

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/11-01/11  
Date: 30 November 2011

**PRE-TRIAL CHAMBER III**

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

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

**IN THE CASE OF *THE PROSECUTOR v. LAURENT KOUDOU GBAGBO***

**Public redacted version of  
“Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant  
of arrest against Laurent Koudou Gbagbo”**

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

**Counsel for the Defence**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

**Legal Representatives of Victims      Legal Representatives of Applicants**

**Unrepresented Victims                      Unrepresented Applicants for  
Participation/Reparation**

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

**States' Representatives                      *Amicus Curiae***

**REGISTRY**

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**Registrar and Deputy Registrar      Detention Section**  
Ms Silvana Arbia, Registrar

**Victims and Witnesses Unit              Others**

**Victims Participation and  
Reparations Section**

**Pre-Trial Chamber III** (“the Chamber”) of the International Criminal Court (“the Court”) issues the following decision on the “Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou GBAGBO” (“Prosecutor’s Application” or “Application”).

## **I. Procedural history**

1. On 3 October 2011, the Chamber authorised the commencement of an investigation in Côte d'Ivoire.<sup>1</sup>
2. On 19 October 2011, the Chamber granted<sup>2</sup> the prosecution’s request for an extension to the page limit for the present Application.<sup>3</sup>
3. On 21 October 2011, the Chamber issued its Decision<sup>4</sup> on the prosecution’s “Request for Leave to file an Application for a Warrant of Arrest that exceeds the word limit in Regulation 36(3)”.<sup>5</sup>
4. On 25 October 2011, the Prosecutor filed an Application for a warrant of arrest against Laurent Koudou Gbagbo on four counts of crimes against humanity<sup>6</sup> based on his individual responsibility for the crimes of murder,

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<sup>1</sup> Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11-14; a corrigendum to the decision was issued on 15 November 2011, ICC-02/11-14-Corr.

<sup>2</sup> Decision on the prosecution’s “Notification to Pre-Trial Chamber III and Request for Extension of Page Limit”, 19 October 2011, ICC-02/11-20-US-Exp.

<sup>3</sup> Notification to Pre-Trial Chamber III and Request for Extension of Page Limit, 17 October 2011, ICC-02/11-19-US-Exp.

<sup>4</sup> Decision on the prosecution’s “Request for Leave to file an Application for a Warrant of Arrest that exceeds the word limit in Regulation 36(3)”, 21 October 2011, ICC-02/11-23-US-Exp.

<sup>5</sup> Request for Leave to file an Application for a Warrant of Arrest that exceeds the word limit in Regulation 36(3), 20 October 2011, ICC-02/11-21-US-Exp.

<sup>6</sup> Prosecutor’s Application Pursuant to Article 58 as to Laurent Koudou GBAGBO, 25 October 2011, ICC-02/11-24-US-Exp, (“Prosecutor’s Application”).

rape and other forms of sexual violence, persecution and inhumane acts committed during the post-election violence from 28 November 2010 onwards by the Ivorian Defence and Security Forces (“FDS”), reinforced by the pro-Gbagbo youth militia and mercenaries (hereafter referred to collectively as the “pro-Gbagbo forces”), in Abidjan, including around the Golf Hotel, and elsewhere in the country.<sup>7</sup>

5. The Prosecutor submits that Mr Gbagbo, supported by individuals from his inner circle, adopted a policy of attacking his political opponent Alassane Dramane Ouattara, members of Mr Ouattara’s political group and civilians who were believed to support Mr Ouattara, the objective being to retain power by all means, including by lethal force (the “policy”). They implemented this policy through the pro-Gbagbo forces who, under the joint authority and control of Mr Gbagbo and his inner circle, committed widespread and systematic attacks on civilians, which included the crimes charged in this Application.<sup>8</sup>
6. The Prosecutor further submits that on the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court that may be investigated in due course, there are reasonable grounds to believe that Mr Gbagbo is responsible as an indirect co-perpetrator (Article 25(3)(a) of the Rome Statute (the “Statute”)) for the crimes against humanity of murder (Article 7(1)(a)), rape and other forms of sexual violence (Article 7(1)(g)), persecution (Article 7(1)(h)) and inhumane acts (Article 7(1)(k))

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<sup>7</sup> Prosecutor’s Application, paragraph 1.

<sup>8</sup> Prosecutor’s Application, paragraph 2.

under the Statute.<sup>9</sup> The Prosecutor contends that the available information also suggests that the arrest of Mr Gbagbo is necessary to ensure that he appears at trial and does not obstruct or endanger the investigation.<sup>10</sup>

7. The Prosecutor requests that his Application be considered on an expedited basis in order to minimise any security risks and to maximise the chance of effecting an arrest (should the Chamber decide to issue a warrant).<sup>11</sup>

## **II. The jurisdiction of the Court and the admissibility of the case against Mr Gbagbo**

### **A. Jurisdiction**

8. Article 19(1) of the Statute provides that “[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it”. Consequently, it is necessary at the outset to determine whether the case against Mr Gbagbo falls within the jurisdiction of the Court.
9. For a crime to come under the Court’s jurisdiction, it is necessary that the following three conditions are met:
  - (i) it is one of the crimes in Article 5 of the Statute (jurisdiction *ratione materiae*);
  - (ii) it was committed within the timeframe specified in Article 11 of the Statute (jurisdiction *ratione temporis*);

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<sup>9</sup> Prosecutor’s Application, paragraph 3.

<sup>10</sup> Prosecutor’s Application, paragraph 3.

<sup>11</sup> Prosecutor’s Application, paragraph 4.

- (iii) it satisfies one or other of the two criteria laid down in Article 12 of the Statute:<sup>12</sup> either it was committed on the territory of a State Party to the Statute or by a national of that State, or it was committed on the territory of a State which has made a declaration under Article 12(3) of the Statute or by nationals of that State.<sup>13</sup>

10. The Chamber has followed the established jurisprudence of the Court to the extent that a case includes “specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified suspects”<sup>14</sup> and that a “case arising from the investigation of a situation will fall within the jurisdiction of the Court only if the specific crimes of the case do not exceed the territorial, temporal and possibly personal parameters defining the situation under investigation and fall within the jurisdiction of the Court.”<sup>15</sup>

11. With regard to the jurisdiction *rationae materiae*, the Chamber has decided, for the reasons developed below, that there are reasonable grounds to believe that the crimes alleged against Mr Gbagbo constitute crimes against humanity under Article 7 of the Statute, on the grounds that they were committed as part of a widespread or systematic attack against the civilian

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<sup>12</sup> Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga*, ICC-01/04-01/07-55, paragraph 11; and Pre-Trial Chamber I, *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6*, 17 January 2006, ICC-01/04-101-tEN-Corr (translation filed on 22 March 2006), paragraph 85.

<sup>13</sup> ICC-01/04-101-tEN-Corr, paragraph 91.

<sup>14</sup> Pre-Trial Chamber I, *Decision on the Prosecution’s Application under Article 58(7) of the Statute*, ICC-02/05-01/07-1-Corr, paragraph 14; and Pre-Trial Chamber I, *Decision concerning Pre-Trial Chamber I Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo*, ICC-01/04-01/06-8-Corr, paragraph 21.

<sup>15</sup> ICC-01/04-01/06-8-Corr, paragraph 21.

population. The Chamber observes, furthermore, that murder is a crime against humanity under Article 7(1)(a) of the Statute; rape is a crime against humanity under Article 7(1)(g) of the Statute; persecution is a crime against humanity under Article 7(1)(h) of the Statute; and inhumane acts, in particular acts of inflicting serious bodily injury and suffering, are a crime against humanity under Article 7(1)(k) of the Statute. In all the circumstances, this first condition, relating to jurisdiction *ratione materiae*, is satisfied.

12. Addressing the Court's jurisdiction *ratione temporis*, the Chamber previously held that it has jurisdiction over crimes allegedly committed in Côte d'Ivoire after 19 September 2002, on the basis of the Declaration of Acceptance of 18 April 2003 and the letters of December 2010 and May 2011.<sup>16</sup> The Chamber indicated that given Côte d'Ivoire confirmed its acceptance of jurisdiction in 2010 and 2011, it was unnecessary to assess whether the 2003 Declaration, on its own, covers crimes allegedly committed in 2010 or 2011.<sup>17</sup>

13. This Chamber has authorised the commencement of an investigation in Côte d'Ivoire for the period after 28 November 2010, which encompasses any continuing crimes to the extent that they were committed as part of the ongoing situation in Côte d'Ivoire.<sup>18</sup>

14. The Prosecutor's Application relates to attacks carried out by pro-Gbagbo forces against the civilian population on the territory of Côte d'Ivoire between 28 November 2010 and 8 May 2011,<sup>19</sup> and, accordingly, the present

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<sup>16</sup> ICC-02/11-14-Corr, paragraph 15.

<sup>17</sup> ICC-02/11-14-Corr, paragraph 15.

<sup>18</sup> ICC-02/11-14-Corr, paragraph 212.

<sup>19</sup> Prosecutor's Application, paragraphs 42, 82 and 89.

Application falls within the temporal parameters of the situation in Côte d'Ivoire as authorized by this Chamber.

15. As previously determined by the Chamber, the alleged crimes occurred in the territory of the Republic of Côte d'Ivoire, and thus the Court has jurisdiction *ratione loci* under Article 12(2)(a) of the Statute.<sup>20</sup> The Court has jurisdiction *ratione personae* under Article 12(2)(b) of the Statute over Mr Gbagbo who is an Ivorian national.

16. For these reasons the Chamber concludes that the case against Mr Gbagbo falls within the jurisdiction of the Court.

## **B. Admissibility**

17. The Prosecutor submits that the case is admissible, although he also suggests a review of this requirement is unnecessary at this stage. In any event, it is contended that although Mr Gbagbo is currently under arrest and has been charged with economic crimes, there are no historic or ongoing investigations or prosecutions in relation to the case that are covered by his Application.<sup>21</sup>

18. The Prosecutor also observes that the government of President Ouattara has repeatedly requested the ICC to launch an investigation into Mr Gbagbo, on the basis, *inter alia*, that the economic charges he faces are to be distinguished from the charges arising in the present context that can be brought by the national judiciary or the ICC. It is argued that this distinction has been

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<sup>20</sup> ICC-02/11-14-Corr, paragraph 188.

<sup>21</sup> Prosecutor's Application, paragraphs 132-138.



reflected in the decision of Côte d'Ivoire to relinquish its jurisdiction to the ICC as regards "blood crimes".<sup>22</sup>

19. The Prosecutor further notes that Switzerland has opened an investigation against Mr Gbagbo for money laundering. However, the Swiss enquiry has not led to any charges and it will in any event address crimes that are outwith the subject matter of the present Application.<sup>23</sup>

20. The Prosecutor finally submits that based on the scale, nature and the manner of the commission of the crimes that are the subject matter of his Application and their past and continuing impact on the victims, the case is of sufficient gravity to justify intervention by the Court.<sup>24</sup>

21. In its Decision authorising the investigation in Côte d'Ivoire, the Chamber found that "due to the absence of national proceedings against those appearing to be most responsible for crimes committed during the post-election violence, and in light of the gravity of the acts committed, the Chamber is satisfied that there are potential cases that would be admissible in the situation in the Republic of Côte d'Ivoire".<sup>25</sup>

22. Article 19(1) of the Statute confers upon the Chamber a discretionary power to examine the admissibility of a case when it has received an application filed under Article 58 of the Statute. The exercise of this discretion will

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<sup>22</sup> Prosecutor's Application, paragraph 139.

<sup>23</sup> Prosecutor's Application, paragraph 140.

<sup>24</sup> Prosecutor's Application, paragraph 142.

<sup>25</sup> ICC-02/11-14-Corr, paragraph 206.

depend on the circumstances of the case, with appropriate consideration being given to the interests of those concerned.<sup>26</sup>

23. The Appeals Chamber, in its Judgment of 13 July 2006 in the Situation of the Democratic Republic of Congo, held that when “the Prosecution Application is made on a *confidential* and *ex parte* basis, the Chamber, for the purpose of preserving the interest of the relevant person, must exercise its discretion under article 19(1) of the Statute only in exceptional circumstances, such as when an “ostensible cause” or a “self-evident factor” impels the exercise of such discretion”.<sup>27</sup>

24. In all the circumstances, the Chamber has not investigated the admissibility of the case against Mr Gbagbo at this stage given: (i) the Prosecutor’s Application is under seal and *ex parte*; and (ii) there is no ostensible cause or self-evident factor which impels the Chamber to exercise its discretion pursuant to Article 19(1) of the Statute.

### **III. Whether there are reasonable grounds to believe that one or more crimes falling within the jurisdiction of the Court have been committed**

25. Under Article 58(1)(a) of the Statute, the Chamber shall determine whether there are reasonable grounds to believe that the person concerned has committed a crime within the jurisdiction of the Court.

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<sup>26</sup> ICC-01/04-01/07-55, paragraph 17; Pre-Trial Chamber I, *Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Mathieu Ngudjolo Chui*, 6 July 2007, ICC-01/04-01/07-262, paragraph 17; ICC-02/05-01/07-1-Corr, paragraph 18.

<sup>27</sup> Appeals Chamber, *Judgment on the Prosecutor’s appeal against the Decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”*, 13 July 2006, ICC-01/04-169, paragraphs 52 and 53.

26. It follows that the Chamber needs to analyse the information and supporting materials provided by the Prosecutor in order to determine (applying Article 58 of the Statute) whether there are reasonable grounds to believe that Mr Gbagbo has committed the crimes alleged by the Prosecutor, and, if so, whether his arrest appears necessary. The Chamber has only referred below to a part of the available material that supports its overall conclusions.
27. As previously determined by Pre-Trial Chamber I and confirmed by the Appeals Chamber,<sup>28</sup> under Article 21(3) of the Statute, the expression “reasonable grounds to believe” must be interpreted in a manner that is consistent with internationally recognised human rights. Thus, the Chamber has borne in mind the “reasonable suspicion” standard under Article 5(1)(c) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, which, as interpreted by the European Court of Human Rights (“ECHR”), “requires the existence of some facts or information which would satisfy an objective observer that the person concerned may have committed the offence”.<sup>29</sup> Moreover, the Chamber has also been guided by the jurisprudence of the Inter-American Court of Human Rights (“IACHR”) as

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<sup>28</sup> Appeals Chamber, *Judgment on the appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”*, 3 February 2010, ICC-02/05-01/09-73, paragraphs 31 and 39; and *Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo*, 10 June 2008, ICC-01/05-01/08-14-tENG (translation filed on 17 July 2008), paragraph 24.

<sup>29</sup> ICC-02/05-01/09-73, paragraph 31; ICC-01/05-01/08-14-tENG, paragraph 24; ECHR, *Fox, Campbell and Hartley v. United Kingdom*, Judgment of 30 August 1990, vol. 182, Series A, page 16, paragraph 32; *K.-F. v. Germany*, Judgment of 27 November 1997, Reports 1997-VII, paragraph 57; *Labita v. Italy*, Judgment of 6 April 2000, paragraph 155; *Berkday v. Turkey*, Judgment of 1 March 2001, paragraph 199; *O’Hara v. United Kingdom*, Judgment of 16 October 2001, paragraph 34.

regards the fundamental right to liberty which is enshrined in Article 7 of the *American Convention on Human Rights*.<sup>30</sup>

### **Crimes against humanity**

#### (1) Contextual elements of the crimes against humanity

28. The Prosecutor submits that Mr Gbagbo is criminally responsible for crimes against humanity under Articles 7(1)(a) (murder), 7(1)(g) (rape), 7(1)(g) (other forms of sexual violence), 7(1)(h) (persecution) and 7(1)(k) (other inhumane acts) of the Statute, committed in Côte d'Ivoire between 16 December 2010 and 12 April 2011.<sup>31</sup> It is alleged that these criminal acts occurred in the context of a widespread or systematic attack directed against the Côte d'Ivoire civilian population, within the meaning of Article 7(1) of the Statute.<sup>32</sup>

29. Under Article 7(1) of the Statute, a crime against humanity involves any of the specified acts that are listed ("underlying acts") when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack ("contextual elements"). Article 7(2) of the Statute provides that an "attack directed against any civilian population" is a course of conduct involving the multiple commission of the acts referred to in

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<sup>30</sup> ICC-01/05-01/08-14-tENG, paragraph 24; see, for example, IACHR, *Bamaca Velasquez v. Guatemala*, Judgment of 25 November 2000, Series C No. 70, paragraph 138-144; *Loayza-Tamayo v. Peru*, Judgment of 17 September 1997, Series C No. 33, paragraph 49-55; *Gangaram Panday v. Surinam*, Judgment of 21 January 1994, Series C No.16, paragraph 46-51.

<sup>31</sup> Prosecutor's Application, subheading D. Crimes within the Jurisdiction of the Court which GBAGBO has Committed (Article 58(2)(b)).

<sup>32</sup> Prosecutor's Application, paragraphs 78-92.

Article 7(1) against a civilian population, pursuant to or in furtherance of a State or organisational policy to commit such an attack.

**(a) An attack against a civilian population**

*Definition*

30. As previously defined by this Chamber, an attack is not restricted to a “military attack”; instead, the term refers to “a campaign or operation carried out against the civilian population”. It consists of a course of conduct involving the multiple commission of the acts referred to in Article 7(1) of the Statute. The potential civilian victims of a crime under Article 7 of the Statute can be of any nationality or ethnicity, or they may possess other distinguishing features. The civilian population must have been the primary object of the attack and not just incidental victims.<sup>33</sup>

*Submissions of the Prosecutor*

31. The Prosecutor alleges that between 28 November 2010 and 8 May 2011, pro-Gbagbo forces committed multiple attacks against civilians who were believed to support Mr Ouattara, during which they were responsible for between 706 and 1059 murders, over 35 rapes, the arbitrary arrest of at least 520 individuals and inflicting serious bodily injury and suffering on at least 90 people.<sup>34</sup>

32. The Prosecutor provides a non-exhaustive description of the attacks against civilians who were believed to support Mr Ouattara, that were committed

<sup>33</sup> See, ICC-02/11-14-Corr, paragraphs 31-33.

<sup>34</sup> Prosecutor’s Application, paragraph 42.

between November 2010 and May 2011 by pro-Gbagbo forces in furtherance of the policy referred to above. The Prosecutor contends that these attacks establish the necessary widespread and systematic nature of the attack against civilians.<sup>35</sup>

33. The Prosecutor submits that the individuals who were attacked were often selected because they lived in neighbourhoods of Abidjan believed to be Mr Ouattara's strongholds (such as Abobo, Adjamé, Koumassi and Treichville), as well as numerous other locations in the Western part of Côte d'Ivoire, where the communities are based that support Mr Ouattara. They were also often identified on ethnic grounds (Baoulé, Djouala, Mossi, Malinké), religious grounds (Muslim), or on national grounds (West Africans or Ivoirians of West African descent), given that members of these groups were perceived to be supporters of Mr Ouattara. To assist the attackers, houses were frequently marked with a "D" (Djouala) or a "B" (Baoulé) in white chalk or a cross in black paint. Pro-Gbagbo forces, and in particular the youth militia, also frequently identified the targets of these attacks by carrying out identity checks at illegal roadblocks or by attacking neighbourhoods or religious institutions that were commonly used by Mr Ouattara's supporters.<sup>36</sup>

*Materials presented by the Prosecutor*

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<sup>35</sup> Prosecutor's Application, paragraph 43.

<sup>36</sup> Prosecutor's Application, paragraph 41.

34. The material submitted by the Prosecutor indicates that the violence began after the “run-off” elections,<sup>37</sup> when regular security forces loyal to Mr Gbagbo, as well as members of the youth militia associated with his political party, resorted to violent attacks on communities believed to be associated with Mr Ouattara.<sup>38</sup> The materials show that armed forces loyal to Mr Gbagbo erected road blocks,<sup>39</sup> and used heavy weaponry – which had been systematically distributed to them<sup>40</sup> – against civilians.<sup>41</sup> The material further indicates that the violence occurred in the form of an ongoing “campaign”,<sup>42</sup> during which individuals associated with or believed to be associated with Mr Ouattara were killed,<sup>43</sup> beaten,<sup>44</sup> raped,<sup>45</sup> burnt alive,<sup>46</sup> unlawfully detained or they “disappeared”.<sup>47</sup>

<sup>37</sup> [REDACTED], UNHCHR Rapport de la Commission d’enquête internationale indépendante de la Côte d’Ivoire 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, paragraph 41.

<sup>38</sup> UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, pages 10-12.

<sup>39</sup> Video material ICC-02/11-24-US-Exp-Anx7.12; UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 10.

<sup>40</sup> [REDACTED]; UNHCHR Rapport de la Commission d’enquête internationale indépendante de la Côte d’Ivoire 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, paragraph 41, ICG, “A Critical Period for Ensuring Stability in Côte d’Ivoire”, 1 August 2011, ICC-02/11-24-US-Exp-Anx5.20, page 11; [REDACTED].

<sup>41</sup> FIDH, Côte d’Ivoire: “It is urgent to prevent the escalation to civil war”, March 2011, ICC-02/11-24-US-Exp-Anx5.25, pages 4-8; UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire”, 24 June 2011, ICC-02/11-24-US-Exp-Anx5.41, pages 6-7; HRW, “The case for Intervention in Ivory Coast”, 25 March 2011, ICC-02/11-24-US-Exp-Anx5.24, page 2; [REDACTED].

<sup>42</sup> HRW, “Côte d’Ivoire: Crimes Against Humanity by Gbagbo Forces”, 15 March 2011, ICC-02/11-24-US-Exp-Anx5.11, pages 2-4.

<sup>43</sup> HRW Côte d’Ivoire “West African Immigrants Massacred”, 31 March 2011, ICC-02/11-24-US-Exp-Anx5.12, page 2.

<sup>44</sup> UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, pages 3-4, 6-15.

<sup>45</sup> HRW, “Côte d’Ivoire: Crimes Against Humanity by Gbagbo Forces”, 15 March 2011, ICC-02/11-24-US-Exp-Anx5.11, page 3; Amnesty International, “Defenceless people need urgent protection from escalating violence in Côte d’Ivoire”, 21 December 2010, ICC-02/11-24-US-Exp-Anx5.17, page 2.

<sup>46</sup> Video material, ICC-02/11-24-US-Exp-Anx7.10; Video material, ICC-02/11-24-US-Exp-Anx7.12.

<sup>47</sup> Abidjan.net “Barbarie des mercenaires et miliciens de Laurent Gbagbo: Voici ceux qui ont hébergé les tueurs à Abidjan” 17 June 2011, ICC-02/11-24-US-Exp-Anx6.34, page 2.

35. It is further apparent from the supporting material that people were targeted on ethnic and religious grounds.<sup>48</sup> Neighbourhoods known to be the strongholds of Mr Ouattara's supporters were systematically shelled,<sup>49</sup> and the houses and property belonging to actual and perceived supporters of Mr Ouattara were destroyed.<sup>50</sup> The evidence suggests that civilians were attacked not only in neighbourhoods of Abidjan, but also in other cities and villages of the country, especially in the western part of Côte d'Ivoire, including Irobo, Grand Lahou, Fresco, and the Sassandra region,<sup>51</sup> as well as Duékoué<sup>52</sup> and Kouibly.<sup>53</sup> Those of West African decent were particularly singled out during the violence, including by open threats and attacks in their homes,<sup>54</sup> and children and the elderly were killed during these events.<sup>55</sup>

#### *Conclusion of the Chamber*

36. In all the circumstances, the Chamber concludes that there are reasonable grounds to believe that in the aftermath of the presidential elections in Côte d'Ivoire pro-Gbagbo forces attacked the civilian population in Abidjan and in

<sup>48</sup> AllAfrica.com "Afrique de l'Ouest: Crise Ivoirienne – L'ABSF fait un décompte macabre", 10 July 2011, ICC-02/11-24-US-Exp-Anx6.35, page 2.

<sup>49</sup> UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire", 24 June 2011, ICC-02/11-24-US-Exp-Anx5.41, page 8.

<sup>50</sup> [REDACTED].

<sup>51</sup> HRW Côte d'Ivoire "West African Immigrants Massacred", 31 March 2011, ICC-02/11-24-US-Exp-Anx5.12, page 2; AFP, "Ivory Coast: Militia killed 220 in southwest" ICC-02/11-24-US-Exp-Anx6.29, page 2.

<sup>52</sup> UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, paragraph 56.

<sup>53</sup> UNHCHR Rapport de la Commission d'enquête internationale indépendante de la Côte d'Ivoire 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, paragraph 29 and paragraphs 46-64.

<sup>54</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, ICC-02/11-24-US-Exp-Anx5.16, pages 17, 26, 32 and 43; see also video material ICC-02/11-24-US-Exp-Anx7.12; [REDACTED]; HRW Côte d'Ivoire "Violence Campaign By Security Forces, Militias", 26 January 2011, ICC-02/11-24-US-Exp-Anx5.10, page 2; HRW, "Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces", 15 March 2011, ICC-02/11-24-US-Exp-Anx5.11, pages 2-4; Abidjan.net "Barbarie des mercenaires et miliciens de Laurent Gbagbo: Voici ceux qui ont hébergé les tueurs à Abidjan" 17 June 2011, ICC-02/11-24-US-Exp-Anx6.34, page 2.

<sup>55</sup> La dépêche/AFP, Côte d'Ivoire: "120 civils tués par les miliciens et mercenaires pro-Gbagbo", 5 May 2011, ICC-02/11-24-US-Exp-Anx6.16, page 2.



the west of the country, from 28 November 2010 onwards. They targeted civilians who they believed were supporters of Mr Ouattara, and the attacks were often directed at specific ethnic or religious communities.

**(b) State or organisational policy**

*Definition*

37. The attack against the civilian population must be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack”. This policy needs to have been implemented by either State or organisational action. The Statute does not provide definitions for the terms “policy” or “State or organizational”. As previously held by this Chamber the following elements had been identified: a) it must be thoroughly organised and follow a regular pattern; b) it must be conducted in furtherance of a common policy involving public or private resources; c) it can be implemented either by groups who govern a specific territory or by an organisation that has the capability to commit a widespread or systematic attack against a civilian population; and d) it need not be explicitly defined or formalised.<sup>56</sup>

*Submissions of the Prosecutor*

38. The Prosecutor submits that Mr Gbagbo and his inner circle constitute an organisation within the meaning of Article 7(2)(a) of the Statute.<sup>57</sup>

39. The Prosecutor alleges that Mr Gbagbo and his inner circle were able to infringe basic human values and to carry out widespread or systematic

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<sup>56</sup> See, ICC-02/11-14-Corr, paragraphs 42-46.

<sup>57</sup> Prosecutor’s Application, paragraph 79.

attacks against the civilian population because (a) they jointly had authority and control over the pro-Gbagbo forces, including the FDS, the youth militia and the mercenaries; (b) they recruited members of the youth militia and mercenaries, and integrated them into the FDS chain of command; (c) they financed the pro-Gbagbo forces and provided them with weapons; and (d) they gave instructions to the pro-Gbagbo forces, who reported back to them as to the unfolding events.<sup>58</sup>

40. The Prosecutor further submits that Mr Gbagbo and members of his inner circle adopted as a policy that they would attack his political opponent (Alassane Ouattara), members of the latter's political group and those civilians who were believed to support him, in order to retain power by all means, including by lethal force (the "policy" referred to above). The policy was acknowledged by Mr Gbagbo and his inner circle,<sup>59</sup> and its existence and nature can in any event be inferred from the following factors: (i) pro-Gbagbo forces committing widespread and systematic attacks against civilians who were believed to be supporters of Ouattara in furtherance of the common plan,<sup>60</sup> (ii) [REDACTED]<sup>61</sup>, (iii) Mr Gbagbo and members of his inner circle used their various positions to instruct, finance and arm the pro-Gbagbo forces who were under their authority and control, so that they were in a position to launch violent attacks against civilians who were believed to be supporters of Mr Gbagbo's political opponents.<sup>62</sup>

*Materials presented by the Prosecutor*

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<sup>58</sup> Prosecutor's Application, paragraph 80.

<sup>59</sup> Prosecutor's Application, paragraph 81.

<sup>60</sup> Prosecutor's Application, paragraph 82.

<sup>61</sup> Prosecutor's Application, paragraph 84.

<sup>62</sup> Prosecutor's Application, paragraph 85.

41. The material provided indicates that Mr Gbagbo and his inner circle constitute an organisation within the meaning of Article 7(2)(a) that had the means to carry out widespread and systematic attacks against a civilian population, in that they jointly exercised authority and control over the pro-Gbagbo forces, including the FDS, the youth militia and the mercenaries, who they recruited, integrated, financed and instructed, and who in turn reported back as to the unfolding events.<sup>63</sup>

42. Furthermore, the supporting materials demonstrate that Mr Gbagbo and his inner circle adopted a policy to launch violent attacks against Mr Gbagbo's political opponent, Mr Ouattara, members of the latter's political group and civilians believed to support him, in order to retain power by all means. The policy was acknowledged by Mr Gbagbo and his inner circle, and this can be inferred from the fact that pro-Gbagbo forces mainly targeted individuals who were perceived to be supporters of Mr Ouattara.<sup>64</sup> The targets were often identified on ethnic, religious or national grounds.<sup>65</sup> Pro-Gbagbo forces used excessive force against civilians and heavy weaponry was utilised in densely populated areas in order to disperse pro-Ouattara supporters.<sup>66</sup>

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<sup>63</sup> Prosecutor's Application, paragraphs 96, 99, 100; See in particular, [REDACTED]; Le Nouveau Réveil, "Lu dans Jeune Afrique d'hier/Dans le secret de la médiation des émissaires de l'Ua et de la Cedeao", 11 January 2011, ICC-02/11-24-US-Exp-Anx6.13, pages 5-6; Le Figaro, Côte d'Ivoire: Ouattara lance l'épreuve de force, 14 December 2010, ICC-02/11-24-US-Exp-Anx6.10, page 3; UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 13.

<sup>64</sup> UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, pages 10-12; Amnesty International, "They looked at his identity card and shot him dead" Six months of post electoral violence in Côte d'Ivoire, May 2011, ICC-02/11-24-US-Exp-Anx5.16, pages 17, 26, 32-34, 43.

<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, ICC-02/11-24-US-Exp-Anx5.16, page 41; HRW, Côte d'Ivoire: "Ouattara forces kill, rape civilians during offensive", 9 April 2011, ICC-02/11-24-US-Exp-Anx5.13, page 3.

<sup>66</sup> [REDACTED]; UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 13; Amnesty International, "They looked at his identity card and shot him dead" Six months of post electoral violence in

43. [REDACTED].<sup>67</sup> [REDACTED].<sup>68</sup>

44. It is further apparent that Mr Gbagbo never intended to relinquish power,<sup>69</sup> and he refused to acknowledge Mr Ouattara's election victory.<sup>70</sup>

*Conclusions of the Chamber*

45. The Chamber, in its Decision authorising the investigation in Côte d'Ivoire of 3 October 2011,<sup>71</sup> held that:

[t]he supporting material indicates that despite the contested results of the elections, Mr Gbagbo remained in control of large parts of the State apparatus. On the basis of the available information, the Chamber agrees with the Prosecutor that there is a reasonable basis to believe that the attack by pro-Gbagbo forces during the post-electoral violence that began on 28 November 2010 was committed pursuant to a state policy.

46. In his Application, the Prosecutor submits that the attacks against the civilian population were committed pursuant to an organisational policy on the basis that Mr Gbagbo and his inner circle constitute an organisation within the meaning of Article 7(2)(a) of the Statute.<sup>72</sup>

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Côte d'Ivoire, May 2011: ICC-02/11-24-US-Exp-Anx5.16, pages 15-17 and 26-28; UNHCHR, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 14 June 2011, ICC-02/11-24-US-Exp-Anx5.41, pages 7-8.

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED]; UNSC, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, pages 4-6; International Crisis Group, "Côte d'Ivoire: Is War the Only Option?", 3 March 2011, ICC-02/11-24-US-Exp-Anx5.26, pages 33-35.

<sup>71</sup> ICC-02/11-14-Corr, paragraph 51.

<sup>72</sup> Prosecutor's Application, paragraphs 78 *et seq.*

47. On the basis of the Application and the supporting material the Chamber finds that there are reasonable grounds to believe that the attack by pro-Gbagbo forces during the post electoral violence that began on 28 November 2010 was committed pursuant to such an organisational policy.

48. Notwithstanding this conclusion, at a later stage in the proceedings it may be necessary for the Chamber to revisit the issue of whether the attacks by the pro-Gbagbo forces during the post-electoral violence, from 28 November 2010 onwards, were committed pursuant to a state policy.

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

*Definition*

49. This Chamber has accepted the approach of Pre-Trial Chamber II that the term “widespread” encompasses “the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims”. Similarly, this Chamber has previously adopted the jurisprudence of Pre-Trial Chamber II that a widespread attack may be the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”, and that the term “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence”. Finally, the Chamber has followed the approach of Pre-Trial Chamber II that an attack’s systematic nature can “often be expressed through patterns of

crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis".<sup>73</sup>

*Submissions of the Prosecutor*

50. The Prosecutor alleges that pro-Gbagbo forces carried out attacks against the civilian population that was believed to support Mr Ouattara.<sup>74</sup> These attacks were both widespread and systematic. The widespread nature of the attacks can be inferred from: (a) the fact that the attacks cover a period of over five months (28 November 2010 until 8 May 2011); (b) their intensity; (c) the large number of victims (at least 1,350); (d) the significant number of separate incidents; and (e) the attacks included the densely populated area of Abidjan and numerous locations in the West of Côte d'Ivoire (such as Bedi-Goazon, Bloléquin, Duékoué and Gagnoa), as well as the coastal areas of the country (such the department of Sassandra).<sup>75</sup>

*Materials presented by the Prosecutor*

51. The material submitted by the Prosecutor indicates that violence against the civilian population was carried out in a systematic manner,<sup>76</sup> including by the use of disproportionate force,<sup>77</sup> as it appears that the regular security forces loyal to Mr Gbagbo, as well as mercenaries<sup>78</sup> and the youth militia associated with his political party (through the *Galaxie Patriotique*), carried out the attacks. The material sufficiently establishes that the youth militia and other

<sup>73</sup> See, ICC-02/11-14-Corr, paragraphs 52-54.

<sup>74</sup> Prosecutor's Application, paragraph 89.

<sup>75</sup> Prosecutor's Application, paragraph 90.

<sup>76</sup> UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp Anx5.36, pages 10-12.

<sup>77</sup> [REDACTED]

<sup>78</sup> [REDACTED]

forces loyal to Mr Gbagbo followed the direct<sup>79</sup> and indirect instructions<sup>80</sup> of generals from the *état major*<sup>81</sup> and the leader of the *jeunes patriotes*.<sup>82</sup> The material also establishes, to the required standard, that they were trained as part of a widespread enrolment campaign to bolster the forces that remained loyal to Mr Gbagbo.<sup>83</sup> The material demonstrates that the campaign of violence followed a consistent pattern,<sup>84</sup> in that military and police forces as well as the youth militia and mercenaries loyal to Mr Gbagbo erected road blocks<sup>85</sup> in order to filter and select individuals on the grounds of their ethnicity or perceived or actual religious background.<sup>86</sup>

52. The material also establishes that weapons were provided to the youth militia by those loyal to Mr Gbagbo.<sup>87</sup> Furthermore, between 28 November 2010 and at least early May 2011 the violent attacks on civilians occurred concurrently in western parts of the territory of Côte d’Ivoire and in the neighbourhoods of

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<sup>79</sup> [REDACTED]. See also video material ICC-02/11-24-US-Exp-Anx7.2 and ICC-02/11-24-US-Exp-Anx7.3 in which youth supporting the “true president” is asked to defend the country against foreigners.

<sup>80</sup> See for example video material ICC-02/11-24-US-Exp-Anx7.1.

<sup>81</sup> [REDACTED].

<sup>82</sup> Video material ICC-02/11-24-US-Exp-Anx7.7; [REDACTED].

<sup>83</sup> [REDACTED]; video material ICC-02/11-24-US-Exp-Anx7.2, ICC-02/11-24-US-Exp-Anx7.7 and ICC-02/11-24-US-Exp-Anx7.8.

<sup>84</sup> FIDH, Côte d’Ivoire, “It is urgent to prevent the escalation to civil war”, March 2011, ICC-02/11-24-US-Exp-Anx5.25, pages 5-6.

<sup>85</sup> [REDACTED].

<sup>86</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, ICC-02/11-24-US-Exp-Anx5.16, pages 17, 26, 32 and 43; Video material ICC-02/11-24-US-Exp-Anx7.12; UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, paragraphs 39-40; Amnesty International “Defenceless people need urgent protection from escalating violence in Côte d’Ivoire”, 21 December 2010, ICC-02/11-24-US-Exp-Anx5.17, pages 2-4.

<sup>87</sup> [REDACTED]; UNHCHR Rapport de la Commission d’enquête internationale indépendante de la Côte d’Ivoire 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, paragraph 102; ICG, “A Critical Period for Ensuring Stability in Côte d’Ivoire”, 1 August 2011, ICC-02/11-24-US-Exp-Anx-5.20, page 11; [REDACTED].

Abidjan where larger numbers of supporters of Ouattara or immigrants were concentrated.<sup>88</sup>

53. It is further apparent from the material that at least 430 civilians were killed, more than 72 “disappeared” and 520 were arbitrarily arrested during the violent attacks on the civilian population during the period leading up to March 2011.<sup>89</sup>

#### *Conclusions of the Chamber*

54. There are reasonable grounds to believe that the attacks carried out by pro-Gbagbo forces against the civilian population in Côte d'Ivoire were widespread and systematic, as demonstrated, *inter alia*, by the extended time period during which crimes were carried out (between 28 November 2010 and May 2011), the geographic spread of the alleged crimes (many of the neighbourhoods of Abidjan and the west of Côte d'Ivoire), the high number of reported victims and the general pattern of the way in which they were committed.

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<sup>88</sup> UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire”, 24 June 2011, ICC-02/11-24-US-Exp-Anx5.41, page 8; HRW Côte d'Ivoire “West African Immigrants Massacred”, 31 March 2011, ICC-02/11-24-US-Exp-Anx5.12, page 2; AFP, “Ivory Coast: Militia killed 220 in southwest” ICC-02/11-24-US-Exp-Anx6.29, page 2; HRW, “Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces”, 15 March 2011, ICC-02/11-24-US-Exp-Anx5.11, pages 2-4; UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, paragraphs 1-7, 6-23, 35-34; Amnesty International, “Defenceless people need urgent protection from escalating violence in Côte d'Ivoire”, 21 December 2010, ICC-02/11-24-US-Exp-Anx5.17, page; Video material, ICC-02/11-24-US-Exp-Anx7.10; Video material, ICC-02/11-24-US-Exp-Anx7.12. [REDACTED]; Amnesty International, “Côte d'Ivoire security forces urged to protect civilians as tensions rise”, 6 December 2011, ICC-02/11-24-US-Exp-Anx5.18, page 2.

<sup>89</sup> UNOCI, Retranscription de point de presse hebdomadaire de l'ONUCI, 24 March 2011, ICC-02/11-24-US-Exp-Anx5.42, page 4; UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, paragraphs 52-56.



(2) Underlying acts constituting crimes against humanity committed in the context of a widespread and systematic attack

55. The Prosecutor alleges that, between 16 December 2010 and 12 April 2011, Mr Gbagbo, as an indirect co-perpetrator, committed the crimes against humanity of murder (Article 7(1)(a) of the Statute, Count 1), rape and other forms of sexual violence (Article 7(1)(g) of the Statute, Count 2), persecution (Article 7(1)(h) of the Statute, Count 3) and inhumane acts (Article 7(1)(k) of the Statute, Count 4). The Prosecutor refers to the following four incidents in support of the charges:

- (i) The attacks relating to the RTI demonstrations between 16 and 19 December 2010.<sup>90</sup>
- (ii) The attack on the women's march in Abobo on 3 March 2011.<sup>91</sup>
- (iii) The Abobo market shelling on 17 March 2011.<sup>92</sup>
- (iv) The Yopougon massacre on 12 April 2011.<sup>93</sup>

**Count 1**

**Murder constituting a crime against humanity**

(Article 7(1)(a) and Article 25(3)(a) of the Statute)

56. The Prosecutor alleges that, between 16 December 2010 and 12 April 2011, Mr Gbagbo, as an indirect co-perpetrator, committed crimes against humanity of murder in Abidjan, including around the Golf Hotel, and elsewhere in the

<sup>90</sup> Prosecutor's Application, paragraph 55 *et seq.*

<sup>91</sup> Prosecutor's Application, paragraph 64 *et seq.*

<sup>92</sup> Prosecutor's Application, paragraph 65.

<sup>93</sup> Prosecutor's Application, paragraph 66, see also Chambers Decision of 3 October 2011, ICC-02/11-14-Corr, paragraph 65.

country, through the Defence and Security Forces (FDS), reinforced by the youth militia and mercenaries, in violation of Articles 7(1)(a) and 25(3)(a) of the Statute.<sup>94</sup>

57. On the evidence, there are reasonable grounds to believe that:

*In the context of the march on the RTI station on 16 December 2010*

- (i) Orders were given by police chiefs to shoot at the crowd without any restraint.<sup>95</sup>
- (ii) A young man was wounded in the Marcory neighbourhood when the FDS began shooting in every direction. Police officers then shot and killed him when they saw he was still alive.<sup>96</sup>
- (iii) The FDS killed at least six protesters when teargas grenades were thrown in their direction and by shooting at them. Furthermore at least 3 people were killed near the Makassi crossroad.<sup>97</sup>
- (iv) A young man was killed in the Riviera II neighbourhood by a group of about 20 members of the *Fédération Estudiantine et Scolaire de Côte d'Ivoire* ("FESCI") youth militia and a policeman from the *Centre de commandement des opérations de sécurité* ("CECOS", Centre for the Command of Security Operations), because it was believed he supported Mr Ouattara.<sup>98</sup>

<sup>94</sup> Prosecutor's Application, page 39.

<sup>95</sup> [REDACTED].

<sup>96</sup> [REDACTED]; Amnesty International, "They looked at his identity card and shot him dead" Six months of post-electoral violence in Côte d'Ivoire, May 2011, ICC-02/11-24-US-Exp-Anx5.16, page 15..

<sup>97</sup> Amnesty International, Côte d'Ivoire: "Security forces killed at least nine unarmed demonstrators", 16 December 2010, ICC-02/11-24-US-Exp-Anx5.19, pages 2-3..

<sup>98</sup> HRW, Côte d'Ivoire: "Violence Campaign by Security Forces, Militias", 26 January 2011, ICC-02/11-24-US-Exp-Anx5.10, page 4..

- (v) Members of CECOS together with armed students and mercenaries killed and injured several peaceful protesters in the Cocody neighbourhood.<sup>99</sup>
- (vi) On 16 December 2010, FDS soldiers organised a raid in Abobo at PK18, during which they killed at least 18 civilians.<sup>100</sup>
- (vii) On 17 and 18 December 2010, members of the FDS, including the *Compagnies républicaines de sécurité* (“CRS”) police force, stormed four mosques in Grand Bassam, Abobo and Williamsville (neighbourhoods of Abidjan). At least one person was killed.<sup>101</sup>

*In the context of the RHDP Women’s march on 3 March 2011*

- (viii) Peaceful demonstrators were attacked by military forces at the “BANCO roundabout” by members of the gendarmerie and the police.<sup>102</sup>
- (ix) At least seven women were killed by members of the FDS or the gendarmerie (or both).<sup>103</sup>

*In the context of the Abobo market shelling on 17 March 2011*

- (x) Heavy weapons, such as mortars, were fired, killing at least 25 people.<sup>104</sup>

<sup>99</sup> [REDACTED].

<sup>100</sup> Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, page 10; UNHCHR, Rapport de la Commission d’enquête internationale indépendante sur la Côte d’Ivoire, 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, page 13.

<sup>101</sup> UNHCHR, Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, paragraph 25..

<sup>102</sup> [REDACTED]; ICC-02/11-24-US-Exp-Anx7.14, (YouTube), entitled Côte d’Ivoire - Dictateur Laurent Gbagbo: “Massacre de femmes à Abidjan”, Uploaded by hernan2802 on 4 March 2011; ICC-02/11-24-US-Exp-Anx7.15, Video (YouTube), “Massacre des femmes à Abobo par Laurent Gbagbo”, uploaded by bimendo on 4 March 2011; ICC-02/11-24-US-Exp-Anx7.16, video material (YouTube), “Six femmes tuées par les forces de l’ordre fidèles à Laurent Gbagbo à Abobo”, uploaded by seumoprism on 4 March 2011, ICC-02/11-24-US-Exp-Anx7.5, video material, EURONEWS, Des femmes tuées lors d’une manifestation en Côte d’Ivoire - videos of events, ICC-02/11-24-US-Exp-Anx7.5, date unknown.

<sup>103</sup> [REDACTED]; UNHCHR, Rapport de la Commission d’enquête internationale indépendante de la Côte d’Ivoire, 14 June 2011, ICC-02/11-24-US-Exp-Anx5.44, paragraph 51; HRW, Côte d’Ivoire: Crimes Against Humanity by Gbagbo forces, 15 March 2011, ICC-02/11-24-US-Exp-Anx5.11, page 3.

*In relation to the Yopougon massacre on 12 April 2011*

- (xi) On the day following his arrest, on 11 April 2011, Mr Gbagbo's militia went on the rampage in several areas of Yopougon, killing more than 80 people from northern Côte d'Ivoire and neighbouring West African countries<sup>105</sup>

## **Count 2**

### **Rape and other forms of sexual violence constituting a crime against humanity**

(Article 7(1)(g) and Article 25(3)(a) of the Statute)

58. The Prosecutor alleges that, between 16 December 2010 and 12 April 2011, Mr Gbagbo, as an indirect co-perpetrator, committed the crimes against humanity of rape and other forms of sexual violence in Abidjan and elsewhere in the country, through the Defence and Security forces (FDS), who were reinforced by the youth militia and mercenaries, in violation of Articles 7(1)(g) and 25(3)(a) of the Statute.<sup>106</sup>

59. The Chamber notes that in support of his submissions, the Prosecutor relies on [REDACTED]<sup>107</sup> [REDACTED].<sup>108</sup> The Prosecutor has not referred to any witness statements, witness summaries or affidavits in support of this count.

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<sup>104</sup> UN News Service, "Pro-Gbagbo forces shell market in Côte d'Ivoire, killing at least 25", 17 March 2011, ICC-02/11-24-US-Exp-Anx6.82, page 2 Affidavit, 7 October 2011, ICC-02/11-24-US-Exp-Anx4.13, paragraphs 5, 8, 12; [REDACTED]; UNHCHR, Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 14 June 2011, ICC-02/11-24-US-Exp-Anx5.41, paragraph 16; UNOCI, Retranscription du point de presse hebdomadaire de l'ONUCI, 24 March 2011, ICC-02/11-24-US-Exp-Anx5.42, page 10.

<sup>105</sup> [REDACTED]; HRW, Côte d'Ivoire: "Gbagbo Supporters Tortured Killed in Abidjan, 2 June 2011, ICC-02/11-24-US-Exp-Anx5.23, page 2

<sup>106</sup> Prosecutor's Application, page 40.

<sup>107</sup> [REDACTED].

<sup>108</sup> [REDACTED].

However, given the low evidential threshold established by Article 58 of the Statute, the Chamber is satisfied on the available material (which comes from reputable and credible sources) that there are reasonable grounds to believe that:

- (i) [REDACTED].<sup>109</sup>
- (ii) [REDACTED].<sup>110</sup>
- (iii) [REDACTED].<sup>111</sup>
- (iv) [REDACTED];<sup>112</sup>
- (v) [REDACTED].<sup>113</sup>

#### **Count 4**

#### **Inhumane acts constituting a crime against humanity**

(Article 7(1)(k) and Article 25(3)(a) of the Statute)

60. The Prosecutor alleges that, between 16 December 2010 and 12 April 2011, Mr Gbagbo, as an indirect co-perpetrator, committed crimes against humanity of inhumane acts, namely acts of inflicting serious bodily injury and suffering in Abidjan and elsewhere in the country, through the Defence and Security forces (FDS), reinforced by the youth militia and mercenaries, in violation of Articles 7(1)(k) and 25(3)(a) of the Statute.<sup>114</sup>

61. On the evidence, there are reasonable grounds to believe that:

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<sup>109</sup> [REDACTED].

<sup>110</sup> [REDACTED].

<sup>111</sup> [REDACTED].

<sup>112</sup> [REDACTED].

<sup>113</sup> [REDACTED].

<sup>114</sup> Prosecutor's Application, pages 40-41.

*In the context of the march on the RTI station on 16 December 2010*

- (i) Pro-Gbagbo forces severely injured several peaceful protesters.<sup>115</sup> Those who were taken to the Police headquarters were hit and threatened with execution.<sup>116</sup>
- (ii) On 18 December 2010, a group of students were beaten with bricks and slashed with machetes when members of the youth militia checked their identity cards.<sup>117</sup>

*In the context of the RHDP Women's march on 3 March 2011*

- (iii) Several demonstrators were severely injured by shrapnel from shell fire.<sup>118</sup>

*In the context of the Abobo market shelling on 17 March 2011*

- (iv) At least 40 people were injured as a result of the shelling of the densely populated market area.<sup>119</sup>

### **Count 3**

#### **Persecution constituting a crime against humanity**

<sup>115</sup> [REDACTED]. Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, ICC-02/11-24-US-Exp-Anx5.40, paragraph 73;

<sup>116</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, ICC-02/11-24-US-Exp-Anx5.16, page 31.

<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, ICC-02/11-24-US-Exp-Anx5.16, page 32.

<sup>118</sup> [REDACTED]; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d'Ivoire, ICC-02/11-24-US-Exp-Anx5.41, paragraphs 12 and 16.

<sup>119</sup> UNHCHR Report of the High Commissioner for Human Rights on the situation of human rights in Côte d'Ivoire, 14 June 2011, ICC-02/11-24-US-Exp-Anx5.41, paragraph 15; UNSC Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, paragraph 49; HRW: The Case for Intervention in Ivory Coast, 25 March 2011, ICC-02/11-24-US-Exp-Anx5.24, page 2; [REDACTED]; Action on armed violence, "Explosive violence update: Côte d'Ivoire", ICC-02/11-24-US-Exp-Anx6.40 page 2; AP, "Shelling kills up to 30 in Ivory Coast marketplace", ICC-02/11-24-US-Exp-Anx6.61, page 2; Amnesty International, "They looked at his identity card and shot him dead" Six months of post electoral violence in Côte d'Ivoire, May 2011, ICC-02/11-24-US-Exp-Anx5.16, page 28.

(Article 7(1)(h) and Article 25(3)(a) of the Statute)

62. The Prosecutor alleges that, between 16 December 2010 and 12 April 2011, Laurent Gbagbo, as an indirect co-perpetrator, committed crimes against humanity of persecution on political, national, ethnic and religious grounds in Abidjan, including around the Golf Hotel, and elsewhere in the country, through the Defence and Security forces (FDS), who were reinforced by the youth militia and mercenaries, in violation of Articles 7(1)(h) and 25(3)(a) of the Statute.<sup>120</sup>

63. The Prosecutor submits, in particular, that the underlying conduct for the crime of persecution encompasses the conduct referred to under Counts 1, 2 and 4.<sup>121</sup>

64. The Chamber reiterates its findings made in relation to Count 1 as to the existence of reasonable grounds to believe that:

- In the context of the attacks relating to the RTI demonstrations between 16 and 19 December 2010: (i) orders were given by police chiefs to shoot at the crowd without any restraint; (ii) a young man was wounded in the Marcory neighbourhood when the FDS began shooting in every direction. Police officers then shot and killed him when they saw he was still alive; (iii) the FDS killed at least six protesters when teargas grenades were thrown in their direction and by shooting at them. Furthermore at least 3 people were killed near the Makassi crossroad; (iv) a young man was

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<sup>120</sup> Prosecutor's Application, page 40.

<sup>121</sup> Prosecutor's Application, page 40.

killed in the Riviera II neighbourhood by a group of about 20 members of the FESCI youth militia and a policeman from CECOS, because it was believed he supported Mr Ouattara; (v) members of CECOS together with armed students and mercenaries killed and injured several peaceful protesters in the Cocody neighbourhood; (vi) on 16 December 2010, FDS soldiers organised a raid in Abobo at PK18, during which they killed at least 18 civilians; (vii) on 17 and 18 December 2010, members of the FDS, including CRS police forces, stormed four mosques in Grand Bassam, Abobo and Williamsville (neighbourhoods of Abidjan). Resulting in the killing of at least one person.<sup>122</sup>

- In the context of the attack on the women's march in Abobo on 3 March 2011: (i) peaceful demonstrators were attacked by military forces at the "BANCO roundabout" by members of the gendarmerie and the police; (ii) at least seven women were killed by members of the FDS or the gendarmerie (or both).<sup>123</sup>
- In the context of the Abobo market shelling: heavy weapons, such as mortars, were fired, killing at least 25 people.<sup>124</sup>
- In the context of the Yopougon massacre on 12 April 2011: on the day following his arrest, on 11 April 2011, Mr Gbagbo's militia went on the rampage in several areas of Yopougon, killing more than 80 people from northern Côte d'Ivoire and neighbouring West African countries.<sup>125</sup>

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<sup>122</sup> See paragraph 57 above.

<sup>123</sup> See paragraph 57 above.

<sup>124</sup> See paragraph 57 above.

<sup>125</sup> See paragraph 57 above.



65. The Chamber reiterates its findings made in relation to Count 2 as to the existence of reasonable grounds to believe that in the context of the attacks relating to the RTI demonstrations between 16 and 19 December 2010: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) [REDACTED].<sup>126</sup>

66. Furthermore, the Chamber reiterates its findings in relation to Count 4 as to the existence of reasonable grounds to believe that:

- In the context of the attacks relating to the RTI demonstrations between 16 and 19 December 2010: (i) pro-Gbagbo forces severely injured several peaceful protesters. Those who were taken to the Police headquarters were hit and threatened with execution; (ii) on 18 December 2010, a group of students were beaten with bricks and slashed with machetes when members of the youth militia checked their identity card.<sup>127</sup>
- In the context of the attack on the women's march in Abobo on 3 March 2011 several demonstrators were severely injured by shrapnel from shell fire.<sup>128</sup>
- In the context of the Abobo market shelling on 17 March 2011 at least 40 people were injured as a result of the shelling of the densely populated market area.<sup>129</sup>

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<sup>126</sup> See paragraph 59 above.

<sup>127</sup> See paragraph 61 above.

<sup>128</sup> See paragraph 61 above.

<sup>129</sup> See paragraph 61 above.

67. Moreover, as previously indicated by the Chamber, there are reasonable grounds to believe that in the aftermath of the presidential elections in Côte d'Ivoire pro-Gbagbo forces attacked the civilian population in Abidjan and in the west of the country, from 28 November 2010 onwards. They targeted civilians who they believed were supporters of Mr Ouattara, and the attacks were often directed at specific ethnic or religious communities.<sup>130</sup>

68. In light of the foregoing, the Chamber is satisfied that there are reasonable grounds to believe that several acts of persecution based on political, ethnic and religious grounds were committed by pro-Gbagbo forces in the context of the attacks relating to the RTI demonstrations between 16 and 19 December 2010, the attack on the women's march in Abobo on 3 March 2011, the Abobo market shelling on 17 March 2011 and the Yopougon massacre on 12 April 2011.

69. On the evidence, there are reasonable grounds to believe that the crimes against humanity of murder under Article 7(1)(a), rape and other forms of sexual violence under Article 7(1)(g), other inhumane acts under Article 7(1)(k) and persecution under Article 7(1)(h) of the Statute, were committed in Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011.

70. Furthermore, the Chamber finds that there are reasonable grounds to believe that these acts occurred in the context of a widespread or systematic attack

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<sup>130</sup> See paragraph 36 above.

directed against Côte d'Ivoire civilian population within the meaning of Article 7(1) of the Statute.

#### **IV. Whether there are reasonable grounds to believe that Mr Gbagbo is criminally responsible for the crimes alleged by the Prosecutor**

71. The Prosecutor submits that Mr Gbagbo bears individual criminal responsibility for the crimes charged in the Application, as “an indirect co-perpetrator” pursuant to Article 25(3)(a) of the Statute on the basis of i) a common plan agreed between Mr Gbagbo and members of his inner circle,<sup>131</sup> and ii) the joint authority exercised by Mr Gbagbo and his inner circle over the pro-Gbagbo forces,<sup>132</sup> including the FDS,<sup>133</sup> the youth militia<sup>134</sup> and the mercenaries.<sup>135</sup>

72. It is suggested that his criminal responsibility (as “an indirect co-perpetrator”) under Article 25(3)(a) of the Statute is established by the coordinated, essential contribution that it is said was made by Mr Gbagbo and members of his inner circle, resulting in the commission of the crimes.<sup>136</sup> Furthermore, it is argued that the execution of these crimes was secured by the almost automatic compliance by pro-Gbagbo forces with the orders given by Mr Gbagbo and his inner circle.<sup>137</sup> It is alleged that the subjective elements of the crimes have been established.<sup>138</sup> Furthermore, it is argued that Mr Gbagbo

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<sup>131</sup> Prosecutor’s Application, paragraph 94.

<sup>132</sup> Prosecutor’s Application, paragraph 95.

<sup>133</sup> Prosecutor’s Application, paragraphs 96-103.

<sup>134</sup> Prosecutor’s Application, paragraphs 104-106

<sup>135</sup> Prosecutor’s Application, paragraphs 107-108.

<sup>136</sup> Prosecutor’s Application, paragraphs 109-120.

<sup>137</sup> Prosecutor’s Application, paragraph 121.

<sup>138</sup> Prosecutor’s Application, paragraph 122.

and other members of his inner circle were mutually aware and mutually accepted that implementing their common plan might result in the realisation of the objective elements of the crimes.<sup>139</sup> Finally, it is suggested that Mr Gbagbo was aware of the factual circumstances that enabled him and other members of his inner circle to exercise joint control over the crimes.<sup>140</sup>

73. For the purposes of his Application, therefore, the Prosecutor has focused exclusively on individual criminal responsibility under Article 25(3)(a) of the Statute, as opposed to the other provisions of that Article or, alternatively, command responsibility under Article 28 of the Statute. Furthermore the prosecution has relied on jurisprudence from Pre-Trial Chamber I to allege that Mr Gbagbo was an “indirect co-perpetrator” under Article 25(3)(a) of the Statute.

74. It is undesirable, particularly at this early stage of the case, for the Chamber to limit the options that may exist for establishing criminal responsibility under the Rome Statute, because this will ultimately depend on the evidence and the arguments in the case. Until the Chamber has heard full arguments from the parties, it is premature to decide, certainly with any finality, whether Article 25(3)(a) of the Statute is the correct basis for proceeding against Mr Gbagbo (either standing alone or along with other provisions) or whether the various elements of the prosecution’s theory of “indirect co-perpetration” are relevant to, or applicable in, this case.

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<sup>139</sup> Prosecutor’s Application, paragraphs 123-125.

<sup>140</sup> Prosecutor’s Application, paragraph 126.

75. However, given that the Prosecutor's Application has been made under Article 25(3)(a) of the Statute, it is necessary to address the basis advanced by the prosecution. The test it suggests is a substantial one that involves establishing the following elements:

- i) the existence of a common plan between Mr Gbagbo and the members of his inner circle;<sup>141</sup>
- ii) Mr Gbagbo and the members of his inner circle were each aware that implementing the common plan would in the ordinary course of events result in the commission of the crimes set out above;<sup>142</sup>
- iii) Mr Gbagbo was aware of the relevant circumstances that enabled him and the other members of his inner circle to exercise joint control over the crimes;<sup>143</sup>
- iv) Mr Gbagbo had the necessary intent and knowledge;<sup>144</sup>
- v) the coordinated and essential contribution to the crimes on the part of Mr Gbagbo and the members of his inner circle;<sup>145</sup> and
- vi) the crimes were executed by pro-Gbagbo forces who complied on an almost automatic basis with the orders given by Mr Gbagbo and his inner circle.<sup>146</sup>

76. In the particular manner described below, the Chamber is satisfied that each of these suggested elements is fulfilled. At paragraph 43 and elsewhere the Chamber has rehearsed the evidence that provides reasonable grounds to

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<sup>141</sup> Prosecutor's Application, paragraph 94.

<sup>142</sup> Prosecutor's Application, paragraph 123 *et seq.*

<sup>143</sup> Prosecutor's Application, paragraph 126 *et seq.*

<sup>144</sup> Prosecutor's Application, paragraph 122 *et seq.*

<sup>145</sup> Prosecutor's Application, paragraph 109 *et seq.*

<sup>146</sup> Prosecutor's Application, paragraph 95 *et seq* and paragraph 121.

believe that the plan (and the policy) existed, and that Mr Gbagbo and his inner circle were aware that implementing it would, in the ordinary course of events, lead to the commission of the offences set out above. Furthermore, by implementing the policy, they exercised joint control over the crimes. Given the position of each member and their role as regards the plan, they made a coordinated and essential contribution to its realisation. There is a sufficient basis to conclude that the pro-Gbagbo forces that put the policy into effect did so by almost automatic compliance with the orders they received. Finally, there is sufficient evidence that Mr Gbagbo acted with the necessary degree of intent and knowledge.

77. Although the Chamber is satisfied that this substantial test, as advanced by the Prosecutor, is therefore made out, as already indicated, it is likely that this issue (*i.e.* Mr Gbagbo's suggested liability as an "indirect co-perpetrator" under Article 25(3)(a) of the Statute) may well need to be revisited in due course with the parties and participants.

**V. Whether the requirements for the arrest of Mr Gbagbo under Article 58(1)(b) of the Statute have been met**

78. The Prosecutor submits that based on the information referred to above, if the Chamber finds that there are reasonable grounds to believe that Mr Gbagbo committed crimes within the jurisdiction of the Court, a warrant of arrest

should be issued. The Prosecutor highlights in this regard the report that Mr Gbagbo is currently in detention.<sup>147</sup>

79. The Prosecutor submits that each of three grounds for arrest under Article 58(1)(b)(i)-(iii) of the Statute is satisfied.<sup>148</sup>

80. Pursuant to Article 58(1) of the Statute, the Pre-Trial Chamber shall issue a warrant of arrest if (a) there are reasonable grounds to believe that a person has committed crimes within the jurisdiction of the Court; and (b) the arrest of the person appears necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

81. The Appeals Chamber has determined that in order to "justify arrest [...] under Article 58(1)(b) of the Statute [...] it must 'appear' to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence" (when addressing the risk of further offending).<sup>149</sup> The Appeals Chamber has held that the seriousness of the crimes allegedly committed is a relevant factor, given this may make a person more likely to abscond.<sup>150</sup>

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<sup>147</sup> Prosecutor's Application, paragraph 144.

<sup>148</sup> Prosecutor's Application, paragraphs 145-148.

<sup>149</sup> Appeals Chamber, *Judgment in the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release*, 9 June 2008, ICC-01/04-01/07-572, paragraph 21; Appeals Chamber, *Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled "Decision on application for interim release"*, 16 December 2008, ICC-01/05-01/08-323, paragraphs 55 and 67.

<sup>150</sup> ICC-01/04-01/07-572, paragraph 21; ICC-01/05-01/08-323, paragraph 55.

82. In the Case of the *Prosecutor v. Ahmad Harun and Ali Kushayb*, Pre-Trial Chamber I held that issuing a summons to appear for a person already detained by national authorities would be contrary to the object and purpose of Article 58(7) of the Statute. The Pre-Trial Chamber concluded that the possibility provided for in the Statute to issue a summons to appear with conditions restricting liberty clearly indicate that the summons is intended to apply only to those individuals who are not already detained.<sup>151</sup>

83. Although the Chamber notes that Mr Gbagbo is reportedly detained,<sup>152</sup> it considers it necessary to evaluate whether any of the three alternate grounds under Article 58(1)(b) of the Statute are met. Critically, immediately after the warrant of arrest against Mr Gbagbo is executed he will be detained under ICC jurisdiction.

84. Pre-Trial Chamber III has determined that a person's "past and present political position, his international contacts, his financial and professional background, and the fact that he has the necessary network and financial resources" are factors that may lead the person to abscond or avoid arrest.<sup>153</sup> The Appeals Chamber has also determined that the financial status of an individual is a relevant factor in determining whether he would have the means to abscond or even to interfere with the investigation or the safety of

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<sup>151</sup> ICC-02/05-01/07-1-Corr, paragraph 120.

<sup>152</sup> AFP, Côte d'Ivoire: "Annan, Tutu, et Robinson rendent visite à Gbagbo à Korhogo, 2 May 2011, ICC-02/11-24-US-Exp-Anx6.107, page 3; Reuters, I. Coasts's Gbagbo, wife charged with economic crimes, 19 August 2011, ICC-02/11-24-US-Anx6.111, page 2.

<sup>153</sup> Pre-Trial Chamber I, *Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo*, 17 July 2008, ICC-01/05-01/08-14-tENG, paragraph 87.



witnesses.<sup>154</sup> In addition, the Appeals Chamber has ruled that a length of sentence that a suspect is likely to receive if convicted is a further incentive for him to abscond.<sup>155</sup>

85. The Chamber notes that Mr Gbagbo, as former President of Côte d'Ivoire, appears to have the political contacts as well as the economic resources to abscond.<sup>156</sup> Furthermore, a news agency has reported that the former Minister of Defence of Côte d'Ivoire called for the immediate release of Mr Gbagbo to ensure peace in that country.<sup>157</sup> The information demonstrates that Mr Gbagbo has numerous supporters within and outside of Côte d'Ivoire who object to the current investigation on the part of the Prosecutor of the ICC. Some of these individuals appear to have substantial material resources and access to weapons.<sup>158</sup> A particular source has revealed that Mr Gbagbo's spokesperson indicated that Mr Gbagbo "told his lawyers to declare loud and clear that he is the [real] president of Ivory Coast".<sup>159</sup> A further source suggests that journalists were allegedly threatened during, and banned from, demonstrations in December 2010 by pro-Gbagbo forces.<sup>160</sup> There is

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<sup>154</sup> Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's "*Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa*", 2 December 2009, ICC-01/05-01/08-631-Red, paragraph 74.

<sup>155</sup> ICC-01/05-01/08-631-Red, paragraph 70.

<sup>156</sup> The Australian, "Pro-Gbagbo rally stirs Ivorian civil war risk", 28 March 2011, ICC-02/11-24-US-Exp-Anx6.74, page 2; The Gambia Voice, 'Gbagbo has friends in Africa', 7 April 2011, ICC-02/11-24-US-Exp-Anx6.85, pages 3-4; The New York Times, "A strongman found support in prominent U.S. conservatives", 11 April 2011, ICC-02/11-24-US-Exp-Anx6.81, page 2-3; Le Figaro, Gbagbo, enquête pour blanchiment, 9 May 2011, ICC-02/11-24-US-Exp-Anx6.113, page 2.

<sup>157</sup> Ghana News Agency, Former Ivorian Minister calls for President Gbagbo's release, 12 October 2011, ICC-02/11-24-US-Exp-Anx6.95, page 3.

<sup>158</sup> Indepth Africa, Gbagbo supporters call for ousted I.Coast ruler's release, 4 September 2011, ICC-02/11-24-US-Exp-Anx6.93 page 2; Abidjan.net, Visite de Luis Moreno Ocampo en Côte d'Ivoire: Le Fpi émet des réserves, 17 October 2011, ICC-02/11-24-US-Anx6.117; [REDACTED].

<sup>159</sup> Mail&Guardian Online, Gbagbo: I'm still the "real president of Côte d'Ivoire", 1 October 2011, ICC-02/11-24-US-Exp-Anx6.92, page 2.

<sup>160</sup> Centre for International Media Assistance, Local and International Media Hit by Battle Between Rival Camps for Control of News, 17 December 2010, ICC-02/11-24-US-Exp-Anx6.11, page 2.

information from the United Nations (“UN”) that pro-Gbagbo forces allegedly carried out murders and other human rights violations in Côte d’Ivoire, and they prevented UN representatives from investigating their crimes (i.e. access was denied to possible mass graves).<sup>161</sup> Furthermore, as set out above, there are reasonable grounds to believe that Mr Gbagbo is personally responsible for serious crimes under the jurisdiction of the Court.<sup>162</sup>

86. In light of the above, the Chamber is satisfied that the continued arrest of Mr Gbagbo is necessary to ensure his appearance before the Court. By way of a summary, he continues to have the political support and economic resources to abscond and there is information that forces close to him have obstructed investigations by the UN and the media as regards serious crimes such as those that are the subject matter of the present Application. Given the fact that Mr Gbagbo has many supporters who have access to weapons, and bearing in mind that he appears to continue to consider that he remains the President of Côte d’Ivoire, there is a real likelihood<sup>163</sup> that he will resort to violence if released.

87. The Chamber is therefore satisfied that his arrest is necessary to: i) ensure his appearance before the Court; ii) ensure that he does not use his political or

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<sup>161</sup> United Nations Security Council, Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire, 30 March 2011, ICC-02/11-24-US-Exp-Anx5.36, page 14; United Nations Human Rights Council, Report of the High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 15 February 2011, ICC-02/11-24-US-Exp-Anx5.38, page 12.

<sup>162</sup> See paragraphs 71-77 above.

<sup>163</sup> Appeals Chamber, *Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled “Decision on the ‘Defence Request for Interim Release”*, ICC-01/04-01/10-283, 14 July 2011, paragraph 60.

economic resources to obstruct or endanger the investigation; and iii) prevent the commission of further crimes.

## VI. Additional request

88. The Prosecutor requests the Pre-Trial Chamber to issue its Decision on his Application and a request for arrest and surrender under seal, only available to the Registry, the prosecution and the relevant authorities of Côte d'Ivoire and of any other States and international organisations that potentially need to be involved for the purposes of transferring Mr Gbagbo to the seat of the Court. The Prosecutor submits this is necessary to protect ongoing investigations, the victims and witnesses and to facilitate Mr Gbagbo's arrest and transfer to the ICC. The Prosecutor indicates that once Mr Gbagbo is transferred to the seat of the Court, a public redacted version of this Decision may be issued.<sup>164</sup>

89. The Chamber is satisfied, given the information provided by the Prosecutor, that the current Application and the Decision of the Chamber are to remain under seal, *ex parte* the prosecution and the Registry only. The Chamber will consider in due course the reclassification of the Application and this Decision upon the surrender of Mr Gbagbo to the ICC.

90. The Prosecutor is to inform the Chamber as to whether this Decision can be reclassified as public by Friday 2 December 2011 at 16.00 hours. If redactions

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<sup>164</sup> Prosecutor's Application, paragraphs 149-150.

are considered necessary, he is to provide a proposed redacted public version to the Chamber by the same deadline. Should he suggest that the public version will require extensive redactions, he is to provide an additional proposed confidential version, suitable for communication to the defence only, again within the same timeframe.

**FOR THESE REASONS, THE CHAMBER**

**DECIDES** that the conditions established by Article 58(1) of the Statute in order to issue a warrant of arrest against Lauren Koudou Gbagbo are met in relation to his alleged criminal responsibility within the meaning of Article 25(3)(a) of the Statute for the crimes against humanity of (1) murder under Article 7(1)(a), (2) rape and other forms of sexual violence under Article 7(1)(g), (3) other inhumane acts under Article 7(1)(k) and (4) persecution under Article 7(1)(h) of the Statute committed in the territory of Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011.

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

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**Judge Silvia Fernández de Gurmendi**

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**Judge Elizabeth Odio Benito**

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**Judge Adrian Fulford**

Dated this 30 November 2011

At The Hague, The Netherlands