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The Carter Center Notes Peaceful Elections in a Fragile Political and Social Context

Carter Center Election Observation Mission Preliminary Statement Côte d'Ivoire,
Legislative Election, December/2011

This statement is preliminary; a final report will be published after the end of the electoral period.

Executive Summary

Côte d'Ivoire's 2011 legislative elections represent an essential step in re-establishing the constitutional order in Cote d'Ivoire and achieving a key goal of the peace process laid out by the Political Accord of Ouagadougou. The Carter Center highlights the generally peaceful voting environment and the absence of major security incidents during the polls, which took place in the fragile political and social context of the post-electoral crisis of 2010-2011.

The question of participation in the electoral process was a central issue in negotiations between the opposition and the government. The government's efforts to fulfill the opposition's demands were unevenly appreciated. Certain political parties decided to take part in the elections, while others, most notably the *Front Populaire Ivoirien* (FPI), chose not to participate.

In this context, the Center welcomes not only the respectful attitude of the Ivorian people, but also political leaders during the polls, independent of their respective views and despite the rise in tensions observed on a local level in certain constituencies in the lead-up to the elections. While the voter turnout – which is not yet official – seemed relatively weak, it is likely because of several factors and interpretations in that regard should be nuanced.

The Carter Center encourages the government to pursue dialogue in a spirit of national reconciliation. The Center notes that important electoral reforms should be considered before a new electoral cycle begins. The Center calls on Ivorian actors to seize the opportunity presented by the municipal elections to pursue reconciliation. Authorities should prioritize the continuation of the identification process of the population and address the shortcomings of the voter registry.

The Carter Center continues its observation of the tabulation of results and calls upon the national institutions and authorities to maintain strict neutrality in the exercise of their duties.

The Carter Center has been present in Côte d'Ivoire since 2008. The Center monitored the identification and voter registration process, the verification of the provisional voter list, and the 2010 presidential elections. The Carter Center mission in Côte d'Ivoire is supported by an office in Abidjan, led by Sabina Vigani.

The Center assesses Côte d'Ivoire's electoral process against the constitution and the electoral law, commitments made in the Ouagadougou Peace Accords, other agreements, and regional and international commitments. The Center conducts its election observation activities in accordance with the Declaration of Principles for International Election Observation, which was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups. Carter Center public statements on the electoral process are available on its website:

www.cartercenter.org.

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Statement of Preliminary Findings and Conclusions

POLITICAL CONTEXT

The Dec. 11 legislative elections were intended to bring closure to an extended period of crisis in Côte d'Ivoire. The polls were essential for renewing the mandate of the parliament in Côte d'Ivoire.¹ The elections are also an important step for the new Ivorian authorities to restore constitutional order and political stability after several years of conflict.

The presidential elections held at the end of 2010 were highly contested. After the Nov. 28 run-off, the Independent Electoral Commission (IEC) announced the preliminary results, which pronounced Alassane Ouattara, candidate of the *Rassemblement des Républicains* (RDR), the winner. However, the Constitutional Council cancelled the results of 13 northern administrative departments and declared that the incumbent president and candidate of *La majorité présidentielle* (LMP) Laurent Gbagbo, had won.

As noted in public statements, Carter Center observers saw no evidence of systematic irregularities that would have had a significant impact on the results. The Center's assessment concluded that the conduct of the run-off election had met international standards and that the Constitutional Council had misapplied the electoral law by annulling a portion of the results.

The results announced by the IEC were certified by the Special Representative of the Secretary General of the United Nations (SRSG) in Côte d'Ivoire and recognized by the international community. This situation plunged the country into a five-month period of intense violence that culminated in April when Abidjan fell to the newly created *Forces Républicaines de Côte d'Ivoire* (FRCI) largely made up of former *Forces Nouvelles* troops. Former President Gbagbo was arrested on April 11, 2011.

The electoral and military defeat of the former presidential camp profoundly modified the Ivorian political landscape. The *Front Populaire Ivoirien* (FPI) and several small parties associated with Gbagbo – which coalesced in 2006 under the umbrella of the *Congrès National pour la Résistance et la Démocratie* (CNRD) – were destabilized with many party leaders in exile or prison. New political entities such as *Liberté et Démocratie pour la République* (LIDER) and *Cap-Unir pour la Démocratie et le Développement* (Cap-UDD) emerged in advance of the legislative elections. The CNRD parties conditioned their participation in the electoral process on specific demands, including the release of Gbagbo. Negotiations with the government stalled on this issue, and the FPI boycotted the 2011 legislative elections. The party suspended the membership of 38 FPI members who registered as independent candidates. Other CNRD parties oscillated between opting out and participating in the elections.²

On Nov. 29, less than two weeks before the elections, Gbagbo was transferred to the International Criminal Court (ICC) to face four counts of crimes against humanity. Some CNRD-affiliated parties that had registered candidates withdrew from the electoral process briefly before

¹ The National Assembly's five-year term expired in 2005.

² This resulted in some parties registering candidates (e.g. UDCY, Cap-UDD and MNC-alternative), some party members participating under the banner of Cap-UDD (URD, UDCY, UNG, AIRD).

again confirming their participation after receiving government incentives, including the release of some of their party members. Conversely, 16 of the 38 independent candidates affiliated with the FPI withdrew from the process.

During the presidential election, Ouattara benefitted from the support of a coalition of parties, the *Rassemblement des Houphouëtistes pour la Démocratie et la Paix*

Women in Africa; the African Charter on Democracy, Elections and Governance; the African Union Convention on Preventing and Combating Corruption; and the ECOWAS Protocol on Democracy and Good Governance.¹⁰

The national electoral framework has been regularly adapted to accommodate political considerations on an ad-hoc basis. The framework for the legislative elections is composed of several legal texts, primarily the constitution and the electoral code,¹¹ the Ouagadougou Peace Agreement,¹² and its subsequent components as well as amendments to the legal framework imposed by these agreements. The result is a fragmented framework, composed of various texts of unequal legal value, providing contradictory provisions and leaving several gaps.

Electoral and political actors frequently disregarded legal requirements that did not meet political expectations or concerns. While this dynamic can be attributed to the complex political situation, it has weakened the law as a tool to guide the electoral process. Although the electoral code was amended in 2008 in preparation for the presidential elections, the sections related to the legislative elections were left unchanged.

The Carter Center encourages the newly elected National Assembly to review and reform the electoral framework to address legal gaps and inconsistencies well in advance of the next electoral cycle.

ELECTION SYSTEM

The National Assembly is elected under the simple majority system. There are 169 single seat constituencies and 36 multi-seat constituencies for a total of 255 seats. The government increased the number of seats from 225 to 255 in 2011.¹³ Seats are allocated to the candidate or lists that attain the highest number of valid votes.

In majoritarian systems, the establishment of constituency boundaries is particularly critical. According to international obligations as well as constitutional principles, the equality of the vote should be respected.¹⁴ In Côte d'Ivoire, the IEC proposes constituency boundaries, and the final decision is vested with the government. The initial IEC proposal on new constituent boundaries was never made public, preventing an assessment of the impact of the final decision made by the government. While there is no legal text to support it, the 2011 distribution of seats and the subsequent electoral map was allegedly based on the estimated population, the size of electoral districts, the number of localities as well as other factors related to the ability to guarantee one seat per district and avoid reducing the number of seats previously allocated to each district.¹⁵ A

¹⁰ Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

¹¹ Law No. 2000-514 of the Aug. 1, 2000 Electoral Code was amended by Order No. 2000-133 of April 14, 2008.

¹² The Ouagadougou Political Agreement was signed on March 4, 2007.

¹³ Decree N° 2011-264 from Sept. 28 2011. Regarding the determination of the electoral constituencies for the 2011-2016 legislature.

¹⁴ UN, ICCPR, art. 25(B).

¹⁵ The formula for constituency delimitation was based on population density (55 percent), the size of districts (25 percent) and the number of localities (20 percent). Other political factors were taken into consideration, including the number of seats that had been previously allocated to that area, so that the number of seats would not be reduced.

national census was last conducted in 1998. Newly introduced administrative boundaries also

Opposition parties, most notably the FPI, but also the CNRD parties and the recently created Lider, criticized the composition of the IEC and called for the appointment of a “more neutral” election management body. In response, a fifth vice-presidential position was created for the FPI, however that position remained vacant as the party deemed the measure insufficient to meet their demands.

In order to conduct its work, the IEC established lower level commissions, at each administrative level including 19 regional commissions, each placed under the direct supervision of an IEC commissioner, 75 departmental commissions, 45 district commissions and 263 local commissions.²³ These bodies essentially duplicate the composition of the central commission, and include over 10,000 commissioners. The current IEC structure corresponds to previous administrations and was left untouched in spite of successive redistricting. Considering the tight deadlines left to the IEC, it would have been impossible to reconfigure the lower level election

sensitive political context, the commission's efforts were intended to support an open electoral process without exacerbating political tensions.

Unfortunately, these efforts did not extend to effective external communication and the transparency of the commission and its work. Both electoral stakeholders and the public had difficulty to receive information from the commission about its work and decisions. Commission meetings were generally closed to the public and information was rarely shared through formal channels.

Although the IEC regularly communicated information about the process through press conferences and public statements, detailed information about decisions, instructions and procedures adopted by the IEC were not generally made available to the public. Internal communication and coordination between the IEC and their subsidiary bodies was also insufficient. At times, local commissioners received essential information through the telephone or during meetings with the regional supervisors, rather than official communications. According to observer reports, local commissioners were informed of electoral procedures, such as the deployment of sensitive electoral material and process for the tabulation of results only seven days before the polls during the trainings held by the regional supervisors.

A local commissioner also informed Carter Center observers that he learned about certain key procedural changes on television, rather than receiving an official notification from the IEC, such as the ability for an individual to vote with a "proof of identity" for voters who lost their ID and voter card. The Center's observers reported that the IEC failed to follow up on the announcement with an information campaign at the local level, undermining the opportunity for people to obtain information from local authorities that could have affected their ability to vote.²⁵

In contrast to other information, polling and counting procedures, which were quite similar to those applied during the presidential elections, were issued in a timely manner by the IEC. Local commissioners and polling staff were trained on polling and counting procedures in cascading levels in the week preceding the elections.

Procedures on the transmission and tabulation of results however remained unclear until the eve of the elections. The IEC issued a press release on Dec. 2 stating that, as in the presidential elections, officials would conduct both a manual as well as electronic tabulation of results. The Carter Center requested and obtained a document from the IEC outlining the procedures to be applied, which was identical to the protocol for transmission and tabulation of results drafted by the IEC between the two rounds of the presidential elections, with the date written in by hand. Carter Center observers reported that a majority of departmental and local commissions were still awaiting instructions less than a week before the elections about the transmission and tabulation of results.

²⁵ Local commissioners were also challenged to conduct their work due to a lack of material support. During the post-election crisis, many election administration offices were destroyed or ransacked. A number of them were relocated. Despite efforts by the IEC in cooperation with UNOCI to replace equipment damaged in the post-election violence, observers reported cases of local commissions still missing essential office equipment, such as computers and chairs in Gagnoa, Duekoue, Man, Bangolo, Agboville, Bouaké, Gboguhe, and Bonoua.

The timely issuing and communication of procedures by election authorities is essential to allow for adequate training of election officials and to inform stakeholders and the general public. The Carter Center strongly encourages future el

The post-presidential election crisis also demonstrated that voter education needed to go beyond the mobilization of voters and information on polling procedures. Increased communication to clarify the respective roles of institutions involved in the electoral process as a whole would have been useful, as well as efforts to enhance information about the role of the National Assembly.

The Carter Center urges future electoral management bodies to seriously consider the need for comprehensive voter education, and for the state to provide funding for these activities.

VOTER REGISTRY

Voter registration is recognized as an important means to ensure every citizen the right to vote. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.³⁰

The president of the IEC, Youssouf Bakayoko, declared in a Nov. 24 interview that the 2010 voter registry would be used for the legislative elections. This was the first time that the issue of the registry was discussed publicly. The IEC president argued that it was preferable to avoid reopening the existing registry, given the post-election crisis.

election. As no adjustments were made, the register does not meet the constitutional right for citizens that are eighteen years of age and older to participate in the elections.

Still, considering the tight electoral timeline driven by political considerations, and the technical and financial implications of reopening registration, the Carter Center understands that it was effectively impossible for the IEC to update the voter register. Furthermore, the decision to not allow citizens the right to alter their principle address of registration, even if adopted prior to the presidential election, could effectively disenfranchise many who moved for personal reasons or because of the post-electoral crisis.

The Carter Centre urges the Government of Côte d'Ivoire and the IEC to seriously consider how to include those who could not register as voters, as well as to explore how to set up a registration mechanism that would allow building upon the current voter register while guaranteeing inclusivity and sustainability of the State's investment in the register.

CANDIDATES, PARTIES AND THE CAMPAIGN ENVIRONMENT

The right of individuals to participate in public affairs, including the establishment of political parties and freedom of association, expression and assembly are obligations under international law.³³

Nominations. In order to be eligible for the legislative assembly an Ivorian citizen must be between the age of 25 and 75 and enjoy the right to vote.³⁴ Additionally, continuous residency in Côte d'Ivoire for five years prior to election day is required as well as a relatively modest deposit of 100,000 FCFA (\$201 USD) and proof of financial solvency. Each candidate must present their nomination papers along with a replacement candidate, who must submit to the same conditions of eligibility, other than the deposit). The law requires certain classes of civil servants running for public office to offer a letter of resignation to avoid a potential conflict of interest if the candidate wins.³⁵ While the overall framework for candidacy complies with most commonly agreed principles, there are a few troubling aspects. First, the law does not allow for naturalized citizens to stand for public office.³⁶ Second, given the various categories of citizens who were excluded from the voter register, some of those who were eligible to stand for office were deprived of their right to candidacy.³⁷

The registration process, which opened on Oct. 17, was affected by several factors. According to law, the process should have closed on Oct. 26. However, the main political parties failed to submit their nominations papers by the deadline and thus the IEC extended registration to Oct. 31. RDR and PDCI both filed their candidates' nomination papers late on Oct. 31. These files were being processed by the IEC, when on Nov. 3, the IEC chairman made an announcement

³³ ICCPR, Article 25(a); ICCPR, art. 21, U.N.HRC General Comment no. 25, para. 26.

³⁴ The criteria to be registered, related to age, nationality and judicial status. However, in the current context, most are related to the negotiated conditions for establishing the register. The Carter Centre previously issued several documents specifically dealing with the issue of voter registration: Dec. 22, 2008, May 8, 2009 and Feb. 1, 2010.

³⁵ Professionals including civil servants, magistrates, army officers and others working in an official capacity for the state are required to present a resignation document confirming upon taking office.

³⁶ Article 71 and 72 contain apparent contradictions. Article 71 bans naturalized citizens to run while Article 72

that candidate registration would be reopened for one additional day on Nov. 4 ostensibly to accommodate candidates from three small CNRD parties. The RHDP also took advantage of this opportunity to reorganize their candidate lists and in particular for the PDCI to submit additional nominations following disagreements within the coalition. Two consecutive laws amending the Electoral Code were adopted to adjust the law regarding the registration deadlines. These extensions are illustrative of an atmosphere in which electoral participants failed to adhere to clear standing laws and procedures, placing the IEC in an unenviable political situation in order to enforce the law or accommodate important political actors.

Penal code provisions related to vote buying were also ignored throughout the electoral campaign. The media widely reported on candidates who distributed gifts⁴² and donations, including cash, to potential supporters.⁴³ Carter Center observers overheard candidates discussing how much money they planned to distribute to various villages and also reported a widespread practice of candidates distributing money during campaign events. The Carter Center encourages future electoral management bodies to sanction candidates who engage in vote buying and other activities that violate the penal code and impede a competitive electoral process.

Freedom of assembly was generally upheld throughout the campaign period. However, certain

political parties, groupings, and presidential candidates.⁴⁴ The law stipulates that parties in the National Assembly receive government financing proportionate to the number of seats held in parliament.⁴⁵ An exception was made for the 2000-2005 legislature to allow political parties who have elected representatives at local levels to benefit from this funding even if they are not represented in the assembly. This action was intended to even the playing level among the parties, most notably allowing the RDR which boycotted the 2000 National Assembly elections, to receive public funding. This approach continued from 2006 through 2010. After the presidential election, the FPI and the other parties did not receive their final installment due to the post-electoral crisis. The Carter Center regrets that the last installment for 2010 was finally paid to the FPI shortly before the elections.

Added to the lack of any provisions limiting and reporting on campaign financing, if the impunity observed in terms of the use of state resources or vote buying is not addressed, widespread political cynicism among voters will increase and may instill a climate of defiance among political competitors. The Carter Center stresses the need to establish, in view of future electoral cycles, a set of implementable regulations to enforce the principles enshrined in the International Convention against Corruption and to establish the means to enforce existing legal provisions effectively.⁴⁶

PARTICIPATION OF WOMEN

International human rights treaties foresee that women shall enjoy equal rights to men,⁴⁷ and that in some cases, states shall take special, temporary measures to achieve *de facto* equality for women.⁴⁸ State obligations to promote *de facto* equality for women derive, in part, from broader obligations regarding absence of discrimination⁴⁹ and the right of all citizens to participate in the public affairs of their country regardless of gender.⁵⁰

Following the 2000 legislative elections, women made up 8.9 percent of the National Assembly. Prospects for increased female representation are limited considering that only 128 female candidates contested the 2011 legislative elections.

The Ivorian government provided ad hoc funding to support female candidates in conducting their campaigns. President Ouattara allocated 1 million CFA for each female candidate. While the Center welcomes efforts to achieve greater representation of women in the National Assembly, this symbolic does not address the structural and social issues impeding women's participation.

⁴⁴ Decision No 2005-07/PR, July 15, 2005.

⁴⁵ Article 4 to 7 of Decision No 2005-07/PR. One one-thousandth of the budget of the states is distributed among political parties and groupings represented in the National Assembly using a formula that splits funding providing 40 percent to political entities based on the number of votes they received during Legislative elections, 40 percent based on the number of seats that political entities got in the national assembly and thirty percent based on the number of deputies registered within parliamentary groups.

⁴⁶ General Assembly resolution 58/4 Oct. 31 2003.

⁴⁷ ICCPR, art. 3.

⁴⁸ CEDAW, art. 3.

⁴⁹ ICCPR, art. 25; 2(1); 26

⁵⁰ UDHR, Art. 21(a); ICCPR, Art 25(9); ICERD, Art 5(c)

Considering the difficulties women face as candidates and the limited number of women who were endorsed by political parties (11.3 percent), the concept of introducing credible incentives should be seriously considered in the future. While measures guaranteeing minimum representation in the national assembly and effective integration into political life are difficult to implement within the limits of a majoritarian system, public support could act as a significant incentive to parties to integrate women into their decision-making bodies, field a significant percentage of women candidates or manage to elect women into parliament or executive positions.

MEDIA ENVIRONMENT

A previous formulation of the election law required equal access to state media during election campaigns.⁵¹ The current article was amended in 2008 with regards to public access for presidential candidates, but did not consider legislative races. Whether intentional or not, the amended law specifically restricted the equal treatment requirement in presidential elections. Consequently, there are no direct obligations in terms of coverage of the campaign on State television, radio or newspaper. In the case of RTI, the contract of service refers to obligations from Article 16 that are non-existent, leaving the remaining general obligations for pluralistic coverage to Article 3.⁵²

In spite of the legal vacuum, the IEC still had the authority to adopt measures providing equal access for all candidates to official electronic and written media.⁵³ Though difficult, considering the high number of candidates for the legislative elections, a specific framework on coverage for these legislative elections could have been established. Instead, the High Authority for the Audiovisual Communication (HACA) issued four decisions, adopted on Dec. 5, two days into the official campaign period. These decisions outlined the main principles to be followed by audiovisual media during the campaign period. It stated that: public radio and TV should ensure equal access to candidates and political parties running in the constituencies where media coverage is provided; that public media should aim to cover campaign activities in the most constituencies possible; and refrain from broadcasting hate and xenophobic speeches, speeches inciting violence and mocking candidates or their representatives. The HACA also noted that local radio stations (*radios de proximité*) were not allowed to cover campaign activities or broadcast debates related to the elections.

As well, the HACA continued to monitor state media during the campaign period. HACA officials explained to the Carter Center that the monitoring of local radio stations is difficult to implement as their broadcast radius is limited. Instead, the HACA acts on complaints and during the campaign period it investigated five cases of

The Carter Center welcomes the initiative taken by the HACA to provide for regulation of the media during the electoral period, and encourages review and reform of the media framework to include also legislative elections in addition those imposed during the presidential elections.

CIVIL SOCIETY AND DOMESTIC OBSERVATION

Fifty domestic observer groups were accredited by the IEC. Several of them, among others the CSCI, COSOPCI, LIDHO, OFACI and COFEMCI had monitored the presidential elections. However, the relative short notice in the announcement of the election date made it difficult for domestic organizations to organize internally as well as raise funds for activities. The Carter Center regrets that although a new system was implemented by the IEC for the production of accreditation badges, important delays in the accreditation process complicated the task of national observers. Some elements of civil society were also involved in the voter education, but again had little resources to play a significant role.

ELECTORAL DISPUTE RESOLUTION

The Constitutional Council exercises jurisdiction over electoral disputes. The court is composed of seven members. The President of the Republic appoints three members and the president, while the other three members are selected by the President of the National Assembly.⁵⁴ In principle, the judges are appointed to an irrevocable six-year mandate. Due to the exceptional circumstances resulting from the reversal of the results of the presidential elections, President Ouattara took extraordinary action to remove several members of the court, appointing a new president and some of the judges.

The legal framework for electoral disputes resolution comprises provisions from the election law and elements of the law organizing the Constitutional Council. This framework leaves several uncertainties on the procedures to be followed and the timeframe in which disputes may be adjudicated. The Constitutional Council and the IEC discussed and agreed on common interpretation on some of the grey areas in the legal framework, including when various legal deadlines would be triggered and what happens as a consequence. However, little to no communication was provided to the public regarding the legal deadlines to file complaints which may restrict citizens' right to due process.

Some complaints were lodged at the IEC level, mostly by written communication, but as there are no administrative mechanisms to address complaints, the IEC likely did not process them. On the other hand, the Constitutional Council, which has jurisdiction to hear electoral complaints, generally only hears cases after election day. In this instance, the complainant must prove that the respondent caused a harm that altered the results in order to receive a favorable ruling.

The Election Law does not provide a clear deadline for the announcement of the provisional results. It only states that the IEC must transfer the polling stations protocols to the Constitutional Council within three days following the elections. According to the law, the only the "administrative constituency", which no longer exists, may announce the results. For the purpose of these elections, the Constitutional Council and the IEC agreed that an announcement

⁵⁴ Former Presidents of the Republic are in principle full members of the Council. President Bedié explicitly waived this right in order to run for the 2010 election. President Gbagbo's case obviously relates to his legal situation.

Johnson, Assistant Director of the Democracy Program of the Carter Center. The Carter Center will stay in Cote d'Ivoire to observe the final phases of the tabulation process, the resolution of electoral disputes and announcement of final results. This statement is preliminary; a final report will be published after the end of the electoral period.

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