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Technical assistance and capacity-building

### Report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, Mohammed Ayat\*

#### *Summary*

In this document, which covers the period from 1 December 2014 to 31 March 2015, the Independent Expert reports on his first visit to Côte d'Ivoire, from 12 to 21 January 2015. He welcomes the progress made by the Government in terms of respect for and protection of human rights, particularly its efforts to set the country's economy back on the path of sustainable development and the establishment of bodies such as the National Human Rights Institute, the Dialogue, Truth and Reconciliation Commission, the victims' reparation fund and the National Programme for Social Cohesion.

The Independent Expert also commends the Government's efforts to build capacity in the justice system, including through renovation of the courts and the ongoing legislative reforms, notably of the Criminal Code, the Code of Criminal Procedure, the Civil Code and the Code of Civil Procedure. He welcomes the reopening of the assize courts after many years, which should in theory make it possible to bring cases for serious offences against and violations of human rights and international humanitarian law and to help combat the culture of impunity.

The case currently before the assize courts against 83 persons, including Simone Gbagbo, is a good start towards combatting the impunity that reigned for nearly two decades. However, the Independent Expert points out that the proceedings still concern a restricted period, that of the electoral crisis in 2010, despite the fact that serious violations of human rights and international humanitarian law had been committed for more than a decade before then.

The Independent Expert also emphasizes that the charges concern acts prejudicial to State security. There is still impunity for the perpetrators of serious violations of human

\* Late submission.



rights and international humanitarian law. Lastly, the charges still focus on just one party to the fighting, although the reports of both the international commission and a national commission indicated that both parties committed acts of violence that could constitute international crimes. The Independent Expert states that equitable justice is a necessary passage towards breaking the vicious circle of violence.

The Independent Expert recognizes that this path must be embarked on with caution to avoid destroying the hard-won but fragile progress that has been made in security and economic development, which benefits all Ivorians. However, he finds it clear that no achievement can be sustained if it is not endorsed by justice. In that regard, the Independent Expert is pleased to note that almost all those with whom he discussed the issue, particularly Ivorians, agreed that justice must be impartial and equitable. It remains for that conviction to be put fully into practice.

The Independent Expert makes a number of recommendations intended to improve detention conditions in prisons and to strengthen measures taken to combat impunity and the legal framework for the protection of human rights in the country. He calls on the international community to provide staunch support for Côte d'Ivoire on its path towards reconstruction.

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## **I. Introduction**

1. The present report, covering the period from 1 December 2014 to 31 March 2015, is submitted pursuant to resolution 26/32 of the Human Rights Council, adopted on 27 June 2014, in which the Council decided to establish a new mandate on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, to follow on from the previous mandate, for a renewable period of one year, and requested the Independent Expert to submit a report at its twenty-eighth session and his final recommendations at its twenty-ninth session.

2. The Independent Expert's first visit to Côte d'Ivoire took place from 12 to 21 January 2015. He was received by Alassane Ouattara, the President of Côte d'Ivoire, the Prime Minister, the Minister for Foreign Affairs, the Minister of the Interior and Security, the Minister for Employment, Social Affairs and Vocational Training, the Minister of Justice, Human Rights and Public Freedoms, the Minister of Higher Education and Scientific Research, the Minister of National Education and Technical Education and other senior civilian and military authorities.

3. The Independent Expert met with the Prosecutor-General at the Court of Appeals of Abidjan, the Public Prosecutor at the Court of First Instance of Abidjan, the Chief of General Staff of the Armed Forces, the chairperson of the National Human Rights Commission, the Ombudsman, the chairperson of the National Electoral Commission and the former chairperson of the Dialogue, Truth and Reconciliation Commission. The Independent Expert visited detention centres in Abidjan. He also met with the leaders of the majority and opposition political parties, religious leaders, traditional chiefs, human rights non-governmental organizations (NGOs), the diplomatic corps and United Nations bodies.

4. The Independent Expert wishes to thank the Ivorian authorities for facilitating the effective completion of the mission and for being so open to dialogue. He would also like to thank all those who provided him with useful information on the human rights situation in Côte d'Ivoire. He would furthermore like to commend the excellent work done by Mr. Doudou Diène, the previous Independent Expert.

5. The Independent Expert wishes to thank the officials of the United Nations Operation in Côte d'Ivoire (UNOCI) and the staff of the Human Rights Division of UNOCI for their technical and logistical support, which ensured the smooth running of his mission to Côte d'Ivoire.

## **II. General situation in the country**

### **A. Institutional framework**

6. Côte d'Ivoire has a presidential system of government (Constitution of 23 July 2000). The President is elected by universal suffrage in a two-round election for a five-year term renewable only once. The President holds executive power. He appoints the Prime Minister — the head of Government — who is answerable to him. Côte d'Ivoire has a single-chamber Parliament (Constitution, art. 58). The Parliament adopts legislation, including in relation to the fundamental freedoms of citizens.

7. The Ivorian Constitution establishes the principle of the independence of the judiciary from the other branches of government. The President of the Republic is the guarantor of the independence of the judiciary. He presides over the Supreme Council of Justice.

8. In its preamble, the Constitution proclaims the country's commitment to human rights and fundamental freedoms and to democratic values. An extensive chapter of the Constitution is devoted to the recognition of human rights (arts. 1 to 22), focusing in particular on equality before the law (art. 2) and providing for the guarantees of a fair trial (arts. 20 to 22).

9. International agreements that have been regularly adopted by Côte d'Ivoire prevail over domestic laws. The Independent Expert notes with satisfaction that Côte d'Ivoire has ratified seven of the nine international human rights instruments that form the backbone of the broader international human rights framework. It has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Côte d'Ivoire still needs to ratify other important conventions and protocols in order to consolidate the progress already made in the adoption of international human rights instruments.

## **B. Political context**

10. In the 1960s and 1970s, Côte d'Ivoire enjoyed resounding economic success, which attracted many immigrants from neighbouring countries. In 1998, approximately 26 per cent of the population of Côte d'Ivoire was made up of non-nationals. In the 1990s, a number of factors, including the introduction of a multiparty system and the economic crisis caused by the fall in coffee and cocoa prices, began to exacerbate xenophobic tension. This tension centred around the concept of "ivoirité", underlined in article 35 of the Constitution.

11. Since then, the country's history has been punctuated by violent events, starting with the overthrow of President Henri Konan Bédié in a military coup on 24 December 1999 and followed by an armed conflict that virtually split the country into two opposing parties: the north, more or less controlled by the rebels, and the south, which remained in the hands of supporters of President Laurent Gbagbo. The violent conflicts that have arisen in Côte d'Ivoire since the late 1990s have primarily been related to elections. The most recent electoral crisis was in 2010.

12. In the second round of the presidential elections in November 2010, Alassane Ouattara was declared the winner by the Independent Electoral Commission. This result was certified by the United Nations and accepted by the African Union. On the same day, the Constitutional Council had announced the victory of Laurent Gbagbo. The two men both took an oath of office and a wave of violence broke out. According to UNOCI estimates, 3,000 persons lost their lives and there were thousands of injured and displaced persons and refugees (there are still some 300,000 displaced persons and over 50,000 refugees, mostly in Liberia).

13. The situation began to ease following the arrest of Laurent Gbagbo and his transfer to the International Criminal Court. Alassane Ouattara was inaugurated as President on 21 May 2011. Since then, the country has been trying, with the support of the international community, to restore peace and social cohesion and regain its momentum towards economic development. This arduous work, which is still ongoing, has resulted in tangible and commendable progress.

14. The next presidential elections are scheduled for October and November 2015. However, for more than a decade, election periods have given rise to violent disturbances. All national and international stakeholders concerned with the human rights situation in the country must therefore be vigilant. This need for vigilance makes the Independent Expert's obligation of objectivity more imperative than ever and also means that he must be very

circumspect and measured in what he says, in order to effectively support the country in its journey towards stability and the consolidation of social peace and greater respect for human rights.

### C. Security situation

15. Peace is the foundation necessary for economic and human development and the promotion of all categories of human rights. The Government of Côte d'Ivoire, with the assistance of its international partners, is trying to establish lasting peace in the country. As a result, there has been a remarkable improvement in security, which the Independent Expert wishes to acknowledge, although it remains fragile.

16. In Abidjan, there are no longer illegal roadblocks or hold-ups organized by uncontrolled forces. Elsewhere, particularly in the west, north and sometimes centre of the country, the phenomenon of highway robbery still persists. The competent UNOCI units record some 14 such incidents per month. There is also crime due, among other factors, to the legacy of the long period of civil war, especially the economic difficulties it has created for vulnerable population groups.

17. Some of this crime is committed by children in conflict with the law, often living in precarious conditions with a poor family environment or no family environment at all. These children are commonly referred to as “germs” (*microbes*), a term frequently used by Ivorians in their everyday speech and in the media. The Independent Expert would like to draw attention to the fact that this is a term that carries a strong stigma and is likely to entrench juvenile offenders in their deviant behaviour. He therefore urges the Ivorian authorities, the Ivorian media and Ivorian civil society to completely eliminate this highly degrading term, which is used to describe some children in conflict with the law, from their vocabulary. It should also be mentioned that these children and children in general are victims of crime, including sexual abuse. The alarming phenomenon of child abduction is common. Indeed, the Ivorian authorities have strongly condemned the practice and pledged to combat it through appropriate preventive and punitive measures.

18. However, in terms of security, the risks of instability have not been entirely eliminated. The Akouédo military camp in Abidjan was attacked on the night of 17–18 September 2014. The attack resulted in the deaths of four members of the Forces Républicaines de Côte d'Ivoire (FRCI) and an attacker and injured several people, including two UNOCI soldiers. Similarly, during the night of 9–10 January 2015, the Grabo region was the scene of an attack by an armed commando in which three persons were killed – two members of the FRCI and an assailant. The attack also led to the displacement of more than 1,000 people.

19. The continued security risks in Côte d'Ivoire must be seen in the particular context of the long period of violent disturbances that has only just abated, together with the upcoming elections. The situation is thus linked to specific factors that require an appropriate response. These factors include the difficulty in monitoring some geographical areas, such as the porous border area in the north of the country and the many huge forest areas.

20. In addition, the Dozo (a heterogeneous group of traditional hunters) and “comzones” (former zone commanders) still have some influence in a few localities outside the capital. Furthermore, some of the ex-combatants are still in possession of firearms, while they wait for the ongoing disarmament process to reach them. The authority responsible for the disarmament, demobilization and reintegration of ex-combatants has identified 76,000 former combatants.

21. To date, more than 46,000 persons have been effectively disarmed, with some 30,000 remaining. The Government plans to finalize the whole disarmament operation by about June 2015, which should contribute to the efforts to ensure a calm atmosphere ahead of the next presidential elections and a climate conducive to sustainable economic and social progress. The international community is actively helping to implement the disarmament programme and should continue to support it through to its conclusion.

22. Social protest movements can sometimes have significant potential to destabilize. However, social demands have almost invariably been followed by a dialogue in order to avoid escalation. The Ivorian authorities clearly have the will to maintain an adequate level of security and social peace. The anger of some elements of the Armed Forces who demonstrated in Abidjan on 18 November 2014 was quickly calmed by the Government, which reacted promptly and promised to meet their demands. The same is true of a recent strike begun by prison guards. However, the dialogue with striking university teachers continues, with a serious risk of the students not being able to take their examinations this year.

#### **D. Economic and social situation**

23. A thriving economy can provide fertile ground for human rights to flourish. The economic growth rate in Côte d'Ivoire was in double figures in 2012 (10.5 per cent) and 8.5 per cent in 2014. Other indicators also point to the country's reinvigorated economy. These include the new investments in infrastructure, the return of the African Development Bank, the resumption of long-haul flights connecting the capital with Europe, the improved business climate reflected by international agencies and the establishment of a commercial court. Another symbolic and timely event that raised hopes was the crowning of the Côte d'Ivoire football team as champions of the Africa Cup of Nations on 8 February 2015.

24. The Independent Expert commends the Ivorian Government on the economic progress it is in the process of achieving, while encouraging it to strengthen efforts to ensure that this progress benefits all segments of the population living in Côte d'Ivoire, firstly, because the impact of economic progress is only felt by the most disadvantaged groups after a relatively long time and, secondly, because enlightened social policy is part of a good economic recovery and should be pursued in tandem with it.

25. In addition, there are emergency situations that need to be addressed quickly. Indeed, Côte d'Ivoire is ranked 171st of a total of 187 countries in terms of human development.<sup>1</sup> This means that there are still many people in need in Côte d'Ivoire. One in every two Ivorians lives below the poverty line. The Government is well aware that this situation could have a negative impact on social and political stability and has taken or is taking steps to meet the needs of the most disadvantaged groups.

26. In this regard, a national social protection strategy was adopted in 2013 (with action plans in progress). One of the achievements under the strategy was the introduction of universal social security coverage to make health care more accessible to the entire population. Furthermore, a bill is being prepared to make education free and compulsory until the age of 16. This is extremely important given that, according to statistics from the United Nations Educational, Scientific and Cultural Organization (UNESCO), one in two children has never attended school and is likely to be illiterate.

<sup>1</sup> United Nations Development Programme, Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience, New York, 2014, table 1, Human Development Index and its components, pp.180–183, on p. 182.

27. In addition, a reform of the cocoa marketing chain has directly benefited approximately 1 million farmers. Capacity-building projects for small and medium-sized enterprises are under way, aimed, inter alia, at reducing the size of the informal sector and combating unemployment.

28. The past two decades, marked by conflicts, the exacerbation of inter-ethnic tension and violence, have seriously weakened social cohesion in Côte d'Ivoire. The wounds inflicted must be healed and that will take time. The process is already under way and must continue without interruption.

29. Several institutions have been set up to help, directly or indirectly, to mend and protect the social fabric. These include the Dialogue, Truth and Reconciliation Commission, the National Programme for Social Cohesion, the Ombudsman and the National Human Rights Institution. They are discussed later in this report, but first the Independent Expert would like to highlight, with both emotion and particular interest, a point that is clear from most of the statements made by the Ivorian people with whom he spoke. In short, but very revealingly, Ivorians are tired of the violence and endless disputes of politicians. They want to live, here and now, a normal life in which they can flourish without constraint and support their children to do the same.

30. The ordinary people of Côte d'Ivoire are eager for peace and development and want their human rights to be respected. For those born in the 1950s, the "golden era" is not so long ago. It is an ever-present part of their past, and they often talk about it nostalgically to younger people, which is inspiring for everyone and offers them great hope.

### **III. Human rights situation**

#### **A. Civil and political rights**

31. During the period covered by this report, the Independent Expert received information, particularly from United Nations agencies, concerning violations of the rights to physical integrity, including acts of torture and inhuman and degrading treatment, arbitrary arrest and detention, sexual violence and violations of freedom of expression. In December 2014, UNOCI documented two cases of human rights violations committed by members of FRCI: one case of arbitrary arrest and detention and one case of torture and cruel, inhuman and degrading treatment. In December 2014, nine cases of rape were also recorded, most of them committed by civilians.

32. In January 2015, the decline in the number of human rights violations committed by FRCI registered in December 2014 continued. However, UNOCI noted the arbitrary arrest and detention of two men in a military camp. The number of victims of sexual violence remained stable, with 10 cases of rape. Eight suspects were arrested and three of them were sentenced to between 3 and 5 years' imprisonment for indecent assault.

33. In February 2015, the Human Rights Division of UNOCI documented 22 cases of human rights violations, which marked an increase compared to December 2014 and January 2015. Twelve cases of human rights violations committed by FRCI soldiers were recorded, including arbitrary arrests and detentions and inhuman and degrading treatment. The number of victims of rape also increased in February 2015, with 16 registered victims, 15 of whom were minors. In two cases, the alleged perpetrators were government officials, one a teacher and the other a health worker.

34. On 12 February 2015, the Toumodi court of first instance sentenced a person for indecent assault in a rape case. The Independent Expert notes with concern that rape is

often prosecuted as indecent assault before the criminal courts, which underestimates the seriousness of this crime for the victims.

## **B. Economic, social and cultural rights**

35. Côte d'Ivoire has a population of 20.8 million people, more than 50 per cent of whom are under 24 years of age. This demographic profile poses major challenges to the State in the areas of education and employment and in relation to social solidarity.

36. The country's gradual economic recovery, which is well under way, could play a decisive role in the promotion of economic and sociocultural rights. Macroeconomic reforms have resulted in significant growth. In 2008, 49 per cent of the population was living below the poverty line. Per capita gross domestic product has now increased by 15 per cent. The Government plans to carry out a survey on the situation of households in March–April 2015 to assess the impact of this progress on the daily lives of all sectors of society. The Government plans to try to reduce the level of poverty by half during the current year.

37. This is clearly an ambitious goal, which will probably take longer to realize. The Ivorian authorities should continue to develop and implement strategies to reduce poverty among the population, with the assistance of international technical cooperation. Poverty reduction involves many components, but the right to education, the right to work and the right to health deserve the greatest attention.

38. The many years of unrest and violence have had a very negative impact on the continuity and quality of teaching in educational institutions. According to the findings of the United Nations Children's Fund (UNICEF), 25 per cent of school-age children are not enrolled in school. The dropout rate among those fortunate enough to have access to education is very high (36 per cent continue to baccalaureate and 36 per cent complete university). This makes it essential to carry out a comprehensive evaluation of the quality of teaching and the overall educational environment.

39. A bill is currently being drafted to make education free and compulsory until the age of 16, which normally corresponds to the end of the first cycle of secondary school. Adequate resources should be allocated to ensure that this welcome initiative is realized. It is also important to continue to upgrade school and university facilities, enhance the training of teaching staff and avoid losing academic years to university closures.

40. The problem of university residences still occupied by ex-combatants should be resolved, as it is important that students have access to a minimum of social services to enable them to focus seriously on their studies. The learning environment should be made safe and free from all forms of abuse or discrimination. The rate of pregnancy among primary and secondary school students is alarming. Solutions must be found to prevent it, including by raising awareness of the seriousness of pregnancy and taking dissuasive measures against those responsible for the pregnancies. Projects for the construction of local schools and boarding schools for girls who have to study far from their families' places of residence should be encouraged.

41. The Government has increased the guaranteed minimum interprofessional wage from 36,600 CFA to 60,000 CFA. The guaranteed agricultural minimum wage is 25,000 CFA and the Government plans to increase it soon. Dialogue is ongoing with trade unions and professional groups. As in many other developing countries, there is a large informal economy in Côte d'Ivoire and unemployment, particularly youth unemployment, is a worrying phenomenon. There are currently 160,000 students in public universities and as many in private universities, and the number of students continues to increase rapidly. However, only 43 per cent of those who obtain a university degree manage to join the

labour market. Over time, this situation could have a destabilizing effect. The Government should continue to pursue lasting solutions to the problem with the support of its international partners.

42. In addition, the Government should continue its efforts to combat child labour, especially in cocoa plantations and mines, and these efforts must be seriously supported by international partners. The subregional dimension of this problem must be incorporated into the responses that are considered. More generally, despite progress made in this area, many Ivorian children still do not enjoy all the rights recognized under the Convention on the Rights of the Child. This state of affairs was analysed by the United Nations Children's Fund (UNICEF) in 2014. Action at national level to address these shortcomings should continue with the support of international partners on the basis of the recommendations put forward in the UNICEF report and those of the National Child Protection Policy adopted in 2012.

## **IV. Justice and national reconciliation**

43. The long years of unrest and violence have wreaked havoc on the infrastructure of the judiciary. They have also seriously diminished human resources, damaged the training and motivation of remaining staff and resulted in an increase in the number of unresolved disputes. Bearing in mind the lawlessness that usually prevails in times of armed conflict, this situation has encouraged a climate of impunity that is detrimental to the country's stability, reconciliation and social cohesion.

44. Reforming and restoring the justice system is a prerequisite to improving the human rights situation in Côte d'Ivoire. Of course, the Ivorian Government's efforts in this area must be recognized, commended and encouraged, especially since it is no easy task. International partners must also continue to support these efforts.

### **A. Justice: Reforms under way**

45. The Ivorian authorities' efforts to reform the justice system cover a number of areas. Firstly, work is being undertaken in the area of human rights training and awareness-raising, targeted in particular at law enforcement personnel, NGOs, the media and young people. United Nations bodies support these efforts at all levels in a cross-cutting manner covering all dimensions of human rights.

46. In this regard, a promotional caravan on human rights issues organized in collaboration with UNOCI toured all the regional capitals for one week. Another audiovisual awareness-raising campaign plans to involve well-known Ivorian artists to take advantage of their public profile.

47. A second aspect relates to the fight against impunity. In this regard, the national commission of inquiry into the post-electoral crisis of 2010 submitted its report in 2012. The report should serve as a road map for the development of a balanced strategy for the judicial response to impunity. The special investigation unit (which did not have jurisdiction) was replaced by the special investigation and examination unit in order to initiate appropriate criminal prosecutions.

48. Criminal proceedings have already begun and the assize courts resumed their sessions in December 2014 after having been forced to stop for more than 10 consecutive years. In addition, despite the criticism it has faced, the work of the Dialogue, Truth and Reconciliation Commission is also aimed at combating impunity in the sense that it leads to reparations for victims.

49. The third aspect is justice reform. This involves the renovation of existing judicial facilities and the establishment of new facilities, capacity-building in human resources in terms of quantity and quality, legislative reform and setting the judicial machinery in motion again to take advantage of all this progress. To date, many courts have been refurbished and new courts have been built. A judicial academy is under construction and a number of prisons, including the Abidjan Detention and Correctional Facility and the Abidjan Military Detention Centre, have been restored as well as possible. The number of judges remains insufficient to ensure the proper administration of justice, as there are less than 700 for a population of 20.8 million. Efforts are being made, although they are hampered by a lack of resources, to recruit approximately 25 new judges per year. An inspection unit is also being set up in the Ministry.

50. The reform of the criminal justice system involves in particular the Criminal Code, the Code of Criminal Procedure, the Civil Code, the Code of Civil Procedure, the regulations governing the judiciary, the juvenile justice system and the Court of Audit. A commercial court has been established with the objective of regaining the trust of economic actors in the country's justice system. It is the first court of its kind in the region. In addition, following the ratification of the Treaty of Rome, the process of bringing domestic laws into line with the Rome Statute of the International Criminal Court has begun.

51. In this context, the death penalty has been abolished in Côte d'Ivoire. This initiative is warmly welcomed. The possibility of making the rulings of the assize courts subject to appeal and ultimately abolishing juries is also being discussed. There is also a project for the protection of witnesses and victims of crime.

52. Special attention is given to the situation of victims of sexual violence. A bill has been passed that redefines rape, provides for harsher penalties and removes the requirement that the victim produce a medical certificate before an investigation is opened into the complaint. This procedural requirement, which, although it was not provided for by law, was established as a rule by a number of criminal investigation officers, made it very difficult for victims to lodge complaints because it was unaffordable. However, sexual violence against women includes many other aspects that need to be addressed as a whole (female genital mutilation, domestic violence, pregnant students, etc.).

53. Lastly, although this list is not exhaustive, Côte d'Ivoire adopted an Act on the protection of human rights defenders on 20 June 2014. This is a significant step towards the promotion of human rights. Of course, the Government must ensure that the Act is as effective as it deserves to be, including by preparing the necessary instruments for its implementation. Civil society should also establish a sense of ownership of the Act.

54. In addition to this series of reforms, both completed and in progress, there have been capacity-building activities for legal and paralegal personnel. Training is provided to judges, prosecutors and the police, especially on human rights. These areas have often benefited, and continue to benefit, from the support of technical cooperation from several international partners. This kind of cooperation should be increased in line with the legitimate expectations of Ivorians and to the level required by the need for respect and protection of human rights.

55. Particular attention should also be paid to inquiries conducted into serious human rights violations in Côte d'Ivoire, international humanitarian law, the proceedings initiated by the assize courts, the situation of persons in pretrial detention and the condition of prisons.

## **B. Prosecutions: More progress should be made on some cases**

56. More than a decade ago, allegations of human rights violations in Côte d'Ivoire (committed between 19 September 2002 and 15 October 2004) had already been considered in a report by an international commission of inquiry. That report came to the clear conclusion that a number of serious violations of human rights and international humanitarian law had been committed during the period in question. The report also highlighted the fact that the warring sides both had their own militia forces and it was those forces that had committed the violations.

57. More recently, violations of human rights and international humanitarian law that occurred between 31 October 2010 and 15 May 2011 were considered in a report by a national commission of inquiry established pursuant to Presidential Decree No. 2011-176 of 20 July 2011. The report indicates that serious human rights violations were committed, particularly against the right to life, the right to physical integrity and the right to security of persons. They included executions, extrajudicial disappearances, sexual violence against women and violations of international humanitarian law. The report also notes that these violations were committed by groups belonging to both warring parties.

58. The establishment of a national commission of inquiry was both a judicious and a courageous initiative seeking to uncover the truth about the violations in question. Moreover, the subsequent establishment of a Special Investigation and Examination Unit, a judicial mechanism responsible for leading the necessary criminal proceedings, demonstrates the Ivorian Government's commitment to combating impunity. The Unit must be strengthened and provided with appropriate and sufficient means to carry out its delicate and sensitive role in a professional and neutral way.

59. Furthermore, the assize courts have resumed their work in order to prosecute the perpetrators of the serious violations committed during the crises that the country has gone through. The Abidjan assize court has opened proceedings against 83 persons from the regime of the former president, Laurent Gbagbo. Among the accused is Simone Gbagbo. Most of the 83 defendants have been held in pretrial detention for some time, in some cases since 2011.

60. Given the length of the pretrial detentions, these cases should be addressed as promptly as possible but also, and above all, with complete respect for the guarantee of a fair trial. The rights of the defence should be strictly respected in accordance with the law and the international instruments ratified by Côte d'Ivoire, in particular the International Covenant on Civil and Political Rights.

61. The charges against the defendants in question concern crimes against the security of the State. They do not concern the violations of human rights or international humanitarian law that were indicated in the reports of the international and national commissions of inquiry. However, these very serious crimes must not go unpunished. The victims of these crimes are entitled to truth and justice. It should be stressed that justice should be impartial and should make no distinction between perpetrators of the violations, whatever their allegiance.

62. Equitable justice at all levels is a necessary step on the path towards breaking the vicious circle of violence. This path should certainly be embarked on with caution to avoid destroying the hard-won but fragile progress that has been made in security and economic development, which benefits all Ivorians. However it must be recognized that no achievement can be sustained if it is not endorsed by justice.

63. The Independent Expert was pleased to note that almost all those with whom he discussed the issue agreed that justice must be impartial and equitable. It remains for that conviction to be put fully into practice.

64. In addition to the case mentioned above that is currently before the Abidjan assize court, dozens of civilians and military personnel are being held in pretrial detention in connection with offences committed during the 2010 electoral crisis. They have been awaiting trial for some time. A list of names drawn up by a group of wives of the detainees arrested during the post-electoral crisis includes 441 persons, of whom 329 are civilians and 112 are military personnel. The majority are imprisoned in the Abidjan Detention and Correction Centre, while others are being held in the Abidjan Military Detention Centre or in regional prisons. Some of the detainees were arrested in 2011 and others later, between 2012 and 2014.

65. The Independent Expert would like to remind the Ivorian authorities of their obligation, under the International Covenant on Civil and Political Rights, to bring all detainees to trial as promptly as possible and to provisionally release those who do not need to be detained pending trial. In that regard, the Independent Expert welcomes the provisional release of 47 defendants, including some of the 83 standing trial in the Abidjan assize court. The unfreezing of a number of bank accounts so that their beneficiaries can use them to support themselves and their families is another commendable initiative. These measures have a calming effect on social tensions despite the fact that the judicial process is still ongoing.

66. It was noted that time limits for holding suspects in police custody prior to trial are not always respected and the relevant penalties provided by law are not applied. It is important to highlight that the length of police custody must be respected and suspects must be brought before a court within the time limit specified by law. The presence of a lawyer to assist suspects is also vital to minimize the risk of abuse.

67. An example is that of the attack on the Akouédo military camp in Abidjan on the night of 17–18 September 2014, which resulted in the deaths of four members of FRCI and one attacker and left several persons injured, including two UNOCI soldiers. Following the attack, 16 persons were arrested. Twelve of them are being held at the Abidjan Detention and Correction Centre, and the remaining four, two of whom are civilians, were detained for more than a month at a military camp in Abidjan run by an ex-comzone, before being released on 14 November 2014. It seems that their arrest and detention in locations that did not comply with international standards were not subject to judicial review.

68. Furthermore, one of these persons reported to UNOCI that he had been tortured and that traces of violence remained visible on his body. Some detainees complained about the time they spent in the National Surveillance Directorate (DST), the legality of which is contested. However, on the whole, there has been an improvement in respecting the time limits for suspects being detained on DST premises. The public prosecution service and the judges concerned must apply the law by carefully fulfilling their duties to supervise and monitor investigations and prosecutions conducted by the criminal police (Code of Criminal Procedure, art. 13).

## C. Prison

69. During his mission, the Independent Expert had the opportunity to visit the Abidjan Detention and Correction Centre and the Abidjan Military Detention Centre. He also met with Ms. Gbagbo whilst she was under house arrest. The country's prisons are a clear reflection of the damage caused to infrastructure by two decades of conflict.

70. Both detention centres are overcrowded. While the Abidjan Detention and Correction Centre has a capacity of 1,500 detainees, it houses triple that number, that is, 4,561 detainees. The Abidjan Military Detention Centre, which housed 64 military detainees and one civilian, only has the capacity to hold a third of that number in relatively

decent conditions. Some convicts are serving sentences of between 5 and 20 years, but most detainees are being held in pretrial detention, some having been held since 2011.

71. The Abidjan Military Detention Centre is dilapidated and extremely run-down. It consists of two small buildings with insufficient ventilation and sunlight. In one of the buildings, bunk beds are crammed into tiny rooms and other beds are spread over the floor, blocking the corridor. The toilets and the shower are basic and detainees have to cope with daily water cuts. The electrical system is antiquated which could be a danger to detainees. However, they do have a clay courtyard where they are allowed to stretch their legs once a day. The least run-down building houses the officers.

72. Detainees in the Abidjan Military Detention Centre are given three meals per day and are allowed visits from families and lawyers twice a week. The nurse assigned to the prison comes only occasionally due to transport difficulties. In addition to the prison governor, the Abidjan Military Detention Centre has 11 guards who work night and day shifts.

73. The Independent Expert was unable to visit the buildings containing the prison cells of the Abidjan Detention and Correction Centre because he arrived at around 5 p.m., after closing time. He was able to visit the sick-bay and the library, to have discussions with the prison governor and take part in a meeting with representatives speaking on behalf of detainees in the presence of the prison governor and some guards. Out of 4,561 detainees, 1,677, or approximately one third, were being held in pretrial detention. The total number includes 59 minors who are housed in 5 shared cells. Consistent testimonies state that prison conditions are a major concern. Particular attention should be paid to this situation in order to remedy shortcomings.

74. Some detainees arrested during the post-electoral crisis of 2010–2011 had been on a hunger strike, which they had ended following a visit on Christmas Eve from Aïchatou Mindaoudou Souleymane, the Special Representative of the Secretary-General for Côte d'Ivoire. Some of those who had taken part in the strike are still very weak and their health requires close medical attention.

75. At the Abidjan Detention and Correction Centre, detainees receive two meals a day and do not cost the State more than 300 CFA francs per day. They are entitled to a weekly visit from their families. However, a visiting permit must be obtained from the judicial authorities prior to every visit. The detainees complain about the practical difficulties that their families have in obtaining a new visiting permit each time. Pretrial detention periods are long, with some detainees having been held since 2011. It is worth noting that several default judgements have been passed when detainees were not present at trial because of problems with transport. There is no doubt that the resources available to the Centre are insufficient and the equipment inadequate.

76. When the Independent Expert visited Ms. Gbagbo, she was under house arrest in acceptable conditions of imprisonment. Her lawyers had been given open permission to visit and talk with her. Two of her lawyers visited her during her meeting with the Independent Expert. They voiced their concerns over the ethnic origin of the jury that had been chosen to sit alongside the judges. They also highlighted the fact that Ms. Gbagbo's bank account had been blocked and she could no longer pay their fees. Furthermore, they claimed that approximately 100 suspects from "the opposing side" had already been summonsed by judges, but had neither presented themselves to the courts nor were being obliged to do so.

## **D. Dialogue, Truth and Reconciliation Commission**

77. The victims of serious violations of human rights and international humanitarian law are entitled to truth, justice, reparations and non-repetition of the abuses that they have suffered. The Dialogue, Truth and Reconciliation Commission consisted of 10 national commissioners and 37 local commissions. The commissions were largely open to broad participation and included religious and traditional leaders, women, young people, representatives of civil society and of the Economic Community of West African States. The Dialogue, Truth and Reconciliation Commission had a three-year mandate.

78. The Commission's most important task was to restore and strengthen social cohesion between communities in Côte d'Ivoire. It heard 72,483 persons, including 28,064 women and 757 children. It also held public hearings, although they were not broadcast by the audiovisual media services. The final report of the Dialogue, Truth and Reconciliation Commission was submitted to the President of the Republic on 15 December 2014. It has not yet been published and it is therefore difficult to give a detailed opinion on the outcome of the Commission's work.

79. Nevertheless, the information collected by the Independent Expert was often critical of the work of the Dialogue, Truth and Reconciliation Commission. In particular, its hearings were criticized for not being accessible enough to the public. The places where the hearings were held were not sufficiently publicized and the audiovisual media did not broadcast them.

80. There is no doubt that the lack of publicity surrounding the Commission's hearings may have reduced the benefits it would have otherwise brought to victims. Although there are a few legitimate exceptions, victims generally need their grievances to be recognized publicly and the crimes that caused them to be denounced as what they were. It is thus advisable that the Commission's report be made public. The content belongs to the victims and to all Ivorians, since they have the right to be informed of the nature and extent of the criminal acts committed.

81. On receiving the Commission's report, the President of the Republic formally announced the establishment of a fund to provide reparations for victims. He allocated 10 million CFA francs to the fund for 2015 and has called upon the international community to offer its support. This initiative should be commended and encouraged because it puts the victims of the violence that has cast a shadow over the country at the heart of the debate on reconciliation. It will, of course, be necessary to define the notion of a victim, as someone legally entitled to reparations, to coordinate the list of victims compiled by the Commission with those drawn up by different government departments, to decide on the types of and modalities for reparation and to appoint an authority to be in charge of putting the initiative in place in the most efficient and transparent way. The Independent Expert calls upon the international community to offer financial and technical assistance to the fund, which is one of the pillars of lasting national reconciliation, in order to allow reparations to be awarded to the victims.

## **E. National Programme for Social Cohesion**

82. The violence that marked the past two decades has sown discord and mistrust among the different communities in Ivorian society. It is necessary to bring back harmony and trust among Ivorians in order to build a lasting peace and restore a climate that favours human development. The National Programme for Social Cohesion was established to achieve that goal. The Programme was launched in 2012 for a renewable period of four years. It is run by a national coordination group and has regional branches. The Programme has been

assigned a budget of 7 billion CFA francs and receives support and technical cooperation from a number of United Nations bodies.

83. Above all, the Programme takes two approaches to tackling the social tensions that fuelled the crises of the past two decades. The first looks at the disagreements that emerged at the top of the political hierarchy. These were rooted in the ideology of “Ivoirité” and resulted in armed conflicts. The second approach addresses the grassroots and concerns land disputes and intercultural and ethnic tensions within the population.

84. In order to restore social cohesion, the Programme focuses on four major areas: peace, solidarity, intercultural dialogue and reconciliation. As part of the Programme, a number of actions have been taken to reinforce these values. The most important is awareness-raising. In practice, this involves carrying out actions to educate people about community spirit, tolerance and acceptance of differences. Above all, emphasis has been placed on the important role of the media in preserving peaceful coexistence among Ivoirians. They have been encouraged to act responsibly and give priority to stories which promote respect for differences and constructive dialogue. The fact that 2015 is an election year means that these activities must be given particular attention.

85. In this process of appeasing tensions between communities, the Programme is an attempt to involve all those who could play a significant role in exerting social and cultural influence, such as religious and traditional leaders and human rights organizations. It is also noteworthy that the Programme continually maps out areas of tension which require close and fairly urgent monitoring. It goes on to outline the interventions that need to be made, in accordance with its means, and attempts to find sustainable solutions.

86. Côte d’Ivoire also has an Ombudsman who plays an important mediatory role between the citizens and the administration, without actually intervening in judicial disputes.

87. There is no doubt that the Programme’s task of monitoring social cohesion increases the need for capacity in logistics and human resources. It must strengthen its presence across all the regions of the country in order to bring about better and lasting results. The move must be made from raising awareness on the importance of social cohesion to achieving the support of the majority of the country’s population for these values and their translation into practice. It is for that reason that the Programme should be backed and strongly supported by the international community, particularly by United Nations bodies.

## **F. National Human Rights Commission**

88. A national human rights commission was first established in 2004. In the early stages, the Commission did not comply with the Paris Principles. The legislation establishing the new national human rights institution that is currently in operation (Act No. 2012-1132) received sustained technical support from the Human Rights Division of UNOCI and now complies better with the Paris Principles. The status, the structures and the mandate of the National Human Rights Commission are proof of this commendable achievement.

89. It comprises both a national commission and regional commissions. Overall, it is participatory in nature, and this aspect should be enhanced. In its article 1, the Act gives the National Human Rights Commission legal personality as well as independence and financial autonomy. Its mandate is relatively broad, encompassing the duties to provide consultation services to the Government, to monitor the human rights situation in the country (including in particular the possibility of carrying out investigations and visiting places of detention) and to deal with the non-judicial aspects of complaints concerning violations of fundamental human rights.

90. The National Human Rights Commission advises the competent authorities on the harmonization of national law with international human rights standards and is helping to draw up the reports required by the United Nations human rights treaty bodies. In general, the Commission works together with national and international human rights entities. The Commission must submit an annual report to both the President of the Republic and all governmental institutions; it is also published.

91. The National Human Rights Commission has already considered many different areas. They include focused protection activities following complaints concerning human rights violations, advocacy for vulnerable populations, particularly those that have been forced out of shanty towns and national park forests with no prospect of being promptly rehoused, visits to prisons, on the basis of which reports are then published, with emphasis on their overcrowded and unhygienic state, meetings with political parties in order to strengthen the national dialogue with a view to ensure that the forthcoming elections take place in a peaceful atmosphere and to contribute to drawing up the universal periodic report.

92. Monthly meetings are organized with the Human Rights Division of UNOCI in order to review the human rights situation in the country. These meetings have led to the establishment of a human rights forum intended to strengthen collaboration between the National Human Rights Commission and civil society and enabled the development of a strategy on the prevention of human rights violations for 2015.

93. The conditions in which the National Human Rights Commission has to carry out its work should be improved in two respects. Firstly, its autonomy, which is clearly stipulated in the body's founding text, should be better guaranteed. The relationship between the Ministry of Justice, Human Rights and Public Freedoms and the National Human Rights Commission should be one of mutual cooperation rather than of administrative supervision. The present situation arises from the fact that the Commission's budget needs to be approved by the Minister of Justice (Act No. 2012-1132, art. 38) and the amounts awarded to its members are also determined by the Minister (art. 25).

94. Furthermore, the procedure for the appointment of members of the regional commissions needs to be reviewed. The National Human Rights Commission should, legally, have a say in the appointment procedure which is currently carried out by order of the Ministry of Justice, Human Rights and Public Freedoms following a proposal from the prefect of the region (Act No. 2012-1132, art. 12). It is also vital that the Commission should raise its profile, which depends on whether it has adequate resources, on the courage and commitment of its members as well as on the constructive cooperation of the public authorities.

95. The National Human Rights Commission is not yet two years old. Indeed, its work is still in the early stages and it has at times been faced with security challenges from within the country. The Commission needs to develop and implement a good information strategy for its activities and cultivate its relations with outside bodies. This requires improved internal organization, capacity-building for its members and increased funds that are spent wisely. With that in mind, reports on the human rights situation in Côte d'Ivoire drawn up by the Commission should be published and quickly made available to the public. Similarly, the Commission's website should be made a priority. These recommendations will help the Commission to better comply with the Paris Principles.

## **G. Independent Electoral Commission**

96. The 2015 presidential elections will be a critical time to test the strength of the efforts made by Côte d'Ivoire in favour of democracy. It is the responsibility of the Ivorian

Government and also that of all other key players on the political scene, such as political parties, civil society (both modern and traditional) and the international community, to protect and build on those efforts through constructive, technical cooperation.

97. The Independent Electoral Commission is a constitutional institution (Constitution, article 32, para. 4). Its aim is to ensure that elections are transparent and lawful. It represents an institutional achievement intended to put an end to the time when elections were organized and monitored by the Ministry of the Interior alone. A sustained dialogue has been initiated with the opposition parties in order to ensure the balanced representation of all political parties within the Commission. The outcome was satisfactory, with the inclusion of an opposition party.

98. The Independent Electoral Commission is faced with many challenges in ensuring that the forthcoming presidential elections run smoothly. It is primarily a question of updating the electoral register, mapping electoral districts and reforming the Electoral Code. However, the greatest challenges relate to training opportunities for politicians and ways in which they will educate voters. Security is also a major challenge and must be assured so that all citizens can adequately exercise their right to vote in satisfactory conditions. In principle, all Ivorian citizens aged 18 or over have the right to vote. In order to meet this standard, it is necessary to find a solution to the fact that many citizens do not have identity cards. Moreover, it is crucial to address the situation of Ivorians living abroad so that they can exercise their right to vote. For instance, it is estimated that there are between 60,000 and 80,000 Ivorians in Liberia.

99. There is no doubt that the Independent Electoral Commission is an important step towards achieving peaceful and transparent elections. Nonetheless, the lack of civil society representatives in local commissions is disappointing. There is a tendency to justify this by the difficulties encountered in finding a balance of representatives from all parts of the country, but many civil society actors are not convinced. Moreover, the refusal of one opposition party to participate in the Independent Electoral Commission is likely to weaken the Commission's power and undermine its authority. Political dialogue should continue in order to overcome this setback as efficiently as possible.

100. Voter apathy should be combated by raising more awareness of the fact that voting is extremely important for the future of the country. The Commission should also ensure that all political parties have equal access to the audiovisual media (all of which are State-owned) and to the official print media. It is also important to continue enhancing security in the country because that is the foundation on which any lasting political, economic and social progress can be built. All of these aspects require consistent support from the international community.

## **V. Conclusions and recommendations**

### **A. Conclusions**

101. **It is noteworthy that, during its universal periodic review, Côte d'Ivoire accepted almost all the recommendations made by the Member States of the United Nations Human Rights Council. On 18 and 19 March 2015, Côte d'Ivoire also submitted its initial report, 20 years overdue, to the Human Rights Committee. This attitude shows that Côte d'Ivoire is committed to constructive collaboration. This report seeks to modestly strengthen this process and to provide guidance to the Ivorian Government in its efforts to honour its international human rights obligations for the benefit of the Ivorian people.**

## B. Recommendations

102. The Independent Expert recommends that the Ivorian authorities should:

- (a) Ensure an impartial and fair justice system that will contribute to reconciliation and lasting peace in the country;
- (b) Bring detainees to trial within a reasonable time limit and to provisionally release those who should not be detained pending trial;
- (c) Strengthen efforts to combat impunity by prohibiting amnesties for serious violations of human rights and international humanitarian law, including sexual violence;
- (d) Adopt an implementing decree for Act No. 2014-388 of 20 June 2014 on the promotion and protection of human rights defenders and set up a monitoring mechanism for the effective implementation of the Act;
- (e) Ratify the second optional protocol to the International Covenant on Civil and Political Rights in order to complete the ongoing process to abolish the death penalty;
- (f) Make the necessary amendments to Act No. 2012-1132 of 13 December 2012 on the establishment, powers, organization and functioning of the National Human Rights Commission in order to improve its compliance with the Paris Principles, in particular, its independence from the Ministry of Justice, Human Rights and Public Freedoms and its financial autonomy;
- (g) Strengthen social policy in order to allow the benefits of economic growth to be fairly distributed among all sectors of the Ivorian population;
- (h) Improve detention conditions in prisons and facilitate access of humanitarian and human rights organizations to persons detained by the National Surveillance Directorate;
- (i) Accelerate the disarmament, demobilization and reintegration of former FRCI combatants and reforms within the security sector;
- (j) Issue clear orders, through chains of command and codes of conduct, prohibiting violence against civilians by members of the security forces.

103. The Independent Expert recommends that the international community should:

- (a) Provide financial support and technical assistance for the Government's capacity-building efforts in the judicial system with a view to combating, in an impartial way, impunity for crimes committed since the beginning of the crisis in Côte d'Ivoire;
- (b) Provide financial and technical support for the victims' reparation fund established by the Ivorian authorities;
- (c) Provide Côte d'Ivoire with guidance in the organization of free and transparent elections and assist in its efforts to reform, reconstruct and develop the country.

104. The Independent Expert recommends that the United Nations should maintain the UNOCI mission until the achievements of Côte d'Ivoire in terms of security and progress towards greater respect for human rights are properly consolidated.