one party state able to co-opt elites and utilize the mechanisms of unions to ensure that the state and civil society worked together to observe and control the population. To this end civil society activity was only possible through allegiance to PDCI-RDA. When multiparty politics was introduced it seemed as if associational space was finally opened up and civil society organizations proliferated in many different sectors of society. However, this broadening of civil society reproduced the kinds of close associations between civil society and political parties which had existed previously. Politicians from different backgrounds were now working through civil society to garner support, establish parties and challenge the governing party. Membership of political parties and civil society organizations overlapped with civil society itself divided by the changing politics as a series of political, economic and military crises destabilized the country. In this sense civil society has never stood apart from the state and formal politics, and indeed its close alliance with political parties, and political factions has been its defining

characteristic. Over time we have seen what Ekeh described as the civic public open but also close to different parts of society.

### **(UN)CIVIL SOCIETY IN CÔTE D'IVOIRE**

As has already been highlighted above, the relationship between civil society and the current transitional justice process can be read as divided between two camps. On one side there are the organizations which support and accompany the process, such as those who document violations of human rights, provide support for the implementation of state structures and also those who monitor the process itself. These organizations are mainly clustered together in a coalition which includes the International Coalition for the ICC (CI-CPI) national section, the Coalition of Ivorian Actors for Human Rights (RAIDH), the Coalition of Civil Society for Peace and Development of a Democratic Côte d'Ivoire (COSOPCI), and the Convention of Ivorian Civil Society (CSCI) among others. An example of such support can be seen in the words of a representative of the CI-CPI:

"the CI-CPI is an organization of 16 NGOs working for ratification of the Rome Statute and also to end impunity...[the CI-CPI]...is mainly involved in criminal prosecution, because wanting to put an end to impunity, we want the perpetrators of crimes to be prosecuted and tried, especially by national or international courts such as the ICC "<sup>vi</sup>.

And of the RAIDH:

"We went to the field, we collected opinions and we did our research. To see the causes and effects of different violations in different localities. We took into account the human rights violations from 2002 to 2011. Whether it's by LIDHO, APDH, MIDH even often and very often the statements and reports of FIDH are based on the local reports of LIDHO, MIDH that are members of this international organization of human rights, so it is to say that in reality civil society is doing its job."<sup>vii</sup>

The perception that the job of civil society is to support the transitional justice process has led to activities in support of the investigations by the National Commission of Inquiry which was established early in the process in 2011, and with the work of the civil society platforms for the CDVR:

“With the CDVR, we worked even though this cooperation was very difficult...Our concern was that we are in the field. We had the ground realities, with the physical data. We know the victims.”<sup>viii</sup>

Elaborating this special role for civil society organizations – closeness to the victims, knowledge of the local areas, ability to mobilize the population and to provide information – chimes well with the literature on civil society and transitional justice more broadly. However it is also based on a series of assumptions such as the moral ‘good’ of supporting the given transitional justice process, of the uniqueness of the ability of civil society to do this, and of the innate civility of their mission. Returning to the quote which began this paper, we can also see that there are some actors and organizations who understand the role of civil society very differently. Positioned within a politically contested space, as outlined above in the history of the development of civil society in Côte d’Ivoire, civil society also works to contest the process and to challenge the Government’s legitimacy. These actors reproduce the logic of ‘resistance’ that emerged against the armed rebellion of 2002 and which was used to ‘defend’ the ‘institutions of the Republic’. A continuum of language of resistance discursively positions the current Government and its pursuit of justice as anti-democratic and anti-Ivoirian<sup>ix</sup>.

For the context of our research it is important to note that these actors have been squeezed from the public space in which transitional justice could be debated, both in terms of their legitimacy and in terms of their ability to access ‘air time’. For example, a representative from a diaspora group in the United States of America explained that:

“During the time of the elections I was invited by Voice of America to give a position, and to speak on behalf of what we call quote on quote the pro-Gbagbos. And many times I had an opportunity to do that and I was interviewed also in a contradictors debate with other people.

But right after April the eleventh, all those doors were, shut....so there was a tacit boycott of anything that would be representing the views or dissenting views to the position taken by the US administration”<sup>x</sup>.

Such actors we interviewed produce leaflets, organize protests and are active on social media in support for Gbagbo, even though they are often clear to explain that theirs is a cause for democracy which is one for all Ivoirians:

“the question of the sovereignty, the authority and the capacity of the Ivorian people regardless of their political affiliation, to decide who should be the leader of their country”<sup>xi</sup>.

During news coverage of the opening of Gbagbo’s trial one commentator wrote:

“Hundreds of Gbagbo’s supporters gathered outside as the hearing began, demanding the release of a man they say is a victim of neo-colonial meddling by former colonial power France. Presiding Judge Cuno Tarfusser insisted the court would not be used for political grandstanding during the trial”<sup>xii</sup>.

Such language which dismisses as illegitimate the activities of these actors can also be found in the Ivoirian press. In general, the Ivoirian press which is understood by Ivoirian political actors to be in support of the ‘resistance’ against transitional justice in Côte d’Ivoire is known as the ‘blue press’ and such media covers the ICC trial of Gbagbo and Blé Goudé as the “Trial of Shame”, and the national trials as “Victors’ Justice”. The statement below calling for mobilization around Gbagbo at the opening of his trial at the ICC on the 26<sup>th</sup> January 2016 is one such example:

“All in The Hague January 28, 2016 to support President Laurent Gbagbo and the Minister Charles Ble Goude, the official opening of the trial of Shame by the ICC, and to maintain pressure so that the truth can triumph and be set free. One day: Thursday. Date: January 28. A City: The Hague. A cause: support for the President of Ivory Coast Laurent Gbagbo Koudou and minister Charles Ble Goude battling imperialist institution of modern times. Ivorian patriots, Africans, friends of Africa and Côte d'Ivoire, the time of mobilization is here. Do not be telling the story of Africa that is written under your eyes”<sup>xiii</sup>.

Or one of the main titles of *Le Temps*:

“Dismissal of Gbagbo Appel Lawyers. The judges of the ICC are divided. France finally admit the plot!”<sup>xiv</sup>.

However, the press close to President Ouattara shows full support for the transitional justice process, accusing supporters of Laurent Gbagbo of being solely responsible for crimes against humanity and deserving of prosecution. For example, *Le Patriote* which is one the strongest supporters of President Ouattara has covered the ICC trial in the following way:

“ICC 2nd day of the trial of Gbagbo and Ble Goude. The shock of horror. The world discovers the ugly face of a bloody regime. The meticulous and professional work of the prosecution”<sup>xv</sup>, or, “Lawyers of the devil come in. How they tried to turn the executioners into victims. Frequently manipulation and lying this morning”<sup>xvi</sup>.

Indeed, we have observed that since the start of the transitional justice process supporters of Laurent Gbagbo have had to become more ‘discreet’ in their day to day use of public space, to avoid accusations and dismissals. The ‘Agora’ and ‘Parliament’<sup>xvii</sup> have distinguished themselves as popular local gathering spaces for the dissemination of opinions and ideologies of the ‘resistance’. This is what Toh and Banégas show in 2006, stating that “It is striking to note how the theme of institutional and constitutional resistance now took precedence over any other legitimating argument. Today in the “agora” and “parliaments” that proliferated in the city, daily work can be observed for the sensitization, mobilization and propaganda in favor of the Constitution. Supporters of the plan are white-hot on this theme as we have been able to see during a regular meeting at the “parliament” of Yopougon-Sideci September 20, 2006, the day the UN had to decide the fate of Côte d’Ivoire”( 2006, p.143). Following the post-election crisis in 2010/11 the security situation became unfavorable to such mobilization and thus the Agora and parliaments have had to reduce their profile:

"It was with the transition that the rebels have been recognized...For a true Ivoirian name, when you see that, you're not happy. But we are looking at that because today it is justice of the victors. That's what they call transitional justice. What Ivorian, who is mandated to put this

transitional justice in place and who are those who compose it? When you see them, it cannot give the desire for an Ivorian to sit on the same table to talk about reconciliation. They say we will reconcile and they put people in prison (...) <sup>xxviii</sup>.

It is unsurprising, given the background sketched earlier, that civil society is divided in Côte d'Ivoire in terms of how different actors understand their role vis-à-vis the transitional justice process. When taken at face value this distinction is a pronounced one between those who support, monitor and implement and those protest, make alternative suggestions and actively work against by refusing to participate or publically calling into question its legitimacy. The ways in which civil society and facets of civility useful for transitional justice have been discussed so far in the literature suggest that these are moral dividing lines between the civil/uncivil. Indeed, the framing in the press or by transitional justice advocates of these uncivil actors in Côte d'Ivoire reproduces these dichotomies and reduces the actors we have interviewed to mere Gbagbo supporters bitter at the ousting of 'their President', opposed to Ouattara, and thus necessarily opposed to the 'goods' of democracy and justice. However, this ordering of civil society cannot capture the dynamics in Côte d'Ivoire and thus their activities vis-à-vis the transitional justice process.

As outlined above, the series of political crises in Côte d'Ivoire has divided, shaped and re-defined the different 'camps' represented through civil society organizations, rendering the lines between civil/uncivil changing depending on who has political power and whether political violence was particularly marked during a given period. The presence of a state sanctioned transitional justice process adds an additional layer, introducing an often simplistic framing of actors as either pro-Gbagbo/opposed to justice/uncivil or pro-Ouattara/supporter of justice/civil. The moral ordering inherent to transitional justice as it is implemented has been etched onto a complex landscape of shifting networks between political and civil society actors, de-contextualizing the way in which civility is being presented and understood. In addition, the dichotomy between the civil and uncivil which is being produced by the press, advocates of transitional justice, international commentators and actors does not take account of the different ways in which civil society actors understand their role. The

'uncivil' actors which we have interviewed certainly saw their role as disruption and challenge, but did not understand this as opposed to justice and democracy in Côte d'Ivoire, in fact they understood their role as central to it.

### **THE DISORDER OF THE (UN)CIVIL AND THE IVORIAN PUBLIC**

The question of the role of civil society and the nature of the kind of 'civility' required to consolidate the 'new' social contract of a society which has experienced massive human rights violations will continue to be a significant and necessary part of the literature on transitional justice. However, our empirical research complicates any assumed relationship between 'civil' society and transitional justice processes. In the case of Côte d'Ivoire civil society has never, in one sense, contained the kinds of 'islands of civility' which are the target of transitional justice advocates intent on leveraging the democratic impulses of the population to support various processes and mechanisms. Colonialism and the post-independence one-party state has ensured a legacy of close alignment and indeed overlap between civil society and political parties, meaning that associational space is frequently leveraged for political goals, split between political factions, and divided in ways which change over time. Moreover, civil society actors themselves understand the nature of their role in varied ways, each claiming to contribute to Ivorian democracy, whether through supporting the work of the CDVR or protesting outside of the ICC at the opening of the trial of Gbagbo and Blé Goudé.

Coming back to the framing of this article, and following detailed descriptive work on the shifting boundaries between the civil and uncivil in Côte d'Ivoire's civil society, we can see even more clearly the limits of the liberal approach to civil society which dominates transitional justice policy and scholarship. In order to understand and analyse more fully the (un)civil society in Côte d'Ivoire we need to do more than think in terms of public outreach, citizen participation and exclusion of the 'bad guys'. We need to look at actually existing civil society which demands attention to context, and we need to understand what role such disorder is playing in the continuing struggle over the public and associational space in Côte d'Ivoire. With reference other country contexts such as Nigeria Obadare's



writings on the (un)civil society in Africa are helpful here as we unpick what we have observed in Côte d'Ivoire. The moral ambivalence of civil society which is highlighted by Obadare (2005) directly challenges a tendency in the literature to focus on the civility of civil society, on organisations of civil society, and on the supposedly independent character of civil society. As he writes “[r]ather than a monolithic formation with inherent characteristics, civil society is a zone of contestation constantly buffeted and formed by the contradictions of the wider social field in which it is located. Thus, its moral properties, just like its very definition, are a moving target” (Ibid, p.279). Obadare suggests greater attention be placed on actually existing civil society and on the more personal aspects of the lifeworlds of civil society organisations and the actors within them (2011).

The actually existing civil society in Côte d'Ivoire is embedded in an historical context of repression during the Colonial period, instrumentalisation during the one-party state following independence, and a fast growing diverse civil society organisations which opposed, were used by, and over-lapped with political parties and the state. Thus to mobilise such organisations in a support role for transitional justice will have its limits. More than this the actually existing civil society contains facets of the civil and uncivil as defined by transitional justice advocates, donors and national politicians and commentators. Importantly the labelling of civility is something that is highly contested and the ‘uncivil’ actors we interviewed identify themselves as Ivorian citizens working towards the common good of Ivorian democracy under threat from an illegitimate President and neo-colonial interference from France. As one press release stated “all those in love with justice and democracy must resist” (Zokou 2012). This was reinforced by the statements of interviewees such as “the combat for the liberation of Laurent Gbagbo is a combat for the return of democracy”.<sup>xix</sup>

By explicitly connecting the current situation in Côte d'Ivoire with a past of colonialism and with a geopolitics which allows neo-colonialism to continue these actors made sense of their attempt to disrupt transitional justice by linking their actions with other times and other scales. Recent discussions in transitional justice about the importance of ‘localising transitional justice’ (see for example Shaw and Walford, 2010) express a wariness of external interventions in societies reckoning

with a past of massive human rights violations. A contradiction arises though when such wariness of intervention is expressed by the (un)civil actors we interviewed, as their concerns about the role of the UN and France are attributed to a lack of acceptance of the Presidential election result.

We come to ask then what is added to the analysis of civil society in Côte d'Ivoire if we think of these (un)civil actors as engaged in a struggle to expand the democratic public and ensure a space for their voices and perspectives within Ekeh's civic public? By framing transitional justice in Côte d'Ivoire as more than a narrow set of mechanisms designed to redress a specific set of crimes, these actors connect the current justice-seeking process in their communities with a national struggle for political power, with a geopolitical struggle for influence in the region of West Africa and with an international debate over the relevance and potency of universal rights and values. This demands that transitional justice itself is contextualized and problematized by its position in relation to these different scales. Transitional justice is not immune from such context or politics, and some scholars have argued that indeed it is embedded within them. The impulse for order and closure which so often accompanies transitional justice process, and which is illustrated in the discussion of transitional justice scholarship earlier in the article, interacts with the civic public in Côte d'Ivoire which is only partly accessible. Certain actors can gain access to this civic public at different times, and this depends upon the shifting divisions between communities within Côte d'Ivoire prompted by ongoing social and political crises. We can see that those actors who are currently excluded – the 'uncivil' and the 'pro-Gbagbo' – are using the opportunities posed by the transitional justice process to create disorder and disruption and to demand an audience.

These acts of disorder and disruption are an explicit demand for a greater variety of voices to be part of the debate over what Ivorian democracy could and should be. Putting aside the question of the morality which could be attributed to their position, it is clear that transitional justice scholarship and practice needs to go much further in engaging with the difficult question of acknowledging different perspectives on what counts as justice, civility and democracy. If this is not done, then we will continue to observe the kinds of empirical puzzle which began this article: transitional justice

requires a decent civil society, but civil society in context is more complex and contested than transitional justice policy allows for. The circular argument will continue as transitional justice processes seek out civil society for outreach and participation while ignoring (un)civil society without any acknowledgement that the act of labelling actors as 'civil' and 'uncivil' says more about the moral ordering inherent to transitional justice than it does about the positions of the actors themselves. More reflective research with a plethora of different voices, including those dismissed as 'uncivil' will be a vital part of research able to unpick these contradictions.

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<sup>i</sup> Interview conducted in French in person on 12th May 2014.

<sup>ii</sup> Commission Dialogue, Vérité et Réconciliation.

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<sup>iii</sup> The project 'Resisting Transitional Justice? Alternative Visions of Peace and Justice' included three country case studies of Côte d'Ivoire, Burundi and Cambodia and was funded by the Swiss National Science Foundation.

<sup>iv</sup> Jeunes Patriotes.

<sup>v</sup> A Presidential hopeful during this time but also a political enemy of the Bédié regime from 1993-1999, which accused Ouattara of being ineligible for political office due to Burkinabe heritage.

<sup>vi</sup> Interview conducted in person with officials at CI-PI headquarters in Abidjan, November 2013.

<sup>vii</sup> Representative of the RAIDH during the Workshop at CSRS, Côte d'Ivoire, 5 November 2014.

<sup>viii</sup> Representative of the RAIDH during the Workshop at CSRS, Côte d'Ivoire, 5 November 2014.

<sup>ix</sup> A detailed analysis of the discursive acts resistance can be found in a previous publication [REDACTED]

<sup>x</sup> Interview conducted in English by phone on 29th May 2014.

<sup>xi</sup> Interview conducted in English by phone on 29th May 2014.

<sup>xii</sup> <http://www.thestar.com.my/news/world/2016/01/28/ivorian-expresidents-supporters-protest-as-gbagbo-trial-opens/>

<sup>xiii</sup> <http://www.ivoirebusiness.net/articles/procès-de-la-honte-tous-à-la-haye-le-28-janvier-2016-pour-soute> .

<sup>xiv</sup> Le Temps N°3040 DU 30/10/2013, p.1.

<sup>xv</sup> Le Patriote, Saturday, January 30, 2016. No. 4741.

<sup>xvi</sup> Le Patriote, 01 February, 2016, Here the Lawyers of Gbagbo at the ICC are treated to be Lawyers of the devil.

<sup>xvii</sup> They constitute popular gatherings spaces and expression of pro -Gbagbo militants to disseminate their ideas and strategies of "resistance" against the rebellion and its supports, the first of which is France according to them. The symbols of "Agora" and "Parliament" means freedom.

<sup>xviii</sup> Focus group of discussion with Gbogbo supporters of the "Parliament" of Agbékoï, at Abobo, conducted in person, 4 May 2014 .

<sup>xix</sup> Interview conducted in French by phone on 13<sup>th</sup> October 2014. Authors' own translation.