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#### Agenda item 10

#### 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\*

### Note by the Secretariat

The Secretariat hereby has the honour to transmit the report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, Mohammed Ayat, to the Human Rights Council.

The report is the outcome of the Independent Expert's fourth visit to Côte d'Ivoire, which took place from 22 to 28 May 2016, and covers the period from 12 November 2015 — the end of his third visit — until 28 May 2016. It highlights the remarkable progress that the country has achieved in the economic and political spheres and in terms of security.

The visit of the Independent Expert occurred a few weeks after the adoption of Security Council resolutions 2283 (2016) and 2284 (2016) on the situation in Côte d'Ivoire. By the first of those resolutions, the Security Council decided to lift the arms embargo and to end the sanctions regime; by the second, it decided to extend the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) for a final period ending on 30 June 2017.

The Independent Expert urges Côte d'Ivoire to take full ownership of human rights protection operations so as to be ready to take over when UNOCI withdraws from the country one year from now. In that regard, it is essential that the authorities revamp the National Human Rights Commission of Côte d'Ivoire and provide it with the necessary means to carry out its mandate and to work independently.

The Independent Expert welcomes the establishment in January 2016 of two new ministries whose work relates to the promotion of human rights: the Ministry of Solidarity, Social Cohesion and Victim Compensation and the Ministry of Human Rights and Civil Liberties. The latter will be responsible for working on the reform of the National Human

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\* The present report was submitted after the deadline so that the most recent developments could be reflected.



Rights Commission of Côte d'Ivoire and for implementing the law on the protection of human rights defenders, which will be crucial to ensure that civil society organizations are able to play their role fully.

The establishment of the Ministry of Solidarity, Social Cohesion and Victim Compensation is a major step towards achieving national reconciliation. The Ministry will be responsible for implementing the recommendations of the National Commission for Reconciliation and Compensation of Victims and the Dialogue, Truth and Reconciliation Commission. Efforts are being made to identify the victims of crises in Côte d'Ivoire with a view to providing them with compensation and to process criminal justice cases relating to the post-electoral crisis of 2010. The Ivorian authorities plan to have completed the processing of those cases by the end of 2016. The Independent Expert notes with appreciation the commitment of the judicial authorities to ensuring equitable justice for all victims of the crises that have occurred in the country since 1990.

The Independent Expert emphasizes that the fight against impunity will be essential in order to prevent intercommunal violence of the sort that occurred in March in the vicinity of Bouna which resulted in a number of deaths. In this case, it is noteworthy that the chief of the *dozo* brotherhood in Bouna was immediately arrested and charged with murder and incitement to murder. The prosecution, while respecting due process, of those responsible for crimes committed during the unrest can only serve to further efforts to achieve national reconciliation.

The Independent Expert noted an improvement in conditions at the Juvenile Observation Centre sited within the Abidjan Detention and Correctional Centre which was brought about through concerted advocacy in favour of children in conflict with the law and increased awareness of their vulnerability and their inalienable right to education and decent living conditions. Nevertheless, the ideal course of action would be to establish a juvenile observation centre that is in keeping with the standards of a rehabilitation institution and that is located outside of the detention centre.

Côte d'Ivoire still has numerous challenges to address. The benefits of economic growth are not yet being felt by ordinary citizens, and the security situation, although improved, remains precarious owing to persistent terrorist threats in the region. The intercommunal violence at Bouna highlights the importance of successfully completing the disarmament process in the country. Lastly, the transition that will follow the impending departure of UNOCI will present a further challenge; meeting that challenge will call for concrete measures to ensure greater ownership by national actors of their duty to protect and promote human rights.

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

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## I. Introduction

1. This report is submitted pursuant to resolution 29/24 of the Human Rights Council of 3 July 2015, whereby the Council requested the Independent Expert to submit a report at its thirty-first session and his final recommendations at its thirty-second session. The report covers the period from 12 November 2015 to 28 May 2016 and is the outcome of the Independent Expert's fourth visit to Côte d'Ivoire, which took place from 22 to 28 May 2016.

2. The mission took place a few weeks after the adoption of Security Council resolution 2284 (2016), by which the Council decided to extend the mandate of the United Nations Operation in Côte d'Ivoire (UNOCI) for a final period ending on 30 June 2017. As stated in paragraph 15 (d) of that resolution, the Security Council decided that the mandate of UNOCI would include contributing to the promotion and protection of human rights in Côte d'Ivoire, including through early warning activities and in close coordination with the Independent Expert established by the Human Rights Council.

3. In that context, the visit provided an opportunity for assessing the challenges that will accompany the transition that will follow the withdrawal of UNOCI and, in particular, the extent to which Ivorians have been able to take ownership of the duties involved in the protection and promotion of human rights — duties that they will need to assume once the United Nations operation ends in June 2017. Other objectives of the visit were to continue to gather information on human rights trends in Côte d'Ivoire and to continue discussions with the Ivorian authorities on their capacity-building needs in the field of human rights.

4. During this mission, the Independent Expert was able to meet with several senior officials of Côte d'Ivoire and with national and international stakeholders. Meetings were held with the Prime Minister and other members of the Government, including the Minister of State, the Minister of the Interior and Security, the Minister of Justice, the Minister of Human Rights and Civil Liberties, the Minister for the Promotion of Women, Family and Child Protection and the Director of the Office of the Minister for Solidarity, Social Cohesion and Victim Compensation.

5. The Independent Expert met with officials in such strategic organizations as the Independent Electoral Commission, the National Human Rights Commission of Côte d'Ivoire, the Dialogue, Truth and Reconciliation Commission and the National Commission for Reconciliation and Compensation of Victims. He also spoke with senior justice officials, including the Prosecutor-General of the Court of Appeals of Abidjan and the Public Prosecutor of the Court of First Instance of Abidjan, who is also in charge of the special investigation unit, and with the President of the Bar Association of Côte d'Ivoire. He also participated in several meetings with representatives of civil society organizations, including NGOs and human rights and victims' organizations, and held talks with members of the diplomatic community and with officials from United Nations agencies. He visited the Juvenile Observation Centre in Abidjan and travelled to Grand Bassam, where he met with the municipal authorities.

6. The Independent Expert wishes to express his gratitude to the Government of Côte d'Ivoire for inviting him to the country and for its candid and sincere cooperation. He also wishes to thank all the people with whom he met in order to gather useful information and to discuss issues relating to his mission. He is very grateful to the officials of UNOCI and the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the valuable logistical support which they provided during his visit.

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

### **A. Economic situation**

7. The economy of Côte d'Ivoire continues to boom, with average growth rates of 9 per cent annually since 2012. The Government aims for Côte d'Ivoire to achieve emerging economy status by 2020 and, to that end, has established a five-year national development programme (2016-2020). The country is earning the confidence of foreign investors, particularly after the recent presidential elections went smoothly. One of the Government's main ambitions is to strengthen processing industries so that the country will no longer export only raw materials.

8. While welcoming these significant trends, the Independent Expert took the opportunity to invite the Ivorian authorities to maintain their focus on the plight of the poorest population groups, especially since some time may elapse before society as a whole reaps their benefits, which might in fact turn out to be negligible. The Independent Expert notes that the Government of Côte d'Ivoire is earnestly working to integrate such an approach into its planning systems. Accordingly, the agricultural sector, which employs two thirds of the working population, is supported by a national investment programme that has helped to boost productivity in the sector while improving the living conditions of farmers. Côte d'Ivoire allocates part of its budget to actions aimed at improving the economic and social situation of the poorest groups, with spending for this purpose totalling 1,1702 trillion CFA francs in 2015 (more than US\$ 3 billion) thanks to an increase of 50 per cent in two years.

### **B. Security situation**

9. The security situation in Côte d'Ivoire has stabilized considerably and is on its way to returning to normal. As a result, according to most observers, last November's presidential elections were organized in a calm and orderly manner and international standards were respected. The significant progress that has been made has been recognized by the Security Council in two important resolutions. By the first (resolution 2283 (2016) of 28 April 2016), the Council lifted the arms embargo that had been imposed on the country for 10 years. That decision was prompted by the Security Council's satisfaction at the progress achieved in the stabilization of Côte d'Ivoire, including in relation to disarmament, demobilization and reintegration and security sector reform and in the management of arms and related materiel. The resolution also highlighted the progress made in terms of national reconciliation. In addition, the Security Council decided to put an end to sanctions aimed at institutions and individuals (travel restrictions and financial measures).

10. By means of the second resolution (resolution 2284 (2016) of 28 April 2016), the Security Council decided to renew the mandate of UNOCI for a final period ending on 30 June 2017. These measures illustrate the international community's increased confidence in the efforts undertaken by the Ivorian authorities to date, with the support of UNOCI, to bring the security situation under control. The Government of Côte d'Ivoire deserves recognition for this praiseworthy achievement.

11. While applauding these developments, the Independent Expert wishes to stress the need for continued progress in bringing stability and security to the country. Stability is a dynamic rather than a static situation; it must be maintained and its continuity ensured. The Ivorian authorities should remain highly vigilant and alert to the risk of terrorist attacks, which have shown a tendency to proliferate in the region. Efforts to prevent and suppress

such attacks must continue and should be carefully coordinated at the regional and international levels. During his mission, the Independent Expert was able to visit the town of Grand Bassam, site of the terrorist attacks of 13 March 2016, in order to hold talks with the local authorities and to offer his personal sympathy and condolences to the victims and their families.

12. The Ivorian authorities have specific legal instruments at their disposal for dealing with offences that may be regarded as acts of terrorism. Anti-terrorism legislation, which is taking on an increasingly international character, often provides for derogations from the provisions of ordinary criminal law and tends to cast a wider net with a view to increasing the effectiveness of enforcement. It is therefore necessary to ensure that such provisions are implemented in strict compliance with all guarantees of a fair trial (which, it should be recalled, apply at all stages of criminal justice proceedings, from the preliminary investigation until acquittal or conviction).

13. Continued attention must also be given to potential sources of intercommunal tension in certain parts of the country. Such tensions are stoked by rivalries between farmers and pastoralists over limited natural resources and are sometimes aggravated by competition for local leadership. Upstream dispute prevention should be preferred to downstream enforcement. It is important to continue to reinforce the legal and social norms that serve as a framework for the land sector, since uncertainties in that respect often sow discord and tension. Local authorities, given their close ties with their communities, have a key role to play in defusing intercommunal conflicts. That delicate task would be facilitated by the involvement of all available human resources at the national and local levels, including traditional leaders, religious leaders and civil society stakeholders.

14. One aggravating factor in intercommunal conflicts that calls for the authorities' full attention is the possibility that members of some of these communities may be armed; this is especially of concern in locations where conflicts may be likely to arise, but it remains a concern even in areas not regarded as particularly sensitive. For years now, Côte d'Ivoire has suffered from chronic instability linked to armed conflict. This kind of situation is conducive to the procurement and circulation of weapons — particularly small arms that are relatively easy to conceal — and to the existence of a subculture in which conflicts are resolved through violence. Moreover, the country borders on regions in which many weapons are still in circulation. There is no doubt that the presence of firearms held by *dozo* groups increased the deadliness of the intercommunal conflict that erupted in Bouna in March 2016.

15. Significant disarmament efforts have already been undertaken in Côte d'Ivoire with the support of the international community under programmes run by the Disarmament, Demobilization and Reintegration Authority. Such endeavours must be pursued within other institutional frameworks as well in order to reinstate the State's monopoly of legitimate force on a permanent basis and thus ensure lasting stability and security for the Ivorian people. The successful efforts undertaken by the authorities to restore security and stability are commendable and should continue, and the international community has a duty to support them effectively.

16. The Independent Expert welcomes the awareness campaign aimed at communities located along the country's western border which was undertaken by the National Commission on the Proliferation of Small Arms and Light Weapons in close collaboration with the United Nations Development Programme (UNDP) from 16 to 27 May 2016. Those communities were warned about the dangers posed to the security and stability of their regions, and to the country as a whole, by the availability of illicit weapons. The awareness campaign also encouraged people to voluntarily surrender any weapons that they might have in their possession in exchange for access to income-generating activities and local development projects.

## C. Political situation

17. Political dialogue between the Government and the opposition continues and is now considered routine among Ivorian political actors. This state of affairs was welcomed by the Security Council in its resolution 2284 (2016) and is also applauded by the Independent Expert. Against this backdrop of political openness, legislation is being drafted to confer a special status upon opposition leaders who do well in the elections and to subsidize the activities of the opposition. This legal recognition of the important role that can be played by the opposition highlights the Government's interest in fostering a plurality of political opinion and could be an important step towards the institutionalization of dialogue in a peaceful and responsible social climate.

18. The new Administration, whose 36 members were appointed on 12 January 2016, includes nine female ministers, thereby increasing female representation within the Government from 11 per cent to 25 per cent. Two new ministries have been created that are of central importance for the promotion of human rights: the Ministry of Solidarity, Social Cohesion and Victim Compensation and the Ministry of Human Rights and Civil Liberties. The country is preparing to organize parliamentary elections and a referendum on the reform of the Constitution, in principle in 2016.

19. The Independent Electoral Commission is a permanent constitutional body responsible for organizing elections in Côte d'Ivoire. It played a pivotal role in the organization of the 2015 presidential elections. At present, the Commission is preparing for the parliamentary elections that are to be held in 2016; the Commission will propose a specific date for the elections to the Government for approval. It is also tasked with organizing the referendum on amendments to the Constitution, which is tentatively scheduled for 2016 as well. Local elections will be held in 2018 upon the completion of the term of office of the present local elected officials.

20. The task of organizing parliamentary elections may be as delicate, if not more so, than that of organizing presidential elections. The Independent Electoral Commission faces constant challenges as it seeks to ensure that ballots are cast under conditions of transparency and fairness and to help to maintain a dialogue between the various parties. The training of the Commission's staff is ongoing, and support from the country's partners for training activities would help to ensure that the challenges faced by the Commission are dealt with as successfully as possible.

## III. Status of human rights institutions

### A. Ministry of Human Rights and Civil Liberties

21. The creation of the Ministry of Human Rights and Civil Liberties demonstrates that the authorities of Côte d'Ivoire understand the central role of human rights in economic and human development. The newly established Ministry, whose structure is still being finalized, should be provided with the logistical support and human resources necessary for it to carry out its important work. The Ministry could take advantage of the impending departure of UNOCI (and its Human Rights Division) to recruit national personnel with practical experience in the field of human rights.

22. The role of the Ministry of Human Rights and Civil Liberties, which will be outlined in its governing legislation and regulations, should focus on implementing the human rights commitments of Côte d'Ivoire. The Government has accepted virtually all of the recommendations issued by the Human Rights Council under the universal periodic review and has also recently submitted its periodic report to the Human Rights Committee

(CCPR/C/CIV/1). It has already adopted a national strategy for the implementation of the recommendations issued by United Nations human rights mechanisms (universal periodic review, treaty bodies and special procedures).

23. The Ministry of Human Rights and Civil Liberties could play a central role in that implementation effort within the executive branch while working in close collaboration with all the other ministries. It should strive to expedite the implementation process, while highlighting issues that call for urgent action and priorities. Another aspect of its work might be to conduct research and prepare the ground for the ratification of conventions or protocols that the country has not yet ratified (for example, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

24. The Ministry could also provide valuable assistance in connection with preparations and advocacy for the enactment of legal instruments that are currently in the pipeline, including amendments to the Criminal Code and the Code of Criminal Procedure, the implementing decree for Act No. 2014-388 of 20 June 2014 on the promotion and protection of human rights defenders and of the bill on witness protection. The Ministry could also take advantage of the forthcoming constitutional reform process to advocate the adoption of provisions that would strengthen the rule of law, democracy and the promotion of human rights.

25. The Ministry should not exercise any supervisory powers over the National Human Rights Commission of Côte d'Ivoire; its relations with that institution should focus on cooperation in the promotion of human rights in Côte d'Ivoire. The Independent Expert considers that the Ministry should work towards the reform of the National Human Rights Commission with a view to ensuring its greater autonomy, independence and compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It is also important to delineate the dividing line between the areas of competence of the Commission and the Ministry so that each body has the flexibility to operate under the best possible conditions for the promotion of human rights in the country, while allowing some leeway for necessary and useful collaboration. A request for the accreditation of the National Human Rights Commission of Côte d'Ivoire is being reviewed by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Côte d'Ivoire may wish to draw on the recommendations of that body as it proceeds with the reform of the Commission. Lastly, the Ministry could usefully issue an informed opinion in the context of the broader debate concerning the forthcoming constitutional reform.

## **B. Ministry of Solidarity, Social Cohesion and Victim Compensation**

26. The structure of the new Ministry of Solidarity, Social Cohesion and Victim Compensation is also in the process of being determined. This Ministry will inherit all of the tasks that had been assigned to the National Programme for Social Cohesion (PNCS) and will continue the work of compensating victims that the Programme had been conducting in close partnership with the National Commission for Reconciliation and Compensation of Victims.

27. The Minister for Solidarity, Social Cohesion and Victim Compensation has already carried out two foreign missions for the purpose of encouraging refugees to return home. This direct intervention by a senior politician reflects the Government's desire to promote the return of Ivorians living in neighbouring countries. The missions took place in Liberia (from 11 to 15 May 2016), where there are still 21,539 refugees, and in Ghana, which hosts



11,423 refugees. The intended purpose was to make the refugees aware that the Government wants them to return to the country so that they can contribute to its development. More and more refugees are, in fact, gradually making their way back to Côte d'Ivoire. The Ministry has also taken part in an operation to provide care and compensation to the victims of the terrorist attack in Grand Bassam.

28. In March 2016, violent clashes erupted in the town of Bouna between members of the Lobi community — supported by *dozos* (traditional hunters) — and members of the Peul, Malinke and Kulango communities. Twenty-seven people died in the unrest, which also resulted in material damage from arson, looting and the destruction of property. Land disputes between farmers and pastoralists appear to have been at the root of the conflict, while the investigation carried out by UNOCI also singled out rivalries among local leaders. The Government responded swiftly and decisively to the outbreak of violence. The Head of State himself visited the town to inspect the damage and reassure the population and issued a clear statement to the effect that there would be no impunity for those responsible for this type of violence. The Minister for Solidarity, Social Cohesion and Victim Compensation also travelled to the area to monitor the situation.

29. UNOCI, the local authorities and the army all did their part to restore law and order in the town. It is noteworthy that the *dozo* chief in Bouna was immediately arrested and charged with murder and incitement to murder. Of the other 80 persons arrested, the fact that 48 belonged to the *dozo* brotherhood sent a strong signal that the Government would not allow the perpetrators to go unpunished, even in the case of members of a faction often described as “pro-Ouattara”. The prosecution of those responsible for committing crimes during the unrest can only serve to further efforts to achieve national reconciliation.

30. That said, there are some lessons to be learned from these unfortunate events which in future may be usefully applied to the proactive protection of human rights. Vigilance is required so that this type of unrest is not repeated in Bouna or elsewhere. Insofar as is possible, it is important to try to anticipate likely sources of tension and to deal with factors that may trigger violence (land and leadership disputes and the possible exploitation of feuds between local communities for political purposes). It is essential that disarmament efforts continue, since the existence of illegal weapons in the hands of civilians increases the risk of serious confrontations.

### C. National Commission for Reconciliation and Compensation for Victims

31. The National Commission for Reconciliation and Compensation of Victims officially submitted its report to the President of the Republic on 19 April 2016. The report (not yet published at the time of the Independent Expert's visit to Côte d'Ivoire) contains a chapter on the process involved in consolidating the list of victims of the crises that the country experienced between 1990 and 2012. The fact that the scope of the report extends beyond the victims of the post-election crisis of 2010 is a commendable decision that contributes to the restoration of social cohesion. The report also includes an overview of national reconciliation activities, together with proposals for the policy on reparations and the text of a draft bill on the status of victims of war. The National Commission has not overlooked the question of refugees and has drafted a recommendation concerning their return and their social and economic reintegration.

32. As regards the consolidated list of victims, a total of 874,056 files were received, of which 316,954 have been validated (36 per cent). The remaining applications were rejected for various reasons, notably the fact that there were a large number of duplicate submissions (38 per cent), as well as some fraudulent applications (12 per cent). That said, some of the grounds for rejection appear to be questionable in the eyes of the victims (for example, because applicants could not be contacted or because they were not in possession

of the documents needed to complete their file). While recognizing that the deadline for registering as a victim cannot be extended indefinitely, the Independent Expert is sensitive to the legitimate grievances raised by victims' associations and recommends that the authorities develop some form of recourse for those who have not yet been able to register.

33. This recommendation is based on the need to take into consideration the difficulties surrounding data collection, including contexts in which the interested parties are illiterate, poor or residing in relatively isolated locations. The recommendation is also made in recognition of the fact that the denial of victim status for actual victims constitutes a revictimization that undermines the process of national reconciliation.

34. Upon the submission of the report of the National Commission for Reconciliation and Compensation of Victims, the President of the Republic instructed the Minister for Solidarity, Social Cohesion and Victim Compensation to proceed with its publication, together with the report produced by the Dialogue, Truth and Reconciliation Commission. The Independent Expert welcomes this positive development. The publication of the reports will have a cathartic effect for the direct and indirect victims of the violence that has plagued the country. However, the reports should be accompanied by an awareness-raising campaign focusing on the importance of the work done by the two commissions, their laudable objectives and the inevitable limitations of the reports.

#### **D. National Human Rights Commission of Côte d'Ivoire**

35. Following the appointment of the former president of the National Human Rights Commission of Côte d'Ivoire as Minister for Human Rights and Civil Liberties, the members of the Commission elected a new (again, female) president. Having published its 2013 and 2014 annual reports late last year, the Commission is now readying its 2015 report for submission to the President of the Republic and subsequent publication. The Independent Expert reiterates the importance of publishing these annual reports on time and on a regular basis, along with reports on sectoral issues that merit more in-depth examination. Efforts should be made to improve the quality of these reports on an ongoing basis and to maximize their visibility among civil society and the public authorities (especially parliamentarians and ministerial departments responsible for security, justice and social cohesion).

36. The institutional workplan for the period 2016-2018 has been aligned with the current five-year plan. Its basic aims are to strengthen and revitalize the national and regional structure of the Commission and to continue its human rights promotion and protection activities. While this programme is ambitious and requires substantial human, financial and logistical support, it seems that current accounting standards sometimes hinder the Commission's work. The Independent Expert draws the attention of the Ivorian authorities to the importance of providing the Commission with an adequate annual budget and of streamlining procedures for the execution and control of budget disbursements. Human rights protection is a task that often demands urgent responses that are difficult to reconcile with convoluted administrative procedures.

37. Cooperation between the Commission and UNOCI continues through monthly bilateral meetings at which the two organizations exchange information and propose actions related to the promotion of human rights. The impending departure of UNOCI raises the possibility that it will leave a vacuum in its wake, and careful thought must therefore be given to the urgent steps that must be taken to ensure continuity in the protection of human rights. The Commission (along with the Ministry of Human Rights and Civil Liberties) is one of the largest institutions to take on this task, which is fraught with challenges. The Independent Expert believes that the upcoming constitutional reform may be a good opportunity to provide the country with a national institution that is more fully aligned with

the Paris Principles, which focus on the independence and the participatory nature of national human rights institutions. In order to properly carry out their work, such institutions should not be under the de jure or de facto supervision of any other State authority.

#### IV. The human rights situation

38. During the period covered by this report, the Human Rights Division of UNOCI documented 67 human rights violations, including 16 violations of the right to life, 31 violations of the right to physical integrity and 14 violations of the right to liberty and security of person. The region with the largest number of human rights violations is the one served by the Division's office in Bondoukou, which recorded 16 human rights violations during the reporting period. The main perpetrators were the Forces Républicaines de Côte d'Ivoire (FRCI), which were responsible for 21 of the violations documented by the Division, followed by the *dozos* (14 violations) and the gendarmerie (5 violations).

39. During the same period, the Human Rights Division of UNOCI documented 11 violations of children's human rights, including 3 violations of the right to life, 6 violations of the right to physical integrity and 2 violations of the right to liberty and security of person. Most of these violations were committed in Bondoukou by members of FRCI.

40. With regard to sexual violence, the Human Rights Division of UNOCI documented 75 cases of rape, including 14 cases of gang rape and 7 of attempted rape. In most instances, the victims were women or girls. Seven of the rapes were committed by State agents. Twenty-six of the alleged perpetrators were being held in pretrial detention, while 14, including three FRCI members, had been convicted of indecent assault and given sentences of between 1 month and 10 years' imprisonment.

41. The Special Representative of the Secretary-General on Sexual Violence in Conflict visited Côte d'Ivoire from 25 to 27 May 2016 and held a meeting with the Independent Expert. Her visit was intended to increase the visibility of the efforts undertaken by Côte d'Ivoire to strengthen its justice system and to implement its national strategy to combat gender-based violence.

#### V. Justice and national reconciliation

42. The Ministry of Justice is proposing reforms in the justice system and the prison services and is preparing amendments of the Criminal Code, the Code of Criminal Procedure and the Civil Code. Magistrates, members of the Bar Association and academics meet regularly to work on those proposals. The discussions concerning these reforms will soon be opened up to other stakeholders that may have useful contributions to make. The Ministry of Justice has already received initial drafts of the corresponding texts. The Independent Expert wishes to draw attention to the need to ensure that the proposed amendments include the introduction of a definition of rape in the Criminal Code, which is unusual in that it sets out penalties for the offence but does not define it (art. 354), allowing judges to apply their own definition. The Independent Expert considers that offences should be defined by the legislature rather than the judiciary and notes that this would be more in keeping with the principle of legality set out in article 21 of the Constitution of Côte d'Ivoire.

43. The introduction of a definition of rape in the Criminal Code presents a good opportunity for the adoption of modern wording that incorporates the advances made in comparative law in terms of how the offence is understood and categorized. In addition, it

is important to make judges aware that they should not routinely minimize the gravity of rape by downgrading the criminal charges to a less serious offence.

44. A further draft bill is expected on witness protection. A law on this subject would clearly be of value in the trials dealing with violent offences committed during the crises that have broken out in Côte d'Ivoire. In a broader sense, a new law of this sort would be important in any criminal case in which witnesses or victims are at risk of reprisals or ill-treatment as a result of their cooperation with the justice system. The reform of the assize courts is another significant area in which work should be accelerated, particularly with a view to introducing the right of appeal against assize court judgments. The rights of the defence in criminal proceedings must also be strengthened. To reduce overcrowding in prisons, judges' discretionary powers to place accused persons in pretrial detention should be regulated, and alternative measures to custodial sentences should be provided for in the Criminal Code. Lastly, and notwithstanding the scope for additional measures beyond those listed here, the Independent Expert recommends expediting the adoption of the implementing regulation for the law on the protection of human rights defenders.

45. The Ministry of Justice continues to implement prison reforms with a view to improving conditions and is in the process of restructuring the Abidjan Detention and Correctional Centre. UNOCI has closely followed the incident that occurred at the Centre on 20 February 2016, when a confrontation between prisoners and security forces resulted in the deaths of a prison guard and 10 prisoners, including Yacou Coulibaly, alias "Yacou le Chinois", whose reign of terror in the prison was mentioned in the previous report of the Independent Expert (A/HRC/31/78) and in the reports of his predecessor. This serious incident seems to have been triggered by an inspection exercise that encountered violent resistance from Yacou and the prisoners who supported him. According to the authorities, prisoners were armed, and 22 persons, including 9 guards and 11 inmates, were injured during the incident. The most seriously injured prisoners were taken to a university hospital, and 13 inmates were subsequently transferred to other prisons.

46. An investigation has been launched to identify those responsible for the acts committed during the incident. Two court cases have been opened by the public prosecutor of the Court of First Instance of Yopougon and referred to the senior investigating judge of that jurisdiction. The first case concerns the events of 20 February 2016 and the identification of all those responsible for or implicated in the introduction of weapons into the Abidjan Detention and Correctional Centre. The second case concerns 14 prison officers who are alleged to have taken part in a punitive operation (reprisals) conducted in the following days that targeted prisoners and other prison officers. Some prison guards have been remanded in custody in the course of those proceedings.

47. According to the Ministry of Justice, lessons have been learned from this regrettable incident and adequate resources have already been released so that the country's prisons will have the logistical support they need in terms of communication and security control. The Ministry is also working to improve the ethical standards of the prison service and is planning to have a high-security women's prison and a juvenile observation centre built at Abidjan as soon as possible. These projects clearly require substantial funding. The Independent Expert urges the international community to support the local authorities' commitment to improving prison conditions both financially and by other means that will help to build capacity in the prison service.

48. Alongside efforts to identify crisis victims with a view to providing them with compensation, the judiciary is still in the process of hearing cases relating to the 2011 crisis. The Ivorian authorities have stated that they hope to finalize these cases by the end of 2016. Ministry of Justice officials also informed the Independent Expert that 217 prisoners that were being held in connection with their actions during the electoral crisis of 2011 have been released and that 31 remain in custody pending the outcome of investigative

proceedings. Out of 67 ongoing cases, 25 have already been tried, 25 are awaiting trial, and 17 are at the preliminary investigation stage. Judges with the Special Investigation Unit make use of data collected by the National Commission of Inquiry. While the prosecutions under way at this time relate to FRCI members, most of the defendants are currently at liberty because the investigating judges are confident that they will appear before the courts when summoned. Moreover, they cannot leave the country without judicial authorization.

49. The second trial of Simone Gbagbo opened at the assize court for the Court of First Instance of Abidjan on 31 May 2016. The defendant is accused of crimes against humanity and war crimes allegedly committed during the electoral crisis of 2010-2011. The Government of Côte d'Ivoire decided not to transfer Ms. Gbagbo to the International Criminal Court, as it considered that the national justice system was capable of adjudicating the case. On 30 May 2016, the eve of the trial, the International Federation for Human Rights Leagues and two of its member organizations, the Ligue ivoirienne des droits de l'homme (Ivorian League for Human Rights) and the Mouvement ivoirien des droits de l'homme (Ivorian Movement for Human Rights), published an open letter expressing their disagreement with the prosecution's strategy. In their view, the prosecution of Ms. Gbagbo as a sole defendant would not capture the wider picture of the wrongdoing that had been committed, nor would it permit the criminal responsibility borne by each person involved in that wrongdoing to be clearly established, since the acts attributed to Ms. Gbagbo were closely linked to those committed by other persons allegedly responsible for acts of violence during the post-electoral crisis.

50. The NGOs also stated that they would stay away from the trial because the lawyers for the civil parties had not been involved in the pretrial proceedings. Yet those same NGOs continued to support Ms. Gbagbo's trial under the Ivorian justice system, which they regarded as the rightful jurisdiction. Accordingly, the Ivorian authorities placed special emphasis on the exclusive discretionary power of prosecutors to choose a prosecution strategy and to decide whether or not to join or sever cases concerning related acts.

51. The Independent Expert considers that it was entirely legitimate for the human rights NGOs to express reservations about a process that they regarded as flawed and to use legal arguments to support their position. It is to be noted that they were free to do so, despite the obvious sensitivity of the case in question. The Independent Expert also believes that the trial of Ms. Gbagbo will have a significant impact on the national reconciliation process, and he therefore urges the Ivorian authorities to ensure that it is conducted in a manner that fully upholds the guarantees of a fair trial at all stages of the proceedings. Such guarantees should be extended to the defendant as well as to the civil parties.

52. The trial of the officers accused of participating in the 2002 assassination of General Robert Guéï and his family members resumed on 25 January 2016. On 18 February 2016, the military court sentenced General Dogbo Blé, former head of the Republican Guard, Commander Anselme Seka Yapo, head of the close protection detail of the former First Lady (Ms. Gbagbo), and Sergeant Daleba Sery to life imprisonment. Another 10 of the accused were sentenced to 10 years' imprisonment, and the 13 remaining defendants were acquitted.

53. As regards other cases linked to the post-electoral crisis, the Human Rights Division of UNOCI was informed on 11 March 2016 of the provisional release of 10 "pro-Gbagbo" detainees previously extradited from Liberia. Six of them had been held at the Bouna Detention and Correctional Centre since 4 July 2012, while the other four had been held at the Katiola Detention and Correctional Centre on charges of endangering the security of the State. These persons were granted a presidential pardon under the decrees of 23 December 2015. On 22 March 2016, four individuals arrested for endangering the security of the State and held since 4 May 2012 at Séguéla Detention and Correctional Centre were also granted provisional release on the orders of the investigating judge of the Court of First Instance of

Abidjan-Plateau. Information in the possession of the Human Rights Division showed that 118 of the 387 persons arrested in connection with the post-election crisis of 2010 had been released prior to the visit of the Independent Expert.

54. As part of the action taken to address human rights violations attributable to members of FRCI, a joint human rights mechanism was established by UNOCI and FRCI, and six months later the National Human Rights Commission of Côte d'Ivoire was invited to become part of that mechanism to ensure that national stakeholders could take full ownership of the process. Since early November 2015, the mechanism has held seven monthly meetings, with those of March, April and May 2016 taking place in Korhogo, Daloa and Bouaké as a result of the decision to hold the meetings in various military regions in order to strengthen the regional dimension of the mechanism. Very close cooperation between the participants has facilitated the action taken to address human rights violations attributed to members of FRCI, which has led to the arrest, detention and conviction of some of the FRCI members accused of serious violations.

## **VI. Situation of children in conflict with the law**

55. After visiting the Juvenile Observation Centre at the Abidjan Detention and Correctional Centre during his previous mission, the Independent Expert had felt no hesitation in reporting, in fairly strong terms, on the living conditions of the children housed in the Centre. On revisiting the Centre during the period covered by this report, the Independent Expert was heartened to note that the situation is improving. This is attributable to the synergy of advocacy efforts on behalf of children in conflict with the law, and to an increased awareness of the vulnerability of these children and their inalienable right to education and decent living conditions.

56. The persons and organizations at the forefront of this advocacy effort include members of the Human Rights Division of UNOCI, Ivorian human rights NGOs and highly motivated members of the Government. The support of a number of accredited diplomatic missions has also contributed some positive momentum. The Independent Expert warmly commends them on their commitment and encourages them to persevere in their work on behalf of children in difficulties.

57. During his visit to the Juvenile Observation Centre, the Independent Expert held a meeting with Ivorian NGOs concerned about the situation of children in conflict with the law, particularly those who are imprisoned or who have been placed in the Centre. There is a large network of NGOs with which the Ivorian authorities can work to improve the situation of children in conflict with the law. That network should be supported by the authorities and by the technical and financial partners of Côte d'Ivoire. The Independent Expert also notes the appointment of a new director of the Juvenile Observation Centre who has brought a new spirit and a new positive dynamic to its work.

58. The general appearance of the Centre has also improved. Drains that previously gave off unpleasant odours have been unblocked. Halls and rooms have been repainted, and the children's beds are now protected by mosquito nets. The children appeared to be better occupied with manual tasks and literacy activities. While these measures have been funded from a relatively modest budget, they have created a positive situation that should be maintained and improved upon further in the future.

59. Ideally, a new juvenile observation centre that meets the standards of a rehabilitation institution should be built outside of the Detention Centre. The Ministry of Justice hopes to carry out such a project in the near future with the support of international partners. There is also a pressing need for special institutions that can provide temporary accommodation for children, until such time as they can be sent back to their relatives, who are not really in

conflict with the law but who are in contact with the justice system owing to a lack of family or community protection. Ivorian juvenile court judges themselves underscore the urgent need for alternative institutions where they could place children who are simply deprived or in need of protection and guidance.

60. Legal protection services for children and youth were established at the Courts of First Instance of Abidjan-Plateau, Yopougon, Man and Bouaké between 26 and 29 January 2016. These services assist juvenile court judges in their decision-making tasks and in connection with civil and criminal matters. Comprising an emergency unit, a civil unit and a criminal unit, they ensure that social and educational dimensions are taken into account in the decisions reached by juvenile court judges as part of a process whose fundamental objective, in criminal matters, must be rehabilitation rather than punishment. Such services should be gradually extended to all jurisdictions in Côte d'Ivoire.

61. The Independent Expert became aware that the term "*microbe*" is still widely used to refer to a certain type of child in conflict with the law and has continued to call for the systematic, definitive rejection of that word and for the use of a better approach for resolving the situations associated with it. In that regard, he wishes to emphasize the following: first, regardless of the type of crime committed and the age of the perpetrator, victims are the main priority and deserve compassion and active assistance; and second, protecting society from crime is legitimate and necessary but must be done within a fair and legal framework. It is not justifying criminal behaviour to state that the individuals labelled "*microbes*", provided that they have not yet reached the age of around 18 to 20, are still children. The use of this term is not part of a constructive societal response to the problem, since labelling individuals in this way tends to make it all the more likely that they will be locked into their marginal status. This marginal status has an objective dimension which consists in the disparaging manner in which these individuals are viewed by others. When constantly reinforced, this perception is ultimately internalized by the individual, thus acquiring a subjective dimension.

62. This stigmatization often condemns the person who has been singled out in this way to play the negative role assigned to him or her; this may trigger a transition from relatively isolated acts of misconduct to what may become an ingrained pattern of behaviour. In such cases, which are by no means hypothetical, children who are initially the victim of a social context that prompts them to engage in deviant behaviour are then unjustly blamed for their misfortune. In the past, the long years of violence in Côte d'Ivoire provided a cultural climate conducive to this type of behaviour. In the present, the shortcomings of the policy for the protection of these minors and the leniency of the penalties imposed on the adults who profit from their violent actions are factors that contribute to those children's continued delinquency.

63. The degrading and dehumanizing term "*microbe*" must be replaced once and for all with the expression "child in conflict with the law". These children are human beings and deserve to be respected as such; the fact that they are at odds with the law means that society has a duty to try, in a civilized manner, to put them back on the right track. In parallel with this significant semantic shift, there is a need to devise a coherent national strategy encompassing the various actors involved in society's response to delinquency (the justice system, the police, education authorities, etc.).

64. During his mission, the Independent Expert noted that several interlocutors who had formerly used the term "*microbe*" on a frequent basis had since dropped it from their discourse. In the wake of the Council of Ministers' meeting of 8 June 2016, the Government announced a resocialization project for 300 young people aged 14 to 19 years who have engaged in subversive activities that might put their lives at risk, disrupted public order or endangered the safety of persons or property. The Government's eventual goal is to

help all of these troubled young people by providing them with vocational training that will allow them to find a better place in society.

65. These are certainly positive developments that should be warmly welcomed. However, it is important to stress that the approach used to achieve the social reintegration of these young people should place priority on their best interests (article 3 (1) of the Convention on the Rights of the Child) and should be in line with all the human rights commitments of Côte d'Ivoire. It is also imperative to take into account the responsibility of the people behind the scenes who provide backing for the violent acts committed by these minors.

## **VII. Constitutional reform**

66. The President of Côte d'Ivoire announced a plan for a reform of the Constitution during his inaugural address in November 2015; it was expected that Ivorians would be able to vote on the adoption of reform measures in a referendum before the end of 2016. The President has recently appointed a committee of eminent jurists to work on the draft text. He has also stated his intention to consult with all segments of Ivorian society on the reform. That consultation process is under way, and the President has already met with traditional and religious leaders and representatives of civil society.

67. The likely scope of the reform is not yet known because the draft text has not yet been made available for discussion and comment by all sectors of the Ivorian population. The Independent Expert notes that the Security Council, in its resolution 2284 (2016), stressed that the constitutional review referendum provided an important opportunity for all Ivorians to achieve a shared sense of nation and to address the underlying causes of tension and conflict, including with respect to land tenure, nationality and identity. He welcomes the interest of the international community in the reform of the institutions of Côte d'Ivoire, which he sees as an opportunity for Ivorians to consolidate their achievements in carrying forward the national reconciliation process and to further entrench democracy and the rule of law. In this connection, the part of the Constitution devoted to fundamental rights and freedoms could be enriched by provisions that better demonstrate the State's commitment to respecting and guaranteeing the enjoyment of those rights and freedoms by all Ivorians, without discrimination.

68. The Independent Expert also reiterates that the National Human Rights Commission of Côte d'Ivoire would gain in credibility and effectiveness if it were to be raised to the rank of a constitutional body and if its independence were to be established in the Constitution. As to the procedures to be used in the constitutional review process, it is imperative to adopt a broadened participatory approach in which Ivorians are given the time and the opportunity to discuss the provisions of the amended text and to provide input during its preparation.

## **VIII. Conclusion and recommendations**

### **A. Conclusion**

69. The resolutions recently adopted by the Security Council demonstrate that the international community has regained its confidence in Côte d'Ivoire. Accordingly, the presence of UNOCI is not considered to be necessary after 30 June 2017. Côte d'Ivoire is thus now in a position to take sole control of its destiny and to continue the pursuit of its economic and human development. This marks a welcome return to the not-too-distant past (the 1960s and 1970s), when the country was an example of



economic success and social inclusion. The wounds inflicted by recent crises are healing over, and the future may well see the realization of the aspirations of the Ivorian people. However, vigilance should remain the watchword, as further headway must be made along the path to reconciliation and justice. The economic development process that is currently gathering momentum must be accompanied at each step along the way by human development, the consolidation of democracy and respect for human rights.

## **B. Recommendations**

70. The Independent Expert recommends that the Ivorian authorities take the following actions to strengthen the security and stability of the country:

- (a) Remain alert to potential sources of intercommunal tension and ensure that contributing factors are addressed;
- (b) Accelerate the land reform process in a manner that meets the legitimate expectations of the population and promote meaningful dialogue between opposing factions;
- (c) Continue efforts to promote disarmament and prevent the proliferation of small arms;
- (d) Continue to combat terrorism in collaboration with regional and international partners and in accordance with an approach that respects human rights.

71. The Independent Expert recommends that the Ivorian authorities take the following actions concerning national reconciliation:

- (a) Maintain the political dialogue with the opposition while encouraging the Independent Electoral Commission to play a leading role in that dialogue;
- (b) Publish the reports and recommendations of the Dialogue, Truth and Reconciliation Commission and the National Commission for Reconciliation and Compensation of Victims as a means of strengthening the reconciliation process;
- (c) Develop a form of recourse for persons who have not been able to register with the National Commission for Reconciliation and Compensation of Victims;
- (d) Continue to work towards the return of Ivorian refugees and implement a coherent policy for their reintegration in the country;
- (e) Continue to fight impunity in respect of serious human rights violations and strike a balance in the initiation of legal proceedings against both sides in the clashes that marked the violent crises that have afflicted Côte d'Ivoire;
- (f) Ensure that the justice system respects the guarantees of a fair trial in cases related to those crises at all stages of the proceedings.

72. The Independent Expert recommends that the Ivorian authorities take the following actions to strengthen the national system for the protection of human rights:

- (a) Provide the Ministry of Human Rights and Civil Liberties with sufficient and appropriate material and human resources to enable it to fulfil its mission;
- (b) Revamp the National Human Rights Commission of Côte d'Ivoire and bring it into line with the Paris Principles;

(c) Complete the establishment of regional branches of the National Human Rights Commission of Côte d'Ivoire;

(d) Provide the National Human Rights Commission of Côte d'Ivoire with sufficient material and human resources to enable it to fulfil its key role and streamline budget disbursement procedures in order to make the Commission more operational;

(e) Issue an implementing decree for the law on the protection of human rights defenders as a key measure in enabling civil society organizations to play their role in full.

73. The Independent Expert recommends that the Ivorian authorities take the following actions to improve the situation of children, especially those in a situation of vulnerability:

(a) Discontinue the use of the stigmatizing term "*microbe*" as applied to a certain category of child in conflict with the law and replace it with the expression "child in conflict with the law";

(b) Relocate the Juvenile Observation Centre that is currently sited within the Abidjan Detention and Correctional Centre as quickly as possible;

(c) Implement the programme for the social reintegration of these youths while placing priority on their best interests in accordance with human rights standards;

(d) Ensure that the National Action Plan to Combat the Worst Forms of Child Labour embodies respect for human rights;

(e) Continue their efforts to improve conditions in the country's prisons in general and in the Juvenile Observation Centre in particular.

74. The Independent Expert recommends that the Ivorian authorities take the following actions concerning the reform of the Constitution:

(a) Take this opportunity to consolidate the achievements of Côte d'Ivoire in the area of national reconciliation and to further strengthen democracy and the rule of law;

(b) Strengthen the independence of the judiciary;

(c) Raise the National Human Rights Commission of Côte d'Ivoire to the rank of a constitutional body and consolidate its independence.

75. The Independent Expert urges UNOCI to use the remainder of its time in the country to assist Côte d'Ivoire in preparing for the handover and in creating the best possible conditions for its assumption of its responsibilities in respecting and promoting human rights.

76. The Independent Expert urges the international community to continue to actively support the efforts of Côte d'Ivoire to promote human rights.