

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/11**  
Date: **23 June 2011**

**PRE-TRIAL CHAMBER III**

**Before:** Judge Odio Benito  
Judge Adrian Fulford  
Judge Silvia Fernandez de Gurmendi

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**Public Document**

**Request for authorisation of an investigation pursuant to article 15**

**Source:** Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(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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**Registrar**  
Silvana Arbia

**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Prosecutor hereby requests authorization from the Pre-Trial Chamber to proceed with an investigation into the situation in the Republic of Côte d'Ivoire since 28 November 2010, pursuant to Article 15(3) of the Rome Statute.
2. Violence has reached unprecedented levels in the aftermath of the presidential election held on 28 November 2010. There is a reasonable basis to believe that at least 3000 persons were killed, 72 persons disappeared, 520 persons were subject to arbitrary arrest and detentions and there are over 100 reported cases of rape, while the number of unreported incidents is believed to be considerably higher.
3. Soon after the final round of elections, security forces loyal to Laurent Gbagbo, aided by youth leaders and group, militias and Liberian mercenaries, launched attacks against civilians perceived to be supporters of Alassane Ouattara. They acted pursuant to a policy to retain Laurent Gbagbo in power by all means. Most of these attacks were carried out with heavy war weaponry and targeted civilians in Abidjan and its neighbourhoods, as well as numerous locations in the Western part of Côte d'Ivoire. As a result, pro-Gbagbo forces allegedly committed crimes against humanity, including murder, rape, other forms of sexual violence, imprisonment and enforced disappearance.
4. By 25 February 2011, the situation escalated into a non-international armed conflict between pro-Gbagbo forces and armed forces loyal to Alassane Ouattara. The latter are comprised of the *Forces Nouvelles* (later renamed the *Forces Républicaines de Côte d'Ivoire* - FRCI) and were supported by a tribal defence group referred to as the *Dozo* and a group of Burkinabe militiamen. There is a reasonable basis to believe that in the context of this armed conflict, both sides committed war crimes on a large scale, including murder, rape, attacking civilians and attacking buildings dedicated to religion.

5. In addition, pro-Gbagbo forces attacked personnel and equipment of the United Nations Operation in Côte d'Ivoire.
6. The identification of the persons who bear the greatest responsibility for ordering or facilitating the crimes is the main objective of the envisaged investigation.
7. Due to the absence of national proceedings relating to those bearing the greatest responsibility for these crimes, and in the light of the gravity of the acts committed, the Prosecutor submits that the potential cases that would arise from its investigation of the situation would be admissible. Furthermore, based on the available information, the Prosecutor has no reason to believe that the opening of an investigation into the situation would not be in the interests of justice.

## **II. Procedural History**

8. By letter of 19 May 2011, the Prosecutor notified the President of the Court, in accordance with Regulation 45 of the Regulations of the Court of his intention to submit a request for the authorisation of an investigation into the situation pursuant to Article 15 (3) of the Rome Statute.<sup>1</sup>
9. On 22 of June 2011, the Presidency of the Court assigned the situation in the Republic of Côte d'Ivoire to Pre-Trial Chamber III.<sup>2</sup>

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<sup>1</sup> ICC-02/11-1-Anx.

<sup>2</sup> ICC-02/11-2.

### III. Background

#### A) *The 2010 presidential election in Côte d'Ivoire and its aftermath*

10. The November 2010 election was the first presidential election held in Côte d'Ivoire since October 2000. In 2002 a failed coup d'état led to the fragmentation of the Ivoirian armed forces and escalated to a division of the country. As the culmination of the peace process initiated after the 2002 crisis, the November 2010 election held particular significance to the future of Côte d'Ivoire.
11. The first round of the election took place on 31 October 2010. Laurent Gbagbo of the *La Majorité Présidentielle* (LMP) alliance and Alassane Ouattara of the *Rassemblement des houphouëtistes pour la démocratie et la paix* (RHDP) alliance were front runners. On 28 November, the second round of the presidential elections was held in a climate of tension and mutual accusations.
12. On 2 December, the Chair of the Independent Electoral Commission announced the provisional results of the second round of the presidential elections, declaring that Alassane Ouattara had garnered 54.1 per cent of the votes, and Laurent Gbagbo 45.9 per cent. Later that day, the President of the Constitutional Council, overturned the decision of the Independent Electoral Commission and declared Gbagbo victorious. Soon after, the two candidates simultaneously declared themselves President of Côte d'Ivoire. Ouattara was quickly backed by the international community as the sole legitimate president.<sup>3</sup>

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<sup>3</sup> Peace and Security Council of the African Union, 252 meeting, 9 December: CIV-OTP-0002-0621; African Union Press Release, The African Union is deeply concerned by developments in the situation in Côte d'Ivoire, 3 December 2010: CIV-OTP-0002-0624; 7 December, Final Communiqué on The Extraordinary Session Of The Authority Of Heads Of State And Government On Côte D'Ivoire, ECOWAS: CIV-OTP-0002-0625.

13. The electoral crisis reignited large-scale violence in the country. Amid a rapidly deteriorating situation, the civilian death toll and the flow of displaced persons fleeing violence to other zones or to neighbouring countries rose.
14. Despite the repeated and sustained mediation efforts of the international community, Laurent Gbagbo refused to relinquish power. On 11 April, following military operations conducted by forces loyal to President Alassane Ouattara, backed by UNOCI and French Licorne troops, Laurent Gbagbo was arrested and placed in the custody of President Ouattara's Government.<sup>4</sup>

***B) Activities of the Office of the Prosecutor in relation to the situation in Côte d'Ivoire***

15. The situation in the Republic of Côte d'Ivoire has been under preliminary examination by the Office of the Prosecutor since the receipt on 1 October 2003 of a declaration from the Government of Côte d'Ivoire, dated 18 April 2003, by which it accepted the exercise of jurisdiction by the Court in accordance with article 12(3) of the Rome Statute. The letter states:

*Pursuant to article 12(3) of the Statute of the International Criminal Court, the Government of Côte d'Ivoire accepts the jurisdiction of the Court for the purposes of identifying, investigating and trying the perpetrators and accomplices of acts committed on Ivorian territory since the events of 19 September 2002. Accordingly, Côte d'Ivoire undertakes to cooperate with the Court without delay or exception in accordance with Part 9 of the Statute. This declaration shall be valid for an unspecified period of time and shall enter into effect on being signed.<sup>5</sup>*

<sup>4</sup> BBC, "UN confirms strikes," 11 April 2011: CIV-OTP-0002-0258

<sup>5</sup> Republic of Côte d'Ivoire, Declaration Accepting the Jurisdiction of the International Criminal Court, 18 April 2003, <http://www.icc-cpi.int/NR/rdonlyres/7DA08D8E-FF5E-40C8-92D7-F058D5B032F3/279779/ICDE2.pdf>

16. Since the upsurge of violence following the second-round of the presidential election of 28 November 2010, the Office of the Prosecutor has repeatedly reminded the political and military leaders of Côte d'Ivoire that they would be held to account for any alleged crimes committed during the post-election violence and urged the supporters of the candidates and security forces to refrain from violence.<sup>6</sup>
17. On the 14 December 2011, the Prosecutor, the President and the Registrar of the Court received a letter from Alassane Ouattara in his capacity as newly elected President of Côte d'Ivoire, confirming the continued validity of the Declaration of 18 April 2003 and committing his country to cooperate fully and without delay with the Court, in particular with respect to crimes and abuses committed since March 2004.<sup>7</sup>
18. On 15 March 2011, the Prosecutor received a memorandum from lawyers representing President Ouattara which compiled information on crimes committed in the context of the post-election violence in Côte d'Ivoire since 28 November 2010. The memorandum contains information on alleged facts, their legal characterisation under the Rome Statute as well as considerations related to jurisdiction and admissibility.<sup>8</sup>
19. On 25 March 2011, the Human Rights Council expressed concern at "the seriousness and extent of the abuses and violations of international human rights law and international humanitarian law" and decided to dispatch an

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<sup>6</sup> France 24, CIV-OTP-0002-0996; ICC Website, <http://www.icc-cpi.int/NR/rdonlyres/DDD3FE71-F3D9-474E-8E0A-4647CDEC0D55/282750/CôtedIvoireENG.pdf>. See also the statement by the Deputy-Prosecutor indicating that the Office is monitoring the situation in Côte d'Ivoire and urging the supporters of the candidates and security forces to refrain from violence, ICC Website, <http://www.icc-cpi.int/NR/rdonlyres/DDD3FE71-F3D9-474E-8E0A-4647CDEC0D55/282750/CôtedIvoireENG.pdf>

<sup>7</sup> Lettre du Président de la République de Côte d'Ivoire, 14 December 2010, <http://www.icc-cpi.int/NR/rdonlyres/7DA08D8E-FF5E-40C8-92D7-F058D5B032F3/283211/OuattaraICCCConfirmationLetter141211.pdf>

<sup>8</sup> Annex 2

independent, international commission of inquiry to "investigate the facts and circumstances surrounding the allegations of serious abuses and violations of human rights committed in Côte d'Ivoire following the presidential election of 28 November 2011".<sup>9</sup> The report of the Commission of inquiry, subsequently issued on 8 June 2011, concluded that some of the many violations of human rights and international humanitarian law committed during the relevant period may amount to crimes against humanity and war crimes.<sup>10</sup>

20. By resolution 1975 (30 March 2011), the United Nations Security Council condemned 'the serious abuses and violations of international law in Côte d'Ivoire, including humanitarian, human rights and refugee law' and noted: "Considering that the attacks currently taking place in Côte d'Ivoire against the civilian population could amount to crimes against humanity and that perpetrators of such crimes must be held accountable under international law and noting that the International Criminal Court may decide on its jurisdiction over the situation in Côte d'Ivoire on the basis of article 12, paragraph 3 of the Rome Statute".<sup>11</sup>
21. On 31 March 2011, the Prosecutor received a series of documents from the cabinet of Laurent Gbagbo, including a "Memorandum on alleged crimes against humanity committed in Côte d'Ivoire".<sup>12</sup>
22. On 4 May 2011, the Prosecutor received a further letter from President Ouattara confirming his request that the Office of the Prosecutor conduct independent and impartial investigations into the most serious crimes committed since

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<sup>9</sup> Human Rights Council, 16 Ordinary Session, 18 March 2011, A/HRC/RES/16/25, par. 3 and 10: CIV-OTP-0002-0614

<sup>10</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte //d'Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at page 0573.

<sup>11</sup> Security Council, Resolution 1975 (2011), Adopted by the Security Council at its 6508th meeting, on 30 March 2011: CIV-OTP-0002-0616

<sup>12</sup> Annex 2 – Article 15 Communications from Governmental sources



28 November 2010 on the entire Ivorian territory, and to ensure that the persons bearing the greatest criminal responsibility for these crimes are identified, prosecuted and tried before the ICC. President Ouattara further reiterated his commitment to provide full cooperation with the Office in the course of these proceedings. The letter states:

*For reasons you are aware of, the transfer of power following the presidential election of 31 October and 28 November 2010 could not occur in the peaceful manner I wished for. A serious crisis has ensued, during which it is unfortunately reasonable to believe that crimes falling under the jurisdiction of the International Criminal Court have been committed. These crimes are of such gravity that I call for your assistance to make sure that the main perpetrators will not remain unpunished, hence contributing to restoring the rule of law in Côte d'Ivoire.*<sup>13</sup> (OTP translation)

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<sup>13</sup> Président de la République de Côte d'Ivoire, Lettre du 3 Mai 2011, <http://www.icc-cpi.int/NR/rdonlyres/7DA08D8E-FF5E-40C8-92D7-F058D5B032F3/283315/LetterOuattaratoOTP030511.PDF>

#### IV. Examination of Available Information

23. In examining the available information, the Prosecution has borne in mind the nature of the proceedings under article 15, the low threshold to reach the relevant findings, as well as the object and purpose of the authorisation procedure decision.<sup>14</sup>
24. The Prosecution has proceeded to the evaluation of sources following consistent methodology based on criteria such as relevance (usefulness of the information to determine the elements of a possible future case), reliability (refers to the trustworthiness of the provider of the information as such), credibility (refers to the quality of the information in itself, to be evaluated by criteria of *immediacy internal consistency* and *external verification*), and completeness (the extent of the source's knowledge or coverage vis-à-vis the whole scope of relevant facts). Furthermore, it has endeavoured to corroborate the information provided with available information from open sources. Full references of the below-mentioned reports are provided in Annex 3 and 4.
25. The incidents referred to in this Application are not exhaustive. The Prosecution selected a limited number of incidents, aiming to provide a sample that is reflective of the gravest incidents and the main types of victimisation. Moreover, the Prosecution presents a limited number of crimes capturing the incidents referred to in this Application. The legal characterisation of these incidents and the crimes presented at a later stage of the proceedings, if authorisation of an investigation is granted, may deviate from this Application.

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<sup>14</sup> The Prosecution stresses that for the purpose of the investigation and the development of the proceedings, it is neither bound by its submissions with regard to the different acts alleged in its article 15 application, nor by the incidents and persons identified therein, and accordingly may, upon investigation, take further procedural steps in respect of these or other acts, incidents or persons, subject to the parameters of the authorised situation.

## *A) United Nations*

26. The Prosecution has systematically reviewed the press releases and reports of the United Nations Operation in Côte d'Ivoire (UNOCI). UNOCI was established by resolution 1528 (2004) of the United Nations Security Council (UNSC), of 27 February 2004, for an initial period of 12 months as from 4 April 2004. Its mandate was since then regularly renewed by the UNSC. It has issued regular press releases and statements, updating information on crimes and reporting especially on the attacks committed by the pro-Gbagbo forces against civilians. While present in the field, the mission was able to closely monitor the developments, the escalating violence and the casualties. According to its spokesperson, the reporting by the UNOCI on the death toll followed a strict and consistent methodology. UNOCI set up a hotline, recording primary reports of incidents. Upon receipt of such information, a UNOCI team would go to the place of the incident and collect corroborative information, including details about the name of the victim, the age, the identity of the perpetrator and the location of the victim's body.<sup>15</sup>

27. On the 10 May 2011, UNOCI issued a new Report on Human Rights Violations committed in the West of Côte d'Ivoire, based on the investigation led by a team of 23 investigators. The team deployed from 1 to 24 April 2011 in three groups in order to cover 85 villages of the 18 Montagnes and Moyen Cavally region along three axes: Danané-Toulepleu; Man-Mahapleu and Duékoué-Blody. The investigative teams interviewed the local authorities in the region, witnesses of the crimes, victims, representatives of the different communities and civil society. They interviewed 35 militiamen and military commanders from both the pro-Gbagbo and pro-Ouattara sides.

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<sup>15</sup> UNOCI, Compte rendu du point de presse hebdomadaire du 24 mars 2011 : CIV-OTP-0002-0983.

28. The Prosecution has also reviewed the Report of the Independent Commission of Inquiry on Côte d'Ivoire established pursuant to Resolution 16/25 adopted on the 16<sup>th</sup> ordinary session of the Human Rights Council. In the course of a four-week long field inquiry conducted in May 2011, the three members of the commission, M. Vitit Muntarbhorn as President of the Commission, Mme Reine Alapini Gansou and M. Suliman Baldo assisted by a group of investigators and experts, interviewed more hundreds of victims and witnesses of the crimes as well as local community leaders and NGOs active in the relevant regions.
  
29. The progress reports of the United Nations Secretary-General (UNSG) on the situation in Côte d'Ivoire also provide valuable details regarding the allegations. They include information such as the exact locations where crimes were committed, the pattern of attacks, and indicate indicia of state involvement through the instigation of xenophobia and the fanning of ethnic and political hate.
  
30. Other UN sources used in this application include the two reports from the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire issued in February and June 2011 respectively, and the Office for the Coordination of Humanitarian Affairs (OCHA) reports. In light of the deteriorating situation in Côte d'Ivoire since April 2011, OCHA strengthened its presence in the country to meet evolving coordination needs in the areas of protection, information management and surge capacity. Following the Presidential elections of November 2010, and an increase in humanitarian needs, OCHA reopened its Country Office in Côte d'Ivoire and has reported on the humanitarian crisis and human rights violations on a regular basis since then.

**B) NGO reports, statements and press releases**

31. This Application also relies on reports of international NGOs such as HRW, AI, FIDH and many others. HRW has been operating in Côte d'Ivoire since the 2000 coup of General Robert Guei, and since the beginning of the 2010 post-election crisis, has been reporting on the escalating violence. The reports, press releases and press statements published by HRW between 4 December 2010 and April 2011 are based on extensive eye witnesses or/and victim interviews and in-depth field investigations. The HRW Côte d'Ivoire team has investigated allegations against both Gbagbo and Ouattara forces, and has collected witness interviews from both Abidjan and the main cities in the West, where crimes of ethnic nature have been committed. For example, they have conducted investigations in the Grand Gedeh region of Liberia between 26 March and 7 April 2011, interviewing over 120 victims of and witnesses to the human rights violations committed in the West. Between 13 and 25 May 2011, HRW interviewed 132 victims and witnesses to violence by both sides during the battle for Abidjan and in the weeks after Gbagbo's arrest. The information they provide is generally reliable and well documented as it includes elements on the targeted victims, circumstances surrounding the commission of the crimes and information on the alleged perpetrators.

32. Amnesty International has also been reporting and voicing concerns about the rising violence and xenophobia in Côte d'Ivoire even prior to the second round of the presidential election. Their press statements and reports are based on interviews with several eye witnesses, corroboration of information from different sources and field research.

**C) Media**

33. A third cluster of information includes reporting from international and local media outlets. International media are often the first to report on developing

situations and provide information which is generally credible. Nonetheless, the Prosecution systematically attempts to corroborate this information with other sources. Credible outlets, such as the BBC, Reuters, AFP and RFI as well as specialized outlets such as Jeune Afrique and Africa Confidential have been preferred over others. Credible information from local media has also been used.

34. In sum, the Prosecution has determined that the information available is reliable, and has concluded that it indicates that serious crimes were committed. This Application identifies the information, cites its sources and attaches as annexes the pertinent documents.

## V. Jurisdiction

35. Article 15 of the Rome Statute provides that the Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. Pursuant to paragraph 3 of article 15, if the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Rule 48 of the Rules of Procedure and Evidence provides that in determining whether there is a reasonable basis to proceed with an investigation under article 15(3), the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).
36. Article 53(1)(a) provides that the Prosecutor shall consider whether the information available to him provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed.
37. The term 'reasonable basis' requires satisfaction that there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being committed. A finding on whether there is a

sensible justification should be made bearing in mind the specific purpose underlying this procedure.

38. For a crime to fall within the Court's jurisdiction: (i) the crime must be one of the crimes set out in article 5 of the Statute (jurisdiction *ratione materiae*); (ii) the crime must have been committed within the timeframe specified in article 11 of the Statute (jurisdiction *ratione temporis*); and (iii) the crime must satisfy one of the two criteria laid down in Article 12 of the Statute.<sup>16</sup>
39. With regard to the first condition, as demonstrated in detailed in Section VIII, the information obtained by the Prosecution provides a reasonable basis to believe that at a minimum the following conduct has been committed in Côte d'Ivoire since the 28 November 2010: murder constituting a crime against humanity under article 7(1)(a); rape and other forms of sexual violence constituting a crime against humanity under article 7(1)(g); imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 7(1)(e); enforced disappearance of persons under article 7(1)(i); and murder under article 8(2)(c)(i); attacking civilians under article 8(2)(e)(i); attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission under article 8(2)(e)(iii), attacking protected objects under article 8(2)(e)(iv) and rape under article 8(2)(e)(vi). This is without prejudice to other possible crimes within the jurisdiction of the Court which may be identified during the course of investigations.
40. The alleged crimes which form the focus on the Prosecution's application, committed since 28 November 2010, are under jurisdiction *ratione temporis*, since the Republic of Côte d'Ivoire, on 1 October 2003, lodged its declaration accepting

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<sup>16</sup> *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo", [ICC-01/05-01/08-14-tENG](#), 17 July 2008, para. 12.

the jurisdiction of the Court in accordance with article 12(3). The acceptance of jurisdiction was reaffirmed by letter on 14 December 2010.

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 exercise 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).<sup>17</sup>
43. The alleged crimes are alleged to have been committed on Ivorian territory.

## **VI. Admissibility**

44. Article 53(1)(b) provides that in determining whether there is a reasonable basis to proceed, the Prosecutor shall consider whether “the case is or would be admissible under Article 17”. The Prosecution has considered admissibility at this stage taking into account the potential cases that would likely arise from an investigation into the situation.

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<sup>17</sup> See, ICC-01/09-19, paras. 204-207.



### A) Complementarity

45. Admissibility at the situation phase should be assessed against certain criteria defining a 'potential case' such as: (i) the groups of persons involved that are likely to be the focus of an investigation for the purpose of shaping the future case(s); and (ii) the crimes within the jurisdiction of the Court allegedly committed during the incidents that are likely to be the focus of an investigation for the purpose of shaping the future case(s). The Prosecution's selection of the incidents or groups of persons that are likely to shape future case(s) is preliminary in nature and is not binding for future admissibility assessments, meaning that the Prosecution's selection on the basis of these elements for the purposes of defining a potential 'case' for this particular phase may change at a later stage, depending on the development of the investigation.
46. Accordingly, the Prosecution has attached two confidential, *ex-parte*, annexes. Annex 1B presents a preliminary list of persons or groups belonging to or associated with the pro-Gbagbo and pro-Ouattara sides that appear to bear the greatest responsibility for the most serious crimes, with an indication of their specific role. As set out in the Office's Prosecutorial Strategy, the category of persons bearing the greatest responsibility includes those situated at the highest echelons of responsibility, including those who ordered, financed, or otherwise organized the alleged crimes.<sup>18</sup> Annex 1A presents an indicative list of crimes within the jurisdiction of the Court allegedly committed during the most serious incidents within the situation.
47. With respect to the assessment of complementarity under article 17(1)(a)-(c), the Appeals Chamber has confirmed that the first question is whether there are or have been any relevant national investigations or prosecutions. Where there are

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<sup>18</sup> *Prosecutorial Strategy 2009-2011* (ICC-OTP), para 19; REF <http://www.icc-cpi.int/NR/rdonlyres/66A8DCDC-3650-4514-AA62-D229D1128F65/281506/OTPProsecutorialStrategy20092013.pdf>

or have been no national proceedings, i.e. there is domestic inactivity, the question of unwillingness or inability does not arise. Instead, there will be a presumption of admissibility in relation to article 53(1)(b), subject to article 17(1)(d).<sup>19</sup>

48. The Government of Laurent Gbagbo provided the Prosecution with information suggesting the attempted launching of investigations into acts of violence and breaches of the penal code committed since 28 November 2010. With respect to investigations into the alleged crimes that are subject of this application, the only relevant information provided pertains to an instruction given on 24 March 2011 by the Military Prosecutor of Abidjan (« Commissaire du Gouvernement du Tribunal Militaire d'Abidjan ») to the National Gendarmerie to proceed with an inquiry into the alleged killing of women during a demonstration in Abobo and the shelling of civilians in Abobo by security forces. The Prosecution has no information that this instruction has been acted upon, especially since the change of Government that has effectively occurred in the meantime and the appointment of a new Military Prosecutor.

49. Rather, in his letter to the Prosecutor dated 3 May 2011, President Ouattara noted his assessment that “the Ivorian judiciary is not at this stage in the best position to address the most serious of the crimes” committed since 28 November 2010, and “any attempt at trying the most responsible individuals may face multiple obstacles”. Although President Ouattara announced, on 27 April 2011, the launch of a criminal probe against Laurent Gbagbo, Simone Gbagbo and 100 other close associates, the Justice Minister specified that this preliminary investigation excludes crimes that may fall under the jurisdiction of the ICC.<sup>20</sup>

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<sup>19</sup> *Case The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497, para 78.

<sup>20</sup> Abidjan Net, Côte d'Ivoire: début mercredi de l'enquête préliminaire sur Laurent Gbagbo, 1st May 2011 : CIV-OTP-0002-0837.

50. On 12 May 2011, the military Prosecutor initiated an investigation against 52 FDS military, essentially from CECOS, BAE and specials gendarmerie units who according to the prosecutor were under the combined command of the Republican Guard and the chief of CECOS. The investigation may reportedly include FRCI elements at a later stage. There also is information that the Prosecutor of Daloa has initiated preliminary investigations into the events occurred in the region.<sup>21</sup> The Prosecution has to date no information that these proceedings may focus on the persons bearing the greatest responsibility for the most serious crimes falling within ICC jurisdiction.
51. On 15 June 2011, the Government Côte d'Ivoire announced the creation of a national commission of inquiry for human rights violations during the post election crisis in Côte d'Ivoire.<sup>22</sup> To the knowledge of the Prosecution this commission has not conducted, and is not intended to conduct, criminal investigations against the persons bearing the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court that were committed in the context of the post-election violence in Côte d'Ivoire. Concerning such criminal investigations, President Ouattara has already stated to the Prosecution that the Ivorian judiciary is at this stage not best placed to address the most serious of the crimes.<sup>23</sup>
52. Because no national investigations or proceedings are pending in Côte d'Ivoire against those bearing the greatest responsibility for the most serious crimes falling within the jurisdiction of the Court allegedly committed in Côte d'Ivoire since 28 November 2010, the Prosecution submits that the potential cases that would arise from its investigation of the situation would be currently admissible.

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<sup>21</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte //d'Ivoire, A/HRC/17/48, 8 June 2011 : CIV-OTP-0002-0573 at 0591

<sup>22</sup> L'express, 16 juin, Côte d'Ivoire: création d'une commission d'enquête sur les exactions : CIV-OTP-0002-0832 ;

<sup>23</sup> Letter to the Prosecutor dated 3 May 2011. <http://www.icc-cpi.int/NR/rdonlyres/7DA08D8E-FF5E-40C8-92D7-F058D5B032F3/283315/LetterOuattaratoOTP030511.PDF>

53. With respect to the possible existence of relevant national proceedings in other States with jurisdiction, the Prosecutor is aware of the information that lawyers of Laurent Gbagbo, Jacques Verges and Roland Dumas, have lodged a complaint in France for crimes against humanity regarding the alleged massacre committed in Dekoué, Western Côte d'Ivoire on 29-30 March.<sup>24</sup> The Prosecutor will seek clarification from the French authorities as to any procedural follow up on this complaint.<sup>25</sup> The Prosecution will continue to assess the existence of national proceedings for as long as the situation remains under investigation, should the Chamber authorise the investigation.<sup>26</sup>

#### **B) Gravity**

54. In terms of the gravity of the cases that would arise from an investigation of the situation, the Prosecution's assessment of gravity includes both quantitative and qualitative considerations based on the prevailing facts and circumstances. As stipulated in Regulation 29(2) of the Regulations of the Office of the Prosecutor, the non-exhaustive factors that guide the Office's assessment include the scale, nature, manner of commission of the crimes, and their impact.<sup>27</sup>

55. The gravity assessment under Article 17(1)(d) must be conducted against the backdrop of a potential case within the context of a situation. This involves a generic examination of (i) whether the persons or groups of persons that are likely to be the object of an investigation include those who may bear the greatest responsibility for the alleged crimes committed; and (ii) the gravity of the crimes allegedly committed within the incidents, which are likely to be the object of an investigation. Accordingly, the Prosecution's submissions on gravity relates to

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<sup>24</sup> Abidjan Net, Plainte des avocats de Gbagbo pour crimes contre l'humanité : CIV-OTP-0002-0835.

<sup>25</sup> See Par. 181 below, in relation to the process envisaged under Article 18.

<sup>26</sup> Regulation 29(4), Regulations of the Office of the Prosecutor.

<sup>27</sup> See *Prosecutor v. Abu Garda*, Decision on the Confirmation of Charges, ICC-02/05-02/09-243-Red, 8 February 2010, paras. 31.

an assessment of gravity of one or more potential cases, rather than the gravity of the entire situation.

56. The Prosecution has examined the gravity of the potential cases that would arise from an investigation of the situation in the light of the preliminary list of persons or groups of persons who appear to bear the greatest responsibility for the most serious crimes, as identified in Annex 1B; and (ii) the gravity of the crimes allegedly committed in the context of the most serious incidents, as provisionally identified in Annex 1A.
57. With respect to the first element concerning the groups of persons likely to be the focus of the Prosecution's future investigations listed in Annex 1B, the information available indicates their high-ranking political or command positions and their alleged role in the violence, namely ordering, inciting, planning, facilitating, and otherwise contributing to the organization of the violence.
58. In relation to the second element concerning the crimes allegedly committed within the incidents that are likely to be the object of the Prosecution's investigations, as listed in Annex 1A, the information available indicates that serious crimes by their very nature such as murders, rapes, and enforced disappearances have been committed on a large-scale, as part of a plan or in furtherance of a policy, or in the context or association with an armed conflict. Many of these crimes were committed with cruelty and on ethnic, religious or politically discriminatory grounds.

## **VII. Interests of Justice**

59. Under article 53(1), while jurisdiction and admissibility are positive requirements that must be satisfied, the interests of justice is a potential

countervailing consideration that may produce a reason not to proceed. As such, the Prosecutor is not required to establish that an investigation is in the interests of justice, but rather, whether there are specific circumstances which provide substantial reasons to believe it is not in the interests of justice to do so at that time.

60. Based on the available information, the Prosecution has no reason to believe that the opening of an investigation into the situation would not be in the interests of justice.

### **VIII. Crimes within the jurisdiction of the Court**

61. Pursuant to Regulation 49 of the Regulations of the Court, the Prosecution provides the following information setting out: (i) a reference to the crimes believed to have been committed and a statement of the facts being alleged to provide the reasonable basis to believe that those crimes have been committed; and (ii) a declaration with reasons that the listed crimes fall within the jurisdiction of the Court.

#### **(i) Alleged crimes and statement of facts**

62. From the second round of the presidential election held on 28 November 2010 until the filing of this Application, crimes appearing to fall under the jurisdiction of the Court have been committed in Côte d'Ivoire.
63. According to the Independent International Commission of Inquiry on Côte d'Ivoire, a reasonable estimate suggests that at least 3000 persons have been killed between 28 November 2010 and 28 May 2010 (end date of the

commission's mission).<sup>28</sup> To date, the Prosecution recorded a minimum of 1361 and a maximum of 2632 deaths, or 1990 deaths on average from open source reports. From this average, the vast majority of those killed appear to be civilians.

64. In the below paragraphs, the Prosecutor provides summarized information on the places and the time-period of the alleged commission of the crimes, and the persons or groups involved. Further details are provided in confidential annexes 1A (list of incidents) and 1B (list of individuals who may be among those most responsible).

**(a) Places of the alleged commission of the crimes**

65. The main affected areas of the violence arising from the situation include: (i) the populated neighbourhoods of Abidjan, particularly Abobo, Port-Bouët, Adjamé, Attécoubé, Koumassi, Treichville and Yopougon and (ii) cities located in the Central and Western regions of Côte d'Ivoire, including Yamoussoukro, Gagnoa, Divo, Daoukrou, San Pedro, Toulepleu, Guiglo, Duékoué, and Bloléquin. A map locating the main incidents is provided in Annex 1C.

**(b) Time period of the alleged commission of the crimes**

66. Violence erupted shortly after the 2 December 2010 announcement of the provisional results of the run-off election, when security forces (FDS) loyal to the outgoing President and groups and militias affiliated with his party launched attacks against communities believed to be strongholds for Alassane Ouattara.<sup>29</sup> Additional deaths were also reported sporadically in the following 2 weeks, in

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<sup>28</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte //d'Ivoire, A/HRC/17/48, 8 June 2011 : CIV-OTP-0002-0573 at page 0576

<sup>29</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0018

their vast majority in Abidjan. A major upsurge of violence occurred between 16 and 21 December 2010 in the context of the pro-Ouattara march on the premises of the Ivorian Radio and Television (RTI) in Abidjan and ensuing clashes with the pro-Gbagbo security forces.<sup>30</sup>

67. The violence continued to escalate throughout the month of January 2011 as FDS used force against Ouattara's supporters on a number of occasions in the neighbourhoods of Abidjan and in other parts of the country, including Gagnoa, Divo and Daoukro.<sup>31</sup> Confrontation further escalated by the end of February as President Ouattara's call, on 19 February 2011, for further protests was met with forceful response by the security forces.<sup>32</sup> During the same month, a number of attacks targeting West African nationals were reported in Abidjan and throughout the country.<sup>33</sup>

68. In March 2011, the situation deteriorated further as forces loyal to Laurent Gbagbo resorted to heavy weapons against protesters.<sup>34</sup> Meanwhile, direct military confrontations occurred between the FDS and the *Forces Nouvelles*. In the course of their military offensive, massive crimes against civilians have allegedly been perpetrated by Liberian mercenaries and militia loyal to Laurent Gbagbo and by armed militias and FRCI forces loyal to President Ouattara, particularly

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<sup>30</sup> See among others Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0660-0662

<sup>31</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0019

<sup>32</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0019

<sup>33</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0019 ; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0672

<sup>34</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0020; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011, CIV-OTP-0002-0647 at page 0673



in Douékoué but also in villages in the vicinity of Duékoué, in Bloléquin and in Guiglo.<sup>35</sup>

69. Throughout the period, the UN Mission in Côte d'Ivoire (ONUCI) has been the target of repeated acts of hostility and provocation.<sup>36</sup>

**(c) Persons or groups involved**

70. The information available suggest that crimes may have been committed on one hand by groups composed of the defence and security forces (FDS) loyal to Laurent Gbagbo, including the *Forces Armées Nationales de Côte d'Ivoire* (FANCI),<sup>37</sup> the *Compagnie républicaine de Sécurité* (CRS), the *Centre de Commandement des Opérations de Sécurité* (CECOS), the *Garde républicaine*, the *Brigade Anti-Emeute* (BAE), the *Brigade du Maintien de l'Ordre* (BMO), and the *gendarmerie*.<sup>38</sup> The FANCI is composed of three corps: the ground forces, the air force and the navy. Among the ground forces under the command of General Firmin DETHO LETHO, only elite troops allegedly took part in the conflict. The elite troops are reportedly composed of the air-ground artillery battalion (*battalion d'artillerie air-sol* - BASA), the command and support battalion (*bataillon de commandement et de soutien* - BCS), the paratrooper commando battalion (*battalion de commando parachutistes* - BCP) and a mobile rapid response detachment (*détachement mobile d'intervention rapide* - DMIR). Apparently, the air force did not play a substantial role. As for the Navy, only the marines (*fusiliers marins commandos* - FUMANCO)

<sup>35</sup> HRW, Côte d'Ivoire: Ouattara Forces Kill, Rape Civilians During Offensive, April 9 2011: CIV-OTP-0002-0186 ; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0687-0688 and pages 0690-0699

<sup>36</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0659

<sup>37</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte //d'Ivoire, A/HRC/17/48, 8 June 2011 : [CIV-OTP-0002-0573](#) at page 0578

<sup>38</sup> HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166

allegedly played an active role during the conflict.<sup>39</sup> Both the FANCI and the gendarmerie fall under the authority of the Minister of Defence. The police which falls under the authority of the Minister of Interior has allegedly also been involved as well as Presidential security group (*Groupe de Sécurité du Président de la République* - GSPR) which is part of the special/ combined/ armed units (*Unités/ spéciales/ interarmes*) and is directly subordinated to the cabinet of the president.<sup>40</sup> The aforementioned groups were aided by militia, in particular in the West of the country and youth and political groups known as the “*galaxie patriote*”, as well as by English-speaking “mercenaries”.<sup>41</sup>

71. On the other hand, the information available suggest that crimes may be committed by individuals linked or belonging to pro-Ouattara forces, namely the *Forces Nouvelles*, renamed the *Forces Républicaines de Côte d’Ivoire* (FRCI) on 9 March 2011 and unified with FDS elements on 17 March 2011 by a presidential decree signed by Ouattara.<sup>42</sup> The FRCI was supported by a tribal defence group referred to as the Dozo and a group of Burkinabe militiamen.<sup>43</sup> The *Forces Nouvelles* organization was organized along the structure of national army. After the FRCI were formed, a General Staff exerted responsibilities over the entire territory of Côte d’Ivoire subdivided into four areas under the command of area commanders.<sup>44</sup>

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<sup>39</sup> UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte //d’Ivoire, A/HRC/17/48 : CIV-OTP-0002-0573 at page 0578

<sup>40</sup> UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte //d’Ivoire, A/HRC/17/48: CIV-OTP-0002-0573 at page 0578

<sup>41</sup> HRW, Côte d’Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0661-0662 ; UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte d’Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at pages 0579-0580

<sup>42</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d’Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010

<sup>43</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0690-0691; Nouvel Observateur, Enquête sur un massacre, 12 May 2011: CIV-OTP-0002-0815

<sup>44</sup> UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte //d’Ivoire, A/HRC/17/48, 8 June 2011 : CIV-OTP-0002-0573 at page 0579

**(ii) Legal characterisation and reasons that the listed crimes fall within the jurisdiction of the Court**

72. For the reasons set out in this application, the information collected by the Prosecution provides a reasonable basis to believe that crimes against humanity under article 7 of the Statute and war crimes under article 8 of the Statute have been committed in the situation.

**(A) CRIMES AGAINST HUMANITY**

73. The available information provides a reasonable basis to believe that multiple crimes committed during the post-election violence since 28 November 2010 occurred in the context of a widespread and systematic attack against the civilian population in Côte d'Ivoire pursuant to or in furtherance of a State or organizational policy to commit such acts on Ivorian territory, within the meaning of article 7(1) of the Statute.

74. The Prosecution submits that pro-Gbagbo forces committed widespread and systematic attacks against civilians associated with his political opponent in pursuance of a policy of the State of Côte d'Ivoire under the leadership of former President Gbagbo to launch violent attacks against political opponents or persons perceived to support the political opponents in order to retain power by all means.

75. The information currently available to the Prosecution does not suggest that there is a reasonable basis that crimes against humanity were committed also by pro-Ouattara forces. However, should an investigation be authorised, the Prosecution intends to investigate also whether crimes against humanity were

committed by pro-Ouattara supporters pursuant to a State or organisational policy to commit such crimes.

76. Pursuant to the Prosecutor's prosecutorial policy, the focus of the Prosecutions investigative activities will be directed at the persons bearing the greatest responsibility for the most serious crimes.<sup>45</sup>

**(a) Contextual elements of crimes against humanity**

77. The contextual elements of crimes against humanity are set out in the Chapeau of article 7 (1) as follows:

*'crimes against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.*

Article 7(2)(a) of the Statute further indicates that:

*'[a]ttack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.*

78. These paragraphs may encompass five contextual elements for crimes against humanity: (i) an attack directed against any civilian population, (ii) a State or organizational policy, (iii) the widespread or systematic nature of the attack, (iv) a nexus between the individual act and the attack, and (v) knowledge of the attack. In light of the nature of the current stage of the proceedings, and bearing in mind that there is presently no suspect before the Court, the last requirement

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<sup>45</sup> Regulation 34, Regulations of the Office of the Prosecutor.

cannot be adequately addressed at this stage, as knowledge is an aspect of the mental element under article 30(3) of the Statute. Thus it limited its analysis to the first four elements.

*(i) Attack directed against any civilian population*

79. The attack consists of a course of conduct involving the multiple commission of acts referred to in article 7(1). The term is not restricted to a military attack, but refers to a campaign or operation carried out against the civilian population.

80. The term “directed against any civilian population” requires a showing that the attacks were directed against the civilian population as a whole and not against randomly selected individuals. It is not necessary for the potential civilian victims of a crime under article 7 of the Statute to constitute a group distinguished by nationality, ethnicity or other distinguishing features. Such a distinction is only necessary for a finding of persecution pursuant to article 7(1)(h).<sup>46</sup>

81. Furthermore, there is no need to establish that the entire civilian population of the geographical area in question was being targeted. However, the civilian population must be the primary object of the attack in question and cannot merely be an incidental victim. The term “civilian population” refers to persons

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<sup>46</sup> In the *Katanga and Ngudjolo* case, Pre-Trial Chamber I observed “as opposed to war crimes which are provided for in article 8 of the Statute, the term ‘civilian population’ within the meaning of article 7 of the Statute affords rights and protections to ‘any civilian population’ *regardless of* their nationality, ethnicity or other distinguishing feature” Decision on the Confirmation of Charges, 30 September 2008, ICC-01/04-01/07-717, para. 399 (emphasis added). In the *Bemba* case, Pre-Trial Chamber II similarly observed that “the potential civilian victims under article 7 of the Statute *could be* of any nationality, ethnicity or other distinguishing features”; Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para.76 (emphasis added). However, in the *Situation in Kenya*, Pre-Trial Chamber II ruled “the potential civilian victims of a crime under article 7 of the Statute *are* groups distinguished by nationality, ethnicity or other distinguishing features”; *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, ICC-01/09-19-Corr, para 81 (emphasis added).

who are civilians, as opposed to members of armed forces and other legitimate combatants.

82. It appears from the available information that most of the attacks carried out by pro-Gbagbo forces were targeting civilians in Abidjan and its neighbourhoods, as well as numerous locations in the Western part of Côte d'Ivoire. According to the International Commission of Enquiry, from mid-December 2010 onwards, pro-Gbagbo armed traded law enforcement weaponry with more sophisticated military weapons including light machine guns AML-90 and 12.7 calibre machine guns, remote propelled grenades RPG-7as well as heavy weaponry such as 82mm and 120mm mortars, multiple rocket launchers BM-21, main battle tanks T-55, Mamba tanks mounted with a medium range ground-air system, armoured personnel carriers BTR-80 and BMP-2, light reconnaissance and support vehicles VLRA mounted with a 20mm canon and ERC-90 Sagaie mounted with a 90mm canon as well as anti-aircraft guns ZSU 23mm/2 and ZSU 23mm/4.<sup>47</sup>

83. Further, the supporting material indicates that the attacks were directed at civilians, often on the basis of ethnic, religious, national or suspected political affiliation. According to the United Nations, shortly after the announcement on 2 December of the provisional results of the run-off election, the regular security forces loyal to Mr. Gbagbo, as well as groups and militias associated with his political party, conducted violent attacks against civilians living in neighbourhoods believed to be strongholds for President Ouattara, especially Abobo and Port Boué.<sup>48</sup> On 2 December, elements of the gendarmerie attacked the Abidjan headquarters of President Ouattara's party, the *Rassemblement des*

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<sup>47</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte //d'Ivoire, A/HRC/17/48, 8 June 2011 : CIV-OTP-0002-0573 at pages 0582-0583.

<sup>48</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0018.

*Républicains*, leaving 8 persons dead and more than 20 wounded.<sup>49</sup> On 4 January, security forces loyal to Laurent Gbagbo killed one supporter of Henri Konan Bédié in an attack against the office of his party, the *Parti Démocratique de Côte d'Ivoire* (PDCI), in Abidjan. Police and gendarmes allegedly fire live ammunition and tear gas at unarmed people inside the building and beat up several militants.<sup>50</sup>

84. There is strong indication that officials of the *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (RHDP) affiliated neighbourhood and youth leaders of the various parties and civil society groups that constitute this coalition, were the object of attacks by regular and irregular pro-Gbagbo forces. Human Rights Watch documented more than 10 forced disappearances or extrajudicial executions that appear to be the result of an organized effort to select, find, and abduct a particular victim associated with the RHDP.<sup>51</sup>

85. In the neighbourhood of Yopougon in Abidjan, considered supportive of Laurent Gbagbo, several civilian supporters of Alassane Ouattara, or other civilians who were identified as such, were arrested, killed and burnt alive by pro-Gbagbo forces.<sup>52</sup> The UN has also noted that some of the homes of Gbagbo's opponents have been marked to identify the ethnicity of their occupants.<sup>53</sup> Several victims and witnesses also testified that houses belonging to northerners and people of the baoulé ethnic groups were marked with the signs "X" and "B" in various neighbourhoods in Abidjan to facilitate the identification of their

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<sup>49</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0018.

<sup>50</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671.

<sup>51</sup> January 26, 2011, Côte d'Ivoire : Violence Campaign by Security Forces, Militias: CIV-OTP-0002-0166.

<sup>52</sup> FIDH, Côte d'Ivoire: It is urgent to prevent the escalation to civil war, March 2011: CIV-OTP-0002-0220 at page 0224; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671.

<sup>53</sup> See BBC News, UN points to Ivory Coast Extra-judicial killing, 3 January 2011: CIV-OTP-0002-0267.

occupants for abduction, extra-judicial killing or destruction/looting of property.<sup>54</sup>

86. Sexual violence appears to be part of the widespread and systematic attack against the civilian population. In general, sexual violence followed ethnic and/or political lines. Victims were often told by their aggressors that they were being victimised as a punishment for their ethnicity or political affiliations. For example, a woman interviewed by HRW and Amnesty International recalled how the pro-Gbagbo militiamen were enraged when they saw she was wearing a T-shirt with a photo of Ouattara and how after they raped her they told her "Go tell Alassane it was us who did this to you".<sup>55</sup> Others who had been arrested at the 16 December demonstration were reportedly raped while in detention in a house guarded by gendarmes.<sup>56</sup>

87. Many incidents of a similar pattern suggest that West-African immigrants or Ivorians of a West African descent were particularly targeted by the Pro-Gbagbo forces during the post-election violence. In Abidjan, the ethnic targeting of West Africans was particularly striking.<sup>57</sup> Several Nigerian and Malian traders described how on 4 and 8 March mobs of an estimated 150 youths armed with machetes and axes chanted, "Kill, burn, kill, burn, all of you must leave," as they

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<sup>54</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February: CIV-OTP-0002-0046 at page 0055.

<sup>55</sup> HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671 at pages 0675-0676.

<sup>56</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671 at pages 0676

<sup>57</sup> HRW, Côte d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0662-0672,; January 26, 2011, HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; HRW, Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces, March 15, 2011: CIV-OTP-0002-0173



broke into and pillaged the stalls of scores of West African merchants in Yopougon.<sup>58</sup> Amnesty also documented at least 10 incidents of killings attributed to pro-Gbagbo militia. These militia, mostly composed of youth, carried out arbitrary killings of civilians perceived to be pro-Ouattara, either because they had a Muslim name, wore Muslim clothes, or were or perceived to be foreign nationals from Mali, Burkina Faso, Senegal or Guinea. In several instances, the victims were beaten to death with clubs, bricks, hacked with machete or burned alive after a tire had been put around their necks and petrol had been poured over their body. Several of these killings apparently took place with the acquiescence of security forces loyal to Laurent Gbagbo. In some instances, these militia were reportedly supervised by these security forces, as on 15 March, Young Patriots, the Republican Guard and the BAE reportedly closed off Port Bouet neighbourhood. Amnesty International documented the killing of several West African nationals by elements of the CRS patrolling Yopougon and Abobo on 28 February and 8 March respectively.<sup>59</sup>

88. The same pattern was identified in Western Côte d'Ivoire. On 22 March 2011, at least 37 West African immigrants were allegedly killed by pro-Gbagbo militias in the village of Bedi-Gouzan, 32 kilometres from the town of Guiglo in western Côte d'Ivoire, the day after combatants loyal to Ouattara had captured the nearby town of Bloléquin.<sup>60</sup> In Bloléquin, between 25 and 28 March 2011, Liberian mercenaries and pro-GBAGBO fighters reportedly systematically massacred over 100 men, women and children from northern Côte d'Ivoire ethnic groups and neighbouring West African countries who had sought refuge in administrative buildings. The attackers reportedly selected those to be killed based on their ethnicity.

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<sup>58</sup> HRW, Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces, 15 March 2011: CIV-OTP-0002-0173

<sup>59</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0671-0672 and 0677-0678

<sup>60</sup> HRW, Côte d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182

89. A man who survived this attack described to HRW how on 25 March, after heavy fighting between pro-Gbagbo and pro-Ouattara troops, Liberian mercenaries and some other pro-Gbagbo fighters broke into the room where many Guéré people were held and let them go after they disclosed their ethnic identity. Later on, at “the entrance to the prefecture they had a Guéré militia guy standing there, who asked each person, one by one, what ethnic group he or she was from - he spoke to the person in Guéré to hear if we could speak the language as a mother tongue. If you could speak Guéré, they led you outside. If you couldn't, they forced you into another direction. We'd combined with people from other rooms at this stage, so some were Dioula, Mossi, Malinké. I heard babies and women crying, they killed them all. They massacred them. We were standing outside and they had us wait while they opened fire on everyone who wasn't Guéré”.<sup>61</sup>

90. Security forces loyal to Laurent Gbagbo also appear to have targeted civilians based on their religious affiliations, in particular Muslims whom might have been perceived to be supporters of President Ouattara. According to witnesses interviewed by Amnesty International, on 25 February security forces and Young Patriots attacked the Lem mosque in the Yopougon neighbourhood of Abidjan. They reportedly vandalized and looted the premises before setting fire to the mosque and the Conseil National Islamique office.<sup>62</sup> Other attacks against mosques occurred in March 2011. On 15 March, four uniformed men wearing red berets came into the mosque in Port Bouët and then left. Fifteen minutes later, a teargas grenade was reportedly tossed in the courtyard. The Imam who had heard a noise and had gone out to see was hit by a bullet in the back by an

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<sup>61</sup> HRW, Côte d'Ivoire : Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186

<sup>62</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0674

unidentified attacker and died.<sup>63</sup> On the same day the UN reported another grenade attack by unidentified men at the Boribana mosque in Attécoubé which reportedly resulted in 2 deaths and another 18 persons were reportedly wounded.<sup>64</sup> On 19 March, students and FESCI members as well as a man wearing a police armband reportedly searching for armed non-ingenuous nicknamed *Dioulas* killed another imam and his mother in a house adjoining a mosque in the Williamsville neighbourhood of Abidjan. They also injured several students at the Koran school.<sup>65</sup>

*(ii) State or organizational policy*

91. In addition, article 7(2)(a) of the Statute imposes the requirement that the attack against any civilian population be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack”.
92. The introduction to elements of Article 7, when explaining the meaning of policy states that “policy to commit such attack” requires that the state or organization actively promote or encourage such an attack against a civilian population. The footnote to the paragraph states “a policy, which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action”.

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<sup>63</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0674.

<sup>64</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0046 at page 0056.

<sup>65</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0674-0675.

93. Neither the Statute nor the elements of crimes offer any definition of the term “attack” or “state or organisational policy”. In the case *The Prosecutor v. Katanga and Ngudjolo Chui*, Pre-Trial Chamber I found that this requirement:

*[...] ensures that the attack, even if carried out over a large geographical area or directed against a large number of victims, must still be thoroughly organised and follow a regular pattern. It must also be conducted in furtherance of a common policy involving public or private resources. Such a policy may be made either by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be explicitly defined by the organisational group. Indeed, an attack which is planned, directed or organised - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.<sup>66</sup>*

94. In relation to the term “policy”, the Prosecution refers in particular to the criteria used by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case against *Tihomir Blaskic*, in which the ICTY Trial Chamber held that the plan to commit an attack:

*[...] need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, inter alia:*

- The general historical circumstances and the overall political background against which the criminal acts are set;*
- The establishment and implementation of autonomous political structures at any level of authority in a given territory;*

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<sup>66</sup> Pre-Trial Chamber I, Decision on the confirmation of charges, ICC-01/04-01/07-717, para.396. See also Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, para. 81. See also ICTY, *Prosecutor v. Tadic*, Case No. IT-94-1-T, Judgement, 7 May 1997, para. 653; R. Dixon, C. K. Hall, "Article 7", in O. Triffterer (ed.). *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2<sup>nd</sup> ed. (Munich etc.: C.H.Beck etc., 2008), p. 236.

- *The general content of a political programme, as it appears in the writings and speeches of its authors;*
- *Media propaganda;*
- *The establishment and implementation of autonomous military structures; the mobilisation of armed forces;*
- *Temporally and geographically repeated and co-ordinated military offensives;*
- *Links between the military hierarchy and the political structure and its political programme;*
- *Alterations to the "ethnic" composition of populations;*
- *Discriminatory measures, whether administrative or other (banking restrictions, laissez-passer,...);*
- *The scale of the acts of violence perpetrated - in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions or the destruction of non-military property, in particular, sacral sites.*<sup>67</sup>

95. With regard to the terms "State or organizational", the term State is self-explanatory, yet a State policy does not need to have been conceived at the highest level of State machinery but may have been adopted by regional or local organs of the State.<sup>68</sup> Organizations not linked to a State may, for the purposes of the Statute, elaborate and carry out a policy to commit an attack against a civilian population.<sup>69</sup> The determination of whether a given group qualifies as an organization under the Statute must be made on a case-by-case basis, taking into account a number of considerations.<sup>70</sup>

96. The Prosecutor submits that the attacks on the civilian population in Côte d'Ivoire were not isolated or spontaneous acts of violence, but were committed

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<sup>67</sup> ICTY, Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 204.

<sup>68</sup> ICTY, Prosecutor v. Blaskic, IT-95-14-T, Judgement, 3 March 2000, para.205.

<sup>69</sup> ICC-01/09-19-Corr, para.92.

<sup>70</sup> ICC-01/09-19-Corr, para.93.

pursuant to the policy of the State of Côte d'Ivoire under the leadership of former President Gbagbo. This policy was to launch violent attacks against political opponents or persons perceived to support the political opponents in order to retain power by all means.

97. The Prosecutor submits that the crimes and offences committed in Côte d'Ivoire took place against the backdrop of a highly charged and deliberately poisoned political environment. Xenophobic and inflammatory speeches made by the Gbagbo camp were pervasive in the media. In the run up to the presidential election, Gbagbo's supporting press stigmatised his rival Alassane Ouattara as being the "candidate of the foreigners",<sup>71</sup> thus giving an ethnic imprint to the elections. Moreover, the Prosecutor submits that the recent violence in Côte d'Ivoire emanates from a long history of violence whereby the concept of "Ivoirité" was manipulated in the political discourse from President Bédié to President Gbagbo in order to foster divisions between Ivorians whose citizenship was considered as beyond doubt, and those whose citizenship was considered "dubious" and were therefore seen as "foreigners". In the beginning, such distinction served political purposes and had the primary aim of marginalizing current or future political rivals from political life. However, the notion of Ivoirité gained traction and deepened rivalries between ethnic groups, thus blurring the distinction between supporters of the *Rassemblement des Républicains* (RDR), the political party of Alassane Ouattara, and ethnic groups such as people from the north, Muslims, Dioulas, and foreigners, especially Burkinabés and Malians.<sup>72</sup>

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<sup>71</sup> "Le candidat de l'étranger". See Abidjan-Dakar: La presse pro-Gbagbo accuse "Ouattara candidat de l'étranger" : CIV-OTP-0002-0341.

<sup>72</sup> HRW, *My Heart Is Cut*, Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire, August 2007: CIV-OTP-0002-0847 at page 0912; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0658.

98. After the first round of the presidential elections, the concept of Ivoirité and xenophobic rhetoric was reactivated by Gbagbo and his close allies, who encouraged nationalistic fervour in the public media, portrayed their political opponents as “puppets” in the hands of the West, and failed to denounce attacks on foreigners and political opponents. Inflammatory speeches fanning the flames of hatred and inciting people to violence were pervasive in the pro-Gbagbo media. According to the UN, there were “statements by the commanders of the Republican Guard and FDS on 10 and 12 December, respectively, calling on their troops to defend Côte d’Ivoire against “foreigners” who, they said, were to take over”.<sup>73</sup>
99. The FIDH mission took note of the fact that incendiary speeches made by one side or another are always immediately followed by acts of violence and other human rights violations.<sup>74</sup> Amnesty International made similar allegations.<sup>75</sup>
100. These accounts demonstrate a State policy of violence. As expressed by HRW, “the targeted killings, enforced disappearances, politically motivated rapes, and persecution of West African nationals over a [five months] period demonstrate a policy of systematic violence by security forces under the control of Gbagbo and militias long loyal to him”.<sup>76</sup>
101. Incitement to violence against peacekeepers and intimidation of human rights workers appears also to be part of a policy. Pro-Gbagbo forces have used language against both UN and French forces that has the potential to incite violence. At a December 18 rally, Charles Blé Goudé called on his *Jeunes Patriotes*

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<sup>73</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0019

<sup>74</sup> FIDH, Côte d’Ivoire : It is urgent to prevent the escalation to civil war, March 2011: CIV-OTP-0002-0220 at page 0225

<sup>75</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0677

<sup>76</sup> HRW, March 15, 2011, Côte d’Ivoire: Crimes Against Humanity by Gbagbo Forces: CIV-OTP-0002-0173

(Young Patriots), a group with a history of violent behaviour against the opposition and peacekeepers, to "liberate" the country of foreign peacekeepers.<sup>77</sup> An article published on 8 December 2010 by *Notre Voie*, the news organ of Gbagbo's political party the FPI, described the radio operated by UNOCI as "One Thousands Hills Free Radio and Television", thereby comparing it to a radio station that incited to genocide in Rwanda in 1994. On 20 December, the same newspaper accused UN peacekeepers and French troops to be "killers, rapist and thieves". On 5 March 2001, the pro-Gbagbo newspaper *Le Temps* described the UNOCI's Special Representative of the UN Secretary General, Young Jin Choi, as a "serial killer of Côte d'Ivoire's people" and that he had "turned the UN force into an occupying army [...] that has given itself the task of killing anyone not willing to sign the refrain 'Alleluia Ouattara'".<sup>78</sup>

102. Furthermore, Charles Blé Goudé, on February 25 publicly called for "real" Ivoirians to set up roadblocks in their neighbourhoods and "denounce" foreigners. According to the UN, the situation threatened to worsen further, as a March 7 letter addressed to the Burkina Faso ambassador by a militant pro-Gbagbo group threatened to "cut the umbilical cord" of the Burkina Faso nationals in Côte d'Ivoire unless they left the country by 22 March. This was confirmed by the UN which stated that "After Mr. Blé Goudé called on the Young Patriots in February to identify "foreigners" in Abidjan and throughout the country, a number of attacks targeting nationals of West African countries were reported, with some abducted or burned alive, and foreign-owned businesses in Abidjan vandalized and looted".<sup>79</sup>

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<sup>77</sup> HRW, Côte d'Ivoire: Pro-Gbagbo Forces Abducting Opponents, 23 December 2010: CIV-OTP-0002-0161

<sup>78</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0659

<sup>79</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0020; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 06747



103. The State-owned radio-television (RTI) engaged in an intensive and systematic campaign to fuel intolerance and hatred against the UN, the AU, ECOWAS, the facilitator of the Ivorian dialogue, as well as non-LMP (*La Majorité Présidentielle*) leaders and supporters. “It galvanized people, including soldiers loyal to candidate Gbagbo, to get ready for a potential war”.<sup>80</sup> In January 2011 the Radio Television Ivoirienne (RTI), which had remained under Gbagbo’s control, broadcasted the registration numbers of 41 private vehicles rented by UNOCI, allegedly exposing UN personnel to controls at roadblocks guarded by pro-Gbagbo security forces and youth militia.<sup>81</sup>

104. The policy of the State is also noticeable through the recruitment financing and training of militia forces and mercenaries.

105. Various reports have documented the recruitment of Liberian mercenaries by pro-Gbagbo government forces.<sup>82</sup> During the 16 December demonstrations in Abidjan many witnesses noted the presence of Liberians, identifiable by their use of English and irregular uniforms. In response to the allegations about the involvement of Liberian mercenaries in the country, President Ellen Johnson Sirleaf of Liberia issued a press *communiqué* on 7 December in which she strongly advised Liberian nationals not to get involved in the ongoing Ivorian crisis.<sup>83</sup> According to the UN, “the administration loyal to Mr. Gbagbo has hired mercenaries estimated to number 4,500, the majority of whom are deployed in Abidjan, San-Pédro and Yamoussoukro and along the former zone of confidence, including in Danané, Douékoué, Daloa and Tiébissou. They have been armed

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<sup>80</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February: CIV-OTP-0002-0046 at page 0058

<sup>81</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0659

<sup>82</sup> HRW, Côte d’Ivoire: Pro-Gbagbo Forces Abducting Opponents, 23 December 2010: CIV-OTP-0002-0161; see also Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February: CIV-OTP-0002-0046 at page 0058.

<sup>83</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire. 15 February: CIV-OTP-0002-0046 at page 0058.

with weapons from FDS stocks and, in some cases, supplied with uniforms".<sup>84</sup> Furthermore, ONUCI Report on the violence committed in the West concludes that the Liberian mercenaries acted in coordination with FDS. They were wearing the same military uniforms<sup>85</sup>.

106. The organised character of the attacks and the fact that they are carried out in pursuance of a State policy is further exemplified by the recruitment of young people in different localities, notably in Abidjan, Bouaflé, Daloa, San Pedro, the Agnéby region, Vavoua and Zuenoula. According to the UN reports, in some instances, they were reportedly brought to Abidjan to undergo rapid military training in designated centres such as Akakro village in Bingerville, in Yopougon Cité verte, Zaon, and 220 Logements. It was also reported that some youth were forcibly abducted and taken to these training centres to be used later as human shields should ECOWAS forces come in the country. Some of the youth have already completed their training and were sent to the field with military uniform and weapons, while others were kept in training centres, hotels and other places.<sup>86</sup> The existence of a concerted action and coordination between the Young patriots led by Charles Blé Goudé and the official state apparatus is further attested in a news report of France 24 showing Philippe Mangou, the Chief of the Ivorian army, galvanising Young Patriots during a public meeting.<sup>87</sup> According to ONUCI, in the months following the presidential elections, young people of the 18 Montagnes and Moyen Cavally region of the West of Côte d'Ivoire, aging between 17 and 25 years were recruited by certain local leaders and prominent military and political personalities of the region purportedly to be enrolled in the armed forces. The recruitment was done on the basis of a "circulaire" signed by

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<sup>84</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010.

<sup>85</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011 : CIV-OTP-0002-0527 at page 0546.

<sup>86</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire. 15 February CIV-OTP-0002-0046 at page 0058.

<sup>87</sup> Reportage France 24, Côte d'Ivoire : "Jeunes patriotes", les hommes de Laurent Gbagbo : CIV-OTP-0002-0995,

Laurent Gbagbo asking for the recruitment of youngsters to increase the number of LMP supports in Abidjan. The new recruits were then sent to a military training Center in Toulepleu. In the Guiglo Zone, more than 2000 young militias were recruited after the call to do so by the leader of the Young Patriots, Charles Blé Goudé.<sup>88</sup> According to ONUCI, they were extensively financed by the government of Laurent Gbagbo and received tens of millions of CFA. One credible testimony reveals that three days before the Duekoué attack, Colombo (Head of the militia group Alliance Patriotique du Peuple Wè) and another militia leader received in Abidjan 30 million CFA from Laurent Gbagbo for the recruitment and the training of Liberian mercenaries.<sup>89</sup>

107. Sophisticated arms and machetes were reportedly distributed illegally to the recruits. Many reports revealed the existence of arm caches in different locations in Abidjan and in the interior of the country.<sup>90</sup> ONUCI's enquiry in the West revealed that militias were provided with BM 13 Katioucha weapons, Defensive Counter Air artillery, rockets, mortars, Kalashnikovs and grenades.<sup>91</sup> They also used sophisticated means of communication, including talkie-walkies and satellite telephones Thuraya. They used the premises of the FPI in Bolequin and the police headquarters in Duekoué as training camps, which further exemplifies the collusion between the pro-Gbagbo state apparatus and the militias.<sup>92</sup>

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<sup>88</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011: CIV-OTP-0002-0527 at page 0544.

<sup>89</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011: CIV-OTP-0002-0527 at page 0544.

<sup>90</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February: CIV-OTP-0002-0046 at page 0059.

<sup>91</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011 : CIV-OTP-0002-0527 at page 0544.

<sup>92</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011 : CIV-OTP-0002-0527 at page 0545.

*(iii) Widespread or systematic nature of the attack*

108. The reference to a widespread or systematic attack excludes isolated or random acts from the concept of crimes against humanity. Only the attack, and not the alleged individual acts are required to be “widespread” or “systematic”.<sup>93</sup> In this regard, the adjective “widespread” refers to “the large-scale nature of the attack and the number of targeted persons”, while the adjective “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence”.<sup>94</sup> The Chamber, moreover, opined that the existence of a State or organisational policy is an element from which the systematic nature of an attack may be inferred.<sup>95</sup> The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack."

109. Based on the available information, there is a reasonable basis to believe that the attacks directed against the civilian population in the Côte d'Ivoire were both widespread and systematic.

110. As noted in the previous section, the available information indicates that a policy was designed at the highest echelons of the State to launch violent attacks against the civilian population on ethnic and real or perceived political affiliation in order to retain power by all means. There are prima facie indications that the State apparatus, including the security forces, were colluding with the militia groups, most notably Young Patriots and Liberian mercenaries, in order to execute such a plan to attack civilians. Witnesses said that in responding to

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<sup>93</sup> ICC-01/09-19-Corr, para.94.

<sup>94</sup> ICC-01/05-01/08-424, para.83; ICC-01/04-01/07-717, para.395.

<sup>95</sup> ICC01/0501/0814tENG, para. 33.

marches by Ouattara supporters, pro-Gbagbo militia assisted security forces, at times firing AK-47s, pistols, and shotguns at unarmed demonstrators.<sup>96</sup>

111. The attacks followed three main patterns:

- Raids against both the headquarters of RHDP/RDR and PDCI, in Abidjan and neighbourhoods perceived as allied with Ouattara were carried out by a combination of pro-Gbagbo security forces and unofficial militia.<sup>97</sup> More than 100 victims and witnesses to the violence described to HRW seeing family members or neighbours dragged from their homes, mosques, restaurants, or the street into waiting vehicles. Many were "disappeared," including some victims who were later found dead.<sup>98</sup> HRW documented more than a dozen assaults during December 2010 and January 2011 that resulted in the deaths and disappearances of scores of residents<sup>99</sup>. Amnesty International who conducted a two-month mission in Côte d'Ivoire provides corroborating information.<sup>100</sup>
- The second pattern of attacks is illustrated by the use of excessive force and armament in heavily populated areas in order to disperse protesters. The first occurrence of such attacks took place on 16 December, when pro-Ouattara protesters attempted to march on the RTI and the Presidential Palace. Reportedly, the pro-Gbagbo forces used excessive force and live ammunitions on 18 and 19 January to disperse pro-Ouattara supporters in the Abobo, Adjamé, Koumassi and Attécoubé neighbourhoods of Abidjan, leaving several persons dead, and on 20 January in other parts of the country, including

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<sup>96</sup> HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166

<sup>97</sup> HRW, Côte d'Ivoire: Pro-Gbagbo Forces Abducting Opponents, 23 December 2010: CIV-OTP-0002-0161; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671

<sup>98</sup> HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166

<sup>99</sup> HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166

<sup>100</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671.

Gagnoa, Divo and Daoukro<sup>101</sup>. Again, on 19 February, after Ouattara called for further protests by his supporters, forces loyal to Gbagbo used excessive force, including heavy weapons, to disperse protesters in Abidjan, as well as in Yamoussoukro and Daoukro. On 3 March an attack against women demonstrating peacefully in Abidjan in favour of Ouattara was marked by the use of heavy machine guns by pro-Gbagbo forces including BAE elements who had arrived at the scene in three 4x4 pick-ups and two armoured vehicles. The shooting resulted in the killing of seven women<sup>102</sup> On 8 March, after a peaceful demonstration to commemorate international women's day and the fallen women on 3 March, at least two west-Africans by-standards, and one young girl were killed, allegedly by CRS, in a shoot-out in front of the St Jeanne d'Arc Church when trying to protect the women.<sup>103</sup> A further escalation of this pattern of attacks took place starting late February in Abobo, a district of Abidjan who had come under the control of anti-Gbagbo armed elements going by the name of *Commando Invisible*. According to Amnesty International, security forces, when crossing Abobo district, fired recklessly, killing and wounding unarmed civilians. On 11 March eight civilians, including three children, were reportedly killed after elements of the forces loyal to Mr. Gbagbo used heavy weapons, including rocket-propelled grenades and mortars. On 17 March, more than 25 people were killed and more than 40 wounded when security forces loyal to Mr. Gbagbo fired several mortar shells in Abobo. On 21 March, a shell hit the Céleste neighbourhood of

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<sup>101</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211 : CIV-OTP-0002-0010; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0671.

<sup>102</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211 : CIV-OTP-0002-0010 at page 21; UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at page 0603.

<sup>103</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0672.

Abobo. Three people including a child aged 12, were killed and two others wounded<sup>104</sup>.

- The third pattern is the establishment of roadblocks and checkpoint by young patriots with assistance from security forces. HRW documented late January the killing of at least 13 men at pro-Gbagbo militia checkpoints. Amnesty International documented at least ten cases. "In many cases, witnesses said that police, gendarmes, and other members of the security forces actively sided with the militias, either standing by while the abuses were committed, openly praising the killings as or after they took place, or even shooting at the body of the victim. Many of the killings took place just meters away from a police station" The same conduct by security forces loyal to Gbagbo was equally documented by Amnesty International.<sup>105</sup> According to HRW, "most of these killings by militias took place in broad daylight during periods of political tension. Victims were typically stopped at illicit militia checkpoints and ordered to show their identification cards. If the militiamen believed from the person's style of dress or surname that he was a Muslim or from an ethnic group that tended to support Ouattara, the militiamen would surround him, accuse him of being a "marcher" or "rebel," and beat the victim to death with iron bars, pieces of wood, and bricks"<sup>106</sup>.

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<sup>104</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211 :CIV-OTP-0002-0010 at page 0021; UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011 : CIV-OTP-0002-0598 at page 0604; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0673.

<sup>105</sup> Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0677 – 0680.

<sup>106</sup>HRW, Côte d'Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; See also attacks on Mosques and Imams documented in Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0674-0675.

112. The Prosecution further submits that the alleged acts of violence were not isolated or random acts; they took place on a large scale and targeted a large number of civilian victims.

113. Over a period of five months, State forces and unofficial militia perpetrated large scale crimes against the civilian population in Côte d'Ivoire. It is to be noted that several mass graves were discovered after FRCI took control of certain neighbourhoods of Abidjan, especially Yopougon, which reveals the existence of unreported deaths and may lead to a sharp increase in the death toll. There were also arbitrary arrest of at least 520 persons, some of them subjected to torture; and at least 72 cases of disappearance. Moreover, multiple instances of rapes were committed although the exact number is not known yet. So far, The OTP recorded so far at least 108 incidents of rapes, half of which appearing to be attributable to pro-Gbagbo forces. The large scale violations resulted in the displacement of about one million people.

114. The geographic distribution of crime spread relates to incidents throughout the Ivorian territory, in particular focused around the populated neighbourhoods of Abidjan, particularly Abobo, Port-Bouët, Adjamé, Attécoubé, Koumassi, Treichville and Yopougon as well as cities located in the Western part of the country, in particular Divo, Daoukrou, Yamoussoukro, Gagnoa, San Pedro, Toulepleu, Guiglo, Duékoué and Bloléquin.

*(iv) Nexus between individual acts and the attack*

115. The issue of whether an act was committed as part of a widespread or systematic attack needs to be analyzed on a case-by-case basis with regard to each particular act. At the article 15 stage, the situation as a whole without focusing beyond what was necessary for the purpose of the authorisation decision on specific criminal acts.



116. A *nexus* between individual criminal acts and the attack can be inferred from the following facts: (a) the geographic and temporal overlap between the attack and the crimes; (b) the fact that the attackers were also the perpetrators of the crimes; (c) the accounts of nightly and daily raids on pro-Ouattara neighbourhoods and headquarters of his political party and allies; (d) the use of excessive force including mortar shells in heavily populated areas in blatant disregard for the lives of civilians and the relentless use of heavy machine guns against peaceful demonstrators; and (e) the fact that the attacks went unabated for a protracted period of time, which shows a pattern of conduct largely attributable to the official apparatus of the State, including FDS, CECOS and Republican Guards, combined with unofficial forces such as Young Patriots and Liberian militia.

**(b) Underling acts constituting crimes against humanity**

117. On the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court which may be identified during the course of an investigation, the Prosecutor declares that there is a reasonable basis to believe that during the post-election period, including but not limited to the time period between 28 November 2010 to 6 May 2011, at a minimum the following conduct has been committed:

- a. murder constituting a crime against humanity under article 7(1)(a) of the Statute;
- b. rape and other forms of sexual violence constituting a crime against humanity under article 7(1)(g) of the Statute;
- c. imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 7(1)(e) of the Statute;
- d. enforced disappearance of persons under article 7(1)(i) of the Statute and

*(i) Murder*

118. The Prosecution recalls that the *actus reus* of the crime of murder consists in the fact that a "perpetrator killed one or more persons".<sup>107</sup>
119. To date, the OTP recorded a minimum of 700 and a maximum of 1048 civilian deaths attributed to pro-Gbagbo forces according to open source reports. The death toll was increasing steadily over the course of the 6 months crisis.<sup>108</sup>
120. UNOCI received several reports alleging the existence of mass graves in various parts of the country, notably in Abidjan, Issia and Lakota (in the Kokora "poulailler" zone, 4 km from Lakota, Dahiri (4 km north of Lakota) and Lobodiguia (Daloa). Other testimonies alleged that several corpses had been buried in the forêt de Banco in Abidjan. On 28 December, a team of human rights investigators led by the Chief of the Human Rights Division attempted to investigate the alleged killing of between 60 and 80 people whose corpses were reportedly deposited on 18 December at Ndotré and subsequently removed to a morgue in Anyama, near Abidjan. A similar attempt by a team led by the SRSG had been previously made on 20 December. On both occasions, UNOCI investigators were blocked by soldiers loyal to Laurent Gbagbo from gaining access to the building in which the dead bodies were reported to be. The SRSG was stopped at gun point and forced to withdraw. Other attempts by UNOCI human rights officers to investigate reports of the existence of mass graves in Lakota and Issia were similarly impeded by FDS elements and local administrative officials.<sup>109</sup> On 14 and 16 March, Human Rights officers finally gained access to the alleged sites in N'dotré, but did not find evidence or traces of mass graves. However, they were informed of the presence of 250 bullet-ridden corpses in the morgue of Anyama, the majority of which had been brought in November and December 2010, which coincides with the first

<sup>107</sup> Elements of Crimes, Article 7(1)(a)(1)

<sup>108</sup> Security Council Update Report on Côte d'Ivoire, 20 April: CIV-OTP-0002-0005 ; See also BBC, Ivory Coast: Gbagbo party urges 'end to war', 16 April 2011: CIV-OTP-0002-0841.

<sup>109</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire. 15 February: CIV-OTP-0002-0046 at page 0056.

allegations of mass graves.<sup>110</sup> In early May, UNOCI discovered a series of 10 mass graves across Yopougon in Abidjan which contained at least 68 bodies of people allegedly killed by pro-Gbagbo militia on 12 April, the day following Laurent Gbagbo's arrest.<sup>111</sup>

*(ii) Imprisonment or other severe deprivation of physical liberty*

121. The Prosecution recalls that the *actus reus* of the crime of imprisonment or other severe deprivation of physical liberty consists in the fact that a "perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty".<sup>112</sup> Moreover, the *actus reus* further requires that "[t]he gravity of the conduct was such that it was in violation of fundamental rules of international law".<sup>113</sup>

122. According to UN estimates, at least 520 arbitrary arrests and detentions by pro-Gbagbo forces, some involving torture were reported. Arbitrary arrests and detention reportedly started as soon as after the enforcement of a curfew declared on 27 November 2010. On 1 December, CECOS elements conducted a weapons search at the RDR headquarters in Wassakara in the Yopougon neighbourhood. Besides opening fire and killing 6 while injuring another 14, they also arrested 7 other RHDP members and detained them at the central civilian prison, the *Maison d'Arrêt et de Correction d'Abidjan* (MACA).<sup>114</sup>

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<sup>110</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at pages 0604 and 0605.

<sup>111</sup>, Aljazeera, Red Cross finds mass grave in Ivorian city, 5 May 2011: CIV-OTP-0002-0347; Reuters, UPDATE 1-Mass grave found in violent Abidjan district, 4 May 2011: CIV-OTP-0002-0255.

<sup>112</sup> Elements of Crimes, Article 7(1)(e)(1)

<sup>113</sup> Elements of Crimes, Article 7(1)(e)(2)

<sup>114</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010; Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February : CIV-OTP-0002-0046 at pages 0052 and 0053..

123. Arbitrary arrests and detentions continued in the context of the repression of the 16 December demonstrations against the RTI tower. According to the High Commissioner for Human Rights, between 15 and 22 December 2010, 471 civilians were arbitrarily arrested and detained in various detention centres, including the Préfecture de police where police officers allegedly conditioned the release of arrested persons to the payment of as much as 150,000 FCFA (approximately 300 USD).<sup>115</sup> A similar raid was conducted on 4 January by FDS elements against the PDCI headquarters in Cocody Abidjan where 63 persons were arrested including six women and a number of children. One person was also killed and four seriously injured during the raid. After being held in custody at the Prefecture de la Police in Plateau, they were transferred to the MACA they were released on 18 January. On 15 January, a man who had been arrested on 4 January at the PDCI headquarters by the FDS and was released on 5 January was “rearrested, tortured and sexually abused by elements of the Republican Guard. In the holding cell, the victim was beaten and sodomized from 11:00 to 17:00 by eight soldiers who also inserted the end of their kalachnikovs in his anus until he agreed, under torture, to provide them the names and residences of other RHDP supporters”<sup>116</sup> Amnesty International documented the arrest and subsequent mistreatment of 5 persons. Two journalists working for a TV station in Bouaké (a Forces Nouvelles stronghold) were arrested on 28 January 2011 in Abidjan and detained by security forces loyal to Laurent Gbagbo. Meeting with Amnesty International while in detention, one journalist explained how they had been beaten by some 30 security elements loyal to Laurent Gbagbo, and how after they tried to strangle him he fainted, then woke up and beaten with iron bars and burned three times with cigarettes. Three were arrested in February 2011 by security forces because they had a Muslim name and were brought to CECOS where a dozen uniformed elements beat them with clubs, belts, gun butts and

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<sup>115</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February: CIV-OTP-0002-0046 at page 0052.

<sup>116</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February: CIV-OTP-0002-0046 at page 0057.

their boots. The same were subsequently brought to the police headquarter were they were once more beaten by police elements armed with truncheons, electric cables and clubs.<sup>117</sup>

124. According to the High Commissioner for Human Rights, Liberian mercenaries working closely with the Republican Guard and the CECOS have been used inter alia to identify targeted individuals to be arrested, abducted or assassinated, and mark their residences with specific symbols and markings.<sup>118</sup>

*(iii) Enforced disappearances*

125. The Prosecutor recalls that the *actus reus* of the crime of enforced disappearance of persons consists in the fact that the perpetrator arrested, detained or abducted one or more persons or refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons; and that such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons, or such refusal was preceded or accompanied by that deprivation of freedom.<sup>119</sup>

126. Moreover, the *actus reus* further requires that such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization; and that such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or

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<sup>117</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0676.

<sup>118</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010; Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February: CIV-OTP-0002-0046 at page 0057; UNOCI, Retranscription du point de presse hebdomadaire de l'UNOCI, 27 January 2011: CIV-OTP-0002-0085.

<sup>119</sup> Elements of crimes, Article 7 (1)(i)(1)-(2)

persons was carried out by, or with the authorization or support of, such State or political organization.<sup>120</sup>

127. On 27 January 2011 UNOCI reported a total of 72 persons disappeared since 16 December 2010, including 24 between 15 and 22 December only.<sup>121</sup> According to the High Commissioner for Human Rights, on 4 January 2011, 18 Malian nationals working as baggage handlers in the Adjamé neighbourhood in Abidjan were abducted and taken to an unknown destination by a group of armed civilians on board of two pick-up vehicles.<sup>122</sup>

128. HRW also documented a few incidents. In one of such incidents which occurred on 10 February, a RHDP leader from the Riviera Palmière neighbourhood in Abidjan was reportedly abducted by three armed men with green camouflage uniforms who allegedly said they had been sent to find him as he was supporting Ouattara. HRW also documented the disappearance of at least seven active members of Ouattara's party in March 2011. In one case, armed men arrived with a list on which the victim's family name appeared.<sup>123</sup> Amnesty International documented the disappearance of 2 persons in the wake of the 16 December demonstrations in Abidjan. One demonstrator was detained by security forces and militiamen. Friends who went looking for him at all police stations and mortuaries never found him. Another person was also arrested on the same day by security forces. When his parents enquired for him at a mortuary in Treichville an employee reportedly told them "that they had been ordered not to show the bodies of victims to parents." Another employee told

<sup>120</sup> Elements of Crimes, Article 7(1)(i)(4)-(5)

<sup>121</sup> ONUCI, Retranscription du point de presse hebdomadaire de l'UNOCI, 27 January 2011: CIV-OTP-0002-0085; Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February: CIV-OTP-0002-0046 at page 0052.

<sup>122</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February : CIV-OTP-0002-0046 at page 0059.

<sup>123</sup> HRW, Côte d'Ivoire : Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166; HRW, Côte d'Ivoire : Crimes against Humanity by GBAGBO forces, 15 March 2011: CIV-OTP-0002-0173

them “that at least 80 bodies were in a container and that staff were not allowed to take any of them out”<sup>124</sup>

*(v) Rape*

129. The Prosecutor recalls that the *actus reus* of the crime of rape consists in the fact that a “perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”<sup>125</sup> The *actus reus* further requires that “[t]he invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent”.<sup>126</sup>

130. The *actus reus* of the crime of sexual violence consists in the fact that a “perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.”<sup>127</sup> The *actus reus* further requires that such conduct was of a gravity comparable to the other offences in article 7(1)(g) of the Statute.<sup>128</sup>

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<sup>124</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0672.

<sup>125</sup> Elements of Crimes, Article 7(1)(g)-1(1)

<sup>126</sup> Elements of Crimes, Article 7(1)(g)-1(2)

<sup>127</sup> Elements of Crimes, Article 7(1)(g)-6(1)

<sup>128</sup> Elements of Crimes, Article 7(1)(g)-6(2)

131. UNOCI has recorded at least 47 cases of rape in the West of Côte d'Ivoire perpetrated by FDS, FRCI, militia groups, mercenaries and civilians.<sup>129</sup>

132. According to Human Rights Watch, pro-Gbagbo elements raped women in front of their families by, forced to watch their husbands being executed and told to "go and tell Ouattara what happened to them".<sup>130</sup> Amnesty International documented the rape of 6 women arrested during the 16 December 2010 demonstration. They were gang-raped twice by a group of 3 men wearing masks while detained in a house guarded by gendarmes for several days. On 18 December 2010, a group of soldiers and militia gang-raped a girl they forcefully took from her parents after unsuccessfully searching their house for weapons.<sup>131</sup> HRW also documented the rape of nine women by groups of militiamen and police operating together in the Ouattara stronghold of Abobo neighbourhood on 25 February 2011. All victims were reportedly active and public members of Ouattara's political party. The documented attacks occurred the day after fighting between armed forces loyal to Gbagbo and Ouattara escalated in the area.<sup>132</sup>

133. Several witnesses confirmed to HRW that victims were targeted pursuant to their ethnic identity. A 36-year-old witness said: "They came in accusing us of being rebels, and said, 'If you're Dioula [from Northern Côte d'Ivoire], you can try to flee if you can, if you're Guere [natives of the area and largely supporters of Gbagbo], stay, we're not concerned with you. But if you're Malian or Mossi [Burkinabe, from Burkina Faso], we will kill you.' And then they started

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<sup>129</sup> ONUCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, 10 May 2011: CIV-OTP-0002-0527 at page 0562..

<sup>130</sup> HRW, President Zuma should be on the side of justice in Ivory Coast, 22 February 2011: CIV-OTP-0002-0164; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0676.

<sup>131</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0676.

<sup>132</sup> HRW, Côte d'Ivoire : Crimes against Humanity by Gbagbo forces, 15 March 2011: :CIV-OTP-0002-0173.



killing."<sup>133</sup>

## B. WAR CRIMES

134. An armed conflict not of an international character between the pro-Gbagbo and pro-Ouattara forces took place on the territory of Côte d'Ivoire from 25 February 2011 until 6 May 2011. During this period, pro-Gbagbo and pro-Ouattara forces committed war crimes of murder (article 8(2)(c)(i)) and attacking civilians (article 8(2)(e)(i)). In addition, pro-Gbagbo forces committed the war crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission (article 8(2)(e)(iii)) and pro-Ouattara forces committed the war crime of rape (article 8(2)(e)(vi)). These crimes took place in the context of and were associated with the armed conflict.<sup>134</sup>

### (a) Contextual elements of war crimes

135. The application of Article 8 requires the existence of an armed conflict.<sup>135</sup> An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.<sup>136</sup>

136. An non-international armed conflict is defined as "the outbreak of armed hostilities of a certain level of intensity, exceeding that of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of

<sup>133</sup>HRW, Côte d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182.

<sup>134</sup> Article 8(1) stipulates that "[t]he Court has jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes". Pre-Trial Chamber II has found that "the term 'in particular' makes it clear that the existence of a plan, policy or large-scale commission is not a prerequisite for the Court to exercise jurisdiction over war crimes but rather serves as a practical guideline for the Court" (ICC-01/05-01/08-424, para. 211).

<sup>135</sup> See Elements of Crimes, second last element of each crime under Article 8.

<sup>136</sup> ICC-01/05-01/08-424, para. 229 (referring to ICTY, Prosecutor v. Tadic, Case No. IT-94-1, "Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction", 2 October 1995, para. 70).

a similar nature, and which takes place within the confines of a State territory. The hostilities may break out (i) between government authorities and organized dissident armed groups or (ii) between such groups.”<sup>137</sup>

137. The concept of ‘organized armed groups’ focuses on the need for the armed groups in question to have the ability to plan and carry out military operations for a prolonged period of time.<sup>138</sup> Those ‘organized armed groups’ must be under responsible command. In this regard, responsible command entails some degree of organization of those armed groups, including the possibility to impose discipline and the ability to plan and carry out military operations.<sup>139</sup>

138. During the period from 25 February 2011 until 6 May 2011 an armed conflict existed between pro-Gbagbo and pro-Ouattara forces.

139. Pro-Gbagbo forces included government forces and other elements of the official state apparatus of Côte d’Ivoire,<sup>140</sup> composed of the defence and security forces, including the *Forces Armées Nationales de Côte d’Ivoire* (FANCI),<sup>141</sup> the *Compagnie républicaine de Sécurité* (CRS), the *Centre de Commandement des Opérations de Sécurité* (CECOS), the *Garde républicaine*, the *Brigade Anti-Emeute* (BAE), the *Brigade du Maintien de l’Ordre* (BMO), and the *gendarmerie*.<sup>142</sup> Both the FANCI and the *gendarmerie* fall under the authority of the Minister of Defence. The police which falls under the authority of the Minister of Interior has allegedly also been involved as well as Presidential security group (*Groupe de Sécurité du Président de la République* - GSPR) which is part of the special/ combined/ armed units (*Unités/*

<sup>137</sup> Articles 8(2)(d) and 8(2)(f); ICC-01/05-01/08-424, para. 229.

<sup>138</sup> ICC-01/05-01/08-424, para. 233 ; ICC-01/04-01/06-803-tEN, para. 234.

<sup>139</sup> ICC-01/05-01/08-424, para. 234 ; ICC-01/04-01/06-803-tEN, para. 232.

<sup>140</sup> See Article 8(2)(f).

<sup>141</sup> UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte //d’Ivoire, A/HRC/17/48, 8 June 2011 : CIV-OTP-0002-0573 at page 0578.

<sup>142</sup> HRW, Côte d’Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011: CIV-OTP-0002-0166.

*spéciales/ interarmes*) and is directly subordinated to the cabinet of the president.<sup>143</sup> The aforementioned groups were supported by other organized pro-Gbagbo armed militia, youth groups as well as by English-speaking “mercenaries”. Militia such as the *Front de libération du grand ouest* (FLGO) headed by Denis Glofié Maho as well as FLGO affiliated militia such as the *Union des patriotes résistants du grand ouest* (UPRGO); *Alliance des patriotes Wê* (APWE) and the *Mouvement Ivoirien pour la Libération de l’Ouest de la Côte d’Ivoire* (MILOCI) were particularly active in the West of the country.<sup>144</sup> Pro-Gbagbo youth groups are referred to as the “*galaxie patriotique*” around Charles Blé Goudé and Eugene Djué such as the Student Federation of Côte d’Ivoire (*Fédération Estudiantine et Scolaire de Côte d’Ivoire, FESCI*), the Young Patriots (*Jeunes Patriotes*) and the Ivorian Popular Front (*Front Populaire Ivoirien, FPI*).<sup>145</sup> These groups were recruited, trained and armed by Government authorities and they received their instructions from them.<sup>146</sup> In addition, the administration loyal to Gbagbo hired mercenaries estimated to number 4,500, the majority of whom were deployed in Abidjan, San-Pédro and Yamoussoukro and along the former zone of confidence, including in Danané, Douékoué, Daloa and Tiébissou. They were armed with weapons from FDS stocks and in some cases supplied with uniforms.<sup>147</sup> Pro-Gbagbo forces also relied on mercenaries, recruited on an ethnical basis in Liberia, essentially from the Special Forces of the *Liberation du Monde Africain* (LIMA), reportedly 2000 strong and led by Commander Marc Gnatoa killed on 6

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<sup>143</sup> UN Human Rights Council, Rapport de la Commission d’enquête internationale indépendante sur la Côte d’Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at page 0578.

<sup>144</sup> Rapport de la Commission d’enquête internationale indépendante sur la Côte d’Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at page 0580

<sup>145</sup> HRW, Côte d’Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011 : CIV-OTP-0002-0166

<sup>146</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February :CIV-OTP-0002-0046 at page 0058; See Reportage France 24, Côte d’Ivoire : “Jeunes patriotes”, les hommes de Laurent Gbagbo: CIV-OTP-0002-0995; Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire. 15 February: CIV-OTP-0002-0046.

<sup>147</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010; HRW, Côte d’Ivoire: Violence Campaign by Security Forces, Militias, 26 January 2011:CIV-OTP-0002-0166.

May 2011.<sup>148</sup> Pro-Gbagbo forces carried out military operations for a prolonged period of time.

140. The pro-Ouattara forces are composed of an organized armed group called the *Forces Nouvelles*, which was renamed the *Forces Republicaines de Côte d'Ivoire* (FRCI) on 9 March 2011 and unified with the FDS on 17 March by a presidential decree signed by Alassane Ouattara.<sup>149</sup> This force includes former Ivorian soldiers, policemen and gendarme who defected from the official state apparatus and neighbourhood-based defence forces.<sup>150</sup> The FRCI was supported by a tribal defence group referred to as the Dozo and a group of Burkinabe militiamen led by a certain Amade and mercenaries recruited on an ethnical basis in Liberia, essentially from the *Movement for Democracy in Liberia* (MODEL). The pro-Ouattara forces had a responsible command structure. However, the identification of the persons who bear the greatest responsibility for ordering or facilitating the crimes remains unclear at this stage and would be one of the objectives of the envisaged investigation. As demonstrated below, in their quest to gain control over the southern part of Côte d'Ivoire, the pro-Ouattara force carried out military operations for a prolonged period of time.

141. By 25 February 2011, the post-election crisis in Côte d'Ivoire escalated into a protracted armed conflict between the two sides that spread over the entire country. Ouattara's forces stationed north of the former zone of confidence seized control of most of the country, with Gbagbo's forces being pushed back to Abidjan. After the FDS attacked the New Forces position in Bounta in the night

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<sup>148</sup> Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at page 0581.

<sup>149</sup> UNSG report S/2011/211 : CIV-OTP-0002-0010 at page 0021.

<sup>150</sup> HRW, Côte d'Ivoire: Leaders should prevent abuses by their forces, 24 February 2011: CIV-OTP-0002-0843; Jeune Afrique, Côte d'Ivoire, Le "commando invisible" donne son bilan des affrontements à Abobo, 23 February 2011: CIV-OTP-0002-0277; HRW, Côte d'Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011 : CIV-OTP-0002-0186; HRW, 15 March 2011, Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces : CIV-OTP-0002-0173; HRW, 2 April 2011, Côte d'Ivoire: Ouattara Should Act to Control Troops: CIV-OTP-0002-0196

of 24-25 February the New Forces captured the towns of Zouan Hounien and Binhouye near the border with Liberia on 25 February and on 7 March took control of nearby Toulepleu.<sup>151</sup> The town of Doké fell on 12 March as the FRCI pushed on towards Bloléquin<sup>152</sup> which they took on 21 March after heavy fighting with pro-Gbagbo forces. The towns of Duékoué and Daloa in the West of the country were captured by the FRCI, as were Bondoukou and Abengourou near the border with Ghana in the east.<sup>153</sup> On 28 March, the FRCI launched a major coordinated offensive along 4 axes: in the west along axis through Duékoué with the harbour of San Pedro as final objective; a centre-west axis towards Daola, a central axis towards Tiébissou and an eastern axis towards Bondoukou.<sup>154</sup> Duékoué and Daola in the west and centre-west, and Abengourou and Bondoukou in the east were captured on 29 March.<sup>155</sup> On 30 March, Côte d'Ivoire's political capital Yamoussoukro and the Western town of Soubré were taken without resistance. The port city of San Pédro, the world's largest cocoa exporting port, fell to the FRCI in the early hours of 31 March.<sup>156</sup>

142. When the FRCI reached Abidjan on 31 March, fighting further intensified between the two parties. Heavy artillery fire, RPG7 rockets and machine guns were used as the troops fought for key sites including the presidential palace.<sup>157</sup> The fighting in Abidjan concentrated on two areas in the suburb of Cocody – around the state television building, and around the residence of Laurent

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<sup>151</sup> Fighting flares in western Ivory Coast : CIV-OTP-0002-0839; UNOCI, Rapport sur les violations des droits de l'homme et du droit international humanitaire commises à l'Ouest de la Côte d'Ivoire, UNOCI/HRD/2011/02, 10 May 2011: CIV-OTP-0002-0527 at page 0540.

<sup>152</sup> AFP, Ouattara forces make gains, seize west Ivorian town: CIV-OTP-0002-0321.

<sup>153</sup> Radio Netherlands Worldwide, Key Ivory coast towns falls as Gbagbo calls for ceasefire, 29 March 2011: CIV-OTP-0002-0819.

<sup>154</sup> Jeune Afrique, Côte d'Ivoire : les secrets d'une offensive éclair, 8 April 2011: CIV-OTP-0002-0295.

<sup>155</sup> Radio Netherlands Worldwide, Key Ivory coast towns falls as Gbagbo calls for ceasefire, 29 March 2011: CIV-OTP-0002-0819.

<sup>156</sup> Reuters, Battle reaches Abidjan: CIV-OTP-0002-0256

<sup>157</sup> BBC News, Ivory Coast: Battle for Abidjan intensifies CIV-OTP-0002-0261; France 24, I. Coast battle rages as Gbagbo digs in, 1<sup>st</sup> April 2011: CIV-OTP-0002-0337.

Gbagbo, where pro-Gbagbo Republican Guard members and armed militia put up strong resistance.<sup>158</sup>

143. On 11 April, Gbagbo was arrested at his residence by pro-Ouattara forces, following helicopter attacks led by UNOCI and the French Force Licorne intended to neutralize heavy weaponry used by Gbagbo's forces.<sup>159</sup> Following this arrest, the armed fighting between the FRCI and pro-Gbagbo militia and mercenaries continued in the Yopougon quarter of Abidjan. Combats raged until 5 May, when FRCI officially took control of the Yopougon quarter.<sup>160</sup>

144. The composition and structure of the pro-Gbagbo and pro-Ouattara forces, the prolonged nature and overall intensity of the fighting, especially in Abidjan, Tolepleu, Duékoué and Bloléquin, the fact that heavy military arms were used, as well as the fact that both pro-Gbagbo and pro-Ouattara forces at times controlled parts of the territory of Côte d'Ivoire supports the conclusion that an armed conflict existed during the relevant period of time.

145. The existence of the armed conflict is further confirmed by statements of competent international authorities: On 31 March 2011, the ICRC referred to "the armed conflict between pro-Gbagbo and pro-Ouattara forces and armed groups" and noted that "the country is now in the throes of a full-fledged internal armed conflict".<sup>161</sup> Similarly, the UN Security Council Resolution 1975 (2011) dated 30 March 2011 calls upon the legal obligations of parties to armed conflicts under international humanitarian law.<sup>162</sup>

<sup>158</sup> Reuters, Ouattara forces say attack Gbagbo Abidjan residence, 1 April 2011: CIV-OTP-0002-0809

<sup>159</sup> BBC, Ivory Coast: Gbagbo held after assault on residence, 11 April 2011: CIV-OTP-0002-0811; Le Figaro, Paris confirme l'arrestation de Gbagbo par des pro-Ouattara à Abidjan, 11 April 2011: CIV-OTP-0002-0825; RFI, Côte d'Ivoire: les versions du camp Ouattara et du camp Gbagbo sur l'arrestation du président déchu, 13 April 2011: CIV-OTP-0002-0826.

<sup>160</sup> RFI, Côte d'Ivoire: Yopougon est désormais sous le contrôle des FRCI, 5 May 2011: CIV-OTP-0002-0299.

<sup>161</sup> ICRC, 31 March 2011, Côte d'Ivoire: Civilians trapped in escalating conflict: CIV-OTP-0002-0157.

<sup>162</sup> S/RES/1975 (2011) Adopted by the Security Council at its 6508th meeting, on 30 March 2011.

146. As concluded by the ICRC, the conflict between pro-Gbagbo and pro-Ouattara forces can be characterized as an internal armed conflict.<sup>163</sup> If and when the Chamber authorizes the Prosecution to open an investigation as requested in this Application, the Prosecution will assess, among other things, whether the alleged support that UNOCI and French Licorne troops provided to pro-Ouattara forces to arrest Gbagbo renders part of the conflict international.<sup>164</sup> However, regardless of the outcome of that analysis, the conduct referred to under this part of the Application is equally criminalized under articles 8 regardless of whether it was committed in the context of an internal or an international armed conflict.<sup>165</sup>

(b) Underlying acts constituting war crimes

147. The Prosecution submits that between 25 February 2011 and 6 May 2011, pro-Gbagbo and pro-Ouattara forces committed war crimes of murder pursuant to article 8(2)(c)(i) and war crimes of attacking civilians pursuant to article 8(2)(e)(i). In addition, pro-Gbagbo forces committed the war crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission pursuant to article 8(2)(e)(iii) and pro-Ouattara forces committed the war crime of rape (article 8(2)(e)(vi)).

(i) *Murder pursuant to Article 8(2)(c)(i) and attacking civilians pursuant to Article 8(2)(e)(i)*

148. The Prosecutor recalls that the *actus reus* of the crime of murder pursuant to article 8(2)(c)(i) consists of the fact that perpetrator killed one or more persons, and such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.<sup>166</sup>

<sup>163</sup> ICRC, 31 March 2011, Côte d'Ivoire: Civilians trapped in escalating conflict, : CIV-OTP-0002-0157

<sup>164</sup> BBC, "UN confirms strikes," 11 April 2011: CIV-OTP-0002-0258

<sup>165</sup> The conduct referred to under Articles 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(iii) and 8(2)(e)(vi) is also criminalized pursuant to Articles 8(2)(1)(a)(i), 8(2)(1)(b)(i), 8(2)(1)(b)(iii) and 8(2)(a)(xxii) respectively.

<sup>166</sup> Elements of Crimes, Article 8(2)(c)(i)(1)-(2).

149. The Prosecutor recalls that the *actus reus* of the crime of attacking civilians pursuant to Article 8(2)(e)(i) consists of the fact that the perpetrator directed an attack, and the object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.<sup>167</sup>
150. The majority of murders and attacks against civilians occurred when pro-Ouattara forces launched military operations to gain control over of the South of the country from pro-Gbagbo forces.
151. During this period, three attacks by pro-Gbagbo forces against civilians stand out. The first attack took place on 22 March 2011. Pro-Gbagbo forces, including English speaking Liberian mercenaries, attacked the immigrant quarter of the town of Bedi-Goazon in the west of Côte d'Ivoire and killed at least 37 West African migrants. The attackers also pillaged and burned some homes. A second attack that is attributed to the same group of perpetrators occurred in Bloléquin on 25 March 2011. The attackers systematically massacred over a 100 men, women and children from Northern Côte d'Ivoire ethnic groups and neighbouring West African countries who had taken refuge in administrative buildings. According to victims' accounts, they were attacked in reprisal for Ouattara's military advances in the region.<sup>168</sup> The third attack took place on 28 March 2011 in Duékoué, the day FRCI supported by Dozos launched their offensive. Liberian mercenaries and militias loyal to Laurent Gbagbo led by Isaac Chegbo, alias Bob Marley reportedly killed several real or perceived Alassane Ouattara's supporters on pure ethnic or political grounds: at least two non-

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<sup>167</sup> Elements of Crimes, Article 8(2)(e)(i)(1)-(2).

<sup>168</sup> HRW, Côte d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182; HRW, Côte d'Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0688. Note that Amnesty International was told that 47 persons originating from the north of the country had been "massacred" by Liberian mercenaries loyal to Gbagbo in Bloléquin by the end of March 2011.



indigenous people, including an Imam, and 3 west African nationals. They also looted and burned down houses.<sup>169</sup>

152. During their offensive to take control of the southern part of Côte d'Ivoire, pro-Ouattara forces also attacked and killed numerous civilians across dozens of villages and towns in and around Toulépleu, Bloléquin, Guiglo and Duékoué, including in Dahoua, Delobly, Bahé Bé, Pinhou, Guéibli, Guinglo-Zia, Diéhiba and Diahoun.<sup>170</sup> On 29 and 30 March 2011, pro-Ouattara forces allegedly killed up to 1000 civilians<sup>171</sup> in the "Carrefour" quarter of Duékoué. The attackers were reportedly composed of pro-Ouattara republican forces (FRCI), pro-Ouattara militias, a tribal defence group referred to as the Dozo and a group of Burkinabe militiamen Amadé Ouermi, a rich Cocoa planter established in the region.<sup>172</sup> The International Commission of enquiry accessed 4 mass graves in Duékoué where 197 corpses had been buried.<sup>173</sup> The pro-Ouattara camp admitted that 152 persons were killed.<sup>174</sup>

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<sup>169</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0687 - 0688

<sup>170</sup> HRW, Côte d'Ivoire : Crimes against Humanity by Gbagbo forces, 15 March 2011 CIV-OTP-0002-0173; HRW, Côte d'Ivoire : Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0687, 0689, 0695, 0697-0698

<sup>171</sup> On the higher end of the spectrum the NGO Caritas referred to 1000 persons killed or disappeared. Other sources such as ICRC reported on 1 April that at least 800 persons were killed in Duékoué area. FIDH indicated that their sources in the field had counted 816 dead. By 8 April the UN who has been counting bodies put the number at 324 with 224 known dead in Duékoué, 40 in Bloléquin and 60 in Guiglo (see references in the following footnote).

<sup>172</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598; HRW, Côte d'Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011 : CIV-OTP-0002-0186; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0690 - 0691; Nouvel Observateur, Enquête sur un massacre, 12 May 2011: CIV-OTP-0002-0815.

<sup>173</sup> UN Human Rights Council, Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, A/HRC/17/48, 8 June 2011: CIV-OTP-0002-0573 at page 0587.

<sup>174</sup> Forces Nouvelles de Côte d'Ivoire, Le gouvernement ivoirien et les FRCI condamnent les accusations de massacre à l'ouest, 4 April 2011 : CIV-OTP-0002-0828; Reliefweb, Caritas condemns Côte d'Ivoire massacre, 2 April 2011: CIV-OTP-0002-0237; CICR, Côte d'Ivoire: des centaines de civils tués à Duékoué, 1 April 2011: CIV-OTP-0002-0156; Le Monde, A Duékoué, le choc d'un massacre de grande ampleur en Côte d'Ivoire, 7 April 2011: CIV-OTP-0002-0273; BBC, Ivory Coast: More than 100

153. This attack was reportedly perpetrated in a systematic manner. Amnesty international referred to the attack against the “Carrefour” quarter as a “manhunt”. According to witnesses, when pro-Ouattara forces entered compounds, they chased the women, then lined up the men, and asked them to state their names and show their identity cards. Several were killed after showing their identity cards. Some were killed after putting their hands on their head showing they surrendered, others were killed in front of their parents.<sup>175</sup>

154. Pro-Ouattara forces often summarily executed, dismembered or immolated civilian victims. In villages where the population had not fled in anticipation of their arrival, pro-Ouattara forces frequently opened fire against the local population. Civilians who fled to the nearby bush were killed when found. In several instances, pro-Ouattara forces locked up in village houses the elderly persons who did not flee in village houses, and killed them over the following days.<sup>176</sup>

155. The attack against the “Carrefour” quarter in Duékoué, an historical stronghold of pro-Gbagbo militiamen, was according to statements of pro-Ouattara forces intended as a collective punishment against the Guéré population.<sup>177</sup> Besides ethnic motives, the attack also had political motives. For example, according to witnesses interviewed by Amnesty International, those Guéré who managed to

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bodies found, says UN, 8 April 2011: CIV-OTP-0002-0265; HRW, Côte d’Ivoire : Crimes against Humanity by Gbagbo forces, 15 March 2011; CIV-OTP-0002-0173; HRW, Côte d’Ivoire : Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186.

<sup>175</sup> Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0691-0692

<sup>176</sup> HRW, Côte d’Ivoire : Crimes against Humanity by Gbagbo forces, 15 March 2011 : CIV-OTP-0002-0173; HRW, Côte d’Ivoire : Ouattara forces kill, rape civilians during offensive, 9 April 2011 : CIV-OTP-0002-0186

<sup>177</sup> HRW, Côte d’Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186.

prove their support for Alassane Ouattara were spared. In other cases, they had their victims sing hymns to the glory of Alassane Ouattara.<sup>178</sup>

156. After the final FRCI offensive against remnant pockets of pro-Gbagbo forces in Yopougon neighbourhood of Abidjan, withdrawing pro-Gbagbo militia and Liberian mercenaries killed at least 125 civilians on their way back towards Liberia: 22 in Grand-Lahou, 17 in Irobo, 3 in Fresco, and at least 2 in Sassandra on 5 May 2011, followed by another 52 in Gonfroto and 25 in Niegreboue on 6 May 2011.<sup>179</sup>

157. Between 6 and 8 May, just days after remnant pro-Gbagbo forces killed at least 125 civilians along the coast, several villages in the sub-prefecture of Dago in the department of Sassandra were looted and burned and people were killed.<sup>180</sup>

(ii) *Attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission pursuant to Article 8(2)(e)(iii)*

158. The Prosecutor recalls that the *actus reus* of the crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission pursuant to Article 8(2)(e)(iii) consists of the fact that the perpetrator directed an attack; the object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations; and that such personnel, installations,

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<sup>178</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0693

<sup>179</sup> Xinhua, Over 100 people killed in southwest Côte d'Ivoire, 10 May 2011: CIV-OTP-0002-0404; La dépêche/AFP, Côte d'Ivoire : 120 civils tués par les miliciens et mercenaires pro-Gbagbo, 5 May 2011: CIV-OTP-0002-0407; UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at pages 0606-0607

<sup>180</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0699

material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.<sup>181</sup>

159. Pro-Gbagbo forces, including the Young Patriots, as well as unidentified elements attacked UNOCI personnel, equipment and installations that were entitled to protection under international law of armed conflict. The first attack took place on 18 December 2011. While six attacks on UN personnel, equipment and installations occurred prior to the outbreak of the armed conflict, twelve such incidents occurred between 25 February and 2 April 2011. As a result of these attacks associated to the armed conflict, one UN staff member was killed by a stray bullet in Abidjan, eight UN personnel were wounded, three international contractors and one peacekeeper were abducted, five UN vehicles were shot at and burned, and twenty UN staff residences and a UNHCR compound were looted.

160. The following twelve incidents occurred between 27 February and 2 April 2011:

- On 27 February, three UN peacekeepers were wounded in an ambush in a suburb of Abidjan. Over that weekend, acts of violence had also been directed against UN peacekeeping troops during which four of its vehicles were damaged.<sup>182</sup>
- On 28 February and 1 March, three international contractors were illegally detained by Young Patriots, before being handed over to regular security forces who released them the same day.<sup>183</sup>
- On 28 February 2011, pro-Gbagbo forces looted the residence of some twenty UN staff in Daloa in the centre of the country after youth had

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<sup>181</sup> Elements of Crimes, Article 8(2)(e)(iii)(1)-(2), (4).

<sup>182</sup> Reliefweb, Côte d'Ivoire: UN peacekeepers wounded in an ambush north of Abidjan, 27 February 2011: CIV-OTP-0002-0830

<sup>183</sup> UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211 : CIV-OTP-0002-0010 at page 0024.

attempted to block UN patrols in the city following Charles Blé Goudé's call on 25 February to block UN peacekeepers movements.<sup>184</sup>

- On 28 February 2011, UN experts came under fire in the capital, Yamoussoukro by unidentified armed persons. They were investigating breaches of the UN imposed arms embargo; more particularly reports that Belarus had provided attack helicopters for supporters of Laurent Gbagbo.<sup>185</sup>
- On 12 March 2011, Young Patriots attacked a UNOCI staff on the parking of a supermarket. He was injured and robbed, while his vehicle burned.<sup>186</sup>
- On 15 March 2011, one peacekeeper was reported missing, as he was taken away by Young Patriots.<sup>187</sup>
- On 16 March 2011, a UNOCI supply convoy was ambushed 100 km north of Abidjan by pro-Gbagbo forces, compelling UN peacekeepers to return fire. A refrigerated truck received nine bullet impacts.<sup>188</sup>
- On 23 March, a UNHCR depot was looted by armed elements in Guiglo, a city in the West of Côte d'Ivoire controlled by pro-Gbagbo forces.<sup>189</sup>
- On 31 March 2011, one female UN staff was killed by a stray bullet in Abidjan, after the fighting between pro-Gbagbo and pro-Ouattara forces had intensified in that area.<sup>190</sup>

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<sup>184</sup> France 24, Des domiciles de soldats de l'ONUCI pillés a Daloa, 4 March 2011: CIV-OTP-0002-0304; UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire , 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0020, para. 47; HRW, Côte d'Ivoire: Research and Advocacy after the 2010 presidential elections, The Case for Intervention in the Ivory Coast , 25 March 2011: CIV-OTP-0002-0845; Abidjan.net, VIDEO - Blé Goudé aux ivoiriens : Empêchez l'ONUCI de circuler à Abidjan, 25 Febraury 2011: CIV-OTP-0002-0351.

<sup>185</sup> BBC, Ivory Coast: UN experts attacked in Yamoussoukro, 1 March 2011: CIV-OTP-0002-0270

<sup>186</sup> UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211 : CIV-OTP-0002-0010 at page 0024.

<sup>187</sup> UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire , 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0024; Reliefweb/AFP, Violences en Côte d'Ivoire : 52 morts en une semaine, 24 March 2011 : CIV-OTP-0002-0315

<sup>188</sup> Le Journal du Dimanche, CIV : "embuscade" contre un convoi de l'ONU, 17 March 2011: CIV-OTP-0002-0352; UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0024.

<sup>189</sup> Reliefweb/AFP, Un entrepôt du Haut Commissariat de l'ONU pour les réfugiés a été pillé dans l'ouest, 24 March 2011 : CIV-OTP-0002-0315.

- On 31 March 2011 in the afternoon, a mortar shell was launched on UNOCI headquarters, reportedly by pro-Gbagbo forces. No casualties were reported.<sup>191</sup>
- On 1 April 2011, UN peacekeepers were directly attacked by pro-Gbagbo forces and managed to repulse the attack.<sup>192</sup>
- On 2 April 2011, four UN peacekeepers were seriously wounded when they came under attack by pro-Gbagbo forces one day after the UN troops repulsed another assault by the same armed group.<sup>193</sup>

161. Although only nine out of the twelve incidents referred to above can be directly linked to pro-Gbagbo forces,<sup>194</sup> it can be inferred that these forces are behind all of the above incidents. The pro-Gbagbo camp directly incited its forces to violence against peacekeepers. For instance, an article published on 8 December 2010 by *Notre Voie*, the news organ of Gbagbo's political party the FPI, described the radio operated by UNOCI as "One Thousands Hills Free Radio and Television",<sup>195</sup> thereby comparing it to a radio station that incident to genocide in Rwanda in 1994. At a rally on 18 December 2010, Charles Blé Goudé called on his *Jeunes Patriotes* (Young Patriots), a group with a history of violent behaviour against the opposition and peacekeepers, to "liberate" the country of foreign peacekeepers.<sup>196</sup> On 20 December, the same newspaper accused UN peacekeepers and French troops to be "killers, rapist and thieves". On 5 March

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<sup>190</sup> Reliefweb, UN staff member killed by stray bullet in strife-torn Côte d'Ivoire, 1 April 2011: CIV-OTP-0002-0317

<sup>191</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 AT PAGE 0609

<sup>192</sup> UN News Centre, Côte d'Ivoire: Four UN soldiers wounded in another assault by Gbagbo's forces, 2 April 2011: CIV-OTP-0002-0320.

<sup>193</sup> UN News Centre, Côte d'Ivoire: Four UN soldiers wounded in another assault by Gbagbo's forces, 2 April 2011: CIV-OTP-0002-0320.

<sup>194</sup> See UNOCI Press Release, UNOCI HQ Continues to Come under Fire from Gbagbo's Special Forces: CIV-OTP-0002-0130.

<sup>195</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0659.

<sup>196</sup> See HRW, Côte d'Ivoire: Pro-Gbagbo Forces Abducting Opponents, 23 December 2010: CIV-OTP-0002-0161.

2001, the pro-Gbagbo newspaper *Le Temps* described the UNOCI's Special Representative of the UN Secretary General, Young Jin Choi, as a "serial killer of Côte d'Ivoire's people" and that he had "turned the UN force into an occupying army [...] that has given itself the task of killing anyone not willing to sign the refrain 'Alleluia Ouattara'".<sup>197</sup> In addition, the Gbagbo government alleged the loss of neutrality and participation by ONUCI in hostilities.<sup>198</sup>

(iii) *Attacks against buildings dedicated to religion pursuant to Article 8(2)(e)(iv)*

162. The Prosecutor recalls that the *actus reus* of the crime of attacking protected objects pursuant to Article 8(2)(e)(iv) consists of the fact that the perpetrator directed an attack and that the object of the attack was one or more buildings dedicated to religion, education, art science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.<sup>199</sup>

163. On 25 February 2011, Pro-Gbagbo forces attacked the LEM mosque in the Yopougon neighbourhood of Abidjan. They vandalized and looted the premises before setting fire to the mosque and the Conseil National Islamique office.<sup>200</sup> Other attacks on mosques attributable to pro-Gbagbo forces occurred in March 2011. On 15 March, four uniformed men wearing red berets came into mosque in Port Bouët and then left. Fifteen minutes later, a teargas grenade was reportedly tossed in the courtyard. The Imam who had heard a noise and had gone out to see was hit by a bullet in the back by an unidentified attacker and died.<sup>201</sup> On the same day the UN reported another grenade attack by unidentified

<sup>197</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0659.

<sup>198</sup> UN, 27<sup>th</sup> report of the Secretary General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, S/2011/211: CIV-OTP-0002-0010 at page 0024, - first sentence.

<sup>199</sup> Elements of Crimes, Article 8(2)(e)(vi)(1)-(2).

<sup>200</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0666

<sup>201</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at page 0666.

men at the Boribana mosque in Attécoubé which reportedly resulted in 2 deaths and another 18 persons wounded.<sup>202</sup> On 19 March, students and FESCI members as well as a man wearing a police armband reportedly searching for armed non-ingenuous nicknamed *Dioulas* killed another imam and his mother in a house adjoining a mosque in the Williamsville neighbourhood of Abidjan. They also injured several students at the Koran school.<sup>203</sup>

164. According to the UN, on 17 April 2011, a group of heavily armed members of the FRCI reportedly raided the Jesuit Institute of Technology in Angré, Abidjan. During this raid, they threatened and intimidated at least six priests including the Rector and physically assaulted one of them while ordering them to hand over the money in their possession and other valuables. The attackers also confiscated seven computers and a number of mobile phones. One of the attackers allegedly declared that they were attacking the Institute in retaliation for attacks against mosques, perceived that the Catholic Church supported Mr. Gbagbo and that the Institute was being used to hide weapons. No single weapon was reportedly found. In May, elements of the FRCI attacked the Baptist Church in Yopougon and arrested 56 people whom they detained before releasing them following UNOCI's intervention.<sup>204</sup>

(iv) *Rape pursuant to Article 8(2)(e)(vi)*

165. The Prosecutor recalls that the *actus reus* of the crime of rape pursuant to Article 8(2)(e)(vi) consists of the fact that the perpetrator invaded the body of a person

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<sup>202</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at page 0608

<sup>203</sup> Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, AFR 31/002/2011: CIV-OTP-0002-0647 at pages 0666-0667.

<sup>204</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at page 0608.



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by armed men believed to be members of the FRCI who accused her of assisting the militias.<sup>207</sup>

(c) Existence of a nexus between the armed conflict and the crimes

167. In order to constitute war crimes, it is necessary that “the conduct took place in the context of and was associated with an armed conflict not of an international character”.<sup>208</sup> According to the jurisprudence of the Court, this is the case where “the alleged crimes were closely related to the hostilities.”<sup>209</sup> It means that the armed conflict “ must play a substantial role in the perpetrator's decision, in his ability to commit the crime or in the manner in which the conduct was ultimately committed.”<sup>210</sup> It is not necessary, however, for the armed conflict to have been regarded as the ultimate reason for the criminal conduct, nor must the conduct have taken place in the midst of the battle.<sup>211</sup>

168. In determining whether or not the act in question is sufficiently related to the armed conflict, the Chamber may take into account, *inter alia*, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.<sup>212</sup>

169. A *nexus* between an armed conflict and a crime may be established also if the crime in question was committed after the cessation of hostilities until a general

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<sup>207</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, A/HRC/17/49, 14 June 2011: CIV-OTP-0002-0598 at page 0607

<sup>208</sup> See Elements of Crimes under Article 8(2)(c) and 8(2)(e), second last element.

<sup>209</sup> ICC-01/04-01/07-717, para.380.

<sup>210</sup> ICC-01/04-01/07-717, para.380.

<sup>211</sup> ICC-01/04-01/07-717, para.380.

<sup>212</sup> ICC-01/04-01/07-717, para.382.

conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. “Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.”<sup>213</sup>

170. The war crimes of murder (article 8(2)(c)(i)), attacking civilians (article 8(2)(e)(i)), attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission (article 8(2)(e)(iii)), attacking protected objects (article 8(2)(e)(iv)) and rape (article 8(2)(e)(vi)) referred to in the previous section of this Application took place in the context of and were associated with the armed conflict.

171. As stated above, the majority of murders, attacks against civilians and rapes occurred when pro-Ouattara forces launched military operations to gain control over of the South of the country from pro-Gbagbo forces. Accordingly, the crimes were committed in the area or in the vicinity of the places where the fighting between pro-Gbagbo and pro-Ouattara forces took place. Moreover, by way of a comparison of the dates of the fighting between pro-Gbagbo and pro-Ouattara forces and the relevant crimes,<sup>214</sup> a temporal vicinity between the war crimes in question and the armed hostilities can be established. In one instance, the relevant crimes were committed in the immediate aftermath of the cessation of the armed hostilities, but prior to reaching a general conclusion of peace.<sup>215</sup>

172. The *nexus* between the armed conflict and a crime can further be inferred from the fact that the perpetrators of the crimes were members of the pro-Gbagbo or pro-Ouattara forces that were directly involved in the armed conflict and that the

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<sup>213</sup> ICC-01/04-01/07-717, para.382, relying on ICTY, *The Prosecutor v. Tadic*, Case No. IT-94-1-A, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 2005, paras 68, 70.

<sup>214</sup> See paras. 141 and 151-160.

<sup>215</sup> crimes committed on 5-6 May 2011.

crimes were perpetrated by using the military equipment that was also used for the fighting. Moreover, the victims of the crimes are civilians who are associated with the other side.<sup>216</sup> They were targeted in reprisal for Ouattara's military advances in the region.<sup>217</sup> UN peacekeepers and their equipment were attacked with a view of "liberating" the country of foreign peacekeepers.<sup>218</sup>

173. From the above facts it can be concluded that the armed conflict played a substantial role in the perpetrator's decision to commit the crimes. The perpetrators would not have committed crimes of such a magnitude and over such an extended period of time in the absence of the armed conflict between pro-Gbagbo and pro-Ouattara forces. Moreover, the armed conflict played a substantial role in the perpetrator's ability to commit the crime and the manner in which the crimes were committed. Because of the armed conflict, the perpetrators were present at the location where the crimes were committed and they were equipped with the arms that they used to commit the crimes.

## **X. Procedural Issues**

174. The Prosecution informs the Chamber that, in compliance with Rule 50, on 17 June 2011, the Prosecutor provided notice to victims or their legal representatives of his intention to request authorization and informed them that pursuant to Regulation 50(1) of the Regulations of the Court they have 30 days to make their representations to the Chamber.

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<sup>216</sup> HRW, Côte d'Ivoire: Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186.

<sup>217</sup> HRW, Côte d'Ivoire: West African Immigrants Massacred, 31 March 2011: CIV-OTP-0002-0182; HRW, Côte d'Ivoire : Ouattara forces kill, rape civilians during offensive, 9 April 2011: CIV-OTP-0002-0186.

<sup>218</sup> See HRW, Côte d'Ivoire: Pro-Gbagbo Forces Abducting Opponents, 23 December 2010: CIV-OTP-0002-0161.

175. The Prosecution consulted with the Victim Participation and Reparation Section (VPRS) of the Registry in this regard and requested input or comments concerning the process. The Registry expressed that it is not able to provide input on the process for receiving the victims' representations pursuant to Rule 50(3). When invited to provide a Registry email address to which victims' representations could be sent, the VPRS stated that it is unable to make a suggestion to that effect.

176. The Prosecution publicized a notice pursuant to Regulation 50(1) by posting it on ICC website, and sending it to a) its media contact database of 3,500 entries worldwide, b) 15 newspapers in Côte d'Ivoire which all published or referred to it in their 17 or 18 June edition, c) The main national TV and radio stations as well as ONUCI FM radio which also disseminated the information subsequently d) and about one hundred individual recipients (Ivorian civil society actors, NGO representatives and senders of art. 15 communications).<sup>219</sup> In addition, from 27 June until 5 July, the Prosecution will conduct a mission to Côte d'Ivoire, during which it will further publicize the fact that it has requested the Chamber's authorization to open an investigation into the situation in Côte d'Ivoire.

177. The Prosecution submits that the procedure that Pre-Trial Chamber II established in the Kenya situation to receive victims' representations<sup>220</sup> could be further refined in order to ensure that proceedings are carried out in an expeditious manner and that the victims who intend to make representations pursuant to Rule 50(3) or intermediaries assisting the victims are not at risk on account of the activities of the Court.<sup>221</sup>

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<sup>219</sup> Full lists of recipients and samples of media coverage are provided in Annex 1G.

<sup>220</sup> See ICC-01/09-4, para. 9.

<sup>221</sup> In the context of victims' representations pursuant to Rule 50(3), the Single Judge of Pre-Trial Chamber II has found that "the Chamber is duty bound to ensure that proceedings are carried out in an expeditious manner" (ICC-01/09-4, para. 9). She also acknowledged the Chamber's "obligation to protect witnesses and not to expose them to any threat or risk." (ICC-01/09-02/11-38, para.12).

178. In the earlier situation, the VPRS requested and was granted an additional 82 days (on top of the 30 days provided for in Regulation 50(1) to implement the Chamber's order).<sup>222</sup> It is reasonable to assume that applying a similar procedure in the situation of Côte d'Ivoire would equally delay the proceedings. Moreover, in the Prosecution's view, direct contact by the VPRS with victims or intermediaries without proper prior risk assessments by the VWU and without applying appropriate risk treatment tools in case of identified risks, is incompatible with the Court's standard of protection.<sup>223</sup> According to the Court-wide guidelines on intermediaries, before any organ of the Court engages or contracts with an intermediary, the VWU, the Registry's Security and Safety Section (SSS) or the Prosecution must conduct an individual risk assessment (IRA). The IRA must be based on a relevant security risk and threat assessment (STRA).<sup>224</sup> In a joint protocol adopted on 21 March 2011, the Prosecution and the VWU agreed on the process and the standards to be followed for conducting IRAs and STRAs.<sup>225</sup> In the Situation in Côte d'Ivoire, no STRA has yet been conducted. Information relevant for the STRA will be gathered during the Prosecution's mission between from 27 June until 4 July 2011 referred to above.

179. For these reasons, and "given the limited scope of article 15 proceedings",<sup>226</sup> the Prosecution proposes that, based on the information given to victims by general

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<sup>222</sup> ICC-01/09-6-Red (VPRS request for extension of time limit, see in particular para. 9(e); ICC-01/09-7 (Decision on Extension of Time Limit).

<sup>223</sup> See Article 68(1), which provides that the Court shall take appropriate measures to protect victims and witnesses alike; and the Appeals Chamber judgment that *all* persons at risk on account of the activities of the Court are entitled to protection ICC-01/04-01/07-475 OA, para. 54). See also Rule 50(1) that establishes a critical role of the VWU in interacting with victims for the purposes of any Article 15(3) proceedings, as well as the decision of Pre-Trial Chamber II regulating the manner in which risks must be assessed by the VWU prior to any interaction between the defence and any potential defence witness (ICC-01/09-02/11-38, paras. 15-16 and ICC-01/09-02/11-89, paras. 16-22).

<sup>224</sup> Draft Guidelines governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries, 8 June 2011, p. 15 (section 5.2, risk assessment). These guidelines were approved by the Registrar.

<sup>225</sup> Prosecution – Registry Joint Protocol on the Mandate, Standards and Procedure for Protection, 21 March 2011. See in particular Chapters 3 and 4.

<sup>226</sup> ICC-01/09-4, para.8.

means, the Court should be ready to receive directly communications from any interested victims, including community leaders or their representatives. Additionally, the Chamber should further instruct the Registry or any competent section within the Registry to conduct an assessment on whether the conditions set out in Rule 85 are met and summarize its views into one report within the 30 days established by the Statute.<sup>227</sup> However, for the reasons set out above, it should be avoided that the Registry establish a presence on the territory of Côte d'Ivoire to collect Rule 50(3) representations or establish direct contacts with victims and/or intermediaries, which might put them at risk on account of the activities of the Court. If there is a need to conduct such outreach and Registry missions they should be undertaken after the Pre-Trial Chamber rules on the Prosecutor's Application triggering the opening of investigations. The missions should then be conducted through the regular process of coordination and planning between the various organs of the Court.

180. The Prosecution also informs the Chamber that it will provide the notice foreseen in Article 18(1) of the Statute upon a decision of the Chamber to authorise an investigation into the situation in the Republic of Côte d'Ivoire. As provided for in Article 18(1), such notification can only occur after an affirmative determination of the Chamber on the Prosecutor's application.

## **XI. Relief Requested**

181. For the reasons set out above and on the basis of the information presented and the supporting material, the Prosecution respectfully requests the Pre-Trial

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<sup>227</sup> See ICC-01/09-4, para. 9.

Chamber to authorise the commencement of an investigation into the situation in the Republic of Côte d'Ivoire since 28 November 2010.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is centered on the page. The signature is fluid and cursive.

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Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of June 2011

At The Hague, The Netherlands