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### Technical assistance and capacity-building

## Report of the Independent Expert on the situation of human rights in Côte d'Ivoire, Mr. Doudou Diène

### *Summary*

The present report is the outcome of the third visit of the Independent Expert to Côte d'Ivoire, from 24 September to 12 October 2012, and is intended to reflect the situation of human rights in Côte d'Ivoire from 15 July to 15 December 2012.

In a subregional context that is weakened by the situation in northern Mali and the Sahel and faced with a tense political climate and an unstable security situation, Côte d'Ivoire is at a decisive political turning point, despite the remarkable economic and social progress that has been achieved.

The attacks by assailants, which chiefly took place in August and September 2012 and were attributed to armed individuals identified by the Government as pro-Gbagbo militants, appeared to be designed to plunge the country back into the cycle of aggression and repression that has prevailed in Côte d'Ivoire for more than 10 years. The response of the State security system to this wave of attacks has at times been disproportionate, leading to some recognized human rights violations.

It is against this background that the Independent Expert gathered information on the increasingly precarious human rights situation, which would appear likely to undermine democratic, economic and social gains. With regard to the violations committed by assailants in the course of attempts to destabilize the country, some 60 people were killed, including Forces Républicaines de Côte d'Ivoire (FRCI) troops and civilians, women and children. In certain areas in the west of the country, populations were displaced by the attacks, fearing for their lives, and hundreds of people were forced to leave their villages to take refuge in neighbouring areas.

The FRCI reacted vigorously to attacks by the assailants by strengthening its presence in Abidjan and other areas, particularly in sensitive areas such as the west of the country and the borders with Liberia and Ghana. FRCI troops set up roadblocks and conducted searches and raids in villages. Against this background, violations of the right to life, arbitrary arrest and detention, acts of torture, violations of the right to property, extortion and racketeering were reported throughout the country, particularly in the west.

The Independent Expert visited the western region of Côte d'Ivoire, which has traditionally been the stage for strong tensions between indigenous and non-indigenous communities. The attack on Nahibly camp for displaced persons in Duékoué, where more than 5,000 people were registered, was one of the most violent episodes of these intercommunity clashes. The attack caused the death of more than 8 people and injured 60, including 1 woman. As the Independent Expert indicated in his most recent report, intercommunity tensions persist in the west of the country and require swift steps by the Government to facilitate peaceful coexistence among communities and prevent intercommunity violence, which often results in serious human rights violations. Nevertheless, the Independent Expert observed, on the ground, that there were internally generated initiatives to settle local conflicts and collectively reconstruct the fabric of intercommunity life.

Against this background, the Independent Expert reaffirms the urgent need to expedite the process of disarmament, demobilization and reintegration (DDR) and of security sector reform. In spite of the Government's efforts, the delay in this area is contributing to the deterioration of the security situation in the country and giving rise to human rights violations. These reforms will require significant amounts of funding to be deployed that are well beyond the current capacity of Côte d'Ivoire to absorb future disarmed and demobilized ex-combatants.

The fight against impunity is under way although, to date, it remains a one-way process that is neither fair nor swift and is, essentially, directed at the supporters of former President Gbagbo. Many political and military figures close to the former president who were involved in human rights violations and whose names have appeared in United Nations reports on several occasions during the past 10 years have now been charged and detained.

The Independent Expert reaffirms that in order for the judicial process to be useful to Ivorian society as a whole, to make a real contribution to national reconciliation and to drive forward a new dynamic that is more respectful of human life and dignity, the authors of human rights violations must be prosecuted regardless of their political, tribal, regional or religious affiliation.

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## I. Introduction

1. This report is submitted in accordance with Human Rights Council resolution 20/19, in which the Council renewed the mandate of the Independent Expert for a period of one year and requested him to submit his report at its twenty-second session.

2. The report is based on the third visit of the Independent Expert [to Côte d'Ivoire] from 24 September to 12 October 2012. It covers the period from 15 July to 15 December 2012. It is based on information gathered from government, traditional and religious authorities, United Nations agencies, national and international non-governmental organizations and from witnesses and victims of human rights violations. In addition, it is based on the recommendations contained in the previous report of the Independent Expert, submitted to the Human Rights Council on 21 March 2012.

3. The Independent Expert would like to thank the Government of the Republic of Côte d'Ivoire for facilitating his stay in the country and his meetings with national and local authorities. In this context, the Independent Expert met with the Prime Minister, the Secretary of State, the Minister of Interior, the Minister of Human Rights and Civil Liberties, the Deputy Minister of Defence, the Minister of Ex-combatants and War Victims, the Minister of Family, Women and Children, the Minister of Education and the Minister of Culture and Francophonie. The Independent Expert held one working session with the Director of the Office of the President of the Republic in order to share his initial reflections with high-level national authorities.

4. Moreover, the Expert met with the Public Prosecutor, the Military Prosecutor, the Director of the National Surveillance Directorate, the President of the Dialogue, Truth and Reconciliation Commission, members of the National Human Rights Commission and the President of the National Commission of Inquiry. The Expert had a fruitful working session with the representatives of political parties such as the former President of the Republic; Henri Konan Bedié, president of the Parti démocratique de Côte d'Ivoire (PDCI); Mamadou Koulibaly, president of Liberté et démocratie pour la République (LIDER); and officials from the Front populaire ivoirien (FPI) and the Congrès national de la résistance pour la démocratie (CNRD).

5. The Expert went far inside the country, in particular to Bouna, Boundiali, Divo, Duékoué, Katiola, Korhogo and Odienné, where he met with people who had been arrested in the context of the post-electoral crisis and with traditional and religious leaders. In all of these areas, the Expert met with the administrative, judicial and security authorities in order to gather their views on issues related to human rights, security and the administration of justice in their respective regions. In addition, he went to Yamoussoukro, where he participated in the 52nd ordinary session of the African Commission on Human and Peoples' Rights.

6. The Expert met with representatives of national and international human rights organizations, women's organizations, representatives of victims and representatives of brotherhoods of traditional hunters (Dozo) in Korhogo. The Expert visited the ruins of the site at Nahibly, which, until it was tragically destroyed on 20 July 2012, had sheltered displaced persons in Duékoué. He heard from camp survivors, as well as from a number of witnesses and victims of human rights violations.

7. In addition, he held working sessions with representatives of the diplomatic corps and with the Special Representative of the African Union for Côte d'Ivoire. He held substantive talks with the Special Representative of the Secretary-General of the United Nations, Albert Gerard Koenders, and his deputy, Arnaud Akodjenou. In addition, he participated in a meeting of the United Nations country team in Côte d'Ivoire, headed by

Ndolamb Ngokwey, the United Nations Development Programme (UNDP) Resident Coordinator in Côte d'Ivoire.

8. The Expert welcomes the support given to him by the United Nations Operation in Côte d'Ivoire (UNOCI) and by mission officials, which enabled him to travel far inside the country and to meet various actors. In particular, he thanks the Special Representative of the Secretary-General in Côte d'Ivoire, the Deputy Special Representative of the Secretary-General for the Rule of Law, the Director of the Human Rights Division and his staff for their support which was crucial for the actual organization of his visit.

9. In addition, the Expert conducted a visit to The Hague, in the Netherlands, from 30 to 31 August 2012, in order to discuss cooperation issues with International Criminal Court (ICC) authorities. In particular, he met with Sang-Hyun Song, ICC President; Fatou Bensouda, ICC Prosecutor; and Silvana Arbia, ICC Registrar. The Expert wishes to thank ICC officials for the fruitful exchanges concerning the complementarity of their mandates, the central role and impact of justice in the national reconciliation process in Côte d'Ivoire and the need for the ICC to lead the Ivorian judicial system by example, in particular with regard to fairness and impartiality. Furthermore, the Expert conducted an exchange with Stephen Rapp, United States Ambassador-at-Large for War Crimes, on the issue of impunity in Côte d'Ivoire.

## **II. Context analysis**

### **A. Subregional instability**

10. Almost two years after the post-electoral crisis, Côte d'Ivoire is gradually resuming its place on the African and international stage. President Alassane Ouattara is also Chairperson of the Economic Community of West African States and, in that capacity, is coordinating the Community's response to the crisis in the Sahel region in general and in the north of Mali in particular.

11. Located to the north of Côte d'Ivoire, Mali is an open door to the Sahara and the Sahel, a particularly vast area over which neighbouring States exercise no effective control. This factor favours the presence of groups such as Al-Qaida in the Islamic Maghreb, the Movement for Unity and Jihad in West Africa and Ansar Dine. The geographical factor also explains a central aspect of the crisis in the Sahel region: the strategic alliance between drug traffickers who seek means of transporting drugs to the Mediterranean coast and the European market, and Islamist groups that need arms and money in order to extend their influence in the region. This strategic alliance is a time bomb that will profoundly destabilize all countries in the region for quite some time.

12. As the Expert indicated in his previous report, Côte d'Ivoire is a microcosm of the region; with its ethnic, religious and cultural diversity, it is [also] a microcosm of the subregion. The Ivorian conflict cannot, therefore, be contained without taking into account the subregional dimension as a whole. Just as the crisis in Côte d'Ivoire has created a risk of instability in the subregion that has security, humanitarian, economic and social repercussions for neighbouring countries, the crisis in north Mali and the Sahel is likely to amplify and exacerbate the political and intercommunity fractures inherited from a decade of total crisis and is even likely to eradicate the process of political, economic and social change under way in Côte d'Ivoire.

## **B. Central role of political pluralism**

13. There are two clear trends in the political arena: a genuine institutional political process, and open challenge in support of a version of political pluralism that favours reconciliation. These two factors have a direct impact on the human rights situation as much as on security. The institutional political process — which is fundamental to the democratic reconstruction of Côte d'Ivoire — is evidenced by the establishment of the main political and administrative institutions of the rule of law, a Head of State, a Parliament and the restoration by the State of its sovereignty over administrative, judicial and security affairs throughout the country.

14. Strengthening inclusive political pluralism, which was one of the central recommendations of the previous report, is the most urgent and enduring response to the two major challenges of the crisis in Côte d'Ivoire, namely, how to transform a society that is deeply polarized in political terms into a legal, democratic expression of the political, cultural, ethnic and religious diversity of the Ivorian people and how to provide credible guarantees of a culture of tolerance in which national reconciliation is possible, with respect for the deeply held convictions of all elements of society.

15. Significant initiatives towards national reconciliation have been made by the political class, as well as by civil society. In this regard, the joint creation by the Government and an opposition party, following the Conclave in Grand Bassam in April 2012, of a permanent framework for dialogue is a major step towards the creation of conditions and instruments that would promote reconciliation. One particularly significant development was that the Government accepted, following a working session, that a working group should be established to make proposals on two important issues raised by opposition parties members of the permanent framework for dialogue, namely, the reconstitution of the Independent Electoral Commission and the postponement of municipal and regional elections.

16. However, the dialogue and reconciliation process as a whole faces the following obstacles to the achievement of critical mass: full inclusion, including the participation of the main opposition party FPI; a strong political initiative to open [access to] power; perception of the impartiality of the judiciary; and a stable security environment. The FPI, the party of former President Gbagbo, is at a crossroads, torn between those who are convinced that dialogue and reconciliation are urgent and necessary, and supporters who remain committed to regaining power by force.

17. The Independent Expert observed this internal dynamic through his meetings both with current party officials and figures from the former regime who remain in detention. The condemnation, in an official communiqué from the FPI, of the attack in August on Akouedo camp in Abidjan is particularly significant in this regard. The indecisiveness of the FPI at the Conclave in Grand Bassam on 28 April 2012 (participation in the opening but withdrawal from and non-acceptance of the permanent framework for dialogue) is evidence of a profound debate within the party.

18. The legitimate historical process of political settling that is under way in the FPI and whether the party will lean decisively towards reconciliation or a strategy of constant tension will depend as much on the balance of power within the party as on the ability of the present Government to give decisive momentum and lend credibility to inclusiveness and political pluralism, through three strong initiatives. The first [such initiative] is legal in nature [and would involve] promoting the legal institutional status of the opposition on the basis of its legitimacy, the full exercise of [the right to] freedom of association and expression, and guaranteeing the [availability of the] necessary means for democratic political activities, by unblocking resources that are untainted by illegality and by providing legal funding from Parliament. The second is judicial in nature [and would involve] ending

the detention of opposition officials not directly involved in serious economic crimes or murder and similar crimes. The third is political in nature [and would involve] participation in a Government of national unity. In the final analysis, only the reality of political pluralism and the vitality of democratic debate can counteract and call into question the temptation to resort to violence as a means of political expression.

### **C. Diminished security environment**

19. The Expert is concerned by the deterioration of the security situation, another serious factor that has a negative impact on the situation of human rights. UNOCI has identified at least 23 large-scale attacks since the beginning of August 2012 in Abidjan and in other parts of the country. These attacks, which are sometimes simultaneous, essentially target FRCI positions, gendarmeries and police stations. According to information provided by the Government on the situation of internal security from March to September 2012, other attacks took place including coup attempts and destabilization operations.

20. Some sources consider that these attacks are carried out by unidentified armed groups. However, according to the Ivorian authorities, they are planned and organized by supporters of former President Gbagbo from Ghana and Liberia, with the involvement of Liberian mercenaries. The objective would be to create a sense of insecurity in the country in order to discourage investors and cause emotional stress to the population. It should be emphasized that the FPI, sensing that it is under increasing pressure from the State security system, has condemned some of these attacks and remains concerned about the risks of confusion and reprisals faced by party officials, their activists and sympathizers.

21. Moreover, the attack of 14–15 October 2012 on the thermal power station at Azito in Yopougon, which provides electricity to Abidjan and the surrounding area, by individuals dressed in new gendarme uniforms illustrates the complexity of the current security situation. The military authorities have recognized that the recent attacks have benefited from complicity at the very core of the FRCI. Some observers recognize that there exists a diverse group of some 97,000 armed men in Côte d'Ivoire who could conduct attacks against State system structures and civilian populations.

22. In view of these security challenges, the Expert reaffirms the urgent need to expedite the DDR process and security sector reform. In spite of the Government's efforts, delay in this field is contributing to the deterioration of the security situation in the country and giving rise to human rights violations. In this regard, the Expert welcomes the creation at the end of August of the Authority for Disarmament, Demobilization and Reintegration under the authority of the National Security Council, headed by the President of the Republic. These reforms will require significant amounts of funding to be deployed that are well beyond the current capacity of Côte d'Ivoire to absorb future disarmed and demobilized ex-combatants.

### **D. Economic and social progress**

23. In economic terms, Côte d'Ivoire appears to be making solid progress and is progressively regaining its former position in the subregion, where it has long been the economic engine of the West African Economic and Monetary Union with 40 per cent of the Union's [regional] gross domestic product (GDP). According to the Government, the growth rate for the coming three years should be between 9 per cent in 2013 and 10 per cent in 2014–2015. Moreover, the growth rate of the Ivorian economy has a significant impact on the countries of the subregion with which the Government has launched large-scale regional projects in the infrastructure sector.

24. The political dimension of the Ivorian crisis must not be neglected in favour of a focus on the economic dimension, since a polarized society contains the seeds of conflicts which, should they manifest, could have a negative impact on economic activities. The enduring impact of this economic growth on democratic reconstruction and national reconciliation is dependent on various elements, namely, the priority given to the effective enjoyment of economic and social rights (health, education, employment, housing) by all the population and, in particular, the numerous victims of a profound crisis, in addition to the attention given to social equality and common prosperity.

### **III. Overview of the human rights situation**

#### **A. Violations committed by assailants during attacks**

25. With regard to the violations committed by assailants in the course of attempts to destabilize the country, some 60 people were killed including FRCI troops and civilians, women and children. Moreover, a number of others were wounded, including children. In certain areas in the west of the country, populations were displaced by the attacks, fearing for their lives and hundreds of people were forced to leave their villages to take refuge in neighbouring areas.

26. The Independent Expert would like to mention the following most significant attacks: on the night of 4 to 5 August, armed men opened fire at an FRCI checkpoint and a police station in Yopougon in Abidjan, killing at least five persons, of whom three were killed at the police station and two at the checkpoint. All of the victims were FRCI troops. One FRCI soldier was seriously wounded as a result of this attack. An even more significant destabilization operation was conducted on the night of 5 August, targeting Akuédo military camp in Abidjan which is one of the most important such camps in the country. The assailants killed at least 5 people and injured 18 others, all FRCI troops. The FRCI captured eight assailants and seized weapons.

27. On 15 August, armed assailants launched a simultaneous attack on an FRCI checkpoint, a gendarmerie and a civilian prison in the town of Dabou, near Abidjan. Three civilians were killed and some 119 prisoners were released by the assailants following the attacks. On 8 August, some 10 assailants targeted an FRCI checkpoint in Agboville, injuring a soldier. On 13 August, a control post located in the town of Pehekan Houebli, near Toulépleu and the border with Liberia, came under attack by armed men from Liberia. One assailant was killed and three FRCI troops were injured.

28. On 25 August, three assailants, one member of the FRCI and one civilian were killed following an attack on an FRCI position at Iroko, 140 kilometres from Abidjan. Another large-scale attack was conducted on the night of 20 to 21 September against an FRCI base located in the village of Noé on the border with Ghana. The attack was led by a pastor, exiled in Ghana, by the name of Djaha Aristide, who had previously announced that President Ouattara would fall [from power] in 77 days. Eight assailants were killed, including the pastor. A further 15 assailants were arrested by the FRCI and transferred to the National Surveillance Directorate in Abidjan. Following these attacks, the Ivorian Government decided to close its air, land and sea borders with Ghana. The airspace between the two countries was reopened on 24 September and the land and sea borders on 8 October.



## **B. Violations related to the response of FRCI to assailants**

29. The FRCI reacted vigorously to attacks by assailants by strengthening its presence in Abidjan and other towns, particularly in sensitive regions such as the west of the country and the borders with Liberia and Ghana. FRCI troops set up roadblocks and conducted searches and raids in villages.

30. The Expert deplors the cases of violations of the right to life that were reported to him, the victims of which were often members of the State security system and civilians suspected of colluding with assailants. For example, on the night of 19 August 2012, the FRCI conducted a raid on the village of Dougroulié, killing a man of 42 years of age suspected of hiding assailants and arresting another person of 35 years of age for the same reason. In response, the village chief led a four-person delegation to the FRCI camp in order to demand the release of the person who had been arrested. Once inside the military camp, the entire delegation was arrested and detained.

31. Other security incidents, most often attributed largely to the FRCI and which have given rise to violations of the right to life among the civilian population, have been documented throughout the country; at least 38 people have been killed during armed robberies and hold-ups that sometimes involve highway robbers.

32. Following the destabilization operations conducted by assailants since August, a large number of civilians as well as military personnel have been arrested and detained for their alleged participation in these attacks. In August alone, more than 382 people were arrested for jeopardizing State security, some of whom were subjected to cruel, inhuman and degrading treatment and 2 of whom died as a result of acts of torture. Serious cases of torture using electricity have been reported, in particular at San Pedro where the Expert received increasingly recurrent allegations of torture committed within the Groupement tactique du Sud-Ouest (South West Battle Group) (GTSO).

33. With regard to detention, on 30 October 2012 more than 250 people remained in arbitrary detention, more than 132 had been released and 131 had been placed in preventive detention in various detention centres around the country. Others, detained incommunicado or beyond the statutory custody limits, had not been brought before a judge. It should be noted that the majority of those who were arrested are, or were, held not only in regular detention centres but also in centres inappropriate for civilians, such as various other FRCI camps. The Expert further notes that the statutory custody limits are not always respected and that detainees are often held in illegal detention centres, such as [on the premises of] the Anti-Riot Squad, the Armed Forces Headquarters, the Republican Guard, the Adjamé Military Police Engineering Camp for civilians or [at] private houses occupied by the FRCI.

34. FPI officials and activists felt that they were the subject of particular attention following the attacks by assailants. On 6 August 2012, Mady Bouabré, a former Member of Parliament affiliated to the FPI, was arrested in Noé, near the border with Ghana and detained at the National Surveillance Directorate. On 12 August 2012, Alphonse Douaty, Deputy Secretary-General of the FPI, was arrested in Abidjan and transferred to the National Surveillance Directorate. On 26 August 2012, the Secretary-General of the FPI, Laurent Akoum, was questioned by police on his way to an FPI meeting in Adzopé, 100 kilometres from Abidjan. After staying at Agban camp, he was transferred to Abidjan Detention and Correction Centre (MACA) where the Expert was able to meet with him. Mr. Akoum is charged with disturbing public order for having asserted at a meeting that former President Gbagbo had been ill-treated while in detention in Korhogo and, in addition, for having contested the results of the presidential elections.

35. Other major figures who are members of the FPI have also been arrested in recent months in countries of the subregion. These include Justin Koné Katinan, exiled former Minister of Budget and spokesperson for the FPI under Laurent Gbagbo, who was arrested on 24 August 2012 in Accra, Ghana following the issuance of an international arrest warrant by the Ivorian judicial authorities for economic crimes committed during the post-electoral crisis. After the extradition of Moïse Lida Kouassi, former Minister of Defence, who was arrested in Lomé, Togo in June 2012, Mr. Katinan is the second FPI figure to be arrested in exile abroad.

36. The media sector in particular symbolizes the political polarization of Côte d'Ivoire. The media landscape is divided into two radically opposed camps. One camp favours the ruling party while the other is close to the FPI of former President Gbagbo. This polarization of political life, which has been followed by a deteriorating security situation, has had a significant impact on freedom of expression and opinion. The National Press Council (CNP), which is the press regulatory body in Côte d'Ivoire, imposed a six-day suspension on daily newspaper *Notre Voie* by its decision No. 14 of 6 September 2012 following the publication of "photographs of figures from the former regime" of Laurent Gbagbo in violation of Presidential Order No. 2011-007 of 14 April 2011 annulling all regulatory acts introduced and individual decisions taken by the Government of Laurent Gbagbo since 4 December 2010.

37. The following week, the CNP further suspended six other daily newspapers with close links to former President Gbagbo for between one and two weeks for the same reasons. The measure was "lifted" one week later, after various figures intervened.

38. It was in this context that the Expert met with CNP officials, in order to obtain a clearer view of the situation of the press in Côte d'Ivoire. According to the CNP, press analyses were often distorted and newspapers made numerous assertions but demonstrated little. They also published statements, accusations and unsubstantiated denunciations. Some newspapers made statements and did not let readers verify the information for themselves, providing them with elements that would help them to formulate an opinion.

### **C. Intercommunity violence**

39. On the morning of 20 July 2012, the camp for displaced persons at Nahibly in Duékoué, where more than 5,000 people were registered, was attacked by a thousand-strong mob that arrived at the camp in waves of hundreds of individuals armed with clubs, machetes and sticks. Once it had formed, the mob converged on the camp and attacked the displaced persons living there, burning and destroying more than 80 per cent of the camp.

40. More than 8 people died as a result of this attack and some 60 were injured, including 1 woman. Six bodies were found at the camp and two others were found approximately 1 kilometre from the camp. According to the medical report issued by the hospital at Duékoué, three of the victims were killed by gunshot wounds and the others died of severe burns. Cases of enforced disappearance were also reported. Survivors fled empty-handed from the looting and destruction perpetrated during the attack. The market opposite the Catholic mission in Duékoué and the parish annex for displaced persons were also set alight by the mob. Nevertheless, many displaced persons were able to return to their villages of origin, where the Expert was able to interview some of those who had fled the camp at Nahibly.

41. It should be noted that Nahibly camp housed a large majority of indigenous Guéré, who generally support the FPI of former President Gbagbo and who were afraid of returning to their homes after the post-electoral crisis from which many Ivorians now in exile in Liberia or Ghana originated. According to the mob that destroyed Nahibly, the mob

consisted of residents of Kokoma in Duékoué, supported by Dozo and by FRCI troops, unchecked and determined to do battle with the camp residents who were suspected, whether rightly or wrongly, of being behind the wave of insecurity (murder, rape, robbery) that has affected Duékoué in recent weeks. The culminating point of this insecurity was the assassination on the night of 19 to 20 July 2012 of four men living in Kokoma, a district populated by non-indigenous communities and, in particular, by the Malinke, an ethnic group traditionally close to the Rassemblement des républicains (RDR), which is the ruling party.

42. In the days following the attack, the Prosecutor of Man went to Duékoué and an investigation was launched. Six months after the events, no arrests have been made. On 10 October 2012, a pit containing the remains of six people was discovered at Toguei in Duékoué. Other places that supposedly contained bodies were reported in the same region. The Prosecutor of Man went to Duékoué to verify this information and opened an investigation with a view to determining the cause of death of the persons concerned and possible links with the attack on Nahibly camp.

43. The Expert notes with grave concern that the patterns of alliances observed in the past between the security forces and non-State armed groups to defend a community close to the ruling party to the detriment of communities seen as supporting the opposition is being repeated in the west of the country. At the time of the former regime, the defence and security forces allied themselves with pro-Gbagbo militia and self-defence groups in order to defend the interests of the indigenous populations close to the FPI and, frequently, to violate the rights of the non-indigenous populations that supported the opposition. Nowadays, the same dynamic appears to be operating but in reverse; the FRCI and the Dozo are increasingly establishing themselves as the defenders of non-indigenous communities against indigenous communities.

44. The Independent Expert has been informed that the attack occurred in the presence of the Regional Commissioner, the Dozo Chief in Duékoué and FRCI officers. It should also be noted that since Nahibly camp was established, UNOCI troops have been sent to the site to monitor the camp from outside. In this context, six watchtowers were erected along the fence around the site. This provision did not prevent the attack on Nahibly camp; the fact that the UNOCI contingent took no action is of particular concern.

#### **D. Violence against women and children**

45. The situation of women and children also continues to give cause for concern, in particular in the Bouaké region and in the west of the country, where a resurgence of acts of sexual violence has been noted. At least 90 cases of rape, of which 23 were gang rapes committed during armed attacks, have been documented throughout the country. Nineteen alleged perpetrators, including four FRCI troops, have been brought to trial.

46. The Independent Expert welcomes the efforts of numerous courts in prosecuting the perpetrators of sexual violence. Nevertheless, the crime of rape continues to be qualified as “indecent assault” by some courts, which diminishes the serious nature of the violations committed. The Expert deplores the high cost of the medical certificate required for the prosecution file in rape cases, which costs 50,000 CFA francs (approximately US\$ 100), and also deplores the amicable agreements reached between families that prevent victims from taking legal action.

47. There have been 61 cases in which serious violations of children’s rights have been observed, as follows: 14 cases of violation of the right to life, 39 rapes, 4 abductions, 2 school occupations and 2 cases in which children were used by Dozos on roadblocks. The Expert expresses his profound concern at the high number of cases of pregnancy among

young girls in primary and secondary education, most frequently pregnant by their own teachers, in violation of the ethical code and the code of conduct regulating relations between teachers and pupils.

48. It was in this context that the bill revoking article 53 and amending articles 58, 59, 60 and 67 of Act No. 64-375 of 7 October 1964 on marriage, as amended by Act No. 83-800 of 2 August 1993, was adopted by the National Assembly on 21 November 2012. The new article 58 provides that: “The family is managed jointly by the spouses in the interest of the household and the children. Together, they provide moral and material guidance.” This represents a significant step forward in the area of equality and non-discrimination that will further the situation of human rights in Côte d’Ivoire. In view of the opposition that this legislation has aroused among some religious leaders, both Christian and Muslim, and among part of the population that remains attached to traditional roles for women, the Expert encourages the Government to develop a communication strategy in order to explain the scope and meaning of the new legislation.

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

49. The Independent Expert notes the remarkable progress achieved by Côte d’Ivoire in respect of economic and social recovery. The national development programme attaches great importance to improving maternal and child health through programmes to increase the efficiency and growth of health services, family planning, immunization coverage and expanded emergency neonatal obstetrical care. In addition, the Government intends to introduce free targeted health care for mothers and for children under 5 years of age and to provide primary education for all.

50. Cases of violation of the right to property and of extortion and racketeering have been reported throughout the country, particularly in the west. Such incidents have mainly been committed in the context of FRCI operations supported by Dozos to confront the recent waves of attacks by assailants. Some members of the security forces have taken these operations as a pretext to enter homes and take objects of value such as computers, portable telephones, white goods and money. Numerous cases of extortion at roadblocks set up by the FRCI and Dozos throughout the country have also been reported. Such practices contribute to further impoverishing populations already traumatized and weakened by more than 10 years of crisis.

51. Many people who had been arbitrarily arrested were released after paying money to the FRCI troops who had detained them. The Expert was also informed of cases in which the families of detainees were held to ransom and required to pay money to certain authorities before being able to visit detained family members. In other cases, detainees did not receive visits because their families were not always able to collect the required amount. The bank accounts of many detainees remained blocked and their houses were destroyed or occupied by FRCI troops. The Expert considers that the prolonged freezing of the assets of some detainees involved in legal proceedings which, in some cases, can continue for some two years without their coming to trial, could constitute a violation of their economic and social rights and those of their families. It could also have an impact on their ability to obtain access to a legal representative of their choosing and, consequently, constitute an obstacle to a fair and equitable trial.

## **IV. Justice and the fight against impunity**

### **A. The National Commission of Inquiry**

52. The Expert met with Paulette Badjo, President of the National Commission of Inquiry, who officially submitted the report of the Commission to the President of the Republic during a ceremony held on 8 August 2012 at the Presidential Palace in Abidjan. The report covers the period from 31 October 2010 to 15 May 2011 inclusive.

53. The report established, with regard to the number of victims and alleged perpetrators, that there had been a total of 3,248 deaths, attributed to the following actors: 1,452 deaths caused by pro-Gbagbo forces; 727 deaths attributable to the FRCI; 200 deaths attributed to the Dozo; and 52 deaths attributed to various non-conventional forces. The report also noted 8,141 cases of ill-treatment, 345 cases of torture, 194 cases of rape, 265 cases of enforced disappearance and 260 cases of arbitrary detention. In total, the Commission interviewed 15,875 victims and witnesses.

54. When he received the Commission's report, President Ouattara emphasized the importance of the moment "for Ivorians, for those who live in Côte d'Ivoire and for the international community, because this report was highly anticipated". He then said that the National Commission of Inquiry had been established in order to seek the truth, end the impunity that prevailed in the country and promote reconciliation. The President said that he was satisfied with the significant work that had been carried out within the established deadlines and, in his turn, submitted the report to the then Prime Minister, Minister of Justice Jeannot Kouadio-Ahoussou so that he could "review it most attentively in order to take the necessary measures". Lastly, the President promised that the report would be published and stated that all those who had committed wrongful acts would answer for them in court.

55. The Expert commends the outstanding high-quality and impartiality of the work accomplished by the members of the National Commission of Inquiry and the willingness of the Government, reaffirmed by the President of the Republic on this occasion, to combat impunity and to bring the alleged perpetrators of such acts to court. In this context, the Expert mentioned the follow-up to the recommendations of this important report during his meeting with the Public Prosecutor at the Court of Abidjan and the Government Commissioner at the Military Tribunal of Abidjan, who had not yet received a copy of the Commission's report. The Expert expressed the hope that the publication of the report, which was the outcome of an internal process that reflected a laudable national desire to protect human rights, would give new impetus towards an impartial judiciary in Côte d'Ivoire, which was a prerequisite for any genuine reconciliation.

### **B. The Dialogue, Truth and Reconciliation Commission**

56. The trauma and emotional impact of 10 years of crisis has left indelible marks in the collective consciousness of the country. The Dialogue, Truth and Reconciliation Commission could serve to promote catharsis at the national level, contribute to identifying traumatic stress points in the country's imaginary landscape and, by giving them visibility through public hearings, contribute to promoting collective memory and shared emotions, which are the foundation of lasting reconciliation in the national consciousness.

57. In spite of the deficiencies and financial difficulties that the Commission encountered during its start-up phase and the delay in the implementation of its activities, it has developed a vision that integrates a certain number of elements not taken sufficiently into consideration when it was established, as a matter of urgency, by the President of the

Republic on 13 July 2011. In this regard, the Expert notes with appreciation that the Commission has accepted the need for a national consultation process, based on broad participation at both the central and the local levels in order to establish the legitimacy of the Commission and to strengthen its legal framework, that takes into consideration the demands and expectations of Ivorians. The Expert also welcomes the forthcoming start of national consultations and the enhanced cooperation between the Commission and non-governmental organizations. The Expert was able to visit one of the Commission's local platforms in Duékoué, run by a local non-governmental organization without adequate means, which reflects the gradual, although slow, progress of the Commission through the preparatory phase and towards the operational phase.

58. It should also be noted that the political, social and security environment in which the Commission functions has an impact on its activities and can make its task more complicated, given the recurrent tension in Ivorian society which can radicalize some political actors. In this context, the Commission is obliged to allocate more resources to the dialogue aspect of its work, which is not traditionally a part of the work of such commissions in other parts of the world; this means that the Commission's mandate must be able to adapt to the political processes at work in society. This situation creates an inherent tension between the dialogue aspect [of the Commission's work], which focuses chiefly on the present, and the truth-seeking dimension, which is more oriented to the past.

59. In spite of these constraints, the President of the Commission initiated dialogue with social pressure groups and political parties, including the FPI, after the attack on FRCI positions, in order to reduce tensions in the country and explore the possibility of genuinely reviving the reconciliation process. The political parties, including the FPI, welcomed this initiative, the findings and conclusions of which were submitted to the President of the Republic.

60. The Expert notes with concern that the missing link remains the concept of justice, which does not figure in the mandate, let alone the name, of the Commission. The concept of justice is crucial; there can be no peace and no reconciliation without justice, and efforts to achieve peace and reconciliation can not take the place of the demand for justice. The Expert further notes the absence of a coherent strategic vision at the State level with regard to the relationship between non-judicial and judicial mechanisms of transitional justice. Bridges need to be created between these different mechanisms so that they can cooperate more effectively on the basis of their complementary mandates.

### **C. National prosecutions**

61. According to the Public Prosecutor at the Court of Abidjan, 8,500 people were interrogated in the context of preliminary investigations into murder and similar crimes, economic offences committed against a number of community organizations and financial organizations and threats to State security and public order. Some 115 persons were charged and detained for threats to State security and public order and 55 others, all associated with former President Gbagbo's regime, were detained on charges of murder and similar crimes.

62. Investigations into the murder of former President of the Republic General Robert Guéï, his wife and bodyguards — a case that is emblematic of the Ivorian crisis — also seem to have made significant progress. On 1 October 2012, the Military Procurator announced that Commander Séka Yapo Anselme had been charged with abduction and murder and that General Dogbo Blé, Lieutenant Colonel Katet Gnatoa and Captain Sakanoko Mory had been charged with abetting abduction and murder.

63. The Expert welcomes the fact that trials before the military court have begun. On 2 October 2012, he attended the opening of the first hearing in the case of *The Prosecution v. General Dogbo Blé Brunot and four others*, the first major trial involving high-level military figures in respect of acts committed during the post-electoral crisis. The Expert deplores the slow pace of proceedings before the civil courts and the fact that the preventive detention of persons charged in the context of that crisis is being extended indefinitely. Preventive detention should be an exceptional measure and its abuse raises real human rights problems. Persons who have been arrested and detained on criminal charges must be brought promptly before a judge and tried within a reasonable period, or released.

64. The Expert is concerned about the lack of impartiality in the current strategy for the pursuit of justice in Côte d'Ivoire. No serious proceedings have yet been brought against members of the FRCI and their associates. The Expert raised this question when he met with the Public Prosecutor of Abidjan; the Public Prosecutor replied that the magistrate of the ninth investigations office in charge of crimes committed in Duékoué during the post-electoral crisis had initiated proceedings, but was not able to go to the west of the country for security reasons. He said that the slow pace of justice was more dependent on the investigations offices, but that the civil proceedings should have started last November, although they had not done so.

65. The Expert takes note of the charges of genocide against 48 persons including seven figures such as Simone Gbagbo; former Prime Minister Pascal Affi N'Guessan; Geneviève Bro Grébé, the President of Femmes patriotes; former Deputy Chairperson of FPI, Aboutrahamane Sangaré; former Minister of Finance Désiré Noel Laurent Dallo; Alcide Djédjé, Minister for Foreign Affairs in the last, unrecognized Government of former President Gbagbo; Professor Gilbert Aké N'gbo, Prime Minister in the last, unrecognized Government of former President Gbagbo; and former Commander of the Presidential Guard, General Bruno Dogbo Blé. The other charges of genocide are against 41 Ivorian nationals extradited from Liberia in June 2012 following an attack on UNOCI peacekeepers.

66. The Expert notes with concern the gaps in the definition of the crime of genocide in the Ivorian Criminal Code, which does not meet the international standards set out in international instruments, in particular the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1946 and the Rome Statute of the International Criminal Court. The definition of genocide contained in article 137 of the Criminal Code is ambivalent and inexact; it is broader than that contained in international instruments, particularly as it applies the term "genocide" to political groups, while at the same time it is more restrictive, failing to apply the term to racial groups and ignoring the concept of "as such" associated with victim groups.

67. In view of these shortcomings, observers rightly wonder whether the genocide charges are relevant in the Ivorian context and whether the national justice system might be discredited if it were perceived to have recourse to legal precepts of the utmost gravity without the necessary rigour.

#### **D. Prosecutions before the International Criminal Court**

68. On 26 September 2012, the Council of Ministers adopted two bills in preparation for the ratification of the Rome Statute of the International Criminal Court. One was a bill amending the Constitution, with a view to enabling Côte d'Ivoire to ratify the Rome Statute, while the other was a bill authorizing the Head of State to ratify the Rome Statute. The National Assembly adopted Act No. 2012-1134 of 13 December 2012 concerning the ICC, introducing article 85 bis under title VI of the Constitution, according to which: "The Republic may recognize the jurisdiction of the International Criminal Court as provided for

under the Treaty signed on 17 July 1998.” The President of the Republic promulgated the said Act by decree No. 2012-1135 of 13 December 2012.

69. On 22 November 2012, Pre-Trial Chamber I of the ICC unsealed the warrant of arrest issued against Simone Gbagbo for four charges of crimes against humanity. According to the arrest warrant, initially issued under seal on 29 February 2012, Ms. Gbagbo is criminally liable under article 25 (3) (a) of the Rome Statute for the crimes against humanity of murder, rape and other forms of sexual violence, other inhumane acts and acts of persecution committed in the territory of Côte d’Ivoire during the period between 16 December 2010 and 12 April 2011.

70. On 5 December 2012, Minister of Justice, Human Rights and Civil Liberties Gnénéma Mamadou Coulibaly stated in reply to questions from the press concerning the reaction of the Government to the arrest warrant issued against the former First Lady that the Ivorian authorities had already taken note of the request and reserved the right to make an official statement in a timely manner. This position, reiterated by the new Prime Minister Daniel Kablan Duncan, raised legitimate questions about his motives and about the implications for the scope of the ratification of the Rome Statute.

## **E. Prison conditions**

71. The national authorities, supported by UNOCI and partner countries, set to work to bring prisons, which are an important link in the chain of criminal justice, back into service. At present, 32 out of 33 prisons accommodating some 7,365 detainees have been brought back into service. Despite the efforts of national authorities and partners, the results are mixed; although prisons have come back into service, it is a struggle to resume normal operation, particularly with regard to the detention and custody of persons in preventive detention. More than 410 detainees have escaped, sometimes with the use of force, which has led to the death of 8 detainees.

72. Following the attacks in August and repeated prison escapes by detainees, the National Security Council, headed by the President of the Republic, deemed it necessary to strengthen prison oversight by recruiting 2,000 prison guards. This is a timely decision that could considerably improve prison administration. However, in order for this measure to be effective, the capacity of the personnel recruited to receive and assimilate training on the one hand and, on the other hand, their capacity to prove their professionalism must be taken into account. Consequently, the recruitment process should be rigorous in order to exclude, for example, persons in conflict with the law or even former detainees.

73. The Expert was able to visit places of detention in Bouna, Boundiali, Katiola, Korhogo, Odienné and Abidjan. In general terms, the detainees with whom he met appeared to be in reasonable physical condition. They were in contact with their lawyers and many received visits from family members. All complained in strong terms about the length of their detention without trial. Simone Gbagbo showed some signs of physical weakness. She was moved from Odienné for security reasons some time ago, which has had an impact on her health. Although she receives regular treatment, she complains that the physicians she sees are not of her choosing. She also complains that she does not receive visits from her family members and only receives news of them through her lawyers. In Katiola and Boundiali, some detainees complained that they shared space with persons detained for common crimes, with the attendant security risks.

74. On his first visit to Bouna, the Expert met with 21 detainees, including former Prime Minister Pascal Affi N’Guessan, former Minister of Defence Moïse Lida Kouassi, recently extradited from Togo, and Michel Gbagbo, son of former President Gbagbo. No ill-treatment was reported. Michel Gbagbo has not received a visit from his family since his



arrest. He was evacuated to Abidjan, where he stayed for three months for medical treatment. The most difficult detention conditions were encountered at the Compagnie territoriale de Korhogo (CTK) in Korhogo where former senior Forces de défense et de sécurité (FDS) officers are held. They live in cramped conditions in small, extremely dilapidated and unhygienic cells. They do not receive any visits from family members. At Abidjan Detention and Correction Centre (MACA), 180 persons are detained on charges of jeopardizing State security, including 99 military personnel.

75. On 10 November 2012, the Human Rights Division of UNOCI was able to visit Commander Séka Yapo at the National Surveillance Directorate. Commander Séka Yapo has been detained incommunicado at an unidentified location since his arrest on 15 October 2011. He has never received a family visit or a visit from his lawyer. He has been unwell and was admitted to a clinic in Abidjan. He expressed the wish to have access to his lawyer, who is in France.

## V. Conclusions and recommendations

### A. Conclusions

76. **The democratic, economic and social reconstruction of Côte d'Ivoire forms part of a process the scope and significance of which must be measured against the long crisis that caused a culture of violence to predominate in society and profoundly disrupted the country's political, economic and social institutions. Two existential issues continue to trouble the collective consciousness, namely, the root causes of the crisis and anxiety about the possibility of reconciliation.**

77. **The three fundamental aspects of the crisis — its moral depths, its political source and its social impact — must be considered together and in terms of the following major challenges: democratic, economic and social reconstruction; the promotion of a national political ethic; the restoration of community life; and the eradication of the culture of violence. The democratic reconstruction taking place at the institutional level is being held back by entrenched political polarization and the lack of progress in establishing genuine political pluralism, in particular by the non-participation of the main opposition party, the FPI, in the permanent framework for dialogue.**

78. **The urgency of the need for political reconciliation and for democratic, economic and social reconstruction is made stronger by the crisis in Mali, the political, military, religious and economic implications of which could destabilize all countries in the region profoundly and in the long term. A multicultural, democratic, egalitarian society that respects human rights is the best defence against this new peril that is fuelled by violence, intolerance and discrimination.**

### B. Recommendations

#### 1. Recommendations to the Government

79. **The Independent Expert recommends that the Government of Côte d'Ivoire should give the highest priority to boosting the democratic process, promoting human rights and consolidating the economic and social reconstruction [process]. The Government must sustain its momentum despite the current attempts to destabilize the security situation, the objective of which is precisely to derail the process.**

80. Democratic reconstruction is a key factor in national reconciliation and should be based on the effective achievement of inclusive political pluralism and the vigorous and vigilant promotion of human rights.
81. The Independent Expert therefore reiterates his recommendation that ethnic, cultural and religious pluralism should be enshrined in the Ivorian Constitution as a basic value of the Ivorian people. Significant political initiatives should be made in order to ensure that the permanent framework for dialogue, which is a positive step, fully reflects the political diversity of Ivorian society.
82. Côte d'Ivoire must consolidate democracy, consensus and peace at the national level, in view of the increasing instability and division inherent in the crisis in Mali and the Sahel.
83. Urgent and credible measures must be taken to ensure effective respect for human rights, for which a robust institutional and legal framework exists, in particular by State security forces; such measures should be based on training, the punishment of established human rights violations and more rigorous filtering under the DDR process.
84. The scope of the progress being made in the promotion and realization of economic, social and cultural rights must be enhanced by laying emphasis, through education, on the inseparability of those rights from civil and political rights, within the responsible Government bodies as much as among the population.
85. Women and children, who are the main victims of the crisis but are also a fundamental element of reconciliation, must be priority beneficiaries of the economic and social recovery and fully exercise the right to education.
86. The mandate, composition, organization and functioning of the National Human Rights Commission, which plays a fundamental role in promoting and [ensuring] respect for human rights, must be in conformity with the Paris Principles and in particular with regard to its independence and resources.
87. Two significant steps should be taken to implement the report of the National Commission of Inquiry, which is a balanced document that favours reconciliation: the report should be published (respecting the confidentiality of sources and witnesses), and an independent structure with the appropriate means to follow up on the implementation of the report's recommendations should be established.
88. It would also be appropriate to establish a platform for cooperation between the State institutions responsible for transitional justice. The necessary resources must be made available to the Dialogue, Truth and Reconciliation Commission, the mandate of which is more appropriate than ever. The formal absence of the concept of justice from the Commission's mandate should be mitigated by taking a holistic, proactive and three-dimensional view of the truth that would involve looking objectively at the facts, identifying those responsible and identifying the root causes.
89. Measures taken to try detainees and provisionally release a significant number of figures from the former regime must be made more credible through greater impartiality on the part of the judiciary towards those recognized as being responsible for massive violations of human rights of all political persuasions, including those seen as being close to the ruling power. Conditions of detention must be subject to more systematic scrutiny.
90. The positive ratification of the Rome Statute of the International Criminal Court must be followed by firm, unreserved cooperation with the ICC to ensure that its ratification is seen as credible by the international community.

91. The Independent Expert reiterates his recommendation with regard to the active promotion of traditional values, practices and mechanisms in order to foster coexistence and the mobilization of religious and traditional leaders for that purpose. The cultural and artistic creativity of the Ivorian people, particularly Ivorian youth, must be systematically encouraged and promoted in order to further reconciliation.

2. Recommendations to the international community

92. The Independent Expert recommends that the international community should maintain and strengthen its support to Côte d'Ivoire in order not only to sustain the democratic process and the current process of economic and social reconstruction but also to further pluralism and national reconciliation, the progress of which is jeopardized by political polarization.

93. The fact that the security situation is weakened by the rise of a culture of violence and by repeated attempts to destabilize State security is justification for lifting the embargo and providing technical reinforcement to State security agencies on an urgent basis.

94. The challenge of consolidating the democratic, economic and social situation in Côte d'Ivoire needs to be addressed by the international community in view of the inherent risks of the crisis in Mali, which could destabilize the region in which Côte d'Ivoire is a lead actor, with profound and lasting effect. One of the major challenges for national reconciliation is convincing the population of the impartiality of the national judiciary, as much as of the International Criminal Court.

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