

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER III

**Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Elizabeth Odio Benito
Judge Adrian Fulford**

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

Public

**Decision on the "Prosecution's provision of further information regarding
potentially relevant crimes committed between 2002 and 2010"**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

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Ms Silvana Arbia

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Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Others

**Victims Participation and
Reparations Section**

Ms Fiona McKay

Pre-Trial Chamber III (the “Chamber”) of the International Criminal Court (the “Court”) issues the following Decision on the “Prosecution’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010”.

I. Procedural history

1. On 23 June 2011, the Prosecutor submitted a Request for authorisation of an investigation pursuant to article 15 (“Prosecutor’s Request of 23 June 2011”).¹ The Prosecutor requested permission to commence an investigation into the situation in the Republic of Côte d’Ivoire (“Côte d’Ivoire”) since 28 November 2010.² However, he also submitted the following:

41. The Prosecution proposes to conduct investigations within this timeframe, as opposed to requesting authorisation to investigate crimes over the entire period from which the ICC could exercise jurisdiction pursuant to the lodged declaration, for the following reasons: (i) the violence on the territory of Côte d’Ivoire during this period reached unprecedented levels, and (ii) there is a wealth of information available to establish that the reasonable basis threshold is satisfied with respect to the alleged crimes committed during this period.

42. Upon review of the supporting material, the Chamber may conclude that Côte d’Ivoire repeatedly experienced violence prior to the 2010 elections and may therefore broaden the temporal scope of the investigations to events that occurred between 19 September 2002 (the date from which the Republic Côte d’Ivoire accepted the exercised of jurisdiction by the Court in accordance with article 12(3) of the Rome Statute) and 23 June 2011 (the date of the filing of this Application) [footnote omitted].³

2. On 3 October 2011, the Chamber authorised the commencement of an investigation in Côte d’Ivoire, first, for crimes within the jurisdiction of the Court committed since 28 November 2010 and, second, for any continuing crimes that may be committed in the future, “insofar as the contextual elements of the continuing crimes are the same as for those committed

¹ Request for authorisation of an investigation pursuant to article 15, 23 June 2011, ICC-02/11-3 with annexes.

² ICC-02/11-3, paragraph 181.

³ ICC-02/11-3, paragraphs 41 and 42.

prior to 23 June 2011” (“Decision of 3 October 2011”).⁴ As to the period to be covered by the investigation, the Majority concluded that although there was information on crimes allegedly committed prior to 28 November 2010, the Prosecutor’s request did not “refer to specific incidents that may have occurred prior to 28 November 2010, and the vast majority of the supporting materials provided by the Prosecutor focus on the most recent post-electoral crisis”.⁵ The Chamber held as follows:

184. In the absence of sufficient information on specific events, the Chamber is however unable to determine whether the reasonable basis threshold has been met with regard to any specific crimes. Indeed, the Chamber is of the view that with regard to this part of his request, the Prosecutor has not provided sufficient supporting material in relation to the contextual elements and underlying acts of the crimes within the jurisdiction of the Court allegedly committed during that period of time.

185. Sufficient information on specific crimes committed between 2002 and 2010 is an essential prerequisite for the Chamber to be able to assess whether there is a reasonable basis to proceed. In accordance with Rule 50(4) of the Rules, the Prosecutor is to revert to the Chamber with any additional information that is available to him on potentially relevant crimes committed between 2002 and 2010.⁶

3. Pursuant to these instructions, on 4 November 2011 the Prosecutor provided further information regarding potentially relevant crimes committed between 2002 and 2010.⁷

⁴ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation in the Situation in the Republic of Côte d’Ivoire, 3 October 2011, ICC-02/11-14-Corr, paragraphs 179 and 212. Judge Silvia Fernández de Gurmendi filed a separate and partially dissenting opinion on 3 October 2011, see ICC-02/11-15-Corr.

⁵ Decision of 3 October 2011, paragraph 183. In her dissenting opinion, Judge Fernández de Gurmendi was of the view that no additional information was necessary and that the extension of the temporal scope could have been authorized on the basis that the post-electoral violence was a continuation of the same political crisis. See ICC-02/11-15-Corr, paragraphs 56 to 59.

⁶ Decision of 3 October 2011, paragraphs 184-185.

⁷ Prosecution’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010, 3 November 2011, ICC-02/11-25 with annexes.

II. Prosecutor's allegations and supporting information

4. In his submission, the Prosecutor refers to a series of incidents which allegedly occurred in Côte d'Ivoire between 2002 and 2010. As part of his submission, the Prosecutor notes:

[...] that there is information available that serious crimes have been committed in Côte d'Ivoire between 19 September 2002 and the period prior to the elections in 2010 by both pro-government and pro-rebel forces.⁸

5. In particular, the Prosecutor identifies incidents in which murders appear to have been committed by government and rebel forces in the months following the attempted *coup d'état* in September 2002.⁹

6. The Prosecutor further submits that there is information that government and rebel forces raped members of the population, and they were responsible for other forms of sexual violence, including sexual slavery. These crimes were allegedly used by all parties to the conflict "as a weapon of war" in the aftermath of the failed *coup-d'état*.¹⁰

7. The Prosecutor finally submits that government and rebel forces were allegedly responsible for child recruitment,¹¹ enforced displacement¹² and unlawful attacks.¹³

III. Applicable law

8. In accordance with Article 21(1) of the Rome Statute ("Statute"), the Chamber has considered Articles 5, 6, 7, 8, 15 and 53 of the Statute, and Rules 48, 49 and 50 of the Rules of Procedure and Evidence.

⁸ ICC-02/11-25, paragraph 7.

⁹ ICC-02/11-25, paragraphs 18-28.

¹⁰ ICC-02/11-25, paragraph 31.

¹¹ ICC-02/11-25, paragraph 35.

¹² ICC-02/11-25, paragraphs 36-38.

¹³ ICC-02/11-25, paragraph 39.

IV. Analysis

9. In light of the additional information provided by the Prosecutor in compliance with the Chamber's order, the Court must decide whether it is appropriate to extend the temporal scope of the investigation into the situation in Côte d'Ivoire to include the period between 19 September 2002 and 28 September 2010.
10. The present decision supplements the Decision of 3 October 2011. The Chamber has applied the analysis and conclusions set out in that Decision, including the interpretation of the legal requirements of the crimes under Articles 5 to 8 of the Statute.¹⁴
11. In relation to the overall context, the Chamber indicated that:

181. The materials available to the Chamber include, in summary form, details of the history concerning the political and military crisis in Côte d'Ivoire since the coup attempt of 2002, which resulted in the *de facto* partition of the country into a northern zone controlled by the armed opposition (the *Forces Nouvelles*) and a southern zone controlled by President Gbagbo. Human Rights Watch indicates that efforts to resolve the conflict between the government of President Gbagbo and the rebels ended in a series of broken peace agreements, over 11,000 foreign peacekeeping troops on the ground and the imposition of a UN arms embargo. Although the peace agreements and peacekeepers brought about a cessation of active hostilities, they did not bring peace or unity to the country. The end result was a stalemate, a situation of "no peace, no war" or "intermittent civil war". The long-awaited presidential election took place on 31 October 2010 and 28 November 2010, having been postponed six times since 2005. However, far from solving the political crisis, the elections plunged "the country into even deeper turmoil with severe consequences for the overall human rights situation" [footnotes omitted].¹⁵

12. The Chamber concluded that "[w]hile the context of violence reached a critical point in late 2010, it appears that this was a continuation of the ongoing political crisis and the culmination of a long power struggle in Côte d'Ivoire."¹⁶ It underlined that:

¹⁴ See in particular paragraphs 27-29, 31-33, 42-46, 52- 54, 63, 68, 89, 119-121, 129, 144, 149-150.

¹⁵ Decision of 3 October 2011, paragraph 181.

¹⁶ Decision of 3 October 2011, paragraph 181.

182. The information contained in the supporting material submitted by the Prosecutor and some of the victims' representations provide indications of very serious human rights violations and abuses that have been committed since the September 2002 coup attempt that could amount to crimes within the jurisdiction of the Court. According to this information, the political and military crisis that followed was devastating from the point of view of human rights and was "punctuated by atrocities attributable to both sides, including extrajudicial killings, massacres, enforced disappearances, and numerous incidents of torture" [footnotes omitted].¹⁷

13. In light of these conclusions and in order to decide whether to expand the temporal scope of the investigation, it is necessary to analyse the additional information so as to determine whether there is a reasonable basis to believe that crimes within the jurisdiction of the Court were committed in the period following the coup attempt in September 2002.
14. In the present decision the Chamber has considered examples of relevant criminality that have allegedly occurred since September 2002. The Court has focussed on the incidents that form part of the same crisis or sequence of events for which an investigation has already been authorised, and it is of the view that it is unnecessary to address each of these in exhaustive detail. Instead, it is sufficient if the Chamber is satisfied that at least some of the incidents meet the relevant test as crimes falling within the jurisdiction of the Court.
15. The Chamber has referred to events identified by the Prosecutor¹⁸ that are examples of crimes which appear to have been committed against civilians by pro-government and rebel forces in Côte d'Ivoire, following the 2002 attempted coup. The Chamber has analysed a chronological sample of these incidents, and it has decided whether they potentially amount to a crime or crimes within the jurisdiction of the Court.

¹⁷ Decision of 3 October 2011, paragraph 182.

¹⁸ ICC-02/11-25, paragraphs 18, 21, 23, 25.

(1) *Sample of incidents*

16. The International Commission of Inquiry reported that on 6 October 2002 the rebel forces, having taken Bouaké some days earlier, executed 131 individuals including 61 *gendarmes* and a similar number of their children and nephews, and 7 other civilians.¹⁹ In addition, according to the same report, the rebels summarily executed civilians who supported the loyalist forces in Bouaké on or shortly after 8 October 2002.²⁰ Human Rights Watch has provided corroborative information in relation to the same events, reporting that “MPCI forces summarily executed over fifty *gendarmes* and member of their families in Bouaké in October 2002”.²¹ Amnesty International reported on these occurrences as follows:

The *gendarmes* arrested on 6 October 2002 at the 3rd *gendarme* legion headquarters in Bouaké were not killed in combat. Most of them were killed in cold blood by armed MPCI personnel while being held prisoner with about 50 of their children and some civilians in the 3rd infantry battalion military camp prison in Bouaké. Moreover, some of them, including the wounded, were very probably killed on the site of the mass grave in which they were forced to bury their colleagues.²²

17. Further, on 27 and 28 November 2002, government forces attacked the village of Monoko-Zohi, near Daloa, shooting as many as 120 civilians, who were mostly immigrant plantation workers. This is confirmed by a

¹⁹ Rapport de la Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 23.

²⁰ Rapport de la Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 23.

²¹ Human Rights Watch, Côte d’Ivoire: Accountability for Serious Human Rights Crimes Key to Resolving Crisis, October 2004, ICC-02/11-25-Anx2.20, page 10.

²² Amnesty International, Côte d’Ivoire: A Succession of Unpunished Crimes, 27 February 2003, ICC-02/11-25-Anx2.7.

contemporary BBC news report,²³ Human Rights Watch²⁴ and the International Commission of Inquiry.²⁵

18. A further relevant incident is the alleged execution of civilians in Bangolo by mercenaries who supported the Government, during the night of 6 March 2003. The International Commission of Inquiry received information that two hundred people had been killed, and it was able to verify sixty of the deaths (primarily members of the Dioula community).²⁶ Several women were raped before they were murdered.²⁷ Human Rights Watch reported that at least sixty civilians, including men, women and children, were killed in Bangolo in early March 2003.²⁸ It interviewed Liberian fighters in detention, who confirmed that they had committed this massacre.²⁹ In addition, Human Rights Watch indicated that the events in Bangolo were followed some days later by a further massacre in neighbouring Dah (this was allegedly an act of reprisal by the rebel forces).³⁰
19. Finally, the Chamber has focussed on events that allegedly occurred during an opposition demonstration in Abidjan in late March 2004. Human Rights Watch reported that “[t]he violence from March 24-27, 2004 occurred [...] in the suburbs of Abobo, Anyama, and Adjame, where

²³ BBC News, Eyewitness: Ivory Coast mass grave, ICC-02/11-25-Anx2.15.

²⁴ Human Rights Watch, Côte d’Ivoire: Trapped between two Wars, Violence against Civilians in Western Côte d’Ivoire, August 2003, ICC-02/11-25-Anx2.22, pages 39-40.

²⁵ Rapport de la Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 25.

²⁶ Rapport de la Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 26.

²⁷ Rapport de la Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 26.

²⁸ Human Rights Watch, Côte d’Ivoire: Trapped between two Wars: Violence against Civilians in Western Côte d’Ivoire, August 2003, ICC-02/11-25-Anx2.22, page 17.

²⁹ Human Rights Watch, Côte d’Ivoire: Trapped between two Wars: Violence against Civilians in Western Côte d’Ivoire, August 2003, ICC-02/11-25-Anx2.22, page 17.

³⁰ Human Rights Watch, Côte d’Ivoire: Trapped between two Wars: Violence against Civilians in Western Côte d’Ivoire, August 2003, ICC-02/11-25-Anx2.22, page 17.

thousands of demonstrators had gathered in anticipation of marching to the city center".³¹ According to this report, Ivorian security forces, including pro-government militias, attacked the demonstrators. It is reported that at least 105 civilians were killed, 290 were wounded and some 20 individuals "disappeared", having been taken into custody.³² An Amnesty International report corroborates these findings.³³

(2) *Whether there is reasonable basis to believe that the above incidents amount to any crime within the jurisdiction of the Court*

(i) War crimes

20. On the information provided to the Chamber, it appears that following a failed coup d'état on 19 September 2002 in Abidjan and in the northern cities of Korhogo and Bouaké, the south of the country remained in the hands of the government while the north was controlled by an armed opposition group called the *Mouvement patriotique de Côte d'Ivoire* ("MPCI").³⁴ It is further suggested that shortly after the failed coup d'état, two other rebel groups emerged - the *Mouvement pour la Justice et la paix* ("MJP") and the *Mouvement Populaire Ivoirien du Grand Ouest* ("MPIGO").³⁵

21. A Human Rights Watch report suggests that in early October 2002, a government offensive in Bouaké resulted in heavy fighting in the area, although the rebels maintained control of the town.³⁶ Thousands of

³¹ Human Rights Watch, Côte d'Ivoire: Human Rights Violations in Abidjan during an Opposition Demonstration - March 2004, October 2004, ICC-02/11-25-Anx2.21, page 3.

³² Human Rights Watch, Côte d'Ivoire: Human Rights Violations in Abidjan during an Opposition Demonstration - March 2004, October 2004, ICC-02/11-25-Anx2.21, page 3.

³³ Amnesty International, Côte d'Ivoire: The indiscriminate and disproportionate repression of a banned demonstration, 8 April 2004, ICC-02/11-25-Anx2.9.

³⁴ Amnesty International, Côte d'Ivoire, Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11, page 6.

³⁵ Amnesty International, Côte d'Ivoire, Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11, page 6.

³⁶ Human Rights Watch, Trapped between two wars: Violence against civilians in western Côte d'Ivoire, August 2003, ICC-01/11-25-Anx2.22, page 47.

civilians fled the city to escape the violence.³⁷ On 7 October 2002, MPCCI captured the town of Vavoua and on 12 October 2002 it took control of Daloa, although the latter was re-captured by government forces several days later; intensive fighting was reported.³⁸

22. Human Rights Watch also reported that although peace negotiations took place at the end of October 2002 in Lomé, the capital of Togo, the violence continued after the ceasefire.³⁹ At the end of November 2002, the MJP and the MPIGO attacked Toulepleu and captured Man and Danané, towns in the west of the country, with the extensive involvement of Liberian and Sierra Leonean fighters.⁴⁰ On 30 November 2002, government forces regained control over the town of Man.⁴¹ By 2 December 2002, MPIGO had captured Toulepleu, and on 7 December 2002 the group moved east and took the town of Blolékin.⁴² It is reported that the government and rebel forces received new recruits in December 2002, and fighting continued until late December, including a rebel counter-offensive and clashes between the French military force monitoring the cease-fire line and western rebels near Duékoué.⁴³

³⁷ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 47.

³⁸ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 47; High Commissioner for Human Rights, *Report of an urgent human rights mission to Côte d'Ivoire*, 24 January 2003, ICC-02/11-25-Anx2.19, page 16.

³⁹ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, pages 47-46.

⁴⁰ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 46.

⁴¹ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 46.

⁴² Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 46.

⁴³ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 46.

23. According to Amnesty International, the MPCI, the MPIGO and the MJP merged into the *Forces nouvelles* (“FN”) by agreement, on 22 December 2002.⁴⁴
24. Human Rights Watch reported that fighting continued in January 2003, particularly along the Liberian-Ivorian border, and there were reports of abuses against civilians in the west of the country.⁴⁵ The internal conflict officially ended when the Linas-Marcoussis peace accords were signed by all the parties to the conflict, on 25 January 2003.⁴⁶ Although peace talks continued that spring, there were also reports of massacres in the west, where apparently “both the government and rebel forces were using Liberian fighters in a proxy war”.⁴⁷
25. Another cease-fire was signed in early May 2003 and a United Nations mission (MINUCI) was approved by the UN Security Council.⁴⁸ In September 2003, representatives of the FN withdrew from the peace agreement.⁴⁹ Human Rights Watch reported that “[e]fforts to resolve the conflict between the government and the rebels have resulted in a string of unfulfilled peace agreements” in January 2003, July 2004 and April 2005, as

⁴⁴ Amnesty International, Côte d’Ivoire: Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11, page 6.

⁴⁵ Human Rights Watch, Trapped between two wars: Violence against civilians in western Côte d’Ivoire, August 2003, ICC-01/11-25-Anx2.22, page 46.

⁴⁶ Human Rights Watch, Côte d’Ivoire: Accountability for Serious Human Rights Crimes Key to Resolving Crisis, October 2004, ICC-02/11-25-Anx2.20, page 8; International Crisis Group, Côte d’Ivoire: “The war is not yet over”, 28 November 2003, ICC-02/11-25-Anx2.26, page 4; Human Rights Watch, Trapped between two wars: Violence against civilians in western Côte d’Ivoire, August 2003, ICC-01/11-25-Anx2.22, page 46.

⁴⁷ Human Rights Watch, Trapped between two wars: Violence against civilians in western Côte d’Ivoire, August 2003, ICC-01/11-25-Anx2.22, page 45.

⁴⁸ Human Rights Watch, Trapped between two wars: Violence against civilians in western Côte d’Ivoire, August 2003, ICC-01/11-25-Anx2.22, page 45.

⁴⁹ Human Rights Watch, Côte d’Ivoire: Accountability for Serious Human Rights Crimes Key to Resolving Crisis, October 2004, ICC-02/11-25-Anx2.20, page 8.

well as the deployment of peacekeeping forces, an arms embargo, and travel and economic sanctions.⁵⁰

26. According to Human Rights Watch, by October 2004 the FN exercised military, economic and administrative control over about 50% of the country.⁵¹ In early November 2004, the Ivorian military reportedly attacked the rebels in several cities in the North of the country, including Bouaké and Korhogo, killing fifty-five civilians and nine French soldiers.⁵²

27. A May 2005 Human Rights Watch report indicates that the government was behind a militia attack on the rebel-held town of Logouale in late February 2005.⁵³ According to a UN report, in May 2005 the security situation remained volatile due to tension and clashes, especially in the west of the country, and in January 2006 violence erupted once more in areas controlled by the government, following a recommendation from an international group of negotiators to dissolve the interim parliament.⁵⁴ This led to attacks on UN bases, vehicles and residences by supporters of Laurent Gbagbo, which extended over several days, and these events included the west of the country.⁵⁵

28. The Chamber is of the view that the incidents analysed above appear to have taken place in the context of, and were associated with, an armed

⁵⁰ Human Rights Watch, Côte d'Ivoire: "My Heart is Cut", Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire, August 2007, ICC-02/11-25-Anx2.23, page 20.

⁵¹ Human Rights Watch, Côte d'Ivoire: Accountability for Serious Human Rights Crimes Key to Resolving Crisis, October 2004, ICC-02/11-25-Anx2.20, page 10.

⁵² Human Rights Watch, Country on a Precipice: The Precarious State of Human Rights and Civilian Protection in Côte d'Ivoire, May 2005, ICC-02/11-25-Anx2.24, page 24.

⁵³ Human Rights Watch, Country on a Precipice: The Precarious State of Human Rights and Civilian Protection in Côte d'Ivoire, May 2005, ICC-02/11-25-Anx2.24, page 21.

⁵⁴ United Nations Standing Committee on Nutrition, Nutrition Information in Crisis Situations – Ivory Coast, May 2005, January 2006, ICC-02/11-25-Anx41, page 2.

⁵⁵ United Nations Standing Committee on Nutrition, Nutrition Information in Crisis Situations – Ivory Coast, January 2006, ICC-02/11-25-Anx41, page 2.

conflict not of an international character⁵⁶ and they may amount to murder and rape as war crimes under Article 8(2)(c)(i) and (e)(vi) of the Statute.

(ii) Crimes against humanity

29. The material submitted by the Prosecutor indicates that, in the aftermath of the attempted coup on 19 September 2002, the government forces of Côte d'Ivoire (including the defence and security forces) and the *gendarmes*, along with affiliated pro-government armed militias such as the so-called "death squads" and the *Fédération estudiantine et scolaire de Côte d'Ivoire* (FESCI), carried out an attack against the population, in which civilians were targeted on the basis of their political affiliations, ethnicity or nationality (because they were believed to be supporters of the rebels).⁵⁷ In his report of 26 September 2005, the UN Secretary General specifically highlighted that during the period under consideration, "incitements to violence, exclusion and intolerance and calls for a resumption of the armed conflict, continued uninterrupted by the Ivorian media, in particular those associated with the ruling party."⁵⁸ The material also suggests that the government controlled the media, including the *Radio*

⁵⁶ The Chamber wishes to clarify that this conclusion is without prejudice to the possible different qualification of the armed conflict in any future related proceedings.

⁵⁷ Amnesty International, Côte d'Ivoire: The indiscriminate and disproportionate repression of a banned demonstration, 8 April 2004, ICC-02/11-25-Anx2.9; Amnesty International, Côte d'Ivoire : Threats hang heavy over the future, 26 October 2005, ICC-02/11-25-Anx2.10, page 3; International Crisis Group, Côte d'Ivoire: "The War is not yet Over", 28 November 2003, ICC-02/11-25-Anx2.26, pages 23-24; Human Rights Watch, Côte d'Ivoire: Human Rights Violations in Abidjan during an Opposition Demonstration – March 2004, October 2004, , ICC-02/11-25-Anx2.21; Human Rights Watch, "Trapped between two wars: Violence against civilians in western Côte d'Ivoire", August 2003, ICC-01/11-25-Anx2.22, page 41; Amnesty International, "Côte d'Ivoire: A Succession of Unpunished Crimes", ICC-02/11-25-Anx2.7, page 4; BBC News: Eyewitness: Ivory Coast mass grave, ICC-02/11-25-Anx2.15, page 3; Rapport de la Commission d'enquête internationale sur les allégations de violations des droits de l'homme en Côte d'Ivoire, 25 May 2004, ICC-02/11-25-Anx2.16, page 25 ; Human Rights Watch, Cote d'Ivoire: "My Heart is Cut", Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire, August 2007, ICC-02/11-25-Anx2.23, pages 82-84.

⁵⁸ UN, Sixth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 26 September 2005, ICC-02/11-Anx2.46, page 11.

Télévision Ivoirienne (the national broadcasting cooperation),⁵⁹ and journalists covering the attacks against the civilian population were threatened.⁶⁰ In addition, Amnesty International and the International Commission of Inquiry suggest that rape and other forms of sexual violence were used against women, in a strategic and tactical manner by all the parties to the conflict, and victims were selected on the basis of their political and ethnic affiliation.⁶¹ According to Amnesty International, groups and militias supported by the government are said to have raped and used sexual violence against women who were labelled by the state propaganda organs as enemies of the President and the nation, and the media and politicians close to President Gbagbo were utilised for this purpose.⁶² While some information suggests that these attacks continued until at least 5 March 2006,⁶³ a Human Rights Watch report of August 2007 indicates that “killings, rapes and a few massacres have continued until the present, long past the end of active hostilities”.⁶⁴

30. Furthermore there are indications that these crimes were undertaken pursuant to a governmental policy of targeting all those who were seen as supporting the rebels based on their religion, political affiliation, or on their national or ethnic origin.

⁵⁹ UN, Eleventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 4 December 2006, ICC 02/11-25-Anx2.43, page 4.

⁶⁰ Amnesty International, Côte d’Ivoire: The indiscriminate and disproportionate repression of a banned demonstration, 8 April 2004, ICC-02/11-25-Anx2.9, pages 16-18.

⁶¹ Amnesty International, Côte d’Ivoire: Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11; Commission d’enquête internationale sur les allégations de violations des droits de l’homme en Côte d’Ivoire, Rapport sur la situation des droits de l’homme en République de Côte d’Ivoire depuis le 19 septembre 2002 jusqu’au 15 octobre 2004, 25 May 2004, ICC-02/11-Anx2.16, page 35.

⁶² Amnesty International, Côte d’Ivoire: Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11, page 14.

⁶³ Amnesty International, Côte d’Ivoire: Les femmes, victimes oubliées du conflit, 15 March 2007, ICC-02/11-25-Anx2.11, page 14.

⁶⁴ HRW, Côte d’Ivoire: “My Heart is Cut”, Sexual Violence by Rebels and Pro-Government Forces in Côte d’Ivoire, August 2007, ICC-02/11-25-Anx2.23, page 76.

31. The material submitted by the Prosecutor suggests that killings of the kind described above were committed systematically and in a variety of locations, as government forces sought out opponents from so-called 'black-lists'.⁶⁵ The supporting material refers repeatedly to the existence of death squads that were reasonably well-organised and which targeted particular individuals.⁶⁶ Government forces focussed on those who were associated with the 2002 coup, and they especially singled out foreigners, Muslims and northerners.⁶⁷ It appears that rape was consistently used against individuals who were perceived to have an affiliation with the rebels. Women associated with the political opposition or who had a particular ethnic or national background appear to have been chosen on the basis that they were rebel supporters. Government forces committed offences of murder and rape throughout the territory of the Côte d'Ivoire,⁶⁸ during a prolonged period of time (at least between 19 September 2002 and March 2006). These attacks against the civilian population resulted in, at a minimum, hundreds of deaths and the rape of many individuals.⁶⁹
32. The planned nature of these offences,⁷⁰ the identities of the victims and the perpetrators and the way particular individuals were selected during the

⁶⁵ Human Rights Watch, *Trapped between two wars: Violence against civilians in western Côte d'Ivoire*, August 2003, ICC-01/11-25-Anx2.22, page 41; Amnesty International, *Côte d'Ivoire: a succession of unpunished crimes*, ICC-02/11-25-Anx2.7, page 20; BBC News: *Eyewitness: Ivory Coast mass grave*, ICC-02/11-25-Anx2.15, page 3; *Rapport de la Commission d'enquête internationale sur les allégations de violations des droits de l'homme en Côte d'Ivoire*, 25 May 2004, ICC-02/11-25-Anx2.16, page 25; Amnesty International, *Côte d'Ivoire : A Succession of Unpunished Crimes*, 27 February 2003, ICC-02/11-25-Anx2.7, page 20.

⁶⁶ UN, *Report of an urgent human rights mission to Côte d'Ivoire*, 24 January 2003, ICC-02/11-25-Anx2.19, pages 14-15; *Le Monde*, *A Abidjan, les escadrons de la mort terrorisent l'opposition*, 16 November 2002, ICC-02/11-25-Anx2.30.

⁶⁷ Amnesty International, *Côte d'Ivoire: Amnesty International craint des règlements de comptes et des dérives xenophobes*, 23 September 2002, ICC-02/11-25-Anx2.8.

⁶⁸ See instances in paragraphs 17 to 19 above.

⁶⁹ See notably paragraphs 17 to 19 above.

⁷⁰ See paragraphs 17 to 19, 29 and 31 above.

attacks (*i.e.* those perceived to be disloyal to the government), support the conclusion that these were not spontaneous, isolated events.

33. Accordingly, the information sufficiently indicates that the attacks against the civilian population by the government forces were of a widespread and systematic nature, and they were committed pursuant to a State policy.

34. On the basis of the examples considered by the Chamber, there is a sufficient basis to conclude that there was a widespread and systematic attack directed against members of the civilian population who were believed to support the rebel forces, following the attempted coup d'état of 19 September 2002. Accordingly, the Chamber is of the view that the incidents of murder and rape which formed an integral part of the events analysed above, appear to constitute crimes against humanity under Article 7(1)(a) and (g) of the Statute.

35. In light of the limited information provided by the Prosecutor, the Chamber is unable to assess whether crimes against humanity may also have been committed by any of the rebel forces.

V. Conclusion

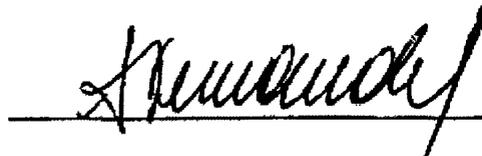
36. In accordance with the Decision of 3 October 2011, and in light of the information analysed above, the Chamber is of the view that the violent events in Côte d'Ivoire in the period between 19 September 2002 and 28 November 2010, although reaching varying levels of intensity at different locations and at different times, are to be treated as a single situation, in which an ongoing crisis involving a prolonged political dispute and power-struggle culminated in the events in relation to which the Chamber earlier authorised an investigation. The Chamber concludes that there is reasonable basis to believe that, in the course of these events, acts of

murder and rape that could amount to war crimes or crimes against humanity were committed.

37. Accordingly, the Chamber expands its authorisation for the investigation in Côte d'Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010.

38. The Chamber notes that the Prosecutor has referred to other crimes committed during this period that may fall within the jurisdiction of the Court. The Chamber has concentrated on the most significant of the samples of incidents. Accordingly the Prosecutor is not limited as to range of offences within the jurisdiction of the Court that he is entitled to consider, provided they fall within the timeframe for the investigation hereby authorised by the Chamber.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi



Judge Elizabeth Odio Benito



Judge Adrian Fulford

Dated this 22 February 2012

At The Hague, The Netherlands