

LESSONS FOR UN ELECTORAL CERTIFICATION FROM THE 2010 DISPUTED PRESIDENTIAL POLL IN CÔTE D'IVOIRE

LORI-ANNE THÉROUX-BÉNONI

KEY POINTS

- While UN electoral certification in Côte d'Ivoire did not prevent parties from contesting the election results, the Ivorian case shows the utility and limits of certification as a tool in the UN electoral toolbox.
- Maintaining flexibility in the definition and implementation of election certification mandates — rather than a rigid approach — may be the key to the successful use of this tool in post-conflict situations.
- The UN should work closely with regional and continental organizations when deciding whether to certify a post-conflict election.
- If the decision to undertake certification is made, it should be enshrined in the legal framework governing the post-conflict election and the UN should define and clarify post-certification follow-up measures.

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After the November runoff of the 2010 presidential elections in Côte d'Ivoire, the country's Independent Electoral Commission (IEC) announced that in the preliminary results, Alassane Ouattara, candidate of the *Rassemblement des Républicains*, had won. The Constitutional Council cancelled the results from several northern electoral areas favourable to Ouattara, however, and declared Laurent Gbagbo, the incumbent president who ran for *La Majorité Présidentielle*, the winner.

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ACRONYMS

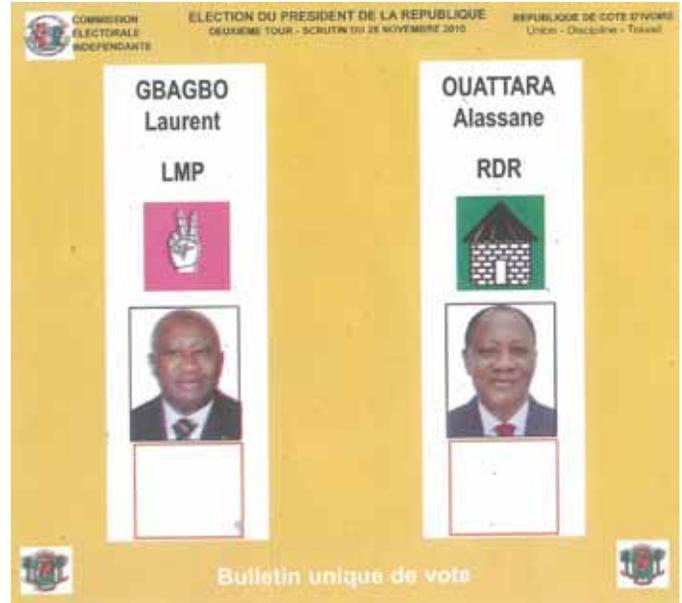
- AU African Union
- ECOWAS Economic Community of West African States
- FN Forces Nouvelles
- FRCI Forces Républicaines de Côte d’Ivoire
- HRE High Representative for the Elections
- IEC Independent Electoral Commission
- MONUSCO United Nations Organization Stabilization Mission in the DR Congo
- OPA Ouagadougou Political Agreement
- SRSB Special Representative of the UN Secretary-General
- UN United Nations
- UNOCI UN Operation in Côte d’Ivoire
- UNSC UN Security Council
- UNSG UN Secretary-General

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A ballot from the November 28, 2010 runoff of the Presidential election in Côte d’Ivoire.

Although the IEC’s results announcing Ouattara’s win were certified on behalf of the international community by the United Nations’ (UN) Special Representative of the Secretary-General (SRSB) in Côte d’Ivoire, Young-jin Choi, Gbagbo refused to step down and the country was plunged into five months of intense violence. The crisis ended in April 2011 when the *Forces Républicaines de Côte d’Ivoire* (FRCI), largely composed of ex-*Forces Nouvelles* (FN) rebel troops loyal to Ouattara (Fofana, 2011), took control of Abidjan and, with the support of the UN Operation in Côte d’Ivoire (UNOCI) and French Licorne troops, arrested Gbagbo.

These developments in Côte d’Ivoire draw attention to a specific type of UN-mandated task in peacekeeping operations: the certification of electoral processes in post-conflict situations. Two fundamental questions arise regarding certification. First, how effective is an instrument like electoral certification in building confidence and guaranteeing that parties will respect results in highly competitive elections in a post-conflict environment? Second, how can electoral certification

be strengthened so that it contributes to peace, rather than fuelling already tense situations?

This policy brief addresses these questions and evaluates the prospects for future UN electoral certification in post-conflict environments in three parts.¹ The first part defines certification in relation to other types of UN electoral intervention. The second part contextualizes the emergence of certification as a United Nations Security Council (UNSC)-mandated task of the operation in Côte d'Ivoire. The third part identifies lessons to be learned from the Ivorian case and offers recommendations to make certification a viable strategy.

CERTIFICATION IN THE UN ELECTORAL TOOLBOX

Terms such as electoral *certification*, *supervision*, *verification*, *monitoring* and even *observation* have been used interchangeably in UN documents (UN Secretary-General [UNSG], 1991: sec. 1). All of these processes share a goal: to determine whether an election was open, free and fair. Differences emerge through the political circumstances surrounding the election (for example, in non-self-governing, independent or post-conflict countries); the origin of the legal framework governing UN involvement (for example, the Trusteeship Council, General Assembly or Security Council); the role of the UN in organizing and conducting an election; and the consequences of such involvement (Koenig-Archibugi, 1997; Stoelting, 1992).

Going beyond the processes of electoral observation (information gathering on the conduct of elections) and

electoral assistance (offering technical support), UN electoral certification attests that the fundamental steps of a post-conflict electoral process adhere to international principles and standards (UNOCI, 2009). Post-conflict environments are often characterized by deep mistrust, both between political actors and towards the institutions managing electoral matters. In such situations, parties can agree to request UN electoral involvement, which, when endorsed by a UNSC resolution, can provide for certification. While certification was recently undertaken in Timor Leste (2007) and Nepal (2008), this process remains an exception in the UN electoral toolbox. In the case of Côte d'Ivoire, unlike Timor Leste and Nepal, the UN SRSG was tasked with certifying the elections without the UN having organized them (UNOCI, 2009).

An electoral observation mission has no authority to act when irregularities undermine the credibility of polls. A certification mandate, however, safeguards not only the electoral process, but also the results of the poll (UNOCI, 2009). Candidates may ignore the conclusions of an observation mission, but it is more difficult to do so with a UN-led certification process.



UNOCI forces positioned in front of the IEC in Abidjan (December 2, 2010).
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¹ Methodologically, this policy brief is based on an analysis of peace agreements and relevant documents published by the UN, the African Union (AU) and the Economic Community of West African States (ECOWAS); open-ended, semi-structured anonymous interviews conducted in Abidjan, Addis Ababa and New York between January and December 2011 with actors and observers of the Ivorian crisis; a three-month fieldwork term as an electoral observer for the 2010 presidential election in Côte d'Ivoire and, more broadly, more than two cumulative years of field research in the country between 2003 and 2009 (Théroux-Bénoni, 2009).

THE EMERGENCE OF CERTIFICATION IN THE IVORIAN PEACE PROCESS

In September 2002, a faction of the Ivorian army attempted to overthrow President Gbagbo, in power since 2000. The coup failed, but evolved into an armed rebellion led by the FN, which took over the northern part of the country. The rebels demanded that the head of state resign, that disenfranchised Ivorians be granted citizenship and that inclusive elections be held (Akindès, 2004; Bouquet, 2011; Marshall-Fratani, 2006; Soro, 2005).

These demands are best understood when situated in the context of Côte d'Ivoire's previous electoral cycles. Elections held in 1990, 1995 and 2000 were characterized by a systemic lack of transparency, political exclusion and violent contestation of the results (Crook, 1997; Diégou, 1995; N'Da, 1999; Coulibaly, 1995). Moreover, the terms of the debate on Ivorian identity and political participation have remained relatively unchanged for the past 15 or 20 years, as have the main political players. This explains, in part, the deep suspicion with which political stakeholders regard each other, as well as the national institutions that manage elections and electoral disputes. It was against this backdrop that, following the signing of the Linas-Marcoussis Accord, the UNOCI mission was authorized by the UNSC in March 2004. Initially, the UNOCI's mandate on electoral matters provided only for technical assistance, with the presidential elections due to be held in 2005 (UNSC, 2004: sec. 6m). Certification developed gradually in four stages: the 2005 Pretoria Agreement, the 2005 SC resolution 1603, the 2007 Ouagadougou Political Agreement and the 2007 SC resolution 1765 (Théroux-Bénoni, 2011).

THE 2005 PRETORIA AGREEMENT

In November 2004, after the national military of Cote d'Ivoire attempted to regain control over the north of the country,

the peace process was at an impasse. With the support of the ECOWAS, the AU proposed a mediation led by South African President Thabo Mbeki, who brokered the Pretoria Agreement in April 2005 (African Union Peace and Security Council 2004, sec. 7). The UN's involvement in forthcoming elections, which had yet to be precisely defined, emerged as a compromise solution.



Thabo Mbeki, who oversaw the signing of the 2005 Pretoria Agreement providing for a UN role in the Ivorian electoral process, during a December 2010 mediation mission in Abidjan (December 5, 2010). © Émilie Régnier

The FN and the political opposition wanted an electoral process entirely organized by the UN (UNSG, 2005a: sec. 19), whereas President Gbagbo was against any approach that infringed on Ivorian national sovereignty. UN Secretary-General Kofi Annan, while recognizing the need to overcome the crisis of confidence, stressed that Côte d'Ivoire was not a failed state and was thus capable of organizing its own elections. Given the "sensitivities surrounding the elections," the signatories agreed that the UN would participate in the work of the IEC and the Constitutional Council (UNSC, 2005a: sec. 10).

THE 2005 SC RESOLUTION 1603

In June 2005, the UNSC passed resolution 1603 endorsing the Pretoria Agreement, and requested the UNSG to appoint a High Representative for the Elections (HRE), autonomous

from the UNOCI, as an exceptional arrangement (UNSC, 2005b: sec. 7). The HRE's mandate was "to verify, on behalf of the international community, that all stages of the electoral process...provide all the necessary guarantees for the holding of open, free, fair and transparent presidential and legislative elections within the time limits laid down in the Constitution of the Republic of Côte d'Ivoire" (UNSG, 2005b: sec. 19).

Despite some initial progress in the peace process, by the end of 2006 the situation remained at a standstill. The UNSC then adopted resolution 1633 (UNSC, 2005c), which used the term "certification" for the first time, and reiterated its full support for the HRE's arbitration role — a role only implicitly mentioned in the previous resolution. Facing repeated postponement of the elections, resolution 1721 was later adopted, empowering HRE Gérard Stoudmann to lift political and technical obstacles in the lead-up to the elections (Toulou, 2008, 2010; Yabi, 2009: 104–106). Stoudmann had a reputation for being impartial and was not on good terms with President Gbagbo. Gbagbo rejected this resolution and initiated a "direct dialogue" with the rebels, facilitated by President Blaise Compaoré of Burkina Faso, then chairperson of ECOWAS.

THE 2007 OUAGADOUGOU POLITICAL AGREEMENT

The direct dialogue between Gbagbo and the rebels resulted in the Ouagadougou Political Agreement (OPA) in March 2007. Since certification was not addressed in the OPA, the rebellion and opposition parties assumed that the UNOCI's role in the electoral process remained unchanged. However, President Gbagbo opposed the HRE's certification and arbitration roles, and asked the UN to restrict its activities to technical advice. The political opposition pointed out that the HRE's role emanated from the Pretoria Agreement, following a "delicately negotiated compromise" (UNSG,

2007: sec. 31). President Gbagbo ultimately agreed that the UN would retain responsibility for certification, but objected to the arbitration role of the HRE as defined in resolution 1721.

THE 2007 SC RESOLUTION 1765

In July 2007, UNSC resolution 1765 terminated the mandate of the HRE, transferring the certification role to the SRSG (referred to as the certifier), and the arbitration role to the OPA facilitator (UNSC, 2007: sec. 6). Resolution 1765 also called for the establishment of a support team (known officially as a cell) within the office of the SRSG (UNSC, 2007: sec. 6). Reporting directly to the SRSG, this certification cell, consisting exclusively of international staff, was independent from the UNOCI's electoral assistance division and other UNOCI components. The cell was required to track all the steps of the electoral process on a daily basis, and to make progress and risks known to the SRSG.

In his newly appointed role as certifier, and in consultation with key national and international stakeholders, SRSG Choi developed a five-criterion framework defining broad certification benchmarks that required the assessment of:

- **Peace** (whether "a secure environment existed during the period leading up to the election and allowed for full participation of the population and the candidates in the process");
- **Inclusiveness** (whether "the electoral process was inclusive");
- **State-run media** (whether "all candidates had equitable access to state-controlled media and whether the latter remained neutral");
- **Voters' list** (whether "the electoral list was credible and accepted by all parties"); and

- **Results** (establishing that “the results of the elections were determined through a transparent counting process and accepted by all or are challenged peacefully through the appropriate channels”) (UNSG, 2008: sec. 32).

Only two of the parameters (the voter’s list and results) were to be explicitly certified through formal written and public statements, while the others were certified implicitly, or by tacit agreement, without any official declaration (UNOCI, 2008; UNSC, 2008). Unless serious violations were noted, SRSG Choi would informally address shortcomings and concerns by maintaining a constant dialogue with the competent authorities. The threat of non-certification would be used tactfully to encourage good practices.²

Three characteristics regarding the UN’s increasing role in the electoral process should be emphasized. First, certification developed against the backdrop of mistrust plaguing previous electoral cycles. As noted earlier, UN involvement was solicited by the parties as a confidence-building mechanism. Second, certification emerged after a delicately negotiated compromise, which was seriously threatened following the OPA. As certifier, SRSG Choi had to walk a fine line between reassuring the opposition that he could guarantee the results of the poll, while not frightening the presidential camp. Third, the UN mandate developed in an ad hoc fashion, shaped by increasing political polarization and a growing impatience from the international community. The UN did not entirely grasp what certification entailed when it initially agreed to play a role in the electoral process,³ which resulted in major uncertainties surrounding the process itself; these factors both limited and created opportunities for its implementation.

IMPLEMENTATION CHALLENGES AND RECOMMENDATIONS

The circumstances surrounding the emergence of the certification process and its implementation in the peace process framed the actions of the UN-appointed certifier, SRSG Choi. The UN’s intervention in Côte d’Ivoire was carefully designed by the certifier and his cell to allow for early warning of impending conflict and mediation in case of difficulty, to serve as a guarantee for the implementation of the electoral provisions of the peace process and to instill legitimacy in the post-conflict elections.⁴ While the certification mandate had to be exercised with determination, caution and discretion were also essential. Moreover, certification decisions had to strike a balance between subjective political judgment and a process of objective technical evaluation. Some observers found the certifier’s behaviour difficult to interpret and a number of stakeholders, both within and outside the UN, remained skeptical of the effectiveness of certification until after the second round of the elections.⁵



The certifier, UN SRSG Choi, on his way to the press conference during which he made his certification statement at UNOCI headquarters in Seboko (December 3, 2010). © Émilie Régnier

Improvements are needed to secure certification as an effective and trusted UN tool. The following

² Interview by author, Abidjan, August 29, 2011.

³ Interview by author, New York, February 14, 2011.

⁴ Interview by author, Abidjan, August 31, 2011.

⁵ Interviews by author, New York, June 9–11, 2011, and Abidjan, August 23, 26 and 29, 2011.

recommendations would contribute to making certification a viable UN strategy in post-conflict electoral processes.

The UN should work closely with regional and continental organizations when deciding whether to certify a post-conflict election. AU mediator Thabo Mbeki and ECOWAS facilitator Blaise Compaoré had central roles, respectively, introducing and sustaining UN involvement in the Ivorian process.⁶ The UN has a unique legitimacy it can confer on post-conflict election results, but its strength is amplified when its role is agreed upon and implemented with the support of regional organizations.

The UN should avoid being perceived as both a judge and a party to the dispute. The dual role of judge (as certifying agent) and party to the dispute (by providing technical assistance) puts a peacekeeping mission in a rather awkward position. Non-election-related mandated tasks can be jeopardized, as can the work of other UN agencies in the country. The desire to avoid this type of situation informed the creation of the HRE position, somewhat independent from the peacekeeping operation.⁷ Although this arrangement was short-lived in Côte d'Ivoire, the logic behind it was appropriate for the task at hand. It should be given due consideration in future certification mandates.

Excessive transparency can impair the effective implementation of a certification mandate. The importance of a clear mandate cannot be underestimated, yet the fragility of the compromise reached on certification in Côte d'Ivoire meant that the details of its implementation had to be arranged with some discretion, outside the public spotlight.⁸ The broadness of the five-criterion framework is precisely what provided SRSG Choi with the necessary latitude to enable him to fulfill his mandate. The certifier, however,

must identify consensual criteria that are objectively measurable and tailored to the circumstances. The difficulty of objectively evaluating a criterion as intangible as peace opened the door to contestation. Indeed, claiming an absence of peace in a country where no disarmament had taken place, the Constitutional Council declared void votes in northern areas favourable to Ouattara and pronounced Gbagbo the winner.

The certifier must develop a credible and pertinent methodology to certify the election results. The SRSG did not make details of the certification procedures public until his declaration on December 8, 2010, the day following its presentation to the UNSC and ECOWAS (UNOCI, 2010b). The certification procedures outlined three directives. First, to quickly discern voting trends, the SRSG relied upon a network of 721 pre-selected polling stations to which UNOCI personnel had been assigned. Next, results were gathered from the 19 regional electoral commissions by 19 UNOCI agents deployed in the field. Finally, all 20,000 tally sheets sent in by the IEC were reviewed and compiled. For that purpose, hundreds of trained UN staff worked day and night at a tabulation centre set up at UNOCI headquarters. The goal was not just to tally the results, but to examine each sheet to detect potential fraud. The perceived credibility of the certifier's methodology strongly contributed to the international community's support for his position in recognizing Ouattara as the elected president.

Certification should be enshrined in the legal framework governing the post-conflict election. The certification mechanism was introduced in the Ivorian electoral code by an ordinance signed by President Gbagbo (Government of Côte d'Ivoire, 2008), and it required the IEC to transmit a copy of every tally sheet to the certifier. Each polling station was supplied with a special envelope addressed to the certifier in which the results had to be sealed. These legal and logistical arrangements for the secure transmission

6 Interview by author, Addis-Ababa, March 30, 2011 and Abidjan, August 24, 2011.

7 Interview by author, New York, June 9, 2011.

8 Interview by author, Abidjan, August 29, 2011.

of tally sheets from each polling station allowed for the establishment of a parallel tabulation system, without which the certifier could not have credibly executed his mandate.

The relationship between the certifier and other electoral bodies should be clarified. After the Constitutional Council’s announcement cancelling northern poll results, the certifier interpreted the Council’s decision “as having no factual basis” (UNOCI, 2010a), while Gbagbo supporters maintain that only the Constitutional Council — being the ultimate arbiter in electoral disputes according to Ivorian law — was authorized to declare the final results. The ambiguity of the relationship between electoral bodies has proven problematic and requires clarification.

The interaction between electoral observers and the certifier should be improved. Before certifying the results of the runoff of the presidential elections, the certifier maintained close contact with the various international election observation missions, but these relationships were not without tension.⁹ At times throughout the process, the certification mandate both overshadowed and muted the work of the observation missions. When the SRSG carried out his certification mandate, especially in an implicit fashion, the observers’ critical remarks and recommendations remained largely unheard. After the second round, however, both the certification process and the preliminary statements of credible observation missions arrived at the same conclusions. While there is some overlap, electoral certification and observation can be complementary in many important ways, and strengthened interaction is desirable.

The UN should define and clarify post-certification follow-up measures. The goal of assigning major responsibilities to the certifier was to pre-empt any attempts to cast doubt on the election results. Additionally, the certification cell had

anticipated a number of scenarios, including the possibility that the Constitutional Council might arrive at a decision in breach of the Electoral Code.¹⁰ The post-certification follow-up methods available to the SRSG included consultation with the players involved; consultation with the main Ivorian figures; consultation with the OPA facilitator; and finally, a report to the UNSC for “appropriate measures” to be taken (UNOCI, 2009, Question 7). Those appropriate measures, which were needed when certified results were rejected, should have been spelled out more clearly from the onset.

CONCLUSION

The UN certification of the 2010 presidential elections in Côte d’Ivoire did not, initially at least, bring about peace; rather, the mandate served as a rallying point for African organizations, the UN and the wider international community to recognize Ouattara as the elected president of Côte d’Ivoire. It also served as a legitimising basis upon which political, economic and financial sanctions were imposed by ECOWAS, the AU, the EU, as well as individual countries such as the United States. It is ultimately on this basis that Gbagbo’s use of force and heavy weapons against civilians was targeted by UNSC resolution 1975. This resolution paved the way for a military intervention spearheaded by the rebels-turned-government forces of the FRCI supported by UNOCI and French Licorne troops. In the process that led to Gbagbo’s arrest and Ouattara’s assumption of power, 3,000 people lost their lives (UN General Assembly, 2012: sec. 9) Rather than charting a trajectory towards peace and democracy, the UN-certified election in Côte d’Ivoire brought the country back to a full-fledged civil war.

⁹ Interview by author, Abidjan, August 24, 2011.

¹⁰ Interview by author, Abidjan, August 27, 2011.

The post-conflict issues in Côte d'Ivoire transcend certification and highlight the responsibilities of national stakeholders to uphold their electoral duty. These issues also draw attention to the conditions under which an election can fulfill its promise as a tool for conflict management and contribute to the sustainability of transition from war to peace (Mbeki, 2011; Jarstad and Sisk, 2008; Toulou, 2008 and 2010). Nonetheless, throughout the peace process, certification allowed for early warning of conflict and mediation at key moments and guaranteed the implementation of important electoral provisions of peace agreements.

Given the violence of the post-certification events, however, and the questions the concept itself raised regarding issues of national sovereignty in Côte d'Ivoire, securing support for future certification mandates remains uncertain, both within host countries of peacekeeping missions and within the UNSC. Opponents in war-torn countries will find certification appealing;¹¹ however, the odds are that leaders wishing to retain power will be hesitant to embrace it. Moreover, in 2005, UNSC endorsement of certification in Côte d'Ivoire was granted on a largely hypothetical basis. Such a mandate had not yet been implemented in other contexts (Timor or Nepal), with the consequence that members of the Security Council were not yet fully aware of the implications of the concept. They now have a better understanding of what the concept entails in terms of opportunities, risks and consequences. So too, do regional organizations such as ECOWAS and AU. Although the above recommendations clearly show that certification still needs to be refined, it remains a potentially useful tool that can help post-conflict countries overcome electoral challenges.

¹¹ The political opposition in the Democratic Republic of the Congo (DRC) demanded that the United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) certify the 2011 presidential election. Roger Meece, SRSG for the DRC, replied in a July 2011 press conference that it would not be possible as MONUSCO was not mandated to do so (Radio Okapi, 2011).

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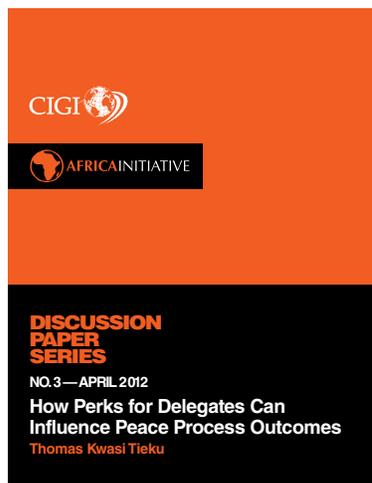
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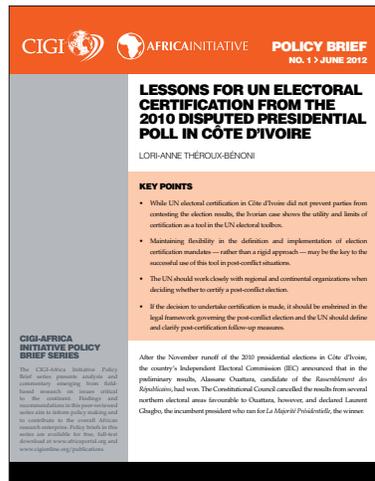
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