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**Before:** Judge Geoffrey Henderson, Presiding Judge  
Judge Olga Herrera Carbuca  
Judge Bertram Schmitt

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

***IN THE CASE OF***

***THE PROSECUTOR***

***v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**PUBLIC**

**With public Annexes A to E**

**Prosecution's pre-trial brief**

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## I. INTRODUCTION

1. The Prosecution describes in this Brief the evidence upon which it will rely to establish the individual criminal responsibility of Laurent GBAGBO and Charles BLÉ GOUDÉ. Both are charged in respect of crimes committed in Abidjan between 27 November 2010 and on or around 12 April 2011 (“the post-election violence”), as part of a widespread and systematic attack directed against civilians perceived as supporters of Alassane Ouattara (“perceived Ouattara supporters”).

2. With respect to the Accused GBAGBO, the Prosecution charges crimes committed during four incidents. As for the Accused BLÉ GOUDÉ, the Prosecution charges crimes committed during the same four incidents, together with a fifth incident which took place between 25 and 28 February 2011 in Yopougon *commune*.

3. These crimes were committed by forces jointly controlled by GBAGBO and/or members of his Inner Circle (“Inner Circle”), including BLÉ GOUDÉ, and comprised members of the Côte d’Ivoire State’s *Forces de Défense et de Sécurité* (“FDS”) – which included the Police, *Gendarmerie*, the Army (or “FANCI”), and Republican Guard (“GR”) – and pro-GBAGBO youth, militia and mercenaries (collectively referred to as “pro-GBAGBO forces”).

4. GBAGBO controlled the FDS, in his claimed capacity as both President and Commander-in-Chief of the armed forces, through a formal and parallel chain of command led mainly by loyalist commanders from Bété and related ethnic background. He also controlled pro-GBAGBO youth, militia and mercenaries, who were either integrated into or collaborated with FDS units. That control was exercised both through the formal and parallel FDS chains of command and through his relationship with BLÉ GOUDÉ and other members of the Inner Circle.

5. Upon assuming the Presidency of Côte d’Ivoire in October 2000, GBAGBO harboured the objective of retaining power by, *inter alia*, repressing or violently attacking those who challenged his authority.



6. In the following years, knowing that a freely-contested presidential election was inevitable, GBAGBO and the Inner Circle jointly conceived and implemented a common plan to keep him in power by all means, including by committing the crimes charged (“Common Plan”). By 27 November 2010, the implementation of the Common Plan had developed to include a State or organisational policy aimed at a widespread and systematic attack against perceived Ouattara supporters.

7. GBAGBO and members of the Inner Circle jointly planned, organised, coordinated, ordered, induced, authorised and allowed various measures to implement the Common Plan and the crimes charged. In pursuance of the Common Plan, pro-GBAGBO forces attacked, killed, injured, raped and persecuted hundreds of civilians.

8. Perceived Ouattara supporters included two categories of civilian: first, actual or perceived political opposition activists and sympathisers, and second, civilians considered to support the opposition due to their Muslim faith or Dioula ethnicity, and/or their provenance from northern Côte d’Ivoire or other West African countries, such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent. The attack against these civilians, and the crimes charged, were therefore also persecutory in nature, and committed on political, national, ethnic or religious grounds.

9. BLÉ GOUDÉ was a prominent member of the Inner Circle. Known as the “*Général de la Rue*”, he occupied a position of authority in relation to the pro-GBAGBO youth, and coordinated and directed their actions; he served as a conduit between GBAGBO and the Inner Circle and the pro-GBAGBO youth. BLÉ GOUDÉ used his charisma and oratorical skills to mobilise the youth for violent acts. He also used xenophobic and other rhetoric, to incite hatred against perceived Ouattara supporters, identifying them as the enemy and legitimate targets for attack. BLÉ GOUDÉ had the capacity to, and did, compel or otherwise influence the actions of the pro-GBAGBO youth through his rhetoric, and through the issuance of specific instructions and *mots d’ordre*.

10. GBAGBO and BLÉ GOUDÉ are responsible for the acts which led to the commission of the crimes charged, alternatively and where applicable, pursuant to article

25(3)(a) (indirect co-perpetration), 25(3)(b) (ordering, soliciting or inducing), 25(3)(c) (aiding, abetting or otherwise assisting), or article 25(3)(d) of the Statute for having contributed to the commission of these crimes.

#### **A. Structure of this Brief**

11. This Brief is structured in five parts. Part I is this introduction. Part II provides background information related to the two Accused. Part III describes the Common Plan and its implementation. Part IV sets out the crimes committed in the execution of the Common Plan, and Part V addresses the individual criminal responsibility of the two Accused in this case.

#### **B. Annexes to the Brief**

12. The Brief also contains five annexes. Annex A is a list of acronyms used in this Brief. The Prosecution has used acronyms throughout the Brief, and has not generally defined acronyms on first use. Annex B is a list of names appearing in the Brief, and their description. Annex C contains three organisational charts: (i) the FDS formal structure during the post-election violence, (ii) the FDS parallel structure during the post-election violence and (iii) the *Galaxie Patriotique*. Annex D is a list of French and defined terms used both in the Brief and at Annex C. Whilst the Prosecution has aimed to use the English language throughout the Brief, some French terms are used, for which translations are provided at Annex D. Annex E is a List of Authorities cited in this Brief.

### **II. THE ACCUSED**

#### **1. Laurent GBAGBO**

13. GBAGBO was born on 31 May 1945. He is a native of Mama, in Gagnoa, Côte d'Ivoire. He was born into a Catholic family, is a member of the Bété ethnic group and holds Ivoirian nationality. GBAGBO is married under civil law to Simone GBAGBO, with whom he converted to evangelical Christianity.

14. In 1982, Laurent and Simone GBAGBO created the FPI as an underground movement, and in November 1988, the FPI was officially constituted as a political party. In 1990, the first democratic presidential election was held in Côte d'Ivoire and GBAGBO stood as the sole candidate against former and long time President of Côte d'Ivoire, Felix Houphouët-Boigny. GBAGBO lost that election but was recognised as the leader of the opposition.

15. In the years leading to the presidential election of October 2000, GBAGBO sought the support of the FESCI, one of whose Secretaries-General was BLÉ GOUDÉ. GBAGBO became President on 22 October 2000 and remained in power until the elections of October-November 2010.

## 2. Charles BLÉ GOUDÉ

16. BLÉ GOUDÉ was born on 1 January 1972 in Niagbrahio, Gagnoa, Côte d'Ivoire. He is a member of the Bété ethnic group and an Ivoirian national.

17. In 1998, BLÉ GOUDÉ was elected Secretary-General of the FESCI. On 4 June 2001, he created the COJEP a "pressure group" which described itself as a "movement to combat imperialism and neo-colonialism". In late 2002, he helped found the AJSN, an umbrella for various pro-GBAGBO organisations of which BLÉ GOUDÉ became President.

18. On 6 December 2010, BLÉ GOUDÉ was promoted by GBAGBO from the unofficial title of *Général de la Rue* to the official post of Minister of Youth, Vocational Training and Employment, thus officialising the close affiliation between the Jeunes Patriotes and the GBAGBO government.

### III. THE COMMON PLAN

#### A. Conception, development and early stages of implementation of the Common Plan

##### 1. Existence of a common plan between GBAGBO, BLÉ GOUDÉ and the members of the Inner Circle

(a) *GBAGBO intended to stay in power at any cost*

19. GBAGBO became President following the 22 October 2000 election, in which the Constitutional Council had disqualified 14 of the 19 candidates, including Henri Konan Bédié and Alassane Ouattara. The elections were overshadowed by issues of nationality, ethnicity and “*Ivoirité*” [Ivoirianness], a concept used to deprive the non-indigenous population of the right to vote or stand in presidential elections. This was the principal justification to exclude Ouattara from the election.

20. On becoming President, GBAGBO sought to stay in power by all means. GBAGBO’s means included the violent repression of political demonstrations from 2000 onwards, using FDS forces under his control.

21. Following the attempted coup of 2002, GBAGBO also sought to entrench his position of power through the use of militias, foreign mercenaries, and pro-GBAGBO youth. From November 2004, GBAGBO continued to obtain weapons in contravention of a UN arms embargo. In 2006, GBAGBO and members of his Inner Circle, including BLÉ GOUDÉ and the FPI President Pascal Affi N’Guessan, obstructed political accords aimed at granting voting rights to members of ethnic groups traditionally coming from Northern Côte d’Ivoire. This obstruction was primarily aimed at preventing Ouattara supporters from being able to vote.

22. In the following years, knowing that a freely-contested presidential election was inevitable, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle jointly conceived and implemented a Common Plan to keep GBAGBO in power by all means,

which included the commission of the crimes charged. The implementation of the Common Plan had, by 27 November 2010, if not before, developed to encompass a State or organisational policy – within the meaning of article 7(2)(a) of the Statute - the purpose of which was a widespread and systematic attack against perceived Ouattara supporters (“the Policy”).

23. Although the Policy and the Common Plan are distinct legal concepts, they overlap to a large extent within the specific context of this case; the Policy is subsumed within the Common Plan. Throughout the Brief, the term “Common Plan” is used to encompass both the Plan as originally conceived and as developed to include the Policy.

*(b) Members of the Inner Circle shared GBAGBO’s aim to maintain GBAGBO in power by all means*

24. GBAGBO’s Inner Circle constituted an organisation within the meaning of article 7(2)(a) of the Statute. Its membership evolved over the years, including as events unfolded during the post-election violence. Simone GBAGBO and Charles BLÉ GOUDÉ were at the very core of the Inner Circle from the very beginning.

25. All members of the Inner Circle shared GBAGBO’s aim to maintain him in power by all means, including by committing the crimes charged. This shared intent is evidenced at least by their actions in directing, coordinating, encouraging, and supporting the use of the pro-GBAGBO forces to repress political opposition even in the years before 2010.

26. Figures within the FDS who were members of the Inner Circle included trusted senior officers who held positions of great responsibility, had decision making power regarding military operations, coordinated closely with GBAGBO and others members of the FDS leadership by participating in meetings, and reiterated their loyalty to GBAGBO right after his swearing-in. These trusted FDS senior officers included the Chief of Staff (“CEMA”), Philippe Mangou; the Director of the National Police (“DGPN”), Simeon M’bia Bredou; the Commander of the *Gendarmerie*, Edouard Tiapé Kassaraté; the Commander of Ground Forces (“COMTER”), Firmin Letho Detoh; the Head of CECOS, Poin Georges

Guiai Bi; the Commander of the *Garde Républicaine* (“GR”), Brunot Dogbo Blé; GBAGBO’s Private Chief of Staff, Touvolé Bi Zobo; the Commander of the Navy (“COMAR”), Faussignaux Gagbei Vagba; and the Commander of the Theater-of-Operations (“COMTHEATRE”), DMIR, and FUMACO, Boniface Kouakou Konan. Of these senior FDS officers, Faussignaux Vagba, Touvolé Bi Zobo, and Dogbo Blé shared ethnic ties with GBAGBO and were part of both the formal and parallel command structures, as elaborated in section III.A.7.b below.

27. The Inner Circle also included lower-ranking FDS officers linked to GBAGBO through ethnic ties, such as the Commander of the BASA, Rigobert Dadi Touhouri, who was also a member of the parallel structure. These officers proved their loyalty to GBAGBO during the events that took place between the years 2000 to 2006 and remained loyal to GBAGBO through the end of March-April 2011 when some senior officers, such as the CEMA, defected.

28. Leaders of youth groups and militia that formed part of the *Galaxie Patriotique* were also members of the Inner Circle, such as: the President of the CONARECI and GBAGBO’s representative on the CEI, Damana Adia Médard a.k.a. Pickass; the proclaimed leader of the GPP and CNRD member Moussa Zégouen Touré; the President of the UPLTCI, Eugène Kouadio Djué; the President of the JFPI, FPI Deputy Campaign Director for the Youth under BLÉ GOUDÉ and CNRD member, Navigué Konaté; and the President of the FENAAPCI and also CNRD member, Idriss Ouattara.

29. Other members of the Inner Circle were either active or former ministers. Among the ministers appointed in December 2010, and in addition to the newly-appointed Minister of Youth, BLÉ GOUDÉ, were the Minister of Defence, Alain Dogou a.k.a. Goba Maurice; the Minister of the Interior, Émile Guirieoulou; the Minister of Foreign Affairs, Alcide Djédjé Ilahiri; the Minister of Economy and Finance, Desiré Noël Laurent Dallo; the Delegate Minister of Economy and Finance, Justin Katinan Koné; the Minister of Equipment and the government’s spokesperson, Ahoua Don Mello; and the Minister of Culture, Alphonse Voho Sahi. Former ministers within the Inner Circle included the

former Minister of Public Service, Hubert Oulaye [also spelled Oulai or Oulaï]; the former Minister of the Interior and *Chef de Cabinet*, Désiré Asségnini Tagro; the former Minister of Defence, Lida Kouassi; and the former Minister for Planning and Development, Paul Antonine Bohoun Bouabré; among others. Of these, BLÉ GOUDÉ, Dogou, Guirieoulou, Djédjé, Dallo, Don Mello, Voho Sahi, Oulaye, Tagro, and Bohoun Bouabré also shared ethnic ties with GBAGBO.

30. The Inner Circle also included Directors-General of State-controlled companies, such as Marcel Gossio (Director-General of the port of Abidjan) and Pierre-Israël Brou Amessan (Director-General of the RTI); FPI politicians, such as the former Prime Minister and FPI President Pascal Affi N'Guessan, and State General Inspector and former Minister of Foreign Affairs Aboudramane Sangare; and CNRD members, in addition to Simone GBAGBO, such as Vice-President and President of the Economic and Social Council Laurent Dona Fologo.

31. The Inner Circle included GBAGBO's security advisor and former Minister of Defence, Bertin Kadet; GBAGBO's spiritual advisor, Pastor Moïse Koré; the RTI journalist Paul Dokoui [or Dokui]; the GSPR Commander, Nathanaël Ahouman Brouha; the Commander of Operations at the Presidential Residence, Paulin Katé Gnatoa; and Simone GBAGBO's *aide de camp*, Anselme Séka Yapo a.k.a. Seka Seka.

32. Throughout the post-election violence, GBAGBO frequently spoke on the phone and received or met, at the Presidential Residence and elsewhere, members of the Inner Circle, such as BLÉ GOUDÉ, Mangou, Kassaraté, Guiai Bi, M'bia Bredou, Dogbo Blé, Désiré Asségnini Tagro, Bertin Kadet, Pastor Moïse Koré, and Marcel Gossio, among others.

(c) *BLÉ GOUDÉ shared the objective to maintain GBAGBO in power by all means*

33. BLÉ GOUDÉ shared the intention to keep GBAGBO in power by all means. BLÉ GOUDÉ enjoyed a special status within the Inner Circle, acting as a direct intermediary between GBAGBO and the *Jeunes Patriotes*. He was the acknowledged leader of the *Galaxie*

*Patriotique*, a coalition of both armed and unarmed pro-GBAGBO youth organisations. BLÉ GOUDÉ was devoted to GBAGBO and often in his company. GBAGBO gave BLÉ GOUDÉ instructions and sought his advice on important political issues. BLÉ GOUDÉ also had a key role within the CNRD, which was headed by Simone GBAGBO.

34. BLÉ GOUDÉ's actions between late 2002 and 2011 were in furtherance of the Common Plan. In his speeches, broadcast by the pro-GBAGBO media, BLÉ GOUDÉ used rhetoric inciting hatred against the international community and against civilians described as "foreigners". In response to calls from BLÉ GOUDÉ, young people took over the streets and perpetrated violence in 2003, in 2004 and in 2006, obstructing political progress and undermining peace accords in order to keep GBAGBO in power. BLÉ GOUDÉ and GBAGBO used similar methods to orchestrate violence by the youth during the post-election violence of 2010 to 2011.

35. BLÉ GOUDÉ also played a key role in recruiting into the FDS thousands of young people, from ethnic backgrounds loyal to GBAGBO and many of whom belonged to *groupes d'auto-défense* [self-defence groups]. This recruitment was done both officially and unofficially between 2002 and 2011. These recruits bolstered the loyalty of the FDS to GBAGBO and participated in politically and ethnically motivated violence in order to prove their "*patriotisme*" [patriotism].

## 2. Violent repression of political opposition before 2010

36. From 2000 to 2010, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle used a combination of the FDS, *Jeunes Patriotes*, militias and mercenaries to violently repress the political opposition. The methods used by these forces included the firing of live rounds on civilian demonstrators, politically-targeted abductions and assassinations, illegal roadblocks and identity checks, and the pillage and burning of property. These methods were replicated in the pattern of violence which followed the second round of the presidential elections in November 2010.



37. In 2000 and 2001, the FDS violently repressed demonstrations by the political opposition, committing crimes against civilians including abductions, murder and rape.

38. On 25 March 2004, opposition parties tried to hold demonstrations in Abobo and other areas of Abidjan, to denounce GBAGBO's non-compliance with the Marcoussis peace accords. The FDS violently repressed these marches, firing live rounds on demonstrators and killing over 100 civilians. GBAGBO did not acknowledge civilian deaths but instead condemned the demonstration, describing it as an "attempted uprising".

39. In the following days, the FDS collaborated with militia members, foreign mercenaries and *Jeunes Patriotes* in carrying out politically motivated abductions and murders of civilians in Abidjan, particularly in Abobo, an area traditionally associated with persons of ethnic groups traditionally from Northern Côte d'Ivoire, who were perceived as Ouattara supporters.

40. GBAGBO's presidency was marked by such politically-targeted abductions and murders, carried out by units known as *escadrons de la mort*. These death squads were led by FDS elements including Simone GBAGBO's *aide de camp* Anselme Séka Yapo, who collaborated with militia and mercenaries in carrying out assassinations. Political opponents of GBAGBO lived with the threat of abduction and murder and many of them were targeted during the post-election violence.

41. Furthermore, from 2000 to 2010, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle justified their actions by (i) denying allegations that the pro-GBAGBO forces committed crimes, and, in the alternative, (ii) claiming that the means used were a justifiable security response to the risk posed by "rebels". This pattern of denial was repeated during the post-election violence of 2010 to 2011.

### 3. Use of youth groups

42. From 2002 onwards, violence by pro-GBAGBO youth was organised via a proliferation of groups referred to as the *Galaxie Patriotique*. The acknowledged leader of

this movement was the Accused BLÉ GOUDÉ, also known as the *Général de la Rue*. From 2002 onwards, BLÉ GOUDÉ, on behalf of GBAGBO, used *Jeunes Patriotes* to occupy strategic positions in Abidjan, to seize control of the media, to intimidate staff from the judiciary, UN and NGOs, and to attack, kill and intimidate political opponents and pillage their property.

43. BLÉ GOUDÉ organised the youth to mount violent demonstrations in order to obstruct the implementation of the Marcoussis peace accords in 2003, to carry out attacks against French nationals in 2004 and to prevent, in 2006, voter registration by people of Northern ethnicity. All of these acts were carried out in coordination with GBAGBO and members of the Inner circle, to obstruct peace accords in order to maintain GBAGBO in power.

#### 4. Use of militias

44. The period of late 2002 and early 2003 saw the creation of pro-GBAGBO militia in Côte d'Ivoire. GBAGBO's Minister of Defence, Bertin Kadet, was among those responsible for arming and training the pro-GBAGBO militia, which formed an armed wing of the *Galaxie Patriotique*.

45. In Abidjan, the predominant militia group was the GPP. From 2003, the GPP and other militias benefitted from full collaboration with the FDS.

46. In the West of Côte d'Ivoire, the predominant militia group was led by FPI representative Denis Maho Glofiéhi and became known as the FLGO. It was sponsored and supported by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle. Glofiéhi's group collaborated with Liberian mercenaries and was responsible for the massacre and rape of civilians from October 2002 onwards.

47. After the 2007 Ouagadougou accords, the pro-GBAGBO militias remained in existence as self-defence groups. In 2010, prior to the elections, members of the Inner Circle recommenced the payment and supply of weapons to these groups, which carried out attacks against civilians during the post-election violence.

## 5. Use of mercenaries

48. From October 2002, GBAGBO used European and South African mercenaries who trained troops in Abidjan and led combat operations in western Côte d'Ivoire. In the same period, GBAGBO also used Liberian mercenaries, who fought alongside the FDS and the FLGO militia in western Côte d'Ivoire, where they participated in the widespread murder and rape of civilians. GBAGBO's use of mercenaries continued into 2010, when Liberian mercenaries were positioned in Abidjan, in preparation for the post-election violence.

## 6. Activities prior to the presidential elections in October/November 2010

49. Before and during the election campaign of 2010, GBAGBO publicly showed that he was prepared to use violence against his political opponents in order to retain power. During the campaign, speeches by GBAGBO and members of the Inner Circle emphasised his intention to stay in power at any cost. In 2010, the FDS violently repressed political demonstrations and GBAGBO openly encouraged them in this task.

50. Prior to and during the election, GBAGBO arranged for the further recruitment of pro-GBAGBO youth and militia members into the FDS. The payment and supply of arms to militia groups was recommenced and Liberian mercenaries were put into position in Abidjan.

51. On 5 August 2010, GBAGBO announced the holding of the election of the President of the Republic. The first round of the election was held on 31 October 2010 and passed peacefully. Between the first and second rounds, GBAGBO put measures in place to assist the violent repression of the opposition. On 14 November 2010, he ordered the requisition of the armed forces by presidential decree. On 26 November, GBAGBO decreed a curfew over the entire Ivoirian territory, with effect from 27 November, the eve of the polling day of the second round. The decree requisitioning the armed forces and the subsequent curfews served as a pretext for the pro-GBAGBO forces to commence their violence against the political opposition and civilians perceived to support it. This violence began on 27 November 2010 and culminated in the post-election violence.

7. GBAGBO ensures control over the FDS and units tasked with implementing the Common Plan

(a) *Appointments on the basis of ethnicity and personal loyalty*

52. On becoming President in October 2000, GBAGBO appointed as senior FDS commanders officers who were prepared to keep him in power by all means and whose personal loyalty to him was assured by their shared ethnic links. In late 2000, GBAGBO appointed Faussignaux Vagba as commander of the Navy and Dogbo Blé as commander of the GR. Both of them came from GBAGBO's Bété ethnic group and they and their units remained loyal to GBAGBO until his arrest in April 2011.

53. In line with their ethnically sectarian politics at the time, GBAGBO and the Inner Circle promoted a policy of ethnic favouritism and division within the FDS. FDS officers from Bété and related ethnic backgrounds were given key positions, often to the exclusion of officers from ethnic groups traditionally from the North of Côte d'Ivoire. The latter were ethnically closer to GBAGBO's main political rival, Ouattara. As a result, they came under suspicion within the FDS hierarchy and were considered potentially disloyal to the GBAGBO regime. This exacerbated ethnic divisions within the FDS.

54. The attempted coup of September 2002 gave GBAGBO and his Inner Circle further licence to rely on ethnic origin as a determining factor for enrolment, appointments and promotions within the FDS. Notably, Colonel Rigobert Dadi Touhouri, another Bété, became joint commander of the BASA and BASS, thereby having control over the main FANCI heavy artillery unit. From 2002 up until GBAGBO's arrest in 2011, units headed by Bété commanders such as Dogbo Blé and Dadi benefitted from preferential treatment in the supply of equipment and weapons, often bypassing official channels.

55. In 2002, GBAGBO confirmed other close associates in prominent positions; he nominated Bertin Kadet, a Bété relative, as Defence Minister. Kadet was instrumental in funding and coordinating the use of militias in this period. GBAGBO subsequently

retained Kadet as his special advisor on security matters; Kadet remained in this position during the post-election violence of 2010-2011.

56. In addition to officers with whom he shared ethnic ties, GBAGBO promoted FDS officers who proved themselves loyal in military operations against the 2002 rebellion. Some of these officers were from ethnic backgrounds other than Bété, although many of them were Christians from South or Central Côte d'Ivoire, rather than from Northern or Muslim backgrounds. In 2004, General Mangou was promoted to CEMA. Mangou is Ébrié, of the same ethnic group as Simone Gbagbo. In November 2004, Mangou led *Opération Dignité*, during which pro-GBAGBO forces breached a ceasefire and unilaterally bombed Bouaké, killing a number of French troops. Although the operation to retake Bouaké failed, Mangou was rewarded with the position of CEMA. Other officers loyal to GBAGBO in this period included Boniface Kouakou Konan, who became COMTHEATRE, and Jean-Noël Abéhi, who became Commander of the GEB in the *Gendarmerie Nationale*.

57. In 2005, GBAGBO created the CECOS, an elite unit comprised of elements of the *Gendarmerie* and the police. The official mandate of the CECOS was to combat organised crime and "re-establish security" in Abidjan. Between 2005 and 2010, the CECOS was accused of repression in Abidjan, targeting civilians from ethnic groups traditionally from the North of Côte d'Ivoire, who were perceived Ouattara supporters. The head of the CECOS was Guiai Bi, a *Gendarmerie* officer of Gouro ethnic background, the Gouro being ethnic neighbours to the Bété. In addition to becoming head of the CECOS, Guiai Bi also retained his position as head of the *École de Gendarmerie* [*Gendarmerie Academy*].

58. Prior to the 2010 election, GBAGBO took further steps to ensure the overall loyalty of the FDS. On 5 August 2010, the day he announced the holding of elections, GBAGBO promoted the senior commanders of the FDS, including Mangou, Guiai Bi, Vagba and Dogbo Blé, to the highest military ranks.. On 7 August 2010, GBAGBO publicly told the FDS commanders that "*Si je tombe, vous tombez aussi*" ["If I fall, you fall too"].

59. By November 2010, the FDS high command consisted mainly of GBAGBO's close associates. During the 2010 elections, several FDS commanders, including Mangou,

instructed their troops to vote for GBAGBO. On 3 December 2010, after GBAGBO's proclamation as President, the FDS commanders formally swore allegiance to him.

60. On 6 December 2010, GBAGBO appointed a Government that was composed of his trusted allies, including Alain Dogou as Minister of Defence and Émile Guirieoulou as Minister of the Interior. After their appointments, both Dogou and Guirieoulou publicly showed their support for GBAGBO and were instrumental in the coordination of the FDS during the post-election violence.

61. Also on 6 December 2010, GBAGBO appointed Charles BLÉ GOUDÉ as the Minister of Youth, Vocational Training and Employment. GBAGBO's appointment of BLÉ GOUDÉ as a minister vested him with governmental authority and legitimacy, securing control over the pro-GBAGBO youth and facilitating BLÉ GOUDÉ's liaison with the FDS during the post-election violence.

(b) *Creation of a "parallel structure" of command*

62. By November 2010, there existed a parallel command structure ["parallel structure"] within the FDS, many of whose officers were Bété and who were able to bypass their official hierarchy in order to communicate directly with the Inner Circle.

63. From late 2002 and into early 2003, GBAGBO had already used *Jeunes Patriotes*, militias and mercenaries to reinforce the FDS, to support their activities to repress the political opposition and to ensure their continued loyalty.

64. In the period 2002 to 2010, GBAGBO continued his efforts to ensure the FDS would maintain him in power, by placing loyal commanders into key positions and units, in order to ensure their willingness and capacity to act in furtherance of the Common Plan. GBAGBO and his Inner Circle appointed loyal officers to take command of units which were given a mandate to enforce security or participate in combat. GBAGBO and his Inner Circle, including BLÉ GOUDÉ, had direct contact with the commanders and senior officers of these units. While each officer came under the command of a superior, they could bypass, when necessary, the official chain of command in the FDS. This enabled

GBAGBO and members of the Inner Circle to coordinate the violent repression of civilians, the liaison with militias and mercenaries, and other actions in furtherance of the Common Plan.

65. The following were among the key officers in this parallel structure:

- i. in the armed forces: General Brunot Dogbo Blé, commander of the GR; General Faussignaux Vagba, commander of the Navy; Colonel Rigobert Dadi Touhouri, commander of the BASA; Konan Boniface, COMTHEATRE; and Captain Clément Ouandé Zadi commander of the *sous groupement tactique* within the 1<sup>er</sup> BCP;
- ii. in the *Gendarmerie Nationale*: Guiai Bi, commander of the *Gendarmerie* academy and the CECOS and his subordinates Robe Gogo and Zoh Loua; Abehi, commander of the GEB; and Koukougnon, commander of the Yopougon *Gendarmerie* Squadron;
- iii. in the police, Emmanuel Patrice Loba Gnango, commander of the BAE; Bertin Djédjé Gbagro, commander of the CRS1 and Marius Ouaty Touré, commander of the CRS2;
- iv. within mixed entities: Konan Boniface was commander of the DMIR, a mixed entity comprising elements of the Navy and other FDS units; the CECOS was another mixed entity and several officers including Abehi (*Gendarmerie*) and Loba (Police) were also CECOS commanders in their respective zones of Abidjan.

66. By November 2010, these trusted officers formed the core of the parallel structure through which GBAGBO and the Inner Circle exercised control over the GR, Navy, BASA, *sous groupement tactique*, CECOS, GEB, Yopougon *Gendarmerie* Squadron, DMIR and the police intervention units BAE, CRS1 and CRS2. These units played a key role during the

post-election violence of 2010 to 2011 and will be referred to as the “parallel structure units”.

67. GBAGBO’s creation of mixed units such as the CECOS and DMIR meant that a number of officers had dual roles. CECOS officers also belonged to the police or *Gendarmerie*; DMIR officers also belonged to their respective FDS units. These multiple roles blurred the official chain of command and meant that the supervisors of these officers were no longer in a position to know whether or not their subordinates were acting under official orders. As a result, officers in the parallel structure were able to act with greater impunity outside the official chain of command.

(c) *Recruitment of pro-GBAGBO youth into the parallel structure*

68. From late 2002, GBAGBO, BLE GOUDÉ and others members of the Inner Circle ensured the recruitment into the FDS of large numbers of pro-GBAGBO youth from regions in the West and Centre of Côte d’Ivoire. These members of the “BLE GOUDÉ contingent” were assigned in priority to parallel structure units, such as the GR. From 2003, these units included a large number of young recruits of Bété or related ethnicity, who were fervently pro-GBAGBO and were ready to commit crimes to keep him in power. This large-scale recruitment of pro-GBAGBO youth and their integration into these units changed the culture of the FDS, exacerbating ethnic divisions and making these parallel structure units overtly pro-GBAGBO. It also facilitated liaison between the parallel structure units and the pro-GBAGBO militia, mercenaries and *Jeunes Patriotes*.

(d) *Provision of weapons and equipment to the parallel structure*

69. As described in Section III.C.3(a), GBAGBO and the Inner Circle ensured that the parallel structure units were better stocked with weapons and munitions than the rest of the FDS. While many units of the FDS were under-equipped, units such as the GR, BASA, CECOS and GEB were well-equipped with weapons and munitions, some of which were deliberately concealed from UN weapons inspectors.



70. Commanders of these units requested material directly from the Inner Circle, rather than via the official FDS hierarchy. Members of the Inner Circle also ordered weapons or personnel to be transferred from other areas of the FDS to units within the parallel structure, such as the BASA. Before and after the 2010 elections, these units were provided with additional personnel, military equipment, money and vehicles, including unofficial gifts from GBAGBO and members of the Inner Circle.

*(e) Collaboration with pro-GBAGBO youth, militia and mercenaries prior to 2010*

71. In the period 2002 to 2010, parallel structure units collaborated with pro-GBAGBO youth, militia and Liberian mercenaries. GBAGBO and his Inner Circle encouraged such collaboration by paying money to militia and self-defence groups as a reward for their support of the FDS. Parallel structure units collaborated with militias in Abidjan, where the militias assisted in the violent repression of civilian demonstrations and worked as unofficial law enforcement agents. Elements within parallel structure units also liaised with Liberian mercenaries and a number of them shared ethnic and language ties with the Liberians.

72. Members of these parallel structure units were involved in crimes against civilians between 2000 and 2010, as part of the violent repression of the political opposition. They were implicated in firing live rounds at demonstrators, abduction, murder and rape of civilians, as well as in politically-motivated murders and kidnappings which were attributed to pro-GBAGBO “death squads”. Throughout this period, these FDS members and their commanders were allowed to act with impunity by GBAGBO and his Inner Circle.

*(f) GBAGBO’s reliance on the parallel structure during the post-election violence of 2010-2011*

73. In 2010, both before and after the elections, GBAGBO and his Inner Circle organised the recruitment of additional pro-GBAGBO youth and militia members into the FDS. Commanders of the parallel structure units, in collaboration with BLÉ GOUDÉ and other members of the Inner Circle, arranged for the unofficial enrolment and training of these

new recruits. In late 2010 and early 2011, these pro-GBAGBO recruits were assigned to the parallel structure units, including the GR and BASA.

74. Prior to the 2010 elections, GBAGBO and his Inner Circle recommenced high-level liaison between the parallel structure units and the militias. During this period, GBAGBO and the Inner Circle also recruited mercenaries and integrated them into the parallel structure units. During the post-election violence, the parallel structure units collaborated with these militia members, Liberian mercenaries and *Jeunes Patriotes*, both in Abidjan and other regions of Côte d'Ivoire.

75. The parallel structure units were the main operational force within the FDS and they formed the backbone of GBAGBO's fight to remain in power. During the post-election violence, the commanders of these units showed their loyalty to GBAGBO and galvanised their troops to help GBAGBO retain power. The personnel of these units were ready to commit crimes in order to demonstrate their "patriotism" and they remained fighting for GBAGBO until the end of the conflict.

76. The parallel structure units were principal actors in the attack on the civilian population during the post-election violence. For instance, the CECOS is implicated in the 16 December incident, the BAE in the 25 February incident, the GR in the 3 March incident and the BASA in the 17 March incident. These units were, in collaboration with pro-GBAGBO youth, militias and mercenaries, the primary perpetrators of the crimes charged.

#### 8. Development of the Common Plan by 27 November 2010

77. The implementation of the Common Plan conceived by GBAGBO, BLÉ GOUDÉ and the other members of the Inner Circle had, by 27 November 2010, developed to encompass the Policy, as described above, consisting of a widespread and systematic attack against perceived Ouattara supporters.

78. The development of the Common Plan by 27 November 2010, as described, is evidenced, *inter alia*, by the following matters.

79. First, between 27 November 2010 and on or around 12 April 2011, pro-GBAGBO forces directed a widespread and systematic attack against civilians who were perceived Ouattara supporters (“the Attack”). The Attack targeted such persons and followed the same *modus operandi* used by the GBAGBO government between 2002 and 2006. The Attack was made possible by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle who used their positions to organise, recruit, train, finance and arm the pro-GBAGBO forces under their authority and control.

80. Second, from 14 December 2010, GBAGBO ordered the blockade of the Golf Hotel, where Ouattara and his cabinet were based. The presence of FDS elements around the Hotel was put in place in prospect of the march on the RTI on 16 December 2010.

81. Third, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle contributed to the implementation of the Common Plan, in the respects outlined in sections III.C.1 and III.C.7 below. GBAGBO and the Inner Circle met frequently to coordinate the implementation of the Common Plan, as is described in section III.C.6.a.

82. Fourth, many members of the pro-GBAGBO forces, including their leaders, not only implemented the Common Plan because they were ordered to do so by their superiors, including GBAGBO and BLÉ GOUDÉ, but personally subscribed to the Common Plan. GBAGBO gave many of them a personal motive to do whatever was necessary to keep him in power. He reminded the senior FDS Generals that their fate was tied to his. GBAGBO further promised the *Jeunes Patriotes* that they would be incorporated into the army in case of victory, and he paid the leaders of the pro-GBAGBO youth and militia monthly allowances both before and during the post-election violence. In addition, the fact that the entire political and military leadership including GBAGBO, BLÉ GOUDÉ, youth leaders, and the other members of the Inner Circle had adopted the Common Plan and strove towards its implementation, corroborates that the pro-GBAGBO forces as a whole subscribed to it.

83. Fifth, GBAGBO and the Inner Circle failed to sanction the violence and actively denied any responsibility for it. In doing so, they condoned it and assisted its ongoing commission, as described in section III.C.8 below.

84. Sixth, even after GBAGBO's arrest in April 2011, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle continued to order measures intended to implement the Common Plan.

85. Finally, within this context, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle publicly showed that they were prepared to use violence against GBAGBO's political opponents to maintain GBAGBO in power, through their statements, as described below.

(i) GBAGBO's statements

86. GBAGBO publicly showed that he was prepared to use violence against his political opponents to retain power.

87. Several months before the election, GBAGBO informed members of the CRS of the battle to be waged against the "bandits", a term also used by members of the Inner Circle to denote Ouattara and his supporters.

88. GBAGBO stated, including to members of the Inner Circle:

"If I fall, you fall too."

89. The slogan of his political campaign was "*on gagne ou on gagne*" ["we win or we win"], meaning that GBAGBO and his supporters would not accept defeat or the election of any other candidate. To some, the electoral slogan meant that GBAGBO and the Inner Circle intended to use all necessary means to maintain GBAGBO in power.

90. Before the election, GBAGBO met some *Jeunes Patriotes* in Yopougon and urged them to fight to protect the nation and not to leave the country in enemy hands.

91. In his address to the nation on 21 December 2010, GBAGBO stated that the international community's acceptance of Ouattara's victory amounted to a declaration of war against Côte d'Ivoire:

"And on the basis of those results, the international community has declared war on Côte d'Ivoire. That is not acceptable and this will not be accepted".

92. GBAGBO also called for the departure of the ONUCI and French forces.

93. On 31 December 2010, GBAGBO made clear in a television interview that although he did not believe that the crisis would lead to civil war, the unrelenting pressure by his political opponents, including the UN,

"[will] make confrontation more likely".

94. That same day, he addressed the nation, stating that he was the legitimate winner of the election and would remain in power:

"We shall not give in".

95. He described the attitudes of his adversary, of the UN, and of certain African heads of state as a:

"*coup d'état* attempt, brought under the banner of the international community".

96. On 4 January 2011, GBAGBO again addressed the nation to condemn the international community's attitude towards Côte d'Ivoire as "hostile and unjust".

97. Within the same week, GBAGBO again called for the departure of the ONUCI.

98. On 7 January 2011, GBAGBO set up an International Commission of Inquiry to look into human rights violations committed after 3 November 2010. The Commission produced a one-page provisional report that failed to address any of the crimes committed by the FDS, and it was shelved without any follow-up.

99. On 24 February 2011, after a “first offensive” in the PK18 neighbourhood of Abobo, GBAGBO ignored the advice of CEMA Mangou - in a meeting at the Presidential Residence - to declare Abobo a war zone, which would have forewarned the civilian population and, specifically, allowed it to flee the area. Instead, he instructed the FDS generals to do everything they could to liberate the N’dotre intersection in Abobo. After the meeting, the FDS shelled PK 18 neighbourhood and the N’dotre area in Abobo.

100. On 3 March 2011, the day of the women’s march in Abobo, GBAGBO instructed the spokesperson during the cabinet meeting to state that:

“the President of the Republic is committed to standing his ground”.

101. On 9 April 2011, GBAGBO instructed forces loyal to him to continue the fight against “Ouattara and his terrorists”.

(ii) BLÉ GOUDÉ’s statements

102. BLÉ GOUDÉ’s statements throughout the post-election violence demonstrate his continued commitment to the Common Plan to keep GBAGBO in power by all means. His inflammatory speeches and instructions to the pro-GBAGBO youth reveal his intent in relation to the use of violence against perceived Ouattara supporters, as further demonstrated in sections III.C.5 and III.C.6 below.

103. On several occasions during the post-election violence, BLÉ GOUDÉ incited the youth to use violence against GBAGBO’s political opponents, ONUCI and France.

104. On 24 February 2011, BLÉ GOUDÉ called on the pro-GBAGBO youth to obstruct ONUCI movements in Abidjan and convened them the following day to issue to them the “last instructions”.

105. On 25 February 2011, he gave a *mot d’ordre* for the obstruction of ONUCI movements and to:

“monitor the comings and goings in your neighbourhoods, and report any *personne étrangère* entering your neighbourhood.”

106. He also told them that in the week ahead, they would organise themselves “properly in the neighbourhoods” for “our systems to be fine-tuned”. It was also BLÉ GOUDÉ who ordered pro-GBAGBO youth to “mount roadblocks in the streets” to “monitor *étrangers*” to “hunt down those who wore *gris-gris*” as they were considered “to be rebels [...] they came from the north.”

107. On 14 March 2011, BLÉ GOUDÉ addressed the pro-GBAGBO youth in a recorded video message, urging them to continue the good work at the roadblocks and not to listen to “rumours” because Ouattara and his supporters are waging a “psychological combat” against them. He reassured the youth that they are going to win because “*nous sommes dans le juste et le vrai*” [“we are in the right and the truth”].

108. On 19 March 2011, before thousands of pro-GBAGBO youth, BLÉ GOUDÉ made an appeal for enlistment. In so doing, BLÉ GOUDÉ justified the arming of the pro-GBAGBO youth. On 21 March 2011, following the appeal, thousands of pro-GBAGBO youth went to the army headquarters to enlist.

109. On 26 March 2011, a reporter interviewed BLÉ GOUDÉ and asked if he was concerned that he might not be able to rein in the armed patriots, to which he replied:

*“dans une révolution, il y a toujours des effets collatéraux”.*

110. In a recorded message aired on the RTI on 3 April 2011, BLÉ GOUDÉ addressed the pro-GBAGBO supporters, reassuring them that he had not fled the country and that he was “where he needs to be”. He congratulated the army who was continuing to fight Ouattara’s rebels, and the patriots who were fighting alongside the army. He stated that the “final assault” will be carried out by the army and the patriots, and that together they will liberate the country.

111. On 5 April 2011, in a similar televised message broadcast on the RTI, BLÉ GOUDÉ once again addressed the “patriots” urging them to continue fighting, to reinforce the roadblocks, and to support the army which was still doing the *ratissage* [sweeping].

(iii) Simone GBAGBO’s statements

112. Simone GBAGBO also stated her intention to fight to the end and to use all means necessary. She urged the pro-GBAGBO supporters to “resist”, to maintain her husband in power.

113. Further, at a CNRD rally of about 4,000 GBAGBO supporters on 15 January 2011, when numerous crimes against Ouattara supporters had already been committed by pro-GBAGBO forces, Simone GBAGBO said:

“the time for debates about the election of Laurent GBAGBO or the bandit ringleaders, that time is over. [We must] regain the entire national territory [...]. While it is of course the task of the [FDS], it is equally ours. We have to support them.”

114. On 10 March 2011, during a CNRD meeting Simone GBAGBO stated, *inter alia*, that “we chose P[resident] G[BAGBO] L[aurent]. [...] [W]e chose to resist those seeking to rob us of our country. [...] our crusade continues.” She also stated that “we must fight and triumph” and that they would “consult the P[resident of the] R[epublic]”.

(iv) Statements by other members of the Inner Circle

115. Other members of the Inner Circle relayed GBAGBO’s statements, stating that they would use all means to maintain GBAGBO in power.

116. On 12 January 2011, given the prevailing insecurity mainly in Abobo, the CEMA, Mangou, announced a curfew in that *commune* and in Anyama *commune*. He asserted that armed attacks against the FDS were “akin to acts of war”. Hence, the FDS considered itself to be:

“in a position of self-defence. Consequently, it reserves the right to respond henceforth, with all means at its disposal, to all attacks from any quarters”.

117. On 22 January 2011, Mangou stated in front of thousands of youths at the FDS headquarters in Abidjan that:



“If we have to fight to the death, we will do so. [...] [W]e will not allow anyone to come here and touch a single hair of the President [GBAGBO]’s head”.

118. On 22 February 2011, during a cabinet meeting, the Minister of Foreign Affairs emphasised that the term “rebels” should thenceforth be used to refer to the “demonstrators”, while the Prime Minister added that the term “terrorists” should be used instead.

119. Similarly, during another cabinet meeting on 24 February 2011, GBAGBO issued an instruction to “neutralise those rebels” in Abobo.

120. At the cabinet meeting of 29 March 2011, the Minister of Communication advised “acts of terror in response”.

121. On 19 February 2011, FPI president Affi N’Guessan conveyed a message to the youth on GBAGBO’s behalf, saying that GBAGBO is counting on them and asks them to fight for him, to remain mobilized for the fight [to keep GBAGBO in power], and that they [the youth] will be the “*force incontournable qui va imposer la solution à tout les problèmes auxquels nous sommes confrontés*” [undisputed force that will impose the solution to all problems we are facing].

122. On 8 February 2011, CRAC leader Serge Koffi addressed a group of pro-GBAGBO youth, emboldening them to lead a combat to support GBAGBO and defend their national sovereignty. He asked the youth to denounce all the *déstabilisateurs* [agitators]. In another speech addressing the youth in Yopougon, on 23 February 2011, Serge Koffi asked them to remain loyal to GBAGBO, and called on them to rise up and use their lethal weapon against their “opponents”, the population living in Abobo: “*Il n’y a pas de bons dans les populations d’Abobo, il faut frapper dans le tas et Dieu sauvera les innocents.*” [There are no good ones in Abobo’s population, we must hit in the stack and God will save the innocent ones]. He then called on all the Ivoirians to “*se lever pour utiliser l’arme fatale pour circonscrire la guérilla urbaine. [Il faut se lever et] démasquer ces anarcos-tueurs*” [rise up to use

the lethal weapon to encircle the urban guerilla. [We must rise up and] remove these anarchist-killers].

123. On 3 April 2011, several pro-GBAGBO youth leaders appeared on the RTI and called on GBAGBO's supporters to mobilise around GBAGBO and to denounce the rebels. CNRD member Idriss Ouattara called on all GBAGBO supporters, regardless of their age or gender, to mobilise and go to GBAGBO's residence to defend him and to celebrate the victory, which is very near.

## **B. GBAGBO, BLÉ GOUDÉ AND THE INNER CIRCLE USED PRO-GBAGBO FORCES TO COMMIT CRIMES**

### **1. Pro-GBAGBO forces were an organised and hierarchical apparatus of power**

#### **(a) *The FDS***

124. The FDS consisted of five main components: the Ground Forces, the Air Force and the Navy; the *Gendarmerie*; the GR; the CECOS; and the Police. GBAGBO, in his claimed status as President, was Commander-in-Chief of the FDS.

#### **(i) National armed forces**

125. General Philippe Mangou was the CEMA and formally commanded the FANCI. He reported both to his immediate superior the Minister of Defence and to GBAGBO as Commander-in-Chief.

#### **a. Ground Forces, Air Forces and Navy**

126. General Deto Letho was the COMTER, General Aka Kadjó the COMAIR, and Admiral Faussignaux Vagba the COMAR. During the September 2002 rebellion, part of the FANCI was deployed to the front line in the West and Centre of Côte d'Ivoire. From 2004, Commander Kouakou Boniface Konan commanded these forces under the title of COMTHEATRE.

127. In addition to their territorial units, the FANCI had several specialised units. The Ground Forces also comprised: two units based at the new Camp Akouédo (referred to as “new camp”), the BASA headed by Rigobert Dadi Tohouri and the 1<sup>st</sup> BB, headed by Colonel Yao Adjoumani; and the commando unit or 1<sup>st</sup> BCP, headed by Commander Brice Gérard Mell and based in the old Camp Akouédo.

128. Captain Zadi, an officer of the 1<sup>st</sup> BCP, headed a unit called *sous-groupement tactique*, in charge of complex operations and composed of elite soldiers from army various units. The *sous-groupement tactique* was based in the old Camp Akouédo.

b. Gendarmerie

129. The *Gendarmerie*’s mandate was twofold since it had both law enforcement and military responsibilities. General Kassaraté was the commander; he reported to the Ministers of Defence and of the Interior and, for military missions, to the CEMA. In addition to its four territorial legions, the *Gendarmerie* also had the UIGN, headed by Commander Ali Badara Bassante, and the GEB, headed by Jean-Noël Abehi; both units were based in Camp Agban in Adjamé.

c. Garde Républicaine

130. From 2000, the GR was commanded by General Dogbo Blé, who from 2005 was also Commander of the Presidential Palace. His deputy in the GR was Colonel Aby, and his chief of operations Lieutenant-Colonel Ohoucou Mody. The GR formally reported to the Minister of Defence and to the CEMA. As Commander of the Presidential Palace, Dogbo Blé received orders directly from GBAGBO.

131. The mandate of the GR was to defend the President of the Republic and to ensure the security of senior public figures and major institutions of the Republic. The GR carried out this task in coordination with other units, primarily the GSPR, commanded by Colonel-major Nathanaël Ahouman Brouha.

(ii) Police

132. General M'bia Bredou was the head of the police, or DGP. Bredou was under the authority of the Minister of the Interior and reported to both the Minister and GBAGBO.

133. In addition to its territorial units, the Police also comprised "intervention units" tasked with maintaining public order and supporting law enforcement missions during regular policing operations. These units included the CRS, particularly the CRS1 headed by Bertin Djédjé Gbagro and the CRS2 headed by Marius Touré, the BAE headed by Emmanuel Patrice Loba Gnango, and the BSP. These units were regrouped into the DUI headed by Claude Yoro and came under the Abidjan prefecture. They were permitted to use their firearms only in exceptional circumstances in the line of duty.

(iii) CECOS

134. The CECOS was commanded by General Poin Georges Guiai Bi, who was also commander of the *École de Gendarmerie*. The CECOS was under the *de jure* authority of the Minister of Defence and of the CEMA. Since its creation in 2005, the CECOS headquarters were in Cocody while Guiai Bi also retained his office at the Academy of the *Gendarmerie*.

135. The CECOS was a unique entity tasked with "combatting organised crime" and ensuring security in Abidjan. It was composed of personnel from various units of the FDS, who were on secondment but who often retained their duties of origin.

136. Within the CECOS, Captain Jean Zoh Loua commanded a group comprising an intervention unit - BMO, headed by Lieutenant Zokouri Yves Ouidi - and a support group - commanded by Captain Aboubacar Fofana. The BMO included cadets from the *École de Gendarmerie*.

137. The CECOS had geographical sub-units to cover the various zones of Abidjan and their unit sector number was generally identifiable by their 4x4 vehicles.

(iv) DMIR

138. In addition to his other duties, Konan Boniface, the COMTHEATRE, headed the DMIR, which was composed of “the élite” of different FDS units, namely the FUMACO (from the navy) and the BAE and CRS (from the Police). The DMIR was created in the aftermath of the 2002 crisis.

(b) *Pro-GBAGBO youth, militia and mercenaries*

139. The pro-GBAGBO youth and militia comprised a force loyal to GBAGBO, on which he and the Inner Circle had relied since 2002. During the post-election violence, their role became crucial in implementing the Common Plan.

140. In March 2011, as desertions from the FDS increased, militias and pro-GBAGBO youth were increasingly assimilated into the FDS parallel structure. BLÉ GOUDÉ’s public speeches lent a veneer of legitimacy to their collaboration with the FDS. On 20 March 2011, BLÉ GOUDÉ justified his call for “*jeunes patriotes*” to enlist in the army by stating that he did not want to start a civil war and was not creating a militia. Following BLÉ GOUDÉ’s calls for recruitment, the official enlistment did not materialise but pro-GBAGBO youth were provided with weapons and openly collaborated with militias, mercenaries and the remaining FDS. In April 2011 BLÉ GOUDÉ urged “patriots” to keep up the struggle and support the army in its combat.

(i) Pro-GBAGBO youth

141. Since assuming the Presidency in 2000, GBAGBO enjoyed an extensive support network of civil society organisations and political parties. The term *Galaxie Patriotique* first appeared in the media around 2003, reflecting the proliferation of pro-GBAGBO organisations, including youth groups, student unions, NGOs, militias and youth wings of political parties. Although the groups making up the *Galaxie Patriotique* were diverse and at times rivals, they harboured one common objective: to keep GBAGBO in power. BLÉ GOUDÉ was the acknowledged “leader of the *Galaxie Patriotique*”.

142. During the post-election violence, the *Galaxie Patriotique* included groups affiliated to the AJSN of BLÉ GOUDÉ and groups affiliated to the CONARECI of Damana Adia

Médard a.k.a. 'Pickass'. Each group in the *Galaxie Patriotique* had its own leader, who in turn was under the direct authority of either BLÉ GOUDÉ or other members of GBAGBO's Inner Circle, such as Simone Gbagbo.

143. The *Galaxie Patriotique* also included the COJEP led by BLÉ GOUDÉ, the FESCI led by Augustin Mian, the JFPI led by Navigué Konaté, the SOAF led by Jean-Yves Dibopieu, the CRAC led by Serges Koffi, the FENAAPCI led by Idriss Ouattara, numerous *parlements* and *agoras* such as *La Sorbonne*, whose President was Richard Dakoury, Clément Nadaud's *Sorbonne Solidarité*, Seydou Koné's MNC, Youssouf Fofana's *Voix du Nord*, and the MODESCI led by Stallone Ahoua.

144. Moreover, the *Galaxie Patriotique* also included several armed militias, which are described in the following section. The members of these militias and other pro-GBAGBO youth groups were often referred to by the generic expression "*Jeunes Patriotes*".

145. The groups which made up the *Galaxie Patriotique* had a hierarchical and effective structure and were represented in each neighbourhood of Abidjan and nationwide. As BLÉ GOUDÉ said in 2006:

"They are well organised and they got a rapid and fast capacity of gathering, which is very important".

146. These groups were financed by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle.

147. Some pro-GBAGBO youth who were not affiliated to a specific group of the *Galaxie Patriotique*, nevertheless considered themselves "*Jeunes Patriotes*"; they would mobilise upon BLÉ GOUDÉ's appeals and followed his instructions.

(ii) Pro-GBAGBO militia members

148. From early 2003, the pro-GBAGBO groups included armed militias, such as the GPP and the FLGO. During the 2010-2011 post-election violence, pro-GBAGBO militia members engaged in armed attacks on civilians, particularly in Abidjan.

149. Since 2003, these militia groups had bolstered the ranks of the FDS. Their members were armed and financed by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle. They were trained mainly by members of the FDS. Some were formally recruited into the FDS, while others acted as unofficial reinforcements.

150. From early 2003, the main militia active in Abidjan was the GPP. In the years that followed, satellite groups formed around it but the GPP continued to be the most prominent militia in Abidjan. It was a paramilitary organisation, closely connected to the Inner Circle and to the FDS parallel structure. During the post-election violence, the GPP was composed of two factions, headed by Moussa Zéguen Touré and Bernard Bouazo Yoko Yoko. Maguy Le Tocard led the GPP in Yopougon during the post-election violence.

151. The main militia in western Côte d'Ivoire was Denis Maho Glofiéhi's FLGO, which also maintained a presence in Abidjan. During the post-election violence, the FDS in Abidjan were reinforced by FLGO members, particularly in late March 2011 when many FLGO members returned from combat in the West.

152. In addition to the established militias, many pro-GBAGBO youth groups became increasingly militarised during the post-election violence and participated in attacks against civilians.

153. In 2010 and early 2011, many pro-GBAGBO youth and militia members were recruited into the FDS and underwent military training at official FDS centres, such as the GR camp at Akakro and the 1er BCP camp at Akouédo, where they were provided with weapons. Pro-GBAGBO youth received weapons training at university residences and other sites across Abidjan.

154. Pro-GBAGBO youth and militia members collaborated with FDS parallel structure units/entities including the GR, BAE, CRS, BASA, DMIR and the CECOS BMO. They often acted under the command of FDS officers and were thereby integrated into the parallel structure. They communicated via mobile telephone and social media, while some had access to FDS radio networks. They also used FDS bases, including the armed forces

headquarters at Camp Gallieni, the *Gendarmerie* headquarters at Camp Agban, police stations and the naval base at Locodjoro.

155. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle also used the pro-GBAGBO youth and militia members to erect roadblocks, to stop “suspects”, search vehicles and to act as FDS informants. At the roadblocks, they could ask for identification, search people and engage in violence. In some cases, they would hand “suspects” over to the FDS, often having assaulted them. Sometimes the FDS would be present at the roadblocks and would give the pro-GBAGBO youth and militia code-words for passage through the roadblocks. In late March 2011, following BLÉ GOUDÉ’s Place de la République rally of 26 March 2011, members of the Inner Circle arranged for the distribution of weapons to the pro-GBAGBO youth. Scores of pro-GBAGBO youth received firearms from FDS members, distributed mainly at the FDS bases.

(iii) Pro-GBAGBO mercenaries

156. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle hired, financed, equipped and armed mercenaries, primarily from Liberia, to participate in the implementation of the Common Plan. Many of these mercenaries were integrated into the ranks of the FDS, placed under FDS command, and participated in operations alongside FDS forces, pro-GBAGBO youth and militia members. The mercenaries were based at several FDS camps, and were commanded by FDS officers who were part of the parallel structure, such as Anselme Séka Yapo.

2. GBAGBO and the Inner Circle exercised joint control over pro-GBAGBO forces

(a) *Control over the FDS*

(i) GBAGBO’s control over the FDS

157. Under the Constitution of Côte d’Ivoire, the President of the Republic is the Commander-in-Chief of the national armed forces, the guarantor of national independence and territorial integrity and the Chair of the Higher Defence Council. The



Constitution vests the President with executive power and the power of appointment to key civilian and military positions. GBAGBO had *de jure* authority over the armed forces and the other FDS units, whose respective commanders reported to him, directly or through the CEMA, the Minister of Defence or the Minister of the Interior. From 2002, the CEMA had overall command over the FDS.

158. In spite of the electoral dispute in late 2010, GBAGBO, in his claimed capacity as both President of Côte d'Ivoire and Commander-in-Chief, continued to control the FDS. Members of his government and the FDS recognised GBAGBO as the President of Côte d'Ivoire and Commander-in-Chief.

159. GBAGBO received regular updates of FDS activities directly from his high command. GBAGBO was frequently briefed by the CEMA, as was GBAGBO's Minister of Defence, on the security situation, developments on the ground and FDS operations. GBAGBO was constantly informed of events on the ground, including through his intelligence services.

160. GBAGBO and the Inner Circle also controlled the information issued by and to the FDS. Through the RTI, the FDS spokesman or internally, they filtered key facts from the ground, by concealing civilian casualties and disguising them as rebel attacks. At the last stages of the post-election violence, they concealed the scope of both the defections and the flaws of the FDS high command.

161. GBAGBO's orders were executed before and during the post-election violence. For example, although several generals did not deem the measure necessary, GBAGBO requisitioned the army by decree of 14 November 2010. From that day, the entire FDS was placed on maximum alert. On 26 November 2010 and on several occasions subsequently, GBAGBO imposed curfews. His orders were executed by the FDS.

162. After the election results, GBAGBO maintained command of FDS operations. For example, he ordered the blockade of the Golf Hotel which was effectively put in place in anticipation of 16 December 2010 march on the RTI. Similarly, on GBAGBO's order, FDS

personnel were deployed to block all access to RTI. In December 2010 and in early 2011, GBAGBO still passed decrees related to defence matters and his subordinates appointed new officials within the Defence Ministry. In the same vein, the order issued by GBAGBO on 24 February 2011 to “stand firm [and not to] cede Abobo” was followed by FDS operations in that *commune*. On 3 March 2011, during a cabinet meeting, GBAGBO resolved to stand firm in the performance of his duties and to continue “defending the sovereignty of the State”; the FDS continued their operations throughout March 2011.

(ii) Control and coordination within the FDS

163. Since the rebellion of September 2002, the FDS were under the official command of the CEMA, who assigned missions to the relevant forces. From 27 November 2010 to 10 January 2011, the DGPN coordinated operations, which were essentially considered to be law enforcement missions normally entrusted to the *Gendarmerie* and the Police. From 11 January 2011 to 21 February 2011, the nature of operations changed to include not only so-called “law enforcement” operations, but also missions entailing army involvement. From 22 February 2011, the CEMA entrusted the coordination of operations to General Detoh Letho, the COMTER.

164. The FDS were coordinated through several COs, PCs and crisis committees, operating from the Presidency, the Headquarters of the armed forces, the DGPN, the CECOS HQ, and other FDS units, including the *Gendarmerie*. The CPCO headed by Colonel Sako coordinated official FDS operations and came under the authority of the CEMA. During the FDS operations in Abobo in 2011, a command post was set up in Camp Commando.

165. Ahead of the 2010 elections, Abidjan was divided into five and subsequently six operational zones, each with a command post, headed alternately by officers from various units.

166. During the deployment of FDS on the ground, this coordination facilitated information-sharing between units and between field staff and the hierarchy. FDS

personnel reported on the situation on the ground, on their operations, on weaponry requirements and on FDS conduct during operations. Moreover, from 22 February 2011, the CO at the armed forces Headquarters received information reports twice a day.

167. Orders were transmitted to FDS personnel through this coordinated and hierarchical command structure. For example, following the 16 December incident, the FDS high command gave orders to raise the level of alert and, in execution of GBAGBO's orders, the FDS High Command sent orders to reinforce security.

168. Commanders issued orders and instructions to personnel in advance of patrols and operations. During operations, they communicated with their personnel and issued orders by radio, telephone or other media.

169. The FDS was an aggregation of organised units. The commanders controlled their respective units. To ensure compliance with the orders from the hierarchy, the FDS also relied on a disciplinary regime to punish, *inter alia*, cases of indiscipline and insubordination. During the post-election violence, disciplinary sanctions continued to be determined and meted out by the FANCI, the *Gendarmerie* and the Police.

170. Until late March 2011, FDS high commanders held regular meetings, often in the presence of the Ministers of Defence or the Interior. The FDS structure and coordination remained functional until the CEMA left his post at the end of March 2011. On several occasions during the post-election violence, Mangou chaired large FDS gatherings and also called on the FDS to remain mobilised.

(iii) Control via the parallel structure

171. The complexity of the FDS structure was compounded by the existence of the parallel structure. This parallel chain of command operated within the ranks of regular FDS forces and provided a direct link between GBAGBO and the units which participated in the commission of the crimes charged.

172. GBAGBO and the Inner Circle controlled the parallel structure. Throughout the post-election violence, GBAGBO and the Inner Circle, particularly Dogbo Blé, maintained direct contacts with parallel structure commanders, as Colonel Dadi, Captain Zadi, Bertin Kadet and Seka were in contact with these commanders.

(iv) Orders to fight

173. GBAGBO and the Inner Circle, and Dogbo Blé in particular, also gave orders directly to parallel structure commanders, such as Colonel Dadi of the BASA, Captain Zadi of the *sous groupement tactique*, Commander Loba of BAE and CECOS, Claude Yoro, the Head of the DUI of the Police.

174. Whereas they should have taken orders from their direct superiors, these commanders implemented GBAGBO's instructions. The commanders of the parallel structure, such as Colonel Dadi of the BASA, openly disregarded orders from higher ranked officers, and stated that Dogbo Blé or GBAGBO alone could issue them orders.

175. Even when they participated in official FDS missions, the commanders bypassed the official rules of engagement. During the violence, the commanders of these units showed their loyalty to GBAGBO.

176. The parallel structure units within the FDS formed the backbone of GBAGBO's fight to remain in power. They galvanised their troops to help GBAGBO retain power. The personnel of these units were ready to commit crimes out of "*patriotisme*". Loyalists of all ranks within the parallel structure displayed an increasingly defiant attitude towards their direct superiors, or others and especially the former BLÉ GOUDÉ recruits.

(v) Integration of pro-GBAGBO recruits

177. In late 2010 and early 2011, parallel structure commanders arranged in collaboration with BLÉ GOUDÉ and other members of the Inner Circle, for the unofficial enrolment and training of new recruits which were assigned to parallel structure units, and integrated into these units, in particular Zadi's *sous-groupement tactique*, the GR,, the

CRS1, and CRS2, BAE, and the GEB and the *Gendarmerie* Squadron of Yopougon. The parallel structure commanders armed the GBAGBO loyalists who were newly integrated into the CECOS, BASA and GR.

178. Throughout the post-election violence, parallel structure commanders coordinated and commanded their units, enhanced with recruits from militias, the youth and mercenaries. They also collaborated with militia members, Liberian mercenaries and *Jeunes Patriotes*, both in Abidjan and other regions of Côte d'Ivoire.

(vi) Control over the FDS following defections

179. As ethnic tensions rose within the FDS and defections increased, the formal chain of command and structure of the FDS weakened. On 30 March 2011, General Mangou sought refuge at the Embassy of South Africa. By the end of March 2011, Mangou, Detoh Letho, Guiai Bi and Kassaraté had stepped down or had been permanently side-lined.

180. Thereafter, GBAGBO and the Inner Circle relied exclusively on the parallel structure which they continued to control through the fully functional chain of command. With Dogbo Blé and Konan Boniface at the forefront, Dadi, Zadi, other commanders and units of the parallel structure continued to battle with their new recruits – including mercenaries and militias, spurred on by BLÉ GOUDÉ, and following orders from GBAGBO and the Inner Circle.

(b) *Control over the pro-GBAGBO youth and militia members*

181. GBAGBO, BLÉ GOUDÉ, and other members of the Inner Circle exercised joint control over the pro-GBAGBO youth and militia members, who had remained loyal to GBAGBO since their first deployments in 2000 and September 2002 respectively.

182. GBAGBO controlled the pro-GBAGBO youth in particular via BLÉ GOUDÉ, as described below. BLÉ GOUDÉ acted as the intermediary between GBAGBO and the pro-GBAGBO youth. BLÉ GOUDÉ exercised control through his position as the acknowledged

leader of the pro-GBAGBO youth, and as a result of his *mots d'ordre* and incitements to hatred, which mobilised the youth and encouraged them to commit violent acts.

183. BLÉ GOUDÉ also participated in the recruitment of youth and militia to the FDS, through his calls for “patriots” to enlist. Through the FDS parallel structure, GBAGBO and his Inner Circle exercised joint control over the pro-GBAGBO youth and militia who were acting within the FDS or in close collaboration with them.

184. BLÉ GOUDÉ’s main strength was his ability to galvanise and rally the youth *en masse*. He was able to mobilise the youth instantaneously. During the post-election violence, pro-GBAGBO youth responded *en masse* to BLÉ GOUDÉ’s appeals, as is described in sections III.C.2.(c) and III.C.5. They complied with his “*mots d'ordre*.” And through his “*mots d'ordre*”, BLÉ GOUDÉ was able to instigate large scale and often violent action by pro-GBAGBO youth. Equally, pro-GBAGBO youth obeyed BLÉ GOUDÉ’s *mots d'ordre* to desist from violent action, such as his 2 January 2011 call not to attack the Golf Hotel. To the pro-GBAGBO youth, BLÉ GOUDÉ’s orders took precedence over those of the police.

185. To avoid accusations of advocating violence, BLÉ GOUDÉ adapted his public messages and used coded language when addressing the youth. He was aware that his speeches were scrutinised, as the international community had previously imposed sanctions on him for inciting youths to violence. In 2006, he dismissed these warnings: “I’m not going to stop my fight because I’m sanctioned”. Instead of desisting from his action, he adjusted the way he communicated with the pro-GBAGBO youth. Referring to BLÉ GOUDÉ’s *mots d'ordre*, an RTI journalist noted that “since actions on the ground require discretion, the *mots d'ordre* go through protected channels”.

186. Prior to and during the post-election violence, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle were in regular contact with leaders of pro-GBAGBO youth groups and of militias. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle gave instructions to such youth and militia members. GBAGBO also financed BLÉ GOUDÉ and other pro-GBAGBO youth and militia leaders.

187. BLÉ GOUDÉ organised public meetings and rallies where pro-GBAGBO youth and militia members gathered. BLÉ GOUDÉ was also involved in the creation and financing of *parlements* and *agoras* in Abidjan and elsewhere in Côte d'Ivoire. Pro-GBAGBO youth and militia members convened at these *parlements*, where BLÉ GOUDÉ and *Galaxie Patriotique* leaders would speak and disseminate pro-GBAGBO propaganda.

188. As stated above, the main active militia in Abidjan from 2003 onwards was the GPP. From its creation, its activities were financed, supported and encouraged by GBAGBO and members of the Inner Circle, including BLÉ GOUDÉ. From 2003 to 2004, the GPP had its own office at the armed forces Headquarters and its members had military cards and could freely pass FDS checkpoints despite bearing weapons. The GPP could also engage in criminality, including extortion, theft and pillage, without fear of arrest by the FDS. Between 2004 and 2010, when the GPP's criminality caused problems with local communities, the CEMA stepped in personally to negotiate with the GPP and arranged for its base to be moved to different locations, including Azito and the Abidjan police academy.

189. In 2010, before the first round of elections, the Inner Circle resumed and redoubled its support to the GPP and other militias. Members of the Inner Circle, such as Bertin Kadet and Affi N'Guessan, supplied weapons to the GPP and enjoined it to provide military training to the pro-GBAGBO youth. Financial support to GPP was also increased. From September 2010, ties between GPP and the FDS became closer. GPP personnel received instructions and worked in collaboration with FDS officers from parallel structure units, particularly the GR and BAE. In late 2010, GBAGBO's Inner Circle armed the FESCI and also enjoined the GPP to provide military training to the FESCI on university campuses in Abidjan. In December 2010, BLÉ GOUDÉ submitted the names of his bodyguards for training and covert integration into the GR.

190. Senior commanders of the GPP, including Maguy Le Tocard and Zagbayou, received instructions from members of the Inner Circle and the parallel structure. Bernard Bouazo Yoko Yoko reported to the Minister of Defence, Alain Dogou. Moussa Zégouen

Touré was a close associate of Simone GBAGBO and Charles BLÉ GOUDÉ. Zagbayou received instructions from Bertin Kadet. Maguy Le Tocard collaborated with and reported to Commander Loba, who headed the BAE. Other senior FDS officers, including Colonel Mody and Commander Kipré of the GR, also issued direct instructions to GPP commanders during the post-election violence.

191. The GPP and other militias also received financial contributions from the Inner Circle, including directly from the Presidency, as well as through BLÉ GOUDÉ and *Galaxie Patriotique* leaders such as Jean-Yves Dibopieu, Djué and Richard Dakoury.

192. Throughout the post-election violence, militia leaders including Zéguen Touré, Denis Maho Glofiéhi and Maguy Le Tocard sided with BLÉ GOUDÉ at public rallies to support the positions adopted by GBAGBO and his Inner Circle. RTI's coverage of these rallies often referred to BLÉ GOUDÉ as the "leader of the *Galaxie Patriotique*" reinforcing the image of BLÉ GOUDÉ as a figure uniting all pro-GBAGBO youth and militias supporting the GBAGBO government. During the post-election violence, GPP personnel formed a security presence at BLÉ GOUDÉ's mass rallies. Towards the end of the post-election violence, BLÉ GOUDÉ also used GPP members for his protection before he fled to Ghana.

193. BLÉ GOUDÉ's bodyguards also included personnel from the parallel structure, particularly the BAE, the GR and GEB. The BAE and GR were units which collaborated closely with the militias and the mercenaries. BLÉ GOUDÉ gave 2 million CFAF to Commander Loba of the BAE during the post-election violence, when Maguy Le Tocard and his group of GPP militia members were integrated into the BAE and acted upon the instructions of Commander Loba. One of BLÉ GOUDÉ's bodyguards was also involved in operations with the BAE during the post-election violence, including searches of mosques in Yopougon. At that time the BAE was heavily implicated in the death of civilians in Yopougon, particularly during attacks on mosques.

194. The control of BLÉ GOUDÉ and members of the Inner Circle over the militia and pro-GBAGBO youth is also demonstrated by the response of pro-GBAGBO militia and



youth on 25 February 2011, when they attacked civilians from neighbouring countries or from the north of Côte d'Ivoire in Yopougon, and in March and April 2011, when GPP militia members such as Maguy Le Tocard and Zagbayou manned roadblocks in Yopougon as "self-defence groups".

(c) *Control over the pro-GBAGBO mercenaries*

195. GBAGBO and the Inner Circle controlled the mercenaries through the FDS chain of command, through which some mercenaries received orders and were given specific responsibilities. Moreover, mercenaries paid by GBAGBO were hired mainly from the Kranh ethnic group in Liberia. The Kranh are ethnically related to the Guéré of Côte d'Ivoire, who overwhelmingly supported GBAGBO.

**C. Coordinated contributions resulting in the commission of crimes**

1. Conception and implementation of the Common Plan and conduct intended to encourage the commission of crimes

196. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle designed and implemented the Common Plan. The purpose of the plan – maintaining Laurent GBAGBO in power by all means – required careful planning, coordination and the issuance of instructions. Both Accused played a central role to this end.

(a) *GBAGBO*

197. GBAGBO held a central position in the civilian and military hierarchy in Côte d'Ivoire. His role in devising the Common Plan meant that the Inner Circle and pro-GBAGBO forces would not have committed the crimes charged without GBAGBO conceptualising and implementing the Plan. GBAGBO incited pro-GBAGBO forces to commit the crimes charged: (1) by ordering them not to question the lawfulness of the orders they received, (2) by intimating that they would not be punished for any crimes they committed and (3) by failing to take the measures within his power to prevent, suppress and punish the commission of such crimes by pro-GBAGBO forces during the

post-election violence. To implement the Plan, he relied on close associates who had proved their allegiance over time; one of these close associates is the co-Accused, Charles BLÉ GOUDÉ.

(b) *BLÉ GOUDÉ*

198. GBAGBO regularly consulted BLÉ GOUDÉ for the implementation of the Common Plan. Given his position as the acknowledged leader of the pro-GBAGBO youth and his extraordinary capacity to galvanise and mobilise the youth, BLÉ GOUDÉ's contribution to devising and implementing the Common Plan was essential and had a direct impact on the pro-GBAGBO forces' commission of the crimes charged.

2. Creation of a structure tasked with implementing the Common Plan

(a) *Securing allegiance*

199. Prior to the post-election violence, GBAGBO created a structure within the Ivoirian government and the FDS which secured his absolute control over the FDS and enabled him to implement the Common Plan. He created units which became and remained operational under the command of his trusted aides.

200. GBAGBO appointed or promoted loyalists to key positions in the government and the FDS. GBAGBO selected trusted leaders to head key units such as the CECOS and DMIR. Commanders of these and other units within the parallel structure addressed their logistical needs and manpower reinforcement directly to members of GBAGBO's Inner Circle. GBAGBO and his Inner Circle paid special bonuses to the commanders of these units.

201. GBAGBO also appointed BLÉ GOUDÉ as the Minister of Youth, Vocational Training and Employment, vesting him with governmental authority and legitimacy and thereby securing control over the pro- GBAGBO youth.

202. Furthermore, GBAGBO secured the loyalty of BLÉ GOUDÉ and other leaders of the pro- GBAGBO youth and militias, including Serge Koffi (as former Secretary-General of

FESCI), Youssouf Fofana (*La Voix du Nord*), Moussa Zéguen Toure (GPP), Djué (UPLTCI) and other youth leaders, by making monthly payments to them and financing their respective groups.

203. GBAGBO also secured the loyalty of commanders of units in the parallel structure – such as the BASA, BAE, CRS, DMIR, GEB and CECOS – by providing them with weapons which were largely stored at the Presidential Palace.

(b) *Recruitment and training of pro-GBAGBO youth*

204. Prior to and during the post-election violence, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle arranged for the recruitment of pro-GBAGBO youth into the FDS. BLÉ GOUDÉ played a crucial role in this drive by mobilising new recruits and arranging for their unofficial military training at sites such as the GR camp in Akakro. Pro-GBAGBO youth also received unofficial military training at university residences and other sites across Abidjan.

205. On 19 March 2011, at a rally in Yopougon, BLÉ GOUDÉ called on the pro-Gbagbo youth to enlist in the army. BLÉ GOUDÉ's appeal served two main purposes: to act as cover for the past and present collaboration of the pro-GBAGBO youth with the FDS, and to facilitate the arming of those youth. On 20 March 2011, BLÉ GOUDÉ justified his call for "*jeunes patriotes*" to enlist by stating that he did not want to be accused of starting a civil war or creating a militia. On 21 March 2011, thousands of pro-GBAGBO youth responded to BLÉ GOUDÉ's call and assembled at the army headquarters for enrolment. In the following weeks, the official enlistment did not materialise but pro-GBAGBO youth were provided with weapons and openly collaborated with militias, mercenaries and the remaining FDS.

(c) *Financing and provision to militias*

205. Prior to the 2010 elections, GBAGBO and members of his Inner Circle recommenced high-level liaison between the parallel structure units and the militias. Throughout the

post-election violence, members of the Inner Circle provided financial and logistical support to the militias and facilitated their collaboration with the FDS.

(d) *Recruitment and Financing of Mercenaries*

206. Prior to and during the post-election violence, members of the Inner Circle such as Bertin Kadet and Hubert Oulaye recruited mercenaries, including from Liberia or re-activated mercenaries, left dormant since the 2002-2004 crisis. Some of the mercenaries received military training during the post-election violence.

207. BLÉ GOUDÉ was personally involved in hiring, financing and organising mercenaries. In December 2010, BLÉ GOUDÉ facilitated the hiring of a hundred or so Liberian mercenaries from the Buduburam refugee camp in Ghana. He also had Ivoirian birth certificates forged for the mercenaries and which appeared to have been signed by the Mayor of Yopougon, a recognised civil status registrar. Boxes of fake identity cards were found at his home.

208. Prior to and during the post-election violence, other members of the Inner Circle such as Hubert Oulaye, Bertin Kadet and Anselme Séka Yapo also financed the mercenaries. They also provided them with accommodation and supplied them with weapons.

3. Arming of pro-GBAGBO forces prior to and during the post-election violence

(a) *Arming of the FDS*

209. During the post-election violence, GBAGBO and members of the Inner Circle provided weapons and ammunition to the FDS, in particular, to units of the parallel structure, including the GR, the BASA, the BAE, the CRS, the DMIR/FUMACO, the GEB and the CECOS. The weapons in possession of these parallel structure units were used, between 16 December 2010 and on or around 12 April 2011, to commit crimes.

210. Despite allegations of lack of weapons and ammunition, GBAGBO and members of the Inner Circle, notably the GR led by Dogbo Blé, had access and controlled a considerable cache of weapons and ammunition stored in the basement of the Presidential Palace. Weapons and related material were also available in other military camps.

211. The FDS included several armoured units: the Ground Forces BB, the BAE, the GEB, and the GR armoured unit. Armoured vehicles were deployed in December 2010 following the announcement of the results of the second round of the elections and later throughout the post-election violence to commit crimes against the civilian population.

212. As previously described in section III.B.1.a.i.a, the FDS also had an artillery unit formed by the BASA and the BASS. The BASS was originally based in Bouaké, but in 2002, following the occupation of Bouaké by the rebellion, the BASS and the BASA merged and were based in Abidjan at Camp Akouédo (new camp) under the command of Colonel Rigobert Dadi Touhouri. In addition to the usual individual weapons, the crewed weapons and related ammunition available at the BASA were 120-mm, 80-mm and 60-mm mortars, twin-tube ZU 23-mm and 20-mm cannons, 12.7-mm submachine guns, BM-21 multiple rocket launchers, and RPG-7 anti-tank weapons. This artillery alone was enough to destroy all of Abidjan. The BASA was the only unit within the FDS that had 120-mm mortars. Although this type of artillery is built for war and not law enforcement missions or to be used in urban areas, it was used during the post-election violence to commit crimes against the civilian population.

213. During the post-election violence, the FDS also counted on Mi-24 combat helicopters to commit crimes against the civilian population.

(b) *Acquisition of weapons*

214. In contravention of the arms embargo imposed by the UN Security Council on Côte d'Ivoire in 2004, Bertin Kadet, Pastor Moïse Koré or Anselme Séka Yapo (through Apex Holding SIA) purchased or attempted to purchase arms, on behalf of the GBAGBO government, either directly or through *Darkwood Logistique* – a company part of RM

Holdings group registered in Latvia and managed by Robert Montoya and Frédéric Lafont.

215. Before and during the post-election violence, GBAGBO instructed members of the Inner Circle to purchase weapons from abroad, in contravention of the arms embargo, and provided them with the necessary funds.

216. Between March and April 2011, Inner Circle member Anselme Séka Yapo took concrete steps to try to purchase additional weapons. These breaches also included assistance to supply, repair, operate or maintain the Mi-24 combat helicopter. Despite the embargo, GBAGBO and his Inner Circle took concrete steps to ensure that FDS were provided with weapons and ammunition during the post-election violence.

(c) *Arming of youth, militias and mercenaries*

217. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle directly or through their subordinates facilitated the distribution of weapons and other equipment to the youth, militias and Liberian mercenaries. As a result, the youth, militia members and/or Liberian mercenaries manning roadblocks were not only armed with sticks and machetes, but also with firearms such as AK-47s. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle also armed the youth, militia members and Liberian mercenaries who, between February and April 2011, joined and reinforced the FDS. This extensive distribution of arms contributed to an upsurge in violence by pro-GBAGBO youth in the weeks that followed. Finally, many youth and militia members, armed with Kalashnikovs and other firearms, attended BLÉ GOUDÉ's rallies, despite his public calls for "barehanded" resistance.

4. Incitement of hatred and control over the media

218. As part of the effort to keep GBAGBO in power by all means, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle mobilised and galvanised their supporters in an organized and coordinated manner. They did so mainly by using violent rhetoric

and hate speech against perceived Ouattara supporters, identifying them as the enemy and legitimate targets for attack. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle created an environment conducive to the commission of the violent crimes for which they are charged.

219. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle used a combination of methods to publicise their messages and ensure their broadest dissemination. They gave speeches to live audiences, either at meetings or at political rallies; disseminated messages through the mass media, particularly the state controlled RTI and pro-GBAGBO newspapers; or made personal visits to neighbourhoods that were GBAGBO strongholds, where they interacted with pro-GBAGBO supporters during meetings.

(a) *Control over the media and RTI*

220. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle were aware of the power of the media and knew how to put it to use in the implementation of the Common Plan. Control over the media, and the RTI in particular, was crucial as a means of disseminating messages on the elections and ongoing events, controlling the information the population received, and conveying instructions and orders. Furthermore, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle exploited the RTI to mobilise the “supporters and the militias”.

221. Key messages issued by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle were filmed and broadcast by the RTI. The RTI often re-ran these messages in loop, thereby reaching a wide audience and increasing the messages’ impact. This method was also used to relay instructions and messages to their supporters up until GBAGBO’s arrest.

222. GBAGBO and his Inner Circle sought to control coverage of the post-election violence and information broadcast by all media, including by blocking pro-Ouattara media outlets. For example, on the evening of the 16 December 2010 demonstration, GR personnel seized control of the press distribution in Côte d’Ivoire and of several printing presses, and temporarily blocked the printing and distribution of pro-Ouattara

newspapers. In January 2011, the GBAGBO government is was concerned about a TV channel, the TCI, which Ouattara was setting up at the Golf Hotel, describing it as a “pirate TV” and attempting to scramble its signal. Pro-GBAGBO youth also tried to block access to the international media and the TCI.

223. Furthermore, BLÉ GOUDÉ and other members of the Inner Circle instructed the population not to trust information from media considered pro-Ouattara, including the international media and the ONUCI radio. BLÉ GOUDÉ also told the pro-GBAGBO youth to watch only pro-GBAGBO channels: “you have to watch the RTI and listen to Radio Côte d’Ivoire, and that’s it. You also have to listen to the neighbourhood committees”.

224. The RTI and the pro-GBAGBO press, the so-called “*journaux bleus*” [blue newspapers], also embarked on a campaign to incite hatred and violence against all those perceived as enemies or adversaries of GBAGBO. As part of this campaign of xenophobia and violence, the pro-GBAGBO media would propagate unfounded information that the pro-Ouattara victims were not civilians but attackers, or that the events causing civilian deaths were just pure fabrication.

(b) *Incitement of hatred*

225. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle, as is detailed below, exacerbated already existing tensions through the manipulation of recurring themes in their public discourse. Notably, they accused the pro-Ouattara and the international community of posing a genocidal threat against GBAGBO’s supporters, masking incitement to violence as a legitimate fight to protect the nation.

226. They also disseminated manipulative and xenophobic messages, promoting an atmosphere of fear and hatred among the GBAGBO supporters of anyone perceived to support Ouattara. And they blurred the distinction between the civilian population and actual combatants associated with pro-Ouattara forces, which contributed to the identification of the civilian population as a legitimate target of attack.

(i) Xenophobic rhetoric



227. GBAGBO's political discourse was infused by concepts related to purity of identity, such as "*Ivoirité*". This rhetoric became widespread when the post-election violence broke out, mainly through the coordinated efforts of politicians and leaders of the *Galaxie Patriotique*, including GBAGBO, Simone GBAGBO and, above all, BLÉ GOUDÉ. In the context of such xenophobic rhetoric, the use of the term "Ivoirian" by BLÉ GOUDÉ, GBAGBO and his Inner Circle necessarily excluded Ouattara supporters. The pro-GBAGBO forces hence came to believe that real Ivoirians did not include Ouattara's supporters, which exacerbated the violence of their actions against the latter.

228. Another recurrent leitmotiv of the public speeches delivered by GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle was the grouping of all perceived Ouattara supporters together as the enemy - whether RHDP sympathisers, communities from the North, immigrants from West African countries (nationals of ECOWAS countries), Muslims, the *Forces Nouvelles* and forces portrayed as pro-Ouattara, such as the ONUCI and the Licorne force. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle interchangeably branded civilians considered as supporting Ouattara as "foreigners", "terrorists", "bandits" and "rebels", making no distinction between "enemy" combatants and the civilian population.

229. GBAGBO, BLÉ GOUDÉ, Simone GBAGBO and other members of the Inner Circle regularly used such xenophobic language against Ouattara supporters during public rallies, meetings and on the RTI, as shown by these examples:

- i. In his speech in Divo in August 2010, GBAGBO declared: "There are some here who hide bandits in their homes. Now, if you hide bandits, then you too are a bandit". GBAGBO further stated: "your enemies – and I don't mean adversaries, but enemies [...] are all those who oppose peace in Côte d'Ivoire [...], all those who want to disrupt the elections".

- ii. In late November 2010, just days before the second round of the elections, GBAGBO described Ouattara as the symbol of evil and darkness, declaring “we will continue the war” because the “the snake is not dead yet”.
- iii. On 31 December 2010, GBAGBO described Ouattara as the “foreigners’ candidate” in a televised interview.
- iv. On 6 January 2011, at a rally in Koumassi, BLÉ GOUDÉ described “Ouattara’s true face” as that of “a joker, a liar, a swindler, a rapist, a robber, [...] an imposter”.
- v. On 15 January 2011, at a CNRD mass rally at the *Palais de la Culture* attended also by BLÉ GOUDÉ, Simone GBAGBO referred to Ouattara as the “bandit ringleader”.
- vi. On 23 January 2011, at a pro-FDS rally at Champroux stadium, BLÉ GOUDÉ stated that the international community wanted to impose a president from “Burkina Faso” on Côte d’Ivoire.
- vii. On 22 February 2011, GBAGBO’s cabinet agreed to brand pro-Ouattara demonstrators as “terrorists”.
- viii. On 19 March 2011, during an appeal for youth enlistment into the army, before BLÉ GOUDÉ took to the stage, a master of ceremonies told the crowd to be ready to “to free Côte d’Ivoire from vermin once and for all” and his words were greeted by cheers. Once on stage, BLÉ GOUDÉ told the crowd that, in Abobo, GBAGBO’s supporters were tortured and their throats were slit by Ouattara’s men, which demonstrated that they were not Ivoirian: “when you slit people’s throats whereas it’s not part of our culture; when we say that you don’t come from here, your very actions show that you are not from here”.

ix. On 9 April 2011, GBAGBO said that he “sympathised with the suffering” meted out by Ouattara and his “terrorists”, spurring on the pro-GBAGBO activists to keep up the fight.

230. The propagation of such xenophobic rhetoric resulted in the pro-GBAGBO supporters translating the term “Ivoirian” as excluding Ouattara’s supporters, since they were deemed synonymous with “rebels”, “terrorists” or “bandits”, and, more generally, “foreigners”. The pro-GBAGBO forces hence came to believe that real Ivoirians did not include perceived Ouattara’s supporters, and exacerbated the violence of their actions against the latter.

231. Against this backdrop, BLÉ GOUDÉ’s statements such as “it is out of the question for young Ivoirians to go and attack other young Ivoirians” or “I can’t bring myself to issue an order to one young Ivoirian to go attack another young Ivoirian” were naturally construed by the pro-GBAGBO youth as excluding those civilians who were perceived Ouattara supporters (that is, not “Ivoirians”), and who were therefore legitimate targets for the pro-GBAGBO forces. Similarly, BLÉ GOUDÉ’s *mot d’ordre* of 25 February 2011 to report any “*personne étrangère*” was interpreted by the pro-GBAGBO youth as an encouragement to target those perceived to support Ouattara. For example, the pro-GBAGBO youth manning roadblocks in Yopougon said they did not fear “rebels”, “because we Ivoirians are determined”. They also said: “we recognise the rebels because they don’t speak the language, don’t know the neighbourhood, and have no papers”. The pro-GBAGBO youth thus meted out much violence against perceived Ouattara supporters since they considered them “rebels”, when checking their identity at roadblocks.

(ii) Accusations levelled against Ouattara supporters and the international community of harbouring genocidal intentions vis-à-vis “Ivoirians”

232. GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle also demonised perceived Ouattara supporters and the international community as threats to the sovereignty of Côte d’Ivoire and to the survival of all Ivoirians, accusing them of, *inter alia*, preparing a genocide.

233. By accusing perceived Ouattara supporters and the international community of committing crimes and of genocidal intent against “Ivoirians”, GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle further justified the use of violence against perceived Ouattara supporters, presenting it as legitimate self-defence. At the same time, BLÉ GOUDÉ denied, as did GBAGBO and his Inner Circle, any responsibility for the post-election violence, instead systematically blaming “Ouattara and his foreigners”.

234. In his public speeches, BLÉ GOUDÉ repeatedly claimed that the ONUCI and the international community were “preparing for genocide” in Côte d’Ivoire, as they had in Rwanda, and that Ouattara and his “rebels” were behind them. Whilst accusing the other side of harbouring criminal intentions, BLÉ GOUDÉ chose his words carefully to impress upon the youth the legitimacy of the action he instructed them to undertake. Hence he portrayed Ivoirians as innocent victims defending themselves against the genocidal intentions of Ouattara and his perceived supporters.

235. Such justifications were also echoed by GBAGBO and other members of his Inner Circle, who specifically made reference to the intention of Ouattara and the international community to spark a civil war in Côte d’Ivoire.

##### 5. Mobilisation of the youth for violent acts

236. An essential ingredient of the Common Plan to maintain GBAGBO in power was the possibility of relying on the pro-GBAGBO youth. BLÉ GOUDÉ played a key role in this task, given his unique ability to rapidly mobilise the pro-GBAGBO supporters by the thousands.

237. BLÉ GOUDÉ was well aware of his influence over the youth and his extraordinary ability to incite them. Prior to, and throughout the post-election violence, BLÉ GOUDÉ maintained close ties with the pro-GBAGBO youth, whose activities he oversaw and to whom he conveyed messages and gave *mots d’ordre*. To this end, he organised and held mass public rallies, including with other leaders of pro-GBAGBO youth groups, paid

regular visits to neighbourhoods loyal to GBAGBO, gave speeches in the *parlements* and *agoras* and was a constant media presence, particularly on the RTI.

238. As early as 2006, BLÉ GOUDÉ said that the youth movements were well organised and attributed their power to their sheer numbers and capacity to mobilise rapidly, adding that he had the power to “send them to rest” or to issue an appeal for action when he saw fit. He stated: “the day I will feel the danger, I will call them [...] This is a strategy of Charles BLÉ GOUDÉ.” As he had been doing since late 2002, BLÉ GOUDÉ applied the same strategy during the post-election violence; he mobilised the pro-GBAGBO youth by telling them to prepare and be ready and await his *mot d’ordre*.

239. Loyal and determined, the youth constituted a reserve army that could be deployed to supplement the ranks of the FDS. BLÉ GOUDÉ supported the FDS, particularly by mobilising those in the FDS who were committed to GBAGBO, sometimes even giving them money. Throughout the post-election violence, pro-GBAGBO youth and militias supported the FDS with whom they carried out joint operations.

240. BLÉ GOUDÉ’s rallies were held in overt support of GBAGBO. From December 2010 through February 2011, BLÉ GOUDÉ organized a series of rallies during a so-called *tournee d’information et de mobilisation*. The main purpose of these rallies was to keep the youth mobilised, ready to receive instructions and get into action when he would call upon them to act. In addition, at these rallies BLÉ GOUDÉ also directed the youth to support and cooperate with the FDS.

241. For example, on 14 December 2010, BLÉ GOUDÉ called on the pro-GBAGBO youth to mobilise and be vigilant, as he was capable of removing Ouattara and the rebels from the Golf Hotel with “his bare hands”. On 18 December 2010, in the aftermath of the violent repression of the march on the RTI, he called on the pro-GBAGBO youth to stand ready, await his *mot d’ordre* and believe in their strength. On 21 December 2010, BLÉ GOUDÉ urged the youth to mobilise and be vigilant “in the face of threats and abuses which have been orchestrated from the outside”. In the following days, the pro-GBAGBO youth obstructed ONUCI movements in Abidjan in a concerted effort with the FDS.

242. Throughout the post-election violence, BLÉ GOUDÉ mobilised the pro-GBAGBO youth and militias to support the FDS. For example, on 23 January 2011, BLÉ GOUDÉ held a support rally in “honour of the FDS and the brave workers”. During that event, the *Général de la Rue*, BLÉ GOUDÉ, and General Mangou, in the presence of senior FDS officers, took the stage to renew their loyalty to GBAGBO, so as to reassure the crowd that the army would not stage a coup d’état. Rather, the army and the youth would continue to fight the enemy together in order to maintain GBAGBO in power by all means.

243. Standing beside BLÉ GOUDÉ, Mangou told the youth, with respect to the FDS: “Together, we must rally around him [GBAGBO] so we can wage this battle. We are not discouraged. We shall fight to the last, and make the ultimate sacrifice. [...] And we know that you, too, have resolved to wage this battle”.

244. In March 2011, prompted by mass defections in the army, GBAGBO and the Inner Circle coordinated their efforts to restructure the forces loyal to GBAGBO. BLÉ GOUDÉ played a key role in this effort by mobilising a significant number of *Jeunes Patriotes* to join the army. On 18 March 2011, GBAGBO, through his spokesperson, called on all Ivoirians to assume greater responsibility and collaborate more with the FDS to neutralise all suspicious individuals. One day later, on 19 March 2011, BLÉ GOUDÉ rallied thousands of youth and asked them to enrol in the army and fight to keep GBAGBO in power. On 21 March 2011, responding to BLÉ GOUDÉ’s call, thousands of pro-GBAGBO youth proceeded to the army headquarters to enlist. Other members of GBAGBO’s Inner Circle made similar calls to mobilise the pro-GBAGBO supporters to continue the fight to keep GBAGBO in power.

245. These calls for mobilisation by GBAGBO, BLÉ GOUDÉ and members of the Inner Circle were intended to be, and were understood by the pro-GBAGBO forces as calls to commit violence, in particular against civilians. The calls to obstruct the activities of the ONUCI, to erect roadblocks and to control the neighbourhoods, and to assist the FDS in their combat all resulted in the youth engaging in violence against civilians, in particular in Yopougon and at roadblocks. The calls for mobilisation of the youth continued until the

end of the crisis, despite widespread reports on crimes implicating the pro-GBAGBO youth throughout the post-election violence.

6. Coordination of the implementation of the Common Plan

(a) *Meetings and instructions within the Inner Circle*

(i) Laurent GBAGBO

246. Throughout the post-election violence, GBAGBO commanded the FDS, issued orders directly to them, and received regular reports from the field. He regularly spoke with members of his Inner Circle, including Simone GBAGBO, BLÉ GOUDÉ, the FDS high command, and the commanders of the parallel structure and frequently held coordination meetings. During such meetings and discussions, GBAGBO and his Inner Circle discussed and coordinated the implementation of the Common Plan. GBAGBO was kept abreast of the situation on the ground by his subordinate commanders, issued operational instructions. He met regularly with BLÉ GOUDÉ, to whom he issued instructions, and with other leaders of the *Galaxie Patriotique*.

247. From 2002, operations were placed under the coordination of the CEMA, aided by the CPCO. During the post-election period and up until 31 March 2011, CEMA Mangou supervised the situation and entrusted the coordination of operations in Abidjan to National Police Chief Bredou M'bia and then to COMTER General Detoh Letho, until GR General Dogbo Blé reorganised the forces in late March 2011 with BASA commander Dadi and COMTHEATER General Konan. Under the authority of Mangou, the armed forces specifically coordinated the FDS operations aimed at repressing political demonstrations. Thus, on 16 December 2010, Mangou was responsible for coordinating operations to prevent pro-Ouattara demonstrators from entering the RTI headquarters in Cocody neighbourhood and "liberating" the RTI. Mangou deployed heavily armed troops around the RTI building, between the Golf Hotel and RTI and throughout Abidjan to disperse demonstrators. As a result, pro-GBAGBO elements within the deployed forces attacked the demonstrators without restraint, leading to the commission of crimes. During the post-

election violence, pro-GBAGBO forces, which had hitherto employed normal law enforcement methods, used an array of weaponry, including machine guns, rocket-propelled grenades, mortars and “tanks”.

248. On 3 December 2010, the day on which the Constitutional Council declared GBAGBO winner of the presidential elections, GBAGBO met with the high commanders of the FDS who confirmed their allegiance to him, indicating that he enjoyed the support of the armed forces. Representatives from the *Gendarmerie*, the FANCI, the GR, and the CECOS were all present. This meeting was held at the Presidential Residence to mobilise all relevant branches of the Ivoirian authorities including the FDS.

249. On the evening of 14 December 2010, GBAGBO convened a meeting attended by the high commanders of the FDS, the Minister of the Interior and the Secretary-General of the Presidency, during which he stated that the planned march on the RTI was forbidden, ordered measures to prevent it and authorised the deployment of the FANCI.

250. On 24 February 2011, GBAGBO held a meeting with the FDS high command to discuss the security situation in Abobo. GBAGBO ordered the FDS to resist and do everything to reconquer ABOBO and normalise the security situation. When it was proposed that Abobo should be declared a *zone de guerre*, GBAGBO decided not to declare it a war-zone. However, GBAGBO ordered the armed forces to retake positions at N’dotre and PK18 and to retake control of the MACA-Abengourou axis. During a cabinet meeting on the same day, GBAGBO issued an instruction to neutralise “those rebels” in Abobo. This military operation was carried out on 26 February and resulted in civilian deaths.

251. During the post-election violence, members of GBAGBO’s Inner Circle, including the generals of the FDS high command, held almost daily meetings at the *État-Major* headquarters to coordinate certain aspects of the implementation of the Common Plan, especially operations involving the entire FDS. GBAGBO was kept informed of the content of the meetings and consulted members of the FDS high command for updates on the implementation of the Common Plan. In addition, GBAGBO was given regular updates as to the developments on the ground through CEMA armed forces Mangou and his personal



Chief of Staff. The high command briefed field commanders, who in turn conveyed orders to their troops. For other operations crucial to the implementation of the Common Plan, the Presidency issued instructions directly to the leadership of the parallel structure units, sometimes without the knowledge of the commanders of regular FDS forces.

(ii) Simone GBAGBO

252. Following the announcement of the results of the second round of the elections, Simone GBAGBO convened numerous “crisis meetings” at the Presidential Residence. Government ministers such as the Ministers of Defence, of the Interior and of Finance, the FPI senior leadership, and often GBAGBO himself were in attendance. Their aim was to ensure that GBAGBO remained in power and to coordinate the activities of GBAGBO’s Inner Circle and his forces during the crisis. Simone GBAGBO also convened meetings of the CNRD of which she was the Secretary-General. Such meetings were held regularly between 4 November 2010 and 31 March 2011. One of the CNRD’s avowed aims was to secure GBAGBO’s re-election.

253. As illustrated by the events which prompted the call for the enlistment of pro-GBAGBO youth into the army, the exploitation of the youth was coordinated by GBAGBO and his Inner Circle, including Simone GBAGBO. For instance, at a CNRD meeting on 10 March 2011, Simone GBAGBO wrote: “defections are rife within [the] [FDS] ranks”; clashes in Côte d’Ivoire are unavoidable irrespective of the outcome of the Panel”; “the people must take their destiny into their own hands, organise and equip themselves”; the people must be “ mobilised and ready to do battle”; “[it is necessary to] find weapons for the youths [because] the war has already started”; “[it is necessary to] define the combat strategy”; “recruit into the army all of our youths who are prepared to fight” and “create a special contingent of these youths in the army”. Simone GBAGBO also noted the need to “take to the streets, hold rallies”; “voice our trust in the army without being alarmed by the defections from FDS ranks”; and “create cells to mobilise the population [and] teach them to fight”. The notes included a five-step communication action plan, including a statement by GBAGBO’s spokesperson followed by a declaration of “general

mobilisation". These measures went into force on 18 and 19 March 2011. On 18 March, through his spokesperson, GBAGBO called on all Ivoirians to assume greater responsibility and collaborate more with the FDS to neutralise all suspicious individuals. On 19 March 2011, BLÉ GOUDÉ echoed GBAGBO's message by calling on the youths to enlist in the army.

(iii) Charles BLÉ GOUDÉ

254. During the post-election violence, BLÉ GOUDÉ also regularly met with GBAGBO and Simone GBAGBO, including at crisis meetings and maintained very close relations with them throughout the relevant period. The logbook of visitors to the Presidential Residence contains information showing GBAGBO and BLÉ GOUDÉ in unrestricted contact during the relevant period.

255. In addition to such meetings with GBAGBO and his wife, BLÉ GOUDÉ, as Minister of Youth, was in contact with other members of GBAGBO's government and participated, *inter alia*, in cabinet meetings.

256. During the relevant period, BLÉ GOUDÉ also participated in meetings with and maintained close relations with senior FDS officers, particularly with Generals Kassaraté and Mangou, both members of the Inner Circle. In particular, General Mangou met and consulted BLÉ GOUDÉ during the post-election violence, including at least once at Mangou's house, at the Presidential Residence during meetings, and at rallies.

257. Further, on 12 January 2011, BLÉ GOUDÉ held a meeting with the FDS high command at army headquarters, where he assured the FDS of the youth's support. Minutes of a 22 February 2011 government meeting, for example, indicate that BLÉ GOUDÉ intervened in the discussion on a matter affecting the military.

258. During the post-election violence, BLÉ GOUDÉ was also in direct contact with several of the key unit commanders and members of the parallel structure including Guiai Bi, Dogbo Blé, Konan and Loba Gnango. BLÉ GOUDÉ met with most of these key unit

commanders at the Presidential Residence, in the company of GBAGBO and other members of the Inner Circle.

7. GBAGBO, BLÉ GOUDÉ and the other members of GBAGBO's Inner Circle instructed or otherwise incited the pro-GBAGBO forces to implement the Common Plan

259. GBAGBO, BLÉ GOUDÉ and the other members of GBAGBO's Inner Circle instructed or otherwise incited pro-GBAGBO forces to implement the Common Plan.

260. The consistency and coherence of the messages delivered throughout the post-election violence are also indicative of the coordination between GBAGBO, Simone GBAGBO, BLÉ GOUDÉ and other members of the Inner Circle. The messages developed and changed at key moments in the post-election violence, but were always simultaneous and matched the prevailing strategy, and were disseminated by all the communication channels used by GBAGBO and his Inner Circle. For instance, this was the case when they called for action against the ONUCI, for the erection of roadblocks and for enlistment into the army. BLÉ GOUDÉ's appeals of 24 and 25 February 2011 were the result of coordinated and concerted action with GBAGBO and several members of his Inner Circle. Shortly before issuing his appeal, BLÉ GOUDÉ met with GBAGBO twice at the Presidential Residence, on 23 and 24 February 2011.

(a) *GBAGBO'S orders/instructions/incitements*

261. GBAGBO's goal was to repress all activities of Ouattara supporters. On 14 November 2010, he ordered the requisition of the armed forces by presidential decree. The pretext for the decree was the security of the second round of the election. On 26 November 2010, GBAGBO ordered a nationwide curfew, with effect from 27 November, the eve of polling day, fuelling controversy. GBAGBO extended this curfew over the weeks that followed. The decree requisitioning the armed forces and the subsequent curfews served as a pretext for the armed forces, who thus remained mobilised and on duty in Abidjan. During this period, the armed forces reinforced the *Gendarmerie* and police presence aimed at ending pro-Ouattara demonstrations: "To the President's mind,

the demonstration had to end and there had to be no lingering in that regard. He wanted the army to solve the problem once and for all.” This exceptional, post-election deployment of the FDS was not in accordance with the decree of 14 November. GBAGBO insisted on the intervention of the army with all its resources, disregarding the advice of his military commanders that the situation on the ground did not warrant the intervention of the armed forces. At a meeting with the FDS high command on 24 February 2011, GBAGBO instructed his troops to “stand firm, I do not want to lose Abobo”.

262. GBAGBO also incited the pro-GBAGBO forces to commit the crimes charged, *inter alia*, by ordering them not to question the lawfulness of any orders they received, by intimating that they would not be punished for any crimes they committed and by failing to take the measures within his power to prevent, suppress and punish the commission of these crimes by pro-GBAGBO forces during the post-election violence.

263. In addition to the FDS, GBAGBO relied on the pro-GBAGBO youth, in particular because of their capacity to mobilise quickly in their thousands, their loyalty and their determination to support him and maintain him in power by all means. On several occasions GBAGBO met with these youths and incited them, directly or through BLÉ GOUDÉ, to fight to liberate Côte d’Ivoire and not to leave it in enemy hands. Several days before the second round of the election of 28 November 2010, GBAGBO incited his supporters to continue “the war” against the rebellion led by Ouattara with the words: “don’t let go of your sticks; even as you sleep, keep your sticks at hand” because “the snake isn’t dead yet”.

(b) *BLÉ GOUDÉ’S orders/instructions/incitements*

264. As described in section III.C.5 above, BLÉ GOUDÉ was the main protagonist of this pro-GBAGBO youth mobilisation. He strengthened his authority by using language with military connotations. In this way, he portrayed himself as the leader of the “patriotic struggle” and not simply the Minister of Youth, but also as the general of the streets: “100% Minister, 100% General”. He called the pro-GBAGBO youth his “troops”, describing their mobilisation as “combat” and issued *mots d’ordre* to direct their actions.

The pro-GBAGBO youth called BLÉ GOUDÉ “our general” and recognised him as their leader, whose orders held sway. As one pro-GBAGBO youth put it: “we simply awaited general Blé’s *mot d’ordre* [...] Whatever he decides, we’re ready”.

265. BLÉ GOUDÉ also ensured that the pro-GBAGBO youth remained on stand-by throughout the post-election violence, so that they could execute his *mots d’ordre* forthwith. He issued several *mots d’ordre* and instructions to the pro-GBAGBO youth, who executed them, thereby committing acts of violence against perceived Ouattara supporters.

266. BLÉ GOUDÉ held public rallies in conjunction with the other pro-GBAGBO youth leaders. The *parlements* and *agoras* served as platforms for relaying information and instructions to the youth, directly communicated through BLÉ GOUDÉ or through other youth leaders. The “neighbourhood committees” also conveyed such messages to youths.

267. In his public broadcast on RTI on 24 February 2011, BLÉ GOUDÉ called on the pro-GBAGBO youth to obstruct ONUCI movements in Abidjan and invited them to a meeting at Le Baron bar the following day “to issue [to them] the last instructions”. On 25 February 2011 at Le Baron bar, BLÉ GOUDÉ issued his *mot d’ordre* to all pro-GBAGBO youth, ordering them again to obstruct ONUCI movements and also to “monitor comings and goings in your neighbourhoods and report any *personne étrangère* entering your neighbourhood”. He told them that in the week ahead, they would organise themselves “properly in the neighbourhoods” to ensure that all the groups were organised, “so as to know who must do what”, and for “our systems to be fine-tuned”, telling them to contact their neighbourhood president. These *mots d’ordre* from BLÉ GOUDÉ were conveyed by other pro-GBAGBO youth leaders to their own groups or units.

268. Immediately after BLÉ GOUDÉ’s *mots d’ordre* of 25 February 2011, the pro-GBAGBO youth increased roadblocks, mainly in Yopougon and in other *communes* of Abidjan, where they conducted targeted attacks against numerous civilians who were perceived Ouattara supporters. They continued to commit violent acts against civilians in the days and weeks that followed. Pro-GBAGBO youth also took to the streets and effectively obstructed ONUCI movements.

269. BLÉ GOUDÉ reiterated his *mot d'ordre* on several occasions in the days and weeks that followed. On 5 March 2011, he called on the youth to be better organised in erecting roadblocks, noting: “there are roadblocks every 15 metres, that has to be brought under control, my friends”. He commended and encouraged the pro-GBAGBO youth by telling them, *inter alia*, that since they had set up the roadblocks “the opponents started despairing”. BLÉ GOUDÉ did not ask the pro-GBAGBO youth at the roadblocks to refrain from any acts of violence against civilians, despite the many incidents in which civilians were killed or burned at such roadblocks. He simply told them not to engage in extortion and not to attack certain nationalities. Violence against civilians continued through to the end of the crisis.

270. As described above in part III.C.2.c, on 19 March 2011, BLÉ GOUDÉ accused Ouattara supporters of committing violent acts against GBAGBO’s supporters in Abobo, by insinuating that pro-GBAGBO supporters had not committed any crimes. The pro-GBAGBO youth reiterated BLÉ GOUDÉ’s accusations and referred to such orders to justify their actions.

271. That same day, BLÉ GOUDÉ addressed thousands of pro-GBAGBO youth, appealing to them to enlist at army headquarters as of the following Monday. BLÉ GOUDÉ pointed out that by asking the pro-GBAGBO youth to join the army, he could not be accused of setting up a militia or starting a civil war. In making such an appeal, BLÉ GOUDÉ thus wanted to legitimate the arming of the pro-GBAGBO youth. As described above in section III.C.5, on 21 March 2011, after BLÉ GOUDÉ’s appeal, thousands of pro-GBAGBO youth proceeded to army headquarters for enlistment.

272. Until late March 2011, the pro-GBAGBO youth seldom used firearms at roadblocks, but committed crimes by lynching, crushing or burning people to death as part of “article 125”, an expression alluding to the price of a matchbox and petrol used by the youth to set their victims alight.

273. On 26 March 2011, BLÉ GOUDÉ held his last major rally, calling on the youths to remain on the streets. Thereafter, the youths manning roadblocks were not only armed

with sticks and machetes, but also firearms such as AK47s. Following BLÉ GOUDÉ's appeal, the FDS officers of the parallel structure facilitated the distribution of arms to the youth. This extensive distribution of arms contributed to an upsurge in violence by of pro-GBAGBO youth in the weeks that followed.

274. On 5 April 2011, the RTI also broadcast a video showing BLÉ GOUDÉ addressing the "patriots" and urging them to continue fighting to maintain GBAGBO in power. He commended them and ordered them to reinforce the roadblocks and support the operations of the armed forces who were still "scouring". He told them to stand by and await his further instructions. In this same message, BLÉ GOUDÉ also called on the population to film any "suspicious movement" in their neighbourhoods and to "send [the recordings] to Ivoirian television". Similarly, in the days preceding GBAGBO's arrest, the other members of GBAGBO's Inner Circle and members of the pro-GBAGBO forces also used the RTI to relay instructions and messages to their supporters.

275. Although BLÉ GOUDÉ spoke out against the use of violence on some occasions, his statements did not apply to acts of violence committed by the pro-GBAGBO youth against perceived Ouattara supporters, as described above at III.C.4.b, because they were considered foreigners.. In such context, BLÉ GOUDÉ's above-mentioned statements such as "I can't bring myself to issue an order to one young Ivoirian to attack another young Ivoirian" were not interpreted to include those perceived as pro-Ouattara. Such statements, therefore, were not a sincere plea to either stop or dissuade the youths from committing further crimes against such persons.

276. Lastly, on several occasions, GBAGBO and BLÉ GOUDÉ commended pro-GBAGBO forces on their actions and encouraged them to carry on, despite the crimes they had committed. Again on 6 April 2001, BLÉ GOUDÉ issued a message commending and encouraging pro-GBAGBO forces, calling for solidarity between the pro-GBAGBO youth and the FDS, urging them to continue fighting. And as stated above, on 9 April 2011 GBAGBO called on forces loyal to him to keep up the fight against "Ouattara and his terrorists". On or around 12 April 2011, pro-GBAGBO forces, including pro-GBAGBO

youth, militia members and mercenaries, committed the crimes in Yopougon enumerated in Section IV.B.5.

(c) *Other members of the Inner Circle*

277. Simone GBAGBO and members of GBAGBO's Inner Circle also issued instructions regarding the implementation of the Common Plan. They were conveyed in the presence of GBAGBO or with his knowledge and approval, and relayed by the FDS commanders to their subordinates. For instance, in late February, early March 2011, Simone GBAGBO enjoined the foremost FDS generals to do their utmost to bring Abobo under control; the CEMA confirmed that they would so comply. Moreover, at a meeting with the same generals towards the end of February, early March 2011, the CEMA ordered them to put an end to the "street protests" and "mass protests which [were] a matter of public order". As a result, pro-GBAGBO forces used "weapons of war" and "the full arsenal available to the military" to disperse protesters during the unrest.

8. Lack of sanction or prevention of violence

278. Neither GBAGBO, nor members of the Inner Circle and/or the FDS took measures to prevent or halt the commission of crimes by pro-GBAGBO forces during the post-election violence. Nor did they make any serious attempt to investigate the allegations of crimes against civilians committed during this period. The investigations ordered were inadequate and did not result in prosecutions or other forms of discipline. Furthermore, there were deliberate attempts to cover up civilian casualties, including through the public denial of crimes committed by the FDS.

279. GBAGBO and members of the Inner Circle, including CEMA Mangou, Defence Minister Alain Dogou, and Generals Detoh Letho, Aka Kadjo, Faussignaux Vagba, Dogbo Blé, Guiai Bi, Kassaraté and Bredou M'bia, created and perpetuated a culture of impunity within the FDS, paving the way for the commission of crimes during the post-election violence. Prior to the violence, GBAGBO told CRS forces to act without thinking and not



to question the lawfulness of the orders issued by their superiors, intimating to them that they would not be punished for measures they might take:

“ [...] yours is not to analyse or to ponder, your role is to quell all who oppose the Republic, all who sow turmoil. [...] If a soldier or a policeman starts thinking like his superior, there will no longer be an army. [...] If errors are made, we will handle the situation.”

280. This culture of impunity pre-existed the 2010 electoral period. As early as the 2002-2004 conflict, pro-GBAGBO forces killed civilians, including the violent repression of demonstrators protesting against GBAGBO in March 2004. No one was punished for the crimes.

281. Throughout the post-election violence, no effort was made to halt the continuing commission of crimes. At no point did GBAGBO, BLÉ GOUDÉ or members of the Inner Circle denounce the ongoing attacks on the civilian population. Despite the United Nations High Commissioner for Human Rights and other parties putting the FDS senior leadership on notice, and the wide reporting of crimes by non-governmental organisations, the international media and other parties, members of the Inner Circle in attendance at the meetings described at section III.C.6(a) above avoided discussing the need to end the widespread massacre of civilians. At a meeting on 1 March 2011, the Council of Ministers noted that the burning of mosques “posed some problems, today for the Muslim communities”, without any apparent discussion of steps to address such incidents. On 8 March 2011, the Council of Ministers noted the accusation that FDS members had killed seven women at an RHDP march, but dismissed it as “without foundation” and the result of a “pure montage”. Given the participants’ knowledge of these incidents, their failures to inquire into these incidents and to take steps to halt the ongoing commission of crimes can only be viewed as deliberate. Such persistent unwillingness to take action in spite of the killing of civilians, widely condemned by the media, also illustrates how GBAGBO and the Inner Circle condoned the attacks.

282. There was also no genuine internal investigation of those responsible for the crimes committed during the post-election period. Within the FDS structure, the *Gendarmerie* was

responsible for investigating potential crimes, but failed to do so. GBAGBO set up an International Commission of Inquiry on 7 January 2011 with a mandate “to shed light on human rights violations”. The investigations ignored the available evidence of civilian casualties and did not progress past the delivery of provisional findings. The Commission was given one month to discharge its mandate. It produced a provisional report of scarcely one page which only named the FDS as alleged perpetrators in one incident, made no mention of the numerous civilians who were killed and wounded throughout Abidjan, and failed to name the alleged perpetrators of the crimes committed during the RTI march. On 23 February 2011, the Senior Commander of the *Gendarmerie* rejected the Commission’s allegations against the FDS, without taking any steps to investigate them. The provisional findings of the Commission were thereby rejected and not subjected to any real internal inquiry. Other investigations and inquiries were opened, yet similarly did not lead to any form of sanction.

283. Similarly, there was no attempt to investigate crimes committed by civilians, namely the pro-GBAGBO youths and militias not integrated into the FDS. Even though the Police was aware of the crimes being committed by pro-GBAGBO youths and militias, they did not conduct investigations and therefore did not bring the perpetrators to justice. In the 16 December 2010 incident, police forces attacked civilian demonstrators alongside the pro-GBAGBO youths and militias. In Yopougon, from October 2010 and throughout the post-election violence, militia groups armed and supported by the military assumed police activities. The Police claim they were unable to disarm them or stop them committing crimes against the civilian population due to their inferior numbers and weaponry; their failure was not investigated by GBAGBO or the government. The Police were intimidated and threatened by these militia groups, who tried to assert authority over them.

284. On numerous occasions, pro-GBAGBO forces obstructed ONUCI activities, including attempts by its Human Rights Division to investigate allegations of human rights violations. Indeed, the prevailing environment was one in which civilian casualties were considered normal, reports were falsified and the accurate reporting of civilian

casualties and the imposition of sanctions were discouraged. For example, in relation to the 16 December 2010 incident, the sole focus of GBAGBO and the Inner Circle was on the FDS victims, disregarding the vast majority of civilian victims killed by pro-GBAGBO forces during the march and thereafter. The FDS announced on Ivoirian television that it considered itself to be in a “position of self-defence” and reserved the right to respond “with all means at its disposal, to all attacks from any quarters”. Furthermore, the FDS repeatedly denied all responsibility for the crimes committed during the post-election period, as exemplified by its public statement on 4 March 2011, rejecting all responsibility for the attack on the women’s march of 3 March 2011. Throughout the post-election violence, GBAGBO and his representatives dismissed these crimes as fabrications created by his political opponents and the international media.

#### 9. Contributions by other members of the Inner Circle to the implementation of the Common Plan

285. Other members of the Inner Circle also contributed to the implementation of the Common Plan, mainly by: (a) participating in meetings to coordinate the implementation of the Common Plan; (b) briefing GBAGBO on the situation on the ground and requesting his instructions; (c) issuing instructions in implementation of the Common Plan; (d) contributing to the recruitment, training and financing of the pro-GBAGBO youth, militia members and mercenaries; (e) contributing to arming of the pro-GBAGBO forces, (f) integrating the pro-GBAGBO youth, militia members and mercenaries into the FDS chain of command; (g) using violent rhetoric and hate speech against perceived Ouattara supporters and (h) carrying out operations in implementation of the Common Plan.

## IV. CRIMES COMMITTED IN THE EXECUTION OF THE COMMON PLAN

### A. Multiple criminal acts

286. Between 27 November 2010 and on or around 12 April 2011, pro-GBAGBO forces attacked perceived Ouattara supporters. These civilians fall into two broad categories:

first, actual or perceived political opposition activists and sympathisers, and second, civilians considered to support the opposition due to their Muslim faith, or Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries, such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent, as described below.

287. According to a conservative estimate, incidents involving the FDS and pro-GBAGBO youth, militia members and mercenaries claimed the lives of at least 1000 civilians in Abidjan and some areas in the west of the country. Pro-GBAGBO forces also arbitrarily arrested at least 520 people and caused great suffering and serious injury to body to more than 140 civilians. Furthermore, in the city of Abidjan alone, at least 33 women and young girls were raped by pro-GBAGBO forces during post-election violence.

#### 1. The 38 incidents

288. The Prosecution relies on the acts committed against civilians during the course of 38 incidents ("the 38 incidents") as constituting a course of conduct which amounts to an "attack" within the meaning of article 7 of the Statute. The 38 incidents include the four incidents for which GBAGBO and BLÉ GOUDÉ bear criminal responsibility, and the additional incident for which BLÉ GOUDÉ bears criminal responsibility. The acts committed in the course of these latter incidents also constitute an attack. All 38 incidents have common features and follow a regular pattern. They concern the city of Abidjan, although, several areas in the west of the country such as Gagnoa, Duekoué, Bloléquin or San Pedro or Bédi-Goazon were also targeted by pro-GBAGBO forces. All of the acts committed during the course of the 38 incidents were directed against perceived Ouattara supporters. All the incidents at issue in this case were directed against unarmed civilians as part of the Common Plan conceived and implemented by GBAGBO and his Inner Circle, including BLÉ GOUDÉ. The acts were aimed at eradicating all forms of opposition by quelling opposition party activity and attacking those civilians considered to support the opposition cause.

i. From 27 to 29 November 2010, in Abobo *commune*, Abidjan, the FDS fired on RHDP demonstrators who were protesting the curfew decreed by GBAGBO on 26 November 2010, causing the deaths of 12 people.

ii. On 30 November 2010, the FDS attacked Sotrepim neighbourhood, Abidjan. They opened fire on the population, killing two young people, one from Burkina Faso and the other from Mali.

iii. During the night of 1 to 2 December 2010, the CECOS raided RDR headquarters in Wassakara, Yopougon, and opened fire on RHDP supporters who were gathered in the building, killing at least nine and wounding at least 14. Seven others were also arrested and detained during the incident.

iv. On 3 December 2010, after an RHDP demonstration, members of the GR, accompanied by English-speaking individuals and armed with machetes, truncheons and knives, attacked the Biafra neighbourhood of Treichville, Abidjan, wounding at least 133 people. During the incident, at least 16 people were also arrested and taken to the Agban *Gendarmerie* camp.

v. On 4 December 2010, BMO officers fired live ammunition at RHDP demonstrators near the Great Mosque of Koumassi, Abidjan, wounding at least eight people. One of the victims, an 11-year old child, died from his wounds.

vi. On 4 December 2010 at Port-Bouët, Abidjan, the FDS killed two civilians, one of whom was from Burkina Faso.

vii. On 6 December 2010 in Adjamé-Boribana, Abidjan, a BMO officer opened fire on RHDP demonstrators, killing at least one person and wounding another.

viii. On 16 December 2010, in Cocody, Abidjan, pro-GBAGBO forces ransacked the premises of the PDCI-RDA, killed an opposition activist and wounded several other people.

ix. From 16 to 19 December 2010, elite police units, including the CRS and the BAE, reinforced by GR and CECOS forces, FESCI members, *Jeunes Patriotes* and mercenaries, killed at least 33 people and wounded at least 54, during and after a demonstration by Ouattara supporters who were heading to the RTI headquarters in Abidjan. 16 women were also raped during the attack.

x. On 25 December 2010, FESCI members, aided by FDS forces and militia members, again attacked PDCI headquarters in Cocody, wounding 11 people, including three by gunfire.

xi. On 4 January 2011, at about 5h00, CRS and BAE police officers from Williamsville, reinforced by GR soldiers, fired live ammunition and threw grenades at unarmed people at the PDCI headquarters in Cocody. One opposition activist was killed, over a dozen were wounded and at least 63 activists were arrested as a result of the attack.

xii. Around 5 January 2011, *Gendarmerie* officers arrested seven Malians in Adjamé, Abidjan. They were accused of being rebels and taken to an unknown destination. Six of them were able to escape after 13 days of incarceration.

xiii. On 11 and 12 January 2011, BAE and CECOS officers attacked the PK18 neighbourhood in Abobo, Abidjan, killing at least four people.

xiv. Between 18 and 19 January 2011, the FDS, in particular the CECOS, killed five persons, including a 13-year old child, and wounded 17 others on the fringes of demonstrations calling for civil disobedience, organised by the RHDP in Adjamé and Attécoubé *communes*, Abidjan.

xv. On 7 and 8 February 2011, the FDS shot dead at least 10 persons and wounded many others in Abobo in an FDS operation to pre-empt an act of sabotage against RTI.

xvi. On 19 February 2011, at the roundabout near Abobo Town Hall, as RDR members were preparing a rally, pro-GBAGBO forces killed two people.

xvii. From 19 to 21 February 2011, the BAE, GR and CRS killed at least nine people in Abobo, Koumassi and Treichville neighbourhoods, Abidjan, during demonstrations organised by the RHDP.

xviii. On 24 February 2011, a man suspected of being a “*Dozo*” was stopped by a crowd and burned to death in Yopougon-Gesco.

xix. On 25 February 2011, in Abobo, the FDS, including CECOS forces, police officers and militia members raped nine female pro-Ouattara campaigners. Two of the victims were raped in their homes, while the other seven were taken to an uncompleted building and gang-raped by several men.

xx. Between 25 and 28 February 2011, pro-GBAGBO youth and militia members, reinforced by the FDS, in particular the Police, attacked Yopougon neighbourhoods predominantly inhabited by Dioula, including Lem and Doukouré. During the incidents, the mosque in Lem was set ablaze, at least seven people were wounded, and 22 others were either killed or burned to death. These incidents happened shortly after BLÉ GOUDÉ’s call to young people to set up roadblocks to better monitor their neighbourhoods.

xxi. On 26 February 2011 and the days that followed, the FDS shelled PK 18, in Abobo, killing several civilians.

xxii. On 1 March 2011, in Yopougon, militia members and pro-GBAGBO youth burned two persons from Niger to death, while referring to a speech made by BLÉ GOUDÉ a few days earlier. CECOS members were present at the time.

xxiii. On 3 March 2011, at the Banco Anador roundabout in Abobo, a military convoy from Camp Commando opened fire on a women's pro-Ouattara demonstration, killing at least seven women and wounding at least three people.

xxiv. In the night of 3 to 4 March 2011, pro-GBAGBO youth burned a physically disabled man from Burkina Faso to death, at Port-Bouët, Abidjan.

xxv. On 4 and 8 March 2011, about 150 pro-GBAGBO youth armed with machetes and axes, broke into and pillaged the stalls of many West African market traders in Yopougon, chanting "kill, burn, kill, burn, you must all leave".

xxvi. On 11 March 2011, pro-GBAGBO militia members killed a man from Burkina Faso in Yopougon, suspecting him of being an informant for the rebels.

xxvii. In the night of 11 to 12 March 2011, in Abobo, Abidjan, three children aged two, six and twelve were killed in a heavy weaponry operation by the FDS.

xxviii. On 15 March 2011, police officers from the BAE and *Gendarmerie* officers, reinforced by militia members, attacked the Great Mosque in Port-Bouët 2, Yopougon. During the attack, 35 people were killed, including the Imam of the mosque.

xxix. On 17 March 2011, in broad daylight, at least seven mortar shells were fired into a densely-populated area of Abobo, which included a market, a hospital and homes, killing over 40 people, wounding over 60 and destroying several homes, and a mosque. Witnesses reported that rapid mortar fire from BASA soldiers at Camp Commando prevented people from fleeing.



xxx. On 19 March 2011, the Police, reinforced by militia members, raided the home of a Malian Imam during a military operation in the neighbourhood of Williamsville. During the attack, six persons, including the Imam and his 90-year old mother, were killed.

xxxi. On 22 March 2011, at *Derrière Rail*, Céleste neighbourhood, Abobo, FDS shells struck a communal courtyard, killing at least five, including one woman and three children, and wounding at least three others.

xxxii. On 29 March 2011, in Adjamé, nine West African nationals were arrested after an identity check by armed men wearing army fatigues. They were subsequently taken by police car to the 11<sup>th</sup> district police station and were shot behind the police station. Six persons were shot dead and three others were seriously wounded.

xxxiii. On 30 March 2011, in Adjamé, Abidjan, militia members stopped a pickup truck at a roadblock and killed the driver after asking for his identification.

xxxiv. On 2 April 2011, at Port-Bouët, students armed with Kalashnikovs and machetes shot four Burkino Faso nationals at point-blank range after an identity check.

xxxv. From 2 to 8 April 2011, in Sikasso, a pro-Ouattara neighbourhood in Yopougon, a group of “armed militia members” shot six dead. The militia members accused them of voting for Alassane Ouattara. On one of the doors in a communal courtyard, the militia members left the following message: “No more Sikasso, either Gbabo or nothing”.

xxxvi. On 10 April 2011, in Yopougon, militia members killed five persons of Dioula ethnicity, accused of being supporters of Ouattara.

xxxvii. On 11 April 2011, the GR fired a rocket on a bakery in Treichville, killing seven people, including a Malian national.

xxxviii. On or around 12 April 2011, in Mami Fatai and Doukouré, two neighbourhoods in the *commune* where many civilians from northern Côte d'Ivoire and West African countries live, pro-GBAGBO forces, including militia members, pro-GBAGBO youth and mercenaries, summarily executed at least 62 persons. As the men were being executed, the women were raped. At least 8 women and young girls, including at least one minor, were raped.

## 2. Target of attacks

289. Civilians targeted were perceived Ouattara supporters, who fell into two categories: first, actual or perceived political opposition activists and sympathisers, and second, civilians who were considered to be supporters of the opposition due to their Muslim faith, or Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries, such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent, as described below.

### (a) *Attack directed against actual or perceived opposition activists and sympathisers*

290. Opposition activists and sympathisers particularly targeted were members of the RDR and supporters of other political parties linked to the RHDP. Based on the 38 incidents cited in this Brief, pro-GBAGBO forces killed at least 92 opposition activists and sympathisers, wounded at least 250, mostly by gunfire, and arrested at least 86. Furthermore, pro-GBAGBO forces raped at least 25 female Ouattara campaigners or sympathisers, sometimes with FDS endorsement.

291. The FDS, supported by other pro-GBAGBO forces, violently repressed at least nine or so peaceful demonstrations organised by the RHDP in the city of Abidjan, in the incidents of 27 to 29 November 2010, 3 December 2010, 4 December 2010 (Koumassi), 6 December 2010, 16 to 19 December 2010, 18 to 19 January 2011, 19 February 2011, 19 to 21 February 2011 and 3 March 2011.

292. In December 2010 and January 2011, the FDS and pro-GBAGBO youth, especially the *Jeunes Patriotes* and FESCI members, attacked opposition premises, including those of the RDR and the PDCI, killing at least 11 opposition activists during the incidents of 1 to 2 December 2010, 16 December 2010, 25 December 2010 and 4 January 2011. Further examples of politically motivated violence include the incidents of 25 February 2011, 2 to 8 April 2011 and 10 April 2011.

(b) *Attack against civilians who were considered to be support opposition supporters due to their nationality, religion or ethnicity*

293. As soon as the second round of the Presidential election ended, the FDS, pro-GBAGBO youth, militia members and mercenaries also attacked Ivoirian Muslims and ethnic Dioula mostly from northern Côte d'Ivoire, and West African nationals (citizens of West African States such as Mali, Burkina Faso or Nigeria, as well as Ivoirians of West African descent). On account of their ethnicity (such as the Dioula), religion (Muslims) or nationality (citizens of West African States such as Mali, Burkina Faso or Niger, as well as Ivoirians of West African descent), members of these groups were attacked by the pro-GBAGBO youth and militia members who considered them to be Ouattara supporters. In the city of Abidjan, the *communes* of Abobo, Adjamé, Koumassi, Treichville and some neighbourhoods of Yopougon, where the majority of such communities live, were considered by pro-GBAGBO forces as enemy zones because of their presumed support for Ouattara. Acts of violence by militia members against communities from the North and West African nationals were sometimes committed with the complicity of the FDS, and the Police in particular. Examples of such incidents include 25 to 28 February 2011, 1 March 2011, 4 and 8 March 2011, and 19 March 2011. On some occasions, FDS perpetrators made references to BLÉ GOUDÉ's incendiary speeches to justify their violence against people from West Africa.

294. Between 27 November 2010 and 8 May 2011, in the 38 incidents mentioned in this Brief alone, over 200 civilians were killed, at least eight women were raped and over 80 civilians were wounded by pro-GBAGBO forces in large-scale operations or summary

executions in Abidjan, particularly targeted at Abidjan neighbourhoods inhabited by people from northern Côte d'Ivoire and West African nationals. The FDS, including CECOS, BAE, BASA and GR forces, launched multiple mortar attacks, especially between late February and March 2011, against the *communes* of Yopougon, Williamsville, Attécoubé, Adjamé and Abobo, killing at least 88 people, including women, children and elderly people. In some *communes*, such as Abobo, heavy weaponry offensives were an almost daily occurrence, despite the presence of a large civilian population. Also armoured vehicles fired at these neighbourhoods in complete disregard of the civilian population.

(i) Attacks on Northerners, ethnic Dioulas and Muslims

295. Instances of attacks directed against Northerners, ethnic Dioulas and Muslims include the incidents of 30 November 2010, 4 December 2010 (Koumassi), 11 and 12 January 2011, 7 and 8 February 2011, 24 February 2011, 26 February 2011, 11 to 12 March 2011, 15 March 2011, 17 March 2011, 22 March 2011, 30 March 2011, 2 to 8 April 2011, 10 April 2011 and 12 April 2011.

296. In other incidents, many ethnic Dioulas were arbitrarily arrested, abducted and summarily executed, usually after identity checks.

(ii) Attacks on West Africans

297. Instances of attacks directed against West Africans include the incidents of 30 November 2010, 4 December 2010 (Port Bouët), 5 January 2011, 1 March 2011, 3-4 March 2011, 11 March 2011, 19 March 2011, 29 March 2011, 2 April 2011, 11 April 2011 and 12 April 2011.

298. In other incidents, as with ethnic Dioulas, many West Africans were arbitrarily arrested, abducted and summarily executed, usually after identity checks. During the post-election violence, 142 persons from Mali and 198 from Burkina Faso were killed by the FDS, militia members, pro-GBAGBO youth and pro-GBAGBO mercenaries, in Abidjan

specifically in the neighbourhoods of Adjame, Abobo, Treichville, Cocody, Marcory, Port-Bouët, Yopougon and Koumassi.

### 3. Perpetrators of acts of violence

#### (a) *Acts of violence perpetrated by the FDS*

299. The pro-GBAGBO forces used to carry out the attacks included FDS parallel structure units, particularly the BASA, the BB, the CECOS, and the BCP, which were deployed to reinforce or replace *Gendarmerie* and Police units, including in routine law enforcement operations to disperse opposition demonstrators. The following lower-ranking FDS officers loyal to GBAGBO, and who were part of the parallel structure, commanded FDS units which participated in the crimes charged and in the execution of prohibited acts included in the remainder of the 38 Incidents: Commander of Daloa's Second Battalion, Alphonse Gouanou; the Commander of the BASA, Rigobert Dadi Touhour; the Commander of the *sous groupement tactique* of the Ground Forces Clément Gohorou Zadi; the Commander of the *Gendarmerie's* armoured squadron, Jean-Noël Abehi; the DUI, Claude Yoro; the Commander of the BAE in Yopougon, Gnango Emmanuel Patrice Loba; and CECOS Second Commander, Joachim Robe [also spelled Robert] Gogo.

300. Within the FDS, these parallel structure units were the most active and violent during the post-election violence. They were a majority presence during the operations in Abobo and at Commando Camp. Militia members, pro-GBAGBO youth and mercenaries either operated alongside or were integrated into the parallel structure units, specifically the GR, the DMIR, the BMO, the CRS and the BAE. Members of these units received orders to work with the mercenaries.

301. Between 27 November 2010 and on or around 12 April 2011, FDS units including the CECOS, GR, Police and its BAE, and the *Gendarmerie* violently repressed opposition activities, particularly demonstrations and rallies. These forces were the perpetrators of – or assisted the main perpetrators in – the vast majority of the 38 incidents outlined above.

(b) *Acts of violence perpetrated by pro-GBAGBO youth, militia and mercenaries*

302. Pro-GBAGBO youth, militia members and mercenaries primarily from Liberia, were enlisted in some FDS attacks against civilians. This occurred in the incidents of 3 December 2010, 16 to 19 December 2010, 25 December 2010, 25 February 2011, 25 to 28 February 2011, 15 March 2011 and 19 March 2011. When not acting alongside the FDS, the pro-GBAGBO youth, militia members and mercenaries directly engaged in acts of violence. Examples of such direct engagement are the incidents of 1 March 2011, 3 to 4 March 2011, 4 to 8 March 2011, 11 March 2011, 30 March 2011, 2 April 2011, 2 to 8 April 2011 and 10 April 2011.

303. The Pro-GBAGBO youth and militia, in particular, targeted ethnic Dioulas, Muslims and West African nationals, because of a perception that these groups were pro-Ouattara. This perception was fuelled by the hate campaign, disseminated by pro-GBAGBO television channels, such as the RTI and speeches by leaders of the *Galaxie Patriotique*, notably BLÉ GOUDÉ who accused certain West African countries, such as Senegal, Nigeria, Mali and Burkina Faso, of destabilising Côte d'Ivoire and of wanting to kill Ivoirians.

4. Means of attack followed a pattern

(a) *Use of heavy war weaponry*

304. Various heavy weaponry, in particular mortar shells, was used during many of the 38 incidents. By using weaponry of this type, the FDS deliberately targeted the civilian population of certain densely-populated neighbourhoods of Abidjan considered sympathetic to Ouattara. Instances of the use of heavy weaponry include the incidents of 27 to 29 November 2010, 30 November 2010, 1 to 2 December 2010, 4 December 2010 (Koumassi), 6 December 2010, 16 to 19 December 2010, 25 December 2010, 4 January 2011, 7 to 8 February 2011, 25 to 28 February 2011, 26 February 2011, 3 March 2011, 11 to 12 March 2011, 17 March 2011, 22 March 2011 and 11 April 2011.

(b) *Identity checks and violence at roadblocks*

305. As described below at section IV.B.2, following a speech by BLÉ GOUDÉ at Le Baron bar on 25 February 2011, in which he called on the *Jeunes Patriotes* to monitor movements in the neighbourhoods, roadblocks began to proliferate in some communities, particularly in Yopougon. It was at these roadblocks that many Ivoirians from northern Côte d'Ivoire, especially the Dioula, and West African nationals were executed or burned to death after identity checks. Such violence at roadblocks and/or following identity checks occurred in the incidents of 25 to 28 February 2011, 29 March 2011, 30 March 2011 and 2 April 2011.

(c) *Attacks on neighbourhood and religious institutions*

306. Apart from identity checks at illegal roadblocks, pro-GBAGBO forces, in particular the pro-GBAGBO youth, often identified their targets by attacking neighbourhoods or religious institutions where such communities were usually found and by marking their houses. For instance, in Abidjan, particularly in Yopougon, certain houses were marked with a cross or the letter B (Baoulé). Other houses were identified at night by "militia members", accompanied by "the neighbourhood Bétés" who pointed out Dioula houses. This targeting of neighbourhoods and religious institutions occurred in the incidents of 11 and 12 January 2011, 25 to 28 February 2011, 26 February 2011, 3 March 2011, 11 to 12 March 2011, 15 March 2011, 17 March 2011, 19 March 2011, 22 March 2011, 2 to 8 April 2011 and 12 April 2011.

## **B. The individual crimes**

307. The evidence referred to in this section establishes that in the course of the charged incidents, pro-GBAGBO forces committed the crimes against humanity of murder under article 7(1)(a), rape under 7(1)(g), inhumane acts under 7(1)(k), persecution under 7(1)(h) and, in the alternative, attempted murder under 7(1)(a) and 25(f).

1. Incident 1: Attacks connected to the demonstrations outside RTI headquarters (16 to 19 December 2010)

308. Between 16 and 19 December 2010, in Abidjan, during and after a pro-Ouattara march on the building of the RTI, the pro-GBAGBO forces killed at least 33 civilians, raped at least 16 women and girls, and wounded over 54 civilians. These crimes were committed on political, national, ethnic or religious grounds.

309. In the morning of 16 December 2010, scores of Ouattara supporters, unarmed civilians, gathered in various neighbourhoods of Abidjan, bound for the premises of the RTI in Cocody with a view to installing the Director-General newly appointed by Ouattara. Control over the RTI, the main broadcaster, was strategically crucial. The RTI had supported La Majorité Présidentielle for years and consistently broadcast programmes supporting GBAGBO. GBAGBO's allies also used the RTI to propagate messages of hate specifically targeting ethnic, political, religious and national groups who were perceived as sympathetic to Ouattara, thereby fuelling and exacerbating tensions. GBAGBO and his Inner Circle had also embarked on a "media campaign" to convince public opinion that Ouattara had no public support.

310. The FDS, reinforced by the pro-GBAGBO youth, militia members and mercenaries, violently repressed the demonstration. The Pro-GBAGBO forces then continued to attack persons perceived as pro-Ouattara in various neighbourhoods of Abidjan between 16 and 19 December 2010.

311. GBAGBO and members his Inner Circle planned and organised the repression of this march. GBAGBO and the FDS high command knew that the march would take place and a repressive operation was planned. Two days before the march and again on the eve of the march, GBAGBO held meetings with his ministers and members of his Inner Circle, including his Defence Minister Alain Dogou and Generals Kassaraté, Mangou and Bredou M'bia, with whom he spoke at length. The CEMA convened a meeting with the FDS high command to convey the instructions he had received from GBAGBO and the measures to be taken with respect to the planned demonstration. The FDS were to be deployed around



the RTI and other Abidjan neighbourhoods and were to “prevent all access to the RTI”, specifically to disperse the crowds which were gathering to march on the RTI. The CEMA entrusted the coordination of operations to the DGNP, General M’bia Bredou.

312. On 14 December 2010, Charles BLÉ GOUDÉ presided over a meeting of youth leaders at the *Hotel de Ville* of Cocody; the aim was to mobilise the *Jeunes Patriotes* to, together with the military, block the march on the RTI that was planned for the 16 December. The meeting’s message was that they were to stop demonstrators from reaching the RTI. To that end, roadblocks were set and movement around the RTI was prohibited. Confrontation and shots were expected. Thereafter, FESCI members mobilised students in Cocody against RHDP activists.

313. On the eve of the march, Colonel Major Babri, the FDS spokesperson appeared on television to warn Ouattara supporters that force could be used to prevent this event and repress demonstrators. BLÉ GOUDÉ told the pro-GBAGBO youth to oppose the march by dispersing it. Before and after the march, GBAGBO and members of his Inner Circle described it as “an insurrectional march” intended to destabilise the government, or an operation intended to place the blame for killings on the FDS. However, the demonstration of 16 December 2010 was intended to be peaceful and demonstrators were unarmed.

314. On the day of the march, between Abobo and Ajamé and in Cocody, some police and gendarme officers tried to dissuade Ouattara supporters from proceeding because pro-GBAGBO elements located ahead were ready to kill them.

315. By 7h00, scores of heavily armed pro-GBAGBO forces – composed of the FDS including police, CECOS (including its BMO) and the GR, together with pro-GBAGBO youth, militia members and mercenaries – had taken up position and were patrolling in Cocody, in the RTI neighbourhood, and all other *communes* of Abidjan, including Abobo, Adjamé, Koumassi and Yopougon. At 9h34, a commander of the intervention units gave the order through the special police units’ radio to clean up the *Route du Zoo* which led to the RTI. He also ordered that the crowd be attacked without restraint. After dispersing the

crowds of civilians, the FDS hunted down Ouattara sympathisers to clear “any pockets of resistance”, further killing and wounding civilians.

316. In Abobo, the FDS, including the BMO with the police, including the CRS, together with pro-GBAGBO youth, attacked demonstrators as soon as the first groups started assembling. They killed at least six demonstrators by firing live ammunition and throwing fragmentation grenades at them, injuring many more. Two other persons were shot dead and others wounded in Attecoubé.

317. Throughout the commune of Adjamé, the pro-GBAGBO forces fired live ammunition into the crowd, threw fragmentation grenades and beat demonstrators, causing heavy casualties. Together with armed youth and mercenaries, the FDS chased demonstrators after they had dispersed:

- i. along the Abobo motorway, where for example, P-0588’s brother was shot near the AGRIPAC junction; at Macaci junction, P-0172 saw four persons wounded by projectiles; near the Sans Manquer roundabout, P-0184 also saw a civilian body that had been killed likely by a projectile; P-0589 also retrieved his brother’s body at Macaci.
- ii. on the Route du Zoo, specifically at the Kablan Duncan junction, where P-0217 saw a *Gendarmerie* truck dispersing the crowd with tear gas and P-0106 was both a witness and victim of a violent offensive by pro-GBAGBO youth, militia members and CECOS personnel;
- iii. at the Djeni Kobenan junction in the Williamsville neighbourhood, where, according to the Police, at least four civilians died and where P-0589 saw the CRS shooting teargas and live bullets at demonstrators and several witnesses saw many wounded persons fleeing.

iv. at a pedestrian overpass in Williamsville that crosses the *Autoroute du Nord* into the *Quartier Latin* neighbourhood, a group of demonstrators were shot at by the FDS, including CECOS members and other armed men in uniformed circulating in unmarked 4x4 vehicles.

v. in the *Liberté* neighbourhood near the Adjamé Town Hall and main market, Civilians had to flee from the FDS gunfire; as he fled he saw a man greatly injured by bullet wounds.

318. In Cocody, in the area around the RTI, the security presence was reinforced and the GR, *Gendarmerie*, army and CECOS, supported by mercenaries, were deployed and started patrolling there in the morning; GPP elements were also present. Some opened fire on a crowd of demonstrators assembled near the RDR and PDCI headquarters in Cocody, wounding and killing civilians. Further in Cocody *commune*, the FDS, and CECOS personnel in particular, followed suit on Boulevard Latrille in the area near ENA – BMW. Three GR military trucks were throwing tear gas and opening fire on the demonstrators and they wounded and killed several demonstrators there.

319. At *Saint-Jean* junction, *Carrefour de la Vie* junction and on the roads surrounding the RTI, pro-GBAGBO elements operating in this area opened fire and threw fragmentation grenades at demonstrators who refused to leave, killing and wounding many, such that the area became the theatre of the attack on demonstrators. They also pursued the demonstrators, wounding and killing many civilians. In the vicinity of the nearby university halls of residence and in other areas of Cocody, pro-GBAGBO youth, joined by CECOS personnel operating with English-speaking mercenaries, attacked the fleeing demonstrators, killing at least four civilians and wounding several others.

320. The FDS also shot two persons dead and wounded others in Attecoubé. In Treichville *commune*, GR troops fired live ammunition at demonstrators, wounding and killing some of them. In Marcory *commune*, a youth was killed by gunfire when members

of the FDS opened fire in all directions. Police officers shot him dead upon noticing that he was still alive.

321. During the incidents that followed the march, pro-GBAGBO elements, comprising the FDS, pro-GBAGBO youth, militia members and mercenaries, also raped and committed other forms of sexual violence against presumed Ouattara supporters. On 16 December, mercenaries intercepted a demonstrator who was participating in the march on the RTI and raped her in a street near the FILTISAC factory in Adjamé. They blamed her for participating in the demonstration. That same day in Abobo, armed youth arrested six women at a roadblock, and after accusing them of having gone to the march, and checking their identities, took the women to an unfinished house, had them detained and then raped them. Furthermore, on 16 December, pro-GBAGBO youth stopped a woman wearing an RDR T-shirts in Abobo Avocatier, near the roadblock they were operating, beat and gang-raped her; after the rape, the perpetrators told the victim to call Ouattara if she wanted to file a complaint.

322. During the course of the day of 16 December, the CEMA kept GBAGBO informed of developments on the ground. On the evening of 16 December, GBAGBO met again with his Minister of Defence Dogou for over four hours. Key members of the parallel structure within the FDS were also received at the Presidency: Bertin Kadet and Dogbo Blé were also present at the time of the meeting between GBAGBO, Alain Dogou and other ministers. GBAGBO also received BLÉ GOUDÉ. Between 16 and 19 December, BLÉ GOUDÉ was received three times at the Residence, where he met GBAGBO and spent many hours. Between 14 and 19 December, BLÉ GOUDÉ addressed the *Jeunes Patriotes* on several occasions as “100% General and 100% Minister” and called on them to mobilise, including at Port Bouët on 19 December 2010. On 21 December, he mentioned the impending final assault for the full liberation of Côte d’Ivoire.

323. The security presence was maintained and repression continued in the following days. The youth responded to BLÉ GOUDÉ’s appeal, in particular by blocking ONUCI movements. On 16 December and in the following days, the FDS, aided at times by pro-

GBAGBO youth, also arrested at least 257 persons – men, women and children who were amongst the demonstrators or suspected of having taken part in the demonstration and thus considered rebels. According to official Ministry of Interior numbers aggregated the week following the march, forty-three of those arrested were from Burkina Faso or Mali. Those arrested were taken to several detention areas including the *École de Police*, the *École de Gendarmerie* and the Police Prefecture in Plateau. After their arrest, the demonstrators were beaten and wounded by policemen, CECOS and *Gendarmerie* personnel, who also threatened to kill the men and rape the women who had taken part in the demonstration. Two police officers were overheard saying that Laurent and Simone GBAGBO had specifically issued instructions to that effect. These arrested persons were then kicked and beaten with clubs, belts and rifle butts by groups of officers.

324. Pro-GBAGBO forces, including the BAE and CECOS, also searched for the wounded in hospitals, in particular to force medical staff not to treat perceived Ouattara supporters. Wounded civilians were also scared of going to hospitals for treatment for fear of being abducted and killed. In fact, starting from the 16 December 2010, the ONUCI clinic doctors, who normally only treat ONUCI employees, began refusing to transfer injured persons to hospitals and treated them at their clinic instead based on allegations that certain patients were disappearing or being refused treatment based on their political or ethnic affiliation. The Cocody CHU only received a total eleven injured civilians on 16 December. Its director instructed the CHU staff to send all new injured patients to another hospital (the HMA) for treatment. He based his decision on the CHU's lack of medical supplies, but the decision was seen as a refusal to treat RHDP members and criticised.

325. In the evening of 16 to 17 December 2010, the FDS and armed persons in civilian clothes raided mainly Abobo *commune*, breaking into civilians' houses and committing many crimes. During that incident, they killed several civilians. On 18 December 2010 in Abobo, about ten police officers pursued and abducted from their homes two RHDP activists who had monitored the voting process at an Abobo polling station. One week later, their bodies were found in Yopougon morgue with gunshot wounds to the chest.

326. On 17 and 18 December, FDS personnel, including from the CRS, stormed four mosques in Grand Bassam, Abobo and Williamsville, killing one person and wounding 29 others, including 14 women.

327. On 17 December 2010, soldiers, together with a member of the *Jeunes Patriotes*, gang-raped a woman in her Abobo home before forcing her to witness the murder of her husband, an RDR activist. Afterwards, the rapists told the woman, who was wearing a Ouattara T-shirt, that she should go and tell him who had raped her. On 19 December 2010, six men claiming to be policemen in order to be let in, gang-raped three young sisters in their Abobo home. After their misdeeds, they told the victims that they should complain to Ouattara. They also abducted one of the victims.

328. On 16 December 2010 and in subsequent days, several women detained since the day of the march were raped by policemen at the *École de Police* and men in gendarme uniforms at the police prefecture. While on their way to the *École de Police*, a policeman stated that he wanted to hurt his victim because she had participated in the demonstration and was a Dioula; he subsequently beat and raped her. Another policeman who subsequently raped his victim told her that Simone Gbagbo issued the instruction to rape the women who participated in the demonstration. The men had condoms. During their detention at the police prefecture, between 16 and 20 December, six women were repeatedly gang-raped by a group of men in gendarme uniforms. When one of the women attempted to resist, she was struck, her finger cut with a knife.

329. Whereas FDS members were killed during operations on 16 December, the incidents occurred on the fringe of the attacks against demonstrators. The FDS fatalities in Abobo near PK18 neighbourhood and the FILTISAC factory in Adjamé were reported by the authorities. These events took place hours after the attack on the demonstrators, more than 15 kilometres from the RTI and away from the sites in both *communes* where the crimes charged were committed. Two FANCI soldiers were also killed at Houphouët-Boigny junction in Cocody, during clashes between the FAFN and FANCI. In the days prior to the march, the CEMA had ordered the deployment of special FANCI forces, who

mounted the blockade of the Golf. On 16 December 2010, after 12h00, gunfire was exchanged between FAFN and FDS troops, causing casualties on both sides.

330. Although the crimes committed against civilians on 16 December 2010 were widely condemned, and although GBAGBO and his representatives acknowledged that civilians had died, their sole focus was on the FDS victims, disregarding the vast majority of civilian victims killed by pro-GBAGBO forces during the march and thereafter. They further took action against journalists and international human rights officers who were covering the event and reporting that the civilian population had been attacked.

## 2. Incident 2: Attack on Yopougon (25 to 28 February 2011)

331. Between 25 and 28 February 2011 in the Yopougon *commune* of Abidjan, pro-GBAGBO forces killed at least 22 persons, primarily Northerners and foreigners from West African countries; and wounded at least seven persons. These crimes were committed on political, national, ethnic or religious grounds.

332. During the 20h00 RTI news bulletin on 24 February 2011, BLÉ GOUDÉ urged “all the youth of Côte d’Ivoire to prevent the UN from driving and moving throughout Abidjan *communes*”. In the same speech, BLÉ GOUDÉ also called on the pro-GBAGBO youth to take part in a mass general meeting convened “to issue the last instructions” at Le Baron bar in Yopougon at 9h00 on 25 February 2011.

333. After having been received at the Presidential Residence on the evening of 23 and 24 February 2011, BLÉ GOUDÉ indeed held a meeting at Le Baron bar, attended by youth leaders Richard Dacoury, Jean-Yves Dibopieu, Augustin Mian, Serge(s) Kassy, and Idriss Ouattara. BLÉ GOUDÉ repeated his order “to prevent ONUCI from moving” and also called on the pro-GBAGBO youth to “check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood”. This meeting was followed by another meeting, at Place CP1 in Yopougon, where BLÉ GOUDÉ repeated his message to the pro-GBAGBO youth.

334. Following BLÉ GOUDÉ's *mot d'ordre* many pro-GBAGBO youth attacked those Yopougon neighbourhoods mainly inhabited by Dioula, including Lem and Doukouré.

335. Pro-GBAGBO youth threw stones at youths from the Doukouré neighbourhood and a clash broke out between the two groups on Boulevard Principal, near the Lem mosque. The pro-GBAGBO youth were supported by police officers from the 16<sup>th</sup> district police station, who fired upon and threw grenades at the Doukouré youths, killing and injuring some of them.

336. Between noon and 13h00, pro-GBAGBO youth and militia members headed by Maguy Le Tocard and reinforced by the FDS and the Police, attacked the Lem Mosque of Yopougon, where youths had sought refuge in its courtyard following clashes. The mosque's watchman was killed and burned by these same attackers, who also burned copies of the Koran and prayer rugs.

337. During the clashes, militia members and the pro-GBAGBO youth were armed with bladed weapons, and some bore Kalashnikovs and rifles.

338. Following the attack on the Lem Mosque and the clashes that preceded and followed, pro-GBAGBO youth, militia members and the police of the 16<sup>th</sup> district killed at least 13 persons, including a woman, and wounded at least seven civilians. At least six of the dead had been burned to death by pro-GBAGBO youth and militia members.

339. Upon BLÉ GOUDÉ's appeal on the morning of 25 February 2011, roadblocks began to proliferate in Yopougon. Apart from a few roadblocks under police control, most were controlled by pro-GBAGBO youth and militia members, who were armed mainly with bladed weapons. They claimed to be executing the "*Général's*" "*mot d'ordre*". Civilians were stopped at these roadblocks and their identification was checked by pro-GBAGBO youth. Civilians from the North, in particular the Dioula and West African nationals, had to pay their passage. They also risked being beaten and were sometimes burned to death or killed. For example, pro-GBAGBO youth beat and set fire to two young civilians accused of being "attackers".



340. During the clashes of 25 February 2011, a motorcade of four-wheel-drive vehicles stopped at the 16<sup>th</sup> district police station on Boulevard Principal, near the Doukouré neighbourhood. Upon seeing the motorcade, pro-GBAGBO youth chanted BLÉ GOUDÉ's nickname "*Général, Général*" and some even ran after the motorcade when it left the police station moments later. After the meeting at Place CP1, BLÉ GOUDÉ's motorcade toured several neighbourhoods in Yopougon.

341. Pro-GBAGBO youth and militia members continued to commit acts of violence in Yopougon in the following days. On 26 February 2011, the Lem Mosque was again the target of an attack as pro-GBAGBO youth pillaged and again burned copies of the Koran. Pro-GBAGBO youth and militia members burned to death four men they accused of being rebels on 26 and 27 February and another two on 28 February 2011 in the presence of the BAE. At least three other persons were burned on the same day by pro-GBAGBO youth in Yopougon.

342. The Police reported on these events and concluded that several civilians had been burned at the roadblocks erected by pro-GBAGBO youth and that, "in the course of their searches for arms and rebels, suspicious individuals were automatically lynched and burned". The police further noted that "only an appeal on national television by the instigator of these roadblocks can ultimately put a stop to them." The reference to the "instigator" was to BLÉ GOUDÉ.

### 3. Incident 3: Attack directed at a women's demonstration in Abobo (3 March 2011)

343. On 3 March 2011, pro-GBAGBO forces killed seven women and wounded at least three persons who had participated in a pro-Ouattara women's demonstration in Abobo commune in Abidjan. These crimes were committed on political, national, ethnic or religious grounds.

(a) *Background*

344. From 16 December 2010, the security situation worsened in Abobo and, on 22 February 2011, the army took control of operations in Abidjan. On 24 February 2011, GBAGBO refused to declare Abobo a war zone and, instead, ordered his forces to stand firm and not to cede Abobo. Camp Commando became the FDS command post for the whole of Abobo. The FDS units posted there had weapons and armoured vehicles. In February and March 2011, military convoys conducted daily supply missions between Camp Commando and other FDS camps, including Camp Agban. The convoys would open fire indiscriminately in the course of their movements, frequently killing civilians.

(b) *Events on 3 March 2011*

345. On 3 March 2011, Ouattara supporters gathered for a peaceful march, starting at the Banco Anador junction in Abobo to demand GBAGBO's resignation, and protest against human rights violations in the neighbourhood. The march was organised by women from all political parties of the RHDP, civil society and NGOs. Over 3,000 women gathered at the junction to start the march. They were unarmed, carried tree branches and placards and chanted anti-GBAGBO slogans.

346. At about 10h00, pro-GBAGBO forces, including FDS troops, were driving from Camp Commando towards the Banco roundabout in at least five vehicles, which included a *char* [armoured vehicle] of the GR in camouflage colours, a camouflage green pick-up truck mounted with a heavy machine gun, a white ambulance, a *cargo* of the *Gendarmerie*, and a Police armoured vehicle.

347. Without warning, these pro-GBAGBO forces opened fire on the crowd. The brief but intense gunfire was directed at unarmed demonstrators. It killed seven women, six of them in one group, and wounded several others. The body of one victim was transported and admitted to Abobo South hospital shortly after the incident. The body of another victim was carried to her family home. The bodies of another four victims were transported to the Abobo South hospital some time later. At around 14h00, armed men in

army fatigues went to Abobo South hospital to ascertain the presence of women's corpses. That evening the bodies of the five women were then taken to the Yopougon morgue. The next day, these bodies were transferred to the Treichville morgue, where they stayed until their burial at the Abobo municipal cemetery in April 2011.

348. DNA analysis conducted between samples obtained from bodies exhumed from the *Carré des Indigents* mass grave in Abobo against samples obtained from blood relatives of victims of the incident confirmed the identification for the bodies of Sylla Malon, Ouattara Rokia, and Kone Moyamou.

349. Although the GBAGBO government had evidence implicating the FDS in the incident, the spokespersons of the government and the FDS, on 4 March 2011, on the RTI, denied any FDS responsibility for this attack. No one was punished for this crime. As of 4 March 2011, the pro-GBAGBO media denounced this incident as a set-up. On 8 March 2011, the Council of Ministers again denied all responsibility, and on this occasion, they advanced that accusations against the FDS were pure fabrication. On 23 March 2011, BLÉ GOUDÉ stated that the FDS could not be responsible for the women's death on 3 March 2011 because Abobo was in rebel hands at the time.

#### 4. Incident 4: Shelling of Abobo market and the surrounding area (17 March 2011)

350. On 17 March 2011, pro-GBAGBO forces killed at least 40 persons and injured at least 60 persons in or near Abobo market by shelling a densely populated area. These killings were committed on political, national, ethnic or religious grounds.

351. As aforementioned, on 24 February 2011, GBAGBO refused to declare Abobo a war zone, which would have allowed the evacuation of the civilian population. Instead, GBAGBO ordered his forces not to cede Abobo. In March 2011, Camp Commando was the pro-GBAGBO forces' last bastion in Abobo. BASA mortars were mounted at Commando Camp. Still in March, the troops stationed in the camp received orders from their superiors to open mortar fire on Abobo. In late February and March 2011, the FDS shelled Abobo, wounding and killing several civilians.

352. On 17 March 2011, in broad daylight, BASA troops based in Camp Commando, opened mortar fire on a densely-populated area in Abobo which included a local market, a mosque, a hospital and homes.

353. Mortar shells struck at least seven locations and killed and wounded civilians in Siaka Koné market, in the SOS village neighbourhood and the Derrière Rails sector. At least 22 civilians perished and a number of others subsequently died of their wounds, raising the death toll to over 30. Over 60 other persons were wounded.

354. By opening mortar fire on a densely-populated area in the knowledge that, by their very nature, such weapons preclude discriminate targeting, the FDS deliberately attacked the civilian population. Although the GBAGBO government had evidence implicating pro-GBAGBO forces in these incidents, no proper investigation was conducted and no one was punished. To the contrary, the government issued a statement covering up the crimes and stating that no damage had been observed at the Abobo market, no victims had been registered at the Abobo and Anyama mortuary and that no complaint had been registered at police stations with respect to an FDS operation.

#### 5. Incident 5: Attack on Yopougon (on or around 12 April 2011)

355. On or around 12 April 2011 in Yopougon, pro-GBAGBO forces killed at least 62 persons hailing primarily from northern Côte d'Ivoire and neighbouring West African countries, raped at least 8 women and wounded at least two persons. These crimes were committed on political, national, ethnic or religious grounds.

356. Yopougon *commune* is considered a pro-GBAGBO stronghold. However, certain of its neighbourhoods, such as Doukouré and Mami Fatai, were inhabited mainly by civilians from northern Côte d'Ivoire and neighbouring West African countries, and are perceived as pro-Ouattara. In the immediate aftermath of GBAGBO's arrest, Yopougon was still under the control of pro-GBAGBO forces and P-0567 saw pro-GBAGBO youth saying that they were going to kill all the Muslim who voted for Ouattara.

357. On or around 12 April 2011, pro-GBAGBO forces, including militia members, pro-GBAGBO youth and mercenaries, attacked Doukouré and Mami Fatai, killing at least 62 people and wounding at least two. The pro-GBAGBO forces, armed with Kalashnikovs and machetes, attacked people on the street or forced their way into homes, where they apprehended their inhabitants. The victims were executed when identified or perceived as Ouattara supporters. In Doukouré, P-0109 saw four friends being killed after pro-GBAGBO forces checked their identity card. P-0398 saw one man being killed because he was a Dioula and counted 26 corpses, all men from Dioula ethnicity. P-0458 saw two friends being killed, after one was identified as “another Ouattara” and counted 39 corpses, all men from Dioula ethnicity. P-0441 also saw pro-GBAGBO forces shooting at people and counted 34 corpses. At least 26 people were buried in a mass grave. In Mami Fatai, after hearing gunshots at night, P-0568 saw the corpses of two relatives in the morning, while P-0185 and P-0567 counted respectively 17 and 18 corpses, all men from Dioula ethnicity. Later on that day, P-0567 saw five other men getting killed. P-0109 and P-0567 were wounded at the result of the attack. In addition to killing these men, pro-GBAGBO forces also raped women. They entered their houses by force and raped at least 7 women in Doukouré and at least 1 in Mami Fatai. P-0404, her mother and two sisters including a minor, were all raped at the same time. P-0185, who was a minor at the time, P-0398, P-0406 and P-0407 were gang-raped.

358. One perpetrator of P-0398’s rape said that, because they voted for Ouattara, women will be raped and their husbands will be killed. Furthermore, after the attackers had killed P-0109’s friends, he heard voices shouting in English: “No GBAGBO, no Côte d’Ivoire”. The scale of the attacks, the large number of victims, the persons targeted and the systematic killing of men and systematic rape of women show that these crimes were committed in a coordinated manner, in furtherance of the Common Plan.

## C. The Contextual Elements for Crimes Against Humanity

### 1. The existence of an attack directed against the civilian population

359. Between 27 November 2010 and on or around 12 April 2011, pro-GBAGBO forces committed a widespread and systematic attack directed against a civilian population pursuant to a State or organisational policy – the Policy – to attack perceived Ouattara supporters. The Prosecution’s position is that the multiple prohibited acts committed during the four incidents charged against GBAGBO, and during the five incidents charged against BLÉ GOUDÉ, are sufficient in and of themselves to constitute an “attack” within the meaning of article 7 of the Statute. Even so, the Prosecution relies upon acts committed in the context of a total of 38 incidents (including the charged incidents), as described in section IV.A.1. as constituting the “attack” within the meaning of article 7 (“Attack”). As a result of the Attack, civilians were killed, injured, arbitrarily arrested and raped, civilian property and religious buildings destroyed, and civilians were persecuted on ethnic, political, religious and/or national grounds.

### 2. Course of conduct involving multiple commission of acts

360. The Attack was constituted by a course of conduct by GBAGBO, members of the Inner Circle and pro-GBAGBO forces involving the multiple commission of acts under article 7(1) of the Statute against perceived Ouattara supporters. These acts were committed in the context of the 38 incidents described in section IV.A.1. However, acts perpetrated during the four incidents of which both Accused are charged are sufficient in and of themselves to constitute the attack against perceived Ouattara supporters. The evidence of the multiple acts must be assessed in its totality, as a whole, to determine whether there is such a “course of conduct”; the acts should not be considered separately, or in isolation of one another. The Chamber must also consider the totality of the relevant evidence when assessing the other constitutive contextual elements of a widespread or systematic attack. Whilst a course of conduct must involve multiple acts, the occurrence of those acts is not the only evidence that may be relevant to prove its existence. The course of conduct requires a certain “pattern” of behaviour. It is not necessary that each separate

incident forming part of the attack be proved beyond reasonable doubt. Rather, it is the Attack itself which must be established to this standard.

### 3. Course of conduct pursuant to a State or organisational policy

361. The pro-GBAGBO forces, which included elements of the FDS, pro-GBAGBO youth, youth militia and mercenaries and were led by GBAGBO and the Inner Circle, including BLÉ GOUDÉ, constituted an “organisation” and “State” and implemented a “policy” within the meaning of article 7(2)(a).

(a) *GBAGBO, the Inner Circle and the pro-GBAGBO forces constituted a State or organisation*

362. GBAGBO and the Inner Circle, of which BLÉ GOUDÉ was a key member, together with the pro-GBAGBO forces, constituted a State or organisation within the meaning of article 7(2)(a) of the Statute. The Inner Circle shared an ideology and common interests. Each of its members contributed to the success of the State or organisation, particularly by mobilising political, financial, human and military resources; such contributions facilitated the development and execution of the Common Plan.

363. The Inner Circle included the individuals described in section III.A.1.(b) above.

364. As a State or organisation, GBAGBO, the Inner Circle and the pro-GBAGBO forces had the means to engage in acts that infringed fundamental human values and to carry out widespread or systematic attacks against the civilian population: (a) they wielded *de jure* and *de facto* control and authority over FDS members and *de facto* control and authority over the mercenaries, militias and pro-GBAGBO youth; (b) they operated through State structures and institutions, and State-affiliated organisations; (c) they oversaw the recruitment, financing and reinforcement of pro-GBAGBO forces and provided them with military equipment; and (d) they issued instructions to pro-GBAGBO forces, who acted upon these instructions and kept them abreast of developments on the ground. Furthermore, GBAGBO and the Inner Circle planned and implemented attacks against civilians and, through pro GBAGBO forces, controlled parts of the territory of Côte d’Ivoire, including the city of Abidjan, where the crimes charged herein were committed.

(b) *Policy consisting of directing violent attacks against the civilian population to maintain GBAGBO in power*

365. The Common Plan conceived by GBAGBO and members of the Inner Circle had, by 27 November 2010, if not before, developed to encompass a State or organisational policy aimed at a widespread and systematic attack against civilians who were perceived Ouattara supporters. These civilians fall into two broad categories: first, actual or perceived political opposition activists and sympathisers, and second, civilians considered to support the opposition due to their Muslim faith, or Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent, as described below.

366. The State or organisational policy need not be explicitly or precisely defined or formalised. The incorporation of this requirement, which is not part of customary international law, was intended to ensure that isolated acts are excluded from the scope of crimes against humanity. An attack, that was planned, directed or organised, as opposed to isolated acts of violence, satisfies this criterion. Contrary to some jurisprudence, the Prosecution submits that the "random" targeting of civilians (for instance through a lottery) should not exclude the application of article 7 of the Statute, as long as the multiple acts under article 7(1) are not isolated. The existence and nature of the Common Plan are substantiated by the facts set out in section III.A.8. above.

#### 4. The Attack was directed against a civilian population

367. The Attack was directed against perceived Ouattara supporters, as described in section IV.A.2. This is evidenced by: (i) prohibited acts perpetrated against perceived Ouattara supporters during 38 incidents; (ii) civilians were attacked, including through the use of heavy weaponry in densely-populated areas; (iii) the destruction of civilian property in neighbourhoods inhabited by perceived Ouattara supporters, together with their religious buildings; (iv) the use of violent rhetoric and hate speech against perceived Ouattara supporters (v) the use of military units against perceived Ouattara supporters



during supposedly routine law enforcement operations; (v) the targeting of civilians on the basis of their identity at illegal roadblocks; (vi) the failure to punish or prevent the commission of crimes against civilians perceived to support Ouattara, which also amounted to encouragement to commit crimes against civilians.

#### 5. Widespread and systematic nature of the attack

368. The Attack was widespread and systematic. It was widespread in that: (a) it led to the commission of crimes against at least 750 victims during the above mentioned 38 incidents) and spanned over four months (between 27 November 2010 and on or around 12 April 2011); (b) the intensity of the attack and number of crimes committed during that period were considerable; (c) the attack affected the entire city of Abidjan which has a population of over three million.

369. The Attack was systematic in that: (a) the use of violence was not casual or accidental; victims were targeted because they were perceived to be Ouattara supporters; (b) the commission of the acts followed a *modus operandi* since in many of the incidents, the targets were identified during identity checks at illegal roadblocks or political demonstrations; the attack was directed at neighbourhoods or religious institutions where Ouattara supporters were usually found; and heavy weaponry was deployed in densely-populated areas, including to disperse pro-Ouattara demonstrators; (c) the Common Plan which gave rise to the attack was adopted at the highest echelons of the State; (d) the implementation of the Common Plan was jointly coordinated by GBAGBO, BLÉ GOUDÉ and the members of the Inner Circle; (e) the attack was coordinated and implemented by parts of the State apparatus, such as Government institutions and the FDS; (e) the FDS and other organized entities whose members held no official position, but were controlled by Gbagbo and the Inner Circle (mercenaries, militia members and pro-GBAGBO youth) played a major role in mounting the attack; and (f) law enforcement forces did not protect the victims and instead took part in the commission of the crimes.

## 6. “As part of”

370. The acts under article 7(1) of the Statute committed in the context of the charged incidents (four incidents in the case of GBAGBO; five in the case of BLÉ GOUDÉ) in and of themselves to constitute a widespread and systematic “attack” within the meaning of article 7 of the Statute. However, they also shared common features with the other acts forming part of the Attack, and were therefore “part of” the Attack. These common features were: (i) common characteristics, in that they were all violent attacks; (ii) common aims, in that they were all intended to implement the Common Plan; (iii) common targets, in that they were all directed against perceived Ouattara supporters; (iv) common perpetrators, that is, pro-GBAGBO forces; (v) common times and locations, in that they were all committed in the aftermath of the presidential elections, and were all committed in Abidjan.

## 7. GBAGBO and BLÉ GOUDÉ were aware of the existence of the Attack

371. At all times, both GBAGBO and BLÉ GOUDÉ knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population. This is demonstrated by the evidence that establishes that they espoused the Common Plan and that their conduct was aimed to further and implement the Common Plan, which involved the Attack.

## V. INDIVIDUAL CRIMINAL RESPONSIBILITY

372. In this section, the Prosecution first addresses the applicable law under articles 25(3) and 30 of the Statute, then the individual criminal responsibility of each Accused under Article 25(3)(a), (b), (d) and (f), and, in respect of BLÉ GOUDÉ only, under Article 25(3)(c).

373. Then, the Prosecution addresses persecutory intent on the part of each Accused.

374. Although the Pre-Trial Chamber declined to confirm charges against GBAGBO on the basis of article 28, the Prosecution has requested the Trial Chamber to notify the

Parties that the legal characterisation of facts may be subject to change in this respect. The Prosecution therefore addresses GBAGBO's individual criminal responsibility under article 28 (both the law and facts) in the last section below.

1. Article 25(3)

(a) *Article 25(3)(a)*

375. Since article 25(3)(a) does not lay out the precise elements of indirect co-perpetration, the Prosecution advances a position that builds both on ICC jurisprudence, in particular the *Lubanga* trial and appeal judgments, and an analysis of the sources relied upon in that jurisprudence.

(i) Actus reus

a. Existence of a common plan or agreement

376. The Prosecution must establish the existence of a common plan between two or more persons, including the accused. The Prosecution is not required to prove that the plan was specifically directed at committing a crime. It is sufficient to establish that the common plan included "a critical element of criminality", namely that its implementation will, in the ordinary course of events, lead to the commission of a crime. Moreover, the common plan need not be explicit and can be inferred from circumstantial evidence, such as the subsequent concerted action of the co-perpetrators. Although the co-perpetrators must intend a particular offence or range of offences (or be aware that these will occur in the ordinary course of events), they need not intend or know the specific instances in which those offences will be carried out.

b. Use of another person or an organised and hierarchical apparatus of power

377. Indirect co-perpetrators may commit a crime through one or more persons, or acting through an organised and hierarchical apparatus of power. Under the latter

scenario (which applies in this case), the Prosecution must establish the existence of an organisation that is based on hierarchical relationships between superiors and subordinates. This also requires proof that the implementation of the will of the co-perpetrators cannot be compromised by any particular subordinate's failure to comply because the individual subordinates within the organisation were fungible. This can be established through attributes of the organisation, such as a large enough size to "provide a sufficient supply of subordinates" in order to replace anyone who refused to act, or through the existence of "intensive, strict, and violent training regimes".

378. Contrary to the findings of ICC Pre-Trial Chambers, this element does not require the Prosecution to prove almost automatic compliance by subordinates with the "orders" of a superior. Compliance with an order may be sufficient, but is not the only means of demonstrating that the organisation is composed of fungible individuals. Actions and attributes other than orders, such as those referred to in the previous paragraph, may also be relied upon to establish this element.

c. Ability to cause the organisation to contribute to the crime

379. Where the accused is alleged to have acted through an organised and hierarchical apparatus of power, the Prosecution must prove that the accused has the ability to cause the organisation to contribute to the crime. For example, in the *Katanga* Confirmation Decision, Pre-Trial Chamber I found that the Prosecution must show that the accused "mobilize[d] his authority and power within the organization to secure compliance with his orders". Compliance with orders is a, but not the only means of establishing this element. The Prosecution may also show that the accused possessed a power of veto within the organisation, or that he had the capacity to hire, train, impose discipline and provide resources to the subordinates.

d. The accused's individual contribution

380. The accused must each “[provide] an essential contribution to the *common plan* that resulted in the commission of the relevant crime[s]”. This means that the contribution must be such that some or all of the crimes resulting from the implementation of the common plan “would not have been committed or would have been committed in a significantly different way”.

381. Co-perpetration “requires that the offence [is] the result of the combined and coordinated contributions of those involved”. Consequently, “the prosecution does not need to demonstrate that the contribution of the accused, taken alone, caused the crime; rather, the responsibility of the co-perpetrators for the crimes resulting from the execution of the common plan arises from mutual attribution, based on the joint agreement or common plan.” The Appeals Chamber has endorsed this finding that an “agreement between [the] perpetrators, which [leads] to the commission of one or more crimes [...] ties the co-perpetrators together and [...] justifies the reciprocal imputation of their respective acts”. The mutual attribution of the respective conduct of co-perpetrators who share a common plan means that an individual co-perpetrator who provides an essential contribution to the common plan resulting in certain crimes can be held responsible for other crime(s) to which he did not directly contribute, as long as these latter crimes were committed by or are attributable to his (charged or non-charged) co-perpetrators in the implementation of the common plan. Accordingly, a co-perpetrator may be held responsible for the crimes committed by other co-perpetrators pursuant to the common plan, even if, because of a division of tasks, they directly perpetrated only some, or a portion of those crimes.

382. This is consistent with the Court’s jurisprudence, which holds that “[n]one of the participants [in a common plan] exercises, individually, control over the crime as a whole but, instead, the control over the crime falls in the hands of a collective as such.” Joint control over crimes carried out in implementing the common plan can occur in two types of situations. Firstly, it can occur where the co-perpetrators distribute the functions necessary to implement the common plan *vertically*, for instance, where some co-perpetrators contribute to the “planning or preparation stage, including when the

common plan is conceived”, while other co-perpetrators execute the crime. Secondly, it can occur where the co-perpetrators distribute functions *horizontally* at the execution stage of the crimes, for instance, where each co-perpetrator executes certain crimes or portions thereof. As a result, it is not necessary to establish that the accused provided a contribution to the execution stage of the crime. It is also not necessary to establish that the accused or any other co-perpetrator physically committed any of the elements of the crimes, as long as it is established that “the objective elements of an offence are carried out by a plurality of persons acting within the framework of a common plan”.

(ii) Mens rea

a. The accused acted with intent

383. The Prosecution must prove that the accused meant to engage in the relevant conduct. In relation to a consequence, the Prosecution must show that the accused (a) meant to cause the consequence; or (b) was aware that the consequence would occur in the ordinary course of events, which, in the context of this case, requires that the Prosecution establish that the Accused were aware that implementing the Common Plan would, in the ordinary course of events, result in the commission of the crimes charged. The accused need not intend or know the specific instances in which the offences would be carried out. Instead, the Accused need only have been aware that the implementation of their Common Plan would, in the ordinary course of events, have resulted in the commission of the crimes against humanity of murder, rape, other inhumane acts and persecution by members of the pro-GBAGBO forces against perceived Ouattara supporters. Again, in the context of co-perpetration, the “*consequence*” of which the person needs to be aware (according to article 30(2)(b)) is the *nature* of the crime(s) (e.g. murder, rape, etc.), not each specific instance in which those crimes will be committed or exactly by whom.

b. The accused had the requisite knowledge

384. The Prosecution must establish that the accused were aware that the circumstances relevant to the underlying crimes existed, or that, in the ordinary course of events, their conduct would bring about the objective elements of the crime.

385. For indirect co-perpetration through an organised and hierarchical apparatus of power, the Prosecution must establish that the accused were aware (a) that the common plan or agreement involved an element of criminality; (b) of the fundamental features of the organisation; and (c) of the factual circumstances that enabled him or her, together with other co-perpetrators, to jointly exercise functional control over the crime.

(b) *Article 25(3)(b)*

386. In the *Gbagbo* Confirmation Decision, Pre-Trial Chamber I found that the elements of ordering are equally applicable to soliciting and inducing. It found that the only exception applies to the requirement of a position of authority, which is particular to ordering and which is not a necessary element of soliciting or inducing.

(i) *Actus reus*

a. The person is in a position of authority – relevant for ordering:

387. The position of authority required for “ordering” is different from the superior-subordinate relationship for command responsibility under article 28. It does not require proof of an official or formal relationship of subordination or effective control. Ordering requires a looser relationship of authority. That authority may be informal or of a purely temporary nature.

388. According to the established jurisprudence of the UN *ad hoc* Tribunals, for the purposes of “ordering”, it is sufficient “that there is proof of some position of authority on the part of the accused that would compel the perpetrator to commit a crime pursuant to the accused’s order.” It suffices that the direct perpetrators *regarded* the accused as speaking with authority, that they *perceived* his words as orders to perform certain acts or omissions, and that they felt obliged to comply. The accused’s authority may be based on

*influence*, which may emanate for instance from their “social, economic, political or administrative standing”.

b. The person instructs another person in any form to either: (i) commit a crime which in fact occurs or is attempted, or (ii) perform an act or omission in the execution of which a crime is carried out

389. It is not necessary that the accused orders, induces or solicits another person to commit *a crime*. It suffices that the accused instructs a person to commit an act, the execution of which contributes to the commission of a crime. There is also no requirement that the instruction be given in any particular form and its existence may be established through circumstantial evidence. Finally, the accused may order, solicit or induce through an intermediary and need not be in direct contact with the physical perpetrator. However, direct orders to the physical perpetrators certainly also meet the test.

c. The order or acts of inducement or solicitation had a direct effect on the commission of the crime

390. For all three modes of liability under article 25(3)(b), it must be established that the culpable conduct of the accused had a “direct” effect on the commission or attempted commission of the crime.

391. The ICC jurisprudence does not qualify the degree or level of contribution. In particular, it does not require the order or act of inducement or solicitation to be *a conditio sine qua non* for the commission of the crime. It is the Prosecution’s position that direct contribution only requires the existence of a link or *nexus* between the act and conduct of the accused and the commission of a crime. Unless the conduct of an accused is so trivial that no relation between that conduct and any of the elements of the crime can be established, all contributions to the crime will be sufficient for criminal liability under article 25(3)(b).

(ii) Mens rea



a. The accused is at least aware that the crime will be committed in the ordinary course of events

392. The general requirements under article 30 apply because article 25(3)(b) does not prescribe any particular *mens rea* for ordering, soliciting and inducing. Accordingly, the Prosecution must establish that the accused intentionally engaged in the criminal conduct and either meant to cause the crime or was aware that the crime would be committed in the ordinary course of events.

393. This element requires a clarification. It is not necessary to show that the accused is aware that the crime will be committed in the ordinary course of events *as a consequence* of the execution or implementation of the order or act of solicitation or inducement. The Prosecution must merely establish that the accused was aware that, due to the totality of the relevant facts and circumstances, which include but are not limited to his conduct, the crimes would be committed in the ordinary course of events.

(c) *Article 25(3)(c)*

(i) *Actus reus*

394. The *actus reus* under article 25(3)(c) requires proof that a person “aids, abets or otherwise assists” in the commission or attempted commission of a crime, “including providing the means for its commission”. This broad formulation (any form of assistance) implies that the degree of assistance is not qualified. In particular, it is not necessary for the Prosecution to demonstrate that the assistance of the accused was essential, substantial or significant, as long as it is proven that the conduct of the accused did in fact assist the direct perpetrator(s) in any way in the commission of the crime. Such assistance is not limited to *material* assistance, but includes *moral* assistance or support.

(ii) *Mens rea*

395. Article 25(3)(c) provides that the accused aids, abets or otherwise assists in the commission of the crime “for the purpose of facilitating the commission of such crime”.

396. This, if interpreted in conjunction with article 30, requires some form of intent in addition to knowledge. However, the term “purpose” does not relate to the commission of the crime but to the accused’s act of facilitation. In other words, the accused need not intend the commission of the crime, but he must only intend that his conduct facilitate the commission of the crime by others. This interpretation is also consistent with article 30(2)(b).

397. Any interpretation of “purpose” requiring a higher mental state for article 25(3)(c) would frustrate its object and status as an accessorial mode of liability. Requiring “purpose” to mean more than article 30(2) would have two unintended consequences. Firstly, it would impose a *mens rea* for aiding and abetting that is similar to or even higher than that required for *committing* a crime under article 25(3)(a). Secondly, it would effectively require proof of a higher form of intent beyond what is required of the article 30, namely specific intent, for each individual crime under the Statute, even if the definition of those crimes does not include any specific intent requirement.

398. Consistent with article 30(3), the knowledge requirement for aiding and abetting requires proof that the accused was aware that the crime would be committed in the ordinary course of events by the direct perpetrators. This does not require proof that the accused shared the intent of the direct perpetrators.

(d) *Article 25(3)(d)*

399. Individual criminal responsibility pursuant to article 25(3)(d) entails the following elements: (i) a crime within the jurisdiction of the Court was attempted or committed; (ii) a group of persons acting with a common purpose attempted to commit or committed this crime; (iii) the accused contributed to the crime, in any way other than those set out in article 25(3)(a) to (c) of the Statute; (iv) the contribution was intentional; and (v) the contribution was made either with the aim of furthering the criminal activity or criminal purpose of the group, or in the knowledge of the intention of the group to commit the crime.

(i) Actus reus

400. As found by Pre-Trial Chamber II, the “concept of ‘common plan’ is functionally identical to the statutory requirement of article 25(3)(d) [...] that there be a ‘group of persons acting with a common purpose’. A common purpose must include an element of criminality, but does not need to be specifically directed at the commission of a crime.” In addition, article 25(3)(d) applies irrespective of whether the accused is a member of the group acting with a common purpose. This derives also from the fact that under article 25(3)(d)(ii) is it sufficient for the accused to have *knowledge* of the intention of the group to commit the crime.

401. The term “commit” in this context must be interpreted broadly and in accordance with article 25(2), in the sense that it may entail *any* form of attribution under any mode of liability under the Statute. A narrower interpretation of the term is limited to the specific mode of liability under article 25(3)(a). Hence, the term *commit* does not necessarily entail the members of the group directly perpetrating the material element of the crime. Criminal responsibility under article 25(3)(d) may be attributed for a crime that was directly perpetrated by persons who do not share the common purpose, as long as the crime forms part of the common purpose. The crime has to be imputed to at least one member of the common purpose, and it has to be shown that this member, when using the direct perpetrators, acted in accordance with the common plan. The existence of this link is a matter to be assessed on a case-by-case basis.

402. Under article 25(3)(d), *any* contribution to the crime is sufficient to establish criminal responsibility. A further qualification of the level of contribution, such as significant, is inconsistent with a literal interpretation of the provision. Despite some jurisprudence of this Court to the contrary, it is submitted that article 25(3)(d) merely requires the existence of a link or *nexus* between the act and conduct of an accused and the commission of a crime by a group of persons acting with common purpose.

(ii) Mens rea

403. Article 25(3)(d) provides that the accused's "*contribution* shall be intentional". Hence, the definition of intent under article 30(2) applies only with respect to the accused's conduct which constitutes such contribution, and not to the consequence. Accordingly, the Prosecution must prove that the accused meant to engage in the relevant conduct.

404. Article 25(3)(d) includes additional subjective requirements that in part overlap with, and in part deviate from, the normal intent in relation to the consequence as set out in article 30(2)(b). Article 30(1) clarifies that the provision only applies "unless otherwise provided", which is precisely the case in relation to article 25(3)(d) liability. Thus, the notion of intent in relation to a consequence enshrined in article 30(2)(b) is not applicable to establish the relevant *mens rea* under that mode of liability.

405. Under article 25(3)(d)(i), the Prosecution must establish that the accused acted with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court. Under article 25(3)(d)(ii), the Prosecution must establish that the accused had knowledge of the intention of the group to commit the crime. However, "it is [...] not required for the [accused] to have the intent to commit any specific crime and [it is] not necessary for him or her to satisfy the mental element of the crimes charged".

(e) *Article 25(3)(f)*

406. The express language of article 25(3)(f), and in particular the phrase "does not occur" recognises that the notion of attempt only applies to situations in which a person endeavours to commit a crime and fails in this endeavour. Thus, an individual incurs criminal responsibility for unsuccessfully attempting to commit a crime only when the following elements are present: (a) the person commits an acts that commences the execution of the crime by means of a substantial step; (b) the person acts with intent and knowledge; and (c) non-completion of the crime is due to circumstances independent of the person's intentions. What exactly constitutes a substantial step to commence the execution of a crime and the exact degree of intent and knowledge are factual

determinations and will depend, among other things, on the mode of liability through which attempt under article 25(3)(f) is examined.

## 2. GBAGBO's individual criminal responsibility under article 25(3)(a)

407. Laurent GBAGBO is liable under Article 25(3)(a) for his contribution to the Common Plan in coordination with other members of the Inner Circle.

### (a) *Actus reus*

#### (i) Existence of a common plan or agreement

408. GBAGBO participated in a common plan together with BLÉ GOUDÉ and other members of the Inner Circle. Their plan or agreement was to maintain GBAGBO in power by all means, including by means of the crimes charged. By 27 November 2010, this plan had developed to encompass a State or organisational policy aimed at a widespread and systematic attack against perceived Ouattara supporters. This was the Common Plan, as described in section III.A and III.C of the Brief. GBAGBO and members of the Inner Circle, including BLÉ GOUDÉ, and members of the pro-GBAGBO forces, shared its criminal aim, including to commit the offences or range of offences charged - as described in section III.A The Common Plan existed until on or around 12 April.

#### (ii) Use of pro-GBAGBO forces

409. GBAGBO, together with BLÉ GOUDÉ and other members of the Inner Circle, used pro-GBAGBO forces to implement the Common Plan resulting in the charged crimes. Pro-GBAGBO forces comprised (i) the FDS, (ii) the pro-GBAGBO youth, (iii) militias, and (iv) mercenaries.

#### a. Pro-GBAGBO forces were an organised and hierarchical structure of power

410. As described in section III.B.1, both the FDS and the pro-GBAGBO youth, militia and mercenaries acted through an organised and hierarchical apparatus of power, which ensured an almost automatic compliance with orders given by GBAGBO and members of the Inner Circle.

411. The evidence described in sections III.B.1, III.B.2 and III.C shows, *inter alia*, that: (i) the FDS was a functioning apparatus of State power, under responsible command, and with considerable capacity; (ii) GBAGBO and the Inner Circle were able to exert authority over the FDS, including militia and mercenary elements integrated therein, through an official and a parallel chain of command which were effective and complemented each other; (iii) despite defections, in particular at the end of March 2011, GBAGBO and the Inner Circle were able to reorganise loyal forces in order to continue the fight for power, including the use of violence against civilians; (iv) the implementation of the Common Plan was coordinated and planned through meetings, instructions to units on the ground, and a functioning communication chain; (v) pro-GBAGBO militias, especially in Yopougon, were thoroughly organised and linked to GBAGBO and the Inner Circle through their leaders, and by receiving assistance in training and financial support; (vi) the pro-GBAGBO youth had a clearly defined leadership in the person of BLÉ GOUDÉ, received systematic financial support, and were controlled primarily through manipulation and incitement at mass rallies.

b. GBAGBO and the Inner Circle exercised joint control over the pro-GBAGBO forces

412. GBAGBO and the Inner Circle exercised joint control over the pro-GBAGBO forces. Such control allowed them to use the forces to execute the Common Plan, including the crimes charged.

413. GBAGBO exercised power, authority, and command and control over the FDS in his claimed capacity as both President and Commander-in-Chief of the Armed Forces, as described in section III.B.2.a. GBAGBO's authority over the FDS continued after the 2010

election. Notably, his commanders re-affirmed their loyalty to him, and his authority over them. GBAGBO exercised control and authority over the pro-GBAGBO youth, in particular, through his relationship with BLÉ GOUDÉ, as described in section III.B.2(b).

414. GBAGBO's authority and control over the pro-GBAGBO forces is also evidenced by the following: (a) GBAGBO and the Inner Circle exercised control over the FDS through the official State hierarchy and a parallel structure which initially complemented and eventually virtually replaced the official structure; (b) GBAGBO and the Inner Circle were able to re-organise the forces loyal to them despite defections from the FDS, in particular at the end of March 2011, which enabled them to continue the fight for power, including the use of violence against civilians; (c) control over militias and mercenaries was also exercised through this official and parallel structure by way of their *de facto* integration into the FDS; (d) control over militia groups, particularly in Yopougon, was further exercised through the personal links between militia leaders and GBAGBO, as well as the provision of weapons and financial support by GBAGBO and the Inner Circle; and (e) control over the pro-GBAGBO youth was ensured in the context of the campaign activities and their related mobilisation to use violence, as well as later calls for their enrolment in the FDS.

(iii) GBAGBO contributed to the implementation of the Common Plan and to the crimes charged

415. Members of the Inner Circle made coordinated contributions to the realisation of the Common Plan, which resulted in the commission of the crimes charged, as described in section III.C.

416. GBAGBO made an essential contribution both to the Common Plan and to the commission of the crimes with which he is charged within the four incidents. GBAGBO's contributions, individually and collectively, were essential to the success of the Common Plan leading to the commission of the crimes charged.

417. GBAGBO made an essential contribution to the implementation of the Common Plan and the commission of the crimes in multiple ways, including as follows:

- i. GBAGBO designed and implemented the Common Plan, which resulted in the commission of the crimes.
- ii. GBAGBO created a structure which enabled him to implement the Common Plan, which resulted in the commission of the crimes, in particular by appointing or promoting persons loyal to him to key posts in the government, the FDS and the media, by tasking his subordinates with the recruitment of additional members, including pro-GBAGBO youth and militia, to the FDS and by supervising their recruitment.
- iii. GBAGBO armed the forces loyal to him and which committed the crimes charged, *inter alia* by placing weapons which he controlled at their disposal, by tasking his subordinates with purchasing additional weapons, by providing the necessary funding and by ensuring that weapons and ammunition were supplied to these forces.
- iv. GBAGBO coordinated the implementation of the Common Plan which resulted in the commission of the crimes, *inter alia* by holding frequent meetings and regular dialogue with the Inner Circle and other members of his support network in order to be briefed about the situation on the ground by his commanders and to issue them with operational instructions. GBAGBO, either directly or through members of the Inner Circle, tasked his subordinates with implementing, or incited them to implement, the Common Plan which resulted in the commission of the crimes, and in particular (a) ordered the deployment of armed forces against demonstrators opposed to his politics; (b) instructed the forces loyal to him to stop the pro-Ouattara march on the RTI headquarters on 16 December 2010; (c) ordered these forces to lay siege to the Golf Hotel and its



guests; (d) directed these forces to stand fast and not to lose Abobo; and (e) used pejorative and hate language against political opponents, *inter alia*, referring to them as “bandits”, “enemies” and “terrorists”; (f) incited the pro-GBAGBO youth and militia members, either directly or through BLÉ GOUDÉ, to fight to protect the nation and not to let it fall into the hands of the enemy, and called on his supporters to continue to resist and to fight Ouattara and his “terrorists”.

v. GBAGBO incited the forces loyal to him to commit crimes: (a) by ordering them not to question the lawfulness of the orders they had received and by making it clear to them that they would not be punished for the crimes committed; (b) by failing to take the measures within his power to prevent or halt the commission of these crimes during the post-election violence or to punish the perpetrators; and (c) by failing to refer the matter to the competent authorities for investigation and prosecution.

vi. GBAGBO ordered that the march on the RTI building on 16 December 2010 be prevented.

vii. GBAGBO ordered and controlled the intervention of the FDS in Abobo, which deployed with its regular means, including heavy weaponry.

viii. GBAGBO supported militia and youth groups, *inter alia* by way of defining a purpose for them (namely, to fight for him), encouraging and endorsing their actions, in particular in Yopougon, as well as providing them with training, weapons and financial means.

418. Without GBAGBO’s contribution, the crimes would not have been committed or would have been committed in a significantly different way.

(b) *Mens rea*

419. GBAGBO intended to bring about the objective elements of the crimes, or was aware that they would occur in the ordinary course of events. GBAGBO took part in conceiving and implementing the Common Plan. Given the nature of the Common Plan, it was his desire that the attack be directed against civilians targeted on political, ethnic, religious and national grounds. GBAGBO was a participant in the Common Plan. Considering his claimed position as President and Commander-in-Chief of the Armed Forces, GBAGBO was fully aware that the conception of the Common Plan and his contributions to it as well as the contributions of BLÉ GOUDÉ, other members of the Inner Circle and pro-GBAGBO forces would bring about the objective elements of the crimes charged. Furthermore, GBAGBO knew or intended his conduct to be part of a widespread and systematic attack against the civilian population pursuant to or in furtherance of the Common Plan that he shared with BLÉ GOUDÉ and the other members of the Inner Circle.

3. GBAGBO's individual criminal responsibility under Article 25(3)(b)(a) *Actus reus*(i) Position of authority

420. GBAGBO was in a position of authority over the pro-GBAGBO forces who were the direct perpetrators of the crimes charged.

421. GBAGBO and his inner circle exercised control over the FDS through the official State hierarchy and a parallel structure which initially complemented and eventually virtually replaced the official structure. GBAGBO's authority over the pro-GBAGBO forces is demonstrated first and foremost by the fact that GBAGBO, together with his Inner Circle, was able to reorganise the forces loyal to him despite defections from the FDS, in

particular at the end of March 2011, which enabled them to continue the fight for power, including the use of violence against civilians.

422. GBAGBO's control over militias and mercenaries was exercised through the official and parallel structure, also by way of their de facto integration into the FDS. Control over militia groups, in particular in Yopougon, was further exercised through the personal links between militia leaders and GBAGBO, as well as the provision of weapons and financial support by GBAGBO and his Inner Circle.

423. GBAGBO exploited the loyalty of the pro-GBAGBO youth, on which he relied since 2002. The pro-GBAGBO youth had a clearly defined leadership in the person of BLÉ GOUDÉ who was particularly close to GBAGBO and played a major role in mobilising the youth, directing their actions, and transmitting to them the instructions of GBAGBO and members of his Inner Circle.

424. GBAGBO's authority over the pro-GBAGBO forces is further shown by the fact that pro-GBAGBO forces acted upon his instructions – given directly or through members of his Inner Circle - which contributed to the commission of the crimes charged.

(ii) GBAGBO instructed another person in any form

425. GBAGBO instructed or otherwise instigated the pro-GBAGBO forces to carry out certain actions, the execution of which contributed to the commission of the crimes charged. He did so in the following ways.

426. In what amounted to an exceptional deployment, GBAGBO requisitioned the armed forces to intervene in the repression of pro-Ouattara demonstrations, which then served as a pretext for the heavily armed forces to remain mobilised and on duty in Abidjan. GBAGBO also ordered the intervention of the armed forces in Abobo with their regular means, including heavy weaponry.

427. GBAGBO ordered that the march on the RTI building on 16 December 2010 be prevented.

428. GBAGBO also incited the pro-GBAGBO forces to commit the crimes charged, *inter alia*, by ordering them not to question the lawfulness of any orders, and by intimating to them that they would not be punished for any crimes committed.

429. As he has done already in the past, GBAGBO - directly or through BLÉ GOUDÉ and other members of the Inner Circle - mobilised the youth and militia groups for his cause, directed their actions, and provided them with the means and purpose of their fighting, which was to retain his power by all means, including through the use of violence against civilians known or perceived to be supporters of Ouattara.

430. Through the use of xenophobic rhetoric and hate messages, GBAGBO created an atmosphere of fear and an environment that was conducive to the commission of crimes against perceived Ouattara supporters.

431. GBAGBO, by emphasising the goal (that is, to stay in power) through statements and actions prior to and during the crisis without qualifying the means that were permissible to attain this goal, created a general situation amongst the forces under his and his inner circle's control, which justified the use of violence against the civilian population.

(iii) The order or acts of inducement or solicitation had a direct effect on the commission of the crimes

432. GBAGBO provided guidance and support to the pro-GBAGBO forces who directly perpetrated the crimes. His conduct had a direct impact on forming and reinforcing their determination to commit the crimes charged, as exemplified by the following.

433. The demonstration at the RTI building was suppressed because of GBAGBO's instruction to do so.

434. The shooting at the women demonstrators in Abobo and the shelling of the Abobo market and its surroundings took place as part of FANCI's intervention in Abobo, which was ordered by GBAGBO.

435. The attack on Doukouré and Mami Fatai in Yopougon occurred as a result of the mobilisation and manipulation of the youth and militia to fight for maintaining him in power.

436. Throughout the post-electoral violence, members of the Inner Circle and the pro-GBAGBO forces justified their actions by invoking their allegiance to GBAGBO and their purpose to keep him in power by all means.

437. In addition, through his xenophobic hate speeches, his instructions not to question the lawfulness of orders, his repeated calls for support to keep him in power despite reports that crimes have been committed, as well as his threats that those loyal to him will go down with him, created an environment in which people were prepared to commit crimes or tolerate the commission of crimes by others. It was an important factor contributing to the commission of the crimes by all components of the pro-GBAGBO forces, and it emboldened them to engage in conduct that led to or contributed to the commission of further crimes.

438. Finally, the fact that GBAGBO, directly or through members of his Inner Circle, provided training, weapons, financing and other material support to pro-GBAGBO youth and mercenaries also had the effect of encouraging them to commit crimes to implement the Common Plan.

(b) *Mens rea*

(i) GBAGBO's conduct was intentional

439. GBAGBO intended to instruct or instigate the pro-GBAGBO forces to carry out certain actions in the execution of which the crimes charged were committed. GBAGBO's intent in relation to the above are demonstrated by, *inter alia*:

- i. his historical repression of his political opposition;

- ii. his public statements indicating his intention to hold on to power at all cost, including by use of force against civilians;
- iii. his coordination and implementation of the common plan through his contact with pro-GBAGBO forces, including by way of meetings and giving instructions to units on the ground, during the post-electoral crisis;
- iv. his steps to mobilise support, especially from youth groups, in anticipation of the use of violence against civilians;
- v. his creation of a military structure tasked with implementing the Common Plan, including regular recruitment and arming activities;
- vi. his irregular recruitment and/or arming of mercenaries, youth groups and militia groups; and
- vii. his failure throughout the post-electoral crisis to denounce the crimes committed, or to ensure that they were properly investigated.

(ii) GBAGBO was aware that the crimes will be committed in the ordinary course of events

440. GBAGBO was aware that crimes against civilians would be committed in the ordinary course of events as a consequence of his instructions or instigations, and he was aware that the civilians targeted would be those perceived to support Ouattara. This is demonstrated by the same facts enumerated immediately above at V.3.(b)(i), and in addition, by:

- i. the fact that his conduct stretched over several months and he was aware, at least as of 16 December 2010, of the consequences;

ii. his awareness of the deployment of the armed forces to Abobo with heavy weaponry which was being used by forces under his control in areas densely populated by civilians;

iii. he knew of the violent nature of the pro-GBAGBO youth and militias yet he exploited their allegiance with a view to committing violence against civilians perceived to support Ouattara, which he helped identify as targets;

iv. Despite reports on crimes committed by his forces during the early stages of the post-election violence, GBAGBO repeatedly and publicly denied their involvement in any crimes against civilians.

#### 4. GBAGBO's individual criminal responsibility under article 25(3)(d)

441. GBAGBO is liable under Article 25(3)(d) for contributing, through the conception and implementation of the Common Plan, to the commission of the crimes charged.

##### (a) *Actus reus*

##### (i) A group of persons acting with a common purpose committed crimes within the jurisdiction of the Court

442. The crimes charged were perpetrated by the pro-GBAGBO forces led by GBAGBO and the Inner Circle, including BLÉ GOUDÉ, who committed the crimes acting with the common purpose of maintaining GBAGBO in power by all means, including through the use of violence against civilians perceived to support Ouattara.

443. The group of persons acting with a common purpose is constituted by GBAGBO, BLÉ GOUDÉ, and other members of the Inner Circle, as well as by members of the pro-GBAGBO forces. Between 16 December 2010 and 12 April 2011, this group of persons, who jointly controlled the pro-GBAGBO forces, committed the crimes charged in this case.

444. As a result, GBAGBO is responsible pursuant to Article 25(3)(d) for all crimes that are attributable to at least one of these persons under any mode of liability, as long as

these persons acted in accordance with the common purpose.

(ii) GBAGBO contributed to the commission of the crimes

445. GBAGBO contributed to the commission of the crimes charged through the entirety of his conduct set out in sections V.2.a and V.3.a above.

446. As discussed above, his conduct constitutes *moral and material* support or other assistance to the group of persons acting with a common purpose who committed the crimes charged. Therefore, GBAGBO's conduct discussed in the context of Articles 25(3)(b) equally applies under Article 25(3)(d).

447. In addition, GBAGBO contributed to the commission of the crimes by playing a central role in the conception of the common purpose of the group and by discussing with BLÉ GOUDÉ and other members of his Inner Circle a strategy to implement this common purpose.

448. Because the crimes charged were perpetrated by GBAGBO and the Inner Circle together with members of the pro-GBAGBO forces with a view to implementing the common purpose, its conception and coordinated implementation played a significant role in contributing to the commission of these crimes.

449. Finally, the crimes were perpetrated by GBAGBO and the Inner Circle through the pro-GBAGBO forces. As a result, GBAGBO incurs criminal responsibility for these crimes under article 25(3)(d) even if, *arguendo*, not all the direct perpetrators were members of the group acting with a common purpose. This is because all these crimes can be attributed to at least one members of the common purpose under any mode of liability under article 25(3).

(b) *Mens rea*

(i) GBAGBO's contribution was intentional



450. GBAGBO's contributions, summarised directly above, were intentional on his part. They were made in pursuance of the common purpose, which he had conceived with BLÉ GOUDÉ and other members of the Inner Circle with the aim of keeping himself in power.

451. GBAGBO's intent in relation to his contributions under Article 25(3)(d) can be inferred from the same facts and circumstances referred to in sections V.2(b), V.3(b), V.9(a) and V.10(c).

(ii) GBAGBO contributed with the aim of furthering the group's criminal purpose or in the knowledge of the intention of the group to commit the crimes

452. GBAGBO carried out his contribution with the aim of furthering the criminal activities and purposes of the group pursuant to the common purpose, devised by himself, BLÉ GOUDÉ and the Inner Circle. In the alternative, he contributed to the crimes in the knowledge of the intention of the group to commit the crimes. This aim and knowledge is demonstrated by the same factors set out in section V.4(b)(i), directly above.

## 5. BLÉ GOUDÉ's individual criminal responsibility under Article 25(3)(a)

453. BLÉ GOUDÉ is liable under Article 25(3)(a) for his essential contribution to the common plan and the commission of the crimes charged in coordination with other members of the Inner Circle. BLÉ GOUDÉ conceived and espoused a common criminal plan together with Laurent GBAGBO and other members of his Inner Circle and members of the pro-GBAGBO forces. Their plan (or agreement) was to maintain GBAGBO in power by all means, and this included the commission of a widespread and systematic attack against civilians perceived to support Ouattara.

(a) *Actus reus*

(i) Existence of a common plan or agreement

454. As set out above, a Common Plan to keep Laurent GBAGBO in power by all means had been in place since he rose to President of Côte d'Ivoire in 2000. This included the use of force against the civilian population throughout the years 2000, and in particular during the post-election violence of 2010-2011. The membership to this Common Plan encompassed both Accused – GBAGBO and BLÉ GOUDÉ – Simone GBAGBO as well as members of the Inner Circle and the pro-GBAGBO forces.

(ii) Use of pro-GBAGBO forces

a. Pro-GBAGBO forces were an organised and hierarchical structure of power

455. As described above, the pro-GBAGBO forces formed part of an organised and hierarchical structure over which GBAGBO, BLÉ GOUDÉ and his Inner Circle exercised joint control. In particular, BLÉ GOUDÉ exercised control over the pro-GBAGBO youth as described in section III.B.2(b). This included contributing to the recruitment into the FDS as well as the recruitment, training and financing of militias and mercenaries; the distribution of weapons; and, the mobilisation of the youth for violence against perceived Ouatarra supporters.

b. BLÉ GOUDÉ exerted joint control over the pro-GBAGBO forces together with GBAGBO and his Inner Circle

456. BLÉ GOUDÉ exercised joint control over the pro-GBAGBO forces with GBAGBO and members of the Inner Circle. Such control allowed them to use the forces to execute the Common Plan, including the crimes charged. Amongst others, BLÉ GOUDÉ:

i. deliberately brought to bear his authority and influence as a minister in GBAGBO's cabinet and as a leader of the pro-GBAGBO youth;

ii. knew that the FDS commanders were dedicated to GBAGBO and had renewed their loyalty to him soon after the second round of the presidential election;

iii. himself had direct contact with the FDS command, particularly with the officers of the parallel structure;

iv. knew that pro-GBAGBO youth, militia members and mercenaries had been integrated into the FDS, and played a role in it;

v. knew that GBAGBO and the other members of his Inner Circle subscribed to the Common Plan and were willing to implement it through the pro-GBAGBO forces;

vi. knew that that GBAGBO, GBAGBO's Inner Circle and the official and parallel chains of command exerted authority and control over the FDS, the pro-GBAGBO youth, the militia members and the mercenaries;

vii. knew that loyalist forces were structured and hierarchical;

viii. was aware of the importance of such forces, which consisted of subordinate personnel, who were interchangeable at will; and

ix. knew that the pro-GBAGBO youth were loyal to him, that they would execute his "mots d'ordre" and would only act or desist upon his say-so.

(iii) BLÉ GOUDÉ contributed to the implementation of the Common Plan and to the crimes charged

457. BLÉ GOUDÉ made an essential contribution both to the Common Plan and to the commission of the crimes with which he is charged within the two confirmed incidents, in that he:

i. exerted the authority, the control and the influence described above;

- ii. had a part in conceiving and implementing the Common Plan;
- iii. secured the allegiance of the youth to him and their compliance with his instructions by galvanising them;
- iv. ensured, through his leadership, that the pro-GBAGBO youth groups acted in unity;
- v. acted as a vital intermediary between Gbagbo and the pro-GBAGBO youth;
- vi. organised the dissemination of instructions through various channels of communication;
- vii. mobilised the youth to commit violent acts;
- viii. contributed to the financing of the activities of the pro-GBAGBO youth;
- ix. played an essential role in the recruitment and enlistment of pro-GBAGBO youth into the FDS;
- x. provided support for the military training and arming of pro-GBAGBO youth;
- xi. contributed to the recruitment of pro-GBAGBO mercenaries;
- xii. supported and encouraged cooperation between the pro-GBAGBO youth, the militias and the FDS.

xiii. knew that the other members of the Inner Circle, including GBAGBO, who exerted authority and control over their loyalist forces, subscribed to the Common Plan;

xiv. knew the roles assigned to other co-perpetrators as part of the Common Plan and the means available to them for its implementation;

xv. held meetings with GBAGBO and other members of GBAGBO's Inner Circle to discuss the implementation of the Plan and coordinate its execution;

xvi. regularly toured Abidjan to hold meetings and rallies, oversee and direct the activities of the pro-GBAGBO youth and give them instructions;

xvii. was informed of the crimes committed by loyalist forces during the post-election violence;

xviii. publicly acknowledged the actions of the pro-GBAGBO youth, which he defended as legitimate, he commended the pro-GBAGBO youth on their good work and urged them to keep up the fight;

xix. acknowledged that his struggle could entail civilians deaths, which he described as "collateral damage";

xx. contributed to the recruitment, arming and financing of the pro-GBAGBO forces;

xxi. maintained contact with the pro-GBAGBO forces;

xxii. knew that as of 2002, pro-GBAGBO forces had committed crimes with the aim of maintaining GBAGBO in power;

xxiii. with respect to the 25-28 February incident in Yopougon,

xxiv. with respect to the 12 April incident in Yopougon.

(b) *Mens rea*

458. BLÉ GOUDÉ intended to bring about the objective elements of the crimes, or was aware that they would occur in the ordinary course of events. BLÉ GOUDÉ took part in conceiving and implementing the Common Plan. Given the nature of the Common Plan, it was his desire that the attack be directed against civilians targeted on political, ethnic, religious and national grounds. As the protagonist of the Common Plan and considering the influence and control which he wielded over loyalist forces, he was fully aware that the conception of this Plan and his contributions to it as well as the contributions of GBAGBO, other members of GBAGBO's Inner Circle and pro-GBAGBO forces would bring about the objective elements of the crimes charged. Furthermore, BLÉ GOUDÉ knew or intended his conduct to be part of a widespread and systematic attack against the civilian population pursuant to or in furtherance of the Common Plan that he shared with GBAGBO and the other members of GBAGBO's Inner Circle.

459. For the foregoing reasons, BLÉ GOUDÉ, as a key member of the Inner Circle, contributed to the Common Plan, which resulted in the crimes charged in the DCC.

6. BLÉ GOUDÉ's individual criminal responsibility under Article 25(3)(b)

(a) *Actus reus*

(i) Position of authority

460. BLÉ GOUDÉ was in a position of authority over the pro-GBAGBO youth. He was not in a same position of authority over other components of the pro-GBAGBO forces. Therefore, BLÉ GOUDÉ's criminal responsibility for ordering is limited to those crimes perpetrated by pro-GBAGBO youth.

461. BLÉ GOUDÉ was the leader of the pro-GBAGBO youth or at minimum the pro-GBAGBO youth regarded him as such. BLÉ GOUDÉ's authority over the pro-GBAGBO youth is demonstrated by the fact that he participated in the establishment of the structure in which the pro-GBAGBO youth were organized, he financed their activities, supported their military training and arming, and ensured their cohesive action. By galvanizing the pro-GBAGBO youth, BLÉ GOUDÉ ensured their loyalty to him and that they would follow his instructions. Moreover, BLÉ GOUDÉ was the essential intermediary between GBAGBO and the youth, and transmitted to them the instructions of GBAGBO and members of his Inner Circle. As a result, in the eyes of the youth, BLÉ GOUDÉ embodied the authority of GBAGBO and they felt obliged to comply with his instructions.

462. BLÉ GOUDÉ's authority over the pro-GBAGBO youth is further shown because the pro-GBAGBO youth in fact acted upon his instructions which contributed to the commission of the crimes charged.

(ii) BLÉ GOUDÉ instructed another person in any form

463. BLÉ GOUDÉ instructed or otherwise instigated the pro-GBAGBO forces to carry out certain actions, the execution of which contributed to the commission of the charged crimes. He did so in the following ways.

464. BLÉ GOUDÉ mobilized pro-GBAGBO youth for committing acts of violence against perceived Ouattara supporters with a view to keeping GBAGBO in power. He motivated them, prepared them to fight and directed their actions.

465. BLÉ GOUDÉ also gave concrete instructions to the pro-GBAGBO youth, the implementation of which contributed to the commission of crimes. He frequently appeared in the media or spoke before large numbers of pro-GBAGBO youth to give them orders (*mots d'ordre*). For instance, he called upon the pro-GBAGBO youth to set up roadblocks to monitor the area, identify all "foreigners" in their neighbourhood and to

denounce them. BLÉ GOUDÉ also asked the pro-GBAGBO forces generally to continue their fight for GBAGBO and to defend the people against the “rebels”.

466. Through the use of xenophobic rhetoric and hate messages, BLÉ GOUDÉ created an atmosphere of fear and an environment that was conducive to the commission of crimes against perceived Ouattara supporters. Among others, he accused perceived Ouattara supporters of committing acts of violence and planning genocide against Ivorians.

467. BLÉ GOUDÉ also prompted the commission of crimes by communicating to the pro-GBAGBO youth the decisions of GBAGBO and members of his Inner Circle. He further supported and encouraged the pro-GBAGBO youth to enrol into, and cooperate with the FDS.

468. BLÉ GOUDÉ further incited the pro-GBAGBO forces to commit the crimes charged by encouraging, condoning and legitimising their criminal conduct, and by congratulating them for their actions.

469. Moreover, in the context of the above, the fact that BLÉ GOUDÉ funded the activities of the pro-GBAGBO youth, supported their military training and arming, and contributed to the recruitment of pro-GBAGBO militias and mercenaries, also prompted them to commit crimes against perceived Ouattara supporters.

(iii) The order or acts of inducement or solicitation had a direct effect on the commission of the crime

470. BLÉ GOUDÉ provided *moral* assistance and support to the youth, the FDS, militia and mercenaries who directly perpetrated the crimes. His conduct had a direct impact on forming and reinforcing their determination to commit the charged crimes.

471. As mentioned above, pro-GBAGBO youth regarded BLÉ GOUDÉ as their unquestioned leader, and he spoke to them with the authority of GBAGBO and members of his Inner Circle and communicated their decisions to them. As a result, the youth felt



compelled to act upon the instructions that BLÉ GOUDÉ gave to them. Implementation of these instructions contributed to the pro-GBAGBO youth committing the charged crimes.

472. BLÉ GOUDÉ also mobilised pro-GBAGBO youth, and motivated and prepared them to fight and to commit acts of violence for the overall purpose of keeping GBAGBO in power. This ensured that many of the pro-GBAGBO youth also espoused the Common Plan and encouraged them to commit crimes.

473. Although BLÉ GOUDÉ was not in a position of authority over the FDS, militia or pro-GBAGBO mercenaries, his conduct still had some influence over them. In particular, his closeness to GBAGBO, his key role in GBAGBO's Inner Circle and his position as a Government Minister gave him access to the FDS leadership, to which he kept close ties, and permitted him to request the cooperation between the youth and the FDS. As a result, BLÉ GOUDÉ's hate speeches and his messages and advice to FDS officers encouraged the FDS to commit violent acts to keep GBAGBO in power.

474. Moreover, the fact that BLÉ GOUDÉ was part of the Common Plan and played a key role in implementing it encouraged other members of GBAGBO's Inner Circle, including FDS commanders, to also participate in the joint implementation of the Common Plan and the commission of the crimes. At the time of the commission of the crimes, the FDS was weakened and it could not have implemented the Common Plan on its own. Because BLÉ GOUDÉ added an essential component to the pro-GBAGBO forces, namely the pro-GBAGBO youth, this strengthened the determination of the FDS to engage in the joint venture that resulted in the commission of the charged crimes.

475. In addition, through systemic xenophobic hate speeches, BLÉ GOUDÉ created an atmosphere conducive to the commission of crimes. By so doing, he created an environment in which people were prepared to commit crimes or to tolerate the commission of crimes by others. It was an important factor contributing to the commission of the crimes by all components of the pro-GBAGBO forces.

476. Similarly, because BLÉ GOUDÉ encouraged, condoned and justified the criminal activities of pro-GBAGBO forces, and spoke with the authority of GBAGBO, this was an indication to all the pro-GBAGBO forces that they were free to act without fear of any form of accountability, which further emboldened them to engage in the conduct that led to or contributed to the commission of the crimes.

477. Finally, the fact that BLÉ GOUDÉ, under the authority of GBAGBO, provided training, weapons, financing and other material support to pro-GBAGBO youth and mercenaries also had the effect of encouraging them to commit crimes to implement the Common Plan.

(b) *Mens rea*

(i) BLÉ GOUDÉ's conduct was intentional

478. BLÉ GOUDÉ intended to instruct or instigate the pro-GBAGBO forces, in particular the pro-GBAGBO youth, to carry out certain actions in the execution of which the crimes charged were committed. BLÉ GOUDÉ's intent in relation to the above are demonstrated by the same facts that are listed immediately above at V.6(a), as well as on the fact that his instructions to the youth and his acts of mobilisation for violent acts were performed as, and were intended to be, part of the common effort to keep GBAGBO in power at all cost, including by attacking civilians.

(ii) BLÉ GOUDÉ was aware that the crimes will be committed in the ordinary course of events

479. BLÉ GOUDÉ was aware that crimes against civilians would be committed in the ordinary course of events as a consequence of his instructions or instigations, and he was aware that the civilians targeted would be those perceived to support Ouattara. This is demonstrated by the same facts enumerated immediately above under V.6(b)(i), and in addition, by:

i. the fact that his conduct stretched over several months and he was aware, at least as of 16 December 2010, of the consequences;

ii. he knew of the violent nature of the pro-GBAGBO youth and militias yet he exploited their allegiance with a view to committing violence against civilians perceived to support Ouattara, which he helped identify as targets.

7. BLÉ GOUDÉ's criminal responsibility under Article 25(3)(c)

(a) *Actus reus*

480. In the above section dealing with BLÉ GOUDÉ's responsibility under Article 25(3)(b), the Prosecution established that BLÉ GOUDÉ's conduct had a direct impact on forming and reinforcing the determination of the pro-GBAGBO forces to commit the crimes. All the same facts and arguments are equally relevant for Article 25(3)(c) liability, as they show how BLÉ GOUDÉ's contribution provided *moral* assistance to the direct perpetrators.

481. BLÉ GOUDÉ also provided *material* support to the direct perpetrators, or otherwise assisted them in carrying out the crimes charged.

482. BLÉ GOUDÉ contributed to the conception and implementation of the Common Plan. In addition, he contributed to the establishment and the management of a structure through which GBAGBO and members of his Inner Circle were able to implement the Common Plan.

483. BLÉ GOUDÉ was the link between GBAGBO and the pro-GBAGBO youth. In particular, he exercised a coordinating role of the activities of the pro-GBAGBO youth and ensured that these activities were consistent with the Common Plan.

484. BLÉ GOUDÉ mobilised the pro-GBAGBO youth and directed their actions, notably through his instructions to repress the march on the RTI and to take action against

perceived Ouattara supporters, in particular in Yopougon, the implementation of which led to their criminal activities.

485. BLÉ GOUDÉ's role included transmitting messages and instructions from GBABO and other members of his Inner Circle to the pro-GBAGBO forces, in particular to the youth. Implementation of these decisions resulted in the commission of the crimes charged.

486. BLÉ GOUDÉ ensured that there was cohesion among the pro-GBAGBO youth groups. He also promoted cooperation between the various components of the pro-GBAGBO forces, in particular between the youth and the FDS. This enabled the direct perpetrators to communicate and operate effectively.

487. By recruiting, training and supplying the pro-GBAGBO youth, militias and mercenaries, BLÉ GOUDÉ ensured that there was a sufficient number of direct perpetrators available to implement the Common Plan and to commit the charged crimes.

488. Further, by making a sufficient number of highly motivated and well financed, armed and trained youth available to cooperate with and support the operations of the FDS, BLÉ GOUDÉ provided support to the FDS for the commission of the crimes charged. Notably, the cooperation between the FDS and the youth and the coordination of their activities enabled the FDS to focus its limited resources on certain areas and activities.

489. Overall, BLÉ GOUDÉ's activities had the effect of strengthening the capability of the pro-GBAGBO forces to commit the crimes charged.

490. Finally, by addressing his hate speeches against perceived Ouattara supporters, BLÉ GOUDÉ identified them as the targets of the attacks of the pro-GBAGBO forces, which also amounts to a form of directing the activities of the direct perpetrators of the crimes.

(b) *Mens rea*

491. BLÉ GOUDÉ's activities, as outlined above, were intentional and performed for the purpose of facilitating the commission of the crimes carried out by the pro-GBAGBO forces. He performed these activities in pursuance of the Common Plan, with the knowledge that the Common Plan comprised an element of criminality and that crimes, including those of which he stands charged, would, in the ordinary course of events, ensue from the implementation of the Common Plan.

492. BLÉ GOUDÉ's intent and knowledge in relation to the above are demonstrated by, *inter alia*:

i. his role in the Inner Circle and his participation in the conception and implementation of the Common Plan to keep GBAGBO in power at all cost;

ii. the fact that he was involved in the coordination of efforts to implement the Common Plan, including his role in the creation of a structure tasked with implementing the Common Plan;

iii. the nature of his activities in relation to the mobilisation of the youth, in anticipation of the use of violence;

iv. the fact that he was engaged in preparatory activities in anticipation of the use of violence, namely the irregular recruitment, training and supplying of the pro-GBAGBO youth, militias and mercenaries;

v. his employment of a xenophobic rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-GBAGBO forces.

8. BLÉ GOUDÉ's criminal responsibility under Article 25(3)(d)

(a) *Actus reus*

(i) A group of persons acting with a common purpose committed crimes within the jurisdiction of the Court

493. The group of persons acting with a common purpose who committed the crimes acting with the common purpose is defined above in section V.4(a).

494. The group of persons acting with a common purpose included GBAGBO, members of his Inner Circle and BLÉ GOUDÉ. BLÉ GOUDÉ is responsible pursuant to Article 25(3)(d) for all crimes that are attributable to at least one of these persons under any mode of liability, as long as these persons acted in accordance with the common purpose.

495. GBAGBO is one of the persons acting with a common purpose to whom the crimes charged can be attributed. As a result, BLÉ GOUDÉ is also responsible for these same crimes, having provided an intentional contribution to the group of persons acting with a common purpose.

(ii) BLÉ GOUDÉ contributed to the commission of the crimes, in any way

496. BLÉ GOUDÉ contributed to the commission of the crimes charged through the entirety of his conduct set out in sections V.5.a, V.6.a and V.7.a above.

497. As discussed above, his conduct constitutes *moral and material* support or other assistance to the group of persons acting with a common purpose who committed the crimes charged. Therefore, BLÉ GOUDÉ's conduct discussed in the context of Articles 25(3)(b) and (c) equally applies under Article 25(3)(d).

498. In addition, BLÉ GOUDÉ contributed to the commission of the crimes by playing a central role in the conception of the common purpose of the group and by discussing with GBAGBO and other members of his Inner Circle a strategy to implement this common purpose.

499. Because the crimes charged were perpetrated by members of the pro-GBAGBO forces with a view to implementing the common purpose, its conception and coordinated implementation played a significant role in contributing to the commission of these crimes.

(b) *Mens rea*

(i) BLÉ GOUDÉ's contribution was intentional

500. BLÉ GOUDÉ's intent in relation to his contributions under Article 25(3)(d) can be inferred from the same facts and circumstances referred to in sections V.5.b, V.6.b and V.7.b.

(ii) BLÉ GOUDÉ contributed with the aim of furthering the group's criminal purpose or in the knowledge of the intention for the group to commit the crimes

501. BLÉ GOUDÉ carried out his contribution with the aim of furthering the criminal activities and purpose of the group pursuant to the common purpose, devised by himself, GBAGBO, and the Inner Circle. In the alternative, he contributed to the crimes in the knowledge of the intention of the group to commit the crimes. This aim and knowledge is demonstrated by the same factors set out in section V.8.b.i directly above.

9. Persecutory intent

502. For the crime of persecution, the persecutory act must be committed "against any identifiable group or collectivity on political, racial, national, ethnic, cultural religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law". According to *ad hoc* Tribunal jurisprudence, discriminatory intent can be inferred, for instance, from the accused's wilful or knowing participation in a common criminal design or system that discriminates on prohibited grounds. It can also be inferred from the systematic nature of the crimes committed against the targeted group, and the accused's general attitude as demonstrated by his behaviour.

(a) *GBAGBO had persecutory intent*

503. The attack – and particularly the four incidents with which GBAGBO is charged – was perpetrated in a discriminatory manner against perceived Ouattara supporters. These civilians included two broad categories: first, actual and perceived political opposition activists and sympathisers, and second, civilians considered to support the opposition due to their Muslim faith or Dioula ethnicity, and/or their provenance from northern Côte d'Ivoire or other West African countries, such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent. The pro-GBAGBO forces targeted participants at pro-Ouattara political demonstrations, as well as the inhabitants of districts perceived as pro-Ouattara, such as Abobo and the Yopougon neighbourhoods of Doukouré, Lem and Mami Faitai.

504. GBAGBO's persecutory intent is abundantly demonstrated by his joint conception and implementation of the Common Plan to keep himself in power by all means, including by committing the crimes charged against perceived Ouattara supporters. This violent suppression was an intrinsic part of the Common Plan.

505. GBAGBO's discriminatory intent is furthermore demonstrated, *inter alia*, by:

- i. the pro-GBAGBO media's campaign of inciting hatred and violence against those perceived as GBAGBO's political adversaries;

- ii. GBAGBO's use of xenophobic political rhetoric, which drew on the concept of "*Ivoirité*" and identified persons of Muslim faith, Dioula ethnicity and/or provenance from northern Côte d'Ivoire or other West African countries as being Ouattara supporters;

- iii. GBAGBO's use of the armed forces to repress the activities of his political opposition prior to and during the post-election violence;



iv. GBAGBO's incitement, directly and through BLÉ GOUDÉ, of the pro-GBAGBO youth against his perceived political adversaries;

v. the pro-GBAGBO forces' systematic targeting of opposition activists and sympathisers, and civilians perceived as supporting the opposition;

vi. the pro-GBAGBO forces' discriminatory means of attack, including the systematic selection of victims through identity checks and the targeting of particular neighbourhoods and religious institutions; and

vii. GBAGBO's failure throughout the post-election violence to denounce the ongoing attacks committed against his perceived adversaries, or to ensure that the crimes were appropriately investigated and the perpetrators punished.

(b) *BLE GOUDÉ had persecutory intent*

506. The attack – and particularly the five incidents with which BLÉ GOUDÉ is charged – was perpetrated in a discriminatory manner against perceived Ouattara supporters. These civilians included two broad categories: first, actual and perceived political opposition activists and sympathisers, and second, civilians considered to support the opposition due to their Muslim faith or Dioula ethnicity, and/or their provenance from northern Côte d'Ivoire or other West African countries such as Mali, Burkina Faso, Senegal or Nigeria, as well as Ivoirians of West African descent. The pro-GBAGBO forces targeted participants at pro-Ouattara political demonstrations, as well as the inhabitants of districts perceived as pro-Ouattara, such as Abobo and the Yopougon neighbourhoods of Doukouré, Lem and Mami Fatai.

507. BLÉ GOUDÉ's persecutory intent is demonstrated by his joint conception and implementation of the Common Plan to keep GBAGBO in power by all means, including by committing the crimes charged. The violent suppression of perceived Ouattara supporters was an intrinsic part of the Common Plan.

508. BLÉ GOUDÉ's discriminatory intent is furthermore demonstrated, *inter alia*, by:

i. BLÉ GOUDÉ's use of xenophobic political rhetoric, which drew on the concept of "*Ivoirité*" and identified persons of Muslim faith, Dioula ethnicity and/or provenance from northern Côte d'Ivoire or other West African countries as being Ouattara supporters;

ii. BLÉ GOUDÉ's leadership, recruitment and coordination of the *Galaxie Patriotique*, a proliferation of pro-GBAGBO youth groups and militias whose common objective was to keep GBAGBO in power, and who employed violence against opposition activists or perceived sympathisers to further that objective;

iii. BLÉ GOUDÉ's instructions to and incitement of the pro-GBAGBO youth to commit criminal acts;

iv. the pro-GBAGBO forces' – including the *Galaxie Patriotique's* – systematic targeting of opposition activists and sympathisers, and civilians perceived as supporting the opposition;

v. the pro-GBAGBO forces' – including the *Galaxie Patriotique's* – discriminatory means of attack, including the systematic selection of victims through identity checks and the targeting of particular neighbourhoods and religious institutions; and

vi. BLÉ GOUDÉ's failure throughout the post-election violence to denounce the ongoing attacks committed against GBAGBO's perceived adversaries, especially those committed by *Galaxie Patriotique* members.

10. Article 28

509. The Prosecution pleads GBAGBO's command or superior responsibility as an alternative mode of liability, available to the Chamber should it come to the conclusion that GBAGBO is not responsible under any of the article 25(3) forms of liability. The four incidents for which GBAGBO bears criminal responsibility were committed by pro-GBAGBO forces over whom GBAGBO exercised effective command, authority and control. Although GBAGBO knew that the pro-GBAGBO forces were about to commit crimes against the civilian population, he failed to take steps to prevent the commission of these crimes. Furthermore, in relation to the incidents of 16-19 December 2010, 3 March 2011 and 17 March 2011, GBAGBO failed to punish the perpetrators or otherwise to submit the matters for investigation.

510. According to the jurisprudence of the Court and a plain reading of the Statute, the elements of article 28 are the following:

- a. the accused must be a military commander or person effectively acting as a military commander (in the case of article 28(a)), or a superior (in the case of article 28(b));
- b. the crimes must be committed by forces under the accused's effective command and control, or effective authority and control (in the case of article 28(a)), or by subordinates under the accused's effective authority and control (in the case of article 28(b));
- c. the accused must have known (in the case of both article 28(a) and (b)), or owing to the circumstances at the time, should have known (in the case of article 28(a)), or consciously disregarded information which clearly indicated (in the case of article 28(b)), that the forces or subordinates were committing or about to commit such crimes;
- d. the crimes must have concerned activities that were within the effective responsibility and control of the superior (in the case of article 28(b) only); and

- e. the accused must have failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution (in the case of both article 28(a) and (b)).

511. The Prosecution addresses these five elements in turn, as well as the potentially additional element of causation, namely that the crimes occurred “as a result of” GBAGBO’s failure to exercise control properly over his forces.

(a) *GBAGBO was the military commander or superior*

512. Article 28(a) covers military commanders or persons effectively acting as such. The latter category includes superiors with authority and control over regular government forces such as armed police units, or irregular forces such as rebel groups, armed resistance movements and militias that follow a structure of military hierarchy or a chain of command. Pre-Trial Chamber II in *Bemba* found that this provision also captures situations where the superior does not exclusively perform military functions and applies to a head of state who is *de jure* the commander in chief of the armed forces. Article 28(b) is worded to encompass those superiors who are part of a superior-subordinate relationship with the direct perpetrators but are *not* covered by article 28(a).

513. From October 2000 until 11 April 2011, GBAGBO was a military commander or a person effectively acting as a military commander, in relation to the FDS, mercenaries, and the pro-GBAGBO youth and militias integrated into the FDS. Furthermore, GBAGBO was a superior in relation to the pro-GBAGBO youth, militias and mercenaries not integrated into the FDS, but which followed a hierarchal structure and chain of command. GBAGBO also occupied a superior position among the members of his Inner Circle and his government, through whom he exercised his authority.

(b) *Pro-GBAGBO forces were under GBAGBO’s control*

514. Pre-Trial Chamber II in the *Bemba* case pointed out that “‘effective control’ is generally a manifestation of a superior-subordinate relationship between the suspect and

the forces or subordinates in a *de jure* or *de facto* hierarchical relationship". Drawing on the jurisprudence of the *ad hoc* Tribunals, it explained effective control as "'the material ability [or power] to prevent and punish' the commission of offences, and, as such, failure to exercise such abilities of control gives rise to criminal responsibility if other requirements are met." The Pre-Trial Chamber went on to list various indicia of such power, including the suspect's official position; his power to issue or give orders and capacity to ensure compliance therewith; his capacity to re-subordinate units or make changes to command structure; the power to promote, replace, remove or discipline any member of the forces; and the authority to send forces where hostilities take place and withdraw them at any given moment.

515. GBAGBO exercised effective command, authority and control – both directly and through his Inner Circle – over the FDS, mercenaries, pro-GBAGBO youth and militia members throughout the charging period. Furthermore, GBAGBO had created a structure which enabled him to implement the Common Plan. From October 2000 to 11 April 2011, the *de jure* complete authority which GBAGBO exercised, reinforced by his *de facto* control over the situation, enabled him to prevent the commission of crimes had he chosen to do so, by denouncing crimes and taking necessary and reasonable measures to punish crimes perpetrated by his subordinates, thereby preventing the commission of further crimes. GBAGBO also had the power to refer the crimes in question for investigation and prosecution, and to punish the perpetrators. The following factors serve as indicia of GBAGBO's authority and control over perpetrator groups:

- a. although the election results were challenged, GBAGBO continued exercising the duty of President of Côte d'Ivoire – as well as his prerogatives over the Government of Côte d'Ivoire as provided for in the Constitution – and the duty of Commander-in-Chief of the armed forces, and was recognised as such by pro-GBAGBO forces;
- b. the FDS was composed of well-trained officers and had an operational command structure headed by GBAGBO;

- c. the mercenaries who were well-organised and trained, jointly conducted their operations with the FDS, under the FDS's direction;
- d. GBAGBO could issue orders to Government officials and FDS commanders, and could even dictate their line of conduct;
- e. GBAGBO could appoint, promote, demote or dismiss officials in the Government or senior commanders in the FDS, even at the very top of the hierarchy;
- f. GBAGBO could ensure that his subordinates executed his orders, by so replacing or dismissing any member of the Government or the FDS;
- g. through senior FDS commanders, BLÉ GOUDÉ and other leaders of the pro-GBAGBO youth and militias, GBAGBO could dictate the line of conduct to be adopted by the members of these movements and the mercenaries;
- h. the pro-GBAGBO youth groups and militias that made up the *Galaxie Patriotique* had a hierarchical and effective structure;
- i. GBAGBO could order the recruitment of FDS members and the integration of pro-GBAGBO youth, militia members and mercenaries into the FDS;
- j. GBAGBO could arm and finance the forces loyal to him;
- k. GBAGBO could order the deployment and withdrawal of FDS units from certain sectors; and
- l. GBAGBO could ensure the effective conduct of appropriate investigations and prosecution of the crimes allegedly conducted by pro-GBAGBO forces.

(c) *Knowledge*

516. The *mens rea* element of article 28(a)(i) requires that the accused knew (actual knowledge) or should have known that his subordinates were about to engage or were engaging or had engaged in conduct constituting crimes embodied in the Statute. According to Pre-Trial Chamber II in *Bemba*, actual knowledge may be established through various indicia, including the number of illegal acts; their scope; whether their occurrence

was widespread; the type and number of forces involved; the scope and nature of the superior's position and responsibility in the hierarchal structure. The 'should have known' standard "requires more of an active duty on the part of the superior to take the necessary measures to secure knowledge of the conduct of his subordinates", and negligence on the superior's part in failing to acquire that knowledge. Possible indicia include the same indicia of actual knowledge, as well as the availability of general information to put the superior on notice of crimes committed by subordinates and sufficient to justify further inquiry or investigation. The *mens rea* element of article 28(b)(i) requires that the accused either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit a crime.

517. GBAGBO had actual knowledge that the pro-GBAGBO forces were about to engage in, were engaging in and had engaged in crimes against the civilian population. Together with BLÉ GOUDÉ and his Inner Circle, GBAGBO conceived and implemented the Common Plan to keep himself in power by all necessary means, including the commission of crimes. The following circumstances are also indicia of GBAGBO's actual knowledge: that numerous criminal acts were committed against the civilian population between 27 November 2010 and 12 April 2011; that the pro-GBAGBO forces were the perpetrators of these acts; that GBAGBO exercised a high level of control over the same pro-GBAGBO forces; and that GBAGBO held frequent meetings with his close associates or subordinates, including FDS commanders, to be briefed on the situation on the ground. In the alternative, these indicia demonstrate that GBAGBO should have known, or consciously disregarded information clearly indicating, the commission of crimes.

(d) *Activities within GBAGBO's responsibility and control (article 28(b) only)*

518. The purpose of this element – unique to article 28(b) responsibility – is to restrict the liability of a civilian superior to only those activities that were within his or her effective responsibility and control. In fact, this element would appear to add little beyond the requirement of a superior-subordinate relationship where the superior has effective control over the subordinate, already expressed in article 28(b).

519. The Prosecution recalls its position on GBAGBO's superior position, his high level of control over the pro-GBAGBO forces, and his design and implementation of the common plan. It follows that the crimes concerned activities that were within GBAGBO's responsibility and control, occurring as they did in pursuance of the common plan.

(e) *Failure to take all necessary and reasonable measures*

520. For this final element, it is necessary to prove that the superior failed to fulfil one of three duties: to prevent crimes (before their commission), to repress crimes (during and after their commission), or to submit the matter to the competent authorities for investigation and prosecution (after the commission of crimes). What constitutes 'necessary and reasonable measures' will depend on the superior's degree of effective control over his subordinates at the time his duty arises, requiring an assessment of his *de jure* power and his *de facto* ability to take such measures.

521. Despite his strong *de jure* power and his *de facto* ability to prevent or halt the commission of crimes, GBAGBO failed to take all necessary and reasonable measures within his power to prevent or to repress the crimes committed against the civilian population. He furthermore failed to ensure that the crimes were adequately investigated and prosecuted.

(f) *The crimes were a result of GBAGBO's failure to exercise control over the pro-GBAGBO forces*

522. Article 28(a) establishes criminal responsibility of commanders for crimes committed by their subordinates "as a result of his or her failure to exercise control properly over [his or her] forces". In the *Bemba* case, the Pre-Trial Chamber held that – with respect only to the duty to prevent the commission of future crimes – article 28(a) includes an "element of causality" which requires proof that "the commander's failure to exercise his duty to prevent crimes increased the risk" of the commission of the crimes charged. However, it is the Prosecution's position that this is not the case: article 28(a) does not create an additional element for the mode of liability under article 28. The link between the commander's failure and the crimes committed is already addressed by the



element of effective control, that is, the commander's ability to control the actions of his subordinates. An additional causality element would create a double standard between failure to prevent crime and failure to punish crimes, because any "element of causality" cannot logically apply to the latter. To the contrary, the language of article 28 means that *criminal responsibility* under the Statute arises "as a result of" the accused's failure to exercise effective control (his material ability to prevent or punish), and not that the *crime* itself is a result thereof.

523. Nevertheless, should a low causal element ("increased the risk") apply to article 28, it is the Prosecution's position that GBAGBO's omissions increased the risk that his forces would commit crimes. As argued above, GBAGBO exercised a high degree of control over the pro-GBAGBO forces. Furthermore, the very essence of the common plan was to maintain GBAGBO as President by all means. It follows that GBAGBO had the material ability to prevent each of the four incidents charged against him, had he chosen to take appropriate action. These crimes would not have been committed if GBAGBO had properly exercised his control over the pro-GBAGBO forces to prevent them.