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Technical assistance and capacity-building

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

#### *Summary*

In this document the Independent Expert reports on his sixth visit to Côte d'Ivoire, from 11 to 24 February 2014. He presents an assessment of changes in the human rights situation in the country since his previous report, which followed his fifth visit to the country from 14 to 23 October 2013 (A/HRC/25/73). The bulk of the report concerns a proposed programme of action for addressing the needs of the victims of the Ivorian crisis, which is the outcome of the international conference on the situation of victims of the Ivorian crisis, organized in Abidjan from 12 to 14 February 2014 on the initiative of the Independent Expert.

The Independent Expert draws attention to the fact that the situation in Côte d'Ivoire is at a crossroads and is becoming ever more complex with the approach of the 2015 presidential elections. This complexity is compounded by a regional context that is still fragile on account of the emerging conflicts.

In the report, the Independent Expert re-examines a number of constant concerns connected, *inter alia*, with the increase in sexual violence, the persistence of the abuses committed by the Forces républicaines de Côte d'Ivoire (FRCI) and the *dozos*, the population's socioeconomic circumstances and with concerns about freedom of expression and association. The Independent Expert at one and the same time confirms the progress made by Côte d'Ivoire towards consolidating the rule of law, while underscoring the major challenges that still remain.

\* Late submission.



This report by the Independent Expert is a plea for the situation of the victims to be taken up as a national cause. The Independent Expert also recalls that the schedule of cases before the courts is weighed down by the number and sensitive nature of the cases outstanding. The looming 2015 presidential elections also require that human and material resources be made available to the judicial system and that its work be speeded up.

This report will be updated when it is presented orally by the Independent Expert to the twenty-sixth session of the Human Rights Council.

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## I. Introduction

1. This report is submitted in accordance with resolution 23/22 of the Human Rights Council, in which the Council renewed the mandate of the Independent Expert for one year and requested him to submit a report at its twenty-fifth session and recommendations at its twenty-sixth session.
2. This report covers the period between December 2013 and April 2014. It is based on information gathered from government authorities, specialized United Nations agencies, national and international non-governmental organizations (NGOs), political actors and detainees. The Independent Expert wishes once again to express his gratitude to the Government of Côte d'Ivoire for facilitating his stay in the country and his meetings with the national and local authorities. He met with the Prime Minister, the Minister of the Economy and Finance, the Minister of Justice, Human Rights and Civil Liberties, the Secretary of State and the Minister of the Interior and Security, the Minister of Higher Education, the Minister for Solidarity, the Family, Women and Children, the Deputy Minister of Defence and the Minister of Tourism.
3. The Independent Expert held meetings with the Army Chief of Staff, the chairperson of the Dialogue, Truth and Reconciliation Commission, the attorney-general of the Abidjan Court of Appeal, the district attorney of the Abidjan court of first instance, the Government commissioner at the military court, the head of the Disarmament, Demobilization and Reintegration Authority, the chairperson of the National Press Council and members of the National Human Rights Commission.
4. He also met with the Special Representative of the United Nations Secretary-General for Côte d'Ivoire and her deputies and members of the various components of the United Nations Operation in Côte d'Ivoire (UNOCI).
5. He also held meetings with the country's partners, including the United Nations system and a number of diplomatic missions, such as those of Canada, the European Union, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.
6. The Independent Expert wishes once again to express his gratitude to the chief of the Human Rights Division of UNOCI and his team, whose support was instrumental in the success of his mission and the preparation of this report.
7. The Independent Expert visited Simone Gbagbo in Odienné and Michel Gbagbo in Abidjan. He travelled to the short-stay prison and correctional facility in Abidjan and the National Surveillance Directorate.
8. He met with the leaders of political parties, including the Front Populaire Ivoirien (FPI) (Ivorian Popular Front), the Rassemblement des Républicains de Côte d'Ivoire (Republican Rally of Côte d'Ivoire), the Parti Démocratique de Côte d'Ivoire (Democratic Party of Côte d'Ivoire) and the party Liberté et Démocratie pour la République (LIDER) (Freedom and Democracy for the Republic).
9. He held meetings with a number of civil society organizations, including organizations for the defence of women's and victims' rights. In order to hear their views and advice, he also met with civil society leaders, including Mr. Amara Essy, former President of the General Assembly of the United Nations, and Mr. Bernard Dadié, a distinguished Ivorian writer.

## II. Recent developments

### A. Elections

10. The Independent Expert welcomed the adoption, on 9 April 2014, of a bill amending Act No. 2001-634 of 9 October 2011 on the membership, organization, mandate and operations of the Independent Electoral Commission. He believes that this reform should be integrated into the national reconciliation and democracy building processes, through consultations with political actors and civil society, with a view to increasing its credibility and organizing peaceful and democratic elections.

### B. Security

11. Notwithstanding the undeniable progress the Government has made in improving security, Côte d'Ivoire has seen a number of armed attacks over the past five months, including one against the 16th district's police station in December 2013 and against the Forces Républicaines de Côte d'Ivoire (FRCI) (Republican Forces of Côte d'Ivoire) in the area of Grabo (68 km from Tabou) during the night of 22–23 February 2014. Incidents involving dozos may have tapered off, but they have not completely stopped. The security situation is further destabilized by the involvement in recent incidents of former soldiers who have yet to be disarmed.

12. The Independent Expert particularly wishes to draw the authorities' attention to the risk of land-related intercommunity tensions, such as the incident on 18 April 2014 in Bouaké, in which approximately 10 Fulani herdsmen were killed during an altercation with the local communities of Koulakaha village that erupted after a Fulani herdsmen allegedly killed a dozo on 6 April.

13. He noted with concern the information contained in the previous report of the Group of Experts on Côte d'Ivoire, submitted under paragraph 19 of Security Council resolution 2101 (2013), concerning the involvement of former area commanders ("com'zones") in smuggling activities likely to foster insecurity.<sup>1</sup>

### C. National reconciliation

14. The Independent Expert noted that the pilot hearing phase of the Dialogue, Truth and Reconciliation Commission, held from 27 February to 12 March 2014 in Bondoukou, Yopougon II, Korhogo, Agboville, Adzopé, Bouaké, Duékoué and Gagnoa, took place without incident. He hopes that the lessons learned during the pilot phase will be put to use in the national phase, and calls for greater awareness-raising and protection. He also calls on all political actors to support the Commission's efforts.

15. The Independent Expert warns against attempts to bring partisan rhetoric back into universities, as demonstrated by the tensions that arose at Felix Houphouët-Boigny University and Nangui Abrogoua University in Abidjan between the end of February and early March 2014.

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<sup>1</sup> S/2014/266, paras. 172 and 173.

## **D. Institutional trends**

### **1. Disarmament, demobilization and reintegration**

16. The Independent Expert welcomes and supports the efforts to roll out the disarmament, demobilization and reintegration programme, and especially the positive developments such as the return of exiles, particularly military personnel who have answered the Government's invitation to return and are contributing towards national reconciliation. In response to the rumours of corruption marring the programme, which the Independent Expert mentioned in his previous report (A/HRC/25/73, para. 31), the director of the Disarmament, Demobilization and Reintegration Authority described a number of steps taken to make the process more reliable, including the expulsion and prosecution of fraudsters. The urgency of supporting the programme is made starker still by the worrying fact that former soldiers have allegedly been involved in recent acts of violence.

### **2. National Human Rights Commission**

17. The Independent Expert strongly reiterates his call for the authorities to strengthen the independence of the Commission and enable it better to fulfil its key mandate to protect and promote human rights in Côte d'Ivoire, in keeping with the Paris Principles.

### **3. Administration of justice**

18. The Independent Expert repeats his call for a review of the provisions of the Code of Criminal Procedure, in particular those whereby assize courts do not allow for appeals, which are fundamental to the principle of effective remedy, as set forth in article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

19. He welcomes the adoption of Decree No. 2013-915 of 30 December 2013 on the special investigation unit, which is responsible for "investigations into offences committed during the crisis that followed the 2010 presidential election".<sup>2</sup> He notes with interest the changes made to the unit's mandate, in particular the definition of its *rationae temporis* jurisdiction as from the 2010 post-election crisis and no earlier. He hopes that these changes will not unduly increase the prosecution's caseload as it already has a backlog. The unit remains insufficiently staffed and hiring commitments have yet to be honoured.

## **E. Persistent human rights violations**

### **1. Violence against women**

20. The Independent Expert remains concerned at the prevalence of rape in the country and regrets the fact that the justice system is not in a position to punish perpetrators as severely as it should, many of whom, thanks to their status, have benefited from a climate of impunity. He is further concerned at the practice, often by armed men, of extorting rape victims and at the rape of girls and gang rape, such as in Aboisso, Bondoukou, Bouaké, Daloa, Daoukro, Divo, Séguéla and Yamoussoukro.

21. The Independent Expert was informed of the case of a 35-year-old pregnant woman who was brutally beaten by a police officer in Bouaké on 11 April 2014. On 17 April, UNOCI reported that seven women had been brutally beaten and had their lives threatened during an eviction operation led by police officers and members of the Forces

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<sup>2</sup> *Journal officiel de la République de Côte d'Ivoire*, No. 17, 31 December 2013. The Decree abrogates the ministerial order of 24 June 2011 on the establishment of the special investigation unit whose mandate had ended on 30 December 2013.

Républicaines de Côte d'Ivoire in Washington shantytown in the Cocody district of Abidjan.

## 2. Torture

22. The Independent Expert was informed of acts of torture committed in various detention centres, including beatings and other cruel, inhuman or degrading treatment, at the hands of members of the National Surveillance Directorate, the Operational Decisions Coordination Centre and the Forces Républicaines de Côte d'Ivoire.

23. On 1 January 2014, officers of the Forces Républicaines de Côte d'Ivoire broke into a man's home in San Pédro, arrested him and brutally beat the other four occupants of the house, including a woman. The officers were arrested and released on 95,000 CFA francs bail. Cases of ill-treatment by officers of the Forces, including extortion and death threats, were also reported in the area of San Pédro on 14 January. Some detainees arrested in February for breach of State security and held at the short-stay prison and correctional facility in Abidjan were allegedly beaten in the course of their arrest and during their stay at the Forces camp in Grabo. The Human Rights Division of UNOCI observed that 15 of them had severe injuries.

## 3. Situation of detainees

24. The Independent Expert welcomes the country's efforts to regularize the legal situation of certain detainees. Over 1,000 prisoners were released under the presidential pardon of August 2013. Several detainees close to former President Laurent Gbagbo, who were imprisoned at the headquarters of the fourth infantry battalion of Korhogo (formerly the Compagnie territoriale de Korhogo), were transferred to either the military short-stay prison or the short-stay prison and correctional facility in Abidjan.<sup>3</sup>

25. Nevertheless, the Independent Expert remains concerned by the situation at the short-stay prison and correctional facility in Abidjan, where banned objects and products, such as knives, drugs and alcohol, can apparently be procured. In February 2014, during a routine check by the country's various security forces, a mutiny broke out, resulting in the deaths of two inmates.

26. He wishes to express once again his grave concern for the persons detained by the National Surveillance Directorate, sometimes in private buildings. He recalls that incommunicado detention is incompatible with a democratic society governed by the rule of law and that any prolonged detention by the Directorate that exceeds statutory limits is unlawful and arbitrary. He also learned that in some cases, despite a duly signed judicial authorization, Directorate agents decide on a discretionary basis whether or not to authorize visits.

27. The Independent Expert is concerned at the situation of some 147 minors being held in the same buildings as adults at the short-stay prison and correctional facility in Abidjan, in flagrant violation of the relevant international norms. He is further concerned that a certain number of people, including Simon Pierre Ehivet and Captain Antoine Kangbe, whom he met at the facility, remain in detention.

28. On 14 February 2014, Michel Gbagbo was banned from leaving the country; the Independent Expert has taken note of the diverging views expressed by the parties in this regard. The prosecution service justified the measure, stating that the defendant, having chosen his domicile<sup>4</sup> upon his release pending trial, required prior judicial authorization for

<sup>3</sup> Ten of them have been tried and acquitted by the Abidjan Military Court.

<sup>4</sup> In accordance with article 144 of the Code of Criminal Procedure.

any travel outside the country. The defence attorney pleaded that this formality was not required under the law and that the defendant, having duly chosen his office as his domicile, should have freedom of movement. The Independent Expert has been told of cases of persons having been released pending trial who are authorized to travel outside the country.

29. Regarding the attempts by the judicial authorities to adjudicate the merits of Simone Gbagbo's case in Odienné from 4 to 6 February 2014, the Independent Expert regrets the fact that only a token hearing took place given that the defendant requested *in limine litis* that her parliamentary immunity be waived before answering the prosecutor's questions. He is of the opinion that a just, fair and swift trial leading to definitive judicial decisions in the cases of Michel and Simone Gbagbo could end the controversy surrounding their status. In this connection, he recalls his recommendation regarding the need to combat impunity and prosecute all those who have committed serious human rights violations (A/HRC/25/73, para. 88 (a)).

#### **4. Freedom of expression and of assembly**

30. The Independent Expert is concerned at a communication released on 11 April 2014 by the National Press Council whereby it decided to suspend the dailies *Aujourd'hui*, the *Quotidien d'Abidjan* and the *Temps* for 12 issues, the weekly *Bôl'Kotch* for 4 issues and the *Quotidien* for 3 issues, on the grounds that they infringed the Act of 14 December 2004, on the legal status of the press, and the national journalists' code of conduct. He laments the fact that all the publications concerned are aligned with the opposition. He also urges journalists to be mindful of the profession's code of ethics in their treatment of information.

31. The Independent Expert welcomes the fact that leaders of the Front Populaire Ivoirien have been able to tour the country. However, the ban on their rallies in Oumé, Bouna and Abobo could compromise the authorities' ability to guarantee the security and free movement of political leaders nationwide.

32. He regrets the fact that, on 27 February 2014, security forces prohibited, with no legal basis, a seminar of the Ivorian Civil Society Federation in Abidjan. On 7 March, he called on the authorities to take the necessary steps to enable human rights organizations in general, and the Federation in particular, fully to play their part and contribute to consolidating progress in the country.<sup>5</sup> He welcomes the attendance of the Ministry of the Interior at a recent Federation meeting.

33. The Independent Expert is concerned by the situation of Alternative, an NGO that works to protect persons living with HIV/AIDS and homosexuals and whose premises and staff in a neighbourhood of Abidjan were attacked between December 2013 and January 2014. He regrets the absence of an adequate reaction from the authorities to uphold the rights of this NGO.

#### **5. Situation of exiles**

34. The Independent Expert welcomes the Government's ongoing efforts to encourage the gradual return of exiles, including soldiers and militia members. He recalls that this initiative should go hand in hand with withdrawal from returnees' homes and their return to work.

35. Furthermore, the Independent Expert was informed that on 17 February 2014, a group of 21 refugees from Little Webbo camp in Liberia were arrested by the Liberian

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<sup>5</sup> Communication of 7 March 2014: [www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14329&LangID=F](http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=14329&LangID=F).



authorities and forcibly transferred to Côte d'Ivoire for allegedly taking part in attacks against security forces. Six of them were released after a preliminary hearing. Some stated that they had been mistreated by Liberian law enforcement officers. The Independent Expert insists on the principle of voluntary return and is concerned at the way in which this operation was carried out. If these facts are corroborated, he calls on Liberia and Côte d'Ivoire, pursuant to their partnership in security matters, better to honour their commitments under international refugee law.

## **6. Economic and social rights**

36. The Prime Minister informed the Independent Expert of the State's investment in the social sector, including the opening of approximately 36,000 classrooms, the targeted assistance programme in the health sector, the building of over 100,000 social housing units, the construction of bridges and roads, the raising of wages and support for the national agricultural investment programme. According to the Prime Minister, the best way of improving Ivorians' quality of life is to create wealth through growth.

37. The Independent Expert welcomes the decision, on 6 March 2014, to adopt a law on universal medical insurance and invites the authorities to take specific steps to put the law into effect.

38. Trade unions have reported that public sector employees have been dismissed without the benefit of redundancy programmes. The Forces Républicaines de Côte d'Ivoire continue to occupy the headquarters of the Federation of Autonomous Trade Unions of Côte d'Ivoire. The Independent Expert encourages the State to ensure a balanced dialogue between the Government, employers and trade unions for the country's long-term prosperity.

39. He draws the authorities' attention to the fate of street children, known as "germ children", especially in the Abobo neighbourhood of Abidjan, who are the product of the country's difficult socioeconomic circumstances. They are both the perpetrators and victims of serious acts of violence.

## **F. Cooperation with the international community**

40. The Independent Expert draws the attention of senior United Nations officials to the importance of not withdrawing ONUCI forces too soon, given the fragile situation in the lead-up to the 2015 elections.

41. He has taken note of Security Council resolution 2153 (2014), in which it voted to relax the sanctions against Côte d'Ivoire, including the weapons embargo.

42. He commends the Government for authorizing the visits of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

43. He has taken note of the fact that Charles Blé Goudé was transferred to The Hague on 22 March 2014 at the behest of the International Criminal Court. He once again urges the Court to bring to justice all those who committed serious human rights violations in Côte d'Ivoire during the post-election crisis.

### **III. Proposed programme of action for assistance to victims of the Ivorian crisis**

#### **A. Background**

44. In order to promote victim-centred national reconciliation and efforts to combat impunity, the Independent Expert organized an international conference on the situation of the victims of the Ivorian crisis, held in Abidjan from 12 to 14 February 2014. Amid political polarization and a stalled political dialogue, the conference addressed the urgent need to highlight the situation of victims as a national cause that transcends the political and partisan divides that have long fuelled the Ivorian crisis. The goal was to remove the cloak of invisibility and silence from victims and to give the various actors of the crisis — including political parties and civil society — the opportunity to share their solutions to the situation of victims. Through a comparative approach, participants also learned about victim assistance policies that have been used in other African and South American countries that have experienced similar crises.

45. The event followed the conference on impunity and equitable justice in Côte d'Ivoire, held at the initiative of the Independent Expert in Yamoussoukro in February 2013. In his report to the Human Rights Council following the conference, he recommended that the Dialogue, Truth and Reconciliation Commission “[e]mphasize the central importance of victims’ situation and expectations and encourage the provision of material, social, psychological, medical and legal support for them” (A/HRC/23/38, para. 88 (g)). Thus, the conference on the situation of the victims of the Ivorian crisis fulfilled many of the earlier recommendations made by the 2004 and 2011 international commissions of inquiry and by the Independent Expert himself.

46. Various State entities took part in the conference, including the Office of the President, the Office of the Prime Minister, the Ministry of Education and Technical Education, the Ministry for Solidarity, the Family, Women and Children, the Ministry of Justice, Human Rights and Civil Liberties, the Ministry of Planning and Development, the Dialogue, Truth and Reconciliation Commission, the National Human Rights Commission, the special investigation unit, members of the judiciary, the Disarmament, Demobilization and Reintegration Authority, the National Programme for Social Cohesion, the Solidarity and Social Cohesion Observatory and the Directorate for War Victims. The conference also brought together representatives of political parties (Front Populaire Ivoirien, Liberté et Démocratie pour la République and Rassemblement des Républicains de Côte d'Ivoire), civil society, international organizations, United Nations institutions and international experts. Victims’ associations actively guided and informed the discussions.

47. The speakers analysed the situation of victims, assessed State efforts and suggested possible solutions, providing the Independent Expert with a basis from which he was able to put forward a series of recommendations to inform and promote a national assistance programme for victims of the crisis.

#### **B. Ethical and legal basis for providing victims with reparation**

##### **1. Ethical basis**

48. It is the State’s duty to ensure that all perpetrators of human rights violations committed in its territory are brought to justice. Its sovereignty is closely linked to its ability to institute the rule of law, grounded partly in an effective, fair and impartial justice system. State responsibility in terms of the reparation of human rights violations is based on

objective criteria regarding both those who wield public authority and the victims. Its responsibility includes reparation of the harm suffered by all victims. Accordingly, the main duty of the Government of Côte d'Ivoire is to support the victims of the long crisis that undermined the country, irrespective of their political affiliation.

## 2. Legal basis

49. The Constitution safeguards human dignity, respect and protection of fundamental liberties, the inviolability of human rights (art. 2) and the right of all individuals to free and equal access to justice (art. 20). Although national law does not define the notion of “victim”, the Code of Criminal Procedure sets forth the conditions for bringing a civil suit, which is the basis for victim status and rights under national criminal law.<sup>6</sup>

50. The Constitution recognizes duly ratified international treaties and agreements as being legally binding. Côte d'Ivoire has ratified a number of international conventions on the State's duty regarding reparation for victims of human rights and international humanitarian law violations, including the International Convention on the Elimination of All Forms of Racial Discrimination, in 1973; the Convention on the Rights of the Child, in 1991; the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, in 1992; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1995; and the Rome Statute of the International Criminal Court, in 2013. The Independent Expert draws attention to General Assembly resolution 40/34 on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

## C. Situation of the victims of the crisis

51. Since the end of the post-election crisis, victims have repeatedly expressed their frustration with the sluggishness of judicial proceedings to obtain reparation. The human rights violations they suffered are perpetuated by the impunity of the alleged perpetrators and the failure to bring them to justice. The victims continue to suffer from the physical and mental pain and considerable material and financial loss they incurred.

### 1. Material and personal harm

52. This loss and pain includes over 3,000 dead,<sup>7</sup> physical/bodily injuries (e.g. torture, abrasions, deep wounds, broken bones, severe burns), social damage (e.g. family dislocation, social divides, deep divisions in some communities) and a profound sense of solitude, injustice, vulnerability and helplessness. The crisis also caused material and financial losses (such as the destruction, theft or confiscation of material and financial goods); massive population displacement; the destruction of homes, sometimes of entire villages, especially in the west; the loss of livelihoods and means of production for rural populations who fled their villages; and limited access to basic social services, which were already unreliable before the crisis.

<sup>6</sup> Article 2 of the Code of Criminal Procedure reads as follows: “A civil action to seek redress for harm caused by a crime, offence or misdemeanour may be brought by anyone who has suffered personally from the harm directly caused by the offending act.”

<sup>7</sup> See the national commission of inquiry, “Report of the inquiry into the violations of human rights and international humanitarian law during the period 31 October 2010 to 15 May 2011”, July 2012, p. 12.

## 2. Impact of the crisis on the most underprivileged population groups

53. The heaviest burden of the Ivorian crisis over the past 10 years has been borne by marginalized social classes, in particular those living in low-income neighbourhoods in cities, towns and villages across the country, especially in Yopougon, the south-west and west. They have seen their houses destroyed, their wives and daughters raped and their husbands killed, tortured or imprisoned. For more than 10 years — although a large number of them have been direct victims — the social and political elites have often managed to lessen, at least for themselves, the effects of the cyclical crises that have beset Côte d'Ivoire, either by going into exile or by obtaining amnesties through political wrangling.

## 3. The mental state of victims

54. The psychological harm caused by the Ivorian crisis includes loss of self-esteem, loss of identity and values and the feeling of helplessness, which can lead to indiscriminate hatred, blind impulses to seek revenge and even suicide. Many victims suffered, and continue to suffer, post-traumatic stress disorder owing to the various forms of violence to which they were exposed, such as murder, torture, rape, humiliation and disappearance. Doubts as to the outcome of the legal proceedings under way cause a sense of helplessness that locks victims in their situation, removes them from society, prevents them from having faith in the justice system and the law and robs them of the ability to be full citizens and thereby build their personal and social resilience.<sup>8</sup>

## 4. Impact of the crisis on the situation of children

55. Children have experienced repeated trauma as a result of the violence they suffered and the numerous horrific events they witnessed. Worse still, they themselves were often forced to perpetrate acts of violence. Their parents' and relatives' suffering, compounded by their own anguish, has "robbed them of part of their childhood".<sup>9</sup> Many had to interrupt their studies because of attacks on their schools or teachers' flight. Some suffered sexual violence while others were denied access to hospitals and humanitarian aid.<sup>10</sup>

## 5. Specific situation of women

56. The physical, material, social and economic impact of the crisis is particularly severe and long-lasting for women. The socioeconomic situation of girls and women is weakened, making them even more vulnerable in a country that has not been immune to the feminization of poverty that has affected the entire subregion. Thousands of women who were in the informal sector (crafts, small-scale retail, etc.) were forced to flee their homes and abandon their work. UN-Women has drawn attention to heightened gender-based violence, including many rape cases. Many victims of sexual violence were unable to file complaints and received neither medical nor psychological care because of cultural attitudes characterized by shame and social rejection.

## D. Actions on behalf of victims

57. Measures on behalf of victims can be taken by either State or non-State actors.

<sup>8</sup> See international conference on the situation of the victims of the Ivorian crisis, Abidjan, 12–14 February 2014, presentation by Cécile Marotte.

<sup>9</sup> Ibid, presentation by Niamke N'Dri Bertin, head of child protection, UNOCI.

<sup>10</sup> See the serious violations of children's rights referred to in Security Council resolution 1612 (2005) on children in armed conflict.

## 1. State efforts

58. In the wake of the crisis, the Government established a series of mechanisms to provide victims with assistance, including the Directorate for War Victims, the post-conflict assistance project, the National Programme for Social Cohesion, the Solidarity and Social Cohesion Observatory, the Dialogue, Truth and Reconciliation Commission, the National Human Rights Commission, the special investigation unit and the National Commission of Inquiry. These mechanisms and institutions, which are described in the detail below, are entirely dedicated to victims.

59. The Directorate for War Victims is attached to the Ministry for Solidarity, the Family, Women and Children and is responsible for identifying and assisting “war victims”. Since it was set up, it has helped to resettle internally displaced persons immediately after the crisis (May 2011) and has raised awareness of voluntary return, provided subsidies, distributed food kits to displaced persons and financed the creation of income-generating activities. The Directorate has also conducted a census of war victims,<sup>11</sup> provided psychological and medical care to 143 victims, supported victims of gender-based violence, awarded 200 scholarships and provided legal assistance to victims. In addition, the Ministry of Education and Technical Education has ensured that child victims receive an education.

60. The post-conflict assistance project, set up in 2007, is financed by the World Bank and headed by the Office of the Prime Minister. Its mission is to enhance employment opportunities and access to social services for the communities and individuals affected by the conflict. Efforts already under way include quick-impact income-generating activities, the construction and refurbishment of infrastructure in the departments of Duékoué, Guiglo, Tai, Bloléquin, Toulépleu and Soubré. The project has helped selected communities to establish some 131 “Peace Committees” for conflict prevention and management. It has funded a training and settlement programme for 1,000 young people in Duékoué, Bangolo and Guiglo in the areas of agriculture, herding, trade and services as well as an emergency return project for internally displaced persons in five villages in Duékoué.

61. The National Programme for Social Cohesion is an interministerial programme to mend the social fabric, foster coexistence, create the conditions for durable social peace and resolve the major problems that jeopardize national cohesion. Since its establishment, the programme has been working to set up a framework for exchange and collaboration with victims’ associations as well as community and intercommunity counselling services for the population of Anonkoua-Kouté, Angbovia and Bocanda. It is also implementing an agreement with the Directorate-General for Employment regarding the social and professional reintegration of vulnerable groups, the reception of returning refugees, the development of economic projects to provide employment for voluntary repatriates and the design, with UNOCI, of projects to refurbish community infrastructure.

62. The Solidarity and Social Cohesion Observatory works to strengthen solidarity and social cohesion by developing early warning mechanisms and decision-making tools. Headed by the Ministry for Solidarity, the Family, Women and Children, the Observatory’s mission includes defining and updating solidarity and social cohesion indicators, taking steps to promote and protect solidarity and social cohesion, conducting research and assessing relevant national policies and programmes. Its activities include strengthening the operational capacity of relevant government bodies and guiding the formulation of the national solidarity and social cohesion policy. The policy will catalogue the harm suffered

<sup>11</sup> In March 2013, their number stood at 70,000. See international conference on the situation of the victims of the Ivorian crisis, Abidjan, 12–14 February 2014, presentation by the Directorate for War Victims.

and design and implement policies and mechanisms for reparation, early warning and the refurbishment of basic social and economic infrastructure.

63. The Presidential Emergency Programme intervenes in emergency situations rapidly to restore specific public services to minimal levels and swiftly meet the basic needs of the affected population.

64. The Dialogue, Truth and Reconciliation Commission has, after holding national consultations from 1 January to 28 February 2013, entered the quantitative phase of its mandate and surveyed 48,561 individuals between 21 August and 21 September 2013. Nearly 30,000 people took part in an inclusive and interactive dialogue during the qualitative phase. Ivorians were thus able to express their views on this initial phase. Those surveyed were able to comment on what types of violations should be included and what forms reparation should take. The next steps will be crucial to the Commission's consideration of the situation of victims and will consist of counselling for victims, awareness-raising, investigations and public hearings.

## **2. Efforts by non-State actors**

65. In order to assist women victims of the crisis, UN-Women, the International Rescue Committee, the Association des Femmes Juristes de Côte d'Ivoire (the Association of Women Lawyers of Côte d'Ivoire) and the West Africa Network for Peacebuilding – Côte d'Ivoire, with the support of the European Union, have launched a project to restore the rights of women victims of sexual violence committed during the post-election crisis with a view to ensuring that 70 victims who have not received any assistance are provided with medical, psychosocial and legal support. Thanks to the project, these women have received legal and psychological assistance. Five "peace huts" have been set up in Abobo, Yopougon, Duékoué, Danané and Man, where the population can learn about gender-based violence and women's rights. Two projects for the economic empowerment of women are under way in these areas, benefiting 800 women, including victims of violence, war widows, female heads of households, displaced women and returnees.

## **E. Barriers to reparation for victims**

### **1. Dispersal of State resources for victim assistance**

66. The various statements and presentations made during the February 2014 international conference revealed that State expenditure on victims is widely dispersed. More than six public institutions overlap in this area and their efforts do not necessarily match victims' expectations. The competitiveness stemming from their various responsibilities potentially hinders and dilutes their efforts, whereas a balanced policy, carefully crafted and coordinated by a central body, would have enabled the State to rationalize its already meagre resources and ensure that its efforts had a greater impact. The various statements made by the institutions responsible for victims also revealed the absence of institutional partnership which would allow them to draw on each other's mandates and activities in order to build greater synergy. The multiplicity of bodies confuses and discourages victims, who are faced with several points of contact and multiple registration systems.

67. Furthermore, the various State and non-State projects do not always have a noticeable impact because they are sporadic and fragmented. Hence the need for an authentic programme of action for victims together with measurable qualitative and quantitative objectives, reliable and sufficient resources, an oversight and assessment mechanism and a specific time frame in order to transform victims from beneficiaries into

actors of economic reconstruction and to rebuild their trust in the State. The State would then be in a position to credibly shoulder its key responsibility towards victims.

## **2. Persistence of impunity**

68. Obtaining justice for the victims of the Ivorian crisis is one of the driving forces of reconciliation. Despite the establishment of the National Commission of Inquiry, the publication of its report and the establishment of the special investigation unit, the impression of impunity remains palpable. Notwithstanding repeated commitments by the political authorities and the clear readiness of justice officials, the issues of impunity and equitable justice remain unresolved. Very few proceedings have been brought against the perpetrators of violence during the post-election crisis. To date, only those closest to the former regime have been prosecuted. The situation is partly to blame for stalling national reconciliation and undermines trust in the restored justice system. The fact that alleged perpetrators of human rights violations have recently been released pending trial makes it unlikely that any precise dates will be set for their trials and could be construed as a de facto amnesty. The participants in the 2013 conference on impunity and equitable justice recalled that the amnesties granted to those who had committed violent acts between 2002 and 2010 yielded nothing more than tenuous political accords that not only failed to prevent renewed violence but also fuelled a culture of impunity and exacerbated the crisis.

## **3. Absence of victim protection measures**

69. Legal proceedings against the perpetrators of serious human rights violations in the aftermath of the 2010 elections should go hand in hand with special protection measures for victims, witnesses and other persons concerned, including judges. The latter's independence cannot be guaranteed because of the threats to their careers and persons. Victims' fear of filing a complaint against the alleged offenders, several of whom work in law enforcement agencies, is compounded by the lack of information on the bodies to whose attention cases should be brought in order to obtain justice and reparation. Speeding up the adoption of the bill on the protection of victims and other persons concerned is therefore crucial.

## **4. Fragility of the legal system**

70. The legal system, which has been rebuilt despite a long history of legal vacuum, is nonetheless undermined by several factors. The independence of the judiciary needs to be strengthened, given the culture of political control over the justice system that prevails in post-crisis situations in Africa. The credibility of the national legal system also poses a significant challenge, owing to the pressure exerted by its international counterpart with regard to the frequent allegations of crimes against humanity made throughout the Ivorian crisis. The fact that the courts have ordered the release pending trial of many detainees held in relation to the post-election crisis is symptomatic of a system keen to address the issue of prolonged detention without trial. However, this measure also reflects the complexity of the legal stakes for the victims of the Ivorian crisis: victims who self-identified as having been close to the former regime welcomed the releases, while other victims interpreted them as a sign that the State was more interested in the fate of the "persecutors" than in that of the "real victims". The conference provided an opportunity for victims' representatives to vent their frustration at the authorities.

71. During the national consultations led by the Dialogue, Truth and Reconciliation Commission, 72 per cent of respondents stated that the justice system could not be trusted — a figure that reflects a troubling perception that could erode faith in the courts — as a guarantor of the rule of law in the future. In a democracy, justice is the last defence against the loss of the belief that republican ethics transcend all individual and partisan interests.

## 5. Weak commitment by political actors

72. The national political discourse, which is increasingly characterized by partisan invectives and power struggles, reveals that the situation of victims is not yet seen as central to the national reconciliation process. The 2014 conference demonstrated that political actors take a broadly politicized stance towards the situation of victims. It is therefore urgent to turn the situation of victims into a national cause, drawing on three elements that underpin a robust national reconciliation process: national solidarity, a national policy that includes all victims without political, ethnic or religious distinction and a comprehensive approach that addresses every aspect (social, medical, material, educational and psychological) of victims' suffering. The goal is to transform the situation of victims into the driving force of a national catharsis in order to resolve the root causes of the crisis and give renewed meaning and substance to the battered humanity of the Ivorian people.

## F. Guiding principles of an effective reparation policy

73. The provision of reparation for the victims of the Ivorian crisis requires an operational framework that legitimizes, structures and maximizes the efforts of the State and other relevant partners. The suggested reference document is based on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, set forth in resolution 2005/35 of the Commission on Human Rights and reproduced in General Assembly resolution 60/147, which suggest guidelines for a victim assistance policy.

74. *Responsibility* – The fundamental principle of State responsibility reflects the stability of the State in its highest form, as guarantor of the well-being, equality and security of all citizens, including victims. This inalienable principle entails the State's obligation to uphold and enforce ratified international conventions, customary international law and national law, including the obligation to investigate serious violations of international human rights law and bring the perpetrators to justice. This responsibility extends to the violence and omissions of previous political regimes.

75. *Definition* – According to the aforementioned basic principles and guidelines:

“[V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” (A/RES/60/147, Annex, para. 8.)

This comprehensive definition effectively prohibits the State from discriminating against perpetrators or victims on grounds of their ethnicity, religion, political affiliation or social background.

76. *Access to justice, remedy and assistance* – Victims should have access to justice, i.e. an effective remedy, relevant information, counsel and protection, including for their relatives during proceedings, and steps should be taken to enable groups of victims to present claims for and receive reparation (ibid., paras. 11–14). Adequate, effective and prompt reparation should be proportional to the gravity of the violations and the harm suffered (ibid., para. 15) and the State should ensure that reparation decisions handed down by the courts are enforced (ibid., para. 17).



77. *Fairness* – All victims having suffered harm should be included in the reparation process, without discrimination (ibid., para. 25). Fairness entails the adoption of targeted measures for victims for whom applying for relief is most difficult or who suffered the most from the violations.

78. *Humanity and dignity* – Victims should be treated with humanity and dignity in their efforts to seek justice and reparation.

79. *Access to information* – It is the State’s duty to ensure that victims have access to the requisite information on available remedies and counselling services (ibid., para. 24).

80. *Access to appropriate reparation* – Reparation may take the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (ibid., para. 18).

81. *Restitution* – Victims should, whenever possible, be restored to their original situation before the violation. Restitution includes: the restoration of liberty, identity and employment, the enjoyment of human rights, the return to one’s place of residence and the return of property (ibid., para. 19).

82. *Compensation* – Insofar as the human rights violations suffered are quantifiable, victims should be compensated for physical or mental harm, lost opportunities, material or moral damage, loss of earnings and medical and legal costs (ibid., para. 20).

83. *Rehabilitation* – This measure “should include medical and psychological care as well as legal and social services” (ibid., para. 21).

84. *Satisfaction* – Steps taken by the Government to this end should include: effective measures aimed at the cessation of continuing violations, public disclosure of the truth, the search for the whereabouts of the disappeared, the restoration of the dignity of the dead, public apology, the prosecution and punishment of persons liable for the violations, commemorations and tributes to the victims and the inclusion of an accurate account of the violations in educational material (ibid., para. 22).

85. *Guarantees of non-repetition* – Such measures should include: effective civilian control of security forces, the harmonization of civilian and military proceedings with international standards of fairness and impartiality, the strengthening of the independence of the judiciary, the protection of victims, witnesses and persons concerned, the provision of human rights education to security forces, the promotion of mechanisms for preventing and monitoring social conflicts and legal reforms to take greater account of the country’s commitments towards international human rights law (ibid., para. 23).

## **G. Recommendations for a comprehensive approach to assistance for victims**

86. **A comprehensive approach should be taken to the provision of assistance for victims on the basis of their actual needs and taking into consideration the full restoration of their rights and citizenship. Bearing in mind that the provision of reparation is first and foremost the State’s responsibility, the Independent Expert makes the following recommendations for each of the three specific levels of intervention, i.e. legislative, institutional and operational.**

87. **From a legislative standpoint, the Independent Expert recommends:**

(a) **The adoption of a law on protection mechanisms for victims, witnesses and concerned persons, including judges, prosecutors, lawyers, human rights defenders and medical experts;**

(b) The adoption of an objective and specific legal definition of victim that takes into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (resolution 60/147, annex);

(c) The adoption of legislation to implement the Rome Statute of the International Criminal Court; and

(d) The establishment of a special fund for victims.

88. From an institutional standpoint, the Independent Expert recommends:

(a) The formulation of a national vision on victims of the crisis in the form of a countrywide programme, prepared in consultation with victims' associations and relevant civil society organizations, which provides for specific actions, financial, material and human resources and a time frame that includes specific and realistic objectives. The programme should be adopted through a law enacted by a National Assembly that is representative of Ivorian political diversity, thereby adopting the situation of victims as a national cause;

(b) The streamlining of State institutions and resources to provide assistance to victims, including enhanced synergy among the National Human Rights Commission, the National Programme for Social Cohesion, the Solidarity and Social Cohesion Observatory, the post-conflict assistance project and the Directorate for War Victims. As a moral and popular symbol of national unity and given its intersectoral dimension and its impact on society as a whole and on economic recovery, the situation of victims should be addressed by a national institution under the jurisdiction of the Prime Minister;

(c) The establishment of a single institution to receive victims' complaints and grievances and provide them with the information they need to obtain medical, psychological, socioeconomic and legal assistance;

(d) The decentralization of this national victims institution to enable victims throughout the country to express their grievances and concerns and receive replies suited to their local sociocultural context; and

(e) The harmonization of available victim databases, ensuring that those run by the Dialogue, Truth and Reconciliation Commission, the National Programme for Social Cohesion, the Directorate for War Victims, the National Human Rights Commission and all other victim assistance systems are interconnected and are overseen by the central victim assistance institution.

89. From an operational standpoint, the Independent Expert recommends that the operational phase of the victim assistance programme be structured around the following three areas of support:

(a) Medical and psychological care:

(i) Immediate care for victims whose situation requires urgent attention, such as those still suffering from serious physical and psychological effects of physical violence and from the loss of their home or employment;

(ii) Establishment throughout the country of accessible, free and confidential psychological and social services for victims of rape and sexual violence;

(iii) Definition of categories of loss and trauma, publication of this information in order to demonstrate the scale of the harm caused by the crimes

committed during the crisis and identification of victims and assailants (determining each actor's responsibility prevents general victimization);

(iv) A public apology by the Government in which it admits its responsibility for the serious harm suffered by the victims of the long Ivorian crisis and expresses its commitment to ensuring that all victims obtain reparation, irrespective of their political affiliation, social status or ethnicity; and

(v) Establishment of places where victims may share their stories and mobilization of religious and traditional leaders to give meaning and substance to traditional and spiritual healing practices for minds and bodies of the individuals, and communities and to the values of solidarity and reconciliation;

(b) Socioeconomic assistance:

(i) Formulation of a public policy on restitution and compensation and implementation of relevant measures for victims, such as free education for orphans, housing for widows and orphans, the restitution of occupied premises and measures to facilitate professional reintegration, including income-generating activities;

(ii) Allocation of reliable funding for implementation and adoption of procedures for its strict monitoring by a Government-mandated public institution;

(iii) Incorporation of gender-specific aspects in the reparation process for victims, including the establishment of counselling and psychological assistance units for women and girl victims of sexual violence;

(iv) Socioeconomic reintegration and/or social and professional integration of victims in the private sector or the civil service, based on their skills and motivation and the country's socioeconomic situation; and

(v) Use of the data generated by the Dialogue, Truth and Reconciliation Commission and of its recommendations as a basis for the drafting of a national policy on assistance for victims;

(c) Legal assistance:

(i) Protection of victims who wish to take part in the proceedings before the International Criminal Court against reprisals;

(ii) Training and information for victims regarding their rights and the possibility of individual or collective participation in proceedings before the national courts and the International Criminal Court;

(iii) Advice for victims on how to bring a case before the national and international courts and provision of free and competent lawyers to defend them before those courts;

(iv) Adoption of more comprehensive reparation measures for victims, including legal and non-legal reparations, based on the experience of countries that have experienced social disruption similar to that of the crisis in Côte d'Ivoire; and

(v) Acceleration of legal proceedings to ensure that alleged offenders receive a fair trial while taking care not to sacrifice victims' interests on the altar of reconciliation and the ongoing political dialogue.

90. The Independent Expert recommends that the international community's support for the national programme of assistance for the victims of the Ivorian crisis

be incorporated into cooperation policies with that country and encourage the involvement of victims' organizations and human rights advocates. Its support may be in the form of specialized technical expertise and contributions to a consolidated victim-assistance fund.

91. The Independent Expert recommends that the victims of the crisis establish a national victims federation that bring together all victims, without political, ethnic or religious distinction. The federation should respect their diverse backgrounds and serve as spokesperson before the Government and the international community.

## H. Conclusion

92. The international conference on the situation of the victims of the Ivorian crisis, held in February 2014, highlighted the initiatives taken by the Government on behalf of the victims. However, the proliferation of institutions and the lack of coordination among them, as well as the lack of information on their missions and mandates, were repeatedly pinpointed as causes of dissatisfaction among victims with the State's efforts, which are nonetheless real. Taking up the situation of victims as a national cause will ensure that the victims of the crisis do not become victims of the current political polarization in Ivorian society.

93. The State has the overriding duty to ensure that the victims' frustration does not degenerate into a social crisis whose magnitude may well jeopardize national reconciliation and social cohesion. Failing to reintegrate victims economically and socially could force them to take desperate steps to survive, including unlawful activities. The perception that offenders benefit from impunity could spark a desire for personal revenge that might undermine the rebuilding of social peace. The thirst for justice and reparation, if not addressed appropriately by the authorities, could push Ivorian society into instability that the slightest electoral challenge or incident between communities could exacerbate. Thus, fulfilling the victims' right to reparation is both an ethical and political duty.

94. In that connection, the Independent Expert advises all political actors to make an ethical commitment. It is their responsibility to assume the moral initiative before the Ivorian nation, to shoulder their historic responsibility in the long and deep tragedy into which the Ivorian people have been cast and to strive to put the situation of victims in the forefront of the process of national reconciliation and reconstruction of democracy. They should make the plight of victims a national cause that transcends political divides.

## IV. General recommendations

95. The Independent Expert notes that Côte d'Ivoire has taken significant steps to implement the recommendations made in his previous reports (A/HRC/19/72, A/HRC/22/66, A/HRC/23/38 and A/HRC/25/73).

96. Nevertheless, he repeats his recommendations to the Government regarding *inter alia* the need to align the National Human Rights Commission with the Paris Principles; the impartiality of the justice system vis-à-vis those of all political persuasions who committed gross human rights violations; the harmonization of the Criminal Code with the country's international obligations; the improvement of prison conditions; the definitive and lasting resolution of the issue of dozos interfering in security operations; the continuation of the inter-Ivorian political dialogue; the consensus-based reform of the Independent Electoral Commission and the electoral

list; the rational management of the return of exiles and evictions; and a more convincing response to issues of sexual violence.

97. He also repeats his recommendation that the international community continue and strengthen its support to Côte d'Ivoire for the consolidation of democracy, economic and social reconstruction and national reconciliation. Lastly, he reiterates his recommendation to fully lift the arms embargo against the country.

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