

INTERNATIONAL ELECTION OBSERVATION MISSION (IEOM)

CÔTE D'IVOIRE - 2020

PRELIMINARY STATEMENT

Abidjan, November 2, 2020

NON-INCLUSIVE IVORIAN ELECTION IS BOYCOTTED, LEAVING COUNTRY FRACTURED

EISA and The Carter Center again urge political leaders to pursue inclusive dialogue

This statement from EISA and The Carter Center in Abidjan, Côte d'Ivoire, on November 2, 2020, is preliminary and covers aspects of the electoral process through Nov. 2 only, as the electoral process is ongoing. Essential phases are outstanding, including the announcement of preliminary results by the Independent Electoral Commission (known by its French acronym, CEI) and the resolution of disputes before the announcement of final results by the Constitutional Council (CC). The IEOM is only able to comment on its observations up to this stage of the process and will subsequently publish a final report, including a comprehensive analysis of the process and recommendations for future elections. The IEOM

- < The Republic of Côte d'Ivoire should be aware of the need to abide by the rulings of international judicial bodies and, in particular, the recent judgments of the African Court of Human and Peoples' Rights, whose decisions are binding on Côte d'Ivoire.
- < The use of the state of emergency as a legal basis to restrict the rights of expression and assembly did not allow citizens to exercise their fundamental freedoms during such a critical period, and these freedoms continued to be restricted even after the state of emergency was lifted. State authorities should not exert discretionary powers to restrict these freedoms during an election period.

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At the invitation of the Ivorian authorities, the Electoral Institute for Sustainable Democracy in Africa (EISA) and the Carter Center

CANDIDATE REGISTRATION

The submission period for candidates for the presidential election took place from July 16 – Aug 31, 2020. Forty-four candidates registered. Within 72 hours, the CEI forwarded these nominations to the CC, which immediately published a list comprising the same 44 contenders, paving the way for the period of electoral challenges. The CC rejected 40 of these nominations, for failing to meet eligibility criteria¹ or the constitutional requirements for the office², and allowed only four contenders to run for the presidency. Thus, the CC rejected the candidacies of Guillaume Soro and Laurent Gbagbo, as they had been removed from the voter registry following the final decisions of the Korhogo and Abidjan Tribunals, respectively.

Concerning the case of Guillaume Soro, the African Court of Human and People's Rights (ACPHR) ordered the State of Côte d'Ivoire, on Sept.15, 2020, to take all necessary steps to remove major obstacles preventing him from enjoying his rights to vote and stand as a candidate. In a second decision, concerning Laurent Gbagbo, issued on Sep.25, 2020, the ACPHR ordered that the reference to a criminal sentence in the criminal record must be suspended and that all necessary actions should be taken immediately to remove al

2018, which applied the principle of legislative continuity set out in Article 183,¹⁰ thus reviving a provision of the 2000 Constitution.¹¹

Both the 2000 and 2016 Constitution limit presidential mandates to two terms. Given the identical nature of the language, it is very difficult to assert that these two texts are contradictory. The Constitutional Council's justifications provided no clear or substantiated legal grounds.¹² This venture echoes a worrying trend, observed across the African continent, to change or amend the Constitutions allowing incumbent Presidents to run for a third term.

ELECTION CAMPAIGN AND FINANCING OF POLITICAL PARTIES

The Electoral Code foresees a 15-day presidential election campaign, which took place from Oct. 15-29, 2020. Although the Article 32 of the Electoral Code states that "*all electoral meetings and electoral propaganda shall be prohibited, outside the regulatory duration of the election campaign.*"

The IEOM directly observed "pre-election" campaign activities, organized mainly on the margins of the candidates' nominations

However, the mission deplors that their calls for civil disobedience have led to acts of violence and destruction. The IEOM also regrets that the electoral management body has been targeted by violence and destruction, aimed at preventing the CEI from distributing voter cards¹⁶ and condemns the incidents and the violence that characterized the electoral process, causing at least 30 deaths (namely in Dabou, Bongouanou, Bonoua, Daoukro, Divo, Gagnoa) and many injured.

Laws governing political party financing and electoral campaigns are weak and not well enforced due to gaps in the legal framework and implementing institutions. The Law No. 2004-494 of September 10, 2004 addresses political party financing, which to date, has been largely unregulated. Nevertheless, its application remains limited, due to deficiencies in the traceability of funds, the absence of spending limits, weak measures to sanction violations of the regulations and an after-the-fact reimbursement a *posteriori* of campaign expenses. These shortcomings lead to a disparate treatment of public and private campaign funding.

The annual subsidy allocated to political parties and groups during their five-year term is based on the number of votes a party garners in the polls, the number of seats awarded and the number of members of each parliamentary group. However, the IEOM notes that, for the year 2020, OM

Budget, respectively. For the first, there is no provision to authorize regulation by ordinance; The State Budgeting Act, on the other hand, authorizes the President use an executive order, only in economic and financial matters. The COVID-19 pandemic and the state of emergency to contain it, served as a basis to change the electoral law by executive ordinance.¹⁹ According to the Protocol on Democracy and Good Governance of the Economic Community of the West African States (ECOWAS), any change to an electoral law, in the six months preceding an election, should obtain the prior consent of a large majority of political actors). This consensus did not occur.

The Ivorian legal framework for the organization of elections meets universal and regional commitments. In addition, Côte d'Ivoire has ratified almost all applicable treaties and legal texts.

Nevertheless, the Republic of Côte d'Ivoire should be particularly sensitive to respect the decisions of international judicial bodies and, in particular, the recent rulings of the African Court of Human and Peoples' Rights (ACHPR) relating to the composition of the electoral management body and the right to vote and be elected. Although Côte d'Ivoire signaled its intent to withdraw from the ACHPR on April 29, 2020, the court is competent to receive requests from individuals or non-governmental organizations (NGOs) through April 30, 2020 when the instrument of withdrawal takes effect. The ACHPR confirmed its jurisdiction in the *Suy Bi Gohore Émile case against the Republic of Côte d'Ivoire* in 2020.²⁰ Indeed, this withdrawal will only become effective on Apr. 30, 2020. Therefore, the Court's rulings are still binding on Côte d'Ivoire, which has an obligation to implement them.

Article 20 of the Constitution guarantees freedom assembly and demonstration. However, the government banned marches, sit-ins and demonstrations across the entire territory, from Aug. 19 – Oct. 14, 2020, on the basis of three inter-ministerial decrees. These decrees were based on the state of emergency that came into force on March 23, 2020 and which has not been renewed since May 13, 2020. The obligation to inform the state of one's intention to organize demonstrations cannot be subject to the discretion of the state authority. Therefore, such restrictions did not allow the opposition to fully enjoy the above-mentioned fundamental freedoms.

In the same spirit, these bans were subsequently extended until Nov. 1, 2020, with the exception of the events organized as part of the election campaign. The IEOM notes that the reference to the state of emergency is no longer mentioned in the published decrees, therefore putting its legality into question. Finally, these provisions do not designate the authorities competent to authorize demonstrations and on which grounds requests can be denied.

ELECTORAL ADMINISTRATION

The Independent Electoral Commission (CEI) is a permanent administrative authority that enjoys legal individual status and financial independence. Its composition, organization, functions, characteristics, and operation are derived from the Constitution, the electoral code, and the law. It enjoys wide-reaching regulatory powers, allowing it to determine the scope of the application of the law, establish clear operational instructions, and to report on each stage of the electoral process, including registration records, the distribution of voter cards, or the latest operations implemented before elections.

The CEI's composition should guarantee representation of the various political actors to ensure its political and administrative balance.²¹ However, the law on the composition, organization, functions and operation of the CEI²² is constantly changing, with the last revision taking place as recently as April 2020.

¹⁹ Statement of the Ministerial Council of April 8, 2020: <https://www.presidence.ci/wp-content/uploads/2020/04/CCM-du-08-04->

The political balance enshrined in its legal framework is a gray area. For example, some opposition members who joined the presidential majority,²³

The CEI committed itself to printing all voter cards for all 7,495,082 registered voters. Indeed, voter cards have a lifetime of an election cycle and therefore all must be reprinted before each election. The distribution was planned, in all polling centers, from Oct. 14-25. In view of the political tensions observed and the "active boycott" against the distribution of voter cards, this phase proved complex for the branches of the CEI. The final issuance rate presented by the CEI was 41.15%.

Though low, the boycott of this process has had relatively no impact on voters' participation in the election, given that they had the opportunity to pick up their registration cards at their respective polling stations on polling day. In the absence of the voting card, voters were allowed to exercise their right to vote by producing their national identity card (CNI), as allowed by the law. Difficulties in distributing the voters' cards did not impact adversely on voting operations on polling day. Voter cards were thus distributed, either at the polling stations, in 69% of cases, or in the polling centers in 20% of cases. It should be noted that the use of the national ID card to confirm the voter's status has been well applied, for voters who did not hold their voting cards.

THE MEDIA AND SOCIAL NETWORKS

WOMEN'S PARTICIPATION

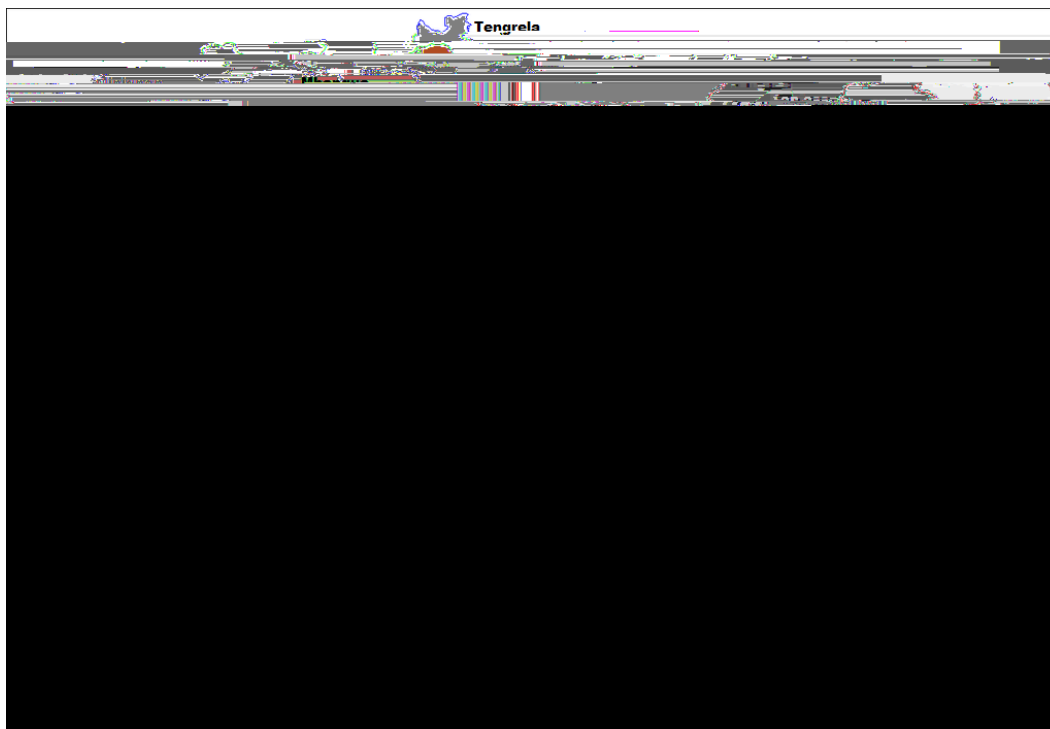
Despite the ratification of the main international instruments on women's rights, women struggle to find a seat for themselves in the decision-making and political spheres in Côte d'Ivoire. Of the 44 presidential candidates, only three were women (6.81%) and none were retained by the CC.

The preamble of the 2016 Constitution outlines the principle of gender equality for the first time -and its decline in various areas (parity in the labor market, political participation and the fight against violence against women).

Organization of Francophonie (OIF), the African Union (AU), which has deployed 40 observers, and the four-person European Union (EU EEM) team of experts. The EISA-Carter Center IEOM was the only long-term international mission to Côte d'Ivoire.

ELECTION DAY OBSERVATION

- ◁ In the Bélier region (Tiébissous District) 113 out of 139 PS remained closed throughout e-day. Additionally, only 22 out of the 26 PS that remained open were later able to centralize and consolidate results. The 4 other PS had been ransacked in the meantime;
- ◁ In the Marahoué region (District of Bouaflé), a PS opening occurred late due to roadblocks. By the end of e-day, 119 PS never opened, mainly in rural areas;
- ◁ In the Mé region, the degraded security situation prevented voting in 97 out of 236 PS.



IEOM observers attended opening operations in 15 of the 33 regions and autonomous districts of the country. The very tense situation in Yamoussoukro did not allow a proper observation of in the morning of election day. From a larger standpoint, the prevailing security situation led numerous delays in the opening of PS. This caused the frequent breaching of processes (set forth by the Central Independent Electoral Commission) by PS staff attempting to quickly open the PS to voters.

Delays observed in the opening of PS

In 10 of the 15 regions observed, observers noted moderate delays in the opening of PS, caused by the necessity for security forces to assist PS staff and secure the operations. Only 54 % of PS opened on time (08AM), 26% within 30 minutes, 11% after 1 hour, and 9 % more than 1 hour later. These figures encompass only PS that opened and were observed during e-day.

General environment

Delays results in lines during the opening period in 66.6 % of PS observed. However, the general environment surrounding the PS allowed the opening in fair conditions, in all cases. Security forces were always present, outside the PS. They positively contributed to the safe unrolling of electoral operations in the majority of cases.

Opening procedures

The process set forth by the electoral commission implied that PS staff was supposed to be in place from 7 AM. Due to prevailing security conditions, a large number of staff preferred to wait for the arrival of the security forces. Hence, only 66,6% of PS staff members arrived on time.

Opening procedures were largely respected and occurred as follows: i) random draw for the location of the hologram, was respected in 73% of cases, ii) the empty ballot box was presented to all people present in 80% of PS, iii) the ballot box was properly sealed in 86% of cases and iv) the seal reference has been written in the minutes in 73% of PS observed. The PS opening procedures has not been respected that strictly for PS that opened late, due to time pressure caused by delays.

