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**ГРАЖДАНСКИЕ И ПОЛИТИЧЕСКИЕ ПРАВА, ВКЛЮЧАЯ
ВОПРОС СВОБОДЫ ВЫРАЖЕНИЯ МНЕНИЙ**

Право на свободу мнений и их свободное выражение

**Доклад Специального докладчика по вопросу о поощрении и защите права
на свободу мнений и их свободное выражение г-на Амбейи Лигабо**

Добавление

МИССИЯ В КОТ-Д'ИВУАР*

* Резюме этого доклада распространяется на всех официальных языках. Сам доклад содержится в приложении к настоящему документу и распространяется только на английском и французском языках.

Резюме

В настоящем докладе, который подготовлен в соответствии с резолюцией 2002/48 Комиссии по правам человека, излагается и анализируется информация о соблюдении права на свободу мнений и их свободное выражение, полученная Специальным докладчиком до и во время его поездки в Кот-д'Ивуар с 28 января по 5 февраля 2004 года из источников Организации Объединенных Наций, а также от должностных лиц страны, неправительственных организаций и частных лиц.

В ходе своей миссии Специальный докладчик получил всестороннее и объективное представление о препятствиях, с которыми сталкивается страна в деле обеспечения уважения и защиты права на свободу мнений и их свободное выражение. В столице Специальный докладчик встретился не только с представителями правительства, национальных учреждений и органов, гражданского общества и средств массовой информации, но и с членами молодежной организации "Молодые патриоты". Кроме того, он посетил город Буаке, где он встретился с представителями движения "Новые силы", гражданского общества и местных средств массовой информации. Неоднократно Специальный докладчик имел возможность убедиться, что свободно высказывать мнения и идеи по-прежнему трудно в силу ряда вызывающих беспокойство факторов и обстоятельств. Однако он также отметил, что большинство людей, с которыми он встречался, независимо от их политической ориентации, возлагали большие надежды на примирение и отмечали настоятельную необходимость свободного обсуждения будущего их страны.

Первым препятствием на пути достижения мира и примирения, которые представляют собой непереносимые условия для уважения основных прав человека, является острота конфликта. В декабре 2003 года появились явные признаки выхода из политического и военного тупика: в этом месяце под наблюдением французских сил, проводящих операцию "Единорог", началось разоружение повстанческих групп и проправительственных ополченцев, в общей сложности приблизительно 30 000 комбатантов. В то же время представители "Новых сил", одной из основных оппозиционных партий, прибыли в Абиджан, с тем чтобы официально занять посты в правительстве национального примирения.

Несмотря на эти изменения Специальный докладчик отмечает, что насилие, неопределенность и страх по-прежнему являются неотъемлемыми элементами повседневной жизни. Огромное количество блокпостов, устраиваемых на дорогах военными и полицейскими, которые зачастую подвергают простых граждан издевательствам и вымогают у них деньги, является характерной чертой сельского и

городского ландшафта. Безусловно, такая атмосфера напряженности препятствует осуществлению права на свободу мнений и их свободное выражение и сводит на нет все усилия, направленные на достижение примирения и мира.

В этом контексте одним из основных приоритетов политической повестки дня должна стать борьба с безнаказанностью. В качестве первого шага правительству следует восстановить в Республике законность, распустить и официально объявить незаконными все ополченческие группы и осуществлять в судебном порядке преследование нарушителей прав человека независимо от их этнической принадлежности и/или принадлежности к какой-либо политической партии. Быстрое размещение дополнительных сил Экономического сообщества западноафриканских государств (ЭКОВАС) и миротворческих сил Организации Объединенных Наций ("голубых касок"), безусловно, сыграет важную роль в деле успешного осуществления этих мер.

Одним из основных препятствий также являются положения статьи 35 Конституции Кот-д'Ивуара об избрании президента Республики, которая содержит дискриминационные критерии, явно противоречащие международным обязательствам этой страны и ее собственному национальному законодательству. Согласно соглашению Лина-Маркуси, формулировка статьи 35 Конституции должна быть изменена, с тем чтобы гарантировать значительной части общества Кот-д'Ивуара право на свободное выражение мнений для осуществления права на участие в голосовании в условиях плюрализма. Кроме того, в свете положений статей 10 и 13 Конституции правительству Кот-д'Ивуара следует разработать нормативные акты и законы, касающиеся ненависти и ее пропаганды, с целью, в частности, защиты права трудящихся-мигрантов на свободу мнений и их свободное выражение.

В Кот-д'Ивуаре большим тиражом выходят некоторые национальные и международные печатные издания, при этом многие национальные средства массовой информации, как и в других странах, находятся под контролем или влиянием основных политических партий. Некоторые печатные издания зачастую распространяют политическую пропаганду, а в ряде случаев подстрекательские заявления и ложные сведения, но не содержат для читателей каких-либо аналитических или критических материалов. Журналисты одновременно являются как виновниками, так и жертвами этой пагубной ситуации, особенно те из них, которые близки к оппозиционным партиям и подвергаются насилию, давлению и угрозам смертью.

Многие издатели газет, редакторы и журналисты, как представляется, не знают, что такое профессиональная этика и чувство ответственности. Для устранения этих недостатков правительству и гражданскому обществу следует предпринять совместные

усилия с целью оживления и укрепления работы существующих средств массовой информации и профессиональных ассоциаций, которые чрезмерно увлеклись политической борьбой. К счастью, существует широкий консенсус по проекту закона в отношении нового кодекса журналистской этики, который должен быть принят в ближайшее время.

Annex

**REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR ON THE RIGHT
TO FREEDOM OF OPINION AND EXPRESSION, AMBEYI LIGABO, ON
HIS MISSION TO CÔTE D'IVOIRE (28 JANUARY TO 5 FEBRUARY 2004)**

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Introduction

1. The present document is the full report of the Special Rapporteur of the Commission on human Rights on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, on his mission to Côte d'Ivoire undertaken from 28 January to 5 February 2004 at the invitation of the Government. The delegation included the Special Rapporteur, an official from the Office of the United Nations High Commissioner for Human Rights and two interpreters from the United Nations Office at Geneva. Previously scheduled for the beginning of 2004, the visit had been postponed for security reasons. A preliminary report of that mission was submitted to the sixtieth session of the Commission on Human Rights (E/CN.4/2004/62/Add.3).
2. The Special Rapporteur would like to mention that, in the preparation of his mission and this report, he consulted material from United Nations sources, particularly the report of the fact-finding mission headed by the Deputy High Commissioner for Human Rights that was submitted by the Secretary-General to the Security Council (S/2003/90); the second report of the Secretary-General on the United Nations Mission in Côte d'Ivoire (MINUCI) to the Security Council (S/2003/1069); the report submitted by Côte d'Ivoire to the Committee on the Elimination of Racial Discrimination (CERD/C/382/Add.2 of 1 October 2002); and the concluding observations of the Committee on the Elimination of Racial Discrimination on Côte d'Ivoire, submitted at its sixty-second session of the Committee (CERD/C/62/CO/1 of 3 June 2003). Similarly, the texts of the Linas-Marcoussis Agreement, of the resolution on the adoption of the Declaration of Principles on Freedom of Expression in Africa (African Commission on Human and Peoples' Rights, thirty-second session, 17-23 October 2002, Banjul, The Gambia) and of the report of the Interim Chairperson of the Commission of the African Union on developments in the situation in Côte d'Ivoire (87th ordinary session of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution at Ambassadorial Level, 4 December 2002, Addis Ababa) provided guidance and inspiration.
3. The Special Rapporteur wishes to thank the Government of Côte d'Ivoire for its openness and for guaranteeing unhindered access to any location. He underlines that he was in a position to carry out his mission in an effective way, without any prejudice, and that he stands ready to help Côte d'Ivoire in its efforts to improve human rights. He further believes that the Office of the High Commissioner for Human Rights could provide valuable technical assistance in the implementation of the Linas-Marcoussis Agreement, especially on the establishment of an international commission of inquiry, and in building up a national human rights commission.
4. The Special Rapporteur would like to thank all representatives of the media, political parties, groups and individuals he met for the information and opinions provided. The Special

Rapporteur underlines that the above-mentioned persons and groups should not face any kind of reprisals or intimidation from the Government, other State institutions or private individuals and groups.

5. The Special Rapporteur also wishes to express his thanks to the Special Envoy of the Secretary-General for Côte d'Ivoire, Albert Tevoedjre, the staff of MINUCI Human Rights Unit and the United Nations Development Programme for their logistical support in the conduct of the mission.

6. The contents of the present document make reference to the situation prevailing in Côte d'Ivoire at the time of the Special Rapporteur's visit. However, he wishes to express his dismay at the lack of significant breakthroughs in the political stalemate and his deep consternation at the atrocities following the protest held in Abidjan on 25 March 2004¹. In this connection, the Special Rapporteur wishes to commend the Acting High Commissioner for the creation of an independent commission of inquiry into those events and for its speedy deployment on the ground. The Special Rapporteur also notes that, to the best of his knowledge, there had been no progress in the adoption of the draft bill on the Press Code or in the establishment of the national human rights commission at the time of the drafting of the present report.

Programme of the visit

7. During his visit to Côte d'Ivoire, the Special Rapporteur met with the Prime Minister, the Minister of Foreign Affairs, the Minister for Human Rights, the Minister of Communication, the Minister of New Technologies and Telecommunications, the President of the Electoral Independent Commission, the Vice-President of the National Assembly, and other government personalities. The Special Rapporteur also met with the representatives of the national and international media, press professional associations, other non-governmental organizations working in the field of human rights and some individuals allegedly victims of human rights violations. The Special Rapporteur travelled to Bouaké to meet representatives of Forces nouvelles, members of civil society and the media working in the area. He also paid a visit to the local MINUCI office and met members of the French military's Operation Licorne. The Special Rapporteur held interesting discussions with the Special Representative of the Executive Secretary of the Economic Community of West African States (ECOWAS), and with the representatives for the European Union, Sweden, Canada and France. Finally, the Special Rapporteur had the opportunity to exchange views with the Special Representative of the Secretary-General and other United Nations officials working in MINUCI and the United Nations Development Programme (UNDP) in Abidjan.

8. In those meetings, there was a common denominator: almost all the Special Rapporteur's interlocutors seemed to have expectations for a better future made by reconciliation and, ultimately, peace. While avenues and patterns for the development of the democratic process may differ substantially, there was a burning demand for discussing the future of the country without necessarily recurring to violence. Essential issues concerning the right to freedom of opinion and expression were discussed with frankness, in a spirit of collaboration that the Special Rapporteur greatly appreciated. Unfortunately, the events of March 2004 may represent a step back and the international community should be more active in helping Côte d'Ivoire to find a viable solution to its problems. The persistence of the conflict risks generating into a long period of instability, not just in the country but also in the region.

9. For the sake of clarity, the Special Rapporteur systematically repeated the contents of his mandate at the beginning of all meetings in which he took part, underlining, as appropriate, certain aspects of his work specifically relevant to the nature and purpose of the meeting. In particular, the Special Rapporteur would like to emphasize that his mandate does not concern exclusively the right to the promotion and protection of freedom of opinion and expression of the media, but it includes all forms of opinion and expression exercised by citizens, groups and associations regarding civil, political, social, economic and cultural matters. The Special Rapporteur considers that the right to the promotion and protection of freedom of opinion and expression should by no means be used to fuel racism, ethnic hatred and other forms of human rights violations that have been strenuously fought by international human rights and humanitarian law for many decades.

I. BACKGROUND

10. Since the death of President Félix Houphouët-Boigny in 1993, Côte d'Ivoire has been struggling to find its own way toward a modern and democratic political environment. General Robert Guei, killed in unclear circumstances in September 2001, had seized power in a coup in December 1999, during the presidency of Henri Konan Bédié. Guei later lost to the current president, Laurent Gbagbo, in controversial elections at the end of 2000. The country has been divided into two distinctive parts since a revolt in September 2002, and in spite of the signature of the Linas-Marcoussis Agreement in January 2003 and the subsequent establishment of a Government of Reconciliation, the situation was extremely volatile throughout 2003.

A. Human rights and humanitarian situation in the context of the political crisis

11. In late October 2002, several hundred West African immigrants and Ivoirians of the Baoulé ethnic group were chased off their lands around Gagnoa, in southern Côte d'Ivoire, reportedly by

groups of Bété youths, the same ethnic group as President Laurent Gbagbo. Moreover, in the West and Southwest of the country, militia gangs known as Bees, Gazelles, Panthers or Ninjas harassed and assaulted peasant farmers, many of whom are migrants from other West African countries, especially Burkina Faso. As a result, at least 250,000 people left Côte d'Ivoire, including Ivoirians who took refuge in Liberia, and Guinea nationals from Liberia, Burkina Faso, Mali, Nigeria, Senegal and other West African countries. Members of the national armed forces allegedly provided militia members, particularly those of Bété ethnicity, with technical training and light weapons.

12. The Special Rapporteur gathered information from reliable sources that hundreds were killed at the beginning of the hostilities in September 2002, and thousands more in the following wave of fighting and ethnic violence. Even after the official end of the conflict, reports on torture, arbitrary detentions and disappearances perpetrated by members of the State security forces in Abidjan were received by the Special Rapporteur. Opposition leaders have been particularly targeted, civil society groups have been attacked, and press freedom has been seriously jeopardized. In addition, a climate of impunity, especially for State security forces and State-supported civilian militias, has created bitter resentment among the opposition rebels and ordinary citizens.

13. At the beginning of his visit, the Special Rapporteur had the opportunity of participating in the weekly human rights briefing held at the headquarters of MINUCI in order to acquire first-hand information regarding human rights and the humanitarian situation. Inter-ethnic confrontation, often originating in land property disputes, was still a major concern especially in the West of the country. Various patterns of human rights violations were repeated in those regions: attacks against civilians, notably women, who were often subject to sexual harassment, and the abduction of children, who were often forcibly recruited as soldiers. With regard to the humanitarian emergencies, several participants at the briefing evoked the lack of medical supplies and the dire situation of refugees of Liberian origin.

14. Troubles occurred in other parts of the country in recent times: one of the most populous neighbourhoods of the capital Abidjan, Anyame, was the theatre of harsh confrontation between opposition groups, police and some individuals allegedly belonging to militias close to President Gbagbo, on 10 January 2004. Several persons were said to have been wounded, severely mistreated or reportedly killed. Also in this case, violence against women appears to have had a sexual character. The security situation in the capital continued to appear unpredictable, although the authorities seemed to consider this matter as a marginal issue and exercised little control over the army and the police.

15. The level of conflict violence was instead relatively tolerable in the areas controlled by Forces nouvelles. The deployment of additional international troops and police remained urgent in order to prevent the proliferation of criminal gangs that Forces nouvelles was unable to control, because of a lack of communications and coordination among its strongholds. MINUCI often acted as a sort of local police in order to thwart criminal activities in the area, in collaboration with the French military's Operation Licorne and ECOWAS troops. It was stated that their presence and activities were implemented in the framework of the Linas-Marcoussis Agreement, especially regarding the building of trust and confidence among the civilian population which had, in their opinion, a strong desire for peace.

16. The Minister of Communication, Guillaume Soro, who is also the Secretary-General of Forces nouvelles, said that he was in favour of increasing involvement of the United Nations in the peace process and the immediate deployment of United Nations peace-keeping forces (blue helmets) who could ensure, among other critical issues, the security of citizens and free circulation of ideas and opinions.

B. The origins of the conflict, the prevalence of violence and ethnic hatred

17. The fact that many Ivorians are of mixed origin should be seen as a distinctive element of the West Africa region, which has always been a crossroads of races, tribes and families, regardless of national borders. The economic growth of Côte d'Ivoire in the 1970s and, partially in the 1980s, could also be explained through that formidable mixture of peoples. In the long run, the worsening economics - notably the fall of coffee and cacao prices - has created social conflicts among the most recent immigrants, especially those working in rural areas. The country has plunged into a profound sense of uncertainty and violence, which ultimately hampers the enjoyment of the right to freedom of opinion and expression. According to some interlocutors, the almost complete disappearance of tolerance is one of the most significant elements of the crisis in the country which seemed to have forgotten its traditions as an African crossroads of ethnic groups, religions and cultures.

18. Moreover, the situation prevailing in Côte d'Ivoire should be seen in the broad picture of the situation in the Mano River countries (Liberia, Sierra Leone and Guinea), a part of West Africa that has greatly been ravaged by civil wars and humanitarian disasters in the last two decades. Many migrants from these and other countries of the region increasingly populated the countryside and urban centres. Ethnic divisions, hatred and fear became instrumental to the political fight, and populations which had lived in peace for years were unfortunately brought into the nightmare of the civil war. As was indicated to the Special Rapporteur, ethnic

differences, in Côte d'Ivoire as well as in other countries, have been used as a tool to excite the masses and to provoke havoc.

19. During his mission, the Special Rapporteur met with members of civil society, both in Abidjan and Bouaké. Not surprisingly, opinions and views about the conflict, its roots and possible solutions were quite similar. The first priorities of the civil society appeared to be the re-establishment of the rule of law, namely a halt to the army and police abuses, a clear government policy on reconciliation and peace through the implementation of the Linas-Marcoussis Agreement, and the replacement of violence by a constructive political debate.

20. Many interlocutors pointed to the negative role played by the media, especially since the killing of General Guei, which had deepened the ethnic divide in the country, a phenomenon virtually unknown 15 years ago. Ethnic identity became a critical issue for the citizen whose tranquillity depends on State certification of his/her ethnicity. Trading false certificates has become one of the most profitable sources of revenue for corrupt officials. Attacks against political representatives and media facilities, the systematic destruction of copies of certain newspapers and the torment of controls at checkpoints were indelible signs of a general state of insecurity and of an aggravation of human rights violations.

21. Student activists have played a prominent role in the rebel movement and within other major political parties. The Jeunes patriotes are militia groups favourable to President Gbagbo, mainly composed of former student leaders from a national university students' association, the Student and School Federation of Côte d'Ivoire (Fédération estudiantine et scolaire de Côte d'Ivoire, or FESCI). In a meeting with the Special Rapporteur, representatives of the Jeunes patriotes stated that, in spite of the existence of various ideologies within their group, their common aim was the preservation, the unity and the future of Côte d'Ivoire based on the concept of *ivoirité*, citizenship and nationality. They felt that the majority of the opposition parties and their media have betrayed the Republic, thus destroying the country build up by Félix Houphouët-Boigny.

22. The Minister for Human Rights, Victorine Wodie, stated that the Government made a remarkable effort to disband all illegal groups, but at the same time, it was necessary to preserve freedom of association, provided that this right be exercised without resorting to violent means. Deputy Secretary-General of Forces nouvelles, Dakoury Taley, stated that the action of his party was a direct consequence of massive human rights violations perpetrated by President Gbagbo. The situation was still marked by numerous violations against ordinary citizens, especially those who presumably supported the opposition. Death squads and hate speech were only two facets of the continuation of war by other means.

II. THE LEGAL FRAMEWORK

A. The Constitution

23. The late General Robert Guei signed the Constitution on 1 August 2000 (Bill No. 2000-513) in which article 2, inter alia, abolishes the death penalty. Articles 9 and 10 forbid any propaganda encouraging racial and religious hatred, while ensuring freedom of opinion and expression. Article 11 ensures freedom of association. Article 13 ensures political freedom and the existence of a multiparty system and forbids the creation of parties based on selective criteria such as regional, tribal, ethnic or racial affiliation. Article 22 states, inter alia, that all propaganda done with the purpose and with the result of ensuring the prevalence of a social group over another, or done to encourage racial or religious hatred, is forbidden.

24. Chapter XI of the Constitution deals with the creation of the Office of the Ombudsman (*Médiateur de la République*) whose activities, organization and functioning are the object of a specific law.

25. Article 35 of the Constitution, the most controversial one, concerns the eligibility of the President of the Republic. The provision that all candidates must be of Ivorian origin, born from two Ivorians, excludes de jure the possibility that a quarter of the population in Côte d'Ivoire, whose origin are mixed with neighbouring populations, be represented in the run for the Presidency. Additionally, article 35 contradicts the provisions of articles 13 and 22 ensuring, inter alia, freedom of opinion and expression in the political arena for all Ivorian citizens regardless of their tribal, ethnic, racial or religious affiliation.

26. Fourteen candidates, including former president Henri Konan Bédié and the most prominent candidate of the opposition, Alassane Dramane Ouattara, were excluded from the 2000 elections owing to the provisions of article 35. The Linas-Marcoussis Agreement has asked for the reformulation of article 35 in accordance, inter alia, with the international treaties signed by Côte d'Ivoire. The Council of Ministers of the Government of National Reconciliation began consideration of this matter on 18 December 2003, almost one year after the signature of the Linas-Marcoussis Agreement.

27. The President of the Electoral Independent Commission, Camille Hoguié, stated that the reform of article 35 of the Constitution did not fall under the competence of the Commission but the present text of the article undoubtedly does not contribute to the calm implementation of the electoral process. The United Nations, ECOWAS and French troops could ensure that future political elections are carried out in a climate of relative tranquillity, and with sufficient impartiality. Hoguié also stated that they were working hard to guarantee balanced information

to citizens and equal access to all media. The members of Commission felt that the political context was putting great pressure on them: all parties have affiliated groups in all sectors of the society acting as opinion makers. These will play a crucial role in the electoral process.

28. According to the Ministry of Foreign Affairs, even during one-party rule, the Government of Côte d'Ivoire had respected human rights and honoured its international commitments. The Government was making a special effort to reinforce freedom of opinion and expression throughout the country: one of the first steps in this direction was to revise the Constitution.

B. The Linas-Marcoussis Agreement

29. Signed on 24 January 2003 by representatives of all parties in the conflict, the Linas-Marcoussis Agreement, in its point 2, asked for the immediate liberation of all political prisoners. In its point 4, it asked for the establishment of a follow-up committee that would ensure the correct implementation of the Agreement provisions; the president of this committee is now the Special Representative of the Secretary-General. In the programme of the Government of Reconciliation, chapter V condemns the incitation to hatred and xenophobia spread by certain media. It also stated that, in this regard, the Government of Reconciliation will reinforce the regulating authorities, ensure the neutrality and the impartiality of the public service and favour the financial independence of the media. Finally, the Government will immediately re-establish the possibility of receiving information from international radio and television services.

30. Numerous political parties exist in Côte d'Ivoire: the Parti démocratique de Côte d'Ivoire, the Rassemblement des républicains, the Front populaire ivoirien, Unité pour la démocratie et la paix en Côte d'Ivoire, the Parti ivoirien des travailleurs, the Mouvement patriotique de Côte d'Ivoire and Forces nouvelles.

C. The establishment of a national human rights commission and the fight against impunity

31. In chapter VI, the Linas-Marcoussis Agreement stated that the Government of Reconciliation will immediately establish a national human rights commission with the task of protecting human rights and freedoms in the country. The Government of Reconciliation will also ask for the creation of an international commission which will inquire and establish the factual truth concerning serious human rights and humanitarian law violations throughout the country since 19 September 2002. On the basis of the report of the international commission, the Government will decide who should be brought before justice in order to end impunity. Finally,

following the findings in the report of the national human rights commission, the Government will take measures for victims' compensation and rehabilitation.

32. The Ministry of Foreign Affairs stated that the Government of Côte d'Ivoire intended to fight impunity in a systematic way, examining all human rights violations and bringing perpetrators, regardless of their political affiliation, before an impartial court. It will soon establish a national human rights commission.

33. The Minister for Human Rights added that the National Assembly had worked on a preliminary text, from 1998 to 2001, on the setting up of such a mechanism. In August 2002, it decided to create a Ministry for Human Rights which was, *inter alia*, charged with the drafting of a new text concerning the establishment of a national human rights commission. President Gbagbo asked the Assembly to discuss a number of draft laws, including the one on the Commission, in a special session scheduled for 15 February 2004.

34. One of the first tasks of the commission would be to proceed to compensation for all victims of the conflict since 19 September 2002. A future international commission of inquiry could help the National Human Rights Commission to gather a general overview of the violations perpetrated during the conflict and to carry out a fair compensation process. The Minister of Communication affirmed that his party was totally favourable to setting up of an International Enquiry Commission in order to assess the human rights situation in an impartial manner. The minister also emphasized that Forces nouvelles was favourable to any serious international inquiry initiative, and that Bouaké and other areas under their control had already been visited by a number of international organizations such as the International Committee of the Red Cross and Amnesty International. The same concepts were reiterated by the chef de cabinet of Forces nouvelles in Bouaké, Amadou Koné, who added that Forces nouvelles decided to release some prisoners through the delegation of the International Committee of the Red Cross working in Bouaké. Koné also stated that Forces nouvelles reopened the Gendarmerie offices with, *inter alia*, the mandate to collect and examine complaints of human rights violations perpetrated by all sides during the conflict.

III. THE NATURE OF THE MEDIA IN CÔTE D'IVOIRE AND THEIR ROLE IN THE CRISIS

35. Côte d'Ivoire is traditionally a country with a rich and diversified press. It is probably the African country that has the highest number of newspapers and magazines in relation to the size of its population, and of all political orientations. While journalists refuse to be considered as having been exclusively responsible for the conflict wrecking the country, it is often believed that they have been one of the triggers of the conflict.

36. The Special Rapporteur discussed the independence of the media with the Prime Minister, the Minister of Human Rights, the Minister for Communication, the Minister of Communication and New Technologies and the Director-General of Radio-télévision ivoirienne. The Special Rapporteur also met several members of l'Union nationale des Journalistes de Côte d'Ivoire and of the Association nationale des journalistes pour la paix et la réconciliation, who represent a large spectrum of the press in Côte d'Ivoire. This includes publications directly funded by, or close to, political parties, and independent publications. Finally, he met several national and foreign media workers and the President of the Observatoire pour la liberté de la presse, de l'éthique et de la déontologie (OLPED).

**A. The link between the independence of the media
and the increase in professionalism**

37. Freedom of opinion and expression, and sensitive matters like hate speech, seemed to have been a major concern in recent years. The Prime Minister, Seidiou Diarra, stated that he appreciated the visit of the Special Rapporteur because it was giving him the possibility to reiterate to the Government of Reconciliation the importance of the independence of the media for the future of the country. The Minister for Human Rights affirmed that, in spite of accusations aired from abroad, the Government was trying to implement the provisions of the Linas-Marcoussis Agreement in this field: reinforcement of the role of the self-ruling organs; guaranteeing the neutrality and impartiality of the State media; facilitating the independence of the media. The improvement of the economic conditions, especially with regard to the salaries of journalists, may be one of the keys to increasing professionalism and independence.

38. The Special Rapporteur noted the link between hate speech and the need to improve the professionalism of the press. After the death of Houphouët-Boigny there was a liberalization of the media without any parallel development of journalists' professionalism: the campaign of hatred in the press, the Minister of Communication noted, was rooted in the past of the country. However, the press seemed to have commenced a self-critical debate on journalists' ethics and professionalism, a step welcomed by the Government, which was actively discussing the possibilities of adopting a number of laws for an overall reform of the media and a new Press Code. The Minister also referred to the dire situation of the majority of journalists whose salaries were absolutely incompatible with the importance of their work. This created the conditions for a subordinate relation between the journalist and the owner of the media.

39. These concepts were reiterated by several journalists, who stated that efforts to craft a code of conduct have been, in their opinion, useless. Journalists' political orientation and affiliation seemed to prevail over their sense of independence and professionalism. The strength of the link

between journalism and political parties was fundamentally related to the possibility of receiving a fair salary, and certain journalists could easily earn five or six times more than other colleagues whose salaries amount to approximately 200 euros per month. A former director of *Le Patriote* and Radio Nostalgie, the Minister of Communication and New Technologies, Hamed Bakayoko, agreed that the economic angle was important: many journalists could not make a living with their salary and this was one of the main reasons of the close relation between media workers and political parties.

40. The draft bill on the press would contain some provisions that can help journalists to set new terms for their independence and generally improve the status of the press. Moreover, it would exclude the possibility of imprisoning media workers because of their activity. The revitalization of numerous press associations and bodies would also contribute to an overall upgrading of the profession. In addition to the above-mentioned new Press Code, which was still to be approved, the Government should implement an emergency plan for the press, including funds to upgrade technical equipment and salaries.

41. Though favourable to the adoption of a new Press Code, some interlocutors said that journalists were sceptical about reform of the media as foreseen in the Linas-Marcoussis Agreement. The grim reality of the conflict, like the unavailability of newspapers in areas under the control of Forces nouvelles and the pressure that party has exercised on the Agence de press ivoirienne and RTI, seemed to be unknown to those who signed the agreement.

42. The Special Rapporteur was told that the draft bill on the press, once adopted, should ensure more freedom and independence to all journalists and media workers. In his opinion, Forces nouvelles was not against the free circulation of newspapers, which was constrained by financial and security problems.

43. It was also indicated that the utmost aspiration of Ivorian journalists was to be, and to be considered as, nothing else but journalists. The creation of OLPED in 1995, as well as other similar non-governmental organizations, was the result of this willingness. Unfortunately, Ivorian journalists are, by and large, still underpaid and their survival depends on political parties: lack of professional training and standards had surely aggravated this morbid relation between political power and press. Defamatory and discriminatory articles published in newspapers have contributed to the present atmosphere of hatred. OLPED was monitoring the freedom of the media and, within this area, also trying to detect violations by all sides against the right to freedom of opinion and expression. Finally, the depenalization of the offences perpetrated by media workers through a new law - the draft bill - may represent a leap forward.

44. The Organization internationale de la Francophonie was apparently very active on the issue of the independence of the media. The Francophonie would be willing to provide financial and technical support for professional training programmes for journalists and other media workers, and for reviving the self-regulating organs of the profession.

B. Obstacles to the right to freedom of opinion and expression of the media

45. Several journalists in Abidjan referred to attacks perpetrated against them, their media outlets and their equipment by the police, the army and security services of various personalities. As recently as October 2003, militia members attacked newspaper distributors and kiosks selling newspapers linked to opposition parties, temporarily shutting down press circulation. Recently, the Government distributed access passes for the presidential palace to a limited number of journalists, basically only those considered as not unfavourable to President Gbagbo obtained that indispensable document.

46. Various representatives of the press in Bouaké complained about the impossibility of reaching the capital Abidjan: because of the conflict, many among them could not visit their families living in the capital or its surroundings; others had not received their salaries since the beginning of the conflict. They also regretted that the mere fact of getting stuck in the region conquered by Forces nouvelles meant that the Government labels them as supporters of the so-called “rebels”. Obviously, some journalists worked in media that were close to the opposition parties, which in some cases bought the necessary equipment. The very negative image of the North as depicted by a large part of the media in the capital exacerbated the local population and, in doing so, created a systematic distrust of the population regarding journalists in general, though ethnic hatred was absent from the region. A representative of Forces nouvelles said that they were negotiating the opening of a British Broadcasting Corporation (BBC) sub-office in Bouaké to increase transparency and other media representatives, both national and international, regularly visited the region.

47. The Special Rapporteur also met a former journalist who was arrested without a judicial mandate by the Presidential Guard in October 2002, shortly after the beginning of the conflict. He reported that elements of the Presidential Guard brought him to the École de Gendarmerie in the Cocody quarter, in central Abidjan, because he was considered as a journalist close to the opposition parties. The former journalist affirmed that he had seen more than 10 bodies lying in the inner court of the École de Gendarmerie and another 7 persons killed on the spot. After having been severely beaten, he was shot in a leg and left in a corner without any medical assistance. In early November 2002, he was finally released from jail owing to an order of the public prosecutor’s department.

48. An unfortunate incident happened during the Special Rapporteur's mission: three journalists were threatened and beaten, and their equipment confiscated by the Presidential Guard while following a visit of President Gbagbo in Yamassoukro. Apparently, the Presidential Guard wanted to prevent one of the three journalists from taking pictures. In doing that, the Guard used disproportionate force and continued acting violently in spite of the intervention of President Gbagbo in person. The Special Rapporteur mentioned this incident in the press release at the end of his mission.

49. Representatives of foreign media in Côte d'Ivoire unanimously expressed concern about the death threats they received on a regular basis. The ultimate meaning of the assassination of Radio-France Internationale reporter Jean Hélène, considered as a general warning to all foreign press, was that foreign journalists were enemies of the Ivorian people. Reportedly, a high-ranking member of President Gbagbo's office virulently expressed his anger against a member of a foreign news agency. The owner of a radio station gave an account of the attack, allegedly perpetrated by the Jeunes patriotes with the help of the police, against his property, which was completely destroyed. With regard to the national press, foreign journalists felt that the lack of training and professionalism were two major shortcomings, in addition to poor salaries, that make journalists very sensitive to the pressure of political parties. The propaganda of ethnic hatred had reached a peak when journalists began to point their fingers at citizens generally considered as President Gbagbo's opponents.

C. The re-establishment of a national television network

50. In line with the Linas-Marcoussis Agreement, one of the main priorities appears to be the re-establishment of the Radio-télévision ivoirienne (RTI) network, especially in the North. This would, in the general opinion, help to appease the population and to recreate a climate of tolerance. Without resorting to censorship, there is an urgent need for a structural reform of RTI to ensure increasing impartiality and professionalism, banning all messages promoting discriminatory and racist attitudes. Several of the Special Rapporteur's interlocutors noted that the programmes previously broadcast by RTI were imbued with ethnic hatred and gave a very negative picture of the situation of the region under the control of Forces nouvelles.

51. RTI's first priorities were to re-establish the network throughout the country and the reform of the organization. A first step in this connection would be to gather a core group of very professional, impartial journalists who could loyally serve the institution and hence the country. Unfortunately, the Government was unable to find sufficient financial resources to restore the national network and therefore external aid would be absolutely necessary. He was

confident that the interest expressed by foreign entities, such as la Francophonie and the European Union, might help in the speedy rebuilding of the network using updated technologies.

D. The National Press Commission

52. In her meeting with the Special Rapporteur, the Secretary-General of the Commission nationale de la presse, Bernadette Boni Loba, gave a short historical account of the establishment of the National Press Commission, which was founded in 1991. Only in 2001, after the adoption of two subsequent decrees on the press, did the Commission commence its activities. In conformity with the most recent bill on the Commission, Decree 2000-545 signed by the late General Robert Guei, its members are appointed by the President of the Republic for a period of six years and cannot be reappointed. The President of the Republic also has the power to dismiss any member of the Commission who violates the provisions of article 7 of Decree 2000-545 concerning the obligation of confidentiality and the prohibition of exercising management activities in media enterprises.

53. Boni Loba first underlined that the Commission was a sort of advisory body that had no competence regarding the application of sanctions to journalists and publications. Basically, the Commission exercises control over the creation, ownership, resources and pluralism of any publication, as stated in article 2 of Decree 2000-545 of the President of the Republic. Should a publication have violated the laws related to the above-mentioned points, the Commission provided advice to the management of the publication for redressing the situation. Ultimately, the persistence of the violation could bring the Commission to have resort to the competent court to obtain the respect of the law.

54. Boni Loba said that the adoption of Decree 2000-545 also meant that the National Press Commission was actually deprived of any disciplinary power. Other serious shortcomings of the Commission are the number of its members, 21 that makes a quorum hard to reach, and the lack of any form of remuneration; the work of the members is pro bono, while the members of the Conseil national de l'audiovisuel receive a salary. The deficiencies of the Commission partially explain the anarchy presently ruling the press environment in the country: in order to obtain an authorization for publishing, it is sufficient to provide the relevant court with a name, an address or a phone number, which of course could be fictitious, and the name of the printing company. In reality, there are only eight press groups but 1,500 press licences, phantom enterprises whose role and functions should be verified one by one. By comparison, the number of official press accredited, slightly more than 400, is much lower. The Secretary-General of the National Press Commission ended on a positive note: she believed that the draft Bill on the Press, which had the support of many components of the media environment and politicians as well, could solve several problems and direct the media toward a better future.

IV. CONCLUSIONS

55. Reducing the intensity of the conflict is the *conditio sine qua non* of rebuilding confidence and trust between the population, political parties, associations and groups. The implementation of the Linas-Marcoussis Agreement should swiftly be achieved: this means the achievement of the process of disarmament and demobilization, the disbanding of militia and the return to legality regarding the action of the police and the army. The seriousness of human rights violations, including violence against women, children and migrants, reached an intolerable level.

56. No country can exist in isolation. Côte d'Ivoire was, for decades, a model of integration of peoples from different races, where racism and xenophobia were almost unknown. The ethnic conflict and its constituent factors like the concept of *ivoirité*, the rural divide and article 35 of the Constitution were used to enflame the political debate and ultimately to create an atmosphere of violence and related fear. It is symptomatic that almost all members of the civil society in Abidjan and in Bouaké express the same concerns for the present and the same hopes for a better future.

57. The reinforcement of ECOWAS troops and the deployment of United Nations blue helmets on the ground, in addition to the presence of the French military's Operation Licorne, may help in securing no-man's land areas and establishing a climate of relative calm elsewhere. Their presence could also contribute to the peaceful fulfilment of the electoral process to be held in 2005.

58. The negative role played by the media in the conflict cannot be overestimated. The Special Rapporteur remarked the lack of regulatory mechanisms that entail obligations, responsibility and discipline amongst newspapers publishers and editors. Without that mechanism, journalists tended to write without following their professional ethics.

59. However, this lack of responsibility and accountability has deep roots in the social situation of the country. Journalists receive no, or scarce, professional training without any ethical component. Perspectives for regular employment and a decent salary quickly fade under the pressure of political power. Many journalists received death threats and menaces, and their physical protection has become a security issue, especially after the killing of Radio-France International reporter Jean Hélène in October 2003. Furthermore, offices have been ransacked, equipment either stolen or destroyed, and as a result, the circulation of publications has been tremendously hampered, thus impeding

the right to freedom of opinion and expression and undermining the expression of pluralism.

60. There is a compelling need to start a dialogue among journalists and other media workers about their role in the process of reconciliation in the country. International organizations and institutions should promote the revival of national professional media organizations, which could, in turn, also help the promotion of an increasing awareness of basic human rights principles and the development of an ethical approach to the profession.

61. Finally, international actors such as the United Nations, the European Union, ECOWAS, the Mano River countries and other neighbouring countries need to harmonize their policies and action to prevent the continuation of the conflict in Côte d'Ivoire. The failure of the reconciliation process can only spread chaos in the region and ultimately turn into a major humanitarian and human rights disaster.

V. RECOMMENDATIONS

62. The Special Rapporteur urges the Government of Reconciliation to consider the fight against impunity as one of the main priorities ahead. The Special Rapporteur strongly recommends to the Government to re-establish republican legality in full, to declare officially that all militias are illegal, to disband them and to pursue human rights violators in the courts, regardless to their ethnic and/or political affiliation.

63. The Special Rapporteur urges the Government of Reconciliation to stick to the Linas-Marcoussis Agreement, to conclude the disarmament process and to begin a real process of reconciliation and reconstruction of the country. The Government should not hesitate to ask for assistance from the relevant United Nations agencies and other institutions.

64. The Special Rapporteur strongly urges the Government of Reconciliation to abide by the decisions included in the Linas-Marcoussis Agreement regarding the immediate establishment of a national human rights commission, the request for the creation of international commission of inquiry and subsequent actions to be implemented in order to end impunity, provide compensation and rehabilitation to victims of human rights violations. Trials and detention of the suspects, defendants and convicted must be implemented according to international human rights and humanitarian standards.

65. The Special Rapporteur urges the Government to release all individuals not involved in the implementation of violent actions, who are detained because of their opinions and beliefs, or because of their belonging to an ethnic group.

66. The Special Rapporteur calls the Government to create a compensation fund for the victims of the conflict, regardless of their political affiliation. Within this initiative, cases concerning journalists and media workers should be considered with care and impartiality. The Special Rapporteur warmly encourages the Government of Reconciliation to seek assistance from relevant United Nations agencies and other international juridical institutions for the correct and effective implementation of the above recommendation.

67. The Special Rapporteur urges the Government to draft specific bills and laws regarding hatred and hateful propaganda in the framework of the exercise of freedom of opinion and expression, in light of the provisions contained in articles 10 and 13 of the Constitution.

68. The Special Rapporteur urges the Government to reformulate, following the commitment taken in the Linas-Marcoussis Agreement, article 35 of the Constitution on the eligibility of the President of the Republic, in conformity with the international treaties ratified by Côte d'Ivoire and articles 10 and 13 of the Constitution.

69. The Special Rapporteur endorses the concerns and the recommendations of the Committee on the Elimination of Racial Discrimination (CERD/C/62/CO/1 of 3 June 2003) and takes note of the contents of paragraph 16 concerning the role of national media in encouraging hatred and xenophobia.

70. The Special Rapporteur encourages the United Nations, especially the United Nations Educational, Scientific and Cultural Organization and other relevant international organizations, to continue their efforts for the development of independent media in Côte d'Ivoire, bearing in mind the experience of other African countries and the expertise of African journalists. International and regional organizations may think about the establishment of a journalism school². Professional training and financial investments, especially an increase in salaries, may upgrade the moral stance of the press and the media industry. Replacement of radio and television installations destroyed during the conflict is another major priority.

71. The Special Rapporteur believes that all parties should commit themselves to a national, independent and inclusive media commission, and urges the Government to adopt the draft bill on the press - the so-called Press Code - as soon as possible. He also

recommends that the Government and civil society make joint efforts to reactivate and reinforce the work of media institutions and professional associations such as the Observatoire pour la liberté de la presse, de l'éthique et de la déontologie (OLPED), the Union nationale des journalistes de Côte d'Ivoire, the Conseil national de la communication audiovisuelle and the Commission nationale de la presse.

72. The Special Rapporteur endorses the recommendation made, inter alia, in the High Commissioner's report to the Security Council (S/2003/90), that the Government give urgent consideration to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

73. The Special Rapporteur invites the Government to submit outstanding reports to relevant treaty bodies as soon as possible.

NOTES

¹ On 26 March 2004, the Special Rapporteur sent an allegation letter, jointly signed by five other Special Rapporteurs of the Commission on Human Rights, to the Government of Côte d'Ivoire on this matter.

² Report of the Deputy High Commissioner for Human Rights, fact-finding mission to Côte d'Ivoire (S/2003/90, paras. 150 and 154).

Appendix I

RATIFICATION OF HUMAN RIGHTS TREATIES BY CÔTE D'IVOIRE

In his meeting with the Minister for Human Rights, Mrs. Victorine Wodie, the Special Rapporteur stated that, for the purpose of having an exhaustive picture of the status of freedom of opinion and expression in the country, he was especially interested in discussing matters concerning the possible ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Côte d'Ivoire has ratified the main human rights conventions: the International Covenant on Economic, Social and Cultural Rights (in 1992); the International Covenant on Civil and Political Rights (in 1992); the International Convention on the Elimination of All Forms of Racial Discrimination (1973); the Convention on the Elimination of All Forms of Discrimination against Women (in 1995); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1987); and the Convention on the Rights of the Child (in 1991). It has submitted some reports under these instruments and some reports are outstanding.

Appendix II

PRESS RELEASES

In his joint statement with the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, Doudou Diene, dated 24 October 2002, A. Ligabo underlined that the exercise of the right to freedom of opinion and expression carries with it, according to the provisions of the International Covenant on Civil and Political Rights, special duties and responsibilities, and that, in particular, any advocacy of national, racial or religious hatred is prohibited. The Special Rapporteurs invited the authorities of Cote d'Ivoire to increase their vigilance against the risks of ethnic conflict and to take urgently all necessary measures to put an end to the current situation. No one should benefit from impunity, in conformity with the obligations of the Government under international instruments to which Cote d'Ivoire is a party.

On 8 November 2002 and 7 February 2003, in two separate press releases, the late United Nations High Commissioner for Human Rights, Sergio Vieira de Mello condemned the propaganda carried by some national media aimed at inciting war and encouraging hatred and xenophobia. He also underlined the essential role of neutral, independent and impartial media in national reconciliation.

In a press release on 12 December 2002, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Asma Jahangir, expressed her serious concern about reports of extrajudicial executions said to have taken place in Côte d'Ivoire. The Special Rapporteur urged all parties in the conflict to refrain from carrying out extrajudicial, summary or arbitrary executions. Ms. Jahangir also affirmed the absolute necessity of identifying perpetrators and of ensuring that they were held accountable in conformity with international standards.

The Secretary-General stated, at the Conference of Heads of State on Côte d'Ivoire in Paris on 25 January 2003, that he hoped the spirit of openness and compromise which made it possible to achieve this agreement will continue to prevail, and that the decisions which have been taken will be implemented in good faith. The stability of Côte d'Ivoire will depend on the emergence and consolidation of national justice, the building of a defence and security apparatus to protect the security of the people and the national territory, and, above all, responsible and unifying governance. The Ivorian leaders, of all parties and factions, will have to ensure respect for the rule of law and human rights. Impunity must be combated and eliminated, and those who have committed crimes against innocent civilians must be punished. It must be clear, the Secretary-General concluded, that seizing power by force of arms is no longer acceptable. National

reconciliation is not an event but a process. It is essential that the parties should continue their efforts beyond this meeting.

In a statement released on 24 October 2003, following the killing of Radio-France Internationale (RFI) journalist Jean Hélène, the Acting High Commissioner for Human Rights called on the Ivorian authorities to carry out a full and transparent investigation into the killing and to bring the author or authors to justice swiftly.

The Special Rapporteur issued a statement, on 10 February 2004, in which he gave an exhaustive account of his findings and preliminary conclusions concerning his mission to Côte d'Ivoire.

In a press release dated 8 April 2004, the Acting High Commissioner for Human Rights reported that, following a specific request from the Secretary-General, he had established an Independent Commission of Inquiry to investigate alleged human rights violations against anti-government protests, committed in late March 2004.

On 30 April 2004, the President of the Security Council made a statement on behalf of the Council on the situation in Côte d'Ivoire, in which he expressed the Council's grave concern at the events which occurred at the end of March 2004 and at the current impasse in the peace process defined in the Linas-Marcoussis Agreement (S/PRST/2004/12).

Furthermore, in a press statement dated 15 May 2004, the President of the Security Council thanked the Acting High Commissioner for Human Rights for presenting the report of the Independent Commission of Inquiry on the events of March 2004. The members of the Council, while noting that the end of impunity is important for resolving the crisis in the country, urged all the parties to the Linas-Marcoussis Agreement to fulfil their commitments under the Agreement immediately, including the establishment of the National Human Rights Commission (press release SC/8094).

Appendix III

LIST OF PARTICIPANTS IN MEETINGS WITH THE SPECIAL RAPPORTEUR

Government officials

Seydou Elimane Diarra, Prime Minister of Côte d'Ivoire

Victorine Wodié, Minister for Human Rights

Guillaume Soro, Minister of Communication

Mamadou Bamba, Minister of Foreign Affairs

Hamed Bakayoko, Minister of Telecommunications and New Technologies

Camille Hoguié, President of the Independent Electoral Commission

Claude Bouah-Kamon, Director-General, Ministry of Foreign Affairs

Simon Bamba, secretariat of the Comité de pilotage des réformes du secteur des médias
(Steering Committee on media reform)

Jean Quentin Yard Demondi, Ministry of Foreign Affairs of Côte d'Ivoire

Media

24 Heures

Le Patriote

Soir Info

L'Inter

Fraternité Matin

La Liberté

Le Liberal

Le Front

Voice of America

British Broadcasting Corporation

Radio Nostalgie

Radio-télévision ivoirienne (RTI)

TV Notre patrie

Agence France-Presse

Non-governmental organizations

Observatoire pour la liberté de presse, de l'éthique et de la déontologie (OLPED)

National Press Commission

Association de la presse ivoirienne

Union nationale des journalistes de Côte d'Ivoire

Association nationale des journalistes pour la paix et la réconciliation

Ligue ivoirienne des droits de l'homme

Collectif des victimes en Côte d'Ivoire

Les Jeunes patriotes

SOS Exclusion

Intergovernmental organizations

Economic Community of West African States (ECOWAS)

European Union

United Nations

Mr. Albert Tevoedjre, Special Envoy of the Secretary-General for Côte d'Ivoire

Claudio Calderone, Deputy Resident Representative, United Nations Development Programme.

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