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**TRIAL CHAMBER I**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Geoffrey Henderson

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

***IN THE CASE OF***

***THE PROSECUTOR***

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

**Public**

**Public redacted version of “Annex 1 - Prosecution’s Consolidated Response to the Defence No Case to Answer”, 10 September 2018, ICC-02/11-01/15-1207-Conf-Anx1**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

**Counsel for Mr Laurent Gbagbo**

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

**Counsel for Mr Charles Blé Goudé**

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

**Legal Representatives of the Victims**

Ms Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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## I. INTRODUCTION

1. In order for Confidential Annex A to stand alone as one single document, the following introduction simply rehearses the description of the Structure of the Prosecution's Response as outline in the cover filing.

### A. Structure of the Prosecution's response

2. The Prosecution's response is divided into seven sections.

#### *(a) Section I- Introduction*

3. Section I constitutes the introduction to the Prosecution's response.

#### *(b) Section II – Standards to be applied in deciding a no case to answer motion and approach to evidence*

4. In Section II, the Prosecution addresses first the standards to be applied in deciding a no case to answer motion and second, the approach to the assessment of the evidence. In this second part, the Prosecution argues that the Chamber should conduct a holistic evaluation of the Prosecution's evidence. The Prosecution also reviews the principles to be applied when assessing the oral testimony of witnesses, including the evidence of insider witnesses. The assessment of other non-oral evidence, such as documents and the submission regime are also discussed. The assessment of hearsay evidence, including the reliability of documents from the United Nations Operations in Côte d'Ivoire is analysed, as are rule 63(4) of the Rules and the notion of corroboration. The use and assessment of circumstantial evidence are also discussed. Finally, the Prosecution addresses two discreet topics related to the assessment of a specific category of documents and the evidence of an insider witness.

*(c) Section III – Contextual elements of the crimes*

5. In section III, the Prosecution first analyses the law applicable to the contextual elements of crimes against humanity, and further explains how each of these elements may be proved. Second, the Prosecution set out its case against each of the contextual elements of crimes against humanity. The Prosecution informs the Chamber that it has refined the number of incidents on which it relies for the purpose of demonstrating the commission of multiple article 7(1) acts.
6. Essentially, the Prosecution demonstrates how the evidence on record establishes that between 27 November 2010 and on or around 12 April 2011 in Abidjan, the pro-Gbagbo forces carried out a widespread and systematic attack, directed against a civilian population perceived as supporting Ouattara, which included a series of multiple acts of violence, including killing, attempted killing, rapes and severe injuries against civilians perceived to be Ouattara supporters.

*(d) Section IV – The charged crimes and victims*

7. In Section IV, the Prosecution demonstrates that the evidence on record establishes, to the requisite standard of the no case to answer, each of the material elements of the crimes for the five charged incidents.
8. The Prosecution recalls that Mr Gbagbo is charged, under article 25(3)(a), with crimes against humanity – murder, other inhumane acts or attempted murder, and persecution – arising out of the 16 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents; and Mr Blé Goudé with crimes against humanity – murder, other inhumane acts or attempted murder, and persecution – arising out of the 25 February 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 12 April 2011 incident.

9. For each incident, the Prosecution's presentation is driven by the material elements of the crimes. For the narrative of the events as they unfolded during the post-election crisis, the Prosecution refers the Chamber to its Trial Brief submitted on 19 March 2018.
10. For all five charged incidents, the Prosecution first describes the law applicable to each of the material elements of the crimes charged. Second, the Prosecution sets out its case against each of the material elements of the crimes and where necessary, responds to specific Defence challenges to the Prosecution's case. Third, the Prosecution addresses more specifically arguments of the Accused. However, not all arguments by Mr Gbagbo and Mr Blé Goudé are addressed in the Prosecution's response since their relevance is of lesser importance in light of the requisite standard to be applied at this stage of the proceedings. Consequently, any unchallenged Defence should not be viewed as a concession on the part of the Prosecution.

*(e) Section V – Prosecution's case under article 25(3)(a)*

11. In Section V, the Prosecution first sets out the law under article 25(3)(a) of the Statute.
12. Second, the Prosecution sets out its case against each Accused under article 25(3)(a), in summary form. The Prosecution argues that the evidence presented shows that a plan or agreement existed between Mr Gbagbo and members of his Inner Circle, which included Mr Blé Goudé, to maintain Mr Gbagbo in power by all means, including by committing the crimes charged. Further to that, by 27 November 2010, the implementation of the Common Plan had evolved to include a State or organisational policy to launch a widespread and systematic attack against civilians perceived to support Alassane Ouattara. For a more detailed elaboration of its case under article 25(3)(a), the Prosecution again refers the Chamber to its Trial Brief.

13. Third, the Prosecution addresses Mr Gbagbo's arguments, as set out in Annex 5 of the Gbagbo Motion, related to the individual criminal responsibility of the Accused Mr Gbagbo under article 25(3)(a), and Mr Blé Goudé's broad arguments related to the Common Plan/Policy (insofar as these are not addressed in Section III of this Response (Crimes Against Humanity), and his responsibility under article 25(3)(a).
14. The Prosecution also addresses in Section V, the Defence arguments related to the Prosecution allegation that Mr Gbagbo (i) failed to take the measures within his power to prevent or halt the commission of these crimes during the post-election crisis or to punish perpetrators; and (ii) failed to refer the matter to the competent authorities for investigation and prosecution.
15. Last, the Prosecution addresses Mr Blé Goudé's arguments related to his individual criminal responsibility under article 25(3)(a).

*(f) Section VI - Prosecution's case under article 25(3)(b)(c) and (d)*

16. This section addresses the three remaining modes of responsibility under article 25(3). As such, it encompasses the Prosecution's response to the broad arguments made by Mr Gbagbo in his motion at Annex 5, paragraphs 1-8, 589-599 and Mr Blé Goudé in his motion at paragraphs 502-508.
17. As in Section V, the Prosecution first sets out the law on individual criminal responsibility under each respective mode before setting out its case against the Accused in summary form.
18. The Prosecution submits that there is – at minimum - sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict Mr Gbagbo of all the crimes charged based on articles 25(3)(b) or (d) as a mode of liability, and Mr Blé Goudé of all of the crimes charged based on articles 25(3)(b), (c) or (d) as a mode of liability.

19. For the avoidance of any doubt, Mr Gbagbo is charged, under articles 25(3)(b) and (d), with crimes against humanity - murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.
20. Mr Blé Goudé is charged, under articles 25(3)(c) and (d), with crimes against humanity – murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 25-28 February 2011, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.
21. Mr Blé Goudé is also charged, under article 25(3)(b), with crimes against humanity – murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 25-28 February 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.
22. Throughout the process of responding to Mr Gbagbo and Mr Blé Goudé's motions, the Prosecution has re-evaluated its evidence with a critical eye with the goal of ensuring the fairness and efficiency of proceedings. In response to Mr Blé Goudé's arguments on the nexus between Mr Blé Goudé and the 3 March and 17 March 2011 incidents, the Prosecution does not oppose the second ground of relief Mr Blé Goudé requests, specifically, the dismissal of the charges against him related to the third and fourth incidents. It is the Prosecution's hope that such relief will assist in expediting the proceedings going forward.
23. In the event this relief is granted, the Prosecution would like to remind the Chamber that there would be no substantive change in the crimes or modes of liability facing Mr Blé Goudé for the crimes of murder, rape, other inhumane acts (or attempted murder) and persecution committed in the context of the incidents of 16 December 2010, 25-28 February 2011, and 12 April 2011.

(g) *Section VII- Prosecution's case under article 28*

24. As with the other modes of liability, the Prosecution first sets out the law under article 28 of the Statute before setting out its case against the Accused all the while responding to some of the Defence challenges as set in their respective no case to answer motions.
25. In this last Section, the Prosecution demonstrates how Mr Gbagbo failed, as a superior, to exercise control properly over his subordinates through his failure(s) to prevent and/or to repress the charged crimes, or to submit them to the competent authorities for investigation and prosecution.
26. The Prosecution also demonstrates how, by virtue of his position and his acts, Mr Gbagbo was a superior, had control over his subordinates and that, despite having knowledge of crimes committed by his subordinates, he systematically failed to take necessary and reasonable measures to prevent or repress the commission of these crimes.

## **II. STANDARD ON NO CASE TO ANSWER AND APPROACH TO EVIDENCE**

### **A. The standards to be applied in deciding a no case to answer motion**

27. Before the Defence filed their respective no case to answer motions and following a request of the Prosecution, the Chamber declined to provide guidance to the Parties as to the standards it would apply to rule on the Defence motions.
28. There is no provision in the Court's legal texts setting out the applicable legal standards to a no case to answer procedure. The *Ruto* and *Sang* Trial Chamber is the only Chamber to have developed legal standards to be applied to such motions. The *Ntaganda* Trial Chamber declined to entertain a no case to answer based on its discretionary powers. Following an appeal by the Defence, the Appeals Chamber recognised the discretionary power of a Trial Chamber to



conduct (or decline to conduct) a no case to answer but did not address the applicable legal standard for no case to answer determinations. Recently, the *Ongwen* Trial Chamber also declined to hear a no case to answer motion. The Prosecution notes that in a recent dissenting opinion related to a request of Mr Gbagbo seeking leave to appeal the submission of documents, Judge Henderson did refer to the applicable test as “whether there is *enough* evidence at this stage of the proceedings that *could* support a conviction”.

29. The *Ruto* Trial Chamber, after an in-depth review of national and international practice, essentially adopted the practice as developed and codified by rule 98bis of the *ad hoc* Tribunals.

30. The Prosecution submits that there are no compelling reasons warranting a departure from the internationally recognised standards consistently applied for the last 20 years before the *ad hoc* Tribunals and adopted in the *Ruto* case. Consequently, the question to be resolved at this stage of the proceedings is “whether there is evidence on which a reasonable Chamber *could* convict”.

# 1. The purpose of no case to answer motions

31. As stated by the *Ruto* Trial Chamber:

“The primary rationale underpinning the hearing of a 'no case to answer' motion - or, in effect, a motion for a judgment of (partial) acquittal - is the principle that an accused should not be called upon to answer a charge when the evidence presented by the Prosecution is *substantively insufficient* to engage the need for the defence to mount a defence case.”

The *Ruto* Chamber further clarified that the purpose is:

“to ascertain whether the Prosecution has lead [sic] *sufficient* evidence to necessitate a defence case, failing which the accused

is to be acquitted on one or more of the counts before commencing that stage of the trial.”

32. The Appeals Chamber in the *Ntaganda* case noted the purpose of a no case to answer motion by referring to the ICTY decision in *Sturgar* which affirmed that such a motion protected “the right of an accused not to be called on to answer a charge unless there is *credible evidence* of his implication in the offence with which he is charged”. In a decision delivered a few days earlier in the *Milošević* case, the rational was defined as follows: “an accused charged with a crime should not be called upon to answer that charge if, at the end of the prosecution case, there is *insufficient* evidence on which a jury acting reasonably could convict him.”
33. The Prosecution submits that independently of the language retained to describe the purpose of a no case to answer motion, what matters is the applicable standard when assessing the evidence and the scope of the review to be conducted by the trier of facts — Trial Chambers.

## 2. The assessment to be conducted

34. In its review of a no case to answer motion, the Chamber is to conduct only a *prima facie* assessment of the evidence. For this purpose, it must take the evidence “at its highest” — in the sense that it should not engage in “exhaustive questions of credibility or reliability” — and assume that the evidence is entitled to credence for the matters asserted unless it is “incapable of belief on any reasonable view”. This limited assessment of the credibility and reliability of the evidence is consistent with the jurisprudence of the ICTY, endorsed by the Appeals Chamber of this Court, that the accused must not answer a charge unless there is *credible evidence* of his implication in the offence, which at this stage of the trial proceedings should be understood to mean, evidence that is reasonably capable of belief.

35. This is also consistent with the limited scope of a no case to answer procedure, which is concerned with what a reasonable Trial Chamber *could* conclude from the evidence rather than the particular appreciation of *this* Chamber. Whether a particular testimony or item of evidence is incapable of belief on any reasonable view — such that it may be rejected from consideration at this stage — must be assessed on a case-by-case basis.
36. Since the threshold assessment of the evidence at the no case to answer stage is limited in this way, it necessarily follows that the Chamber should not enter at this stage into detailed assessments of the credibility or reliability of evidence which otherwise form part of its final deliberations at the conclusion of the trial.
37. This is not because Defence evidence may alter the balance of the Trial Chamber’s assessment, although this is possible, but because the assessment of the evidence at this stage must remain fundamentally distinct from the ultimate question of whether this Chamber finds that the guilt or innocence of the Accused is established beyond reasonable doubt. Nor does it necessarily follow that evidence which might ultimately be deemed not to meet the admissibility criteria, at the end of trial, is “incapable of belief on any reasonable view” at the half-time stage. For the reasons further developed in Section II.B below, the limited assessment of the evidence at the case stage is also perfectly compatible with the submission regime adopted in this case and as upheld by the Appeals Chamber in the *Bemba et al.* case.
38. In sum, in its assessment of the evidence, the Chamber is required to forecast the findings that *could* reasonably be made on the evidence received by *this* point in the proceedings. This does *not* mean that the Chamber is requested to pre-judge its own final analysis on guilt or innocence. Judge Herrera-Carbuccia, in her dissenting opinion in the decision terminating the proceeding in *Ruto*, warned against the risk of applying an excessively stringent approach to the assessment of the credibility and reliability of the evidence on the integrity of the

proceedings. In fact, she warned against “the implications that such high standard would have on the impartiality of the judges, if and when the no case to answer findings would be reversed in appeal and referred back to the Trial Chamber.”

39. Rather, at this stage, it must only consider *objectively* whether *any* reasonable Trial Chamber *could* convict on the basis of the evidence submitted. The *subjective* analysis — whether the Chamber *itself* is satisfied beyond reasonable doubt — will come later. The distinction between these concepts is inherent in the fact that “two judges, both acting reasonably, can come to different conclusions on the basis of the same evidence, both of which are reasonable”.

40. The Prosecution elaborates further in Section II.B below, the approach that should be followed by the Chamber in assessing the totality of the evidence.

(a) *The exceptional circumstances that led the majority of the Trial Chamber in the Ruto case to engage in a qualitative assessment of the evidence*

41. Although the *Ruto* Trial Chamber adopted the standards described above, it nevertheless, by majority, engaged in a qualitative assessment of the evidence to decide the no case to answer motions of the Defence. However, one cannot ignore the exceptional circumstances of the *Ruto* case, including the remedy ultimately ordered in that case. It is important to recall that six insider witnesses recanted the content of their prior recorded testimony. They were declared hostile by the Trial Chamber and cross-examined by the Prosecution on the content of their prior recorded testimony. Before the close of its case, the Prosecution sought, and was granted, the admission into evidence, for the truth of their content of the prior recorded testimony of five of these six witnesses. On appeal, the Appeals Chamber’s reversed the Trial Chamber’s decision and the prior recorded testimony was ultimately excluded from the court record.

42. It is in that context, that the *Ruto* Trial Chamber declared in its decision on the no case to answer motion that the Prosecution's case was on the "brink of breaking down":

"[I]f the entirety of the Prosecution's case hinges on the testimony of one witness, where it initially intended to rely on a number of witnesses, it can certainly be argued that the case teeters on the brink of breaking down. In such circumstances, the question as to whether the one key witness provides a credible account becomes a central issue in determining whether or not there is any point in continuing the trial proceedings".

43. The exceptional circumstances are further epitomised by the remedy ordered by the Chamber. The *Ruto* Trial Chamber did not enter an acquittal, as should normally be the rule if the evidence on record does not meet the necessary threshold, but instead declared a mistrial due to a "troubling incidence of witness interference and intolerable political meddling that was reasonably likely to intimidate witnesses".

44. As the presentation of the evidence in this response demonstrates, the exceptional circumstances of the *Ruto* case are not applicable here. The Chamber should therefore reserve its qualitative assessment of the evidence for its article 74 deliberations and final judgement.

### 3. The scope of the evidence to be considered

45. For the purpose of its assessment, the Chamber is to consider only the evidence that has been submitted in the record at the close of the Prosecution's case. The evidence submitted on the record of the case includes the testimony of many witnesses (heard *viva voce* and by video-link), the prior recorded testimony of

witnesses, documentary evidence such as reports from many different sources and a large number of audio-video material. Conversely, evidence that has been discarded or that has not been submitted on the record should not be considered by the Trial Chamber.

46. The Prosecution notes that Mr Gbagbo relies on material disclosed but which has not been submitted on the record of the case. By way of example, Mr Gbagbo argues that BASA Witnesses P-0164, P-0239, and P-0226 are not credible because they were spies and saboteurs from the Golf Hotel that infiltrated the FDS. Beyond the fact that spies and saboteurs *can* be credible, in support of his allegation, Mr Gbagbo cites the withdrawn statement of Witness P-0234, which is not in evidence. Another striking example is Mr Gbagbo's use of a Prosecution's report on the *commando invisible* provided to Pre-Trial Chamber I as an annex to the submission of the amended document containing the charges filed in January 2014. This report was neither discussed at trial nor submitted in the case record. But more importantly, the underlying sources of the report are not in evidence. To constitute evidence, the underlying witnesses would have had to testify before *this Chamber* or the documents referred to in the report would have had to be *submitted* in the record.
47. The Defence cannot rely on such material at this stage of the proceedings, not only because the underlying evidence was not discussed before the Chamber but also because allowing the Defence to "present" such material at this stage would amount to presenting at least elements of a defence case which is contrary to the very purpose of a no case to answer. Consequently, any material referred to by the Defence in its no case to answer motion which has not been submitted in the record has to be discarded by the Chamber.

4. The legal element of the counts and alternative modes of individual criminal responsibility

48. Based on the record before it, the Chamber shall ascertain whether there is evidence that *could* lead to a conviction on each of the legal elements of the counts and modes of individual criminal responsibility as charged. In order to dispel any ambiguity, in the present case, the terms “count” or “charge” are synonymous. Pre-Trial Chamber I itself used that terminology when it confirmed four “counts” of crimes against humanity of murder, rape, other inhumane acts or attempted murder and persecution committed over four incidents in the case against Mr Gbagbo and five incidents against Mr Blé Goudé.

49. The Trial Chamber shall consider each of these counts separately. The *Ruto* Trial Chamber also held that a Chamber need not consider each individual incident pleaded within a count since evidence supporting any one of the incidents, or criminal acts committed in the context of such incident, is sufficient to defeat a no case to answer motion.

50. As regards alternative modes of individual criminal responsibility, once the Chamber is satisfied “that there is evidence which could support any one pleaded mode of liability, in respect of each count, that aspect of the required elements would be satisfied and there is no need to consider other modes of liability.” Therefore, the Trial Chamber has to be satisfied that the test is met “in respect of one mode of liability, as pleaded or for which a Regulation 55 of the Regulations notice has been issued”. In its recent decision rejecting the submission of a no case to answer motion, the *Ongwen* Trial Chamber adopted the same approach, when it stated that even if Mr Ongwen could convince the Chamber that evidence was lacking of his planning of the Pajule attack, “this would not meaningfully affect the scope of the trial. Mr Ongwen is charged with attacking Pajule under several alternative modes of liability not all of which necessarily require him to be involved in a common plan or be in a position of authority. In other words, the

Defence's proposed arguments in relation to Pajule would not lead to removing any of the charges related to this alleged incident".

51. In its Second Order, this Chamber noted its obligation to ensure the expeditiousness of the proceedings by taking procedural steps that may, *inter alia*, "contribute to a shorter and more focused trial... [and] the proper administration of justice and the rights of the accused".

52. Considering the specific circumstances of this case, including the counts as articulated — and irrespective of the approach laid out in the *Ruto* case — the Chamber could assess whether the test is met not only in relation to each specific count, but also for acts committed in the context of each particular incident. For instance, the Chamber may separately assess whether for the count of murder, a reasonable Trial Chamber *could* convict for the underlying acts of murder committed in the context of the incidents of 16 December 2010, 3 and 17 March 2011, and of 12 April 2011. If the Chamber finds that the test is met for murder committed in the context of some, but not of other incidents, Mr Gbagbo would not have to respond to the specific portions of the charges relevant to the latter incidents.

53. The same approach could be taken with respect to the multiple modes of liability charged in this case. For instance, the Chamber may be satisfied that for murder committed in the context of one established incident, a reasonable Trial Chamber could convict the Accused for the modes of liability under articles 25(3)(a) and 28, while for murder committed in the context of another established incident, a reasonable Trial Chamber could merely convict the Accused for the mode of liability under article 28.

## **B. Approach to the Evidence**

54. The Prosecution details below, some of the general principles related to the assessment of the evidence as applied by Chambers of this Court. The



Prosecution also responds to arguments raised by Mr Gbagbo and Mr Blé Goudé related to specific items of evidence.

1. Holistic evaluation of the evidence

55. In assessing the evidence, the Chamber should not consider any individual piece of evidence, including witness testimony, in isolation, but rather should consider each piece of evidence in the context of all the evidence submitted and discussed before it. This has been referred to by Chambers of this Court as a “holistic evaluation and weighing of all the evidence taken together in relation to the fact at issue”. This is warranted since items of evidence taken individually – without any context - may seem insufficient to support a given fact but analysed against the totality of the evidence, “their effect may be telling”.

56. As recalled by the dissenting Judges in the *Ngudjolo* Appeals Judgement “a trial chamber should adopt a holistic approach, whereby all relevant pieces of evidence are considered together as an entire body, *i.e.* as a system of evidence, and not merely on their own. Only when the trial chamber does not confine its assessment to each individual piece of evidence in isolation will the trier of fact be in a position to make an accurate determination on the merits of the case.” Likewise, the Appeals Chambers of the *ad hoc* Tribunals have agreed that individual items of evidence “when considered by [themselves], may appear at first to be of poor quality, but [they] may gain strength from other evidence in the case”.

2. Assessment of oral testimony

57. The assessment of oral testimony is a matter of judicial discretion. However, “judicial discretion is not unlimited and if abused, could affect the outcome of the trial and the search for the truth”.

58. In its evaluation of the oral testimony of witnesses, the Chamber should keep in mind the individual circumstances of each witness. Factors such as, *inter alia*,

their relationship to the Accused, involvement in the crimes, risk of self-incrimination, if assurances against self-incrimination where given, their cultural and social economic background, vulnerability, age, bias for or against the Accused, and motives for telling the truth or providing false testimony are relevant to the Chamber's assessment.

59. The Chamber should also consider such factors as the witness' demeanour when testifying, willingness and spontaneity in responding to questions, including acknowledgement of responsibility in the commission of crimes. The witness' recollection, consistency, precision, plausibility of account, the passage of time, coherence with prior recorded testimony or other items of evidence, and unnecessary complications in the account are also relevant factors to take into consideration. The Chamber should not overlook if the witness suffered any trauma, and "therefore had difficulty providing a coherent, complete and logical account".

60. Contradictions, inconsistencies or inaccuracies are important factors to consider.

However, as eloquently stated by Trial Chamber VII in the *CAR Article 70* case:

"They do not automatically render a witness's evidence unreliable in its entirety but may in fact speak in favour of the truthfulness of the witness's account. Depending on their personal circumstances, witnesses experience past events in different ways. They attach substantial weight to details that were important to them at the time of the events. On the other hand, inconsistencies, contradictions and inaccuracies will regularly surface when they relate to matters to which the witness attached minor significance at the time of the events. Against this backdrop, it is possible for a witness to be accurate and truthful on some aspects of his or her testimony (and therefore reliable in this regard) but inaccurate, contradictory and untruthful on other aspects of his or her testimony (and therefore unreliable in that regard)."

61. Inconstancies between witnesses can also be explained by a hectic environment and different viewpoints and therefore perceive the same traumatic events differently.

62. The Appeals Chamber also affirmed that “the evidence of a witness in relation to whose credibility the Trial Chamber has some reservations may be relied upon to the extent that it is corroborated by other reliable evidence. [...] there may be witnesses whose credibility is impugned to such an extent that he or she cannot be relied upon even if other evidence appears to corroborate parts of his or her testimony.”

*(a) The assessment of the credibility of the Generals*

63. The Chamber has heard the testimony of the following Generals of the FDS high command. Witnesses P-0009, the CEMA; P-0010, the Commander of the CECOS; P-0011 the Commander of the Gendarmerie; P-0046, the DGPN and P-0047, the Commander of the ground forces of the FANCI.

64. The Prosecution had foreshadowed in its opening statement that “when testifying, some insiders may try to minimize their own conduct to avoid incriminating themselves or to protect others. However, you will see where their evidence is corroborated and, importantly, where they are telling the truth or not about the acts and conduct of the accused.”

65. While the Generals’ testimony can be accepted as credible on a number of issues, it must be treated with caution when it touches upon their own individual criminal responsibility. This is particularly the case when they are asked to testify on evidence which indicates their own complicity with or, at minimum, tacit acquiescence as of the commission of crimes.

66. It is therefore no surprise that Witnesses P-0011 denied and Witness P-0046 did not recall attending a meeting at the Presidential Residence on 15 December 2011 when Mr Gbagbo gave instructions to prohibit the 16 December march.

67. Witness P-0009's claim that Mr Gbagbo signed a second requisition decree in January 2011 and handed it personally to him is another example of the caution the Chamber should exercise when assessing evidence from insider witnesses. Apart from the testimony of Witness P-0009, the Prosecution has not found, from the evidence collected, disclosed and submitted on record, any proof or evidence of the existence of such a requisition. None of the other Generals or FDS members heard during the trial have testified as to the existence of such a requisition. The only known requisition during the relevant period of the charges is Decree No. 2010-306 from 14 November 2010, which authorises the FANCI to be deployed across the entire country with a focus on the *Centre-Nord-Ouest* (CNO) zone.

68. The existence of a requisition of the FANCI on 14 November 2010 indicates an intention to employ those forces after the elections and before the occurrence of any violent incident which may have justified their intervention. It is indicative of prior intent and Witness P-0009 would have been a party to this. His claim that there was a second requisition in January 2011 is evidence of an attempt to distance himself from a plan to employ the armed forces, which was already in existence before the second round of the elections.

- a. The requisition of the FANCI on 14 November had no meaningful impact on the security measures for the election as these were already facilitated by the CCI under the Ouagadougou Accords. There was no such decree for securing the first round of the elections and, for the second round of the elections, the CCI continued its work in liaison with the FDS, FAFN and the *forces impartialles*. The 14 November decree applies to the FANCI, it was a unilateral measure taken by Mr Gbagbo and it was subsequently applied to mobilise the FANCI in execution of curfews from 26 November 2010 onwards, which was another unilateral step taken by Mr Gbagbo without the agreement of other parties. Witness P-0010 testified that the 14 November decree remained in application beyond the elections and was

the legal basis for the continued mobilisation of the FANCI, including on the day of 16 December 2010.

69. This demonstrates that the engagement of the armed forces was already intended as of 14 November 2010 and is indicative of Mr Gbagbo's intent to use all means to stay in power.
70. Another factor in the assessment of the evidence of insider witnesses are the topics on which their memory had to be refreshed or on which they were confronted with their prior recorded testimony. For instance, Witness P-0046, initially denied that Mr Gbagbo had ordered the CEMA to deploy heavy weapons or weapons of war in order to block the the access to the Golf Hotel but, when confronted, he adopted the content of his prior recorded testimony and confirmed that Mr Gbagbo had ordered the *blocus* of the Golf Hotel. Even though Witness P-0046 immediately thereafter, upon a question of the Chamber, testified that he was guessing that Mr Gbagbo had given such an order, Witness P-0009 did confirm that Mr Gbagbo had ordered the *blocus*.
71. Last but not limited to, it cannot be ignored that Mr Gbagbo named and promoted the Generals to the positions and rank they held at the time of the crisis. Therefore, the Chamber will have to take into consideration the loyalty the Generals may have had when giving their evidence. As Commander in chief, Mr Gbagbo had played a significant role in determining the paths of their careers.

### 3. Documentary evidence and other non-oral evidence

72. In this case, over 1940 items of documentary evidence were submitted *via* the testimony of witnesses. The remainder over 2670 documents were submitted by the Prosecution *via* Bar Table Motions or decision. The Chamber accepted the submission of these documents but deferred its assessment of their admissibility to its final article 74 deliberations.

(a) *The submission regime*

73. Engaging in a detailed qualitative assessment of the evidence at the no case to answer stage would defeat the rationale of the submission regime, which foresees that a trial chamber may “recognise the submission of [...] evidence without a prior ruling on its relevance and/or admissibility and consider its relevance and probative value as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused”.

74. The Prosecution is aware of the position of Judge Henderson as regards to the submission regime. While assessing if the submission regime could be reconciled with a no case to answer motion, Judge Henderson noted that the Chamber could decide a no case to answer motion:

“on the assumption that none of the evidence presented by the Prosecutor is inadmissible. [...]. However, if the Chamber finds that there is a case to answer based on that assumption, the Defence may well be forced to put up a lengthy and costly defence case to challenge evidence which the Chamber may not even be allowed to consider, if the admissibility criteria are applied properly. This not only creates serious prejudice, it also significantly affects the expeditiousness of the proceedings.”

75. The Appeals Chamber in the *Bemba article 70* case addressed the issue of whether the fair trial rights of an Accused were violated because he or she would have to conduct a defence “in the expectation that all evidence submitted in the proceedings could constitute the basis for the Trial Chamber’s eventual decision on his guilt or innocence.” The Appeals Chamber affirmed that:

“[a]rticle 74 (2) of the Statute and related provisions indicate that it is the evidence “submitted” (and discussed) at trial that, unless excluded by virtue of the operation of an exclusionary rule in the applicable law, constitutes the evidentiary basis for the final decision on the guilt or innocence of the accused. Thus, the “expectation” that all evidence submitted could be considered for the purpose of the Trial Chamber’s decision

under article 74 (2) arises directly from the Court's own legal instruments – which, by providing so, accept that there is no inherent incompatibility between fair trial rights and an assessment of the relevance and probative value of the evidence at the end of the proceedings in light of all evidence submitted.”

76. The Prosecution also notes that the submission regime has been adopted by two other Trial Chambers and upheld, by majority, by the Appeals Chamber.
77. Finally, the Protocol on the disclosure of evidence, as adopted by the Pre-Trial Chamber in this case, foresaw that all incriminating items of evidence disclosed be identified as such. Further, for every item of evidence disclosed as incriminating evidence, the Prosecution provides an Element based Chart. Consequently, Mr Gbagbo and Mr Blé Goudé are given notice as of the time of disclosure, of an items value and potential use as regards the elements of the crimes and modes of individual criminal responsibility so that they can prepare their case appropriately.
78. Notwithstanding the applicable standard for the assessment of evidence at this stage of the proceedings, the Prosecution provides in this response where necessary the relevant details to demonstrate that the documentary evidence relied upon is relevant, reliable, and of sufficient probative value. Ultimately, the documentary evidence and other non-oral evidence relied upon could be admitted by a reasonable Chamber in its article 74 judgment.

*(b) Evaluation of documentary evidence*

79. Trial Chambers of this Court have consistently affirmed that, while non exhaustive, the following factors should be borne in mind in assessing the reliability of documentary evidence. Its provenance, author or source (and his or her role in the events), the nature, content and characteristics of the item, the chain of custody, its contemporaneousness to the events, its purpose and any other relevant information on the record. The reliability of a document should be

assessed on a broad basis. The Chamber should also keep in mind that a document deemed authentic can, nevertheless, be unreliable.

80. As well as with oral evidence, a Chamber may find documentary evidence reliable on some aspects, while finding it unreliable on other aspects. In doing so, the Chamber should primarily assess the reliability of the portions of the evidence that go to the facts that are essential.

*(c) The assessment of Police reports*

81. The Prosecution submits that, given the police are accused of committing crimes during the post-election crisis, the content of each police report should be assessed with circumspection to determine its reliability. The Prosecution makes the following general comments in this regard which are developed further, for instance, in Section IV.C. when describing the Prosecution's case on the 16 December 2010 incident.

82. Absent any reliable evidence to the contrary, routine contemporaneous recordings made by the Police during the post-election crisis in the course of their duty, and on the basis of personal observations should be regarded as reliable. This includes police information related to dead victims, their particulars, location found and date of death as well as any apparent signs on their body. The Chamber can therefore safely rely on this type of information. However, all other information in police reports should be carefully scrutinised by the Chamber. For instance, the Prosecution submits that exculpatory information regarding the actions or conduct of the police should be examined with extreme caution.

*(d) Authenticity of documentary evidence*

83. Documents can be authenticated by witness testimony but this is not an essential requirement. A chamber may be satisfied that the authenticity of a document has been established because this is evident on the face of the document itself or other



evidence submitted on the record “demonstrate the item’s provenance” or *indicia* of authenticity. Essentially, “the Chamber needs to be satisfied that the item is what it purports to be.” The authenticity requirement can also be admitted by the Defence.

84. The Prosecution has requested the submission of a larger number of items of evidence *via* Bar Table Motions. A number of investigator reports detailing the circumstances and provenance of items seized *in situ* or obtained pursuant to specific requests have also been submitted in support of these requests. For instance, the Prosecution seized a large number of documents (or *batch of documents*), at such locations as, the Presidential residence, the headquarters of the Police, Gendarmerie and the *État-Major* of the army. Therefore, their provenance is clear. Witnesses have also authenticated a number of documents from a given *batch* or location. On their face, these reports also reveal that they were drafted in the ordinary course of events (or business), and were acted upon. In some cases, the same document sent from one location was found at the location it was destined. Moreover, the Defence used some documents, from a given *batch*, to challenge the Prosecution’s case either during their examination of Prosecution witnesses or now in their no case to answer motions.

85. The Prosecution response answers, where necessary, the Defence challenges to the “admissibility” of the non-oral evidence. Nevertheless, the Prosecution will immediately address the Defence Challenges to the authenticity of the Logbook of the Presidential residence.

(i) The authenticity of the logbook of the Presidential Residence

86. The main arguments of the Defence are that

Mr Gbagbo argues further that

[REDACTED]

[REDACTED]

87. Mr Gbagbo also challenges the authenticity by alleging the hypothetical alternatives that 1) there must have been an electronic register or at least a typed register of the entries to the Residence and 2) questions why so few names are registered in the logbook when the Presidential residence was a vast complex with numerous staff. These two propositions do not need to be answered since they are not supported by any evidence on the record of the case. As is argued below in this Section, for alternative allegations or inferences to be drawn, they have to be supported by evidence in the case record and be reasonable. Moreover, the Defence cannot with such alternatives try to introduce extraneous evidence to the record of the case. Again, this would defeat the purpose of the no case to answer and allow Mr Gbagbo to submit a Defence at this stage of the proceedings without that evidence being discussed and challenged by the Prosecution. If the Defence wishes to adduce counter-evidence, the Defence case would be the right stage of the proceedings to do so.

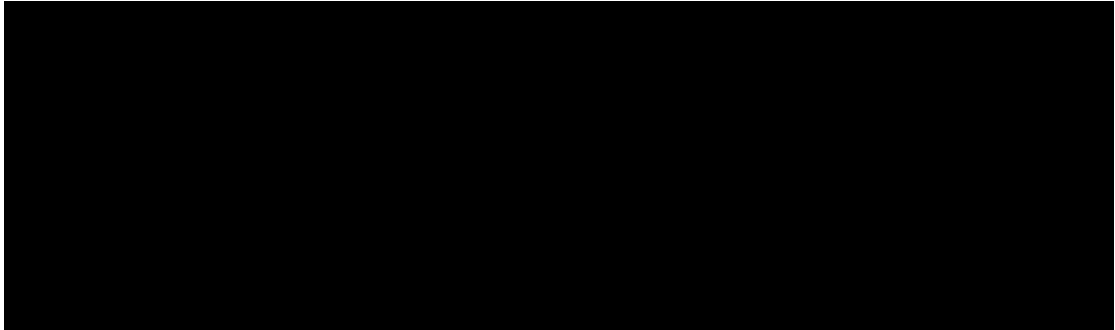
88. The Appeals Chamber in this case affirmed that the authenticity of a document should *not* be determined *only* by reference to the document concerned, but it “may be further elucidated by other evidence” presented at trial is consistent with this view. The *ad hoc* Tribunals followed the same practice. As the ICTR’s Judges noted “The Rules impose no technical requirements for establishing the authenticity of a document, but a number of factors have been considered relevant” including the extent to which the document’s content is corroborated by other evidence.

89. Applying these principle, the Prosecution submit that an assessment of the relevant evidence demonstrates the logbook is authentic:

- i. It was seized inside the Residence itself by Prosecution investigators;

- ii. The simple appearance and state in which the logbook was found is very good indicia of its authenticity. Its appearance also correlates with the state of the residence itself and the abundance of evidence on record that it was bombed in April 2011;

- iii.



- iv. Prosecution witnesses have confirmed their attendance at meetings recorded in the logbook including on 24 November 2010, 1 December 2010, 12 January 2011, and 28 February 2011, and
- v. Video evidence also correlates with the presence of visitors as entered in the logbook. For instance, the 20h00 RTI news bulletin of 13 January 2011 confirms the presence and meeting of the FDS High Command, Mr Blé Goudé, Ministers Guiriéoulou and Dogou and Prime Minister Aké N'go with Mr Gbagbo.

90. Mr Blé Goudé further argues by reference to filing ICC-02/11-01/15-607-Conf, para. 39, "serious concerns as to the integrity of the document, and whether it was tampered with in the years spanning 2011-2014, when the Prosecution collected the first logbook from the Presidential Residence". Mr Gbagbo states that the logbook is "*plus que douteux*", "*ni crédible*", "*pas de valeur*". The Prosecution submits that these allegations are simply not supported by the evidence. As noted above, the Defence may provide evidence to support their allegation at a later stage of the proceedings.

(ii) Reliability of the Logbook

91. In addition to the evidence already referenced above, [REDACTED]

[REDACTED] The Prosecution submits that the logbook is analogous to a business record – made in the regular course of a business – to contemporaneously record, the names and times of visits by individuals at the Presidential Residence. It follows that absent any reliable evidence to the contrary, its content should be considered reliable.

*(e) Chain of custody of documentary evidence*

92. As Pre-Trial Chamber I found in *Lubanga*, “nothing in the Statute or the Rules expressly states that the absence of information about the chain of custody and transmission affects the admissibility or probative value of Prosecution evidence”.

93. The Logbook is another very good example that the chain of custody is not an essential requirement for the submission or assessment of the probative value of non-oral evidence. Gaps in the chain of custody are not fatal. It is simply one factor to be assessed—rather than an essential requirement to be met—for the purpose of admissibility.

94. Trial Chamber I in *Lubanga* noted that “the drafters of the Statute framework have clearly and deliberately avoided proscribing certain categories or types of evidence, a step which would have limited - at the outset - the ability of the Chamber to assess evidence ‘freely’. [...] In ruling on admissibility the Chamber will frequently need to weigh the competing prejudicial and probative potential of the evidence in question. [...] For these reasons, the Chamber has concluded that it enjoys a significant degree of discretion in considering all types of evidence. This is particularly necessary given the nature of the cases that will

come before the ICC: there will be infinitely variable circumstances in which the court will be asked to consider evidence, which will not infrequently have come into existence, *or have been compiled or retrieved, in difficult circumstances*, such as during particularly egregious instances of armed conflict, when those involved will have been killed or wounded, and the survivors or those affected may be untraceable or unwilling - for credible reasons - to give evidence.”

95. The Chamber’s ability to assess evidence *freely* would inevitably be prejudiced if a document’s chain of custody was considered an essential requirement, rather than an indicia, for reliability. As stated before the ICTY in the *Oric* case—echoing the just mentioned reasoning of TC1 in Lubanga—:

“The Trial Chamber is convinced that applying rigid rules of evidence on chain of custody to cases involving an armed conflict would not be in the interests of justice, and potentially, could even lead to the impossibility of bringing evidence at all in some cases. The nature of armed conflicts is such that it is often impossible to investigate an offence committed during an armed conflict to the extent of ordinary crimes committed in peacetime. In addition to the difficulty in retrieving evidence, maintaining a proper chain of custody and safeguarding it during an armed conflict, witnesses are often unidentified or cannot be found, and physical evidence is sometimes destroyed or damaged while the crime scene may not be accessible”.

96. The Prosecution also recalls that the chain of custody of documentary evidence and videos submitted on the record was provided in compliance with the E-court Protocol adopted in this case. Therefore, the chain of custody field, from the time of collection/reception to registration in the Prosecution Ringtail database, is also available to the Chamber for the purposes of its assessment.

#### 4. Hearsay evidence

97. The Appeals Chamber has ruled, “there is no procedural bar to the introduction or reliance on hearsay evidence in the legal framework of the Court”, nor is it

necessarily the case that “hearsay evidence should always be accorded low weight”. To the contrary, “while the fact that evidence is hearsay may result in such evidence being afforded less weight, this ultimately ‘depend[s] upon the infinitely variable circumstances which surround hearsay evidence’.” While hearsay evidence may be categorically excluded in some domestic legal systems, especially those that have lay judges, this is not the case in this Court. Rule 63(2) provides that a Chamber shall freely assess all evidence submitted, and according to rule 63(5) it shall not apply national laws governing evidence.

98. In this sense, for example, contemporaneous reports prepared by first responders on the ground, such as UN or NGO reports, may potentially be valuable and unique evidence for the Chamber to consider, especially if they corroborate other evidence collected by the Prosecution, sometimes years after the events. The weight to be accorded to a particular report must be assessed on a case-by-case assessment. This approach is consistent with the practice of this by this Court and other international tribunals.

*(a) Defence challenges to specific categories of UNOCI reports*

99. Mr Blé Goudé submits that the reports prepared during the post-electoral crisis by UNOCI, namely UNOCI Human Rights Division Call Centre Daily Reports, UNOCI *Suivi du cas* Reports and UNOCI Daily Situation Reports, should not be relied upon by the Chamber. Contrary to Mr Blé Goudé’s submissions, these reports were produced contemporaneously to the events being adjudicated following a methodology which attests to their reliability, and which was commented on by Witness P-0414, who appeared before the Chamber and was cross-examined by the Defence. In addition and as developed in more detail in the relevant parts of this response, these reports are consistent with and corroborate the evidence of the five charged incidents which further attests to their reliability.

(i) Call Centre Daily Reports

100. The UNOCI Human Rights Call Centre (“Call Centre”) was put in place to monitor violations of human rights committed during the post-election period and started operating on 13 December 2010, operating every day of the week and, from 23 December 2010, all 24 hours. The existence of the Call Centre was known to the population and its phone number publicised through UNOCI’s radio, which covered a large part of Côte d’Ivoire, while local NGOs were also informed. From mid-December to 30 March 2011, the Call Centre received 9000 calls. After mid-February 2011, the number of calls strongly increased. From 23 February 2011, the Call Centre received on average 150 calls each day. Considering the extent of the temporal and geographical coverage (particularly of Abidjan) of the Call Centre and the volume of calls received, the information provided by the Call Centre Daily Reports gives a strong indication of the pattern and extent of the human rights violations it was set up to monitor.

101. Witness P-0414 worked at the Call Centre, first as an operator and then compiling the reports (including analysing the information and grouping it) and explained the methodology through which the Call Centre Daily Reports were compiled. While Mr Blé Goudé challenges reliance on the Call Centre Daily Reports by arguing that they bear no signature and their authors cannot be identified, and that Witness P-0414 was not asked to authenticate them as she was not in a position to do so for all, Witness P-0414 did recognise a Call Centre Daily Reports she had written and their format.

a. Methodology

102. The Call Centre Daily Reports were prepared on the basis of the calls received at the Call Centre. They were prepared daily and from 23 February 2011 twice

daily as given the volume of calls, one report would not suffice. The Call Centre essentially received calls of victims or witnesses who informed the Centre about incidents, such as firing/shooting, arrests or disappearances, which were taking place. The information was entered manually by the operator on the basis of the information received.

103. The Call Centre Daily Reports contained information regarding the number of the call, the name of the person or team from the Call Centre receiving them (which is why this information is redacted), the date and time when the call was received, the name of the caller (where the surname appears redacted), the nature/type/quality of the caller (witness, victim or resident), the alleged perpetrator/ author of the acts as said by the caller, a brief summary of what happened according to the caller, the place of the incident where the caller was victim or witness to the incident, and the action to be taken by the operator.
104. Mr Blé Goudé claims that on the basis of the Daily Reports provided it is not possible to determine whether the events had been directly witnessed or come from hearsay. However, the nature/type/quality of the caller are indicated. Witness P-0414 confirmed that the caller would be referenced as victim, witness or source, and when information provided was based on hearsay they would generally use “source” rather than “witness”.
105. While the identification of a perpetrator or perpetrator group was based on the caller’s account, the Call Centre operators would ask questions in order to determine how the caller knew who the perpetrators were, what made them say so, whether there were elements that indicated or could confirm their words. The UN staff hired to work at the Call Centre had to meet certain requisites and in addition received training regarding how to ask questions, what questions to ask, and how to fill in the relevant forms.
106. In the cover page, calls were regrouped along the lines of the neighbourhoods most affected (Koumassi, Abobo, etc) or of the significance of the specific event or



on the basis of the calls received. The Call Centre Daily Report was addressed to the supervisor of the Call Centre with copy to the Chiefs of the other UNOCI Units, including the chief of the UNOCI Human Rights Division.

b. Actions taken in furtherance of the information received at the Call Centre

107. On the basis of the information received through the Call Centre, the UNOCI police or its military component could be alerted, for cases requiring urgent intervention. This shows that the calls themselves were considered a sufficiently reliable source to prompt UNOCI to take action. As stated in a OHCHR and UN Secretary-General (joint) report, the Call Centre proved “in a very restricted security environment” to be “an essential tool for the collection of information, and a vital link to civilian populations [...] enabl[ing] the human rights component to identify hot spots and sensitive zones and, in certain cases, to seek to prevent violations through the immediate dispatch of military and police patrols.”

108. The fact that the calls would prompt action also undermines Mr Blé Goudé’s claim that the Call Centre may have been used as a tool for propaganda by the people calling in, as Mr Blé Goudé alleges but fails to substantiate. Furthermore, the volume and frequency of the calls also undermines the claim that they may have been the product of a propaganda campaign. As Witness P-0414 testified, cross-checking the information received through the Call Centre - by grouping calls that resembled each other into incidents with the times, locations and presumed perpetrators that could be the same and following-up these incidents by phone-call or by field mission - acted as a bulwark against any such propaganda practice. A February 2011 report from the Human Rights Division confirms that “the Human Rights Division has been systematically following up specific cases.”

(b) *UNOCI Suivi de cas Reports*

109. The Call Centre supervisor, upon the information referenced in the Call Centre Daily Reports, would assign the cases for follow-up. *Suivi de cas* Reports were prepared by Human Rights Officers. For certain incidents, the caller that provided the information to the Call Centre would be called back for a follow-up by a Human Rights Officer. Additional details would be obtained over the phone or, the security situation permitting, in person in the field. Sometimes the victims themselves came to the ONUCI headquarters, either to speak to the Human Rights Officers directly or to get care at the medical centre. In the latter situations, the Human Rights Officer took the opportunity to interview them. In this way, Witness P-0414 sometimes received one or two victims each day.

110. Witness P-0414 explained that the majority of *Suivi de cas* Reports were done by phone but not all. The person in charge of following up would try to call the callers of the calls that had been grouped together so as to obtain more details, and since this normally involved calling different callers, to be able to cross-check the information among them and see if the information corresponded.

(i) Content of *Suivi du cas* Reports

111. The *Suivi du cas* Reports make reference to the case (call) number with the date of the relevant Call Centre Daily Report where such case (call) appears. They indicate the facts of the incident, the perpetrators, the location and date of the incident. They also contain an assessment or commentary on the credibility of the person being interviewed. This assessment was carried out by seeking precise details from the witness that could be further corroborated through other sources. Normally, every piece of information that the UNOCI Human Rights Division advanced was always based on at least two independent sources.

(ii) Defence challenges to their reliability

112. Mr Blé Goudé argues that the *Suivi de cas* Reports bear no signature so that their authors cannot be identified. However, Witness P-0414 did personally carry out a number of follow-up of cases and verification of the information, and explained the methodology behind *Suivi de cas* Reports.
113. Mr Blé Goudé challenges the reliability of the *Suivi de cas* Reports on the basis that there is an absence of dates on several of them. Witness P-0414 clarified that the *Suivi de cas* Reports were dated but that this date was consigned to the electronic version of the document. Nevertheless, she confirmed that generally *Suivi de cas* Reports were written *at the latest 48 hours from when the information was received by the Call Centre*. In the case of Call Centre Daily Report spanning 24 hours [so prepared once rather than twice a day], generally the Human Rights Officers followed up by communicating the callers on the day after the preparation of the Call Centre Daily Report.
114. Mr Blé Goudé also challenges to the reliability of the *Suivi de cas* Reports on the basis that the names in these Reports do not correspond to names in the Daily Call Centre Report. Witness P-0414 acknowledged that the particular *Suivi de cas* Reports being challenged were based on information additional to that received by the Call Centre given that the names of the callers were different from those mentioned in the Call Centre Daily Report related to the same incident. The Prosecution submits that this is consistent with the fact that the specific Daily Call Centre Report indicated that the Call Centre experienced a technical computer problem due to which information was lost. As can be assessed by the Chamber, other *Suivi de cas* Reports reflect the Daily Call Centre Report clearly.
115. Last and contrary to Mr Blé Goudé's submission, the juxtaposition of French and English languages in the same *Suivi de cas* Report does not affect its reliability. Witness P-0414 confirmed that Human Rights Officers, who were the individuals writing the *Suivi de cas* Reports, were free to write in English or

French, and that there were occasions when both languages were used in the same report.

*(c) The UNOCI Daily Situation Reports*

116. The UNOCI Daily Situation Reports were prepared by the UNOCI “JOC” [Joint Operations Centre] which was composed of 3 entities: the SOC for the civilian component, the POC for the police component and the MOC for the military component. The UNOCI “JOC” prepared these reports on the basis of the information received by the 3 entities in addition to other sources, from the different sections [divisions] of ONUCI. The reports of the Human Rights Division were sent to the JOC and also to Geneva because there was a direct link with the UN High Commissioner for Human Rights.

117. The Daily Situation Reports are in the form of an outgoing code cable addressed to the United Nations in New York. While Mr Blé Goudé objects that the Daily Situation Reports are not signed, bear no signature, no logo and its authors are not mentioned, they follow the same format which Witness P-0414 recognised, contain the markings of an outgoing code cable, indicate the addressees and who they originate from, and the date. Daily Situation Reports were written at the time of the events and covered the period of the preceding 24 hours. They also specified the source of the information as they are divided by section, so the reader is able to determine whether specific information was provided by the Human Rights Division. Events being reported on a daily basis, Daily Situation Reports provide evidence of unfolding events in a continuous and chronological order.

118. Contrary to Mr Blé Goudé’s argument, Witness P-0414 did not acknowledge that the information contained in the Daily Situation Reports were mostly allegations. Rather, she was asked whether documents would have been drafted on the basis of Call Centre reports. She answered yes and clarified that she was

referring to “*points de situation quotidiens*” that she wrote herself and which referenced the allegations reported to the Call Centre in the past 24 hours. She noted that she did not think her “*points de situation quotidiens*” would serve as a basis for other reports or if they did, then the term allegations would be used. Thus, in the Daily Situation Reports, where the information is not confirmed, the writer specified that the information has the status of an allegation.

119. Mr Blé Goudé also objects to the Daily Situation Reports on the basis that they are partially based on the calls received at the Call Centre and on information contained in the *Suivi de cas* Reports. The Prosecution refers the Chamber to its arguments on these reports as developed above.

## 5. Corroboration

120. Rule 63(4) of the Rules expressly stipulates that corroboration “is not required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.” Mr Gbagbo nevertheless argues the contrary by referring to the Old Testament principle of *testis unus, testis nullus*. He also challenges the evidence of the victims of sexual violence in this case because they are not corroborated.

121. The Appeals Chamber has recently re-affirmed, in the Bemba CAR article 70 Appeals Judgment, that:

"Pursuant to rule 63 (4) of the Rules there is no legal requirement of corroboration *irrespective of the type of evidence or the fact to be established on its basis*. This is not to say that corroboration will never have a role to play when assessing a witness's credibility and the reliability of his or her testimony. It is one of many potential factors relevant to a trial chamber's assessment. A trial chamber may find, in the specific circumstances of the case, that corroboration of a particular witness's testimony – or part thereof – is needed for it to be convinced of its reliability and credibility; however, this does

not mean that corroboration is required as a matter of law when evaluating the testimony of any witness." (emphasis added)

122. As is further developed below in Section III that refers to applicable law on the course of conduct involving the multiple commission of acts referred to in article 7(1), evidence is deemed corroborative when "one *prima facie* credible" piece of information is "compatible with other *prima facie* credible [information] regarding the same fact or a *sequence of linked facts*." Thematic consistencies among items of evidence are sufficient corroboration, and it is unnecessary and unrealistic to require items of evidence to be 'mirror images' of each other.

#### 6. Circumstantial evidence

123. It has been settled law since the *Lubanga* Trial Judgement, that "nothing in the Rome Statute frameworks prevents the Chamber from relying on circumstantial evidence".

124. It also has been accepted by the Appeals Chamber that "nothing prevents a court from relying on 'stacked inferences' to establish a material fact or ultimate conclusion". The Appeals Chamber has also agreed with the proposition that "each piece of circumstantial evidence need not be, nor rarely is, proven beyond reasonable doubt". Only the facts establishing the elements of the crime and mode of liability have to be proven beyond reasonable doubt.

125. Mr Gbagbo refers to the separate opinion of Judge Eboe-Osuji in the *Ruto* Termination Decision in the following manner: "[il] notait que la présomption d'innocence devait jouer un rôle de protection contre toutes déductions au détriment de l'Accusé, encore plus lorsqu'il s'agit de se fonder sur de la preuve circonstancielle". Mr Gbagbo further argues that circumstantial evidence alone is insufficient to establish a common plan.

126. Judge Eboe-Osuji was simply stating that a Trial Chamber may assess the "viability of any other hypothesis that is consistent with innocence and, on the

other hand, the nature, quality and viability of any other independent evidence such as would assist the trier of fact in making sure of their entitlement to draw the particular inference urged in the direction of guilt". Consequently, as with unfounded allegations, on the one hand, the Chamber has to guard itself against alternative inferences (or rhetorical questions) of the Defence which are not rooted in the evidence submitted on the record or that are simply not reasonable, and on the other, it may look for corroborative evidence in support of an inference to establish a fact in support of the crimes or modes of liability. But as argued above, "it is one of many potential factors relevant to a trial chamber's assessment".

(a) *A common plan can be inferred*

127. The *CAR Article 70 Trial Judgement*, as upheld by the Appeals Chamber, clearly states that a common plan need not be proven by direct evidence, but instead may be inferred from circumstantial evidence:

"The co-perpetrators need not have signed a written contract. The agreement or common plan may be express or implied, previously arranged or materialise extemporaneously. Its existence may be inferred from subsequent concerted action of the co-perpetrators, and proven by direct evidence or inferred from circumstantial evidence."

128. In any event, as articulated in Section V of this response and independently of its characterisation, the totality of the evidence on record shows the existence of a common plan, and meets the requisite standard of whether a reasonable Chamber *could* convict.

## 7. Response to specific challenges of Defence

### (a) *Credibility of Witness P-0435*

129. Many of the arguments in Annex 5 of Mr Gbagbo's Motion involve a credibility assessment of Prosecution Witness P-0435, and criticise the Prosecution for relying upon this witness. Mr Blé Goudé also makes lengthy arguments regarding Witness P-0435's credibility, at paragraphs 236 to 249 of the Blé Goudé Motion. The Prosecution submits first, that now is not the appropriate time for credibility assessments of Prosecution witnesses,

130. Alternatively, for the reasons detailed below and where appropriate in the Prosecution's Response, the Chamber should regard Witness P-0435 as a highly credible, insider witness, whose evidence is corroborated by other reliable witness evidence, and by documentary evidence presented in the case.

131. A large part of Witness P-0435's testimony relates to covert collaboration between the pro-Gbagbo militia, elements of the FDS, and political figures, including members of the *Galaxie Patriotique*, and relates to the commission of crimes including the killing of civilians. This was an environment in which, as Witness P-0435 testified, militia-members would be punished if they betrayed secret information and where "*la trahison engendre le sang*", for which Witness P-0435 gave the practical example of a member who was under suspicion and who "fell" from a window and died. The Prosecution submits that it is entirely in keeping with a closed criminal organisation, which is involved in murder, that access to information was strictly controlled, meetings took place covertly, and much of its activity was not documented by its perpetrators.

132. However, where there exists relevant documentary, video or witness evidence relating to the militia's activities, it consistently corroborates Witness P-0435 with regard to the organised nature of the pro-Gbagbo militia, the relations between the militia, the FDS, and political figures including members of the *Galaxie*



*Patriotique*, the covert integration of militia-members into the FDS, the militia collaboration with the FDS during the post-electoral crisis, and the increasingly violent actions of the pro-Gbagbo militia groups during the period of December 2010 to April 2011.

133. This section will not detail every instance where the evidence of Witness P-0435 is corroborated as his evidence will be referred to in other parts of this brief, along with supporting material. However, the evidence detailed in this section demonstrates the corroboration of Witness P-0435 on key points of his testimony. Witness P-0435's testimony is often corroborated by documentary and other evidence which was not previously shown to him, to a level of detail which could not be coincidental or manufactured and which corroborates the authenticity and credibility of his evidence. In addition, Witness P-0435's testimony is often corroborated both by mid-level insider witnesses who felt unable to take action against the militia and by civilian witnesses from communities against whom the militia committed crimes.

(i) Corroboration of Witness P-0435's status as a GPP commander in 2010 and 2011

134. Witness P-0435's status as a GPP commander in 2010 and 2011 is corroborated by video and press material of his activity, notably a video of his attendance with GPP leader Bernard Yokoyoko Bouazo and other militia members at a rally of the "*groupes d'auto-défense*" on 22 September 2010, in which Witness P-0435 can clearly be seen wearing a GPP t-shirt. His participation in this rally as a senior GPP member is also confirmed in an email he sent to the GPP email account on that day. Witness P-0435 also features on a video showing him stopping a UN vehicle on 24 January 2011 and in a related press interview with the pro-Gbagbo newspaper *Le Temps*, in which he is referred to as "*Commandant Maïcke du GPP*".

(ii) Corroboration of Witness P-0435 on the creation of the GPP as an armed militia

135. On the formal creation of the GPP by Charles Groguhet, Moussa Zéguen Touré and others in 2003, and the militia's links with prominent former FESCI members such as Eugène Djué and Mr Blé Goudé, Witness P-0435's evidence is corroborated by the oral testimony and academic work of [REDACTED] who interviewed a number of militia and youth leaders on these and related issues, including Moussa Zéguen Touré, Eugène Djué, Damana Pickass and Maguy Le Tocard.

136. On the initial supply of weapons to the GPP and other militia groups in late 2002, Witness P-0009 provides further detail to Witness P-0435's testimony, stating that Mr Gbagbo managed to obtain weapons from Russia and, upon the arrival of these weapons at Abidjan airport, they were shared out to "*groupes d'auto-défense*". The groups which Witness P-0009 refers to in this context are the GPP of Zéguen Touré, the FLGO of Denis Maho Glofiéhi and combatants led by the marine officer Kakou Brou, known as "KB", based at the Cité Rouge university residence in Cocody, Abidjan – the location where [REDACTED] and other Liberian mercenaries were based under the command of KB during the early part of the post-electoral crisis.

(iii) Corroboration of Witness P-0435 on the GPP as an armed wing of the Galaxie Patriotique

137. On the role of the GPP within the *Galaxie Patriotique*, the overlap between armed and unarmed groups and the role of prominent former FESCI members such as Eugène Djué, Witness P-0435 is corroborated by a letter from Djué dated 17 April 2005 with a list of the "*Mouvements Patriotiques*" which Djué represents at that time, including the GPP, and by a video of a meeting in Yopougon on 22 June 2006 which was provided by Witness P-0431. This video shows a meeting in

the context of the DDR process for the “*groupes d’auto-défense*” which is chaired by Eugène Djué representing the UPLTCI militia and at which the other main speakers are militia leaders Moussa Zéguen Touré (representing the GPP) and Ferdinand Kouassi alias “Watchard Kedjebo” (representing the CNLB), along with leaders of other *Galaxie Patriotique* organisations such as Yousouf Fofana of *La Voix du Nord*. The speeches of Djué and Touré in particular refer to the armed combat which was led by their *groupes d’auto-défense*, also called *milices*, across different areas of Côte d’Ivoire. Also present at this 2006 meeting was Maguy Le Tocard, who can be seen very briefly on the footage but who is referred to by one of the presenters as “*le président du Parlement du 16e arrondissement que vous connaissez très bien, le camarade TOCARD MAGUY*”. This also corroborates Witness P-0435 in showing that Maguy Le Tocard was already well-known as a prominent speaker in the *Parlements*, some years before he led the armed militia in central Yopougon during the 2010-2011 crisis.

138. Other evidence on the record shows that, from 2009, Eugène Djué received regular payments totalling 1.6 million FCFA per month from the *Cabinet du Président de la République*, in his capacity as *Président* of the UPLTCI, and that in 2010 he was also named to the *Haut Conseil Politique* for Laurent Gbagbo’s presidential campaign, where he was given the position of “*1er Secrétaire Adjoint aux Moyens Généraux*”.

(iv) Corroboration of Witness P-0435 on the division of the GPP into two factions and the GPP’s relations with satellite militia groups

139. On the inner workings of the GPP militia and its division into factions loyal to (i) Bernard Yokoyoko Bouazo and (ii) Moussa Zéguen Touré and Jeff Fada, Witness P-0435 is corroborated firstly by documents from 2006 and 2010, in which Mr Bouazo is presented as President of the GPP. These documents include a public declaration by Mr Bouazo in 2006, in which he refers to the split in the GPP

militia, and Mr Bouazo's correspondence to the police in 2010 in which he presents himself as both "*Président du GPP*" and "*Le porte parole des Groupes d'Auto-défense (GAD)*".

140. Witness P-0435 is also corroborated on this point by receipts of payments to Moussa Zéguen Touré as an individual on 2 occasions in 2004 and 2005 and then in regular instalments in his capacity as "*Président du Groupement des Patriotes pour la Paix (GPP)*" between 16 May 2009 and 18 March 2011, when these payments were provided by Madame Sarata Ottro Zirignon-Touré, *Directeur Adjoint du Cabinet du Président de la République*, and her secretariat. The receipts appear to be signed on a number of occasions by Moussa Zéguen Touré himself and on many other occasions by Youssouf Fofana collecting funds on Zéguen's behalf, on the same day that Fofana is also collecting payments from the *Cabinet du Président de la République* for his own organisation *La Voix du Nord*. Youssouf Fofana also collected payments on behalf of other persons and armed groups affiliated to the *Galaxie Patriotique*, up to and including on 18 March 2011 for Eugène Djué and Serge Koffi.

141. The Prosecution submits that the totality of receipts for funds paid from the *Cabinet du Président de la République* to both armed and unarmed groups, along with other supporting evidence on the case record, are indicative of a link between the presidency of Mr Gbagbo and the militia.

142. On the period between the Ouagadougou accord of 2007 and 2010, Witness P-0435 testified on the role of militia commander "Djimmy Willy" and his "*Union des Mouvements d'Autodéfense du Sud*" (UMAS), explaining that UMAS was a front organisation for militia groups including the GPP, which were officially disbanded but which remained organised during that period. Details of Witness P-0435's testimony on the UMAS are corroborated by a letter dated 22 February 2010 and signed by Zan Bi Bolo Aubin alias General Djimmy Willy, sent on behalf of the UMAS to the *Directeur National de Campagne du Candidat Laurent Gbagbo*.

The subject of the letter is a convention on the theme, “*L’engagement des groupes d’auto-défense pour la victoire du candidat Laurent Gbagbo aux élections présidentielles*” which includes proposals to organise its members into “*comités de vigilance*” to act as assessors for voting offices and security for Mr Gbagbo’s campaign. The letter corroborates Witness P-0435 with regard to the large-scale organisation of the GPP and its related militia groups in Abidjan and across the South of Côte d’Ivoire, with the UMAS consisting of 17,282 combatants in February 2010 and the GPP the largest individual group with over 6,373 members. Witness P-0435 testified that, by September 2010, the GPP had around 18,000 members nationally and he refers to the GPP as the principal militia group encompassing numerous satellite groups which had been formed from it, (e.g. the GCLCI, the FLP, the FAT and 1<sup>er</sup> BCL), but which essentially belonged to the same movement. The satellite groups listed above are also included in the letter from Djimmy Willy and they, along with the GPP and other armed groups, combine to give the total of 17,282 combatants, close to the figure of 18,000 which Witness P-0435 stated in testimony.

143. Witness P-0435’s description of the GPP as the predominant militia group, with a proliferation of smaller groups around it, is also corroborated by letters from Bouazo Yokoyoko Bernard to the Police and the Presidency in the period before and after the 2010 elections. In his letter dated 13 September 2010 to the *Directeur général de la police nationale*, Mr Bouazo presents himself both as *Président du GPP* and *Le porte parole des Groupes d’Auto-défense*, including the satellite groups cited above. In his letter dated 17 January 2011 to the Presidency, Mr Bouazo reiterates his position as “*Le porte parole des Groupes d’Auto-défense (GAD)*” and states there are 20,000 members available to support the FDS.

(v) Corroboration of Witness P-0435 on the covert training, recruitment and integration of militia-members into the FDS

144. Witness P-0435 testified that, from December 2010, youth members from the GPP and other *mouvements patriotiques*, who had already received initial military training from Witness P-0435 and other GPP trainers, were admitted into FDS camps to undergo accelerated military training, and that they underwent medical checks at the *Hôpital militaire d'Abidjan* (HMA) and the old Akouédo military camp, before being integrated into units including the *1<sup>er</sup> Bataillon de commando parachutiste* (1<sup>er</sup> BCP), *Bataillon blindé* (BB), and *Bataillon d'artillerie sol-sol / Bataillon d'artillerie sol-air* (BASS-BASA).
145. On this unofficial recruitment, Witness P-0347 corroborates Witness P-0435 in stating that from December 2010 there was an accelerated training of youth in the *Garde Républicaine* camp at Akakro, which he had not been informed about and which came under the direct responsibility of General Dogbo Blé.
146. Witness P-0347 testified that these young recruits trained openly in a "*lieu de regroupement*" in Treichville, behind the *Garde Républicaine* camp and beside the *Palais de la Culture*, from where they went on to the Akakro training camp and were subsequently integrated into the *Garde Républicaine*. Witness P-0347 testified that this recruitment contravened procedure, citing that (i) the *État-major* should have provided the lists of recruits but that instead the recruits were selected by "*copinage*", through unofficial connections, including *via* the *Garde Républicaine*, and (ii) the recruits assembled at the unofficial "*lieu de regroupement*" beside the *Palais de la Culture*, rather than at an official barracks.
147. Witness P-0316 also testified about this clandestine recruitment and training of *Jeunes Patriotes* at the *Garde Républicaine* camp in Akakro in December 2010, noting that up to 100 of these recruits subsequently joined the 1<sup>er</sup> BCP.
148. Witness P-0239 was present at the *Garde Républicaine* camp in Akakro in December 2010 and witnessed the presence of these recruits, who informed him that they had been recruited on the order of General Dogbo Blé.

149. Official FDS documents confirm that medical examinations of recruits in Akakro took place on 22 and 23 December 2010 and were followed in January 2011 by medical examinations of additional recruits at the HMA and Akouédo, as referred to by Witness P-0435.
150. With regard to the recruitment and training of militia, Witness P-0435 also testified on the role of Mr Zagbayou, who was both a non-commissioned officer within the FDS and a “Colonel” within the GPP, for which he was the principal military trainer since 2003, and who was active again in this role in 2010 and 2011.
151. Video evidence from 18 January 2011 shows an assembly of *jeunes patriotes* who are being trained to be recruited, next to the *Palais de la Culture* in Treichville, in what matches Witness P-0347’s description of the location of the unofficial “*lieu de regroupement*” of recruits. The *jeunes patriotes* on this footage are undergoing training by GPP trainer Zagbayou, while Mr Blé Goudé is giving a speech inside the *Palais de la Culture*. Mr Zagbayou comments to camera that: “*Ils sont prêts à tout combat. Ces jeunes-là, ce sont des volontaires, ceux qui aiment leur pays, et qui sont prêts à mourir pour le pays.*” Also present with Zagbayou on this footage is Guy Gbetri, who features in a further video from the same period showing the registration for recruitment of *jeunes patriotes* from a *parlement* in Yopougon.
152. On 22 January 2011, an RTI news bulletin shows Guy Gbetri and Mr Zagbayou next to Mr Blé Goudé, before a large crowd of *jeunes patriotes* next to Mr Blé Goudé’s house. While standing next to Mr Gbetri and Mr Zagbayou, Mr Blé Goudé says, “*Vous m’avez porté un message, je l’ai compris.*” At the end of this news report, the crowd of *patriotes* is shown singing Mr Zagbayou’s name and, while the reporter Mambo Abbé is giving his message to the camera, Mr Zagbayou is clearly shown giving military instruction to the *patriotes* in the background, with a combination of visual and oral messages which is a feature of the RTI news during this period.

153. This video evidence of Mr Zagbayou in training militia recruits corroborates Witness P-0435, as does other witness testimony of Zagbayou's involvement as the main trainer of militia in Yopougon.

154. The above video evidence of Mr Zagbayou, Guy Gbetri and Mr Blé Goudé with large numbers of *jeunes patriotes* who are being "mobilised" and preparing for combat coincides with similar video evidence in the period of 18 to 23 January 2011:

- a. On 20 January 2011, Mr Blé Goudé and his "*amis*" visit the FDS commanders at the *État-major*, where Mr Blé Goudé announces a rally at Stade Champroux to pay homage to the FDS and General Mangou acknowledges the support of the youth;
- vi. On 21 January 2011, there is a large assembly in front of the *État-major* of *jeunes patriotes* who are demanding to be recruited into the army;
- vii. On 23 January 2011, the rally of youth organised by Mr Blé Goudé takes place at Stade Champroux, where Mr Blé Goudé assures the FDS that the youth are "*à votre disposition*" and General Mangou says to the assembled crowd that: "*Nous irons jusqu'au bout, jusqu'au sacrifice suprême. [...] Et nous savons que vous aussi, vous êtes décidés à mener ce combat.*"

155. FDS correspondence dated 21 February 2011 confirms the details of 398 FDS recruits who have been selected from militia / "*groupes d'auto-défense*" and who are listed under the title "*Répartition GAD pour la formation militaire*". This list denotes the militia groups which the recruits belong to and designates their distribution to the 1<sup>er</sup> BCP, BB, and BASA – the three units specified by Witness P-0435 – as well as to the 1<sup>er</sup> *Bataillon d'infanterie d'Akouédo*.

156. The content of this FDS document was confirmed by Witness P-0047, who testified that the document was signed by his second-in-command and that youth



from these groups, including the GPP, were recruited into the FDS during the crisis with the knowledge of the *État-major*. This further corroborates the testimony of Witness P-0435, who had already provided details of the recruitment of the militia and their distribution among these military units and, when subsequently shown this list, recognised the names of a number of militia members who were personally known to him and provided additional information about them.

157. The majority of militia groups/“*groupes d’auto-défense*” listed on this FDS document (including - in addition to the GPP – the GCLCI, FLP, FAT, and BCL) are groups which Witness P-0435 had already testified were affiliated to the GPP. As noted above, they are also named in the correspondence sent by GPP leader Bernard Yokoyoko Bouazo on 13 September 2010 as “*Le porte parole des Groupes d’Auto-défense (GAD)*” and Mr Bouazo also wrote to the Presidency on 17 January 2011 as spokesman for the *groupes d’auto-défense* and proposed their immediate engagement in support of the FDS.

158. A number of other documents obtained from the FDS archives indicate that large numbers of young recruits continued to be integrated into the FDS during February and early March 2011, including from the West of Côte d’Ivoire, despite the lack of any official public announcement of enrolment in the armed forces prior to Mr Blé Goudé’s call to *les jeunes* on 19 March 2011 to enlist at the *État-major* on 21 March 2011. The totality of the evidence corroborates Witness P-0435’s testimony that this public *mot d’ordre* by Mr Blé Goudé made official a recruitment that had already been ongoing covertly for a number of months.

159. Although Witness P-0009 claimed to be unaware of any recruitment by the FDS of militia while he was in command, he stated that, once he left his position on 30 March 2011, there was a recruitment of members of *groupes d’auto-défense* by the *Garde Républicaine* and that these recruits fought alongside members of the *Garde Républicaine* in subsequent combat. The evidence in the record of the case

shows that many militia recruits were demobilised from the FDS following the post-electoral crisis, and the abundance of evidence cited above indicates that this covert recruitment of militia had been ongoing from December 2010. As a result, Witness P-0009's testimony on this specific issue appears self-serving and must be treated with caution, given the indications of his own complicity with this recruitment and therefore his own responsibility.

(vi) Corroboration of Witness P-0435 on the collaboration of the militia and certain FDS units in the commission of crimes and the impunity under which they acted

160. Witness P-0435 provided detailed evidence on the collaboration during the post-electoral crisis between his own group of GPP members and specific FDS units, notably the GR, CECOS and CRS1, as well as the collaboration of the group of Maguy Le Tocard in Yopougon with the police BAE and its commander Loba. Witness P-0435 testified on how the militia and these FDS units liaised together in the commission of crimes, including the murder of civilians.

161. Witness P-0435 testified that his GPP group were provided with white FDS "*brassards blancs*", worn on the left arm, which were issued after the elections and distributed to the militia as well as the FDS and which his group wore during the incident of 16 December 2010. His description of these armbands was contested during his examination; however, video footage from January 2011 shows the armband clearly visible with the FDS insignia and worn on the left arm, as described by Witness P-0435.

a. As to the events of 16 December 2011

162. On the 16 December 2010 incident, Witness P-0435 testified that members of his group were armed but that they were under instruction not to use their guns unless they intercepted armed marchers, but [REDACTED] liaised

with the CECOS BMO. He referred to an incident on the night of 16 December 2010 where his group had a violent altercation with police from the 7<sup>th</sup> commissariat, who objected to the GPP detaining marchers, and that the situation was resolved when his GPP group were able to hand over the marchers they had captured to the CECOS BMO. Witness P-0435's account of this incident is corroborated by an entry on an official police report which, although it does not refer to the GPP's role on that day, notes the altercation between the GPP group and police from the 7<sup>th</sup> commissariat, stating that there were shots fired by both sides and that the situation was resolved with the arrival of the CECOS BMO. In noting that shots were fired by a police officer and by the GPP, the report also corroborates Witness P-0435's statement that his GPP group had guns on that day.

163. Witness P-0435 also testified that the FESCI participated in the repression of the 16 December 2010 march, that they were based in the university residences of *Cité rouge* and *Cité Mermoz* in Cocody, [REDACTED] on that day and that they had already been armed with AK-47s in advance of the march. On these points, Witness P-0435 is corroborated by a police report for 16 December 2010 which notes, in relation to events in Cocody, "*Les manifestants ont pu accéder au carrefour de la vie au carrefour Saint-Jean. Affrontement entre jeunes du RHDP et étudiants*", by the testimony of Witness P-0107, who was injured by a bullet fired from a university residence in Cocody, and by the testimony of Witness P-0106, who saw marchers being assaulted by FESCI members who were collaborating with the BMO on that day. The evidence that FESCI members in university residences were armed with AK-47s during the crisis is corroborated by police reports which refer to armed "*étudiants*" from "*cités universitaires*" firing automatic weapons, including to repress a RHDP demonstration on 8 March 2011.

(b) *On the activities of Maguy Le Tocard*

164. Witness P-0435 testified in relation to Maguy Le Tocard's militia activities during the crisis, particularly his collaboration with the police BAE based in Yopougon, including a gun and RPG attack in Port Bouët II which killed a number of civilians. His testimony on the BAE liaising with militia in Yopougon is corroborated by witness and documentary evidence. Witness P-0442 testified that the BAE openly trained pro-Gbagbo youth in Yopougon before the elections, including in using firearms. Witness P-0442 also testified that the BAE were present during the militia attack on the Lem mosque on 25 February 2011. Witness P-0547 testified that the BAE led the attack in the Port Bouët II area of Yopougon, in which civilians including the imam were killed. A UN report also provides details of this joint attack by the BAE and militia in Port Bouët II, which occurred on 15 March and in which grenades were used against civilians. A police report also notes the shooting dead of the imam on that date.

165. The complicity of the FDS with the militia, and the widespread knowledge of this, is also corroborated by Witness P-0440. Witness P-0440 testified about his inability to stop Maguy Le Tocard and his armed militia from entering the 16<sup>th</sup> police commissariat in Yopougon, stating:

*"Ils n'avaient pas besoin d'autorisation. En tout cas, on ne leur a jamais donné une autorisation. Ils n'en avaient pas besoin. Et nous-mêmes ne sentions pas le besoin...le besoin de les empêcher."*

*"Il faut dire qu'à l'époque on les craignait plus ou moins, parce qu'on ne pouvait pas tenter une action contre eux. Donc, on les craignait, et ils pouvaient se permettre tout. Ils pouvaient se permettre de rentrer, de sortir, sans qu'on ne bronche, ils savaient qu'on n'allait pas broncher."*

*“Ils étaient pratiquement intouchables. Il y avait une catégorie de personnes comme ça qu’on ne pouvait pas arrêter, qu’on ne pouvait pas empêcher de faire ce qu’ils voulaient. Il y avait eux, y avait les étudiants de la FESCI, puis il y avait un autre groupe qu’on appelait GPP. En tout cas, ils posaient des actes que nous voyions, mais on était impuissant.”*

*“Parce qu’on ne pouvait pas les arrêter. On n’y pensait même pas. Parce qu’on se disait qu’on allait avoir des représailles.”*

*“D’eux-mêmes d’abord, et puis des réprimandes de la part de notre hiérarchie. Parce que tout le monde était au courant et tout le monde laissait faire.”*

166. Witness P-0046 confirmed having received a phone call from the BAE Commander and the CRS1 Commander asking him whether he had learned that militia members were to work with them. Witness P-0046 also testified that he discovered that two persons, whom he visited at a Police hospital in Adjamé in the belief that they were police officers, were in fact militia members who worked with the CRS of Williamsville.

167. Witness P-0435 testified on the collaboration of GPP militia members with the police CRS1 in Williamsville, and an attack by the GPP at the Williamsville mosque which led to the killing of civilians including the imam. The account by Witness P-0435 of the CRS1 / GPP operation which resulted in the killing of an imam in Williamsville is corroborated by a UN report which provides further details of this incident, which occurred on 19 March 2011. Witness P-0046 also testified on the lack of explanation of the CRS1 commander concerning the deaths of civilians during this incident.

168. Witness P-0578 corroborates the collaboration between the CRS in Williamsville and the militia, testifying that there were militia based at the *cite policière* of the CRS in Williamsville and also referring to the GPP group at 220 Logements, which was the location of Witness P-0435's base. Witness P-0578 saw armed militia wearing GPP t-shirts with the FDS towards the end of the crisis and recognised some of the militia-members from 220 Logements entering Camp Agban. This also corroborates Witness P-0435, who testified that, in early April 2011, a group of GPP militia left the CRS1 base and transited *via* Camp Agban, before moving on to the Presidential Residence.

169. The collaboration of the militia with the FDS also became more overt *via* the RTI, which on 20 March 2011 lauded militia leader Maguy Le Tocard and publicised his visits to the police BAE in Yopougon and the police CRS1 in Williamsville. The clip represents Maguy as defending the community and states that the actions of his "*comité de vigilance*" are bearing fruit and that "*Pour le commandant MAGUY, il faut soutenir le Président de la République Laurent GBAGBO, qui incarne la légalité constitutionnelle*".

170. This RTI tribute to Maguy Le Tocard, which makes no reference to Maguy or his group being armed or engaging in violence, sits in contrast to a video interview of Maguy which was already publicly available on the internet from 6 March 2011. In this earlier video, Maguy and his militia are filmed with kalashnikovs in Yopougon, openly collaborating with the FDS, and features pictures of burned bodies on the streets, with Maguy stating that "*S'ils viennent avec les armes nous allons les attaquer avec les armes*" and "*donc, ils tuent un, on tue 10 ... là on en brûle un, on brûle 10*".

171. Other senior militia figures who featured prominently on the RTI news during this period to state their messages of resistance in support of Mr Gbagbo include Moussa Zéguen Touré of the rival wing of the GPP, Augustin Mian of the FESCI, Serge Koffi of the CRAC and Denis Maho Glofiéhi of the FLGO.

(i) the collaboration between the FDS and militia, including the GPP

172. On the increasing collaboration between the FDS and militia, including the GPP, the testimony of Witness P-0435 is also corroborated by official FDS documents from March 2011. The Prosecution obtained from the police archives an analysis document dated 8 March 2011 by the Direction des Renseignements Généraux of the Ministry of the Interior. It refers to the security situation in the communes of Abobo and Anyama, noting that rebels are openly mounting checkpoints at the Grand carrefour d'Anyama and Carrefour N'Dotré. Among the measures proposed by the Direction des Renseignements Généraux are the use of armed GPP in civilian clothing to support police, gendarmerie and military in carrying out "search and sweep" operations in Abobo and Anyama: "Ce personnel d'intervention se composera d'une part d'éléments supplétifs GPP (en civile)"; "Sur ces sites, l'Armée fera partie du dispositif et sera chargée avec la gendarmerie et le GPP de faire la pénétration et le ratissage tandis que la police assurera la ceinture"; "Moyens d'intervention Pour le GPP Ces éléments seront dotés individuellement de fusil d'assaut (Kalachnikov)"; "Il urge d'engager ces opérations et de les étendre aux autres quartiers d'Abidjan susceptibles d'abriter ces rebelles".

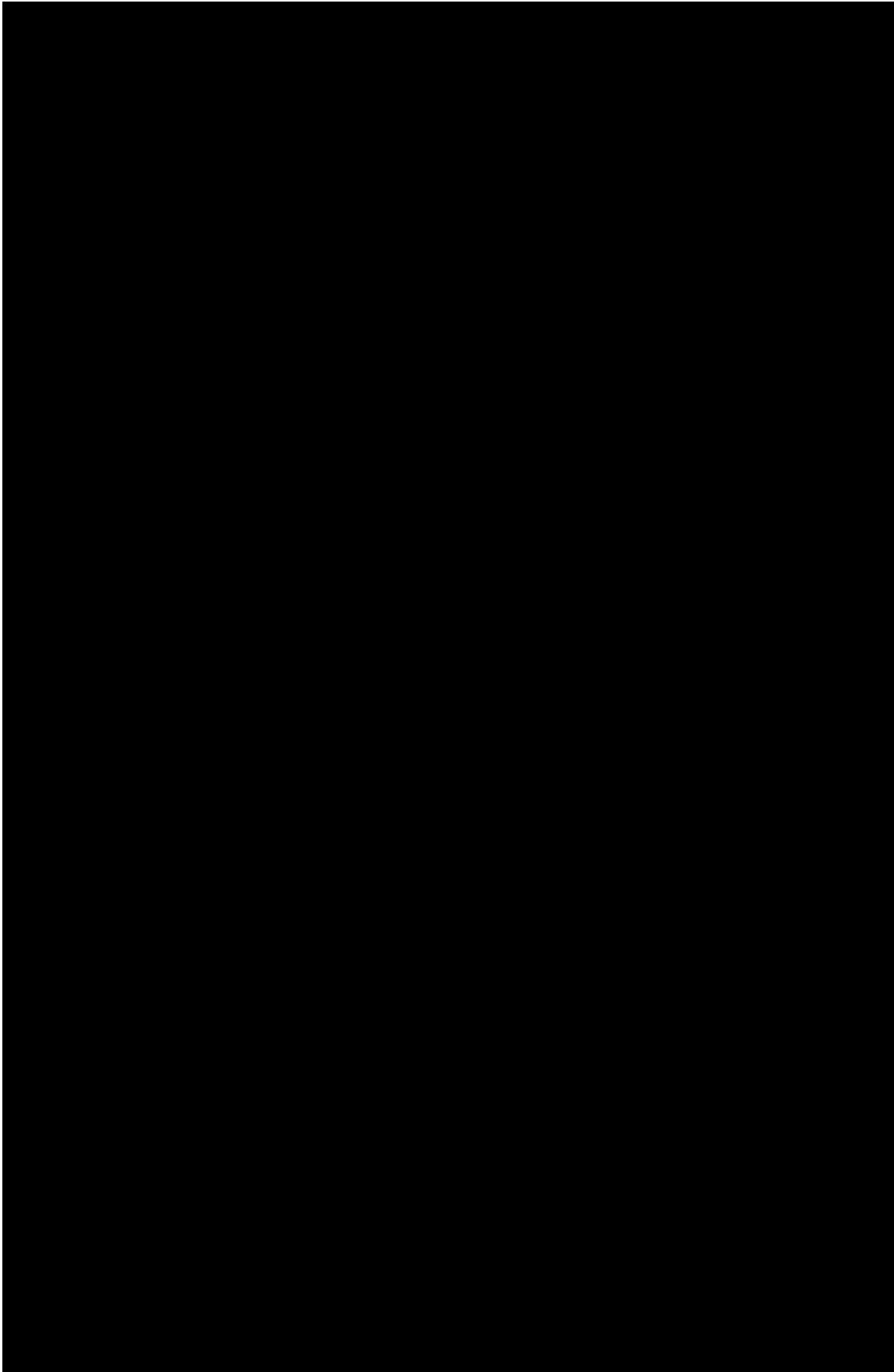
173. This document is corroborated by a *"Synthèse des Bulletins Quotidiens d'Information pour la période du 16 au 21 mars 2011"* of the Police, which the Prosecution obtained from the archives of the Ministry of the Interior. This compilation of police reports notes that, at a meeting on 16 March 2011, the *Direction des Renseignements Généraux* proposed the above measures, with slight modifications in the division of Abobo into Sector 1 for Anyama, PK18 and N'dotré, and Sector 2 for the rest of Abobo, noting:

*“2.3 Modalités d’intervention Dans le secteur 1, l’armée, la gendarmerie et les éléments du GPP se chargeront de faire la pénétration, tandis que le ratissage sera l’affaire des policiers”; and*

*“2.4 Moyens d’intervention - Doter les éléments du GPP de kalachnikovs”*

These documents correspond with the increasingly overt collaboration between the FDS and the militia, which manifested itself in the commission of crimes including the incident of 25-28 February 2011, the killing of civilians in the Port Bouët II district of Yopougon on 15 March, and the killing of civilians at the Williamsville mosque on 19 March.





(iii) Collaboration of Witness P-0435 with Commanders of the GR

175. On his collaboration with officers from the GR, Witness P-0435 provides information about their roles and responsibilities, which would not be commonly known to outsiders but which is corroborated by Witness P-0347. Witness P-0435 refers to the GPP's focal point in the GR being Commander Kipré, who was based at the Presidential Palace. Witness P-0347's testified that Commander Yagba Kipré, General Dogbo Blé's *chef de cabinet*, was based at the Presidential Palace and was involved in covert training and recruitment to the GR in December 2010. Witness P-0435 also refers to Colonel Mody of the GR being based at the Presidential Palace and in charge of GR operations; this information is also confirmed by Witness P-0347.

(iv) On the presence of militia and Liberian mercenaries at the residence

176. Witness P-0435 is corroborated by other witnesses on the presence of militia and Liberian mercenaries at the Presidential Residence on 2 and 4 April 2011. Witness P-0435 volunteered the name of [REDACTED] as one of the Liberian combatants based at the Presidential Residence; this information was subsequently confirmed by Witness [REDACTED]. Witness P-0435 also referred to GPP members Tchang and Meledje being based at the Presidential Residence; their presence there was also confirmed by Witness P-0500. Witness P-0435 also referred to the FDS officers Colonel Katé Gnatoa and Commander Anselme Séka Yapo coordinating militia activity during this period; this information is corroborated by Witness [REDACTED] and, in relation to Séka, by Witness P-0500. Witness P-0009 also testified to having seen heavily armed mercenaries with Commander Séka Yapo on the road to the Presidential Residence on 3 April.

(v) The disarmament of militia in Yopougon after the arrest of Mr Gbagbo

177. At the end of the crisis, Eugène Djué, along with Maguy Le Tocard and Guy Gbetri, took part in the disarmament of the militia in Yopougon. Some of the weapons used by the pro-Gbagbo militia in Yopougon can be seen on the video

footage of this disarmament ceremony, including an RPG, as referred to by Witness P-0435 in relation to the militia attack on the Port Bouët II district of Yopougon on 15 March.

(vi) Corroboration of Witness P-0435 by evidence submitted by the Defence

178. It is worth noting that a number of key points in the evidence of Witness P-0435, while contested by Mr Gbagbo and Mr Blé Goudé, are also corroborated by a book which both Defence teams rely on: *“France - Côte d’Ivoire: une histoire tronquée”* by Fanny Pigeaud. In relation to the security situation at the start of December 2010, before the announcement of results of the second round of elections, Ms Pigeaud states: *“la branche armée des Jeunes Patriotes, le GPP, est toujours active et s’entraîne du côté de Yopougon, sous la direction d’un ancien militaire qui se fait appeler «Zagbayou».”*

179. While the Prosecution does not accept the evidential weight of a book for which the author has not been examined by the Parties, the above statement indicates that the activities of the GPP militia were well-known to many people on the ground at the time, including to “foreign journalists”.

(c) *Defence reliance on Witness P-0435 and P-0048*

180. The Prosecution notes that, despite the Mr Gbagbo’s robust challenges relating to the credibility of Witnesses P-0048 and P-0435, the Defence nevertheless relies on their evidence when it supports their narrative.

### III. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY AND RESPONSE TO DEFENCE ARGUMENTS

#### A. Introduction

181. First, the Prosecution sets out the law on the contextual elements for crimes against humanity.

182. Second, the Prosecution sets out its case for each contextual element. Under each element, the Prosecution also responds to the Defence arguments that relate to it.
183. Thus, under the element regarding the course of conduct involving the multiple commission of article 7(1) acts, the Prosecution addresses Mr Gbagbo's arguments, as set out in Annex 3 of the Gbagbo Motion, challenging the evidence of article 7(1) acts committed in the context of 20 incidents. The Prosecution informs the Chamber that it no longer relies on evidence specifically relevant to the following incidents for the purpose of demonstrating the commission of multiple article 7(1) acts: 27 to 29 November 2010 (Abobo), 4 January 2011 (PDCI headquarters, Cocody), 11 and 12 January 2011 (Abobo, PK18), 7 and 8 February 2011 (Abobo), 19 to 21 February 2011 (Abobo, Koumassi and Treichville), 25 February 2011 (rapes in Abobo), 1 March 2011 (Yopougon), 29 March 2011 (Adjamé) and 30 March 2011 (Adjamé).
184. Under the element regarding the course of conduct, the Prosecution also addresses Mr Blé Goudé challenges to the evidence of other article 7(1) acts and evidentiary patterns, where relevant and not covered by the sections of this response dealing with the five charged incidents.
185. Under the element regarding that the attack was directed against the civilian population, the Prosecution addresses, for the reasons explained there, Mr Blé Goudé's arguments regarding the inferences that can be drawn from the way the pro-Gbagbo forces carried out the attack—with the five charged incidents being developed more fully in their particular sections in the response--and from the nature of the threat posed by opposition armed groups.
186. Under the element on the State or organisational policy, the Prosecution addresses Mr Blé Goudé's argument regarding the pro-Gbagbo forces and the Inner Circle insofar as those are not addressed in Section V on Individual Criminal Responsibility.

## **B. Law on contextual elements of crimes against humanity**

187. In this section, the Prosecution analyses the law applicable to the contextual elements of crimes against humanity, and further explains how each of these elements may be proved. Specifically, for the Trial Chamber to conclude that there is a case to answer under article 7, it must determine that a reasonable Trial Chamber could find that:

- a. there was an attack, in the sense of
  - a. a “course of conduct involving the multiple commission of acts referred to in [article 7(1)]”,
  - b. “against any civilian population”,
  - c. “pursuant to or in furtherance of a State or organisational policy to commit such attack”; *and*
- viii. that attack was “widespread” or “systematic”; *and*
- ix. there was a nexus between the incidents for which the accused is alleged to be responsible and that attack; *and*
- x. the perpetrator(s) of the charged incidents knew of the nexus with the attack.

188. Each of these elements — which permit identification of the relevant material facts — is addressed in the following paragraphs:

1. The “course of conduct involving the multiple commission of acts referred to in [article 7(1)]”

(a) *Applicable law*

189. A “course of conduct involving the multiple commission of acts referred to in [article 7(1)]” constitutes a “series or overall flow of events as opposed to a mere aggregate of random acts”, sometimes conceived of as a “campaign or operation”.

190. The “conduct” in question need not amount to a “military” attack, nor involve the use of armed force, but may encompass any mistreatment of the civilian population through acts under article 7(1). Acts which are not proscribed under article 7(1) cannot be taken into account *per se*, although they may be relevant evidence in establishing the existence of a “course of conduct” or a “policy” or the “systematic” nature of the attack.

191. Although the requirement for the “course of conduct” to involve the “multiple commission of acts referred to in [article 7(1)]” establishes a “quantitative threshold”, it is a limited one. In particular, the term “multiple” should not be conflated with “widespread”, since this would be incompatible with the plain structure of article 7 which allows a qualifying “attack” to be “systematic” but *not* “widespread”. It follows, therefore, that the requirement for commission of “multiple” acts can only amount to a lesser quantitative threshold, such as “more than a few” or “several” acts. Indeed, in principle, a *single incident* could qualify as an attack, provided that it still involved “multiple” acts under article 7(1). As long as the course of conduct involves “multiple” acts, the precise number of individual acts is irrelevant and need not be determined. Judges Van den Wyngaert and Morrison disagree with this statement of law, but provide no authorities in support of their separate opinion that departs from the practice of the Court and other international tribunals.

(b) *Means of proof*

192. The material fact to be established is the factual articulation of a “course of conduct” involving “multiple” acts contrary to article 7(1) of the Statute. In this case, it is alleged that between 27 November 2010 and on or around 12 April 2011, pro-Gbagbo forces carried out a series of multiple acts of violence, including killing, attempted killing, rapes, severe injuries and arbitrary arrests against civilians perceived to be Ouattara supporters.

193. The individual acts themselves are not material facts, and need not be established to the requisite standard of proof — provided that the Trial Chamber is satisfied overall that a reasonable Trial Chamber could find the existence of a “course of conduct” as a whole. In other words, the Prosecution must prove the “existence of the forest”, not each individual tree. This does not mean that the Prosecution’s burden is lowered with respect to the chapeau elements. Rather, the elements and corresponding material facts for the chapeau of article 7 are *different* from those of the underlying crimes. The Appeals Chamber recently seemed to agree, by acknowledging that the contextual element of crimes against humanity “operates at a higher level of abstraction”.

194. Although the Prosecution’s burden *may* be met by evidence which individually proves a ‘sufficient’ number of article 7(1) acts, this is not the *only* means of doing so. To take a common analogy, it is not necessary to review in detail each word in this brief in order to conclude that it contains ‘multiple’ words — the same feat can be accomplished inferentially by means such as verifying that the pages are not blank, considering the number of pages, the font size, the purpose for which the brief was presented, and so on.

195. In this case, the Prosecution relies, among other things, on evidence relevant to “a series of incidents [...] to establish that an attack within the meaning of article 7 of the Statute occurred”. But these incidents are presented as subsidiary

facts supporting the existence of a “course of conduct” (material fact). To establish the necessary “course of conduct”, it need *not* be shown that a reasonable Trial Chamber could find that each — or indeed any one — of these incidents (nor any of the article 7(1) acts committed in the context of an incident) are established to the requisite threshold. As noted by Judge Fernández, “[t]he term ‘incident’ has no specific legal meaning [...], although it may be of certain practical value in the analysis of the evidence and the construction of a narrative of relevant facts as it appears to refer to an event within certain temporal and territorial parameters.” The question is, instead, whether, based on evidence relevant to these incidents and acts, together with all other relevant evidence, a reasonable Trial Chamber could find that there was a course of conduct involving multiple acts under article 7(1).

196. This distinction — which is consistent with the jurisprudence of this Court and other international tribunals — becomes especially important if the Prosecution, as in the present case, seeks to establish the course of conduct also by analysing the evidence in light of a number of other evidentiary factors or patterns involving acts under article 7(1). These patterns are subsidiary facts that assist the Chamber in analysing the evidence relevant to the material facts.

197. For instance the evidence shows that the multiple acts under article 7(1) were committed by the same group of perpetrators in a defined area and timeframe, that the perpetrators targeted political opponents, that they targeted specific neighbourhoods, and that they used military weapons and pursued a certain *modus operandi*. These patterns are common to article 7(1) acts committed in the context of the five charged incidents. They are also common to article 7(1) acts otherwise referred to in the evidence, but for which the accused is not alleged to be criminally responsible (“uncharged acts”). The existence of the “course of conduct” can further be supported by evidence that is relevant to evidentiary factors or patterns without focussing on the detail of individual criminal acts. For



instance, some forms of evidence (overview evidence, demographic evidence, technical evidence and the like) may in appropriate circumstances suffice to establish the requisite scope of criminality, without addressing specific incidents.

198. The Chamber should cumulatively consider all this evidence to inform its decision whether there was a course of conduct involving multiple acts under article 7(1). In this context it is important to note that evidence of uncharged acts may be used to *corroborate* evidence relevant to the contextual elements of article 7, including evidence on other charged or uncharged acts. For instance, evidence relevant to uncharged act A may corroborate evidence relevant to charged or uncharged act B — and *vice-versa* — for instance if the evidence relates to the same pattern, such as showing that these acts have common features such as they were perpetrated in the same context, by the same group of perpetrators, against the same group of victims and within the same temporal and geographic framework. Corroboration does not require evidence to be identical in all aspects or to describe the same fact in the same way. Evidence is deemed corroborative when “one *prima facie* credible” piece of information is “compatible with other *prima facie* credible [information] regarding the same fact or a *sequence of linked facts*.” Thematic consistencies among items of evidence are sufficient corroboration, and it is unnecessary and unrealistic to require items of evidence to be ‘mirror images’ of each other. This means that any evidence of acts under article 7(1), or any other evidence that is logically consistent with such a *sequence of linked facts*, should be considered to determine whether there is a course of conduct involving the multiple commission of acts referred to in article 7(1).

## 2. The attack was directed against “any civilian population”

### (a) *Applicable law*

199. The “attack” — meaning the “course of conduct” — must be directed against “any civilian population”.

200. The term “civilian population” denotes a collective, as opposed to individual “civilians”. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. The civilian population must be the *primary*, as opposed to incidental, object of the attack, but this does not mean that it need be the *exclusive* target. Nor does it mean that attacking the civilian population must be the primary “purpose or objective”. The object of the attack must not be confused with the perpetrators’ motivation for the attack, which is irrelevant as a matter of law for establishing the contextual elements for article 7. In fact the perpetrators may be driven, for instance, by military, political or economic reason, or by no clear reason at all.
201. The reference to “any” civilian population means that the scope of article 7 is not limited to populations defined by common nationality, ethnicity or other similar distinguishing features, but extends to groups with any distinguishing features, including (perceived) political affiliation.
202. Likewise, demonstrating that the “course of conduct” is “directed against” such a population does not mean that the group was targeted in its entirety, but merely that civilians were targeted in sufficient numbers or otherwise in a manner showing that a “population” — rather than a limited number of specific individuals — was attacked.
203. Despite the requirement that the attack as a whole must be directed against a civilian population, there is no requirement that individual victims of the article 7(1) acts specifically charged against the accused — in other words, the ‘crime base’ — must themselves be “civilians” under international humanitarian law. It is only necessary that such conduct has a nexus to the attack directed against the civilian population.

(b) *Means of proof*

204. Proving that the attack was directed against a civilian population is a fact-driven inquiry. In circumstances where only civilians are the victims of multiple acts contrary to article 7(1), the facts will usually speak for themselves.

205. In circumstances where the attack does not only affect civilians, the following evidentiary factors may be relevant to determine whether the attack was directed against a civilian population: (i) the means and methods used in the course of the attack; (ii) the status of the victims; (iii) their number; (iv) the discriminatory nature of the attack; (v) the nature of the crimes committed in its course; (vi) the form of resistance to the assailants at the time of the attack, if any; and (vii) the extent to which the attacking force complied with the precautionary requirements of international humanitarian law.

206. While the “attack” must involve “multiple” acts proscribed in articles 7(1)(a) to (k), evidence of other crimes which may be factually associated with those acts — for example, looting or destruction of property — may be relevant in considering whether the attack was directed against a civilian population.

3. The course of conduct was carried out “pursuant to or in furtherance of a State or organisational policy to commit such attack”

(a) *Applicable law*

207. This element presupposes the existence of either a “**State**” or an “**organisation**”, both of which are relevant in this case.

208. The reference to “State” for the purpose of article 7 does not require the involvement of the whole State but includes any entity which comprises “part of the State apparatus”.

209. An “organisation” is a non-State entity that has sufficient resources, means and capacity to bring about the “course of conduct” described above. It suffices

that the organisation has a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population. Purely private groups can meet this requirement.

210. Requiring the State or organisation to have a “**policy**” to carry out the “attack” was a diplomatic compromise in the Statute, with only a modest purpose: specifically, to “screen out ‘ordinary crime’, that is, unconnected crimes committed by diverse individuals”. This notion of ‘policy’ merely as a form of ‘link’ between crimes had been espoused in *Tadić*, which was the basis of the Canadian proposal leading to the drafting of article 7(2)(a). Such an approach is also extensively supported in academic commentary. Showing that the attack was planned, directed or organised — as opposed to wholly spontaneous, or an aggregate of isolated acts of violence — will thus necessarily satisfy the policy criterion. It must be stressed, moreover, that the “policy” requirement does not amount to requiring the attack to have been committed “systematically” — this would defeat the plain structure of article 7, which for example permits an attack to be widespread but *not* systematic.

211. Showing a “policy” does not require proof of a motive, ideology or ulterior purpose; the perpetrators’ motivation is irrelevant. Indeed, a “policy to commit an attack against a civilian population” does not need to be formalised and need not be bureaucratic or precise, and may be implicit. It is not necessary to show that the policy was adopted at the highest levels of a State or organisation, nor is it required that every member of a State or organisation support or endorse the policy. The term “policy” merely requires that some part of the State or organisation must have at least encouraged the attack, either actively or passively, and thus link the multiple article 7(1) acts together. A policy need not be proven in relation to each particular act or incident, but in relation to the attack as a whole.

212. Consistent with the statutory requirement that the “attack” was carried out “**pursuant to or in furtherance**” of the State or organisational policy, the Elements of Crimes require the State or organisation to “actively promote or encourage” the attack. In exceptional circumstances, they also allow that a policy may be shown by a deliberate failure to take action, which is consciously aimed at encouraging such attack. Again, this simply means that the course of conduct must reflect a link to the State or organisational policy, in order to exclude those acts which are perpetrated by isolated and uncoordinated individuals acting randomly on their own.

*(b) Means of proof*

213. The involvement of a **State** apparatus will usually be obvious. By contrast, and bearing in mind the diverse nature of potentially relevant “**organisations**”, such determinations must be made on a case-by-case basis, in accordance with the factors previously identified. Relevant factors may include evidence of the following: (i) the group is under a responsible command, or has an established hierarchy; (ii) the group exercises control over part of the territory of a State; (iii) the group has criminal activities against the civilian population as a primary purpose; (iv) the group articulates, explicitly or implicitly, an intention to attack a civilian population; or (v) the group is part of a larger group, which fulfils some or all of the abovementioned criteria. It is emphasised that, while these considerations may assist a Chamber in its determination, they do not constitute a rigid legal definition, and do not need to be exhaustively fulfilled.

214. Following the practice of this Court, the “**policy**” of the State or organisation in question may be inferred from a variety of factors, including (i) the manner in which the acts occur; (ii) a recurrent pattern of violence, including the adoption of a *modus operandi*; (iii) the use of public or private resources to further the policy; (iv) the involvement of the State or organisational forces in the commission of

crimes; (v) statements, instructions or documentation attributable to the State or the organisation condoning or encouraging the commission of crimes; (vi) preparatory meetings; and/or (vii) a “motive” or “purpose” underlying the policy.

215. The requirement for the State or organisation to “actively promote or encourage” the attack merely explains the common sense view that the “policy cannot be inferred solely from the *absence* of governmental or organisational action”. It can, however, be established by means including evidence of the *positive acts* of State agents or members of the organisation (including at the ‘grass roots’ level), the positive acts taken in response to criminal and other conduct, or indeed by “a deliberate failure to take action” in relevant circumstances.

216. To establish that a course of conduct was committed “**pursuant to or in furtherance**” of the State or organisational policy, it is sufficient to show a “link” between the course of conduct and the policy. This may be shown through evidence demonstrating that the persons who carried out the course of conduct were members of, or associated, with the relevant State agencies or the organisation and that their conduct was envisaged by, or consistent with, the policy. Evidence on the separate element of the perpetrator’s knowledge of the attack may also be relevant in this context. The Prosecution need not establish that each individual act under article 7(1) took place pursuant to or in furtherance of a State or organisational policy, but that the course of conduct took place in that context.

#### 4. The “widespread” or “systematic” nature of the attack

##### (a) *Applicable law*

217. The term “widespread” connotes the large-scale nature of the attack and the large number of targeted persons. Such attacks may be “massive, frequent, carried out collectively with considerable seriousness and directed against a

multiplicity of victims". But what is large is not absolute, and may also depend on other factors that are not exclusively quantitative or geographical. For instance, "widespread" has been explained as encompassing an attack carried out over a large geographical area or an attack in a small geographical area, but directed against a large number of civilians.

218. The alternative requirement that the attack be "systematic" has been consistently understood in the jurisprudence of the Court as pertaining to the organised nature of the acts of violence and the improbability of their random occurrence. Further, according to the jurisprudence of the Court, the systematic nature of an attack can "often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis".

*(b) Means of proof*

219. The assessment of whether the attack is widespread is fact-driven and case-specific.. This may include the temporal scope of the attack, the large number of acts, the high number of individuals directly victimised, the duration, and the size of the population or area otherwise affected. To establish the widespread nature of the attack, it is not necessary to independently establish each and every criminal act or the direct or indirect victimisation of each individual person. Also, the precise number of acts and victims is irrelevant.

220. An attack may be found to be systematic on the basis of evidence that demonstrates that the attack was prepared in advance, that it was planned and coordinated, that demonstrates the involvement in the attack of "officials or authorities" or that the acts of violence reveal a pattern, including in terms of targeted victims, areas of attack and *modus operandi* of the perpetrators. Although proof of "systematicity" may be more demanding than proof of a "policy", requiring a higher degree of coordination, it may be established in a similar way and potentially drawing on similar evidence.

## 5. Nexus between the charged acts and the attack

### (a) *Applicable law*

221. The Prosecution must demonstrate that the underlying acts charged under article 7(1) were committed “as part” of the widespread or systematic attack directed against any civilian population.

### (b) *Means of proof*

222. Identifying the nexus is fact-sensitive. In determining whether the requisite nexus exists, the Chamber must make an objective assessment, considering, in particular, the characteristics, aims, nature and/or consequences of the act. Isolated acts that clearly differ in their context and circumstances from other acts that occur during an attack fall outside the scope of article 7(1).

223. Establishing that the charged acts under article 7(1) were committed “as part” of the attack does not require proof that they were committed “in the midst” of that attack. An offence which is committed before or after the attack against the civilian population, or away from it, could still, if sufficiently connected, be part of that attack. Whether a given offence is sufficiently connected to the attack will depend on the factual circumstances of the case but, in any event, it should not be so far removed from the attack so as to constitute an isolated act void of any nexus to the attack.

## 6. The perpetrator’s “knowledge of the attack”

### (a) *Applicable law*

224. According to the Elements of Crimes, it must be established that “[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population”. Paragraph 2 of the Introduction to Article 7 of the Elements of Crimes clarifies



that this “should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organisation”. Furthermore, the perpetrator’s motives are irrelevant, as is their personal conduct — provided the perpetrator knows that there is a nexus between their conduct and the attack against a civilian population, and that nexus objectively exists, their conduct need not itself be targeted against civilians.

225. The term “perpetrator” in this context is not necessarily equivalent to the term “accused”. It will apply to an accused only if he or she is charged with perpetrating the crime in question, for example under article 25(3)(a) of the Statute. Where the accused is not charged as a perpetrator, his or her mental state is not determinative of the existence of a crime against humanity (which must be independently established) but only of his or her own liability.

226. For example, if the accused is charged as a superior under article 28, it is sufficient to prove that they knew or should have known that their subordinate was committing or about to commit a crime against humanity. In other words, to establish whether an accused charged under article 28 possessed the required *mens rea*, the governing provision is article 28. The same approach applies, *mutatis mutandis*, where an accused is charged as an accomplice under articles 25(3)(b)-(d) of the Statute.

(b) *Means of proof*

227. According to the Elements of Crimes, “[i]n case of an emerging widespread or systematic attack against a civilian population, [...] this mental element is satisfied if the perpetrator intended to further such an attack”. This is entirely logical, since an early perpetrator cannot, strictly, ‘know’ of acts which have not yet occurred, even if they anticipate them and contribute towards them.

228. The perpetrator's knowledge may, among other factors, also be inferred from the *modus operandi* in which the attack is being carried out, the characteristics of the attack—for instance the features that are determinative of the widespread or systematic nature of the attack—or from features that may be relevant in determining the existence of a State or organisational policy.

### C. Factual submissions

229. The evidence on record demonstrates that from 27 November 2010 until on or around 12 April 2011 in Abidjan, pro-Gbagbo forces carried out a widespread and systematic attack directed against a civilian population perceived as supporting Ouattara. A reasonable Trial Chamber could find that the contextual elements for crimes against humanity under article 7 of the Statute are established to the requisite standard. The Defence submissions on the matter should therefore be dismissed.

#### 1. There was a course of conduct involving the multiple commission of acts referred to in article 7(1)

230. Between 27 November 2010 and on or around 12 April 2011 in Abidjan, pro-Gbagbo forces carried out a series of multiple acts of violence, including killing, attempted killing, rapes and severe injuries against civilians perceived to be Ouattara supporters.

231. The Prosecution has presented evidence of article 7(1) acts carried out in the context of five incidents which amount to crimes against humanity for which Mr Gbagbo (for four out of the five) and Mr Blé Goudé should be held criminally responsible. Evidence of these acts is also relevant to establishing the material fact of the course of conduct involving the multiple commission of acts as a contextual element of crimes against humanity.

232. To establish the relevant material fact, the Prosecution has also presented other evidence, which refers to article 7(1) acts for which the Accused are not alleged to be criminally responsible. This includes evidence of article 7(1) acts committed during 20 other incidents in addition to the five charged incidents, and other evidence on the record supporting the existence of the material fact. The Prosecution informs the Chamber that it no longer relies on evidence specifically relevant to the following incidents for the purpose of demonstrating the commission of multiple article 7(1) acts: 27 to 29 November 2010 (Abobo), 4 January 2011 (PDCI headquarters, Cocody), 11 and 12 January 2011 (Abobo, PK18), 7 and 8 February 2011 (Abobo), 19 to 21 February 2011 (Abobo, Koumassi and Treichville), 25 February 2011 (rapes in Abobo), 1 March 2011 (Yopougon), 29 March 2011 (Adjamé) and 30 March 2011 (Adjamé).

233. As indicated in the previous section setting out the law on crimes against humanity, it is the existence of a course of conduct involving the multiple commission of article 7(1) acts, sometimes referred to as a “campaign or operation”, that needs to be established to the required standard. The individual acts themselves, do not need to be established to this standard, and indeed less so the incidents within which they were committed. The Prosecution addresses below where relevant Mr Gbagbo’s challenges to the evidence in support of article 7(1) acts committed during the 20 other incidents. It does so in order to demonstrate that this evidence is consistent with and can be used to support the existence of the material fact of a course of conduct involving the multiple commission of article 7(1) acts, as it is not necessary to demonstrate the existence to the required standard of the acts or incidents themselves. Challenges to the reliability of UNOCI reports and of the reports prepared by Witness P-0564 have been dealt with in other sections of this response and are incorporated by reference here, as well as the Prosecution’s general position regarding the reliability of police reports.

234. The totality of the Prosecution evidence taken together demonstrates the material fact of the course of conduct. The Chamber could also decide that part of it suffices to prove it. In particular, evidence of the article 7(1) acts committed during the five charged incidents, including evidence of the context and manner in which they were committed, is of itself sufficient to demonstrate to the required standard the material fact of the existence of a course of conduct. The Trial Chamber does not need to be satisfied of the responsibility of the Accused for the crimes committed during the five charged incidents in order to find that evidence of these acts sufficiently demonstrates the existence of a course of conduct for the purpose of the contextual element of crimes against humanity.

235. Between 27 November 2010, the eve of the second round of the presidential election, and on or around 12 April 2011, after Mr Gbagbo was arrested, pro-Gbagbo forces carried out a campaign or operation of killing, raping and injuring civilians perceived as Ouattara supporters. The pro-Gbagbo forces carried out this campaign against the civilian population by employing a number of common means some of which evolved during the duration of this campaign or operation.

236. Civilians perceived as Ouattara supporters fell into two categories. The first category was composed of actual or perceived political opposition activists and sympathisers, in particular members of the RDR and supporters of other political parties linked to the RHDP such as the PDCI. As will be seen below, this category was mostly targeted in the context of demonstrations or in connection with political parties' premises.

237. The second category was composed of civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries, such as Mali, Burkina Faso or Niger, as well as Ivorians of West African descent. Pro-Gbagbo forces attacked members of these groups because they considered them to be Ouattara supporters, and as will be seen below, they were targeted

following their identification including at roadblocks, but also by shelling or indiscriminate fire in areas populated by them, and by other attacks in those areas including on their religious personnel and places of worship. In particular, the communes of Abobo and some neighbourhoods of Yopougon (Lem, Doukouré, Mami Fatai and Port-Bouët II) containing mainly members from these communities, were targeted by the pro-Gbagbo forces because of their presumed support for Ouattara. The communes of Adjamé, Koumassi and Treichville also contained members of these communities and were also targeted on this basis.

238. Evidence of at least 142 murders, 17 rapes, and 110 inhumane acts (alternatively acts of attempted murder) during the five charged incidents, including evidence showing that these acts were committed on discriminatory grounds and evidence showing the context and manner in which they were committed, establishes the material fact of the course of conduct involving the multiple commission of acts referred to in article 7(1).

*(a) Evidence of article 7(1) acts during the five charged incidents follows evidentiary factors or patterns demonstrating the existence of a course of conduct involving the multiple commission of acts referred to in article 7(1)*

239. This evidence of the five charged incidents should be assessed in light of the following evidentiary factors or patterns, which demonstrate the existence of a campaign or operation involving multiple article 7(1) acts, as opposed to a mere aggregation of un-associated acts:

- i. the acts amounted to murder, rape, other inhumane acts (alternatively attempted murder) or persecution;
- ii. the victims of those acts were civilians perceived as Ouattara supporters;
- iii. the perpetrators of the acts were pro-Gbagbo forces;

- iv. these acts were carried out in Abidjan between 27 November 2010 and on or around 12 April 2011.

240. The Prosecution submits that these four factors/patterns serve as a baseline to demonstrate at a minimum the existence of a campaign or operation involving multiple article 7(1) acts.

241. Nevertheless, additional factors from the evidence of the five charged incidents further demonstrate that the acts committed in their course constitute a series or overall flow of events, as opposed to a mere aggregation of un-associated acts. These evidentiary factors are:

- i. Pro-Gbagbo forces killed, raped and injured actual or perceived Ouattara political activists and sympathisers primarily in the context of political demonstrations or in and around political parties' premises, in Abidjan between 27 November 2010 and on or around 12 April 2011;
- ii. Pro-Gbagbo forces killed, raped and injured civilians during attacks on neighbourhoods where inhabitants were perceived as Ouattara supporters, including attacks on religious personnel in Abidjan between 27 November 2010 and on or around 12 April 2011;
- iii. Pro-Gbagbo forces killed, raped and injured civilians perceived as Ouattara supporters following identification checks, particularly at roadblocks, in Abidjan between 27 November 2010 and on or around 12 April 2011; and
- iv. Pro-Gbagbo forces killed and injured civilians by shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters in Abidjan between 27 November 2010 and on or around 12 April 2011.

242. How the evidence of article 7(1) acts committed during the five charged incidents fits into these patterns is set out further below. Evidence of article 7(1) acts may be relevant to more than one pattern. The patterns of the means through which the article 7(1) acts were carried out serve to further highlight the commonality between article 7(1) acts showing they constitute a campaign or operation. Nevertheless, they amount to evidentiary factors and should not be confused with the material fact that needs to be demonstrated to the requisite standard. As mentioned above, the material fact describing the legal element of the existence of a course of conduct is that between 27 November 2010 and on or around 12 April 2011 in Abidjan, pro-Gbagbo forces carried out a series of multiple acts of violence, including killing, attempted killing, rapes and severe injuries against civilians perceived to be Ouattara supporters.

243. The patterns identified are also relevant to establishing other material facts, such as that the attack was directed against a civilian population, the policy behind the course of conduct, and the nature of the attack.

*(b) Evidence of article 7(1) acts committed during 20 other incidents, and other evidence on the record, follows evidentiary factors or patterns and further demonstrates the existence of a course of conduct involving the multiple commission of acts referred to in article 7(1)*

244. Aside from the evidence of article 7(1) acts from the five charged incidents being sufficient to show a course of conduct, evidence of article 7(1) acts committed in the context of 20 uncharged incidents, and other evidence on the record, additionally corroborates the existence of the relevant material fact. This additional evidence is consistent with and supports the evidentiary patterns highlighted above, as it further corroborates that between 27 November 2010 and on or around 12 April 2011 in Abidjan, pro-Gbagbo forces carried out a series of

multiple acts of violence, including killing, attempted killing, rapes and severe injuries against civilians perceived to be Ouattara supporters.

245. This additional evidence also corroborates the existence of the other factors or evidentiary patterns as discussed below. On this basis, the Chamber should find that the material fact relevant to the legal elements of the existence of a course of conduct involving the multiple commission of acts referred to in article 7(1), is established to the requisite threshold. Contrary to Mr Blé Goudé's arguments, there is sufficient evidence of the patterns identified, as the Prosecution sets out in detail below.

(c) *Pro-GBAGBO forces killed, raped and injured actual or perceived Ouattara political activists and sympathisers primarily in the context of political demonstrations or in and around political parties' premises, in Abidjan between 27 November 2010 and on or around 12 April 2011*

(i) Evidence of article 7(1) acts from the five charged incidents

246. During the 16 to 19 December 2010 incident, pro-GBAGBO forces fired live ammunition at unarmed pro-Ouattara demonstrators in connection with the RHDP march to the RTI headquarters, killing at least 24 and injuring 52 persons. In particular, evidence shows that civilians were killed and injured by bullets fired by the CECOS BMO and by the CRS1, and that the FDS also caused casualties by throwing fragmentation grenades. Pro-Gbagbo forces also opened fire on demonstrators near the RDR headquarters in Rue Lépic in Cocody, killing and wounding civilians. Women suspected of taking part in the demonstration, were raped by pro-Gbagbo armed youth, [REDACTED]  
[REDACTED] FESCI youth beat demonstrators with clubs, chains and machetes, and GPP militia beat and injured demonstrators with *cordelettes*. Young Patriots from the FESCI also fired on the demonstrators during the march. Demonstrators were also beaten and injured, including on the



orders of a GR commander, at an FDS roadblock and while detained by the *Gendarmerie*.

247. On 3 March 2011 in Abobo, members of an FDS convoy led by a BTR-80 of the GR shot at demonstrators with a 14.5mm gun and AK-47s and killed seven women, and injured at least six other people, at an unarmed anti-Gbagbo demonstration.

(ii) Evidence of article 7(1) acts from the 20 other incidents

a. Attack on the RDR office in Wassakara, Yopougon, during the night of 1 to 2 December 2010

248. During the night of 1 to 2 December 2010, members of the *Gendarmerie* squadron based at Yopougon Toit Rouge, accompanied by other persons in military and civilian clothing, raided the RDR office in Wassakara, Yopougon, and opened fire on RHDP supporters who were gathered in the building, killing at least four and wounding at least seven, while at least seven others were brought into detention. The evidence of article 7(1) acts committed during this incident is supported by the testimony of police *commissaire* Witness P-0440, who attended the immediate aftermath of the incident, conducted enquiries at the scene and prepared a police report on this basis. Witness P-0440 testified that there were three dead bodies lying in pools of blood outside the RDR office and that there was another dead body inside the building, along with seven wounded. He testified that the dead and wounded bore bullet wounds and that there was blood everywhere. He and his colleagues did not find any weapons in the RDR office.

249. At the scene, Witness P-0440 spoke to a surviving witness who was wounded and who told him that it was gendarmes from the *Gendarmerie* squadron of Yopougon who had come and shot them. A *procès-verbal* from a witness is attached to Witness P-0440's report and states that 51 people had gathered to

sleep at the RDR office for their own safety, as they had received death-threats from youths. Around 22h00, individuals dressed in gendarme and military uniforms, with some others in civilian clothing, smashed through the door of the office and opened fire without warning, killing and wounding many people. According to the witness, other persons who were not hit by bullets were taken away.

250. While on site, Witness P-0440 called the commander of the *Gendarmerie* squadron of Yopougon, commander Koukougnon, who confirmed that his subordinates had informed him they had been at the RDR office in Wassakara. When Witness P-0440 explained the carnage caused, commander Koukougnon responded that he did not know who sent them there and that they were going to cause him problems (*"Il a répondu que 'je ne sais pas qui les a envoyés là-bas. Ceux-là, ils vont me tuer [...] il voulait dire qu'ils vont lui créer des problèmes'"*). Witness P-0440 later returned to the location and took photographs and videos as the incident appeared very serious to him. Witness P-0440 watched the news that same day on RTI, where it was reported that there had been an exchange of fire between the FDS and armed RDR elements. This reporting falsely portrayed the facts, as there had been no exchange of fire but the victims had been killed in cold blood (*"ont été tués de sang-froid"*). Witness P-0440 testified that this revealed to him that there was an intention to deliberately hide the truth, which prompted him to delete the photographs and videos he had taken of the crime-scene, as he did not want them to be found on him.

251. In his testimony, Witness P-0440 clarified that, while there was no evidence of an exchange of fire, he indicated in his report that commander Koukougnon told him his elements said they had to return fire (*"ont dû riposter"*). Witness P-0440 explained that that is what the commander had told him later on, after the first time they spoke, and Witness P-0440 included that information *"[p]arce que, entre frères d'armes, plus ou moins, on se couvre."* The Prosecution submits that Witness P-

0440's observation of the crime-scene and his questioning of a wounded witness at the scene immediately after the event should be preferred to the account provided to the BAE, and indeed to Witness P-0440 himself, by members of the *Gendarmerie* squadron as they are implicated in these crimes. In addition, unlike Witness P-0440's report, which includes the date and time it was faxed, the report by the BAE member on which Mr Gbagbo relies is handwritten and, although dated 2 December 2010, it includes no transmission information to confirm the date. It was addressed to the head of the BAE, who is implicated in collaborating with militia. It was forwarded to the head of the police intervention units, *Commissaire principal* Claude Yoro, who is implicated both as head of the operational command post PC Minos during the incident of 16-19 December 2010, and as director of the police intervention units which included the CRS1 and BAE, both of which collaborated with militia during the post-election violence. The implication of the *Gendarmerie* squadron 2/1 of Yopougon Toit Rouge and their commander Koukougnon in this incident is corroborated by evidence that in the latter part of the post-election violence, weapons were distributed to pro-Gbagbo youth from the base of the *Gendarmerie* squadron 2/1 at Toit Rouge. The account in testimony by Witness P-0440 and in his contemporaneous police report, based on his observations of the crime-scene and the *procès verbal* of an eyewitness, is further corroborated by an NGO press release which was issued the day after the incident and which was based on accounts from a number of eyewitnesses.

b. 3 December 2010 incident following RHDP demonstration in Treichville

252. On 3 December 2010, following an RHDP demonstration, the GR, accompanied by English-speaking individuals armed with truncheons, machetes and knives, raided the Biafra neighbourhood in Treichville and "[a]s a result, 133 people were injured" and "[a]t least 30 people were arrested and detained at the GR in connection with the incident." This incident is demonstrated by a UNOCI

Daily Situation Report which was prepared 4 days after the incident, detailing the event under the Human Rights section of the report. This indicates that the information originates from UNOCI's Human Rights Division, which followed the methodology explained by Witness P-0414 attesting to the reliability of the information. The report itself indicates that the information regarding English-speaking persons accompanying the GR comes from UNOCI Human Rights Officers and UNPOL interviews with local sources, which contrary to Mr Gbagbo's submission are not identified as RHDP members. Witness P-0414 described how follow-up interviews were conducted. Regarding the number of injured, Witness P-0414 also testified that local hospital staff were also a source of information for the UNOCI Human Rights Division. The identity of the perpetrators of this incident is consistent with evidence that the GR received an order from General Dogbo Blé to prevent demonstrations, and that they arrested demonstrators and detained them in the GR camp in Treichville, where they also beat them. It is also consistent with corroborative evidence from Witness P-0347 and Witness P-0435 that the GR participated in operations with Liberian mercenaries, with this collaboration becoming more overt later in the crisis, when hundreds of Liberian mercenaries were based in the GR camp at Treichville from late March.

c. 4 December 2010 incident against RHDP demonstrators near the Great Mosque in Koumassi

253. On 4 December 2010 [CECOS] BMO officers wounded at least 8 people, including an 11-year old child who died from his wounds, by firing live ammunition at RHDP demonstrators near the Great Mosque of Koumassi. This incident is demonstrated by documentary evidence in particular a contemporaneous police report. The source providing the information regarding the BMO firing live ammunition at the demonstrators injuring them is named in the report along with his contact number. The report indicates the name of the 11-

year old victim as Sangaré Sadjo, and that his body was taken to the CHU Treichville morgue. The CHU Treichville morgue register shows an entry for Sangaré Sadjo on 4 December 2010. A Human Rights Watch report, prepared from witness interviews which were carried out around a month after the incident, refers to a higher number of casualties, including children, and also states that CECOS was the main security force firing at the demonstrators on 4 December 2010 in Koumassi. The Director-General of the Police, Witness P-0046, confirmed that this incident had been reported to him. Witness P-0010 gave evidence that, although he could not recall whether he had been informed of this particular incident, once the election results were proclaimed on 3 December, such incidents multiplied and there were certainly incidents of this type, as this was not the only one (*"il y a certainement eu ce genre d'incidents, d'ailleurs, ce n'est pas le seul"*).

d. 6 December 2010 incident against RHDP demonstrators in Adjamé-Boribana

254. On 6 December 2010, in the Boribana area of Adjamé, CECOS BMO officers opened fire on unarmed RHDP demonstrators, killing one civilian and wounding another. This incident is detailed in documentary evidence, including contemporaneous police reports which were faxed to the *Préfet de Police d'Abidjan* within hours of the incident, as well as a UNOCI Daily Situation Report dated 8 December. The documents from the police and UNOCI corroborate each other on the circumstances of death and the identification by witnesses of the CECOS BMO as the perpetrators of the incident. The two police reports from 6 December each have the title *"Compte rendu simplifié"* and are pages 1 and 2 of a fax sent to the *Préfet de Police d'Abidjan* at 16h34 on the day of the incident. The reports are signed and stamped by Witness P-0560, who testified and confirmed his signature and official stamp on the first report and explained the nature of *"Compte rendu simplifié"* which he had prepared for the *Préfet de Police d'Abidjan*. The first police

report provides the names of the deceased person, the injured person and a witness. It notes that, according to witnesses, the police CRS shot at the crowd of demonstrators, wounding 2 of them; they then approached one of the wounded persons in their vehicle and an officer fired further shots at him, killing him. The second police report supplements the information from the first report and clarifies that the perpetrators who shot the victims were from the CECOS BMO, rather than the CRS, identifying them as CECOS from their 4x4 vehicle marked "BMO". A further police document, which was authenticated by Witness P-0046, lists FDS and civilian casualties during December 2010 and confirms the date and location of this incident and the identity of the deceased, noting that he was *"abattu par balle suite à l'intervention des FDS"*. A subsequent police chronology of events which occurred during the crisis, which was prepared by the police *Directeur général adjoint chargé de la sécurité publique* and sent to the Head of Police, repeats the information from the 6 December reports. This chronology includes events up to 7 February 2011, indicating that, by that stage, the police did not have any additional information contradicting the original accounts of this incident from 6 December. The UNOCI Daily Situation Report is dated 8 December, two days after the incident, and details the event under the Human Rights section of the report. This indicates that the information originated from UNOCI's Human Rights Division, which followed the methodology explained by Witness P-0414 attesting to the reliability of the information. The information in the report originates from interviews by UNOCI Human Rights Officers of two unnamed eyewitnesses. It states that the deceased victim was "summarily executed" and that "the killing took place publicly around 14:30." It states that police and CRS quelled the demonstration before the arrival of 4 armed police officers in a vehicle marked BMO, and that a BMO officer in police uniform "executed" the deceased victim. This is consistent with the information in the police reports, which note that the deceased person was already shot and wounded when a BMO officer came up to him and shot him dead. A subsequent

UNOCI chronology of events during the crisis briefly summarises this incident. It notes that a brother of the deceased reported that on 6 December at around 15h00, during a RHDP demonstration in Adjamé, the FDS shot at the crowd and his brother was killed by bullets; it notes that the deceased's body was transferred to the IVOSEP morgue in Treichville, before burial. Also on the record is an IVOSEP document which confirms that the deceased was admitted to the CHU Treichville morgue on 6 December, the day of this incident. The evidence regarding the perpetrators of article 7(1) acts during this incident and the previous incident (of 4 December 2010 in Koumassi), is consistent with other evidence of the CECOS BMO shooting live rounds and killing demonstrators during the RHDP march on the RTI on 16 December 2010, and in other incidents set out in this section.

e. 25 December 2010 incident at the PDCI headquarters in Cocody

255. A UN report states that on 25 December 2010 members of the FESCI, aided by the FDS and militiamen, attacked persons at the PDCI headquarters in Cocody, during which 11 RHDP supporters were injured, three of them suffering serious gunshot injuries. This report by the UN High Commissioner for Human Rights was prepared around 2 months after the incident, and would have been prepared in line with UNOCI Human Rights Division reporting. The UNOCI Human Rights Division followed a methodology which was explained by Witness P-0414 and which tested the reliability of the information. A subsequent police chronology of events which occurred during the crisis, which was prepared by the police *Directeur général adjoint chargé de la sécurité publique* and sent to the Head of Police, corroborates in part the intervention of the FDS, in particular the police and *Gendarmerie*, as well as the number of three RHDP supporters who suffered gunshot wounds. The police report states that the police and *Gendarmerie* intervened in a confrontation between RHDP and "Cité Mermoz" students, as a result of which, 12 students and 11 RHDP supporters were injured, with three RHDP supporters injured by bullets. There is no indication of FESCI members

suffering any bullet injuries. As explained in Section II, Mr. Gbagbo's arguments based on evidence which has not been submitted should be disregarded. The account provided by the UNOCI Human Rights Division following the methodology described by Witness P-0414 should be preferred as the evidence of article 7(1) acts as presented in the UNHCHR report is consistent with the evidence of other article 7(1) acts committed during prior and subsequent incidents where the FDS killed and injured actual or perceived Ouattara political activists or sympathisers in or around political parties' premises.

f. 18 and 19 January 2011 incident in connection with RHDP demonstrations in Adjamé and Attecoubé

256. Between 18 and 19 January 2011, the FDS, including marine elements and CECOS, accompanied by at least one civilian armed with a machete, killed five persons and wounded 17 others by gunshots, in connection with demonstrations calling for civil disobedience organised by the RHDP in Adjamé and Attecoubé. The information in the contemporary UNOCI Daily Situation Report originates from the UNOCI Human Rights Division, which followed the methodology explained by Witness P-0414 attesting to its reliability. The events described took place among other locations in Attecoubé, the neighbourhood where the UNOCI headquarters was based; and the reports indicate that one person died in front of the UNOCI headquarters and that a UN local officer was wounded by a bullet within the UNOCI compound. 14 of the wounded were treated at the UNOCI medical centre. Witness P-0414 gave evidence that Human Rights Officers would take the opportunity to carry out interviews with persons being treated for their injuries at this location. The killing on 19 January in Adjamé of an individual by the surname Bamba, reported in the UNOCI report as having been carried out by CECOS elements accompanied by a civilian with a machete, is corroborated in part by information recorded in a police report. According to the police report, the deceased's relatives reported that he suffered wounds caused by a machete



blow to the head and by Kalashnikov bullets. Bamba's relatives told the police that the perpetrators were a CECOS team. As stated earlier, this evidence is consistent with evidence of CECOS BMO firing on and killing demonstrators during the RHDP march on RTI on 16 December 2010 and other instances as set out in this section. It is also consistent with other evidence on the record of the CECOS BMO collaborating with non-FDS elements, including militia, in the killing of civilians during the post-election violence.

g. 20 February 2011 incident at the roundabout near the Abobo Mairie

257. On 20 February 2011, as RHDP members were preparing a rally, FDS forces shot and killed two people at the roundabout near the Abobo Mairie. Witness P-0184 testified that on 19 February 2011, she was present at the roundabout near Abobo preparing an RHDP meeting calling for Mr Gbagbo to step down, when the FDS fired indiscriminately ("*n'importe comment*") and people ran for their lives ("*le sauve qui peut*"). The FDS gunfire hit the podium and other equipment. Witness P-0184 was later told that two persons had been killed as a result. She stated that "*ceux qui étaient censés assurer notre sécurité, c'est eux-mêmes qui nous tuaient.*" Contrary to Mr Gbagbo's submission, Witness P-0184 sufficiently identified the perpetrators as FDS. A *Gendarmerie* report indicates that the FDS dispersed a demonstration in the Abobo roundabout ("*Rond-Point Mairie*") on the morning of 20 February 2011, noting in particular that the BAE used their weapons to fire shots in the air. In the Prosecution's submission, Witness P-0184's testimony and the *Gendarmerie* report refer to the same incident which took place on 20 February 2011. The fact that Witness P-0184 gave evidence that it occurred on the previous day does not affect the reliability of the rest of her account. Witness P-0184's account that the FDS were shooting in all directions and shot against the meeting organiser's podium, pick-ups and equipment contradicts the claim in the *Gendarmerie* report that the BAE shot in the air as a measure to disperse groups of individuals ("*ont fait usage arme a feu en tirant des coups de feu en*

*l'air pour disperser des groupuscules d'individus*"). The two resulting fatalities also demonstrate this. Witness P-0184's account is also consistent with the pattern of other article 7(1) acts committed during prior and subsequent incidents where the FDS killed and injured actual or perceived Ouattara political activists or sympathisers during demonstrations. Witness P-0184's account is also consistent with evidence of BAE firing live ammunition at perceived pro-Ouattara supporters on 15 March 2011 in the Port-Bouët II district of Yopougon. The provision of false information concerning the BAE's actions also fits the pattern of that unit's collaboration with militia during the post-election violence.

(iii) Other evidence of article 7(1) acts

258. Witness P-0347, the commander of the GR unit in Treichville, testified that General Dogbo Blé ordered his GR subordinates to prevent demonstrations. He testified that the GR arrested RHDP demonstrators, who they detained in their camp in Treichville, and that he witnessed GR members beating the demonstrators who were detained there.

259. Witness P-0580 provides evidence which is consistent with CECOS firing live ammunition at the perceived pro-Ouattara population. Before the 3 March 2011 women's march, Witness P-0580 saw a group of people throwing rocks at a bus and setting it on fire on the road between the Abobo station roundabout in the direction of Samaké. He then saw a dark-blue CECOS pick-up arrive with a man in uniform armed with an AK-47 sitting at the back. Witness P-0580 saw the uniformed man open fire at the group of people around the bus. Witness P-0580 fled, and when he returned after about 15-20 minutes, he found the body of a dead boy ("*garçon*") with a wound in his stomach at the scene.

260. The following incident illustrates that pro-Gbagbo forces killed people associated with the RHDP also outside the context of demonstrations. Witness P-0048, who has been a spokesperson for the RDR testified that on 8 April 2011,

pro-Gbagbo forces led by Simone Gbagbo's *aide de camp*, Anselme Séka Yapo *a.k.a.* Seka Seka, stopped his vehicle and executed his four bodyguards. Seka Seka spared Witness P-0048's life because of a request from Stéphane Kipré, who is a nephew of Witness P-0048, and is also Mr Gbagbo's son-in-law. This incident is also reported in an UNOCI Human Rights Division Report regarding human rights violations in Abidjan during the post-election crisis.

261. The Prosecution argues that certain non-article 7(1) acts are relevant for the purpose of demonstrating the existence of a course of conduct involving the multiple commission of article 7(1) acts, in the sense that they show that article 7(1) acts were part of an overall flow or series of events rather than random aggregate acts. Witness P-0048 gave evidence that during the post-election violence, the residences of opposition members were looted by Young Patriots. He referred to the residences of RHDP members such as former Ministers Diby and Mabri Toikeusse, and General Banny. Witness P-0048 personally observed that the residences of Mabri Toikeusse and General Banny had been looted. A police report with fax markings of 4 March 2011 reported the pillaging of politicians' homes on 3 and 4 March 2010, among them the pillaging by 300 Young Patriots of the residence of Minister Albert Mabri Toikeuse. Witness P-0440 testified that FESCI youth organised by their former secretary general Serge Koffi in a movement called CRAC (*Comité d'Action Concrete*) looted and vandalised the residences of RHDP representatives, and that this was openly known but the police took no measures to stop it. Video evidence demonstrates that Serge Koffi was able to promote his CRAC movement on the RTI news. There is also evidence of pro-Gbagbo forces looting and destroying property at opposition premises in Abidjan. This evidence further demonstrates that the article 7(1) acts committed against opposition members were part of a course of conduct.

(d) *Pro-Gbagbo forces killed, raped and injured civilians during attacks on neighbourhoods where inhabitants were perceived as Ouattara supporters, including attacks on religious personnel in Abidjan between 27 November 2010 and on or around 12 April 2011*

(i) Evidence of article 7(1) acts from the five charged incidents

262. Two of the charged incidents, 3 March 2011 and 17 March 2011, concern attacks on the Abobo neighbourhood and its inhabitants, as evidenced by the circumstances of those incidents - including the fact that Abobo was a densely populated area - and by the methods employed during their course. This is explained in the shelling or indiscriminate fire pattern described further below. Many of Abobo's residents were from ethnic groups traditionally from Northern Côte d'Ivoire and from other West African countries and they were perceived as Ouattara supporters. Abobo was also targeted during the 16 to 19 December 2010 incident. On 17 December 2010, the FDS raided mainly the *commune* of Abobo, breaking into civilians' houses and firing live ammunition, killing several people. During that incident, mosques were also targeted in Abobo and elsewhere. On 17 and 18 December, FDS personnel, including from the CRS, stormed four mosques in Grand Bassam, Abobo and Williamsville, killing at least one person and wounding 27 others.

263. The remaining charged incidents concern attacks on areas of Yopougon inhabited by perceived Ouattara supporters. From 25 to 28 February 2011, pro-Gbagbo forces consisting of youth, militia and police killed at least 19 persons and injured at least 13 others in the Lem and Doukouré areas, which are inhabited mainly by Dioula civilians from Northern Côte d'Ivoire and neighbouring West African countries, perceived as pro-Ouattara supporters. On 25 February 2011, police fired into a crowd gathered close to the Lem mosque, including with grenades. Militia commander Maguy le Tocard and his men killed and burned

the watchman of the Lem mosque, [REDACTED]

[REDACTED] When they attacked the Lem mosque of Yopougon, pro-Gbagbo youths and the militia-members of Maguy Le Tocard were accompanied by GR and BAE vehicles. CECOS vehicles also carried militia-members.

264. On or around 12 April 2011, the neighbourhoods of Mami Fatai and Doukoure, inhabited mainly by Dioula civilians from Northern Côte d'Ivoire and neighbouring West African countries, were attacked. Pro-Gbagbo forces including pro-Gbagbo youth, mercenaries and militia members killed at least 61 persons, raped at least 6 women, and wounded at least 3 persons.

(ii) Evidence of article 7(1) acts from the 20 other incidents

a. Attack in Sotrapim neighbourhood on 30 November 2010

265. An UNOCI Daily Situation Report demonstrates that during an attack in the Sotrapim neighbourhood of Abobo on 30 November 2010, the FDS fired gunshots indiscriminately and killed two civilians of West African origin (Mali and Burkina Faso), who are named in the report, and whose deaths by gunshot are corroborated by proof of death documentation. The description of the incident comes under the Human Rights section of the UNOCI Daily Situation Report. This indicates that the information originated from UNOCI's Human Rights Division, which followed the methodology explained by Witness P-0414 attesting to the reliability of the information. The death by gunshots of the two individuals named in the UNOCI Daily Situation Report is corroborated by the information provided by the *Institut de Médecine Légale* -- albeit the name of one of the victims has a slightly different spelling -- including the ages and nationalities provided for them and their civilian status. According to the Anyama morgue register, in a slight difference to what is stated in the UNOCI report, their bodies entered the

morgue on the day after the incident. The *Conseil des Maliens* report also records the killing of the Malian victim on 30 November.

b. Killing of two civilians on 4 December 2011 in Port-Bouët

266. Documentary evidence, including a police report and a report by Amnesty International, demonstrates that on 4 December 2010 in Port-Bouët the FDS killed two civilians one of whom was from Burkina Faso. The Amnesty International report was prepared on the basis of two investigation missions in January and April 2011 to Cote d'Ivoire. It is based on an eyewitness account of the circumstances of the killing by the FDS of two named individuals in Port Bouët on 4 December 2010. It is corroborated on a number of details by a contemporaneous police report into the discovery of the two bodies in the Abattoir district of Port Bouët on 4 December 2010. The names of the individuals whose bodies were found coincide with the names and with the profession of one of the individuals as given in the Amnesty International Report. The police report states that the circumstances of death are unknown. The time when these bodies were found, recorded in the police report as 06h45, is consistent with the time given in the Amnesty International report for their death (after the curfew). The bodies entered the morgue on the same day. The observations made in the police report regarding the bullet injuries found on the bodies are consistent with the cause of death recorded by the *Institut de Médecine Légale*. As explained in Section II, Mr. Gbagbo's arguments based on evidence which has not been submitted should be disregarded.

c. Attack on the Great Mosque of Port-Bouët II in Yopougon on 15 March

267. On 15 March 2011, BAE and *Gendarmerie* officers together with militia-members attacked the Great Mosque in Port-Bouët II in Yopougon, killing 35 people including the imam of the mosque. Documentary evidence from the UNOCI Human Rights Division demonstrates this, corroborated in part by

witness evidence regarding the identity of the perpetrators. An UNOCI Human Rights Division report indicates that the imam was shot by militia and that, during the attack, militia-members, BAE and *Gendarmerie* elements shot at the population and burned homes. Phone-calls from inhabitants of Port-Bouët II to the UNOCI Call Centre in the period after this event reported shooting by persons in FDS uniform—identified as police or CECOS – and killings and burnings by militia-members, and that the imam of the mosque had been killed. A contemporaneous police report indicates the presence among others of BAE, CECOS and *Gendarmerie* forces in Yopougon on that date and highlights that a sweeping operation took place in the entire commune (*“ratissage sur l’ensemble de la commune”*). Witness P-0435 gave evidence that Maguy Le Tocard told him that he had together with his elements carried out a joint operation with the BAE elements of commander Loba in Port Bouët II, and that they fired with RPGs and machine guns killing many people. Witness P-0435 stated that this took place in February or March 2011 in Port Bouët II, a Yopougon neighbourhood with a majority of people from Mali, Burkina Faso or from the North. A different witness, Witness P-0441, heard Maguy Le Tocard say he had killed the imam of the Port-Bouët II mosque. Witness P-0440 was informed by his superior in the police that an operation by the BAE had taken place in Port-Bouët II during which the imam was killed. Witness P-0547, [REDACTED] described the BAE shooting in Port Bouët II, and that the day they did so in the evening around 18h, they killed the imam and a woman.

d. Attack on the house of an imam in Williamsville on 19 March 2011

268. Witness evidence, corroborated as regards the identity of the perpetrators by documentary evidence, supports that on 19 March 2011, the CRS1 together with militia members raided the home of a Malian imam in the context of a joint operation in Williamsville, during which several persons including the Imam were killed. Witness P-0435 gave evidence that he saw GPP elements, who were

based at the CRS1 in Williamsville, driving a car with Muslim prayer beads. One of them called Charles Kouadio explained to Witness P-0435 the circumstances under which they got the car. Having received instructions from CRS1 *commissaire* Kabila to neutralise shooters posted on a mosque's minaret, the GPP elements also went into the adjacent house and shot and killed their inhabitants. They reasoned that they must have been accomplices to the shooters. They also took things from the house including the vehicle. Witness P-0435 did not ask his subordinates how many people they killed. An UNOCI Human Rights Division report corroborates that the police and GPP were acting together on 19 March when they went into the imam's home, and gives a total of six killed victims including the imam and his 90 year old mother. The names of several of the victims in that report appear as having been killed under similar circumstances in the report by the *Conseil des Maliens*. The Director-General of the Police, Witness P-0046 testified that the commander of CRS1 located in Williamsville eventually confirmed to him that an imam had been killed in his home, after Witness P-0046 had put the question to him on three occasions, but the CRS1 commander failed to give any further information. The Director-General of the Police, Witness P-0046 also testified that he received a phone-call from the BAE commander and the CRS1 commander asking him whether he had learned that militia members were to work with them. Contrary to Mr Blé Goudé's submission, rather than an isolated event, evidence of article 7(1) acts committed during this incident is consistent with the evidence of other joint FDS-militia operations against mosques such as the 15 March 2010 operation in Port-Bouët II referred to above.

e. The incidents of 2 and 8 April 2011 in Sikasso village

269. On 2 and 8 April 2011, in Sikasso village a group of militia members armed with Kalashnikovs killed six people with bullets, among them three women. They killed them on the reasoning that they voted for Ouattara. Sikasso village is inhabited mainly by individuals of Senoufo ethnicity and borders the Kowëit



*sous-quartier* of Yopougon. The attackers also threatened to destroy the village. This incident is detailed in a UNOCI Human Rights Division report which Names the victims and notes that investigators of the Human Rights Division read a message left by the militia-members in a communal courtyard that said “*Plus de Sikasso, Gbagbo ou rien.*” The UNOCI Human Rights Division report was prepared on the basis of enquiries carried out in Abidjan by a team of 11 investigators tasked with investigating serious human rights violations committed in Abidjan from 1 December 2010 to 31 May 2011 in order to establish responsibility for these violations, and describes the methodology employed. The reliability of this report can also be seen from the fact that it describes a different incident--the killing of Ouattara’s spokesperson’s bodyguards—consistently with the evidence received by the Chamber and discussed further above. The pro-Gbagbo militia leader responsible for the two attacks in Sikasso on 2 and 8 April is referred to as “Andy”. This corresponds with a marine officer who collaborated [REDACTED] [REDACTED] who refers in his testimony to going to the Kowëit area with “Andy” in April 2011. The marine officer and pro-Gbagbo militia member “Andy” was a notorious perpetrator of crimes in the Kowëit area of Yopougon during the crisis and was subsequently murdered in revenge by the FRCI on or around 6 May 2011 in Kowëit. The phrase “*Gbagbo ou rien*” was used frequently during the crisis by Gbagbo supporters.

(iii) Other evidence of article 7(1) acts

270. Within neighbourhoods, dwellings inhabited by West Africans were also specifically targeted. Witness P-0230 who resided in Adjamé-Marie-Thérèse gave evidence that after 16 December, he heard shots in the Marie-Thérèse *quartier* during the curfew. From the roof of his building he observed that the shooting came from the building where Guinean watchmen gathered to drink tea. He saw a white pick-up there. Witness P-0230 called the *commissaire* of the 7<sup>th</sup> commissariat who arrived at the scene and attested that Kalashnikovs had been

fired on the young Guineans, and that their bodies were torn apart. Four of them had been killed and one seriously wounded. The wounded man explained that they were inside the building when men ordered them out, and when they did not come out, the men got in and shot at them. Witness P-0230 was present when the *commissaire* found the men and asked them for an explanation. They were four men in police uniform on a double-cabin pick-up who according to Witness P-0230 pretended to be ("*se faissent passer*") CRS elements from Williamsville, although they did not have their police identification cards on them. These men explained that the Guineans had not respected the curfew as one could hear their voices from outside. The *commissaire* took them to the police in Plateau but they were released by the following day. Witness P-0230's evidence that the CRS committed crimes against civilians perceived as Ouattara supporters is consistent with the evidence of CRS1 killing pro-Ouattara supporters by bullets during the 16 December 2010 march and with several of the incidents mentioned above, including incidents when the GPP acted jointly with the CRS1, such as during the attack on an imam's house in Williamsville on 19 March 2011.

271. Witness P-0230 also gave evidence that, after the 16 December 2010 march, the militiamen living in 220 Logements descended upon the Marie-Thérèse *quartier* each morning, killing those who they found on their way. In January 2011, Witness P-0230 was informed by his nephew that militiamen had just descended on the Hotel Bled in Marie-Thérèse, slaughtering at close range the hotel occupants. Witness P-0230 heard the shots. When he arrived at the hotel he saw seven dead civilians. They had been killed by gunshots, three in the street and four inside the hotel. Witness P-0230 knew three of the men who were killed: a Burkinabé – Souleymane, who had been shot in the back; a Nigerien hairdresser – Moumony whose body was found in front of the hotel and who had been shot in the back, and a cigarette vendor called Aoude whose store was next to the Nigerien's salon, and who was found inside a room, shot in the chest, as if he had

been shot while sitting on the bed. Witness P-0230's evidence is consistent with the GPP being based in 220 Logements and with the evidence of Witness P-0435

272.

Evidence of article 7(1) acts committed during this incident is consistent with the evidence of other joint FDS-militia operations against mosques such as the 15 March 2010 operation in Port-Bouët II and the 19 March 2011 operation in Williamsville referred to above.

273. Witness P-0435 also testified that, before the post-election violence, FESCI members were provided with AK-47s and that during the post-election violence they took part in actions against civilians. There is extensive evidence from official police reports that FESCI members in university residences were armed with automatic weapons and were shooting at people perceived as Ouattara supporters, particularly around *cités universitaires* in the *commune* of Port Bouët and including during the repression of a RHDP demonstration on 8 March 2011.

274. Evidence of pro-Gbagbo forces looting and destroying property in perceived pro-Ouattara neighbourhoods, and in mosques, further demonstrates that the article 7(1) acts committed against their inhabitants constituted a course of conduct.

275. Documentary evidence and in particular a contemporary police report refers to the pillaging of shops belonging to West African owners by the Young Patriots on 4 March 2011 in Yopougon Niangon. According to the police report, the actions by the Young Patriots on 4 March 2011 were in reprisal for the treatment of *Femmes Patriotes* by the ONUCI Senegalese contingent. The pillaging of West African shops by Young Patriots in Yopougon and specifically in Yopougon Niangon on this day (4 March 2011) is also corroborated by contemporary calls to the UNOCI Call Centre. One of the callers cited a *Femmes Patriotes* sit-in as the reason behind the Young Patriots' actions (*"suite aux messages de Blé Goudé par rapport au sit-in des femmes patriotes a la Base de l'ONUCI a la Riviera"*).

276. A caller to the UNOCI Call Centre reported pillaging of West African shops by the LMP youth / Young Patriots in Yopougon on 8 March 2011. A Human Rights Watch report prepared on the basis of interviews with witnesses indicated that youths armed with machetes and axes pillaged shops belonging to West African owners on 8 March 2011, accompanying their actions with death threats against the traders. The Prosecution notes that the evidence of acts committed during the 4 and 8 March 2011 incidents of looting constitutes evidence of one of the 20 other incidents, but considers that it is appropriate to cite it here as constituting evidence of non-article 7(1) acts.

277. During the 25 to 28 February 2011 charged incident, shops belonging to individuals originating from the North were looted by pro-Gbagbo youth.

278. During that incident, Young Patriots tried to burn the Doukouré mosque and the Sideci mosque was pillaged. At the Lem mosque, the attackers burned copies of the Koran and prayer rugs. The burning of mosques (*"les incendies des mosquées"*) is mentioned in the minutes from the *Conseil du Gouvernement* of 1 March 2011 demonstrating that Gbagbo's government was aware of this practice. Witness P-0440 gave evidence that he was told by his superior that there were weapons in certain mosques and he was constantly asked to verify this. When he

went to verify he found that militia-members went together with the police during the verification, while only officers of the judicial police were legally authorised to carry out such searches. Witness P-0440 never found any weapons in a mosque.

(e) *Pro-Gbagbo forces killed, raped and injured civilians perceived as Ouattara supporters following identification checks, particularly at roadblocks, in Abidjan between 27 November 2010 and on or around 12 April 2011*

(i) Evidence of article 7(1) acts from the five charged incidents

279. On the day of the 16 December march, in Abobo, armed pro-Gbagbo youth arrested six women at a roadblock close to the police station of the 32<sup>nd</sup> arrondissement. After asking them for their identity documents and accusing them of going to the march, [REDACTED]

280. Following Mr Blé Goudé's *mot d'ordre* of 25 February 2011, pro-Gbagbo youths killed civilians after conducting identity checks, particularly at roadblocks during the 25 to 28 February 2011 incident in the Lem and Doukouré neighbourhoods of Yopougon. In particular, eight individuals were lynched and then burned at roadblocks erected by the Young Patriots. A Malian coal seller was beaten, shot and finally burned by youths after being identified as an "assailant". Upon questioning by Young Patriots, a 17-18 year old man was not recognised as being from the neighbourhood and the Young Patriots set fire to him.

281. Following Mr Gbagbo's arrest, during the 12 April 2011 incident, men perceived to be Ouattara supporters were killed by pro-Gbagbo forces upon being identified as such during door to door searches. After the armed youth checked the identity cards of two people in Witness P-0109's group, the ones behind shot and killed two men and injured the Witness. Local inhabitants such

as local Guéré men, and a local militiaman, also participated in identifying targets in their homes, [REDACTED].

a. Evidence of article 7(1) acts from the 20 other incidents

i. Burning of a man on 24 February 2011 in Yopougon Gesco

282. Documentary evidence, in particular contemporaneous police reports, demonstrates that a man suspected of being a Dozo or rebel was burned to death in Yopougon Gesco on 24 February 2011. This killing is corroborated by proof of death documentation bearing the same name as the victim in one of the police reports. While the police reports do not identify the perpetrators beyond naming them as the crowd or the population, two contemporaneous phone-calls to the UNOCI Call Centre report that a man was burnt *by the Young Patriots* because he was suspected of being an assailant. The information from the Call Centre is consistent with the evidence of Young Patriots being identified as the perpetrators of killings and burnings at roadblocks during the charged 25 to 28 February 2011 incident, and in other instances described further under this part of the response.

ii. Burning of a disabled man during 3 to 4 March 2011 in Port-Bouët

283. Documentary evidence, in particular contemporaneous police reports, demonstrate that during 3 to 4 March 2011, Young Patriots burned a physically disabled man from Burkina Faso to death at Port-Bouët, accusing him of harbouring rebels. One of the police report is based on police on-site enquiries, including interviews with named witnesses whose contacts are provided. The reports concern the burning on 4 March 2011 by Young Patriots/ *groupes d'auto defence* of a Burkinabe national accused of harbouring rebels in Port Bouët, quartier Jean Folly. Contrary to Mr Gbagbo's submission, both reports indicate that this accusation, rather than local relations, was the cause behind this incident. Proof of death documentation corroborates the police report naming the victim,

as regard the name of the victim, age, nationality, location of death and that the body was burnt ("*corps carbonisé*"). A call recorded by the UNOCI Call Centre on 4 March 2011 reports that LMP youth burnt a Burkinabe man alive on 3 March 2011 in quartier Jean Folly. A Human Rights Watch report based on a contemporaneous interview contains a similar account, identifying the perpetrators as militia-members.

iii. Killing of Lalogo Moumouni on 11 March 2011 in Yopougon

284. Witness evidence, and documentary evidence corroborating the identity of the perpetrators, demonstrates that on 11 March 2011 "the youths of the Parliament" killed a man from Burkina Faso in Yopougon, suspecting him of being a rebel informant. The President of the Yao Séhi neighbourhood was not present when a Burkinabe man called Lalogo Moumouni was killed, but nevertheless contemporaneously took steps to try to prevent his killing. Witness P-0108 gave evidence that on 11 March 2011, he was asked to intervene because the youths of the Parliament ("*les jeunes du parlement*") had caught Lalogo Moumouni, a neighbour from Witness P-0108's quartier whose parents were from Burkina Faso. They accused him of providing information to the rebels. In an attempt to save him, Witness P-0108 called an individual at the office of the Parliament's head ("*le monsieur du parlement*"). However around 15h or 16h, this person informed him that Moumouni had been killed by the youths of the Parliament. Witness P-0108 was informed by people he had sent to confirm the death, that Moumouni had been killed with blows and stones and sticks. The police of the 16<sup>th</sup> arrondissement recorded the finding and organised for the body to be taken to the morgue. Consistent with Witness P-0108's account, the list of victims of the CHU Treichville morgue contains a record for that day of an individual by the name of "Moumouni". Contemporaneous calls to the UNOCI Call Centre also corroborate that this murder took place at around 16h, reporting that the Young

Patriots had murdered a young Burkinabe called “Momin” at Yopougon Sicobis, “*vers le parlement.*”

b. Other evidence of article 7(1) acts

i. Militia

285. In the course of his duties, Witness P-0440 the police *commissaire* of the 16<sup>th</sup> arrondissement in Yopougon Sicogi received reports from victims of Maguy Le Tocard and his group. During and after the elections, Maguy Le Tocard and his group arrested individuals upon suspicion of being assailants or rebels. For Maguy Le Tocard and his group, rebels or assailants could only come from the North. The victims were beaten and freed if they did not suspect them further. Others who were suspected of being assailants they sent to the police *commissariat*. When the 16<sup>th</sup> arrondissement *commissariat* received these detained persons, they interviewed them and then sent them on to the DST. This was in order to avoid the detainees getting lynched or killed by the Young Patriots, which is what would have happened had the police released them immediately. The DST for their part would release these detainees since they had done nothing unlawful. After some time, Maguy Le Tocard and his group stopped sending anyone to the *commissariat* and instead treated these “suspected rebels or assailants” as they wished. How they did so is explained below.

286. The President of the Yao Séhi neighbourhood in Yopougon saw three incidents of people set on fire by GPP commander Maguy Le Tocard’s group near the Nelson Mandela College. From his account, at least two of these killings were the result of ascertaining the victims’ identity. Around the start of the crisis, Witness P-0108 saw a man from Niger being attacked and burned by “Maguy’s group” at the Mandela college. After 11 March 2011, but before Mr Gbagbo’s arrest, youths from Maguy’s group shot three individuals who they took to be rebels. They then put tires on them and burned them. On another occasion,



Witness P-0108 saw Maguy le Tocard's men stopping youths to check their identity cards, taking one youth aside and shooting him. They then set him on fire.

287. Witness P-0435 also gave evidence that around the end of February and in March 2011, the GPP was overwhelmed by the number of people they stopped and apprehended. A procedure originating in the *commune* of Yopougon was put in place. The so called "Article 125" – 100 FCFA for the petrol, 25 FCFA for the matches - involved burning people accused of being rebels or assailants. If LMP sympathisers (pro-Gbagbo youth) found someone who was not from the neighbourhood, or upon questioning did not know Abidjan, or could not justify their presence there, then they burned them alive. On an occasion when Witness P-0435 was told by the CECOS that they were overwhelmed with receiving people, and Witness P-0435 did not know whether to release those arrested, he sought guidance from Jean-Yves Dibopieu, a well-known associate of Mr Blé Goudé who succeeded him as secretary-general of the FESCI. The majority of victims of the "Article 125" method were Northerners and West Africans from Mali and Burkina Faso. Witness P-0435 heard from GPP elements in Yopougon, including Maguy Le Tocard, that the instruction to burn "assailants" had been disseminated through the *agoras* and *parlements*.

288. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] An UNOCI Call

Centre Daily Report corroborates the testimony of [REDACTED] that the GPP controlled identities and killed people in the Washington neighbourhood, during a joint operation with the CECOS. However it dates this event as taking place on 17 March 2011 rather than in February 2011 [REDACTED].

ii. Pro-Gbagbo youth

289. Witness P-0185, a student living in Mami Fatai, gave evidence that after the second round of the presidential election there were roadblocks at the Carrefour Guéré in Yopougon, to control passers-by. There she saw a young man from Abobo, who had been overheard saying “Abobo” in a phone cabin, being apprehended by Guéré youths from the neighbourhood carrying sticks and stones. Among the group of Guéré youths, she recognised the owner of the cabin. They accused the young man of being from Abobo and a rebel, which he denied. This young man was taken to the SOGEHIFA field, where he was stoned and then killed by being set on fire. Contrary to Mr Blé Goudé’s submission, Witness P-0185’s evidence, even if uncorroborated, is sufficiently reliable. The evidence of this incident is consistent with the evidence of other instances where pro-Gbagbo youths burned individuals suspected of being rebels upon identifying them at roadblocks. In addition, there is no alleged discrepancy in her testimony regarding the women providing the matches and fuel. Contrary to Mr Ble Goude’s assertion, when she answered that she did not know, Witness P-0185 was being asked from where (“où”) the youths obtained the matches and fuel, not from whom.

290. In the course of his duties, Witness P-0440, the police *commissaire* of the 16<sup>th</sup> arrondissement in Yopougon Sicogi, received reports from the population that crimes were taking place at roadblocks. On several occasions the police including Witness P-0440 himself went to enquire and made reports. After 28 February (at which point the police had reported eight burnt bodies), the situation worsened

and it became *an almost daily occurrence* (“*quasi quotidiennement*”) that they were notified that an individual had been lynched or that there was a burnt body. The perpetrators of these crimes were the Young Patriots and the population gave the police this information, including to Witness P-0440 personally. Witness P-0440 also learnt this information from the officers under his authority. At the roadblocks they held, the Young Patriots carried out identity controls. They asked individuals with a Northern name to pay a ransom in order to be let through. However if the individuals were “unlucky” or were considered as assailants or rebels, they were lynched and burned. The Young Patriots had fuel and matches and when they finished lynching a person, they put a tyre across the body and set it alight. Witness P-0440 confirmed this practice was called “Article 125”.

291. Witness P-0440 also gave evidence of near-misses such as when he received a phone-call from his nephew who found himself in the hands of the Young Patriots one evening. They wanted to burn him after stopping him at a roadblock and ascertaining that he was from the North, as they took him for an assailant. Witness P-0440’s nephew told the Young Patriots that he was Witness P-0440’s relative. Young Patriots got in contact with Witness P-0440 to verify, threatening to burn him. Witness P-0440 contacted the duty policeman in that area who was able to save his nephew.

292. Witness P-0266 was a carrier at the mortuary in Treichville tasked with collecting bodies. He stated that during the post-election violence there were a lot of burnt bodies to collect, particularly on the streets in Yopougon. Witness P-0266 recalled in particular Yopougon SIDECI and Yopougon Gnagnon (the *sous quartiers* Gnagnon à gauche and Gnagnon à droite), predominantly inhabited by pro-FPI individuals. In these neighbourhoods, the pro-FPI youths erected roadblocks and controlled passers-by. Although Witness P-0226 could not state the number of burnt bodies that he had to collect during the post-election violence, he estimated that they were a lot, particularly during the last weeks of

the crisis. Each week during his collection outings (“*sorties*”) he collected burnt bodies. There were occasions when they arrived and the body was still burning. They found youths armed with clubs around the body who threatened them when they wanted to put the fire out. Witness P-0226’s evidence comes from his first-hand experience. Rule 68(2)(b) provides for the submission of a witness’s prior recorded testimony without being examined before the Chamber. It can nevertheless be relied upon, especially for the purposes of corroboration. Witness P-0226’s evidence is consistent with other evidence of pro-Gbagbo youths burning people at roadblocks, as set out above. Video evidence of Maguy Le Tocard’s activities in Yopougon during this period also indicates that the burning alive of people was a common practice, with Maguy himself implicating himself in this activity when saying, “*donc, ils tuent un, on tue 10 ... là on en brûle un, on brûle 10*”.

293. The DGPN, Witness P-0046, confirmed that, consistent with a 4 March 2011 police report describing the commission of crimes at roadblocks, “*des infractions*” committed by those in charge of the roadblocks following Mr Blé Goudé’s *mot d’ordre* had been reported to him. These crimes included people being killed and burnt in Yopougon by the individuals who erected the roadblocks. On 14 March 2011, ANSI in a *Note d’Information* [REDACTED] reported to the DGPN crimes committed by members of self-defence groups in Yopougon against «*les populations ivoiriennes et étrangères vivant à Yopougon*» – including extra-judicial killings by youths with guns.

294. Finally, evidence that Northerners were the victims of theft and extortion at roadblocks, further demonstrates that the article 7(1) acts committed against them constituted a course of conduct.

(f) *Pro-Gbagbo forces killed and injured civilians by shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters in Abidjan between 27 November 2010 and on or around 12 April 2011*

(i) Evidence of article 7(1) acts from the five charged incidents

295. After 12 January 2011, the FDS operated in Abobo, a densely populated area, as if it were a war zone, with military operations being carried out from 23 February 2011.

296. On 3 March 2011, a FDS convoy led by a BTR-80 of the GR fired at demonstrators at an unarmed anti-Gbagbo demonstration in Abobo—killing seven women and injuring at least six other people. This was one of the military supply convoys to Camp Commando which in the course of their daily movements opened fire indiscriminately frequently killing and injuring civilians.

297. On 17 March 2011 in broad daylight, BASA troops based at Camp Commando launched 120mm mortars on locations in Abobo including the Siaka Koné market, SOS village, a mosque, a hospital and homes, killing at least 31 persons and wounding at least 36 others.

(ii) Evidence of article 7(1) acts from the 20 other incidents

a. Shelling incident of 26 and 27 February 2011 in Abobo

298. Documentary evidence in the form of a contemporaneous UNOCI Human Rights Call Centre Daily Report demonstrates that on 26 and 27 February 2011, the FDS shelled Abobo including PK18 killing several civilians. In particular, in the evening of 26 February a caller from Abobo reported that the FDS were shelling Abobo and that there were many injured. A caller in the morning of 27 February reported that during the previous night (*"suite aux tirs d'hier"*) a rocket fell on a house behind the bridge (*"une maison derrière le pont"*), causing four dead and several injured, and identified the perpetrators as FDS. As seen below, the

FDS had fired shells on 25 February 2011, and according to witness evidence, 120mm mortars were being put in battery also after, on 28 February 2011 in Camp Commando.

b. Shelling incident of 11 to 12 March 2011 in Abobo

299. On 11 to 12 March 2011 in Abobo, an FDS operation using heavy weapons including mortars killed three children aged two, six and twelve. This event is demonstrated by documentary evidence in particular an UNOCI Daily Situation Report. The report describes an UNOCI field mission conducted shortly after the event and that preliminary investigation show that three children were killed by shells of the FDS. During this field mission, UNOCI collected evidence on the basis of which, coupled with the impact and effects of shootings, it concluded that the FDS “used heavy weapons, including rockets and mortars to attack the Invisible Commando in the Abobo area.” A caller on 12 March 2011, calling from Abobo Banco, reported that a shell fell in a courtyard the day before, killing a teenage girl and that two children who had been injured by the shell had died. The caller identified the perpetrators as the FDS. The information reported in the call is corroborated by an Amnesty International report as to the date and general location, and by the information that the teenage girl was killed immediately while the two children later died of their injuries.

c. Shelling incident of 22 March 2011 at *Derrière Rails* in Abobo

300. Documentary evidence in particular an UNOCI Daily Situation Report dated 25 March 2011 supports that on 22 March 2011 at *Derrière Rail*, Céleste neighbourhood, Abobo, FDS shells killed at least five persons including one woman and three children. This information appears under the Human Rights section of the report which indicates that it originated from UNOCI’s Human Rights Division, following the methodology explained by Witness P-0414 attesting to the reliability of the information. The UNOCI Call Centre received

calls regarding shelling in Abobo on 22 March. In particular, a call in the evening of 22 March 2011 from the Céleste neighbourhood in Abobo reported that a shell had fallen on this neighbourhood killing four and injuring several others, and identified the perpetrators as FDS. A Daily Situation Report dated 23 March, stated that the UNOCI night patrol in Abobo was unable to confirm the number of casualties and therefore no number of casualties was given in the report of that date. However, the number of casualties is provided in the 25 March report, supporting the inference that the information would have been verified as explained by Witness P-0414 in her testimony, because it is no longer treated as an allegation. Further supporting that this shelling took place, Witness P-0414 recalled one evening receiving calls from Abobo concerning shells exploding and observing from the UNOCI headquarters in Attecoubé light like fires in the distance. This is consistent with the first call reporting shelling being received at 18.29, indicating that it may have been the same instance that Witness P-0414 observed.

d. Shelling incident of 11 April 2011 on a bakery in Treichville

301. On 11 April 2011, elements of the GR shelled a bakery in Treichville, killing at least four people. This incident is demonstrated by documentary evidence in particular a UNOCI Human Rights Division Daily Situation Report. The report by the *Conseil des Maliens* corroborates the date and location of this event and that the shell was fired by the GR in Treichville, and identifies one of the deceased as a Malian national. The implication of the GR in mortar fire is corroborated by a FDS document dated 18 February 2011, which is from the Commander of Ground Forces to the Commander of the BASA, requesting for an instructor on mortar fire to be made available to train GR elements up until 11 March. The document is signed and stamped from the *État-major* and has fax markings dated 18 February 2011. The implication of the GR in crimes during April is also consistent with the GR's overt collaboration with Liberian mercenaries from late March, and its

involvement with militia in the kidnapping and murder of foreigners from the Novotel Hotel in Abidjan on 4 April 2011. Unrelated to this incident, but providing support for the use of shells during this late period of the post-election violence, a UNOCI Human Rights Division Report includes the information that on 6 April 2011, pro-Gbagbo militia-members and mercenaries fired a shell which fell in the courtyard of Nohou Doumbia, seriously injuring four persons.

(iii) Other evidence of article 7(1) acts

a. Evidence of shelling

302. FDS witnesses gave evidence that from late February 2011, the FDS fired shells and that mortars were positioned and oriented towards certain locations. Taken together with the evidence of civilian witnesses and with documentary evidence reporting shell strikes, this evidence shows that the FDS used shells in areas densely populated by perceived Ouattara supporters. This conclusion is reinforced by in the absence of reliable evidence on the record that opposing armed groups would have been in possession of mortars or used them against the FDS in Abidjan prior to 31 March 2011, as elaborated further below.

i. FDS witnesses

303. According to the CEMA, on 23 February 2011, the FDS carried out a military operation along the Axis MACA-N'Dotré and from the Abobo roundabout to PK18. Witness P-0009 gave evidence that he authorised the use of a 60 mm mortar on this occasion. At the request of General Detoh, the CEMA ordered ("*ordonné*") the use of a 60 mm mortar, which he described as an infantry weapon commanded by a caporal, along the axis MACA-N'Dotré. He ordered a "*tir de flambage*" to make the tube smoother, and a "*tir de harcèlement*" (harassment fire) in the Banco forest to see if the enemy responded.



304. An UNOCI Human Rights Division Call Centre report outlines the different calls received during 23 February 2011. One citizen reported that on 23 February a shell fell in front of his door located in the area of Abobo-PK18-N'Dotré.
305. On 25 February 2011, the FDS carried out another operation, designed to retake the zone of N'Dotré and its two strategic axes. Witness P-0009 testified that at the request of General Detoh he authorised the use of two 120mm mortars, and that they carried out a "*tir de flambage*" and a "*tir d'arrêt*". The CEMA alleged that the reasons that motivated the deployment of a 120mm in this operation in Abobo were just to demonstrate the FDS firepower to the people, not to hit residential areas.
306. Witness P-0156 testified that during this operation he led the troops along the MACA-N'Dotré axis. The CEMA was informed by General Palasset that on 25 February, 60 mm mortars were used during an operation led by Commander Toaly (P-0156) to liberate the MACA-Ndotré Axis. Witness P-0009 gave evidence that he gave instruction to call Witness P-0156 so that he could give a more detailed report.
307. As seen above, an ONUCI Human Rights Call Centre Daily Report supports that on 26 and 27 February 2011, the FDS shelled Abobo including PK18 killing several civilians.
308. Witness P-0330 gave evidence that on 28 February 2011, Colonel Doumbia, who on that day was operational commander of Camp Commando, ordered Captain Clément Zadi and his detachment to stop putting into battery 120 mm mortars in the camp as the usage of such a mortar made him personally liable. Captain Zadi told him that he had received the order to do so from the Presidency. Witness P-0330 saw three mortars that were being put into battery, and observed that the mortar that was being installed was pointed in the direction of the market and the "*gare d'Abobo*".

309. Witness P-0164, a member of BASA, testified that prior to his deployment to Camp Commando on 3 March 2011, Colonel Touhourri Dadi in charge of BASA told him to go there and fire 120mm mortars at two *Carrefours*: one at the *Mairie d'Abobo* and the other at N'Dotr . While deployed at Camp Commando on 4 March, P-0164 set up two 120mm mortar launchers and aimed them at these two same locations, on the orders of Commander Niamk  who was in charge of the Abobo operational zone at the time. Witness P-0164 had concerns about the consequences of using a 120mm mortar in such a densely populated area, and requested a written order from his superiors, but it never arrived. When he left Camp Commando on 7 March, Witness P-0164 left the mortars in position as per the orders he received.

310. Similarly, BASA Witness P-0239 testified that Captain Zadi of the *sous-groupement tactique* ordered him to go to the Anonkoua-Kout  area and fire mortars. Once at Depot 9, located in Abobo on the road to Anyama, and as Witness P-0239 was ready to fire the 120mm mortars, another member of BASA insisted on a written order to fire the mortars. Instead, Zadi fired 81 or 82 mm mortars himself.

311. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

ii. Civilian witnesses

312. As seen above, UNOCI documentation supports that shells were also used by the FDS before the 17 March 2011 charged incident, namely on 23 February 2011, on 26 and 27 February 2011 and 11 to 12 March 2011.

313. Witness P-0184 who lived in Abobo gave evidence that from 19 March until Mr Gbagbo's arrest there was daily shelling. A mortar ("*obus*") fell on the

Clouetcha neighbourhood killing a relative of Witness P-0184 and the child of her neighbour. In addition, when she went to the district of Monsieur Ouattara Sitafa in PK18, Witness P-0184 personally saw a shell ("*obus*") kill two people ("*deux enfants*").

314. An UNOCI Human Rights Division Call Centre Daily Report details calls received during the afternoon and evening of 20 March 2011 reporting shelling by the FDS/FANCI in Abobo Anador, *Carrefour des Mauritaines* near the zoo, near the pharmacy of Dokoui-roïute and in Samaké, and that the shells caused fatalities. As seen above, UNOCI documentation also supports that shells were used by the FDS on 22 March and 11 April 2011.

315. Witness P-0117, an Abobo resident, gave evidence that a shell in another part of Abobo had killed a woman and her three children. Witness P-0117 saw the shells after they fell. She heard others say that the shells came from Camp Commando or the CRS camp in Williamsville.

b. Evidence of indiscriminate fire

316. The evidence on record also shows that in February and March 2011, military convoys, including armoured vehicles, conducted daily supply missions between Camp Commando and other FDS camps, including Camp Agban. These convoys would open fire indiscriminately in civilian areas in the course of their movements, frequently killing or injuring civilians.

i. Civilian witnesses

317. Witness P-0580 saw the CRS and CECOS frequently patrolling Abobo during the post-election violence, and described that FDS convoys would pass in the morning or the afternoon and shoot in all directions.

318. Witness P-0578 who resided in Williamsville described that during the post-electoral violence, FDS soldiers riding in pick-up trucks coming through

Williamsville from Agban camp would shoot daily with assault weapons or machine guns. Witness P-0578 knew that in February and March of 2011, the FDS shot a neighbour in the back while he was stepping out of the front door which faced the expressway. Witness P-0578's brother took the neighbour to the UNOCI medical centre for treatment but he was dead before arriving there. On another day, FDS units shot and killed the expressway's gas station attendant at point blank; while Witness P-0578 saw his body, he heard about the incident from his brothers and cousins. From mid-March to mid-April 2011, Witness P-0578 saw military vehicles and convoys passing daily in the direction of Abobo firing indiscriminately in the direction of Williamsville. Witness P-0578 even tried to film this once and a man in a pick-up fired a gun in his direction. A building on the border of the expressway was also damaged by shots fired from a military vehicle coming from Camp Agban.

319. Witness P-0114 described armoured vehicles ("*chars*") passing through Abobo and shooting as they drove by after the second round of elections in 2010. He stated in detail that the supply convoys for Camp Commando, which included BAE and police vehicles, would pass around 8h and 17h every day and fire their guns in all directions all the way from Camp Commando to the Samaké roundabout. He never saw anyone firing at the convoys and saw traces of bullets everywhere – on the walls, signs, etc. He stated that the FDS killed around sixty people in this manner, having seen the bodies himself, and even once helped transport a wounded man to the hospital. People were killed frequently, including a ten year-old boy. The witness was nearly shot himself.

320. Witness P-0172 described a similar pattern in that every day after 3 March 2011, the FDS supply convoys from Camp Agban to Camp Commando would fire guns throughout their route in Abobo, from when they entered to when they exited, killing people each time. He described that friends and relatives in Adjamé

and Williamsville would call people in Abobo to warn them that the convoys were coming.

321. Witness P-0362 also described the daily passing at certain times—between 11 and 12—of an armoured vehicle from Camp Agban to Camp Commando in Abobo and that each time it passed it shot in all directions, even on civilians. Witness P-0362 described this taking place even before the 17 March incident. According to Witness P-0364, an Abobo SOS resident, every day there was gunfire from the military Camp at Abobo, starting at 10:00 and until 13:00 – 14:00, then again from 15:00 to 18:00. In the night, it would go from 20:00 to about 5:00. This happened from 28 November 2010 to 17 March 2011, after which the gunfire was replaced with shells. Witness P-0364 testified that she heard the armoured vehicle firing, and said that this is how she knew it would go out every day. On some days, the armoured vehicle went out many times and would fire on each occasion.

ii. FDS witnesses

322. BASA Witness P-0239 described being part of an FDS convoy that shot indiscriminately into Abobo along the way to Camp Commando after hearing shots fired. Witness P-0239's testimony shows that everyone ("*tout le monde*") in FDS convoys fired assault weapons along the road to Camp Commando – despite that he couldn't even see where he was shooting. Witness P-0239 indicated this shooting was in response to the convoys being shot at but also that they sustained the shooting along the entire route to Camp Commando. This pattern is borne out on another time when Witness P-0239 shot indiscriminately along the road in Abobo in a convoy en route to Camp Commando.

323. Witness P-0330, the Commander of Camp Commando in charge of the 3/1 *Gendarmerie* Squadron until he deserted on 3 March 2011, testified that convoys departing from Camp Commando to Camp Agban would shoot in the air in

response to being shot at or having rocks thrown at them. Witness P-0330 was informed by members of *l'escadron d'Abobo* that civilians were injured by the FDS shots in the air. He reported this information to his superiors and as a consequence on several occasions the Chief of the PC had to meet with them to impose a "*discipline de feu*". As seen during the 3 March 2011 incident, this firing continued.

(g) *Conclusion*

324. The evidence presented above illustrates multiple article 7(1) acts and denotes a series or overall flow of events as opposed to a random aggregation of un-associated acts because it demonstrates the common and consistent ways in which the article 7(1) acts were carried out. It is the existence of a course of conduct involving the multiple commission of article 7(1) acts that needs to be established to the required standard, and not the individual acts themselves. On the basis of the totality of the evidence, a reasonable Trial Chamber could conclude that there existed a course of conduct involving the multiple commission of article 7(1) acts.

2. The attack was directed against "any civilian population"

(a) *Prosecution case*

325. The evidence shows to the requisite standard that the attack, meaning the course of conduct, was directed against a civilian population, namely, civilians perceived as Ouattara supporters, composed of actual or perceived political opposition activists or sympathisers, and civilians of Muslim faith, Dioula ethnicity and/or from northern Côte d'Ivoire, or other West African countries as well as Ivorians of West African descent.

326. The evidence of the five charged incidents suffices to show this to the requisite standard, because of (1) the identity as civilians perceived as Ouattara supporters

of the victims of article 7(1) acts committed during those incidents; (2) the pattern of commission of those acts; and (3) the nature of the acts themselves. Furthermore, evidence of other non-article 7(1) acts corroborates that the civilian population was the primary object of the attack.

327. Even if the evidence of the five charged incidents is sufficient, the Prosecution now addresses how the evidence of the five charged incidents, the 20 other incidents and other evidence on the record, taken together shows to the requisite standard that the attack was directed against a civilian population.

328. The identity of the victims as perceived Ouattara supporters has been addressed in the section above. The identity of the victims shows that the attack was directed against that particular civilian population.

329. The patterns of commission of article 7(1) acts, whether each pattern or in combination, also show that the civilian population was the primary rather than an incidental object of the attack.

(i) Targeting of actual or perceived Ouattara political activists or sympathisers

330. The killing, raping and injuring of actual or perceived Ouattara political activists or sympathisers by pro-Gbagbo forces particularly in the context of demonstrations or in and around premises of political parties shows that the attack was directed against the civilian population, as evidenced by (1) the victim's identity as actual or perceived Ouattara political activists or sympathisers; (2) the circumstances in which these acts were carried out; (3) the number of victims; and (4) the means through which these acts were carried out.

331. Actual or perceived Ouattara political activists or sympathisers included women and were targeted during demonstrations in or around political parties' premises. The number of victims of these acts, and the weapons used against them, particularly during the 16 to 19 December 2010 charged incident, denotes them as the primary target. The violence used against these victims went beyond

conventional methods of law-enforcement and encompassed the use of live ammunition, in particular indiscriminate fire and/or grenades (for example, 16-19 December 2010 (charged incident), 3 March 2011 (charged incident), 20 February 2011 (Abobo)). These measures were also inconsistent with any purported “self-defence against lethal force”. The violence also encompassed execution (1-2 December 2010 (Wassakara), 6 December 2010 (Adjamé-Boribana), execution of Ouattara’s spokesperson’s bodyguards on 8 April 2011), and rape of actual or perceived political activists or sympathisers (16-19 December 2010 (charged incident)). These factors demonstrate that the attack was directed against a civilian population.

332. In addition, seeing this pattern in context with other acts preceding the implementation of the attack, further demonstrates that the attack was directed against a civilian population. For example, the disparity with which the police and *Gendarmerie* treated the LMP and the RHDP before the second round of election shows that opposition political activists or sympathisers were targeted for violence. Demonstrations organised by the RHDP such as the 16 December 2010 march were “dispersed”, whereas demonstrations by pro-Gbagbo supporters were secured. Whereas the FDS secured the pro-Gbagbo campaign rallies in Yopougon, Anyama and Cocody involving Police, *Gendarmerie*, CECOS and GSPR, the *Gendarmerie* refused to protect RHDP party headquarters, responding that it was instead the responsibility of the police. Violence against the RHDP was met with little to no resistance from the forces expected to provide security to the civilian population. Such violence took place after the elections as set out in detail in the section above, but also before. On 19 November 2010, pro-Gbagbo youth (members of the FPI youth wing) pillaged the RHDP headquarters. During the campaign, Witness P-0433 saw an FPI youth beat up a woman wearing a Ouattara t-shirt. During the second round, GPP members were instructed not to allow gatherings of opposition parties in the stadium next to



their base, and when the RHDP gathered there, GPP members shot in the air to get them to leave.

333. The looting and destruction of political parties' premises and opposition representatives' homes, as mentioned above, though not amounting to article 7(1) acts, further demonstrate that the attack was directed against a civilian population.

(ii) Targeting of civilians in neighbourhoods inhabited by perceived Ouattara supporters', including religious personnel

334. The killing, injuring and raping of civilians during attacks on neighbourhoods inhabited by perceived Ouattara supporters, including on religious personnel, shows that the attack was directed against the civilian population, as evidenced by the way those attacks were carried out. Attacks by shelling or indiscriminate fire are specifically dealt with further down below.

335. Witness P-0184 who prepared a list at the Abobo Mairie of the victims of the post-election violence in that *commune* gave evidence that the majority of the people in that list were from the North. In other *communes* such as Yopougon, where ethnicities were more intermingled, attackers went door to door, for example during the 12 April 2011 charged incident, killing men and raping women. The comparative treatment of communities, whereupon perceived Ouattara supporters were targeted while the communities living alongside were spared, also shows that the attack was directed against a civilian population. Witness P-0414 gave evidence that according to the victims she interviewed, militia-members targeted RHDP quartiers and sub-quartiers but also individuals, so that in two communal courtyards arranged side by side, the courtyard inhabited by people associated with the LMP was untouched.

336. During these attacks, pro-Gbagbo forces killed their targets within their place of residence as seen during the 12 April 2011 charged incident and in the evidence

of Witness P-0230 regarding the killing of West Africans in his *quartier*. Victims were also located at mosques or imam residences, as in the incidents of 25 to 28 February 2011 (Yopougon), 15 March 2011 (Port-Bouët II), 19 March 2011 (Williamsville), and [REDACTED] The acts committed against Muslim religious personnel or in connection with places of worship in particular demonstrate that the civilian population was the object of the attack. Witness P-0435 explained that people assumed or suspected that those responsible for mosques hosted or helped RHDP supporters, the majority of who were Northerners. Witness P-0440 gave evidence that in the course of his official duties he was constantly ordered to verify whether there were weapons in certain mosques but that he never found any. Although non-article 7(1) acts, the looting and destruction of mosques, but also of shops owned by Northerners and West Africans as discussed earlier, further shows that the article 7(1) acts were directed against the civilian population.

(iii) Identification of civilians perceived as Ouattara supporters based on political, national, ethnic or religious grounds

337. Ouattara supporters were identified in two categories: (1) as actual or perceived political activists or sympathisers, or (2) as of Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or from other West African countries or of West African descent. The killing, raping and injuring by pro-Gbagbo forces of perceived Ouattara supporters following identification checks or their identification as such, shows that the attack was directed against the civilian population. The targeting of the first category has been dealt with above. As for the second category encompassing persons of Muslim faith, Dioula ethnicity and/or from northern Côte d'Ivoire, or other West African countries or of West African descent, their targeting following identification was directed against a civilian population. This is evidenced by (1) the basis (facial features, names and surnames) and (2) the criteria (Northern,

Dioula, West African, Muslim) on which such people were identified; (3) the mistreatment that ensued (stealing, raping, killing such as by lynching and burning); and (4) the character of the individuals doing the identification. In particular, Young Patriots and the members of paramilitary organisations (militia) carrying out identifications at roadblocks were not career or legitimate law enforcement officials. They acted on the basis of suspicion founded on political, national, ethnic or religious grounds. Using these type of forces to carry out identifications, and the basis on which they carried out these identifications, demonstrates that the civilian population perceived as supporting Ouattara was the primary object of the attack.

338. Evidence on how roadblocks operated shows that the article 7(1) acts were directed against the civilian population. Witness P-0087 who interviewed youths holding roadblocks stated that they made it clear that the types of people they were looking for were Northerners with Northern features and Muslim sounding names, and cars with Northern number plates. On camera the youths identified themselves as members of the *Galaxie Patriotique* and also explained their belief that other West-Africans (*“ressortissants CEDEAO”*) wanted to attack Côte d’Ivoire. Witness P-0442 was stopped several times at roadblocks and had to “pay to survive”. He said that at these roadblocks, identification checks were carried out on civilians to see if they were “assailants”. He understood the term “assailant” to mean Dioulas, “Mossis” or Northerners, presumed Ouattara supporters. At a roadblock in Sicogi, Witness P-0438 had his papers seized, including his foreign identity card, and was told: “You are the ones killing people”. Witness P-0440 received reports of crimes in the course of his official police duties and was a victim of the roadblocks himself, as he was stopped at roadblocks manned by Young Patriots when he was in civilian attire. The Young Patriots at roadblocks ransomed Northerners, and killed those who they assimilated to assailants or rebels. They called assailants and rebels those who

originated from the North, from above Bouaké, including those from Burkina Faso, Mali or Niger. The Young Patriots identified their victims based on facial features, but also by carrying out identity checks, asking for names and identity cards. If Young Patriots discovered that an individual was from the North or bordering countries, which they could see simply from the name, then they branded him a potential assailant. They also verified whether individuals carried *gris-gris* (amulets), in which case they automatically determined that they came from the North or a bordering country such as Mali, Niger or Burkina Faso. As reported by Witness P-0440, in the course of carrying out controls in search for weapons and rebels, if an individual appeared suspicious to the youth at the self-defence roadblocks, that individual would be lynched and burnt. A simple suspicion sufficed (*« un simple soupçon suffit à mettre fin à une vie de façon atroce. »*). Witness P-0435 who also ran roadblocks explained that the majority of the victims of the “Article 125” method of killing were Northerners and West Africans from Mali and Burkina Faso.

(iv) Shelling or indiscriminately firing in areas densely populated by perceived Ouattara supporters in Abidjan

339. The killing and injury caused by pro-Gbagbo forces shelling or indiscriminately firing in areas densely populated by perceived Ouattara supporters was directed against the civilian population, as evidenced by (1) the resulting number of victims, women and men, particularly during the 3 March and 17 March 2010 charged incidents; (2) the repetition of the instances of shelling or indiscriminate fire as described in the section above; (3) the areas in which these methods were employed, specifically Abobo which was densely populated by perceived Ouattara supporters, but also Treichville; and (4) the absence of precautionary measures taken to safeguard civilians or minimise civilian casualties, as seen in the decision not to declare Abobo a war zone and as further illustrated by the evidence of the 17 March 2011 charged incident.

340. As developed further below, despite the fact that opposing armed groups were present in Abobo, including the *Commando Invisible*, during the period when the FDS shelled or indiscriminately fired in the area, this does not negate that in the circumstances of this case the civilian population was the primary object of the attack. This is demonstrated by the nature of the threat posed by these armed groups, the means used to combat them and the absence of precautionary measures to safeguard civilians or minimise civilian casualties. These armed groups in Abobo used guerrilla-style tactics to attack the FDS. As such, apart from some roadblocks, the duration of which the evidence does not reveal, these armed groups did not have static bases. Instead, they would engage in confrontations or attack the FDS then disappear by blending in with the civilian population. Thus, by firing shells at locations where the presence of opposing armed groups had been allegedly noted, the FDS knew that the chances of actually disabling a member of these armed groups with such strikes were virtually non-existent. However, particularly in the absence of precautionary measures taken to safeguard civilians or minimise civilian casualties, the chances of striking civilians were very likely given that these areas were densely populated by the civilian population. Further demonstrating that the attack was directed against a civilian population, the shelling or indiscriminate fire described under this pattern was not limited to Abobo. The acts under this pattern also need to be seen in the context of other article 7(1) acts making up the attack, and the evidentiary patterns they fit into, which were also not limited to Abobo.

(v) Other factors showing that the attack was directed against the civilian population

a. The nature of article 7(1) acts shows that the civilian population was the primary object of the attack

341. The type of some of the article 7(1) acts committed by pro-Gbagbo forces against perceived Ouattara supporters during the post-election violence further shows that the civilian population was the primary object of the attack since their very nature precludes that they were carried out during combat. Between 27 November 2010 and around 12 April 2011, male and female perceived Ouattara supporters were raped during three of the five charged incidents, and in other instances. The sexual character of these crimes, which involve elements of force/coercion [...], logically preclude active participation in hostilities at the same time". On analogous reasoning, pro-Gbagbo youth and militia-members lynching and burning victims, and pro-Gbagbo forces' beatings causing injuries during detention further support civilian population targeting.

- b. Article 7(1) acts were committed on discriminatory grounds showing that the civilian population was the primary object of the attack

342. Evidence of article 7(1) acts being carried out on discriminatory grounds, particularly as in this case on political, national, ethnic, or religious grounds, further demonstrates that the attack was directed against the civilian population. Witness P-0441 described youths nearing the Lem mosque during the 25 to 28 February incident singing "*A chacun son Dioula*". During the 12 April 2011 incident, Witness P-0109 heard one attacker say "*No Gbagbo, no Côte d'Ivoire*". "*Plus de Sikasso, Gbagbo ou rien*" was written in a communal courtyard in one of the villages attacked. The evidence from at a minimum the five charged incidents showing that the article 7(1) acts were committed on political, national, ethnic, or religious grounds, additionally demonstrates that the attack was directed against a civilian population.

- c. Non-article 7(1) acts also show that the civilian population was the primary object of the attack

343. Evidence of additional non-article 7(1) acts is also relevant to determining whether the attack was directed against the civilian population. In addition to other non-article 7(1) acts mentioned already, there is evidence that medical treatment was refused to those injured during RHDP demonstrations or otherwise perceived as Ouattara supporters. During the post-election violence, the UNOCI medical centre which was normally reserved for staff began to receive and care for injured persons from the 16 December 2010 incident because they received allegations that local hospitals' doctors refused to care for certain types of injured persons depending on their political affiliation or ethnicity. When Witness P-0107 arrived at the CHU of Cocody after being injured during the 16 December 2010 march, the doctors did not want to treat him, and when one finally agreed to do so, Witness P-0107 heard that he left because he had been threatened on account of treating the injured who had taken part in the RTI march. Reporting on information from the Human Rights Division, an UNOCI report of 22 March 2011 stated that "[t]he Office also documented cases during the week involving the FDS-CI going to hospitals in Abidjan preventing hospital personnel from treating wounded people who were wounded in clashes and believed to be RHDP supporters."

344. Further demonstrating that the attack was directed against the civilian population, the RTI, the State television which was administered by persons who remained loyal to Mr Gbagbo, propagated information likening perceived Ouattara supporters to rebels, thereby contributing to their identification as targets of attack. On the same 20h RTI broadcast when Mr Blé Goudé's 25 February 2011 *mot d'ordre* was retransmitted, the RTI presenter expressly equated RHDP supporters to rebels, stating "*Les rebelles et autres militants du RHDP mènent, depuis quelque temps, une guérilla urbaine dans le district d'Abidjan et dans plusieurs villes du pays*". On 26 March at *Place de la République*, Mr Blé Goudé expressly stated that "*dans sa lancée, Alassane Ouattara et ses militants ont égorgé beaucoup de*

*nos concitoyens*”. Contrary to Mr Blé Goudé’s argument that the pro-Gbagbo forces sought to protect the civilian population from the rebels, likening civilians perceived as Ouattara supporters to combatants failed to make any distinction between the two, further demonstrating that the civilian population was the primary object of the attack.

*(b) Defence arguments*

345. As illustrated by the article 7(1) acts of the course of conduct and in particular those acts committed during the five charged incidents, the Prosecution contests Mr Blé Goudé’s claim that “the FDS operations and the roadblocks were not organised to target the pro-Ouattara [civilian population] or perceived pro-Ouattara civilians, but to protect the population from rebel forces”. As developed further in the sections dealing with the five charged incidents, during these incidents the pro-Gbagbo forces (1) fired at unarmed male and female demonstrators including using grenades on 16 December 2010; (2) fired at unarmed female demonstrators including with a tank on 3 March 2011; (3) burned individuals identified on discriminatory grounds at roadblocks or killed them at mosques on 25 to 28 February 2011; (4) inappropriately used a mortar to fire towards a densely populated area on 17 March 2011; and (5) went door to door killing and raping civilians on 12 April 2011. These were not actions designed to protect the civilian population against opposing armed groups.

346. Mr Blé Goudé nevertheless submits that the fact that the FDS were carrying out operations “with a defensive purpose,” to defend the population against violence conducted against the FDS and civilians by opposing armed groups, is inconsistent with the Prosecution’s case that there was a policy to commit an attack directed against the civilian population. However, irrespective of any purported military purpose behind the attack, the way the attack was carried out shows that the civilian population perceived as supporting Ouattara was the



primary object of the attack and therefore, that the attack was directed against a civilian population.

347. From this, a policy to commit such an attack can be inferred. This is because the policy can be inferred from the manner in which the acts occur. Indeed, Mr Blé Goudé's submissions are focused on the manner in which the acts were committed and in particular on the roadblocks and on how the FDS carried out operations. The Prosecution submits that the way in which the acts occurred and the attack was carried out, shows that the attack was directed against a civilian population, leading to the inference, along with other factors, that the pro-Gbagbo forces and/ or Mr Gbagbo and the Inner Circle members including Mr Blé Goudé were acting pursuant to a State or organisational policy to commit an attack directed against the civilian population.

348. Mr Blé Goudé emphasises the purpose and the objectives of the State or organisation carrying out the attack as *dispositive* or determinative of the question whether the policy was to attack the civilian population. As a *matter of law*, however, showing a "policy" does not require proof of a motive, ideology or ulterior purpose, as the motive behind the attack is irrelevant. As a result, therefore, the "purpose" of the attack cannot be determinative or dispositive of the policy behind it.

349. Mr Blé Goudé's reliance on Pre-Trial Chamber's I decision in the *Mbarushimana* case to argue that a State's or organisation's purpose and objectives are dispositive of the policy element is inapposite. In *Mbarushimana*, the Pre-Trial Chamber made a factual finding that the FDLR's retaliatory attacks aimed at both military objectives and the civilian population could not be considered to be part of a larger campaign specifically directed against the civilian population. This finding does not establish "jurisprudence" to assess "the real purpose and objective of the FDS' military operations during the post-election violence in this case". In relevant part, Pre-Trial Chamber I made a factual finding based on the

evidence before it, and not a general legal pronouncement. In addition, as a matter of law, the civilian population must be the *primary*, as opposed to incidental, object of the attack, but this does not mean that it needs to be the *exclusive* object of the attack. Nor does it mean that attacking the civilian population must be the primary “purpose or objective”. The object of the attack must not be confused with the motivation behind the attack, and in fact the attack may be driven, for instance, by military, political or economic reason, or by no clear reason at all. Accordingly, Pre-Trial Chamber I’s findings in the *Mbarushimana* case regarding the motivations of the FDLR attack — whether as retaliation for prior attacks by the enemy, or to remove or destroy enemy positions — are not determinative, as a matter of law and fact, of the case before this Chamber.

350. In any event, the Chamber in this case should avoid drawing inferences from, or otherwise being influenced by, the factual conclusions of Pre-Trial Chamber I in the *Mbarushimana* case. Because the facts and the evidence of each case are different, factual findings in one case cannot inform a Chamber’s determination on the facts in another case.

(i) The civilian population perceived as supporting Ouattara was the primary object of the attack

351. Contrary to Mr Blé Goudé’s arguments, the evidence on the record shows that the civilian population perceived as supporting Ouattara was the primary object of the attack.

a. Roadblock operation shows the civilian population was the primary object of the attack

352. First, as regards the pattern of roadblock identification, Mr Blé Goudé’s argument that roadblocks’ primary objective was to check for suspicious

individuals to see if they were cooperating with the rebel forces, obviates the basis and criteria on which and the means by which these checks were carried out, and their aftermath. As explained in more detail above, these are consistent with article 7(1) acts carried at roadblocks being directed against civilians perceived as supporting Ouattara. Mr Blé Goudé's submission that many times the goal of such abuse was to obtain financial gain, overlooks that it was civilians perceived as Ouattara supporters who were being extorted of their possessions. Even if these amount to non-article 7(1) acts, they are relevant to show that the attack was directed against a civilian population.

- b. The pattern of shelling in this case shows that the civilian population was the primary object of the attack

353. Second, as regards shelling, Mr Blé Goudé argues that the FDS' use of shelling does not show that the attack was carried out pursuant to a policy to commit an attack directed against the civilian population. He maintains at the same time that the Prosecution has not demonstrated that the FDS used heavy weaponry in Abobo between February 2011 and April 2011, and that, even if it did, this does not mean that the attack was directed against the civilian population.

354. The Prosecution has outlined the pattern of FDS shelling that emerges from the evidence. In the circumstances of this case, as explained in more detail in the section of this response dealing with the 17 March 2011 charged incident, the use of mortars shells in densely populated areas such as Abobo denotes that the civilian population was the primary object of the attack. This is demonstrated by the nature of the threat posed by the opposing armed groups in Abobo, the means used to combat them and the absence of precautionary measures to safeguard civilians or minimise civilian casualties.

355. The nature of the threat posed by opposing armed groups in Abobo is described in detail below. Even on Mr Blé Goudé's characterisation of the threat,

however, mortar shelling would appear an inappropriate response, and its use would instead indicate that the civilian population was the primary object of the attack. Mr Blé Goudé cannot at the same time argue that “Abobo became a complex and intense combat zone where armed and diffused enemy combatants were raging”, characterised by the FDS being unable to “identify the enemy they were facing”, “who were indistinguishable from the civilian population”, and that the use of mortar shelling by the FDS in Abobo was an appropriate response. To the contrary, such use indicates that attack was directed against the civilian population.

356. Abobo was densely populated, and there was no possibility of forward observation. FDS witnesses themselves acknowledged that under the circumstances at the time, including the type of threat they confronted, the use of mortars was inappropriate in an urban setting. The Prosecution’s expert witness confirmed that, in general, “[a] mortar system would be appropriate where you have a concentration of enemy and no civilian population”, and that “[i]n an area where there is a significant number of civilian population or where there is going to be a large amount of collateral damage, then an area effect weapon such as a mortar, such as a 120 mm heavy cased high explosive mortar, that would be an inappropriate use of that weapon system.” The discussions and failure in this case to declare Abobo a war zone, which would have forewarned the civilian population to leave the area, shows the clear disregard for civilian life or at a minimum the absence of precautionary measures to safeguard civilians or minimise civilian casualties in the face of mortar attacks, further illustrating that the civilian population was the primary object of the attack.

357. This is additionally supported by the pattern of indiscriminate fire at civilians in densely populated areas set out above, by the fact that the acts under the shelling and indiscriminate fire pattern were not limited to Abobo, and by the

evidence of other article 7(1) acts in Abidjan following the remaining stated patterns.

358. In the following section, the Prosecution addresses the Defence arguments and the evidence on the record regarding the presence of opposing armed groups in Abobo, and shows that such presence does not affect the conclusion that the civilian population was the primary object of the attack. Irrespective of any purported military purpose behind FDS operations in Abobo, the way the attack was carried out by the pro-Gbagbo forces in Abidjan demonstrates that it was directed against a civilian population.

(ii) The presence of opposing armed groups in Abobo does not affect the conclusion that the civilian population was the primary object of the attack

359. The Prosecution does not deny that opposition armed groups, including the *Commando Invisible* based in Abobo were attacking the FDS. However, their presence does not affect the conclusion that the civilian population was the primary object of the attack and in no way can legally excuse or justify the crimes as charged.

a. Maps

360. Mr Gbagbo has included three maps (which are actually portions of one map at three different zoom levels) which purport to list the bases held by the “armed rebel groups” during the post-election violence in Abobo. The first major flaw with these three maps (which actually appear to be portions of one map on three different zoom levels), is that there is no time frame associated to assist in determining when opposing armed groups allegedly held these locations. Moreover, Mr Gbagbo bases these maps on two sets of sources: a Prosecution report prepared upon request of Pre-Trial Chamber I and evidence provided by Prosecution witnesses. From the outset, the Prosecution submits that 10 of the

bases cited in the maps are sourced exclusively to the Prosecution report – which itself is not in evidence. Mr Gbagbo failed to verify whether the underlying sources of the Report were part of the Court record. In order to avoid any confusion, the Prosecution submits as Annex B, a review of each alleged base of the armed groups and identifies whether they are indeed supported by evidence submitted in the record of the case. It should immediately be noted that the sources cited in the Prosecution's report that refer to the *Mairie d'Abobo* and the *Gare UTB* are in fact references to the quartier Marley, and thus not separate bases.

361. Concerning the locations of armed groups' bases sourced by Mr Gbagbo to testimonial evidence, the Prosecution makes the following comments. Several of the citations provided by Mr Gbagbo are incorrect. In Annex B, the Prosecution provides, what it believes to be the correct citation when known. It should be noted that the alleged bases at the *Pharmacie de l'Étoile* and at the *Gendarmerie* are in fact one and the same location. Moreover, the commissariat of the 21<sup>st</sup> arrondissement is located within the area known as Derrière Rails, while the base near the COOPEC agency is located within Quartier Marley. Therefore, when witnesses speak about these bases they may be speaking about the same location.

362. One general conclusion of this analysis of the map of the Defence is that three of the alleged bases (quartier Belleville, Bois-sec and Gare UTB), are referenced to sources that are not submitted in the court record. In addition, as indicated above, on several occasions the same bases appear to be referred to by different names, thereby inflating the number of alleged bases.

b. Opposing armed groups in Abobo

i. Mr Blé Goudé's allegation regarding the control of Abobo by the Commando Invisible

363. Mr Blé Goudé claims that by the time the *Poste de Commandement* was set up in Camp Commando – in mid-February 2011- the *Commando Invisible* had gained complete control of Abobo, excluding the FDS Camp. Similarly, the Gbagbo Defence argues, with few citations or footnotes, that in March 2011, Abobo was “entirely” under the “stranglehold” and total control of armed pro-Ouattara groups, and that the few soldiers remaining at Camp Commando were purely a “symbolic” presence of the Ivorian authorities meant to protect the population around the camp.

364. First, the evidence demonstrates that the *Commando Invisible* was not the only armed group operating in Abobo during the postelection crisis. As detailed below, the evidence suggests that youths, rebels and other armed individuals were present in Abobo and attacked or were involved in confrontations with the FDS in Abobo. Further, the Prosecution submits that Mr Gbagbo’s and Mr Blé Goudé’s allegations are an oversimplification of the situation. Although it is true that by mid-February 2011, opposing armed groups in Abobo – including the *Commando Invisible* – had an important presence in the commune, and were engaged in confrontations with and attacks on the FDS, they did not have total military control. In fact, by their very nature, these armed groups engaged in guerrilla type warfare – they were mobile groups attacking the FDS and then disappearing amongst the population in Abobo, which was largely supportive of the opposing armed groups. Witness P-0520 described it as “*une sorte de politique de harcèlement*”. The evidence demonstrates that their purpose was to wear out the FDS which was numerically superior and had more lethal weapons. As such, the FDS was able to remain in Camp Commando until their departure on or about 29 March 2011.

365. In order to properly describe the presence, actions and weapons of these opposing armed groups in the Abobo, and to address the issue of whether they had control of the *commune* during the post-election crisis, and more specifically

in the month of February 2011, the Prosecution provides below a summary of the relevant evidence in the record of the case.

366. The evidence demonstrates that some of the armed groups in Abobo - including the Commando Invisible - first appeared in the PK18 neighbourhood (of Abobo) in late November or December 2010. In the following months, they increased their presence in Abobo, erecting roadblocks, engaging in confrontations with and attacking the FDS. As of mid-march 2011, Camp Commando remained as the only FDS stronghold in Abobo. Ultimately, the FDS left Camp Commando on or about the 29 March 2011.

(a) Late November 2010 – January  
2011

367. While the FDS had military control of Abobo during the months of December 2010 and January 2011, the presence – and strength - of opposing armed groups within the *commune* increased as the post-election violence evolved.

368. Opposing armed groups were present in Abobo at the commencement of the post-election violence and attacked or were involved in confrontations with the FDS as of then. Some of the armed groups in the PK18 neighbourhood organised themselves to fight the FDS - in late November or early December 2010 - following FDS violence in Abobo.

369. Confrontations occurred between opposing armed groups and the FDS in Abobo on 16 December causing several FDS casualties, particularly in the PK18 area. During the day several FDS were killed and wounded in an exchange of fire with armed elements near PK18 and at approximately 8-9 p.m., two members of the FDS 1<sup>st</sup> battalion were killed in an ambush near Unicafé near PK18.

370. Police reports indicate that armed rebel groups were present in the PK18 neighbourhood of Abobo in January 2011. On 11 January 2011, an (FDS) “*opération de sécurisation*” in Abobo PK18, was unsuccessful due to an attack of



the FDS positions by heavily armed rebels causing a number of (FDS) casualties. According to a DGPN report regarding threats to the *Cité Policière* in Abobo, as of 25 January 2011, there were 4 dangerous zones in Abobo: a triangle including PK18 and *Unicafé*, the Zion neighbourhood, the roundabout of the *Mairie* and the Marley neighbourhood, and an area from the second stop at Banco roundabout south to the *Château d'eau*. The report further indicates that the *Cité Policière* was far from these zones and was surrounded by FDS positions: the Police District, the 13<sup>th</sup> arrondissement and l'escadron de la *Gendarmerie* (Camp Commando).

(b) February 2011

371. Despite the increased presence of opposing armed groups in Abobo, and attacks or confrontations with the FDS during the month of February 2011, the FDS was present in Abobo and conducting operations. As of 13 February, the FDS held positions at numerous locations in Abobo, including PK18, N'Dotré, *Mairie*, Samaké and Anador. On 18 February, the *Gendarmerie* Commander ordered 3 platoons consisting of 75 men to reinforce security in Abobo, among others by conducting patrols. As of 20 February 2011, there were 121 forces from the *Escadron de la Gendarmerie Mobile* positioned and patrolling different locations in Abobo. That same day, the BAE opened fire to disperse individuals near the *Mairie*, and operations continued subsequently. On 24 February during a meeting with the Generals, Mr Gbagbo gave instructions to liberate the MACA-Abengourou axis in N'dotré and not to cede Abobo. The CEMA acted on this order and FDS operations were conducted in PK18/N'dotré area.

372. By late February 2011, reports indicate the evacuation of certain police stations and attacks on policemen.

373. A report from the ANSI indicates that as of 28 February 2011, three neighbourhoods in Abobo were serving as bases for rebel forces – Marley,

Derrière-Rail and PK18. When P-0330 was questioned in regards to this document, he testified that his men who were on the ground would report on the position of armed men in the area; at first they heard about rebel groups, then about the warlords Chérif Ousmane and Zakaria behind PK18 and then they heard about the *Commando Invisible*. When P-0330 was asked about the number of rebels in the Marley neighbourhood, he responded he had never crossed one of these groups and that his men had seen three or four people amongst the population from afar. Witness P-0330 added that although the convoys between Camp Agban and Camp Commando were attacked every time they passed, the patrols that were sent out (in Abobo) to Bocabo, Derrière-Rails, Marley and PK-18 were not attacked.

374. Further, Witness P-0239 also confirmed that he participated in an operation outside of Camp Commando which very likely occurred in late February or early March 2011. Captain Zadi of the *sous-groupement tactique* ordered him on a mission to confront enemy troops near Anonkoua-Kouté. Once at *Dépôt 9*, located in Abobo on the road to Anyama, Captain Zadi requested the 120 mm mortars to be fired, but another BASA member, the chief of the artillery group on site, refused to fire without written orders. Finally Captain Zadi fired 81/82 mm himself instead.

375. FDS crimes in Abobo in late February further demonstrate the FDS presence and ability to operate in Abobo, such as that on 26 February 2011 and the days that follow, UN call centre records corroborate that the FDS shelled PK 18 in Abobo, killing several civilians.

(c) March 2011

376. Opposing armed groups increased their presence in Abobo and continued their attacks on FDS convoys in March 2011. Civilians were also allegedly attacked by the armed groups. As of the 1 March 2011, eight different rebel

“gathering points” were reported by ANSI in the PK18 neighbourhood. Additional roadblocks manned by armed youths and/or members of opposing armed groups were erected in Abobo – some as a result of the 3 March incident. On 10 March, Witness P-0414, encountered armed members of the *Commando Invisible* on the Sebroko road, while traveling to Abobo for a fact finding mission regarding the 3 March incident, and subsequently at a Carrefour in Abobo.

377. Despite the increased presence of opposing armed groups in Abobo during the month of March 2011, the FDS maintained a stronghold at Camp Commando until 29 March 2011, and was still able to conduct the shelling of the Abobo market and surrounding area on 17 March from within its confines.

378. Witness P-0156, who was the FDS Commander in charge of the command post at Camp Commando on 3 March 2011, testified that the personnel there was 150 to 175 men, including *gendarmes*, led by a captain and a squad leader. There were other detachments, which came to be at the disposal of the PC, and there were six to seven different sections: BCP, engineers BAE, the police, 1<sup>st</sup> Battalion, the Republican Guard, and the BASA.

379. An analysis from the *Direction Des Renseignements Généraux*, dated 8 March 2011, confirms that FDS forces were present at Camp Commando in Abobo. The report indicates that rebels could travel without hindrance in Anyama, PK18 and until the *Mairie* roundabout. The report advocated for a military intervention (with the support of the GPP) in the Anyama, N'Dotre and PK18 locations, and a police intervention in other locations. The orders also listed three “*Points Tenus*”, i.e. held by FDS: *Escadron Abobo*, *Pharmacie Azur* and *Filtisac*.

380. On 18 March, the CPCO convened a meeting to discuss a new security plan for Abobo. As of 25 March 2011, an FDS report indicates that there were still over 150 FDS members active in the Abobo/Anyama areas. Another FDS report, dated 29 March 2011, demonstrates that prior to leaving Camp Commando, there were still 116 FDS members active in the Abobo/Anyama areas. Similarly, a series of

DGPN reports on the number of personnel deployed indicate that BAE and CRS forces were present in Abobo from 22-29 March 2011.

381. FDS also continued to commit crimes in Abobo, demonstrating FDS's presence and operations in Abobo:

i. P-0580 witnessed FDS commit other acts of violence in Abobo prior to the women's march. After a group of people had thrown rocks to a bus and set it on fire on the route between the Abobo station roundabout in the direction of Samaké, Witness P-0580 saw a CECOS pick up open fire on the group of people around the bus. Witness P-0580 fled, and when he returned 15-20 minutes later he found the body of a dead boy ("*garçon*") with a wound in his stomach at the scene.

ii. On the night of 11 to 12 March 2011, in Abobo, an FDS operation using heaving weapons, including mortars, killed three children aged two, six and twelve.

iii. On 17 March, the FDS forces present in Camp Commando killed at least 31 persons and injured at least another 36 persons in or near Abobo market by shelling densely populated areas near Siaka Koné market, SOS village and other areas

iv. On 22 March 2011, at Derrière Rails, FDS shells struck a communal courtyard, killing at least five, including one woman and three children, and wounding at least three others.

c. Weapons

382. Mr Blé Goudé claims that the *Commando Invisible* had mortars during the post-election crisis. However, the evidence cited by Mr Blé Goudé is equivocal, unreliable and unsupported by the evidence on record. When Witness P-0010 was first asked by Defence counsel whether the *Commando Invisible* had any

mortars his first response was “*probablement, mais je n’en ai pas vu l’effet...je ne peux pas confirmer ça, mais ils devaient être équipés.*” When Witness P-0010 was confronted with his prior statement in this regard, he testified that he had spoken with an unidentified military “friend” who told him that the *Commando Invisible* possessed mortars. No information was provided as to the identity of the friend or - more importantly - how his friend came about this information. Absent these two components, this hearsay evidence has very little if any probative value or weight. Witness P-0010 also stated that he saw the ex-FAFN in possession of mortars following the second week of April – but this is immaterial as to whether the *Commando Invisible* in Abobo possessed mortars at the time of the events of 17 March 2011.

383. Witness P-0009’s testimony that he received reports of his men on the ground – in Camp Commando - being attacked by mortar shells is contradicted by reliable evidence on the record. Moreover, there is no FDS documentary evidence on the record supporting this claim. Witness P-0164 who was at the Camp Commando for a from 3 to 7 March 2011, testified that it would surprise him if the *Commando Invisible*, the youth or other organized forces in Abobo would have had possession of mortars as they only had access to the (small) weaponry available in the *Brigades* and *Commissariats* that they had overrun. Witness P-0164 adds that if these armed groups had mortars in their possession they would have used them against the Camp Commando in the days following the 3 March incident. Further, apart from Witness P-0009’s testimony, no other evidence on record makes mention of the *Commando Invisible* or other armed groups in Abobo making use of mortars to attack Camp Commando.

384. The evidence shows that opposing armed groups – including the *Commando Invisible* - had AK-47s (Kalashnikovs), 12.7 heavy machine guns, hunting rifles, offensive grenades, and hand-held rocket launchers (*lance-roquettes* such as RPG) at their disposal during the postelection violence. However, there is no reliable

evidence on the record that they would have been in possession of mortars or used them against the FDS in Abidjan prior to 31 March 2011. Rather, there is evidence on the record indicating that initial reports regarding the use of mortars by opposing armed groups before this date were incorrect. Nor is there credible evidence that these opposing armed groups had armoured vehicles before the arrival of FAFN troops in Abidjan on 31 March –the evidence indicates that before that date they had four by fours and other unarmoured vehicles.

385. Two FDS documents make mention of a shell “obus” striking a central antenna (the RTI’s) on 17 December 2010. However, they contain contradictory and vague information regarding the origin of the shell and can therefore not be relied upon to draw any rational conclusion. The first report – a BQI authored by Claude Yoro on 17 December 2010 - indicates that an “obus” “lancé de très loin” struck the “centre émetteur” at Derrière-Rail. However, a second BQI from the 17 December indicates that a shell struck the RTI premises after a UNOCI airplane flew over the location. Further, neither report links the shelling to an armed group in Abobo – let alone to the Commando Invisible.

d. Curfews

386. Mr Blé Goudé claims that the curfews that were implemented in Abobo were taken as exceptional measures to protect the civilian population and the FDS from the *Commando Invisible*. The Prosecution submits that the evidence on record demonstrates that the Mr Gbagbo was unconcerned about the welfare of the civilian population in Abobo – and was really concerned about regaining control of the commune through any means. Irrespective of any purported military purpose behind FDS operations in Abobo, the way the attack was carried out by the pro-Gbagbo forces in Abidjan demonstrates that it was directed against a civilian population. Shelling or indiscriminate fire by the FDS in Abobo was part of this attack, and the nature of the threat posed by the

opposing armed groups, the means used to combat them and the absence of precautionary measures to safeguard civilians or minimise civilian casualties show that it was part of an attack directed against a civilian population. Further demonstrating that the attack was directed against a civilian population, the way the attack was carried out was not limited to shelling or indiscriminate fire or to Abobo, but included other article 7(1) acts falling under the other evidentiary patterns in other areas of Abidjan.

3. The course of conduct was carried out “pursuant to or in furtherance of a State or organisational policy to commit such attack”

387. By 27 November 2010, the implementation of the Common Plan had developed to include a State or organisational policy to attack civilians considered to support Ouattara. Although the Common Plan and the contextual element of the policy are distinct legal concepts with a different scope and different means of proof, in this case the same evidence is relevant to both, as seen further below.

388. The pro-Gbagbo forces, which included elements of the FDS, pro-Gbagbo youth, militia and mercenaries, and which carried out the article 7(1) acts described above, constituted a “State” or “organisation” and acted pursuant to or in furtherance of a policy to attack the civilian population within the meaning of article 7(2)(a) of the Statute. In addition or in the alternative, Mr Gbagbo and the Inner Circle including Mr Blé Goudé constituted a “State” or “organisation” and acted pursuant to or in furtherance of a policy to attack the civilian population. The composition of the Inner Circle has been dealt with in the Trial Brief and will not be repeated here.

389. Contrary to Mr Blé Goudé’s argument, the Prosecution has not departed from its allegations in the Pre-Trial Brief in this respect. Importantly, the Prosecution’s submission that the policy within the meaning of article 7 was adopted both by

Mr Gbagbo's Inner Circle (including the two Accused) and/or by the pro-Gbagbo forces, does not exceed the fact and circumstances described in the charges, and the Accused have been informed promptly and in detail of this aspect of the charges against them.

390. In the Confirmation Decision against Mr Gbagbo, the Pre-Trial Chamber held that the policy to attack the civilian population can be attributed to the "entire entity [...], and not only on the individual(s) who adopt the policy at the highest level on behalf of the State or organisation". It specifically found that a State or organisational policy could be attributed to the pro-Gbagbo forces, which included elements of the FDS, youth militia and mercenaries, and were led by Mr Gbagbo and his Inner Circle. The Confirmation Decision against Mr Blé Goudé expressly reiterates the finding that the State or organisational policy can be attributed both to Mr Gbagbo's Inner Circle and to the pro-Gbagbo Forces.

391. In its Pre-Trial Brief, the Prosecution alleged that "[t]he 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, constitute[d] an 'organisation' and 'State' and implemented a 'policy' within the meaning of article 7(2)(a)". Thus, the Prosecution alleges that these entities—the pro-Gbagbo forces, and Mr Gbagbo and the Inner Circle including Mr Blé Goudé, which led them—constitute a State or organisation and that the attack was carried out pursuant to a State or organisational policy whether that policy was held at the level of the Inner Circle or at the level of the pro-Gbagbo forces, or both.

392. The commission of article 7(1) acts by the same group of perpetrators (pro-Gbagbo forces) against the same group of civilians (civilians perceived as Ouattara supporters) carried out following similar methods (the evidentiary patterns referred to earlier), within a given location and time-frame (in Abidjan between November 2010 and April 2011) demonstrates that the underlying acts were carried out pursuant to a State or organisational policy. Contrary to Mr Blé



Goudé's argument, the Prosecution has demonstrated the existence of patterns of article 7(1) acts as explained earlier. In addition to the other factors addressed below, these evidentiary patterns show the policy behind those acts.

(a) *The pro-Gbagbo forces constituted a State or organisation acting pursuant to or in furtherance of a State or organisational policy*

393. The pro-Gbagbo forces had sufficient resources, means and capacity to bring about the course of conduct described above. They had a set of structures and mechanisms that were sufficiently efficient to ensure the coordination necessary to carry out the attack directed against the civilian population.

394. Contrary to Mr Gbagbo's submission, the evidence of article 7(1) acts demonstrates to the requisite standard that they were carried out by pro-Gbagbo forces. As seen in the evidence of the five charged incidents and more broadly in the course of conduct section, the attack was carried out by elements of the FDS, pro-Gbagbo youth, militia and mercenaries. The main FDS units involved in carrying out the attack were FANCI units such as the BASA, the CECOS, the GR, and the police in particular the BAE and CRS. The commanders of some of these units also formed part of a parallel structure controlled by the Inner Circle, such as the Commander of the BASA, Rigobert Dadi Touhouri; the Commander of the BAE in Yopougon, Emmanuel Patrice Loba Gnango; the Commander of the *sous groupement tactique* of the Ground Forces Clément Ouandé Zadi and the Commander in Chief of the GR, Dogbo Blé. In fact, the heads of most of these units were Inner Circle members: in addition to Dadi and Dogbo Blé, the Head of CECOS, Georges Guiai Bi Poin was part of the Inner Circle.

395. The pro-Gbagbo forces constituted a State or organisation. They constituted a State insofar as they comprised part of the State apparatus, notably the FDS. The FDS was the country's official military and law enforcement organisation, and an aggregation of organised units controlled by their respective unit commanders,

therefore constituting an organised and hierarchical apparatus of power. Mr Blé Goude's submissions regarding the integration into and collaboration with the FDS of pro-Gbagbo youth, militia and mercenaries have been responded to elsewhere, and do not undermine the characterisation of the pro-Gbagbo forces as a State or organisation, which was hierarchically organised.

396. In carrying out the attack, the pro-Gbagbo forces acted pursuant to or in furtherance of a State or organisational policy to commit such attack. This can be seen in that the State or organisation's forces were involved in the commission of crimes, as the perpetrators of the article 7(1) acts were members of the pro-Gbagbo forces. It can also be seen in the evidentiary patterns of article 7(1) acts set out above, as a policy can be inferred from the manner in which the acts occur, demonstrating that these acts were committed pursuant to or in furtherance of a policy and were not simply unconnected and isolated acts.

397. Thus, that the pro-Gbagbo forces carried out the attack pursuant to or in furtherance of a State or organisational policy involving a degree of planning, direction and organisation — as opposed to wholly spontaneous or isolated acts of violence — can be seen in that (1) the pro-Gbagbo forces were hierarchically organised and followed orders (the FDS, the *Galaxie Patriotique* (including pro-Gbagbo youths and militia), and mercenaries integrated into the FDS); (2) the pro-Gbagbo forces acted in coordination, collaborated with or provided support to one another; (3) the pro-Gbagbo forces exercised control over part of the territory of Côte d'Ivoire, including large parts of Abidjan; (4) the manner in which they carried the article 7(1) acts out followed certain patterns; (5) the pro-Gbagbo forces used public resources to further the policy, and State officials and State forces were involved in the commission of the crimes; and (6) the superior officers of the pro-Gbagbo forces did not take measures to prevent, punish or repress the prohibited acts carried out by their subordinates.

398. In particular, that the pro-Gbagbo forces followed orders and/or engaged in coordination, collaboration with or support to other units when carrying out the attack can be seen in the evidence of crimes committed during the five charged incidents.

399. During the 16 to 19 December 2010 charged incident, pro-Gbagbo youth, militia-members and mercenaries, reinforced the FDS and together with it violently repressed the demonstration. Young Patriots answered the call to mobilise and set up roadblocks, where they stopped and checked demonstrators who they would hand over to the police, and committed rapes. GPP members wearing white armbands so that the FDS would recognise them, were instructed to support the FDS by intercepting demonstrators, and in doing so they beat and injured demonstrators with *cordelettes* and handed them over to the CECOS BMO. CECOS BMO and the CRS shot at and killed demonstrators. FESCI members, trained prior to 16 December by the GPP, were placed on alert, and also participated in the repression of the march by beating demonstrators. Young Patriots from the FESCI also fired on the demonstrators during the march. Demonstrators were beaten at the orders of a GR commander, and at an FDS roadblock and at the *Gendarmerie*.

400. During the 25 to 28 February 2011 charged incident, following Mr Blé Goudé's *mot d'ordre*, pro-Gbagbo youth attacked the Doukouré/Lem neighbourhood, and were supported by police officers from the 16<sup>th</sup> district police station, who fired and threw grenades at the Doukouré youths, killing and injuring some of them. A victim tried to enter the 16<sup>th</sup> arrondissement police station, but was pushed out by the police. A BAE patrol was present when two victims were burnt. When they attacked the Lem Mosque of Yopougon, pro-Gbagbo youths and the militia members of Maguy Le Tocard were accompanied by GR and BAE vehicles, while

CECOS vehicles carried militia members. Demonstrating their coordination and that their actions were pursuant to or furthered the policy, on 28 February 2011, the *Young Patriots* refused to remove their roadblocks because they said that Mr Blé Goudé had told them to monitor the neighbourhood and so they were doing their job.

401. On 3 March 2011, the GR led the convoy that fired into the women's demonstration, part of a pattern of indiscriminately firing whereupon FDS convoys fired assault weapons along the road to Camp Commando in Abobo. Denoting coordination and that their actions were pursuant to or furthered the policy, in an attempt to destroy the evidence of these crimes, FDS troops such as the *Gendarmerie* made efforts to intercept the bodies of the women on 3 March 2011.

402. The fact that BASA members executed orders when they shot mortars on several locations in Abobo on 17 March 2011, demonstrates that their actions were pursuant to or furthered the State or organisational policy to carry out an attack against the civilian population.

403. The crimes of 12 April 2011 in Mami Fatai and Doukouré, were carried out by pro-Gbagbo forces including youths, militia-members, mercenaries and the remaining loyal FDS members, based at the Locodjoro Naval Base, which they controlled until 18 April 2011.

404. This following orders, coordination, collaboration or support within and among the different units carrying out article 7(1) acts, denoting the policy behind the attack being carried out, can also be seen in the rest of the evidence, in particular in the evidence of acts committed during the following incidents: 25 December 2010 (PDCI headquarters in Cocody) (involving FESCI and FDS and militia-members), 18 and 19 January 2010 (Adjamé and Attecoubé) (involving CECOS, a civilian and marine elements), 3 December 2010 (Treichville-Biafra) (involving the GR and mercenaries), 15 March 2010 (Port-Bouët) (involving

militia-members, BAE and *Gendarmerie*), 19 March 2011 (Williamsville) (involving militia-members and CRS1), attack on the Washington neighbourhood of Adjamé (involving CECOS and GPP) (evidence of [REDACTED]), attack on the mosque of Yopougon-Sable (militia-members and CECOS) (evidence of [REDACTED]).

405. The operation of roadblocks by youth and militia-members also demonstrates this type of collaboration/support showing the existence of a policy. FESCI and Young Patriots set up roadblocks after a message from Mr Blé Goudé and sometimes they would mix with the GPP. If the GPP arrested an individual at a roadblock, they would bring him to the BAE or CECOS patrol. Mainly after the elections, Witness P-0440 received reports that Maguy Le Tocard's group would perform police-like operations while wearing police armbands, such as arresting persons of being rebels or assailants, and send them to the 16<sup>th</sup> arrondissement commissariat. After some time, Maguy Le Tocard and his group stopped sending anyone to the *commissariat* and instead treated these "suspected rebels or assailants" as they wished.

406. Further demonstrating that the attack was carried out pursuant to or in furtherance of a policy, the superior officers of those carrying out these crimes did not prevent, punish or repress the prohibited acts carried out by their subordinates. In addition to the specific evidence relating to the 16 to 19 December 2010, 3 March 2011 and 17 March 2011 charged incidents—where, for example, Colonel Rigobert Dadi, celebrated rather than punished those who launched the 120 mm mortars into Abobo—other crimes by pro-Gabgbo forces were not stopped or went undeterred and unpunished, showing that their criminal conduct furthered the policy.

407. Witness P-0347 gave evidence that when he tried to stop GR elements at the Treichville base from abusing detained RHDP demonstrators, this information was reported to his superior General [Dogbo Blé], saying that he [Witness P-0347] stopped the men from carrying out these abuses, and therefore that he was not

“with them” (*“donc je n’étais pas avec eux”*), meaning the officers of the hierarchy including General Dogbo Blé. Sanctions would have had no effect as even if Witness P-0347 had ordered sanctions his superior would have ordered that the sanction not be executed.

408. As confirmed by Witness P-0435, there was no sanction against GPP members involved in killing an imam and others in Williamsville. Witness P-0440 gave evidence that the Young Patriots, the militia and the FESCI students benefited from impunity as even if they committed crimes, the police would not arrest them because they were not asked to arrest them and in addition because they were afraid of reprisals by these individuals but also of being reprimanded by their hierarchy, “[p]arce que tout le monde était au courant et tout le monde laissait faire.” By his hierarchy, he meant from the DGPN. Witness P-0440 gave evidence that he sent reports up through his chain of command of individuals being burnt by Young Patriots but received no follow-up from his superiors in the police. Similarly, during a meeting between the police *commissaires* and the Police Prefect, one of the *commissaires* denounced acts of vandalism and pillage against opposition parties’ leaders, stating that the perpetrators were known, but was met with silence on the Police Prefect’s part, and received no orders in this regard.

409. As seen, the ability of these forces—the Young Patriots, the militia and the FESCI, in the words of Witness P-0440—to commit crimes with impunity during the post-election crisis, was due to their close collaboration with pro-Gbagbo elements in the FDS. For example, on 16 December 2010, a *commissaire* of the police who attempted to stop GPP activities was rendered powerless when he requested them to hand over the detainees, due to the intervention of the CECOS BMO. Similarly, and although he was speaking in the context of regular army discipline rather than punishing crimes, Witness P-0164 stated that it was not possible to discipline Young Patriots in BASA because the BASA commanding officer—Colonel Dadi—used to listen to the Young Patriots more than he listened

to BASA elements. That the pro-Gbagbo forces acted pursuant to or in furtherance of a State or organisational policy is also evidence that there was a policy at the level of Mr Gbagbo and the Inner Circle including Mr Blé Goudé, and *vice versa*.

410. Mr Blé Goudé's arguments that the policy behind the FDS, youth's and militia's actions was to protect the population from rebel forces have been addressed above. It is simply not borne out by the evidence as seen in the acts committed in the context of the attack. It also does not follow that the purported existence of a military purpose behind the attack excludes that there was a policy to commit an attack directed against the civilian population. Similarly, Mr Gbagbo argues that the fact itself that the FDS were attacked by opposing armed forces belies the existence of a policy to commit an attack directed against the civilian population. The Prosecution reiterates that a policy to carry out an attack must not be confused with the purpose or motive which as a matter of law is irrelevant and can be multiple or non-existent. The legal notion of the policy merely requires proof that the attack was planned, directed or organised by a State or organisation — as opposed to wholly spontaneous, or isolated acts of violence. If it is established that the attack against the civilian population did have these objective characteristics, the purpose or motive behind the attack is irrelevant. Even if, *arguendo*, the purpose of the attack was to protect civilians from opposing armed groups as argued by Mr Blé Goudé—which is contradicted by the evidence--this would not negate the planned, directed and organised nature in which the pro-Gbagbo forces committed the attack, or as demonstrated by the evidence, that it was directed against a civilian population. To the contrary, Mr Blé Goudé's argument supports the Prosecution's position that the attack was linked to the pro-Gbagbo forces who acted in a coordinated manner, and therefore pursuant to a policy attributable to the pro-Gbagbo forces.

*(b) Mr Gbagbo and the Inner Circle constituted a State or organisation acting pursuant to or in furtherance of a State or organisational policy*

411. In addition or in the alternative, Mr Gbagbo and the Inner Circle including Mr Blé Goudé acted pursuant to a State or organisational policy to commit an attack directed against the civilian population. Contrary to Mr Blé Goudé's argument, the Inner Circle constituted a State or organisation because, as set out in more detail in Section V of this response, they (a) exercised control over FDS members and mercenaries, militias and pro-Gbagbo youth; (b) operated through State structures and institutions, such as the FDS, and State-affiliated organisations; (c) they oversaw the recruitment, arming and financing of pro-Gbagbo forces; and (d) they issued instructions to pro-Gbagbo forces, who acted upon these instructions and kept them abreast of developments on the ground.

412. That Mr Gbagbo and the Inner Circle including Mr Blé Goudé acted pursuant to a State or organisational policy can be inferred from the same evidence and factors discussed in the previous section under the pro-Gbagbo forces. In addition, it is further corroborated by the following evidence and evidentiary factors developed below.

413. Mr Gbagbo and the Inner Circle, including Mr Blé Goudé, acted pursuant to the policy to attack the civilian population, as evidenced by the following factors: (1) they shared the motivation to keep Gbagbo in power by all means; (2) prior to 2010, they had already used violence as a means to further political objectives aimed at keeping Gbagbo in power, following methods and using groups also employed during the 2010-2011 attack; (3) they recruited, armed and financed pro-Gbagbo youth, militias, including the GPP, and mercenaries before and during the attack; (4) they exercised joint control over the pro-Gbagbo youth, militia and mercenaries including through instructions and incitements that furthered the attack; (5) they consolidated and exercised joint control over the FDS by appointing loyal individuals to key positions, and armed perpetrating



units; (6) they met or otherwise communicated frequently, received information regarding the situation on the ground, and issued instructions and incitements that furthered the attack; (7) they used rhetoric which sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible; (8) they encouraged and endorsed the actions of the pro-Gbagbo forces; (9) they used the RTI, a State tool, to disseminate encouragements and endorsements of the actions of pro-Gbagbo forces, and to disseminate instructions and incitements in furtherance of the attack; (10) they failed to prevent, repress or report the crimes committed, and denied responsibility for them; (11) their actions in implementation of the attack were coordinated.

414. As regards the latter, Mr Gbagbo and members of the Inner Circle coordinated their actions that furthered the attack. This evidence of coordination in the implementation of the attack belies Mr Blé Goudé's claim that no policy to carry out an attack against the civilian population can be inferred because "the organisation and preparatory activities of the FDS and the different youth groups and militia was protection against the possibility that the opposing side would resort to violence to accede to power". This allegation is contradicted by evidence that after preparatory meetings among Mr Gbagbo and members of the Inner Circle, the FDS, the pro-Gbagbo youth and militia in fact carried out crimes against civilians perceived as Ouattara supporters, as seen for example during the 16 to 19 December 2010 charged incident, showing that the preparatory activities denote the policy behind the attack. The reliance on statements of insider witnesses such as Witness P-0009 regarding the FDS' mission to protect the civilian population or on a document reminding of these principles, is meaningless in the face of the evidence that FDS units, in collaboration with pro-Gbagbo youth and militia, carried out the article 7(1) acts making up the attack. It is also meaningless in light of the evidence of the actions of Inner Circle members, such as when Mr Gbagbo instructed the FDS to do everything to hold on to

Abobo and liberate the N'Dotr  roundabout – and after enquiring about the presence of the population in that zone, Mr Gbagbo gave the instruction to make sure there were not too many dead.

415. In addition, that Mr Gbagbo's and the Inner Circle's policy was to carry out an attack against the civilian population can be seen in particular by: (1) the use by the pro-Gbagbo forces of violence against the civilian population, following the patterns established above; (2) the pre-election recruitment, training and arming of pro-Gbagbo youth and militia, in particular the GPP, a militia group with a criminal past and the use of which alone demonstrates Mr Gbagbo's and his associates willingness to use any means (even violent ones) against the civilian population; (3) the requisitioning of the army before the second round of election, presaging its use alongside the rest of the FDS to attack the civilian population during the post-election violence; (4) the issuance of instructions and incitements to the pro-Gbagbo youth and militia and the FDS which furthered the attack, in particular for the five charged incidents; (5) the rhetoric used by Mr Gbagbo and members of the Inner Circle, including Mr Bl  Goud , which sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible; (6) the encouragement and endorsement of the actions of the pro-Gbagbo forces, including through failing to prevent, repress or report the crimes committed and denying responsibility for them. All of these factors also show that the preparatory activities mentioned by Mr Bl  Goud  were actually designed to carry out the attack as it indeed happened and that from them a policy to commit an attack against the civilian population can be inferred.

416. Contrary to Mr Bl  Goud 's argument, that the Prosecution's insider witnesses did not "spontaneously confirm the existence of a policy where they would resort to killing the pro-Ouattara or perceived pro-Ouattara civilian population such that Mr Gbagbo would stay in power," does not detract from the existence of such policy. This policy can be inferred from the evidence supporting the factors

set out above. As provided by the jurisprudence, the policy does not need to be explicit but can be inferred. The Prosecution relies upon the coordinated actions of members of the Inner Circle, together with the pattern of actions of pro-Gbagbo forces during the post-election violence as evidence of the existence of a policy to carry out an attack against the civilian population.

417. Finally, contrary to Mr Blé Goudé's argument, the Prosecution has not ignored that according to the Elements of Crimes, a policy cannot be inferred solely from the absence of governmental or organisational action. The term "policy" merely requires that some part of the State or organisation must have at least encouraged the attack, either actively or passively, and thus link the multiple article 7(1) acts together. The policy in this case is not limited to "a deliberate failure to take action", but rather, is made up by State or organisational actions, as seen in the majority of the factors stated above. For example, there can be no question that this was a policy made up of state action from the fact that there was an instruction prohibiting the 16 December 2010 march; on 25 February 2011, a call from Mr Blé Goudé resulting in setting up roadblocks, and after that a failure to take them down; and a decision on 24 February 2011 not to declare Abobo a war zone and not to cede it. Furthermore, the deliberate failure to take action in this case—to prevent, repress or punish—was in any event "consciously aimed at encouraging such attack", by creating a climate of impunity and permissiveness within the FDS, the militia and the pro-Gbagbo youth, as further explained above, and as seen in the denials of the crimes themselves.

#### 4. The attack was "widespread" and "systematic"

418. The attack against the civilian population was widespread and systematic. This is the case whether the five charged incidents are taken separately or together with the rest of the evidence.

*(a) The attack was widespread*

419. The attack was widespread in that it was large-scale and involved a large number of targeted persons. In particular, the following features show that it was a widespread attack: (a) article 7(1) acts were carried out against at least 269 victims during the five charged incidents, and at least 259 victims during at least 20 other incidents—although this is a conservative estimate in light of the number of other acts and victims as set out in this response—and occurred over four months (between 27 November 2010 and on or around 12 April 2011); (b) the number of crimes committed during that period was considerable; (c) the attack affected large areas of the city of Abidjan such as Abobo which held 1.5 million inhabitants. The nature of the crimes and their impact both on the victims, and on the socio-political and economic environment in Abidjan and beyond, show that the attack against the civilian population was grave.

*(b) The attack was systematic*

420. The attack was systematic in that the acts of violence were organised which made their random occurrence improbable. To show the systematic nature of the attack, the Prosecution incorporates by reference its arguments and evidence discussed above to demonstrate that there was a course of conduct involving the multiple commission of acts under article 7(1) and that the attack was carried out pursuant to or in furtherance of a State or organisational policy.

421. In particular, the following features show that the attack referred to above was systematic: (a) the victims were targeted because they were perceived to be Ouattara supporters; (b) the commission of the article 7(1) acts followed similar methods since in many cases, the victims were targeted during political demonstrations or at political premises; during identity checks particularly at roadblocks; or in neighbourhoods or religious institutions where perceived Ouattara supporters were usually found; and shelling or indiscriminate fire was

used in some of these populated areas, including to disperse pro-Ouattara demonstrators; (c) prior to 2010, Mr Gbagbo and the Inner Circle, including Mr Blé Goudé had already used violence as a means to further political objectives aimed at keeping Mr Gbagbo in power, following methods and using groups also employed during the 2010-2011 attack; (d) they consolidated and exercised joint control over the FDS by appointing loyal individuals to key positions, and armed perpetrating units; (e) the pre-election recruitment, training and arming of pro-Gbagbo youth and militia, in particular the GPP; (f) the requisitioning of the army before the second round of election; (g) Mr Gbagbo and members of his Inner Circle met or otherwise communicated frequently, received information regarding the situation on the ground, and issued instructions and incitements that furthered the attack; (h) the attack was coordinated and implemented by parts of the State apparatus, such as Mr Gbagbo, Mr Blé Goudé and the Inner Circle; (i) the pro-Gbagbo forces followed orders and/or engaged in coordination, collaboration and support of other units; (j) law enforcement forces did not protect the victims and instead took part in the commission of the crimes; (k) Mr Gbagbo, members of his Inner Circle and the superior officers of the pro-Gbagbo forces failed to prevent, repress or report the crimes committed by their subordinates; and Mr Gbagbo and the Inner Circle denied responsibility for them.

422. As mentioned above in the course of conduct section, that the attack was systematic can particularly be seen in the different patterns used to carry out the attack, indicating the recurrence of similar acts carried out against perceived Ouattara supporters by the pro-Gbagbo forces. It can also be seen in the simultaneous occurrence of these patterns, such as but not limited to the coincidence of the beginning of the shelling by the FDS in Abobo with the roadblocks that followed Mr Blé Goudé's call of 25 February 2011. It can further be seen in the patterns themselves, such as the recurrence of violence against demonstrators, of attacks on neighbourhoods and mosques, and of shelling or

indiscriminate fire. As regards the roadblocks, the fact of their timing, similar operation, and extent, further supports that the attack was systematic. Witness P-0449 testified that as soon as the meeting in which Mr Blé Goudé pronounced his speech was over, roadblocks were erected by the *Jeunes Patriotes* in all of the *quartiers, communes* and at the entry point of different cities. He was informed by other *Jeunes Patriotes* of the fact that they had erected roadblocks in different locations. Witness P-0435 gave evidence that after a message by Mr Blé Goudé, the FESCI and the Young Patriots erected roadblocks in the different *quartiers* and residences. In his movements across Abidjan, he saw them in Cocody, Adjamé, Williamsville and Yopougon. Witness P-0414 gave evidence that the practice of having the Young Patriots control vehicles or passers-by, as a sort of checkpoint, was reported to UNOCI Human Rights Division many times. Witness P-0440 gave evidence that they started recording killings at roadblocks essentially when the roadblocks began.

##### 5. Nexus between the charged acts and the attack

423. As developed in more detail in the sections of this response dealing with each of the charged incidents, the acts under article 7(1) of the Statute committed in the context of the charged incidents were “part of” the widespread and systematic attack directed against a civilian population. At a minimum, the article 7(1) acts shared common features in that (i) they were acts of violence (killing, raping, injuring); (ii) the victims of the acts were civilians perceived as Ouattara supporters; (iii) the perpetrators were members of the pro-Gbagbo forces and (iv) the acts took place between 27 November 2010 and on or around 12 April 2011 in Abidjan.

#### 6. The perpetrator's knowledge of the attack

424. As developed in more detail in the sections of this response dealing with each of the charged incidents, the perpetrators knew that their conduct was part of, or intended their conduct to be part of the widespread and systematic attack.

425. As developed in more detail in the sections of this response dealing with the individual criminal responsibility of Mr Gbagbo and Mr Blé Goudé, they knew that their conduct was part of, or intended their conduct to be part of the widespread and systematic attack.

## **IV. THE CHARGED CRIMES AND VICTIMS**

### **A. Introduction**

426. In this Section, the Prosecution demonstrates that the evidence on record establishes, to the requisite standard, the material elements of the crimes for each of the charged incidents.

427. For each incident, the Prosecution's presentation is driven by the material elements of the crimes. Therefore, for the narrative of the events as they unfolded

during the post-election crisis, the Prosecution refers the Chamber to its Trial Brief.

428. For all five charged incidents, the Prosecution first describes the law applicable to each of the material elements of the crimes charged. In a second sub-section, the Prosecution presents the evidence on record that supports the material elements of the crimes and where necessary, responds to specific Defence challenges to the Prosecution's case. In a third sub-section, the Prosecution addresses more specific challenges of the Defence. However, not all challenges of Mr Gbagbo and Mr Blé Goudé are addressed in the Prosecution's response. Consequently any unchallenged Defence allegation should not be viewed as a concession on the part of the Prosecution.

## **B. Law**

### **1. Murder**

#### *(a) Objective Elements*

##### **a. The perpetrator killed one or more persons**

429. The Prosecution must establish that a perpetrator killed or caused the death of one or more persons.

430. For the act of murder to be committed, the victim has to be dead and the death must result from the act of murder. Accordingly, there has to be a causal link between the act of murder and the victim's death.

431. The act of murder may be committed by action or omission.

432. There is no need for the victim's body to be recovered for proof of murder. Indeed a victim's killing may be proven by circumstantial evidence so long as the victim's death is the only reasonable inference that can be drawn therefrom.



(b) *Subjective Elements*

(i) The perpetrator intended or had awareness in relation to death

433. Article 30 of the Statute applies, such that the *mens rea* requirements to be proven are intent and knowledge. Hence, the Prosecution must establish that the perpetrator meant to cause death or was aware that death will occur in the ordinary course of events required by article 30(2)(b) of the Statute.

2. Rape

(a) *Objective elements*

434. The crime against humanity of rape under article 7(1)(g) requires proof of the following objective elements:

- a. the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; and
- iii. the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
- iv. When analysing the evidence, the Chamber should be guided by rules 70 and 71, which set out several principles of evidence in cases of sexual violence.

(i) The perpetrator invaded the body of the victim

435. The definition of rape encompasses acts of ‘invasion’ of any part of a victim’s body, including the victim’s mouth, by a sexual organ. Indeed, as supported by the jurisprudence of the ICTY, oral penetration, by a sexual organ, can amount to rape and is a degrading fundamental attack on human dignity which can be as humiliating and traumatic as vaginal or anal penetration.

(ii) The circumstances under which the invasion occurred are multiple and non-cumulative

436. This second material element details the circumstances and conditions which give the invasion of the victim’s or perpetrator’s body a criminal character. It provides that, for the invasion of the body of a person to constitute rape, it has to be committed under one or more of four possible circumstances:

- a. by force;
- v. by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person;
- vi. by taking advantage of a coercive environment; or
- vii. against a person incapable of giving genuine consent.

It is only necessary for one of the four alternative possible circumstances identified in articles 7(1)(g)-1(2) and 8(2)(e)(vi)-1)2( 2) to be proven.

437. “Coercive environment” does not require physical force. Rather, threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or military presence. The number of people involved in the commission of the crime, or whether the rape is committed during

or immediately following a combat situation, or is committed together with other crimes are relevant factors to determine a coercive environment.

438. In addition, in relation to the requirement of the existence of a ‘coercive environment’, it must be proven that the perpetrator’s conduct involved ‘taking advantage’ of such a coercive environment.

439. The victim’s lack of consent is not a legal element of the crime of rape under the Statute. Where ‘force’, ‘threat of force or coercion’, or ‘taking advantage of coercive environment’ is proven, the Prosecution does not need to prove the victim’s lack of consent.

440. Nonetheless, a fourth possible circumstance to be considered is the victim’s incapacity of giving genuine consent. In such cases, the Prosecution will only have to prove that the victim’s capacity to give genuine consent was affected by “natural, induced, or age-related incapacity”.

*(b) Subjective elements*

441. With regards to the subjective element of the crime, the perpetrators must have committed the rape with intent and knowledge, pursuant to article 30. It must be proven that “the perpetrator intentionally committed the act of rape.” Intent will be established where it is proven that the perpetrator meant to engage in the conduct in order for the penetration to take place.

442. As to the requirement of “knowledge”, it must be proven that the perpetrator was aware that the act was committed by force, by the threat of force or coercion, by taking advantage of coercive environment, or against a person incapable of giving genuine consent.

### 3. Persecution

#### (a) *Objective Elements*

443. The crime against humanity of persecution under article 7(1)(h) requires proof of the following elements:

- a. the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights;
- viii. the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such;
- ix. such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7(3) of the Statute, or other grounds that are universally recognised as impermissible under international law;
- x. the conduct was committed in connection with any of the acts referred to in article 7(1) of the Statute or any crime within the jurisdiction of the Court.

(i) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights

444. As stated in article 7(2)(g) of the Statute, persecution is “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” Pre-Trial Chamber II in the *Kenyatta et al.* case found that killings, displacement, rape, serious physical injury and acts causing serious mental suffering constituted such severe deprivations of fundamental rights. Pre-Trial Chamber III, in the Republic of Burundi situation, recognised that persecutory acts can take many forms, but recalled that not every infringement of human rights is relevant. The Chamber added that the fundamental rights concerned by persecutory acts “may include a variety of

rights, whether derogable or not, such as the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment, freedom of expression, freedom of assembly and association, and the right to private property.”

- (ii) The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such

445. The persecutory conduct must be directed “against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in [Article 7(3) of the Statute], or other grounds that are universally recognised as impermissible under international law [...]”. The collectivity or group must be identifiable by any of the characteristics mentioned, *as defined by the perpetrator*.

446. “Political grounds” may “not pertain only to the victim’s membership of a political party or adherence to a particular ideology but also to differences of opinion over public affairs, or (actual or presumed) political affiliations”.

- (iii) The conduct was committed in connection with any act referred to in article 7(1) of the Statute or any crime within the jurisdiction of the Court

447. As stated in article 7(1)(h) of the Statute, persecution must be committed against the targeted group on the prohibited grounds “in connection with any acts referred to in this paragraph or any crime within the jurisdiction of the Court.” The other acts referred to in article 7 include murder, rape and other inhumane acts.

448. Hence, the definition of persecution includes elements of other crimes listed in article 7(1) of the Statute. However, it constitutes a different crime as it contains materially distinct elements not present in the definition of those crimes, “namely the requirement of proof that a particular group was targeted on the basis of certain discriminatory grounds described in article 7(1)(h) of the Statute”. For

example, in the *Ruto et al.* case, the Chamber found that “the acts of forced displacement also constitute acts of persecution as they were directed against a particular group for reason of their perceived political affiliation”.

449. This requirement also “filter[s] out discriminatory measures that would not fall within the Court’s jurisdiction if committed without such connection”.

(b) *Subjective Elements*

450. In addition to the general requirements of intent and knowledge under article 30, the crime of persecution requires proof of a discriminatory intent. This requires proof that the perpetrator targeted the persons based on political, racial, national, ethnic, cultural, religious, or gender as defined in article 7(3) of the Statute, or other grounds that are universally recognised as impermissible under international law.

(i) Discriminatory intent: such targeting was based on political, racial, national, ethnic, cultural, religious, or gender as defined in article 7(3) of the Statute, or other grounds that are universally recognised as impermissible under international law

451. Pre-Trial Chamber I stated in *Prosecutor v. Al Bashir* that “the *dolus specialis*/specific intent required for the crime against humanity of persecution (is) persecutory intent consisting of the intent to discriminate on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law, against the members of a group, by reason of the identity of the group”. That Chamber cited the ICJ Judgment on Genocide, stating that “[t]he *mens rea* requirement for persecution is higher than for ordinary crimes against humanity [...]” and that “what matters is the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characterisation (as well as [...] on account of their political affiliation).” The ICJ further added that “in the case of persecution the discriminatory intent

can take multifarious inhumane forms and manifest itself in a plurality of actions including murder [...]”.

452. The discriminatory intent must be established with respect to the specific act that is charged rather than with an attack in general.

- (ii) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population

#### 4. Other Inhumane Acts and the Alternative

453. The crime against humanity of other inhumane acts under article 7(1)(k) of the Statute requires proof of the following elements:

- i. the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;
- ii. such act was of a character similar to any other act referred to in article 7(1) of the Statute; and
- iii. the perpetrator was aware of the factual circumstances that established the character of the act.

##### *(a) Objective elements*

454. Pre-Trial Chamber I in the *Katanga* case stressed that “great suffering, or serious injury to body or to mental or physical health occur *by means* of an inhumane act.” In this respect, it cited the ICTY’s jurisprudence regarding bodily injury as a crime against humanity: “(a) the victim must have suffered serious bodily or mental harm; the degree of severity must be assessed on a case-by-case basis with due regard for the individual circumstances; (b) the suffering must be the result of an act or omission of the accused or his subordinate [...]”.

455. Criminal behaviour deemed to fall within ‘other inhumane acts’ has included mutilation and other types of severe bodily harm, beatings, brutal killings and mutilations in front of the eyes of the victims’ family members, severely injuring peaceful protesters and threatening them with execution, beating students with bricks and slashing them with machetes, injuring demonstrators with shellfire and shelling a densely populated market area, forced disappearance, sniping at civilians, and forced marriage. The Pre-Trial Chamber has accepted the application of inhumane acts to the destruction of property, but only to the extent that there is evidence that it causes extreme mental suffering.

456. In assessing whether certain conduct amounts to inhumane acts, the Pre-Trial Chamber I in the present case considered the “modalities in which the alleged criminal acts were performed, including the kinds of weaponry used,” and “the types of injuries suffered by the victims”.

457. According to article 7(l)(k)(2) of the Statute, other inhumane acts must be of a similar character to any other act referred to in article 7(1). The character of a conduct refers to its nature and gravity.

458. Pre-Trial Chamber I in the *Katanga* case found that the acts specifically enumerated in article 7 may not simultaneously be considered as “other” inhumane acts. However, serious physical and mental injury falling short of murder can be prosecuted as “other inhumane acts”.

*(b) Subjective elements*

459. With regards to the subjective element of the crime, article 30 of the Statute applies and requires that the objective elements were committed with intent and knowledge. Knowledge in this context requires proof that the “perpetrator [must also have been] aware of the factual circumstances that established the character of the act.”



**C. 16 December 2010: the Pro-Gbagbo Forces Murder, Rape, and Seriously Wound Civilians During a Peaceful March on the RTI**

1. Prosecution Case

460. On 16 December 2010, the pro-Gbagbo forces violently repressed a peaceful pro-Ouattara march towards the RTI in Abidjan, murdering and seriously wounding unarmed civilian demonstrators. Mr Gbagbo himself instructed the FDS Generals that *“la marche ne doit pas avoir lieu, qu’elle était interdite”*. These instructions were disseminated by the Minister of Interior and the Minister of Defence leading to an operation to block and repress the march. The FDS, reinforced by pro-Gbagbo youth, militia members and mercenaries violently repressed the march – using live ammunition, fragmentation grenades and other weapons. Between 16 and 19 December 2010, during and after the march, pro-Gbagbo forces killed 24 identified civilians and many other unidentified civilians, raped at least 11 women and girls and seriously wounded 52 identified civilians and many other unidentified civilians. These crimes were committed on political, national, ethnic or religious grounds. Instead of punishing the perpetrators, Mr Gbagbo’s regime arrested, tried and imprisoned the demonstrators.

461. The evidence of FDS forces using live ammunition and fragmentation grenades against unarmed demonstrators during the 16 December 2010 march; the use of the GPP and the FESCI to collaborate with the FDS in violently repressing the march; the significant number of civilian casualties and the context in which these casualties occurred, demonstrate that Mr Gbagbo’s instructions to the Generals were understood (and meant to be understood) as a call to repress the march by all means possible including through violent methods.

462. The Prosecution submits that the crimes charged for the 16 December 2010 relate solely to the incidents that occurred during the march proper. The Prosecution has since the confirmation of charges proceedings admitted that there

were FDS casualties on 16 December 2010. However, it is submitted that these did not occur during the context of the march proper in Cocody and the immediate surrounding area. In fact, the testimonial evidence on record, corroborated by independent police reports, shows that FDS casualties occurred principally in the at the Carrefour Marie-Thérèse during a brief confrontation with rebel soldiers based at the Golf Hotel and in Abobo at the Carrefour PK18. Contrary to the Defence allegations, these incidents should not be conflated with the events that happened in the context of the civilian RTI march.

(a) *Murder*

463. Between 16 and 19 December 2010, pro-Gbagbo forces killed at least 24 identified civilians and many other unidentified civilians.

- (i) Pro-Gbagbo forces killed one or more persons, intentionally or with awareness as to death.

Cocody

464. On 16 December 2010, the FDS fired live ammunition and used fragmentation grenades on unarmed demonstrators in Cocody – marching toward the RTI – causing many casualties. The FDS set up roadblocks, at major arteries leading to the RTI and used these to impede the demonstrators from reaching their destination and to violently repress the demonstration. The FDS opened fire on the unarmed demonstrators and used fragmentation grenades and explosive devices against them. Unarmed demonstrators who were desperately attempting to flee the area were chased down by the FDS using live ammunition, cornered and seriously wounded or killed.

465. In Cocody, in the area surrounding the RTI, the police 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 along with the *Jeunes Patriotes* of the FESCI.

466. Witness P-0230 states that at about 07h00 – while the demonstrators were meeting at the Marie-Thérèse neighbourhood in Adjamé prior to heading to the seat of the RDR in Cocody – the Commissaire of the 7<sup>th</sup> arrondissement warned them about continuing forward. The Commissaire told them :

“qu’il ne fallait pas que les jeunes du quartier parte à cette marche, en disant qu’une fois dépassé son commissariat, on serait tombé sur des gens qui n’étaient pas ivoiriens, et qu’ils allaient tiré sur tout ce qui bouge...il n’aurait aucun pouvoir sur eux parce que c’est des miliciens qui sont là-bas.”

(ii) The seat of the RDR on rue Lepic

467. After having reached the seat of the RDR in Cocody, Witness P-0230 states that he first heard intensive gunfire and canon fire just minutes after a couple of groups of demonstrators had left (the seat of the RDR) to march on the RTI. Witness P-0230 then saw one of his friends running for safety as he was being chased by a column of armed vehicles from the *Gendarmerie*. From a building near the RDR (on rue Lepic), Witness P-0230 saw the FDS chase down the demonstrators on “*la grande voie du Lycée Technique*” and corner them on rue Lepic – a one-way street ending with a ravine where the seat of the RDR was situated. The FDS was firing live ammunition and killed the demonstrators that tried to escape by the ravine. Witness P-0230 also witnessed the FDS using an explosive device that injured three demonstrators. From what he saw on that day, Witness P-0230 estimates that about 100 people died on that day.

468. Witness P-0230 was also wounded: while on his way back to the seat of the RDR, near the Pharmacy of the Lycée Technique, he was struck by a bullet as the FDS was firing in every direction.

(iii) Centre Culturel Américain

469. Witness P-0230 also witnessed the FDS firing live ammunition on a group of women who were cornered between an FDS roadblock at the Centre Culturel Américain - which was there since the morning – and FDS elements. The women ran in every direction while the FDS was firing on “anything that moved”. According to Witness P-0230 some of them escaped but many were killed and some of the bodies were put in FDS vehicles.

- a. Diabate Laciné: Witness P-0230 provides reliable hearsay evidence regarding the death of his younger brother Diabate Laciné during the 16 December 2010 march. His nephew who was with his brother when he was killed by the FDS told the circumstances of Witness P-0230 brother’s death to him. The death of Diabate Lacina on 16 December 2010 is also corroborated by different items of documentary evidence.
- b. Cisse Modi: Police reports of the 16 December 2010 indicate the death of Cisse Modi, at the seat of the RDR, rue Lepic, and indicate that he was struck by “*éclats de grenade a plusieurs endroits de son corps*”. Given the evidence of Witnesses P-0230 and P-0184 above it is reasonable to infer that the FDS killed Cisse Modi, like other unarmed demonstrators on rue Lepic that day. Documentary evidence on the record further corroborates the death of Cisse Modi on 16 December 2010.

(iv) The PDCI headquarters

470. Witness P-0547 testified that while on the way (with other demonstrators) to the PDCI headquarters on 16 December 2010 they encountered a roadblock manned by the CRS, with elements of the *Garde Républicaine* in vehicles behind them. The CRS first shot tear gas at them and then shot at the demonstrators – after they had lifted their hands to clearly indicate they were unarmed. Witness P-

0547 saw the “*gendarmes commandos*” shooting at them; all those who were in front of him fell to the ground. Subsequently, an element of the GR ordered the others to pick up the demonstrators on the ground and put them in the cargo truck. The demonstrators were picked up and tossed into an FDS cargo truck. According to Witness P-0547’s testimony, these civilians were not moving. It is therefore reasonable to infer that at a minimum some of these civilians were dead or seriously injured and/or victims of attempted murder. Witness P-0547 was himself struck by a bullet that traversed his thigh. While at the Yopougon CHU (Centre Hospitalier Univerisitaire), Witness P-0547 was put into a section of the hospital with civilians that had been injured by bullets on that day in different areas of Abidjan – many of which died. Witness P-0547 testified that the injured people at the CHU were all demonstrators that had participated in the march. Witness P-0547’s testimony is corroborated by contemporaneous medical receipts indicating that he received treatment for his injuries.

(v) Carrefour de la vie and surrounding area (Cocody)

471. Witness P-0107, testified that on the day of the march, he and approximately 200 other demonstrators walked to the seat of the RDR in Cocody and joined others who were already there. Upon arriving there, the FDS who were positioned at a Carrefour nearby told them to leave. When one of the demonstrators replied that they would not go, one of the FDS threatened to use a grenade on them and another said that if they continued they would “*régler leur compte*” at their return. Witness P-0107 and the other demonstrators left the area and headed towards the RTI. At a junction some 200 meters removed from the RTI, the FDS – some of which were hooded – fired live ammunition at Witness P-0107 and the other demonstrators, when they refused to turn back and after having thrown tear gas them. He saw three unarmed men being struck by bullets; one man was struck in the head and the two others who had been struck by bullets lay motionless on the ground. Witness P-0107 adds that after the FDS fired

the first shots he saw approximately 20 people that were struck by bullets and that fell to the ground. Witness P-0107 believes that these people were dead as they were not moving. He also saw a woman being struck by a bullet to the head in front of him and another woman who was struck by a bullet and died. Fragmentation grenades were also used and caused the death of two young boys of 7–8 years old. Witness P-0107 heard the sound of “*roquettes*” being used by the FDS.

472. While attempting to flee the area, Witness P-0107 was struck by a bullet fired by young patriots from the FESCI – who were firing on demonstrators from a building. Witness P-0107 was helped into the bushes by two youths, who were subsequently gunned down by the FDS while trying to escape. While hiding in the bushes Witness P-0107 also witnessed other people being struck by bullets from the FDS. Witness P-0107 said that while in the bushes he heard people speaking English with the CECOS; they were Angolan and Liberian mercenaries.

473. In regards to the casualties, Witness P-0107 states that he saw many dead demonstrators that day but does not know their names.

(vi) Lycée Technique (Cocody)

- a. Togola Seydou: Police reports demonstrate that the body of Togola Seydou – bearing bullet wounds – was found at Lyceé Technique in Cocody on 16 December 2010 – apparently the body had been ejected from a vehicle. The Prosecution submits that the presence of bullet wounds on the body, and the fact that his body was discovered on 16 December 2010 at that location shows that Togolo Seydou was a demonstrator who was killed by the FDS during the march. In fact the evidence on record demonstrates that the FDS violently repressed the march with the use of live ammunition in the Cocody area. The death

of Togola Seydou fits within this pattern. Documentary evidence on record further *demonstrates Togola Seydou's* death on 16 December 2010.

- b. Kone Souleymane: A police report indicates the death of Kone Souleymane on 17 December 2010, at Carrefour La Vie, "*tué par une grenade qu'il a tenté de renvoyer au FDS*". The circumstances of Kone Souleymane's death point to the fact that it was a fragmentation grenade that killed him. This fits the pattern of the FDS using fragmentation grenades on 16 December 2010, against the demonstrators to repress the march.

(vii) Adjamé

474. While on his way to the Macaci junction to recover the body of his brother – Dokoure Aly – Witness P-0589 was an eyewitness to the CRS shooting teargas and live ammunition at demonstrators at the Djéni Kobina junction. Witness P-0589's testimony is corroborated (in part) by Witnesses P-0578 and P-0117, and by contemporaneous police reports. Witness P-0578's evidence is that on 16 December 2010 he was told by a youth that lived with them, that his friend – a taxi driver named *vieux* – had been injured by a grenade and then killed by a policeman at the Djéni Kobina junction. The youth and *vieux* had been retreating when a policeman threw a grenade at them and both the youth and *vieux* were injured. A policeman from the 11<sup>th</sup> arrondissement shot the *vieux* in the head at point-blank range and killed him. The reliability of this hearsay account stems from the fact that it was told to Witness P-0578 by the youth who was an eyewitness to the events on the same day the events took place. Further it fits into the pattern of FDS attacking civilians with live ammunition and grenades on the day of the march.

475. On that day, Witness P-0578 was himself an eyewitness to CECOS elements firing indiscriminately into the surrounding neighbourhoods in Williamsville.

Witness P-0117 was also an eyewitness to policemen firing live ammunition and grenades at civilian demonstrators in Williamsville. Witness P-0117 stated that before arriving at the Williamsville station, policemen at Dokui told them (the demonstrators):

*“Vous faites mieux de vous arrêter la et de rebrousser chemin, Si vous insistez, on ne vous fera rien, mais si vous continuez plus tard vous allez rencontrer un autre groupe. Ces gens ne vont pas chercher à comprendre et ils vont vous tirer dessus et vont vous tuer parce qu’ils sont en train de tirer”.*

476. Witness P-0117 stated that the gunfire in Williamsville was very intense. Policemen started by shooting teargas and then fired live ammunition and fragmentation grenades at the civilian demonstrators. Witness P-0117 saw five to six people on the ground following an explosion and there was blood everywhere. Witness P-0117 also saw four people hit by bullets. Given that these civilians were struck by bullets or grenade fragments it is reasonable to infer that they either died or were seriously wounded.

477. Witness P-0109 testified that while heading towards the RTI with his friends, they crossed *gendarmes* near the highway who asked them where they were going – they responded that they were going to the march – and the *gendarmes* replied *“vous partez vous donner à la mort”*.

a. Mr Gbagbo’s claims regarding Witness P-0578’s credibility

478. Mr Gbagbo claims that Witness P-0578’s testimony is vague and incoherent but fails to substantiate this with any evidence. According to Mr Gbagbo, Witness P-0578 is unable to explain how he would have broadcasted on the internet the videos that he filmed. However, the references cited by Mr Gbagbo do not support this last assertion. It should also be recalled that as explained above



Witness P-0578 was himself as eyewitness to the events in Williamsville, so the videos only corroborate his testimony.

b. Mr Gbagbo's claims regarding Witness P-0589's credibility

479. Mr Gbagbo states that Witness P-0589's narrative does not make sense as he could have used a shorter route to get to Macaci junction then the one going through Djéni Kobina and that therefore he was not in Djéni Kobina (on that day). Mr Gbagbo does not seem to challenge the remainder of Witness P-0589's testimony. When Mr Gbagbo suggested to Witness P-0589 that the route going through the North of the Williamsville cemetery would have been shorter than through Djéni Kobina (to reach Macaci junction), Witness P-0589 disagreed and stated that the route through the neighbourhood was shorter. This matter was not explored further by Defence counsel at the time – who deliberately chose not to ask further questions on why this was the case. As such there is no reason why Witness P-0589 should be disbelieved on this matter. There is also no apparent reason for Witness P-0589 to have been untruthful in regards to the events at the Djéni Kobina junction while being truthful about all of the other events that he was a witness to on that day – especially the death of his brother. Last, the events that Witness P-0589 described seeing at Djéni Kobina junction are corroborated by testimonial evidence and independent police reports. The DGPN's compilation of events during the post-election crisis, relied upon by Mr Gbagbo on several occasions in their submissions, confirms (and corroborates) both Witnesses P-0172 and P-0589's evidence that there were civilian casualties at the Macaci junction on the day of the march following the FDS intervention.

480. Much like Witnesses P-0588 and P-0589, Witness P-0172's evidence is that the FDS (including policemen) first fired tear gas at the civilian demonstrators and then fired live ammunition and fragmentation grenades at them. Witness P-0172

was an eyewitness to four people falling to the ground as a result of this, two of them struck by bullets or fragmentation grenades.

c. Mr Gbagbo's claims regarding the shootings in Adjamé

481. Mr Gbagbo alleges that the Prosecution is confusing the matter regarding the gunshots fired by the FDS in Adjamé and that according to the documentary (FDS) evidence, the FDS was simply trying to defend itself in a context where the demonstrators had erected barricades and had initiated the violence. The Prosecution submits that the report cited by the Defence does not mention that the police fired on the demonstrators because of the barricades or in self-defence for that matter. In fact, it only mentions that the FDS' use of conventional methods to disperse the demonstrators – meaning no gunshots - which is wholly contradicted by the evidence on the record.

(viii) Macaci Junction

- a. Doukouré Aly: The FDS killed civilians at the Macaci junction. Witness P-0589 retrieved his brother's body - Doukouré Aly - from the Macaci junction after receiving a call from one of his brother's friends, who alerted him (by phone) immediately after the events that his brother had been killed by the "authorities" when they had fired on them. When Witness P-0589 reached the Macaci junction, the FDS had already left and the remaining demonstrators were either talking in small groups or looking at the bodies on the ground. Witness P-0589 saw three bodies on the ground. He was later told that these were the dead bodies of demonstrators. He found his brother's body lying on the ground, next to another body. Witness P-0589 observed an entry and exit wound in his brother's head. A friend of his brother who was there and was with his brother when the events occurred told him that the CRS first fired

tear gas and then fired live ammunition at the demonstrators – one of which struck Witness P-0589's brother.

- b. This hearsay evidence is reliable insofar as Witness P-0589 received the information from a person who was present when the murder occurred; the information was given to Witness P-0589 immediately after the incident occurred; Witness P-0589's brother had an injury which was compatible with a bullet striking him in the head and finally, the *modus operandi* of the CRS's attack fits the pattern of other FDS attacks on civilians on that day. Further, Witness P-0589's testimony was credible – containing the type of intimate details that would only be known by someone who lived through them. The circumstances of Doukouré Aly's death – and his death during the march – as related by Witness P-0589 are also corroborated by documentary evidence on record, including a police report that mentions he was killed by bullets when a CECOS (BMO) unit that opened fire on demonstrators on 16 December 2010, the Anyama morgue and Witness P-0184's list of Victims.
- c. Alabi Ismailai Amidou and Soumahoro Mohamed: The same police report also indicates that the corpses of two other individuals killed by the CECOS (BMO), Alabi Ismailai Amidou and Soumahoro Mohamed were also found in the same locations as the one of Doukouré Ali. Although the police report is reliable in reporting the death of the three demonstrators – which is corroborated by testimonial evidence and other police reports – it is patently unreliable when indicating that "*les moyens conventionnels de maintien de l'ordre*" were used to disperse the crowd at the Djeni Kobina junction. The same submission applies to other police reports indicating the same use of conventional means. The

Prosecution submits that this is self-serving exculpatory evidence that should not be relied upon. In fact, reliable and corroborated evidence on record demonstrates that the FDS and pro-Gbagbo forces used live ammunition and fragmentation grenades against civilian demonstrators in the Williamsville neighbourhood and other places on the day of the march. In this regard, Witness P-0560 who drafted a report on the march to the police Prefect of Abidjan on the 16 December 2010, indicating the death of three civilians, testified that weeks after 16 December 2010 the *commissaires* of the 3<sup>rd</sup> and 11<sup>th</sup> arrondissements told him that civilians died as a result of the BMO's intervention and that they were initially afraid to report this given that the CECOS was still there on location with them. The death of Alabi Ismailai Amidou and Soumahoro Mohamed on 16 December 2010 is also corroborated by documentary evidence in the record of the case.

(ix) Samake Roundabout

- a. Unknown dead man: Near the Samake roundabout, Witness P-0184 saw and recorded the dead body of a young man, dressed with civilian clothes, with holes in it, at the spot where in the morning she had seen uniformed men posted on the buildings. Although Witness P-0184 did not see who killed the young man, the circumstantial evidence points to the FDS: they had the means, the opportunity and the motive. Witness P-0184 states that she came upon the dead body on the morning of the 16 December 2010, while going through a side street in order to avoid the FDS that was firing "*n'importe comment*". On that very morning, Witness P-0184 had observed armed FDS posted on the buildings nearby. Further, this killing fits the pattern of the FDS firing on unarmed civilian demonstrators on the day of the march – with the

objective of repressing it. The “holes” which were described by Witness P-0184 are compatible with bullet wounds.

(x) Agripac Junction

- a. Lacina Bakayoko: The FDS aided by youths in civilian clothes killed civilians along the Abobo motorway. Witness P-0588's evidence is that he was told by his nephew that his brother – Lacina Bakayoko – was shot by uniformed individuals together with youths in civilian clothing near the Agripac junction. Witness P-0588's brother's body was subsequently identified at the Anyama morgue four days after the shooting. The reliability of this hearsay evidence is bolstered by the fact that Witness P-0588's nephew was with Witness P-0588's brother when the shooting occurred, was an eye witness to the shooting, told Witness P-0588 about the events immediately after they occurred and in more detail just four days after the shooting – while he himself was being detained at the Macaci prison after having been arrested by the FDS. The death of Lacina Bakayoko on 16 December 2010 is also confirmed and corroborated by the Anyama Morgue register. In regards to Mr Gbagbo's allegation that P-0588 did not identify his brother's body: it is important to note that it was Losseni Bakayoko – his twin brother - that identified the corpse of Lacina Bakayaoko at the morgue while P-0588 was also at the morgue and who also helped in the procedure before burying the corpse.
- b. Witness P-0588 was also told by his nephew that he was brought to the Commissariat of the 32<sup>nd</sup> arrondissement by the youth and FDS; that the police of the commissariat had executed some of the people arrested and that while bringing them to the *parquet* the police passed by “Banco” and killed off those that had been seriously wounded and had

thrown them there. This evidence is also reliable given that Witness P-0588 was a first-hand witness to these events, had no apparent reason to lie in the circumstances and the killings fit in with the wealth of reliable evidence demonstrating how the FDS killed other civilian demonstrators.

(xi) Anonkoua Kouté

- a. Lanzeni Ballo: Witness P-0590 provided evidence that his brother – Lanzeni Ballo – was killed during the 16 December 2010 march to the RTI near Anonkoua Kouté. Witness P-0590 received this information from his parents – who had themselves been informed of the death of their son through a friend (of their son) who had been with him when he died and had even seen the corpse. The reliability of the information that Lanzeni Ballo died on 16 December 2010 is corroborated by reliable independent documentary evidence on record such as the Interfu “*fiche d’entrée*” and the entries on the Anyama morgue registers. Given the fact that Lanzeni Ballo participated in and was killed during the march to the RTI, and that his corpse demonstrated signs of wounds caused by an *arme blanche*, it is reasonable to infer that he was yet another civilian victim of the pro-Gbagbo forces that violently repressed the march on the RTI. In fact, the significant number of civilian casualties, combined with the testimonial and documentary evidence on record shows that the pro-Gbagbo forces were intent on blocking the march and its participants - through all means possible.

(xii) Avocatier (marché de nuit)

- b. Lankouandé Daouda: A *post-mortem* external examination report from the IML (Institut de Médecine Légale) and other reliable

documentary evidence, demonstrate that Lankouandé Daouda (also spelled Lakonde, Lankonte and Lankoudé) was killed by the FDS during the 16 December 2010 march. The report indicates that he took *“une balle au marché de nuit”*, and also confirms the presence of *“des plaies par arme a feu”* (PAAF) in different parts of the victim’s body. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

(xiii) Abobo (near Abobo Gare)

482. Witness P-0117 left her house at approximately 06h00 on 16 December 2010 with her sister and one of her friends and headed to Abobo Gare with the intent of marching towards the RTI. However, they were unable to reach Abobo Gare as there were many armed policemen – wearing black uniforms – and some armed civilians who had encircled the Abobo roundabout in front of the Mairie and were firing in every direction. The police was positioned there since 05h00 that morning. Witness P-0117 did not see anyone hit by a bullet but heard that a militant had been killed that very morning. Witness P-0117 states that the FDS was positioned at every Carrefour on the road to Cocody on that day. Witness P-0330, who was at Camp Commando on the day of the march, testified that he heard gunshots coming from Abobo Gare on that morning prior to 08h00. Shortly after, while traveling in the direction of Adjamé, he crossed two CRS1 vehicles and a civilian one that were heading towards the Carrefour de la Mairie in Abobo with Kalashnikovs pointing out from their windows. They opened fire with their Kalashnikovs while they were passing by striking two people with bullets. Witness P-0330 testified that after 11h00 or 12h00, it was reported to him that shots had been fired by armed civilians who were in front of the military at the

PK18 Carrefour causing the death of two policemen and injuring one; the military returned fire and left the scene hurriedly.

(xiv) Abobo PK18

483. The Prosecution submits that the following deceased victims should be considered as there is cogent evidence from which a Court could reasonably infer that they were killed by the pro-Gbagbo forces, in the PK18 neighbourhood of Abobo, as they made their way to the RTI. The evidence above demonstrates that early that morning the FDS were already positioned at locations south of the PK18 neighbourhood, were blocking demonstrators from progressing further to Cocody and in many locations firing live ammunition and throwing fragmentation grenades at them. Further, there is no evidence implicating them in any of the brief confrontations that occurred between armed opposition groups and the FDS in PK18 on that day.

- a. Alimamy Diaby: A *post mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Alimamy Diaby was killed by the FDS during the 16 December 2010 march in Abobo (PK18) Agripac at approximately 22h00. The *post-mortem* external examination report indicates that according to a police requisition (op. no. 6976/PU-32), the victim would have been shot by a sharp shooter. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition against civilian demonstrators during the 16 December 2010 march.
- b. Kamara Moustapha: A *post mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Kamara Moustapha was killed by the FDS during the 16 December 2010 march in Abobo (PK18). The report confirms the presence of



*“des plaies par arme a feu” (PAAF)*, and indicates that he died in Abobo (PK18) on the day of the march. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

- c. Ouedraogo Boubacar (or Boubakar): A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Ouedraogo Boubacar (or Boubakar) was killed by the FDS during the 16 December 2010 march in Abobo (PK18). The report confirms the presence of *“des plaies par arme a feu” (PAAF)*, and indicates that he died in Abobo (PK18) on the day of the march. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

484. As with the deceased victims of the PK18 neighbourhood in Abobo, the Prosecution submits that there is cogent evidence from which a Court could infer that the following deceased victims were killed by pro-Gbagbo forces during the violent repression of the 16 December march on the RTI.

- d. Traoré Inza: A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Traoré Inza was killed by the FDS during the 16 December 2010 march in Abobo. The report confirms the presence of *“des plaies par arme a feu” (PAAF)* and *“balle”*, and indicates that the victim died in Abobo on the day of the march. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live

ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

- e. Yeo Souleymane: A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Yeo Souleymane was killed by the FDS during the 16 December 2010 march in Abobo. The report confirms the presence of “*des plaies par arme a feu*” (PAAF), and indicates that the victim died in Abobo on the day of the march. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.
- f. Yeo Katienninfoi: A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Yeo Katienninfoi was killed by pro-Gbagbo forces during the 16 December 2010 march in Abobo. The report confirms the presence of “*plaies par arme blanche*” and indicates that the victim died in Abobo on the day of the march. It is reasonable to infer that he was yet another civilian victim of the pro-Gbagbo forces that violently repressed the march on the RTI.

#### Unspecified locations

- a. Maiga Moussa: A *post-mortem* external examination from the IML indicates that Maiga Moussa disappeared on 16 December 2010 and his corpse was later found at the Anyama Morgue. The report confirms the presence of “*des plaies par arme a feu*” (PAAF). The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or

fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

- b. Ouattara Lamissa: A *post-mortem* external examination from the IML indicates that Ouattara Lamissa was killed on 16 December 2010, and that his body bore wounds that had been made by *arme blanche*. Documentary evidence on record also confirms his death on 16 December 2010. It is reasonable to infer that he was yet another civilian victim of the pro-Gbagbo forces that violently repressed the march on the RTI. In fact, the significant number of civilian casualties, combined with the testimonial and documentary evidence on record shows that the pro-Gbagbo forces were intent on, and effectively blocked the march and its participants – through all means possible.
- c. Sangare Amidou: A *post-mortem* external examination from the IML and other reliable documentary evidence confirms that Sangare Amidou was killed on the 16 December 2010 and that the FDS caused this death. The report itself cites a police operation number (Op no. 6974/PU-32) indicating that Sangare Amidou, a “*Malien*” was killed by bullets on 16 December 2010 and the report makes note of a projectile that was extracted from the corpse. The report corroborates this information in indicating that the body showed “*plaies par arme a feu*”. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.
- d. Bamba Amadou: A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Bamba

Amadou was killed by the FDS during the 16 December 2010 march. The report confirms the presence of “*des plaies par arme a feu*” (PAAF), and contains information provided by the cousin of the victim indicating that the victim died by bullet wounds on the day of the RHDP march. The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and/or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

- e. Kante Brahima: A *post-mortem* external examination from the IML and other reliable documentary evidence, demonstrate that Kante Brahima was killed by the FDS during the 16 December 2010 march. The report confirms the presence of “*des plaies par arme a feu*” (PAAF). The Prosecution submits that this death can be attributed to the FDS as it fits in with its pattern of using live ammunition and / or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.
- f. Coulibaly Peleguedjo: Witness P-0184 also lists Coulibaly Peleguedjo (or Pelequedjo) as a civilian who died during the 16 December 2010 march to the RTI.
- g. Chérif: Witness P-0555 also provided evidence regarding the death of a person named “Chérif” who had been stopped for an identity check by pro-Gbagbo forces and was burned by them because they thought that he was related to Ousamane Cherif.
- h. Corpse of demonstrator left in Koumassi
- i. Timite Kounadi: Police reports indicate that on 16 December 2010, the body of a demonstrator, Timite Kounadi, was left near a police

station of the 6<sup>th</sup> arrondissement. The information collected by the policemen indicates that the victim received “*une décharge de lacrymogène*” fired by the police or the *gendarmerie*. The probative value of evidence regarding the circumstances of Timité Kounadi’s death is bolstered by the fact that it was provided contemporaneously to the police, was noted in the report, goes against self-interest and last, the circumstances of his death are corroborated by other police reports. In fact, a DGNP report regarding the “*faits Saillants*” of the march indicates that the Timité Kounadi received a “projectile de grenade lacrymogène” on the chest by CECOS (BMO) elements. Further, there is evidence of the FDS using tear gas against the demonstrators in order to repress the march. Other documentary evidence also confirms the death of Timité Kounadi on 16 December 2010.

(xv) FDS killings on 17 and 18 December 2010

485. The evidence also demonstrates that the FDS continued killing perceived pro-Ouattara civilians on 17 and 18 December 2010.

486. On the 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 18 civilians.

487. 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 twenty-seven others, including fourteen women.

(xvi) The murders were committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

488. The evidence above clearly demonstrates that the killings committed by the pro-Gbagbo forces were part of a pattern targeting actual or perceived pro-Ouattara supporters, as seen in the Wassakara incident on 1<sup>st</sup> December and other incidents. The pro-Gbagbo forces knew that the victims were perceived pro-Ouattara supporters and in fact actual supporters because they were part of the demonstration or were intending to participate in it.

(b) *Rape*

(i) Pro-Gbagbo forces raped 11 women from 16 to 19 December 2010 by force, or by threat of force or coercion, or by taking advantage of a coercive environment during the post-election violence

a. Rape of six women at [REDACTED]

489. Pro-Gbagbo elements also raped perceived Ouattara supporters. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

490. [REDACTED]

[REDACTED]

[REDACTED]

491.

[REDACTED]

492.

[REDACTED]

c. Mr Gbagbo's allegations regarding the identity of the perpetrators

493.

Mr Gbagbo also alleges that the Prosecution is trying to make a false link between the youth at the roadblock and the police. Witness's description of the perpetrators at the roadblock was clear and unequivocal. She was also able to provide the name of an individual she knew – – who was talking with the youth at the roadblock when she was released.

494. Witness's evidence also demonstrates that the youth at the roadblock and the police were not only linked but also collaborating in the repression of the march. This is why the Prosecution refers to them as pro-Gbagbo forces. The youth at the roadblock were operating in plain view of the police station and the policemen stationed there who allowed them to carry out their criminal activities with impunity.

All of this occurred while policemen were in the vicinity, in front of the police station, which was not very far away and could be seen from the roadblock. When asked how the policemen reacted to the youth stopping people at the roadblock, Witness replied that the youth had the



same powers as the police, that the policemen were afraid of them and that the youth would hand over people that they had stopped to the police.

495. Contrary to what is suggested by Mr Gbagbo, the fact that [REDACTED] was speaking to the youth, that he engaged in “*palabre*” with people in the neighbourhood and that his surname is *Amer* does not support the conclusion that the roadblock was a case of “*délinquance locale*”. Not only is this conclusion unsubstantiated but it is wholly contradicted by the evidence of Witness [REDACTED] that effectively demonstrates how the youth at the roadblock were effectively cooperating with the police at 32<sup>nd</sup> Arrondissement. Also, for the record, Witness [REDACTED] states that [REDACTED] was a member of a transport union and also handed people over to the police.

496. Further, the evidence above also reveals that the youth shared the same goals as the FDS on that day: to repress the march. In fact, the first question they asked of Witness [REDACTED] and the others at the roadblock was whether they were going to the march. And upon being liberated one of the youth told them “*vous pouvez rentrer prochainement. Prochainement, vous n’allez plus marcher et faire campagne pour un Burkinabé.*”

a. Rape of four women at the École de Police

497. [REDACTED]

[REDACTED]

498. [REDACTED]

[REDACTED]

499. [REDACTED]

[REDACTED]

(ii) Mr Gbagbo's allegations regarding the identity of the perpetrators

500.

501. The evidence demonstrates that Witness [REDACTED] and the other civilians were arrested by men in a *Gendarmerie* pickup truck, wearing fatigues (*tenues de corps habillés*) and armed with Kalashnikovs. It is therefore reasonable to draw the inference that these hooded men were therefore elements of the *Gendarmerie* – or at the very least were elements of the pro-Gbagbo forces. This is further supported by the fact that they had access to the Police Prefecture [REDACTED]

a. Rape at the École de Police

502. [REDACTED] testified that she was arrested with other civilians by the police after having participated in the 16 December 2010 march. [REDACTED]

i. [REDACTED]

503. [REDACTED]

504. [REDACTED]

[REDACTED] As such, they do not affect the reliability of her testimony in regards to the charge of rape – which remained unimpeached during the examination by the Defence. Aside from these two contradictions, the witness provided a detailed account of her activities on the 16 December 2010 and following days – including the names of some of the people that she interacted with. No other contradictions were raised by the Defence. It is important to recall that minor inconsistencies commonly occur in witness testimony without rendering the entirety of the testimony unreliable (see section II of this response). Ultimately, it is for the Trial Chamber to evaluate such discrepancies and to determine whether the evidence is reliable.

ii. [REDACTED]

505. [REDACTED]

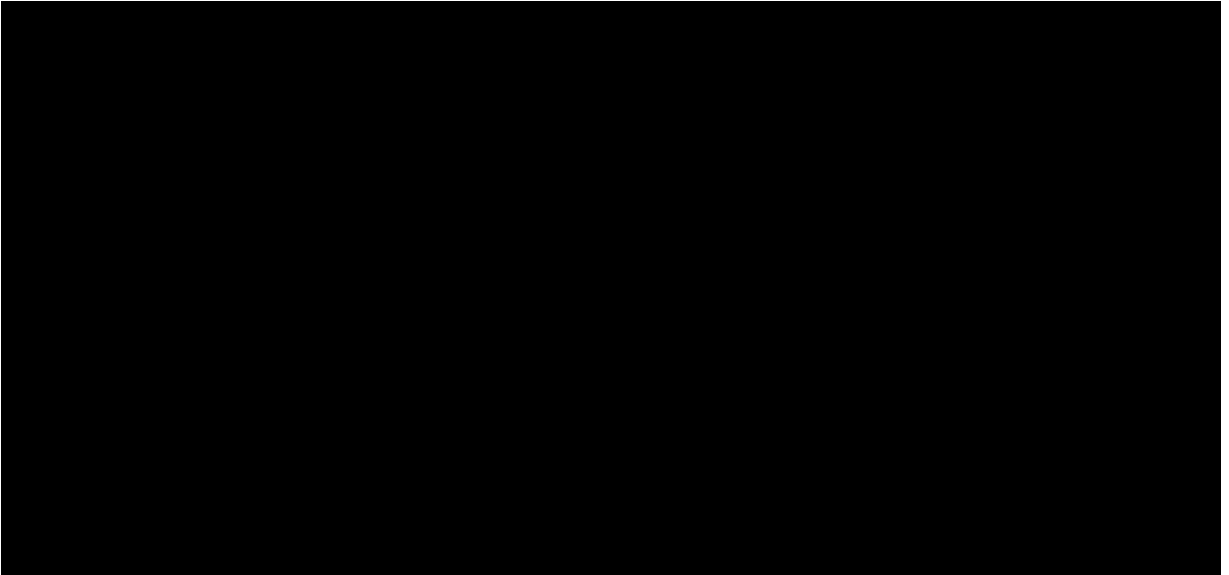
506. [REDACTED]

(iii) The rapes were committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

507. The evidence above clearly demonstrates that the rapes committed by the pro-Gbagbo forces were part of a pattern targeting actual or perceived pro-Ouattara

supporters. The pro-Gbagbo forces knew that the victims were perceived pro-Ouattara supporters and in fact actual supporters because they were part of the demonstration or were intending to participate in it.

508. While at the roadblock, [REDACTED] testified that the youth asked them if they were going to the march. They denied but the youth still accused them of



509. [REDACTED] was arrested, with other demonstrators, while taking part in the pro-Ouattara march on 16 December 2010. As [REDACTED] and the other civilians arrested were viewed as a pro-Ouattara supporters.

510.



(c) *Other Inhumane Acts or Attempted Murder*

- (i) Pro-Gbagbo forces attempted to kill one or more persons, or in the alternative, inflicted great suffering or serious injury by means of an inhumane act

511. In addition to the civilians killed by the pro-Gbagbo forces from 16-19 December 2010, the pro-Gbagbo forces also seriously wounded 52 identified civilians and many other unidentified civilians/or attempted to murder them with live ammunition and fragmentation grenades. The Prosecution argues that the use of live ammunition and fragmentation grenades against unarmed civilians suffices – in and of itself – to demonstrate the intent to kill them.

*Cocody*

- (i) The seat of the RDR on rue Lepic

*Witness P-0230*

512. After having reached the seat of the RDR in Cocody, Witness P-0230 states that he first heard intensive gunfire and canon fire minutes after a couple of groups of demonstrators had left (the seat of the RDR) to march on the RTI. Witness P-0230 then saw one of his friends running for safety as he was being chased by a column of armed vehicles from the *Gendarmerie*. From a building near the RDR (on rue Lepic), Witness P-0230 witnessed as the FDS chased down the demonstrators on “*la grande voie du Lycée Technique*” and cornered them on rue Lepic – a one-way street ending with a ravine where the seat of the RDR was situated. The FDS was firing live ammunition and killed the demonstrators that tried to escape by the ravine. Witness P-0230 also witnessed the FDS using an explosive device that injured three demonstrators. Witness P-0230 was also wounded: while on his way back to the seat of the RDR, near the Pharmacy of the

Lycée Technique, Witness P-0230 was struck by a bullet as the FDS was firing in every direction.

513. Witness P-0230 also saw the FDS firing live ammunition on a group of women who while attempting to return were cornered between an FDS roadblock at the Centre Culturel Américain – which was there since the morning – and FDS elements. The women ran in every direction while the FDS was firing on “anything that moved”. According to Witness P-0230 some of them escaped but many were killed and some of the bodies were put in FDS vehicles.

(ii) Road to the PDCI headquarters

*Witness P-0547*

514. Witness P-0547 testified that while on the way (with other demonstrators) to the PDCI headquarters on 16 December 2010 they encountered a roadblock manned by the CRS, with elements of the *Garde Républicaine* in vehicles behind them. The CRS first shot tear gas at them and then shot at the demonstrators – after they had lifted their hands to clearly indicate they were unarmed. Witness P-0547 saw the “*gendarmes commandos*” shooting at them; all those who were in front of him fell to the ground. Subsequently, a GR element ordered that all the bodies on the ground be thrown into the military cargo truck – and this was done. According to Witness P-0547’s testimony, these civilians were not moving. It is therefore reasonable to infer that at a minimum some of these civilians were dead or injured and therefore victims of attempted murder. Witness P-0547 was himself struck by a bullet that traversed his thigh. While at the Yopougon CHU (Centre Hospitalier Univerisitaire), Witness P-0547 was put into a section of the hospital with civilians that had been injured by bullets on that day in different areas of Abidjan – many of which died. Witness P-0547 testified that the injured people at the CHU were all demonstrators that had participated in the march.

(iii) Carrefour de la vie



*Witness P-0107*

515. Witness P-0107 states that at a junction some 200 meters removed from the RTI, the FDS – some of which were hooded – fired live ammunition at Witness P-0107 and the other demonstrators, when they refused to turn back and after having thrown tear gas them. He saw three unarmed men being struck by bullets; one man was struck in the head and the two others who had been struck by bullets lay motionless on the ground. Witness P-0107 adds that after the FDS fired the first shots he saw approximately 20 people that were struck by bullets and that fell to the ground. Witness P-0107 believes that these people were dead as they were not moving. He also saw a woman being struck by a bullet to the head in front of him and another woman who was struck by a bullet and died. Fragmentation grenades were also used and caused the death of two young boys of 7–8 years old. Witness P-0107 heard the sound of “*roquettes*” being used by the FDS as well.

516. While attempting to flee the area, Witness P-0107 was struck by a bullet fired by young patriots from the FESCI – who were firing on demonstrators from a building. Witness P-0107 was helped into the bushes by two youths, who were subsequently gunned down by the FDS while trying to escape. While hiding in the bushes Witness P-0107 also witnessed other people being struck by bullets from the FDS.

(iv) Boulevard des martyrs and Carrefour Marie-Thérèse

517. At the level of the Boulevard des Martyrs, GPP members – wearing white FDS armbands so that the FDS would recognise them – intercepted demonstrators fleeing Cocody, [REDACTED] and handed them over to the CECOS BMO vehicles to take to their (CECOS BMO) base. [REDACTED]  
[REDACTED]

Witness P-0555

518. At Carrefour Marie-Thérèse in Cocody, Witness P-0555 states that Traoré Abdourahmane, Doumbia Bouaka and himself were beaten by the FDS on 16 December 2010. The FDS beat the three men with clubs and batons, and kicked them. After Witness P-0555 was detained and taken to the Gendarmerie in Cocody, where he was beaten again. Witness P-0555 was scarred as a result of the beating from the FDS and still has pain to his back, kidney and forearms.

(v) Djeni Kobina junction (Williamsville)

519. While on his way to the Macaci junction to recover the body of his brother – Dokoure Aly – Witness P-0589 was an eyewitness to the CRS shooting teargas and live ammunition at demonstrators at the Djéni Kobina junction. Witness P-0578's evidence is that on 16 December 2010 he was told by a youth that lived with them, that his friend – a taxi driver named *vieux* – had been injured by a grenade and then killed by a policeman at the Djéni Kobina junction. The youth and *vieux* had been retreating when a policeman threw a grenade at them and both the youth and *vieux* were injured. A policeman from the 11<sup>th</sup> arrondissement shot the *vieux* in the head at point-blank range and killed him.

520. On that day, Witness P-0578 was himself an eyewitness to CECOS elements firing indiscriminately into the surrounding neighbourhoods in Williamsville. Witness P-0117 states that while heading to Williamsville there were shots being fired and that at Williamsville they became more "*nourris*". Policemen started by shooting teargas and then fired live ammunition and fragmentation grenades at the civilian demonstrators. Witness P-0117 saw five to six people on the ground following the explosion and there was blood everywhere. Witness P-0117 also saw four people hit by bullets.

(vi) Liberté neighbourhood

521. Witness P-0109 testified that while heading towards the RTI with his friends, they crossed *gendarmes* near the highway who asked them where they were going – they responded that they were going to the march – and the *gendarmes* replied “*vous partez vous donner à la mort*”. When Witness P-0109 reached the Liberté neighbourhood near the Adjamé Town Hall and main market, he heard gunshots and saw people running; one of these people told him that that they had come from the march and that the “*agents*” – who had their faces covered – were firing on the demonstrators.

522. The Defence claim that P-0109’s version of the events is based unreliable hearsay evidence and that his version of the events on that day changed throughout his testimony. Contrary to what is asserted by the Defence, the Prosecution submits that the circumstances in which this hearsay evidence was provided to Witness P-0109 bolsters its reliability. The hearsay information was provided to P-0109 in the spur of the moment by someone fleeing the FDS attack – with no apparent reason to lie. This *res gestae* evidence is inextricably linked with the events that occurred and is therefore reliable. The Defence also fails to mention that when P-0109 and the others crossed Gendarmes on the way to the march, one of these asked them where they were going and upon hearing that they were going to the march told them “*vous partez vous donner la mort ou quoi?*” This preceded the instant when P-0109 spoke to one of the persons fleeing – thereby further corroborating the veracity of what the person told him. Last, it fits into the pattern of the FDS attack on civilian demonstrators with live ammunition on that day. P-0109’s testimony did not change throughout his testimony – as asserted by the Defense. In fact, in its allegations the Defence distorts P-0109’s testimony to create the appearance of a contradiction – but the witness’ testimony remains the same. The witness simply elaborated on his

narrative once the Presiding judge asked him to repeat a phrase for the interpreters.

(vii) Kablan Duncan junction (on the Route du Zoo)

*Witness P-0106*

523. On the Route du Zoo, specifically at the Kablan Duncan junction, Witness P-0106 was both a witness and victim of a violent offensive by pro-Gbagbo youth, mercenaries and CECOS BMO. Between 09h15 and 09h34, CRS commander, Bertin DjéDjé Gbaro (going by the code name “Nimbus” on the UHF frequency), gave the order through the Police units’ radio to clean up the Route du Zoo which led to the RTI and to *rentrer franchement dans la foule*. The head of the police intervention unit, Claude Yoro (going by the code name “Sandrak” on the Police UHF frequency) also gave the order to *rentrer dans la foule*. Witness P-0106 states that while his group was walking towards the RTI, close to the *Gendarmerie*, FESCI youth armed with clubs, chains, machetes, steel bars and pieces of wood started hitting them. The BMO arrived on the scene and started shooting tears gas, and fired live ammunition and grenades at the demonstrators. While this was going on the FESCI youth screamed “*Tuez-les! Frappez-les!*” Witness P-0106 saw people fall to the ground and get back up – while others remained on the ground; he also saw people wounded by bullets and others with blood on them. Witness P-0106’s arm was struck by grenade fragments and he was transported to the hospital for medical care. Documentary evidence on record confirms Witness P-0106’s injury.

a. Mr Gbagbo’s allegations regarding Witness P-0045’s credibility

524. Mr Gbagbo claims that Witness P-0045 – who wrote what he heard on the radio channel – should be disbelieved because when it came to sensitive orders all of the “*responsables militaires et policiers*” that came to testify said that radios were

not used because the police and army networks were being listened to. This is incorrect. No references are provided by the Defence to support this assertion. Although Witness P-0046 testified that the police radio communications were being listened to, he still confirms that on 16 December 2010, he used the radio to instruct the FDS in regards to the march. Further, Witness P-0011 testified that the coordination between the CEMA and the different armed forces present was done through the radio on 16 December 2010.

525. In regards to the order of *“rentrer dans la foule”*, Mr Gbagbo alleges that Witness P-0045’s testimony does not allow us to understand what happened on the Route du Zoo on the 16 December 2010 as he was not there. This assertion is incorrect. Although, Witness P-0045 was not on site when the events occurred, his testimony demonstrates that the police intervention units were indeed ordered to repress the march violently.

526. Mr Gbagbo further argues that Witness P-0045’s evidence that the order from Bertin DjéDjé Gbaro was given between 09h15 and 09h34 is in contradiction with an FDS report on record, which indicates that *“la tendance est a l’apaisement depuis 9.30”*. First, it must be noted that Witness P-0045 was estimating the time at which the said order by Bertin DjéDjé Gbaro was given. Further, the FDS report cited by the Defence refers to 400 people (and not 40) at *“Abobo Samake”* – a specific location on the Route du Zoo between Abobo Gare and the Zoo – and does therefore not refer to all the events that would have occurred on the Route du Zoo itself. As such the FDS report does not contradict Witness P-0045’s testimony.

527. Mr Gbagbo is correct in stating that Claude Yoro’s order at 08h42 to *“rentrer dans la foule”* is preceded by an indication that the police would have been fired on. It is on this basis that Mr Gbagbo claims that the police were acting in self-defence. However, there is no police report or other independent evidence confirming that demonstrators would have fired on the FDS at this location. Thus

the indication that police had been fired on must be looked at with extreme caution as it is essentially self-serving.

(i) Abobo gare

528. Witness P-0117's evidence is that he left his house at approximately 06h00 with his sister and one of his friends and headed to Abobo Gare with the intent of marching towards the RTI. However, they were unable to reach Abobo Gare as the police – who wore black uniforms – and some armed civilians had encircled the Abobo roundabout in front of the Mairie and were firing in every direction. Witness P-0117 did not see anyone get hit by a bullet but heard that a militant had been killed that very morning. Witness P-0330, who was at Camp Commando on the day of the march, testified that he heard gunshots coming from Abobo Gare on that morning prior to 08h00. Shortly after, while traveling in the direction of Adjamé, he crossed two CRS1 vehicles and a civilian one that were heading towards the Carrefour de la Mairie in Abobo with Kalashnikovs pointing out from their windows. They opened fire with their Kalashnikovs while they were passing by striking two people with bullets.

(ii) Avocatier (Eau Glacier)

529. Witness P-0363 had stopped on the side of the road near Avocatier (Eau Glacier) – with others – to see the demonstrators when a police vehicle arrived on the scene. A policeman wearing a CRS uniform came out of the vehicle and opened fire on them with a Kalashnikov; they started running but two men were struck by bullets.

(iii) Carrefour Agripac

530. Witness P-0588 provided first hand evidence that on 16 December 2010, he observed the FDS shooting live ammunition at demonstrators in Carrefour Agripac (Abobo) after having initially thrown tear gas.

(iv) Macaci junction

531. As indicated above, Witness P-0172 was a witness to the FDS firing live ammunition and throwing fragmentation grenades at the civilian demonstrators at the Macaci junction and was a witness to four people falling to the ground as a result of this – two of which were struck by bullets or grenade fragments.

- i. “Ibrahim”: Witness P-0513 testified having spoken to a young man named Ibrahim who was struck by a bullet during the march.

Report of the Conseil des Maliens de Côte D'Ivoire

532. The report of the *Conseil des Maliens de Côte D'Ivoire* lists the following nationals as having been wounded during the 16 December 2010 march: Yahia Younoussa, wounded by a bullet; Koné Zoumana, wounded by a bullet in Yopougon; Drissa Diarra, wounded by a bullet in Treichville; and Oumar Banou, wounded by a grenade. The Prosecution submits that these wounds can be attributed to the FDS as they correlate with the FDS pattern of using live ammunition and/or fragmentation grenades against civilian demonstrators during the 16 December 2010 march.

Wounded people on Witness P-0184's list

533. Witness P-0184, lists the name of 34 people injured during the 16 December 2010 march, and describes the circumstances in which these injuries occurred. The Prosecution submits that the nature of the injuries sustained by the victims – and the circumstances of the injuries described – correlate with the pattern evidence demonstrating that pro-Gbagbo forces used live ammunition, fragmentation grenades and physical violence – sometimes with other weapons – to block and violently repress the 16 December 2010 march.

534. The victims on the list are: Bakayoko Adama, who was beaten by the policemen of the 32 arrondissement; Coulibaly Amidou states that

“Gbagbomercenaries” threw a grenade on them; Koné Lamine was struck by three bullets; Diarrasouba Noufo was struck by a bullet; Sahanogo Sekouba was kidnapped by the GR and tortured; Sahibou Taroré was left paralysed; Sangare Yacou was injured by a fragmentation grenade; Doumbia Adama, had a *“traumatisme a la grenade”*; Kane Abdoul Bassitou was stopped by Mr Gbagbo’s militia at Anonkoua and his right hand was burned; Pokou Koffi Guillam was injured by a firearm; Dagnogo Maimouna was also injured by a firearm; Ouattara Lacina Siontionvohoua, was injured by a firearm; Kone Brehima was injured by a firearm; Moussa Doumbia suffered a *“traumatisme a la grenade”*; Bamba Moussa, suffered a *“traumatisme a la grenade”*; Diomadé Drissa was stopped by the CECOS and handed over to the LMP youth who injured him with a machete; Diomandé Mawa, was injured by a bullet; Bamba Mamadou was injured by a grenade; Aboubacar Samassi was struck by bullets; Niangoran Adjo Valentine was beaten by the FDS; Doumbia Adjaratou, was beaten by the FDS; Guindo Adama was beaten and injured by a shell from the FDS; Koné Nahawa, was held captive and tortured by the FDS; Minata Sanfo, was injured by a grenade from the FDS; Sidibé Abdoulaye was injured and burnt by the FDS; Karimou keita was held captive and tortured by the FDS; Soumahoro Mamadi was held captive and tortured by the FDS; Ouattara Solihou was held captive and tortured by the FDS; Diaby Souleymane was held captive and tortured by the FDS; Tiemoko Gongbe Venance, was struck by a bullet fired by the FDS; Doumbia Ben Bakari, was held captive and tortured by the FDS; Cissé Salimata was beaten by the FDS; Cissé Mabongo, was beaten by the FDS; Bakary Touré was held captive and tortured by the FDS; Koné Oumar was held captive and tortured by the FDS; Guindo Ibrahim was injured by a grenade from the FDS and held captive; Tolo Brahima was injured by a grenade from the FDS and held captive; Siaka Ouattara was injured by a grenade from the FDS and held captive; Koulibaly Yacouba was injured by a grenade from the FDS and held captive.



535. [REDACTED]

536. On 17 and 18 December 2010, the FDS, including from the CRS, stormed four mosques in Grand Bassam, Abobo and Williamsville, killing one person and wounding twenty-seven others, including fourteen women.

(v) The perpetrator was aware of the factual circumstances that established the character of the act.

537. The evidence above demonstrates that the perpetrators acted with full awareness of the factual circumstances that established the character of the act. As stated above, the use of live ammunition and fragmentation grenades against unarmed civilians demonstrates – in and of itself – intent and knowledge. Further, using a knife or a *cordelettes* which contains lead also demonstrates the intent and knowledge that it will cause serious wounds.

(vi) The inhumane acts and/or attempted murders were committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

538. The evidence above clearly demonstrates that the inhumane acts/attempted murders committed by the pro-Gbagbo forces were part of a pattern targeting actual or perceived pro-Ouattara supporters. The pro-Gbagbo forces knew that the victims were perceived pro-Ouattara supporters and in fact actual supporters because they were part of the 16 December demonstration or were intending to participate in it.

(d) *Persecution*

- (i) Pro-Gbagbo forces severely deprived, contrary to international law, one or more persons of fundamental rights

539. The acts of murder and other inhumane acts/or attempted murder described above at counts 1 and 2, respectively, constitute severe deprivations of fundamental rights. Pre-Trial Chamber II in the *Kenyatta* case found that killings, serious physical injury and acts causing serious mental suffering constituted such severe deprivations of fundamental rights.

- (e) *Discriminatory intent: Pro-Gbagbo forces targeted such persons by reason of their identity in a group or collectivity, or targeted the group or collectivity as such, based on political, racial, national, ethnic, religious, or other grounds*

540. The evidence demonstrates that the crime of persecution was committed through the targeting of the victims of counts 1 and 2 on political, ethnic, or religious grounds. More specifically, the victims of the 16 December 2010 march were targeted as perceived Ouattara supporters, on the basis that they were actual or perceived political activists or sympathisers, or civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries.

541. As is demonstrated by the evidence, this was purely a political march by (perceived) pro-Ouattara supporters with a view to installing the new Director-General of the RTI as appointed by Mr Ouattara.

- (i) The conduct was committed in connection with acts referred to in article 7(1) of the Statute

542. The acts relied upon to make out the crime of persecution are one and the same as the acts of murder and inhumane acts/or attempted murder, also charged under articles 7(1)(a) and (k), of the Statute.

- (ii) The persecution was committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

543. The evidence above clearly demonstrates that the persecution committed by the pro-Gbagbo forces was part of a pattern targeting actual or perceived pro-Ouattara supporters. The pro-Gbagbo forces knew that the victims were perceived pro-Ouattara supporters and in fact actual supporters because they were part of the demonstration or were intending to participate in it.

## 2. The Defence

### (a) *The Blocus of the Golf Hotel*

#### (i) Mr Gbagbo's allegations regarding the blocus of the Golf Hotel

544. The Defence disputes that there was a blockade around the area surrounding the Golf Hotel and also disputes the Prosecution's contention that it was a deliberate tactic to curtail and monitor the movements of the opposition and other groups. The Defence claims that the control points were put in place by the FDS – under the technical supervision of the UNOCI – as a security measure to monitor the rebel soldiers in order to notify the pro-Gbagbo authorities of any suspicious movement so as to avoid possible friction with the population.

545. The Prosecution submits that the evidence on the record demonstrates that the blockade was put in place – and used – to curtail and monitor the opposition and

other groups but certainly not to protect the population from the rebel soldiers. First, regardless of whether the UNOCI collaborated with the FDS in determining where exactly the control points should be placed, this does not mean that they condoned the creation of a blockade around the area, nor the manner in which it was used. Also, this does not change the fact that it was Mr Gbagbo who ordered the blockade around the area of the Golf Hotel – which was subsequently translated into a military order by Witness P-0009. This order indicated where the control points would be located, and more importantly designated who could have access to the Golf Hotel. It provided for the identification of all people and vehicles going to the Golf Hotel, save for the Diplomatic Corps and the “*Forces impartialles*”, but indicated that access was prohibited to any person “*n’y ayant aucune activité Légale reconnue*”. All of this afforded the FDS with the means to monitor and curtail the movement of the opposition at the Golf Hotel.

a. Mr Gbagbo alleges that there was no blocus

546. The Defence further alleges that in reality there was no blockade as a number of civilians and journalists were able to go in and out the Golf Hotel as they liked – as was the case for UNOCI vehicles and the CEDEAO-UA mission on 3 January 2011. Further, Pro-Ouattara politicians that were based at the Golf Hotel were able to visit zones that were favourable to them and the soldiers and civilians at the Golf Hotel had access to stocks of food and ammunition throughout the post-election violence.

547. First, the evidence on record demonstrates that even Mr Gbagbo’s Foreign Affairs Minister, Alcide Djédjé, recognised that an FDS blockade was in place around the Golf Hotel and that it would only be lifted under certain conditions. Second, the fact that certain civilians or journalists might have been able to visit the Golf Hotel during the post-electoral violence – or leave from there to visit other locations – does not preclude the fact that the blockade served essentially to

monitor and curtail the movements of the opposition and other groups. Not to block everyone from accessing the Golf Hotel.

548. Further, the evidence cited by the Defence does not substantiate the allegation that civilians and journalist could just walk in and out of the Golf Hotel as they pleased – nor does the evidence on the record for that matter. Although the UN SITREP referenced by the Defence states that UN vehicles and civilians on foot “continued to be allowed in/out of the hotel”, it also states that “no civilian vehicle was however allowed in/out”. In a portion of Witness P-0087’s testimony which is not cited by the Defence, the witness states that he used a UN helicopter to reach the Golf Hotel because they did not have the authorisation to use the road to do so. As for the other journalists present there is no evidence regarding how they managed to get in the Golf Hotel. Consequently, the allegation suggesting that they were allowed to go in and out as they pleased is speculative. In fact, the evidence on record demonstrates that as the crisis progressed, those who tried to enter or leave the Golf Hotel came under increasing scrutiny and even attacks by forces loyal to Mr Gbagbo. In January 2010, a UNOCI convoy carrying food for the Golf Hotel was stopped and searched by the FDS – this incident was broadcast on the RTI. On another occasion in March 2011, Colonel Adama Dosso was killed by pro-Gbagbo forces after having left the Golf Hotel. In this regard, Witness P-0048 testified that he visited the Golf Hotel prior to the blockade but after the murder of Dosso they did not seek to visit the Golf Hotel again.

(ii) Notification of the 16 December 2010 march

a. Mr Gbagbo’s allegation that he was never formally advised of the 16 December 2010 march

549. The Defence claim that Mr Gbagbo and the FDS high command were never formally advised that there would be a march on the RTI on the 16 December

2010. The Prosecution submits that the issue of whether or not Mr Gbagbo and the FDS high command were given a formal notification of the march through a prior request for a permit or other – as suggested by Mr Gbagbo – is basically a distraction from the real issue. The evidence demonstrates that Mr Gbagbo and the FDS high command had prior notice – albeit informally – that the march would take place on 16 December 2010 and were thus able to prohibit it and take all the necessary measures to repress it. A fax from the police prefect of Abidjan dated 12 December 2010 with the heading “*Po à tenir à l’occasion de la manifestation du RHDP en vue d’aller installer le 1er Ministre Soro Guillaume*”, is a very cogent indicator that the Mr Gbagbo and the FDS high command were very much aware of the fact that there would be an upcoming RHDP march and that preparations for it were already being made. Witness P-0046’s testimony corroborates this document and also confirms the prior knowledge of Mr Gbagbo and the FDS high command. Witness P-0046 testified that although he had no formal notice of the march, he had nonetheless heard about it prior to the march. In this regard, Witness P-0046 confirmed the authenticity of the police prefect’s fax by indicating that he made the “*vu*” inscription on the document itself. Despite not having received a formal document confirming the march, Witness P-0046 testified that they nonetheless made the necessary preparations in the eventuality that a march would take place.

550. The Defence also argue that the Prosecution’s claim that a public announcement was made by Soro regarding the march on 16 December 2010, on the day of the march itself and without an authorisation from the police, has no legal merits. Once again, as argued above, the fact that an official notification was not made regarding the march is immaterial to the crux of the issue. Further, Mr Gbagbo is wrong in indicating that the announcement was only made on the day of the march. Although the UN daily SITREP is dated 16 December 2010, it clearly indicates that it covers the period from “00.01 hours 15 December 2010 to 24.00

hours 15 December 2010” and that at a press conference held on the “15 December” the Prime Minister had confirmed that a “peaceful” march would be held “today” – that is to say on the day the SITREP was made (16 December 2010).

551. Last, it is important to note that in terms of notification, Witness P-0009 testified that he had received a note from Interior Minister – Mr Émile Guiriéoulou – prohibiting the march, there was information in the newspapers and that he himself was called by Soro who asked him to let his men through as he was going to install a new RTI Director. To which Witness P-0009 responded that they had been instructed by the government that the march was prohibited. Further, on 15 December 2010, Mr Babri Hilaire Gohourou made a televised statement denouncing the upcoming march. Babri’s statement was effectively a warning to Ouattara supporters that taking part in such a march amounted to destabilising the public order and threatened that the FDS would not stand idly by and let it happen. Babri stated that “...ces marches, a relent d’action de force, donc de troubles graves à l’ordre public, n’ont pour unique finalité que d’opposer d’innocentes populations aux forces régulières de maintien de l’ordre public, et espérer obliger les forces de défense et de sécurité a un affrontement avec des Ivoiriens.”

(iii) Meeting on 15 December 2010 between Mr Gbagbo and members of the Inner Circle

552. The Defence claims that it was those responsible for the security – especially Witness P-0009 – that called for the demonstration to be cancelled given the risks to the population. Implicit in this argument is that it was not Mr Gbagbo who ordered or instructed that the march be prohibited and repressed. Further, the Defence claims that the operational decisions were made during a meeting at the general Staff and that the Prosecution is unable to prove that Mr Gbagbo took the operational decisions regarding the march. This is basically a distraction from the real issue: Mr Gbagbo instructed the Generals that the march was prohibited.

a. Mr Gbagbo's allegation that he never gave instructions regarding the march

553. Mr Gbagbo indicates that Witness P-0009 never spoke about "instructions" from the Minister of Interior or the Minister of Defence prohibiting the march, but only speaks about an information note on the matter and never mentions the Defence Minister. The Prosecution submits that the Defence's arguments focuses on semantics and is essentially misleading. Witness P-0009 received direct instructions from Mr Gbagbo himself during a meeting on 15 December 2010, that *"la marche ne doit pas avoir lieu, qu'elle était interdite"*. Witness P-0009 also testified that he received a note from the Minister of Interior that *"interdisait la marche"* – meaning that the note given to him was effectively an instruction (from the President) to prohibit the march. Witness P-0009 confirms this – immediately after the above extract – when he testified telling Mr Soro that he could not let his men through as *"...le gouvernement nous a instruit, et que la marche est interdite..."*. Witness P-0009 subsequently testified that apart from the Minister of Interior they had a meeting with the Minister of Defence who told them that the march was prohibited by the government.

b. Mr Gbagbo's allegations that the Prosecution distorted Witness P-0009's speeches

554. Mr Gbagbo claims that the Prosecution has distorted the meaning of Witness P-0009's speeches to the FDS prior to the 16 December 2010 march and that these speeches never made any mention of the upcoming march nor was their content a call for repression and/or violence. The Prosecution submits that although the 16 December 2010 march is not explicitly mentioned in Witness P-0009's speeches, it can be reasonably inferred that they were specifically made for the purpose of the march from their timing and content. The speeches took places while Witness P-0009 toured various army units in Abidjan – not elsewhere – just days before the



march on the 12 and 13 December 2010. One of Witness P-0009's speeches is essentially a (thinly veiled) reminder for the FDS that being in a Republic means that they must defend its institutions and respect the Constitution – meaning Mr Gbagbo. Contrary to what is asserted by the Defence, Witness P-0009 also states that if they (the FDS) are attacked they will react vigorously. The Prosecution submits that these speeches were not made by Witness P-0009 for the purpose of an eventual attack on the country as suggested by the Defence but for the march itself. It is important to note that the demonstration was indeed seen as an attack – as the FDS spokesperson Babri put it clearly: *“...ces marches, a relent d'action de force, donc de troubles graves à l'ordre public, n'ont pour unique finalité que d'opposer d'innocentes populations aux forces régulières de maintien de l'ordre public, et espérer obliger les forces de défense et de sécurité a un affrontement avec des Ivoiriens.”*

c. Mr Gbagbo's claim regarding Babri's speech

555. The Defence claim that Babri's statement was made after the march on the 16 December 2010 – not 15 December 2010 as indicated by the Prosecution – and that in any event it was not meant as a threat.

556. Contrary to what the Defence suggests, the Prosecution does not rely exclusively on the evidence of Witness P-0117 to confirm that Babri's statement was broadcast on the 15 December 2010. In fact, the RTI newscast of 15 December 2010 at 13h00 speaks for itself as the announcer warns the audience about the upcoming RHDP marches on Thursday and Friday (16 and 17 December 2010). The Defence merely references a rebroadcast of the same statement that occurred on 16 December 2010 – as is evidenced by the content of the newscast before and after the statement.

d. Mr Gbagbo's allegation that the DGPN was managing security of the march

557. The Defence refers to Witness P-0009 in support of the assertion that the DGPN was managing the security of the march as it was police elements supported by CECOS that were doing the work. This assertion sourced to Witness P-0009 is incorrect. The evidence shows that the GPP and the FESCI were working alongside the CECOS BMO in repressing the march. Further, although the DGPN, through the *Préfet D'Abidjan* and the police, was handling the security of the demonstration, with the support of CECOS (including CECOS BMO) it must be recalled that the *Préfet* was also assisted by the Director of the Police Intervention Units Claude Yoro, who was at the head of the CRS (CRS 1 and CRS 2), the BAE and the BSP. There is also evidence that Liberian mercenaries were part of the CRS and the CECOS BMO at the time of the 16 December 2010 march. The evidence demonstrates that the CECOS was better equipped than the army, Police or *Gendarmerie* and their role that day not limited to the use of *moyens conventionnels*. As evidenced above, both the CECOS and CRS were responsible for the killings of civilians during the 16 December 2010 march.

(iv) Presence of militia and mercenaries

a. Mr Gbagbo's allegation regarding Witness P-0435's credibility and the presence of GPP members during the march

558. Mr Gbagbo state that Witness P-0435's testimony should be disbelieved when he claims that the Minister of Interior instructed the GPP to help the FDS during the 16 December 2010 march. According to Mr Gbagbo, Witness P-0435 is not credible because (1) he was described as physically weak and suggestible by an Ivoirian psychiatrist that examined him; (2) he admitted it having taking drugs; (3) he had played the role of strong man for the transport syndicate/union; (4) he lived from extortion and delinquency with the GPP – which would have been dissolved in 2003; (5) the number of GPP members was so small that they all stayed in abandoned houses – in which they squatted and chased away the

occupants and Witness P-0435 says he was given instructions by the FDS but is unable to say who gave him these instructions and other details – thus it is unverifiable hearsay. In fact Mr Gbagbo challenges the very fact that the GPP collaborated with the FDS in repressing the march.

559. The psychiatrist's report relied on by Mr Gbagbo while "technically" submitted was the object of a strong objection by the Prosecution. The Chamber allowed its submission with the condition that the witness not be questioned on the report as it was basically a psychiatrist's report on Witness P-0435's health. Further, the author of this report never testified before this Chamber as to its conclusions and there is no evidence as to the specific circumstances that led to its request by the Ivoirian courts. It is dated from July 2014 while Witness P-0435 testified in October 2016. Last, the determination of Witness P-0435's credibility in the present case rests solely with this Trial Chamber not an Ivoirian court. Therefore, this report, prepared for another Court, should have no bearing in the determination of Witness P-0435's credibility in this case.

560. Witness P-0435's admission that he consumed drugs (cannabis) in 2002 is without any rational connection to the issue of his credibility; nor is the fact that he would have played the role of a "*gros bras*" for the transport union, committed crimes of extortion and delinquency with the GPP or that he would have squatted in unoccupied houses after the GPP had chased out its occupants. If anything, Witness P-0435's candidness in relation to the crimes he may have committed with the GPP in the past speaks strongly to his honesty when being examined under oath. [REDACTED]

561. The GPP was not simply a "*gang de délinquants pourchassés par la police*" as portrayed by Mr Gbagbo. The evidence on record shows otherwise. The GPP was a well-oiled, structured militia at the time of the post-election violence – with the necessary manpower and weapons to engage in military operations.

562. Witness P-0435 testified that in September 2010, the GPP had a hierarchical structure comprised of several tiers with a working chain of command and had an honour code in effect “*Soumission, Soumission, exécution avant la réclamation, la trahison engendre le sang*” – which meant that all orders had to be obeyed without questions and any disobedience would be seen as a betrayal incurring punishment. As of September 2010, the GPP and its affiliated militia groups numbered more than 18,000 elements nationwide, of which 8,000 to 9,000 were stationed in Abidjan. The GPP was well armed: Witness P-0435 testified that they possessed AK-47s RPGs and machine guns.

b. Mr Gbagbo’s claim regarding the police trying to stop the GPP

563. Mr Gbagbo claims that evidence that the Police commissary of the 7<sup>th</sup> arrondissement tried to stop the GPP’s activities on the day of the march demonstrates by the same token that the GPP could not have been collaborating with the police on that day. First, this Defence argument presupposes that the GPP was present during the march and was collaborating with the FDS as submitted by the Prosecution. Second, the fact that one police commissary attempted to stop the GPP’s activities does not necessarily mean that the GPP was not collaborating with the FDS on that day – nor does it weaken the evidence that the former Interior Minister instructed the GPP to support the FDS by intercepting and handing over demonstrators to the authorities. In fact Witness P-0435’s evidence shows that demonstrators were intercepted, [REDACTED] and handed over to the CECOS BMO vehicles to take them to their base. Finally, Mr Gbagbo fails to mention that due to the intervention of the CECOS BMO, the police commissary was powerless to force the GPP to hand over the detainees.

564. Mr Gbagbo alleges that Witness P-0435 is unable to elaborate on whom at the FDS gave him the instructions, in what circumstances and form – and that

consequently it is unverifiable hearsay. This allegation is misleading. Witness P-0435 testified that the orders he personally received were from Mr Bouazo – not from the FDS. Mr Bouazo had received his instructions regarding the march during a meeting with the former Interior Minister, Mr Tagro. The evidence cited by Mr Gbagbo relates principally to Witness P-0435's understanding of what the FDS' exact mission was on the day of the march.

c. Mr Gbagbo's claim regarding the presence of FESCI during the march

565. Mr Gbagbo claims that the Prosecution seems to suggest that Mr Blé Goudé would have had a role in the repression of the 16 December march; but that it is not clear given that the Prosecution confuses the youth with the militia and the mercenaries. The Prosecution's case against Mr Blé Goudé is clear. On 14 December 2010 Mr Blé Goudé held a meeting of youth leaders at the Hotel de Ville of Cocody, attended by JFPI leader Navigué Konaté, FESCI leader Augustin Mian, Youssouf Fofana, GPP leader Zéguen Touré and others. The aim was to protect the RTI from the demonstrators of the march on the RTI planned for 16 December 2010. Witness P-0625 testified that when called to mobilise the *Jeunes Patriotes* knew what to do: set up roadblocks. The *Jeunes Patriotes* from the FESCI followed Mr Blé Goudé's call as the evidence shows that they aided the FDS in violently repressing the 16 December 2010 march.

d. Mr Gbagbo's allegation regarding the presence of armed individuals during the march

566. Mr Gbagbo relies on the testimonial evidence of Witnesses P-0184 and P-0230 to substantiate the allegation that the 16 December 2010 march was carefully prepared by the rebels in the context of a military attack. The Prosecution submits that the evidence cited by the Defence does not substantiate their allegation and that the evidence on record cited below demonstrates that the march was not part

of a military attack, but was rather a march attended by unarmed civilian demonstrators.

567. Mr Gbagbo claims that the *modus operandi* of the armed groups that participated in the march was to place combatants disguised as civilians in the middle of unarmed civilians and to use these as human shields to approach and attack the FDS. In support of this contention the Mr Gbagbo cite the testimony of Witnesses P-0010 and P-0046; video CIV-OTP-0083-1394 and several police reports. The Prosecution submits that this claim is unsubstantiated by the evidence on record and speculative.

568. To the contrary, testimonial evidence on record – corroborated by reliable documentary evidence – shows that the 16 December 2010 march was a composed of unarmed civilians marching towards the RTI; certainly not armed groups with firearms. Witness P-0330 testified that the march was a street demonstration during which the people had the intent of walking to the RTI. Witness P-0172, who walked from Banco (Abobo) to Carrefour Macasi (Macaci), states that the demonstrators who were with him on the day of the march were unarmed. Witness P-0588 evidence is that that the demonstrators at the Carrefour Djeni Kobina were also unarmed, and that they were going “*mains nue*”. This evidence is corroborated by Witness P-0350 who testified that the demonstrators making their way to Djeni Kobina were unarmed. Witness P-0106’s evidence is to the effect that people heading to the demonstration assembled at the Mairie d’Abobo and at the Dokui Pharmacy; at the departure of each group, older and responsible men searched the demonstrators to ensure that no one was armed. Witness P-0587, who was part of a group of demonstrators heading to the RTI through Attecoubé and Adjamé, states in his evidence that everyone went bare handed – no one had weapons. Witness P-0117 who was heading to the demonstration in Cocody from Abobo, states in his evidence that there were policemen at every Carrefour on that day and that the demonstrators – men,

women, old people and youth – were unarmed and would raise their bare hands to show this. Witness P-0547 also testified that the demonstrators were heading to the RTI “*mains nues*” and that the instructions were not to do anything and to not even respond to provocations.

569. Contemporary police reports on the record corroborate this testimonial evidence. A detailed police report prepared by the police commissioner of the 4<sup>th</sup> arrondissement, assisted by officers from the 1<sup>st</sup> District (Abobo), 5<sup>th</sup>, 7<sup>th</sup> and 28<sup>th</sup> arrondissement and dated 16 December 2010, makes no mention of civilian demonstrator carrying firearms, let alone any mention of civilians firing on the FDS during the march proper. It does however mention the death of three civilians by bullets following the intervention of the *Gendarmerie* and CRS 1. Along the same lines, a detailed report from Witness P-0560 (the Chief of the 4<sup>th</sup> police district - Adjamé) to the Police prefect of Abidjan, dated 16 December 2010, also makes no mention of armed demonstrators participating in the march proper. In fact, amongst other things, it makes mention of dead civilians following the intervention of the CECOS BMO during the march, including one by bullet. A BQI from the Police Prefect of Abidjan to the Ministry of Interior, which is composed of most of the information in the previous reports, also bears no mention of armed demonstrators during the march.

e. The reliability of Claude Yoro’s report

570. The only police report which makes mention of armed civilians during the march proper, is one authored by Mr Claude Yoro (Commissaire Principal de Police) and transmitted on 20 December 2010.

571. This report is unreliable. First, this document is apparently not a contemporaneous record of the incidents that occurred on 16 December 2010 given that it was only transmitted days after the march had occurred on 20 December 2010. Second, Yoro’s police report is the only one on record suggesting

that CECOS would have opened fire on armed demonstrators in Adjamé during the march. Further, the only two civilian casualties in Adjamé that are mentioned (in the report) are those that were allegedly involved in the armed confrontation with the CECOS. To the contrary, the evidence demonstrates that the FDS fired on unarmed civilians in Adjamé on the day of the march. The report also fails to mention the civilian casualties in Cocody. Last, and most importantly, Yoro had a motive to withhold relevant information in his report and give a false account of the day's events. The CRS, an intervention unit under Yoro's authority as head of the DUI (Direction des Unités d'Intervention), fired live ammunition on unarmed civilians during the march, killing several of them, and was also implicated in the storming of four mosques on 17 and 18 December 2010 killing one civilian and wounding many others.

f. Mr Gbagbo's allegations regarding the testimony of Witnesses P-0010 and P-0046

572. Mr Gbagbo relies on specific parts of Witnesses P-0046 and P-0010's testimonies as a basis for the suggestion that armed individuals were present in the march and fired on the FDS. However, the testimonial evidence cited in support of this submission is misleading and unsupportive of this contention.

573. In the references cited by Mr Gbagbo, Witness P-0046 simply states that when one looks at the *bilan* of the day, policemen that were killed must have been through the use of firearms and that it was not a normal demonstration (but an armed demonstration) which is why the Minister of the Interior called for it to be dispersed. The *bilan* Witness P-0046 is referring to can be found in a DGPN report, which was shown to him immediately preceding this part of his testimony. The report indicates that policemen were killed only in Abobo but not in Cocody or Adjamé during the march proper.



574. Witness P-0010's testimony regarding the death of certain "men" with weapons of war such as an RPG-7 "*qui ont totalement cramé des véhicules de transport de troupes*" does not refer to any known incident that occurred on the 16 December 2010. In fact, no other witness or FDS report mentions this incident occurring during the march proper. FDS reports only mention that a military vehicle was ambushed in Abobo while *en route* to Anyama, at about 8 p.m. – thus after the march had finished - causing the death of two militaries.

575. The FDS reports cited by Mr Gbagbo do not demonstrate that the 16<sup>th</sup> December march proper was a military operation. These reports describe incidents that occurred in: the PK18 neighbourhood of Abobo – far from the march proper to the RTI; the PK18 neighbourhood at 20h00 – after the march proper had finished; Abobo Agripac (a house lodging the FDS was burnt down); Yopougon; Riviera 2 (at the domicile of the Ex-Ministre of the Defense) and to events that occurred on 17 and 18 December 2010.

g. Mr Gbagbo's allegation regarding the Video CIV-OTP-0083-1394

576. The Gbagbo defence also relies on the video CIV-OTP-0083-1394 to claim that demonstrators wielding firearms participated in the 16 December 2010 march. The Prosecution submits that upon close examination of the video footage – depicting a location near Carrefour de la Vie - including the timestamps indicated by Mr Gbagbo, none of the demonstrators are wielding firearms. Conversely, the footage does corroborate the testimonial and documentary evidence on record in clearly showing that the demonstrators were unarmed and that some were seriously wounded and killed during the march. The footage shows scores of young unarmed men retreating from the action; wounded young men being helped away, including some with serious injuries being loaded into cars. The footage also shows one young man saying that the police and *Gendarmes* have shot live ammunition at people; and another saying that at Carrefour Djeni

Kobina, the loyalist forces, including Liberians and Angolans fired a real grenade causing injuries to six people.

h. Mr Gbagbo's allegation regarding the rebel attacks

577. Mr Gbagbo alleges that the concomitant attack from the rebels at the Golf Hotel and the armed rebels hidden amongst the demonstrators demonstrates the existence of an important military operation with the objective of destroying the FDS, so as to take over the RTI and the *Primature*. The evidence demonstrates that the conformation between the rebels at the Golf Hotel and the FDS commenced at approximately 09h00 and lasted approximately 30 minutes causing two FDS casualties. As demonstrated above, the evidence on the record does not speak of an attack by hidden armed rebels amongst the civilian demonstrators during the march proper – but rather of isolated attacks/confrontations – which occurred in Abobo and at the Carrefour Marie-Thérèse Houphouët-Boigny on the day of the march.

i. Mr Gbagbo's allegations regarding the police reports

578. Mr Gbagbo maintains that the police reports – on which the Prosecution basis its case – demonstrate that the incidents occurred in another manner than described by the Prosecution and show that the police performed their duties professionally and in a neutral manner. Mr Gbagbo claims that the very fact that the police drafted these reports and indicated in certain circumstances that investigations had been opened, militates against the Prosecution's case.

579. The Prosecution submits that the fact that the police actually drafted these reports has no bearing on the question of whether they committed the crimes that they are accused with. The police was simply complying with their official duties in drafting these reports. Nothing else can rationally be made of this and it certainly cannot be treated as exculpatory evidence. Although the Prosecution

relies on certain police reports to substantiate its case, this does not necessarily entail that all of their content can be safely relied upon – especially when certain parts are contradicted by reliable evidence on the record. As with witnesses, the Chamber has the discretion to rely on certain reliable parts of a police report and ignore other unreliable parts.

580. In the present case, given that the police are also accused of committing crimes, the content of the each police report needs to be assessed with circumspection to determine its reliability. The Prosecution makes the following general comments in this regard.

581. Absent any reliable evidence to the contrary, routine contemporaneous recordings made by policemen (during the post-election crisis) in the course of their duty, and on the basis of their personal observations should be regarded as reliable. This would of course include in the case of victims, their particulars, location and date of death as well as any apparent signs on their body. The Chamber can therefore safely rely on this type of information. However, all other information in police reports should be carefully scrutinised by the Chamber. In this regard, the Prosecution argues that exculpatory information regarding the actions of the police should be examined with extreme caution.

582. Further, the Prosecution considers that certain police reports are unreliable in respect of the manner in which victims died during the post-election violence – when the police had a motive/or interest in hiding the truth – especially if they were allegedly implicated.

583. For instance, allegations in police reports that demonstrators going to the RTI march on 16 December 2010 were dispersed with “*moyens conventionnels de maintien d’ordre*” in conformity with orders, all the while indicating that dead civilians – killed with bullets – were found dead on location should be disbelieved and not be relied upon by the Chamber. Not only are such allegations contradicted by reliable evidence on record but they do not explain how victims

could have died – especially by bullets wounds – if only conventional means were used to repress the march. The Prosecution submits that this incident fits in with prior and subsequent incidents where the FDS fired live ammunition or used war weapons on perceived pro-Ouattara supporters causing numerous civilian casualties. Any allegation that rebel forces might have caused these killings is to be disregarded given that it is speculative as there is no evidence on the record to substantiate it and because it defies common sense: rebel forces would not have any logical motive to kill perceived pro-Ouattara supporters.

584. Although certain reports make the mention of a “*Information*” having been opened in regards to certain incidents this does not necessarily mean that they were followed up or that investigations or criminal procedures were effectively carried out as Mr Gbagbo seems to suggest. In fact the evidence on record demonstrates that incidents regarding FDS wrongdoing against pro-Ouattara supporters during the post-election violence were routinely covered up, not followed up by proper investigations or simply ignored by the authorities. Even in very serious cases involving murder no one was ever punished.

585. The handling of the Wassakara incident by the Ivorian authorities is reflective of this. Witness P-0440, the police commissary for the 16<sup>th</sup> arrondissement, testified that he reported by fax the killing of four RDR militants (and seven injured) in their headquarters at Wassakara – by *gendarmes* – to the Police Prefect of Abidjan but never received any response. The report sent by Witness P-0440 indicates that an “*information*” had been opened. Witness P-0440’s investigation of the crime scene led him to the conclusion that shots had not been exchanged but that RDR militants had been killed in cold blood. Although in a telephone conversation with Commander Koukougnon, the latter admitted that it was his men who had been implicated in the incident, Witness P-0440 testified that he could not put certain details in the police report because as “*frères d’armes, plus ou moins, on se couvre*”. Witness P-0440 also called the *Procureur de la République* –

who was responsible for investigating this type of incident – and reported what had happened in Wassakara. The Procureur took note of the incident and asked him to send a report on the incident. Witness P-0440 complied but this never resulted in a legal or criminal procedure. Nor was any investigation opened in regards to this serious incident. Following the same pattern, the Ivoirian authorities also failed to undertake proper investigations or punish anyone in regards to the 16 December 2010 incident and 3 and 17 March 2011 incidents.

j. Mr Gbagbo's claim that pro-Gbagbo forces searched for the wounded demonstrators in hospitals

586. The Defence claim that the Prosecution's submissions that the pro-Gbagbo forces – including the CECOS – searched for the wounded in hospitals so as to force the medical staff not to treat perceived Ouattara supporters are vague and based on hearsay. The Defence adds that the evidence of Witness P-0573 – the Director of the CHU of Cocody – does not substantiate the Prosecution's position and that the Prosecution chose to ignore his evidence because it contradicted its theory. The Prosecution's evidence is not vague and is based on reliable hearsay evidence. Witness P-0107 testified that when he arrived at the CHU of Cocody the doctors did not want to treat him – finally one did and they left him in a room. The witness never saw the doctor who treated him again. A young woman who was at the hospital told him that the doctor who had treated him had left because he had been threatened on account of treating the injured who had taken part in the RTI march. She also told him that people at the hospital had heard that Mr Gbagbo did not want the wounded to be treated as they would be witnesses to what happened at the RTI if they recovered and that the CECOS themselves had patrolled the hospital to identify the injured. The reliability of this hearsay is corroborated by how the witness himself was ignored despite his injuries when he arrived at the hospital and how the only doctor who had treated him disappeared after doing so.

587. Witness P-0106's hearsay evidence is also reliable. Witness P-0106 who was at the CHU of Yopougon on account of his wounded arm, testified that a nurse and another person who worked at the hospital told him not to stay at the hospital because Mr Gbagbo's people would come and take people to kill them. The nurse who agreed to treat him at home did not come dressed in white and came to see him secretly for fear of being discovered – thus corroborating the fact that treating someone who had participated in the march could be dangerous.

588. It is also to be noted that two witnesses treated at different hospitals refer to a similar practice. This is also another relevant factor for the Chamber's assessment of the evidence on this matter.

k. Mr Gbagbo's allegations regarding FDS crimes committed on 17 and 18 December 2010

589. Mr Gbagbo claims that the allegations made by the Prosecution regarding crimes committed by the FDS and men dressed in civilian clothes on 17 to 18 December 2010 during raids primarily in Abobo are extremely vague – given that neither the perpetrators or the victims are identified and that the alleged crimes committed by the FDS are not specified. Further, the Defence maintain that these allegations are based on an UNOCI report – the probative value of which is very weak. First, the UNOCI *Daily Situation Report* referred to by the Prosecution as a source for this allegation indicates that during an Abobo raid the "FDS-CI" broke into people's homes, fired gunshots and arrested people. Further, the fact that the victims' names are not formally indicated should not affect the reliability of this evidence. As elaborated upon in Section II the Prosecution submits that the content of UNOCI *Daily Situation Reports* is reliable. The same response applies to the Defence's contention that the Prosecution only relies on an UNOCI report – of weak probative value – to support the conclusion that on 17 and 18 December

2010 the FDS personnel stormed four mosques, killing one person and wounding twenty-seven others.

1. Mr Gbagbo's claim that Prosecution is vague when addressing if he was informed of operations on the ground

590. Mr Gbagbo claims that the Prosecution is being purposefully vague when it states that "the CEMA kept Gbagbo informed of developments on the ground" and that this formulation was used to give the impression of constant communication with the CEMA on that day dealing with the details of the operations. According to Mr Gbagbo, Witness P-0009 only spoke about reports ("*compte-rendus*") to the President and not discussions – in his testimony – refusing to follow the Prosecution in this regard. First, the Prosecution submits that the evidence on record does demonstrate that Witness P-0009 kept Mr Gbagbo informed about the operations on the 16 December 2010. Witness P-0009 himself testified that for every (FDS) "*action*", there was a report made "*en cours d'action*" and one "*a la fin de l'action*". As such, Witness P-0009 testified that he reported the confrontation between the rebel soldiers at the Golf and the FDS – including casualties – to Mr Gbagbo at about 11h00 or 12h00. In regards to the march, Witness P-0009 called Mr Gbagbo at about 12h00 to report the "*déroulement de la marche*", including the death of civilians and policemen. On the basis of information reported to him by the DGPN, Witness P-0009 called Mr Gbagbo at the end of the day and gave him a second report on the march, which included the fact that a number of civilians had died but putting the emphasis on FDS deaths. Further, the Prosecution was not trying to suggest the term "*discussion*" rather than "*compte-rendu*" with the witness; the transcript actually shows that the Prosecution was concerned about using the same terms in the questions and answers.

591. The Defence also claims that Mr Gbagbo's instruction to Witness P-0009 that the soldiers not move following the confrontation with the rebels from the Golf Hotel was the only real instruction from Mr Gbagbo (to the FDS) in the court record and that it was made by Mr Gbagbo to keep the peace. The Prosecution submits that there is no evidence as to why Mr Gbagbo would have given this instruction to Witness P-0009, thus the Defence's claim about it being made by him to maintain the peace is speculative at best.

592. Contrary to what is alleged by the Defence, the court record also demonstrates that at a meeting 15 December 2010, Mr Gbagbo instructed the CEMA and other Generals that the march should not take place and that it was "*interdite*". Also, prior to that, in the month of February 2011, Mr Gbagbo instructed Witness P-0009 to do everything to hold on to Abobo and liberate the N'Dotré roundabout.

593. The Defence also claims that in regards to the alleged meeting that would have been held on 16 December 2010, the Prosecution relies on the visitor's logbook of the President's residence, which has not been authenticated and therefore has no probative value. The Logbook was authenticated by the evidence on record and can be safely relied upon by the Chamber as developed extensively in Section II of this response.

*(b) Mr Gbagbo's arguments regarding proof of death and P-0564's evidence (Annex 4 paras.1-50, 149-157 and Mr Blé Goudé's Motion paras. 455-465)*

(i) Mr Gbagbo's argument that the number of victims for each incidents has changed over time (Anx.4, paras. 10-15)

594. The Prosecution submits that the number of victims for each incident currently reflects the evidence that was submitted on the record. The change in the number of victims does not affect the nature of the incidents.



(c) *Mr Gbagbo's statistics about victims of the five incidents where there is no evidence regarding their civil status or medical evidence (Anx.4, para. 16)*

595. Mr Gbagbo claims that there is an absence of "*élément d'état civil ou d'ordre médical*" regarding a certain number of deaths, injured and rape victims. Mr Gbagbo further suggests that the Prosecution's reliance on other types of evidence is insufficient. Contrary to what is suggested by Mr Gbagbo, the Prosecution submits that the determinative issue is not whether a certain type of evidence is used to support an allegation of death, injury or rape but whether it is reliable. Thus, the death of a person can be established through different types of evidence. The lack of a contemporaneous official administrative document confirming the death of someone does not preclude the use of other types of evidence – e.g. testimonial evidence – to demonstrate this. The same applies to the evidence regarding the civilians that were wounded and those that were raped. Last, it must be recalled that the Statute does not require corroboration – in any form – to prove a crime.

(d) *Mr Gbagbo's argument that Witness P-0564 relied on information provided by the family and/or the morgue for the identification of the corpse, its age, ethnic group, the chain of custody of the corps and date of death (Anx.4, paras. 22-28)*

596. Witness P-0564 testified that the bodies were visually identified by the families of the deceased and that the information about the age and ethnic group of the victim was provided by the family. For the date of death, the information was provided by either a family member or documents from the morgue.

597. In relation to the identification of the corpse, it was not conducted by Witness P-0564's team. The team relied on the file from the morgue and compared data (for example, the identification number) to the identification tag on the arm of the corpse and other potentially identifying features, which would also be analysed.

For tracking purposes, numbers were assigned to each body, which was entered into a register and was also linked to the number received from the mortuary. When there was no armband on the body to identify it, the team would take down the number from the mortuary and relied on the number that had come with the body.

598. The evidence on record corroborates Witness P-0564 and shows how the morgue identified the corpses in a reliable manner. Witness P-0589 stated that when the Anyama ambulance came to pick up the body of his brother, they took down the name, date of birth, occupation, civil status of his dead brother and noted the information in a large register. At the entry at the morgue, Witness P-0594 testified that the *morguier chef* filled in the entry of body with the name and other information in the Anyama morgue register. He also prepared a bracelet which included the name of the body, sequencing number, rack number and date of entry. Witness P-0590 testified that he went to the Anyama morgue and with the name and rack number of the *fiche d'entrée*, he was presented the body of his brother whom he identified. In sum, the information found in the Anyama Morgue Register is inherently reliable given that it was compiled in the normal business activities of the morgue, in the manner described by Witness P-0594.

(e) *Mr Gbagbo's argument regarding the "rapport circonstancié" drafted by Witness P-0564 (Anx.4, paras. 29-30)*

599. Mr Gbagbo argues that because this report is based on non-verifiable information and is not signed, the report is not useful. The Prosecution submits that the report is both reliable and useful. Witness P-0564 confirmed that she and her team drafted the report and stated that she did not date it because she knew there would be subsequent missions. The report contains a compilation of the

results of Witness P-0564's work and that of her team. Out of the 789 bodies examined, 647 bore signs of a violent death.

*(f) Mr Gbagbo's argument in relation to Witness P-0564's files and post-mortem external examination reports (Anx.4, paras. 31-38)*

600. Mr Gbagbo argues that the files and reports on external examinations are not reliable since Witness P-0564 could not have done 147 examinations in one day. This is a speculative argument. Witness P-0564 testified that it was possible for so many analyses to be conducted in a single day, as the teams went to the mortuaries themselves and thus did not lose so much time transporting the bodies to the Institute. It was therefore possible for 3 doctors to each conduct 50 external examinations in a single day, in the same hall. Witness P-0564 examined all the bodies and signed off on all 147 reports. She added that when an injury was identified, she would look at it together with the other doctors, which enabled them to work expeditiously and professionally.

601. Witness P-0564 further explained that they had a massive amount of work since there were many corpses to examine after the postelection crisis. They chose to perform external examinations for reason of necessity and speed: families were asking to receive the bodies (and death certificates) so that they could bury them, with the support of the legal authorities and ii) the morgue no longer had the space to accommodate all the bodies and were therefore in a very difficult situation because of the smell of the rotting corpses.

*(g) Mr Gbagbo's argument in relation to the certificates established by Witness P-0564 (Anx.4, paras. 39-45)*

602. Mr Gbagbo argues that for the victims of the 16 December 2010 and 17 March 2011, the Prosecutor relies on death certificates and other type of certificates – which are based on hearsay information from family members – to demonstrate the identity, the date of death and circumstances of death of those presented as

victims. This is incorrect. The Prosecution relies on different types of evidence, including P-0564's evidence, to demonstrate the identity, date and place of death of the victims of these incidents. Further, it is important to recall that P-0564 testified that she relied on the information file provided by the morgue (which accompanied the body) to identify the body and the place of death.

603. Mr Gbagbo also argues that some relatives received a death certificate from the morgue without identifying the corpse at the morgue, and source it to Witness P-0589. Although Witness P-0589 did not identify the corpse of his brother at the morgue, he did identify him on the day of his death and provided the name of his brother along with other information, to the *ambulancier* who brought the corpse of his brother to the morgue.

*(h) Mr Gbagbo's argument in relation to the complementary report drafted by Witness P-0564 (Anx.4, paras. 46-50)*

604. Mr Gbagbo argues that this complementary report is not conclusive for any of the victims and does not provide information about the circumstances of their death. This is incorrect. Witness P-0564's report concludes that the wounds of four victims of the 17 March incident, Sidibe Seydou, Kouakou Koffi Francois, N'Guessan Adjo Therese and Doumbia Makaridia were compatible with the accounts of the family members, who said they had been killed by (mortar) shells. For example the report indicates that the corpse of Kouakou Koffi Francois showed 18 wounds "*Par arme à feu*" which showed an "*aspect de cribblage*" compatible with the detonation of a shell as reported by his brother-in-law. In addition, the extraction of metallic fragments from the wounds of two of these victims further supported the hypothesis that these victims were hit by shell fragments. Prosecution witnesses provided further information about the circumstances of death of the four victims, as well as other evidence on record, such as the morgue registers. Witness P-0297 testified about the death of his sister

Doumbia Makaridia and Witness P-0294 about the death of his brother Kouakou Koffi François and sister-in-law N'Guessan Adjo Thérèse.

(i) *Mr Gbagbo's argument in relation to the Excel table from the Institut Médico Légal (Anx.4, paras. 149-157)*

605. Mr Gbagbo argues that the provenance of the Excel table is not clear and that even if it came from the *Institut Médico Légal*, the information does not link any victim to the charged incidents. The Excel table was provided to the Office of the Prosecutor by the Ministry of Justice on 29 January 2015. It was compiled by the *Institut Médico Légal*. It contains the main details of the post-mortem reports produced by Witness P-0564 and her team, under 789 distinct IML file numbers. These entries contain the same 789 names as in the *rapport circonstancié*, which was drafted by Witness P-0564 and which she authenticated during her testimony. In addition, Witness P-0564 testified that when they met with the families, they would take the relevant report and fill in the information. In case the date had also been entered on the computer, they would also fill it in.

(j) *Mr Blé Goudé's argument about forensic evidence and a nexus between the examined bodies and any charged incidents (Blé Goudé Motion, paras. 455-465)*

606. First, Mr Blé Goudé argues that Witness P-0564's observations were made without any ballistic reports. It is important to recall that Witness P-0564 testified that she was recognised as an expert in forensic pathology – at the Abidjan Courts – since 2009. Further, Witness P-0564 carried out many legal autopsies and external examinations of bodies since 1991. Witness P-0564 explained that during her training as forensic doctor, she studied terminal ballistics, which is ballistics and injuries, the conduct of projectiles and impact on bodies. She stated that she has also basic knowledge of ballistic ammunitions.

607. Second, Mr Blé Goudé argues that Witness P-0564 was unable to establish any nexus between the examined bodies and any charged incidents. Witness P-0564 testified that it was not part of her mandate to determine whether the causes of death of the bodies she examined were related to a particular incident during the postelection violence. However, the Prosecution submits that the results of Witness P-0564's forensic examinations are important items of evidence often linking victims with charged incidents and corroborating evidence already on record.

(k) *Mr Gbagbo's arguments regarding: documentary evidence from Interfu, Anyama Morgue and Treichville Morgue (Gbagbo Motion, Annex 4, paras. 60-103)*

(i) Mr Gbagbo's argument in relation to the *permis d'inhumer* (Annex 4, paras. 60-64)

608. Mr Gbagbo argues that the *permis d'inhumer* do not mention the circumstances of death and that the source of the information on the *permis* is not known. However, the circumstances of death of the victims are established by other evidence submitted on the record, including witness testimony, and documentary evidence such as the register from the Anyama morgue and videos. The *permis d'inhumer*, which are signed and stamped by the Mairie d'Abobo, are simply administrative documents which corroborate the evidence on record about the death of the victims.

(ii) Mr Gbagbo's argument in relation to the "fiches d'entrée et de sortie des morgues" (Annex 4, paras. 65-67)

609. Mr Gbagbo argues that the source of the information on these forms is unknown. This assertion is incorrect. These forms are signed by the staff members of the morgue and the relatives of the victim. They indicate the names, dates of

entry or exit of the victim, as well as the rack where the corpse is located. They are also authenticated with the header of “INTERFU” or “IVOSEP” as well as the sequencing number of the form. The information in these forms corroborates witnesses who came to testify about the killing of their relatives. In particular, the *fiche d’entrée* CIV-OTP-0084-0131 corroborates the testimony of Witness P-0589 on the date of entry of the corpse of his brother to the morgue as well as the registers of the morgues. The other two *fiches* corroborate the testimony of Witness P-0590 and the registers of the morgues.

(iii) Mr Gbagbo’s argument in relation to the handwritten registers of the Anyama morgue (Annex 4, paras. 68-79)

610. Mr Gbagbo argues that there is no evidence as to what the columns of the Anyama morgue registers correspond to and that neither of the extracts of the morgue register have been authenticated. The register CIV-OTP-0084-3866 covers the period from October 2010 to January 2011, whereas the register CIV-OTP-0084-3167 covers the years 2011 and 2012. First, Witness P-0594 authenticated an extract of the Anyama morgue register CIV-OTP-0084-3167. He stated that it was his register and recognised his handwriting as well as that of his colleague’s. Although he was not there when the corpses arrived on 17 March 2011, he filled in some of the columns upon his return, as they could only be filled in after the corpses had been autopsied, which occurred around the same date as his return. Witness P-0594 also testified regarding the type of information that was contained in all the 14 columns of the register, as well as a description of the acronyms used. In regards to the Anyama Morgue Register CIV-OTP-0084-3866, its chain of custody is detailed in the investigator’s report CIV-OTP-0083-1314, which is submitted in the court record. This report states that the morgue register was collected at the *Pompes Funèbres Générales d’Afrique*, commonly known as Anyama

mortuary, directly from [REDACTED]

[REDACTED] on 5 June 2015. The circumstances of its collection show that this document is authentic. In addition, the information contained in this register is corroborated by other evidence on record, including witnesses testimonies with regards to the death of victims mentioned in the register.

(iv) Mr Gbagbo's argument in relation to the handwritten register of INTERFU office (Annex 4, paras. 80-83)

611. Mr Gbagbo argues that the chain of custody of the register of the INTERFU office CIV-OTP-0084-3044, is not known and that it was not authenticated. As described in the metadata of the register, it was obtained by the Office of the Prosecutor on 25 May 2015 from [REDACTED]

[REDACTED] Witness P-0594 authenticated the register when he testified recognising the handwriting of one of his colleagues in it and noted that many entries in this register matched entries in the Anyama morgue register. The information contained in this register is both confirmed and corroborated by reliable evidence on the record. For example, the death of Doukouré Aly appearing at page 3066 is corroborated by the testimony of Witness P-0589, as well as his individual INTERFU file and the Anyama registers. Further, the death of Witness P-0588's brother, Lacina Bakayoko – at page 3067 of the register – is confirmed by Witness P-0588's evidence and Witness P-0564's table, CIV-OTP-0073-1074, as well as the evidence on record for other victims.

(v) Mr Gbagbo's argument in relation to the handwritten register of the Treichville morgue (Annex 4, para. 84)

612. Mr Gbagbo argues that there are no titles in the columns of the register of the Treichville morgue CIV-OTP-0063-0818, which covers the period of 15 October to 31 December 2010. First, the fact that the register CIV-OTP-0063-0818 was



collected from IVOSEP (on 10 July 2014), demonstrates its authenticity. Second, Witness P-0471's testimony regarding the extracts of another Treichville morgue register covering the period from 1 January to 15 May 2011 - which contains the same columns as the one covering the period of 15 October to 31 December 2010 – is relevant in understanding the latter. P-0471 explained that it contained the sequencing number, the name of the deceased or X if it is unknown, the date of entry of the corpse at the morgue, the name of the depositor and the date of exit of the morgue, the provenance of the body and the use of different colours.

(vi) Mr Gbagbo's argument in relation to the individual INTERFU files (Annex 4, paras. 92-96)

613. Mr Gbagbo argues that there is no evidence as to the chain of custody of the individual INTERFU files. This assertion is incorrect. The investigator's report CIV-OTP-0083-1314 – which has been submitted into the court record – details the circumstances of collection of these files by the Office of the Prosecutor. Mr Gbagbo also argues that the author of these files is unknown and that there are some inconsistencies. Witness P-0594 confirmed that there were two files which presented inconsistencies between the information on the individual files and the Anyama morgue register. He added that these files were nevertheless prepared by the INTERFU office.

(vii) Mr Gbagbo's argument in relation to the table entitled "Evènement CHU Treichville 'identifiés'" (Annex 4, paras. 97-101)

614. Mr Gbagbo argues that for the table titled "*Evènement CHU Treichville 'identifiés'*", there is no evidence on the circumstances of death of the deceased. The Prosecution submits that the table corroborates other documentary evidence which provides the description of the circumstances of death.

(viii) Mr Gbagbo's argument in relation to the use of photos (Annex 4, paras. 102-103)

615. Mr Gbagbo argues that there is no information on the date and place that the photos were taken and that it is not possible to know whether the names on the coffins correspond to the bodies. Witness P-0594 explained that he took 52 out of the 56 photos, and the circumstances that surrounded the pictures – which demonstrate the reliability of these. These photos corroborate other evidence on record regarding the death of victims.

(ix) Mr Gbagbo's arguments regarding the testimony of Dr. Bonbled - Expert Witness P-0410

616. Mr Gbagbo claims that the Prosecution is using the testimony of Expert Witness P-0410 in order to demonstrate the injuries to four alleged victims of the 16 December 2010 incident, the rape of two victims during the 16 December 2010 incident and the injuries to a victim of the 17 March 2010 incident. The Prosecution submits that the primary evidence regarding the above injuries resides in the testimony of the victims concerned and the relevant documentary evidence. The subsequent expert examination corroborates this evidence. As such, Expert Witness P-0410's testimony should not be mischaracterised as being determinative in regards to whether the injuries occurred or not – it is simply independent corroborative evidence in certain cases.

617. Mr Gbagbo claims that Expert Witness P-0410 was unable to determine the circumstances of the injuries and had admitted to basing himself too much on what witnesses had told him during their physical examination. For example, the expert did not conduct additional medical tests to Witness P-0106 who claimed to have respiratory problems since would have been superfluous (according to the Expert). Mr Gbagbo fails to mention that Expert Witness P-0410's medical report regarding Witness P-0106 corroborates the latter's testimony regarding his injury

– which is central to his testimony. Mr Gbagbo attempts to distract the attention of the Chamber by focusing on Witness P-0106’s respiratory issues. Expert Witness P-0410 explained in his testimony that a medical examination commences by questioning the patient and that through his (Witness P-0410’s) observations, he concluded that it was unnecessary – at that stage – to refer Witness P-0106 to a lung specialist.

618. Mr Gbagbo further claims that the tests used by Expert Witness P-0410 in determining the level of PTSD were not adapted to the cultural context and could therefore not be relied upon by the Chamber. However, this conclusion is not substantiated by any expert evidence on the record and should therefore not be considered by the Chamber. The same applies to the Defence’s unsubstantiated allegations that Expert Witness P-0410 does not seem very familiar with PTSD issues.

(x) Mr Gbagbo’s arguments in Annex 6

619. The Prosecution has addressed Mr Gbagbo’s arguments when necessary in the evidence above. The Prosecution reiterates that the Statute does not require corroboration to prove a crime and that the determinative issue is whether the evidence is reliable.

**D. 25-28 February 2011: the Pro-Gbagbo Forces Murder and Seriously Wound Civilians in an Attack on Yopougon**

620. On the morning of 25 February 2011, Mr Blé Goudé held a meeting at the Bar le Baron of Yopougon, in which he ordered the pro-Gbagbo youth assembled to “check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood”. This was the *mot*

*d'ordre* that Mr Blé Goudé had primed the youth and militias to receive the evening before on the RTI. In the violence that ensued over the following days in Yopougon, pro-Gbagbo forces killed at least 19 civilians, and wounded at least 13 civilians.

# 1. Prosecution Case

## (a) *Count 1: Murder as a crime against humanity*

### (i) Pro-Gbagbo forces killed one or more persons, intentionally or with awareness as to death

621. The evidence, detailed below, shows that pro-Gbagbo forces consisting of youth, militias and the police killed 19 persons during the 25-28 February 2011 incident. For those victims for which there is no direct evidence of death, this is nevertheless the only reasonable inference that can be drawn from the available evidence. Where the specific identity of the victim is not proved, the Prosecution has nevertheless specified, to the extent possible, the location, date, means, perpetrator/s and any other details of the killing.

622. In addition to the specific victims listed below, the Prosecution also relies on Witness P-0440's evidence in support of the total number of murder victims, as well as the manner of killing (burning and shooting). Witness P-0440's report of 28 February 2011 refers to fourteen bodies, four of which were lynched, eight of which were lynched and then burned at "self-defence" roadblocks erected by youths, and two of which were killed by bullet.

623. The perpetrators meant to cause death or were aware that death would occur in the ordinary course of events. The circumstances are such that the individual perpetrators' intention to cause death, or at minimum their knowledge that death would occur in the ordinary course of events, is the only reasonable inference to be taken from the evidence as summarised directly below.

- a. Siaka Bakayoko: On 25 February 2011, Witness P-0442 saw the victim fall while the police were firing on the crowd, and later found out that he died at the clinic to which he was taken. Witness P-0436 describes seeing both Witness P-0442 and the victim being injured by the same grenade launched by the police, and falling to the ground. He was later told that the victim died 15 minutes later. The name “Bakayoko Isiaka” also appears in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. Additionally, Witness P-0109, who was also in the crowd, said that a “Chaka” was hit by a grenade and died on the spot. While the full name of “Chaka” is not known, the similarity in first name and circumstances of death suggest that it is the same person. Witness P-0109 describes the perpetrators as “*miliciens*” dressed partly in military uniform or otherwise in civilian clothing. Although this contrasts with Witnesses P-0436 and P-0442’s account that the perpetrators were police, both groups form part of the pro-Gbagbo forces.
- b. Cissé Moustapha, the mosque’s watchman: Witness P-0441 describes seeing, on 25 February 2011 at the Lem mosque, Maguy Le Tocard’s group amputating the victim’s arm with an axe, cutting him into pieces, and then burning him in the middle of the paved road outside the mosque. Witness P-0433, the president of the management committee of the mosque, says that he was informed about the killing that evening by [REDACTED]. He attended the mosque that evening and saw the victim’s remains between the road and the CNI office. The name “Cissé Moustapha” also appears with the comment “(*brulé*)” in the list of victims of 25-26 February 2011 compiled by the CVQDY. A UN report also refers to a group of

militiamen led by Maguy le Tocard entering the Lem mosque on 25 February 2011, intercepting the mosque's watchman "Cissé Moussa", who was "*frappé à mort avant d'être brûlé vif*."

- c. "Traoré": Witness P-0433 saw a young man on 25 February 2011 who had been shot coming into his courtyard, falling down and agonising on the ground before dying. The next day, he met the older sisters of the young man who told him that the victim's name was Traoré and that they had all fled the situation in Abobo. Witness P-0433 did not see who had fired the shot that killed the victim. Witness P-0436 saw the police firing bullets into the alleys of Doukouré from the main road, killing and injuring people. Among the dead, he referred to a young man who had fled the hostilities in Abobo and come to Yopougon, where he was shot and died behind Witness P-0433's house.
- d. Bakayoko Lacina: Witness P-0436 saw the victim on 25 February 2011 trying to enter the 16<sup>th</sup> arrondissement police station, but being pushed out by the police. He saw the crowd who had come to attack the Doukouré neighbourhood set upon him with stones and wood, before putting tyres on him and lighting him on fire. The name "Bakayoko Lacina" also appears with the comment "*(brulé)*" in the list of victims of 25-26 February 2011 compiled by Witness P-0436's victim collective, the CVQDY. A UN report also lists him among 11 persons killed by militiamen during the attack of 25 February 2011.
- e. Bamba Souleymane: Witness P-0436 saw the police on 25 February 2011 firing bullets down the alleys of Doukouré. He later received information that this firing caused the victim's death.

- f. "Zanga": Witness P-0436 saw the police on 25 February 2011 firing bullets down the alleys of Doukouré. He later received information that this firing caused the death of "Zanga", whom he describes as a hotel manager. The description "*Gérant Hôtel*" also appears in the list of victims of 25-26 February 2011 compiled by Witness P-0436's victim collective, the CVQDY.
  
- g. Cissé Yaya: Witness P-0109 testified that on 25 February 2011, he found a person who had been burned in the area of the mosque. He knew this person as "Cissé", who was a guard at a nearby pharmacy. The name "Cissé Yaya" appears with the comment "*(brulé)*" in the list of victims of 25-26 February 2011 compiled by Witness P-0436's victim collective, the CVQDY. A UN report also lists him among 11 persons killed by militiamen during the attack of 25 February 2011.
  
- h. Mamadou Niakaté: Witness P-0459 saw the victim ("Niakaté Ahmed", a Malian coal seller) being attacked by a group of youths on 25 February 2011. He describes the perpetrators as overexcited youths (not simply as "*gens*", as asserted by Mr Gbagbo), who were apparently "morning looters". They beat him with anything they could get their hands on and struck him with a cudgel until he fell to the ground. While the crowd yelled "(i)t's an assailant", a man in a navy blue military uniform arrived and shot him in the head. According to the witness, once the crowd judged that he was dead, they started to yell that he should be burned. At this point, they started to lug away the body to a place out of view of the witness. The witness referred to this as the point at which "*...ils ont fini de tuer Ahmed...parce que, quand ils l'ont battu, l'état dans lequel moi je l'ai vu, je savais qu'il ne pouvait pas vivre*". The witness later learned that

the victim was in fact burned. Contrary to Mr Gbagbo's submission, these events were witnessed directly by Witness P-0459. The passage cited by Mr Gbagbo purporting to show that Witness P-0459 did not witness these events relates to what the person named Adama had seen at an earlier point just prior to the attack, when one of the attackers said "(y)ou, come here, here's one." It was clarified in questions put by the Prosecution that, after leaving the *grin* with Adama and leaving the witness's view for a time, the victim ran back towards the *grin* and into the witness's view once again with the crowd of youths in pursuit. Witness P-0438 also describes being informed by an eyewitness about the killing of the victim – Mamdou Niakaté – who was his cousin and friend, on 25 February 2011. He then attended the Saguidiba intersection, where he saw the victim's burned body next to a roadblock. Those manning the roadblock asked for the witness's identity card, and upon seeing his foreign identity card, said "*c'est vous qui êtes en train de tuer les gens.*" A UNOCI *suivi du cas* call centre report relates the killing of a "M. Ahmed, coal seller" by a group of people from "Yao Sei", who had accused him of being a rebel, and had burned him in the area of the "Saghidiba" intersection. The name "Amed Gnagate" also appears with the comment "*(brulé)*" in the list of victims of 25-26 February 2011 compiled by Witness P-0436's victim collective, the CVQDY. A UN report also lists him ("Niagate Mamadou") among 11 persons killed by militiamen during the attack of 25 February 2011. Finally, a report prepared by the *Conseil des Maliens* also refers to a Niakaté Mamadou who was killed by mercenaries and militiamen in Yopougon on 25 February 2011.



- i. Binate Hamed: The UNOCI call centre report of the morning of 28 February 2011 contains an entry for 18h41 of the evening before reporting that the neighbourhood of Yopougon Port-Bouët II had been attacked all day long, resulting in 10 deaths, including 28-year-old “BINATE HAMED”. The actors were listed as “CECOS ET MILICIENS”.
- j. “Ahmed”: Witness P-0442 named “Ahmed” as a person who died on 25 February 2011 as a result of the police firing into the crowd. While the witness did not explicitly state that he did not see the event himself, there is also no indication that his knowledge is based on hearsay, and the basis for his knowledge was not addressed in cross-examination.
- k. Bakayoko Salimata: Witness P-0436 was told by an eyewitness that at Lem on 25 February 2011, a projectile from a teargas canister fired by police injured the victim’s vertebral column, and that she fell down and suffocated from breathing in the tear gas. The name “Bakayoko Salimata” also appears in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. A UN report also lists her among 11 persons killed by militiamen during the attack of 25 February 2011.
- l. Modibo Kamara: Witness P-0438 testified about hearing of the death of Mamadou Niakaté’s “younger brother”, Modibo Kamara, on 25 February 2011. A UN report also lists him (“Modibo Camara”) among 11 persons killed by militiamen during the attack of 25 February 2011. A report prepared by the *Conseil des Maliens* gives the date of 26 February 2011 for the burning to death of a “Modibo Camara” by militiamen in front of the 16<sup>th</sup> arrondissement police

station in Yopougon. The name “Camara Modibo” also appears in the list of disappeared persons during the crisis, compiled by Witness P-0436’s victim collective, the CVQDY.

m. A 17-18 year-old burned alive after being tortured near the Wakouboué pharmacy: The UNOCI call centre report of the evening of 27 February 2011 contains an entry at 14h59 that day reporting the torture and burning alive of a 17-18 year old person near the Wakouboué pharmacy. The actors were listed as “militiamen-BAE”. A UNOCI call centre daily report of 27 February 2011 expanded on this description, stating that on that day, near the Wakouboué pharmacy, a 17-18 year old man was questioned by a group of 30 “Young Patriots”. It continued: “(t)he Young Patriots asked him to produce his IDs as he was not recognised as one of the district inhabitants... [They] started beating him up with the use of stones, belts and sticks... Meanwhile some members of the group spilt some fuel on a tire and put it around the neck of the young man before setting it on fire.”

n. Konaté Abdoulaye; and one unnamed person: The UNOCI call centre report of the morning of 28 February 2011 contains an entry for 06h51 that day reporting that:

“5 personnes ont été brûlés vifs depuis ce matin au Quartier Banco vers la voie du CHU de Yopougon. Selon lui, les auteurs sont des jeunes du quartier, précisément de l’ethnie Akié, qui opèrent à visage découverts. Ils vous arrêtent et vérifient si vous êtes de leurs camps ou pas. Ils découpent les victimes avec des machettes avant de mettre du feu sur les corps.”

- a. The actors are identified as “*Jeunes du Quartier*”. A call centre daily report of 28 February 2011 expanded on this description, stating that on that day, two young men working as *pousse-pousse* were “jumped into a little crowd of 30 Young Patriots who stopped them and attacked with machete.” It continued: “...after causing serious injuries to them with machetes and sticks, the Young Patriots took the corps and burnt them down on the fired tires. An eyewitness recognised among the Young Patriots who led the action, several young men from the Banco 2 district in Yopougon.” A UN *suivi du cas* call centre report gave further details of the same incident, adding that a BAE patrol arrived at the scene before the fire started burning and failed to intervene. It further noted that one of the victims had been identified as “[redacted] Abdoulaye”, a Malian national. A police BQI of 28 February 2011 also reports at 13h55 the burning alive of an individual identified as Konate Abdoulaye at Yopougon Banco II by “*jeunes patriotes qui l’ont pris pour un rebelle*”. A France 24 online article presents video images of two persons being burned in the presence of a marked BAE vehicle, reportedly at Yopougon on 28 February 2011.
- b. Bamba Abdoulaye: The name “Bamba Abdoulaye” appears in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. A UN report also lists him among 11 persons killed by militiamen during the attack of 25 February 2011.
- c. Tiene Yaya: The name “Tiene Yaya” appears with the comment “(*brulé*)” in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. A UN report also lists him among 11 persons killed by militiamen during the attack of 25 February 2011.

- d. Dosso Lama: The name “Dosso Lama” appears with the comment “(brulé)” in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. While no witness saw the perpetrator/s, it can be inferred from the pattern of pro-Gbagbo youth and militias burning people in Yopougon during this time period, that the perpetrators were pro-Gbagbo youth and and/or militia.
- e. Diomande Maetie: The name “Diomande Maetie” appears in the list of victims of 25-26 February 2011 compiled by Witness P-0436’s victim collective, the CVQDY. It can be inferred that the victim was killed by pro-Gbagbo forces, given that he is listed as a victim of 25-26 February 2011 in Doukouré.

(b) *Count 3: Other inhumane acts or attempted murder as a crime against humanity*

- (i) Pro-Gbagbo forces attempted to kill one or more persons, or in the alternative, inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act, with awareness of the factual circumstances establishing the character of the act

624. The evidence, detailed below, shows that pro-Gbagbo forces consisting of youth, militias and the police attempted to kill one or more persons during the 25-28 February 2011 incident. These are victims 1-2, 5-7, 9-13 listed below. In the alternative, the evidence shows that these pro-Gbagbo forces inflicted great suffering or serious injury upon all 13 persons listed below during the 25-28 February 2011 incident.

625. For those victims for which there is no direct evidence of injury, this is nevertheless the only reasonable inference that can be drawn from the available evidence. Where the specific identity of the victim is not proved, the Prosecution

has nevertheless specified, to the extent possible, the location, date, means, perpetrator and any other details of the inhumane act.

626. The perpetrators were aware of the factual circumstances establishing the nature and gravity of the act. The circumstances are such that this awareness is the only reasonable inference to be taken from the evidence as summarised directly below.

a. Witness P-0442: Witness P-0442 testified that the police fired on the crowd with tear gas, live bullets and grenades on the paved road on 25 February 2011. He said that, while the police were firing, he was hit and fell to the ground with a broken foot. Traces also struck his neck. The witness did not see what hit him, but was told by others that it was a grenade. Supporting documentation was submitted through the witness, in the form of a medical certificate and seven photos of his injuries. [REDACTED]

Finally, the name [REDACTED] also appears in a list of persons injured during the crisis compiled by Witness P-0436's victim collective, the CVQDY.

b. “André”: Witness P-0442 named “André” as a person whose arms were injured on 25 February 2011 as a result of the police firing into

the crowd. Contrary to Mr Gbagbo's submission, there is nothing to suggest that Witness P-0442 did not witness this injury directly, responding as he did to the question "Is there anyone else you remember by name *who you saw* being hurt?" (Emphasis added).

- c. Witness P-0441: Witness P-0441 testified that a member of Maguy le Tocard's group – either Maguy le Tocard himself or "Agbolo" – [REDACTED] at the Lem mosque on 25 February 2011.
- d. "Le mendiant": Witness P-0441 testified that a member of Maguy le Tocard's group [REDACTED] [REDACTED] at the Lem mosque on 25 February 2011.
- e. Soumahoro Sékou: Witness P-0436 saw the police on 25 February 2011 firing bullets down the alleys of Doukouré. He later received information that this firing caused injury to the victim's arm. Witness P-0109, who was also in the crowd, said that a "Sékou" was injured to the left arm. Contrary to Mr Gbagbo's submission, the witness testified that he saw Sékou being injured. The name "Soumahoro Sekou" also appears in a list of persons injured during the crisis compiled by Witness P-0436's victim collective, the CVQDY.
- f. Soumahoro Youssouf: Witness P-0436 saw the police on 25 February 2011 firing bullets down the alleys of Doukouré. He later received information that this firing caused injury to the victim's tibia. The name "Soumahoro Youssouf" also appears in a list of persons injured during the crisis compiled by Witness P-0436's victim collective, the CVQDY.

- g. Sanao Siata: Witness P-0436 saw the police on 25 February 2011 firing bullets down the alleys of Doukouré. He later received information that this firing resulted in a bullet going through the victim's thorax, *via* his back, and coming out the front.
- h. "Chemokogoro": Witness P-0438 said that he saw the BAE launching teargas grenades at the crowd on 25 February 2011 in Doukouré, injuring a man called "Chemokogoro" to the leg.
- i. Witness P-0109: Witness P-0109 said that armed "*miliciens*" arrived in Doukouré on 25 February 2011 and threw a grenade, fragments of which hit him and injured his left hand.
- j. Bamba Falikou: The UNOCI call centre report of the evening of 27 February 2011 contains an entry at 10h13 that morning reporting that the police were throwing grenades into the courtyards of houses in Port Bouët II, in the course of which the victim was injured.
- k. Bamba Vassiriki: The UNOCI call centre report of the evening of 27 February 2011 contains an entry at 10h13 that morning reporting that the police shot and injured two persons including the victim in Port Bouët II.
- l. "Mamadou": The UNOCI call centre report of the evening of 27 February 2011 contains an entry at 14h45 that afternoon reporting that the FDS had shot and killed a "Mamadou" in Port Bouët II. The Prosecution notes that while this victim was killed and could be included in the count for murder, the Prosecution nevertheless includes this crime as an inhumane act – consistent with its Trial Brief – for the purpose of the present submission.

m. "Idrissa": The UNOCI call centre report of the evening of 27 February 2011 contains an entry at 14h45 that afternoon reporting that the FDS had shot and killed an "Idrissa" in Port Bouët II. The Prosecution notes that while this victim was killed and could be included in the count for murder, the Prosecution nevertheless includes this crime as an inhumane act – consistent with its Trial Brief – for the purpose of the present submission.

(ii) The acts were of a similar character to any other referred to in article 7(1) of the Statute

627. The acts described above consist of the firing of bullets and grenades at civilians, as well as [REDACTED] These acts are therefore of a similar gravity to murder and rape, which are other acts referred to in article 7(1) of the Statute.

(c) *Count 4: Persecution as a crime against humanity*

(i) Pro-Gbagbo forces severely deprived, contrary to international law one or more persons of fundamental rights

628. The 19 acts of murder and 13 acts of other inhumane acts described above at counts 1 and 3, respectively, constitute severe deprivations of fundamental rights.

(ii) The conduct was committed in connection with acts referred to in article 7(1) of the Statute

629. The acts relied upon to make out the crime of persecution are one and the same as the acts of murder and inhumane acts, also charged under articles 7 (1)(a) and (k) of the Statute.



- (iii) Discriminatory intent: pro-Gbagbo forces targeted these persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such, based on political, national, ethnic, religious or other grounds

630. The evidence shows that the crime of persecution was committed through the targeting of the victims of counts 1 and 3 on political, national, ethnic, or religious grounds. Specifically, the victims of the 25-28 February 2011 incident were targeted as perceived Ouattara supporters, on the basis that they were actual or perceived political opposition activists and sympathisers, or civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries.

631. This targeting is evidenced by:

- i. The pro-Gbagbo forces' selection on political, national and/or ethnic grounds of the Dioula/Muslim-majority neighbourhoods of Lem and Doukouré and their inhabitants for attack. These districts were inhabited mainly by Dioula civilians from northern Côte d'Ivoire and neighbouring West African countries, and were perceived as pro-Ouattara.
- ii. Specifically, the pro-Gbagbo forces' selection on religious grounds of the Lem mosque, and in particular its watchman and [REDACTED] (murder victim ii and [REDACTED] above), for attack. The attackers burned copies of the Koran and prayer rugs.
- iii. The pro-Gbagbo forces' selection on national grounds of Malian nationals for attack (murder victims viii, xii, xviii, above).
- iv. The words or actions of the pro-Gbagbo forces during the attack from which discriminatory victim selection based on political, national and/or ethnic grounds is apparent. During the attack on 25 February 2011, the pro-

Gbagbo youth made such utterances as “Today we are going to kill all the Dioulas”, “*A chacun son Dioula*”, and that they would kill “*les Mossi*”. Also during the incident, pro-Gbagbo youth and militiamen mounted roadblocks at which they checked the identity cards of civilians to identify “*assaillants*”, a term understood to mean Dioula, “Mossi” or Northerners, who were presumed Ouattara supporters. Witness P-0440’s report noted 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”. Murder victim viii was attacked while the crowd yelled “It’s an assailant”. Upon seeing his burned body (murder victim viii) near a roadblock, Witness P-0438 produced his foreign identification card to pro-Gbagbo youths and was told “*c’est vous qui êtes en train de tuer les gens.*” According to a UNOCI call centre report of the morning of 28 February 2011, youths “stop you to see if you are from their side or not”, and cut their victims with machetes and set their bodies alight. Murder victim ii was killed by Maguy le Tocard’s group after they found a *gris-gris* – used by those manning the roadblocks to identify “rebels” – in his pocket. Murder victim xiii was killed at a roadblock near the Wakouboué pharmacy by pro-Gbagbo youths who asked him for his identification card and did not recognise him as coming from the neighbourhood. Murder victim xiv was burned alive by Young Patriots who took him to be a “rebel”. As argued in Section V.F.3(d), it is the Prosecution’s case that these roadblocks were erected pursuant to Mr Blé Goudé’s order to those assembled at Bar Le Baron to “check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood.”

(d) *Nexus to the widespread or systematic attack directed against a civilian population*

- (i) The acts of killing and other inhumane acts were committed as part of a widespread or systematic attack directed against a civilian population

632. That the pro-Gbagbo forces committed the killings and inhumane acts in Yopougon between 25 and 28 February 2011 as part of the widespread or systematic attack against the civilian population is evidenced by the following common features:

- a. Common temporal and geographic scope, in that the incident occurred in the aftermath of the Presidential election in Abidjan;
- b. Common characteristics, in that the crimes committed as part of the 25-28 February 2011 incident were crimes of violence against a civilian population;
- c. Common aims, in that the crimes were intended to implement the Common Plan and were instigated by Mr Blé Goudé, a prominent member of the Inner Circle;
- d. Common targets, in that the targeted victims were civilians perceived as Ouattara supporters; and
- e. Common perpetrators, in that the attackers were members of the FDS (police, BAE, *Garde Républicaine*), as well as pro-Gbagbo youths and militias.

- (ii) The pro-Gbagbo forces intended or knew that the conduct was part of a widespread or systematic attack directed against a civilian population

633. The pro-Gbagbo forces knew that the killings and inhumane acts they committed in Yopougon between 25 and 28 February 2011 were part of the

widespread or systematic attack against the civilian population, and intended to further this attack. The perpetrators must have known that:

- a. They committed the crimes in Abidjan in the aftermath of the Presidential elections;
- b. Their crimes were of a violent nature;
- c. They committed the crimes in order to implement the Common Plan, and – in the case of the pro-Gbagbo youth and militias – upon the instigation of Mr Blé Goudé;
- d. The target group of the attack was the population of Lem and Doukouré, and – in the case of the pro-Gbagbo youth and militias – persons understood to be “*assaillants*” or “rebels”; and
- e. They themselves were members of the FDS, or pro-Gbagbo youth or militia groups.

## 2. Defence arguments

634. In this part, the Prosecution responds primarily to the arguments made by Mr Gbagbo contesting the sufficiency of evidence of murders and inhumane acts in the 25-28 February 2011 incident. It also deals, first, with two discrete arguments made by both Mr Gbagbo and Mr Blé Goudé about the pre-existing tension in Yopougon and the role of police. The Prosecution’s substantial response to the arguments raised by Mr Blé Goudé about the 25-28 February 2011 incident are included in Section V.F.

- (a) *Mr Gbagbo and Mr Blé Goudé's argument on the underlying and escalating tension between opposing groups of inhabitants in Yopougon in the lead-up to 25 February 2011 (Gbagbo Motion, Annex 3, paras. 547-549 and 705-707; Blé Goudé Motion, paras.19, 587)*

635. Mr Gbagbo emphasises the context of ongoing clashes between the youths of Yao Séhi and Doukouré, and the assertions made by some witnesses that the Doukouré side was the stronger of the two during the clash on 25 February. It also refers to instances of petty criminality, such as phone theft, and concludes that many of the “youths” were actually marginalised persons or thugs looking for a fight.

636. Mr Blé Goudé similarly argues that the incident was the result of escalating tensions between two neighbourhoods that pre-dated his speech, and that police intervention was necessary because the Doukouré side was “beating” the Yao Séhi side. In arguing that the incident was the result of this escalating tension, it claims that the incident cannot be linked to a policy to target pro-Ouattara or perceived pro-Ouattara civilians.

637. The Prosecution submits in response that:

- i. The evidence on the existence of petty criminality is unclear. For example, Witness P-0554 denied that there was a problem of petty criminality in Doukouré during the post-electoral crisis.
- ii. Despite the testimony from those present that the Doukouré side was the stronger of the two during the stone-throwing clash, the pro-Gbagbo Yao Séhi side were the initiators. Witness P-0442 described the “pro-Gbagbos” who had attended Mr Blé Goudé’s meeting at Bar Le Baron coming down the *Boulevard Principal* and throwing stones at the Doukouré residents. Witness P-0436 described a crowd of people who first threw stones at a sign with the effigy of Mr Alassane Ouattara before throwing stones at

people in the Doukouré neighbourhood; the inhabitants of Doukouré then responded by throwing stones at the crowd. It is also relevant that the broader Yopougon *commune* was a traditional pro-Gbagbo stronghold, meaning that the Doukouré inhabitants were the outnumbered minority in the broader *commune*.

- iii. In any case, and more pertinently, Mr Gbagbo and Mr Blé Goudé have not demonstrated how questions of petty criminality and the relative strength of the Doukouré side during the stone-throwing clash have any relevance to the ensuing commission of the crimes of murder and inhumane acts committed by the police and the pro-Gbagbo youth and militias against the inhabitants of Doukouré. The police action in firing live bullets and grenades at the residents of Doukouré goes beyond any legitimate law enforcement response. As to the actions of pro-Gbagbo youth and militias in attacking the Lem mosque and burning perceived Ouattara supporters at roadblocks over the coming days, there is nothing in evidence to indicate that this was motivated by petty criminality or stone-throwing. Even if it was, as a matter of proportionality these crimes should not be construed as legitimate self-defence.
- iv. The background of tension between the two neighbourhoods of Yao Séhi and Doukouré does not vitiate the link between the incident and the broader widespread and systematic attack. Nor – for the reasons expanded upon below at Sections V.F.3(b)-(e) – does it detract from Mr Blé Goudé’s responsibility for events occurring in the immediate aftermath of his speech at Bar Le Baron. If anything, the context of tension between the two neighbourhoods meant it was foreseeable that inflammatory words stigmatising “foreigners” – such as Mr Blé Goudé’s – would lead to violence against the population of Doukouré.

638. Additionally, the Prosecution responds to two discrete factual issues raised by Mr Gbagbo and Mr Blé Goudé.

- v. In relation to identification of the attackers of the Doukouré neighbourhood, Mr Blé Goudé asserts that “Witness P-0109 identified the people who attacked the Doukouré neighbourhood as people from the Yao Sehi neighbourhood but did not identify them as being pro-Gbagbo youth.” The Prosecution relies on Witness P-0442’s evidence, cited above, identifying the attackers as the “pro-Gbagbos” who had attended Mr Blé Goudé’s meeting at Bar Le Baron coming down the Boulevard Principal and throwing stones at the Doukouré residents.
- vi. In relation to the actions of the Doukouré residents, Mr Gbagbo states that “P-0404 et P-0554 ont indiqué que les jeunes du quartier Doukouré avaient érigé des barrages”. The Prosecution submits that this submission misapprehends the chronology of events apparent from the evidence. Read in its context, the witness testimony shows that the Doukouré youth mounted roadblocks not prior to the events of 25 February 2011, but in response to these events. Witness P-0436 made it clear that the residents of Doukouré only established roadblocks after the events of 25 February, i.e. from 26 February onwards. Witness P-0404 similarly, in the same passage as cited by Mr Gbagbo, agreed in cross-examination that the roadblocks were mounted at the entry points to Doukouré “pour sécuriser le quartier”, “après l’incident de la mosquée”. Finally, Witness P-0554 – also cited by Mr Gbagbo – spoke about barrages being mounted by the youth of Doukouré, but without giving any timeframe.

(b) *Mr Gbagbo's argument that the police had no offensive role and tried to calm the situation (Gbagbo Motion, Annex 3, paras. 706-707) and Mr Blé Goudé's submission about police intervention (Blé Goudé Motion, para. 589)*

639. Mr Gbagbo asserts that the police were weak in numbers, and therefore had no offensive role in the events of 25 February 2011. He further asserts that they took no side between the two groups of youths and tried to calm the situation.

640. Mr Blé Goudé attempts to cast doubt on the actions of police, by pointing to the testimony of Witness P-0109 that there was no intervention by the 16<sup>th</sup> district police station.

641. The Prosecution submits in response that:

- i. Mr Gbagbo's submission entirely ignores all evidence of police involvement, as detailed in the Prosecution's Trial brief, upon which the Prosecution continues to rely.
- ii. In relation to Witness P-0109's testimony as to there being no intervention by police, this contradiction with the accounts of other witnesses (namely, Witnesses P-0433, P-0436 and P-0442) does not mean that those witnesses cannot be relied upon. The inconsistency is in the identification of perpetrators, as Witness P-0109 described the persons firing bullets and grenades as being "*miliciens*" dressed partly in military uniform or otherwise in civilian clothing. Witness P-0109 may simply be mistaken in his identification of the perpetrators as "*miliciens*" rather than police. It is notable that Witness P-0442 recognised one policeman on the day, "Seri", having seen him on previous occasions leaving the 16<sup>th</sup> arrondissement police station. In any case, both groups form part of the pro-Gbagbo forces, so the discrepancy has no relevance.



- (c) *Mr Gbagbo's arguments contesting the sufficiency of evidence of 19 acts of murder and 13 instances of inhumane acts (Gbagbo Motion, Annex 4, paras. 256-258; Annex 6, paras. 78-144)*

642. Mr Gbagbo challenges the sufficiency of the evidence relied upon by the Prosecution to prove the 19 acts of murder and 13 instances of inhumane acts committed by pro-Gbagbo forces in Yopougon between 25 and 28 February 2011.

643. The Prosecution firstly refers the Chamber to its analysis of the evidence in relation to each murder, set out above under Section IV.D.1(a)(i). Some discrete evidential issues raised by Mr Gbagbo are addressed in this analysis. The Prosecution further provides its response directly below to certain recurring arguments made by Mr Gbagbo in his approach to the evidence of these murders and inhumane acts.

(i) Approaching pieces of evidence in isolation

644. In relation to murder victims i, iii, viii, and xiv, as well as inhumane act victim v, Mr Gbagbo approaches each individual source of evidence in isolation, rather than approaching all sources in their totality. By way of example, in analysing the evidence on murder victim i, Mr Gbagbo emphasises that Witness P-0442 said that he did not know how the victim was hit. However, this information is provided by other witnesses – namely Witnesses P-0109 and P-0436 – who testified that the victim was hit with a grenade. The totality of the evidence allows the Chamber to make the finding that the victim was hit by a grenade, whether or not one particular witness saw the grenade.

645. Adopting an isolated approach to evidence would amount to a requirement that each individual witness be able to testify about each and every relevant material facts in order to establish the commission of a crime. This is certainly not the case. The Prosecution refers the Chamber to Section II on the applicable principle to the assessment of the evidence.

(ii) Discounting direct witness evidence for lack of direct corroboration

646. In relation to murder victims ii, iii, and iv, as well as inhumane act victims iii, iv, vi, vii, viii, and ix, Mr Gbagbo appears to suggest that the evidence of one direct witness to the facts is insufficient to establish the commission of a crime. By way of example, in analysing the evidence on murder victim ii, Mr Gbagbo states that Witness P-0441 is “the only witness to the incident”, and without challenging that witness’s evidence. The Prosecution notes at the outset that Witness P-0441 is not the only witness to the incident, although he is the only direct witness to the act of killing.

647. More importantly, there is no basis for discounting a direct source of evidence for a given fact simply because it is the sole source of direct evidence for that fact (See section II of this response). There is no reason why the Chamber cannot accept a sole piece of direct evidence, for lack of direct corroboration i) at all; and ii) especially where there is also indirect evidence of a corroborative nature. Mr Gbagbo has offered no basis for requiring that a direct source of evidence only be accepted when corroborated by an additional direct source of evidence.

(iii) Discounting all indirect evidence

648. In relation to murder victims x, iii, xi, v, and vi, xv, xvi-xviii, xii, xiii, ix, and xiv, as well as inhumane act victims v, vi and vii, and x to xiii, Mr Gbagbo appears to suggest that indirect or “hearsay” cannot be relied upon, whether i) alone; or ii) to corroborate direct evidence. By way of example of hearsay evidence alone, in relation to murder victim xi, Mr Gbagbo notes that the only witness testimony as to the death was based on hearsay from a relative of the victim, and that the only other evidence is the CVQDY list and the UN *rapport sur les violations*. By way of example of hearsay evidence as corroboration, in relation to murder victim iii, Mr Gbagbo notes that Witness P-0436 was not a direct witness of the events, apparently because he did not see the victim die. However,

Witness P-0436's hearsay evidence as to death corroborates the direct evidence of Witness P-0433, who saw the shot victim falling down and dying.

649. There is no basis for discounting an indirect source of evidence i) where there is no direct evidence; or ii) especially where it corroborates a direct source of evidence. There is no reason why the Chamber cannot accept indirect evidence, to corroborate direct evidence, or even in the absence of direct evidence. Where only hearsay evidence is available to prove a fact, the Chamber may nevertheless accept the evidence if it deems it in all the circumstances to be sufficiently reliable (see Section II of this response on the assessment of hearsay evidence).

a. Hearsay evidence as corroboration for direct evidence

650. In relation to the following crimes, the hearsay evidence corroborates the direct evidence.

- i. Murder victim i: The CVQDY list corroborates the direct evidence of Witnesses P-0442, P-0436 and P-0109;
- ii. Murder victim ii: The CVQDY list and the UN *rapport sur les violations* corroborate the direct evidence of Witness P-0441;
- iii. Murder victim iv: The CVQDY list and the UN *rapport sur les violations* corroborate the direct evidence of Witness P-0436;
- iv. Murder victim vii: The CVQDY list corroborates the direct evidence of Witness P-0109;
- v. Murder victim viii: The CVQDY list, UN *rapport sur les violations*, a UN *suivi du cas* call centre report and the *Conseil des Maliens* report corroborate the direct evidence of Witnesses P-0459 and P-0438;
- vi. Inhumane Act victim i: The CVQDY list corroborates the direct evidence of Witnesses P-0442 and P-0436;

- vii. Inhumane Act victim v: The CVQDY list corroborates the direct evidence of Witness P-0109.

- b. Hearsay evidence only that can still be accepted

651. In relation to the following crimes, for which only hearsay evidence is available, this evidence can nevertheless be accepted by the Chamber for the reasons outlined. As to the reliability of specific categories of documents, the Prosecution refers to its submissions on the UN reports at Section II.B.4, and the CVQDY list at Section IV.D.2(d) The Prosecution further reiterates that the reliability of the UN reports is demonstrated by the many instances in which they are consistent with direct witness evidence.

- i. Murder victim xi: Witness P-0436's information on the victim's death provides a detailed narrative of the death, and comes from an identified source, being the victim's mother-in-law. The fact of the victim's death is corroborated by the appearance of the same full name in both the CVQDY list and the UN *rapport sur les violations*.
- ii. Murder victims v and vi: Witness P-0436 gives direct evidence about the manner of death, in that he saw the police firing bullets down the alleys of Doukouré. The information he gathered simply provides the identities of the resulting victims.
- iii. Murder victim xv: The victim's name appears in both the CVQDY list and UN *rapport sur les violations*, which provides a measure of corroboration.
- iv. Murder victims xvi, xvii and xviii: The victims' names appear in the CVQDY, which can be relied upon for the reasons set out at Section IV.D.
- v. Murder victim xii: Witness P-0438's information on the victim's death is corroborated by the appearance of the same full name (albeit with a

variation in spelling between “K” and “C”) in both the UN *rapport sur les violations* and the *Conseil des Maliens* report.

- vi. Murder victim xiii: The victim’s death is described in UN call centre reports, which can be relied upon for the reasons set at Section II.B.4.
  - vii. Murder victim ix: The victim’s death is described in a UN call centre report, which can be relied upon for the reasons set out at Section II.B.4.
  - viii. Murder victims xviii: The victims’ deaths are described in UN call centre reports, the details of which are corroborated in a police BQI and in the video published by France24 online. The BQI provides the same name of one of the victims, and the same location at Banco II. The video shows the presence of a marked BAE video, as described in one of the UN call centre reports (*suivi du cas*).
  - ix. Inhumane Act victim vi: Witness P-0436 gives direct evidence about the manner of injury, in that he saw the police firing bullets down the alleys of Doukouré. The information he gathered simply provides the identity of the resulting victim and type of injury. The fact of the victim’s injury is corroborated by the appearance of the same full name in the CVQDY list.
  - x. Inhumane Act victim vii: Witness P-0436 gives direct evidence about the manner of injury, in that he saw the police firing bullets down the alleys of Doukouré. The information he gathered simply provides the identity of the resulting victim and the entry and exit points of the bullet.
  - xi. Inhumane Act victims x-xiii: The victims’ deaths are described in a UN call centre report, which can be relied upon for the reasons set out at Section II.B.4.
- (iv) Requiring the full identity of the victim

652. In relation to murder victims x, iii, and vi, as well as inhumane act victims ii, iv, v, and viii, Mr Gbagbo notes that the victim's full name is not known. It submits in relation to inhumane act victim v that "a first name or surname is not sufficient to identify a person."

653. As set out above in Section IV.B.1, there is no requirement to establish the specific identity of the victim. The Prosecution has nevertheless taken the approach that there should be sufficient details on the victim and/or the circumstances of the crime to distinguish him or her from other victims and to avoid a double counting of victims. This means that, in practice, normally some form of name is given for each victim, even though there is no such requirement.

(v) Requiring the exact date of death

654. In relation to murder victims xv, xvi, xvii and xviii, and xii, Mr Gbagbo notes that the date of death is not particularised as between 25 and 26 February 2011, or that there are contradictory indications as to the two possible dates.

655. As set out above in Section IV.B.1, the Prosecution is only expected to specify the "approximate date". There is therefore no requirement for the Prosecution to specify the exact date, and the nomination of alternative dates – one day apart from each other – is sufficient. The Prosecution recalls that Mr Blé Goudé is charged for this incident for acts committed between 25-28 February. As concerns Mr Gbagbo, the exact date of death is also immaterial. In terms of the contextual elements of crimes against humanity, the deaths are evidence of article 7(1) acts committed against perceived Ouattara supporters in Abidjan during the relevant time period showing that there was a course of conduct amounting to an attack.

*(d) Defence arguments regarding the CVQDY List CIV-OTP-0058-0320-R02 (Gbagbo Motion, Annex 4, paras. 121-148)*

(i) Mr Gbagbo's submission on the political affiliation of the CVQDY founders (Gbagbo Motion, Annex 4, paras. 124-126,138)

656. Mr Gbagbo appears to argue that the political affiliation of CVQDY founders Witness P-0436 and Brahim Bakayoko, as well as other associates, renders the information gathered by the collective unreliable. It argues that the Prosecution has “put itself in the hands of a collective which clearly appears to be a tool for the RDR.” However, there is no evidence on record that the political affiliation of the members of the CVQDY had an impact on the compilation of the list. In fact, Witness P-0436 stated that the CVQDY is not political and identified all victims regardless of their political affiliation. He added that the CVQDY also lists persons with other political affiliations. In addition, Witness P-0436 stated that as the youth leader, he passes messages on to the youth from the Imam or Okou Traoré, who is the President of the *comité de gestion de la mosquée*. Contrary to what Mr Gbagbo alleges, Witness P-0436 did not mention that he was passing on political messages to the youth.

(ii) Mr Gbagbo’s submission on the timing of the official registration of the CVQDY (Gbagbo Motion, Anne. 4, paras. 127-129)

657. Mr Gbagbo seems to argue that the CVQDY is suspicious since it was created after the confirmation of charges hearing of 2013. However, Witnesses P-0433 and P-0436 stated that the activities of the CVQDY started informally after the 25 February incident in 2011. Witness P-0433 asked Witness P-0436 and Ibrahima Bakayoko to draft lists of victims, as soon as there were people killed, after 25 and 26 February 2011. Witness P-0433 added that the lists were actually created after 11 and 12 April 2011. The lists included the dead, wounded and rape victims. He was corroborated by Witness P-0436, who testified that he started gathering information of dead and wounded people for the lists the day after the 25 February 2011 incident. The CVQDY was created in November 2013.

(iii) Mr Gbagbo’s submission on the intermediary roles of Witness P-0436 and Brahim Bakayoko in presenting the victim/witnesses to the OTP, the VPRS and the LRV (Gbagbo Motion, Annex 4, paras. 130-138)

658. Mr Gbagbo argues that the intermediary roles of Witness P-0436 and Brahim Bakayoko in presenting the victims/witnesses to the OTP, the VPRS and the LRV, are suspicious. However, there is no evidence on record that their role had any impact whatsoever on the testimonies of the Prosecution witnesses that came to testify.

(iv) Mr Gbagbo's argument that there was no methodology in the compilation of the list (Gbagbo Motion, Annex 4, paras. 139-144)

659. Mr Gbagbo argues that the lists of victims of the CVQDY were compiled on the basis of anonymous hearsay evidence or were fabricated. However, Witness P-0436 explained the methodology used to compile the list. Victims were asked about their identity, harm suffered, the date on which the harm occurred and their accounts. They also took into account medical documents for wounded people or death certificates for the deceased. Witness P-0436 further stated that if a victim gave the name of someone who was a witness, they would either approach or call the person to check on the veracity of the victim's account. In addition, the lists corroborate the testimonies of Prosecution witnesses as well as other evidence on record, which indicate that they are reliable.

(e) *Mr Gbagbo's argument that the list contains no information on the circumstances of death (Gbagbo Motion, Annex 4, paras. 145-148)*

660. Mr Gbagbo argues that there is no evidence as to the date or circumstances of death of the victims. However, there is evidence on the record, which establishes the circumstances of deaths of the victims. With regards to the dates of the deaths, the list on page 0321 is titled "*Fiche d'identification des victimes du 25-26/02/2011*" and compiles the deceased victim of the 25 February 2011 incident.



## **E. 3 March 2011: the FDS Murder Seven Women at Peaceful Protest in Abobo**

### **1. Prosecution Case**

661. On 3 March 2011, members of an FDS convoy patrolling Abobo shot and killed seven women, and injured at least six other people, at a peaceful anti-Gbagbo protest. As described below, the overwhelming testimonial, video, photographic, and forensic evidence proves that the FDS targeted these civilians on political, national, ethnic, or religious grounds. Indeed, this attack on civilians came within a week of Mr Gbagbo's explicit order to FDS Generals not to cede Abobo, and to do whatever it takes to keep Abobo. Mr Gbagbo's continuous refusal to resign in the face of mounting domestic and international pressure, including in a speech on the day preceding the Women's march, also show his intention to stay in power at this time.

662. Instead of conducting a good faith investigation or punishing the perpetrators, the Gbagbo regime publicly denied responsibility for the murders one day later, in a *communiqué* approved by the Minister of Defence and broadcast on RTI, claiming instead that the incident was a set-up to discredit the Gbagbo regime. This bold denial occurred despite that Mr Gbagbo and his Inner Circle had evidence implicating the FDS in the incident. As described below, no substantive investigation materialised – the Gbagbo government had no intention of conducting a good faith investigation, and instead tried to capitalise on the incident for political gain by turning the tables and painting Mr Gbagbo as the victim of a conspiracy.

(a) *Murder*

663. On 3 March 2011, members of an FDS convoy murdered seven women at a peaceful anti-Gbagbo women's protest in Abobo.

(i) Pro-Gbagbo forces killed one or more persons, intentionally or with awareness as to death

664. The overwhelming evidence shows that at around 10h00, a convoy of five FDS vehicles left Camp Commando for Camp Agban, and fired upon a peaceful anti-Gbagbo women's demonstration near the Banco roundabout. The FDS convoy consisted of five vehicles, led by a BTR-80 of Mr Gbagbo's *Garde Républicaine* and shot the protestors with a 14.5mm gun and AK-47s in an unprovoked attack.

665. Videos of the incident corroborate the eyewitness and victim accounts that the FDS fired a 14.5mm gun and AK-47s into the unarmed crowd. [REDACTED]

[REDACTED] An expert in forensic image confirmed that nobody had tampered with this video file, and produced an enhanced stabilised version showing more clearly a cloud of smoke exiting from the cannon of the BTR-80, as well as the words *Police Nationale* on the side of the Police vehicle. As described below, a copy of this video was shown to six of the seven victims' families – all of whom identified the bodies of their murdered relatives and testified about their continued loss and suffering. Expert analysis of the audio also confirms that the BTR-80 fired first when its cannon was pointed horizontally into the crowd of protestors – no other shots can be heard firing before the BTR-80.

666. DNA analysis of samples taken from the bodies exhumed from a mass grave in Abobo against samples from blood relatives of the murder victims confirmed the identification for the bodies of three of these seven women. Forensic evidence, including autopsies of these bodies by an expert in forensic pathology, confirmed their cause of deaths as by gunshot.

667.

[REDACTED]


The videos, eyewitness accounts, and medical evidence, however, all disprove this account and corroborate that the FDS fired a 14.5mm gun and AK-47s directly into the civilians in the crowd. The allegation that someone fired shots at the tank is based solely on indirect evidence of one witness and completely unsupported by the videos of the incident and the accounts of other eyewitnesses.

668. The following detailed analysis of evidence pertaining to each murder victim shows that eyewitness testimony, video evidence, DNA analysis, and forensic evidence all corroborate the FDS killing of seven women: Nachamy Bamba, Ouattara Gnon Rokia, Moyamou Koné, Fatoumata Coulibaly, Malon Sylla, Adjara Touré, and Amy Coulibaly.

a. Moyamou Koné

669. Moyamou Kone's mother, Witness P-0582, testified that her daughter told her on the morning of the demonstration that she would attend, and she cautioned her daughter not to attend because Mr Gbagbo's men had a habit of firing on people without mercy. Witness P-0582 nonetheless ended up at the location of the march and saw her daughter with a group of women that were protesting, dancing, playing drums, and cheering their support of Alassane Ouattara. Witness P-0582 did not see a *char*, but was told one was coming, so she left the scene and shortly thereafter heard a loud noise that made the ground shake, then people running and screaming "*Des gens ont été tués! Des gens ont été tués!*"

Witness P-0582's son told her that her daughter had been hit in the neck and brought to the General Hospital in Abobo. Upon questioning by the Presiding Judge, Witness P-0582 clarified she saw her daughter's body at the hospital, which was consistent with her prior recorded statement (notwithstanding the Gbagbo Defence team's misleading statement to the contrary). Witness P-0105 was also at the scene and saw Moyamou's sister Kotoum, who told Witness P-0105 that Moyamou had been killed.

670. Witness P-0582 identified her daughter, Moyamou Kone's, body on  video and several screenshots of the incident.

671. Expert reports and testimony confirmed a DNA match between the sample retrieved from Moyamou Kone's body in mass grave in the Abobo cemetery and the sample taken from her mother, Witness P-0582.

672. An expert in forensic pathology's testimony and autopsy report further confirmed that Moyamou Kone's cause of death was a gunshot injury on her right shoulder, and described a fracturing to her face that could have been caused by a gunshot injury, but due to the missing bones it was not possible to ascertain what caused the facial injury with a degree of scientific certainty.

b. Malon Sylla

673. On the morning of 3 March 2011, Malon Sylla's brother, Witness P-0580 left the house around 08h00-09h00 to meet some friends. He saw Malon Sylla close to Abobo's Town Hall as she was returning from the market and carrying a placard that said "*Gbagbo criminel*". Witness P-0580 overheard his sister telling a man that she would go home before returning to take part in the march. This was the last time Witness P-0580 saw her before the FDS fatally shot her.

674. After seeing his sister, Witness P-0580 met a friend who lived close to the Banco roundabout. While walking along a small road running parallel to the main route from Abobo station's roundabout toward the Banco roundabout,

Witness P-0580 saw women demonstrating carrying placards. They shouted “*ADO solution*” and “*Gbagbo criminel*”. Witness P-0580 did not see any armed men at any point that morning.

675. When Witness P-0580 was next to the “*Mobile*” stations he saw a “*char*” and a “*cantère*” vehicle pass by, and he also identified these on [REDACTED] video and screenshot thereof. He saw three or four armed FDS with AK-47s in the “*cantère*”. Both vehicles were heading in the direction of Banco roundabout where the women were protesting. Witness P-0580 then heard shots similar to those of AK-47s and a loud noise from the direction of these vehicles. He clarified that the shots were fired successively and lasted for approximately one to two minutes. After the shooting Witness P-0580 fled and hid for a few moments. He then came across his mother’s cousin who told him “[*laisse pour toi à Dieu*”]. Witness P-0580 later realised she had said that because Malon Sylla was hit.

676. Witness P-0580 then went to the crime-scene and saw bodies lying on the road. He found his sister lying on the ground, covered in blood and breathing rapidly. He then stopped a taxi to take Malon Sylla to the hospital. A man helped Witness P-0580 bring his sister to Abobo hospital and on the way they also came across and picked up the wife of Witness P-0580’s cousin.

677. Witness P-0580 saw that his sister was injured on her left shoulder, an injury that is corroborated by the forensic examination of her body and her autopsy report, as well as medical records obtained from the hospital that are contemporaneous with her treatment there and indicate that she died from a gunshot wound and that she had a fracture on her left shoulder, and that blood had collected between her chest and lungs on her left side (“*fracture de l’omoplate gauche + hemothorax gauche*”).

678. Once at the hospital the doctors took Malon Sylla to the emergency room. The doctors informed the family that Malon Sylla died about 30 minutes after she was brought to the emergency room.

679. Witness P-0172 knew Malon Sylla well before her death since they were neighbours and confirmed Malon Sylla was also treated at Abobo Sud before her death, where Witness P-0172 also saw her relatives. Witness P-0172 also helped obtain her death certificate.
680. After receiving news of his sister's death Witness P-0580 heard shots approaching the hospital. Witness P-0580 and his family members who were present jumped the fence of the hospital and returned when things calmed down about 15-20 minutes later. At this moment Witness P-0580 saw people bringing five dead bodies of other women killed during the incident to the hospital on a pushcart. The bodies of these women and of Witness P-0580's sister were placed in the waiting room. Witness P-0580 stayed at the hospital until about 18h00-18h30.
681. Witness evidence from Witnesses P-0479 and P-0543 corroborate handwritten registers that show Malon Sylla's body was transported from the hospital in Abobo to the Yopougon morgue on 3 March 2011, and later brought to the morgue in Treichville.
682. Witness P-0580 was present during the exhumations of the bodies at the Abobo cemetery. Families of the other seven victims were also present.
683. Witness P-0580 identified his sister Malon Sylla's body on [REDACTED] video and several screenshots of the incident. Witness P-0580 also accurately described what his sister was wearing on 3 March 2011 during his interview with the investigators before viewing the 3 March 2011 video, and during his testimony.
684. Expert reports and testimony confirmed a DNA match between the sample retrieved from Malon Sylla's body and the sample taken from her brother, Witness P-0580.

685. An expert in forensic pathology's testimony and autopsy report further corroborated that Malon Sylla's cause of death was a gunshot injury to her neck and left shoulder, likely by high velocity ammunition – such as that from an assault rifle.

c. Gnon Rokia Ouattara

686. [REDACTED]

687. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

688. [REDACTED] went to the Yopougon morgue on 7 March 2011 to try to find the Gnon Rokia Ouattara's body, but were told to go to the Treichville morgue, where they went three days later and obtained an identifying number for her body. Witness P-0172 was later informed that she was buried in a mass grave in the Abobo Baoulé cemetery in April 2011 per the instructions from the Golf Hotel because the bodies were spoiling due to lack of electricity at the morgue.

689. [REDACTED]  
[REDACTED]

690. [REDACTED]  
[REDACTED]  
[REDACTED]

691. An expert in forensic pathology's testimony and autopsy report further corroborated that Gnon Rokia Ouattara's cause of death was gunshot injuries of the neck, shoulder, and chest, and specified that the damage was very suggestive of high velocity ammunition such as from an assault rifle – a minimum of two gunshots.

d. Fatoumata Coulibaly

692. Witness P-0172 described talking to his sister-in-law Fatoumata Coulibaly on the day before the march, when she informed him she would be attending the march to demand Gbagbo follow the law of the constitution and cede power to the winner of the elections, Alassane Ouattara.

693. On the morning of the protest, Witness P-0172 heard gunfire at his home on the morning of the march, then Fatoumata's adopted daughter banged on the door showing signs of trauma and saying she could no longer find Fatoumata. Witness P-0172 then went to the scene and saw five female bodies, including that of Fatoumata Coulibaly. The third body he saw belonged to Fatoumata Coulibaly and when he lifted the *pagne* covering the body, he completely recoiled because her head had been completely blown off. Pieces of her body and brain were put into the *pousse-pousse* that he helped take to Abobo Sud hospital.

694. A merchant from Abobo, Witness P-0190, testified about her participation in the march with [REDACTED] and dear friend Fatoumata Coulibaly (aka Mama) [REDACTED] soon after her arrival, there was a loud boom and the earth started shaking, causing the witness and the women around her including



Fatoumata to fall to the ground. Witness P-0190 got up and ran for shelter by the side of the road and heard further shots from a convoy of vehicles passing on the main road. She saw bodies lying on the main road but did not have the courage to look at them. She had blood stains and what looked like brain matter on her clothes and went home, where she learned Fatoumata had been shot and killed.

695. Witness P-0106 [REDACTED]

[REDACTED] and corroborated seeing seven bodies at the scene, including one of a woman whose head had exploded, consistent with injuries sustained by Fatoumata Coulibaly, after hearing the sounds of detonations coming from a *char*, and people screaming "*on a tué des femmes!*" Similarly, Witness P-0105 described seeing six women's bodies, including one who had a terrible head wound, including her brain coming out of her head.

696. Witness P-0172 also identified Fatoumata Coulibaly's body on [REDACTED]

[REDACTED] video and several screenshots of the incident. These screenshots clearly corroborate the fatal head wound many witnesses described seeing at the scene.

e. Nachamy Bamba

697. Nachamy Bamba's father, Witness P-0237, testified that on the morning of 3 March 2011, he received a phone call informing him that his daughter was shot at the march. He further testified that he saw her body later that same day at their home, and upon being questioned by Counsel for Mr Gbagbo, described her body that day as practically decapitated – with her neck wound being the most atrocious, and also seeing a bullet wound on her arm. He testified that their neighbour and family photographer took pictures of his daughter's corpse that same day, and that he paid this photographer some money for taking the photos and printing paper copies two days later. Copies of these photographs are also in evidence and corroborate the fatal injuries Nachamy Bamba suffered that day.

698. Witness P-0172 described hearing gunfire at his home on the morning of the march, then going to the scene and seeing five female bodies, including Nachamy Bamba's. He observed fatal injuries on her body: "*j'ai vu que sa gorge n'était plus là*". Witness P-0172 also said that Nachamy's family carried her body back to her house with the help of some youth, and that she was buried the same day in the Abobo Boule general cemetery.

699. Witness P-0184, an organiser and participant in the march, testified about Nachamy Bamba's murder there, describing that Nachamy was one of the six women to die at the scene, and that Nachamy's uncle Bamba Moussa helped take her body back to the family's home.

700. Nachamy Bamba's friend, Witness P-0105, whose testimony and statement also described how Nachamy (aka "Mimi") was killed that morning. Witness P-0105 did not participate in the march that morning, but saw a *char* go by Siaka Koné market, and within ten to fifteen minutes, learned that women were murdered at the march. Over an hour later, Witness P-0105 went to Nachamy's house and saw her body there and other family members, including Witness P-0237.

701. Witness P-0237 identified his daughter Nachamy Bamba's body on [REDACTED] video and screenshots of the incident.

702. Bamba Nachamy was buried at the Abobo cemetery on the afternoon of 3 March 2011 after the 13h30 prayer at Witness P-0237's home. A signed and stamped burial permit from the *Mairie d'Abobo* shows she was buried that day. Her death certificate was signed 19 April 2011.

f. Adjara Touré

703. Witness P-0581 testified about his sister, Adjara Touré's, murder. Witness P-0581 testified that last saw his sister, Adjara Touré, on the morning of 3 March 2011 when she told him she was attending the demonstration with her classmates.

Later that morning an elderly woman approached him on the street crying and shouting that women had been killed at the Banco roundabout. Witness P-0581 was not able to see his sister's body that day due to the insecurity in Abobo, and the fact that the body was transferred from Abobo to Treichville.

704. Witness P-0172 was also at the scene and saw five female bodies, including that of Adjara Touré, which was one of the bodies he helped take to Abobo Sud in a *pousse pousse*. Witness P-0172 also told Witness P-0581 that his sister was buried in a mass grave in Abobo Baoulé cemetery.

705. While testifying in court, Witness P-0581 identified his sister Adjara Touré's body on an enhanced version of [REDACTED] video of the incident.

g. Amy Coulibaly

706. Witness P-0172 went to the Banco roundabout and saw the bodies of five women on the ground – the first body was Amy Coulibaly, which was being handled by some people. Her body was covered in blood and had a *pagne* covering her, which he lifted, and saw blood in her mouth. cemetery. Witness P-0172 did not know her before this incident, but knows her relatives. Witness P-0172 also obtained Amy Coulibaly's death certificate on or about 16 July 2011.

707. Witness P-0184, who helped compile a list of wounded and dead from the post-electoral violence, testified learning the identity of one of the deceased women at the demonstration was Amy Coulibaly.

(b) *Other Inhumane Acts or Attempted Murder*

708. In addition the seven women murdered at 3 March 2011, the FDS convoy's gunfire also seriously wounded at least six other persons at the protest. The overwhelming testimonial, video, photographic, and forensic evidence described above proves the FDS convoy shot a 14.5mm cannon and AK-47s at these peaceful protestors with the intent to injure and kill them, thereby killing seven of

them and causing serious physical injury, including bullet wounds, to at least another six.

709. Several witnesses at the scene, including P-0105, P-0106, P-0172, and P-0184 described that many people were injured in the march. P-0190 also described attending the march, seeing the convoy, hearing shots fired, seeing people fall to the ground, and being covered in someone else's blood. A video of the march obtained by the UN Office of Legal Affairs also shows at least two women were wounded – one with blood and a wound on the back of neck and the other with a hole in her back.

- (i) Pro-Gbagbo forces attempted to kill one or more persons, or in the alternative, inflicted great suffering or serious injury by means of an inhumane act

710. The FDS seriously injured, or attempted to kill, at least six people when they fired 14.5 mm cannon and AK-47 rounds into a peaceful protest on 3 March 2011. These six individuals include: Witness P-0184, Ivakaba, Amy Ouattara, Sylla Ousmane, Bayo Kabine, Coulibaly Massandje, and others whose names are unknown.

- a. Witness P-0184

711. Witness P-0184 testified in detail about her experience at the march, about seeing the convoy, and hearing it fire shots at the crowd, and falling to the ground. She described the ensuing chaos and people frantically trying to find shelter, where she fell again and lost consciousness. She provided details on the substantial injuries to knee and elbow, including swelling and being covered in blood, resulting in her having to be treated at the hospital where she saw others who were also injured during the women's march. The Defence argues that her injuries are not corroborated, but nonetheless had the opportunity to examine the

veracity of her claims on the witness stand and did not succeed in attacking her credibility in this regard.

b. Ivakaba and Amy Ouattara

712. Witness P-0184 testified in court about her knowledge two other women survivors who were wounded by bullets at the march. The first is named Ivakaba, who had to undergo surgery in order to remove bullets from her body and who is still suffering as of the date of P-0184's testimony in December 2017. The second woman who was wounded by a bullet at the march was named Amy Ouattara, and she also had to have a surgery to remove it.

c. Sulla Ousmane, Bayo Kabine, and Coulibaly Massandje

713. The FDS shot three other people at the march, according to the list Witness P-0184 provided, the reliability and authenticity is established below. Witness P-0184 described the methodology for creating this list, including that people have to show prescriptions, physical signs of injury, or a medical certificate. Sylla Ousmane was wounded by a bullet from two *chars* next to a market. The FDS shot Bayo Kabine in the neck with a bullet. Pro-Gbagbo forces also shot a bullet that hit Coulibaly Massandje in the finger.

d. Unknown

714. The Prosecution does not have to prove the identity of victims of inhumane acts or attempted murder in order to prove this count. Several witnesses at the scene, including P-0105, P-0106, P-0172, and P-0184 described that many people were injured in the march. Witness P-0184, for example, testified that she went to the Clouetcha Hospital and saw other people there that had been injured during the march – the majority of which had been injured by bullets. A video of the march obtained by the UN Office of Legal Affairs also clearly shows at least two

women were wounded – one with blood and a wound on the back of neck and the other with a hole in her back.

(c) *Persecution*

- (i) Pro-Gbagbo forces severely deprived, contrary to international law, one or more persons of fundamental rights

715. The seven acts of murder and at least 6 other inhumane acts described above at counts 1 and 2, respectively, constitute severe deprivations of fundamental rights. Pre-Trial Chamber II in the *Kenyatta et al.* case found that killings, serious physical injury and acts causing serious mental suffering constituted such severe deprivations of fundamental rights.

- (ii) The conduct was committed in connection with acts referred to in article 7(1) of the Statute

716. The acts relied upon to make out the crime of persecution are one and the same as the acts of murder and inhumane acts, also charged under articles 7(1)(a) and (k), of the Statute.

- (iii) Discriminatory intent: Pro-Gbagbo forces targeted such persons by reason of their identity in a group or collectivity, or targeted the group or collectivity as such, based on political, racial, national, ethnic, religious, or other grounds

717. The evidence shows that the crime of persecution was committed through the targeting of the victims of counts 1 and 2 on political, national, ethnic, or religious grounds. Specifically, the victims of the 3 March 2011 incident were targeted as perceived Ouattara supporters, on the basis that they were actual or perceived political opposition activists and sympathisers, or civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire, or other West African countries.

718. As detailed above, this was a purely political march organised by women supporters of Alassane Ouattara with one specific goal: to protest Gbagbo's staying in power. They had clear signs and placards to that effect. The FDS targeted these women specifically because they were actual or perceived Ouattara supporters. Participants in the march were motivated primarily by their political opposition to Mr Gbagbo, and many of them were Northerners and/or Muslims. For example, Witness P-0184 testified that the majority of people on her list of those injured, disappeared, and deceased during the post-electoral violence included individuals from the North of Cote d'Ivoire and RDR members.

*(d) Nexus – Crimes Against Humanity*

719. The evidence shows, and indeed the Defence does not dispute, that the nature of FDS operations in Abobo had changed from a law enforcement to a military model by the last week of February 2011. Documentary and testimonial evidence proves the FDS treated Abobo like a war zone without an official declaration – thereby obtaining the benefit of more robust FDS operations, including the use of weapons of war, without explicitly invoking their responsibility to protect civilians. In other words, Mr Gbagbo purposefully never gave civilians the benefit of declaring Abobo a war zone.

720. Mr Gbagbo's continuous extension of a curfew in Abobo and Anyama throughout the post-electoral violence provided a legal justification for the FDS to conduct nightly patrols there.

721. As described in the above section on pattern evidence, the record is clear that the FDS engaged in a pattern of targeting civilians in Abobo during the post-electoral violence by repressing peaceful demonstrations, shooting civilians indiscriminately during their supply convoys to Camp Commando, and shelling civilian areas with mortars.

- (i) The killings and inhumane acts on 3 March 2011 were committed as part of a widespread or systematic attack directed against a civilian population

722. The FDS murdering and wounding civilians at the 3 March 2011 demonstration was part of a widespread and systematic attack directed against a civilian population. In particular, the FDS convoy's unprovoked use of force against unarmed civilians at a peaceful protest was part of a larger pattern of violence whereby FDS repressed peaceful demonstrations, killing and injuring civilians as seen the 16 December 2010 incident. It was also part of a larger pattern of indiscriminate shooting in neighbourhoods inhabited by perceived Ouattara supporters.

723. FDS witnesses testified about shooting indiscriminately in civilian areas, and civilian witnesses testified about witnessing FDS convoys do the same.

a. Civilian witnesses

724. Witness P-0580 saw CRS and CECOS frequently patrolling Abobo during the post-election violence, and described that FDS convoys would pass in the morning or the afternoon and shoot in all directions.

725. Witness P-0578 described that during the post-electoral violence, FDS soldiers riding in pick-up trucks coming through Williamsville from Agban camp would shoot daily with assault weapons or machine guns. It was most often the units of the parallel structure that would that would fire, killing or wounding several people. In February and March of 2011, the FDS shot a neighbour in the back while he was stepping out the front door, and on another day FDS parallel structure units shot and killed a gas station attendant at point blank. From mid-March to mid-April, Witness P-0578 saw military vehicles and convoys passing daily in the direction of Abobo firing indiscriminately in the direction of Williamsville. Witness P-0578 even tried to film this once and a man in a pick-up



fired a gun in his direction. A building on the border of the expressway was also damaged by shots fired from a military vehicle coming from Camp Agban.

726. Witness P-0114 described *chars* passing through Abobo and shooting as they drive by after the second round of elections in 2010. He described in detail that the supply convoys for Camp Commando, which included BAE and police vehicles, would pass around 08h00 and 17h00 every day and shoot guns in all directions all the way from Camp Commando to the Samaké roundabout. He never saw anyone firing at the convoys and saw traces of bullets everywhere – on the walls, signs, etc. He confirmed that the FDS killed at least sixty people in this manner, having seen the bodies himself, and even once helped transport a wounded man to the hospital. People were killed every day, including a ten year-old boy – and the witness was nearly shot himself.

727. Witness P-0172 described a similar pattern in that every day after 3 March 2011, FDS supply convoys from Camp Agban to Camp Commando, including BAE and CRS vehicles, would fire guns throughout their route Abobo, from when they entered to when they exited, killing people each time. He described that friends and relatives in Adjamé and Williamsville would call people in Abobo to warn them the convoys were coming.

728. Witness P-0117, a vendor in Abobo, also described how FDS supply convoys leaving Camp Commando would shoot all the time, especially at night after 18h00, and would shoot all night into the early morning. The shooting would begin again in the morning from 10h00 until 12h00. This caused fighting and a very traumatised and stressed population.

729. Witness P-0362, a truck driver in Abobo, described that pro-Gbagbo elements at Camp Commando would receive a *char* from Camp Agban every day around 11h00-12h00 to bring food and supplies, and that this *char* would then return to Camp Agban. He described that this *char* would fire guns everywhere when it passed, including at civilians. This happened even on the day of the shelling of

the Siaka Koné market, as corroborated by numerous UNOCI Call Centre reports discussed in the above pattern evidence section.

b. FDS witnesses

730. BASA Witness P-0239 describes being part of an FDS convoy that shot indiscriminately into Abobo along the way to Camp Commando after hearing shots fired:

*Q. D'accord. Alors, vous partez avec ce convoi. Vous dites que vous avez apporté deux mortiers de 120 millimètres. Et en route, est-ce que, à un moment donné, est-ce qu'il s'est passé quelque chose ou bien est-ce que vous êtes arrivés au camp Commando sans incident?*

*R. Bon, avant d'arriver au camp Commando, on a eu... il y a eu des tirs. Nous, on était en arrière. Donc, on a entendu les premiers tirer, donc tout le monde a commencé à tirer jusqu'à on arrive à... au camp... on dépasse le Camp Commando où les tirs ont cessé, et nous sommes rentrés au camp Commando. Il y avait des tirs de kalaches.*

*Q. Est-ce que le véhicule dont vous faisiez partie au BASA, est-ce que vous avez tiré aussi?*

*R. Oui, le véhicule (inaudible), on a tiré aussi.*

*Q. Et vous tiriez vers où?*

*R. Bon, puisque dans le véhicule on se donne dos, il y a deux bancs, d'autres regardent à gauche, d'autres regardent à droite, chacun tire dans sa direction.*

*Q. D'accord. Et vous tiriez sur quoi?*

*R. Bon, Mon cher, moi, je ne voyais rien. Moi, je pense que quand quelqu'un a tiré, il faut passer... parce qu'on ne sait pas, c'est un passage il faut se frayer pour passer. Bon, moi, je pense que, dans ce cas, si les premiers ont essuyé des tirs, tout le monde tirait pour ne pas se faire prendre.*

731. This testimony from Witness P-0239 shows that everyone ("*tout le monde*") in FDS convoys fired assault weapons along the road to Camp Commando – despite that he couldn't even see where he was shooting. Although Witness P-0239 indicated this shooting was in response to the convoys being shot at, the sustained shooting along the entire route to Camp Commando without a clear target in sight shows this indiscriminate nature of the firing.

732. FDS convoy participants were even admonished for their indiscriminate firing. Witness P-0330, the Commander of Camp Commando in charge of the 3/1 *Gendarmerie* Squadron until he deserted on 3 March 2011, testified that convoys departing from Camp Commando to Camp Agban would shoot in the air in response to being shot at or having rocks thrown at them. Witness P-0330 was informed by members of *l'escadron d'Abobo* that civilians were injured by the FDS shots in the air. He reported this information to his superiors and as a consequence on several occasions the Chief of the PC had to meet with them to impose a "*discipline de feu*".

(ii) The pro-Gbagbo forces intended or knew that their conduct on 3 March 2011 was part of a widespread or systematic attack directed against a civilian population

733. As shown above, the 3 March 2011 incident, whereby FDS members of a convoy from Camp Commando targeted peaceful civilian anti-Gbagbo protestors in Abobo, killing seven and wounding at least six, formed part of a pattern of indiscriminate firing along areas densely populated by civilians. FDS witnesses

travelling in those convoys admitted engaging in such practice. The perpetrators of the 3 March shooting intended or knew that their shooting and killing of seven female civilians from their convoy was part of a pattern of firing indiscriminately into areas densely populated by the civilian population and therefore that it was part of a widespread or systematic attack against a civilian population.

(e) *Official Government Denial of FDS Involvement, Lack of Investigation, and Cover Up*

734. Mr Gbagbo's government completely failed to investigate these murders, and nonetheless officially denied any FDS involvement within 24 hours. Furthermore, multiple witnesses corroborate that the FDS attempted to intercept the bodies of the murders victims – likely in an attempt to cover up evidence of their crimes.

(i) Official Government Denial

735. The highest levels of government had knowledge of these murders on the day they happened. Information relating to this incident became available immediately - as Witness P-0156 testified, the CPCO was informed, and from the moment Col. Sako was aware, the information started circulating.

736. As soon as the following day, on 4 March 2011, although Mr Gbagbo and his Inner Circle had evidence implicating the FDS in the incident, spokespersons Don Mello and Babri denied, on the RTI, any FDS responsibility for the attack. The FDS *communiqué* was approved by Minister of Defense Dogou. The CEMA testified that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the *communiqué*, and that Mr Gbagbo would at times review such press releases himself.

737. On 4 March 2011, even the RTI broadcaster/journalist previewed the official government *communiqué* as a denial of FDS responsibility:

*“Le Gouvernement de CÔTE D’IVOIRE dégage toute responsabilité s’agissant de la mort des militantes du RHDP, tuées au cours d’une*

*marche organisée à Abobo jeudi dernier. Nous vous proposons à cet effet la déclaration du porte-parole du Gouvernement."*

738. Mr Gbagbo's spokesperson Don Mello read the official 4 March 2011 government *communiqué* immediately thereafter, describing accusations of FDS involvement in the 3 March 2011 incident as "*fantaisistes et sans fondements*." This *communiqué* refers to "*prétendus charniers*" and goes so far as to claim that footage of 3 March 2011 murder victim Moyamou Kone shows she is "curiously resuscitated" while she was attempting to get up from the ground after being shot in the throat.

739. The denials continued, when, on 5 March 2011, Interior Minister Guiriéoulou adopted a version of this argument on RTI, denying any responsibility for the killing of women and claiming it was an attempt by the international media to discredit the Gbagbo regime in a set-up – an argument repeated often in pro-Gbagbo media at the time.

740. On 8 March 2011, the *Conseil des ministres* again denied all responsibility, and advanced that accusations against the FDS were pure fabrication.

741. On 23 March 2011, Mr Blé Goudé alleged 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.

(ii) Lack of Government investigation

742. The FDS chain of command showed a complete lack of genuine intent to conduct a good faith investigation into the murder of these seven women. On the day of the incident, the FDS officer in charge of the command post at Camp Commando on the day in question, Witness P-0156, had several phone calls with subordinates and superiors in the FDS about the widespread news that an FDS convoy had murdered women at a protest in his zone. The first phone call was from his superior, Col. Sako, commander of the CPCO, who told him that an

NGO member had informed him that the FDS had fired upon on a women's march in Abobo - this information was circulated immediately.

743. Witness P-0156 testified that he spoke to CEMA on the same day as the march, but did not talk about the murders, and instead CEMA confirmed Witness P-0156 could stay at Camp Commando. Witness P-0156 never heard of any disciplinary measures or punishments for anyone involved in the 3 March 2011 convoy.

744. Witness P-0156 was not asked to write a report to his superiors about the 3 March 2011 event – he only wrote the usual weekly report.

745. The CEMA testified that he discussed the events with the Minister of Defence that day. CEMA and P-0047 also discussed the murders on the day in question. CEMA told P-0047 that he had received information about the march from General Palasset and the Minister of Defence, including the fact that women were killed. P-0047 denied to CEMA that the FDS had repressed the march, because he was not aware of the march in advance. Later in the afternoon, the Chief of the CPCO, Col Sako briefed P-0047 and other generals on the situation – the briefing stated that a women's march in Abobo had been repressed by FDS elements and that seven women had been killed.

746. Col. Sako told P-0047 that he had questioned troops in Abobo but that those troops had not encountered any march and therefore could not have been involved. According to P-0047, CEMA asked for an investigation to be carried out by intelligence units, and despite that CEMA did not assign this task to anyone in particular, P-0047 asked his people in the field to provide intelligence. His few sources provided little information and said they were not aware of the march having taken place. P-0047 gave this information to CEMA, who relayed it to the Minister of Defence.

747. A few phone calls during a single day does not constitute a serious or credible investigation into a murder, let alone several murders committed by government

forces in broad daylight in a big city. In any military justice system, allegations of this gravity require more substantive investigation. These events happened in the capital city of the state whose own government effectively deployed such forces around that city in various command posts.

748. No one was punished for this crime. The incident was never seriously investigated by Mr Gbagbo or the FDS; the sole piece of evidence showing a mild interest in the killing of the 3 March 2011 victims was a passing remark by Military Prosecutor at the end of a *Requisition aux Fins D'Enquête*.

749. The overwhelming evidence on record demonstrates that the denials from Mr Gbagbo and his Inner Circle were not only a failure to investigate or punish, but a plan to cover up their crime.

(iii) FDS Attempts to Intercept Victim's Bodies

750. FDS attempts to intercept the bodies of the 3 March 2011 victims demonstrate the extent to which the FDS was trying to cover up the murder and wounding of civilians in Abobo. Evidence shows the FDS used force in an attempt to destroy the best evidence of their crimes, knowing this was not just bad publicity domestically, but had the potential to turn the tide of international support against Mr Gbagbo.

751. Several witnesses testified as to the FDS efforts to intercept the bodies of the women on 3 March 2011. For example, Witness P-0237 described FDS attempts to obtain his daughter's body while *en route* to Abobo cemetery for burial on the same day as the murder. Bamba Nachamy's body was taken from Witness P-0237's house to the cemetery in an unmarked vehicle. Witness P-0237's younger brother and friends organised this transportation, whereby the body was accompanied by family and friends, including the imam. At the Samaké intersection, Witness P-0237 saw a vehicle from Camp Commando with "Gendarmerie d'Abobo" written on it follow the vehicle carrying his daughter's

body after it left from his house. Witness P-0237 heard shots while this was happening.

752. Further, Witness P-0172 described armed men in uniform coming to Abobo Sud hospital on the afternoon of the march to take away the bodies of the murdered women, and even firing weapons there.

753. Witness P-0580 also heard shots approaching the hospital in Abobo, after receiving news of his sister's death there on 3 March 2011. Witness P-0580 and his family members who were present jumped the fence of the hospital and returned when things calmed down about 15-20 minutes later. At this moment Witness P-0580 saw people bringing five dead bodies of other women killed during the incident to the hospital on a pushcart.

754. There can be no doubt that the FDS attempts to seize these bodies by force was a continuance of their plan to intentionally target these civilians, and cover up evidence of their criminal conduct.

## 2. Defence Arguments

755. Both Defence teams challenge core aspects of the 3 March 2011 attack on the women's march in Abobo. Their main arguments, outlined below, should be rejected.

### *(a) Gbagbo Defence Alleges Involvement of Golf Hotel and Armed Rebels in the Women's March*

756. Mr Gbagbo argues that the Golf Hotel planned and organised the Women's March in order to trap an FDS convoy; that armed pro-Ouattara groups controlled Abobo in March 2011; and that armed rebels participated in the march with the consent of the Golf Hotel and indeed shot at the FDS convoy. These arguments are addressed in turn below.

#### *(i) Armed Pro-Ouattara Groups did not control Abobo in March 2011*



757. Mr Gbagbo argues, with few citations or footnotes, that in March 2011, Abobo was “entirely” under the “stranglehold” and total control of armed pro-Ouattara groups. While the Prosecution does not deny the presence of pro-Ouattara groups in Abobo, these arguments ignore a considerable amount of evidence pointing to a significant FDS presence there and an ability to conduct military operations, which is discussed extensively above in the section on opposing armed groups in Abobo.

(ii) Golf Hotel Officials did not plan the Women’s March to trap an FDS Convoy

758. Mr Gbagbo argues that the Golf Hotel actually planned the women’s march on 3 March 2011 to purposefully trap an FDS convoy. The clear evidence on the record, including testimony from the demonstration’s organiser, tells a different story: this was a grassroots march with the motivation to protest Mr Gbagbo’s refusal to step down from power. Witness P-0184 was “*la responsable politique*” of the Bocabo District in Abobo and the Secretary General of the “*Femmes du Rassemblement des Républicains*”; her role was to organise and mobilise local women who opposed Mr Gbagbo’s staying in power after he lost the election.

759. Witness P-0184 testified that her boss, Maïmouna Touré, the President of “*Femmes du Rassemblement des Républicains*”, called her on 2 March 2011 and asked her whether the women from Abobo should also demonstrate given that women from other communes were demonstrating to tell Mr Gbagbo to leave. Witness P-0184 told her that she did not see any inconvenience and asked her to call other women; they agreed unanimously to demonstrate. Maïmouna Touré asked her to mobilise and call women including the President of the PDCI, the MFA, and IDPCI, the president of the Amazons, and those in charge of civil society organisations and faith based organisations. Witness P-0184 was supposed to read a political statement at the march, but the FDS intervened before she could.

(iii) Armed men did not attend this women’s peaceful protest

760. The overwhelming evidence shows that this was a peaceful march without the presence or participation of armed groups. No eyewitness testified ever seeing armed men or women at the women's march, and no armed individuals appear on any of the incident videos.

761. The only allegation of armed men being present at the protest comes in the form of indirect evidence – [REDACTED]

[REDACTED]

[REDACTED] There is, however, no such direct evidence on the record – neither in any eyewitness account, nor in the video.

762. The few men on the record as being present include a local politician, members of the press, and a cameraman. Mr Gbagbo seems perplexed at the idea that women organisers would want press (journalists) or media (cameramen) to cover their protest – while ignoring the obvious point of the protest is for these women to have their voices heard. Journalists and cameramen document the events would clearly assist in that regard.

763. It should be no surprise that one of the few men that went with Witness P-0184 to the march was Yeo Kolotioloma, RDR campaign director in Abobo for Ouattara. It is worth noting that both in the instant motion and while examining Witness P-0184, Mr Gbagbo misleadingly referred to Kolotioloma as Ouattara's campaign director in 2010 (a job that belonged to Amadou Gon Coulibaly) in an attempt to overplay his connection to Ouattara and the Golf Hotel. They failed to specify that Kolotioloma was the campaign director for Abobo only – a fact that Witness P-0184 clarifies in her response.

764. In fact, all of the eyewitnesses present at the march testified to the peaceful and political nature of the protest, and the fact that primarily women attended. First, an organiser of the march, Witness P-0184, also testified about the peaceful nature of the march and that its purpose was "*Gbagbo dégage*" because Mr Gbagbo

had lost the elections and too many people had died since – so they decided to protest because they did not want any more casualties. Witness P-0184 further described that it was a women’s march because men could not go outside as they would be shot at – and they believed that they would not be shot at given their status as unarmed women. She confirmed that thousands of women attended, and that they were joined by a few professional men including a photographer, a journalist, and a cameraman, and that she never saw a protestor carrying a weapon. Witness P-0184 also testified that she that when she first saw the convoy, and the white flag being waved, women clapped as they thought that the vehicle was there to secure the demonstration.

765. Second, Witness P-0106 [REDACTED]

[REDACTED] and confirmed the peaceful and political nature of the march. She saw unarmed women preparing signs reading “*Gbagbo dégage.*” She specified that many women dressed in white, carried tree branches (a sign of peace), and played drums.

766. Third, Witness P-0105’s arrived on the scene just after the murders and did not see anyone armed.

767. Fourth, Witness P-0190 testified that it was only a women’s march because at the time the men were scared of going out; there were people who would disappear.

768. Lastly, UNOCI Human Rights Officer P-0414 interviewed approximately ten people regarding the 3 March 2011 women’s protest in Abobo – none of these witnesses indicated that the *Commando Invisible* were part of the demonstration, and none of them indicated or that participants in the march were armed.

(iv) The FDS convoy did not shoot the protestors in self-defence

769. Despite the overwhelming testimonial and video evidence to the contrary, Mr Gbagbo argues that the FDS fired in self-defence, suggesting the FDS shot in the air first and returned fire into the crowd only after being shot at by armed combatants. This argument fails for several reasons.

770. First, [REDACTED]  
[REDACTED] – so  
the question of the convoy acting in self-defence is moot.

771. Second, the FDS did not fire the 14.5mm gun into the air. Video evidence and eyewitness accounts clearly show the 14.5mm cannon pointed horizontally into the crowd. [REDACTED]

"*cannon au bleu*," it was also unknown to [REDACTED] Witness P-0156, who was in charge of the command post at Camp Commando on 3 March 2011. It can therefore not be relied upon as a military term understood to have a particular meaning to those units involved.

772. Third, expert forensic analysis of the video of the incident demonstrate that the first gunshot-type noise was from the 14.5mm cannon – during which smoke can be seen rising from the cannon pointed horizontally at the protestors, not vertically.

773. Lastly, the Gbagbo Defence's argument that the convoy acted in self-defence is based solely on [REDACTED]

As detailed above, no witnesses saw anyone shooting anything at the tank. The Defence allegation is also unsupported

by the videos of the incident, and forensic analysis of the audio of that video – none of which show armed combatants in the crowd. Rather, the videos, eyewitness accounts, forensic, and medical evidence all corroborate the FDS firing a 14.5mm gun and AK-47s into the civilians in the crowd without provocation.

*(b) Mr Gbagbo Alleges the Murders Were Staged and the Video is a Montage*

774. Perhaps the most offensive argument put forward by Mr Gbagbo with respect to this incident is the notion that these women depicted in these videos are actresses and that their murder and suffering was somehow staged. Indeed, as soon as the following day, the official government position that was broadcast on RTI with Mr Gbagbo's knowledge, was to deny any involvement in the crimes.

775. The Gbagbo Defence has no choice but to follow this line despite that overwhelming testimonial, scientific, video, and photo evidence that this was a real event and that the FDS was responsible. To do otherwise would be to undermine their own client's official self-serving version of events on the record.

776. In the end, the horrific details of the eyewitness and victim accounts are corroborated by the video footage of the murders. It would take an extremely talented movie production crew and dozens of actresses to re-create the horrible injuries and the panic, desperation, and grief depicted in the video. Any viewer of the video can use common sense to realise it depicts very real suffering in extreme detail. Knowing that this video is corroborated by witness testimony, forensic evidence, and DNA evidence, makes it impossible to deny the FDS shot and killed these seven women.

*(i) The extent and nature of the injuries is consistent with the events described.*

777. Mr Gbagbo argues that there should have dozens more dead and wounded at the march if the FDS used the 14.5 mm and AK-47s the Prosecution described. Mr Gbagbo further claims, without any support or citations, that none of the three

murder victims' bodies that were recovered had a trace of burst of gunfire. This misleading claim completely ignores the forensic evidence on the record, including the reports and testimony from an expert in forensic pathology who examined these three bodies and found that all three died of gunshot wounds – and was able to determine that the gunshot wounds on the neck and shoulders of Malon Sylla and Gnon Rokia Ouattara were likely caused by high velocity ammunition – such as that from an assault rifle rather than that of a pistol or other low velocity ammunition.

(ii) Crime base witnesses inconsistencies are not material

778. Mr Gbagbo argues that the crime base witness contradictions in the number of vehicles in the convoy, the number of shots fired, the noises of weapons they heard, all indicate that this event was fabricated.

779. While the videos and expert analysis in question should clarify what actually happened on the ground in terms of the number of vehicles in the convoy, the number of shots they fired, and the noise they made, a video is not necessary to prove the crimes charged. Indeed, even without the video and with minor inconsistencies, the eyewitness accounts would meet the Prosecution's burden of proof. These minor inconsistencies do not mean there was no convoy or no firing of an FDS weapon. It merely means that people situated in a hectic environment on different sides of the street have different perspectives and perceive the same traumatic events differently – with different points of views, different memories, and differing ability to recall events so many years later.

(iii) Overwhelming corroborative evidence proves cause of death - not every witness needs to prove cause of death alone

780. Mr Gbagbo provides arguments for each of the murder victims, often arguing that because one eyewitness did not see the entire event, that eyewitness alone does not prove cause of death. This argument ignores the basic notion in criminal

trials that one witnesses' testimony or one piece of evidence is generally not meant to prove every element of every crime charged. It is the totality of the evidence, taken together, that should be analysed to determine whether the Prosecution has met its requisite burden.

781. For example, Mr Gbagbo argues that with respect to the death of Nachamy Bamba, that [REDACTED] cannot confirm how she died because he said he fell to his knees after hearing the gunfire, or that her father Witness P-0237 was not present for her death so he cannot testify as to the circumstances of her death. As elaborated in the Prosecution Case section above, a wealth of testimonial, video, evidence corroborates the cause of Nachamy Bamba's death. Witness P-0237 saw his daughter's body later that day in his home and described her body that day as practically decapitated – with her neck wound being the most atrocious, and also seeing a bullet wound on her arm. These injuries are corroborated by the video taken of the murder, the photos taken later that day, and Witness P-0172's account of observing her injuries at the scene: *"j'ai vu que sa gorge n'était plus là"*. Furthermore, Witness P-0237 identified his daughter Nachamy Bamba's body on [REDACTED] video and screenshots of the incident. Nachamy Bamba's friend, Witness P-0105, whose testimony and statement, also described how Nachamy was killed that morning that she saw her body there and other family members, including Witness P-0237. To suggest, as the Gbagbo Defence does, that the Prosecution has not proven her cause of death because her father did not see her die, ignores the overwhelming corroborative evidence on the record.

782. Similarly, Mr Gbagbo argues that with respect to the death of Fatoumata Coulibaly, that Witness P-0190 cannot confirm how she died because she said she did not see what happened to the victim at the march. As elaborated in the Prosecution Case section above, a wealth of testimonial, video, evidence corroborates the cause of her death. Witness P-0190, described participating in the march in detail with her friend, Fatoumata Coulibaly, where soon after their

arrival, there was a loud boom that caused her and other the women around her including Fatoumata to fall to the ground. Witness P-0190 got up and ran for shelter by the side of the road and heard further shots from a convoy of vehicles passing on the main road. Further, on the morning of the march, Witness P-0172 heard gunfire and soon thereafter saw his sister Fatoumata Coulibaly's body at the scene, and described completely recoiling once he saw that her head had been completely blown off. He helped place pieces of her body and brain into the *pousse-pousse* that he took to Abobo Sud hospital. Witnesses P-0106 and P-0105 also described seeing a woman at the scene whose head had exploded, after hearing the sounds of detonations coming from a tank. Witness P-0172 also identified Fatoumata Coulibaly's body on [REDACTED] video and several screenshots of the incident that clearly corroborate her fatal head wound. To suggest, as Mr Gbagbo does, that the Prosecution has not proven her cause of death because her friend and brother-in-law did not see her die, ignores the overwhelming corroborative evidence on the record.

783. In the same vein, Mr Gbagbo argues that Malon Sylla's brother, Witness P-0580, cannot testify as to cause of death because he was not present for the actual murders. As elaborated in the Prosecution Case section above, however, a wealth of testimonial, video, evidence corroborates the cause of Malon Sylla's death. Her brother Witness P-0580, went to the crime-scene and saw bodies, including his sister's, lying on the road. He found her covered in blood and breathing rapidly, then stopped a taxi to take her to the hospital. Witness P-0580 described seeing that his sister was injured on her left shoulder, an injury that is corroborated by the forensic examination of her body and her autopsy report, as well as medical records obtained from the hospital that are contemporaneous with her treatment there and indicate that she died from a gunshot wound and that she had a fracture on her left shoulder and blood between her chest and lungs on her left side ("*fracture de l'omoplate gauche + hemothorax gauche*"). Witness evidence from P-



0479 and P-0543 corroborate handwritten registers that show her body was transported from the hospital in Abobo to the Yopougon morgue on 3 March 2011, and later brought to the morgue in Treichville. Witness P-0580 was present during the exhumations of the bodies at the Abobo cemetery. Expert reports and testimony confirmed a DNA match between the sample retrieved from her body and the sample taken from her brother, Witness P-0580. An expert in forensic pathology's testimony and autopsy report further corroborated that her cause of death was a gunshot injury to her neck and left shoulder, likely by high velocity ammunition – such as that from an assault rifle. To suggest, as Mr Gbagbo does, that the Prosecution has not proven her cause of death because her brother did not see her die, ignores the overwhelming corroborative evidence on the record.

784. Finally, Mr Gbagbo argues that [REDACTED]

cannot testify as to cause of death because he was not present for the actual murder. As elaborated in the Prosecution Case section above, however, a wealth of testimonial, video, evidence corroborates the cause of Gnon Rokia Ouattara's death. [REDACTED]

[REDACTED] Witness P-0172 was later informed that she was buried in a mass grave in the Abobo Baoulé cemetery in April 2011 per the instructions of the Golf Hotel because the bodies were spoiling due to lack of electricity at the morgue. [REDACTED]

[REDACTED] An expert in forensic pathology's testimony and autopsy report further corroborated that Gnon Rokia Ouattara's cause of death was gunshot injuries of the neck, shoulder,

and chest, and specified that the damage was very suggestive of high velocity ammunition such as from an assault rifle – a minimum of two gunshots. [REDACTED]

[REDACTED] To suggest, as the Gbagbo Defence does, that the Prosecution has not proven her cause of death [REDACTED] ignores the overwhelming corroborative evidence on the record.

(iv) Videos of the incident are authentic and reliable

785. Mr Gbagbo raises several concerns about the reliability and authenticity of the 3 March videos. Mr Gbagbo argues that the chain of custody for the main 3 March video is broken. This argument ignores, however, two critical facts. The first is that [REDACTED]

[REDACTED] Second, this video is still readily available through public sources – therefore reducing the importance any chain of custody concerns, especially since an expert verified this video has not been tampered with.

786. Moreover, there is additional proof demonstrating the lack of doubt about the authenticity of the video: [REDACTED]

[REDACTED] This camera [REDACTED] and was the exact same model that expert Witness P-0606 predicted it would be, an HP Photosmart M447.

787. Furthermore, the content of [REDACTED] video and the video obtained by the UN Office of Legal Affairs (from P-0553) corroborate one another.

(c) *Mr Gbagbo Argues Insufficient Proof of Death for 3 March 2011 Victims*

788. Mr Gbagbo challenges the sufficiency of proof of victims that were wounded or killed during the 3 March incident. The considerable evidence on the record

for each victim is analysed above in detail in the Prosecution Case section. Additional arguments for other categories of evidence are discussed below.

(i) DNA evidence

789. Mr Gbagbo raises several concerns about the value of the DNA evidence of the 3 March victims. The DNA evidence showed a match for three murder victims in this case. The Defence argues there is insufficient proof of death for the remaining victims due to the lack of DNA evidence. Absence of such evidence, however, does not create reasonable doubt – thousands of murder cases were proven before this technology existed. In this case, there are plausible explanations for the lack of DNA for these four murder victims.

790. The lack of a DNA match for the remaining four murder victims can be explained by the chaotic environment in which the bodies were transported and buried during the crisis, and their being buried in a mass grave. The witness and forensic evidence cited above demonstrates that these women were buried in the midst of the dangerous atmosphere of the post-electoral crisis in Abidjan. Electricity at morgues was not reliable, thereby causing bodies to spoil. Further, it was not safe to transport bodies around the city, given the FDS violent attempts to recover the bodies. For these reasons, several of the women were buried in mass grave in Abobo Baoulé cemetery.

791. Witness P-0237 said Bamba Nachamy was buried in an individual grave at the Abobo municipal cemetery on the day of the incident. The Witness visited this grave for the first time one week after the burial. The grave had a plaque with her name and date of burial on it. However, during a later visit to the cemetery with ICC investigators the plaque was no longer there. Witness P-0237 also tried to locate his daughter's grave during a visit to Abobo's municipal cemetery with individuals from the *Cellule Spéciale d'Enquete*. Witness P-0237 visited the cemetery during the exhumations that took place in December 2014, but he

doesn't know if it was his daughter's body that was exhumed. During his testimony Witness P-0237 clarified that he doesn't know where exactly his daughter's body is today.

(ii) Chain of custody of bodies and autopsies

792. Mr Gbagbo raises several concerns about the chain of custody of the bodies of the 3 March victims. The chain of custody of the bodies is less relevant when, as in this incident, DNA evidence provides a match for several victims. Nonetheless, these arguments also ignore that the main witnesses to this effect, P-0479 and P-0543 are reliable and corroborated by documentary evidence of morgue registers and testimonial evidence of victims' friends and families, and that the Chamber introduced their statements *via* rule 68(2). P-0172's testimony on the matter is consistent with other eyewitness testimony and video evidence.

793. Contrary to Mr Gbagbo's arguments that it is impossible to know where the bodies in question came from, the evidence shows a clear link between those examined and contemporaneous entries in the Treichville morgue Register. In his autopsy reports, expert Witness P-0585 refers to labels found on the bodies of Mallon Sylla, Gnon Rokia Ouattara, and Moyamou Koné – the three women for whom there are DNA matches. These labels contain reference numbers that match those mentioned in the Treichville morgue Register. More precisely: the autopsy report for Moyamou Kone refers to a "white plastic label around the left wrist" which refers to "Mme X, 04-03-11, **0931**". Similarly, the autopsy report for Gnon Rokia Ouattara refers to a "white plastic label around the left wrist" which refers to "Mme X, 03-03-11, CHU YOP, **0932**." Lastly, the autopsy report for Mallon Sylla refers to a "white plastic label around the right wrist" which refers to "Mme X, 03-03-11, YOP, **0935**." These numbers (0931, 0932, and 0935) correspond to the entries for the 3 March victims in the Treichville morgue Register.

(iii) Death certificates

794. Mr Gbagbo raises several concerns about the reliability of the death certificates of the 3 March victims. The Prosecution admits these certificates are of low evidentiary value, but they nonetheless corroborate evidence of the record of the death of these women.

(iv) Recueils de données ante mortem from CSEI

795. Mr Gbagbo says these documents from the local investigative body are unreliable because they were done three years after the fact, are based on hearsay, and cannot be used to argue cause of death. This argument ignores the fact that much of the contents of these interviews corroborate eyewitness and family member's earlier accounts - they are prior recorded statements that are largely consistent with subsequent statements.

**F. 17 March 2011: the FDS Shell a Densely Populated Residential Area in Abobo, Killing 31 and Seriously Wounding 36 Civilians**

1. Prosecution Case

796. On 17 March 2011, in broad daylight, members of a BASA platoon at Abobo's Camp Commando executed orders and launched 120mm mortars on locations including the Siaka Koné market, SOS Village, a mosque, a hospital, and homes – thereby killing at least 31 civilians and wounding at least 36 more. As described below, the overwhelming testimonial, video, photographic, and forensic evidence proves that the FDS targeted these civilians on political, national, ethnic, or religious grounds. Indeed, this attack on civilians came within weeks of Mr Gbagbo's explicit order to FDS Generals not to cede Abobo, and to do whatever it takes to keep Abobo.

797. On the day after the shelling, media reports blamed the FDS for the shelling, but instead of conducting a good faith investigation or punishing the perpetrators, Mr Gbagbo, through his spokesperson, called on all Ivorians to assume greater responsibility and collaborate more with the FDS to neutralise suspicious individuals.

798. Only five days after the shelling, on 22 March 2011, the Gbagbo government issued a statement on the RTI announcing the results of a sham investigation aimed at covering up their crimes and allowing them to continue to govern with impunity.

(i) Mr Gbagbo and CEMA authorised the use of 120mm mortars in Abobo

799. The CEMA testified that the BASA was authorised to use these 120mm mortars under Mr Gbagbo's requisition, and specifically, that the CEMA had a delegation from Mr Gbagbo to use 120mm mortars during the crisis. BASA Witness P-0239 testified that members of BASA are taught in training that the President himself needs to sign off on the usage of weapons of war such as the 120mm mortars because of the significant destruction they cause.

800. BASA's commanding officer at the time was parallel structure member Colonel Rigobert Dadi, who got his orders directly from Mr Gbagbo, advised Mr Gbagbo on military issues (including firing of weapons), and whom Mr Gbagbo trusted with the security of Abidjan.

801. The CEMA testified that he authorised the use of two 120mm mortars during the post-electoral violence, including the deployment in Abobo, but he denied authorizing their use in a residential area. The CEMA alleged the reasons that motivated the deployment of a 120mm for the second offensive in Abobo were just to demonstrate the FDS firepower to the people, and not to hit residential areas – although the evidence shows this is precisely what happened on 17 March

2011. This portion of CEMA's testimony denying the use of 120mm mortars in Abobo is not credible, for the reasons discussed below.

802. This was not Witness P-0009's first time authorising the launching of 120mm mortars in Abobo during the crisis. Witness P-0009 says that just weeks before the 17 March 2011 incident, in the last week of February, Gbagbo gave them a mission: *"Libérez l'axe MACA-Abengourou"*. Witness P-0009 also confirmed that Mr Gbagbo told him *"de tout faire pour libérer l'axe Abengourou-MACA."* In this 24 February 2011 meeting, Mr Gbagbo told his Generals not to cede Abobo, and to do whatever it takes to keep Abobo. To place this statement in context, it is worth recalling the CEMA's evidence on the importance of the MACA-Abengourou axis; thus Gbagbo's insistence to do what it takes to take control of the axis. Witness P-0156 led the offensive on the MACA-Abengourou axe on the next day, and on the second phase of the operation, at the request of General Detoh, Witness P-0009 authorised shelling with a 120 mm mortar; it was a *"tir de flambage et un tir d'Arrêt"*. Witness P-0009 was also informed by General Palasset that on 25 February 2011, 60 mm mortars were used during an FDS operation. Witness P-0009 testified that he reported this to the Minister of Defence, and that the President must have been informed by the latter.

803. Three days later, FDS Witness P-0330, one of the Commanders of Camp Commando in Abobo during the PEV, observed Captain Zadi attempt to install 120mm mortars in Camp Commando, and Zadi confirmed he was acting on the orders of the Presidency.

804. Within a few days, in early March 2011, BASA troops stationed in Camp Commando received orders from their superiors, including Dadi, to open mortar fire on Abobo despite the presence of its civilian population. Witness P-0164, a member of the BASA, testified that prior to his deployment to Camp Commando on 3 March 2011, Dadi told him to go there and fire 120mm mortars at two Carrefours: one at Mairie d'Abobo and one at N'Dotré. While deployed at Camp

Commando on 4 March 2011, Witness P-0164 set up two 120mm mortar launchers and aimed them at these two same locations, on the orders of Commander Niamké, who was in charge of the Abobo operational zone at the time. Witness P-0164 had concerns about the consequences of using a 120mm mortar in such a densely populated area, and requested a written order from his superiors, but it never arrived. Witness P-0164 testified that he asked for a written order to execute Colonel Niamké's order because he knew that the market, with women and children was right next to it, and he therefore knew what impact the 120 mm shell would have if it was fired at the Carrefour de la Mairie.

805. Witness P-0164 was told that he would be called when the order would arrive. During a meeting on 5 March 2011, Commander Niamké called Witness P-0047 and when they started talking about the 120mm mortars, Witness P-0164 heard Witness P-0047 say, over the phone (which was on speakerphone function), that *"je ne suis pas dans votre affaire d'armes lourdes"* and the conversation finished. Later on, Niamké called CEMA from his office. CEMA told Niamké to do everything to persuade Witness P-0164 to fire the shells, but since he did not succeed, he asked Witness P-0164 to leave his office.

806. Although CEMA denied that this phone call took place, his testimony on this matter is not credible. Mr Gbagbo alleges that Witness P-0164's account is not credible, arguing that an army commander would not call the CEMA in front of his subordinate. This interpretation ignores the fact that a subordinate has a lawful basis to refuse to follow manifestly unlawful orders – and that a commander's call to the CEMA would be appropriate in that extraordinary instance.

807. BASA Witnesses P-0164, P-0239, and P-0226 all acknowledged that the use of artillery weapons such as 120mm mortars in an urban area required a written order. There was no explicit written order to use 120mm mortars in Abobo in March 2011 because this paper trail would have directly implicated Mr Gbagbo



and his chain of command in criminal conduct of indiscriminately shelling a residential area.

808. Witnesses P-0009 and P-0047 denied that the FDS used 120mm mortars on 17 March 2011 into the Siaka Koné market – as Mr Blé Goudé correctly noted. But this should not come as a surprise, given that these high level commanders have an interest in minimising their involvement (and that of their subordinates) due to possible superior criminal responsibility for their conduct in failing to prevent or punish these acts.

809. The Prosecution submits that the early March order to fire 120mm mortars into Abobo, as well as the subsequent order on 17 March 2011, must have come directly from Mr Gbagbo himself. Although there is no direct evidence of these orders, there is no other reasonable conclusion to draw from the circumstances. The above record shows: (i) Mr Gbagbo authorised CEMA to use of 120mm mortars in Abidjan during the crisis; (ii) CEMA admitted to using them in Abidjan (albeit for a “*tir de flambage* and a *tir d’arrêt*”); (iii) multiple witnesses indicate the order to fire 120mm mortars from Camp Commando came from the Presidency; and (iv) CEMA and other commanders pressured at least one BASA Witness to fire them. Tellingly, Mr Gbagbo’s 24 February 2011 order to FDS Generals not to cede Abobo, and to do whatever it takes to keep Abobo, marked a turning point in FDS operations and their willingness to use mortars. Immediately thereafter, the FDS starting using mortars in Abidjan during the 25 February 2011 operation, a practice that continued into March. Furthermore, as detailed below, BASA Commander and Gbagbo loyalist Dadi ordered his men to fire the 120mm mortars on 17 March 2011 and celebrated their success rather than punish them, and the FDS failed to conduct a good faith investigation into the shelling. The totality of these circumstances demonstrates that Mr Gbagbo authorized the 17 March 2011 shelling of Abobo.

(a) *Murder*

810. On 17 March 2011, members of a BASA platoon based in Camp Commando murdered at least thirty-one civilians in Abobo.

- (i) Pro-Gbagbo forces killed one or more persons, intentionally or with awareness as to death

811. The overwhelming evidence shows that at Camp Commando on the morning of 17 March 2011, the FDS launched 120mm mortars into a heavily civilian area, thereby killing at least thirty-one people. FDS witnesses testified about the placement and launching of these mortars from Camp Commando, one witness even saw the mortars in question being fired, while civilian witnesses testified about hearing and watching the mortars land at various locations in Abobo and the resulting carnage. Videos of the immediate aftermath of the shelling show bloody and wounded bodies at the Siaka Koné market in gruesome detail.

- a. BASA installed and launched 120mm mortars from Camp Commando

812. FDS witnesses corroborated the delivery, installation, and launching of 120mm mortars from Camp Commando on 17 March 2011. Several FDS Witnesses testified that, among other weapons, the BASA had 120mm mortars mounted at Camp Commando during the post-election violence. As described below, FDS witnesses testified to transporting 120mm mortars to Camp Commando, observing or participating in their installation there. While other witnesses heard the sounds of 120mm mortars being fired from Camp Commando on 17 March 2011, BASA Witness P-0239 himself observed members of BASA firing the 120mm mortars from Camp Commando that struck the Siaka Koné market, Abobo SOS Village, and Derrière Rails.

- i. Witness P-0239

813. BASA Witness P-0239 testified that after his first mission to Abobo that occurred in late January 2011, he returned to Abobo on a second mission and personally escorted two 120 mm mortars from Camp Agban to Camp Commando. When they arrived at Camp Commando they were told to take over for troops that were already in Anonkoua-Kouté. While at “Depot 9” – in Abobo, on the road to Anyama, before arriving at the “nouvelle gare d’Abobo” – Captain Zadi ordered him to fire (mortar) 120mm shells. The adjutant Yapo refused to fire and requested a written order. Faced with this situation Captain Zadi fired 81 / 82mm mortars himself and said that he was targeting a place behind “Depot 9” in the direction of Anyama. Witness P-0239 explained that Adjutant Yapo asked for a written order because in order to use war weapons such as mortar shells, that could cause massive destruction, the President had to authorise such use with a written order. Witness P-0239 learned this during his trainings.

814. Importantly, on 17 March 2011, Witness P-0239 described observing first-hand two members of his BASA unit, Kamanan and Pegard, firing 120mm mortars from Camp Commando in the direction of the *Gendarmerie* roundabout in Abobo. It was these shots that caused the death and destruction described below. Witness P-0239 testified that this firing was done in response to an FDS convoy allegedly being shot at earlier that day. For the reasons discussed at length below in the nexus section for this incident, this response – without any verification that the military objective was still at the target location or whether civilians were present – constituted a failure of the FDS to exercise reasonable discretion in firing mortars.

815. Witness P-0239 also had experience handling 120mm mortars and described BASA’s as Russian-made, with a range of 6km, and a blast diameter of 200m. He specified they should normally be used in the countryside to destroy a bridge or a dam.

ii. Witness P-0330

816. FDS Witness, P-0330, one of the Commanders of Camp Commando in Abobo during the PEV, observed Captain Zadi attempt to install 120mm mortars in Camp Commando without the knowledge of the commanding officer at the end of February 2011. Witness P-0330 confirmed that Zadi said he was acting on the orders of the Presidency. On the day of Colonel Doumbia's arrival, around 28 February 2011, Witness P-0330 saw officer Zadi, arrive with his 1<sup>st</sup> BCP detachment and watched them unload 120mm mortar barrels in Camp Commando and attempt to put three barrels in a battery. One of the mortars being installed was facing the market, in the direction of the Abobo station. The mortars were being set up in a corner, not far from one of the two main buildings housing accommodation at Camp Commando. Just as Witness P-0164, this witness also indicated the position on the mortars on the 360 presentation of Camp Commando at panorama 11.

817. According to Witness P-0330, Colonel Doumbia, who was the chief of the PC at the time, requested Captain Zadi stop the operation, because he had not been informed of the installation, and firing with this type of weapon would engage Doumbia's own responsibility. In response, Captain Zadi told Colonel Doumbia that he had received his order from the Presidency. Colonel Doumbia also gave further details about this discussion to Witness P-0330 later in his office, saying he could not accept that under his command additional orders should be issued without his knowledge, because he would be the one answerable for them subsequently.

iii. Witness P-0164

818. Another BASA Witness, P-0164, stationed at Camp Commando during the crisis testified that prior to his deployment there on 3 March 2011, Colonel Dadi told him to go to Camp Commando and fire 120mm mortars at two Carrefours: one at the Mairie d'Abobo and one at N'Dotré. While deployed at Camp Commando on 4 March 2011, Witness P-0164 set up two 120mm mortar launchers

and aimed them at these two locations, on the orders of Commander Niamké, who was in charge of the Abobo operational zone at the time. During his testimony, Witness P-0164 indicated the precise locations of these mortars at panorama 11 on the 360 degree presentation of Camp Commando. As detailed above, Witness P-0164 had concerns about the consequences of using a 120mm mortar in such a densely populated area, and requested a written order from his superiors, but it never arrived.

iv. Witness P-0226

819. A gunner at BASA, Witness P-0226 was on duty at Camp Commando when a BASA team arrived with two 120mm mortars before 3 March 2011 and helped assemble them himself. He detailed that the two mortars were brought in the afternoon in a single vehicle, a KIA *véhicule d'allegement*, by an *adjudant-chef* [REDACTED] [REDACTED] with only a handful of people because there was a shortage of men that day. *Adjudant-chef* [REDACTED] asked Witness P-0226 and others to help him assemble the weapons because they had more experience than the elements with whom he had arrived. They did so and finished putting the weapons in place. Witness P-0226 recalled that there was a Michelin map of part of the Abobo area, which was very outdated, and that they had to update it and make the calculations in order to direct the tubes of the weapons.

820. Witness P-0226 was also present at the new Akouédo military camp when he heard the 120mm mortar detonations on 17 March 2011 – when a colleague of his confirmed they had been fired from Camp Commando. Witness P-0226 knew the sound because he had personally fired 120mm mortars during his instruction sessions. Witness P-0226 elaborated that BASA also had around six 120 mm mortars – among other weapons – at the new Akouédo military camp. He also provided details on their origin, in that the 120mm mortars were Russian because during his training he was taught about these weapons by Russian instructors,

the manuals were in Russian, and the inscriptions on the shells and other material were in Russian.

v. Witness P-0238

821. A fourth BASA witness stationed at Camp Commando during the crisis, Witness P-0238 testified that BASA was the only FDS unit with 120mm shells, and that 120mm shells were used in the crisis, despite that they are not supposed to be used in urban areas because of the damage the shrapnel can cause upon explosion. He elaborated that depending on the precise coordinates set, these shells can travel eight or nine kilometres, and its shrapnel has a defragmentation (explosion) radius of about 500 meters.

vi. Expert Evidence

822. The above eyewitness testimony that BASA launched 120mm mortars from Camp Commando on 17 March 2011 is corroborated by findings of an expert in military engineering who visited the shelling launch and impact locations.

823. Witness P-0411, an expert in military engineering with considerable experience investigating the usage of mortars, determined the Camp Commando was a viable firing point for the 120mm mortars on the 17 March 2011 impact sites he visited in Abobo. Indeed, in his report summary, the expert concluded that it is “highly likely” the four impact sites he visited were subject to attack by a heavy-cased high-explosive ammunition item – most likely a 120mm mortar system variant.

824. As detailed in Annex C of his report, the expert provided approximate distances, the first one to area of Camp Commando to SOS Village area (approximately 700 meters), and the second one from Camp Commando to area of Siaka Koné market (approximately 1500 meters). As detailed in Annex D of his report, the expert concluded that it was possible to deploy mortar systems from Camp Commando and that the areas of SOS Village and Siaka Koné market are

well within the minimum and maximum range limitations of most mortar systems, including Soviet type 120 millimetre mortar systems.

- b. These 120mm mortars landed in a densely populated primarily civilian neighbourhood, killing at least 31 people

825. Video evidence, medical evidence, victim and eyewitness testimony corroborate that 120mm mortars from Camp Commando landed in three places in Abobo on 17 March 2011: Siaka Koné Market, SOS Village, and Derrière Rails. Investigations from UNOCI and Human Rights Watch to the impact sites verified, including one visit on the day of the shelling verified that mortars caused the damage. Furthermore, an expert in military engineering who visited four impact sites he visited in Siaka Koné Market and SOS Village and found it “highly likely” the sites were subject to attack by a heavy-cased high-explosive ammunition item - most likely a 120mm mortar system variant.

a. Site Visits by Different Investigators Verified the Shelling

826. In addition to Expert Witness P-0411 whose site visits are discussed below with respect to each impact location, UNOCI and Human Rights Watch both conducted investigations of the impact locations and verified that the FDS shells landed in Abobo on 17 March 2011. UNOCI managed to get to the scene first – on the same day as the shelling – whereas Human Rights Watch visited four months later.

827. With respect to the UNOCI’s investigation of the 17 March 2011 FDS shelling on the Abobo market, Witness P-0414 explained how a team made of UNPOL, Human Rights Office and Public Information Office travelled to the Abobo market on the same day. The first call received at the UNOCI call centre relating to the shelling was at 12h27 that day. The witness remembered visiting the area,

including two houses damaged by the shells in the “*Village d’enfant SOS*,” visiting the market and seeing the shell impacts on the ground of the market as well as little debris scattered around. The UNPOL specialist who accompanied Witness P-0414 stated this was typical of mortar fire to spread this way. The witness also stated that there was a strong smell of powder when they reached the market, which meant to her that the shelling was quite recent. Many of the calls received at the UNOCI call centre stated that the fire came from Camp Commando.

828. A Human Rights Watch researcher, Witness P-0369, visited these shelling sites in Abobo from 25 to 30 July 2011, including the Siaka Koné market, Abobo SOS Village and an area known as Pharmacie de la Mer. In the Siaka Koné market, Witness P-0369 saw small holes in the area where people often sat to drink and chat and in the surrounding area in a radius of five to ten metres, as well as indentations in the concrete. The holes were in metal doors that entered into the common courtyards and on the roofing or the metal top above the particular area. In Abobo SOS Village, which Witness P-0369 described as a residential area, Witness P-0369 visited four different sites and saw similar impacts and a large number of small holes in buildings, including homes. In the area near the Pharmacie de la Mer, Witness P-0369 saw similar impacts on metal doors and other buildings surrounding the area.

i. Siaka Koné Market

829. Forensic analysis of the crime scene at Siaka Koné shows clear evidence of the impact of a mortar. In regards to his visit to Siaka Koné market, Expert Witness P-0411 explained that there was evidence of infrastructure damage consistent with high velocity, low angle fragmentation. He testified that his forensic analysis of a door there showed a spread of fragmentation very consistent with a mortar bomb functioning at ground level - which is depicted in panorama 1 of the 360 Presentation of Siaka Koné market done simultaneously with his forensic analysis, and which Witness P-0362 corroborated was where one of the shells hit



on 17 March 2011. The expert further explained that the door at the scene as well as the concrete wall serve as so-called permanent “witness screens” in this case because they still bear the fragmentation damage whereas wooden structures have been replaced and do not manifest damage anymore. He testified that fragmentation pattern is consistent with a heavy cased item of ammunition considering asymmetric shape and random nature of penetrations. In contrast, he said a bullet hole would have a lot more symmetry and a number of penetrations of the same size would be expected.

830. The expert testified that there are puncture marks on the wall are directly opposite the door, as depicted in panorama 2 of the 360 Presentation of Siaka Koné market, and in his report. He explained the fact that there are no puncture marks to their left and right indicates that fragmentation could have punctured the door, continued its flight and then punctured the wall opposite to it.

831. In addition to the forensic evidence, several eyewitnesses gave harrowing accounts of being injured and seeing other killed by the shelling at the Siaka Koné market on 17 March 2011.

832. For example, Witness P-0105, a fruit seller in the market, arrived to work that morning around 09h00 with her little sister. At around 11h00–11h30, Witness P-0105 heard a big noise, like a bomb. She told her sister to go home, and was gathering her belongings and trying to take shelter when she heard a second big noise. She immediately had pain at the bottom of the right clavicle and there was a lot of blood. She tried to run to the yard behind the market, but with the heat and blood she fell and lost consciousness. When she regained consciousness, she was at the operating room at the Hospital of Abobo where she had a small surgery that required her to spend two days there. During the next six months, she could not move her right arm because of the pain. Several months later she went for an x-ray, which is also in evidence, and it showed a fragment had remained inside her body. The doctor told her that it was very deep and he did

not want to take the risk of removing it. Pictures of her bandaged injury taken the day after the incident and scar are also in evidence. To this day, there is still a little piece inside her body, as Expert Witness P-0410 corroborated during his medical examination.

833. In his capacity as an Expert Witness, P-0410 examined Witness P-0105 in October 2013 and provided reports detailing the injuries she sustained during the crisis, and confirmed these conclusions during in-court testimony. The report states Witness P-0105 received an injury to the clavicle: *“à la mise en évidence d’un éclat métallique en projection des parties molles axillaires à droite.”* Witness P-0410 further noted that the fragment was too deep to be safely removed. Witness P-0410 consulted with a radiologist who agreed with his conclusions, based on the density and opacity of the fragment. Witness P-0410 also took photographs of Witness P-0105’s injuries, which were included in his report and which provided further evidence of the nature and extent of her wound.

834. Witness P-0105 heard from her sister that four Malians were killed in the shelling, including one named Yaya. Two days after the shelling, the witness saw on the television (TCI) the images of the incident and recognised Yaya and a handicapped man and his wife, which had passed in front of her just before the shelling. When Witness P-0105 came out of the hospital, she saw Yaya’s parents, who told her that Yaya died at the hospital. Witness P-0105 did not see armed people in the market nor did she see the police or the *gendarmérie*.

835. Witness P-0362, a truck driver in Abobo, arrived at the station across from the Mairie d’Abobo next to the Siaka Koné market at around 08h00-08h30. Witness P-0362 was seated in a hanger with more than five associates, and described several vendors and other people in the surrounding area. While chatting with friends, he heard a loud “boom” and panicked – it was the first time he ever heard such a noise – and ran towards the station. He came back to the hanger ten minutes later and saw blood everywhere, wounded people, and people on the ground.

836. In terms of those who were killed, Witness P-0362 counted about 14 bodies.

For example, saw the bodies of his two friends, including Lasso who had wounds in his back, and his friend Adama who was laying on a table with perforations over his entire chest. His friend Daou, who died three days later, had one leg that was completely crushed at the tibia. Witness P-0362 saw five other bodies among the area where vendors sell fans, all of whom died on site because the shell exploded. He also saw Yaya, who worked in a nearby store, whose two legs were completely destroyed and who died two days later. He also saw the bodies of two passers-by, a husband and wife, who were just a few meters from where the shell fell.

837. In terms of those who were wounded, Witness P-0362 could also see the blood coming from this friend Amara's neck, who was hit by the shelling, but who survived. Another man, Solo, had "*tendons centrals*" of his leg cut. Moussa Gana was hit in the arm. In court, Witness P-0362 clarified that he did not know the name of everyone that was wounded that day, but provided some additional names of people he knew: Bamba Sekou, Diomande Sekou, Ballo Sindou, Diomande Amara.

838. Witness P-0362 helped put one wounded man in a *pousse-pousse* to be carried to Abobo Sud hospital, and then used empty bags of rice and *pagnes* to cover the bodies. He did not see an ambulance come for the wounded, nor the police, nor UNOCI, nor did he see armed combatants at the scene. He did see people filming at the scene, and provided the Prosecution with a copy of the video of the incident when he saw them visiting the shelling site in July 2013, and identified both in court and to OTP investigators, several of his friends that were injured or killed in the shelling, including Yaya.

839. Witness P-0362 further authenticated photographic evidence taken at the Siaka Koné site during Expert Witness P-0411's visit, and corroborated Witness P-0411's report when he confirmed that panorama 1 indeed depicted a doorway

that was a few meters from where the shell fell, and that the damage to the door was still visible in the form of perforations at the time of his testimony in November 2017.

840. Witness P-0294 described how his brother Kouakou Koffi Francois and sister-in-law N'guessan Adjo Therese were killed by the shelling in the Siaka Koné market on 17 March 2011. His description of the location of their death, matches eyewitness P-0362's description of seeing a man and woman's bodies. By the time Witness P-0294 arrived at the scene that day, the bodies had already been taken to the hospital, but Witness P-0294 could nonetheless see blood and bits of human flesh on the ground where they died. Witness P-0294 saw the names of his brother and sister-in-law in the Anyama morgue register three days later, but could not see the bodies because there were problems preserving the bodies due to cuts to the electricity. Witness P-0294 also provided an x-ray and a picture of the bodies of his brother and sister-in-law at the scene which was also published in local papers on 19 and 20 March 2011, a copy of which is also in evidence. He also provided identity cards, *certificates de non contagion*, death certificates, signed by Witness P-0594, and signed extracts from the *Registre des actes de l'état-civil* of his brother and sister-in-law. Notably, the *certificates de non contagion* and the death certificates, dated 23 May 2011, both contain matching file numbers for the IML Register (Koffi, 278, Adjo Therese, 282) and the Anyama Morgue Register (Koffi, 393, Adjo Therese, 398). Copies of the INTERFU files verify that his brother and sister-in-law died and entered the morgue on 17 March 2011.

841. Medico-expert Witness P-0564 performed examinations of Kouakou Koffi Francois and N'guessan Adjo Therese, finding their extensive wounds were consistent with a shelling as a cause of death.

842. Witness P-0106, a mechanic, also indicated that on the day of the shelling, he was at Abobo Quartier Marley, and heard shell fire around midday. He heard from others that the shelling of Siaka Koné market had occurred, and saw

wounded people at the market the next day, blood everywhere, and some family members burying their loved ones.

843. Witness P-0580 was at the entrance to the neighbourhood with some friends when they heard the sound of shells falling. About 15-20 minutes later Witness P-0580 arrived at the Siaka Koné market. He saw dead bodies and other victims of the shelling spread out across the crime-scene. The rooftops of the houses were also damaged. Witness P-0580 could not remember the exact date of this incident, but recalled that it took place after the women's march.

844. Witness P-0117, [REDACTED] heard that Mr Gbagbo was going to bomb the market before the 3 March 2011 women's demonstration. Everyone in the street talked about how Mr Gbagbo's supporters were sent messages over the phone to leave Abobo because it was going to be bombed. Although she puts the bombing at around 15h30-16h00, she is clear that two weeks after the 3 March women's demonstration, Gbagbo forces shelled the Siaka Koné market across from the Mairie and not far from Abobo Gare. She heard the noise of the shelling herself, and was told there were about forty dead and many wounded in the market, and remembers the UNOCI radio announcing at first there were twenty-four dead, but then later updated the number to forty. She described that previously closed hospitals had to open to take in victims of this attack. She could still see the damage to the market during her interview in 2012.

845. Witness P-0184, an Abobo resident and organiser, described how after the 3 March 2011 incident, Mr Gbagbo's people warned their FPI supporters to leave Abobo. Mr Gbagbo's forces started launching mortar shells on Abobo and on 17 March 2011, Witness P-0184 heard the noise of four or five exploding. Soon after she started receiving phone calls reporting on victims killed or injured in the shelling at the Siaka Koné market, and the Habitat neighbourhood. The next day Witness P-0184's organisation, the *Comité de Survie d'Abobo*, collected information about victims who died in the shelling. In response to Defence arguments, the

methodology and the reliability of the list are discussed at length below. It confirms that Bamba Aminata, Coulibaly Moussa, Coulibaly Aboubacar and Diaby Karamoko all died from a shelling in Abobo on 17 March 2011, and two specifically at the Siaka Koné market.

846. In addition to this list, several other documents corroborate the identity of victims of the Siaka Kone shelling. In response to Defence arguments, the authenticity and probative value of these documents are discussed in detail below in section 2(h). In sum, these documents show that the following victims died during the shelling on the 17 of March in Siaka Kone Market: Coulibaly Mamadou, Somplei Theophile, Coulibaly Lacina, Bamba Amara, Kone Konoutie, Diarrassouba Hamidou, Hien Mamdierenil Patrice, and in Abobo: Ouedraogo Moumouni.

ii. Abobo SOS Village

847. The 17 March 2011 shelling hit three locations in Abobo SOS Village, a neighbourhood whose name comes from an NGO that provides foster services, education, and other support for children who can no longer live at home. Abobo SOS Village is located between Camp Commando and the *Gendarmerie* roundabout.

848. Forensic analysis of the crime scene at SOS Village shows clear evidence of the impact of a mortar.

849. Expert Witness P-0411 also visited several mortar impact locations in SOS Village, which the expert described as a largely residential area with a mix of residential dwellings, small businesses, religious buildings, and the SOS Village. His testimony and report discuss three locations of relevance there, all of which contained damage consistent with heavy cased, high explosive ammunition item functioning within the immediate vicinity, despite the significant amount of time that has elapsed since the incident. These observations were consistent with

damage depicted in photographs of the scene at the time of the shelling which were provided to the expert and included in his report. Fragments obtained during their visit to the first SOS Village site, that were alleged to have been removed from shelling victims, were consistent with the fragmentation of a cast iron heavy cased item of high explosive ammunition. Similarly, the expert determined that fragments that were allegedly recovered at the time of the attack from a nearby wall at the second SOS Village site were likely from a mortar bomb attack.

850. As the expert detailed in his testimony, the impact of the shelling at these three locations in SOS Village can also be seen in the pictures included in the Expert's report and the 360 degree panoramic photos, specifically those visible in panoramas 17, 19, 23, and 24, which were taken simultaneously with the expert's visit. For example, the expert recognised the facade of the mosque and the doors that he forensically analysed, visible in panorama 19, as having a series of penetration or puncture marks and strike marks which were attributable to the high velocity fragmentation. Another example is the forensic analysis the expert did of the door seen on 360 panorama 23, which he testified as having a significant amount of fragmentation damage, consistent with the high velocity fragmentation, expected from a heavy cased item of ammunition. Considering the amount of penetration and the amount of fragmentation, the expert assessed that the detonating item was in a very close vicinity to that door.

851. The findings of this forensic examination of the crime scene are corroborated by several eyewitnesses who gave harrowing accounts of being injured and seeing others killed by the shelling at three Abobo SOS Village on 17 March 2011, and whose medical records document their injuries.

852. With respect to the first location in SOS Village location, Witness P-0364 described the shelling in detail, including injuries she suffered from one of five shells that landed that day. Witness P-0364, a vendor and resident of Abobo SOS

Village, described sitting in her courtyard with family in the morning of 17 March 2011 and seeing something falling from the sky, then hearing a big sound and seeing a lot of dust. This shell fell in her neighbour's courtyard behind her house and – she later found out – killed a Senegalese man who was in the shower. Witness P-0364 and her family then fled to the mosque across the road, where her neighbour Issa Boukoum and other neighbours were. While closing the door to her house, she heard the second shell that fell at the other part of the Carrefour. While in the mosque, the witness heard the third shell that fell in a courtyard nearby.

853. The fourth shell, which injured her and her family members, fell in front of the gate to Witness P-0364's house. Witness P-0364 didn't see the shell falling, but heard it, and saw the *traces* afterwards. The shell fragments pierced the mosque's iron door and roof, injuring her and several family members. Her family member Papiss was struck to his feet – she saw his feet bleeding – Issa was struck to both arms and one foot. The witness was struck in the right buttock and thigh, and Ismael had a light injury to the head. Youth helped bring the wounded to the hospital. Other people wounded in the shelling include Moumouni, Francois, and Maturin.

854. While at the hospital, Witness P-0364 had shell fragments removed from her buttocks, and described seeing lots of dead bodies, and parts of bodies. While there Witness P-0364 also heard a fifth shell fell nearby at the XV<sup>ème</sup> arrondissement.

855. Forensic, medical, and photographic evidence corroborate Witness P-0364's account. Witness P-0364 provided Prosecution investigators with three shell fragments that were extracted from her body while she was in the hospital, as well as three photographs of damage from the shelling that she saw being taken on the day of the incident. The three photographs show holes in the wall in front of her home, her front door, and the wall of her home. Witness P-0364 provided a



fourth photograph which showed her bandaged wounds on the day of the shelling, and a copy of her medical records for treatment for her injuries. Her injury still affects her to this day such that she still walks with a crutch when in pain. The shell fragments she provided were subsequently analysed by Expert Witness P-0411 and found to be likely from a mortar bomb attack.

856. In his capacity as an Expert Witness, Witness P-0410 conducted a medical examination and provided a report as to the injuries sustained by Witness P-0364; he confirmed these conclusions during in-court testimony. The report states that the witness had suffered bullet wounds to the right thigh and the right buttock. Witness P-0410 requested an x-ray of the right thigh and found: *“un corps étranger métallique susceptible de correspondre à un projectile.”* Witness P-0410 also took a photograph of Witness P-0364’s injuries, which were included in his report and which provided further evidence of the nature and extent of her wound.

857. With respect to the second and third SOS Village locations, several witnesses such as P-0536, P-0360, P-0363, and P-0489 provide compelling accounts of the shelling that corroborate forensic evidence of the shelling.

858. Witness P-0536, a former housemaid who lived in Abobo, described being hit by a shell that seriously injured her and killed her young son [REDACTED] while they were walking in a group of about fifteen civilians away from the market. She described hearing gunfire and a “boum”, but did not see anyone armed and did not see a shell. She described ten other people were killed and five wounded from the incident. She described losing lots of blood and being wounded in the belly, and also said four “bullets” were removed from her stomach at the hospital, but was told later that she was hit by a shell. After losing consciousness, she was taken to the hospital in a wheelbarrow where she was x-rayed, operated on, and where she stayed recovering for five weeks. She saw lots of other wounded civilians at the hospital. She subsequently had daily treatments and another

surgery on her stomach at a hospital in Treichville where she stayed for two weeks. She still suffers pain from her injuries and is not able to work.

859. Defense counsel conceded that the identity of Witness P-0536's son's corpse in the photographs provided, as well as in a screenshot of the video of the incident. Witness P-0536 further authenticated one of the pictures of her dead son, indicating her niece obtained it from the photographer himself. She also authenticated her medical records from Treichville hospital, and pictures of her own injuries, taken after her release from the hospital. Although Witness P-0536 could not put a date on the shelling, medical records corroborate that her son died on 17 March 2011. Witness P-0364, a vendor and resident of Abobo SOS Village, described the shelling of 17 March 2011 in detail, including injuries she suffered.

860. Witness P-0363 worked in the [REDACTED] and at the time of the shelling was in his clothing shop, [REDACTED]. He reported that shots were fired at approximately 10h30 in the morning; he was certain the shots had come from Camp Commando [REDACTED]. At around noon, shells were fired and the witness described hearing three shells explode – two fell approximately [REDACTED] from his shop and the first fell near to the new mosque. When the third shell fell, Witness P-0363 reported hearing cries; when he went outside he saw bodies lying on the ground. This included a mother and her seriously injured baby, as well as a ten year old boy who had died from his injuries and two other victims who had died and were unknown to the witness.

861. Witness P-0363 described seeing a number of people who were injured during the shelling, including a man who had been struck in the face and was being taken to the hospital by a group of youths. A man at the adjoining fence to the shop, Kone Moussa, had been injured in the foot. On the other side of Witness P-0363's shop, his neighbours Cisse Sékou and Kone had both been injured in the

neck. A Senegalese man known to the witness as N'Diaye had been injured in the abdomen and was being taken to hospital, where he died upon arrival. Injured and dying people were taken to hospital on *pousses-pousses*, including an old woman named Nan who had been struck in the chest, and two young children. Furthermore, Witness P-0363 described these locations in court on the 360 panorama of SOS Village that was taken in coordination with Witness P-0411's site visit.

862. In the aftermath of the shelling, Witness P-0363 found several shell fragments in his atelier, which he kept until passing them on to an OTP Investigator, and subsequently analysed by Expert Witness P-0411 and found to be likely from a mortar bomb attack. The marks from the shells remain visible in his front door, the wood of the worktable of the atelier, and the roof.

863. Witness P-0360 was living and working [REDACTED] during the shelling at the SOS Village. He remembered an exchange of fire that took place early in the morning between the FRCI and the FDS, who were firing from Camp Commando. He was in his studio when the first shell exploded in front of a home to the left of his studio, [REDACTED] [REDACTED]. At virtually the same time, other shells began to fall in the *quartier*; he remembers five shells falling in total. The first shell killed a Senegalese man and injured numerous others, including his friend Komo and a woman who lived in a nearby courtyard. Witness P-0360 took photographs of the wall in the courtyard, the toilet, the broken roof, the door of the house, and a refrigerator belonging to the injured woman – he then gave the photos to her once they had been developed. Another shell hit the nearby mosque that was under construction, but he did not take a photo of the mosque.

864. Witness P-0360 remained in his studio for approximately half an hour waiting for the shelling to stop, at which point he left and saw ten people lying on the ground. This included a mother and child who had been seriously injured by

shell fragments. Youths from the *quartier* were taking the injured to hospital with the aid of *pousse-pousses*. Witness P-0360 took photographs of the scene as he saw it, which included injured people, death, and destruction of property.

865. During the crisis, Witness P-0360 gave copies of the photographs he had taken to a friend, after which he continued to use his camera's memory card. At some point in the intervening period, his memory cards were wiped due to a virus. However, Witness P-0360 was able to recover some of the photos in August 2015, with the help of a friend. The witness provided a series of descriptions for the photographs, indicating that they showed, amongst other things, numerous people who had been badly injured by shells.

### iii. Derrière Rails

866. Witness P-0297 testified that his sister, Makaridia Doumbia, was killed by a shell on 17 March 2011 near the Derrière Rails area of Abobo. Although he was not a direct eyewitness, he described hearing how the shell hit her at Bocabo Avocatier, which was close to the Mosque. On the day of the shelling, Makaridia went to the market Siaka Koné and then her friend Mariam's house, on the way from which she was hit and killed by the shell. Shrapnel hit the side of her head and her friend Mariam found her dead not far from Makaridia's home. Witness P-0297's friend Adama also saw Makaridia dead at the scene, next to other corpses. Adama transported the Makaridia's body to the hospital of Abobo and called Witness P-0297 to say the she would be transported to the Anyama morgue.

867. Witness P-0297 went to the morgue the following day, but was sent back as the body would first be examined, although he had never authorised an autopsy. He could only identify his sister at the morgue a month later. When Witness P-0297 went to the morgue, he had to show his ID card and that of his sister to establish his relation to Makaridia. He was then considered as the "responsible" person for the body according to the medical file, which is in evidence. When he

identified her corpse, he saw part of her face and her body, which was covered with a flowery cloth. On the day of the identification, Witness P-0297 was told at the morgue to collect several documents at the CHU of Treichville, which he did on that day or the following day, and which are also in evidence, and corroborated by the contents of her INTERFU file.

868. Medico-expert Witness P-0564 performed an examination of Makarida Doumbia and found wounds that were consistent with a shelling as a cause of death: *“Toutefois, la présence des deux orifices d’entrée sur la face postérieure du corps, peut être compatible avec les informations rapportées par le frère cadet de la défunte.”*

869. At the hospital, Witness P-0105 saw many people injured by the shelling. Many of these people were also victims of a shell that landed in Derrière Rails. She knows a woman who was injured in her arm that was also in the hospital and she told Witness P-0105 that shells also landed in her neighbourhood.

*(b) Other Inhumane Acts or Attempted Murder*

870. On 17 March 2011, members of a BASA platoon based in Camp Commando caused serious injury, or attempted to murder, at least thirty-six civilians in Abobo.

(i) Pro-Gbagbo forces attempted to kill one or more persons, or in the alternative, inflicted great suffering or serious injury by means of an inhumane act

871. The conduct of the Pro-Gbagbo forces in shelling the civilian population of Abobo on 17 March 2011, and thereby causing serious injuries described above by victims and eyewitnesses, constitute other inhumane acts, or in the alternative, the attempted murder of at least thirty-six civilians.

872. The Prosecution does not have to prove the identity of victims of inhumane acts or attempted murder in order to prove this count.

(c) *Persecution*

- (i) Pro-Gbagbo forces severely deprived, contrary to international law, one or more persons of fundamental rights

873. The 31 acts of murder and at least 36 other inhumane acts described above at counts 1 and 2, respectively, constitute severe deprivations of fundamental rights. Pre-Trial Chamber II in the *Kenyatta et al.* case found that killings, serious physical injury and acts causing serious mental suffering constituted such severe deprivations of fundamental rights.

- (ii) The conduct was committed in connection with acts referred to in article 7(1) of the Statute.

874. The acts relied upon to make out the crime of persecution are one and the same as the acts of murder and inhumane acts, also charged under articles 7(1)(a) and (k), of the Statute.

- (iii) Discriminatory intent: Pro-Gbagbo forces targeted such persons by reason of their identity in a group or collectivity, or targeted the group or collectivity as such, based on political, racial, national, ethnic, religious, or other grounds.

875. The evidence shows that the crime of persecution was committed through the targeting of the victims of counts 1 and 2 on political, national, ethnic, or religious grounds. Specifically, the victims of the 17 March 2011 incident were targeted as perceived Ouattara supporters, on the basis that they were actual or perceived political opposition activists and sympathisers, or civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity

and/or their provenance from northern Côte d'Ivoire, or other West African countries.

876. Abobo was a known Ouattara stronghold during the crisis. The RHDP took the majority of votes in Abobo in the 2010 Presidential election.

(d) *Nexus*

(i) The killings and inhumane acts were committed as part of a widespread or systematic attack directed against a civilian population

877. As discussed in the above section on pattern evidence, there is substantial evidence on the record demonstrating that the 17 March 2011 shelling was part of a broader pattern of killing and injury caused by pro-Gbagbo forces shelling and indiscriminately firing in areas densely populated by perceived Ouattara supporters in Abidjan, and that this shows that the attack was directed against the civilian population.

878. Mr Blé Goudé argues that there is insufficient evidence that the FDS used heavy weaponry to indiscriminately target civilians, but the overwhelming evidence shows that this is exactly what they did when they launched 120mm mortars from Camp Commando into the pro-Ouattara neighbourhood of Abobo on 17 March 2011. The record also shows that the FDS killed civilians when it launched mortars in or around Abobo on 26 and 27 February 2011, 11 to 12 March 2011, 22 March 2011 and in Treichville on 11 April 2011.

879. Mr Blé Goudé takes issue with the Prosecution's characterisation of mortars as imprecise weapons, but cites no evidence or factual proposition to indicate mortars are precise weapons. Perhaps more importantly, as demonstrated below, there is no evidence that anyone along the FDS chain of command, whether commanders on the ground or their superiors, ever took reasonable measures to

ensure that these imprecise mortars were launched in Abidjan in a way that they actually achieved a military objective and minimised civilian casualties.

- (ii) The pro-Gbagbo forces intended or knew that their conduct was part of a widespread or systematic attack directed against a civilian population

880. The evidence on the record shows the FDS intended and knew their shelling of Abobo on 17 March 2011 was part of a widespread or systematic attack directed against a civilian population.

881. As a threshold matter, the expert testified that use of a mortar system would be appropriate where you have a concentration of enemy and the absence of a civilian population. He elaborated that the lethal radius of these weapons can be in excess of 90 to 100 metres, and that fragmentation could still be lethal in excess of 200 metres. Thus, in an area like Abobo where there is a significant civilian population or where there is going to be a large amount of collateral damage, an area effect weapon such as a 120 millimetre heavy cased high explosive mortar would be inappropriate weapon system. As discussed above, many FDS witnesses confirmed this principle – and for that reason, the use of artillery weapons such as 120mm mortars in an urban area required a written order, which is corroborated by BASA Witnesses P-0164 and P-0239.

882. As such, FDS commanders did not act as a “reasonable military commander,” despite Mr Blé Goudé arguments to the contrary. Even if the use of mortars were allowed in an urban setting to achieve a military objective, it is not “excessively burdensome,” as Mr Blé Goudé suggests, to require the FDS leadership to require BASA to take minimal steps such as a brief reconnaissance mission to determine the exact coordinates of the target location and to determine whether the enemy is still located there.



883. The expert Mr Blé Goudé cited, Professor Yoram Dinstein, actually supports the proposition that such measures are necessary:

“If it is planned to attack a small military objective surrounded by densely-populated civilian areas, the only legitimate *modus operandi* may be to resort to a surgical raid with precision-guided munitions [...] LOIAC instructs the planners of an attack to take whatever steps that are necessary, in order to avoid or minimize collateral damage to civilians (in urban settings and elsewhere). If the attack against a specific military objective can be embarked upon within these parameters, it is perfectly legitimate. Otherwise, it must be recoiled from.”

884. The record is clear nobody in the FDS chain of command took such reasonable or necessary steps to minimise civilian deaths on or before their 17 March 2011 shelling of Abobo. Indeed, the use of mortars in a densely populated urban area without such reasonable measures in fact demonstrates that the civilian population perceived to support Mr Ouattara was the primary rather than the incidental object of the attack.

885. As alleged evidence of the FDS lack of belligerent will against the civilian population, Mr Blé Goudé cites BASA Witness P-0226’s testimony that the use of artillery weapons such as 120mm mortars in an urban area required a written order, which is corroborated by BASA Witnesses P-0164 and P-0239. In further support of this proposition, Mr Blé Goudé also cites Witness P-0009’s testimony that mortars could not be used in an urban area without combatants. The Prosecution does not dispute this basic premise – the issue is that these principles were not adhered to on the day of 17 March 2011 when the FDS shelled Abobo. The record shows there was no written order to use 120 mm mortars that day – thereby demonstrating the circumvention of measures that are supposed to regulate the use of this powerful weapon. There was no explicit written order to

use 120mm mortars on 17 March 2011 in Abobo because this paper trail would have directly implicated Mr Gbagbo and his chain of command in the criminal conduct of indiscriminately shelling a primarily residential area.

(iii) The FDS failed to exercise reasonable discretion in firing mortars in Abobo

886. A key indicator that the FDS intended and knew their shelling of Abobo on 17 March 2011 was directed against a civilian population is that FDS Commanders failed to reasonably exercise their discretion to use heavy weaponry in Abobo. Mr Blé Goudé advances the proposition that military commanders have discretion to use heavy weaponry, such as mortars, in urban areas. Mr Blé Goudé further describes that the FDS had to perform “military operations in a guerrilla-like warfare situation, which had to be conducted in an urban area.” Mr Blé Goudé puts forward the “reasonable military commander” standard and cites criteria from the report of the Committee Established to Review the NATO Bombing campaign Against the Federal Republic of Yugoslavia, including the use of “precautionary measures.” This report elaborates on such measures underlying the principle of distinction which requires military commanders distinguish between military objectives and civilian persons or objects:

“...Article 57 of Additional Protocol [...] in part, obligates those who plan or decide upon an attack to “do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects”. The obligation to do everything feasible is high but not absolute. A military commander must set up an effective intelligence gathering system to collect and evaluate information concerning potential targets. The commander must also direct his forces to use available technical means to properly identify targets during operations.” (emphasis added).

887. The FDS commanders in this case do not meet the very threshold cited by Mr Blé Goudé. The record is clear that no FDS commander along the chain of command took such reasonable measures when the FDS shelled Abobo on 17 March 2011. It is not that precautionary measures “did not work well,” it is that there were none taken whatsoever. Mr Blé Goudé does not cite any facts specific to 17 March 2011 to support the conclusion that the FDS met the reasonable commander standard, and as demonstrated below, the FDS failed to meet even the most basic criteria.

888. State practice and common sense provide several steps that reasonable commanders can take to minimise the risk of civilian casualties while using mortars in an urban setting, such as: (i) forward observation of target; (ii) recent (or real-time) targeting information; (iii) determining effectiveness of mortar fire for certain targets; (iv) preparatory measures (“registration”); (v) after-action review; and (vi) specific rules of engagement regulating use of mortars. The analysis below demonstrates the FDS failed to take reasonable steps at each of these six steps.

889. The first factor, forward observation of a military target, helps ensure accuracy in firing. Military practice and common sense dictate that “observed fire” where a commander or forward observer can see the target in real-time is preferred to “predicted fire” whereby a forward observer is not used and a commander does not have a direct line of sight to the target and where the accuracy depends on predications about the trajectory of the rounds based on a range of factors (also known as “shooting off the map”). Using predicted fire instead of observed fire substantially increases the risk of civilian harm.

890. BASA Witness P-0238 confirmed that calculations are needed to have precision with mortars. BASA Witness P-0226 specified that even with mapped and programmed coordinates these mortar shells have a precision of more or less fifty meters, which is why it is not appropriate to use them in town. Expert

Witness P-0411 confirmed that it was unlikely that even an experienced user group would hit a specific point on a map with 120 mm mortars – and that they will land 60 to 100 meters in diameter from an intended point. Witness P-0226 noted that when firing it in a built-up area, one needs to ensure that there are no people present or only a small number in order to minimise the loss of lives.

891. The BASA did not have such accurate and precise targeting data on 17 March 2011. BASA Witness P-0239, who observed the 120mm mortars being launched that day, testified to an alleged military target: the *Commando Invisible* that purportedly fired upon the FDS convoy at the *Gendarmerie* roundabout earlier that same day. As witness testimony and the 360 panorama taken of Camp Commando demonstrate, there was no such ability to observe the alleged military target *Gendarmerie* roundabout directly from the location where the mortars were launched, and the evidence suggests forward observers were not employed to direct mortar fire.

892. The importance of the second factor, recent (or real-time) targeting information is self-evident. Common sense dictates that the extent to which a mortar is likely to serve any military advantage depends on the nature of the target and the “freshness” of the information placing the target at the location in question – particularly when dealing with a mobile and not a static target such as guerrilla-style fighters.

893. There is no evidence to suggest from BASA Witness P-0239’s testimony, who observed the mortars being fired from Camp Commando on 17 March 2011, that anyone in the FDS took steps to obtain recent or updated information on their alleged military target at the time the mortars were fired, or to even bother to investigate whether the *Commando Invisible* were still present at the *Gendarmerie* roundabout. In other words, the FDS ignored the highly likely possibility that the *Commando Invisible* had moved locations since their alleged encounter earlier that morning.

894. The third factor indicates that a reasonable commander looks at whether mortars will be effective against the intended military target. The FDS failed to use common sense when evaluating the effectiveness of mortar fire against guerrilla-style fighters. It is not in dispute that pro-Ouattara armed groups in Abobo including the *Commando Invisible* engaged in guerrilla warfare – they were mobile groups attacking the FDS and then disappearing amongst the population in Abobo. Witness P-0520 described it as “*une sorte de politique de harcèlement*”. As such, the absence of reasonable measures to determine whether mortars would in fact be effective against fighters who were mixed into the civilian population and without a static position (and as their very name implies, invisible) demonstrates an intention to target the civilian population.

895. The fourth factor, preparatory measures, including the process of “registration” can be taken by reasonable commander to ensure the mortars land where intended. Registration is when the weapon is fired in a safe area such as a landmark or empty field, and the fall of the shot is observed, so as to reduce the “error budget” and increase the probability of firing the weapon accurately. BASA Witness P-0239 did not describe any such registration being done on 17 March 2011 when he saw his colleagues launch the mortars in question. Indeed, there is no evidence on the record of mortars hitting any landmarks or nearby empty fields that day.

896. The fifth factor, battle damage assessment (BDA) and after-action review (AAR), refers to reasonable steps a commander can take to ensure the mortars actually hit the intended military target, to determine mission success, whether further strikes were needed, and whether civilians were harmed. The utility of such information when conducting future operations is corroborated in a U.S. Army Techniques Publication:

“Army units can prevent civilian casualties by incorporating lessons learned from previous incidents, including near misses.

Collection, analysis, and dissemination of civilian casualty information horizontally and vertically are critical for civilian casualty mitigation. Insights on civilian casualties can be obtained from mission after action reviews and debriefs, assessments of unit experiences, cross-talk with other units, data management and analysis, investigation results.”

897. Instead of investigating or analysing whether their alleged target was hit, the record shows that BASA Commander Dadi and his subordinates celebrated their attack on Abobo. BASA Witness P-0226 testified that, at Akouédo new camp the day after the attack, Commander Dadi and his troops celebrated the unit members that fired the shells like heroes, each getting a cold beverage of their choice. No measures were taken after the 17 March 2011 shelling to determine whether the mortars actually achieved a military objective, which, in the face of contemporaneous news reports of significant civilian deaths, demonstrates an utter disregard for an alleged military objective and an intention to attack civilians who resided in the densely populated area where the shells landed. The absence of a genuine FDS investigation into the criminal responsibility for the shelling further underscores this point.

898. The sixth and final point – specific rules of engagement (“ROE”) – refer to those specific rules that would help a commander to reasonably exercise his discretion in accomplishing a military objective when using mortars in an urban setting. Mr Blé Goudé himself refers to such rules in his motion, citing the U.S. Army Field Manual (VV. 3-09, Sect. 1-1115), which “acknowledges that in order to avoid collateral damage, the use of artillery in an urban setting requires ‘*more detailed and restrictive rules of engagement*’ (emphasis in original). This principle is further developed in the U.S. Army publication, *Tactical Employment of Mortars*:

“The ROE may limit the types of systems and ammunition permitted to fire. The ROE may also limit the types of targets

and their proximity to specified locations, such as towns and mosques.”

899. The FDS had no such limits in place on 17 March 2011 – indeed, the mortars hit, *inter alia*, a mosque, a marketplace, and homes in SOS Village. There was also no attempt to use smaller mortars that day, such as the 81mm or 60mm, that would have theoretically caused less damage to the civilian population in Abobo.

900. Mr Blé Goudé argues, without citing any specific evidence or authority, that the applicable FDS rules of engagement at the time permitted use of mortars in self-defence. Mr Blé Goudé cites Witness P-0156’s testimony and his discussion of “rules of engagement” but this amounts to a discussion of general principles of IHL, and not rules of engagement to a specific military operation.

901. There is no evidence to suggest the FDS had rules of engagement during the crisis. At no point did the FDS develop or distribute specific rules of engagement on the use of mortars (or any other kind of heavy weapon) in urban areas – a fact which, on its own, demonstrates a disregard for minimising civilian casualties. A reasonable FDS commander therefore had no specific guidance to follow on this issue. The only advice distributed were broad principles of law, referring generally to “the laws of war”, and therefore unhelpful in providing specific advice to FDS commanders on the firing of heavy weapons in a densely populated urban area like Abidjan. There are two such FDS communications on the record. One document is a single-page annex entitled “*Annexe DIH*” to 18 January 2011 FRAGO 69 from CEMA/CPCO to various commands. This annex simply states that during law and order operations, the relevant law includes: human rights law, national law, and customary law, whereas in non-international armed conflict, IHL and human rights law apply. The annex also indicates that the FDS should at all times respect persons and property, prohibit pillaging, and assist humanitarian groups like the ICRC. The second document, a message from COMTER to all commands, serves merely as a general reminder for troops to

observe IHL, including to only target military objectives and to respect of the civilian population and property.

902. In sum, the evidence shows the FDS failed to act reasonably to protect civilian life in Abobo. The FDS did not verify whether their alleged military objective was at the target location and conducted no assessment of whether they achieved their alleged military objective. The failure of the FDS to exercise discretion reasonably at each of these six steps while using mortars in an urban setting, and the complete absence of objectively reasonable measures to minimise civilian casualties or achieve a lawful military objective, shows the true purpose of the shelling: to target civilians. The totality of the evidence shows that on 17 March 2011 the FDS used 120mm mortars in Abobo without a genuine intention to hit a lawful military target – and instead intended the civilian population to be the primary object of the attack.

*(e) Lack of Gbagbo Government Investigation and Official Denial of FDS Involvement*

903. As with the 3 March 2011 killing of women protestors, the Gbagbo government failed to conduct an investigation into the murder of civilians in Abobo and officially denied any FDS involvement.

*(i) Lack of Official Investigation*

904. Although Mr Gbagbo and his Inner Circle had knowledge of the involvement of the FDS in this incident, no proper investigation was conducted and no one was punished.

905. On 17 March 2011, Witness P-0047 learned that the market in Abobo had been shelled from reading the press. A meeting held between the generals and the head of the CPCO reported that mortars had been fired on Abobo. [REDACTED]

[REDACTED]



During questioning by the Presiding Judge, Witness P-0047 reiterated that none of the military authorities were sent to the location to investigate. [REDACTED]

[REDACTED]

906. Witness P-0047 reported this lack of findings to Witness P-0009. Witness P-0009 was aware of the lack of rigor in Witness P-0047's methods in that he knew Witness P-0047 had not even visited Abobo to investigate the incident. Witness P-0009 reported this to the Minister of Defence and allegedly asked for a more general investigation to be conducted. Witness P-0009 assumed that Mr Gbagbo was informed of his report. Witness P-0009 also seemed to absolve himself of any responsibility – claiming that after he reported it to the Minister, at which point it became a matter for the *Gendarmerie* to handle – but then has no memory or knowledge of the *Gendarmerie* doing any such investigation. Witness P-0009 confirmed, in any event, that nobody was ever punished.

907. The BASA Commander did even worse. Instead of investigating or analysing whether their alleged target was hit, the record shows that BASA Commander Dadi and his subordinates celebrated their attack on Abobo. BASA Witness P-0226 testified that, at Akouédo new camp the day after the attack, Commander Dadi and his troops celebrated the unit members that fired the shells like heroes, each getting a cold beverage of their choice.

908. No measures were taken after the 17 March 2011 shelling to determine whether the mortars actually achieved a military objective, which, in the face of contemporaneous news reports of significant civilian deaths, demonstrates an utter disregard for an alleged military objective and an intention to attack

civilians who resided in the densely populated area where the shells landed. The absence of a genuine FDS investigation into the criminal responsibility for the shelling further underscores this point.

(ii) Official Government Denial

909. A mere five days after the shelling, on 22 March 2011, the Gbagbo government issued a statement on the RTI claiming they had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama morgue and, (iii) that no complaint had been registered at police stations with respect to an FDS operation.

910. The evidence shows that these denials served to absolve Mr Gbagbo and the FDS of their responsibilities in the eyes of public opinion. The physical damage to various shelling locations was still visible when Expert Witness P-0411 visited the sites more than two years after the events. In the immediate aftermath of the shelling, videos of the carnage were uploaded online and are still publicly available. The register of the Anyama morgue for the calendar year of 2011, clearly identify the victims of the 17 March 2011 shelling. The evidence on record demonstrates that the denials from Mr Gbagbo and members of his Inner Circle were not only a failure to investigate or punish, but yet again, as with the 3 March 2011 incident, meant to cover up their crimes.

2. Defence arguments

911. Both Defence teams raised numerous arguments pertaining to the 17 March 2011 incident that are addressed below.

(a) *The FDS had 120mm shells at Camp Commando*

912. Mr Gbagbo argues that there is insufficient proof that the FDS had 120mm mortars at Camp Commando. However, several FDS Witnesses testified that,

among other weapons, the BASA had 120mm mortars mounted at Camp Commando during the post-election violence. As described in more detail in the above section on the installation and launching of mortars from Camp Commando, FDS witnesses testified to transporting 120mm mortars to Camp Commando, observing or participating in their installation there, and observing the firing of 120mm mortars from Camp Commando during the crisis.

913. Although Mr Gbagbo alleges that CEMA said there were no 120mm mortars at Camp Commando, the cited transcript does not support this proposition. Rather, a full reading of that portion of his testimony it supports the conclusion that 120mm mortars were returned to an unspecified location after their use in a late February operation in Abobo.

*(b) BASA witnesses are consistent and credible*

914. Mr Gbagbo argues that BASA Witnesses P-0164, P-0239, and P-0226, are inconsistent and not credible because they are in all likelihood spies and saboteurs from the Golf Hotel that infiltrated the FDS. Notably, Mr Gbagbo cites withdrawn Witness P-0234's statement in support of this proposition, regardless of the fact that this statement is not in evidence and therefore cannot form part of the basis of their no case to answer motion. Interestingly, unlike the other BASA witnesses, Mr Gbagbo does not question BASA Witness P-0238's credibility.

915. The considerable amount of testimony from these witnesses shows that they are consistent within and between their testimonies. They corroborate each other and other key evidence on the BASA's structure and weapons, as well as BASA's use of 120mm mortars on 17 March 2011. These witnesses, all of whom are career FDS soldiers, are also honest about when they perpetrated acts of sabotage against the FDS, and are clear about their reasons for doing so.

916. As demonstrated above in the Prosecution Case of this incident, these witnesses corroborate each other, and other witnesses such as Witnesses P-0238

and P-0330, on the placement, effect, and use of 120mm mortars at Camp Commando during the crisis. The corroboration between BASA witnesses and with other testimonial, video, and forensic evidence from the 17 March incident, demonstrates these witnesses are credible.

i. Witness P-0164

917. Witness P-0164 started his military career in 1987. The first training he undertook was in the 3<sup>rd</sup> Infantry Battalion in Bouaké. Subsequently, he was transferred to the BASA where he was trained as a surface to air artillery soldier. He spent at least 20 years in BASA. Witness P-0164 admitted that, after over 20 years of service to the FDS, he put salt in the fuel reservoirs of four or five FDS lorries carrying 12.7mm guns, because these guns were killing civilians in Abidjan. Rather than showing a lack of credibility, as Mr Gbagbo argues, his honesty about this conduct actually shows Witness P-0164's integrity in protecting civilians and upholding the rule of law.

ii. Witness P-0239

918. Witness P-0239 is also a career soldier, having joined the FDS in 2000. During the post-electoral crisis, he was *brigadier tireur* with the BASA. Mr Gbagbo argues that because he does not give an exact date or time of the 120mm mortars fired from Camp Commando, or the name of the commander in charge, that he cannot be believed. Rather than damaging the witnesses' credibility, however, this lack of memory shows that he is not fabricating a story and that he is honest about what he does and does not remember. He is not forcing his memory of events to fit a pre-conceived narrative.

919. Importantly, Witness P-0239 remembered seeing two BASA soldiers, Brice Kamanan and MDL Pegard, firing 120mm mortars from Camp Commando into Abobo. As detailed above, there is plenty of other eyewitness, forensic, and video evidence to corroborate the date and time of the shelling.

920. Mr Gbagbo also mischaracterises Witness P-0239's testimony when they claim he said he was evasive about whether he heard the orders to Kamanan and Pegard to shoot. In fact, Witness P-0239 was consistent and clear that he did not see the exchange, which happened inside the PC, but that he only saw Kamanan and Pegard execute the orders and fire the 120mm mortars. He even marked on a map where he watched them do it.

iii. Witness P-0226

921. Mr Gbagbo is alarmingly misleading and inaccurate when he claims that: *"Quant à P-0226, il ne dit rien sur un supposé tir de mortier"*. In response to questioning from the Presiding Judge, Witness P-0226 testified that he was on duty at the new military camp in Akouédo, from where he heard the sound of weaponry that was so loud that they wondered what kind of weapon had caused it, and then confirmed upon further questioning that the noise he heard was the sound of 120mm mortar detonations – noting that a colleague told him the shots had been fired from Camp Commando. Witness P-0226 knew the sound because he had personally fired 120mm mortars during his instruction sessions.

922. In fact, Witness P-0226 gave an extensive description of the 120mm mortars, their Russian origin, their range, their purpose, and BASA's transportation and installation of them during the crisis. Witness P-0226 detailed the type of crew and coordinates needed as well as their range and impact, having used them himself. He specified that even with mapped and programmed coordinates, these mortar shells have a precision of more or less fifty meters, which is why it is not appropriate to use them in town. He noted that when firing it in a built-up area, one needs to ensure that there are no people present or only a small number in order to minimise the loss of lives. Witness P-0226 further testified that if used in a populated area, reconnaissance should be done to ensure that there are little to no people around because there will otherwise be a high number of casualties. Witness P-0226 learned in his training that the maximum range for the 120mm

mortar was 12 km, and noted that the more charges are placed on the shell, the further the shell will travel. The “practical range”—the distance that a shell will travel and do most damage when it lands—was 6 km. The radius of the shell’s explosion is 300 m. The mortar shell has a range of 6 km and a diameter of 12 km so it is normal to hear the vibrating sound. Witness P-0226’s knowledge and experience with 120mm mortars make him a credible witness to discuss their firing.

(c) *There is a nexus between Mr Gbagbo, the Inner Circle, and the order to fire mortars*

923. Mr Gbagbo argues that neither Gbagbo nor the Inner Circle made the order to fire the mortars on 17 March 2011 – and that there is insufficient proof of the order generally. As a starting point, Mr Gbagbo’s 24 February 2011 order to FDS Generals not to cede Abobo, and to do whatever it takes to keep Abobo, marked a turning point in FDS operations and their willingness to use mortars. Immediately thereafter, the FDS started using mortars in Abidjan during the 25 February 2011 operation, a practice that continued into March.

924. The above Prosecution Case section also shows that the early March order to fire 120mm mortars into Abobo, as well as the subsequent order on 17 March 2011, came directly from Mr Gbagbo himself. Although there is no direct evidence of these orders, there is no other reasonable conclusion to draw from the circumstances. The above record shows: (i) Mr Gbagbo authorised CEMA to use of 120 mm mortars in Abidjan during the crisis; (ii) CEMA admitted to using them in Abidjan (albeit for a *tir de flambage* and a *tir d’arrêt*); (iii) multiple witnesses indicate the order to fire 120mm mortars from Camp Commando came from the Presidency; (iv) CEMA and other commanders pressured at least one BASA Witness to fire them; (v) BASA Commander and Gbagbo loyalist Dadi ordered his men to fire the 120mm mortars on 17 March 2011 and celebrated their success rather than punish them; and (vi) the FDS failed to conduct a good faith

investigation into the shelling. The totality of these circumstances demonstrates that Mr Gbagbo authorised the 17 March 2011 shelling of Abobo.

925. Despite Mr Gbagbo's unsourced Defence argument that he was not involved in operational matters, the evidence shows that just three weeks before 17 March 2011, on or about 24 February, Mr Gbagbo himself ordered his FDS generals to do everything they could do to liberate the MACA-Abengourou axis, to liberate N'Dotré, and not to cede Abobo. This order certainly pertained, but was not limited to, the second FDS military operation in Abobo on the 25-26 February 2011. Mr Gbagbo's intent in both incidents is the same – to use the firepower of the FDS to regain complete control over Abobo.
926. Contrary to Mr Gbagbo's argument that the FDS had been expelled from Abobo and did not have the means to conduct a shelling on 17 March 2011, the weight of testimonial evidence shows the FDS maintained operations in Camp Commando, including regular convoys to Camp Commando– as detailed in the pattern section and the subsequent installation and launching of 120mm mortars, as described above.
927. According to a BASA gunner, Witness P-0226, the general disciplinary regulations require that orders be executed without questioning. But where doing so involves the criminal responsibility of the person executing the order, that person may discuss the way in which the order is to be implemented. Witness P-0226 elaborated that if the order is to fire a 120mm in the middle of a town, then one has to ask for the order to be in writing before implementing it because it becomes one person's word against another when ascribing responsibility. Witness P-0226 said an exception to this requirement of written authorisation for firing a 120mm mortar in the middle of town is in the event one's position is attacked. In contrast, Witness P-0226 clarified that when the order is to fire the mortar in the countryside, no written authorisation is needed.

928. With respect to the authorisation of the use of mortars, Mr Blé Goudé does not contest that the BASA were granted authorisation to use 120mm mortars within the framework of a requisition. Mr Blé Goudé cites Witness P-0009's testimony regarding an alleged January 2011 requisition of the armed forces, in which Mr Gbagbo requisitioned the FANCI to secure Abidjan and to face the security problems in Abobo, but this particular aspect of Witness P-0009's testimony is not credible. Witness P-0009 also claimed that Mr Gbagbo signed a decree and handed it personally to Witness P-0009. Witness P-0009 also testified that the requisition was disseminated to the public by the press. Apart from the testimony of Witness P-0009, however, the Prosecution has not found, from the evidence collected, disclosed and submitted on record, any proof or heard of the existence of such a requisition. None of the other Generals or FDS members heard during the trial have testified as to the existence of such a requisition. The only known requisition during the relevant period of the charges is Decree No. 2010-306 from 14 November 2010, which authorises FANCI to be deployed across the entire country with a focus on the *Centre-Nord-Ouest* (CNO) zone.

*(d) FDS Commanders failed to exercise reasonable discretion in firing mortars into an urban area on 17 March 2011*

929. Mr Ble Goude argues there is insufficient proof that the FDS used heavy weaponry to indiscriminately target civilians. Specifically, he argue that the use of mortars in a densely populated is not *per se* illegal under the rules of international humanitarian law, but even the legal commentator they cite, indicates that those planning such an attack must take "...whatever steps that are necessary, in order to avoid or minimize collateral damage to civilians (in urban settings and elsewhere)." No such steps were taken in this case.



930. Mr Blé Goudé argues that the FDS had discretion to fire heavy weapons in Abidjan. This argument is addressed fully in the above section in this incident on its nexus to the widespread and systematic attack against the civilian population.

(i) Witness P-0411's expert report is credible and probative

931. Both Mr Gbagbo and Mr Ble Goude argue that Witness P-0411's expert is not credible. Mr Gbagbo attacks Expert Witness P-0411's report on the shelling sites in Abidjan, arguing it was an ill-prepared mission with a problematic methodology, and referring to him as a "rubber stamp" for the Prosecution. The evidence, however, shows the opposite: that this expert in military engineering, whose qualifications as an expert the Chamber accepted, confirmed that it is likely that a 120mm mortar caused the damage at each impact site was based on extensive analysis of corroborative evidence.

932. Expert Witness P-0411 has an extensive military background, dating back to 1999, including training on different weapons and indirect fire systems. His training and experience as an Ammunition Technical Officer in the British Army investigating the use of mortars in Iraq and Afghanistan, as UN Chief of Weapons and Ammunition Management in Libya where he investigated events that included the use of mortars, and his membership in the Institute of Explosive Engineers, clearly qualify him to offer his expert opinion on the use of mortars on 17 March 2011 in Abobo.

933. The expert's objective analysis, as documented in his "Report on the Alleged Shelling Sites Within Abidjan, the Ivory Coast – Mission date 8-12 July 2013" found evidence of a high explosive event at all of the shelling sites he visited in Abobo and clearly determined that a 120mm mortar could have been the cause:

“Each site displays evidence of a high explosive event and there is evidence of high velocity fragmentation throughout. Whilst there are a number of possible causes for an isolated event such as these [...] when the events are viewed as a collective then a pattern emerges and this points to the indirect firing of heavy cased high explosive ammunition such as a mortar set to function on impact. It is quite possible that a 120mm mortar bomb could have been the cause of each impact site visited.”

934. Once the expert examined fragments and reviewed witness statements and videos of the incident, he concluded:

“Given all the examined circumstances surrounding the four impact sites visited it is highly likely that they were subject to attack by a heavy cased high explosive ammunition item and this was most likely a 120mm mortar system variant”.  
(underline added)

935. Precisely because this conclusion is so damning, Mr Gbagbo argues that the expert’s mission was poorly prepared, yet Mr Gbagbo cannot point to any facts which suggest the expert was not sufficiently equipped for his mission or otherwise unable to apply his expertise objectively, as requested in his mission letter. Rather than being hired to validate a pre-approved hypothesis, as Mr Gbagbo suggests, a basic reading of this letter shows the expert was asked to read witness statements, watch videos, inspect impact sites (and any other relevant location) with the view to identify, describe, and document impact zones, collect any relevant evidence, and apply his expertise to determine what caused the alleged impacts, and whether the destruction on the video is compatible with such a shelling. Importantly, his mandate was broad and open-ended, in that he was encouraged to “make any other relevant findings/ remarks” and make an

objective analysis. The expert even confirmed on cross-examination that while conducting the investigation, he looked at all the available evidence, and he did not walk into that investigation with the cognitive bias that it was categorically a 120 millimetre mortar attack.

a. Shelling sites

936. The expert testified that during the mission he visited Camp Commando, SOS Village and Siaka Koné market. The expert testified that GPS readings during the mission were either taken by himself or by one of the OTP personnel, and clarified that precise coordinates are almost irrelevant for indirect fire weapons systems. Impressively, he was able to locate evidence of the shelling even two years later, and was able to document it, along with OTP Investigators who took helpful 360 degree Panoramic photographic representations of the Siaka Koné market, SOS Village, and Camp Commando locations simultaneously with Witness P-0411's visit. These panoramic photographs also corroborate crime base witness accounts of the shelling.

937. As detailed above in the summary of the Prosecution Case, Witness P-0411 found infrastructure damage very likely caused by a 120mm mortar in both the Siaka Koné Market and SOS Village.

938. Mr Gbagbo further questions the expert's methodology by pointing out that he did not visit the shelling site in Derriere Rails, but the Prosecution's Investigator's Report on the Forensic Mission to Abobo, clearly explains that the Investigator in the field only learned of this site on two days after Witness P-0411's forensic mission had concluded.

939. In response to a question from Defence counsel, the expert indicated that he excluded from his report a second site in Siaka Koné that the Prosecution showed him but that "nothing of any technical substance" from which he could make an assessment. Mr Gbagbo and Mr Ble Goude argue that this damages his

methodology, when in reality, there is no indication that this is the case – nothing of substantive value was to be gained from the site, and its inclusion in the report would not have changed its conclusion.

b. Date, Origin, and Range of Shelling

940. The Defence argues that the expert cannot provide a date of the bombing in question, nor can he say what weapons fired shells, by looking at each site individually. While it is obvious that a person cannot tell the date of shelling impact by merely looking at a bombing site, this argument ignores that his conclusions, however, are based on an analysis of other corroborative evidence – a fact that only bolsters the report’s credibility. The expert stated that it was the combination of analysing other corroborative evidence, such as blast sites, sample fragments, videos of the incident, and witness testimonies helped him draw the conclusion that it is likely 120mm mortars were used on 17 March 2011. Interestingly, in response to a question from the Presiding Judge, the expert said that he would have come to same conclusion on the likelihood of 120mm mortars being used even if he had not read the witness statements and other documentary evidence the Prosecution provided him.

941. The Defence also argues, that the expert made no calculations to determine if shells could have come from Camp Commando, despite clear evidence to the contrary.

942. As detailed in Annex C of his report, the expert provided approximate distances, the first one to area of Camp Commando to SOS Village area (approximately 700 meters), and the second one from Camp Commando to area of Siaka Koné market (approximately 1500 meters). These distances were taken by the expert from Google maps.

943. As detailed in Annex D of his report, the expert concluded that it was possible to deploy mortar systems from Camp Commando and that the areas of SOS

Village and Siaka Koné market are well within the minimum and maximum range limitations of most mortar systems, including Soviet type 120 millimetre mortar systems, so the assertion that the attack originated from there is certainly viable. He further explained that a 120 millimetre mortar system could be usable between 500 metres and 7,000 metres, although those are not definite brackets.

944. The Defence also argues, that the expert did not examine surrounding buildings to see if mortar trajectory would have been blocked, despite clear evidence to the contrary. The expert explained that when he stood at Camp Commando, he saw no high-rise buildings or any obstacles in the probable direction of fire that would have limited the use of mortar ammunition. He further clarified that the mortar system is the perfect weapon system for use in the built-up environment because the bombs easily pass over buildings based on the indirect fire principles, and a three-storey building would not be an obstacle for a mortar.

945. This Defence also cites the testimony of Witness P-0009, who said that a mortar fired into Abobo from Camp Commando would have been obstructed by buildings, despite that the 360 panorama of the location shows the opposite is true. Furthermore, Witness P-0009 did not perform any measurements at the scene, nor has he been qualified as an expert in mortars or military engineering. The self-serving nature of this portion of Witness P-0009's testimony is apparent. In contrast, the expert demonstrated that a 120 millimetre Soviet or Russian mortar shell fired from Camp Commando would be able to have an impact in Siaka Koné or SOS Village range.

946. Importantly, the expert was also clear that inherent imprecision of 120mm mortars as well as their substantial lethal radius. He said that users are unlikely to hit a specific point on map, because mortars could land anywhere from 60-100 metres in diameter from that point. In addition, variables such as experience of the users, and the wind on the day are taken into consideration. As such, when

using mortars, it is not expected to hit a specific point, but rather a specific area: hence the term “area effect weapon.” Indeed, the lethal radius expected of a heavy cased 120 millimetre mortar is in excess of 90-100 metres, however, fragmentation would still be lethal in excess of 200 metres and possibly beyond. The expert added that a safety distance of 500 metres or more would be appropriate alongside a requirement that people have hard cover within this distance to reduce risk.

947. Mr Gbagbo and Mr Blé Goudé further argue that the expert could not exclude the possibility that it was a different piece of heavy cased ammunition or an improvised explosive device (IED), and not a 120 millimetre mortar heavy cased piece of ammunition, however, the expert explained taken as a whole, his report indicates the former.

948. Mr Gbagbo and Mr Blé Goudé also argue that the expert did not sufficiently analyse the chain of custody of various mortar fragments he was provided, apparently forgetting that it is not this expert’s job to confirm or corroborate chain of custody. Rather, it is his job to objectively analyse the Prosecution’s evidence provided, which is precisely what he did.

c. Work Methodology and Conditions

949. Mr Gbagbo argues that because the expert was accompanied by members of the Office of the Prosecutor, that his capacity to objectively deliver his expertise was compromised. This argument ignores the basic fact that it is indeed the OTP who hired this expert, and therefore the members of the OTP who were taking the expert to various impact sites that they had plotted in the preceding his visit. Further, unlike the expert, the OTP staff were familiar with Abidjan and spoke French, and in addition, they documented the sites thoroughly with photographic evidence that is now visible in the 360 panoramas.

950. Mr Gbagbo also argues that the expert did not analyse possibility of shells coming from armed rebels or other military groups. While there is evidence on the record that opposing armed groups had RPGs, there is little credible evidence on the record they had large calibre mortars prior to the arrival of FAFN troops in Abidjan on 31 March 2011. Further, during cross-examination the expert made clear he did not pursue a line of inquiry about RPGs because it was incompatible with the evidence he observed on the ground. For example, the expert clearly explained why RPGs could not have caused the damage at the impact sites he observed, indicating RPGs have “many features that would be dissimilar with the pattern that we saw on the ground,” and clarifying that as an expert, he would discount a weapon such as an RPG to have caused the fragmentation pattern he observed.

*(e) The video evidence of the shelling was properly authenticated*

951. Mr Gbagbo argues that none of the four videos for this incident were properly authenticated, while ignoring the obvious evidence to the contrary.

952. With respect to the first video (CIV-OTP-0046-1283), Witness P-0362 gave it to the OTP himself, as it was annexed to his statement and introduced into evidence *via* rule 68(3). Witness P-0362, who was present for the shelling of the market, identified his friend Yaya (Diakate) on the video in court, and identified several other friends and victims when shown the video during his interview with OTP investigators. Witness P-0362’s testimony and prior statement are consistent in that he obtained a copy of the video from a man who showed him the video on a cell phone. Witness P-0362 then approached OTP investigators with the video when he saw them visiting the shelling sites on 10 July 2013.

953. This video was also authenticated by another victim of the shelling, Witness P-0105, who also identified victims Yaya (Diakate) and her neighbour Issa Bamba on the video in court, and explained that she remembered seeing these images on

TCI two days after the 17 March 2011 shelling in which she was injured. Indeed, she recognised Yaya and a handicapped man and his wife, which had passed in front of her just before the shelling. This testimony alone is sufficient to authenticate the video – but there is more.

954. The second (CIV-OTP-0042-0593) and third (CIV-OTP-0043-0268) videos the Defence attacks as montages, claiming it is unable to verify whether these were taken on 17 March 2011. Several witnesses who were present for the shelling, however, identified people depicted in the second video as other shelling victims, both in court and in their statements to the OTP. For example, Defence counsel conceded that screenshots of the video that showed the dead son of Witness P-0536, whose son was killed in the shelling. This video was also shown to Witness P-0362 in court who described having seen this video before, and that he people depicted in the video in court, including seeing one of them at the hospital. Witness P-0411 also watched portions of the video and identified mortars with tail fins consistent with 120mm mortars that were used on 17 March 2011.

955. With respect to the third video CIV-OTP-0043-0268, which the OTP obtained from the *Commandement Supérieur of the Gendarmerie* during a mission on 21 May 2013, with metadata indicating it was uploaded on YouTube on 19 March 2011 with the title “*Le bombardement du marché siaka koné à Abobo.*” Furthermore, Witness P-0564’s forensic analysis of Yaya Diakate’s body corroborates his leg injuries that are clearly visible on this video. For example, Witness P-0564’s *fiche d’examen externe de corps de DIAKITE Yaya* dated 20 May 2011 demonstrate injuries that correspond with eyewitness accounts of the shelling we can see in this video at 00:01:59.

956. With respect to the fourth video, CIV-OTP-0051-2092, MSF published and uploaded this video about Abobo Hospital on Dailymotion just a few months after the shelling on 20 June 2011. The video contains interviews with several MSF staff who worked at that time at the hospital. These staff members speak about



what happened at the hospital during that period, including at 00:01:25, a shell that he saw falling at a market near the Mairie of Abobo on 17 March 2011, before going to his work at Abobo hospital. One explains that a few minutes after he arrived at the hospital, wounded people and bodies started arriving at the hospital. At 00:02:38, another MSF staff member explains how that day, while they were working at the hospital, a shell landed also at the hospital. Other staff members explain the difficulties in getting medicines to the right place, and how the number of hospitalised people rose very quickly in that period. There can be little doubt as to the fact that MSF staff treated victims of the 17 March 2011 shelling in Abobo on the of the incident.

*(f) The FDS "investigation" into the 17 March 2011 incident was not credible and not done in good faith when it determined that no mortars were used*

957. Mr Gbagbo argues that the FDS "investigation" into the 17 March 2011 incident was credible and done in good faith when it concluded that mortars were not used. Mr Gbagbo cites Witness P-0009, who claims to have done an investigation – merely by asking his commanders what happened – and relying on their word alone that their forces were not involved.

958. Witness P-0009, incredibly, went so far as to say that nothing hinted at the FDS being involved, despite substantial media and NGO reports to the contrary, and despite General Palasset allegedly calling him to inform him that civilians had died in a shelling in the market. Journalists were calling the Minister of Defence, on the day of the incident, alleging the same thing had happened.

959. The lack of investigation is covered in more detail in the above section of the Prosecution case for this incident: *Lack of Government Investigation*. In sum, Witnesses P-0009 and [REDACTED] failed to conduct a good faith investigation, which is why they were not able to come to an accurate conclusion about the culpability of their subordinates for the shelling. [REDACTED]

██████████ does not constitute a good faith or reasonable investigation in light of the gravity of the incident and the civilian deaths reported.

*(g) Abobo was considered a Ouattara stronghold during the crisis*

960. Mr Gbagbo suggests that the Prosecution inappropriately characterised Abobo as ethnically and politically homogenous. The Defence cites testimony from Witnesses P-0330, P-0106, and P-0321, but ignores weight of evidence showing the opposite conclusion. Mr Gbagbo only cites Defence materials when arguing that the multi-ethnic character of Abobo.

961. First, as to density, Witness P-0009 testified as to the population density of Abobo during the post-electoral violence: 1,500,000 habitants; (10,000 hectares) 100 km<sup>2</sup>; 167 habitants per hectare.

962. Second, Abobo was considered a Ouattara stronghold during the crisis. Pro-Gbagbo forces (Gendarmerie, CRS, CECOS) came into Abobo to repress the population and create insecurity. Mr Gbagbo sent them because Abobo was majority RDR. These forces would check identity cards, and take foreigners away as they were presumed to be rebels.

963. In sum, just because an area is heterogeneous does not preclude it from being attacked based on ethnic, religious, or political grounds. Abobo can be large and multi-ethnic and still contain a majority of Northerners and/or pro-Ouattara residents.

*(h) There is Sufficient Proof of Death and Injury for 17 March Victims*

964. Mr Gbagbo challenges the sufficiency of proof of victims that were wounded or killed during the 17 March 2011 incident. The considerable evidence on the record for each victim is analysed above in detail in the Prosecution Case section. Additional arguments for other categories of evidence are discussed below.

965. Mr Gbagbo alleges that the particular pieces of evidence provide insufficient proof of death of the 17 March 2011 victims. This argument is yet another example of Mr Gbagbo suggesting that pieces of evidence are examined in isolation – requiring each individual piece of evidence to prove each material fact of the crime charged – when, as with most criminal trials, it the evidence when examined as a whole that meets the Prosecution’s burden of proof.

(i) Witness observations

966. Mr Gbagbo suggests that witness testimony as to injuries and deaths resulting from the 17 March shelling – in particular Witnesses P-0360, P-0362, P-0363, P-0364, P-0536, and P-0489 – may not be considered reliable if those witnesses did not have a ‘direct’ view of the cause of injuries. However, in several instances the time between hearing explosions and witnessing injuries, deaths, and destruction to property, was minimal and was in fact corroborated between Prosecution witnesses. Witness P-0364 reported seeing something fall from the sky; immediately afterwards, she heard explosions. Upon taking sanctuary in the mosque, she witnessed a shell pierce the mosque’s iron door and cause injuries to several people, including Issa Bokoum, Papiss, Yembone Moumouni, and Ismael. According to Witness P-0363’s statement, he heard the impact of the third shell approximately [REDACTED] from his shop and immediately afterwards witnessed numerous people who were seriously injured being taken away to hospital, including Cissé Sekou. Within ten minutes of hearing a loud explosion, Witness P-0362 saw bodies on the ground and assisted in transporting the injured to hospital; he provided names for many of those who were wounded that day, including Bamba Sekou, Diomande Sekou, Ballo Sindou, and Diomande Amara. He also confirmed that Bamba Lacina died as a result of the attack. Witness P-0536 was hit directly by a shell fragment and reported that before she lost consciousness, she saw others who were also injured in the same attack.

967. By classifying witnesses as ‘indirect,’ Mr Gbagbo suggests that witnesses who saw injured people or corpses in the *immediate aftermath* of an attack are rendered unable to verify that injuries or deaths occurred as a result of said attack. Such logic stretches the bounds of credulity, given the speed with which these witnesses arrived at and saw or tended to victims at the crime scene in the aftermath of the shelling. As with the analysis conducted in relation to proof of death, Mr Gbagbo has chosen to assess every piece of testimony individually in relation to injured victims, rather than taking a holistic view of the totality of the evidence to determine whether the Prosecution’s burden of proof has been met.

968. Witness P-0536 testified as to her own longstanding injuries as well as the death of her son [REDACTED] as a result of the shelling. Mr Gbagbo suggests not only that Witness P-0536’s testimony is unreliable, but also that the video footage showing [REDACTED] may not be relied upon. Her testimony is credible, however, and the death of her son is corroborated by documents reflecting the child’s name, the testimony of Witness P-0594, photographs provided by the Prosecution, and video footage showing the child. The Defence teams themselves conceded the identity of the son’s corpse in photographs as well as in a screenshot taken from the Prosecution’s video footage. Furthermore, it is unrealistic to expect a victim to be able to determine exactly what has struck them unconscious during an attack of this nature.

969. In the case of Witness P-0360, Mr Gbagbo implies that the time taken to reach the crime scene somehow renders his photographic evidence of the attack inherently less reliable; they also question the fact that he worked as a professional photographer at the time. The profession held by the witness does not diminish the credibility of a photograph in identifying the dead. In addition, Witness P-0360’s testimony provides valuable information relating to the death of M’baye Ndiaye (“*cet obus a tué un Sénégalais*”) – information that was corroborated by Witnesses P-0362, P-0363, and P-0489.

970. It is unrealistic to expect that a civilian witness to a shelling attack would be able to see the entirety of the event – from the mortar falling from the sky to the moment of impact – without seeking cover even temporarily. It is equally illogical to imply that witnesses who arrived quickly at the crime scene to see what had happened were doing so for suspicious or nefarious reasons (as the Defence has implied in relation to Witness P-0360 in particular).

(ii) Corroboration for deaths and injuries

971. The weakness of Mr Gbagbo's argument relating to lack of corroboration of proof of death is further demonstrated by video, forensic, and medical evidence supporting the injuries and deaths that occurred on 17 March 2011 detailed in the above Prosecution case. It has already been established that witnesses present during the shelling and its aftermath, have verified the accuracy of the video footage taken at the scene. The video and photographic evidence showing deaths and injuries corroborates witness testimony and medical records, including forensic examinations of the bodies, on their cause of death. It remains to be seen how a single timestamp cited by Mr Gbagbo with no further explanation, indicates the existence of a video montage or doctoring of any kind.

972. Witness P-0410 provided additional corroboration as to the injuries suffered by several witnesses. Witness P-0410 confirmed in both his report and in-court testimony that Witness P-0364 suffered injuries due to "*un corps étranger métallique susceptible de correspondre à un projectile*;" the report further verified that Witness P-0364 remained for two days in the hospital. Witness P-0410 also provided a report in relation to Witness P-0105, confirming that an x-ray of Witness P-0105 had revealed a longstanding injury to the clavicle, "*à la mise en évidence d'un éclat métallique en projection des parties molles axillaires à droite*." The same conclusion was reached by an x-ray expert, based on the density and opacity of the fragment. This directly contravenes Mr Gbagbo's assertion that the Prosecutor did not introduce medical records to establish Witness P-0105's injuries.

973. Mr Gbagbo incorrectly suggests that Witness P-0410 only assessed one victim who was injured on 17 March 2011, when in fact he assessed three victims (one of whom has since withdrawn his testimony). Furthermore, Mr Gbagbo alleges that because the date of injury in each of Witness P-0410's reports is based on what the witness reported to him, his observations lack weight in determining whether injuries occurred before or during the electoral crisis. The specific evidence corroborating the timing of injuries of each 17 March Prosecution witness may be found in the Prosecution Case section above, however it must be noted that the conclusions found in Witness P-0410's reports were determined not only on the basis of victims' stories as to what had happened to them, but in conjunction with x-rays, consultations with other experts, and photographs. All of these things allowed Witness P-0410 to apply his expertise to assessing the contributory factors in the injuries sustained by the victims.

(iii) IML Register

974. Mr Gbagbo argues this register is incomplete and unhelpful to identify the bodies, but Witness P-0564 authenticated the register and showed how it was actually a helpful contemporaneous record of the IML's processing of victims' bodies. Witness P-0564 recognised the excerpts of it and testified as to its contents – noting that it was corroborated by the external examination forms – and that it contains information like the name of the body received, the number of the register assigned to them, the date and location the body was discovered, and the name of the family representative. This information was entered into the register as it was received, and included information on the cause of death, including that several 17 March 2011 victims died from shelling. Notably, the registration numbers assigned to the bodies in this document are the same ones used in the subsequent external examination forms.

(iv) P-0564's Evidence

975. Mr Gbagbo has raised general methodological issues with the files provided by medico-legal expert, Witness P-0564.

976. In analysing the deceased, Witness P-0564 and her team followed a specific methodology: the teams worked in pairs to complete an external examination; Witness P-0564 would then meet with family members and provide documents to the relatives which would allow them to have an official burial. The priority for the team was to gather as much evidence as was plausible from an external examination, and to do so as quickly as possible. When conducting the external examination, Witness P-0564's team would consult the identification tag on the body and compare that to the information sent by the mortuary. When the mortuary provided no tag or armband to confirm the identity of the deceased, the team relied on the forms that were sent with the corpse. In the event that bodies arrived with no identification whatsoever ("*inconnu*") and a family was able to make a positive identification (see below for the particular case of Diakité Yaya), the name would be inserted onto the *fiches* in the place of "*inconnu*."

977. Both Witnesses P-0564 and P-0594 have indicated the difficult conditions under which external examinations of the dead were conducted, the speed with which the team was required to work, and the high workload required to clear morgues and private funeral homes, which at the time of the examinations were at full capacity.

978. Despite the fact that Mr Gbagbo claims that Witness P-0564 had no way to confirm the identity of the eight persons killed by a shelling, Witness P-0564 testified that friends or relatives identified the bodies to the morgue/IML staff at a time proximate to their deaths and admission to the morgue – a fact corroborated by her report, and contemporaneous IML worksheets, INTERFU dossiers, and Anyama morgue registers.

979. There are also examples of family members of the 17 March 2011 victims corroborating both the identity of the dead and the work conducted by Witness P-

0564's forensic team. For example, Witness P-0297 reported that he was able to identify his sister (Doumbia Makarikia) following the completion of her autopsy: the registration of the body at the Anyama morgue, INTERFU files, and the testimony provided by Witness P-0297, are mutually corroborative.

980. In another example, Witness P-0294 echoed the statement of Witness P-0564 in noting that the conditions at the morgue were poor and there were difficulties preserving the corpses; these difficulties rendered him unable to see the bodies of his family members at the morgue. Witness P-0294 indicated that he provided identity cards and death certificates, which were signed by Witness P-0594. As previously noted, the death certificates match the registrations in the IML Register and the Anyama Morgue Register; the INTERFU files also reflect the date of the shelling, 17 March 2011. Mr Gbagbo's arguments contesting the veracity for each piece of forensic evidence for each individual victim belies the cumulative value of the testimony and documentary evidence provided by the forensic team, and the testimony of witnesses who saw the shelling, its immediate aftermath, or who subsequently identified victim's bodies.

981. Mr Gbagbo argues that the files provided by Witness P-0564, including the *certificats médicaux de décès* and the *certificats de non-contagion* may not be considered valid, as the information relating to the dates and circumstances of death was obtained from the families of the deceased and the papers sent from the morgue. Mr Gbagbo further alleges that families of the deceased were given paperwork to facilitate burials without being asked to visually identify bodies – Witness P-0564 in fact stated the opposite in her testimony. Wherever possible, the families would identify the deceased visually; the forensic team would note the height, build, skin pigmentation, attire, and other features of the corpses in their paperwork, which would also allow for a victim to be identified. This, coupled with the paperwork provided to the team by the morgue, demonstrated the various objective means by which the dead were identified by Witness P-0564



and her team. Mr Gbagbo also suggests that Witness P-0564 did not meet with the families to deliver their paperwork, as they went to the morgue to retrieve the necessary documentation. Again, this contrasts sharply with Witness P-0564's testimony, which indicates that she was responsible for meeting with the families of the deceased, once the authorities had given authorisation for an official burial.

982. The *certificats médicaux de décès*, *process-verbaux de contestation de décès*, and the *certificats de non-contagion* are provided for all of the victims of the 17 March 2011 shelling: Coulibaly Drissa, Sangare Kola, Kouakou Koffi Francois, N'Guessan Adjo Therese, M'baye Ndiaye, Sidibe Seydou, Diakité Yaya, Sidibe Brahim, and Doumbia Makarikia. Mr Gbagbo further contests the authenticity and reliability of these files, stating that P-0564 did not authenticate her signature on these documents. After due consideration to the volume of documents submitted under Witness P-0564's testimony, the Prosecution referred the Chamber to the overall INTERFU files for each victim; Witness P-0564 confirmed the presence of her signature on the forms in a singular positive statement. Additionally, the Chamber indicated that having seen Witness P-0564's signature on over 200 forms (and with over 150 forms authenticated by P-0564 on the day of her testimony), it was commonly understood that the same signature belonging to Witness P-0564 was recognisable on the remainder of the forms.

983. Witness P-0564 provided a report at the request of the OTP to follow up on her examination of eight bodies of victims of the 17 March 2011 shelling. Mr Gbagbo incorrectly states that this report is listed for ten victims in our Trial Brief for 17 March 2011 victims, when it is only listed for eight. Indeed, the report notes that each of the eight victims had a friend or family member indicate to IML staff that the deceased was killed in a shelling.

984. Through re-visiting her reports and external examinations of the bodies, Witness P-0564 verified that four of the eight victims had wounds that were consistent with a shelling as a cause of death. These four victims are: Sidibe

Seydou, Kouakou Koffi Francois, N'guessan Adjo Therese, and Doumbia Makaridia.

985. For example, for Sidibe Seydou, Witness P-0564 found: “Un éclat métallique (à type de plomb à confirmer par l'expertise balistique) a été extrait d'une des plaies à type de criblage située sur la face antérieure du tiers inférieur de la cuisse droite juste au-dessus du genou droit” and concluded that “Cet aspect de criblage est compatible avec un éclat d'obus donc avec les dires du cousin du défunt”.
986. Similarly, for Kouakou Koffi Francois, Witness P-0564 found: “la présence de 18 plaies par arme à feu réalisant un aspect de criblage de la face postérieure du corps. Un fragment métallique a été d'autre part, extrait d'une plaie de l'avant-bras gauche” and concluded that “Cet aspect de criblage est compatible avec un éclat d'obus donc avec les dires du beau-frère du défunt”.
987. With respect to N'guessan Adjo Therese, Witness P-0564 found: “Toutefois, la présence de l'orifice d'entrée sur la face postérieure droite du cou, peut être compatible avec les informations rapportées par le parent de la défunte. En effet, cet orifice d'entrée peut avoir été provoqué par un éclat d'obus.”
988. For Makarida Doumbia, Witness P-0564 similarly found: “Toutefois, la présence des deux orifices d'entrée sur la face postérieure du corps, peut être compatible avec les informations rapportées par le frère cadet de la défunte.”
989. For the remaining four bodies, Witness P-0564 did not exclude shelling as a cause of death, rather, she indicated she was unable to come to a conclusion as to cause of death from her external examinations. There are logical explanations as to why Witness P-0564 could not determine a cause of death for these four bodies. For Sangare Kola and Coulibaly Drissa, Witness P-0564 reiterated her conclusion that she was unable to come to a conclusion about cause of death from an external examination because of their bodies' advanced state of decay. For Sidibe Brahim, it is clear he had a “*fracas cranio-facial predominant sur le cote droit*” – a generalised

enough injury that could have multiple causes. For Diakite Yaya, Witness P-0564 re-examined the incorrect IML file (number 244) when she should have looked at number 294, for the reasons described below in the section on Diakite Yaya.

990. Both Mr Gbagbo and Mr Blé Goudé raise doubts as to the conclusions drawn by Witness P-0564 and her team, suggesting that there were other possible causes of death, times of death, and determinations for the injuries suffered by the victims. Witness P-0564's classification of cause of death was influenced by the need to conduct external examinations rather than autopsies. This decision was made due to the difficult conditions under which her forensic team was operating, including a large amount of bodies from the crisis to process in a short time, and morgues that had reached capacity such that the odour of rotting bodies was creating a problem. Despite their limited timeframe, Witness P-0564 reported that external examinations nevertheless allowed for a direct observation of the causes of injury and the appearance of the corpse – it does not negate the conclusions of her team, but rather reflects a wealth of information gathered in a short time, and with the greatest degree of accuracy possible under the circumstances.

(v) Overall report on autopsies

991. Given the lack of matching DNA evidence, and the discrepancies between names on the gravesites and coffins of many of the 17 March victims, the Prosecution is not relying on autopsy or DNA evidence with respect to the 17 March 2011 incident. Details on the relevant investigative steps, and possible explanations for the mismatched bodies, are documented in the Prosecution Investigator's Report: *Investigative Activities Concerning the Misidentification of Bodies for Burial 17 March 2011 Abobo Shelling Incident*.

(vi) Witness P-0184's list from the Comité de survie

992. The Defence argues that this list was created by a biased group of RDR members that used it as a political strategy. There are several inaccuracies in this argument. First, the Defence claims that one of the members of the committee who created the list, Yeo Kolotchoma, was campaign manager for Alassane Ouattara, without specifying that he was only campaign manager for only the district of Abobo. Second, the Defence claims there is a complete absence of methodology on the creation of this list, when in fact, Witness P-0184 testified in detail on this subject. She indicated that because there were many deaths in the crisis, a committee was established, of which she was a member – called the *Comité de survie*, or Survival Committee. This committee operated out of the Abobo Mayor's Office, since it was their job to issue certificates of internment. Whenever there were deaths, rape, destruction of property, and gunshot injuries, people would call the committee and provide them information. There was a book in which they recorded information, including the number of burials. Four girls helped Witness P-0184 compile the list. Witness P-0184 specified that for injuries, she would do visible inspection and required that the victims provide medical prescriptions. When it came to destruction of property, she asked for photographs and a bailiff's report. The information would be transferred to Mr Sylla who had a computer. The committee also helped provide foodstuffs and medical treatment to those in need. She also confirmed a majority of the people on the list were from the North.

(vii) Table of victims of Siaka Koné Market (Abobo)

993. These two tables of victims were collected over two years apart from two different INTERFU employees. One is slightly different in the other in that it contains what appear to be handwritten check marks by the name of each of the 23 victims. The Chamber considered both documents formally submitted. Mr Gbagbo argues that rule 68(2)(b) Witness P-0594 could not authenticate this document because he said he had never seen the document before his interview

with OTP investigators. This argument ignores, however, the fact that Witness P-0594 confirmed that the 23 names on the list are also in the Anyama morgue register.

**(viii) The particular case of Diakite Yaya**

994. Although the Defence argues that there is insufficient proof to demonstrate Diakaté Yaya died from the 17 March 2011 shelling, testimonial, video, photographic, and forensic evidence demonstrate that he was killed by a mortar in the Siaka Koné market that day. Witness P-0362 attested to having seen Yaya after the shelling and provided OTP investigators with video footage taken in the aftermath of the attack. He positively identified Yaya in the video – “*assis avec ses jambes broyées*”. Witness P-0362 further confirmed in his testimony that “*je vois Yaya. M. Yaya*” on a screenshot. Additionally, Witness P-0362 provided a sketch of the market marking the locations of both the shell and Yaya. Witness P-0105 also corroborated Yaya’s identity using the same video evidence. The same victim identified as Diakité Yaya by Witnesses P-0362 and P-0105 can also be seen in another video obtained from the *Commandement Supérieur de la Gendarmerie*.

995. The Defence contends that a mistake made by the forensic team at INTERFU, discredits the positive identification of Yaya’s corpse; this is an inaccurate argument. Witness P-0564 clearly stated in her testimony that an error with the INTERFU records (which resulted in the completion of two dossiers bearing Yaya’s name) was the result of family members giving the wrong file number to the team (390) when they came for the death certificate. Yaya was visually identified by his family members; file number 390 in fact belonged to a John Doe and file 397, to Yaya. The injuries noted in Yaya’s medical report, correspond to the injuries displayed in the video.

996. In an expert report pertaining to the error, Witness P-0584 reviewed the quality of five documents related to Diakité Yaya, concluding that there was no

basis on which to question the identity of the victim in relation to the causes and circumstances of his death. Finally, three different registers, from the INTERFU Anyama morgue office, the Anyama Morgue and the *Institut Medico-Legal* show the entry of Diakité Yaya on 17 March 2011. Two of the registers also reflect an entry with the number 390 marked “John Doe” and the name “Diakité Yaya” crossed out on 17 March 2011.

997. The merits of the list prepared by the *Comité de Survie* have been discussed in the section above. However, it bears noting that the list reflects the entry of Diakité Yaya as a deceased person with the date of death listed as 17 March 2011 and the cause of death listed as “*éclat d’obus*”. The personal information, date of birth “04/04/1971”, and sex that are listed, also correspond to the identity card of Diakité Yaya included in his INTERFU dossier.

**G. 12 April 2011: the Pro-Gbagbo Forces Murder, Rape, and Seriously Wound Civilians in an Attack on Yopougon**

998. On or around 12 April 2011 in Yopougon, pro-Gbagbo forces killed at least 61 persons primarily from northern Côte d'Ivoire and neighbouring West African countries, raped at least 6 women and wounded at least 3 persons. These crimes were committed on ethnic, political, national and religious grounds. The crimes occurred in the mostly Dioula neighbourhoods of Mami Fatai and Doukouré.

999. The incidents formed part of a continuum of violence perpetrated against perceived Ouattara supporters set in motion by Mr Blé Goudé's call of 25 February 2011, which led to the establishment of the roadblocks. Mr Blé Goudé, rather than condemning the violence perpetrated at these roadblocks, actively encouraged their continued use. In the days preceding Mr Gbagbo's arrest, both he and Mr Gbagbo called upon the pro-Gbagbo forces to continue the fight for power. The crimes perpetrated in Yopougon on 12 April 2011 were committed by pro-Gbagbo forces including youths, mercenaries and militia members armed and trained by Mr Blé Goudé and Mr Gbagbo and the remaining, loyal, FDS based at the Locodjoro naval base immediately after Mr Gbagbo's arrest.

1000. The evidence on record provides cogent indicia demonstrating that the perpetrators of the charged crimes committed on the 12 April 2011 were pro-Gbagbo forces. The killings, rapes and other inhumane acts committed in the Mami Fatai and Doukouré neighbourhoods of Yopougon bear significant commonalities with the crimes committed by pro-Gbagbo forces against perceived pro-Ouattara supporters in Abidjan during the post-election crisis. The perpetrators were specifically targeting Dioulas – who were perceived as being pro-Ouattara supporters; (in certain cases) the perpetrators asked about the ethnicity of the victims or looked at their identification before attacking them; Dioula men were killed while Dioula women were raped – just like some of the perceived pro-Ouattara supporters during the 16 December 2010 incident; and the

commission of crimes by English speaking and or masked perpetrators. Last, there is evidence that Maguy le Tocard – who was one of the Commanders in Yopougon – was amongst the attackers.

1001. The criminal responsibility of Mr Gbagbo and Mr Blé Goudé in relation to the crimes charged committed during this incident, are discussed below in sections V and VI.

*(a) Murder*

1002. The evidence demonstrates that pro-Gbagbo forces killed at least 61 people in Doukouré and Mami Fatai on or about the 12 April 2011.

(i) Pro-Gbagbo forces killed one or more persons, intentionally or with awareness as to death

1003. Camara Inza, Camara Dou, Diawara Issa, Diomande Ibrahim and Camara Mamadou: On 12 April 2011, Witness P-0567 was hiding in the toilet when militiamen forced open the gate of her house in Mami Fatai neighbourhood, saying that they were going to kill all the Dioulas on that day. The witness testified that this was how she knew that they were pro-Gbagbo militiamen. Soon after, she heard the gunshots that killed three of her brothers. As she came out of the toilet, she saw her three brothers, Camara Inza, Camara Dou and Diawara Issa, as they lay dying. There were many militiamen and they were masked. She begged them not to kill her other brothers but one militiaman hit her in the eye with his Kalashnikov. She then saw one militiaman kill her brother's friend Diomande Ibrahim. After killing him, one militiaman stated – to another – that it was not over, “[...] *il en manque un car normalement dans cette cour, il y a cinq garçons.*” She recognised the voice of this militiaman as one of her brother's friends who knew everyone at her house. The first militiaman then went back inside and found Witness P-0567's brother Camara Mamadou. Witness P-0567



heard a shot and understood that her brother Camara Mamadou had just been killed.

1004. [REDACTED] On the same day, close by in the Doukouré neighbourhood, Witness P-0109 was with a group of friends when the attackers came. The group of attackers was composed of the same youth that the witness had seen previously throwing stones at the youth of Doukouré, youths that were known as militia, and Liberians. The youth were armed with machetes and wood, and behind them were other individuals armed with firearms, masked and dressed in black. Once the armed youth had checked the identity cards of two people in Witness P-0109's group, the masked individuals dressed in black opened fire on Witness P-0109's group, which included [REDACTED]. Witness P-0109 was injured with a bullet and played dead on the ground. He heard one attacker say "No Gbagbo, no Côte d'Ivoire". The next day, Witness P-0109 saw the corpses of [REDACTED] next to the mass grave.

1005. Mr Gbagbo argues that Witness P-0109 is not corroborated and that he is not a direct witness to the death of his friends. First, Witness P-0109's account is corroborated by other witnesses. Witness [REDACTED] saw four armed masked men dressed in black arriving in a vehicle in Doukouré and shoot at unarmed young men. In regards to Mustafa's death, Witness P-0438 testified that he learnt that [REDACTED] was buried in the mass grave. Concerning Witness P-0109's wound, Expert Witness P-0410 testified that the small metal fragments that appear in the x-ray of Witness P-0109's [REDACTED] are compatible with his account of being struck by a bullet. Witness P-0109 was an eyewitness to the death of his friends. He saw armed masked men dressed in black open fire on his friends and heard gunshots while he fled and when he was playing dead on the ground.

1006. [REDACTED]  
[REDACTED]

[REDACTED]

1007. The mass grave in Doukouré: Witness P-0441 stated that attackers dressed mostly in white t-shirts and fatigue pants came on 12 April 2011 and went door-to-door killing people starting with the house of the Imam. During cross-examination, Witness P-0441 confirmed his prior statement and testified that Maguy le Tocard and Agbolo were among the attackers, alongside many other armed individuals, including civilians, uniformed individuals, police officers and *vagabonds*. It is important to recall that Witness P-0435 saw GPP Commander, Maguy le Tocard, at the Locodjoro naval base on 12 April 2011 and testified that the GPP were committing exactions during that period.

1008. Witness P-0441 testified that he [REDACTED] 34 corpses in the mass grave next to the mosque in Doukouré on the Wednesday following the attack (13 April 2011). The witness was involved [REDACTED] a bit. Amongst these corpses, he identified the bodies of Fofana Adama, Mr Ouattara and Mr Touré. Mr Gbagbo argues that Witness P-0441 was not able to recognise the place of the mass grave on the Prosecutor's panorama presentation. However, he was able to confirm the location of the mass grave where the 34 bodies were buried in the video CIV-OTP-0012-0048, after seeing the minaret.

1009. Witness P-0109 stated that he went to the mass grave in Doukouré on 13 April 2011, the day after the attack. He was there when people were bringing the

corpses but left after less than half an hour. He saw and counted 17 corpses. In addition to [REDACTED] Witness P-0109 identified Daou, Lass, IB, Chaka, Adamo, Loss, the father of Awa, the father of Ibrahim and Baba amongst the corpses.

1010. Video CIV-OTP-0012-0048, which was authenticated by Witness P-0441, shows people digging a hole, in front of corpses lined up and covered with sheets. Video CIV-OTP-0017-0042 shows the bodies being placed into the mass grave and people filling up the hole. The list of the *Collectif des Victimes du Quartier Doukouré Yopougon* contains the names of the people buried in the mass grave.

1011. Corpses found in Mami Fatai in the early morning of 12 April 2011: On the morning of 12 April 2011, after hearing gunshots at night, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Witness P-0567 stated that she saw 18 corpses in the morning of the 12 April 2011; she knew some of them, as they were Dioulas from the neighbourhood. She identified Doumbia Ibrahim, Cissé Amara, Cissé Bazo and Doumbia Vie. [REDACTED]

[REDACTED]

1012. Witness P-0568 testified that during the night, after hearing gunshots close to his house, he saw a masked man with a long firearm and heard another one saying “go, go, go”. On the morning of 12 April 2011, he heard from one of his wives that his two sons Doumbia Brama and Doumbia Bakary had been killed. His wives also told him that Witness P-0568’s cousin, Koné Adama, and Witness P-0568’s tenants, Banssé Seydou and Koné Souleymane, had also been killed. Witness P-0567 testified that Witness P-0568’s children were amongst the corpses and [REDACTED] Lastly, the death

certificates of Doumbia Brama and Doumbia Bakary corroborate Witness P-0568's account.

1013. Given that the 17 or 18 corpses were found on the morning of the 12 April, close to Witness P-0568's house, and his evidence regarding hearing gunshots on the night of the 11 April 2011, it can be inferred that the victims were killed during that night by a group of men – given the number of men killed – composed of the masked man with a long firearm (that was seen by Witness P-0568) and the other man that he heard. It can also be inferred that this group – or members of it – attacked Witnesses P-0109 and P-0567 on the 12 April: (i) all the killings occurred in a relatively short period of time (one day) in nearby neighbourhoods; (ii) the men who attacked Witnesses P-0567 and P-0109 were wearing masks – just like the man seen by Witness P-0568 (on the night of 11 April 2011); (iii) in the case of Witness P-0109, the attackers spoke English – just like one of the persons heard by Witness P-0568; and (iv) most importantly, in all instances Dioula men were being targeted and killed by gunfire.

1014. Mr Gbagbo argues that Witness P-0568's rule 68 (3) statement cannot be relied upon anymore as it is in contradiction with his live testimony as to how he learned about the death of his sons. The fact that there is a contradiction between Witness P-0568's live testimony and his rule 68(3) statement does not make the latter entirely unreliable. Both form part of the witness' evidence and as such the Chamber has the discretion to rely on the whole or parts of Witness P-0568's evidence. Although Witness P-0568 contradicts his rule 68(3) statement on this one point, his testimony on the events that occurred on the eve of the 12 April 2011 including his description of the attacker, the death of his sons along with his cousin and two other tenants and the events that occurred in the days following the attack, including an encounter with a youth wearing a "Police" t-shirt, is consistent with his rule 68(3) statement. It is also important to note that the

witness seemed overwhelmed with grief when testifying about the night he lost his sons – which is another indication of the veracity of his account.

1015. [REDACTED]

[REDACTED]

[REDACTED]

1016. Burning corpse: Witness [REDACTED] also testified that on the day she and Witness [REDACTED] left Doukouré, which was according to her maybe two days after the 12 April 2011, they saw a burning corpse in front of the “*Lavage*”, at the exit of Doukouré. She saw five young people in civilian clothing around the fire, one of whom was placing the unburnt parts of the corpse in the fire. She was told by some of the people who were there that the victim had tried to flee after his car had been stopped by youths so they burnt him. Witness [REDACTED] also stated that she saw a burning corpse at the same place when leaving Doukouré with Witness [REDACTED] although she says it was on the 12 April 2011. She added that it was the “pro-Gbagbo” that were burning him.©

1018. Mass graves: Witness P-0369 testified that on a mission in May 2011, he visited Doukouré and Mami Fatai neighbourhoods and saw the mounds of earth of at least ten mass graves that varied in size.

1019. To summarise, the Prosecution arrives to the total number of 61 people killed in the following manner:

- b. In Doukouré, the Prosecution relies on Witness P-0441 for the number of 34 corpses buried in the mass grave, which includes 3 people he identified. This also includes 17 corpses that Witness P-0109 saw in front of the mass grave, the killing of Abdoulaye Djire and Doumbia Ibrahim. In addition to these 34 corpses, there is the burning corpse that Witnesses [REDACTED] and [REDACTED] testified about, which makes a total of 35 people killed in Doukouré.
- iv. In Mami Fatai, the Prosecution relies on 18 corpses that Witness P-0567 saw, which includes 17 corpses [REDACTED] It also includes the corpses of Cissé Amara, Cissé Bazo and Doumbia Vie that Witness P-0567 identified amongst the corpses; as well as the two sons, one cousin and two roommates of Witness P-0568. In addition to these 18 corpses, the Prosecution counts the killings that happened later on that day of the four brothers of Witness P-0567 and her brother's friend and [REDACTED] [REDACTED] as one can reasonably infer they were murdered. This amounts to a total of 26 people killed in Mami Fatai.

*(b) Rape*

1020. The evidence demonstrates that pro-Gbagbo forces raped at least six women in Doukouré and Mami Fatai on or about 12 April 2011.

- (i) Pro-Gbagbo forces invaded the body of a person by conduct resulting in penetration by force, or by threat of force or coercion, intentionally or with awareness as to the rape

1021. [REDACTED]  
[REDACTED]

[REDACTED]

1022. Mr Gbagbo argues that she is the only victim of rape of Mami Fatai and that she is uncorroborated. The fact that she is the only witness for the crimes of rape in Mami Fatai is sufficient as the rape was part of a widespread and systematic attack and there is no requirement of corroboration in the Statute.

1023. [REDACTED]

[REDACTED]

1024. [REDACTED]

[REDACTED]

[REDACTED]

1025. [REDACTED]

[REDACTED]

[REDACTED]

1026. Witness [REDACTED] also added that the attackers wore red scarves on their heads, the same as the young Gbagbo recruits would wear during their training at the time of the post-election crisis. Witness P-0106 corroborates Witness [REDACTED] as he testified that FESCI members wore red *bandelettes* around their heads during the post-electoral crisis.

1027. [REDACTED]

[REDACTED]

[REDACTED]

1028. [REDACTED]

[REDACTED]



[REDACTED] It bears recalling that Witness P-0109 also testified that some of the attackers wore black clothing and were masked. The Prosecution submits that this evidence points to the fact that they were the same perpetrators or belonged to the same general group.

1029. [REDACTED]

1030. [REDACTED]

(c) *Other inhumane acts*

1031. The evidence demonstrates that pro-Gbagbo forces committed other inhumane acts on at least three people in Doukouré and Mami Fatai on or about 12 April 2011.

- (i) Pro-Gbagbo forces inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act on one or more persons intentionally or with awareness as to those acts

1032. Witness P-0567: Witness P-0567 was hiding in the toilet of her house in Mami Fatai when militiamen forced open the gate of her house, saying that they were going to kill all the Dioulas “today”. From this threat, the witness understood that they were pro-Gbagbo. Soon after, she heard gunshots and when she came out of the toilet she saw her three brothers dying on the ground. The militiamen were numerous and masked. She begged them not to kill her other brothers but one militiaman hit her in the eye with his Kalashnikov. He hit her several times until she fell down to the ground. She stayed on the ground for a while – next to the

bodies of her brothers – as she could not get up anymore. The militiamen killed her other brother and her brother's friend. Witness P-0567 added that, after the 12 April 2011, her right eye was swollen and became very red. Since then, she has strong pain in her right eye and headaches. Although she had a medical condition to her right eye before the 12 April 2011, she now cannot see with her right eye anymore.

1033. Witness P-0109: As stated above in the count of murder, pro-Gbagbo forces shot at Witness P-0109 and a group of people from Doukouré on 12 April 2011. Witness P-0109 was injured with the bullet and playing dead on the floor, when he heard one attacker say “No Gbagbo, no Côte d’Ivoire”. Expert Witness P-0410 examined Witness P-0109 and concluded that his wound was compatible with the witness's account of being struck with a bullet. He noted that, on the prescribed x-ray, there was the presence of small metal fragments [REDACTED] In addition, the name of Witness P-0109 appears on the CVQDY's list compiling the names of wounded people during the post-electoral crisis. This also further establishes the reliability of the CVQDY list.

1034. [REDACTED]

[REDACTED] stated that the attackers wore a red scarf on their heads, the same that the young Gbagbo recruits would wear during their training at the time of the post-election crisis.

(ii) The act was of a similar character to any other act referred to in article 7(1) of the Statute

1035. Considering the nature and gravity of the acts described above which are apparent from the context and violence in which the crime were perpetrated, the above acts are of a similar character to any other acts referred to in article 7(1) of the Statute.

*(d) Alternative count of attempted murder*

1036. The evidence demonstrates that pro-Gbagbo forces attempted to murder at least one person in Doukouré on or about 12 April 2011.

1037. Witness P-0109: Witness P-0109's testimony regarding how he was shot [REDACTED] by pro-Gbagbo men on 12 April 2011, as described above in the count of other inhumane acts, constitutes attempted murder. While P-0109's friends were shot dead by the attackers, he was injured and played dead on the floor until the attackers went away.

*(e) Persecution*

(i) Pro-Gbagbo forces severely deprived, contrary to international law one or more persons of fundamental rights

1038. The 61 acts of murder, six acts of rapes and three acts of other inhumane acts described above at counts 1, 2 and 3, respectively, constitute severe deprivations of fundamental rights.

(ii) The conduct was committed in connection with acts referred to in article 7(1) of the Statute

1039. The acts relied upon to make out the crime of persecution are one and the same as the acts of murder, rapes and inhumane acts, also charged under articles 7(1)(a), (g) and (k), of the Statute.

- (iii) Discriminatory intent: pro-Gbagbo forces targeted such persons by reason of their identity in a group or collectivity, or targeted the group or collectivity as such, based on ethnic, political, national and religious grounds

1040. The evidence shows that the crime of persecution was committed through the targeting of the victims of counts 1, 2 and 3 on ethnic, political, national and religious grounds. Specifically, the victims of the 12 April 2011 incident were targeted as perceived Ouattara supporters or based on their ethnicity, nationality or religion.

1041. This targeting is evidenced by:

- c. The pro-Gbagbo forces' selection of Doukouré and Mami Fatai and their inhabitants as targets for attack on ethnic, political, national and/or religious grounds, given the Dioula majority in these districts. These districts were inhabited mainly by Dioula civilians from northern Côte d'Ivoire and neighbouring West African countries and were perceived as pro-Ouattara.
- v. The words or actions of the pro-Gbagbo forces during the attack from which discriminatory victim selection based on ethnic, political, national and/or religious grounds is apparent. [REDACTED]  
[REDACTED]  
[REDACTED] The attackers told them that "*On va aller vous tuer*", "*on veut pas que vous gouvernez ce pays. Vous, les Dioula, c'est notre pays vous voulez*", "*on va vous tuer.*" In addition, Witness P-0567 heard the attackers shouting that they were going to kill all Dioulas. Witness P-0109 stated that the attackers checked the identity cards of two of his friends, before shooting at them. After shooting them, one of the attackers stated "No Gbagbo, no Côte d'Ivoire". [REDACTED] stated that, when the attackers arrived they

asked about their ethnicity and “When you say you are Guéré, they don’t touch you. But if you say you are Dioula, they attack you.” In addition, [REDACTED] she heard from people of the neighbourhood that pro-Gbagbo militia were about to kill a Malian but he was saved thanks to the intervention of his Guéré neighbour. She was also told that pro-Gbagbo militia were going from house to house asking about people’s ethnicity and when they responded they were Baoulé or Dioula, they mostly killed them.

- vi. The fact that the corpses in Mami Fatai were all Dioulas also shows that they were targeted on an ethnic basis. [REDACTED]  
[REDACTED]  
[REDACTED] Witness P-0567 corroborated [REDACTED] by stating that from the 18 corpses she saw in the morning, she knew some of them as Dioulas from the neighbourhood.

(f) *Nexus – Crimes Against Humanity*

1042. The evidence shows that the crimes committed on or about 12 April 2011 was part of a widespread and systematic attack directed against the civilian population.

- (i) The killings, rapes and other inhumane acts on or about 12 April 2011 were committed as part of a widespread or systematic attack directed against a civilian population

1043. The evidence shows that the crimes committed on 12 April 2011 were part of a widespread and systematic attacks in Doukouré, insofar as the pro-Gbagbo forces targeted the population on the basis of their ethnicity, nationality or political affiliation, as they did throughout the post-electoral crisis, including at the roadblocks; they attacked a neighbourhood which was considered as pro-



members were denounced by the local population. They denounced RHDP civilians who were suspected of giving intelligence to the FRCI. The population at that time was settling scores by denouncing people.

## 2. Defence Arguments

1047. Both Defence teams challenge core aspects of the 12 April 2011 attack on Doukouré and Mami Fatai. Their main arguments, outlined below, should be rejected.

(a) *Mr Gbagbo's argument that rebels infiltrated Yopougon before the 12 April 2011 and that it was most likely them who perpetrated crimes in Yopougon (Annex 3, paras.532, 537-546)*

1048. First, in terms of opportunity, there is no evidence on record that the rebels or the FRCI were in Doukouré and Mami Fatai – where the crimes charged were committed – on or about the 12 April 2011. In fact, Witness P-0568 testified that the FRCI arrived in Mami Fatai after they fled the neighbourhood, which was at least five days after 12 April 2011.

1049. Second, unlike the pro-Gbagbo forces, they had no motive to attack pro-Ouattara supporters. It would make no sense. It is unlikely that rebels or FRCI have targeted people who were saying they were Dioula; or would have shouted that they were going to kill all the Dioulas on that day; or in some cases spoke in favour of Mr Gbagbo in English.

1050. Third, as described below, the crime base witnesses identified that, through their words, actions or description, the attackers were pro-Gbagbo forces.

1051. The evidence on record shows that pro-Gbagbo forces controlled Yopougon on the 12 April 2011 and that they committed the crimes charged in the Doukouré and Mami Fatai neighbourhoods of Yopougon on or about 12 April 2011.

- i. Witness P-0435 left the Presidential Palace at 14h00 on 12 April 2011 and arrived at the Locodjoro naval base, on the same day. At the base, Witness P-0435 testified seeing Liberian *chefs de guerre*, GPP commanders including Maguy Le Tocard and Commander Tchang, FDS Commander Konan Boniface, and other FDS elements – including marines and soldiers – basically most of the elements previously based in Plateau, some from Cocody and those already in Yopougon. Witness P-0435 further testified that there were gatherings at the naval base in the mornings or afternoons. He stayed at the Locodjoro naval base until 17 April 2011 and testified that pro-Gbagbo forces controlled Yopougon until Monday, 18 April 2011. Witness P-0435 also stated that, during that period, Liberians and GPP members – [REDACTED] – and militia members were committing exactions in Yopougon. He saw them killing RHDP civilians who were suspected of giving intelligence to the FRCI and used informants amongst the population to make denunciations against pro-RHDP civilians.
  - ii. UNOCI Daily Situation Reports corroborate Witness P-0435 on crimes committed by pro-Gbagbo forces in Yopougon on or about 12 April 2011. One report confirms that a concentration of a pro-Gbagbo militia group in Yopougon had killed and burnt people on 12 April. Another report dated 14 April 2011 reiterates the presence of pro-Gbagbo militiamen in Yopougon who would have killed at least 18 people between 11 and 13 April 2011 and committed acts of pillaging in Yopougon.
1052. Witnesses of the charged incident identified some of the perpetrators as being Liberian given that they spoke English and Witness P-0441 identified Maguy le Tocard amongst the attackers on 12 April 2011 in Doukouré. The Prosecution submits that it is reasonable to infer that the armed pro-Gbagbo forces that were at the base – especially the Liberian fighters and GPP members – committed some of



the charged crimes in the Doukouré and Mami Fatai neighbourhoods of Yopougon.

1053. Additional evidence shows that pro-Gbagbo forces still controlled Yopougon towards in the days prior to the arrest of Mr Gbagbo. Witness P-0226 testified that he passed through roadblocks in Yopougon three or four days after the 4 April 2011 bombing of Camp Akouedo. They were manned by youth, and people wearing uniforms of the Gendarmerie and police and spoke English.

1054. Further corroborating evidence that shows that pro-Gbagbo forces gathered at the naval base of Locodjoro, close to Yopougon, towards the end of the postelection crisis is found in the following:

- iii. Witness P-0347 arrived at the Locodjoro base on 5 April 2011, was received by Colonel Konan Boniface and saw around 400 young males in civilian clothing, some of which were armed with AK47s. Lieutenant Colonel Gbamelan told Witness P-0347 that they had received an order to resume the fight;
- iv. Witness P-0483 describes going to the marine base in Yopougon Koweit, which is a reference to the Locodjoro naval base, [REDACTED] on the day of the shelling over the Presidential Residence. He stated that there were many people at the base, including [REDACTED]
- v. Youth leader Witness P-0449 stated that, after the 27 March 2011, he was informed that Mr Babri Gohourou, the FDS spokesperson, was distributing weapons at the Locodjoro base and that members of his movement went there to pick up weapons to defend themselves.

1055. Further evidence that shows that FDS armed the pro-Gbagbo youth and militia towards the end of the crisis:

1056. Witness [REDACTED] testified that, in the latter part of the crisis, weapons were distributed to pro-Gbagbo youth from the base of the Gendarmerie squadron 2/1 at Toit Rouge in Yopougon and that the head of this Gendarmerie squadron was Captain Koukougnon.

1057. Witness [REDACTED] volunteered in his interview and confirmed in his testimony that the distribution of these weapons was announced to the local pro-Gbagbo youth by COJEP representatives at the agora in Toit Rouge, after the taking by the rebels of the town of Duékoué but before the arrest of Mr Gbagbo, and that following this call the local youth were armed with kalashnikovs.

1058. It is on the record that pro-Ouattara forces took the town of Duékoué in the West of Côte d'Ivoire in the early morning of 29 March.

1059. On 30 March 2011, a consignment of 300 AK-47s and 30 boxes of 7.62 mm munitions was provided from the GR headquarters to squadron chief Koukougnon, who was in charge of the 2/1 Gendarmerie squadron at Toit Rouge in Yopougon. The receipt bears the stamp of the GR headquarters and notes that these weapons were for the benefit of ("*au profit de*") the GR itself. This appears illogical, as the GR was part of a separate branch of the FDS from the gendarmerie, it did not have any formal links with the Gendarmerie in Yopougon, and there would be no reason for squadron chief Koukougnon of the gendarmerie to be involved in a transfer of weapons which took place internally within the GR.

1060. However, other evidence on the record demonstrates that the GR acted as a focal point around which militia, pro-Gbagbo youth and Liberian mercenaries integrated unofficially into the FDS and collaborated in operations with FDS during the crisis. Witness P-0347 testified on the unofficial training and recruitment of youth into the GR and the collaboration between the GR and Liberian mercenaries on operations during the crisis. Witness P-0435 testified on the collaboration between the GR and the militia during the crisis. Witness P-0435

also testified that, despite the fact he was a GPP militia-member and was never an official member of the FDS, he was able to carry a GR identity card which allowed him to pass through FDS check-points and that, in the event of being questioned at check-points, General Dogbo Blé or Commander Kipré of the GR could be contacted and they would provide the necessary authorisation for him to be allowed to pass through as a supposed member of the GR.

1061. In this context, it is reasonable to infer that the AK-47s which were delivered with the authorisation of General Dogbo Blé from the GR to Gendarmerie squadron chief Koukougnon on 30 March were meant for the militia and pro-Gbagbo youth and that these were the Kalashnikovs which Witness [REDACTED] saw being distributed to youth from the 2/1 squadron at Yopougon Toit Rouge around the end of March.

*(b) Mr Gbagbo's argument that the FDS no longer existed on 12 April 2011 (Annex 3, paras. 526 and 532)*

1062. Mr Gbagbo's argument is not substantiated by any evidence. In addition, the above evidence shows that, although the formal FDS structure was falling apart after Mr Gbagbo's arrest, the remaining loyal FDS members gathered at the Locodjoro Naval Base along with other pro-Gbagbo forces.

*(c) Mr Blé Goudé's argument about the lack of identification of the perpetrators as pro-Gbagbo forces by Prosecution witnesses (Mr Blé Goudé's motion, para. 21 and Mr Gbagbo's motion, para. 628)*

1063. Prosecution witnesses' description of the attackers show that they were pro-Gbagbo forces:

- i. Witness P-0109 testified that some of the youth from Yao Séhi who had previously thrown stones at them, on 25 February 2011 (following Mr Blé

Goudé's speech) were amongst the attackers who injured him and left him for dead;

- ii. Witness [REDACTED] saw that the attackers wore red scarves on their heads, the same as the young Gbagbo recruits would wear during their training at the time of the crisis. Witness P-0106 corroborates Witness [REDACTED] when he testified that FESCI members had red *bandelettes* around their heads during the post-electoral crisis;
- iii. During the Defence examination, Witness P-0441 confirmed his statement that Maguy le Tocard and Agbolo (a known associate of Mr Blé Goudé), were among the attackers alongside many armed individuals: civilians, uniformed individuals, police officers and *vagabonds*. Witness P-0435 corroborate that part of the testimony of Witness P-0441 as he saw GPP Commander, Maguy le Tocard, at the Locodjoro naval base on 12 April 2011 and also testified that the GPP was committing exactions during that period.

1064. The words and actions of the perpetrators – who targeted Dioulas and perceived pro-Ouattara supporters – show that they were pro-Gbagbo forces:

- i. The attackers revealed their political motivations. One attacker told [REDACTED] *“on veut pas que vous gouvernez ce pays. Vous, les Dioula, c'est notre pays vous voulez”, “on va vous tuer.”* Witness P-0109 heard one of the attackers say “No Gbagbo, no Côte d'Ivoire”;
- ii. The attackers targeted the Dioula because they were perceived as being pro-Ouattara supporters and attacked their neighbourhoods. Witness P-0567 heard the attackers shouting that they were going to kill all Dioulas

[REDACTED]

- iii. The attackers had pro-Gbagbo informants. [REDACTED]
- [REDACTED]
- [REDACTED]

- iv. Witness P-0109 identified Liberians amongst the attackers, as he heard English being spoken. Witnesses [REDACTED] and P-0568 also heard the attackers speaking English. In this regard, Witness P-0435 testified that Liberians were committing exactions in Yopougon against perceived pro-Ouattara supporters after Mr Gbagbo's arrest. Witness [REDACTED] testified that Liberian mercenaries were based at the Presidential Residence during four or five months, before arriving at the naval base after Mr Gbagbo's arrest.

*(d) Mr Gbagbo's argument that the crimes were isolated acts committed by bandits abusing the situation of chaos (Annex 3, para. 553)*

1065. The circumstances surrounding the killing of at least 61 people on or about 12 April 2011 as well as the rapes and other inhumane acts show that it was a deliberate and coordinated attack against the perceived pro-Ouattara supporters of Doukouré and Mami Fatai and not mere isolated acts of banditry. These criminal acts were perpetrated as a continuum of the Common Plan with the objective to attack perceived pro-Ouattara supporters. The pro-Gbagbo forces used the same *modus operandi* in both neighbourhoods:

- i. The attackers killed perceived pro-Ouattara men. Witness P-0109 stated that the pro-Gbagbo forces, including Liberians, first checked the identity

cards of two members of his group and then shot at them. Witness P-0567 testified that her four brothers and her brother's friend were killed after the attackers forced their gate shouting they were going to kill all the Dioulas. The 17 or 18 corpses in Mami Fatai – including the corpses of Witness P-0568's sons – were all Dioula men. [REDACTED]

he

34 corpses in Doukouré were also all male.

- ii. The attackers used informants in both neighbourhoods to target the Dioula houses. In Mami Fatai, [REDACTED]

[REDACTED] Witness P-0567 also testified that she

recognised one militiaman – who indicated how many men there were to kill in this house – as a friend of her brother's. In regards to Doukouré,

- iii. [REDACTED]

1066. Witness P-0435 corroborates this *modus operandi*. Witness P-0435 testified that GPP members, including his own elements, and Liberians killed RHDP civilians who were suspected of giving intelligence to the FRCI in Yopougon. They used informants amongst the population to make denunciations against pro-RHDP civilians. In addition, Witness P-0435 saw Liberians checking whether civilians were pro-Gbagbo or pro-Ouattarra supporters by asking them whether “*c'est Gbagbo ou c'est maison*” (“*maison*”) referring to the RDR party logo, which was a

house) and shot at them if they answered “*maison*”. Therefore, the word *maison* being a reference to Mr Ouattara.

1067. The attackers raped perceived pro-Ouattara women – just like some of the perceived pro-Ouattara supporters during the 16 December 2010 incident. The rapes were part of the attack as they were committed against women perceived as pro-Ouattara supporters. [REDACTED]

1068. Lastly, the acts of pillaging at Witnesses P-0567, [REDACTED] houses should be seen as part of the attack against the perceived pro-Ouattara supporters on this day, and not as the primary goal of the attack as Mr Gbagbo is alleging. With regards to Witness P-0567, the attackers aimed at killing her brothers and her brother’s friend, since they shouted they were going to kill all the Dioula on that day and they knew how many people there were to kill at her house. It is only after that they pillaged the house. With regards to [REDACTED]

[REDACTED] With regards to Witness P-0109, he did not testify about acts of pillaging when the attackers shot at him.

(e) *Mr Gbagbo’s argument about the tensions between the neighbourhoods of Doukouré and Yao Séhi (Annex 3, para. 550)*

1069. Mr. Gbagbo’s argument that Yao Séhi inhabitants became the targets of the Doukouré youth on 12 April 2011, after suffering attacks from them during months, is not substantiated by any evidence. The Prosecution also refers the Chamber for further information about the escalating tensions between the two neighbourhoods to Section IV. D. 2(a).

(f) *Mr Gbagbo's argument on the ethnic composition of Mami Fatai (Annex 3, para. 551)*

1070. Mr Gbagbo presents only part of the evidence of Witness P-0568, the neighbourhood chief, on the ethnic composition of Mami Fatai. Although he stated that "all races" were present in the neighbourhood, he added that the most numerous were the Dioulas, Malians and Guineans.

(g) *Mr Gbagbo's argument that the date of on or about 12 April 2011 is vague (Annex 3, para. 532)*

1071. The evidence shows that the crimes were committed during the night of 11 to 12 April and on 12 April 2011. During the night of 11 to 12 April 2011, pro-Gbagbo forces entered the neighbourhood of Mami Fatai and killed 17 or 18 people. Witness P-0568 stated that it was 23h45 on 11 April 2011 when he heard someone shouting "*couchez-vous*" and gunshots afterwards. Witness P-0567 also confirms that she heard gunshots at around midnight.

1072. The other crimes committed in Mami Fatai occurred during the day of 12 April 2011. The crimes in Doukouré were also committed on 12 April 2011 and the corpses were buried in the mass grave on 13 April 2011. With regards to the burning corpse, Witness [REDACTED] stated that she and Witness [REDACTED] saw it on 12 April 2011, whereas Witness [REDACTED] stated that it was maybe two days later. In any event, the evidence still demonstrates that he had been killed by pro-Gbagbo youth.

(h) *Number of killings on or about 12 April 2011*

1073. Finally, Mr Gbagbo's Defence team challenges the number of victims of murder of the 12 April 2011. The Prosecution has reassessed the number of deceased in order to avoid the repetition of four corpses in Mami Fatai and provides a detailed explanation above in the count of murder on how the evidence shows at least 61 murders.



- (i) *Mr Gbagbo arguments contesting the sufficiency of evidence of the acts of murder*  
(Annex 6, paras. 267-308)

1074. Mr Gbagbo challenges the sufficiency of the evidence submitted to prove the acts of murder committed by pro-Gbagbo forces in Yopougon on or about 12 April 2011. The Prosecution firstly refers the Chamber to its analysis of the evidence in relation to each murder, set out above under Section IV, G. 1(a). The Prosecution further provides its response below to certain recurring arguments made by Mr Gbagbo in its approach to the evidence specific to these murders.

1075. Discounting direct witness evidence for lack of direct corroboration: In relation to murder victims 37, 38, 39, 53, 54, 55, 56 and 57, Mr Gbagbo appears to suggest that the evidence of one direct witness to the facts is insufficient to establish the commission of a crime. There is no legal basis for this argument, as the Statute does not require corroboration to prove a crime.

1076. Discounting hearsay evidence: In relation to murder victims 1 and 2, Mr Gbagbo appears to suggest that hearsay cannot be relied upon to corroborate direct evidence. [REDACTED]

[REDACTED]  
[REDACTED] In relation to victim 2, Witnesses [REDACTED] saw the corpse burning and were told by people around the circumstances of his death. There is no basis for discounting an indirect source of evidence if the Chamber deems it in all the circumstances to be sufficiently reliable.

1077. Requiring the full identity of the victim: In relation to nine of the seventeen murder victims of entry 52, Mr Gbagbo notes that the victims' names are not known. However, there is no requirement to establish the specific identity of the victim.

Requiring the circumstance of the death of all victims: In relation to some victims of murder including 14, 15, 37, 38, 39, 61, 62, 63, 64 and 65, Mr Gbagbo argues that there is no evidence as to the circumstances of their deaths. In relation to victims 37, 38, 39, 61, 62, 63, 64 and 65, [REDACTED]

[REDACTED] In addition, the Prosecution submits that from the totality of the evidence on record supporting this incident, one can reasonably infer that they were killed by pro-Gbagbo forces that attacked their neighbourhoods.

## **V. PROSECUTION CASE UNDER ARTICLE 25(3)(A) AND RESPONSE TO DEFENCE ARGUMENTS**

### **A. Introduction**

1078. First, the Prosecution here sets out the law on individual criminal responsibility under article 25(3)(a) of the Statute (Section V.B, below).

1079. Second, the Prosecution sets out its case against each Accused under article 25(3)(a), in summary form (Section V.C, below). For a more detailed elaboration of its case under article 25(3)(a), the Prosecution refers the Chamber to its Trial Brief, Sections IX.A and X.A.

1080. Third, the Prosecution addresses Mr Gbagbo's arguments, as set out in Annex 5 of the Gbagbo Motion, related to the individual criminal responsibility of the

Accused Mr Gbagbo under article 25(3)(a), and Mr Blé Goudé's broad arguments related to the Common Plan/Policy (insofar as these are not addressed in Section III of this Response (Crimes Against Humanity) (Section V.D, below). At Section V.D, the Prosecution has generally (but not always) attempted to follow the structure of Annex 5 of the Gbagbo Motion, integrating arguments from the Blé Goudé Motion where appropriate.

1081. Fourth, the Prosecution has addressed the Defence arguments related to the Prosecution allegation that Mr Gbagbo (a) failed to take the measures within his power to prevent or halt the commission of these crimes during the post-election crisis or to punish perpetrators; and (b) failed to refer the matter to the competent authorities for investigation and prosecution (Section V.E, below). Here, the Prosecution also refers the Chamber to Section VII of this Response, where the Prosecution case on Mr Gbagbo's individual criminal responsibility under article 28 of the Statute is addressed in detail.

1082. Last, the Prosecution addresses Mr Blé Goudé's arguments related to his individual criminal responsibility under article 25(3)(a) (Section V.F, below).

1083. Given the size of the respective Defence Motions and the time available to the Prosecuting in drafting this Response, it has not always been possible to address common or similar Defence arguments at the same time, or to integrate these arguments into a shared section, although the Prosecution has done its best to. The Prosecution therefore notes that there is, in this Section, some unavoidable repetition as between the responses to the lengthy arguments advanced by the Accused.

1084. Many of the arguments in Annex 5 of the Gbagbo Motion involve a credibility assessment of Prosecution Witness P-0435, and criticise the Prosecution for relying upon this witness. Mr Blé Goudé also makes lengthy arguments regarding Witness P-0435's credibility, at paragraphs 236 to 249 of the Blé Goudé Motion. The Prosecution refers to its submissions at Section II of this Response, first, that

now is not the appropriate time for credibility assessments of Prosecution witnesses; alternatively, that the Chamber should regard Witness P-0435 as a highly credible, insider witness, whose evidence is corroborated by other reliable witness evidence, and by documentary evidence presented in the case. Witness P-0435's evidence is addressed in detail at Section II of this Response.

1085. As for Mr Gbagbo's submissions regarding the law on indirect co-perpetration under article 25(3)(a) and its application, as indicated, the Prosecution addresses the relevant jurisprudence below (Section V.B).

1086. As in previous sections, the Prosecution has not necessarily addressed each and every Defence allegation in this part of the Response. Any unchallenged Defence allegation should not be viewed necessarily as a concession on the Prosecution's part.

1087. Finally, and as elaborated in Section II of this Response, the Prosecution notes that Mr Gbagbo is wrong in calling for the application of a "beyond a reasonable doubt" ("*au-delà de tout doute raisonnable*") standard at this stage.

## **B. Law on Article 25(3)(a)**

1088. To establish individual criminal responsibility for the mode of liability of indirect co-perpetration under article 25(3)(d) of the Statute, the Prosecution must establish the following elements:

- i. Existence of a common plan;
- ii. use of another person or an organised and hierarchical apparatus of power;
- iii. the co-perpetrators' joint control over the other person or organised and hierarchical apparatus of power;
- iv. the accused's essential contribution to the common plan;
- v. the accused acted with intent; and

vi. The accused had the requisite knowledge.

1. Existence of a common plan

1089. The Prosecution must establish the existence of a common plan or agreement between two or more persons, including the accused. This plan or agreement ties the co-perpetrators together and justifies the reciprocal attribution of their respective acts. The plan or agreement itself does not have to be directed to a criminal activity, as long as it includes “a critical element of criminality”, namely that its implementation will, in the ordinary course of events, lead to the commission of a crime. The common plan need not be written or explicit and can be inferred from circumstantial evidence, such as the subsequent concerted action of the co-perpetrators. The plan may be previously arranged or materialise extemporaneously.

1090. In the recent *CAR Article 70* appeals judgment, the Appeals Chamber held that evidence post-dating the common plan can be used to infer the existence of a common plan at a prior date. The Appeals Chamber further clarified that evidence of the accused’s interactions with third persons (i.e. persons *outside* the common plan, but acting towards its implementation) may be properly considered by the trier of fact in evaluating the accused’s participation in the common plan as a whole. Therefore, evidence of a co-perpetrator’s dealing with a “tool” or “accessory” to the charged crimes may be highly relevant to establish the common plan.

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

1091. 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 is applicable to this case), the Prosecution must establish the existence of an organisation that is characterised by “functional automatism”.

This requires proof that the implementation of the co-perpetrators' will is independent from the identity or intent of the individual members of the organisation and cannot be compromised by any particular subordinate's failure to comply. This can be established, for instance, through specific 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".

3. The co-perpetrators' joint control over the other person or organised and hierarchical apparatus of power

1092. Where the accused is alleged to have acted through an organised and hierarchical apparatus of power, the Prosecution must prove that the co-perpetrators had joint control over the crimes by controlling the organisation, which they could steer towards the implementation of the common plan. It is not necessary that each co-perpetrator was individually in a position to control the organisation. Control is exercised collectively by all co-perpetrators.

1093. Control over the organisation may be shown by establishing that the co-perpetrators jointly had the ability to secure the commission of the crimes through a mechanism that enabled them to ensure automatic compliance with their orders. In addition, the co-perpetrators' joint control over the organisation may also be shown for instance, if any one of them possessed a power of veto within the organisation or if they had the capacity to hire, train, impose discipline and provide resources to the subordinates.

4. The accused's essential contribution to the common plan

1094. The accused must make an essential contribution to the implementation of the common plan or "within the framework" of the common plan. The Appeals Chamber clarified that this does *not* require proof that the accused made an

intentional contribution to each of the specific crimes or criminal incidents that were committed on the basis of the common plan. By making an intentional essential contribution to the common plan, the accused co-perpetrator is liable for all the crimes that occur within the framework of the common plan.

1095. Assessing whether an accused's contribution is "essential to the implementation of a common plan" requires normative assessments of the accused's *role* in the implementation of the common plan, taking into account the division of tasks and his or her individual *contributions* to the implementation of the plan. The decisive consideration is whether the accused's contribution within the framework of the common plan was such that without it "the crime would not have been committed or would have been committed in a significantly different way".

1096. The essential nature of the co-perpetrator's contribution to the common plan is based on a cumulative assessment of all relevant contributions to the common plan, and not on an isolated assessment of individual acts. It may take many forms and need not be criminal in nature. In addition, a co-perpetrator may make an essential contribution to the common plan at any stage, which includes the execution stage of the crime, the planning and preparation stage, and the stage when the common plan is conceived.

1097. Trial Chamber VII in the *CAR Article 70* case held that co-perpetrators who "formulate the relevant strategy or plan, become involved in directing or controlling other persons, or determine the roles of those involved in the offence" would provide an essential contribution to the common plan. Similarly, Pre-Trial Chamber I in the *Katanga* case held that an essential contribution to the implementation of a common plan through an organised structure of power may consist in "activating the mechanisms", which leads to the commission of the crimes. It further found that "[d]esigning the attack, supplying weapons and ammunitions, exercising the power to move the previously recruited and trained

troops to the fields; and/or coordinating and monitoring the activities of those troops, may constitute contributions that must be considered essential regardless of when are they exercised (before or during the execution stage of the crime)".

5. The accused acted with intent

1098. Pursuant to article 30(2), 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.

1099. The concept of "awareness that a consequence will occur in the ordinary course of events" means that, based on the accused's knowledge of how events ordinarily develop, he or she anticipated that the consequence would occur in the future. In the context of indirect co-perpetration, the Prosecution must establish that the accused was aware that implementing the common plan will, in the ordinary course of events, result in the commission of the crimes charged.

1100. The Appeals Chamber held that this standard requires proof that the foreseeability of future events is virtually — as opposed to absolutely — certain. This standard may be met where it is shown that the accused espoused a common plan which involved the commission of certain types of crimes, in the sense that "it was virtually certain that the implementation of the common plan led to the commission of the crimes at issue".

1101. For the accused to meet the subjective element of the crimes charged, he or she need not have been aware of the *specific* crimes that resulted from the implementation of the common plan. Instead, the accused need only have been aware that the implementation of the common plan would, in the ordinary course of events, result in the commission of the *type* of offences charged. In this case, the accused must have been aware that implementing the common plan would, in the



ordinary course of events, result in crimes of murder, inhumane acts, rape and persecution.

6. The accused had the requisite knowledge

1102. Pursuant to article 30(3), the Prosecution must establish that the accused was aware that the circumstances relevant to the charged crimes (e.g. murder, inhumane acts, rape and persecution) existed, or that, in the ordinary course of events, the crimes of murder, inhumane acts, rape and persecution would be committed.

1103. In addition, for indirect co-perpetration through an organised and hierarchical apparatus of power, the Prosecution must establish that the accused was 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. This latter aspect is established by showing that the accused was aware of his or her critical role in the implementation of the common plan and his or her ability to control, jointly with others, the organised structure of power.

**C. Prosecution's Case under Article 25(3)(a) – Mr Gbagbo and Mr Blé Goudé**

1104. The Prosecution submits that there is – at minimum - sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict both Mr Gbagbo and Mr Blé Goudé of all of the crimes charged based on article 25(3)(a) as a mode of liability. For the avoidance of any doubt, Mr Gbagbo is charged, under article 25(3)(a), with crimes against humanity - murder, other inhumane acts or attempted murder, and persecution – arising out of the 16 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011

incidents; and Mr Blé Goudé with crimes against humanity – murder, other inhumane acts or attempted murder, and persecution – arising out of the 25 February 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 12 April 2011 incident.

1. Existence of a Common Plan between Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé

1105. The evidence presented shows that a plan or agreement existed to maintain Mr Gbagbo in power by all means, including by committing the crimes charged, and further that by 27 November 2010 the implementation of the Common Plan had evolved to include a State or organisational policy (the Policy) to launch a widespread and systematic attack against civilians perceived to support Alassane Ouattara.

1106. The Prosecution refers the Chamber to its Trial Brief, Section IX.A, paragraphs 641 to 700, and Section X.A, paragraphs 768 to 769, for the elaboration of its case on the existence of the Common Plan and Policy. In this Response, the Prosecution focuses on the evolution of the Common Plan to include the Policy.

1107. The fact that Mr Gbagbo and the Inner Circle, including Mr Blé Goudé, acted pursuant to the Policy to attack the civilian population, is evidenced by circumstantial evidence, including the respective contributions of Mr Gbagbo and Mr Blé Goudé to the Common Plan - as elaborated below (Sections V.C.4, V.C.8, V.D.3, V.D.5-7, V.D.9-20), and the following factors:

- i. They shared the motivation to keep Mr Gbagbo in power by all means;
- ii. Prior to 2010, they had already used violence as a means to further political objectives aimed at keeping Mr Gbagbo in power, following methods and using groups also employed during the 2010-2011 attack;

- iii. They recruited, trained, armed and financed pro-Gbagbo youth, militias – including the GPP, and mercenaries before and during the attack;
- iv. They exercised joint control over the pro-Gbagbo youth, militias and mercenaries including through instructions and incitements for the implementation of the Common Plan;
- v. They consolidated and exercised joint control over the FDS by appointing loyal individuals to key positions; and they armed perpetrating units;
- vi. They met and otherwise communicated frequently, received information regarding the situation on the ground, and issued instructions and incitements for the implementation of the Common Plan. They issued instructions and incitements to the pro-Gbagbo youth, and militias, including the GPP, for the implementation of the Common Plan;
- vii. They used rhetoric which sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible;
- viii. They encouraged and endorsed the actions of the pro-Gbagbo forces.
- ix. They used the RTI, a State tool, to disseminate encouragements and endorsements of the actions of pro-Gbagbo forces, and to disseminate instructions and incitements for the implementation of the Common Plan;
- x. They failed to prevent, repress or report the crimes committed, and denied responsibility for them;
- xi. Their actions in implementation of the Common Plan were coordinated.

1108. These factors are further addressed in sub-sections (a)-(i) below.

1109. As provided by the jurisprudence, the Common Plan does not need to be explicit. And in the present case, it is not so. There is no statement or document

explicitly stating Mr Gbagbo's will (or that of members of his Inner Circle) to stay in power – even if this required the use of violence against civilians. However, the jurisprudence and the Statute provide that the Common Plan can be inferred from circumstantial evidence. This use of violence to maintain Mr Gbagbo in power was conveyed through the actions and words of Mr Gbagbo, and members of the Inner Circle, including Mr Blé Goudé – and is seen in the actions of the pro-Gbagbo forces. The criminality of the Common Plan is evidenced by the following factors:

- i. The use, by the pro-Gbagbo forces, of violence against the civilian population, as is elaborated in the Trial Brief. With respect to the design of the plan to stay in power at any cost, the “stay in power” aspect of this plan may seem benign and part of a regular electoral campaign of an incumbent going for re-election; however, the background of this case and the evidence showing the “at any cost” aspects of the plan are expressions of the criminality of the plan. This aspect is addressed in sub-section V.C.1(b), below.
- ii. The pre-election recruitment, training and arming pro-Gbagbo youth and militias, in particular the GPP; and the issuance of instructions and incitements to them in implementation of the Common Plan, as elaborated in sub-sections V.C.1(c) and (d), V.D.7 and V.D.13 below.
- iii. Mr Gbagbo's requisitioning of the FANCI on 14 November 2010. The requisition should be seen within the context of pre-2010 events, in particular the previous requisition of 2004 leading to over 120 civilian deaths at the beginning of a demonstration. The existence of a requisition of the FANCI indicates an intention to employ those forces after the elections and before the occurrence of any violent incident which may have justified their intervention. This demonstrates that the engagement of the

armed forces was already intended as of 14 November 2010 and is indicative of Mr Gbagbo's intent to use all means to stay in power.

- iv. The FDS received instructions from Mr Gbagbo that the 16 December 2010 march was prohibited and should not take place. This instruction was disseminated by Mr Gbagbo's Minister of Interior and the Minister of Defence to prohibit the march, leading to an operation to block it. The use of pro-Gbagbo youth (FESCI) and the GPP to violently repress the 16 December 2010 march shows that the security operation for this march was not only a matter of law enforcement, but that Mr Gbagbo and his Inner Circle, including Mr Blé Goudé, intended to repress this march, using any available means – including violence against civilians - to keep him in power. This march was not the first violent action against civilians after the Presidential election, but it is emblematic of the use of non-State actors to commit crimes against civilians that is repeated in the weeks and months that followed.
- v. The rhetoric used by Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé, sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible. This aspect is elaborated at Section V.C.1(g), below.
- vi. The failure to prevent, repress or report the crimes committed, and denial of responsibility for them, as elaborated below in Section V.C.1(h) and V.E.
- vii. The encouragement and endorsement of the (criminal) actions of the pro-Gbagbo forces, as elaborated below in Sections V.C.1(f), V.C.8(a)(ii)(e), V.C.8(a)(ii)(j), V.C.8(a)(iii)(c), V.C.8(a)(iii)(g), V.C.8(a)(iv), V.D.13, V.D.15, F.3 and F.4.

1110. The Common Plan remained in existence throughout the post-election violence, as is evidenced by Mr Gbagbo's repeated refusals to step down despite calls made by the international community and the pro-Gbagbo forces' continuous targeting of pro-Ouattara supporters. For example:

- i. On 31 December 2010, during his end of year address to the nation, Mr Gbagbo reiterated that he was the legitimate winner of the election and that he was not stepping down.
- ii. His intention to stay in power carried into April 2011, when he again encouraged his troops to continue the fight. Mr Gbagbo's encouragement to the FDS leadership, on 3 April 2011, to continue the battle further demonstrates that the Common Plan and the Policy were still in place.
- iii. On 10 March 2011, Simone Gbagbo in yet another statement in support of her husband, stated "we must fight and triumph".
- iv. Mr Blé Goudé too made several statements to fight "until the end" and to be prepared to suffer for the "cause", or that Mr Gbagbo was the candidate that the population had chosen.
- v. Mr Blé Goudé gave repeated speeches supporting Mr Gbagbo as President.
- vi. Despite repeated calls by the African Union and the ECOWAS, Mr Gbagbo and his Inner Circle continued to govern Côte d'Ivoire and to issue statements in support of maintaining Mr Gbagbo in power.

1111. The Common Plan remained in existence even beyond Mr Gbagbo's arrest as pro-Gbagbo forces continued fighting in the hope of reinstating Mr Gbagbo's power.

1112. The continued use, by the pro-Gbagbo forces, of violence against the civilian population, as is elaborated in the Trial Brief, also demonstrates that the Common Plan was in force during a protracted period of time.

(a) *Mr Gbagbo and the Inner Circle including Mr Blé Goudé shared the motivation to keep Mr Gbagbo in power by all means*

1113. The evidence presented shows that Mr Gbagbo intended to stay in power by all means, including by committing the crimes charged, and that this intent was shared by other participants in the Common Plan, including Mr Blé Goudé. The following factors demonstrate a will to go over and beyond regular campaign activities in order to stay in power. These activities should be read in conjunction with the factors that demonstrate the criminality of the plan.

- i. Mr Gbagbo promoted loyal FDS officers on the day he announced the elections (5 August 2010);
- ii. Mr Gbagbo told his officers “if I fall, you fall” two days later (“*si je tombe, vous tombez*”);
- iii. Mr Gbagbo’s highest military officers, General Mangou and Kassaraté, both encouraged their subordinates to vote for Mr Gbagbo;
- iv. Preparations were under way prior to the elections for seasoned fighters within the GPP to train youth groups such as the FPI and COJEP youth, as well as FESCI and to obtain additional weapons for the FDS;
- v. The use of strong language against Mr Ouattara was accompanied with violence against the RDR and RHDP, such as the attack on the RHDP headquarters on 19 November 2010 and the roughing up of RHDP militants;

- vi. Two weeks before the elections, Mr Gbagbo requisitioned the armed forces by presidential decree;
- vii. Two days before the elections, Mr Gbagbo announced that he was putting in place a curfew on election day, despite the opposition of the Ouattara camp;
- viii. Mr Gbagbo's representative at the electoral commission, Damana Pickass, ripped the preliminary results of the second round of the elections on national television on 30 November 2010;
- ix. The results of the elections were not going to be in Mr Gbagbo's favour. Indeed, Bédié's votes going to Alassane Ouattara inevitably meant a win for Mr Ouattara. Unsurprisingly, the electoral commission – which included representatives of both the FPI and the RDR – was unable to reach the required consensus. Despite the preliminary announcement of Mr Ouattara's victory by the electoral commission on 2 December 2010, the President of the Constitutional Court, Paul Yao N'Dré, proclaimed Mr Gbagbo the elected President of Côte d'Ivoire on 3 December 2010, after having visited Mr Gbagbo that day;
- x. Mr Blé Goudé made several speeches in support of Mr Gbagbo with the aim to keep him in power, including references to suffer and to fight to the end;
- xi. Simone Gbagbo made statements to support Mr Gbagbo in power, including to keep mobilised, the departure of UNOCI and speeches against Mr Ouattara and his supporters. Other members of the Inner Circle, including Witnesses P-0009, P-0010 and P-0046 made statements supporting Mr Gbagbo.



*(b) Prior to 2010, they had already used violence as a means to further political objectives aimed at keeping Mr Gbagbo in power*

1114. The pattern of violence prior to 2010 is described in the Trial Brief, and is further addressed in the Response to Defence to arguments, at Section V.D.5(a) to (c) below. The Prosecution refers the Chamber to both of these sections.

1115. The focus of the charges in this case relate to incidents which took place in 2010-2011. However, to assess the criminality of the Common Plan, it is necessary to take into account the totality of the pattern of conduct of the FDS and militia groups during Mr Gbagbo's tenure as President, and not only the period of the charged crimes. While the crimes charged in this case range from 16 December 2010 to 12 April 2011, and while the Common Plan crystallised to encompass the Policy by 27 November 2010, these crimes are part of a pattern of conduct that emerged from the moment Mr Gbagbo rose to power until (and including) the post-election violence of 2010-2011.

*(c) They recruited, enlisted, armed, trained and financed pro-Gbagbo youth, militias and mercenaries before and during the attack.*

1116. This aspect has been rehearsed exhaustively in the Prosecution's Trial Brief, and is further addressed in the Response to Defence to arguments, at Section V.D.7 below.

*(d) They exercised joint control over the pro-Gbagbo youth, militias and mercenaries including through instructions and incitements for the implementation of the Common Plan*

1117. One of the most telling aspects both in showing the existence and criminality of the Common Plan is the control and use of pro-Gbagbo youth and militias – in particular the GPP, and the issuance of instructions and incitements to them.

1118. Mr Gbagbo and the Inner Circle, including Mr Blé Goudé, exercised joint control over pro-Gbagbo youth groups and militias who were either integrated into the FDS or acting in close collaboration with them, and used them to commit the crimes charged. In particular as regards the pro-Gbagbo youth and militia, this can be seen in that:

- i. In late September 2010, the GPP leader, Bouazo, received a visit from a member of the *Galaxie Patriotique*, Stallone Ahoua, who had come to convey a message from Mr Blé Goudé. The GPP at the time had protested about the fact that promises had not been met, insofar as the GPP members had not been integrated into the army or received indemnities in the disarmament process. Mr Blé Goudé's message was for the GPP to calm down and rest assured that Mr Gbagbo was informed of GPP concerns and of the protest march, and that the process would be carried out after the elections. At the same time, Mr Blé Goudé (still through Stallone Ahoua) requested that the GPP initiate training sessions for *Jeunes Patriotes*, members of the COJEP and the FPI youth, before the elections. Stallone Ahoua brought money and food to Bouazo and also gave them instructions on the way forward. The GPP did indeed provide military training to approximately 600 youth members of the FESCI and the COJEP from October 2010 until December 2010, at which time the recruits integrated into FDS units.
- ii. On 14 December 2010, Mr Blé Goudé had called a meeting of youth leaders at the Hôtel de Ville of Cocody, including JFPI leader Navigué Konaté, FESCI leader Augustin Mian, Youssouf Fofana, GPP leader Zéguen Touré, Sam l'Africain and others. The aim was to mobilise the *Jeunes Patriotes* to protect the RTI from the demonstrators of the march on the RTI planned for 16 December 2010. When called to mobilise, the *Jeunes Patriotes* knew what to do: that is, to set up roadblocks.

- iii. Between 14 and 19 December 2010, Mr Blé Goudé addressed the Young Patriots on several occasions and called on them to mobilise, and the youth responded in particular by blocking UNOCI movements.
- iv. Witness P-0435 stated that from the moment Soro took the decision to organise the 16 December 2010 march, meetings were held between the former Interior Minister, Désiré Asségnini Tagro, and GPP leaders, and that the instruction given was to support the FDS by intercepting demonstrators and handing them over to the authorities. GPP President Bouazo as well as some of the GPP base commanders, including Maguy “Le Tocard” from Yopougon, attended these meetings. For the 16 December 2010 march, FESCI members in Cocody – who had been trained by the GPP in September to November following the message received from Stallone Ahoua and Mr Blé Goudé – were placed on alert.
- v. On 25 February 2011, Mr Blé Goudé instigated pro-Gbagbo youth and militia to erect roadblocks and commit violent action, and while Witness P-0440 and Yopougon District Head Tiagnéré visited him to ask him to stop the roadblocks, he did not. Instead on 14 March 2011, Mr Blé Goudé thanked the youth for the roadblocks.
- vi. On 19 March 2011, Mr Blé Goudé called upon youth to enlist, in order to cover for the past and present collaboration of the pro-Gbagbo youth with the FDS, and to facilitate the arming of the youth.
- vii. Mr Blé Goudé reiterated congratulations to the *Jeunes Patriotes* manning the roadblocks on 20 March 2011 and on 5 April 2011 asked them to reinforce the roadblocks.
- viii. During an RTI interview on 25 March 2011, Mr Blé Goudé explained that the people would respond to their *mot d'ordre* at the rally that was set for

the following day at the Place de la République. Mr Blé Goudé also added that they would not flee Abidjan and that they would “...*défendre cranement [phon] mais avec la démocratie, la Côte d’Ivoire*”.

- ix. At the 26 March 2011 rally at the Place de la République, Mr Blé Goudé said, amongst other things, that they could not come and scare Ivoirians in their house and that they wanted to make people believe that the *Jeunes Patriotes* were cowards (“*faire passer les patriotes pour des peureux*”) but Alasanne Ouattara would never take Abidjan.
- x. On 3 or 4 April 2011, *via* the RTI, Mr Blé Goudé addressed Ivoirians and “*patriotes*” in inflammatory terms. He said that the rebels and mercenaries of Alasane Ouattara had sown terror in several Ivorian cities: they rape, rob, plunder, and slaughter with the complicity of UNOCI and Licorne forces; and asked people to support the FDS including “*en étant éveillés, en étant debout, dans vos quartiers, en étant debout là où vous êtes.*” He said the final assault will not come from the rebels, but rather from the FDS and valiant patriots (“*[il] viendra des vaillants patriotes que vous êtes*”). On the same day, calls were made on the RTI delivering a message from the FDS calling soldiers to go to the barracks.

On 3-4 April 2011, Émile Guiriéoulou called for the people of Côte d’Ivoire to mobilise:

*“Nous appelons le peuple de CÔTE D’IVOIRE à les soutenir sans faille et à leur apporter assistance en tout moment et en toutes circonstances. Nous demandons aux populations de CÔTE D’IVOIRE, et particulièrement à celles vivant dans la ville d’ABIDJAN, à se mobiliser pour défendre la patrie [...]. Nous demandons donc à toutes les populations de se mobiliser, de sortir pour protéger la CÔTE D’IVOIRE.”*

Likewise, youth leaders including Damana Pickass, Konate Navigué, Serge Koffi, Geneviève Bro Brebé and Idriss Ouattara also called for mobilisation.

- i. On 5 April 2011, Mr Blé Goudé urged the “patriots” to continue fighting to maintain Mr 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, Mr Blé Goudé also called on the population to film any “suspicious movement” in their neighbourhoods and to “send [the recordings] to Ivoirian television”.

*(e) They consolidated and exercised joint control over the FDS by appointing loyal individuals to key positions; and they armed perpetrating units.*

1119. This aspect is addressed in the Trial Brief, at paragraphs 53-60, 216-217, and in the Response below, at Sections V.D.4(c), V.D.6 and V.D.9.

*(f) They met or otherwise communicated frequently, received information regarding the situation on the ground, and issued instructions and incitements to the pro-Gbagbo youth, and militias, including the GPP, for the implementation of the Common Plan.*

1120. Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé, regularly met, or otherwise communicated, during the post-election violence. Mr Gbagbo received information regarding the situation on the ground, and gave instructions and incitements, which were then disseminated to the pro-Gbagbo forces through the FDS structure. In addition, Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé issued instructions and incitements to the pro-Gbagbo youth, and militias, including the GPP, for the implementation of the Common Plan.

1121. The Prosecution relies upon meetings with Mr Gbagbo including the following:

- i. The meeting on 14-15 December 2010 before the march on the RTI when Mr Gbagbo gave instructions that the march was prohibited. On this point, contrary to Mr Blé Goudé's argument, the instruction to stop the march, the large deployment of armed units, and the use of youth and paramilitaries in repressing the march, all indicate that violence, including the murders and rapes, were part of the methods envisaged to stop the march.
- ii. A meeting took place at the Presidential Residence on 4 January 2011. Witness P-0009 reported on the situation that was prevailing in Abidjan – more precisely in Abobo – and the problems they had.
- iii. The meeting on 12 January 2011 where FDS generals, Mr Ble Goudé and Ministers met with Mr Gbagbo to report on the FDS operation in Abobo.
- iv. The 24 February 2011 meeting during which a proposal to declare Abobo a war zone—which would have forewarned the civilian population and specifically allowed people to evacuate – was raised and not adopted, and during which Mr Gbagbo instructed the FDS to do everything to hold on to Abobo and liberate the N'Dotré roundabout – and after enquiring about the presence of the population in that zone, Mr Gbagbo gave the instruction to make sure there were not too many dead.
- v. At a meeting on 14 March 2011, Mr Gbagbo discussed security problems in Abobo with the FDS Generals and, as Witness P-0047 testified, the need for the FDS to have more weapons and ammunition to win the war. Later that night, footage of this meeting was broadcast over the RTI and the journalist says the Generals reaffirmed their allegiance to Mr Gbagbo during this meeting to quash any rumours of defections, and discussed, *inter alia*, the security situation in the country and the “subversive appendix” of Abobo.

- vi. On 3 April 2011, Mangou and Gouanou visited Mr Gbagbo at the Residence, along with FDS senior commanders Kassaraté, Dogbo Blé, Vagba Faussignaux, and Boniface Konan; their visit was filmed and broadcast on the RTI. The RTI presenter/journalist introducing the relevant footage in a broadcast on 4 April 2011, stated: *“l’armée reste toujours soudée autour du Président de la République, le président Laurent GBAGBO qui tient fermement la barre.”* Witness P-0009 testified that he went to this meeting from the South African Embassy, in order to convince Mr Gbagbo to resign – although in the end he did not do this. Mr Gbagbo said to the FDS officers present: *“Reprenez le combat. Mangou est ... le général et là. Allez-y, reprenez le combat”*.

1122. Instigations by Mr Blé Goudé of pro-Gbagbo youth and militia are addressed in detail at Sections V.C.1(f), V.D.8(e) and V.D.13 of this Response.

- (g) *The rhetoric used by Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé, sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible*

1123. The existence of the Common Plan is also demonstrated by the rhetoric used by Mr Gbagbo, and members of the Inner Circle including Mr Blé Goudé, including the following:

- i. On 7 August 2010, Mr Gbagbo publicly told the FDS commanders that *“Si je tombe, vous tombez”* [“If I fall, you fall”].
- ii. On 10 December 2010, Mr Blé Goudé formally took over the position of Minister of Youth and Employment from his predecessor Théodore Mel Eg. At that meeting Mr Blé Goudé declared that every birth is painful and that if they wish to give birth to a new nation they have to suffer: *“Tout accouchement est douloureux. Nous voulons accoucher d’une nouvelle Nation ?*

*Eh bien, nous devons souffrir.*" He also stated that he remained 100% General and 100% Minister.

- iii. On 15 December 2010 at the Palais de la Culture in Treichville, Mr Blé Goudé declared that they are willing to live but are ready to die to see their country develop *"Nous voulons vivre pour voir notre pays se développer, mais aussi nous sommes prêts à mourir pour que cette cause-là puisse se réaliser. Que l'on le sache."*
- iv. On 19 December 2010, Mr Blé Goudé says that Mr Gbagbo is not a *sous-préfet français*, and therefore not under the orders of Sarkozy. He then says:
- v. "[...] Ici en Côte d'Ivoire, regardez depuis plus d'une semaine les gens allaient tranquillement au travail. Cela veut dire qu'ils se reconnaissent dans le président qui est là. Qu'ils se reconnaissent dans les institutions qui sont là. Mais les ivoiriens n'ont aucun problème, c'est SARKOZY qui a un problème. Mais ils n'ont qu'à faire erreur, ils n'ont qu'à faire erreur ils n'ont qu'à faire erreur pour s'attaquer à un seul cheveu de GBAGBO Laurent. Parce que on est là, oui, vous avez mis en garde GBAGBO, vous avez pensé à GBAGBO, vous avez à faire au chef d'état de Côte d'Ivoire. C'est lui qui est l'espoir des jeunes, donc on va pas vous permettre de vous amuser avec notre président comme ça."
- vi. On 29 December 2010, during an interview with Euronews, Mr Gbagbo explained that he is the winner of the elections, that it is not in his agenda for him to resign, but he is asking for a recount of the votes and also told the Ivorians that they would have a choice between a candidate for Ivory Coast (i.e. himself) and a candidate for foreigners (i.e. Mr Ouattara).
- vii. On 31 December 2010, in his address to the nation, Mr Gbagbo referred to the armed rebellion in the interior of the country *"une rébellion armée à*



*l'intérieur*” and accused the international community, namely the UN and a number of powerful countries “*quelques pays puissants du monde*” which he did not name, of interfering in the internal affairs of Côte d’Ivoire. This time he referred to an attempted coup “*il s’agit d’une tentative de coup d’Etat menée sous la bannière de la communauté internationale*”. He also promised to the Ivorian people that they would not give in “*Nous n’allons pas céder*”.

- viii. On 1 January 2011, Mr Gbagbo demanded that the Constitution, the legislation and the procedures of the country be respected and he declared that when these are respected he is the president of the republic and there is no debate: “*D’abord, qu’on respecte la Constitution, qu’on respecte les lois qui en découlent, et qu’on respecte les procédures qui en découlent. Quand on a respecté cela - la Constitution, les lois et les procédures – « c’est moi qui suis le Président de la République, il n’y a pas de débat »”.*
- ix. On 5 January 2011, at Place Inch’Allah in Koumassi, Mr Blé Goudé said that he believes in a diplomatic solution and that, even if there is a war, there will ultimately be discussion. He added that a negotiated solution does not imply the departure of Mr Gbagbo, but that it meant discovering who truly won the elections:
- x. “*Mais pourquoi pas ne pas discuter? Je suis pour une solution de négocier. Je suis ... mais une solution de négocier ne veut pas dire négocier le départ de GBAGBO. [...] Négocier veut dire « venir savoir la vérité. Qui, de GBAGBO ou de OUATTARA, a gagné les élections.*”
- xi. On 7 January 2011, Mr Blé Goudé said “le seul gage de stabilité dont dispose la Côte d’Ivoire aujourd’hui, c’est GBAGBO Laurent.”
- xii. On 28 January 2011, during a seminar by the ministry of youth and employment, Mr Blé Goudé says:

- xiii. “Vu la situation actuelle de la Côte d'Ivoire, je crois que le Président a besoin de gens qui sont prêts à se sacrifier pour lui donner des résultats. Moi je ne suis pas venu pour faire du sur place. Je vais déranger beaucoup de choses. Et puis après on va mettre l'ordre ensemble. Il va falloir être courageux pour le faire, parce qu'en face nous avons des comptes à rendre à toute cette jeunesse qui attend beaucoup de nous.”
  
- xiv. On 5 February 2011, Mr Blé Goudé declared that a revolution had started in Côte d'Ivoire; he made references to attempts by New York [Note: implicitly a reference to the UN] and Paris to crush them [implicitly Mr Gbagbo supporters]; and referred to the fight of Mr Laurent Gbagbo versus Alassane Ouattara who is an antenna the West utilises, but that they will not let this happen and that they will fight to the end (“*nous irons jusqu’au bout*”).
  
- xv. On 12 February 2011, during a meeting in Agboville, Mr Blé Goudé once more stated that one could not touch Mr Gbagbo, whom together with the Constitution of Côte d'Ivoire he described as a totem:
  
- xvi. “Ici, là, le totem de tous ceux qui sont quittés, en France, aux Etats-Unis, en Angleterre, Union européenne, ONU, leur totem, là, s'appelle KOUDOU GBAGBO ... [Public: Laurent!...] Laurent. Nous venons vous dire : « Vous allez faire vos enquêtes comme vous voulez, mais GBAGBO, là, on le touche pas. Le totem en Côte d'Ivoire, là, on ne touche pas à notre Constitution, on ne touche pas à GBAGBO Laurent. »”
  
- xvii. On 13 February 2011, speaking at a thanksgiving mass, Mr Gbagbo referred to the struggle they are engaged in to transform Côte d'Ivoire by themselves instead of change being imposed on them and stated that they will win this struggle “*Nous allons gagner*”.

- xviii. On 27 March 2011, Mr Blé Goudé, during an interview with the RTI, he talks about the rally on 26 March 2011 at Place de la République and he says that when he sees images of the mobilisation, he believes God has his hand on Côte d'Ivoire, and that he thinks that these Ivorians are a people who believe in their fight and are ready to fight until the end. The stated purpose of the rally is to support Laurent Gbagbo and the institutions of Côte d'Ivoire. He says Côte d'Ivoire is inspiring revolutions in Egypt and Tunisia. He thanks pastors, priests, Muslims, and imams for joining the rally. He thanks the singers and the *Jeunes Patriotes*. He says that he has signed a pact with the crowd and that they are ready to fight until the end.
- xix. In early April in 2011, Mr Gbagbo from his residence says that French force destroyed Ivorian military capacity. He proposes first to decide who won the elections before negotiations can start on solving the conflict. Mr Gbagbo states that he does not regret having continued to remain in his position in the last four months.
- xx. On 3 April 2011, Mr Gbagbo encouraged his troops to continue the fight – despite months of violence marred by civilian deaths – by stating to Witness P-0009: *“Bon, reprenez le combat. Mangou est... le général est là. Allez-y, reprenez le combat”*.
- (h) *They encouraged and endorsed the actions of the pro-Gbagbo forces; and used the RTI to disseminate encouragements and endorsements of the actions of pro-Gbagbo forces, to disseminate instructions and incitements for the implementation of the Common Plan, and to disseminate rhetoric which sent a clear message that Mr Gbagbo was there to stay and that no other scenario was plausible*
1124. Mr Gbagbo and the Inner Circle, including Mr Blé Goudé, used the RTI to disseminate encouragements and endorsements of the actions of pro-Gbagbo

forces, to disseminate instructions and incitements for the implementation of the Common Plan, and to disseminate their rhetoric (above).

1125. Mr Blé Goudé, in particular, exploited the media in order to disseminate his instructions and mobilise the pro-Gbagbo youth groups. Highlights of his key speeches during rallies, press conferences, or other public events were frequently broadcast on the RTI. Mr Blé Goudé also instructed the pro-Gbagbo youth to only watch pro-Gbagbo channels such as RTI, listen to Radio Côte d'Ivoire and to the neighbourhood committees. This further amplified his means of communication through the media.

1126. The use of RTI to disseminate a consistent message on the use of roadblocks, is demonstrated by the evidence showing first, that Mr Blé Goudé's *mot d'ordre* of 25 February 2011 was disseminated on RTI, second, that that message was repeated and disseminated by other youth leaders, and their messages broadcast on the RTI, and third, that statements were broadcast on the RTI in the weeks after 25 February 2011 endorsing and encouraging the actions at roadblocks.

- i. During the RTI broadcast on 25 February 2011 at 20h00, youth leader Nicaise Douyou instructed all Ivorians to participate; and not to shelter "rebels". He said:

*"Si tu es ivoirien, il faut les dénoncer à tout moment, mais si tu ne les dénonces pas, alors tu es un rebelle et tu es l'ennemi de la Côte d'Ivoire. Nous allons te traiter comme tel".*

- ii. In the same RTI footage, Jean-Marie Konin (President of FENOPACI) repeated Mr Blé Goudé's call stating:

*"Nous demandons aux Ivoiriens de ne plus dormir, et de surveiller leurs différents quartiers, d'occuper tous les carrefours stratégiques pour permettre à la fluidité, et de contrôler tous les véhicules qui*

*rentrent et qui sortent pour ne pas que l'ONUCI dépose des rebelles dans nos différentes communes. Considérant que c'est l'ONUCI qui convoie et qui transporte tous les rebelles et qui les dépose dans le district d'Abidjan, et nous savons de quoi nous parlons, ceux qui attaquent nos populations, à Abobo, font partie de l'armée régulière du Burkina Faso, convoyés par l'ONUCI et déposés par l'ONUCI à Abobo". [Emphasis added]*

- iii. In Yopougon Gesco, in an RTI broadcast on 28 February 2011 at 13h00, it is reported that, following Mr Blé Goudé's *mot d'ordre*, a vigilance committee has been installed in the *corridor de GESCO*, at the entrance of Yopougon, by Idriss Ouattara. He expressed their support to the FDS and said:

*"nous sommes leurs oreilles, nous sommes leurs yeux dans le quartier, pour leur fournir les informations importantes, pour que ses Forces de défense et de sécurité puissent accomplir sereinement leur mission de défense des institutions. Pour que la victoire de Laurent GBAGBO s'impose à la communauté internationale."*  
[Emphasis added].

- iv. Similarly, rather than condemning the violence against civilians in Yopougon, the Government spokesperson on 3 March 2011, described the commune as a *zone de repli* of terrorists. On 17 March 2011, in a Government *communiqué* read by the spokesperson, Mr Gbagbo is quoted as calling on Ivorians to collaborate with the FDS *"afin que toutes les présences suspectes dans notre environnement soient neutralisées"*, and suggests that public transport vehicles – *Gbaka* and *Woro-woro* – are camouflaging rebels (*"nous assistons ces jours aux derniers soubresauts d'une rébellion qui s'étend, en se camouflant dans des véhicules de transport en commun, Gbaka et Wôrô-wôrô"*).

- v. On 14 March 2011, Mr Blé Goudé thanked the youth who erected the roadblocks *“pour protéger vos quartiers”* and stated that they had received the results: *“ces barrages ont découragé les rebelles.”* Rather than instructing the youth to dismantle the roadblocks or to stop perpetrating violent crimes against civilians, he told them: *“Continuez, mais surtout soyez polis. Soyez polis et évitez de racketter”* and presented allegations of crimes (racketeering) as false (*“Je sais que vous ne rackettez pas mais pour vous discréditer, l’on raconte n’importe quoi”*). Then he told the youth that they (he and others) would launch an historic call and that they would come to visit the Ivorian populations in their neighbourhoods, to speak to them:

*“Et croyez-moi, dans les heures qui suivent, nous allons vous lancer un appel pressant. Préparez-vous, parce que les heures qui arrivent, vous allez répondre à un appel historique. Mais un dernier appel historique pour libérer la CÔTE D’IVOIRE. C’est le lieu de vous féliciter déjà, vous qui avez dressé des barrières et les barrages dans les quartiers, pour protéger vos quartiers. Nous avons les résultats de ces barrages: ces barrages ont découragé les rebelles. Continuez, mais surtout soyez polis. Soyez polis et évitez de racketter. Je sais que vous ne rackettez pas mais pour vous discréditer, l’on raconte n’importe quoi. Nous viendrons vers vous, vous qui êtes dans les quartiers, les populations ivoiriennes : nous viendrons vers vous pour vous parler. Mais avant de venir vers vous, nous vous lancerons un appel historique”.*

- vi. On 18 March 2011, Mr Blé Goudé together with other leaders of the Patriotic Galaxy, including Richard Dakouri and Navigué Konaté, visited a roadblock held by Young Patriots. The visit was broadcast on the RTI, that day. The RTI reported first that *“Ouattara’s men have killed four passers-by in the vicinity of a roadblock manned by the Jeunes Patriotes at Deux-*

Plateaux”; Mr Blé Goudé – identified as *“chef des Jeunes Patriotes”* - visited the families of the victims, with his *“État-major”* – the footage shows Richard Dakouri and Navigué Konaté. He condemned what he described as the actions of people who hide kalashnikovs under civilian clothes (*“Des gens ne peuvent pas se mettre comme ça en civil dans la ville d’Abidjan, cacher des Kalachnikovs sous leurs habits”*). Then Mr Blé Goudé is filmed visiting a roadblock – described in the RTI broadcast as the *“théâtre des opérations d’auto-défense”*. A Young Patriot says that in a fight there are people who die, that they must fight terrorists, that they will always be ready, until the last. Mr Blé Goudé draws a parallel with the Rwandan genocide (*“Comme tu l’as dit, ils peuvent pas tuer tout le monde. Il y a eu des survivants à la Première guerre mondiale. Il y a eu des survivants au génocide rwandais. Il y a eu des survivants au tsunami. Il y aura des survivants à la guerre en CÔTE D’IVOIRE”*), then announces that he and the leaders of the *Galaxie Patriotique* will be launching an *appel historique* at Place CP1 in Yopougon the following day. He says that rumours that Laurent Gbagbo wants to resign are untrue, and aimed at destabilising the youth. He gives the following instructions – concerning the roadblocks:

*“Renforcez les corridors et vérifiez les véhicules avec beaucoup de politesse, avec beaucoup de gentillesse, mais avec beaucoup de fermeté aussi”.*

- vii. On 20 March 2011, Mr Blé Goudé addressed the Ivorians from an RTI studio. He congratulated the youth at the roadblocks:

*“[...] Je voudrais d’abord dire bonsoir aux ivoiriens, aux jeunes que je voulais féliciter. Ceux qui sont sur les barrages, ceux qui veillent pour que les autres dorment, ceux qui maintiennent l’ordre*

*dans les quartiers avec politesse et qui aujourd'hui sont en train de dissuader ceux qui veulent semer le désordre dans le pays".*

He also called the youth to enrol in the army:

*"[...] je les appelle demain à se rendre à l'Etat-major et le Chef d'Etat-major avec son équipe trouveront le moyen de les enregistrer et de les enrôler dans l'Armée de CÔTE D'IVOIRE [...]"*.

- viii. On the same day, 20 March, the RTI broadcast also footage of Maguy Le Tocard in Yopougon. The footage is introduced and described by the RTI presenter/journalist(s) as relating to the vigilance committees ("*comités de veille*") established by youth volunteers after "*il avait été demandé [...], aux jeunes, dans les quartiers, de rester vigilants*"; a clear reference to Mr Blé Goudé's *mot d'ordre* of 25 February 2011, repeated by Mr Blé Goudé on 19 March 2011.
- ix. Again, on 21 March 2011, in the RTI news studio, Mr Blé Goudé said that since the youth had started to set up roadblocks, their opponents had started to be discouraged. He told people to watch the RTI and listen to *Radio Côte d'Ivoire*; and listen to the committees in the neighbourhoods.
- x. On 22 March 2011, pro-Gbagbo youths (and others) began to enrol at decentralised enrolment points, including in Mr Blé Goudé's presence – according to Mangou's (on the day before) and Mr Blé Goudé's instructions. Mr Blé Goudé says: "*Donc en même temps, en restant dans les quartiers, vous surveillez les quartiers mais en même temps vous vous inscrivez*".
- xi. On 5 April 2011, Mr Blé Goudé thanked and congratulated the patriots for their resistance and encouraged them to continue to resist, and instructed



the youth to reinforce 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, Mr Blé Goudé also called on the population to film any “suspicious movement” in their neighbourhoods and to “send [the recordings] to Ivoirian television”: *“quant à vous, dans vos quartiers vous avez dressé des barrages, il faut les renforcer. Dans vos quartiers, si vous voyez un mouvement suspect il faut le filmer et le faire parvenir à la télévision ivoirienne, il faut signaler tous ces mouvements suspects.”*

- (i) *They failed to prevent, repress or report the crimes committed, and denied responsibility for them*

1127. As is elaborated in this Response, Section VII (addressing Mr Gbagbo’s criminal responsibility under article 28), Mr Gbagbo and members of the Inner Circle, including Mr Blé Goudé, failed to prevent, repress or report the crimes committed, and denied responsibility for them as follows:

- (i) Failure to prevent

1128. Had the perpetrators of the 16 December 2010 crimes and those of the Wassakara killings of early December been prosecuted, this would have sent a strong signal to pro-Gbagbo forces that such acts were not tolerated and would have prevented the commission of future crimes.

1129. With respect to the 12 April 2011 incident, Mr Gbagbo had all the information at his disposal to be on notice that by requesting the pro-Gbagbo forces to continue to fight, it would lead to the commission of further crimes. Instead, Mr Gbagbo relied on pro-Gbagbo forces which had been involved in criminal acts in the past and encouraged them to continue on different occasions:

- i. On 2 April 2011, elements of the GPP – including some of their commanders – members of the FESCI and Liberian mercenaries were met

first by Mr Gbagbo's son Michel, as well as Mr Gbagbo himself. Mr Gbagbo congratulated them, stating that he was proud of the young Ivoirians, that they had already won the war, because Mr Gbagbo's goal was to show that France was supporting the rebellion.

- ii. On 3 April 2011, at the Presidential Residence and in front of General Mangou, Dogbo Blé and Konan Boniface, Mr Gbagbo still urged his troops to continue fighting.
- iii. On 5 April 2011, Mr Gbagbo's subordinate, his co-Accused Mr Blé Goudé urged the "patriots" to continue fighting to maintain Mr Gbagbo in power. Mr Blé Goudé 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, Mr Blé Goudé also called on the population to film any "suspicious movement" in their neighbourhoods and to "send [the recordings] to Ivoirian television".
- iv. On 9 April 2011, Mr Gbagbo's spokesperson released a public *communiqué* stating that "*Le Président de la République exprime toute sa détermination à continuer la lutte*" (the President expresses his firm determination to continue to fight).

(ii) Failure to repress or report

- a. Mr Gbagbo failed to punish the crimes related to the 16 December 2010 incident.

1130. Mr Gbagbo was fully aware that civilians had been killed during the 16 December 2010 march. He was quick however to point out the number of FDS casualties. It would have been appropriate, upon receiving information of casualties during the 16 December 2010 march, for Mr Gbagbo to – at minimum –

refer the matter to investigative bodies or announce that such measures were being taken. Instead, in his 21 December 2010 televised speech on national television, Mr Gbagbo commemorated the FDS members who had lost their lives, stating they were martyrs and that they died to defend the Ivoirian constitution; he added “we are being terrorised” (“*On veut nous terroriser*”). The Prosecution submits that Mr Gbagbo’s establishment of an international commission of inquiry fulfilled, in a perfunctory fashion, the role of a bureaucratic entity hired to cover up crimes committed by the FDS during the 16 December 2010 march and month of December. Neither Mr Gbagbo nor his spokesperson seem to have followed up, nor were any statements made by the government with respect to the findings of the Commission.

b. Mr Gbagbo failed to punish FDS perpetrators of the killings of 3 and 17 March 2011

1131. Mr Gbagbo, his associates (such as his spokesperson) and subordinated FDS officers received information both on 3 and 17 March 2011 claiming that the FDS was involved in these incidents. The killings in Abobo on 3 and 17 March 2011 were simply scarcely investigated in the immediate aftermath and thereafter their existence denied or simply covered-up by accusation of being a montage in the case of the 3 March 2011 incident.

(iii) Denials of responsibility:

a. 3 March 2011

1132. With respect to the killing of seven women during the women’s march of 3 March 2011, although Mr Gbagbo and his Inner Circle had evidence implicating the FDS in the incident, spokespersons Don Mello and Babri denied, on the RTI, any FDS responsibility for the attack on 4 March 2011. The FDS *communiqué* was approved by Minister of Defence Dogou. The CEMA testified that he had been

told by the Minister of Defence that the latter had informed Mr Gbagbo of the *communiqué*.

1133. On 5 March 2011, Interior Minister Guiriéoulou condemned the international press for their continued claims that the FDS were responsible for the killing of the women on 3 March 2011. He claimed that it was an attempt to discredit Mr Gbagbo's regime.

1134. As of 5 March 2011, pro- Gbagbo media denounced this incident as a set-up.

1135. On 8 March 2011, the *Conseil des ministres* again denied all responsibility, and advanced that accusations against the FDS were pure fabrication.

1136. On 23 March 2011, Mr Blé Goudé alleged 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 – in line with the response of Mr Gbagbo and members of his Inner Circle.

b. 17 March 2011

1137. On 22 March 2011, the Mr Gbagbo's government issued a statement on the RTI claiming they had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama morgue and, (iii) that no complaint had been registered at police stations with respect to an FDS operation. The tolerance of violence against perceived Ouattara supporters sent a clear message to pro-Gbagbo forces that political opposition would not be tolerated.

1138. Finally, as put by Witness P-0440:

*“On vivait dans une période où l’impunité était devenue la règle, l’impunité vis-à-vis de certaines personnes: il y avait les jeunes patriotes, il y avait les miliciens, et il y avait les étudiants de la FESCI. Ceux-là, de façon tacite, ils bénéficiaient d’une impunité.*

*C'est-à-dire, ils commettaient des actes répréhensibles, mais on ne les arrêtait pas et on ne nous demandait pas non plus de le faire. On était dans une situation telle que c'était le laisser-aller, c'était le laisser faire."*

1139. Witness P-0048 explained that the killings of 52 Dioula men by the Abobo *Gendarmerie* in October 2000 marked the beginning of an era of impunity in Côte d'Ivoire:

*Plus grave, même les procès qui auraient pu avoir lieu sous... sur cet événement n'ont jamais abouti à incriminer quelque personne que ce soit. Je peux vous dire que cet épisode douloureux qui est une marque flagrante d'impunité avec d'autres types d'impunité qu'il y a eu dans... en Côte d'Ivoire vont constituer le terreau fertile de ce que nous avons connu comme crise dans notre pays."*

(j) *Their actions in implementation of the Common Plan were coordinated.*

1140. The evidence shows that Mr Gbagbo and members of the Inner Circle coordinated their actions in implementation of the Common Plan. Examples of this may be seen in the events described below.

(i) Events around 16 December 2010

1141. The facts relating to the 16 December 2010 incident demonstrate coordination between various organs and institutions, both civilian and military, towards the same goal of preventing the march towards the RTI by any means. This is visible through the mobilisation of the pro-Gbagbo youth and militia, as well as the FDS, and the coordination of their activity by Inner Circle members.

1142. On 11 December 2010, Mr Gbagbo ordered a blockade of the area around the Golf Hotel, where Ouattara, his cabinet and around 300 members of the FAFN

were based. FDS elements took position around the Hotel on the afternoon of 12 December 2010. Mr Gbagbo and the FDS high command were aware — by 12 December — of planned RHDP demonstrations prior to their public announcement by Guillaume Soro. They also knew that a march would take place on the RTI. The announcement of the march was made official *via* a cabinet meeting of the Soro government.

1143. On 14 December 2010, Mr Blé Goudé had called a meeting of youth leaders at the Hôtel de Ville of Cocody, including JFPI leader Navigué Konaté, FESCI leader Augustin Mian, Youssouf Fofana, GPP leader Zéguen Touré, Sam l’Africain and others. The aim was to mobilise the *Jeunes Patriotes* to protect the RTI from the demonstrators of the march on the RTI planned for 16 December 2010. When called to mobilise, the *Jeunes Patriotes* knew what to do: that is, to set up roadblocks.

1144. Witness P-0435 stated that from the moment Soro took the decision to organise the march, meetings were held between the former Interior Minister, Désiré Asségnini Tagro, and GPP leaders, and that the instruction given was to support the FDS by intercepting demonstrators and handing them over to the authorities. GPP President Bouazo as well as some of the GPP base commanders, including Maguy “Le Tocard” from Yopougon, attended these meetings. For the 16 December 2010 march, FESCI members in Cocody – who had been trained by the GPP in September to November following the message received from Stallone Ahoua and Mr Blé Goudé – were placed on alert.

1145. A day or two before the march, Mr Gbagbo met with his ministers and members of his Inner Circle, including his Defence Minister Dogou and Generals Kassaraté, Mangou and Bredou M’bia, to convey the instructions that the march was prohibited. While Witness P-0009 remembered this having taken place on 14 December 2010, the logbook of visitors at the Presidential Residence indicates that a meeting took place with the Generals on 15 December 2010.

1146. Instructions were disseminated by Mr Gbagbo's Minister of Interior and the Minister of Defence to prohibit the march, leading to an operation to block it.
1147. The CEMA convened a meeting with the FDS high command on 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 access to the RTI, specifically to disperse the crowds that were gathering to march on the RTI. The CEMA entrusted the coordination of operations to the DGPN, Bredou M'bia.
1148. On the eve of the march, FDS spokesperson Babri appeared on television to warn Ouattara supporters that taking part in such a march amounted to destabilising public order, and that the aim of such a march was to force the FDS to confront innocent Ivorians.
1149. That same day, RTI reported on the first Blé Goudé rally since his nomination as Minister, at the *Palais de la Culture*. There, Mr Blé Goudé said the following to an excited crowd of pro-Gbagbo youth in relation to the army:

*“Je n'ai pas de fusil. Je n'ai aucune arme et voici mes mains. Mais je promets à Guillaume SORO et à Alassane OUTTARA, qu'avec mes mains, je suis capable de les déloger du GOLF HÔTEL à mains nues. Ils ont l'ONU avec eux. Ils ont la FRANCE avec eux. Ils ont les ÉTAT-UNIS avec eux. Ils ont l'Union Européenne avec eux. Nous avons l'Éternel des armées avec nous. Et nous avons Dieu avec nous mais nous avons une deuxième chose avec nous. Nous avons notre détermination avec nous. Et quelle que soit l'armée la plus puissante du monde qu'ils vont nous envoyer, cette armée sera vaincue par l'armée de Dieu. Chers amis, chers amis, je vous demande, dès cet instant, de vous apprêter. Soyons soudés, soyons soudés, soyons solidaires, soyons déterminés, soyons sûrs de notre force et ne reculons*

*devant rien ! Je vous lance ce message, du haut de cette tribune. Nous voulons vivre pour voir notre pays se développer, mais aussi nous sommes prêts à mourir pour que cette cause-là puisse se réaliser. Que l'on le sache."*

1150. During the course of the day of 16 December 2010, the CEMA kept Mr Gbagbo informed of developments on the ground and Mr Gbagbo instructed the CEMA not to move his units towards the Golf Hotel. On the evening of 16 December 2010, Mr Gbagbo met again with several ministers, including his Minister of Defence Dogou for several hours. Key members of Mr Gbagbo's Inner Circle, including FDS officers, were also received at the Presidential Residence: Bertin Kadet and Dogbo Blé were also present at the time of the meeting between Mr Gbagbo, Alain Dogou and other ministers. The DGPN was informed of civilian deaths through the reports of his staff and he reported to the Minister of the Interior Guiriéoulou by phone on the day of the march and subsequently *via* police reports.

1151. On the night of 16 December 2010, Mr Gbagbo also received Mr Blé Goudé. Between 16 and 19 December 2010, Mr Blé Goudé was received three times at the Presidential Residence, where he met Mr Gbagbo and spent many hours. Between 14 and 19 December 2010, Mr Blé Goudé addressed the *Jeunes Patriotes* on several occasions and called on them to mobilise, including at Port Bouët on 19 December 2010. On 21 December 2010, he mentioned the impending final assault for the full liberation of Côte d'Ivoire.

1152. The facts relating to the 16 December 2010 incident demonstrate coordination between various organs and institutions, both civilian and military, towards the same goal of preventing the march towards the RTI. This is visible through the mobilisation of the youth as well as the army and the coordination of their activity by Inner Circle members.



(ii) Events around 25 February 2011

1153. The timeline of events around the 2528 February 2011 incident demonstrates, again, coordination between Mr Gbagbo and members of the Inner Circle - including Mr Blé Goudé, as well as the pro-Gbagbo youth and militia, the government and the FDS, within the context of attacks on civilians in Yopougon and the FDS offensive in Abobo.

1154. On the evenings of 23 February 2011 (the night before his message to the youth of 24 February 2011); and 24 February 2011 (between 21h34 and 23h06), Mr Blé Goudé visited the Presidential Residence (after his message to the youth of 24 February 2011 and prior to his *mot d'ordre* on the morning of 25 February 2011). The Prosecution invites the Trial Chamber to appreciate these visits within the context of the FDS offensives in Abobo, and the attack on civilians in Yopougon, starting on 25 February and continuing in the days after.

1155. On 24 February 2011, Ahoua Don Mello reads out a communication issued by the Council of Ministers following their meeting held at the Presidential palace, and presided by Laurent Gbagbo, on 24 February 2011. In relation to UNOCI, Ahoua Don Mello conveys that

*“Le Conseil des ministres a exprimé sa préoccupation quant à l’attitude complice des forces onusiennes dans le soutien en équipement radio et télévision des rebelles du Golf et dans l’infiltration de ces rebelles dans certains quartiers d’Abidjan, notamment Abobo, Anyama, Koumassi, et dans certaines communes à l’intérieur du pays: Bangolo, Danané et Djébonouan. Le gouvernement a condamné une telle attitude des forces onusiennes”.*

1156. On 24 February 2011, Mr Blé Goudé appeared on the RTI news with a message to the youth: to prevent the UN from driving and moving throughout Abidjan *communes*. He also called on the pro-Gbagbo youth to take part in a mass

general meeting convened “to issue the last instructions” at Bar Le Baron in Yopougon at 09h00 on 25 February 2011.

1157. On 25 February 2011, at Bar Le Baron, Mr Blé Goudé demands the youth to prevent the UN from circulating: *“Dès maintenant, l’ordre que je vous donne et qui doit être valable dans tous les quartiers, c’est que quand vous retournez dans vos quartiers, vous devez empêcher l’ONUCI de circuler. Un. Deuxièmement, en retournant dans vos quartiers, vous devez contacter les présidents de quartier, vous devez vous réunir pour savoir et vérifier les entrées et les sorties de vos quartiers et dénoncer toute personne étrangère qui vient dans votre quartier”*.

1158. On 25 February 2011 at a parlement, Jean-Marie Konin (President of FENOPACI) mirrors Mr Blé Goudé’s call when stating:

*“Nous demandons aux Ivoiriens de ne plus dormir, et de surveiller leurs différents quartiers, d’occuper tous les carrefours stratégiques pour permettre à la fluidité, et de contrôler tous les véhicules qui rentrent et qui sortent pour ne pas que l’ONUCI dépose des rebelles dans nos différentes communes. Considérant que c’est l’ONUCI qui convoie et qui transporte tous les rebelles et qui les dépose dans le district d’Abidjan, et nous savons de quoi nous parlons, ceux qui attaquent nos populations, à Abobo, font partie de l’armée régulière du Burkina Faso, convoyés par l’ONUCI et déposés par l’ONUCI à Abobo”*.

1159. On 25 February 2011 Komoe Kouadio, Minister of Energy and Mines, announces the government's decision to suspend the supply of fuel to Licorne and UNOCI;

1160. On 23 February 2011, the FDS went on their first military offensive in Abobo. The mission, as instructed by CEMA, was to engage with the enemy located at the Axis MACA-N’Dotré and from the Abobo roundabout to PK18. The CEMA

testified that he reported both to the Minister of Defence and Mr Gbagbo on the difficulties encountered, which led Mr Gbagbo to order a meeting with his Generals the next day. On 24 February 2011, after a “first offensive” in the PK18 neighbourhood of Abobo that proved unsuccessful, Mr Gbagbo – in a meeting with his Generals – instructed the FDS Generals to do everything they could to liberate the MACA-Abengourou axis in Abobo, to liberate N’Dotr , and not to cede Abobo. After enquiring about the presence of the population in that zone, Mr Gbagbo gave the instruction to “make sure there are not too many dead”. After the meeting, Mr Gbagbo ignored the advice of Mangou to declare Abobo a war zone, which would have forewarned the civilian population and, specifically, allowed people to evacuate. Instead, on 25 February 2011, the FDS conducted a second military offensive and shelled PK 18 neighbourhood and the N’Dotr  area in Abobo. Witness P-0009 stated that he must have informed the Minister of Defence and Mr Gbagbo that the Carrefour N’Dotr  had been freed and also that mortars had been used.

1161. On 26 February 2011, during a reportage against UNOCI, the presenter alleges that the UNOCI and Licorne are attempting to distract the armed forces from dismantling subversive actions in Abobo Anyama and adds that: *“Les patriotes font  chouer cette noire ambition et leur chef Charles BL  GOUD  annonce l’ONUCI persona non grata   Abidjan”*.

1162. On 27 February 2011, at a massive gathering of youth at the President’s residence in Cocody, Serge Koffi (CRAC) explains that during that night, they are checking the suspicious circulation of UNOCI and Licorne vehicles, which he labels as partial forces.

1163. On 28 February 2011, the *femme patriotes*, led by Genevieve Bro Greb , protest against the UNOCI in a sit-in in front of the Jordanian contingent in Riviera 3. The women said they were determined until UNOCI stopped helping the rebels to destabilise the country.

1164. Dissemination of Mr Blé Goudé's *mot d'ordre* of 25 February 2011 is addressed at Sections V.C.1(h) and V.F.3(g).

1165. On 4 March 2011 Ahoua Don Mello addresses the nation regarding a Council of Ministers held on 3 March 2001. He states that the rebels are relying on the population to commit crimes and material damage with the support of UNOCI:

*“On note également que ces rebelles se muent en terroristes dans les zones telles qu’ABIDJAN qui leur sont défavorables, se fondant aussi dans la population pour commettre des crimes et des dégâts matériels très souvent avec l’appui logistique et tactique de l’ONUCI [...] le gouvernement dénonce le comportement de l’ONUCI et demande aux contributeurs des troupes de l’ONUCI de rappeler leurs différents contingents”.*

(iii) Events preceding 12 April 2011

1166. Statements by Mr Gbagbo, members of his Inner Circle - including Mr Blé Goudé, and members of the pro-Gbagbo youth, in the last few days of the post-electoral violence preceding the 12 April 2011 incident, also demonstrate their coordinated actions. For example:

- i. On 3 April 2011, Mangou and Gouanou visited Mr Gbagbo at the Residence, along with FDS senior commanders Kassaraté, Dogbo Blé, Vagba Faussignaux, and Boniface Konan; their visit was filmed and broadcast on RTI. The RTI presenter/journalist introducing the relevant footage in a broadcast on 4 April, stated: *“l’armée reste toujours soudée autour du Président de la République, le président Laurent GBAGBO qui tient fermement la barre.”* Mr Gbagbo said to the FDS officers present: *“[r]eprenez le combat. Mangou est ... le général et là. Allez-y, reprenez le combat”.*

- ii. That same day, Colonel Gouanou was broadcast on RTI, reading an official statement alleging that severe abuses have been committed in the interior of the country and in the communes of Abidjan, including Abobo, Koumassi, Cocody, and Yopougon – and that inhabitants of Yopougon have had to displace *en masse* to escape the rebels' acts of vengeance including murder, rape and robbery, following fighting between the FDS and rebels there. Gouanou says that UNOCI and Licorne had failed to protect the civilian population and accuses the opposing forces of acts of perfidy.
- iii. Again, on 3 April, Navigué Konaté, in the RTI studio, reiterates a call made on the preceding day for popular mobilisation to Mr Gbagbo's residence.
- iv. This call is echoed by others in similar broadcasts on RTI, including Inner Circle member, Damana Pickass, Bro Grébé and Serge Koffi.
- v. Guiriéoulou similarly broadcasts on RTI that day, 3 April, calling for Ivorians to mobilise to help the FDS defend the country against the rebels and to mobilise around the public institutions including the Presidential Palace and Residence.
- vi. On 3 or 4 April 2011, RTI broadcast a video of BLÉ GOUDÉ addressing Ivorians and *patriotes* in inflammatory terms. He said that the rebels and mercenaries of Alassane Ouattara sown terror in several Ivorian cities: they rape, rob, plunder, and slaughter with the complicity of UNOCI and Licorne forces:

*“depuis quelques jours, les rebelles et les mercenaires de M. Alassane Dramane OUATTARA ont fait leur entrée dans plusieurs villes de la CÔTE D’IVOIRE, où ils sèment la terreur: ils violent, ils volent, ils pillent, ils égorgent. Plusieurs villages sont incendiés. Est-ce cela, la CÔTE D’IVOIRE*

*que M. OUATTARA veut nous offrir? Est-ce cela, ce que M. Alassane Dramane OUATTARA veut faire de la CÔTE D'IVOIRE, avec sa soi-disant communauté internationale ? Nous disons non. Avec la complicité des forces de l'ONUCI, avec la complicité de la LICORNE, les rebelles sèment la terreur dans notre pays et nos parents sont terrorisés."*

Mr Blé Goudé saluted the FDS for fighting the rebels, UNOCI, the Licorne forces, and mercenaries. He invokes God as being on the side of the FDS: "*nous avons l'Étemel des Armées avec nous.*" He then asks for people to support the FDS:

*"nous vous demandons de les soutenir par vos informations, nous vous demandons de les soutenir en étant éveillés, en étant debout, dans vos quartiers, en étant debout là où vous êtes".*

Mr Blé Goudé denied claims that he and Mr Gbagbo had fled. He said the final assault will not come from the rebels, but rather from the FDS and valiant patriots ("*il*) *viendra des vaillants patriotes que vous êtes*").

- vii. On 5 April 2011, the RTI broadcast a video showing Mr Blé Goudé addressing the "patriots" and urging them to continue fighting to maintain Mr 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, Mr Blé Goudé also called on the population to film any "suspicious movement" in their neighbourhoods and to "send [the recordings] to Ivoiran television".
- viii. Finally, on 9 April 2011, as is evidenced by a *Communiqué du Gouvernement*, Mr Gbagbo called on the people to keep up the fight *pour la libération de la Côte d'Ivoire* and said he sympathised with the suffering imposed on them

by Ouattara et ses terroristes; Mr Gbagbo “*exprime toute sa détermination à continuer la lutte*”.

## 2. Pro-Gbagbo forces were an organised and hierarchical apparatus of power

1167. As further demonstrated in Sections IV.A.1 and IV.B of the Trial Brief, pro-Gbagbo forces including the FDS, youth groups (*Galaxie Patriotique*) and militia (GPP) formed an organised and hierarchical apparatus of power.

### (a) FDS

1168. As demonstrated in Section IV.A.1 of the Trial Brief, the FDS was an organised and hierarchical apparatus of power.

### (b) Pro-Gbagbo youth: *Galaxie Patriotique*

1169. The groups that made up the pro-Gbagbo *Galaxie Patriotique* had a hierarchical and effective structure and were represented in each neighbourhood of Abidjan and nationwide. As Mr Blé Goudé himself stated in 2006: “They ‘[the *jeunes patriotes*] are well organised and they got a rapid and fast capacity of gathering, which is very important”. Mr Blé Goudé, as President of the *Galaxie Patriotique* and “*Général*”, was at the top of this hierarchy and directed the *jeunes patriotes*.

1170. During the post-election violence, the *Galaxie Patriotique* included groups affiliated to the AJSN (*Alliance de la Jeunesse pour le sursaut national*) of Mr Blé Goudé and groups affiliated to the CONARECI of Mr Pickass. Each group in the *Galaxie Patriotique* had its own leader, who in turn was under the direct authority of Mr Blé Goudé.

1171. The *Galaxie Patriotique* was vast – it included the COJEP led by Mr 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 Serge Koffi, the FENAAPCI led by Idriss Ouattara, Clément Nadaud’s *Sorbonne Solidarité*, Seydou Koné’s MNC,

Youssouf Fofana's *Voix du Nord*, the MODESCI led by Stallone Ahoua, the singer Serges Kassy, and numerous *parlements* and *agoras* such as *La Sorbonne*, whose President was Richard Dakouri.

1172. During an RTI interview on the 14 December 2010, Mr Blé Goudé made clear that despite his position as Minister, the youth had not lost their "*Général*"; he was still 100% General and 100% Minister. If he had the sense that his country was threatened or that there was desire to destabilise it, he would remove his suit, put on his black cap and steer things ("*j'oriente les choses*"). As elaborated below, the evidence establishes that Mr Blé Goudé had the capacity to mobilise the *Jeunes Patriotes* directly, or through the *Galaxie Patriotique* leaders in the different communes and *quartiers*. In line with his position, Mr Blé Goudé would repeatedly tell the pro-Gbagbo youth to wait for his instructions or *mots d'ordre* and/or give them instructions, that were followed.

1173. Moreover, the *Galaxie Patriotique* also included the GPP and the FLGO, which are described below. The members of these militias and other pro-Gbagbo youth groups were often referred to by the generic expression "*Jeunes Patriotes*". Witness P-0625 explained that the term (*jeune*) *patriote* meant someone who defended the interests of the country. Witness P-0046 testified that militia members were also *Patriotes*.

(c) *GPP*

1174. As of September 2010, the GPP had a large number of members - numbering more than 18,000 elements nation-wide, of which 8,000 to 9,000 were stationed in Abidjan. The GPP's hierarchical structure at the time, as described by Witness P-0435, was comprised of several tiers. At the top was the President, Bernard Bouazo Yoko Yoko, who was also the acting Chief of Staff, seconded by Witness P-0435 who was effectively second in command. Orders from Mr Bouazo were transmitted down the chain of command by Witness P-0435, or Mr Bouazo could



transmit them directly himself. Below were the different zone commanders in and outside of Abidjan, followed by the local commanders and their elements. As such, the Commanders of Abidjan north and south exercised authority over the local commanders of the communes and *quartiers*. During the post-election violence, Maguy Le Tocard was one of the commanders of the GPP in Yopougon, with Mr Zagbayou; he had previously been an orator at the *Parlements du Plateau* and the *Sorbonne*.

1175. The GPP was characterised by a functional automatism, as evidenced by the strictness of its training regimen, and that subordinates' failure to comply with orders was met with harsh punishment. Witness P-0435 testified that the honour Code within the GPP – "*Soumission, Soumission, exécution avant réclamation, la trahison engendre le sang*" was known by all to mean that orders had to be obeyed without question and any disobedience would be seen as a betrayal incurring punishment. Witness P-0435 testified that when the "*Grand Chef*" Bouazo gave an instruction, "*il ne faut pas discuter*".

1176. The military training of the Young Patriots started in October 2010 and lasted until December. In this period approximately six hundred youth were trained by the GPP.

(d) *FLGO*

1177. With respect to the FLGO, the Prosecution submits their primary relevance is to their recruitment into and participation in the Common Plan, and not as a perpetrator unit of the charged incidents. Evidence of their integration into and collaboration with the FDS is relevant to show their intent to implement the Common Plan. For example, a message from the Command of the *Forces Terrestres* signed by Colonel Major Koloubla, the *commandant en second*, dated 21 February 2011 shows that 398 new recruits were to be made available to the 1<sup>st</sup> Infantry Battalion, the 1<sup>st</sup> BCP, the Bataillon Blindé and the BASA on 22 February 2011 for

military training. The recruits – listed in an Annex to the Message, entitled “*Répartition GAD pour la formation militaire*” – comprised of members of the so-called *Groupes d’auto-défense*, as clearly indicated by the acronym GAD, including the GPP, LIMA and FLGO. Members of these militia and/or mercenary groups were assigned to the 1<sup>st</sup> Infantry Battalion (100 men), the 1<sup>st</sup> BCP (98 men), the *Bataillon Blindé* (100 men) and the BASA (100 men). Witness P-0435 recognised several names, amongst the list of recruits, of members of the GPP. He testified that, in fact, the recruits listed in the Annex, were integrated into the army; some of the elements took part in the fighting in Abobo after their training.

1178. A similar list of “volunteers” to be convened for the Second Infantry Battalion in Daloa on 9 March 2011 shows further waves of recruitment of members or former members of militia and/or mercenary groups, including LIMA and FLGO, in early March 2011.

1179. FLGO leader Glofiéhi attended the 19 March rally at Place CP1 Yopougon with other *Galaxie Patriotique* members, such as Mr Dibopieu, Mr Dakouri, Mr Kassy and Idriss Ouattara, where Mr Blé Goudé called for the youth to enrol in the FDS.

1180. Lastly, FLGO member Witness P-0500 testified that towards the end of the crisis, he stayed at and defended Mr Gbagbo’s Residence, where he saw Seka Seka, whom he described as being in charge. From there, he took a military cargo to the *École de gendarmerie* with over a hundred other youth in a convoy of military vehicles – where he fought the rebels alongside FDS and other youth. Witness P-0500 confirmed that the FLGO members that went to the camps assembled to go to the naval basis of Abobo-Doumé.

### 3. The Inner Circle had joint control over pro-Gbagbo forces

1181. The pro-Gbagbo forces, including the FDS, pro-Gbagbo youth, militia groups and mercenaries, formed part of an organised and hierarchical structure of which

Mr Gbagbo, Mr Blé Goudé and his Inner Circle exercised joint control. Mr Blé Goudé had a particularly significant role in ensuring joint control over the pro-Gbagbo youth, militia groups, and mercenaries.

(a) *FDS*

1182. In Section IV.A.2 of the Trial Brief, the Prosecution presented evidence showing Mr Gbagbo's control, both *de jure* and *de facto*, over the FDS. In sum, Mr Gbagbo had both *de facto* and *de jure* authority over the FDS, whose respective commanders reported to him directly, or through Mr Gbagbo's subordinates. Mr Gbagbo, in his claimed capacity as both President of Côte d'Ivoire and Commander-in-Chief, continued to control the FDS throughout the post-election violence.

1183. In addition to the formalised authorities noted in the previous section, Mr Gbagbo exercised command, control, and authority over parallel structure units or units headed by officers loyal to Mr Gbagbo, which included the BASA, the CECOS, the BAE and the GR. These groups were deployed to reinforce or replace *Gendarmerie* and Police units, including during routine law enforcement operations. Trial Brief Section IV.A.2(d) describes the parallel structure in more detail.

1184. As further demonstrated in Section IV.B.1 of the Trial Brief (and discussed in the below response to Blé Goudé Motion, paragraphs 266-273), Mr Gbagbo and Mr Blé Goudé exercised joint control over pro-Gbagbo youth groups such as the *Galaxie Patriotique* and militias including the GPP. Mr Gbagbo was able to do this by using Mr Blé Goudé as an intermediary.

1185. In December 2010, Mr Gbagbo nominated Mr Blé Goudé as his Minister of Youth and Education. It is precisely because of Mr Blé Goudé's ability to control the *jeunes* or *Jeunes Patriotes*, as their "*Général*", that Mr Gbagbo chose Mr Blé

Goudé as his youth minister at this pivotal moment in setting up his new government after refusing to concede the election.

1186. Mr Blé Goudé was the leader of the pro-Gbagbo youth, or at minimum regarded by the pro-Gbagbo youth as such. Mr Blé Goudé's authority over the pro-Gbagbo youth is further demonstrated by his participation in the formation of a hierarchical structure – the *Galaxie Patriotique* – to help indoctrinate the youth and follow Mr Gbagbo's policies, through various affiliated groups, composed of youth groups referred to as *Jeunes Patriotes*.

(b) *Pro-Gbagbo youth: Galaxie Patriotique*

1187. Mr Blé Goudé played a vital role in ensuring control over the pro-Gbagbo youth by mobilising them to commit violent acts, financing of the *Galaxie Patriotique's* activities, training and arming them, and playing an essential role in their recruitment and enlistment into the FDS, as described below. Further evidence of this control is demonstrated by their compliance with his instructions, and his ensuring the youth's cohesive action by transmitting his instructions down to the *Jeunes Patriotes*, through the local leaders. Mr Gbagbo and other members of the Inner Circle also kept their authority over these groups by financing them.

1188. During 2010 and early 2011, pro-Gbagbo youth and militia members were recruited into the FDS and underwent military training at official FDS centres; this embedded the youth in the recognised and formal structure of the armed forces. Throughout the post-electoral violence, Mr Gbagbo used Mr Blé Goudé and other members of the Inner Circle to disseminate instructions to youth and militia members. On at least one occasion, youth enlistment occurred as a direct result of a *mot d'ordre* given by Mr Blé Goudé. Mr Blé Goudé controlled the deployment of youth groups through a well-organised network of *Galaxie Patriotique* leaders, who would contact their members in different *quartiers* across

Abidjan and encourage them to mobilise. Large-scale mobilisations to pro-Gbagbo groups also took place using the RTI, radio and/or SMS messages.

1189. As the common objective of the youth groups was to maintain Mr Gbagbo's position as President, his effective control over members of the *Galaxie Patriotique* was established and exercised mainly through intermediaries. His effective control was further strengthened through the appointment of Mr Blé Goudé as the Minister of Youth and Education, the perception of Mr Blé Goudé as *le fils aimé*, and Mr Blé Goudé's exercise of authority as the *Général de la rue*. Mr Blé Goudé ensured that the leaders of youth militias were funded, that youth were provided with weapons and supplies and were motivated to serve Mr Gbagbo's cause.

1190. In line with his position, Mr Blé Goudé would repeatedly tell the pro-Gbagbo youth to wait for his instructions or *mots d'ordre* and/or give them instructions. These instructions would either be communicated directly to the pro-Gbagbo youth or militia groups – as was the case with the 25 February *mot d'ordre* – or channelled through the *Galaxie Patriotique* leaders. The evidence also establishes that the leaders and *Jeunes Patriotes*, in different locations, would communicate with each other and exchange information or updates. In this regard, Witness P-0449 explained, during his testimony, that following Mr Blé Goudé's Bar le Baron speech on 25 February 2011, he was informed by other *Jeunes Patriotes* of the fact that they had erected roadblocks in other locations.

1191. As elaborated in Trial Brief Section IV.B.2(b), the evidence establishes that Mr Blé Goudé had the capacity to mobilise the *Jeunes Patriotes* directly, or through the *Galaxie Patriotique* leaders in the different communes and *quartiers*. The evidence also establishes that this capacity to mobilise included a capacity to mobilise the members of militia groups. For example, Witness P-0625 testified that if Mr Blé Goudé wanted to call for the mobilisation of the *Jeunes Patriotes*, each of the *Galaxie Patriotique* leaders would then make a call to their supporters in the

different communes or quartiers and they would mobilise. Depending on the gravity of the situation or the nature of the call, Mr Blé Goudé would use the RTI, and SMS messages to mobilise and to call out to Ivorians. The efficiency and strength of the system of compliance with Mr Blé Goudé's *mots d'ordres* by both the pro-Gbagbo youth and militia groups is demonstrated in the following examples of Mr Gbagbo and Mr Blé Goudé's control over the *Galaxie Patriotique* and pro-Gbagbo youth and militia groups generally:

- i. First, on 28 December 2010, following Gbagbo's request for the UNOCI to leave, which was reiterated by Navigué Konaté and Augustin Mian on 24 December, an UNOCI convoy was stopped by a crowd in Niangon (Yopougon). The commentator describes the crowd as "*visiblement hostile*" as they yell "*ONU CI dehors*". The convoy was eventually escorted out by General Philippe Mangou.
- ii. Second, thousands of supporters attended a rally at Champroux Stadium on 23 January 2011 in support of the workers and the FDS after Mr Blé Goudé repeatedly called for all to attend.
- iii. Third, and as detailed in Section VII.E.2 of the Prosecution's Trial Brief, immediately following Mr Blé Goudé's *mot d'ordre* at the Bar le Baron on 25 February 2011, pro-Gbagbo youth and militia members increased roadblocks mainly in Yopougon and civilians who were perceived as Ouattara supporters were attacked. Witness P-0449 testified that immediately after Mr Blé Goudé pronounced his speech, roadblocks were erected by the *Jeunes Patriotes* in all of the *quartiers, communes* and at the entry point of different cities. On 14 March, Mr Blé Goudé thanked those who erected the roadblocks and said that they would visit and talk to the Ivorian people in the neighbourhoods.

- iv. Fourth, on 21 March 2011, thousands of youth responded to Mr Blé Goudé's *mots d'ordre* and presented themselves at the *État-Major* to enlist, after Mr Blé Goudé held rallies in the preceding days in Yopougon and Port-Bouët.
- v. Fifth, immediately after a speech made by Mr Blé Goudé on the 23 March 2011, that Mauritians who had left their shops would return to find new shop owners in the Ivory Coast, Witness P-0097 testified that shops near Siporex were pillaged; and upon one such Mauritanian-owned shop the following was written: "*La Cote D'Ivoire aux Ivoiriens*".

1192. Witness P-0625 testified that the *Galaxie Patriotique* was "very well organised" in terms of communication. If there was a need to hold meetings or reunions, Mr Blé Goudé, as President of the *Galaxie Patriotique*, would send SMS messages by mobile phone to the other members. Mr Blé Goudé had his own communication service that would handle these matters. For large scale meetings, Mr Blé Goudé would send messages to all the *Galaxie Patriotique* leaders, and these would in turn contact the different mobilisation bases. The leaders would relay Mr Blé Goudé's messages and further encourage attendance. Adverts were also made on the television. Means of transportation were hired and each *commune* had a person responsible for designating a meeting place for those travelling to the meeting.

(c) *GPP*

1193. Sections IV.B.3 and IV.B.4 of the Trial Brief demonstrates that Mr Gbagbo controlled the GPP by financing and arming it, and that Mr Gbagbo controlled it through Mr Blé Goudé. Mr Gbagbo's control over militia groups is also supported by evidence showing their recruitment and integration of such groups in the FDS, and financing by members of the Inner Circle.

1194. Prior to and during the post-election violence, Mr Gbagbo and members of his Inner Circle arranged for the recruitment of pro-Gbagbo youth and militia members into the FDS. The evidence shows that loyal militia groups, like the GPP, were armed, both before and during the post-election violence.
1195. Several witnesses reported that militia groups (including youth militias, such as the FLGO and GPP) were present in FDS camps and cooperated with and fought alongside regular forces, which indicates their *de facto* integration into the FDS chain of command. Later in the crisis, the militias took possession of weapons in FDS bases and at other locations.
1196. The GPP's honour code demonstrates that automatic compliance with superior orders was the norm. Witness P-0435 testified that the honour code within the GPP – "*Soumission, Soumission, exécution avant réclamation, la trahison engendre le sang*" – which was known by all, meant that orders had to be obeyed without question and any disobedience would be seen as a betrayal incurring punishment. Witness P-0435 testified that when the "*Grand Chef*" Bouazo gave an instruction, "*il ne faut pas discuter*".
1197. Pro-Gbagbo militia groups were financed by Mr Gbagbo, as well as by members of the Inner Circle. Zégouen Touré was financed by the Presidency prior to and during the post-election crisis, while Mr Bouazo was also financed by Simone Gbagbo. The evidence also establishes that Mr Blé Goudé financed the GPP.
1198. Mr Gbagbo and Mr Blé Goudé's control over the GPP is further demonstrated by how: (1) the GPP complied with instructions from Desiré Tagro to support the FDS in repressing the 16<sup>th</sup> December march; (2) the GPP followed orders from senior officers of the FDS to execute operations; (3) the GPP (Mr Zagbayou) trained 300 youth in Gagnoa following instructions from Bertin Kadet; (4) the GPP complied with instructions from Mr Blé Goudé to train *jeunes patriotes*; (5) the GPP on occasion operated alongside the FDS and were effectively under their



orders during operations; and how (6) GPP elements were integrated into the FDS.

1199. Mr Blé Goudé was fundamental for the exercise of control of the GPP by the Inner Circle through (1) the fact that he had an important role in its creation, (2) his personal links with GPP members including Witness P-0435, Zéguen Touré, Guy Gbetri (a leader of the *jeunes patriotes* in Yopougon and President of the *Parlement du Service technique*) and Zagbayou, a (GPP) Commander in Yopougon who also trained the youth; (3) the provision of financial support and food to the GPP; and (4) through the fact the GPP trained youth belonging to Mr Blé Goudé's COJEP and the FESCI. Leaders of the *Galaxie Patriotique*, including Mr Blé Goudé, also decided on the nomination and replacement of GPP Presidents.

1200. As with the *Galaxie Patriotique*, several examples show that Mr Blé Goudé also had the ability to send instructions to and mobilise the GPP. For example, in September 2010, following a GPP protest march regarding compensation, Stallone Ahoua told Mr Bouazo that (1) Mr Blé Goudé had asked them to calm down as the President had been informed of their grievances, and (2) to prepare for the military training of the *Jeunes Patriotes*". Stallone Ahoua brought money and food to Mr Bouazo and also gave them instructions on the way forward. The GPP communicated through what Witness P-0435 termed a "*flotte téléphonique*," given that that they did not trust the army radio frequencies during the election period. In this manner they exchanged information and the base received information concerning the evolving security situation on the ground.

1201. The GPP also obtained arms from the FDS and indeed was well armed during the post-election violence. Witness P-0435 testified that following the second round of the elections some of the GPP members possessed AK-47s, RPGs and machine guns. Apart from the weapons given to the GPP members that were recruited into the FDS, the GPP obtained kalashnikovs from the "*Commissaire du*

*Commissariat de Bracodi*” and Mr Pickass, as well as a case of “defensive” grenades from the Presidential Palace – under instruction from Colonel Modi.

(i) Mercenaries

1202. Sections IV.C of the Trial Brief demonstrates that mercenaries were integrated into and performed operations with the FDS, and that Mr Gbagbo and the Inner Circle had control over them.

1203. Mr Gbagbo’s effective control over mercenaries is demonstrated through the movement of money, weapons, and supplies, as well as the degree to which mercenaries were integrated with FDS forces. Some mercenaries received money directly from the Ivoirian government, whilst others were funded, supported and armed by members of the parallel structure. FDS members coordinated and conducted operations alongside mercenaries, whose duties included guarding Mr Gbagbo’s residence. By recruiting and continuing to employ foreign fighters throughout the post-electoral violence, Mr Gbagbo demonstrated that he was willing to resort to illegal measures in furtherance of the Common Plan.

1204. Mr Blé Goudé also played a role in the exercise of control by Mr Gbagbo and other Inner Circle members over mercenaries. For example, Witness P-0435 testified that Mr Blé Goudé contributed to their recruitment in that he financed the transport of the Liberian combatants from Ghana in January 2011 to the Ivory Coast. Witness P-0435’s source was the very person who Blé Goudé tasked to accomplish the mission and who had commanded the transport operation. According to Witness P-0435’s source, the Liberian combatants had already received an advance payment and each one of them had been promised a sum of 5 million FCFA. As discussed above, Mr Gbagbo and the Inner Circle achieved joint control over mercenaries primarily through their integration into the formal and informal chain of command of the FDS, as well as through financial

sponsorship and other benefits. The strength of this control is evidenced by the numerous instances in mercenaries complied with orders and instructions.

1205. Financial means, supplies, and weapons were provided to the mercenaries by members of Mr Gbagbo's Inner Circle, in exchange for their services.

1206. Active recruitment of mercenaries by Mr Gbagbo and his Inner Circle for use within Côte d'Ivoire commenced as early as 2002. Additional recruitment and reinforcement of the existing mercenary groups, for example from Liberia, took place during the post-election violence. Evidence on this issue is addressed in the Trial Brief in Section II.A.4 (Development of the Plan) and IV.C. (on Pro-Gbagbo mercenaries).

1207. The evidence demonstrates that mercenaries were being *de facto* integrated within the FDS ranks and were commanded and given instructions by FDS officers or other members of the Inner Circle. The evidence indicates that the mercenaries cooperated with the regular FDS units and other pro-Gbagbo elements – they were based in their camps and engaged in activities including fighting together and alongside pro-Gbagbo forces.

1208. In sum, Mr Gbagbo and Mr Blé Goudé exercised joint control over pro-Gbagbo forces during the post-election violence. Mr Gbagbo controlled the pro-Gbagbo youth through Mr Blé Goudé. These pro-Gbagbo youth groups and militia units and mercenaries regularly collaborated with the FDS and were under the command of FDS officers, who were under the *de facto* and *de jure* control of Mr Gbagbo.

#### 4. Mr Gbagbo's essential contribution to the Common Plan

##### (a) *Mr Gbagbo contributed to the Common Plan*

1209. Laurent Gbagbo contributed to the Common Plan that resulted in the commission of the charged crimes. He did so by

- i. designing and implementing the Common Plan;
- ii. creating structures, which enabled him to implement the Common Plan;
- iii. arming forces loyal to him;
- iv. coordinating the implementation of the Plan; and
- v. inciting loyal forces.

(i) Mr Gbagbo designed and implemented the Common Plan

1210. The Prosecution has described in its Trial Brief how Mr Gbagbo intended to stay in power by all means at the latest by 27 November 2010, and that the roots of his plan to stay in power trace back to the moment he became President in October 2000.

1211. As the 2010 Presidential elections were approaching, Mr Gbagbo took steps to secure his hold on power. He based his campaign on demonising his opponents by asking the crowd not to vote for those who are in favour of *coup d'état*, impressing upon his FDS leaders by tying their fate to his, training FESCI and COJEP youths in Abidjan and using slogans which indicated that he was intending to stay in power no matter the outcome of the elections. Through Mr Blé Goudé, he ensured control over the *Jeunes Patriotes* and counted on the mobilisation of the GPP when needed. Everything was set into motion in order to stay in power no matter the outcome of the elections.

1212. Significantly, between the first and second round of the elections, on 14 November 2010, Mr Gbagbo requisitioned the FANCI. The requisition should be seen within the context of pre-2010 events, in particular the previous requisition of 2004 leading to over 120 civilian deaths at the beginning of a demonstration. The existence of a requisition of the FANCI on 14 November 2010 indicates an intention to employ those forces after the elections and before the occurrence of

any violent incident which may have justified their intervention. The requisition of the FANCI on 14 November had no meaningful impact on the security measures for the election as these were already facilitated by the CCI under the Ouagadougou Accords. There was no such decree for securing the first round of the elections and, for the second round of the elections, the CCI continued its work in liaison with the FDS, FAFN and the *forces impartialles*. The 14 November decree applies to the FANCI, it was a unilateral measure taken by Mr Gbagbo and it was subsequently applied to mobilise the FANCI in execution of curfews from 26 November 2010 onwards, which was another unilateral step taken by Mr Gbagbo without the agreement of other parties. Witness P-0010 testified that the 14 November decree remained in application beyond the elections and was the legal basis for the continued mobilisation of the FANCI, including on the day of 16 December 2010.

(ii) Mr Gbagbo created a structure which enabled him to implement the Common Plan

1213. The repression, persecution and killing of perceived Ouattara supporters was not coincidence, nor were these criminal acts isolated events. Such concerted acts of violence did not happen of their own or spontaneously. They were the result of the collective effort of various actors working together towards the same goal.

1214. Mr Gbagbo promoted loyal FDS leaders in August 2010, and they supported him and asked their subordinates to vote for him; they also displayed their allegiance on 3 December 2010.

1215. In parallel to this, Mr Gbagbo also had established direct communication with a certain number of devout and loyal officers within the FDS, who remained by his side until the end of the conflict, while other FDS officers stepped down, seeing the unreasonable continuance of the conflict despite repeated calls by the AU, ECOWAS and the UN. For example, Mr Gbagbo had direct access to Colonel

Dadi at the BASA, and Dogbo Blé at the *Garde Républicaine*. These chiefs coordinated with armed militias, such as the GPP, some of whom were already based at the Presidential Residence as of February 2011, such as the GPP and Liberian mercenaries. Mr Gbagbo was also informed of the GPP's efficiency, which led to the integration and arming of 60 of its members within the *Garde Républicaine*.

1216. Mr Gbagbo also ensured that he had in Yao N'Dré (a former Minister in one of his governments) a long-time supporter in charge of the Constitutional Court which would hand him the keys to the Presidency. Mr Gbagbo had set the stage to put his plan into motion the moment he needed his various associates, advisors and supporters.

(iii) Mr Gbagbo armed the forces loyal to him

1217. Mr Gbagbo placed weapons at the disposal of loyal units, including by placing weapons which he controlled at their disposal and ensuring that weapons and ammunition were supplied to these forces.

1218. The Prosecution relies, in particular, on the evidence of [REDACTED] (on materiel for the use of the GR, stored in the basement of the Presidential Palace, and on the supply of ammunition from Mr Lafont to the GEB, BASA and CECOS), and Witness P-0047 (on large quantities of twin guns found at the BASA). This aspect is further elaborated below, at Sections V.D.4(c) (related to Related to Alcide Djédjé and V.D.9).

(iv) Mr Gbagbo coordinated the implementation

1219. Mr Gbagbo coordinated the implementation of the Common Plan, which resulted in the commission of the crimes, by holding frequent meetings and regular dialogue with his Inner Circle and other members of his support network. Mr Gbagbo, either directly or through members of his Inner Circle, tasked his

subordinates with implementing, or incited them to implement, the Common Plan which resulted in the commission of the crimes, in the following ways:

- i. Similar to the repression in 2004, Mr Gbagbo instructed his armed forces that the 16 December 2010 march be prohibited, thereby signalling to his commanders to deploy armed units against demonstrators opposed to his politics;
- ii. Mr Gbagbo also ordered his forces to lay siege to the Golf Hotel and its residents;
- iii. Mr Gbagbo directed his forces to stand fast and not to lose Abobo;
- iv. Mr Gbagbo and his Inner Circle used pejorative and hate language against political opponents, *inter alia*, referring to them as bandits, enemies and terrorists.
- v. Mr Gbagbo incited the pro-Gbagbo youth and militia members, either directly or through Mr Blé Goudé, to fight to protect the nation and not to let it fall into the hands of the enemy, such as:
  - Calling the UNOCI to depart Côte d'Ivoire and ordering the pro-Gbagbo youth to obstruct UNOCI movements;
  - Calling the youth to enlist in the army on 19 March 2011 at Place CP1;
  - Calling all Ivoirians to stay mobilised until the rebirth of Côte d'Ivoire; and
  - Calling on the people to continue to resist and fight for the liberation of Côte d'Ivoire against Mr Ouattara and his terrorists.

1220. Mr Gbagbo's control over the implementation of the Common Plan is also evidenced by virtue of what he incarnated. As put very bluntly by one of the

*Jeunes Patriotes* attending Mr Blé Goudé's rally at Place CP1 on 19 March 2011 and dressed as a traditional warrior, "if President Gbagbo steps down, we will keep calm" ("*si le Président Gbagbo démissionne, nous resterons tranquilles.*") While this is an interview with one *patriote*, of course it represents a view that was shared by pro-Gbagbos as Mr Gbagbo was the cause they endorsed and were prepared to fight for. Mr Gbagbo's contributions to the Common Plan were essential, as stepping down would have radically changed the course of events, and the crimes would not have been committed, or at least would have been committed in a significantly different way.

(v) Mr Gbagbo incited loyal forces

1221. Mr Gbagbo incited the forces loyal to him to commit crimes, (i) by ordering them not to question the lawfulness of the orders they had received, making it clear to them that they would not be punished for the crimes committed, and (ii) by deliberately not taking the measures within his power to prevent or halt the commission of these crimes during the post-election violence, or to report and punish the perpetrators, thereby further amplifying the message of official tolerance towards the crimes.

1222. Mr Gbagbo's contempt towards the role of judicial system could not be clearer when he stated on 27 August 2010 in Divo:

*"Il y a une ligne de démarcation pour la CRS, il y a le blanc et il y a le noir. [...] La CRS n'est pas au milieu. Vous n'êtes pas des juges, ce sont les juges qui regardent pour voir s'il y a des circonstances atténuantes ou bien ... [...] ... s'il y a des ... ça c'est les juges, ça ! Vous, vous n'êtes pas les juges, hein ! Vous, vous êtes les combattants de la légalité républicaine, c'est tout. Quand on dit que la République est menacée, vous apparaissez pour rétablir l'ordre républicain. Si il y a des dégâts, les juges après, rétabliront".*



1223. By telling members of this special police unit that they are not to use their judgement but to simply obey orders, Mr Gbagbo set the stage to the next step in his logic: that if there are *dégâts* (*i.e.* damages or casualties), judges can subsequently settle matters, thus inviting the members of this unit to act without consideration for legality. The excerpt of this video from 00:06:10 to 00:06:25 is very telling of Mr Gbagbo's lack of respect for the judicial system, as he slows down his tone in a mocking voice, followed by gestures with his hand. This immediately attracts laughter from the audience. More laughter follows his remark that "if there are damages, the judges will reinstate later on".

1224. As developed in Sections II.A.8 and IX.A.1(a)(ix) of the Trial Brief, impunity and denial were the norm under Mr Gbagbo's regime. The atmosphere of *laissez-faire* of Mr Gbagbo and his Inner Circle made it clear in the mind of the pro-Gbagbo forces that they could repress political opponents using lethal force and would suffer no consequence for these acts.

*(b) Mr Gbagbo's role in the implementation of the Common Plan*

1225. As explained above, the implementation of the Common Plan required the collective efforts of members of the Inner Circle, each playing his or her role. Mr Gbagbo's contributions, as described in the previous section, must be understood within the context of his position and role in the Inner Circle.

1226. The primary beneficiary of a plan to maintain him in power by all means, Mr Gbagbo benefited from Presidential powers vested by the Constitution, benefited from a large base of militants and devout followers, as well as a privileged connection with the leader of a considerable portion of Ivorian society, that is the youth.

1227. The leaders of FDS organs such as the FANCI (Philippe Mangou) and the *Gendarmerie* (Édouard Tiapé Kassaraté) understood that their position was at risk when they heard Mr Gbagbo's warning "if I fall, you fall too", prompting them to

encourage their troops to vote for Laurent Gbagbo. Another FDS officer sharing close ties with Mr Gbagbo, BASA commander Colonel Dadi, had the same initiative. These officers played their role in ensuring the implementation of the Common Plan.

1228. Therefore, in assessing Mr Gbagbo's above-mentioned contributions, it is essential to read these through the lens of a political leader with military powers, whose contributions will be largely limited to the issuance of instructions, speeches and press release made before the media, interviews with journalists and orders delivered during private meetings.

1229. Moreover, given the long-standing relationship he enjoyed with many members of his Inner Circle, Mr Gbagbo's instructions did not need to be explicit, as members of the Inner Circle – his subordinates – knew exactly what was at stake. In this light, the Constitutional Council's radical move to erase the results of seven entire regions (Bouaké, Korhogo, Ferkessédougou, Katiola, Boundiali, Dabakala and Séguéla) to enable him to declare Mr Gbagbo winner of the elections must be understood as part of the plan to maintain Mr Gbagbo in power. To this end, it is interesting that the decision of the Constitutional Council only makes reference to alleged irregularities in the *"zones Centre et Nord"*.

##### 5. Mr Gbagbo acted with intent

1230. Mr Gbagbo intended to bring about the objective elements of the crimes, or was aware that they would occur in the ordinary course of events. In fact, when speaking to the CRS on 27 August 2010, he already anticipated that the use of force could lead to criminal acts when he stated *"Si il y a des dégâts, les juges après, rétabliront"*. Mr Gbagbo also knew, from past experience, that repressing demonstrators led to casualties, as was the case in 2000 and 2004.

1231. Mr Gbagbo took part in conceiving and implementing the Common Plan, and did not intend to give up his plan up until the very end, when he stated to all the

Generals present at the Residence on 3 April 2011 to continue to fight. A *communiqué* issued on 9 April 2011 by Mr Gbagbo's spokesperson stated that "*Le Président de la République exprime toute sa détermination à continuer la lutte*" (the President expresses his firm determination to continue to fight).

1232. 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. Mr Gbagbo requisitioned the armed forces on 14 November 2010 and did so willingly, despite the fact that there was no real need to requisition the armed forces: according to Witness P-0010, the security situation during the first round of the elections was calm, and despite some frictions after the first round, the situation did not deteriorate to the point of requiring a requisition. As elaborated above (Section V.C.4(a)(i)), the existence of a requisition of the FANCI on 14 November 2010 indicates an intention to employ those forces after the elections and before the occurrence of any violent incident which may have justified their intervention. The requisition of the FANCI on 14 November had no meaningful impact on the security measures for the election as these were already facilitated by the CCI under the Ouagadougou Accords. There was no such decree for securing the first round of the elections and, for the second round of the elections, the CCI continued its work in liaison with the FDS, FAFN and the *forces impartiales*. The 14 November decree applies to the FANCI, it was a unilateral measure taken by Mr Gbagbo and it was subsequently applied to mobilise the FANCI in execution of curfews from 26 November 2010 onwards, which was another unilateral step taken by Mr Gbagbo without the agreement of other parties. Witness P-0010 testified that the 14 November decree remained in application beyond the elections and was the legal basis for the continued mobilisation of the FANCI, including on the day of 16 December 2010. This demonstrates that the engagement of the armed forces was already intended as of

14 November 2010 and is indicative of Mr Gbagbo's intent to use all means to stay in power.

1233. Mr Gbagbo was a participant in the Common Plan. Considering his claimed position as President and Commander-in-Chief of the Armed Forces, Mr Gbagbo was fully aware that the conception of the Common Plan and its implementation would bring about the objective elements of the charged crimes. For example, when he ordered the FDS not to cede Abobo, he was aware that the consequence of his actions would mean civilian casualties; when the FDS leadership informed him that the civilian population was still in the zone, he instructed them "make sure there are not too many dead". Furthermore, Mr 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 Mr Blé Goudé and the other members of the Inner Circle.

#### 6. Mr Gbagbo had the requisite knowledge

1234. Mr Gbagbo was aware of the circumstances relevant to the crimes of murder, inhumane acts, rape and persecution existed during the post-election violence, or that they would be committed in the ordinary course of events. Moreover, he was aware of the element of criminality of the Common Plan, the fundamental features of the organisation and the circumstances which enabled him to exercise joint control over the crime.

1235. Mr Gbagbo was aware that crimes would occur during the post-election violence as he predicted that damages ("*dégâts*") could be repaired by the judges afterwards during his address to FDS officers on 27 August 2010. Moreover, he knew – by mid-February – that crimes had occurred in December 2010 and that they could happen again when he instructed the FDS to "make sure there are not too many dead" during the attacks in Abobo. This also demonstrates the element of criminality of the plan.

1236. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). The evidence shows that sexual violence was also an integral part of the implementation of the Common Plan. In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

1237. Moreover, the Chamber can find that Mr Gbagbo was aware that crimes of sexual violence would be committed in the ordinary course of events as a result of the implementation of the common plan, even without relying on evidence showing notice of prior sexual violence. For instance, the ICTY Appeals Chamber inferred knowledge of the realistic possibility of sexual violence from the massive and violent nature of the other crimes. This factual scenario equally applies to the case against Mr Gbagbo.

1238. Mr Gbagbo was aware of the fundamental features of the organisation as President and Supreme Commander of the armed forces, in that he was the superior of the civilian structure (the executive branch of the government) and the military structure (the FDS). This enabled him to exercise joint control over the crime along with other members of the Inner Circle.

7. Mr Gbagbo was aware that his conduct was part of the widespread or systematic attack

1239. Mr Gbagbo knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.5.

8. Mr Blé Goudé's essential contribution to the Common Plan

*(a) Mr Blé Goudé contributed to the Common Plan*

1240. Mr Blé Goudé contributed to the Common Plan that resulted in the commission of the crimes charged. As set out in this section, he did so by:

- i. participating in conceiving and implementing the Common Plan;
- ii. contributing to the establishment and organisation of a structure, which allowed the execution of the Common Plan;
- iii. contributing to the implementation of the Common Plan, as elaborated below;
- iv. inciting the pro-Gbagbo forces and the pro-Gbagbo youth in particular to commit crimes or otherwise facilitate their commission.

1241. The Prosecution references, as headings in the paragraphs below, Section 4 of the Blé Goudé Confirmation Decision, at paragraph 192, specifically, the contributions enumerated therein.

(i) Mr Blé Goudé had a part in conceiving and implementing the Common Plan

a. Mr Blé Goudé had a part in conceiving the Common Plan

1242. At least from Mr Gbagbo's electoral campaign in October 2000, Mr Blé Goudé was very close to Mr Gbagbo. In June 2001, Mr Blé Goudé created the COJEP, a pro-Gbagbo youth organisation. Mr Blé Goudé was perceived as Mr Gbagbo's *fils aimé*, and was "100 per cent on board" with Mr Gbagbo's policies and worked together with Mr Gbagbo towards the same cause. Mr Blé Goudé entertained strong relations with Simone Gbagbo and also had very close relations with FDS chiefs Philippe Mangou ("very intimate" or "very close") and Édouard Tiapé Kassaraté (a "brotherly relationship").

1243. Shortly after the 2002 failed *coup d'état*, Mr Blé Goudé returned to Côte d'Ivoire and started organising the youth in support of Laurent Gbagbo in a movement which became known as the *Jeunes Patriotes*. The aim of the *Jeunes Patriotes* was to uphold the Gbagbo Presidency and oppose the rebellion.

1244. Following the attempted *coup d'état* of September 2002, self-defence groups emerged in Abidjan, such as the GPP, an armed wing of the *Galaxie Patriotique*. The GPP was devoted to supporting the Gbagbo Presidency. The GPP remained active from 2003 up to and including the post-election violence of 2010-2011. Mr Blé Goudé participated in a 23 March 2003 meeting with Eugène Djué, Mr Dibopieu and the GPP's first leader, Charles Groguehet, where the group's name was decided. Mr Blé Goudé and Mr Dibopieu came to encourage the GPP during trainings provided by Colonel Zagbayou (a day-time military officer) and other FDS trainers.

1245. In his speeches, broadcast by the RTI, Mr Blé Goudé used violent rhetoric against the international community and against civilians described as "foreigners". In response to calls from Mr Blé Goudé, young people took over the streets and perpetrated violence in 2003, 2004 and 2006, obstructing political progress and undermining peace accords in order to keep Mr Gbagbo in power.

1246. Between 2002 and 2011, Mr Blé Goudé also played a key role in recruiting into the FDS thousands of young people, from ethnic backgrounds loyal to Mr

Gbagbo and many of whom belonged to *groupes d'auto-défense* (self-defence groups). This recruitment was done both officially and unofficially.

1247. On 3 December 2010, the RTI 20h00 news bulletin focused on Mr Gbagbo's election victory, and showed Mr Blé Goudé arriving at the Presidential Residence. Two days later, Mr Blé Goudé again appeared on the RTI news broadcast and congratulated the youths of Côte d'Ivoire for their support and their contribution in the re-election of "their candidate".

1248. On 6 December 2010, Mr Gbagbo appointed Mr Blé Goudé as Minister of Youth, Vocational Training and Employment. Mr Gbagbo's appointment of Mr Blé Goudé as a minister vested Mr Blé Goudé with governmental authority and legitimacy, reinforcing his control over the pro-Gbagbo youth and facilitating Mr Blé Goudé's liaison with the FDS during the post-election violence. The CEMA testified that Mr Gbagbo admitted in mid-March 2011 that Mr Blé Goudé was one of his trusted men.

1249. On 10 December 2010, the RTI 20h00 broadcast contained images of the inauguration ceremony of Mr Blé Goudé as Minister of Youth and Employment. Mr Blé Goudé, as the *Général de la Rue*, reminded the youth that despite his new position, he remained 100% General and in control of what went on in the street.

b. Mr Blé Goudé had a part in implementing the Common Plan

1250. Mr Blé Goudé shared the intention to keep Mr Gbagbo in power by all means. Mr Blé Goudé enjoyed a special status within the Inner Circle, acting as a direct intermediary between Mr Gbagbo and the *Jeunes Patriotes*. As the acknowledged leader of the *Galaxie Patriotique*, he was Mr Gbagbo's close ally and worked together with Mr Gbagbo to keep him in power. Not only did Mr Blé Goudé have the power to mobilise the *Jeunes Patriotes*, he also contributed to the creation of the GPP — as described above, an armed militia used by the Gbagbo regime to repress political opponents and engage in military-type operations.



1251. The central way in which Mr Blé Goudé implemented the Common Plan was through his role as a capable and admired leader of the *Jeunes Patriotes* and the *Galaxie Patriotique*, as reflected in his appointment as Mr Gbagbo's Youth Minister. Mr Blé Goudé's most important quality in this aspect was his ability to issue calls and instructions (*mots d'ordre*) that were followed and implemented religiously. In addition, Mr Blé Goudé, through his rhetoric, both encouraged and endorsed the actions of pro-Gbagbo forces and created an environment conducive to the commission of crimes, as is elaborated in Sections V.C.8(a)(iii)(g) and V.C.8(a)(iii)(i) below. Mr Blé Goudé's part in implementing the Common Plan is further demonstrated by the evidence elaborated under the individual headings below under sub-sections (ii) and (iii).

1252. The youth were mobilised by Mr Blé Goudé, Dibopieu, Eugène Djué, Mr Pickass and other youth leaders throughout the period 2000 to 2011 — including during the post-election violence, in implementation of the Common Plan as described below. Between 2002 and 2011, the youth positively responded to calls made by Mr Blé Goudé and other youth leaders in order to mobilise in Mr Gbagbo's favour.

- (ii) Mr Blé Goudé contributed to the establishment and organisation of a structure, which allowed the execution of the Common Plan, occasioning the commission of crimes

1253. Mr Blé Goudé contributed to the establishment and organisation of the pro-Gbagbo youth groups that allowed the Common Plan to be executed. Mr Blé Goudé did so in the following ways:

- a. Mr Blé Goudé secured the allegiance of the youth to him and their compliance with his instructions by galvanising them

1254. Mr Blé Goudé galvanised the pro-Gbagbo youth through his public speeches.

The evidence at Sections V.C.8(iv)(a)-(c) demonstrates how Mr Blé Goudé was able to create an atmosphere in which the pro-Gbagbo youth perceived themselves to be under threat, so as to justify or impel the (eventual) use of violence. With each public speech, Mr Blé Goudé kept the pro-Gbagbo youth alert and poised to fight. As such, when Mr Blé Goudé finally gave his *mot d'ordre* on 25 February 2011 it was meant and understood by the pro-Gbagbo youth as a call to engage in violence. The pro-Gbagbo youth complied with his *mot d'ordre* and followed his instructions throughout the post-election violence.

1255. The strength of the pro-Gbagbo youth allegiance towards Mr Blé Goudé was such that once he had given his 25 February 2011 *mot d'ordre* it trumped the orders of the police, and only Mr Blé Goudé could rescind it and order them (the pro-Gbagbo youth) to return home. Mr Blé Goudé never gave that order and consequently the pro-Gbagbo youth continued unabated in their criminal activities until the end of the post-election crisis.

b. Mr Blé Goudé ensured, through his leadership, that the pro-Gbagbo youth groups acted in unity

1256. As leader of the *Galaxie Patriotique* and the undisputed *Général* of the *Jeunes Patriotes*, Mr Blé Goudé directed the pro-Gbagbo youth groups through his instructions. Mr Blé Goudé's authority meant that only his instructions were transmitted down to the *Jeunes Patriotes*, through the local leaders, and thus ensured that pro-Gbagbo youth groups acted in unity.

1257. Mr Blé Goudé made it abundantly clear throughout his public speeches during the post-election violence that despite the fact that he had been appointed as Minister, (1) he was the one who would direct things if Côte d'Ivoire was threatened, (2) he was still the General "100 %" and (3) he was still the one who directed the pro-Gbagbo youth — "*c'est le Général qui vous lance le mot d'ordre*". In

fact, Mr Blé Goudé frequently reiterated that the pro-Gbagbo youth had to wait for the *mot d'ordre du Général*. Once made, Mr Blé Goudé's *mot d'ordre* was avidly followed by the pro-Gbagbo youth, as occurred on 25 February 2011.

c. Mr Blé Goudé was a vital intermediary between Mr Gbagbo and the pro-Gbagbo youth

1258. As General and leader of the *Jeunes Patriotes*, Mr Blé Goudé was a vital conduit for Mr Gbagbo to control the pro-Gbagbo youth. Mr Blé Goudé used his authority to instruct and direct the pro-Gbagbo youth, either through rallies and public events or through the *Galaxie Patriotique* leaders, so that they could be mobilised for violence in an organised and planned manner.

d. Mr Blé Goudé organised the dissemination of instructions through various channels of communication

1259. Mr Blé Goudé exploited the media in order to disseminate his instructions and mobilise the pro-Gbagbo youth groups. Highlights of his key speeches during rallies, press conferences, or other public events were frequently broadcast on the RTI. Mr Blé Goudé also instructed the pro-Gbagbo youth to only watch pro-Gbagbo channels such as the RTI, listen to Radio Côte d'Ivoire and to the neighbourhood committees. This further amplified his means of communication through the media.

1260. The evidence also establishes that Mr Blé Goudé had the capacity to mobilise the *Jeunes Patriotes* through the *Galaxie Patriotique* leaders in the different *communes* and *quartiers*. As such, if Mr Blé Goudé wanted to call for the mobilisation of the *Jeunes Patriotes*, each of the *Galaxie Patriotique* leaders would then make a call to their supporters in the different *communes* or *quartiers* and they would mobilise. Depending on the gravity of the situation or the nature of the call, Mr Blé Goudé would use the RTI, the radio and/or SMS messages to mobilise

and to call out to Ivoirians. Mr Blé Goudé also had the ability to send delegations into the neighbourhoods to inform the pro-Gbagbo youth.

e. Mr Blé Goudé mobilised the youth to commit violent acts

1261. “General” Blé Goudé was central to the mobilisation of the youth in Abidjan during the post-election violence. Through his *mots d’ordres*, he mobilised the pro-Gbagbo youth to commit acts of violence in order to ensure that Mr Gbagbo remained in power.

1262. Mr Blé Goudé’s public speeches, the highlights of which were broadcast on the RTI, kept the youth in a state of alert, at his disposal, and waiting for his instructions. These speeches were designed to create an atmosphere in which the pro-Gbagbo youth felt threatened, by vilifying the UN and France, referring to the existence of a genocidal threat, the usage of inflammatory language and repeated references to the need to defend themselves.

1263. On 14 December 2010, during an interview, Mr Blé Goudé stated that although those who wanted to gamble on the international front had the UN and France on their side, they had “*l’Éternel des armées*”, and God himself on their side. He then asked the youth to remain calm and that he would call on them when Côte d’Ivoire would be in danger.

1264. On 15 December 2010 during a rally at the Palais de la Culture, Mr Blé Goudé told the pro-Gbagbo youth that UN SRSG Choi, the UN and France were preparing a genocide in Côte D’Ivoire, that the UNOCI had made available its radio to the rebels and that the UN had made available its jeeps to the rebels and had lent them its uniforms – which the rebels were now using to bring weapons to the Golf Hotel. Mr Blé Goudé finished his statement by saying that they wanted to live to see the country develop but that “*nous sommes prêts à mourir pour que cette cause-là puisse se réaliser*”.

1265. At a rally on 18 December 2010, in Yopougon, Mr Blé Goudé told the crowd that the then French President, Nicolas Sarkozy and the UN were preparing a “genocide” in Côte d’Ivoire; that allied against the pro-Gbagbo were the UN, the French Army, and the “rebels”; “ils ont toutes les armées puissantes du monde avec eux”. The pro-Gbagbo side had *aucune arme* — but they had *l’Éternel des armées* with them. Mr Blé Goudé told the crowd that the UN was no longer a neutral force in Côte d’Ivoire, rather their *mandat souterrain* was to remove Mr Gbagbo from power.
1266. During a rally in Koumassi on 21 December 2010, Mr Blé Goudé told the pro-Gbagbo youth that he was going to invite them soon to totally liberate the country.
1267. On 29 December 2010, Mr Blé Goudé instructed the pro-Gbagbo youth to get ready with *les mains nues* in a speech, which also made mention of *la Licorne* and the UNOCI. In an interview on the same day, Mr Blé Goudé stated that despite being threatened every day by Guillaume Soro with his army, and that Commander Wattao had said that he would bring them to heel, they would invade the Golf Hotel with their “bare hands”.
1268. During a rally on 7 January 2011, Mr Blé Goudé told the pro-Gbagbo youth to wait for the General’s *mot d’ordre*. This was reiterated at other rallies during the month of January.
1269. At a rally in Attecoubé on 7 January 2011, Mr Blé Goudé said: “attendez le *mot d’ordre du général*. Vous devez veiller à ce que des forces étrangères ne viennent pas nous déranger”. At a rally in Abobo on 15 January 2011, Mr Blé Goudé referred to the *clique* at the Golf Hotel as a bunch of “robbers” and stated that he could no longer accept what was going on there; he told the crowd that he needed their support as soon as he would be giving the *mot d’ordre*.

1270. On 24 February 2011 Mr Blé Goudé appeared with a message to the youth on the 20h00 edition of the RTI news. He urged “all the youth of Côte d’Ivoire to prevent the UN from driving and moving throughout Abidjan *communes*”. He also called on the pro-Gbagbo youth to take part in a mass general meeting convened “to issue the last instructions” at Bar Le Baron in Yopougon at 09h00 on 25 February 2011.

1271. On 25 February 2011 at 09h00, Mr Blé Goudé repeated his order “to prevent UNOCI 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 was the *mot d’ordre* that Mr Blé Goudé had primed the youth to receive. It was a call to engage in violence and was understood as such.

1272. Immediately following Mr Blé Goudé’s call, pro-Gbagbo youth erected roadblocks throughout Abidjan. Also, pro-Gbagbo youth who had attended the meeting threw stones at the Doukouré residents, while other youth approaching the Lem mosque sang “*A chacun son Dioula*”. Further, in the early afternoon of 25 February pro-Gbagbo youth and militia members headed by Maguy le Tocard, reinforced by the FDS, attacked the Lem Mosque of Yopougon.

1273. On 14 March 2011, Mr Blé Goudé thanked the youth who erected the roadblocks “*pour protéger vos quartiers*” and stated that they had received the results: “*ces barrages ont découragé les rebelles.*” Mr Blé Goudé added to this by telling the youth to stand ready to receive the final historical call to liberate Côte d’Ivoire.

1274. Mr Blé Goudé reiterated his congratulations to the *Jeunes Patriotes* manning the roadblocks on 20 March 2011 and on 5 April 2011 asked them to reinforce the roadblocks.

1275. During an RTI interview on 25 March 2011, Mr Blé Goudé explained that the people would respond to their *mot d'ordre* at the rally that was set for the following day at the Place de la République. Mr Blé Goudé also added that they would not flee Abidjan and that they would “[...] *défendre cranement [phon] mais avec la démocratie, la Côte d’Ivoire*”.

1276. At the 26 March 2011 rally at the Place de la République Mr Blé Goudé said, amongst other things, that they could not come and scare Ivoirians in their house and that they wanted to make people believe that the *Jeunes Patriotes* were cowards (“*faire passer les patriotes pour des peureux*”) but Alasanne Ouattara would never take Abidjan.

1277. On 3 or 4 April 2011, *via the RTI*, Mr Blé Goudé addressed Ivoirians and “*patriotes*” in inflammatory terms. He said that the rebels and mercenaries of Alassane Ouattara had sown terror in several Ivorian cities: they rape, rob, plunder, and slaughter with the complicity of UNOCI and Licorne forces; and asked people to support the FDS including “*en étant éveillés, en étant debout, dans vos quartiers, en étant debout là où vous êtes.*” He said the final assault will not come from the rebels, but rather from the FDS and valiant patriots (“*[il] viendra des vaillants patriotes que vous êtes*”).

1278. In his final address, on 5 April 2011, Mr Blé Goudé urged the “*patriots*” to continue fighting to maintain Mr 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, Mr Blé Goudé also called on the population to film any “*suspicious movement*” in their neighbourhoods and to “*send [the recordings] to Ivoirian television*”.

1279. Within the context of his earlier incitements against the Ouattara camp, and explicit endorsements of the erection of roadblocks — which had resulted in the

commission of crimes, Mr Blé Goudé thereby mobilised the pro-Gbagbo youth to commit violent acts.

f. Mr Blé Goudé contributed to the financing of the activities of pro-Gbagbo youth

1280. Mr Blé Goudé assumed the financing of various patriotic movements, whether *agoras*, *parlements* or the GPP, and ultimately, was their direct link with the authorities. The evidence also establishes that Mr Blé Goudé received subsidies from the *pouvoir en place* and distributed these to the President of the different associations who in turn gave them to the *agoras* and *parlements*.

1281. The evidence also demonstrates that Mr Blé Goudé provided a sum of two million FCFA to Commander Loba of the BAE, between November and April 2011, because the latter was in contact with *Jeunes Patriotes* at the time. It can be inferred that this money was used for the upkeep and training of the *Jeunes Patriotes* at the time.

g. Mr Blé Goudé played an essential role in the recruitment and enlistment of pro-Gbagbo youth into the FDS

1282. Mr Blé Goudé used his authority as the “General” to instruct the pro-Gbagbo youth to enlist in the FDS. When Mr Blé Goudé spoke, the pro-Gbagbo youth followed.

1283. Upon Mr Blé Goudé’s instructions, and funding the GPP trained approximately 600 *Jeunes Patriotes* from November to December 2010, at which time they were integrated into the FDS.

1284. On 20 January 2011, during a meeting with the CEMA and other senior FDS commanders, Mr Blé Goudé praised the FDS and announced a rally at Champroux Stadium to pay tribute to them. A day after, on 21 January, RTI footage showed youths gathered at the *État-major* and the RTI journalist indicated



that “*plusieurs centaines de jeunes – environ 2000 – ont déferlé à l’État-major des forces armées [...] pour se faire enrôler*”.

1285. On 19 and 20 March 2011, Mr Blé Goudé used his authority as the “General” and leader of the *Jeunes Patriotes* to call upon youth to enlist in the FDS. On 21 March, the pro-Gbagbo youth responded massively to this *mot d’ordre* and presented themselves at the Army headquarters to be enlisted.

h. Mr Blé Goudé provided support for the military training and arming of pro-Gbagbo youth

1286. Following Mr Blé Goudé’s instructions and funding the GPP trained approximately 600 *Jeunes Patriotes* from October to December 2010, at which time they were integrated into the FDS.

1287. Mr Blé Goudé provided a sum of two million FCFA to Commander LOBA of the BAE, between November and April 2011, because the latter was making use of *Jeunes Patriotes* at the time.

i. Mr Blé Goudé contributed to the recruitment of pro-Gbagbo mercenaries

1288. The evidence demonstrates that Mr Blé Goudé financed the transport of Liberian mercenaries from Ghana to Abidjan in January 2011 and that he advanced each of them five million FCFA.

j. Mr Blé Goudé supported and encouraged cooperation between the pro-Gbagbo youth, the militias and the FDS;

1289. Following Mr Blé Goudé’s instructions, and funding, the GPP trained approximately 600 *Jeunes Patriotes* from October to December 2010, at which time they were integrated into the FDS.

1290. On 23 January 2011, during the rally at Stade Champroux, Mr Blé Goudé said that the youth were at Mr Mangou’s disposal.

1291. On 3 or 4 April 2011, Mr Blé Goudé asked the people to help the FDS by giving information and supporting the FDS when they are in their neighbourhoods, as no-one other than them could liberate Côte d'Ivoire.

(iii) Mr Blé Goudé contributed to the implementation of the common plan which resulted in the commission of crimes

1292. Mr Blé Goudé was uniquely positioned as Mr Gbagbo's Youth Minister, and as a leader of the *Jeunes Patriotes* and the *Galaxie Patriotique*, to contribute to the implementation of the Common Plan. Mr Blé Goudé did so in the following ways:

a. Mr Blé Goudé frequently met Mr Gbagbo and other members of the Inner Circle to adapt their strategy as the crisis developed;

1293. The evidence demonstrates that Mr Blé Goudé had access to Mr Gbagbo and other members of the Inner Circle prior to and during the post-election violence at certain crucial times. According to the information in the Residence logbook, Mr Blé Goudé met with Mr Gbagbo at least 22 times at the Presidential Residence between the 17 November 2010 and 14 March 2011. This included three out of four nights during the 16-19 December 2010 period, on the evenings of 23 February 2011 (the night before his message to the youth of 24 February 2011), and on 24 February 2011 (prior to his *mot d'ordre* on the morning of 25 February 2011). The Presidential Residence logbook indicates that the CEMA and other senior level FDS officers were also present at this last meeting, as some of them were on other occasions when Mr Blé Goudé met with Mr Gbagbo.

1294. Mr Blé Goudé also had access to Mr Mangou and other senior officers of the FDS. This is best exemplified by Mr Blé Goudé's 20 January 2011 meeting with Mr Mangou and the FDS Generals at the *État Major*, while accompanied by *Galaxie Patriotique* leaders Mr Kassy and Mr Dakouri.

- b. Through his speeches Mr Blé Goudé conveyed the determination of the Gbagbo Government to remain in power at any cost, including by the use of force

1295. On 29 December 2010, at a rally at the Place CP1 in Yopougon Mr Blé Goudé called upon the youth to be ready to attack the Golf Hotel:

*“Vous voulez aller les chercher? Vous voulez aller les chercher? Ici, qui a déjà pris ses lèkè? Prenez vos lèkè [...] et je demande aux jeunes de CÔTE D’IVOIRE de s’apprêter, les mains nues (...) La LICORNE peut l’accompagner, l’UNOCI peut l’accompagner. Si vous ne le faites pas, si vous ne le faites pas, à partir du 1er janvier, quand c’est passé, je ne suis plus responsable de la sécurité de Guillaume Soro au GOLF HOTEL.” [Empasis added]*

1296. As described in Section V.C.8(ii)(g), V.C.8(iii)(h) and V.D.7, Mr Blé Goudé successfully called on thousands of pro-Gbagbo youth to enlist in the FDS, who on 21 March 2011 gathered at the Army headquarters to be enlisted. Mr 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. Witness P-0087 was present and filmed the rally. Before Mr Blé Goudé arrived, Witness P-0087 filmed supporters in the crowd. One said:

*“Nous allons mener la résistance. Parce que depuis longtemps nous nous sommes assis, nous n’avons rien dit, on attendait seulement le mot d’ordre du général Blé. Et aujourd’hui le général sera là. Quel que soit ce qu’il va décider, nous sommes prêts.”*

1297. Witness P-0087 filmed Mr Blé Goudé’s speech. Mr Blé Goudé told him: “They are waiting for the message.” To the crowd in Yopougon he said:

*“Yopougon, je voudrais m’incliner devant toi. Yopougon, je voudrais saluer ta résistance. Yopougon, la citadelle imprenable. Yopougon, qui veille. Yopougon, qui ne tombe pas. Yopougon, qui toujours debout. Yopougon doit se saluer.”*

1298. During his speech, Mr Blé Goudé told his audience that he had seen them being attacked in the quartiers, that *“Tous ceux qui se réclament de Gbagbo Laurent, chaque sont en danger. Chaque jour sont torturés”*, that *“quand tu égorges des gens alors que ce n’est pas dans notre culture, quand on dit tu n’es d’ici, toi-même par tes actions tu prouves que tu n’es pas d’ici”*. He said the entire UN was making war on Côte d’Ivoire, that they were forcing him to change his attitude, and to do what he didn’t want to do. Then he asked the crowd: *“Jeunes de Côte d’Ivoire, est-ce que vous êtes prêts à aller dans l’armée pour server notre pays ?”* The film shows that in the aftermath of the march, Mr Blé Goudé stood on top of a vehicle and addressed the youth of Yopougon again, telling them to be vigilant in their quartiers.

1299. Furthermore, on 26 March 2011, in an interview with Witness P-0087, Mr Blé Goudé, upon hearing that Witness P-0087 was robbed at a roadblock by a group of young men calling themselves Young Patriots, apologised on behalf of the Young Patriots (*“je voudrais vous présenter mes excuses au nom des Jeunes Patriotes”*). En route to the planned rally in Mr Blé Goudé’s vehicle, Mr Blé Goudé told Witness P-0087 that in a revolution, there are always collateral effects.

1300. In his final address, on 5 April 2011, Mr Blé Goudé urged the “patriots” to continue fighting to maintain Mr 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, Mr Blé Goudé also called on the population to film any “suspicious movement” in their neighbourhoods and to “send [the recordings] to Ivoirian television”.

- c. Mr Blé Goudé maintained close ties with FDS officers and encouraged collaboration between the FDS officers and the other pro-Gbagbo forces

1301. As described in Section V.C.8(a)(iii)(a), Mr Blé Goudé had access to senior FDS officers, including the CEMA and the members of the *État-Major*. Further, Mr Blé Goudé encouraged the pro-Gbagbo youth to help the FDS, either through enlisting or by supporting them on the ground.

1302. Witnesses P-0010 and P-0011 testified that on 20 January 2011 Mr Blé Goudé met other high-ranking FDS Generals at the FDS headquarters at the *État-Major*. Later that night, the RTI broadcast video footage of this meeting, showing: (i) Mr Blé Goudé greeting the CEMA outside the *État-Major* with Serges Kassy and Richard Dakouri, (ii) Mr Blé Goudé issuing a call from inside the *État-Major* for youth to mobilise at the Stade Champroux in three days to support the FDS, and (iii) the CEMA giving a public statement on the steps of the *État-Major*, with Mr Blé Goudé at his side, emphasising that the FDS was ready to fight for the sovereignty and institutions of the Republic.

1303. Following this meeting, on 21 January 2011, RTI footage showed youths gathered at the *État-Major*. The RTI journalist said that “*plusieurs centaines de jeunes – environ 2000 – ont déferlé à l’État-major des forces armées [...] pour se faire enrôler*”. The CEMA addressed them, saying, *inter alia*: “*Nous ne permettrons pas que des gens viennent de l’extérieur pour nous imposer leur loi [...] S’il faut se battre jusqu’à ce qu’on perde notre vie, nous allons le faire !*”

- d. Mr Blé Goudé maintained ties with the other pro-Gbagbo youth leaders and conveyed to them the decisions of Mr Gbagbo and the Inner Circle

1304. The evidence demonstrates that despite being appointed as a Minister, Mr Blé Goudé still remained the leader of the *Galaxie Patriotique* and the “General”. As such Mr Blé Goudé was often accompanied by youth leaders when attending rallies, public events or important meetings throughout the post-election violence.

It can be inferred that Mr Blé Goudé used these close ties to convey the decisions of Mr Gbagbo and the Inner Circle — which he obtained from his contact with the latter at the Presidential Residence — to the youth leaders. During the post-election violence, the youth leaders accompanied Mr Blé Goudé to key meetings and were present during them.

1305. On 5 December 2010, Mr Blé Goudé appeared on the RTI news broadcast of 20h00. He congratulated the youth of Côte d'Ivoire for their support and their contribution in the re-election of "their candidate". Mr Blé Goudé also called for the respect of the institutions of the Republic and declared that along with "his friends" (Mr Dakouri and Mr Dibopieu, sitting next to him) they decided that in order to counter ongoing rumours, they would send delegations to their neighbourhood to provide them with accurate information about the current situation. He asked them to welcome these delegations: first in restricted groups and then in larger public meetings.

1306. On 15 December 2010, during a meeting with the youth at the Palais de la Culture, Mr Blé Goudé told them to remain ready to engage in acts of resistance should such be necessary, and said that the UN and France were preparing a genocide in France, all this while in the company of Mr Kassy, Mr Navigué, Mr Dakouri and Charles Dosso.

1307. On 20 January 2011, Mr Blé Goudé met with the CEMA and the FDS Generals at the *État-Major* to indicate his support to the FDS while accompanied by *Galaxie Patriotique* leaders Mr Kassy and Mr Dakouri.

1308. On 14 March 2011, during an interview on the RTI, Mr Blé Goudé — accompanied by Mr Dakouri and Mr Navigué — thanked the youth who erected roadblocks "*pour protéger vos quartiers*" and stated that they had received the results: "*ces barrages ont découragé les rebelles.*"

1309. During the 19 March 2011 rally at Place CP1 of Yopougon, Mr Blé Goudé can be seen on stage, accompanied by Maho Glofiéhi, Dibopieu, Dakouri, and Idriss Ouattara amongst others.

1310. Furthermore, the evidence of coordinated statements around attacks on UNOCI shows that Mr Blé Goudé communicated Mr Gbagbo's anti-UNOCI message to youth leaders throughout the crisis. First, on 28 December 2010, following Mr Gbagbo's request for the UNOCI to leave, which was reiterated by Konaté Navigué and Augustin Mian on 24 December, an UNOCI convoy was stopped by a crowd in Niangon (Yopougon). The commentator describes the crowd as *visiblement hostile* as they yell "*ONUCI dehors*". The convoy was eventually escorted out by General Philippe Mangou. Second, on 26 February 2011, during an RTI reportage, the presenter alleges that UNOCI and the *Licorne* are attempting to distract the armed forces from dismantling subversive actions in Abobo and Anyama, adding that: "*Les patriotes font échouer cette noire ambition et leur chef Charles BLÉ GOUDÉ annonce l'ONUCI persona non grata à Abidjan*". The reporter explained that the *Patriotes* stormed the central arteries of the city, including the Riviera 2 crossroad, which UNOCI were obliged to use. This led to an incident at Riviera 2 between the youth and UNOCI on the night of 24-25 February 2011.

- e. Mr Blé Goudé held mass rallies to mobilise the pro-Gbagbo youth and issued *mots d'ordres*

1311. As detailed in Section V.C.8(a)(ii)(e), Mr Blé Goudé repeatedly and effectively mobilised the youth and issued them *mots d'ordres* throughout the post-election violence.

- f. Mr Blé Goudé motivated the pro-Gbagbo youth, directed their actions and prepared them for combat

1312. Mr Blé Goudé's speeches described above kept the pro-Gbagbo youth on alert and prepared to commit violence. His speeches created a sense that Ivoirians as a whole, and more specifically the pro-Gbagbo youth, were under a threat which would justify – or indeed impel – an eventual use of force in self-defence. As such, when Mr Blé Goudé's *mot d'ordre* was issued on 24 and 25 February 2011 it was meant and understood as a call to engage in violence. Mr Blé Goudé's intent is further demonstrated by the fact that he subsequently congratulated the *Jeunes Patriotes* who had erected the roadblocks, and not once asked them to dismantle them or cease their violence against civilians, as detailed directly below.

g. Mr Blé Goudé encouraged and endorsed the actions of the pro-Gbagbo forces

1313. On 14 March 2011, Mr Blé Goudé thanked the youth who erected roadblocks *"pour protéger vos quartiers"* and stated that they had received the results: *"ces barrages ont découragé les rebelles."* Rather than instructing the youth to dismantle the roadblocks or to stop perpetrating violent crimes against civilians, he told them: *"Continuez, mais surtout soyez polis. Soyez polis et évitez de racketter"* and presented allegations of crimes (racketeering) as false (*"Je sais que vous ne rackettez pas mais pour vous discréditer, l'on raconte n'importe quoi"*). Then he told the youth that they (he and others) would launch an historic call and that they would come to visit the Ivorian populations in their neighbourhoods, to speak to them: *"Nous viendrons vers vous, vous qui êtes dans les quartiers, les populations ivoiriennes: nous viendrons vers vous pour vous parler"*.

1314. On 20 March 2011, Mr Blé Goudé addressed the Ivoirians from an RTI studio. He congratulated the youth at the roadblocks: (...) *"Je voudrais d'abord dire bonsoir aux ivoiriens, aux jeunes que je voulais féliciter. Ceux qui sont sur les barrages, ceux qui veillent pour que les autres dorment, ceux qui maintiennent l'ordre dans les quartiers avec politesse et qui aujourd'hui sont en train de dissuader ceux qui veulent semer le*



*désordre dans le pays*". He also calls the youth to enrol in the army: "[...] je les appelle demain à se rendre à l'État-major et le Chef d'Etat-major avec son équipe trouveront le moyen de les enregistrer et de les enrôler dans l'Armée de CÔTE D'IVOIRE [...]".

1315. On 5 April 2011, Mr Blé Goudé thanked and congratulated the patriots for their resistance and encouraged them to continue to resist, and instructed the youth to reinforce roadblocks: *"quant à vous, dans vos quartiers vous avez dressé des barrages, il faut les renforcer. Dans vos quartiers, si vous voyez un mouvement suspect il faut le filmer et le faire parvenir à la télévision ivoirienne, il faut signaler tous ces mouvements suspects."*

h. Mr Blé Goudé prompted the pro-Gbagbo youth to enlist in the FDS and contributed to the reorganisation of the Gbagbo forces

1316. As described above, Mr Blé Goudé explicitly called upon the pro-Gbagbo youth to enlist in the army on 19 and 20 March 2011. On 21 March 2011, the pro-Gbagbo youth responded massively to this *mot d'ordre* to participate in an official FDS recruitment. In the lead up to this *mot d'ordre* Mr Blé Goudé prepared the ground by vaunting the merits of the FDS and the pro-Gbagbo youth.

1317. On 20th January 2011, while at a meeting at the *État-Major*, Mr Blé Goudé praised the FDS, assured it of the youth's support, and announced a rally at Champroux Stadium to pay tribute to them (the FDS). Following this meeting, on 21 January 2011, RTI footage showed youths gathered at the *État-major*. The RTI journalist said that *"plusieurs centaines de jeunes – environ 2000 – ont déferlé à l'État-major des forces armées [...] pour se faire enrôler"*. The CEMA addressed them, saying, *inter alia*: *"Nous ne permettrons pas que des gens viennent de l'extérieur pour nous imposer leur loi.[...] S'il faut se battre jusqu'à ce qu'on perde notre vie, nous allons le faire !"*

- i. Mr Blé Goudé created an environment conducive to the commission of crimes

1318. As part of the effort to keep Mr Gbagbo in power by all means, Mr Blé Goudé galvanised the pro-Gbagbo youth and pro-Gbagbo forces including through the use of violent rhetoric against perceived Ouattara supporters — as described below in Section V.C.8(a)(iv), identifying them as the enemy and legitimate targets for attack.

1319. In addition, Mr Blé Goudé encouraged and endorsed the actions — including criminal actions — of the pro-Gbagbo forces, as described in Section V.C.8(a)(iii)(g). As such, Mr Blé Goudé created an environment conducive to the commission of the violent crimes for which they are charged.

- (iv) Mr Blé Goudé incited the pro-Gbagbo forces and the pro-Gbagbo youth in particular to commit crimes or otherwise facilitated their commission

1320. Mr Blé Goudé was uniquely positioned as Mr Gbagbo's Youth Minister, and as a leader of the *Jeunes Patriotes* and the *Galaxie Patriotique*, to contribute to the implementation of the Common Plan. Mr Blé Goudé did so in the following ways:

- a. Mr Blé Goudé used violent rhetoric

1321. As part of the effort to keep Mr Gbagbo in power by all means, Mr Blé Goudé mobilised and galvanised his supporters in an organised and coordinated manner. He did so mainly by using violent rhetoric and hate speech against perceived Ouattara supporters, identifying them as the enemy and legitimate targets for attack.

1322. On 6 January 2011, at a rally in Koumassi, Mr Blé Goudé described "Ouattara's true face" as that of "a joker, a liar, a swindler, a rapist, a robber, [...] an imposter". On 23 January 2011, at a pro-FDS rally at Champroux stadium, Mr

Blé Goudé stated that the international community wanted to impose a president from “Burkina Faso” on Côte d’Ivoire.

1323. On 15 February 2011, at a rally in Abobo, Mr Blé Goudé referred to the *clique* at the Golf Hotel as a bunch of “robbers” and said that he could no longer accept what was happening there.

1324. On 19 March 2011, at a rally at Place CP1 in Yopougon, Mr Blé Goudé talked about adversaries, stating that:

*“[...] Mais quand tu égorges des gens alors que ce n’est pas dans notre culture, quand on dit tu n’es d’ici, toi-même par tes actions tu prouves que tu n’es pas d’ici... Mais dès que des gens qui ont des amulettes partout, des gris-gris partout vont attaquer des commissariats, et que les policiers les tuent [...].”*

b. Mr Blé Goudé laid responsibility for the violence during the post-election violence on the Ouattara camp

1325. During a television interview on 4 January 2011, when asked about violence against supporters of Ouattara, including 173 deaths, Mr Blé Goudé referred instead to protesters having descended onto the streets following Alassane Ouattara’s call, having burned a building and a policeman to death.

1326. On 26 March 2011, Witness P-0087 interviewed Mr Blé Goudé who referred to perceived Ouattara supporters as rebels:

*“[...] ce qui est arrivé est dans la même logique que ce que M. Ouattara fait. Il prend les armes, il les cache dans les mosquées. Il prend les rebelles, il les cache dans les mosquées. Et c’est des mosquées, c’est partant des mosquées qu’ils vont attaquer les populations. Ce qui peut provoquer en retour que quand les rebelles sont poursuivis, ils sont poursuivis jusque dans les mosquées”.*

c. Mr Blé Goudé accused Mr Ouattara supporters and the international community of harbouring genocidal intentions against “Ivoriens”

1327. During his speech at the Palais de la Culture on 15 December 2011, Mr Blé Goudé stated *“Je vous informe, monsieur CHOI, et l’ONU et la FRANCE, préparent un génocide en CÔTE D’IVOIRE”*.

1328. At a rally on 18 December 2010, in Yopougon, Mr Blé Goudé told the crowd that the then French President, Nicolas Sarkozy and the UN were preparing a “genocide” in Côte d’Ivoire; that allied against the pro-Gbagbo were the UN, the French Army, and the “rebels”; *“ils ont toutes les armées puissantes du monde avec eux”*. The pro-Gbagbo side had *aucune arme* – but they had *l’Éternel des armées* with them.

1329. During a press conference broadcast on 23 December 2010, Mr Blé Goudé reiterated that the French and the UNOCI were preparing a genocide in Côte d’Ivoire and called on the public to attend a rally / demonstration at the Place de la République on 29 December.

1330. On 18 March 2011, while visiting a roadblock, Mr Blé Goudé, reacting to the comments of a *Jeune Patriote* stated: *“Comme tu l’as dit, ils peuvent pas tuer tout le monde. Il y a eu des survivants à la Première guerre mondiale. Il y a eu des survivants au génocide rwandais. Il y a eu des survivants au tsunami. Il y aura des survivants à la guerre en CÔTE D’IVOIRE”*.

d. Mr Blé Goudé singled out civilians perceived as supporting pro-Ouattara as the targets for attacks by the perpetrators of the crimes;

1331. Mr Blé Goudé’s *mot d’ordre* of 25 February 2011 to report any “*personne étrangère*” was intended and interpreted by the pro-Gbagbo youth as an instruction 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”.

1332. On 23 March 2011, Mr Blé Goudé made a speech that Mauritians who had left their shops would return to find new shop owners in the Ivory Coast. Witness P-0097 testified that shops near Siporex were pillaged; and on one such Mauritanian-owned shop the following was written: “*La Cote D’Ivoire aux Ivoiriens*”.

1333. On 26 March 2011, as described in Section V.C.8(a)(iv)(b) above, Witness P-0087 interviewed Mr Blé Goudé where he referred to civilian pro-Ouattara supporters as rebels.

- e. Mr Blé Goudé called on the youth to erect roadblocks, keep watch in their neighbourhood and identify and report any *étrangers* [strangers or foreigners] in their neighbourhoods

1334. During his speech at the Bar Le Baron in Yopougon in February 2011, Mr Blé Goudé called upon the pro-Gbagbo youth “to prevent UNOCI from moving” and also called upon them to “check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood”.

- f. Mr Blé Goudé commended pro-Gbagbo youth on their actions and asked them to continue fighting for Mr Gbagbo and defend the population against the “rebels”

1335. On 14 March 2011, Mr Blé Goudé thanked the youth who erected roadblocks *pour protéger vos quartiers* and stated that they had received the results: *ces barrages ont découragé les rebelles*. Rather than instructing the youth to dismantle the roadblocks or to stop perpetrating violent crimes against civilians, he told them:

*“Continuez, mais surtout soyez polis. Soyez polis et évitez de racketter”*; and presented allegations of crimes (racketeering) as false (*“Je sais que vous ne rackettez pas mais pour vous discréditer, l’on raconte n’importe quoi”*). He further told the youth that they (he and others) would launch an historic call and that they would come to visit the Ivorian populations in their neighbourhoods, to speak to them: *“Nous viendrons vers vous, vous qui êtes dans les quartiers, les populations ivoiriennes: nous viendrons vers vous pour vous parler.”*

1336. On 20 March 2011, Mr Blé Goudé addressed Ivorians from an RTI studio. He congratulated the youth on the roadblocks:

*[...] “Je voudrais d’abord dire bonsoir aux ivoiriens, aux jeunes que je voulais féliciter. Ceux qui sont sur les barrages, ceux qui veillent pour que les autres dorment, ceux qui maintiennent l’ordre dans les quartiers avec politesse et qui aujourd’hui sont en train de dissuader ceux qui veulent semer le désordre dans le pays.”*

He also calls the youth to enrol in the army:

*“[...] je les appelle demain à se rendre à l’État-major et le Chef d’État-major avec son équipe trouveront le moyen de les enregistrer et de les enrôler dans l’Armée de Côte d’Ivoire [...]”*.

1337. On 5 April 2011, Mr Blé Goudé thanked and congratulated the Patriots for their resistance and encouraged them to resist, and instructed the youth to reinforce roadblocks:

*“quant à vous, dans vos quartiers vous avez dressé des barrages, il faut les renforcer. Dans vos quartiers, si vous voyez un mouvement suspect il faut le filmer et le faire parvenir à la télévision ivoirienne, il faut signaler tous ces mouvements suspects”*.

g. Mr Blé Goudé legitimated the actions of the pro-Gbagbo youth

1338. Mr Blé Goudé legitimated the actions of the pro-Gbagbo youth who erected roadblocks — and by the same token the concomitant violence committed against civilians — by claiming that they were necessary in order to protect the *quartiers* and discourage the rebels. Mr Blé Goudé never instructed the youth to dismantle the roadblocks or to stop perpetrating violent crimes against civilians. On the contrary, he congratulated the pro-Gbagbo youth, told them to continue and dismissed any allegations of criminality on the part of the pro-Gbagbo youth as frivolous. This had the effect of encouraging the pro-Gbagbo youth even more and to be ready for the next instructions.

1339. In calling upon the youth to enlist in the army in March 2011, Mr Blé Goudé sought to legalise the arming of the youth, and their past actions in carrying out violent acts/committing crimes.

h. Mr Blé Goudé used the media and other channels of communication to propagate such messages of hate.

1340. As described in Section V.C.8(a)(ii)(d) above, Mr Blé Goudé exploited the RTI throughout the crisis to propagate messages of hate to the pro-Gbagbo youth.

9. Mr Blé Goudé acted with intent with regard to the crimes

1341. With respect to the 25-28 February and 12 April 2011 incidents for which Mr Blé Goudé is charged under article 25(3)(a), he meant to bring about the objective elements of the crimes, or was aware that they would occur in the ordinary course of events. Mr Blé Goudé participated in conceiving and implementing the Common Plan, such that his intent and knowledge are demonstrated by, *inter alia*:

- i. His galvanisation and mobilisation of the youth to commit violent acts. Mr Blé Goudé's public speeches, the highlights of which were broadcast on the

RTI, kept the youth in a state of alert, at his disposal, and awaiting his instructions. By vilifying the UN and France, referring to the existence of a genocidal threat, using inflammatory language and repeatedly referring to the need to defend themselves, Mr Blé Goudé's speeches were designed to create an atmosphere in which the pro-Gbagbo youth felt threatened.

ii. His use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces. For example, Mr Blé Goudé:

- a. at his Bar le Baron speech on 25 February 2011, told the youths assembled to "check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood".
- b. in an address on 14 March 2011 in which he voiced his approval for the actions at roadblocks, told those manning roadblocks that "*ces barrages ont découragé les rebelles*".
- c. at a rally on 19 March 2011, claimed that the perpetrators of crimes against Ivorians were "*ressortissants de certains pays de la CEDEAO à l'activisme nocif*." In the same vein, he said: "*quand tu égorges des gens alors que ce n'est pas dans notre culture, quand on dit tu n'es d'ici, toi-même par tes actions tu prouves que tu n'es pas d'ici*".
- d. at a rally on 26 March 2011, said that those who have closed their shops and who have fled Abidjan, all they have to do is go; but when they return they will find Ivorians in those shops.
- e. in an address broadcast on the RTI on 3 or 4 April 2011, said that "*les rebelles sèment la terreur dans notre pays et nos parents sont terrorisés*."



- iii. His role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

1342. To the very end, Mr Blé Goudé did not intend to give up his Plan. On 5 April 2011, he thanked and congratulated the patriots for their resistance and encouraged them to continue to resist and instructed the youth to reinforce roadblocks:

*“quant à vous, dans vos quartiers vous avez dressé des barrages, il faut les renforcer. Dans vos quartiers, si vous voyez un mouvement suspect il faut le filmer et le faire parvenir à la télévision ivoirienne, il faut signaler tous ces mouvements suspects”.*

1343. Given the nature of the Common Plan, he intended that the attack be directed against civilians targeted on political, ethnic, religious and national grounds. For example, Mr Blé Goudé’s *mot d’ordre* of 25 February 2011 to report any *personne étrangère* was intended and interpreted by the pro-Gbagbo youth as an instruction to target those perceived to support Mr Ouattara. Further, on 23 March 2011, Mr Blé Goudé made a speech that Mauritians who had left their shops would return to find new shop owners in Côte d’Ivoire. The evidence shows that shops near Siporex were pillaged, and upon one such Mauritanian-owned shop was written: *“La Cote D’Ivoire aux Ivoiriens”*.

1344. As a protagonist of the Common Plan and considering the influence and control which he wielded over pro-Gbagbo youth, Mr Blé Goudé was fully aware that the conception of this Plan and his contributions to it, as well as the contributions of Mr Gbagbo, other members of the Inner Circle and pro-Gbagbo forces, would bring about the objective elements of the crimes charged. Mr Blé Goudé enjoyed a special status within the Inner Circle, acting as a direct intermediary between Mr Gbagbo and the *Jeunes Patriotes*. Through his public speeches, Mr Blé Goudé kept the pro-Gbagbo youth alert and poised to fight. The

youth complied with his *mots d'ordre* and followed his instructions throughout the post-election violence.

10. Mr Blé Goudé had the requisite knowledge

1345. As argued directly above at V.C.9, Mr Blé Goudé was aware that in the ordinary course of events, the crimes charged would be committed. Additionally, he was aware:

- a. that the Common Plan involved an element of criminality. This is demonstrated by his involvement in the activities of the pro-Gbagbo youth and militias, including funding the activities of the pro-Gbagbo youth, supporting their military training and arming, contributing to the recruitment of pro-Gbagbo militias, and creation of and material support for the GPP.
- b. of the fundamental features of the organisation. Mr Blé Goudé knew that the FDS was the country's official military and law enforcement organisation, composed of organised units as part of a hierarchical apparatus of power. He knew that the pro-Gbagbo youth and militia – organised into the *Galaxie Patriotique* and the GPP – were integrated into and collaborated with the FDS. He knew that, together, these pro-Gbagbo forces were hierarchically organised and had the means to carry out a widespread and systematic attack against the civilian population in Abidjan.
- c. of the factual circumstances that enabled him, together with the co-perpetrators, to jointly exercise functional control over the crime. That Mr Blé Goudé was aware of his critical role in the implementation of the Common Plan and his ability to control, with others, the organised structure of power, is demonstrated by his references to being a “*Général*”

to the youth, responsible for “orientating” them, and by his repeated *mots d’ordre* or instructions to them.

1346. As to Mr Blé Goudé’s argument that the conflict that ensued following the elections was entirely unforeseen, such that he could not have been aware of that circumstance, Mr Blé Goudé has failed to explain how knowledge of that circumstance (i.e. the existence of a conflict) has any bearing on his own knowledge that crimes would be committed in the ordinary course of events. In any case, as a matter of fact, it cannot be maintained that Mr Blé Goudé had no knowledge of the likelihood of conflict breaking out. Since 2000, Mr Gbagbo and his Inner Circle, including Mr Blé Goudé, had employed violent means to repress political opponents, and elections had been delayed since 2005. As Mr Blé Goudé said in 2006, contemplating the birth of a new nation:

*“Tout accouchement est difficile et douloureux. Vous voulez que la Côte d’Ivoire accouche d’une nation nouvelle, d’un Ivoirien nouveau, c’est le prix à payer.”*

1347. It is simply not conceivable that Mr Blé Goudé was not aware that conflict may break out around the time of the long-delayed elections.

11. Mr Blé Goudé was aware that his conduct was part of the widespread or systematic attack

1348. Mr Blé Goudé knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. In relation to liability under article 25(3)(a), in particular, he knew or intended it as such pursuant to or in furtherance of the Common Plan that he shared with Mr Gbagbo and the other members of the Inner Circle. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.9, namely:

- i. Mr Blé Goudé's galvanisation and mobilisation of the youth to commit violent acts;
- ii. his use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces; and
- iii. his role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

#### **D. Prosecution Response to Defence arguments related to Article 25(3)(a)**

##### **1. Defence arguments relating to the existence of a Common Plan**

1349. Mr Gbagbo makes no substantive submissions on the essential elements of article 25(3)(a), but rather poses a series of questions which do not enunciate the elements for this mode of liability, and therefore do not need to be answered, as put. The elements for individual criminal responsibility under article 25(3)(a) are elaborated by the Prosecution above. These elements define the issues which the Prosecution has to prove, and, it follows, the questions that the Chamber needs to consider.

1350. Mr Gbagbo observes that it is "striking" that the Prosecution has not shown a meeting at which the Common Plan was discussed or conceived. This argument is predicated on a misunderstanding of the legal notion of the Common Plan. Accordingly, there is no need to show that the Common Plan was expressly formulated in a precise meeting of the members of the Common Plan. As the Prosecution submitted above, the Common Plan need not be written or explicit and can be inferred from circumstantial evidence, such as the subsequent concerted action of the co-perpetrators. In addition, the Common Plan may be previously arranged, or may materialise extemporaneously. Contrary to Mr

Gbagbo's arguments, there is no need to provide evidence of a meeting during which the Common Plan would have been discussed and realised, as a Common Plan does not emerge in a particularly set format.

1351. Mr Gbagbo argues that the Prosecution has failed to prove any order to attack the civilian population. This misses the point that for individual criminal responsibility under article 25(3)(a), the Prosecution has to prove that a Common Plan existed, that Mr Gbagbo was part of it and that he made an essential contribution to the Common Plan. None of these elements is predicated, as a matter of law, on the existence of any particular order that would expressly require his subordinates to attack the civilian population. Mr Gbagbo asserts that not a single document, internal note exchange, or decision shows a will to attack the civilian population, and further that it is "crippling" ("*rédhibitoire*") that the Prosecution does not seek to prove the existence of a Common Plan by direct evidence of its existence. As noted above, there is no requirement that the Common Plan is explicit, and it can be inferred from circumstantial evidence, such as the subsequent concerted action of the co-perpetrators. There is no question here of the Prosecution requiring the judges to make an "act of faith" ("*acte de foi*"), rather a judicial determination based on circumstantial evidence, viewed as a whole and interpreted in its proper context. The Prosecution refers to its arguments in Section II of this Response, on the use of circumstantial evidence. Mr Gbagbo's reliance upon a reference to the *Ruto* case is inapposite. The Chamber dismissed that case based on the evidence before it, which both in terms of quantity and quality, is not comparable to the evidence adduced by the Prosecution in this case. In fact, reliable and logically consistent circumstantial evidence presented in this case shows the existence of a Common Plan.

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1352. Mr Gbagbo further argues that the evidence shows that he only wanted peace and to establish republican legality, however these arguments are made without footnotes or other cites to the evidence. The same applies for Mr Gbagbo's arguments concerning the rebel side (*"la volonté des rebelles de se saisir du pouvoir par la force tout en adoptant différentes stratégies"*). Mr Gbagbo further maintains that Mr Blé Goudé supported Mr Gbagbo's policy of reconciliation, without offering a source for this claim.

1353. Mr Gbagbo incorrectly argues that the Prosecution is required to show, for indirect co-perpetration under article 25(3)(a), the role and contribution of each of the co-perpetrators other than the Accused. The role of non-charged co-perpetrators is relevant only insofar as it allows the Prosecution to attribute their conduct to the Accused. As held by the Appeals Chamber, an "agreement between [the] perpetrators, which [...] ties the co-perpetrators together and [...] justifies the reciprocal imputation of their respective acts". In other words, what characterises the co-perpetrators is the fact that they share a Common Plan. The degree of contribution to the Common Plan is a separate element that must be shown to establish an accused person's criminal responsibility. However, that assessment must strictly focus on the accused person(s) and not on other non-charged co-perpetrators. As stated by the Appeals Chamber, [w]hat is required is a 'normative assessment of the role of the accused person [...]'. The decisive consideration for determining whether an accused person must be qualified as a co-perpetrator is whether the individual contribution of the accused within the framework of the agreement was such that without it, the crime could not have been committed or would have been committed in a significantly different way.

1354. The Prosecution does not argue that the term "Inner Circle" was used during the conflict, but rather that it is a term used by the Prosecution to describe the different members of the Common Plan, including by virtue of the relative closeness of their relationship to Mr Gbagbo. As shown above, what is required is

proof that there was an agreement between two or more individuals, in order to attribute their conduct to the Accused co-perpetrator(s).

1355. As for Mr Gbagbo's submissions regarding the existence of – and particulars regarding – the group, and Mr Blé Goudé's argument that the Prosecution fails to identify any concrete evidence showing the existence of the Inner Circle "as a structure, separate from the State apparatus", or "how it would have been operating", there is no requirement that the Prosecution show that the group had a certain structure or mode of operating. In fact, all the Prosecution must establish for the purposes of article 25(3)(a) is the existence of a Common Plan or agreement between two or more persons, including the accused.

1356. In addition, an important aspect of Mr Gbagbo's misunderstanding of the law and its application is that he expects the Prosecution to demonstrate the creation of an illegal group (or "*groupe clandestin*") in the implementation of a Criminal Plan. As indicated before, there is no need to establish an illegal group. Also, the Common Plan or agreement itself does not have to be directed to a criminal activity, as long as it includes "a critical element of criminality", namely that its implementation will, in the ordinary course of events, lead to the commission of a crime. Some of the institutions upon which Mr Gbagbo relied were both the regular and official armed forces of Côte d'Ivoire. Hence, by relying on the formal armed forces, it is inevitable that the implementation of the Common Plan will take place in the framework of meetings with leaders of "regular forces".

1357. The fact that Mr Gbagbo's governments included members of the opposition and representatives of the rebel forces, and that the army, police and gendarmerie were multi-ethnic organisations is not - as Mr Gbagbo argues - evidence against the Prosecution allegation that Mr Gbagbo used the FDS to commit the crimes charged. Mr Gbagbo's argument that the Prosecution has to show that the "levers of State" ("*leviers de l'Etat*") were at one point "confiscated" by the co-perpetrators and the relevant units of the armed forces re-organised in a certain way, misses

the point that M Gbagbo – around whom the Common Plan turned - had *de jure* command authority over the armed forces.

1358. Mr Gbagbo argues that the Prosecution needs to demonstrate that the members of the Common Plan shared the same goals. Insofar as it is necessary to remind the Chamber, the plan here conceived and implemented as from 27 November 2010 was to keep Mr Gbagbo in power by all means, including by launching a widespread and systematic attack against civilians perceived to support Alassane Ouattara. It was not a component of the plan to “stay in power against the will of the people” (“*se maintenir au pouvoir contre la volonté du peuple*”), as suggested by Mr Gbagbo. As the Prosecution has made clear on other occasions, whether or not Mr Gbagbo or Alassane Ouattara won the 2010 elections in Côte d’Ivoire is not an issue in this case. Rather, the issue is whether Mr Gbagbo and his associates took the decision to keep Mr Gbagbo in power by using the full force of the State – along with non-State actors – against civilians who were perceived to be opposed to him.

1359. As for particular decisions or orders given by Mr Gbagbo which themselves either individually or collectively constituted essential contributions to the Common Plan, these are addressed under the general heading above, related to Mr Gbagbo’s individual criminal responsibility under article 25(3)(a). The Prosecution notes that the essential nature of the co-perpetrator’s role to the Common Plan is based on a *cumulative assessment* of all relevant contributions to the Common Plan, and not on an *isolated assessment* of individual acts.

## 2. Defence arguments concerning Mr Blé Goudé’s membership of the Common Plan

1360. In this part, the Prosecution addresses the Defence arguments concerning Mr Blé Goudé’s membership of the Common Plan.



(a) *Relationship with Mr Gbagbo*

1361. Both Mr Gbagbo and Mr Blé Goudé argue that Mr Blé Goudé's presence at the residence is not indicative of his closeness to Mr Gbagbo; the Prosecution agrees that taking the number of entries in the residential logbook alone amounts to an isolated assessment of Mr Blé Goudé's ties with Mr Gbagbo.

1362. Mr Gbagbo and Mr Blé Goudé both argue that the Prosecution relies on a picture of the 2000 electoral campaign and Witness P-0087 to describe the relationship between both Accused. Mr Gbagbo ignores the testimony of Witness P-0009 who testified that Mr Blé Goudé was very close ("*très proche*") to Laurent Gbagbo. In addition, the Prosecution relies upon Witness P-0176's evidence that Mr Blé Goudé was perceived as Mr Gbagbo's *fil*s *aimé*, the fact that Mr Blé Goudé was the deputy in charge of the mobilisation of the youth during Mr Gbagbo's 2010 presidential election campaign, and that Mr Gbagbo appointed Mr Blé Goudé on 6 December 2010 as Minister of Youth, Vocational Training and Employment.

1363. This evidence should be viewed within the context of Mr Blé Goudé's statements, during the post-electoral violence, praising Mr Gbagbo, or characterising him as someone who should not be "touched", for example, as follows:

- i. On 7 January 2011, Mr Blé Goudé made a statement at a meeting at the Maison Blanche in Attécoubé, warning against touching "*un seul cheveu*" of Mr Gbagbo:

*"le seul gage de stabilité dont dispose la sous-région, c'est Gbagbo Laurent. Parce que le jour, [...] l'erreur d'envoyer, même si c'est quatre, cinq policiers, pour toucher un seul cheveu de GBAGBO, en CÔTE D'IVOIRE ici, là, c'est gâté."*

- ii. On 12 February 2011, during a meeting in Agboville, Mr Blé Goudé described Mr Gbagbo in the following terms:

*“Ici, là, le totem de tous ceux qui sont quittés, en France, aux États-Unis, en Angleterre, Union européenne, ONU, leur totem, là, s’appelle KOUDOU GBAGBO ... [Public: Laurent!]...Nous venons vous dire: « Vous allez faire vos enquêtes comme vous voulez, mais GBAGBO, là, on le touche pas. Le totem en Côte d’Ivoire, là, on ne touche pas à notre Constitution, on ne touche pas à GBAGBO Laurent ».”*

1364. The Prosecution further refers the Chamber to the Prosecution’s response to Mr Blé Goudé’s arguments regarding his relationship with Mr Gbagbo, addressed below at Section D.19.

*(b) Mr Blé Goudé’s position as leader of the youth*

1365. Mr Gbagbo argues that the evidence does not show that COJEP was a pro-Gbagbo youth organisation: Mr Gbagbo ignores Witness P-0009’s evidence to the effect COJEP was “somewhat of an appendix” of the pro-Gbagbos. The Prosecution notes that Witness P-0009’s evidence in this regard is supported by the evidence that COJEP formed part of the *Galaxie Patriotique*: Witness P-0176 testified that the common point of all the movements in the *Galaxie Patriotique* was Mr Gbagbo – everyone loved Mr Gbagbo; Mr Blé Goudé was President of COJEP and the “chief” of the Patriotic Galaxy – he was at the forefront, and made the decisions; and he did the rounds and facilitated all the major meetings or rallies relating to ensuring the success for Laurent Gbagbo. Witness P-0435 testified that the aim of the Patriotic Galaxy was to defend the politics and the ideas of the FPI.
1366. Mr Gbagbo challenges the fact that the Patriotic Galaxy was made up of pro-Gbagbo youth organisations, asserting that it is “*un rassemblement de mouvements*

*divers, certains soutenant la ligne politique du Président Gbagbo à un certain moment avant de changer de position, d'autres non"; and "asséner de but en blanc qu'il se serait agi d'organisations de « jeunes pro-Gbagbo » est factuellement faux".* This challenge is made without reference to the evidence presented in this case. Mr Gbagbo also asserts that the Prosecution does not cite to evidence stating that there were armed groups within the Patriotic Galaxy. To be clear, the evidence presented shows that the GPP was a member of the Patriotic Galaxy, and that the GPP was an armed group.

1367. Both Mr Gbagbo and Mr Blé Goudé challenge the fact that Mr Blé Goudé was the leader of the Patriotic Galaxy. Witness P-0449's evidence that Mr Blé Goudé was leader of the Patriotic Galaxy is corroborated by the evidence of Witnesses P-0435, P-0176 and P-0625 on this issue.

1368. Witness P-0097 testified that the *Galaxie Patriotique* was a reference to several groups of *Jeunes Patriotes*. The Prosecution relies upon footage from the RTI, where Mr Blé Goudé is introduced as the leader of the *Jeunes Patriotes*. For example, on 28 December 2010 during an interview in the RTI news studio, Mr Blé Goudé was himself asked by the RTI news anchor if he should be referred to as a Minister or as General, leader of the youth, to which Mr Blé Goudé answered: "General, leader of the youth, it's better this way" ("*Bonsoir, le Général, leader des jeunes, c'est mieux, ainsi*"). On 4 February 2011, when asked, during an interview in the RTI news studio, if it was the Minister or the President of the Young Patriots who was in the studio, Mr Blé Goudé responded: "[v]ous le constatez bien, c'est le général. C'est le leader des Jeunes patriotes, qui est sur le plateau".

1369. Mr Blé Goudé relies upon Witness P-0097's testimony that "the fact the Charles Blé Goudé would present himself as the leader of the *Galaxie Patriotique* did not mean that he in fact was its leader". The assertion is contrary to logic. In any event, it is not fully clear what Witness P-0097 is saying when he testified that in FESCI it was "difficult" for someone who was a general before you, to submit

themselves to your directives, that “certain leaders” who presented themselves as “*maréchal*,” “*ils ne peuvent pas se soumettre*” – like Zéguen Touré who, during the first meeting, said “*je rentre pas, parce que c’est mon petit*” (“I’m not going in because that is my junior”); Witness P-0097 testified that apparently Mr Touré “*il estime que pour avoir fait la FESCI, avant le bureau national de la FESCI, avant Blé Goudé, lui, il ne peut pas se soumettre.*”

1370. In relation to Zéguen Touré, the evidence shows that he nevertheless:

- i. [REDACTED]
- ii. On 14 December 2010, attended a meeting of youth leaders called by Mr Blé Goudé, at the Hôtel de Ville of Cocody. Those in attendance included Zéguen Touré, as well as JFPI leader Navigué Konaté, FESCI leader Augustin Mian, Youssouf Fofana, and Sam l’Africain. The aim was to mobilise the *Jeunes Patriotes* to protect the RTI from the demonstrators of the march on the RTI planned for 16 December 2010.

1371. In any event, during the post-election violence, the GPP was composed of two factions, headed by Moussa Zéguen Touré and Bernard Bouazo Yoko Yoko. Witness P-0435 testified that in September 2010, following a GPP protest march regarding compensation, Stallone Ahoua told Bernard Bouazo Yoko Yoko that (i) Mr Blé Goudé had asked them to calm down as the President had been informed of their grievances, and (ii) requested that the GPP initiate training sessions for *Jeunes Patriotes*, members of the COJEP and the FPI youth, before the elections. The GPP did indeed provide military training to approximately 600 youth

members of the FESCI and the COJEP from that time up until December, at which time the recruits were integrated into FDS units.

1372. Mr Gbagbo characterises the Patriotic Galaxy and its leader in various ways – but in the absence of sources it is unclear what the bases for these claims are. The evidence presented shows that Mr Blé Goudé’s leadership of the Patriotic Galaxy meant that he was at the forefront, and made the decisions; and he did the rounds and facilitated all the major meetings or rallies relating to ensuring the success for Laurent Gbagbo. More particularly:

- i. Witness P-0435 testified that the GPP received direct instructions from members of the *Galaxie Patriotique* that was led by Mr Blé Goudé, that Mr Blé Goudé was a direct line between the *Galaxie Patriotique* and the authorities - as he was its President and everything that was considered “*patriotique*” (GPP, Agoras) was under the charge of Mr Blé Goudé.
- i. Witness P-0625 testified about how a Patriotic Galaxy rally was organised. He said: “*le président Blé Goudé dit: « on doit faire un meeting », il lance un appel, il dit l’endroit, et puis les gens se mobilisent*”. The witness also said that Mr Blé Goudé, as the president, was the one who sent the message to the other leaders of the Patriotic Galaxy for meetings, and when Mr Blé Goudé called for a meeting (*réunion*) within the Patriotic Galaxy – as opposed to a “meeting” – *rassemblement* or rally – the leaders of the Patriotic Galaxy would attend.
- ii. Witness P-0449 testified that: “within the Patriotic Galaxy, each person had his own particular movement and each person led his own movement as best he could. When there was a major organisation, that had to be organised and the struggle had to be organised, that is why President Comrade Charles Blé Goudé was in charge or responsible for that Patriotic

Galaxy while at the same time having his own movement which was the COJEP.”

1373. Mr Gbagbo maintains that Mr Blé Goudé did not have a role in the “security policy” of the country, and that Mr Blé Goudé was not present with Mr Gbagbo at a meeting which dealt with security matters except when the whole of the government was present. However, the evidence also shows that Mr Blé Goudé *did* have a role in the security policy of the country – but that this was not a role that he occupied within a formalised government or military structure. For example, as the evidence elaborated in the Trial Brief shows, Mr Blé Goudé gave instructions to the GPP, a pro-Gbagbo militia group, and prompted youth and militia into violent action (for example), by his instructions / instigation on 25 February.

1374. As for the relationship as between Mr Blé Goudé and FDS Commanders, Mr Gbagbo fails to note that Witness P-0011, having been challenged on what was said in his interview with respect to the relationship between General Mangou and Mr Blé Goudé, testified, in response to a question from the Chamber, that General Mangou and Mr Blé Goudé were “*très proche*” (very close). In addition, Mr Gbagbo makes a generalised assertion about the meaning of “*relation fraternelle*” in the context of Mr Blé Goudé’s relationship with Witness P-0011, based on what is “*habituel en Afrique*”, but does not rely upon any source for the allegation made.

1375. Furthermore, the evidence shows that Mr Blé Goudé attended meetings with FDS officers. For example, the Residence logbook, supported by video evidence, shows that on 12 January 2011, Mr Blé Goudé attended a meeting at the Presidential Residence, along with Prime Minister Aké N’Gbo, and the high command of the FDS. Ministers Dogou and Guiriéoulou were also present at this meeting.

1376. The Prosecution further refers the Chamber to Section V.D.14, below, addressing Mr Blé Goudé's arguments regarding meeting, more generally.

1377. On the issue of Mr Blé Goudé's contribution to the financing of the activities of the pro-Gbagbo youth through the distribution of funds to leaders of organisations of the Patriotic Galaxy, the Prosecution relies upon Witness P-0449 and also the following evidence:

- a. Witness P-0435's testimony that the funding of all "patriotic movements", be it *agoras*, *parlements* or the GPP, was under the responsibility of Mr Blé Goudé, as leader of the Patriotic Galaxy; he was the direct link with the authorities.
  - iii. Witness P-0435's testimony that he was told by Jean-Marie Konin that the *parlements* and *agoras* were funded by Mr Blé Goudé, who received subsidies from the *pouvoir en place* – which can be inferred to be the government – and distributed these to the Presidents of the associations and movements; they in turn distributed the money to the *agoras* and *parlements*.
  - iv. The Prosecution also refers to Section V.C.8(ii)(f) above.
3. Mr Blé Goudé's arguments concerning coordination of activities among members of the Inner Circle

1378. The Prosecution relies upon the coordinated actions of members of the Inner Circle, together with the pattern of actions of pro-Gbagbo forces throughout the course of the post-election violence as evidence of the existence of the Common Plan, and of Mr Gbagbo and Mr Blé Goudé's respective roles in its implementation. Mr Blé Goudé argues that because on some occasions individual members of the Inner Circle disagreed or because their relationship was "not at its best" or because one of them (Dogbo Blé) was "disrespectful", this

“contradicts” the evidence that the actions of the members of the Inner Circle were coordinated. It does not. Whether or not there were disagreements, rivalries or personality clashes as between individual members of the Common Plan does not mean that they were not otherwise each pursuing the same goal. In fact, evidence of disagreements and even utterances of disrespect shows that the relevant persons from Mr Gbagbo’s Inner Circle engaged with each other to discuss and implement a Common Plan. The decisive question is whether the Common Plan among the two Accused and other members of Gbagbo’s Inner Circle can be established, based on the evidence as a whole — including evidence of the conduct and utterances of the Inner Circle, as well as the conduct and utterances of persons in their sphere of influence.

1379. Mr Blé Goudé relies upon Witness P-0009’s testimony concerning Mr Blé Goudé’s calls for enlistment on 19 and 20 March 2011, and argues that this is an example of where the actions of members of the Inner Circle (Mr Mangou and Mr Blé Goudé) were not coordinated. The Prosecution notes that Witness P-0009 testified that he met Mr Blé Goudé after his interview on RTI was broadcast on 20 March 2011, and that Mr Blé Goudé explained the strategy in relation to his calls; that he had called upon the youth since he knew there was no ammunition and weapons – “*[l]eur nombre pourrait influencer l’ennemi et l’empêcherait de nous attaquer*”. As the Prosecution argued in its Trial Brief, this is not what Mr Blé Goudé said during his interview on the RTI, and is not a convincing explanation of the purpose of Mr Blé Goudé’s call – given his emphasis upon legitimising the arming of the youth. In any event, on 21 March 2011, thousands of pro-Gbagbo youth responded to Mr Blé Goudé’s call and assembled at the army headquarters for enrolment. It is telling of the coordination as between members of the Inner Circle that:



- a. Witness P-0009 testified that he told the youth assembled at the army headquarters to go back to their neighbourhoods if they wanted to enrol; that they should register themselves at the town halls.
- b. This is what the pro-Gbagbo youth duly did: On 22 March 2011, pro-Gbagbo youths (and others) began to enrol at decentralised enrolment points, including in Mr Blé Goudé's presence. Mr Blé Goudé is recorded saying: *"Donc en même temps, en restant dans les quartiers, vous surveillez les quartiers mais en même temps vous vous inscrivez"*.
- c. On this aspect, the Prosecution also refers to its arguments below, at Sections V.D.17(a), F.1(c) and F.5.

1380. In relation to his strategy in relation to the calls for enlistment on 19 and 20 March 2011, Mr Blé Goudé also relies upon his RTI live studio interview on 25 March 2011. The Prosecution notes that Mr Blé Goudé demonstrated on this occasion his continuing adherence to the Common Plan to keep Mr Gbagbo in power by all means, and his continuing authority and control over the youth (who, following his call, then attended a rally on 26 March). On 25 March 2011, Mr Blé Goudé congratulated Ivorians for their mobilisations and for being at all the *carrefours*, and the youth who mobilised at the army headquarters. He also said that the national community – as opposed to the international community – has its President, Gbagbo, that *"(n)ous allons sortir massivement pour montrer que la Côte d'Ivoire n'est pas un quartier de Paris,"* and that:

*"L'enfant a tété hier. Il a grandi et il veut marcher de lui-même. Il veut prendre en main sa destinée. Et les Ivoiriens vont sortir demain nombreux pour prendre en main leur destinée."*

1381. As for the inferences to be drawn from the evidence, as described in paragraph 436 of the Trial Brief, regarding Mr Blé Goudé's visit to the BAE and Witness P-0046's testimony in relation to that, the Prosecution refers the Chamber

to the evidence which shows a pattern of close collaboration as between Mr Loba and the GPP in Yopougon, including through the commission of crimes:

- i. From November 2010, Maguy Le Tocard (one of the commanders of the GPP in Yopougon) received direct instructions from Mr Loba; they led joint operations. In particular, in February or March 2011, Maguy Le Tocard participated in a joint operation with the BAE in Port-Bouët II – a Yopougon neighbourhood with a majority of people from Mali, Burkina Faso or from the North – to quell a demonstration. When they were impeded from entering the neighbourhood by the demonstrators they fired on them with RPGs and machine guns causing many deaths.
- ii. Witness P-0440 identified Maguy Le Tocard as the leader of the youths training near the 16<sup>th</sup> arrondissement police station in Yopougon, and recounted how Maguy Le Tocard had visited him at the police station prior to the first round of elections to offer him manpower and weapons. Witness P-0435 testified that Maguy Le Tocard trained his troops in broad daylight next to the police station and collaborated with the FDS and the 16<sup>th</sup> arrondissement police station for investigations purposes (it was easier for GPP members as civilians to infiltrate some areas). He said he transmitted information to the police station because they had the same mission to maintain order.
- iii. Witness P-0442 said he saw men wearing BAE armbands training youths in Yopougon, and that they were learning to fire.
- iv. Witness P-0440 described Maguy Le Tocard's group as "untouchable", and the police as powerless to arrest them. Mainly after the elections, he received reports that Maguy Le Tocard's group would perform police-like operations while wearing police armbands, such as arresting persons suspected of being rebels or *assaillants*. Witness P-0435 testified that if the

GPP arrested an individual at a roadblock, they would bring him to the BAE or to a CECOS patrol.

- v. After Mr Blé Goudé's call on 25 February 2011, in the early afternoon, pro-Gbagbo youth and militia members headed by Maguy Le Tocard attacked the Lem Mosque of Yopougon. They were accompanied by a tipper truck (*benne*) of *Garde Républicaine* members who pillaged items from the mosque, and a BAE tank.
- vi. Witness P-0441 saw the watchman of the mosque, called Cissé, killed and burned by Maguy Le Tocard and Agbolo. He was killed because he was wearing a *gris-gris*.
- vii. Between 26 and 28 February 2011, the UNOCI call centre received numerous reports of pro-GBAGBO youth and militia members burning people to death, including two persons on 28 February 2011 burned in the presence of the BAE.
- viii. On 15 March 2011, police officers from the BAE and *Gendarmerie* officers, reinforced by militia members, attacked the Great Mosque in Port-Bouët II, Yopougon. During the attack, 35 people were killed, including the Imam of the mosque.
- ix. On 20 March 2011, RTI broadcast also footage of Maguy Le Tocard in Yopougon. The footage is introduced and described by the RTI presenter/journalist(s) as relating to the vigilance committees ("*comités de veille*") established by youth volunteers after "*il avait été demandé [...], aux jeunes, dans les quartiers, de rester vigilants*"; a clear reference to Mr Blé Goudé's *mot d'ordre* of 25 February 2011, repeated by Mr Blé Goudé on 19 March 2011. The broadcast is otherwise about Maguy Le Tocard – identified as commander of a self-defence organisation: he is helping to

secure Yopougon; his elements are “*actifs pour la défense et la souveraineté du peuple ivoirien*”, “*il faut soutenir le Président de la République Laurent GBAGBO, qui incarne la légalité constitutionnelle*”. He is filmed visiting CRS1 and the BAE.

#### 4. Defence arguments relating to the Inner Circle

1382. The Prosecution here addresses the arguments advanced by Mr Gbagbo and Mr Blé Goudé related to the Inner Circle.

1383. First, contrary to Mr Gbagbo’s assertion, the Prosecution does not maintain the membership of the Inner Circle vague (“*flou*”) but provides the names of the individuals who contributed to the Common Plan in Section II.B of the Trial Brief.

1384. Second, the Defence carry out in-depth analyses of the individuals listed in the Trial Brief as members of the Inner Circle. Mr Gbagbo argues that the Prosecution has not explained the contribution of each member or that there is no evidence of the intent to be a member of the Inner Circle. Both these arguments misunderstand the law. There is no requirement under the case law to demonstrate the criminal intent of each individual to be a member of the Inner Circle. As noted above, it suffices for the Prosecution to demonstrate that non-charged persons shared a Common Plan with the Accused to attribute his or her conduct—whether essential to the Common Plan or not—to the Accused person.

1385. In this sense, the Prosecution explained the broad contributions of non-charged members of the Common Plan or Inner Circle in its narratives on the implementation of the Common Plan, in order to assess the Accused’s individual criminal responsibility.

1386. In any event, the Prosecution responds to some of the Defence arguments related to individual members of the Inner Circle in the paragraphs below.

1387. Finally, Mr Blé Goudé argues that the Prosecution's main evidence to support its theory that the Inner Circle existed is the main logbook of visits to the Presidential Residence, CIV-OTP-0067-0402. This is not the case. The logbook should be considered as evidence of the *incidence* of meetings, as described at paragraph 84 of the Trial Brief, within the context of other evidence in the case as to the content of meetings, and the surrounding events. Contrary to Mr Blé Goudé's assertion, the logbook *can* be used as evidence that meetings with Mr Gbagbo took place, with whom these meetings took place, and at what approximate times – given that:

- i. Prosecution witnesses have confirmed their attendance at meetings recorded in the logbook including on 24 November 2010; 1-5 December 2010, 12 January 2011 and 28 February 2011.
- ii. Video evidence confirms the logbook as to the occurrence of meetings at the Presidential Residence on 12 January 2011 and 14 March 2011.

1388. The Prosecution addresses arguments on the authenticity of the logbook and other documents seized from other Presidential Residence, at Section II above.

*(a) Defence arguments concerning senior FDS members of the Inner Circle*

1389. First, Mr Gbagbo argues that FDS operations were conducted autonomously and collectively, so that there could not have been an Inner Circle unless the FDS High Command in its entirety were members. The manner in which FDS operations were organised does not militate against the existence of a Common Plan or Inner Circle. Rather, it demonstrates that the FDS functioned as an organised and hierarchical apparatus of power. In addition, the Prosecution notes that Mr Gbagbo's reference to Witness P-0009's evidence regarding the FDS retreat from PK18 and N'Dotré omits the evidence which follows, regarding Mr

Gbagbo's order. Mr Mangou testified (upon being questioned on the content of his prior interview):

*“Q. [...] « Les actions que nous avons mené, c'était l'offensive que nous avons engagée au niveau de PK 18 et puis de N'Dotré, nous étant aperçu qu'il était difficile, parce qu'on nous tirait dessus, de riposter, parce que la population était en place. Nous avons donc replié – nous avons donc replié. Et quand nous avons replié, il nous a demandé de tout faire pour libérer l'axe Abengourou-MACA, c'est-à-dire l'axe qui passe par N'Dotré. »*

*Est-ce que cela vous rafraîchit la mémoire ?*

*R. Bien sûr que cela me rafraîchit la mémoire.*

*Q. Donc il vous a demandé de tout faire...*

*R. Oui.*

*Q. ... pour libérer l'axe.*

*R. Oui.”*

1390. Further, the fact that Witness P-0009 testified that the FDS mission may have been to defend the integrity of the territory, to protect people and their possessions, and was not to kill people is meaningless in the face of:

- i. The evidence presented in this case that FDS units did kill civilians, as described in the Prosecution Trial Brief and in this response (in relation to the charged and other incidents;
- ii. The context in which Witness P-0009's evidence here was given: he testified immediately prior about a statement given by him on RTI on 12

January 2011 to the effect that there was a curfew in place in Abobo-Gare and Anyama neighbourhoods, and that the FDS had placed itself in a position of “legitimate defence,” then testified that the FDS were in a state of war (*“situation de guerre”*) at this time;

- iii. Witness P-0009’s evidence regarding what Mr Gbagbo said, on 24 February 2011, when Mr Mangou reported to him concerning the first FDS offensive on 23 February 2011 and Mr Gbagbo gave the order to liberate the MACA-Abengourou axis. Witness P-0009 testified that Mr Gbagbo:

*“[...] a posé deux questions. La première question : “Est-ce que la population est encore dans la zone ?” Nous avons dits « oui », que la population est encore en place. Il a fait une recommandation : « Faites en sorte qu’il n’y ait pas trop de morts. »”*

1391. In addition, Mr Gbagbo’s arguments regarding how the FDS high command made operational decisions – according to the (unsourced) evidence of Mr Mangou – in no way vitiates the evidence presented as to the existence of an Inner Circle and Common Plan – and Mr Mangou’s membership of the Inner Circle. Rather this evidence demonstrates that the chain of command within the FDS was functioning normally, and, further, the extent to which Mr Mangou exercised operational control. It should be noted that Mr Mangou’s evidence as to the extent of the control exercised by him should be approached with caution. While Mr Mangou admitted to having operational control over FANCI, he denied having such control over other branches of the FDS during the post-election violence. However, FDS documents show that he repeatedly sent instructions to units such as CECOS, the *Gendarmerie*, and the Police throughout the relevant period. In addition, the head of CECOS testified that Mr Mangou was his superior, that he reported to him daily, and that Mr Mangou reported to Mr Gbagbo every day. The head of the *Gendarmerie* testified that Mr Mangou was

responsible for operational planning in the event of a crisis or serious event, and in such an event, other forces make their human and material resources available to him. Witness P-0011 elaborated that Mr Mangou had responsibility for planning and operations before and during the post-election violence. Further, the head of Police testified that the Army led the coordination meetings between the Army, Police, and *Gendarmerie*. Lastly, multiple Generals testified that Mr Mangou presided over meetings between Gbagbo and the FDS Generals, during which Mr Mangou would give the situation report and discuss the order of operations.

1392. Second, Mr Gbagbo argues that the presence of FDS leaders at Mr Gbagbo's inauguration, and the fact that a military leader – for example, Mangou – was appointed by Mr Gbagbo does not lead to the inference that these individuals were members of the Inner Circle; that congratulating Mr Gbagbo on his election is part of tradition and does not prove membership in an Inner Circle; and that meetings with the FDS Generals during a conflict are normal and not indicative of the existence of an Inner Circle. Mr Gbagbo, again, assesses the evidence in an isolated fashion, and misses the point. If the evidence of these factors is viewed in its proper context and in light of the evidence as a whole, the alternative inference proposed by Mr Gbagbo is simply unreasonable. For instance, the Prosecution demonstrated at trial that those who committed the charged crimes were either members of the FDS, members of militia groups such as the GPP, or members of the pro-Gbagbo youth. The leadership of these groups and their interaction with Mr Gbagbo during the implementation of the Common Plan is relevant to a number of factors, including that there was a coordination of minds (i.e. a Common Plan or agreement) between Mr Gbagbo and members of his Inner Circle, that Mr Gbagbo exercised control over the pro-Gbagbo forces, and that Mr Gbagbo made an essential contribution to the Common Plan.



1393. Mr Blé Goudé argues that there is nothing surprising or reprehensible in the fact that FDS senior officers met with Mr Gbagbo “from time to time” during the crisis to report on the security situation in Abidjan and more generally in the territory as a whole. Again, the Defence takes the Prosecution’s evidence in isolation – it is what was said, for example, during the 24 February 2011 meeting, within the context of what then happened, that the Chamber should consider. Mr Gbagbo argues, regarding the 24 February meeting, that this was an “*occasion*” which was part of the normal functioning of the institutions of State, “*en particulier en tant de guerre*”. The Prosecution disagrees with Mr Gbagbo’s characterisation of this meeting – in particular as to Mr Gbagbo’s role, and refers the Chamber to its Trial Brief, paragraphs 452 to 454. The Prosecution notes that Mr Blé Goudé, in characterising Mr Gbagbo’s role during meeting with the FDS High command, relies upon the evidence of Witness P-0010 – in which he stated that Mr Gbagbo would never, in any meetings, go into the details concerning military operations. This misses the point that Witness P-0010 also testified as to Mr Gbagbo’s instructions to the military and his knowledge and understanding of the weaponry at their disposal, including heavy weaponry.

*“R. En tout cas, pour les réunions... les deux réunions principales qui ont eu lieu au Plateau dont je me rappelle parfaitement, peut-être pas dans le détail près, mais je me rappelle assez bien le déroulé, le Président, il donnait des instructions, mais il rentrait jamais dans le détail des opérations militaires. Et pourtant, de tous les Présidents de Côte d’Ivoire que, moi, j’ai connus, c’est le seul qui ait fait l’armée et qui connaît l’armée. Mais jamais il n’est rentré dans le domaine... dans le détail des opérations militaires. Il donnait toujours des instructions en disant : « Tenez Abobo, renforcez vos... vos positions, faites ce que vous pouvez, mais il faut tenir Abobo. » Et je l’ai dit à Mme le Procureur l’autre jour : nous, on appelle ça une attitude*

*défensive. Au mieux, ça ne pouvait être que des contre-attaques pour récupérer des positions qu'on avait perdues.*

*Q. D'accord. Quand vous dites « il connaissait l'armée », est-ce que vous voulez dire par là qu'il a fait son service militaire ?*

*R. Et comment ! Parfaitement, et il connaissait les armes, et il savait comment elles étaient lourdes, mais jamais il n'est rentré dans le détail de nos opérations militaires."*

1394. Third, Mr Gbagbo argues that the Prosecution never asked Witnesses P-0009 or P-0011 if they ever asked their subordinates to vote for Gbagbo and further that the fact that two persons instructed their subordinates to vote for Mr Gbagbo does not prove their membership of the Inner Circle. The Prosecution first notes that the argument is beside the point because it falls upon the Trial Chamber to consider the evidence presented, rather than what might have been presented, in other circumstances; the Prosecution further notes that the Trial Chamber imposed time limits on the questioning of Prosecution witnesses. In addition, the Prosecution notes that the evidence on these issues was presented through credible witnesses (Witnesses P-0238 and P-0330). Finally, this is an example of the Mr Gbagbo's taking circumstantial evidence in isolation; the Prosecution submission is that the evidence should be considered as a whole.

1395. Fourth, contrary to Mr Gbagbo's argument, the fact that some members of the FDS leadership deserted their position on 31 March 2011 is not evidence that they were therefore *not* members of the Inner Circle – at any time. Mr Blé Goudé asserts that the Prosecution “seems to consider this alleged inner circle as a permanently changing and moving entity whose membership would be a reflection of what was happening at the time”. However, under article 25(3)(a), the membership of the Inner Circle – or participants in the Common Plan – can fluctuate over time. In fact, the Prosecution is not seeking to attribute to the

Accused the conduct of members of Mr Gbagbo's Inner Circle at the time after they deserted their position on 31 March 2011. However, the conduct of other members of the pro-Gbagbo forces that occurred after 31 March 2011, but which was set in motion by members of Mr Gbagbo's Inner Circle prior to their desertion, can be attributed to the Accused. For the same reasons, it does not even matter whether the Accused continued to espouse the Common Plan until the time when the relevant criminal conduct was committed, as long as they made an intentional essential contribution to the Common Plan prior to the commission of these acts, and the acts occurred within the framework of the Common Plan.

1396. Fifth, Mr Gbagbo argues that ethnicity was not a factor taken into account in the promotions of the high level military officers, like Mr Mangou, since most of these were not of the same ethnic origin as Mr Gbagbo, and that Ministers who are alleged to be members of the Inner Circle did not always share Mr Gbagbo's ethnicity, or a related ethnicity. Again, the Defence takes the Prosecution evidence in isolation. The evidence shows that, as stated below at Section V.D.6, on the day of the announcement of the elections, Mr Gbagbo promoted a number of his high-ranking officers. Taken in the context of the speeches which followed telling them that if he falls, they fall too, and that two of the highest ranking officers – Mr Mangou and Mr Kassaraté – urged their subordinates to vote for Mr Gbagbo, the promotions have a specific role in ensuring the allegiance of these officers within the context of Mr Gbagbo's resolve to stay in power. Therefore, setting aside the issues of ethnicity and loyalty, the case has been made that promotions were announced just prior to the elections and as Mr Gbagbo's pre-campaign was commencing.

*(b) Defence arguments concerning lower-ranking FDS members of the Inner Circle*

1397. Mr Blé Goudé's argument that it is reasonable to conclude that Dadi and Seka Seka continued to fight even after the resignation of the CEMA because they

“exploited the chaos that was apparent in the command chain to overstep and promote themselves at a higher command position in order to finally be free to implement their isolated yet extreme approach to the eradication of the enemy,” and that it is not inconceivable “that Séka Séka or Dadi were pursuing their own personal quest, without Laurent Gbagbo approving or even being informed of their actions” is simply not credible based on the following evidence:

- i. Seka Seka was an officer of the GSPR, which maintained the security of the Presidential Residence and the Presidential couple. As *aide-de-camp* to Simone Gbagbo, he was attached to the *Cabinet de la Première Dame*, which had its offices at the Presidential Residence complex in Cocody. Seka Seka continued to be active from the Presidential Residence throughout the post-electoral violence, including in the days leading up to Mr Gbagbo’s arrest.
- ii. Seka Seka was, throughout the post-electoral violence, by virtue of his position at the Residence, in a position of comparative power compared to other officers of his rank. The evidence shows that he was present for a meeting with Mr Mangou and other FDS generals at the *État-Major*, likely in February 2011, where Mr Mangou authorised Seka Seka to propose a plan for FDS operations in Abobo; that he took Liberian fighters (including [REDACTED]) to Camp Agban during the post-electoral crisis where they demonstrated their handling and shooting of weapons; that he received weapons through the formal *Gendarmerie* structure; and that he was also able to obtain weapons and munitions beyond what was known to Mr Mangou.
- iii. It is inconceivable that Mr Gbagbo would not have approved or known of Seka Seka or Dadi’s actions: Mr Gbagbo was in direct contact with other, mid-ranking officers – [REDACTED]



[REDACTED]  
[REDACTED]  
[REDACTED]

1399. Seka Seka demonstrated his continued commitment to the Common Plan in his use and control of mercenaries and militia members as the crisis progressed:

- i. Under the command of Seka Seka, [REDACTED] and his group of Liberian mercenaries protected and defended the Presidential Residence. Witness P-0435 confirms that Liberian mercenaries were based at the Presidential Residence, along with the GPP elements, as of February 2011. The role of the GPP was to participate in the security belt surrounding the Presidential Residence and support the FDS elements that had been ordered to hold those positions. Witness P-0500 operated under the command of Seka Seka, alongside a GR member, Meledjé, young combatants and other non-members of the security forces, including Tchang, a GPP member; he took part in combat to defend the *École de gendarmerie*.
- ii. These mercenaries, along with GPP elements, were – towards the end of the post-electoral violence – highly visible: on 3 April 2011, Witness P-0009 saw well-armed mercenaries driven by Commander Seka Seka on the road to Mr Gbagbo's residence. They were also conducting operations alongside other FDS units: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Also in April 2011, the FDS, led by Konan Boniface, conducted an operation to recapture RTI; FDS elements, including Dadi, Gouanou, Zadi, and Seka Seka operated alongside militia

members with Anglophone accents; the Prosecution submits that the latter were Liberian mercenaries.

(c) *Defence arguments related to active or former ministers*

1400. Mr Gbagbo argues, regarding his appointments of members of the Inner Circle to their positions in Government, that such appointments are not evidence of membership of the Inner Circle. Again, Mr Gbagbo assesses the evidence in an isolated fashion.

1401. From 6 December 2010, Mr Guiriéoulou was Minister of the Interior and Mr Dogou was Defence Minister in the Gbagbo government; together they had responsibility for enacting the Presidential decree of that date imposing a curfew. As Minister of the Interior, Mr Guiriéoulou had responsibility over the police and was the interlocutor between the head of Police and the President. Witness P-0046 testified that Mr Guiriéoulou gave the order to disperse the marchers on 16 December. In his public statement after the RTI march, Mr Guiriéoulou glossed over the civilian deaths and referred to any civilian victims as “aggressors”. On 12 January 2011, Mr Guiriéoulou gave a speech to the prefects of Côte d’Ivoire in which he told them: *“nous devons intégrer dans nos comportements, dans nos actes, dans nos réactions, que nous sommes dans une situation de guerre.”* As Minister of the Interior, Mr Guiriéoulou was provided with police reports – duty officer reports (*“les rapports de permanence”*) and daily information bulletins (*“les BQI”*). On the basis of these, at minimum, he must have been aware of the murder and other attacks against civilians at roadblocks which had been erected after the call by Mr Blé Goudé on 25 February 2011. Mr Guiriéoulou had responsibility for the public order situation in Abidjan and he should have prevented the mounting of illegal roadblocks by militia and pro-Gbagbo youth, at which civilians were killed, but he did nothing to prevent, condemn or stop the killing of civilians at the roadblocks, and made no mention of these crimes in public statements. Indeed,

on 8 and 16 March 2011, Mr Guiriéoulou's own intelligence department at the Ministry of the Interior recommended collaboration between the FDS and the GPP. Witness P-0440 testified that, in Yopougon, Maguy Le Tocard and his men were "practically untouchable"; they could not be arrested for fear of reprisals from them and reprimands from the hierarchy. On 3 April 2011, by which time many military officers had left their positions, Mr Guiriéoulou called on the civilian population, particularly in Abidjan, to mobilise to assist the FDS and to defend the Presidential Palace and the Presidential Residence.

1402. On 5 March 2011, Mr Guiriéoulou and Mr Dogou both participated in an official denial of responsibility for the 3 March 2011 incident, claiming that reports that the FDS were responsible were an attempt by the international press to discredit the Gbagbo regime.

1403. Related to Alcide Djédjé, concerning Mr Gbagbo's arguments about Lafont (that there is no evidence to show he was an arms trafficker) and [REDACTED]

[REDACTED] the Prosecution submits that the evidence shows that Lafont supplied weapons and ammunition to FDS units both before and during the post-electoral violence, and that he carried out such supplies through different entities including Darkwood Logistics and Protec-SA; and that supplies received by CECOS before the post-electoral violence were not for usage in public order operations, in contravention of the arms embargo then in place. The Prosecution relies upon:

- i. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



ii.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Witness

P-0010 testified that Robé Gogo was head of the CECOS Operations planning division and that on 16 December 2010 he led a CECOS *Groupe d'appui* detachment that was deployed to the Carrefour de la Vie).

iii. There was at this time an arms embargo in place in Côte d'Ivoire. The relevant UN Resolution provided that the arms embargo related to "arms or any related materiel" (paragraph 7) but not "supplies of non-lethal military equipment intended solely for humanitarian or protective use" (paragraph 8 (b)) or "supplies of protective clothing, including flak jackets and military helmets" (paragraph 8(c)) or "supplies of arms and related materiel and technical assistance intended solely for support of or use in the process of restructuring defence and security forces pursuant to paragraph 3, subparagraph (f) of the Linas-Marcoussis Agreement" (paragraph 8(e)).

iv. Witness P-0009 testified that the creation of the CECOS by Mr Gbagbo, in light of its mission, permitted the CECOS to circumvent the UN arms embargo, and that therefore CECOS was better equipped than the Army, Police, or *Gendarmerie*. Specifically, he testified that CECOS had 12.7 mm heavy machine guns, RPGs and offensive as well as defensive grenades; these were practically war weapons, not for fighting major criminality. Witness P-0009 also testified that CECOS exceeded its mission – to fight against banditry. For example, they set up the mobile brigade for

maintenance of law and order (BMO), which was not for fighting against banditry, and which was armed with conventional weapons from the various units.

- v. That Lafont was director of entities known as Darkwood Logistics and Protec-SA is demonstrated documents presented by the Prosecution.
- vi. That Lafont was an FDS-supplier is demonstrated by the following documents: a payment order dated 20 October 2010 shows the purchase of 50 pistols (GC54), ammunition, 200 MP7 (teargas) grenades and 70 HG84 grenades from Darkwood Logistics, amounting to almost 48 million CFA. The original invoice for this purchase, dated 9 August 2010, is at page 0328 of the document. This document is corroborated by a document of the Police Nationale, *Régie d'Avances Spéciale*, providing an overview of payments to Darkwood Logistics, Protec-SA, *Protectas Sécurité Privé*, Protec, and PROTEC CI in the total sum of just over 3 billion CFA, including a transaction "*en reste à payer*" in 2010 for pistols and grenades from Darkwood Logistics totalling almost 48 million CFA.

1404. Further documents showing supplies by Darkwood Logistics include:

- i. Another payment order showing the purchase of teargas grenades in October 2009, for almost 50 million CFA; a related order letter is signed by Mr Tagro, who was then Minister of Interior.
- ii. A cheque paid out by the *Paierie Générale* of the FDS, dated 2 July 2010, showing a payment made out to Darkwood Logistics, for an amount of 100 million CFA.
- iii. An order letter by Mr Tagro, then Minister of the Interior, dated 18 May 2009, to Darkwood Logistics showing an order for 1500 MP7 teargas

grenades and 1500 DPR 50 mm (Prosecution note: This acronym means *dispositifs de propulsion à retard*, delayed propulsion devices).

- iv. A Darkwood pro-forma invoice dated 22 February 2010 shows an order for materiel including AK47s, automatic pistols, ammunition, lightning grenades, teargas grenades, in the total amount of just over 1 billion CFA. The Prosecution notes that the words Fact Pro connote "Facture Pro-Forma."

The following documents show supplies by Darkwood Logistics and Protec-SA to CECOS:

- i. An invoice for 1,662,000,000 CFA from Darkwood Logistics, dated 8 February 2010, as well as a delivery form for the same items. It is apparent from these documents that the supplies are for CECOS.
- ii. An invoice from Protec-SA to CECOS dated 10 January 2008 shows the purchase of materiel including tear gas grenades, helmets, bullet-proof vests in 2008, totalling over 400 million CFA. This document is signed by Bi Poin, Commander of CECOS. The Prosecution notes that the words Fact Pro connote "Facture Pro-Forma." Asked about this document his testimony, Witness P-0010 said recognised his signature, and confirmed that this was the kind of material CECOS would order.
- iii. Specifically, the Prosecution notes that a CECOS overview of realised deliveries as per 1 November 2010, for a total of CFA 1,662,000,000, shows the delivery of pistols, ammunition, grenade launching rifles, grenades (including 1400 *grenades defensive mortelles*), and 50 120mm mortars. The Prosecution notes that the original order appears to be from November 2009. It also contains the words Fact Pro, which connote "Facture Pro-Forma" and reflects, in form, the Darkwood Logistics invoices. This

overview shows the supply of different materiel to the 8 February 2010 Darkwood Logistics invoice referred to above, although for the same amount. The 1 November 2010 deliveries overview is stamped and signed: “*Capitaine Sanganoko Mory*”, described as CECOS *Officier Adjoint*. Witness P-0010 testified that Captain Sanganoko Mory was head of the CECOS logistics division, but that he had never seen any of the materials on CIV-OTP-0073-0215, and that they were never delivered since such equipment – for example 50 120 mm mortars – would have been noticed by the embargo control team in Côte d’Ivoire; he had “some reservations” about this document and was not familiar with Mory’s signature. The Prosecution submits that Witness P-0010’s evidence on this document should be viewed with caution; it is also the Prosecution’s case that the head of CECOS would have been aware of the supply of such weapons – clearly not intended for public order use – to his unit.

1405. In relation to Désiré Tagro, both Mr Gbagbo and Mr Blé Goudé inappropriately (for the stage in the proceedings) seek to advance arguments impugning Witness P-0435’s credibility. The Prosecution refers the Chamber to its submissions at Section II, regarding this witness. To be clear about the detail of Witness P-0435’s testimony regarding Désiré Tagro and his role in the 16 December events, he testified that from the moment Mr Soro took the decision to organise the march, meetings were held between Tagro and GPP leaders, and that the instruction given was to support the FDS by intercepting demonstrators and handing them over to the authorities. GPP President Bouazo as well as some of the GPP base commanders, including Maguy “Le Tocard” from Yopougon, attended these meetings. For the 16 December march, FESCI members in Cocody – who had been trained by the GPP in September to November following the message received from Stallone Ahoua and Mr Blé Goudé – were placed on alert. During questioning on behalf of Mr Blé Goudé, Witness P-0435 further clarified

that the meeting with Mr Tagro, along with FDS leaders, at which Mr Tagro had informed Mr Bouazo of the “line of conduct to be adopted” were the march to take place, took place on 14 December. As the Chamber will recall, on the same day, 14 December 2010, Mr Blé Goudé had called a meeting of youth leaders at the *Hôtel de Ville* of Cocody, including JFPI leader Navigué Konaté, FESCI leader Augustin Mian, Youssouf Fofana, GPP leader Zéguen Touré, Sam l’Africain and others. The aim was to mobilise the *Jeunes Patriotes* to protect the RTI from the demonstrators of the march on the RTI planned for 16 December. When called to mobilise, the *Jeunes Patriotes* knew what to do: that is, to set up roadblocks.

1406. As for Defence arguments concerning Hubert Oulaï, to the effect that Oulaï was not a key focal point between the Liberian mercenaries and Mr Gbagbo’s government, and that the support by Krahn leaders of self-defence groups in the West of the country bore no connection to the Gbagbo government or the Common Plan, the Prosecution submits that the evidence shows that Mr Gbagbo, his government and the FDS leadership supported and used Liberian fighters both in 2002-2003 and during the post-electoral violence. Contrary to Mr Blé Goudé’s assertion, the period 2002-2003 – and the intervening years – is relevant to the charges since the use of mercenaries during this period demonstrates both how the relationship developed – and was maintained – as between the Gbagbo administration and a particular group of Krahn Liberian mercenaries from the LIMA group, the prior use of pro-Gbagbo mercenaries to supplement the FDS, and the persons and relationships involved in their logistical support and control, both in 2002-2003 and the years following. The evidence also shows that Oulaï, a Minister in Mr Gbagbo’s government, was an intermediary between such mercenaries and the Gbagbo government. Apart from the evidence cited to at paragraph 80 of the Trial Brief, the Prosecution refers to the following:

- i. A bill from the Hotel Village Krokrom in the Koumassi 05 area of Abidjan shows that in 2005 Liberian fighters stayed at the hotel – including one

Général Bobby Johnson, “*Commandant des Forces Terrestres du Liberia*”, together with [REDACTED] – whose name, the Prosecution submits, bears a striking resemblance to [REDACTED]

- ii. Correspondence from the hotel shows that the bill was unpaid and that Tony Oulaï (as an intermediary), “Pouho Richard” and Hubert Oulaï were involved in the payment – or implicated in the non-payment – of this bill. A subsequent letter from the same hotel to Simone Gbagbo, again requesting payment, adds that Pouho Richard had requested the hotel – in the name of Laurent Gbagbo – to provide accommodation to eight Liberians, and that they stayed from 21 May to 1 September 2005.

1407. [REDACTED]

1408. As for Witness P-0108’s evidence regarding Hubert Oulaï, the Prosecution corrects Mr Blé Goudé’s submission that the evidence only relates to activities pre-dating the charges by eight years, since this witness testified that his neighbour, a Liberian mercenary, “took up arms” again shortly after the crisis,

but was killed. In addition, he testified that over the years, until 2010, his neighbour was “taken care of” by Hubert Oulaï, that from time to time an army 4x4 vehicle would come to fetch him and he would go with other Liberian mercenaries to Guiglo; and that upon his return he would repay the witness money owed to him.

1409. In relation to Bertin Kadet, the Prosecution also refers the Chamber to the following evidence:

- i. Witness P-0330’s evidence regarding the presence of “white people” in Bloléquin, in 2002-2003 – whom the Prosecution say were mercenaries (foreign fighters for hire) – leading Ivorian “special forces” whom they had trained at the *École de Gendarmerie* in Abidjan; and
- ii. Witness P-0010’s evidence regarding the establishment of a mixed unit by Bertin Kadet, then Minister of Defence, that was trained at the *École de Gendarmerie* by military trainers – some were French speaking, and others, from South Africa, were English speaking. The Prosecution also refers the Chamber to a document dated 30 April 2007 from the *Préfecture de Danane*, which corroborates the witness evidence regarding the creation of a Special Force in 2002, and Bertin Kadet’s involvement in that.

1410. Mr Blé Goudé’s assertion that Witness P-0435’s evidence - that in Gagnoa, Bertin Kadet asked Mr Zagbayou to train 300 youth, who were also then armed with about 100 kalashnikovs provided by Bertin Kadet - does not make it “more likely or not that Mr Kadet shared Laurent Gbagbo’s intent to maintain power by all means,” misses the point that the evidence concerning one or other member of the Inner Circle should not be taken in isolation but considered within the context of the other evidence in the case – in particular, here, the evidence as to the training of young people by the GPP both in and outside of Abidjan, in advance of the Presidential elections. The only reasonable inference is that this training

was coordinated. The Prosecution refers the Chamber to the evidence at paragraphs 91 to 96 of the Trial Brief, including that:

- i. In late September 2010, Mr Blé Goudé requested that the GPP initiate training sessions for *Jeunes Patriotes*, members of the COJEP and the FPI youth, before the elections. The GPP did indeed provide military training to approximately 600 youth members of the FESCI and the COJEP from that time up until December, at which time the recruits integrated into FDS units.
- ii. The GPP received young people from various “patriotic movements”, whom they trained, including in weapons handling. The trainings started in October 2010, in the GPP’s training centre at their Yopougon Sable camp, and continued until December 2010, when the young people were integrated within the various FDS camps in order to follow the basic military training courses – although the time-frame for these was reduced significantly. There were at least 600 young people trained by experienced GPP elements, including Witness P-0435. After medical visits at old Akouédo camp, where the *Forces Terrestres* Command was based, or at the military hospital in Abidjan, the elements deemed apt (fit) to enter military service were, after training, then assigned to various units within the Army, such as the 1<sup>st</sup> BCP, BB and the BASS and BASA.
- iii. Witness P-0435’s evidence that the GPP also conducted military training of young people in areas outside of Abidjan: for example, in Bongoanou, at the request of Affi N’Guessan, and in Abengourou and Niablé, at the request of Minister Assoa Adou.

1411. Mr Gbagbo and Mr Blé Goudé both challenge Pascal Affi N’Guessan’s membership of the Inner Circle by attacking the credibility of Witness P-0431 and focusing on a newspaper article to which he refers in his testimony. This



approach is selective and ignores the fact that the Prosecution relies on Witnesses P-0009, P-0625, P-0048 and a *Gendarmerie* report at paragraph 83 of the Trial Brief. As for Witness P-0431's testimony, he says that Mr N'Guessan's statement to stop the mobile courts by all means was "widely known and reported", and that the reason why he knew a rally which he filmed on 18 July 2006 was about that issue was because he was told this. Witness P-0431's evidence is corroborated by footage filmed at the rally on 18 July 2006:

- i. An FPI militant says that on behalf of his party, it has been decided to boycott the mobile courts.
- ii. After Blé Goudé's *mot d'ordre* is announced, the speaker says, in reference to the mobile courts:

*"Qu'est-ce que la Côte d'Ivoire perde si il y a pas d'audiences foraines ? Voilà ! Des bandits ont pris les armes, ont violé, pillé, tué, des hommes là [...] on va organiser des audiences foraines [...] Nous pouvons pas accepter que, en 2000, il y avait 5 millions d'électeurs inscrits [...]"*

*(d) Defence arguments regarding leaders of youth and militia*

1412. With respect to Damana Adia Médard *alias* Damana Pickass, Mr Gbagbo argues that he committed not a single act of violence, but the law does not require that the contributions of each member of a Common Plan be of a violent nature. According to the Appeals Chamber, a co-perpetrator may make an essential contribution to the Common Plan at any stage, which includes the execution stage of the crime, the planning and preparation stage, and the stage when the Common Plan is conceived. For the same reasons, not every member of the organised structure of power through which the co-perpetrators implement the Common Plan must commit violent acts for their conduct to be relevant to assess

the Accused's criminal responsibility. Mr Pickass was the former leader of the FPI youth wing and had long-standing links with Mr Blé Goudé, who had been Pickass' campaign director when Mr Pickass unsuccessfully stood to be Secretary-General of FESCI. In relation to the January 2006 events following the GTI recommendation not to extend the mandate of the National Assembly, on 18 January 2006, the RTI broadcast an interview with Mr Blé Goudé in front of the French Embassy – with, amongst others, Damana Pickass. Mr Blé Goudé called upon Ivorians to converge at locations including the UN base at Sebroko and the French embassy.

1413. During the post-electoral crisis, Mr Pickass took part in activities in furtherance of the Common Plan. On 30 November 2010, Pickass disrupted the announcement of election results by the CEI's spokesperson Bamba Yacouba. Witness P-0435 testified that Pickass was a contact point for GPP leader Bernard Yokoyoko Bouazo and that he and Bouazo visited Pickass and obtained kalashnikovs from him. Damana Pickass stayed loyal to Mr Gbagbo throughout the crisis and on 3 April 2011, when many FDS had left their positions, Pickass was one of a succession of youth leaders who appeared on the RTI to call on civilians to defend the Presidential Residence.

1414. In relation to payments to leaders of youth and militia groups, Mr Blé Goudé argues that the funds provided to these leaders were "almost insignificant"; however, this does not correspond with the amount paid to Eugène Djué in his capacity as President of the UPLTCI militia and representative of 12 other *mouvements patriotiques*. From 16 May 2009 until 18 March 2011, Mr Djué received regular monthly payments of 1.6 million FCFA, equivalent to over 2,400 euros per month, and amounting to a total of 36.8 million FCFA (or approximately 56,000 euros) for this period.

1415. It is not the Prosecution's case that the *Cabinet du Président* provided payments to the leaders of such groups in order for them to buy weapons in Abidjan on

their own initiative. The Prosecution submits that Mr Gbagbo's regime provided the militia with weapons through other channels and that the payments from the *Cabinet du Président* constituted financial support to the militia and other groups. The evidence on the case record demonstrates that groups including the GPP and FESCI were provided with weapons in the period around the 2010 elections and subsequently. The fact that such groups used automatic weapons during the crisis is demonstrated by witness evidence, police reports and contemporaneous video footage. At the end of the crisis, Eugène Djué, along with Maguy Le Tocard and Guy Gbetri, took part in the disarmament of the militia in Yopougon; further evidence of militia weapons can be seen on the video footage of this disarmament ceremony.

*(e) Defence arguments related to Simone Gbagbo*

1416. As for the Defence arguments related to Simone Gbagbo's membership of the Common Plan, the Prosecution also refers the Chamber to one of Simone Gbagbo's most significant and inflammatory speeches, on 15 January 2011. Witness P-0625 received an invitation to this meeting *via* mobile phone on 13 January 2011, demonstrating the coordinated nature of the activities of the pro-Gbagbo youth – including Mr Blé Goudé, who was present and spoke to French reporters at the rally – and Simone Gbagbo.

1417. Regarding documents concerning the CNRD, the Prosecution responds to Defence arguments concerning the chain of custody of documents found at the Presidential Residence in Section II above.

1418. Mr Blé Goudé asserts that only one document cited refers to Simone Gbagbo as Secretary-General of the CNRD, and that this document is unsigned and undated. In fact, a CNRD attendance list, dated 30 March 2011, also shows Simone Gbagbo as Secretary-General of the CNRD.

1419. Regarding the reliability of Simone Gbagbo's diary as containing handwritten abbreviated notes of CNRD meetings presided over by her, the Prosecution refers the Chamber to Witness P-0625's testimony regarding the meeting attended by him in December, including what was said by him – which may be compared with the handwritten entry for 27 December 2010 (wherein it is stated: "*Sam l'African Dieu d' Abraham nous a livré [...]*").

5. Defence arguments related to existence and implementation of the Common Plan from 2000 to August 2010

1420. Mr Blé Goudé argues that the events preceding 2010 do not accurately represent the situation that prevailed in 2010-2011 and further that it would be "unduly prejudicial" to Mr Blé Goudé to take such evidence into consideration in the Trial Chamber's assessment at this stage.

1421. Mr Blé Goudé also asserts that the Prosecution has failed to prove any symmetry between the methods used from 2000 to 2010 and during the post-electoral crisis, and that Mr Blé Goudé is "absent" from the Prosecution narrative regarding targeting of political opponents. He also argues that he is absent from the Prosecution narrative and evidence regarding "ethnically-motivated nominations", and that he played "no role" in the creation of the GPP and the recruitment of youth in the FDS in 2003, and no role in the FLGO. On these topics, the Prosecution refers the Chamber to its submissions in the sections immediately following, and to its arguments in response to Mr Blé Goudé's submissions regarding his individual responsibility (at Section VI of the Blé Goudé Motion), addressed below in Section V.F.

1422. The Prosecution submits that events preceding 2010/2011 are relevant both (i) as evidence of the conception and implementation of a Common Plan following Mr Gbagbo's election in 2000; (ii) as evidence of Mr Gbagbo and Mr Blé Goudé's contributions to the Common Plan; (iii) in any event as evidence supporting the

existence and implementation of the Common Plan during the post-electoral violence by reason of the pattern of recruitment and use of youth, militia and mercenary groups including to supplement FDS units; the pattern of use of pro-Gbagbo forces to commit violent acts against civilians; and (iv) because showing Mr Blé Goudé's authority and control over the pro-Gbagbo youth and GPP.

1423. Mr Blé Goudé's contributions to the conception and implementation of the Common Plan are multifaceted and span over a period of ten years.

1424. With respect to the conception and development of the Common Plan between 2000 and 2010, Mr Gbagbo argues that the Prosecution only relies on Witness P-0048 whose reliability is coloured by his political allegiance; Mr Blé Goudé asserts that Witness P-0048 cannot be deemed credible because he holds a "strong bias" against Mr Gbagbo and Mr Blé Goudé. The Prosecution reminds the Chamber that now is not the appropriate stage for credibility assessments of Prosecution witnesses. In any event, it is not the case that the Prosecution only relies on Witness P-0048 with respect to every aspect of the existence and implementation of the Common Plan before 2010, as the evidence referenced in the relevant section of the Trial Brief shows. The Prosecution relies upon other witnesses to support the factual, political and military developments in the period from 2000 – including Witness P-0009 and other credible witnesses like Witnesses P-0316, P-0164 and P-0435.

1425. Finally, Mr Gbagbo argues that none of Witnesses P-0009, P-0010, P-0011, P-0047 and P-0046 gave evidence that supports the Prosecution's "narrative" (*"ne va dans le sens de son narrative"*), but offers no evidence in support of this claim. The Prosecution makes generalised submissions regarding the evidence of these witnesses in Section II of this Response.

1426. Mr Gbagbo impermissibly cites to the non-submitted interview of Witness P-0009 to embark upon a seeming introductory argument about the Prosecution's supposed motives for alleging that the Common Plan existed from 2000, and

arguments about the existence of the Common Plan which do not address any evidence (or involve any citation to sources).

1427. In addition, Mr Gbagbo argues against reliance by the Prosecution on NGO reports – based upon language used by Judge Henderson in a dissenting opinion in this case, that “no reasonable chamber should ever rely on anonymous hearsay, for the simple reason that it is impossible to properly assess the credibility and reliability of its source;” and Mr Blé Goudé asserts that reports by NGOs or international organisations, such as UNOCI, should not be admitted to the case record. The Prosecution addresses these general arguments at Section II of this Response.

(a) *Defence arguments concerning pattern of violence before 2010-2011*

(i) Defence arguments concerning the escadrons de la mort

1428. Both Mr Gbagbo and Mr Blé Goudé broadly argue that the existence of the “*escadrons de la mort*” is unproven on the basis of Witness P-048’s evidence. Mr Blé Goudé argues that Witness P-0048 “expressed serious doubts as to the very existence of a group called “*escadrons de la mort*”, and that he said there was no specificity (“*pas de particularité*”) as to those who disappeared.

1429. First, the Prosecution notes that Witness P-0048 testified that although he could not say that people were murdered based on ethnicity, what was clear was that, “*il n’était pas bon de s’affilier d’abord avec la rébellion*”.

1430. Second, the Prosecution does not rely on Witness P-0048 alone on the issue of the “*escadrons de la mort*”. Witness P-0435 explained that Simone Gbagbo’s assistant (“*aide de camp*”) Seka Seka, an officer of the *Gendarmerie*, was in charge of operations to kidnap, eliminate or assassinate individuals and the press referred to these as operations of the death squads “*escadrons de la mort*”. Witness P-0435 testified that he himself took part in some of the operations. In addition, the Trial

Chamber has footage of news reports on the RTI where reference is made to these death squads, including Minister Désiré Tagro's denial of their existence.

(ii) Defence arguments concerning March 2004 events

1431. With respect to the killings of opposition supporters on 25 March 2004, Mr Blé Goudé first states inaccurately that the Prosecution assertion that civilians were attacked by FDS forces is "based to a large extent on the UN Commission report" and second, that Witness P-0048's evidence fails to support the allegation that the FDS attacked civilians and in any event that his "knowledge of the march is largely based on the UN Commission report".

1432. First, as to the basis of Witness P-0048's knowledge of the March 2004 events, the Prosecution notes the witness's evidence that he was in Abidjan at the time and received phone calls from *militants* on the ground and from G7 organisers.

1433. Second, to clarify, the Prosecution bases its case on the events of 25 March 2004 on the evidence of witnesses, as corroborated by documents, including the UN Commission of inquiry report of 2004. These witnesses are cited to in the Trial Brief, and gave evidence as follows:

- i. In 2004, Witness P-0184 and other demonstrators went out to support the Linas-Marcoussis agreement. The march was organised by the RHDP. Witness P-0184 testified that she and other demonstrators were shot at by Mi24 helicopters. She was surrounded by the FDS, and they shot at people indiscriminately. As people scattered, they kept on firing. Many people died or were injured. The witness suffered injury. The younger brother of her husband died that day. Fifty-six bodies were buried at the Carré des Martyrs, in Abobo.
- ii. Witness P-0172 also suffered injury as a result of being shot during the march on 25 March 2004 by people wearing fatigues. The march was

organised by the opposition – all those who opposed President Gbagbo. The march took place in all the ten communes in Abidjan; in Abobo-Adjamé, where the witness was, there were helicopters shooting at people.

- iii. Witness P-0048 testified that G7 militants were murdered in cold blood with the assistance of combat helicopters in the possession of the army. He was in Abidjan that day. At the level of the G7, they made an effort, using the system of neighbourhoods, to draw up a list of the G7 militants who were murdered on that day; the number was 350. They also organised public funerals.

1434. Mr Blé Goudé appears to argue that the perpetrators of the killings and injuries of civilians on 25 March 2004 were not identified by Prosecution witnesses, and therefore that the identity of the perpetrators – as members of the FDS – has not been proven to sufficient standard. Mr Blé Goudé does not venture a suggestion as to who else might have shot at civilians – including from helicopters – on 25 March 2004. For the avoidance of any doubt, Witness P-0184 testified that she saw FDS shoot at people. She and Witness P-0172 both testified that they saw helicopters shooting at civilians.

1435. Insofar as Mr Blé Goudé suggests that the FDS response on 25 March 2004 was somehow justified because demonstrations were banned, the Prosecution submits that the fact that demonstrations were prohibited as at the date of the march in no way justifies the violent repression which followed. Mr Blé Goudé refers to the decree of 11 March 2004 itself (banning demonstrations), but unfortunately this is not submitted into evidence. Witness P-0048 testified that a few days before the march, Mr Gbagbo requisitioned the entire army in order to ensure security in the Plateau area.

1436. Both Mr Blé Goudé and Mr Gbagbo would also appear to argue, on the basis of the UN Commission of Inquiry report of 2004, that the violence perpetrated



against civilians on 25 March 2004 was somehow justified because of “objective security threats” and the “insurrectional nature of the planned G7 march”. However, the Prosecution relies upon the clear evidence of Prosecution witnesses as to the purpose and peaceful nature of the march:

- i. Witness P-0048 testified: *“cette marche était pacifique”*.
- ii. Witness P-0184 testified that the purpose of the demonstration was to support the Linas-Marcoussis agreement.
- iii. Witness P-0172 testified that the march was organised by the opposition – all those who opposed President Gbagbo – to tell President Gbagbo to organise elections in 2005.

1437. Further, Mr Gbagbo cites selectively to two paragraphs of the report of the UN Commission of Inquiry, to the effect that the Ivorian authorities justified the decision to forbid the 25 March 2004 demonstration by the fear that armed elements, presumably belonging to the *Forces Nouvelles*, could attempt to infiltrate the march and foment a coup against the Head of State, and that the events of 25 March 2004 came to be seen by the Ivorian authorities as having been planned long before and as an ultimate threat to the regime. This ignores the portions of the report which state that the Commission could not independently verify the allegations regarding the presence of armed demonstrators and elements of rebel groups prepared to attack the security forces or to overthrow the President, as the Commission received “no credible or conclusive evidence to this end” (*“la Commission n’ayant reçu aucune preuve crédible ou concluante allant dans ce sens”*); and that while the march was presented to the public, and possibly perceived by some, as a major security challenge to the nation and its President, all available evidence suggests that there was no significant threat to the security forces posed by the demonstrators, who were not armed (*“il a été démontré qu’il n’y a pas de réelle menace de la part des manifestants, lesquels n’étaient pas armés”*), and there was

no reported infiltration from the north, or any attempts at an insurrection by the population against the State. The UN report adds that the *Forces Nouvelles* were not even in Abidjan – they decided not to participate in the protest march in Abidjan, but to organise demonstrations in areas under their control. This corroborates the evidence of Witness P-0048 that the *Forces Nouvelles*, who were members of the G7, were not present in Abidjan; they were in Bouaké.

1438. In addition, Mr Gbagbo misstates the evidence of Witness P-0048 – seemingly suggesting that the witness said that the march took place because the G7 wanted to obtain executive power, in other words to overthrow the government – when the witness was talking about the transfer of executive power as had been agreed at Linas-Marcoussis.

1439. Mr Blé Goudé also argues that the Prosecution has not presented evidence that “political opponents” were targeted on 25 March 2004. However the evidence (referred to above) overwhelmingly shows that the demonstrations on 25 March 2004 were attended by members, or supporters of Gbagbo’s political opposition. Witness P-0048, in addition, testified that G-7 militants were killed; and that they drew up a list of the G7 militants who were murdered on that day, and organised public funerals.

1440. Finally, Mr Gbagbo makes no mention of his denial of this incident and instead questions why Witness P-0048 did not investigate the March 2004 events when he became Human Rights Minister 2.5 years later (not “a few months later”, as Mr Gbagbo alleges). As for Witness P-0048’s evidence upon being questioned about any legal proceedings related to the March 2004 events, the witness testified:

*“[...] Je ne saurais vous répondre parce qu’il appartient au Parquet d’engager les poursuites en pareilles circonstances. Mais vous verrez qu’en Côte d’Ivoire, pendant des années, toutes les exactions n’ont pas*

*fait forcément l'objet de procès. Et même quand il y a eu un procès, on n'a jamais trouvé de coupables. Je vous ai parlé tantôt du charnier de Yopougon, les événements de 2004, les événements de ... mars 2004, novembre 2004, les exactions sur les populations civiles. Partout, il n'y a pas eu de procès. Mais, par contre, nous nous sommes retrouvés dans des situations où il y a eu des lois d'amnistie qui ont été prises."*

(b) *Defence arguments concerning Blé Goudé's role in the Hotel Ivoire incident, in November 2004*

1441. On the issue of *Opération Dignité*, whether or not there is a pending criminal procedure in France on the role of the French authorities is neither relevant nor in evidence in this case.

1442. Mr Gbagbo's argument here that Witness P-0435's testimony is "(p)as grand-chose" does not articulate a legal standard. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Mr Gbagbo claims that this is a fabricated story and an "imaginary plot," and repeats criticisms of Witness P-0435 person and evidence; these are generally addressed above, at Section II of this Response. Witness P-0435's account of [REDACTED]  
[REDACTED] finds support in a UN report which refers to [REDACTED]  
[REDACTED] ("the Ivorian authorities accused the Licorne force of a disproportionate use of force [REDACTED]  
[REDACTED]).

1443. As for Mr Gbagbo's arguments at paragraphs 221 to 222 of Annex 5, the Prosecution submits that the point in relation to the *Hôtel Ivoire* incident is that by this time, the Gbagbo authorities were making use of the youth groups, [REDACTED]  
[REDACTED]

1444. As for paragraphs 197 to 201 of Annex 5, Mr Gbagbo refers to a UN Security Council Resolution (S/RES/1572 (2004)), dated 15 November 2004, cited to by the Prosecution at paragraph 41 of the Trial Brief. Mr Gbagbo argues that it is not clear from the resolution that it is pro-government media that are targeted, but that is plainly not the case, given the language used in the Resolution (*“inciter à la haine et à la violence contre des étrangers en Côte d’Ivoire”; “(e)xige que les autorités ivoiriennes mettent un terme à toutes les émissions de radio et de télévision incitant à la haine, à l’intolérance et à la violence”*). The Prosecution notes that Mr Blé Goudé was subjected to UN sanctions as of 7 February 2006, on the basis of, *inter alia*, public statements advocating violence. Mr Gbagbo fails to point to any evidence that the language of paragraph 6 of UN Security Council Resolution 1572 somehow reflected “normal diplomatic practice” such that it did not imply that the Ivorian authorities caused such emissions.

(c) *Defence arguments concerning the slowing down of the peace process/delay of elections*

(i) 2003 demonstrations following Linas-Marcoussis

1445. Mr Gbagbo argues that Linas-Marcoussis was organised by the French authorities to take power away from Mr Gbagbo and hand it over to the rebellion. This assertion is not supported by evidence and no footnote is provided. Mr Gbagbo further argues that Mr Gbagbo’s government and Mr Gbagbo himself were invited only at the end to sign the agreement, citing for support CIV-D15-0004-0495, an extract from a book submitted by the Defence during the questioning of Witness P-0048. This is not Prosecution evidence and not appropriate for consideration at this stage. In any event, the author of the relevant book has not testified; the book is of uncertain quality and should not be relied upon by the Trial Chamber. An extract, regarding the Linas-Marcoussis negotiations, put to Witness P-0048 during questioning on behalf of Mr Blé Goudé was not accepted by this witness (*“(c)’est faux”*). In addition, Witness P-

0048 explained that all political parties were present, but that Mr Gbagbo was not present as he was not the President of the FPI at that moment; he further testified that Pascal Affi N'Guessan signed the agreement for the FPI, as then President of the FPI, and that Mr Gbagbo's authority was recognised and not called into question by the agreement. The Prosecution also relies upon the testimony of Witness P-0048 that after the signing of the Linas-Marcoussis agreement, *"il y avait une bonne ambiance, il n'y avait pas des gens qu'étaient d'un côté... des Ivoiriens rebelles qui étaient d'un côté, il y avait tout simplement des Ivoiriens qui ont décidé de prendre les choses en main de telle sorte que notre pays ne tombe pas dans la déchéance"*; and further:

*"Et je ne pense qu'un seul des signataires, avec ceux qui les accompagnaient, ait pensé un seul instant que cet accord était mauvais, puisque cet accord prenait en compte les véritables problématiques que se posaient à notre pays en ce moment-là. Donc je peux vous dire que c'était dans une belle ambiance que nous avons signé cet accord."*

1446. The point here is that the Prosecution has shown that the Gbagbo government attempted to sabotage the Linas-Marcoussis agreement, as Mamadou Coulibaly (speaker of the national assembly of Côte d'Ivoire) returning to Abidjan and *"pour venir préparer la résistance"* shows. Further on this issue, Witness P-0048 also testified that there were calls, launched by the *Jeunes Patriotes*, calling upon people to block the implementation of the agreement.

1447. On who organised the protest in Abidjan following the Linas-Marcoussis agreement, the Prosecution notes that Mr Gbagbo's arguments at paragraph 178 and 181 regarding the involvement of the *Jeunes Patriotes* in organising this meeting would not appear to be supported by the Defence evidence upon which he otherwise relies in this part (*"Les partisans de Gbagbo, qui démentira avoir accepté*

*un tel scenario, organisent aussitôt des manifestations hostiles à la France, avec en tête Blé Goudé, le leader des Jeunes Patriotes”).*

(ii) Events of January 2006

1448. On 15 January 2006, the GTI had recommended not to extend the mandate of the National Assembly. This triggered a sit-in by Mr Blé Goudé. On 18 January 2006, RTI broadcast an interview with Mr Blé Goudé in front of the French Embassy – with, amongst others, Damana Pickass, in which he called upon Ivorians to converge at locations including the UN base at Sebroko and the French embassy. Other excerpts from the same RTI broadcast of 18 January 2006 show the coordinated actions of the *Jeunes Patriotes* during this period. On 19 January 2006, at the end of this action, Mr Pickass held a press-conference with militia leaders including Eugène Djué and Watchard Kedjebo, at which Pickass instructed youth to lift their roadblocks and to “lift the siege” of UN and French facilities including the French military base of the 43<sup>rd</sup> BIMA, the French embassy, the UN base at Sebroko, and other UN military bases across the country.

(iii) July 2006 shutdown of Abidjan

1449. As to the events in 2006, including rallies against the establishment of the mobile courts (“*audiences foraines*”) culminating in the “shutdown” of Abidjan on 19 July 2006, the Prosecution relies in particular upon Witness P-0431’s filming of speeches at a rally at a *parlement* in Yopougon on 12 July 2006, and footage of a meeting on 18 July 2006 at the mayor’s office in Yopougon. During the 12 July 2006 rally:

- a. A speaker, Hervé Gérard Komi Séka aka *Vertu la Température*, in charge of the *Mouvement Patriotique* in Yopougon, says that the youth, after phases of mobilisation and sit-ins, are now in a phase of radicalisation. He says he

will not explain the method of fighting, but that they will follow their “*grand maitre*”.

- b. Youssouf Fofana explains that even Northerners like him and Zéguen (meaning Moussa Touré aka Zéguen) are against Mr Soro and the presence of foreigners in the North of the country.
- c. Eugene Djué talks about the mobile courts and the delays, which he says the enemy wants. He also says that the rebellion is organised and supported by France.

1450. During the meeting on 18 July 2006, Witness P-0431 filmed footage of a speaker communicating a *mot d'ordre* given by Mr Blé Goudé – “*nous allons partager le mot d'ordre clair de notre premier responsable ; je voudrais citer le Général Blé Goudé qui nous a chargés de vous transmettre*” – that they would paralyse the city of Abidjan on the following day. The speaker, who appears on the stage along with other youth leaders including Vincent Dago, then President of the body coordinating the various *parléments* of Yopougon, Guy Gbetri, then President of the Yopougon *parlement*, as well as the then President of the COJEP coordination group, “Jean-Claude”,, says: “Tomorrow, all of Abidjan will be paralyzed, all of Ivory Coast will be barricaded. Do not come to the town hall, but go to the intersections, that we will make the barricades.” Finally, Witness P-0431 filmed the shutdown of Abidjan on 19 July 2006.

1451. This footage should be viewed within the context of an interview given by Mr Blé Goudé at around this time (30 June 2006) to Witness P-0431, during which he said: “[t]hey [the *Jeunes Patriotes*] are well organised and they got a rapid and fast capacity of gathering, which is very important”; and filmed footage of his address to the *Jeunes Patriotes*, broadcast on or around 19 July 2006:

*“Je félicite donc les patriotes de Cote d’Ivoire qui à travers ces actions ont lancé l’avertissement et ont exprimé leur désapprobation par rapport à ces activités. Maintenant [...] que l’oreille est attentive et tendue, attendons la fin de ces discussions. En attendant, je vous demande de lever – comme nous avons l’habitude de le faire, dans la discipline – lever les barrages. Rentrons chez nous. Sachons sortir, sachons rentrer. Dans les jours à venir, [...] des discussions, nous allons nous retrouver [...].”*

*(d) Defence arguments concerning recruitment of youth, 2002-2003*

1452. Mr Blé Goudé argues first, that he played no role in the FDS recruitment in 2003, or any recruitment, and second, that the FDS recruitment which occurred after the 2002 attempted *coup d’état* did not form part of the Common Plan, in particular because the 2002 *coup d’état* was not foreseeable.

1453. On the use of the terms, “*les soldats Blé Goudé*” or the Blé Goudé “contingent” or “*la génération Blé Goudé*”, as referenced at paragraph 32 of the Trial Brief, the Prosecution notes that both Mr Gbagbo and Mr Blé Goudé rely upon Witness P-0009’s “explanation” that the term “*la génération Blé Goudé*”, was “humorous.” To be clear, Witness P-0009 testified:

*“Donc, 4000 jeunes ont été recrutés [...] C’étaient ceux-là qu’on appelait «la génération Blé Goudé ». Je l’ai souligné ici, non pas parce que c’est Blé Goudé qui les a recrutés, mais vous savez que les Ivoiriens, ils ont le sens de l’humour. C’étaient des jeunes qui battaient le pavé. Et du coup, on fait le recrutement, donc, ce sont des jeunes-là que sont rentrés dans l’armée, des jeunes ivoiriens très bien formés. Il y en avait qui avaient la licence, il y en avait qui avaient même la maîtrise.”*



1454. The Prosecution submits that on this issue – as in the case of the use and recruitment of militias by the FDS – Witness P-0009’s evidence is not supported by the overwhelming evidence in this case, which points to the conclusion that the use of the term “*la génération Blé Goudé*” to describe the FDS recruits of 2003 was not meant to be funny; rather, it reflected the reality of the allegiance of this group of recruits to the pro-Gbagbo side – in the same way that a militia group allies itself to a cause or to an individual, as opposed to the State. In addition, to be clear, Witness P-0435 testified that the “first wave” of recruits at this time was integrated into the army – this was the Blé Goudé batch (“*Promotion Blé Goudé*”). This wave was supposed to encompass 3,000 recruits but this did not turn out to be the case because only approximately 1,000 recruits were integrated into the army at this time. Then there was supposed to be a second and third wave in order to integrate everybody else (including members of the GPP). Witness P-0435 testified that at this time, “*il fallait des jeunes qui étaient vraiment ralliés à la cause du pouvoir, qui étaient prêts à, vraiment, donner leur vie, s’il fallait, pour [...] les institutions de la République*”. The only reasonable inference, from the way in which this group of recruits was described, is that Mr Blé Goudé played an essential role in their recruitment.

1455. Mr Gbagbo erroneously suggests that the statement, at paragraph 32 of the Trial Brief in relation to the 2002-2003 recruitment, that, “these soldiers became militiamen, not soldiers – meaning that they served an individual, rather than the entire country”, is an “interpretation” by the Prosecution. It is not; this is the witness’s evidence. Witness P-0316 says:

“Q. [...] Vous avez dit que la formation était de courte durée, et vous l’avez décrite comme étant très simple, très simpliste. Vous avez utilisé un terme en particulier. Et, ensuite, vous avez dit : « C’est que... La preuve, c’est, voyez où ça nous a amenés. » Donc, qu’est-ce que vous vouliez dire par là ? » Voyez un peu jusqu’où ça

*nous a amenés, du fait de la formation qu'avaient reçue ces recrues, en particulier. »*

*R. Effectivement, si ces recrues avaient vraiment une vraie formation militaire, ils allaient dissocier leur... un militaire, c'est un ange. Voilà. Un militaire, c'est un ange. Quand Dieu veut envoyer quelqu'un pour un message, c'est les anges, il envoie. Le militaire aussi, il est au service des responsables pour être envoyé, pour exécuter des missions. Mais, ça ne fait pas de lui un milicien de l'individu. Si, réellement, ces jeunes-là avaient vraiment la formation militaire, à un moment donné, ils auraient compris que, non, ce que nous faisons là est faux. Donc, retournons à nos services militaires. Mais, malheureusement, il y a des militaires aujourd'hui qui ont déserté, qui sont au Ghana, au Togo; bon, pour quelle raison ? Tu es un militaire, tu as fait ton travail, ça n'a pas marché, tu continues. Si on doit te punir, on te punit, et puis ça passe. Mais, aujourd'hui, il y a d'autres qui sont en désertion et qui sont au Togo, au Ghana, tout simplement parce qu'ils sont restés, au lieu d'être militaires, ils sont restés miliciens. C'est pourquoi « que » je dis, cette formation voilà où ça nous a conduits. Voilà.*

*Q. [...] par rapport à ce que vous venez de dire, vous dites que « ces soldats sont devenus des miliciens »; qu'est-ce que vous voulez dire par là ?*

*R. Par là, je veux dire que, le militaire, il est le soldat des 322 kilomètres carrés (phon.) que représente la Côte d'Ivoire. Il n'est pas un militaire d'un individu. Voilà. Certes, on peut être au service de l'individu — c'est le rôle du militaire, mais, à un moment donné, si, effectivement, le peuple n'est plus pour l'individu, mais le*

*militaire s'aligne à la volonté du peuple. Voilà. Donc, voilà ce que je veux dire.*

(e) *Defence arguments concerning recruitment and use of militias and mercenaries, 2002-2003*

(i) GPP

1456. Mr Blé Goudé challenges Witness P-0435's evidence regarding the creation of the GPP, and Mr Blé Goudé's involvement in that and his relationship with Charles Groguhet, alleging that there are "serious doubts" as to Witness P-0435's credibility and that Witness P-0435's evidence is not corroborated. However, on the formal creation of the GPP by Charles Groguhet and others in 2003, and the GPP's links with prominent former FESCI members such as Eugène Djué and Mr Blé Goudé, Witness P-0435's testimony is supported by the oral testimony and academic work of Witness P-0097, who interviewed a number of militia leaders on this subject, including Moussa Zéguen Touré, Eugène Djué, Damana Pickass and Maguy Le Tocard.

1457. Further, on the role of the GPP within the *Galaxie Patriotique*, the overlap between armed and unarmed groups and the role of prominent former FESCI members such as Eugène Djué, Witness P-0435 is corroborated by a letter from Djué dated 17 April 2005 with a list of the "*Mouvements Patriotiques*" which Djué represented at that time - including the GPP, and by a video of a meeting in Yopougon on 22 June 2006, provided by Witness P-0431. This video shows a meeting in the context of the DDR process for the "*groupes d'auto-défense*" which is chaired by Eugène Djué representing the UPLTCI militia and at which the other main speakers are militia leaders Moussa Zéguen Touré (representing the GPP) and Ferdinand Kouassi *alias* "Watchard Kedjebo" (representing the CNLB), along with leaders of other *Galaxie Patriotique* organisations such as Youssouf Fofana of *La Voix du Nord*. The speeches of Djué and Touré, in particular, refer to the armed

combat which was led by their *groupes d'auto-défense*, also called *milices*, across different areas of Côte d'Ivoire. Also present at this 2006 meeting was Maguy Le Tocard, who can be seen very briefly on the footage but who is referred to by one of the presenters as "*le président du Parlement du 16e arrondissement que vous connaissez très bien, le camarade TOCARD MAGUY*".

1458. Mr Blé Goudé further relies upon Witness P-0009's denials of FDS involvement with militia groups, including the GPP, however Witness P-0009's evidence as to his own and FDS involvement with militia groups should be viewed with caution, since necessarily self-serving (on this, the Prosecution also refers the Chamber to Section II of this Response). On the topic of Prosecution document CIV-OTP-0071-0850 (Message from COMTER dated 21 February 2011):

- i. Witness P-0009 testified that there were no militias in the FDS when he was CEMA. He distinguished between militias and self-defence groups ("*groupes d'auto-défense*"), like the FLGO.
- ii. He also testified that he was not aware of any recruitment conducted before he left service on 30 March 2011, then (shown CIV-OTP-0071-0850) said that in January 2011 there was a recruitment of more than 3,184 persons; these recruits were directly transferred to FDS units, namely the 1<sup>st</sup> BCP, 1<sup>st</sup> Infantry Battalion, BASA, Engineering Battalion, GR, BCS, DMIR and, in the theatre of operations, to the *groupements* (centre-west in Daloa, east, southwest, west) in the theatre of operations.
- iii. Asked about CIV-OTP-0071-0850, he testified that he did not know what the acronym "GAD" meant, and that this document was not drafted by the *État-Major*; he denied having sent any recruits to the BB.
- iv. Similarly, Witness P0047 testified that, in the *Armée de Terre*, he never worked with any militia members, he said his men never worked with any

militia groups, and that he was not aware of anything to do with recruitment, since this was not the task of the Commander of the *Forces Terrestres*.

- v. However, shown CIV-OTP-0071-0850, he testified that he must have seen this document, and that the Annex entitled “*Repartition GAD pour la formation militaire*” must relate to recruits being allocated to the various battalion for training. The originating message to train these recruits – as indicated by the reference number – came from the *Chef d’État-Major*. Witness P-0047 was aware that the 1<sup>st</sup> Battalion was supposed to train 100 men, the 1<sup>st</sup> BB 100 men, the BASA 100 men and the 1<sup>st</sup> BCP 98 men, as indicated in the Annex.
- vi. Witness P-0047 also testified that groups – including the GPP and LIMA – listed against names in the Annex signified that members of these groups had offered to serve (“*ont postulé*”, “*ont été retenus*”) in the army.

(ii) Mercenaries and FLGO

1459. Mr Gbagbo argues that the Liberian fighters of Krahn ethnicity (in 2002-2003) were refugees who received “subsidies” from Krahn *notables* - and were therefore not “foreign fighters for hire”, and that the Prosecution has not shown a link between the FLGO or mercenaries and Mr Gbagbo. Mr Blé Goudé makes similar submissions regarding both the mercenaries and FLGO; and says that Mr Blé Goudé “does not appear” in the Prosecution’s narrative or in the evidence adduced about Liberian mercenaries in 2002-2003. Mr Gbagbo also argues that the FLGO was a self-defence group, as opposed to a militia.

1460. First, the evidence shows that in 2002-2003, Liberian fighters:

- i. fought in support of Mr Gbagbo’s government,

- ii. were provided logistical supplies by the *État-Major*, and
- iii. were subordinated to an FDS sergeant, Oulaï Delafosse who received his orders from the FDS *État-Major*.
- iv. The evidence also shows that the Liberian fighters were, in 2002-2003, known as LIMA in Côte d'Ivoire.

1461.

[REDACTED]

1462. With respect to the FLGO, Mr Gbagbo argues that this was not a militia group, but a self-defence group, however any supposed distinction between militia groups on the one hand, and self-defence groups on the other, is meaningless. The evidence shows that the so-called self-defence groups were armed groups that were not official units of the armed forces, but were supported by the authorities and used to supplement the FDS; they were militias. In this regard, the Prosecution relies upon the following evidence as recited in the Prosecution's Trial Brief: In the West of Côte d'Ivoire, the predominant militia group was led by FPI representative Glofiéhi and became known as the FLGO. Witness P-0500 testified that he was recruited by the FLGO, with other men, in March 2003. He was given transport money and informed that the "*cadres*" from the West, such as Hubert Oulaï, was sending them to defend their families. When P-0500 arrived in Guiglo with other recruits they initially stayed at the residence of an FPI deputy. Witness P-0500 and other recruits in Guiglo were trained in assembling and disassembling AK-47's. At the time the FLGO was training over 500 men, mostly

Ivorians, but also some Liberians. The hierarchical structure of the FLGO at Guiglo consisted of Glofiéhi as the General; an *aide-de-camp*, a “*Commissaire*”, who was his subordinate, and the elements. During the period between March and September 2003, at least 50 Liberians were combatting with the elements of Glofiéhi and were reporting to him. At the time the Liberians would also visit the FDS at their Command Post in Guiglo. Upon their return from Guiglo, FLGO members, numbering 678, stayed with the First Battalion of Akouédo before returning home.

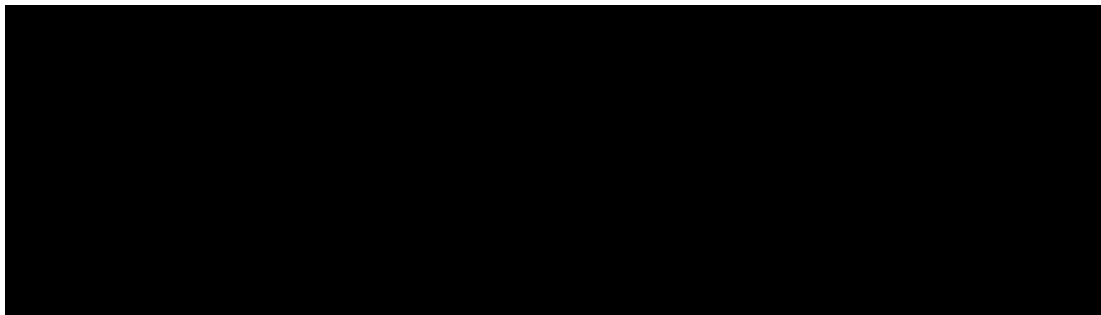
1463. As for Witness P-0009’s evidence regarding the FLGO and the Liberian fighters, the Prosecution notes again that denials by the FDS leadership of their linkage to mercenaries or militia groups should be viewed with caution, since necessarily self-serving. In this regard, the Prosecution also refers the Chamber to the questioning of Witnesses P-0009 and P-0047 on Prosecution document CIV-OTP-0071-0850, above (Section V.D.5(e)(i)).

1464. As for the link between the Liberian fighters and Mr Gbagbo, apart from the evidence recited at paragraph 33 of the Trial Brief, the Prosecution relies upon the following additional evidence linking the use of mercenaries to members of the Inner Circle:

- i. Witness P-0330’s evidence regarding the presence of “white people” in Bloléquin, in 2002-2003 – whom the Prosecution say were mercenaries (foreign fighters for hire) – leading Ivorian “special forces” whom they had trained at the *École de Gendarmerie* in Abidjan, and Witness P-0010’s evidence regarding the establishment of a mixed unit by Bertin Kadet, then Minister of Defence, that was trained at the *École de Gendarmerie* by military trainers – some were French speaking, and others, from South Africa, were English speaking.

- ii. A bill from the Hotel Village Krokrom in the Koumassi 05 area of Abidjan shows that in 2005 Liberian fighters stayed at the hotel – including one Général Bobby Johnson, “*Commandant des Forces Terrestres du Liberia*”, together with [REDACTED] – whose name, the Prosecution submits, bears a striking resemblance to [REDACTED]. Correspondence from the hotel shows that the bill was unpaid and that Tony Oulaï (as an intermediary), “Pouho Richard”, Hubert Oulaï were involved in the payment – or implicated in the non-payment – of this bill. A subsequent letter from the same hotel to Simone Gbagbo, again requesting payment, adds that Pouho Richard had requested the hotel - in the name of Laurent Gbagbo – to provide accommodation to eight Liberians, and that they stayed from 21 May to 1 September 2005.

a.



- b. Witness [REDACTED] evidence that he saw Hubert Oulaï, Mr Blé Goudé at Liberian General Baygboe’s wake. General Baygboe was a LIMA General, and a General in Liberia, in MODEL; he was the Liberian MODEL commander whom Oulaï Delafosse worked with.

6. Defence arguments concerning appointments and promotions

1465. The Prosecution alleges that Mr Gbagbo contributed to the Common Plan through, *inter alia*, creating a structure which enabled him to implement the Common Plan, which resulted in the commission of crimes. This included:



Appointing or promoting persons loyal to him to key posts in the government and the FDS.

1466. The Prosecution relies, in particular, upon the following as evidence of these appointments or promotions:

- i. First, the promotion of senior FDS commanders on 5 August 2010, the day upon which he announced the holding of presidential elections.
- ii. Second, the appointment of Government Ministers on 6 December 2010, including Mr Blé Goudé as Minister of Youth, Vocational Training and Employment, Alain Dogou as Minister of Defence, and Émile Guiriéoulou, as Minister of the Interior.

1467. Mr Blé Goudé argues that he is “entirely absent” from the Prosecution narrative and evidence regarding “ethnically-motivated nominations”; this is true. Mr Gbagbo argues that the FDS high commanders always had to be formally appointed by presidential decree, that the appointments and promotions met objective criteria, that there was nothing out of the ordinary about them and that they were not conducted on an ethnic basis or on the basis of personal loyalty; and in any event that the four “*commandants des armes*” were the only appointments by presidential decree. Mr Blé Goudé makes similar arguments.

1468. First, as for Mr Gbagbo’s argument that the four “*commandants des armes*” were the only appointments by presidential decree, this ignores the appointments of Dogbo Blé and Guiai Bi Poin, which were also made by Presidential decree.

1469. Second, the Prosecution does not allege that Mr Gbagbo *only* appointed or promoted FDS officers who shared ethnic ties with him.

1470. Third, the Prosecution’s case is that Mr Gbagbo’s appointments or promotions to key posts of persons loyal to him assured their loyalty, within the context of

other evidence. The evidence of appointments or promotions *per se* should not be viewed in isolation.

1471. The evidence shows that on 5 August 2010, the day of the announcement of the elections, Mr Gbagbo promoted a number of his high ranking officers, including Philippe Mangou, Georges Guiai Bi Poin, Faussignaux Gagnai Vagba, Aka Kadjou Marc, and Brunot Dogbo Blé. As Witness P-0009 testified, promotion to the rank of General was within the exclusive remit of Mr Gbagbo.

1472. Taken in the context of the speech which followed telling them that if he falls, they fall too, and the evidence that Mr Mangou and Mr Kassaraté urged their subordinates to vote for Mr Gbagbo, and, setting aside the issues of ethnicity and loyalty, the promotions had a specific role in ensuring the allegiance of these officers within the context of Mr Gbagbo's resolve to stay in power. Indeed on 3 December 2010, after the Constitutional Council proclaimed Mr Gbagbo the elected President of Côte d'Ivoire, the high-ranking FDS Generals visited the Presidential Residence. Witness P-0010 gave evidence that the CEMA was informed by Bertin Kadet that all the Generals were to go to the Presidential Residence. They went to "*présenter nos admirations [...] aussi pour nous... renouveler notre disponibilité.*" Witness P-0011 testified: "*(c)'est une coutume dans l'armée ivoirienne: quand un chef est réélu ou élu, nous allons lui présenter d'abord nos devoirs et nous mettre à sa dispositions*".

1473. The Prosecution's case is that the meaning and effect of the words spoken by Mr Gbagbo on 7 August 2010, as recorded in a *Note de Renseignement* – "*si je tombe, vous tomberez*" – is apparent from any reading of the language used, given the time at which this speech was given – immediately after the elections were announced, and the persons present – all the Generals, including Mr Mangou, Mr Kassaraté, Bredou M'bia, Dogbo Blé, Detoh Letho and Guiai Bi Poin. Witness P-0010 testified that the soldiers were being urged to continue being loyal soldiers to the authorities ("*c'est une incitation adressée à nous, soldats, et continuer à être des soldats*").

*loyaux vis-à-vis de l'autorité*"). The Prosecution submits that this was a demand for personal loyalty towards Mr Gbagbo. The *Note de Renseignement* continues:

*"Cette phrase a été interprétée aussi bien par la population que les opposants comme l'octroi de grades aux militaires pour demander à ceux-ci d'être prêts à l'extirper d'une difficulté à venir et non comme une reconnaissance de leurs mérites."* [emphasis added]

1474. The Prosecution submits that it is noteworthy that Mr Mangou remained loyal to Mr Gbagbo until 30 March 2011, Mr Bi Poin until 31 March 2011, and Mr Vagba and Dogbo Blé were with him until the very end of the post-electoral violence. In addition, echoing Mr Gbagbo's language on 7 August 2010, Witness P-0239 testified that Dadi would say to BASA elements that if ever Alassane Ouattara came to power, he would dismiss all the FDS; so it was in their interests to fight.

1475. The Prosecution notes that a copy of the *Note de Renseignement* was collected from the "*Direction Générale de la Police Nationale*" on 11 July 2013. Although undated, it was written after the 50<sup>th</sup> anniversary of Cote d'Ivoire's independence (7 August 2010), and bears a handwritten "VU" on the first page. This is an indicator of reliability since Witness P-0046 testified that he would write "VU" upon reading a document.

1476. On the issue of ethnic favouritism, the Prosecution repeats that it does not allege that Mr Gbagbo *only* appointed or promoted FDS officers who shared ethnic ties with him. As for Mr Gbagbo's arguments about the sourcing of the second sentence of paragraph 57 of the Trial Brief, the Prosecution accepts that not all references cited to support the allegation in the preceding sentence of promotion of a policy of ethnic favouritism in the FDS assist on this issue. The Prosecution here relies upon Witness P-0330's evidence of the accelerated promotion of Colonel Obou Gado, of Bété ethnicity. The point which may be derived from Witness P-0238's evidence is that during the post-electoral violence,

Northerners – persons with names from the North of the country – were linked to the pro-Ouattara side.

1477. Insofar as the supply of equipment and weapons is concerned, leaving the ethnicity of unit commanders aside as a factor, the Prosecution's case is that:

Mr Gbagbo armed the forces loyal to him and which committed the crimes charged, including by placing weapons which he controlled at their disposal and ensuring that weapons and ammunition were supplied to these forces.

1478. This case is made out on the evidence. The Prosecution relies, in particular, on the evidence of Witness P-0321 (on materiel for the use of the GR, stored in the basement of the Presidential Palace, [REDACTED] and Witness P-0047 (on large quantities of twin guns found at the BASA). This aspect is further elaborated at Section V.D.4(c) (in arguments related to Alcide Djédjé).

7. Defence arguments related to the financing, recruitment, arming of pro-Gbagbo youth, militias and mercenaries from August 2010

(a) *Mr Gbagbo's arguments on recruitment of youth and militia into the FDS*

1479. Mr Gbagbo argues that the Prosecution has not demonstrated that there was any departure in the normal procedure for recruitment in the army, but does not elaborate further on this submission.

(b) *Mr Gbagbo's arguments concerning the GPP*

1480. Mr Gbagbo's arguments concerning the activities of the GPP in the months prior to the post-electoral crisis centre around the credibility of Witness P-0435. In addition, Mr Gbagbo argues that the GPP was dissolved in 2003, and there were never many members of the GPP.

1481. First, Mr Gbagbo bases his argument that the GPP was dissolved in 2003 upon a document, CIV-D15-0004-1966, which was shown to Witness P-0435 during his testimony. Witness P-0435 testified:

*“C’est vrai c’est [...] un document qui parle de dissolution du GPP et qui date de décembre 2003, bien sûr. Mais je tiens à souligner le fait que, en décembre 2003, le GPP n’était pas caché, [...] était basé [...] dans les locaux de l’Institut Marie-Thérèse, qui était une ONG internationale et, par la situation géographique, cette base-là était en plein centre d’Adjamé, et que nous sommes restés là jusqu’en 2005. Donc [...] je peux dire plus d’un an après que cette décision-là, que ce communiqué-là a été rédigé. Le GPP menait ses activités et était toujours basé à la même adresse qu’elle était lorsque ce communiqué-là [...] a été fait. Donc, si on veut suivre ce qui est écrit, on dira que le GPP était dissout. Mais si on suit ce qui s’est passé, c’est que le GPP était bel et bien, après ce communiqué-là, toujours présent, et aux yeux de tous.”*

1482. He later continued:

*“Moi, ce que j’avais appris à cette époque, c’est qu’on allait nous délocaliser, mais pas de dissoudre le GPP en tant que tel.*

*[...]*

*[on] parlait plus de nous délocaliser, c’est-à-dire de nous faire quitter l’Institut Marie-Thérèse et de nous reloger ailleurs, dans un endroit qui serait moins exposé au regard [...] de la population et aussi de l’opposition, de la communauté internationale.”*

1483. Second, Mr Gbagbo suggests that if one relies upon Witness P-0435 then “*ce sont quelques dizaines, quelques centaines de marginaux – au plus – qui constitueraient tous ces groupes d’auto-défense ou de milice*”. Mr Gbagbo ignores the documentary evidence presented, which corroborates Witness P-0435’s testimony. First, during his testimony, Witness P-0435 was able to recognise several names, as GPP members, amongst the listed recruits for the FDS in an annex to a Message from the Command of the *Forces Terrestres* signed by Colonel Major Koloubla, the *Commandant en Second*, dated 21 February 2011. This message shows that 398 new recruits were made available to the 1<sup>st</sup> Infantry Battalion (1er Bton D’Inf), the 1<sup>st</sup> BCP (1er BCP), the *Bataillon Blindé* (1er BB) and the BASA (BASA) on 22 February 2011 for military training. The recruits – listed in an Annex to the Message, entitled “*Répartition GAD pour la formation militaire*” – comprised members of the so-called *Groupes d’auto-défense*, as clearly indicated by the acronym GAD, including the GPP, LIMA and FLGO. Members of these militia and/or mercenary groups were assigned to the 1<sup>st</sup> Infantry Battalion (100 men), the 1<sup>st</sup> BCP (98 men), the *Bataillon Blindé* (100 men) and the BASA (100 men). Witness P-0435 recognised several names, amongst the list of recruits, of members of the GPP. He testified that, in fact, the recruits listed in the Annex, were integrated into the army; some of the elements took part in the fighting in Abobo after their training. A similar list of “volunteers” to be convened for the Second Infantry Battalion in Daloa on 9 March 2011 shows further waves of recruitment of members or former members of militia and/or mercenary groups, including LIMA and FLGO, in early March 2011.

1484. Witness P-0435’s description of the GPP as the predominant militia group, with a proliferation of smaller groups around it, is corroborated by letters from Bouazo Yokoyoko Bernard to the Police and the Presidency in the period before and after the 2010 elections. In his letter dated 13 September 2010 to the *Directeur général de la police nationale*, Mr Bouazo presents himself both as *Président du GPP*

and *Le porte-parole des Groupes d'Autodéfense* (GAD), including the satellite groups cited above. In his letter dated 17 January 2011 to the Presidency, Bouazo reiterates his position as "*Le porte parole des Groupes d'Auto-défense (GAD)*" and states there are 20,000 members available to support the FDS.

(c) *Mr Gbagbo's arguments concerning integration of GPP militia into the FDS*

1485. Mr Gbagbo challenges the Prosecution's submission that, in December 2010, measures were taken to integrate militia into the FDS. Mr Gbagbo argues that Witness P-0435 cannot be believed in his testimony on Minister of Defence Alain Dogou's December 2010 request of GPP President Bouazo Yoko Yoko to choose 50 GPP elements to be integrated into the FDS, i) due to general character considerations; and ii) because he was not in direct contact with Minister Dogou and Mr Gbagbo.

1486. On the first point, the Prosecution notes the gratuitous language used, again, in relation to Witness P-0435, and refers to Section II in relation to the character points raised by both Defence teams.

1487. On the second point, Witness P-0435 gave the basis for his knowledge. He testified about the ongoing link between the Ministry of Defence and the GPP, and about having once accompanied Bouazo to the cabinet of the Ministry of Defence. Furthermore, when asked how he learned that Dogou and other political personalities had requested the creation of the *Légion Ivoirienne de Sécurité*, the witness replied:

*"Je suis rentré en contact avec Bouazo, puisque c'est moi qui avais la charge en ce... en cette période-là du volet militaire. Donc, il m'a demandé de contacter d'abord les commandants de ces différentes zones-là, les informer et qu'ils s'organisent avec des officiers qui étaient à la base ou avec les autres commandants au niveau d'Abidjan,*

*afin de détacher des éléments qui allaient les assister dans la formation de ces jeunes."*

1488. The witness described the arrangements he made, including in Gagnoa, where Minister Bertin Kadet had asked for youths to be trained, resulting in the training of 300 youths.

*(d) Mr Gbagbo's arguments concerning financing youth and militia*

1489. Mr Gbagbo argues that the Prosecution allegation that the pro-Gbagbo youth and militia groups received money from Mr Gbagbo is not made out because based on unreliable documents which the Prosecution has not authenticated, because the relevant sums are derisory anyway, and because receipt of money from Mr Gbagbo's cabinet (from the "*Secrétariat du Directeur Adjoint du Cabinet du Président de la République*") does not necessarily mean that the money came from Mr Gbagbo himself. Mr Gbagbo also argues that Witness P-0625 did not authenticate the receipts during his testimony.

1490. First, the Prosecution has addressed the wider arguments regarding the chain of custody of financial receipts and other documents seized from the Presidential Palace at Section II of this Response.

1491. Second, in arguing that the monies received were derisory, Mr Gbagbo relies upon one receipt showing a sum of money received by Serge Koffi in August 2010. This ignores the incidence of receipts of money for Serge Koffi – for example, showing sums of money received by him in September 2010 (100,000 CFA), January 2011 (100,000 CFA), and March 2011 (100,000 CFA); and the other recipients of money – as elaborated at paragraph 270 of the Prosecution Trial Brief. For example, Youssouf Fofana (*Voix du Nord*) received 450,000 FCFA on 18 November 2010, and another 450,000 FCFA on 5 January 2011; and Eugene Djué (UPLTCI), received 1,300,000 FCFA on 18 November 2010, another 300,000 FCFA on 18 November 2010 and 1,300,000 FCFA on 5 January 2011.



1492. Third, Witness P-0625's evidence both corroborates and authenticates the receipts to the extent that he testified, specifically, that he saw young people from the Patriotic Galaxy pick up "bonuses" in envelopes from the Secretariat of the Deputy Director of the President's Cabinet.

*(e) Mr Gbagbo's arguments concerning mercenaries*

1493. [REDACTED]

[REDACTED]

[REDACTED]

*(f) Defence arguments concerning the FLGO*

1494. Mr Blé Goudé alleges that the evidence regarding the sponsorship of the FLGO is insufficient to demonstrate that the funds were given to keep Mr Gbagbo in power by all means. In this regard, Mr Blé Goudé states that the Prosecution has not demonstrated how the document CIV-OTP-0025-0381, a receipt for 100,000 FCFA, makes it more or less likely that Mr Gbagbo and the Inner Circle were likely to resort to violence. The Prosecution submits that the letter and accompanying receipt generally demonstrate the strong links between Mr Gbagbo's government and the FLGO in the months prior to the post-election violence – especially when the money requested was for welcoming Mr Gbagbo in the west. The letter, dated 31 December 2010 from Paul Nonzi to Désiré Tagro, confirms that these links remained during the post-election violence – and this despite the lack of evidence regarding Mr Tagro's response to the letter. In the letter, Paul Nonzi praises Désiré Tagro, demonstrates his support for the Presidency and tells the latter "*mettez tout en oeuvre pour que nos 60 éléments*

*puissant partir sur Bangolo et Semian aujourd'hui*" as the elements are "*travailleurs*" and were starting to get discouraged with how slow things were going. It can be inferred that the financing requested in this letter was not only for leisure purposes but for the elements to get back to work – meaning fighting. In sum, it can be inferred that the financing of the FLGO – even in the form of travel expenses - was designated to maintain their support for Mr Gbagbo.

1495. As for Mr Blé Goudé's relationship with the FLGO, the Prosecution refers the Chamber to Section V.F.2, below, in which this topic is addressed.

8. Defence arguments regarding diminished capacity of the army and police

1496. Mr Gbagbo argues that the capacity of the army and police was diminished due to a weakness of manpower, a lack of weapons and ammunition, and difficulties in communication. As detailed below, the evidence does not bear this out.

1497. In relation to manpower, Mr Gbagbo relies exclusively on a passage in which Witness P-0009 testified that General Kassaraté and General Brédou were reluctant to contribute personnel from the *Gendarmerie* and the police, respectively to the army. As cited by Mr Gbagbo, the witness stated that General Kassaraté made only 500 persons available to him, and General Brédou only 1250. Firstly, it is apparent from the same passage that a much larger number of personnel continued to be available to the *Gendarmerie* and the police: a total of approximately 15,000 gendarmes and nearly 20,000 policemen. Secondly, the matter of personnel contribution as between the *Gendarmerie*, the police and the army says nothing of the total number of army personnel. There is therefore no evidence to indicate that the army and police suffered from diminished manpower during the post-electoral crisis. The Prosecution additionally notes that Mr Gbagbo impermissibly attempts to rely on a statement not in evidence

(*“Comme le confirmeront les autres témoins militaires...”*), which for that reason should be disregarded.

1498. In relation to weaponry, Mr Gbagbo relies on Witnesses P-0009 and P-0010's testimony to argue that there was a lack of weapons and ammunition. He also refers to *“l'audition d'autres témoins”* without citing any sources. Mr Gbagbo claims, based on Witness P-0009's testimony, that the last supply of weapons was in 2003 and consisted of some vehicles and three planes. In the passage cited, however, the witness replies specifically to the question of how many BTR-80s were purchased and whether they were in operation. In other words, he does not describe the full contents of the 2003 supply, as Mr Gbagbo suggests:

*“R. Merci. Ces BTR ont été achetés dans le cadre de la crise, en 2003.*

*Tout l'armement que nous avons reçu, c'est en 2003.*

*Q. Il y avait combien de BTR-80 qui ont été achetés ?*

*R. Je crois qu'il doit y en avoir six pour l'armée ivoirienne – six, je crois.*

*Q. Et lors de la crise postélectorale, combien y en avait-il en opération ?*

*R. Alors, il faut noter que c'était des véhicules d'occasion, des véhicules d'occasion qui n'ont pas... qui n'ont pas fait long feu – qui n'ont pas fait long feu. Celui de... au niveau du bataillon blindé, je crois qu'il doit avoir un qui... qui marchait, au niveau de la Garde républicaine, un ou deux qui marchaient, mais ces véhicules n'ont pas fait long feu.”*

1499. Mr Gbagbo also refers to Witness P-0010's testimony about the detachment of students from the *École de la Gendarmerie* who only had access to old weaponry.

This use of old weaponry needs to be situated within the context given by the witness, i.e. that:

*“[...] ce qu’il faut savoir, c’est qu’à l’école de gendarmerie, on n’est pas une unité d’intervention, donc les équipements en armes, on n’est pas prioritaires; c’est les escadrons de marche de la gendarmerie qui sont prioritairement équipés en armes.”*

1500. The evidence relied upon by Mr Gbagbo therefore does not demonstrate any real shortage of weaponry in the army and police. To the contrary, and as already detailed by the Prosecution in its Trial Brief, the CECOS, BASA, GEB and the *Garde Républicaine* were given weapons and ammunitions that other FDS units had difficulty obtaining. As Witness P-0009 said, due to the materials allocated to CECOS, *“nous nous sommes servis du CECOS”*.

1501. In relation to communications, Mr Gbagbo cites no evidence in support of his arguments about difficulties in communication, save for Witness P-0011’s testimony that French agents were listening in to the communication of Ivorian authorities. Contrary to the argument that members of the military did not have means to communicate with each other, Witness P-0009 described the use of mobile phones, Witness P-0011 described the use of VHF, mobile phones, ordinary phones, mobile radios and written communication, and Witness P-0047 described the use of messages or telephone, as well as written orders.

## 9. Defence arguments related to arming of FDS perpetrating units

### (a) *Defence arguments on the violation of the embargo*

1502. Mr Gbagbo argues that the Prosecution has not demonstrated that he circumvented the UN-imposed weapons embargo, through the creation of CECOS for this very purpose. The Prosecution repeats its submissions at Section V.D.4(c), that the evidence shows that Lafont supplied weapons and ammunition

to FDS units both before and during the post-electoral violence, and that he carried out such supplies through different entities including Darkwood Logistics and Protec-SA; and that supplies received by CECOS before the post-electoral violence were not for usage in public order operations, in contravention of the arms embargo then in place.

*(b) Mr Gbagbo's arguments on CECOS and other specialised units*

1503. Mr Gbagbo challenges the Prosecution's argument that he made appointments on the basis of ethnicity and personal loyalty. As to Mr Gbagbo's appointment of senior commanding officers on the basis of ethnicity and personal loyalty, the Prosecution repeats its submissions at Section V.D.6.

1504. Once more, as to Mr Gbagbo's submissions on the creation and purpose of CECOS, in which Mr Gbagbo argues that CECOS was established and armed for purely military reasons in order to combat banditism the Prosecution repeats its submissions at Section V.D.4(c).

10. Defence arguments concerning implementation of the Common Plan between the first and second round of the elections

1505. Mr Gbagbo argues that the Prosecution has not demonstrated the relevance to the Common Plan of events between 31 October and 27 November 2010.

(i) 14 November 2010 requisition of armed forces

1506. Mr Gbagbo argues, with reference to paragraph 102 of the Trial Brief, that the Prosecution does not substantiate its claim that Mr Gbagbo's purpose in requisitioning the armed forces was to clamp down on civilians who supported his opponent. He argues that the Prosecution relies on its own opinion. He argues that the requisition was organised within the framework of the CCI, and with the backing of the French authorities and UNOCI. He further argues: "*qu'un décret de*

*réquisition est nécessaire à l'utilisation de l'armée et qu'il ne s'agit en aucune manière [...] d'un outil pour préparer une attaque contre des civils", and that a decree is "un outil neutre" that "n'impose pas un comportement spécifique à l'armée en matière opérationnelle".*

1507. As apparent from the wording of the full sentence in paragraph 102, the claim that "GBAGBO requisitioned the armed forces for the purpose of clamping down on civilians who supported his opponent" is preceded by the words "[a]s seen during the post-election violence". The proof of Mr Gbagbo's true purpose – to clamp down on opposition supporters – is demonstrated by such acts of repression by the FDS: *see* Section III.C.1(b)(iv).

1508. The requisition of the FANCI on 14 November had no meaningful impact on the security measures for the election as these were already facilitated by the CCI under the Ouagadougou Accords. There was no such decree for securing the first round of the elections and, for the second round of the elections, the CCI continued its work in liaison with the FDS, FAFN and the *forces impartiales*. The 14 November decree applies to the FANCI, it was a unilateral measure taken by Mr Gbagbo and it was subsequently applied to mobilise the FANCI in execution of curfews from 26 November 2010 onwards, which was another unilateral step taken by Mr Gbagbo without the agreement of other parties. Witness P-0010 testified that the 14 November decree remained in application beyond the elections and was the legal basis for the continued mobilisation of the FANCI, including on the day of 16 December 2010. This demonstrates that the engagement of the armed forces was already intended as of 14 November 2010 and is indicative of Mr Gbagbo's intent to use all means to stay in power.

1509. Contrary to Mr Gbagbo's characterisation of paragraph 103 of the Trial Brief, the relevance of the attack on RHDP HQ of 19 November 2010, five days after the requisition, is to demonstrate that the stated aim of the requisition – securing the second round of elections – was not *bona fides*. That "[c]et affrontement n'implique en

*rien les FDS*” is the point exactly. If the purpose of the requisition was actually to secure the second round of elections, then it would be expected that the FDS would secure the headquarters of the opposition party.

1510. Mr Gbagbo misapprehends Witness P-0009’s testimony in arguing that the requisition was organised with the backing of the French authorities and UNOCI. In the portion of Witness P-0009’s testimony relied upon by Mr Gbagbo, the witness says:

*“Alors, ce décret, il s’agit du décret pour la sécurisation du processus électoral. Il faut noter qu’il y a eu plusieurs décrets. Déjà, évoluant dans le cadre de l’accord politique de Ouagadougou, qui a été signé le 4 mars 2005, par le Président Blaise Compaore et facilitateur de l’accord, le Président Laurent Gbagbo lui-même déjà, puisque nous travaillions, au niveau du CCI, qui est le Centre de commandement intégré. Donc, dans ce centre, nous étions deux chefs d’état-major, le général Bakayoko et le général Mangou avec pour chef du Centre de commandement intégré le général Kouakou Nicolas. Donc, déjà dans ce centre, le Président nous a donné une mission par le biais du décret 2007-82 du 4... du 16 mars 2007.”*

1511. He then says, when asked about the general functioning of integrated command during the post-electoral crisis:

*“Ça a été, d’ailleurs, un plan conjoint, puisque nous avons travaillé avec les chefs d’état-major, Bakayoko et moi, et les deux commandants des forces impartiales, le général Palasset, pour l’ONUCI, et le général Amoussou pour l’ONUCI.”*

1512. At no point does Witness P-0009 say that the requisition was decided by the French authorities and UNOCI. Mr Gbagbo does not cite to any evidence to

substantiate his claim that “[c]’est une fois que les décisions – encore une fois prises par Palasset et le Général Amoussou, – concernant le principe et les modalités de la sécurisation avaient été arrêtés qu’il appartenait au Président Gbagbo, conformément à ses obligations légales, de passer un décret pour permettre l’intervention des forces armées gouvernementales.”

1513. While it is true that the requisition did not, in and of itself, bind the army to operate in a certain manner, it did provide – as Mr Gbagbo states – “*un cadre légal dans lequel l’armée peut prendre des décisions opérationnelles.*” Its value is, as argued by the Prosecution, as a necessary pretext for the mobilisation of the FDS during the post-election period. As Witness P-0009 explained, officers do not deploy an army in a locality under the competence of the police or gendarmerie without a requisition. This applied, for example, to the 120mm mortars held by BASA. When asked about the kind of authorisation required for the use of this weapon, Witness P-0009 replied that they already had the authorisation in the framework of the requisition (albeit that he was here referring to a supposed January 2011 requisition of the armed forces): “[d]ès l’instant où l’armée est requise, l’armée vient avec tous ses moyens.”

(ii) Imposition of curfews

1514. Mr Gbagbo argues that the Prosecution does not explain the link between the curfews imposed and the Common Plan.

1515. As explained, the curfews were one measure – among others details in Part II.C.2.(a) of the Trial Brief – that served as a pretext for the pro-Gbagbo forces to commence their violence against the political opposition, and as such are one indicator of the Common Plan.

(iii) Rising violence against the pro-Ouattara camp



1516. The observations made by Mr Gbagbo about the instances of rising violence against the pro-Ouattara camp between the two rounds of elections, particularly about the intervention of police, do not detract from the pattern of rising violence against the pro-Ouattara camp, and the examples cited to demonstrate this, as alleged in the Trial Brief.

(iv) The Gendarmerie's refusal to protect RHDP party headquarters

1517. Mr Gbagbo argues without substantiation that the police, and not the *Gendarmerie*, have jurisdiction over urban areas for the protection of party headquarters, so that the Prosecution allegation that the Gendarmerie refused to protect RHDP party headquarters shows no differential treatment. While Witness P-0011 indicated – after being shown the *Gendarmerie's* refusal letter – that the police were “*en première position*” with the *Gendarmerie* sending reinforcements where necessary, he first said – before being shown the refusal letter – that there was nothing abnormal in such a request for protection. It was, he said, “*tout à fait dans les normes qu’une structure demande le concours de la gendarmerie pour sécuriser telle ou telle réunion, et c’est notre devoir de le faire.*” The *Gendarmerie's* refusal to protect RHDP party headquarters, especially in light of this testimony, demonstrates inferior treatment of the RHDP, *vis-à-vis* the LMP.

11. Defence arguments concerning implementation of the Common Plan from 28 November 2010

1518. Mr Gbagbo argues that the Prosecution has not demonstrated the relevance to the Common Plan of events between 28 November and 10 December 2010.

1519. Mr Gbagbo argues that the Prosecution, in alleging a Common Plan, only points to conduct during the period of 28 November to 10 December 2010 that is normal for a head of State in exercising his activities. The Prosecution submits that, in demonstrating the existence of the Common Plan and in considering Mr

Gbagbo's contributions to the Common Plan, it is irrelevant that many of Mr Gbagbo's actions during this period were consistent with his belief that he was the rightfully elected President. Mr Gbagbo wrongly takes each of his actions in isolation. Mr Gbagbo's actions should be read in the context of his prior and subsequent actions, the actions and words of members of the Inner Circle, including Mr Blé Goudé, and the conduct of the pro-Gbagbo forces both in this period and after. All of these factors demonstrate both the existence of the Common Plan and Mr Gbagbo's acceptance of violent means in order to stay in power.

*(a) Statements by Mr Gbagbo and members of the Inner Circle following the second round*

1520. As Mr Gbagbo notes, the seven footnotes in Part II.C.2.b(i) of the Trial Brief (paragraphs 113 to 119) contain no reference. At the time of drafting, the Prosecution's request for an extension of time to add the sourced videos to its List of Evidence was pending before the Chamber. Following the Chamber's rejection of that request on 1 June 2018, the Prosecution removed the sourced videos, as they can no longer be relied upon. The Prosecution does not therefore rely upon these paragraphs of the Trial Brief.

*(b) Announcement of the results*

1521. Mr Gbagbo argues that only the *Conseil Constitutionnel* had the prerogative to declare the election results, and suggests that the proclamation by the CEI of Mr Ouattara as the winner amounted to a "*coup d'état institutionnel*". He argues that UN SRSG Choi proclaimed Mr Ouattara the winner in violation of his mandate. He suggests that the closeness of the relationship between himself and Constitutional Council President Yao N'Dré is of no relevance. He claims that CEI President Bakayoko "*un proche d'Alassane Ouattara, s'était rendu en cachette des autres membres de la CEI (à vérifier), à la demande de l'ambassadeur de France (à vérifier) au QG de celui qui n'était alors que l'un des deux candidats pour « annoncer » les*

*résultats et se substituer au Conseil constitutionnel.*" He further claims that Bakayoko was surrounded by "*rebelles en armes*" at the time of the announcement.

1522. Mr Gbagbo cites no evidence or – in the case of legal conclusions – analysis in support of many of these claims, specifically:

- a. that only the *Conseil Constitutionnel* had the prerogative to declare the election results;
- b. that the proclamation by the CEI of Mr Ouattara as the winner amounted to a "*coup d'état institutionnel*";
- c. that UN SRSG Choi proclaimed Mr Ouattara the winner in violation of his mandate; and
- d. that CEI President Bakayoko was close to Mr Ouattara, that he went to the Golf unbeknownst to other members of the CEI, and this at the behest of the French ambassador.

1523. Further, Mr Gbagbo misstates the evidence when he claims that a representative (presumably of UNOCI) "convinced" the President of the CEI to go to the Golf Hotel to proclaim Mr Ouattara elected. Witness P-0625's testimony, in response to a question about UN SRSG Choi's role, does not refer to any convincing:

*"[...] c'est eux qui sont allés prendre le Président de la Commission, M. Youssouf Bakayoko, pour l'amener, pour calmer les élections dans ce que vous appelez le « quartier général du candidat M. Alassane Ouattara »".*

1524. It is similarly a misstatement of the evidence to say that Witness P-0369 "admitted" that the Security Council resolution containing UNOCI's mandate did not allow SRSG Choi to certify the winner of the election. During questioning by

the Defence, Witness P-0369's answer was: "That is not up to me to decide. I don't think I'm here as a legal scholar on election law", and later: "We don't take a position on that. I'm merely stating what the SRSG did."

1525. Even assuming that these claims of institutional *coup d'état* by Mr Ouattara and supported by the UN could be substantiated, Mr Gbagbo has not demonstrated their relevance in terms of the Common Plan.

1526. Finally, as to the closeness of the relationship between Mr Gbagbo and Constitutional Council President Yao N'Dré, the Prosecution submits that it is one factor among many to demonstrate the existence of the Common Plan for Mr Gbagbo to remain in power. In particular, N'Dré's visit to Mr Gbagbo on 30 November 2011 – the same day as the CEI's failed attempt to provide provisional results – is highly relevant considering that he purported to resolve the dispute in Mr Gbagbo's favour three days later on 3 December 2010. So too is his visit to Mr Gbagbo on 3 December 2011 between 11h19 and 12h00, a matter of hours before the proclamation of results by the Constitutional Council in the afternoon.

(c) *Wassakara incident*

1527. Mr Gbagbo argues that the Chamber should not accept Witness P-0440's testimony that the information related in the BAE report was false because i) he did not write the BAE report; and ii) he did not witness the incident itself.

1528. The Prosecution refers to its submissions at Section III.C.1(b)(i)b.i, and reiterates in particular that Witness P-0440's personal observations and the information he obtained from inquiries immediately after the event should carry more weight than the information provided to the BAE – and indeed to Witness P-0440 himself – by the *Gendarmerie* unit implicated in the crimes.

(d) 3 December 2010 meeting: Mr Gbagbo and the Inner Circle's strategy following UN certification of Mr Ouattara's election victory

1529. Mr Gbagbo argues that the handwritten minutes of meeting "*réunion de concertation*" is insufficient to prove that such a meeting was held. It challenges the reliability, for lack of authenticity, of the Presidential Residence visitor's logbook, and further states that "it will be explained" that many people worked at the *Présidence* and that entering the Residence did not mean having an appointment with the President. He further argues that, in any case, the minutes demonstrate no criminal intention aimed at committing crimes against the civilian population.

1530. As to the reliability of the logbook, the Prosecution refers generally to Section II. The current example is a case in point as to why the logbook – and indeed the minutes of meeting – should be accepted as authentic. The appearances of Mr Djédjé and Mr Kadet in the logbook tend to corroborate the occurrence of the *reunion de concertation*, given that these two persons were noted as responsible for a "*cellule*". The logbook has Mr Djédjé entering at 10h49 to see the President, and Mr Bertin entering at 10h53 to see the President. What "will be explained" by Mr Gbagbo about the Residence has no evidential value and should be disregarded. Finally, as argued, it is immaterial that the minutes of the meeting do not in themselves reveal a criminal intention; their relevance to the Common Plan is that they demonstrate the coordinated and concerted efforts (through the establishment of diplomatic, defence/security and communication *cellules*), contribution, intent and awareness of Mr Gbagbo and members of the Inner Circle to keep Mr Gbagbo in power by all means.

1531. The Prosecution addresses Mr Blé Goudé's arguments in relation to this meeting below, at Section V.D.14(b)(i).

## 12. Defence arguments related to planning and conduct of FDS operations

### *(a) Planning and ordering*

1532. Mr Gbagbo outlines the process followed by the FDS in the development, issuance and execution of orders, including the role of the CPCO. He then states, without elaboration, that the Prosecution has not shown that the actions of military and police chiefs, for example, their response to armed attacks in Abobo, were anything other than the fulfilment of their mission within the framework of republican legality. Given that they acted within their functions, he argues, there can be no Common Plan.

1533. The question of whether the military and police acted within their functions (as opposed to, for example, in a personal capacity) has no relevance to the existence of the Common Plan or the criminality of the conduct of FDS units as demonstrated by the evidence presented, including in relation to the 16-19 December 2010 incident, the 25-28 February 2011 incident, the 3 March 2011 incident, and the 17 March 2011 incident.

### *(b) Defence arguments concerning the army's respect for humanitarian standards*

1534. Mr Gbagbo argues, based on witness testimony regarding instruction on the rules of international humanitarian law within the army and the army's stated respect for these rules, that the police and the army did in fact respect these principles, when performing both law enforcement operation and military operations against armed rebels. In relation to the use of 120mm mortars, in particular, he incorrectly argues that such weaponry was never used (except on one mission in the Banco forest) in order to avoid civilian casualties, despite the overwhelming evidence that the BASA in fact launched them from Camp Commando into Abobo on 17 March 2011, as detailed in Section IV.F.

1535. The questions of whether the army received training in international humanitarian law and whether Witness P-0156 and other (unspecified) witnesses allegedly adhered to it demonstrates an awareness on the part of these individuals of the legal – international humanitarian law – framework within which they were required to act during a state of armed conflict, in particular. However, the claimed adherence to international humanitarian law is meaningless in the face of the evidence presented as to the crimes perpetrated by FDS units. Further, in relation to the use of 120mm mortars, Witness P-0009's denial of the FDS's use of this weaponry in the 17 March 2011 incident is not credible in light of the evidence outlined at Section Section IV.F.

1536. Mr Blé Goudé incorrectly argues that FDS rules of engagement on the use of mortars were in effect during the crisis – despite there no evidence of any specific rules being distributed with respect to, for example, the use of heavy weapons in an urban area. This argument, and the remainder of Mr Blé Goudé's arguments on the 17 March 2011 shelling incident are addressed at Section IV.F.

13. Defence arguments concerning Mr Gbagbo's exercise of control; and instructions and incitements

1537. Mr Gbagbo broadly argues that the army, police and Gendarmerie did not act directly on orders given by him, or engages in credibility and qualitative assessments of the evidence. The Prosecution will address these matters in the next sub-sections.

(i) Mr Gbagbo's adoption of the curfews

1538. Mr Gbagbo claims that he was the only one who could sign an order adopting a curfew, but that those curfews ordered during the post-electoral crisis were not his initiative, that the FDS requested them and that he simply validated them. This amounts to arguing that Mr Gbagbo, as the head of State and Commander-

in-Chief of the National Armed Forces, was fulfilling his functions in a perfunctory manner, as a mechanical administrator who had no power to initiate military action. This argument cannot be sustained. Furthermore, the evidence does not show that the signing of these curfews had no meaning for Mr Gbagbo. If that had been the case, there would have been no reason for him to announce the first curfew on national television during the debate of 25 November 2010, nor would he have made reference to it during his address to the nation on 21 December 2010.

(ii) Mr Gbagbo's requisition of 14 November 2010

1539. Similar to Mr Gbagbo's arguments on the adoption of the curfews, he also argues that the requisition was not his initiative and that he merely validated determinations made by others. Again this argument represents the head of State and Commander-in-Chief as a mechanical administrator with no power to initiate military action, and cannot be sustained.

1540. Mr Gbagbo also claims once more that the requisition was "*décidée notamment par les Autorités françaises et les Autorités de l'ONUCI.*" The Prosecution repeats its argument at Section V.D.10(i) above that Mr Gbagbo misapprehends Witness P-0009's testimony in arguing that the requisition was organised with the backing of the French authorities and UNOCI, or indeed decided by these very authorities; and its related submissions at Section V.D.10(i) regarding the 14 November 2010 requisition.

(iii) Minister of Defence and Mr Gbagbo's level of information on the conduct of operations

1541. Mr Gbagbo states in the sub-heading of Section 4.4.3 (Annex 5) that "*il ressort des témoignages que le Ministre de la Défense était peu informé du déroulement des opérations*", yet does not substantiate this claim with any arguments or sourcing in



the body of his submissions. To the contrary, Mr Gbagbo himself refers to Witness P-0009's evidence that he, the CEMA, would inform the Minister of Defence of upcoming *communiqués* by the *porte-parole* of the army.

1542. Mr Gbagbo argues that he was even less informed than the Minister of Defence, relying on testimony from Witness P-0009 about the reporting chain, and about how rarely he (Mr Gbagbo) was informed of upcoming press *communiqués* from the army. Firstly, the passage cited from Witness P-0009's testimony about the reporting chain does not demonstrate – as Mr Gbagbo claims – that the Minister of Defence was Witness P-0009's *interlocuteur*, and that Witness P-0009 had more conversations with the Minister than the President. In fact, Witness P-0009 emphasised that he reported to the initiator of the requisition – that is, the President, Mr Gbagbo – while ensuring that the Minister of Defence also had the same level of information:

*“Donc, au reçu de l’ordre [la réquisition], nous nous exécutons, donc, nous rendions compte à celui qui est l’initiateur de la réquisition – au Président de la République. Mais il y a quand même une hiérarchie : il y a le ministre de la Défense et le Président de la République. Pour ce qui était de mon cas, puisque nous étions dans le feu de l’action, et compte tenu de l’urgence, je rendais compte à la fois au ministre de la Défense et au Président de la République, pour être sûr que les deux étaient au même niveau d’information.”*

1543. In relation to the press *communiqués*, Mr Gbagbo's argument that he was rarely informed of upcoming *communiqués* has no relevance to the level of information he received about ongoing operations. As Witness P-0009 explained, “*Vous avez un porte-parole, ici, qui, chaque fois, informe les gens de ce qui se passe, des disposition qui sont prises, de ce qui va être fait.*” The function of a *communiqué* is to inform “people” – i.e. the general population – of army activities. That not all

*communiqués* were read to or approved by Mr Gbagbo prior to dissemination says nothing about the level of information that Mr Gbagbo himself received. To the contrary, and to cite Witness P-0009 once more: “*nous rendions compte à celui qui est l’initiateur de la réquisition – au Président de la République.*” In any case, the evidence indicates that Mr Gbagbo did read *communiqués* before their issuance. In relation to the the *communiqués* following the 3 March incident, Witness P-0009 testified that the FDS *communiqué* was approved by Minister of Defence Dogou. The CEMA testified that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the *communiqué* and that Mr Gbagbo would review such press releases himself.

(iv) Mr Gbagbo’s argument that he never gave an operational order

1544. Mr Gbagbo states in the sub-heading at Section 4.4.4 (Annex 5) that “[i]l ressort du dossier que le Président Gbagbo n’a jamais donné un ordre quelconque de nature opérationnelle, même vague, se contenant lors des quelques réunions officielles tenues avec les responsables FDS de les encourager à maintenir la légalité républicaine et éventuellement à déloger les gangs armés terrorisant la population”, yet does not substantiate any of these claims with any arguments or sourcing in the body of his submissions. Mr Gbagbo argues – also with no substantiation – that Witness P-0009 and “other witnesses” did “not really” receive instructions from him during the crisis, and that “*si Mangou avait dû recevoir des instructions, ça aurait été du Président, via le Ministre de la Défense.*” He also argues that the fact of contact between himself and Witness P-0009 does not mean that instructions were given, and that any contact was not constant.

1545. The undisturbed evidence of Witness P-0009 is that during the post-electoral crisis, it was Mr Gbagbo who gave him instructions:

“Q. [...] *Durant la crise postélectorale, toujours entre le 28 novembre 2010, donc, et le 11 avril 2011, qui vous donnait vos instructions,*

*ordres, missions – peu importe la terminologie –, qui, donc était cette personne ou ces personnes ?*

*A. Le Président Laurent Gbagbo.”*

1546. Indeed, when Defence Counsel suggested to the witness during examination that, in terms of instructions from Mr Gbagbo, there were no real operational discussions, the following exchange took place between the Presiding Judge and the witness:

*“Q. La question est comme suit : est-ce que le Président vous a jamais donné des instructions ou des consignes opérationnelles ? Oui ou non ?*

*R. Oui, Monsieur le Président. Quand nous lui faisons un compte rendu, c’est un compte rendu opérationnel. Et quand il nous donne une instruction, c’est une instruction qui va dans le sens opérationnel.”*

1547. Contrary to Mr Gbagbo’s arguments, it has no relevance that the meetings at the Presidential Residence were what he calls “relatively limited” given that Côte d’Ivoire was in a state of war, or that they occurred in a formal framework. As Witness P-0009 explained, “[...] souvent, les comptes rendus sont faits au téléphone.” Mr Gbagbo has not been able to adduce any argument to counter Witness P-0009’s clear evidence that he received his instructions – including operational instructions – from Mr Gbagbo. The Prosecution continues to rely on the illustrative examples of orders from Mr Gbagbo in paragraph 203 of its Trial Brief.

(v) Defence arguments related to Mr Gbagbo’s orders on Abobo

1548. Mr Gbagbo appears to argue, in order to demonstrate his lack of instructions to the FDS during the post-electoral crisis, that he did not give any orders in

relation to operations in Abobo in January and February 2011. This argument cannot be maintained in the face of the evidence on record, including the following.

- a. Witness P-0047 testified that, at a meeting held with the high command of the FDS on the evening of 12 January 2011, Mr Gbagbo “*nous exhorte à reprendre le combat parce que notre mission c’était de sécuriser les populations... les populations d’Anyama et d’Abobo, en particulier [...].*” While Witness P-0009 testified that Mr Gbagbo did not give any particular instruction at this meeting, he places this in context by saying: “*Il savait que nous étions requis, que nous faisions notre travail.*” In other words, given the requisition of the army, it was not necessary for Mr Gbagbo to give any particular instructions. Whilst Witness P-0009 makes this point in relation to a supposed January 2011 requisition of the army (which the Prosecution submits – and the evidence shows - does not exist), the point – regarding the effect of Mr Gbagbo’s requisitioning of the armed forces – is nevertheless well made.
- b. As evident from RTI footage, on 10 February 2011, Mr Gbagbo presided over a *Conseil des ministres*, from which Don Mello read a *communiqué* over RTI, saying that Mr Gbagbo gave “*instructions, pour renforcer les moyens humains et matériels, pour mieux sécuriser Abobo et Duékoué et maintenir le couvre-feu à Abobo.*”
- c. According to Witnesses P-0009, P-0010, P-0011 and other sources, on 24 February 2011, Mr Gbagbo instructed his Generals to do everything they could to liberate the MACA-Abengourou axis in Abobo, to liberate N’Dotre, and not to cede Abobo.

1549. In light of this evidence, Mr Gbagbo cannot reasonably argue, as he does, that he had no role in defining security strategy, or that “*...au cours de la crise, les décisions d’ordre sécuritaire furent prises par les responsables de l’armée et de la police,*

*comme c'était leur rôle et leur devoir et que l'échelon politique – a fortiori le Président Gbagbo – n'y eut aucun rôle."*

1550. Mr Gbagbo further argues that the January and February 2011 operations in Abobo were conceived by the Generals on 7 January 2011, thereby excluding any of his own influence. He also makes the general argument that it is clear from the evidence that he had no role in the execution of the security strategy, and that it was the Generals who decided upon the conduct of operations in the field. The Prosecution is not required to show – and indeed has not argued – that Mr Gbagbo was involved in operational planning. While the Generals' meeting of 7 January 2011 took place at the *État-Major* and not in the presence of Mr Gbagbo, this meeting occurred some two to three days after Witness P-0009 had met with Mr Gbagbo to discuss the worsening situation in Abobo. It was – according to Witness P-0009 – at this meeting that Mr Gbagbo requisitioned the FANCI in order to secure Abidjan and to face the security problems arising out of Abobo. While the Prosecution submits that Witness P-0009 is not credible on this point, because the evidence presented shows that the requisition was in fact issued on 14 November 2010, it remains clear and indeed uncontested that i) Mr Gbagbo had already requisitioned the army; and ii) he further discussed the situation in Abobo with Witness P-0009 on 4 January 2011. Against this background, it cannot reasonably be argued that the decision to deploy in Abobo came from the Generals alone, with no involvement from Mr Gbagbo, at their meeting of 7 January 2011.

(vi) Defence argument that Mr Gbagbo gave no orders

1551. Mr Gbagbo argues that the curfews and requisition of the army were measures necessary for the security of Abidjan, that they – legally speaking – could only be imposed by the political authorities, and that because they did not set out any particular operation they could not amount to "orders". As the

Prosecution has already argued, this amounts to arguing that a head of State is fulfilling his functions in a perfunctory manner, as a mechanical administrator who had no power to initiate military action. None of these arguments detract from the curfews and requisition being examples of Mr Gbagbo's orders that were executed by the FDS.

1552. Mr Gbagbo argues that the Prosecution has not produced evidence to show that he ordered the blockade of the Golf Hotel, or that he ordered FDS personnel to deploy to block all access to RTI. In particular, he says with reference to Witness P-0009's testimony that "*P-0009 ne dit rien d'un quelconque ordre ou d'une quelconque instruction émanant du Président Gbagbo.*" Contrary to this assertion, the witness was asked by the Presiding Judge about a meeting on 14 December 2010 regarding the upcoming RTI march, and said:

*"R. Monsieur le Président, nous avons donc été convoqués à cette réunion pour recevoir les instructions que la marche était interdite. Nous en avons donc profité pour faire le point de la situation qui prévalait et émis le souhait... émis le souhait que la marche n'ait pas lieu, parce que nous pressentions qu'il allait y avoir des troubles. Donc, nous l'avons souligné, hein, et nous avons même demandé au Président si on pouvait avoir... demander... demander à M. Choi d'user de son influence pour parler aux deux grands afin que la marche n'ait pas lieu, parce que nous pressentions vraiment qu'il allait y avoir des troubles.*

*[...]*

*Q. Et lors de cette rencontre, quel a été... avez-vous reçu des instructions du Président ?*

*R. Oui, nous avons reçu les instructions. Les instructions, c'est celles que la marche ne doit pas avoir lieu, qu'elle était interdite."*

1553. The witness then stated that security arrangements were put in place following the meeting, and described both the RTI and the Golf as among these locations.

1554. While the military authorities may have been responsible for putting in place the security arrangements ("*dispositif sécuritaire*"), Witness P-0009's testimony shows that these measures were taken pursuant to Mr Gbagbo's order that "*la marche ne doit pas avoir lieu, qu'elle était interdite.*" As argued in the Prosecution's Trial Brief, it was Mr Gbagbo's order to Witness P-0009 that was subsequently translated into a military order by Witness P-0009.

1555. Mr Gbagbo concludes his arguments on the question of orders by stating that that the Prosecution does not attempt to prove the existence of a direct order to target the civilian population. This is true; the Prosecution is not required to prove that Mr Gbagbo gave a direct order to target the civilian population. Instead, it is the Prosecution's position – in relation particularly to Abobo – that his orders to do whatever it takes to keep Abobo and not to cede it resulted, foreseeably, in civilian casualties. As explained in Section VI.B.2, Mr Gbagbo's liability arises because the execution of these orders led to the commission of the charged crimes. There, the Prosecution provides several examples demonstrating a pattern whereby Gbagbo issues orders and his subordinates abide. Furthermore, having permitted the army to deploy its units in an urban setting, having knowledge of past scenarios where such a deployment led to great numbers of casualties, Mr Gbagbo was aware of the consequences of his orders.

(vii) Defence arguments related to meetings at the Presidential Residence

1556. Mr Gbagbo states that, for the Prosecution, all meetings that he had with military and political leaders were suspicious and reveal a criminal intention. He

states that the Prosecution bases its Common Plan on clandestine meetings, relying exclusively on the Presidential Residence logbook to argue that such meetings took place. This is not the Prosecution's position. The Prosecution relies on the logbook to the extent and for the purposes as set out in its Trial Brief: principally to corroborate witness testimony as to the occurrence of meetings, and to demonstrate the level of contact between Mr Gbagbo and members of the Inner Circle. Of course, it is not possible to infer from the logbook alone what matters were discussed at a given meeting, and the Prosecution does not ask for such an inference to be drawn.

1557. Mr Gbagbo also makes assertions of facts for which no evidence has been led at trial, namely on the layout of the Presidential Residence, the number of staff, and their level of contact with external visitors. He speculates that, "[...] *plus probablement le vrai registre devait être un document informatisé, ou au moins tapé à la machine.*" These factual assertions stated without any evidential basis should be disregarded.

1558. Mr Gbagbo further argues that just because a visitor enters the Presidential Residence does not mean that he or she necessarily has a meeting with the President, and states that "certain witnesses" would go to the Presidential Residence not necessarily to see the President. Using Witness P-0625 as an example, Mr Gbagbo suggests that witnesses may have attended the Presidential Residence only to be able to brag about having visited the President. Mr Gbagbo also argues that no evidence has been led to show that he himself was at the Presidential Residence to be able to receive attending visitors. The Prosecution recalls that the logbook entries contain a column labelled "*personne demandée*", where the abbreviation "PR" stands for "President". They also note the time of Mr Gbagbo's arrival and departure every day. While the logbook – [REDACTED] – are not able to confirm whether the listed visitors did indeed meet with Mr Gbagbo, the fact of the meeting is to be inferred from all



surrounding evidence, including direct witness testimony. Finally, the proposition that witnesses such as the Generals would attend the Presidential Residence during the post-electoral crisis simply to brag that they had met with Mr Gbagbo is another allegation unsupported by any evidence on the record.

1559. In relation to arguments on the authenticity of the logbook generally, the Prosecution refers to Section II.

14. Mr Blé Goudé's arguments concerning meetings between Mr Gbagbo, Mr Blé Goudé, and the Inner Circle to plan and implement the policy (Blé Goudé Motion, paragraphs 396-417)

1560. Mr Gbagbo, Mr Blé Goudé, and the Inner Circle met frequently between December 2010 and April 2011. Testimonial, documentary, and video evidence of these meetings shows their importance in the planning and implementation of the Common Plan to stay in power at all costs, and to attack pro-Ouattara civilians in Abidjan. The record also shows Mr Gbagbo's knowledge of the security situation in Abobo and civilian deaths in Abidjan, because FDS Generals reported to Mr Gbagbo on these issues during these meetings. This section addresses Mr Blé Goudé's arguments on the sufficiency of evidence on how these meetings are related to the planning and implementation of the Policy to attack civilians.

1561. Mr Blé Goudé repeatedly argues that the routine or ordinary nature of meetings between Mr Gbagbo and Mr Blé Goudé, or between Mr Gbagbo and the FDS somehow indicates they are irrelevant. However, the evidence on record does not reflect this interpretation. The frequent nature of the meetings shows the extent of the Inner Circle's plan to keep Mr Gbagbo in power by all means. Moreover, the importance of these meetings is demonstrated by the fact that, as discussed below, the plans discussed in the meetings were executed.

(a) *Meetings with the Council of Ministers*

1562. As detailed below, Mr Gbagbo regularly presided over a *Conseil des ministres* (Council of Ministers), including on 7 December 2010, 14 December 2010, 10 February 2011, 17 February 2011, and 24 February.

1563. On 7 December 2010, the first Council of Ministers of the new government formed by Mr Gbagbo took place at the Presidential Palace. Mr Blé Goudé arrived at his first cabinet meeting with, among others, Richard Dakouri. The RTI news broadcast of that evening contained several statements, including from newly appointed Ministers Dogou and Guiriéoulou.

1564. On 14 December 2010, the first *Conseil du gouvernement* was held at the *Primature* and was followed up by a second working session on 15 December 2010. The Ministers scheduled their next meeting of the Council of Ministers to take place with Mr Gbagbo at the Presidential Palace on 16 December at 11h00.

1565. On 10 February 2011, Mr Gbagbo presided over a Council of Ministers, from which Don Mello read a *communiqué* over the RTI, saying Mr Gbagbo gave “instructions, pour renforcer les moyens humains et matériels, pour mieux sécuriser ABOBO et DUÉKOUÉ et maintenir le couvre-feu à Abobo.”

1566. On 17 February 2011, Mr Gbagbo presided over a Council of Ministers, from which Don Mello read a *communiqué* over the RTI, but instead of referencing the civilian casualties that were mounting in Abobo, the *communiqué* alleged that unidentified rebels committed crimes in Abobo and that Mr Gbagbo: “a déploré ces crimes odieux et a donné des instructions fermes au ministre en charge de la Défense et de la Sécurité afin que les efforts soient redoublés pour identifier ces criminels.”

1567. On 24 February 2011, Don Mello read a *communiqué* on the RTI issued by the Council of Ministers, following their meeting chaired by Laurent Gbagbo. The deterioration of the security situation in Abobo was discussed and Mr Gbagbo gave instructions to: “Renforcer le dispositif de sécurité afin que dans les plus brefs

*délais la population de la commune d'Abobo retrouve la paix et la tranquillité en mettant hors d'état de nuire ces rebelles."*

1568. Although Mr Blé Goudé does not mention the 24 February 2011 meeting, he argues that the rest of these meetings lack relevance, that "the Prosecution does not produce any evidence as to their content," and downplays the relevance of the official government *communiqués* issued over the RTI. The *communiqués* as detailed above, however, provide insight into the contents of these meetings and the intent of Mr Gbagbo and the Inner Circle to reinforce FDS operations in Abobo and ignore civilian deaths there.

*(b) Meetings with FDS Generals and/or Mr Blé Goudé*

1569. Mr Gbagbo also met frequently with members of the Inner Circle, including Mr Blé Goudé and other FDS Generals, throughout the crisis. Mr Blé Goudé argues there is insufficient evidence to show these meetings contributed to the conception or implementation of the State or organisational policy to attack the civilian population but as described below, the evidence shows that during these meetings, Mr Gbagbo received information about preparations for and conduct of the attack, and issued plans, instructions and incitements for its implementation.

*(i) 3 December 2010 – réunion de concertation*

1570. A document entitled *réunion de concertation* dated 3 December 2010, which contains minutes of that meeting, details Mr Gbagbo and his Inner Circle's strategy to be implemented going forward. This is also addressed at Section V.D.11(d) above. Mr Blé Goudé argues that these minutes lack authenticity and reliability, but ignores the clear indicia of reliability and authenticity described below. Furthermore, one of the documents Mr Blé Goudé cites to support this conclusion has not been submitted in evidence, and therefore cannot be relied upon at this stage.

1571. The authenticity and probative value of this document are supported by the following: they were found in the Presidential Residence, they are dated, both Mr Djédjé and Mr Kadet (each responsible for a “*cellule*”) were present at the Residence on that day according to the Presidential Residence logbook and had arrived within minutes of each other, along with Abou Drahamane Sangaré and Désiré Tagro who arrived around that time too. Further corroborating the minutes, Witnesses P-0010, P-0011, P-0046 and the Presidential Residence logbook confirmed that the Generals were at the Residence on the evening of 3 December 2010. Witness P-0010 gave evidence that the CEMA was informed by Bertin Kadet that all the Generals were to go to the Presidential Residence in order to “*présenter nos admirations [...] aussi pour nous... renouveler notre disponibilité.*”

1572. The circumstances of collection further demonstrate its authenticity. The Prosecution collected this document from the Presidential Residence, in a room identified as Simone Gbagbo’s bedroom. Moreover, the content of the document is further corroborated by the events of that day and of the following days.

1573. The “*réunion de concertation*” minutes are highly relevant as they demonstrate the coordinated and concerted efforts, contribution, intent and awareness of Mr Gbagbo and members of the Inner Circle to keep Mr Gbagbo in power by all means. The document describes how six “*cellules*” were being created with a specific mandate and headed by Inner Circle members or close allies. Alcide Ilahiri Djédjé was to lead the “*cellule diplomatique*” which was to contact the regional and sub-regional organisations to seek their support for Mr Gbagbo’s proclamation and request their attendance to his inauguration to take place immediately the following day. Mr Djédjé was also to invite foreign heads of State to the inauguration; invite the UN SRSG Choi to meet with Mr Gbagbo in order to remind him of the role of the UN in certifying the results of the elections, and finally to contact members of the UNSC to have them make statements in Mr Gbagbo’s support. Bertin Kadet was responsible for the “*cellule défense & sécurité*”

and was to encourage the heads of the army, *Gendarmerie* and police to make statements in Mr Gbagbo's support; to bring the *État-Major* and the different commanders of the FDS that evening to salute Mr Gbagbo, and finally to make sure the FDS regained control of the "*zone de confiance*". A "*cellule politique*" was tasked, among others, with "*susciter une ou des déclarations de plusieurs formation [sic] politique ainsi que de plusieurs organisation [sic] de la société civile. Mobiliser le peuple dans toutes ces composantes pour venir saluer et soutenir le PR élu: régions après région ou département après département.*" A "*cellule communication*" headed by Alain Toussaint was to take charge of all media communications regarding all past and current events taking place since the second round of the elections. It was also to undertake both an "offensive and defensive" strategy. Finally, the President of the FPI, Affi N'Guessan was to address members of all political parties that supported Mr Gbagbo "*pour les inviter au calme, au sens civique [sic] afin qu'ils évitent les pièges de nos adversaires.*" A "*cellule humanitaire*" led by Clotilde Ohouochi was to assist all people in difficulty and mainly all comrades that were victims of assaults. Lastly, a "*cellule mobilisation*" was foreseen without further information noted.

1574. That same evening of 3 December 2010, Alcide Djédjé further corroborated the contents of these minutes during an interview on the RTI news broadcast of 20h00. He was introduced not only as Ambassador of Côte d'Ivoire to the UN but also as special adviser to Gbagbo for "diplomatic affairs", echoing the characterisation found in the "*réunion de concertation*" minutes.

(ii) 15 December 2010 - Presidential Residence

1575. During a late night 15 December 2010 meeting at the Presidential Residence with Inner Circle members, Mr Gbagbo instructed those present, including the Minister of Defence, and Witnesses P-0009, P-0046, and P-0011 that the 16 December 2010 march on RTI should be prohibited. The logbook shows this

meeting took place immediately after the 20h00 RTI news broadcast on 15 December 2010 in which Mr Babri Hilaire Gohourou made a televised statement denouncing the upcoming march.

1576. Mr Blé Goudé points out that Witness P-0010 did not mention who recommended prohibiting the march, and that Witness P-0009 explained it was the Generals who recommended the march be stopped because they could foresee disturbances, but this ignores that it was Mr Gbagbo who issued the instructions to prohibit the march – a fact Witness P-0009 made abundantly clear in his subsequent testimony:

*“Q. Et lors de cette rencontre, quel a été... avez-vous reçu des instructions du Président?”*

*R. Oui, nous avons reçu les instructions. Les instructions, c’est celles que la marche ne doit pas avoir lieu, qu’elle était interdite.”*

1577. Mr Gbagbo’s instructions to prohibit the march were consistently repeated by his subordinates. Witness P-0009 testified about receiving a note from the Minister of Interior that *“interdisait la marche”* – and telling Mr Soro that he could not let his men through as *“[...] le gouvernement nous a instruit, et que la marche est interdite...”*. Witness P-0009 also testified about a meeting with the Minister of Defence who told them that the march was prohibited by the government. There can be no doubt Mr Gbagbo instructed his government, including the FDS, to prohibit the march.

1578. Although Witness P-0011 describes attending a meeting on 15 December 2010 at the *État-Major* where they planned operations for 16 December 2010, Mr Blé Goudé correctly points out that Witness P-0011 denied being at a meeting at the Presidential Residence that day and Witness P-0046 did not recall such a meeting. Witness P-0011’s self-serving testimony on this issue is not credible. The logbook

clearly shows both Witnesses P-0046 and P-0011 in attendance, as does the testimony of Witness P-0009 with respect to the content of the meeting. Although P-0009 testified that the meeting was December 14, the logbook and other witness testimony indicate the meeting was in fact on 15 December. Witness P-0046 may not have recalled the meeting, he nonetheless described making the necessary preparations in the eventuality that a march would take place:

*“...En revanche, nous avons eu vent d’un événement, on ne peut pas rester les bras croisés. Donc, nous avons pris les dispositions pour que, au cas où cette marche, effectivement arrive à se dérouler, on peut prendre des dispositions.”*

1579. Notably, Mr Blé Goudé does not contest that a FDS planning meeting took place with Witness P-0009 that occurred earlier the same afternoon of 15 December 2010 at the *État-Major*, as testified by both Witnesses P-0011 and P-0010. Witness P-0010 described the content of this meeting at length, including that Witness P-0009 issued instructions to Witness P-0046 and other Generals present to plan and conduct operations to prevent the march, based on the information available from RHDP.

(iii) 16 December 2010 – Presidential Residence

1580. On the evening of 16 December 2010, Mr Gbagbo met again with several ministers, including his Minister of Defence Dogou for several hours. Key members of Mr Gbagbo’s Inner Circle, including FDS officers, were also received at the Presidential Residence: Bertin Kadet and Dogbo Blé were also present at the time of the meeting between Mr Gbagbo, Alain Dogou and other ministers.

1581. Mr Blé Goudé alleges the Prosecution did not provide evidence of the content of this meeting. However, a clear inference can be established from the evidence of those attending and from the evidence of the events of the day, as well as the

content of a meeting of the same FDS officers a few hours earlier at the *État-Major*, which Witness P-0009 confirmed was a command post for the military component of operations that day where he was present with Detoh Letho. Witness P-0011 testified this meeting happened at the end of operations on 16 December 2010, where CEMA and other FDS generals received a report from the field. Both Witnesses P-0009 and P-0010 elaborated that this field report from Witness P-0046 at this meeting included a discussion of both FDS and civilian casualties. The logical inference from this evidence is that this subject was discussed when all of these Generals met Mr Gbagbo only hours later, especially given that Witness P-0009 testified that he reported these casualties to Mr Gbagbo that same night, and in fact had been doing so all day.

(iv) 16-19 December 2010 – Mr Gbagbo and Mr Blé Goudé meet at least three times

1582. Mr Blé Goudé cross-references another section of his Motion for his arguments on these meetings, a response to which is located at Section V.F.(1)(b) below on Mr Blé Goudé 's participation in meetings.

(v) 4 January 2011

1583. Mr Blé Goudé cross-references another section of his Motion for his arguments on this meeting and the alleged FDS requisition on this date. In any event, the Prosecution refers to its Trial Brief, paragraphs 409-412, regarding this meeting, and its submissions above, at Section V.D.13(v).

1584. Specifically as to the alleged "[r]equisition that was decided on 4 or 5 January 2011", the Prosecution here repeats its submission at Section II of this Response: Witness P-0009's claim that Mr Gbagbo signed a second requisition decree in January 2011 and handed it personally to him is another example of the caution the Chamber should exercise when assessing evidence from insider witnesses.



Apart from the testimony of Witness P-0009, the Prosecution has not found, from the evidence collected, disclosed and submitted on record, any proof or evidence of the existence of such a requisition. None of the other Generals or FDS members heard during the trial have testified as to the existence of such a requisition. The only known requisition during the relevant period of the charges is Decree No. 2010-306 from 14 November 2010, which authorises the FANCI to be deployed across the entire country with a focus on the *Centre-Nord-Ouest* (CNO) zone. The existence of a requisition of the FANCI on 14 November 2010 indicates an intention to employ those forces after the elections and before the occurrence of any violent incident which may have justified their intervention. It is indicative of prior intent and the Prosecution submits that Witness P-0009 would have been a party to this. His claim that there was a second requisition in January 2011 is evidence of an attempt to distance himself from a plan to employ the armed forces, which was already in existence before the second round of the elections.

(vi) 7 January 2011 - État-major meeting

1585. On 6 January 2011, Mangou ordered FDS Generals, with the exception of Dobgo Blé, to attend in person a meeting at the Headquarters of the *État-major* to be held on 7 January 2011. Mr Blé Goudé argues that this meeting is somehow less relevant because it has allegedly not been disproven that it occurred in the ordinary course of events expected during a crisis. Whether ordinary or not, its relevance is that it shows a coordinated plan to ramp up of FDS operations in Abobo. Witness P-0009 confirmed that this meeting at the *État-major* with the Generals was to analyse the situation in Abobo and discuss the deployment of FDS on the ground. During the meeting, the DGPN declared that the events in Abobo were under his responsibility since it was a law enforcement operation and that the police could face the situation, which they did within a week. Witness P-0009 testified that this meeting took place on 6 January 2011, but a

document he sent to FDS commanders confirms the meeting was held on 7 January 2011.

(vii) 12 January 2011 – Presidential Residence

1586. On the evening of 12 January 2011, Mr Gbagbo presided over a meeting at the Presidential Residence with Mr Blé Goudé, Ministers Dogou, Guiriéoulou, and the high command of the FDS. Mr Blé Goudé argues that no instructions were given by Mr Gbagbo at this meeting and that it was just an ordinary meeting expected in such a crisis period that involved a general security update and nothing specific to Abobo. This argument fails for several reasons.

1587. First, it ignores Witness P-0010's clear recollection that the meeting included a discussion of security matters in Abobo, specifying that the meeting was expanded to include other members of government, adding that it is quite possible that Mr Blé Goudé would have participated if Mr Gbagbo found it necessary.

1588. Second, this argument ignores the context of the meeting and the events immediately preceding it. After the failure of the 11 January 2011 police operation in Abobo, evidence in the form of FDS documents (BQI and FRAGO 69), FDS public statements, video, and testimony of FDS witnesses, shows that the FDS began operating in Abobo as if it were a war zone, and the Inner Circle began to treat it as such, despite no such formal declaration having ever been made.

1589. For example, on the evening of 12 January 2011, the CEMA appeared on the RTI news broadcast of 20h00 to read a *communiqué*. He described the events of 11-12 January 2011 in Abobo and the deaths of FDS. Faced with what he described: *“une telle atmosphère de quasi insécurité, et de menace de guerre dans laquelle vivent les laborieuses populations de cette commune,”* and the threats of attacks against the FDS, a curfew was adopted under Presidential Decree No. 2011-08 in the *commune* of Abobo-Gare and Anyama on 12 January 2011 from 19h00 to 15 January 06h00.

The CEMA further called national and international human rights organisations, the national and international community to witness that:

*“Ces attaques armées contre elles [FDS], assimilées à des actes de guerre et suivies de lourdes pertes en vies humaines dans leur rang, les placent désormais en position de légitime défense. Dès lors, elles se réservent le droit de riposter à partir de maintenant, tous moyens réunis, à toutes les attaques, d’où qu’elles viendront.”*

1590. The RTI news broadcast also showed a meeting of the Minister of the Interior addressing the prefects of Côte d’Ivoire. Mr Guiriéoulou was clear:

*“Nous sommes dans une situation qui n’est pas une situation normale. Donc, j’ai rappelé aux préfets que nous sommes dans une situation de guerre et qu’en situation de guerre, des dispositions particulières et spéciales doivent être prises, et que nous ne devons pas nous contenter, hein, des mesures habituelles d’administration, mais que nous devons intégrer dans nos comportements, dans nos actes, dans nos réactions, que nous sommes dans une situation de guerre.”*

1591. After that night’s RTI broadcast, Mr Gbagbo presided over a meeting at the Presidential Residence with Blé Goudé, Ministers Dogou, Guiriéoulou, and the high command of the FDS. Witness P-0047 reported that the purpose of the visit was to report on the operation in Abobo and, as with every meeting, Mr Gbagbo: *“nous exhorté à reprendre le combat parce que notre mission c’était de sécuriser les populations... les populations d’Anyama et d’Abobo, en particulier [...]”*

1592. A video of the meeting broadcast the next day on the RTI also corroborates the focus of the meeting was to strategise security measures for these same parts of Abidjan:

*“Le Président de la République, Laurent Gbagbo, Chef suprême des Armées, a eu le point de la rencontre que les généraux ont eue, bien avant, à l’État-Major des Armées. Les commandants de la Marine nationale, des Forces aériennes, des Forces terrestres, du CECOS, de la gendarmerie et de la police, et le général de corps d’armée Philippe Mangou ont arrêté des mesures pour sécuriser le territoire, et faire échec à toute velléité de rendre incontrôlables certaines communes d’Abidjan”.*

1593. In the same RTI broadcast, Mangou also questioned the impartiality of the UN when he accused them of colluding with the rebels since after the attack of that morning, the UN did not provide any assistance to the FDS. Mangou reaffirmed Mr Gbagbo’s position that the solution was for the UN to leave the country. This was clearly not an ordinary meeting – the evidence above shows it was a meeting where Mr Gbagbo, Mr Blé Goudé, and the Inner Circle, continued to develop their Common Plan to maintain power at all costs.

(viii) 20 January 2011 – Mr Blé Goudé meeting with FDS at État-Major

1594. Mr Blé Goudé cross-references another section of his Motion for his arguments on this meeting, a response to which is located at Section V.F.(1)(b) below.

(ix) 22 January 2011 – Mr Blé Goudé gives money to BAE / CECOS Commander Loba

1595. Mr Blé Goudé cross-references another section of his Motion for his arguments on this meeting, a response to which is located at section V.D.17 below on the parallel structure.

(x) 24 February 2011 – Conseil de Ministres and Presidential Palace meetings

1596. Mr Blé Goudé again argues that the Prosecution has not portrayed the proper context for Mr Gbagbo's 24 February 2011 Presidential Palace meeting – claiming its objective was to actually protect the civilian population. As discussed below, however, if Mr Gbagbo really wanted to protect the civilian population, he would have followed the advice of his generals and declared Abobo a war zone.

1597. On 24 February 2011, Don Mello read a *communiqué* on the RTI issued by the Council of Ministers, following their meeting chaired by Mr Gbagbo. The deterioration of the security situation in Abobo was discussed and Mr Gbagbo gave instructions to: *“Renforcer le dispositif de sécurité afin que dans les plus brefs délais la population de la commune d'Abobo retrouve la paix et la tranquillité en mettant hors d'état de nuire ces rebelles.”*

1598. On the same day, after a “first offensive” in the PK18 neighbourhood of Abobo that proved unsuccessful, Mr Gbagbo – in a meeting at the Presidential Palace with his Generals – instructed the FDS Generals to do everything they could to liberate the MACA-Abengourou axis in Abobo, to liberate N'Dotré, and not to cede Abobo. After enquiring about the presence of the population in that zone, Mr Gbagbo gave the instruction to “make sure there are not too many dead”.

1599. Although Mr Blé Goudé correctly notes that Mangou claims to have not discussed the designation of Abobo as a war zone in this particular meeting, Mangou is perfectly clear that around the same time of this meeting he proposed this idea to Mr Gbagbo, through the Minister of Defence, and that Mr Gbagbo rejected it. In other words, Witness P-0009 corroborates the other Generals that Mr Gbagbo rejected Witness P-0009's idea to declare Abobo a war zone, at a time when the FDS was ramping up operations in Abobo. As Mr Blé Goudé notes, other Generals, like Witness P-0047 testified how Mr Gbagbo rejected Witness P-0009's request to declare Abobo a war zone.

1600. After the meeting, Mr Gbagbo ignored the advice of Mr Mangou to declare Abobo a war zone, which would have forewarned the civilian population and, specifically, allowed people to evacuate. Instead, on 25 February 2011, the FDS conducted a second military offensive and shelled PK 18 neighbourhood and the N'Dotré area in Abobo.

(xi) 24 February 2011 – Presidential Residence (Mr Blé Goudé, Mr Gbagbo, Witness P-0009, and Boniface Konan on the eve of dual offensive)

1601. Mr Blé Goudé cross-references another section of his Motion for his arguments on this meeting, a response to which is located at Section V.F(1)(b) below.

(xii) 11 March 2011 – Meetings between Mr Gbagbo, Mr Blé Goudé, and Mr Mangou

1602. Mr Blé Goudé argues that the core evidence of these meetings is opinion evidence because it comes from Mangou – but this qualification ignores that Mangou is speaking about his personal knowledge from these meetings, and in particular, the resulting attack on his residence a few days later.

1603. Mangou testified that on 11 March 2011, Mr Gbagbo summoned him alone to the Petit Palais inside the Presidential Palace around 16h30 or 17h00. In this meeting, Mr Gbagbo told Mangou that the Presidents of Angola and South Africa had asked Mr Gbagbo to step down, and he wanted both Mangou and Mr Blé Goudé's advice on the matter since he considered them both his "*homme de confiance*." Mangou told Mr Gbagbo to resign, and Mr Gbagbo told Mangou to harmonise his view with Mr Blé Goudé's and get back to him with an answer. Shortly thereafter, Mangou met Mr Blé Goudé at his office in the *État-Major*, and they both agreed Mr Gbagbo should step down, and Mr Blé Goudé told Mangou to inform Mr Gbagbo of their decision alone, which made Mangou suspicious. Later that same night, Mangou told Mr Gbagbo of his and Mr Blé Goudé's

agreement that he resign, to which Mr Gbagbo responded: “OK. *N’en parle à personne.*”

1604. During the early morning of 14 March 2011, Mangou’s residence was attacked by men with AK-47s and RPGs for six hours, and one CECOS element was killed defending him. Mangou testified that it was only after talking to General Vagba that he realised Mr Gbagbo and Mr Blé Goudé were testing his loyalty. Mangou was surprised there would be an attempt on his life for merely asking Mr Gbagbo to step down. Contrary to Mr Blé Goudé’s argument that this was opinion evidence – this was merely the only logical inference Mangou could make.

(xiii) 14 March 2011 – Mr Gbagbo, Mr Blé Goudé, FDS Generals, and Ministers meet

1605. Mr Blé Goudé cross-references another section of his Motion for his arguments on this meeting, a response to which is located at Section V.F.(1)(b) below.

(xiv) 2 April 2011 – Mr Gbagbo meets Witness P-0435 and other GPP commanders

1606. On 2 April 2011, Mr Gbagbo told Witness P-0435 and other GPP commanders at the Presidential Residence that they had already won the war because Mr Gbagbo’s fight was to show that France was supporting the rebellion; Mr Gbagbo said that the resistance that the GPP had led alongside the FDS forced France to reveal its plans. Mr Blé Goudé argues that there is insufficient evidence of this meeting because Witness P-0435 is not a credible or reliable witness. The record, shows, however, that Witness P-0435 gave reliable and credible evidence that was corroborated extensively, as discussed in Section II.

(xv) 3 April 2011 – Presidential Residence – Mr Gbagbo meets P-0009, Gouanou, and FDS Senior Commanders

1607. On 3 April 2011, Mangou and Gouanou visited Mr Gbagbo at the Residence, along with FDS senior commanders Kassaraté, Dogbo Blé, Vagba Faussignaux, and Boniface Konan; their visit was filmed and broadcast on the RTI. The RTI presenter/journalist introducing the relevant footage in a broadcast on 4 April 2011, stated: *“l’armée reste toujours soudée autour du Président de la République, le président Laurent GBAGBO qui tient fermement la barre.”* Witness P-0009 testified that he went to this meeting from the South African Embassy, in order to convince Mr Gbagbo to resign – although in the end he did not do this.

1608. Mr Blé Goudé tries to minimise the importance of this meeting, by inaccurately arguing that the “[p]rosecution does not dispute that no decision was made during this meeting.” Mr Gbagbo decided to continue fighting. His orders to the FDS officers present could not be more clear: *“[r]eprenez le combat. Mangou est ... le général est là. Allez-y, reprenez le combat”*.

1609. In sum, the testimonial, video, and documentary evidence of meetings from December 2010 through April 2011 demonstrates Mr Gbagbo, Mr Blé Goudé, and the Inner Circle’s planning and implementation of the Common Plan to stay in power at all costs, and to attack pro-Ouattara civilians in Abidjan.

15. Mr Gbagbo’s argument that none of his speeches contain indicia of a Common Plan or a call to violence

(i) Divo speech

1610. Mr Gbagbo argues that his speech at Divo of 27 August 2010 cannot be a sinister warning to opposition politicians, since it related to the establishment of a *compagnie républicaine de sécurité* – a special police unit – in Divo and demonstrated that he was meeting the population’s desire for security.

1611. The occasion of the speech – here, the establishment of a *compagnie républicaine de sécurité* – attracted dignitaries such as the Minister of Interior, the *Directeur*



*Général de la Police Nationale* (Witness P-0046), as well as the mayor of Divo and the *conseil general*. As argued in Part IX.A.1(e)(v) of the Trial Brief, he tells members of the special police unit that if there are *dégâts* (ie. damages or casualties), judges can subsequently settle matters, thus inviting the members of this unit to act without consideration for legality. In incendiary language, Mr Gbagbo also refers to political opponents as bandits and enemies. Contrary to Mr Gbagbo's argument, this is in no way diminished by the inclusion of Soro and other "former rebel" Ministers in the government. As detailed in Section II.A.5 of the Prosecution's Trial Brief, this inclusion was the result of the Linas-Marcoussis agreement, and Mr Gbagbo had been delaying elections since the early 2000s.

(ii) The slogan "*on gagne ou on gagne*"

1612. Mr Gbagbo argues that the Prosecution has not brought sufficient evidence to show that "*on gagne ou on gagne*" was the slogan of his political campaign, and questions the authenticity of an apparent campaign poster with Gbagbo's image and the words "*Avec Gbagbo on gagne ou on gagne*". As apparent from the metadata, this poster was collected at the Presidential Residence in February 2012. It corroborates Witness P-0625's testimony that "*on gagne ou on gagne*" was a campaign slogan, along with "*il n'y a rien en face, c'est maïs*". Witness P-0048 also testified that:

*"... dans le camp de la majorité présidentielle d'alors, il y avait un slogan qui disait : « on gagne ou on gagne. » Cela veut dire ce que ça veut dire : quel que soit ce qui se passe, on gagnera."*

1613. Mr Gbagbo's argument that Witness P-0048 was not able to say whether the phrase was an official campaign slogan misses the point. Official or unofficial, it was a slogan used in Gbagbo's "camp". As Witness P-0048 clarified: "*Je n'ai jamais*

*dit que c'était le slogan officiel; j'ai dit que c'était les slogans qu'on entendait du camp du Président Gbagbo."*

1614. Mr Gbagbo relies on video footage of Antoinette Allany singing at a welcome ceremony for Ouattara in Bouaké, apparently filmed in 2013. The song includes the words "*on gagne et on gagne*" and also "*on va gagner*". On the basis of this song, Mr Gbagbo argues that the slogan "*on gagne ou on gagne*" does not belong to any camp and is used by football supporters and by political supporters of all sides, alike. There is a significant difference between expressions such as "*on gagne et on gagne*" / "*on va gagner*" and "*on gagne ou on gagne*". The use of the disjunctive "*ou*" relays the meaning that, in any scenario, "*on gagne*". It is not the same expression, and there is nothing to indicate that the words "*on gagne et on gagne*" / "*on va gagner*" have any more prominence than any other words in Allany's song. This evidence therefore does not support Mr Gbagbo's argument that the expression "*on gagne on gagne*" is used by political supporters of all sides.

(iii) Mr Gbagbo's *Jeune Afrique* interview

1615. Mr Gbagbo submits that his statements made during an interview with *Jeune Afrique* in October 2010 amounted only to the normal expressions of hopes that all candidates engage in during a campaign. This may be true of certain statements made by Mr Gbagbo throughout the interview, but not the portion relied upon by the Prosecution:

*"Que ferez-vous si vous êtes battu ?*

*"Je ne serai pas battu. J'y suis, j'y reste. Mais je ne serai pas éternellement président et, un jour, je transmettrai le flambeau à quelqu'un de plus jeune que moi. Le lendemain, je crois que je me mettrai à l'écriture d'un livre témoignage sur ma vie."*

1616. This is more than a simple expression of hope for a win, or a statement that defeat is not expected. Perhaps more significant than the statement “[j]e ne serai pas battu. J’y suis, j’y reste” is the agency expressed in the statement “un jour, je transmettrai le flambeau à quelqu’un de plus jeune que moi.” It amounts to a statement that power will pass from Mr Gbagbo not as the result of a democratic process, but when he decides to transmit the torch to a younger, unnamed candidate.

1617. Mr Gbagbo also cites to his statement in the interview that he was the only candidate not to base his campaign on ethnic or religious identity. While he does go on to speak of his “*conviction profonde*” in relation to Abidjan’s melting pot, and about waging the battle for democratic values, the first reason he gives for this, however, is more pragmatic than altruistic:

Question: “*Votre ethnie étant minoritaire, vous n’avez guère d’autre choix*”.

Response: “*C’est exact. Si je ne comptais que sur le vote bété, même si je dois être roi chez moi, je n’irais pas très loin.*”

(iv) “Si je tombe, vous tombez aussi”

1618. Mr Gbagbo makes submissions on the context and meaning of the phrase “*si je tombe, vous tombez aussi*”, and on the authenticity of the supporting *note de renseignement*. The Prosecution submits that the phrase amounted to a demand for personal loyalty towards Mr Gbagbo, and refers to Section V.D.6 on both points. It also notes that the transcript of the speech referenced by Mr Gbagbo has not been submitted onto the record. Once more, the Prosecution recalls that Mr Gbagbo: i) cannot rely on evidence that is not on the record and was not discussed before the Chamber; and ii) cannot introduce evidence now, since that would be making a Defence; this would defeat the purpose of a no case to answer motion.

(v) Demonisation of Ouattara

1619. Mr Gbagbo argues, as against the Prosecution's submission that he demonised Mr Ouattara, that Mr Ouattara supported and financed the rebellion. The argument appears to be that Mr Gbagbo's demonisation of Mr Ouattara was justified. Whether or not Mr Ouattara supported the rebellion is of no relevance to Mr Gbagbo's demonisation of Mr Ouattara as a means of mobilising support for the eventual use of violence against Ouattara supporters, actual or perceived.

1620. Mr Gbagbo also argues that Witness P-0048 cannot be relied upon for his testimony about the information received by the RDR leadership in late November 2010 that Mr Gbagbo's side was preparing to hijack the election and that the LMP was lodging English-speaking mercenaries in university residences, because he did not give the source of his information and because he "*fait montre de parti pris*". This information is supported by the evidence of [REDACTED]

[REDACTED] Furthermore, Mr Gbagbo simply alleges that the witness is biased and cannot be believed, without any basis in the evidence.

(vi) Demonisation of the UN

1621. Mr Gbagbo argues, as against the Prosecution's submission that he demonised UNOCI, that UNOCI exceeded its legal mandate in certifying the election results, when only the Constitutional Council had the authority to proclaim the winner. As argued above at Section V.D.11(b), Mr Gbagbo has no basis in evidence to claim that i) only the Constitutional Council had the prerogative to declare the election results; or ii) UN SRSG Choi proclaimed Mr Ouattara the winner in violation of his mandate. In any case, whether or not SRSG Choi's certification of the result fell within UNOCI's mandate in no way detracts from Mr Gbagbo's call

for UNOCI to leave Côte d'Ivoire indicating his resolve to stay in power by all means.

1622. Mr Gbagbo disputes the characterisation of Alcide Djédjé's speech of 3 December 2010 as "*sanglant*". The word in English that the Prosecution used in its Trial Brief was "stinging"; a characterisation that it maintains.

1623. In relation to Mr Gbagbo's speech of 21 December 2010, in which he stated that his government had requested the departure of UNOCI, Mr Gbagbo refers to certain excerpts aimed at pacifying the situation and calling for calm. Again, none of these excerpts detracts from Mr Gbagbo's resolve to remain in power. To the contrary, Mr Gbagbo opened this speech by recalling that the Constitutional Council had proclaimed the election result, that he had won the majority of votes, and that "*Je suis le président de la République.*" He then went on to blame the country's troubles on the "*refus de mon adversaire de se soumettre aux lois, règlements et procédures en vigueur dans notre pays.*"

(vii) Address to the nation of 31 December 2010

1624. Mr Gbagbo argues that the meaning of his words "*nous n'allons pas céder*" must be construed to mean no more than that he had been elected and that he had duties. Such a characterisation is in no way compatible with the characterisation submitted by the Prosecution; that Gbagbo would not cede power. Mr Gbagbo also emphasises that, in this speech, he explained the reasons for proposing an evaluation committee to establish the truth on the conduct of the elections. However, the preceding sentences reveal that the purpose of such a process would not call into question who won the elections, but to inquire into the actions of his adversary:

*"La question aujourd'hui n'est pas de savoir qui a gagné l'élection présidentielle en Côte d'Ivoire; elle est de savoir ce qui motive l'attitude de mon adversaire et de ses soutiens extérieurs. Tout se*

*passé comme s'ils savent des choses que nous autres, Ivoiriens, nous ignorons, concernant le déroulement du scrutin et les procédures de proclamation des résultats. C'est pourquoi je propose un comité d'évaluation destiné à connaître des faits et à établir la vérité sur le déroulement des élections en Côte d'Ivoire."*

1625. Mr Gbagbo's words speak for themselves: "Nous n'allons pas céder. Je le répète, mon adversaire n'a pas gagné." Moreover, when referring to the Ouattara camps, he uses the "ils" (they), while referring to his camp as "*nous autres, Ivoiriens*" (us, Ivorians), as another attempt to divide the country between those who he considers to be real Ivorians and those considered as foreigners.

16. Defence arguments regarding control of the FDS

(a) *Mr Gbagbo's arguments concerning the parallel structure*

1626. Mr Gbagbo asserts that the Prosecution has not shown the existence of illegal or criminal orders, and has not shown that members of the armed forces acted beyond their functions. He further argues that the Prosecution's assertion of a parallel structure is contradictory to its assertion of an Inner Circle.

1627. As to the first point, the Prosecution is not required to prove that the orders were inherently criminal or illegal, or that forces acted beyond their functions; these questions have no relevance to Mr Gbagbo's control over the FDS. As to the second point, Mr Gbagbo has not demonstrated the incompatibility between the existence of the Inner Circle and the existence of a parallel structure. As argued in the Trial Brief, Mr Gbagbo and the Inner Circle controlled the parallel structure, being a parallel chain of command operating within the ranks of regular FDS forces and providing a direct link between Mr Gbagbo and the commanders of units which participated in the commission of crimes. Contrary to Mr Gbagbo's assertion, the Prosecution makes no suggestion that the purpose of the parallel

structure was to circumvent (“*contourner*”) the Inner Circle and its members. The Prosecution does not say that the parallel structure was parallel to the Inner Circle, but rather to the regular chain of command.

(i) Control of the parallel structure

1628. In relation to BASA commanding officer Dadi, Mr Gbagbo argues that the testimonies of Witnesses P-0239, P-0238 and P-0164 are insufficient to show Dadi’s involvement in the parallel structure. The Prosecution details the evidence of these witnesses in turn.

1629. First, Witness P-0239 testified about Dadi’s stated closeness to Mr Gbagbo, contrary to Mr Gbagbo’s assertion that the witness never spoke of Mr Gbagbo. As per the passage cited by Mr Gbagbo, according to the witness, Dadi claimed to be receiving orders from Mr Gbagbo, to do whatever Mr Gbagbo told him, to have Mr Gbagbo’s trust, and to be the “*homme fort*” of the situation. Mr Gbagbo argues that these utterances amount to mere boasting on Dadi’s part, and therefore cannot be believed. In doing so, he offers no evidence to indicate that this was mere boasting. Furthermore, contrary to Mr Gbagbo’s assertion that the direct link between Mr Gbagbo and Dadi is based solely on Witness P-0239’s evidence, this link is corroborated by the following evidence from Witness P-0238 about Dadi’s proximity to the Republican Guard.

1630. Second, Witness P-0238 testified about Dadi’s closeness to the heads of other parallel structure units, namely General Dogbo Blé of the Republican Guard, General Guiai Bi Poin of CECOS and Captain Zadi of the 1<sup>st</sup> BCP. Dadi would make it known that he was in regular communication with Dogbo Blé by visiting him at his Republican Guard office next to the Presidential Palace, and by relating his instructions to his elements (“*Il a eu un entretien avec le général, il fallait sécuriser tel endroit, il fallait faire si, il fallait faire ça*”; “*Voilà, le général a demandé à ce qu’on fasse ça, donc il faudrait bien le faire*”). Dadi’s execution of Dogbo Blé’s orders and

subsequent report back to him led the witness to believe that such orders occurred without the COMTER's knowledge. BASA would also perform joint Presidential missions with the Republican Guard. According to Witness P-0238, Dadi was also close to Zadi. The witness saw Zadi coming often to the camp to see Dadi, and always with information. He also saw former government Minister Brouabré and his *chef de cabinet* coming very often to see Dadi. The witness also saw *Galaxie Patriotique* member Jean-Yves Dibopieu visiting Dadi at BASA during 2010. Contrary to Mr Gbagbo's assertion, Witness P-0238's knowledge of these relationships is based not only on Dadi's representations, but on his own observations.

1631. Third, Witness P-0164 testified about the Patriots recruited in 2002 and 2003 and assigned to BASA. He said that they completed only half their military training before being sent to the field, and did whatever they wanted without reprimand:

*“Au fait, au niveau du traitement... Disons que nous, on n'était pas trop bien vus par rapport à eux, c'est-à-dire ils étaient plus écoutés même que nous. C'est pour ça que j'ai dit : au cours de la formation, lorsque vous formez quelqu'un qui veut vous apprendre les rudiments de la chose, il est mieux de le laisser où il est. Puisque lorsqu'il y a eu... il y a un problème quelconque entre nous et eux, quand ils appelaient selon eux « les haut lieux », on sait un peu ce qu'on te disait, hein. Là, si tu ne voulais pas avoir des trucs que tu ne veux pas entendre, il était mieux de les laisser où ils sont et les ordres souvent, qu'on leur donnait, étaient très peu respectés par eux, parce qu'ils faisaient ce qu'ils voulaient. Beaucoup même venaient aux instructions quand ils voulaient et il n'y avait pas de moyen de les réprimander, hein.”*



1632. He went on to explain that some of these elements were under his command, and that it was impossible to punish them or reprimand them because “*ils étaient plus écoutés que nous-mêmes*”, by Dadi.

1633. Mr Gbagbo also seeks to impugn the credibility of Witnesses P-0164 and P-0239 on the basis that the first was operating under the instructions of the Golf Hotel, and the second was accused of doing so. At the outset, there is no evidence on the record that Witness P-0239 was accused of being a spy for the Golf Hotel (save that Counsel for Mr Gbagbo put this suggestion to the witness, who denied it). Further, Mr Gbagbo has not demonstrated how Witness P-0164’s credibility would be damaged by his operating under the instructions of the Golf in order to stop further casualties. Additional response to M. Gbagbo’s arguments about these BASA witnesses credibility, and their alleged ties to the Golf Hotel, are discussed in the Section IV.F. In any case, as submitted in Section II, questions of witness credibility do not fall for determination at the present stage.

1634. In relation to General Dogbo Blé, Mr Gbagbo argues that the testimony of Witnesses P-0009 and P-0238 is insufficient to show Dogbo Blé’s involvement in the parallel structure. The Prosecution details the evidence of these witnesses in turn.

1635. First, contrary to Mr Gbagbo’s contention that Witness P-0009 only said that Dogbo Blé was arrogant and therefore had to be reassigned, Witness P-0009 explained the close relationship between Dogbo Blé and Mr Gbagbo. The witness described Dogbo Blé as the “*interlocuteur privilégié*” of Mr Gbagbo, whom he saw all the time, and who had appointed him to the position of Republican Guard commander. The witness explained that, by virtue of also being the military commander of the Palace, Dogbo Blé had two bosses (the President and the CEMA), Mr Gbagbo was “God”. He described instances of apparent insubordination by Dogbo Blé to himself (Witness P-0009), in favour of Mr

Gbagbo: “... *quand vous donniez des instructions à Dogbo, il vous dira: « Je suis avec le Président. Je ne peux pas venir à la réunion. Le Président dit de... »*”.

1636. Second, Witness P-0238 gave evidence – as set out above – that Dogbo Blé gave orders to Dadi, who relayed these to his own BASA elements, and that BASA would perform joint Presidential missions with the Republican Guard. Notwithstanding Mr Gbagbo’s observation that Witness P-0238 did not directly witness Dogbo Blé giving orders to Dadi, there is no reason to doubt the proximate representations given by Dadi that he had received orders from Dogbo Blé, especially in light of the performance of joint missions.

1637. In relation to Mr Gbagbo’s authorisation for the integration of militiamen and mercenaries into the FDS, the Prosecution refers to its submissions in Section II. In particular, Witness P-0435’s evidence demonstrates the Gbagbo and the Inner Circle arranged for the recruitment of pro-Gbagbo youth and militia members into the FDS.

1638. In relation to Captain Zadi, the commander of the *sous groupement tactique*, Mr Gbagbo argues that the testimonies of Witnesses P-0330, P-0316 and P-0483 is insufficient to show Zadi’s involvement in the parallel structure. Insofar as the evidence of witnesses P-0330 and P-0483 is concerned, the Prosecution notes the following:

- i. Witness P-0330 testified that Zadi attempted to install 120mm mortars at Camp Commando at the end of February 2011, without the knowledge of the commanding officer. He heard Zadi say that he had received the order from the Presidency: “*Donc, l’officier chef de détachement qui mettait... qui utilisait... qui voulait utiliser les... les mortiers de 120 millimètres disait qu’il avait reçu l’ordre depuis la Présidence.*” Mr Gbagbo argues that the witness admitted that he did not “participate” in the conversation and that he did not hear it perfectly. That the witness did not participate in the

conversation has no relevance to his ability to hear it. Further, as the following questioning by the Presiding Judge shows, although the witness did not hear the entire conversation and was subsequently given a summary of it by the other officer, the witness independently heard Zadi say the word “*Présidence*”:

*“Q. Alors, pouvez-vous nous dire ce que vous avez entendu vous-même, et ce que vous avez appris, par la suite, de la bouche de cet officier, lorsqu’il vous a donné des détails supplémentaires ?*

*R. Merci, Monsieur le Président. Donc, comme je l’ai dit... euh... le chef de détachement... le chef de... du PC, le responsable de tout ce personnel qui était là a aperçu un officier, un chef de détachement en train de mettre le mortier en batterie, en train de lutter avec ses hommes pour faire la mise en batterie. Et donc il est venu vers eux, et moi, je n’étais pas loin, et il... il lui a demandé pourquoi il mettait cette arme en batterie. Est-ce que c’était pour l’utiliser ? Et l’autre a dit oui, que c’est pour l’utiliser. Et le chef qui continue de lui dire : « Mais tu connais les effets de cette arme, et tu veux l’utiliser ici, sur qui, et puis, c’est sur quel ordre ? » Et donc là, ils ont échangé. Moi, j’ai entendu « *Présidence* ». Et c’est après que je suis monté et l’officier m’a fait tout le point. Puisque j’étais le chef du camp, donc, on échangeait régulièrement.*

*Q. Lorsque vous dites « les autres détails », vous voulez dire, il a confirmé... Enfin, expliquez-vous, que voulez-vous dire par : « autres détails » ?*

*R. Merci, Monsieur le Président. Donc, lorsque nous sommes montés à son bureau, euh... il a continué de se plaindre, et il a dit qu’il ne*

*pouvait pas admettre que, sous son commandement, on donne des ordres complémentaires qu'il ne savait pas, parce que c'est lui qui va en répondre plus tard. Et voilà que cet officier, lui... lui dit qu'il... l'officier... qu'il a reçu des ordres de la Présidence alors que lui-même n'en savait rien."*

- ii. Witness P-0483's testimony about Zadi contained an apparent contradiction that was resolved in re-examination. In the first instance, during questioning by the Prosecution, the witness said that he did not see a person called "Zadi" at the Residence. When questioned by Counsel for Mr Gbagbo about who he had seen at the Residence, he spontaneously stated: *"Il y avait ... [other persons]... et le capitaine Zadi."* When this contradiction was put to him by the Prosecution, during re-questioning, he said that Zadi had been at the Residence and that he was a member of the military but had not joined "us" on the front line. Although the reason for the apparent contradiction is not known, it was drawn to the witness's attention in a clear and fair way, and he confirmed that he had seen Zadi at the Residence. Contrary to Mr Gbagbo's submission that the witness could have been referring to another Zadi, the Prosecution emphasises his spontaneous reference to *"capitaine Zadi."*

1639. In relation to Commander Loba of the BAE and CECOS, Mr Gbagbo argues that Witness P-0046's evidence on police working with militias was speculative. Although the witness said that he could not say who had asked the commanders of the CRS1 and the BAE to work with militiamen (apart from speculating that it may have been the leaders of the LMP), this is not the only evidence on Loba's involvement with militias and the parallel structure. The witness also said that, after the crisis, he found out that militiamen were in the BAE. During the crisis, Loba called him to ask if he was informed that militiamen were coming to work with the BAE. Loba also called him to say that Mr Blé Goudé had given him

(Loba) 2 million francs CFA. Although the witness initially testified that he found nothing strange about this, he accepted that he had said in prior interview that he found the amount of the payment to be significant: *“Mais deux millions, c’est qu’il y a quelque chose”*, and that *“plus tard j’ai compris que les gens travaillaient ensemble, j’ai dit: ‘Bon, écoutez, ça va être ça.’”* He also accepted saying the following, in relation to Mr Blé Goudé:

*“Et c’est plus tard que j’apprends qu’il travaille avec les patriotes. Donc, c’est comme ça que j’ai fait la relation pour dire : ‘Ah, donc, s’il a donné les deux millions, c’est que pour certainement nourrir les plus jeunes patriotes.’”* Donc, c’est comme ça que j’ai fait la relation.”

1640. The handing over of money from Mr Blé Goudé to Loba (as identified by Witness P-0046) was also the subject of an RTI broadcast aired on 22 January 2011 at 20h00.

1641. In relation to the monthly cash payments made to parallel structure commanders from Dogbo Blé’s office, Mr Gbagbo refers to [REDACTED]

[REDACTED] and represented a *“prime de disponibilité”* to compensate for availability at any moment. This in no way detracts from the Prosecution’s position that these commanders were part of a parallel structure loyal to Mr Gbagbo.

1642. In relation to the cash payment made by Mr Blé Goudé to Commander Loba, shown on RTI footage, Mr Gbagbo appears to argue that there is no indication as to the content of the envelope. Given Witness P-0046’s evidence that Loba told him that he had received two million francs CFA from Mr Blé Goudé, it can reasonably be inferred that this was the content of the envelope.

1643. In relation to parallel structure commanders bypassing the official rules of engagement, Mr Gbagbo argues that the testimony of Witnesses P-0238 and P-0330 does not demonstrate such bypassing. The Prosecution refers, once more, to

Witness P-0238's evidence on Dadi's execution of Dogbo Blé's orders, without the COMTER's knowledge. It also refers, once more, to Witness P-0330's evidence about Zadi's attempt to install 120mm mortars at Camp Commando at the end of February 2011, upon the order of the Presidency, but without the knowledge of the commanding officer.

(ii) Arming of the parallel structure

1644. Mr Gbagbo repeats his submission on the diminished capacity of the army and police during the post-electoral crisis. The Prosecution refers to its submissions in Section V.D.8 to argue that the evidence does not bear this out.

1645. In relation to Witness P-0009's sighting of armed persons – who were led by Seka Seka and not soldiers – at the Presidential Residence on the night of 3 April 2011, Mr Gbagbo argues that there is no precise information on who they were or where their weapons came from. Witness P-009 describes them as mercenaries:

*"Et ceux que je voyais, ce n'étaient pas nos soldats. Avec un accoutrement bizarre, des maillons de chaîne entrecroisés sur la poitrine, des tenues demi-saison, mi-treillis, mi-civil, commandés par Seka Seka qui était l'aide de camp de la première dame, qui, en situation de paix, n'avait pas de troupes sous sa responsabilité et qui se trouve... retrouve avec des gens qui dépassaient même une compagnie plus. J'ai regardé. C'étaient des mercenaires. Ce n'étaient pas des soldats ivoiriens."*

1646. They were, as Witness P-0009 described them, "*superbement armés*". In light of the evidence on the illegal receipt of weapons and munitions (see Section V.D.4(c)), it can reasonably be inferred that this superior weaponry was received through such illegal channels, in violation of the arms embargo.

1647. In relation to the arming of CECOS, Mr Gbagbo points to Witness P-0010's testimony that CECOS had a shortage of weapons, and argues that even Witness P-0009 said nothing about where the weapons apparently came from. The Prosecution repeats its submissions at Section V.D.4(c), to the effect that weapons and ammunition were supplied to FDS units both before and during the post-electoral crisis, and that the supplies received by CECOS were not for usage in public order operations, in contravention of the arms embargo in place.

1648. Mr Gbagbo asks various questions about the meaning of a receipt dated 30 March 2011, CIV-OTP-0071-0223. The Prosecution refers to the testimony of Witness P-0347, a senior officer in the Republican Guard, who explained that the Republic Guard could distribute weapons and ammunition from the Palace to other units, such as the *Gendarmerie*. This particular receipt was shown to him and he confirmed that it was the type of document filled out when ammunition was needed, and explained that it showed Dogbo Blé signing off on the supply of weaponry and ammunition to the *Gendarmerie*:

*"Ce qu'on peut en tirer c'est que c'est une demande d'armes et de munitions faite par le chef d'escadron... auprès du... auprès du chef de corps, du général Dogbo Blé et donc... qui a donc acquiescé à cette demande et donc qui a fait le bon pour qu'il puisse les lui fournir."*

1649. Mr Gbagbo argues that the Prosecution has not shown evidence of BASA receiving weapons as part of the parallel structure. The Prosecution relies on the above-described description of Zadi bringing mortars to Camp Commando, as well as [REDACTED]

1650. Mr Gbagbo argues that there is insufficient evidence to demonstrate that there was a stockpile of ammunition kept by the Republican Guard in the basement of

the Presidential Palace. The Prosecution relies on Witness P-0347's testimony that ammunition was held in the basement of the Presidential Palace during the post-electoral crisis, under the responsibility of Dogbo Blé. After the crisis, the ammunition was removed by the *Etat-Major*, along with UNOCI and *Force Licorne*, a process that the witness personally attended. At that time, the witness was able to observe that the boxes actually contained ammunition. The witness's testimony is corroborated by the existence of a video which he identified as showing the boxes of ammunition he had seen in the Presidential Palace. It is also corroborated by i) Witness P-0625's testimony that "weapons" were found in the basement of the Presidential Palace, ii) Witness P-0321's testimony that at the end of the crisis, there was an important stock of weapons in the basement of the Presidential Palace, managed by the Republic Guard; and iii) Witness P-0009's testimony – following viewing of the video – that ammunition was stocked in the basement of the Presidential Palace. Witness P-0321 testified about negotiating the receipt of ammunition from Dogbo Blé, after failing to receive ammunition from his superior. Contrary to Mr Gbagbo's submission, this demonstrates a departure from the normal chain of command.

1651. Mr Gbagbo challenges the conclusion drawn from Witness P-0347's evidence that the *Garde Républicaine* was able to distribute weapons and ammunition from the Palace to other units, because Mr Gbagbo was the Commander-in-Chief and had the authority to distribute whatever was there. The passage upon which the Prosecution relies is as follows:

*"Q. Alors, ma question est la suivante, suivant votre réponse, à l'époque selon votre connaissance et votre expérience, est-ce qu'il était normal pour quelqu'un d'autre, hors... en dehors de la Garde républicaine de faire demande pour des munitions auprès du général Dogbo Blé Brunot ?*



*R. Affirmatif, parce que le Président étant le chef suprême des armées, donc, à ce titre-là, s'il y a des moyens au niveau du palais, ces moyens peuvent donc être rétrocédés aussi à d'autres corps en mesure d'accomplir la mission globale pour le pays."*

1652. Finally, Mr Gbagbo argues that the Prosecution has not brought evidence to show that units of the parallel structure obtained weaponry illegally, notably in violation of the embargo. The Prosecution responds to this argument, and those raised by Mr Blé Goudé's on the same issue, in the section immediately below. The Prosecution repeats its submissions at Section V.D.4(c), to the effect that weapons and ammunition were supplied to FDS units both before and during the post-electoral crisis, and that the supplies received by CECOS were not for usage in public order operations, in contravention of the arms embargo in place.

*(b) Mr Blé Goudé's arguments concerning the parallel structure (Blé Goudé Motion, paragraphs 220-223, 392)*

1653. Despite Defence arguments to the contrary, Mr Gbagbo and the Inner Circle controlled a parallel structure within the FDS. Despite Mr Blé Goudé's characterisation of the evidence linking the Inner Circle to three parallel structure commanders (Dadi, Zadi, and Loba) as "sparse" or "mainly based on hearsay or witnesses' speculation," the Prosecution has proven through testimonial, video, and documentary evidence that Mr Gbagbo and the Inner Circle controlled this parallel structure, which provided a direct link with perpetrator units such as BASA and the *Garde Républicaine*. The evidence shows that Mr 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*, and Commander Loba of the BAE and CECOS, and that they were given money and ammunition in exchange for their loyalty.

1654. There are three main points in relation to the parallel structure, which are all elaborated on in more detail in this section:

- i. First, parallel structure commanders, in particular, Dogbo Blé, Dadi and Loba, were loyal to Mr Gbagbo and parallel structure units were key to the implementation of the Common Plan and the commission of crimes during the post-electoral violence, for example, CECOS BMO on 16 December 2010, Loba's BAE on 25 February 2011, Dogbo Blé's *Garde Républicaine* on 3 March, Dadi's BASA on 17 March - as elaborated in the respective incident sections.
- ii. Second, it is the parallel structure commanders – Dadi, Zadi and Dogbo Blé, along with certain members of the Inner Circle, like Seka Seka, who were loyal to Mr Gbagbo to the very end of the crisis.
- iii. Third, the parallel structure commanders and parallel structure units collaborated with and/or integrated militias and mercenaries. This became particularly relevant in the final days of the post-electoral violence particularly after Mangou, Detoh Letho, Guiai Bi and Kassaraté had either stepped down or been permanently sidelined, as elaborated below.

1655. Witness P-0009 described Inner Circle member General Dogbo Blé of the *Garde Républicaine* as a privileged interlocutor to Mr Gbagbo who met with Mr Gbagbo all the time, since Mr Gbagbo was his primary boss. Witness P-0009 elaborated that Mr Gbagbo appointed General Dogbo Blé and that Dogbo Blé put himself on a pedestal because of his close work with Mr Gbagbo and that this could be dangerous.

1656. The first parallel structure commander, BASA Commander Dadi, also had a close relationship with Mr Gbagbo. Commander Dadi told his BASA subordinate, Witness P-0239, that he (Dadi) was receiving orders from President

Gbagbo directly, that he was the strongman in charge of the situation, and that Mr Gbagbo trusted him and entrusted him with the security of Abidjan. Dadi elaborated that he was a military advisor to Mr Gbagbo and that Mr Gbagbo was the one who made decisions.

1657. One of Dadi's subordinates in BASA, Witness P-0238 testified that Dogbo Blé (who also got his orders from Mr Gbagbo), would give Dadi orders outside the regular chain of command that his men executed. The COMTER was apparently not made aware of these orders. Dadi would report back to Dogbo Blé and did not have such close relationships with any other commanders except Captain Zadi of the 1<sup>st</sup> BCP. Witness P-0238 further confirmed the allegiance between members of the parallel structure in that Dadi did not have a good relationship with other commanders like the COMTER, but respected General Dogbo Blé and Bi Poin of CECOS. Witness P-0238 also described Dadi as the boss who gave orders, and as strong, forceful, intelligent, yet someone that he would humiliate and punish anyone who disagreed with him. Dadi also constantly told his troops they had to vote for Mr Gbagbo and checked the ink on their fingers to confirm they voted. Witness P-0164, another one of Dadi's subordinates in BASA confirmed that Dadi had total control over everyone in BASA, even the officers.

1658. The second commander who participated in the parallel structure was BASA Commander Loba of the BAE, who was also CECOS commander for Yopougon. Video evidence shows that on 22 January 2011, Mr Blé Goudé gave an envelope of two million FCFA and supplies to Commander Loba. The Chief of Police, Witness P-0046, identified Loba on this video in court and testified that there was a direct link between this money and Loba's use of militiamen and Young Patriots. Commander Loba himself called Witness P-0046 to inform him that Charles Blé Goudé gave him two million FCFA, and Witness P-0046 told the BAE commander to keep the money. It was only after the events that Witness P-0046 made the link between the BAE commander making use of Young Patriots and Mr Blé Goudé

handing over 2 million FCFA to him. He clarified that he learned after the crisis that militias were working with the BAE and CRS1, and that he suspected LMP leadership issued orders to do so. In response to a question of Mr Blé Goudé's Defence team, Witness P-0046 testified that it was really exceptional and rare for an Ivorian authority to openly give money to the FDS.

1659. The third commander who participated in the parallel structure was Captain Zadi, a commander in the *Gendarmerie*. Witness P-0330 testified that Captain Zadi also got orders from the Presidency, and [REDACTED] P-0483 confirmed that Zadi, *chef de mortier*, was at Mr Gbagbo's residence often. Witness P-0330 specified that Zadi was responsible for bringing 120mm mortars to Camp Commando and trying to set them up in the direction of Abobo market at the end of February 2011. Further showing the existence of orders outside the normal chain of command, Witness P-0330 elaborated that Zadi got into an argument with Colonel Doumbia who was in charge of Camp Commando at the time and who was not informed of the mortars and did not want them there. Colonel Doumbia told Witness P-0330 that he could not accept that additional orders should be issued without his knowledge, because he would be the one answerable for them subsequently.

1660. Colonel Zadi's subordinate in the BCP, Witness P-0316, testified that Zadi worked with Witness P-0047 and reported to him and that Zadi specialised in mortars for which he went to training in Morocco. Witness P-0316 confirmed that Zadi was fighting until the end, and that he was giving weapons to young people at Old Camp Akouédo. The above evidence of Zadi's attempts to use of 120mm mortars outside the chain of command, his use of armed mercenaries, and his arming of youth groups, directly contradict Mr Blé Goudé arguments that Zadi's unit (the 1<sup>st</sup> BCP) did not receive any additional equipment during the crisis.

1661. As Witness P-0321 testified, these three commanders (Dadi, Zadi, and Loba) and others such as Seka Seka, also received monthly cash payments from the

Presidential Palace, including from Dogbo Blé's office, that were in addition to their salary. During the violence, the commanders of these units showed their loyalty to Mr Gbagbo, not least through coordination with pro-Gbagbo youth militias and mercenaries, as detailed below.

- (i) Parallel structure units were rewarded for their allegiance with more ammunition and weapons (Blé Goudé Motion, paragraphs 222, 385-389)

1662. The weight of the evidence shows that CECOS, BASA, and the *Garde Républicaine* received weapons as a reward for their allegiance, despite Mr Blé Goudé's arguments that the parallel structure did not receive more ammunition and weapons than the rest of the FDS. Furthermore, as described below, these units obtained their weapons and ammunition through illegal means and hid them from both international inspectors and their superiors in the FDS.

1663. Witness P-0009 confirmed that CECOS was armed with weapons of war that went beyond its mandate such as RPGs, 12.7mm machine guns, and defensive grenades. Witness P-0009 also testified that CECOS was better equipped than the army, police, or *gendarmerie*, and that Mr Gbagbo actually created CECOS to get around the UN arms embargo. Mr Blé Goudé's argument that CECOS did not fall *stricto sensu* under the arms embargo corroborates this point.

1664. The BASA also had heavy weapons and ammunition that were outside the scope of the arms embargo. Witness P-0238 described Colonel Dadi's ordering him and other members of BASA to hide weapons and ammunition from UNOCI inspectors monitoring the UN arms embargo. [REDACTED]

[REDACTED]

[REDACTED] It is no surprise, therefore,

that General Deto Letho testified that both Dogbo Blé and Dadi concealed large amounts of weapons from him.

1665. The *Garde Républicaine* kept a large stockpile of ammunition in the basement of the Presidential Palace, which even Witness P-0009 testified was abnormal. Witness P-0347, a senior officer in the *Garde Républicaine*, testified that they could distribute weapons and ammunition from the Palace to other units, such as the *Gendarmerie*, because Mr Gbagbo was Commander-in-Chief and had authority to distribute whatever was there. An FDS document dated 30 March 2011 corroborates this claim – a receipt signed and stamped by General Dogbo Blé as *Commandant Militaire du Palais* and *Commandant la Garde Républicaine*, for 300 AK-47 assault rifles and ammunition given to the *Gendarmerie*. Furthermore, Witness P-0321 testified that Dogbo Blé's support was needed to obtain this ammunition, and that circumventing standard FDS procedure, he directly requested ammunition from Dogbo Blé and obtained two cases as a result. Mr Blé Goudé's arguments that these witnesses never saw inside the boxes stored in the Presidency basement is irrelevant, considering the video, documentary, and testimonial evidence showing that ammunition from there was distributed to FDS units.

1666. Mr Blé Goudé's quote of Witness P-0009's description of the video of the *Garde Républicaine's* ammunition is misleading. While arguing that the evidence of ammunition in the basement of the Presidential Palace is unsubstantiated, they comment that Witness P-0009 is "very clear" that the room seen on video CIV-OTP-0048-1651 is "not the ammunition bunker of the *Garde Républicaine*." Although technically accurate, it ignores the remainder of Witness P-0009's testimony immediately after being shown this video in court in which he confirms the video depicts cases of ammunition that were in fact stored in the basement of the Presidency. Witness P-0009 went so far as to describe the ammunition in the Presidency basement as a powder keg:

*“...on devait lever les bras aux ciels pour remercier le seigneur que le Président Laurent Gbagbo se soit assis sur une véritable poudrière. C’est pas normal que des caisses de munitions se retrouvent là.”*

1667. Accordingly, given that the CEMA himself was not made aware of the extent of the ammunition and weapons in Mr Gbagbo’s possession, there can be no doubt that the approval to store and distribute the ammunition and weapons from the Presidential Palace came from the highest levels of government – from Mr Gbagbo himself.

(ii) Mr Gbagbo and the Inner Circle’s control over the FDS continued after 30 March 2011 through the parallel structure units (Blé Goudé Motion, paragraph 224)

1668. It is not in dispute that the defections of several high-level FDS commanders at the end of March 2011 weakened the formal chain of command and structure of the FDS. For example, on 30 March 2011, General Mangou testified that he sought refuge at the Embassy of South Africa, and on 31 March 2011 General Detoh Letho testified that he went to the Golf Hotel. By the end of March 2011, Mangou, Detoh Letho, Guiai Bi and Kassaraté had stepped down or had been permanently side-lined.

1669. This weakening of the formal chain of command, however, presented an opportunity for Mr Gbagbo and the Inner Circle to rely even more on allegiances developed in the parallel structure which they continued to control through a fully functional chain of command.

1670. 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 Mr Blé Goudé and following orders from Mr Gbagbo and members of the Inner Circle, including Dogbo Blé and Seka, as described below in Section V.D.18.

1671. Several witnesses provided examples of how the parallel structure assumed more responsibility for FDS military operations at the end of the crisis. First, GPP commander Witness P-0435 testified that he saw Dogbo Blé at the Presidential Palace at the end of March 2011, and that Dogbo Blé described the decision to integrate the GPP into the FDS as coming from the Presidency of the Republic. Dogbo Blé further congratulated him and other GPP on their successful integration into the FDS, and ordered him to move weapons from the DMIR base in Cocody run by Konan Boniface to the Presidential Palace – indicating that some of these weapons would also be taken to the Presidential Residence.

1672. Second, Witness P-0316 testified about Zadi ordering youth to take weapons that FDS soldiers had brought from Daloa and confirming that Zadi was fighting until the end.

1673. Third, on the day of his defection, 31 March 2011, Witness P-0047 was told by Colonel Doumbia that he was unable to leave his camp because Colonel Dadi was holding them hostage.

1674. Lastly, Witness P-0009 testified that his security detail informed him that young Ivorians had been recruited into the *Garde Républicaine* after 30 March 2011 and had taken part in combat. Witness P-0009 also saw, on 3 April 2011, Seka Seka driving well-armed mercenaries at the Presidential Residence. On the same day, at a meeting at the Residence, where Dogbo Blé and Konan Boniface were also present, Mr Gbagbo told Mangou he had to resume fighting, but Mangou remained at his residence and did not take control of the operations. General Kassaraté, who was also present at the Residence that day, was threatened by the *Garde Républicaine* and called a traitor.

1675. Mr Blé Goudé argues that there is insufficient evidence showing that Mr Gbagbo and the Inner Circle continued to control the FDS through the parallel structure after high-level FDS commanders defected at the end of March 2011. To support this argument, Mr Blé Goudé cites testimony of Witnesses P-0010 and P-



0316 to indicate there was an absence of commanders in various camps. But this is precisely the Prosecution's point – that the high level defections allowed space for the parallel structure commanders and certain members of the Inner Circle, like Dadi, Dogbo Blé and Seka, to assume even more authority in the chain of command.

1676. For example, the testimony of Witness P-0010 cited by Mr Blé Goudé, for example, supports the conclusion that Seka Seka in fact took over control of the *École de Gendarmerie* and the remaining soldiers there after Witness P-0010 left the *Gendarmerie* school on 31 March 2011. As another example, the testimony of Witness P-0316 cited by Mr Blé Goudé discusses a new commander, Captain Akapéa, who took over the 1<sup>st</sup> BCP, and who was rumoured to be working directly for the Presidency, and who brought a considerable number of men that wore a mixture of civilian and military clothing. These citations therefore support, rather than contradict, the finding that the Inner Circle continued to control the FDS through a parallel structure.

1677. Mr Blé Goudé argues with respect to Witness P-0238's testimony that a disagreement during a meeting between Dadi, Boniface Konan, and Colonel Doumbia at the new Akouédo camp is proof of a "lack of coordination and consensus among the FDS hierarchy" because Boniface Konan allegedly left the meeting after he and Dadi had a disagreement. This argument ignores that disagreements happen all the time in militaries around the world, and that the testimony did not connect this disagreement to Mr Gbagbo's ability to control the parallel structure. Furthermore, as Witness P-0238 later clarified that it happened before March, this meeting is irrelevant to the degree of control Mr Gbagbo had over the parallel structure at the end of the crisis.

1678. In sum, the totality of the above evidence clearly demonstrates that Mr Gbagbo and the Inner Circle controlled the parallel structure units such as the BASA, *Garde Républicaine*, and CECOS, throughout the crisis and rewarded them

with weapons and ammunition for their allegiance, including after 30 March 2011. This weaponry and ammunition were obtained through illegal means and hidden from arms inspectors.

17. Mr Blé Goudé's arguments concerning allegation that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units (Blé Goudé Motion, paragraphs 225-265)

1679. As detailed below, the overwhelming testimonial, documentary, and video evidence shows that pro-Gbagbo youth groups and militia units regularly collaborated with the FDS and were under the command of FDS officers, and thereby integrated into the parallel structure.

1680. Even prior to and during the election, Mr Gbagbo and members of his Inner Circle arranged for the recruitment of pro-Gbagbo youth and militia members into the FDS. Pro-Gbagbo youth and militia groups also received money from Mr Gbagbo and members of the Inner Circle. Further, arms were supplied to Liberian mercenaries, who had fought in the previous years in the West, were present in Abidjan and were receiving payments from the authorities.

1681. The Prosecution here addresses Mr Blé Goudé's arguments with respect to the sufficiency of evidence that the FDS parallel structure commanded or collaborated with the pro-Gbagbo youth and militia units.

*(a) Pro-Gbagbo youth groups collaborated with and integrated into the FDS before 31 March 2011 (Blé Goudé Motion, paragraphs 226-235)*

1682. The evidence establishes that prior to and during the post-election violence, Mr Blé Goudé and other members of the Inner Circle were in regular contact with leaders of pro-Gbagbo youth groups and of militias. 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. Mr Blé Goudé and other members of the Inner Circle gave instructions to such youth and militia members.

1683. FDS Witness P-0316, a member of the 1<sup>st</sup> BCP, testified that as of December 2010, there were “underground” or “clandestine” youth in the army, recruited by *Jeunes Patriotes* from areas favourable to Mr Gbagbo. The training for recruits in Akakro took place on 22 and 23 December 2010. An FDS document corroborates that 164 men were deemed fit during this recruitment, and another document from the *Centre d’Instruction de la Garde Républicaine* demonstrates that the recruitment was confirmed or authorised by the *État-Major*.

1684. Witness P-0316 knew some of these recruits personally, including his nephew, who he said were recruited with eight others by a *Jeune Patriot* who was part of the *Galaxie Patriotique*. When Witness P-0316 met the group, who had come to follow a military training, none had proper papers. Two of the youth were eventually incorporated into the FDS, one of whom was made Corporal within weeks. For the unemployed youth in villages the very idea of integrating the FDS was a dream. As described in Section V.D.17(d) below on events after 31 March, *Garde Républicaine* Commander P-0347 corroborates Witness P-0316’s account of recruits being sent to Akakro for training.

1685. Mr Blé Goudé attempts to dismiss the link between Witnesses P-0316 and P-0347’s evidence, by pointing to alleged inconsistencies in Witness P-0316’s account, on the timing of when he saw the youth named “Zambi” who recruited these youth. But there is in fact no discrepancy in his testimony that Zambi drove the youth to the new Akouedo camp, where they were held overnight, and released the next day when Witness P-0316’s nephew drove the youth to Witness P-0316’s house without Zambi. Mr Blé Goudé claims that Witness P-0316 described Zambi abandoning the youth at the camp that night, when in reality, he was merely saying that Zambi did not continue onwards with his nephew after their release the next morning.

1686. Mr Blé Goudé's argument that Witness P-0316 did not know the difference between voluntary recruitment and conscription is unfair and unsupported by his testimony. Witness P-0316, a member of the 1<sup>st</sup> BCP, did not understand the meaning of the word "*conscription*," but clearly understood the Ivorian conscription process. When asked a four-part question in questioning by the Defence about voluntary recruitment, Witness P-0316 responded with a clarifying question that was never answered – thereby effectively precluding the witness from offering an answer. This does not prove Witness P-0316's lack of knowledge about voluntary recruitment, especially since he had no opportunity to respond.

1687. Mr Blé Goudé characterises Witness P-0347's testimony as "irrelevant" to the integration of pro-Gbagbo youth into the FDS because there was no mention of their political allegiance or membership to a particular youth group. This argument is misleading. Witness P-0347 testified that the 60 to 80 men who had expedited training and were integrated into the *Garde Républicaine* were all from the Krou ethnic group, that is, Bété and Dida. Furthermore, whether they explicitly stated a political affiliation is irrelevant in light of the fact that they chose to join the armed forces under Mr Gbagbo's command and control after a contested election. In other words, they knew exactly which side they were fighting for.

1688. Mr Blé Goudé concedes that the *Jeunes Patriotes* had the intention to integrate into the FDS, but claims that they were technically unable to do so. Indeed, their intent is clear from a 17 January 2011 police report documenting that about 200 of them protested in front of the *État-Major* demanding to be recruited into the FDS. Further, video evidence shows thousands of youth responding to Mr Blé Goudé's *mots d'ordre* in late March 2011 and presenting themselves at the Army headquarters to be enlisted. Video of this gathering and eyewitness accounts corroborate the considerable pro-Gbagbo and anti-Ouattara sentiment of those attending this recruitment event. Additional corroboration for the coordination

between the youth and FDS is demonstrated by the fact that on 29 March 2011, through Babri Gohourou, Mangou specifically thanks the *Jeunes Patriotes* for responding to Mr Blé Goudé's call to defend the country and enlist in the FDS.

1689. Although Mr Blé Goudé again tries to discredit the evidence against him that he gave Commander Loba two million FCFA – precisely because it is so damning – his argument that there is no connection to this payment and FDS use of *Jeunes Patriotes* is not convincing. As described above, the RTI video evidence of this exchange was corroborated by the Chief of Police, Witness P-0046 who himself received a phone call from Commander Loba informing him that Charles Blé Goudé gave him two million FCFA. Witness P-0046 testified that there was a direct link between this money and Loba's use of militiamen and Young Patriots. In response to a question by Counsel for Mr Blé Goudé, Witness P-0046 testified that it was really exceptional and rare for an Ivorian authority to openly give money to the FDS.

1690. Mr Blé Goudé argues that uniformed men at Yopougon roadblocks after the Baron Bar speech are “not participating as members FDS, but as neighbours wanting to assist in the protection of their neighbourhood”. Witness P-0449's evidence, however, could not be more clear:

*“R. J'ai dit : tout le monde y était, à ces différents barrages. Le COJEP pouvait ériger un barrage, peut-être, mais moi, à ma connaissance, non. Mais tous ceux qui y étaient, il y avait même des jeunes du quartier, il y avait des corps habillés aussi parmi nous.*

*Q. Vous avez mentionné des corps habillés. Lesquels ?*

*R. Les... les FDS, les corps habillés de Côte d'Ivoire.”*

1691. It is immaterial, and unsurprising, that these FDS units came from Yopougon, as Witness P-0449 clarified in his response.

1692. Although Mr Blé Goudé is correct in describing Witness P-0625's testimony that the FDS and *Jeunes Patriotes* erected and managed separate roadblocks during the 16 December 2010 incident, Witness P-0625 is perfectly clear that the FDS and *Jeunes Patriotes* shared operational objectives that day: the FDS made a primary perimeter to protect the RTI television station, while the civilian roadblocks made a secondary one to block the pro-Ouattara protestors.

1693. Lastly, Witness P-0046, Director General of the National Police, said he was surprised to learn that two wounded policeman in the hospital were actually a militiaman working under the commander of the CRS1. At one point during the crisis Witness P-0046 was approached by the commander of CRS1 and the commander of the BAE to know whether he had been informed that militiamen should work with them, and Witness P-0046 replied they should not work with militiamen. Witness P-0046 suspected that these orders came from someone in charge within the LMP. On 15 April 2011, Witness P-0046 testified that Colonel Major Mian Gaston at the Golf corroborated that militiamen worked together with the BAE.

*(b) Witness P-0435's evidence on the GPP and their collaboration with and integration into the FDS is reliable and credible (Blé Goudé Motion, paras 236-249)*

1694. As discussed above in Section II, on the credibility of former GPP member P-0435's evidence, the Prosecution maintains there is no reason to doubt his credibility. His evidence demonstrates the Gbagbo and the Inner Circle arranged for the recruitment of pro-Gbagbo youth and militia members into the FDS. The Prosecution refers the Chamber to the Trial Brief, paragraphs 88-96, and 289-307.

- (c) *Evidence of the Inner Circle organising the collaboration between FDS and militia is credible, and cannot be looked at in isolation from Witness P-0435's evidence (Blé Goudé Motion, paragraphs 250-258)*

1695. Throughout his motion, Mr Blé Goudé repeatedly asks the Chamber to treat each piece of evidence in a vacuum – unreasonably asking the Chamber to look at pieces of evidence in isolation rather than looking at ways pieces of evidence corroborate each other. For example, an entire section of the Blé Goudé Motion explicitly excludes Witness P-0435's testimony from their analysis of the evidence of collaboration between FDS and militia. For the reasons stated above, however, Witness P-0435's testimony cannot simply be ignored. Excluding an entire testimony of a key witness shows the lack of rigour in the evidentiary analysis, as described below.

1696. Mr Blé Goudé argues that the receipts from the Presidency showing that Mr Gbagbo was involved in the financing of youth groups and militia lack sufficient indicia of reliability, and that the Prosecution has “led no evidence showing for what specific purpose these monies were received.” Witness P-0625, however, corroborated that GPP leaders signed receipts for payments received from Madame Sarata Ottro Zirignon-Toure at the Presidential Palace, and even saw members of the GPP collect envelopes himself. Moreover, on their face, these receipts show payments from Madame Sarata Ottro Zirignon-Touré, *Directeur Adjoint du Cabinet du Président de la République*, to Moussa Zégouen Touré in regular instalments between 16 May 2009 and 18 March 2011 in his capacity as “*Président du Groupement des Patriotes pour la Paix (GPP)*”. The Prosecution does not need to allege a payment for specific purpose – the evidence is clear that Mr Gbagbo financed these armed paramilitary groups before and during the crisis, and that these same groups participated in the attacks against civilians.

1697. The receipts appear to be signed on a number of occasions by Moussa Zégouen Touré himself, and on the other occasions by Youssouf Fofana collecting funds on

Zéguen's behalf, on the same day that Fofana is also collecting payments from the *Cabinet du Président de la République* for his own organisation *La Voix du Nord*. Youssouf Fofana also collected payments on behalf of other persons and armed groups affiliated to the *Galaxie Patriotique*, up to and including on 18 March 2011 for Eugène Djué and Serge Koffi.

1698. Furthermore, Prosecutor investigator reports clearly outline the process by which these receipts were collected in 2012 from the Presidential Palace in Abidjan. Despite Mr Blé Goudé's unsubstantiated claim that these receipts lack sufficient indicia of reliability, there is no reason to doubt the reliability of these receipts, which form part of a larger collection of government documents, and include several hallmarks of reliability such as: the signature of the person receiving the sum of money, the sum of money received, and the specific capacity in which he is receiving the money (personal or on behalf of an organisation). In addition, the circumstances of the collection are reliable. As detailed in the 2012 report, the Prosecution found these receipts among a massive collection of hundreds of boxes of documents that took a team of eight investigators over two weeks to review, and selected these receipts as relevant based on objective criteria. The local authorities were not involved in any way on selection of these receipts.

1699. Mr Blé Goudé argues that FDS correspondence dated 21 February 2011 (CIV-OTP-0071-0850) does not corroborate Witness P-0435's testimony regarding the integration of militia members into the FDS structures well before the Battle of Abidjan. As described below, however, several documents as well as the testimonies of Witnesses P-0047 and P-0345 help corroborate and authenticate this document.

1700. This piece of FDS correspondence from 21 February 2011 confirms the details of 398 FDS recruits who have been selected from militia / "*groupes d'auto-défense*" and are listed under the title "*Repartition GAD pour la formation militaire*". This list



denotes the militia groups which the recruits belong to and designates their distribution to the *1er Bataillon de commando parachutiste* (1<sup>er</sup> BCP), *Bataillon blindé* (BB), and *Bataillon d'artillerie sol-sol / Bataillon d'artillerie sol-air* (BASA) – the three units specified by Witness P-0435 – as well as to the *1er Bataillon d'infanterie d'Akouédo*.

1701. The content of this FDS document was confirmed by Witness P-0047, who testified that the document was signed by his second-in-command and that youth from these groups, including the GPP, were recruited into the FDS during the crisis with the knowledge of the *État-major*. Mr Blé Goudé argues that Witness P-0047 “did not recognise the document”, when in reality he recognised his deputy’s signature and repeatedly indicated to the court “... *j’ai dû le voir*.”
1702. This further corroborates the testimony of Witness P-0435, who had already provided details of the recruitment of the militia and their distribution among these military units and, when subsequently shown this list, recognised the names of a number of militia members who were personally known to him and provided additional information about them.
1703. The majority of militia groups / “*groupes d’auto-défense*” listed on this FDS document (including – in addition to the GPP – the GCLCI, FLP, FAT, and BCL) are groups which Witness P-0435 had already testified were affiliated to the GPP. They are also named in the correspondence sent by GPP leader Bernard Yokoyoko Bouazo on 13 September 2010 as “*Le porte parole des Groupes d’auto-défense* (GAD)”. Mr Bouazo also wrote to the Presidency on 17 January 2011 as spokesman for the *groupes d’auto-défense* and proposed their immediate engagement in support of the FDS.
1704. Mr Blé Goudé points out the anecdotal nature of Witness P-0108’s testimony about his Liberian mercenary neighbour named Kuya Bola, who explained to him that he was financed by Hubert Oulaï. What Mr Blé Goudé failed to note, however, is that Witness P-0435 corroborates this information in his testimony,

that Hubert Oulaï, a government Minister, was involved in paying the Liberian mercenaries.

1705. Mr Blé Goudé incorrectly characterises Witness P-0459's testimony on Liberian mercenaries in his neighbourhood in Yopougon as "speculative". Witness P-0459's personal knowledge of these groups is clear: he testified that he observed small groups of Liberian mercenaries in the neighbourhood, saw them spy on local residents, and heard them speaking with strong English accents. Mr Blé Goudé also inappropriately relies on Defence evidence to support the inference that Witness P-0459 could be mistaken.

1706. Mr Blé Goudé also argues that a document (CIV-OTP-0048-0203) the Prosecution collected in the Human Resources archives of the *État-Major* in August 2013 lacks indicia of authenticity. There is no reason to doubt the authenticity of this document – the circumstances of its collection are well documented in a Prosecution investigator's report, and described by FDS archivist P-0381's statement and testimony. Furthermore, it is a contemporaneous document that forms part of a collection of other reliable documents.

*(d) Gbagbo and the Inner Circle controlled militia and youth groups during FDS operations after 31 March 2011 (Blé Goudé Motion, paras 259-261)*

1707. Mr Blé Goudé argues that because of the high level FDS defections on or about 31 March 2011, there is insufficient evidence of how Mr Gbagbo and the Inner Circle members were coordinating FDS joint operations with youth groups or militia members. The evidence from several witnesses shows, however, that Mr Gbagbo and the Inner Circle maintained contact with FDS commanders, especially parallel structure members, such that they were able to execute orders on the ground.

1708. First, Witness P-0009 testified that his security detail informed him that young Ivorians had been recruited into the *Garde Républicaine* after 30 March 2011 and

had taken part in joint combat operations. Mr Blé Goudé argues that this information should not be relied upon because the source is Witness P-0009's security detail, and not Witness P-0009 himself, however, there is nothing on the record to indicate Witness P-0009 doubted or questioned the accuracy of this information.

1709. Second, GPP commander P-0435 testified that he saw Dogbo Blé at the Presidential Palace at the end of March 2011, and that Dogbo Blé described the decision to integrate the GPP into the FDS as coming from the Presidency of the Republic. Dogbo Blé further congratulated him and other GPP on their successful integration into the FDS, and ordered him to move weapons from the DMIR base in Cocody run by Boniface Konan to the Presidential Palace – indicating that some of these weapons would also be taken to the Presidential Residence. He also testified that apart from the GPP elements present, he observed FESCI students and Liberians at the Presidential Residence on 2 April 2011.

1710. Third, Witness P-0316 of the 1<sup>st</sup> BCP confirmed that Zadi was fighting until the end of the crisis, and that he was ordering youth to take weapons that FDS soldiers had brought from Daloa at Old Camp Akouédo.

1711. Fourth, Witness P-0321, who admittedly had difficulty distinguishing the definition of “mercenaries” and “militiamen,” testified that in April 2011, BASA and DMIR worked with armed irregular forces. Despite Mr Blé Goudé's argument that Zadi's unit (the 1<sup>st</sup> BCP) did not receive any additional equipment, Witness P-0321 also testified that at some point between February and April 2011, he saw Captain Zadi drive two vehicles of armed irregular forces into their barracks, and that these forces were wearing a mix of civilian and military clothes and speaking with an English accent.

18. Mr Blé Goudé's arguments concerning allegation that Mr Gbagbo and his Inner Circle Controlled Mercenaries (Blé Goudé Motion, paragraphs 262-265)

1712. Mr Blé Goudé argues that there is insufficient evidence that Mr Gbagbo and his Inner Circle controlled mercenaries through the FDS chain of command. However, the evidence of Prosecution witnesses shows that Mr Gbagbo and the Inner Circle controlled mercenaries throughout the crisis.

1713. First, a senior officer in the *Garde Républicaine*, Witness P-0347 testified about the armed mercenaries who participated in FDS operations. He was surprised one evening before the Battle of Abidjan when he noticed approximately 100 men in civilian attire, aged between 25-35, in his barracks in Treichville. By virtue of them speaking English and their accent, the witness concluded they were from Liberia. Mr Blé Goudé argues that Witness P-0347 could not testify who authorised the mercenaries to be at his barracks, but it is clear from his testimony that FDS Captain Blé Kouassi Urbain and warrant officer Kokobo were in charge and taking care of the recruits present in the camp. This group stayed in the barracks until they came under fire in the end of March – beginning of April. During their stay, their main activity was to conduct missions with Captain Kouassi Urbain and Warrant Officer Kokobo, some of them wearing civilian attire and some wearing semi-military uniforms. These individuals had mostly AKs as their weapons. When asked in Court why he did not report the presence of these unauthorised elements to the Chief of Staff of the *Garde Républicaine*, Witness P-0347 testified that he had been put to the side and in any case they could not have been in his camp without “*la benediction du Chef de Corps*” – General Dogbo Blé of the *Garde Républicaine*.

1714. Second, Mr Blé Goudé argues that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1715.

[REDACTED]

[REDACTED]

1716. Notably, [REDACTED] also testified about [REDACTED] that he worked with regularly in conducting joint operations with the FDS. He testified that following the orders of Navy Commander KB, [REDACTED] of Liberian mercenaries participated in a joint operation with members of the marines to protect "*leur zone de Marcel Gossio*" at the Port of Abidjan. While on mission, [REDACTED] and his group were armed, wore army uniforms and were still under the orders of Commander KB. From [REDACTED]'s testimony it can be inferred that this mission took place after the elections and prior to the

election results. This evidence is corroborated by [REDACTED]

1717. [REDACTED] further testified that distribution of weapons and uniforms occurred at the marine barracks, and that his group at the checkpoint consisted of five to six Ivoirians and five to eight Liberians, [REDACTED] [REDACTED] [REDACTED] of 13 or 14 Liberian mercenaries, ex-LIMA members, met with Commander KB of the Navy and with Seka Seka – Simone Gbagbo’s bodyguard – at the Cité Rouge – one the largest University campuses of Cocody, where they were based for one month. While at the Cité Rouge, Seka Seka told [REDACTED] [REDACTED] of Liberian mercenaries that he wanted them to help him, but that he first needed to know whether they were “real combatants”; he brought them to Camp Agban where they demonstrated to his satisfaction that they could handle and shoot weapons. From the Cité Rouge [REDACTED] of Liberian mercenaries based themselves in a hotel in front of Mr Gbagbo’s Residence.

1718. Mr Blé Goudé argues that because [REDACTED] did not come to the Presidential Residence on any FDS members’ order, that Mr Gbagbo and the Inner Circle somehow lack control over the mercenaries. The method or tactics by which they got there is immaterial. The fact is they remained there until Mr Gbagbo’s residence was attacked and performing a security function to protect Mr Gbagbo, as elaborated below.

1719. [REDACTED] testified that Seka Seka gave orders to [REDACTED] unit, and they were focused primarily on protecting Mr Gbagbo. On a daily basis, the group was working with the *Gendarmerie* near Mr Gbagbo’s Residence, divided into groups of four to five members to serve as security. [REDACTED]

[REDACTED] of Liberian mercenaries also defended the Presidential Residence when it was attacked by the rebels.

1720. Mr Blé Goudé tries to diminish Seka Seka's obvious links to Mr Gbagbo and the Inner Circle by arguing, somewhat inconsistently, that Seka Seka acted independently, and at the same time that his operations were unknown to FDS hierarchy, and that he was reprimanded for running his own operations. The evidence shows that Seka Seka was present at a February 2011 meeting with CEMA and other FDS generals at the *État-Major* where CEMA authorised Seka Seka to propose a plan for FDS operations in Abobo. Seka Seka suggested acting in a more intensive manner bringing more troops to defeat the *Commando Invisible* in Abobo in February 2011.

1721. On 2 April 2011, Witness P-0435 testified that upon arriving at the Presidential Residence, he was greeted by Mr Gbagbo's son, Michel Gbagbo, and saw GPP commanders, FESCI students from Adjamé and Liberian combatants. Witness P-0435 added that only the Chiefs of the Liberian groups were present at the Presidential Residence, including Junior Gbagbo. Up through at least 3 April 2011, Seka Seka was driving well-armed mercenaries to Mr Gbagbo's Residence.

1722. Given their joint operations with the FDS, the considerable personal connections to Mr Gbagbo and the Gbagbo Residence, including that [REDACTED] [REDACTED] was at Mr Gbagbo's Residence when it was attacked, there can be no doubt that Mr Gbagbo and the Inner Circle were aware of the financing of these mercenaries and their integration into the FDS. The conclusion that Mr Gbagbo was somehow unaware of these mercenaries' cooperation with the FDS is not plausible.

1723. Unsurprisingly, Mr Blé Goudé also attacks the evidence linking himself to mercenaries. The evidence is that Mr Blé Goudé financed the transport of Liberian combatants from Ghana to Côte d'Ivoire in January 2011. Witness P-0435's source for this information, Charles Guei of the *Garde Républicaine*, was the very person

who had been tasked by Mr Blé Goudé to accomplish the mission and who had commanded the transport operation. According to Witness P-0435's source, the Liberian combatants had already received an advance payment and each one of them had been promised a sum of five million FCFA. Mr Blé Goudé argues that there is insufficient evidence of the source's last name, but the witness clearly remembered during his testimony despite not remembering it during his interview with Prosecution investigators.

19. Mr Blé Goudé's arguments concerning allegation that Mr Gbagbo controlled the pro-Gbagbo youth through Mr Blé Goudé (Blé Goudé Motion, paragraphs 266-273)

1724. Mr Gbagbo controlled the pro-Gbagbo youth *via* Mr Blé Goudé, who acted as an intermediary. Mr Blé Goudé puts forward several arguments, minimising his own relationship with Mr Gbagbo in order to come to the unsubstantiated conclusion that Mr Gbagbo did not use Mr Blé Goudé to control the youth. Mr Blé Goudé minimises the meaning of his nickname ("*Général de la rue*") and his documented visits to the Gbagbo Residence. Mr Blé Goudé also ignores the most compelling evidence – the fact that in December 2010, Mr Gbagbo nominated Mr Blé Goudé as his Minister of Youth and Education. It is precisely because of Mr Blé Goudé's ability to control the *jeunes* or *Jeunes Patriotes*, as their "*Général*", that Mr Gbagbo chose Mr Blé Goudé as his youth minister at this pivotal moment in setting up his new government after refusing to concede the election.

1725. Already on 10 December 2010, having been nominated as Minister in Mr Gbagbo's new government, Mr Blé Goudé declared – during a meeting with the outgoing Ministers – that he remained 100% General and 100% Minister. He added that he wished this to be very clear, as some believed that because he had been appointed minister, they could do anything in the streets without him. He reiterated this on 14 December 2010, and stated that he worked to find jobs for the



youth but that, should he sense that Côte d'Ivoire was threatened or destabilised, he would take off his suit and put on his black cap to orient things. The Pro-Gbagbo youth's participation in the 16 December 2010 incident is therefore no coincidence.

1726. It is also not a coincidence that Mr Blé Goudé met with Mr Gbagbo on the night of 16 December 2010, after the FDS and youth coordinated an attack on pro-Ouattara civilians. Although Mr Blé Goudé downplays the significance of his frequent meetings with Mr Gbagbo, these meetings occur at pivotal moments. Between 16 and 19 December 2010, Mr Blé Goudé was received three times at the Presidential Residence, where he met Mr Gbagbo and spent many hours. Between 14 and 19 December 2010, Mr Blé Goudé addressed the *Jeunes Patriotes* on several occasions and called on them to mobilise, including at Port-Bouët on 19 December 2010. On 21 December 2010, he mentioned the impending final assault for the full liberation of Côte d'Ivoire.

1727. Mr Blé Goudé appeared on the 20h00 edition of the RTI news on 24 February 2011 with a message to the youth. He urged "all the youth of Côte d'Ivoire to prevent the UN from driving and moving throughout Abidjan *communes*". He 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 09h00 on 25 February 2011. On the evenings of 23 February 2011 (the night before his message to the youth of 24 February 2011); and 24 February 2011 (between 21h34 and 23h06) Mr Blé Goudé visited the Presidential Residence (after his message to the youth of 24 February 2011 and prior to his *mot d'ordre* on the morning of 25 February 2011). This 24 February 2011 visit to Mr Gbagbo overlapped with a visit from Boniface Konan and CEMA, and was on the same night as a meeting where Mr Gbagbo gave the order to his FDS Generals "to do everything possible to bring security back to Abobo" and to "do everything they could" to liberate parts of Abobo and not to cede Abobo.

1728. On both of these occasions, Mr Blé Goudé makes a call to mobilise pro-Gbagbo youth, then has a late-night meeting with Mr Gbagbo, after which the youth attacked perceived Ouattara supporters in the charged incidents. As Mr Blé Goudé correctly notes, the substance of the smaller meetings between Mr Gbagbo and Mr Blé Goudé is not always a matter of record, but a reasonable inference to be drawn from these late-night meetings before and after key incidents is that Mr Blé Goudé and Mr Gbagbo discussed and coordinated their shared aim to keep Mr Gbagbo in power – even if this encompassed violence against perceived Ouattara supporters.

1729. Further evidence of Mr Gbagbo's trust of Mr Blé Goudé is when he used Mr Blé Goudé to test Mangou's loyalty around 11 March 2011. That a president trusted his Minister of Youth over the Chief of the Armed Forces says a lot about their strong relationship. Mr Gbagbo even said to Mangou: *"Mon général, tu es... avec Blé Goudé, mon homme de confiance."*

1730. Mr Blé Goudé argues that the Prosecution has shown an insufficient connection between Mr Blé Goudé and Mr Gbagbo to know their relationship. A selection of Mr Blé Goudé's own words, however, demonstrates their "privileged" relationship and Mr Blé Goudé's role as Mr Gbagbo's intermediary to the youth. Mr Blé Goudé wrote in his 2006 book, *Ma Part de Verité*:

*"Revenons au Président Gbagbo. J'ai adhéré à son projet de société par pure conviction. Bien avant de le rencontrer, j'avais déjà pu remarquer combien il avait positivement influencé les jeunes de ma génération, combien il s'était impliqué pour nous, au péril de sa vie, dans le noble combat de la libération... Laurent Gbagbo a su rallier les jeunes à sa cause, moi le premier. Pourtant, la relation privilégiée que j'entretiens avec lui aujourd'hui ne s'est pas tissée sans mal."*

1731. Furthermore, three days after youth under his control are responsible for killing civilians at roadblocks on 16 December 2010, Mr Blé Goudé spoke to a jubilant crowd in Yopougon, and after invoking God on their side (“...*nous avons l’Eternel des armées avec nous et il a une armée invisible...*”), Mr Blé Goudé described Mr Gbagbo as “*l’espoir des jeunes*”:

*“CBG : Mais les Ivoiriens n’ont aucun problème, c’est SARKOZY qui a un problème. Mais ils n’ont qu’à faire erreur...*

*Foule : [Acclamations]*

*CBG : ... ils n’ont qu’à faire erreur, ils n’ont qu’à faire erreur pour s’attaquer à un seul cheveu de GBAGBO Laurent.*

*Foule : [Acclamations]*

*CBG : Parce qu’on est là, oui, [incompréhensible, 00:32:21], vous n’avez pas à faire à GBAGBO, vous avez à faire au Chef d’État de CÔTE D’IVOIRE. C’est lui qui est l’espoir des jeunes. Donc on ne va pas vous permettre de vous amuser avec notre Président comme ça.”*

1732. Mr Blé Goudé exercised control through his position as the acknowledged leader of the pro-Gbagbo youth, and as a result of his speeches including *mots d’ordre* and the use of rhetoric aimed at identifying perceived Ouattara supporters, which galvanised the youth, and mobilised and encouraged them to commit violent acts. Mr Blé Goudé’s main strength was his ability to galvanise and rally the pro-Gbagbo youth instantaneously and *en masse*. For instance, through his *mot d’ordre* on 25 February 2011, Mr Blé Goudé instigated pro-Gbagbo youth and militia to erect roadblocks and commit violent action, as detailed in Section IV.D.

1733. With respect to Mr Blé Goudé’s arguments on whether he had control over the youth, and his ability to mobilise them, see Sections V.F.3 and 4.

20. Defence arguments on use of the RTI

(a) *Mr Gbagbo's arguments, Gbagbo Motion, Annex 5, Section 5.2*

1734. Mr Gbagbo challenges the Prosecution's submission that "[c]ontrol over the RTI, the main broadcaster, was strategically crucial for GBAGBO and his Inner Circle to maintain support for GBAGBO and propagate his messages." He does so by arguing that it is normal for a state radio-television broadcaster to have representatives of the state in its administration, that in this way the competent Minister may have a role in the RTI, and that there is nothing abnormal or criminal about this. He does not challenge the evidence given by Witness P-0625 about the importance of control over the RTI ("*[e]n Afrique, quand tu veux faire un coup d'État, il faut prendre la télévision*"), but argues instead that at no point did Witness P-0625 say that Mr Gbagbo and his associates undertook any initiative to control the RTI. The argument is nonsensical, in light of the fact (with which Mr Gbagbo agrees) that the RTI was a state radio-television broadcaster. It was already controlled by Mr Gbagbo's government, and that control of the state communication apparatus was vital to political legitimacy, as demonstrated by this passage from Witness P-0625's testimony:

*"Ce qui était important pour la RTI, pour les deux parties, c'est la communication que chacun voulait passer des messages, peut-être, à la Côte d'Ivoire ou à la population. Il fallait forcément avoir la RTI pour que, si vous voulez, le... le nouveau Président reconnu par... par « le » communauté internationale puisse passer et dire tout ce qu'il veut, faire des publications, tout ça."*

1735. Mr Gbagbo also addresses the other evidence relied upon by the Prosecution to further illustrate the strategic importance of the RTI for him and his Inner Circle to maintain support for himself and to propagate his messages. The arguments that he makes do not detract from the value of these documents in

illustrating the RTI's importance to Mr Gbagbo and the Inner Circle. These documents show that, during the post-electoral crisis, the Ministers of the *Conseil de gouvernement* discussed the need to intensify communication by reference to the RTI, congratulated the RTI for its promptness with information and proposed sanctioning of any newspaper that referred to two Presidents of the Republic. The correspondence from the CEMA to the Deputy Director dating from May 2010 demonstrates the RTI's status as a tool of the state – especially military – apparatus since prior to the elections, as apparent from this opening line:

*“L'excellente qualité des relations entre la RTI et l'Etat-major des Armées de Côte d'Ivoire a permis de gérer avec efficience sur le plan médiatique la crise qui vit notre pays depuis 2002.”*

1736. It is immaterial that that the minutes of the *Conseil de gouvernement* do not reveal a state policy to attack civilians, that there is no indication that the proposed sanctioning of newspapers referring to two Presidents went ahead, or that the CEMA gave no “order” to the RTI in proposing the continuation of a certain journalist. The documents nevertheless provide corroboration for Witness P-0625's testimony about the strategic importance of the RTI, and reveal that Mr Gbagbo's Ministers and the CEMA stated acknowledgment of this importance.

1737. As to the dissemination of violent and xenophobic rhetoric against perceived Ouattara supporters, Mr Gbagbo argues that the Prosecution does not properly substantiate its argument that Mr Gbagbo and his Inner Circle used the RTI to disseminate violent and xenophobic rhetoric against perceived Ouattara supporters. He argues specifically that the denouncing of crimes committed by rebels does not constitute such violent and xenophobic rhetoric against perceived Ouattara supporters because the commission of crimes by rebels was a reality.

1738. As argued in the Prosecution's Trial Brief, the main way in which the RTI transmitted propaganda – defined as biased or misleading information used to

promote a political cause – was through advancing unfounded claims that pro-Ouattara victims were not civilians but attackers, and casting events involving civilian deaths as pure fabrication.

1739. As argued in Section III.C.2(a)(v)(c), the RTI propagated information likening perceived Ouattara supporters to rebels, thereby contributing to their identification as legitimate targets of attack. On the same 20h broadcast as the transmission of Mr Blé Goudé's 25 February 2011 *mot d'ordre*, the RTI presenter expressly equated RHDP supporters with rebels, stating "*Les rebelles et autres militants du RHDP mènent, depuis quelque temps, une guérilla urbaine dans le district d'Abidjan et dans plusieurs villes du pays*". On 26 March at *Place de la République*, Mr Blé Goudé expressly stated that "*dans sa lancée, Alassane Ouattara et ses militants ont égorgé beaucoup de nos concitoyens*". In likening civilians perceived as Ouattara supporters to combatants, Mr Blé Goudé failed to make any distinction between the two, and further demonstrated that the civilian population was the primary object of the attack.

1740. The RTI was not simply providing faithful reports on "crimes committed by rebels". It was deliberately misrepresenting the reality on the ground by denying the commission of crimes committed against perceived Ouattara supporters, and/or casting them as the criminals rather than the victims. This extended from the way in which journalists reported events, to the dissemination of public *communiqués* on behalf of the state and military apparatus. It is significant that the journalists' reporting on events mirrored the narrative provided by the state, for example, in response to the 16 December 2010 RTI march, and the 3 March 2011 women's march. This further demonstrates the RTI's use throughout the post-electoral crisis as a mouthpiece for pro-Gbagbo interests.

1741. Mr Gbagbo argues that the various videos in the RTI collection only have value if they are shown to and commented upon by persons present in Côte d'Ivoire at the time of events, as it is difficult for foreigners to understand the

context and the meaning. The Prosecution presented evidence from Witnesses P-0578 and P-0107, two witnesses who were present in Côte d'Ivoire, and who described the RTI as *"diffusait même des messages de haine"* and *"diffusait des déclarations de la part de GBAGBO pour pousser les gens à la haine."* As to Witness P-0578 specifically, Mr Gbagbo has not been able to identify any suggestion by the witness that his statement was incorrect on this topic. As to both witnesses, while they did not give examples of such messages of hate, their statements demonstrate the way in which they perceived the messages broadcast. In any case, Mr Gbagbo has not advanced any reasonable argument as to why the Chamber cannot make its own analysis of the content and tenor of the RTI's reporting.

1742. Finally, as to Mr Soro's position as Prime Minister prior to and during the elections, this is of no relevance. Mr Gbagbo's suggestion that the RTI must have obeyed Mr Soro's instructions in that period is not based on any evidence, and should be rejected outright. The airing of a Presidential debate on state television is hardly significant, and is similarly of no relevance to the question of RTI's use as a mouthpiece for pro-Gbagbo interests.

*(b) Mr Blé Goudé arguments, Blé Goudé Motion paragraphs 418-426*

1743. Mr Gbagbo, Mr Blé Goudé, and the Inner Circle used the RTI to carry out an attack on perceived pro-Ouattara civilians. Mr Blé Goudé even concedes that the RTI was strategic to Laurent Gbagbo. Video evidence of RTI broadcasts shows their importance in the planning and implementation of the Common Plan to stay in power at all costs and the Policy to attack pro-Ouattara civilians in Abidjan. The record also shows Mr Gbagbo's use of RTI to deny FDS involvement in the 3 and 17 March 2010 incidents in the absence of a genuine investigation. This section addresses Mr Blé Goudé's arguments on the sufficiency of evidence on

how the RTI was used in the planning and implementation of the Policy to attack civilians.

1744. The Gbagbo government's silencing of international media, TCI, and UNOCI-FM were part of a Policy to attack civilians and in pursuit of a Common Plan to stay in power at all costs. Mr Blé Goudé argues that "the interruption of these international channels intervened in a very chaotic election context where those international channels announced results although they were not yet proclaimed by the Constitutional Council." Even if this proposition were true, which it is not, it is not a valid legal basis for restricting universally recognised press freedoms. It ignores the basic proposition that a government violates these freedoms when it unilaterally silences dissenting or critical voices *en masse*. Indeed, the silencing of international media outlets, the UN, and the TCI was a blatant attempt to reduce internal support for Mr Ouattara. Quite tellingly, the only evidence that Mr Blé Goudé cites in support of the proposition that the banning of international media, TCI, and UNOCI-FM was to "prevent the exacerbation of tensions among the population," is a propaganda video from RTI itself on the results of the election dated 3 December 2010. There can be no doubt that this ban served the opposite purpose, such that it garnered support for Mr Gbagbo to stay in power and assisted in the implementation of the Policy to target and attack civilians, including perceived Ouattara supporters, as described below.

1745. Mr Blé Goudé's argues that the installation of TCI was an attempt by the pro-Ouattara groups and the international community to control information. In support thereof, Mr Blé Goudé cites Witness P-0625's uncorroborated hearsay testimony that he was told a French Licorne helicopter attacked RTI, and Witness P-0625's testimony that he does not know who physically installed TCI. Witness P-0625 did, however, confirm the partisan nature of RTI transmissions as a state-run media organisation: "*Ce qui était important pour la RTI, pour les deux parties,*



*c'est la communication que chacun voulait passer des messages, peut-être, à la Côte d'Ivoire ou à la population".*

1746. Despite Mr Blé Goudé's arguments to the contrary, Mr Gbagbo and the Inner Circle disseminated propaganda through RTI to implement their Common Plan to stay in power at all costs and in furtherance of a Policy to attack pro-Ouattara civilians. As Mr Blé Goudé noted, the Prosecution cited its 500 page analysis of RTI news broadcasts as support for this proposition to show the overwhelming pattern for pro-Gbagbo and anti-Ouattara rhetoric. The reason for this is that Mr Blé Goudé would be hard pressed to find one single positive mention of Mr Ouattara, or one negative reference to Mr Gbagbo, in the entire collection of these broadcasts.

1747. Further demonstrating that RTI contributed to the identification of civilians as targets of attack was its broadcasting information likening perceived pro-Ouattara supporters to rebels. On the same 20h00 RTI broadcast when Mr Blé Goudé's 25 February 2011 *mot d'ordre* was retransmitted, the RTI presenter expressly equated RHDP supporters to rebels, stating "*Les rebelles et autres militants du RHDP mènent, depuis quelque temps, une guérilla urbaine dans le district d'Abidjan et dans plusieurs villes du pays*". West African nationals were also equated to rebels during the same broadcast by Jean-Marie Konin, the President of FENOPACI, who stated that "*ceux qui attaquent nos populations, à Abobo, font partie de l'armée régulière du Burkina Faso*". Likening perceived pro-Ouattara supporters to the rebels failed to make any distinction between the two, further demonstrating that Mr Gbagbo, Mr Blé Goudé, and the Inner Circle used the RTI as a tool used in the planning and implementation of the Policy to attack civilians.

1748. Mr Blé Goudé argues that his alleged calls for peace issued over the RTI show an attempt "to seek out peace and dialogue." As demonstrated in Sections V.F.3 and 4 below, however, his speeches had no such intent.

1749. Mr Blé Goudé's argues further that the Prosecution is inconsistent in that it relies on the truth of the content of certain RTI excerpts, "without seeing in those excerpts any '*propaganda*' or '*pro-Gbagbo bias*'. The only evidence Mr Blé Goudé cites in support of this proposition, however, is Annex B2 to the Prosecution's 31 July 2017 Application for the Introduction of Video Evidence ("Application"), which was largely granted on 1 June 2018. Here, Mr Blé Goudé confuses two concepts – citing speech for the truth of the matter asserted, versus citing speech for evidence of accuracy of what someone actually said. In other words, the Prosecution is in general not citing the RTI news broadcasts because it believes in the truth of these broadcasts (for example, when the Gbagbo government denies FDS involvement in the 3 March 2010 attack on pro-Ouattara protestors), rather the Prosecution is citing these broadcasts as evidence of the Gbagbo government's public statements that provide the Chamber insight in the state of mind and level of knowledge of the Accused. Moreover, the Prosecution is in general not challenging the truthfulness of raw footage broadcasted on the RTI of, for example, the January 2011 rally at Champroux stadium, the 25 February 2011 Baron Bar speech, the 3 March 2011 victims, or the late March pro-FDS rallies in Abidjan, rather, the Prosecution is challenging the truthfulness of the biased commentary and editorialising of RTI journalists and broadcasters surrounding those events.

1750. Mr Blé Goudé does not cite any evidence on the record to support its argument that the Prosecution "misinterpreted" that the Gbagbo government stepped up its control of media in the days preceding the 16 December 2010 incident – perhaps because the evidence in support of the Prosecution's conclusion is overwhelming. Mr Gbagbo and his Inner Circle sought to control coverage of the post-election violence and information broadcast by all media, including by blocking Mr Ouattara supporters, UNOCI and international media

outlets. These included measures discussed and taken at government sessions, applied by the CNCA and also measures on the ground:

- i. On 2 December 2010, Félix Nanihio, General Secretary of CNCA, read communiqué number 2010-05: “le Conseil a enjoint, par courrier daté de ce jour, 2 décembre 2010, madame Le Guennou-Remarck Françoise, président directeur général de Sédaci CANAL+ HORIZON, à procéder à la suspension sans délai de tous les signaux des chaînes de radio et de télévision étrangères d'informations contenues dans le bouquet de CANAL+HORIZON et diffusées sur le territoire ivoirien.”
- ii. On 3 December 2010, the CNCA decided to interrupt all the international channels broadcasted by CANAL+ horizon including France24 to prevent foreign channels pronouncing different results than the ones announced by the RTI.
- iii. On 13 December 2010, a *communiqué* of the CNCA reported on a radio emitting on the 105.1 Mhz frequency. The CNCA stated that this was a pirate radio, that investigations had begun and that sanctions would apply. It invited the author to cease its activities and comply with the law.
- iv. On 14 December, the new Minister of Communication, Ouattara Gnonzie, singled out UNOCI FM as being worse than *Radio des Milles Collines* (a reference to the Rwandan genocide) because they were allegedly calling for a rebellion.

1751. Mr Blé Goudé’s bold and unsubstantiated claim that the “TCI was an actual pirate station financed by the European Union and installed with the assistance of the French intelligence services” has no citation to any evidence on the record, and should therefore be ignored.

1752. Going further, Mr Blé Goudé also argues that the Prosecution has not shown that the RTI relayed the Gbagbo government claim that the events of 3 March 2011 causing civilian deaths were pure fabrication, or that the women's protest victims were not civilians but attackers. However, as detailed below, excerpts of these broadcasts show this is precisely the message that the Gbagbo government disseminated over the RTI.

1753. As soon as the following day, Mr Gbagbo's spokesperson Don Mello and FDS spokesperson Babri were on the RTI denying FDS responsibility for the attack, despite that Mr Gbagbo and his Inner Circle had evidence implicating the FDS in the incident. The FDS *communiqué* was approved by Minister of Defence Dogou. The CEMA testified that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the *communiqué*, and that Mr Gbagbo would time review such press releases himself. On 4 March 2011, even the RTI broadcaster/journalist previewed the official government *communiqué* as a denial of FDS responsibility:

*"Le Gouvernement de CÔTE D'IVOIRE dégage toute responsabilité s'agissant de la mort des militantes du RHDP, tuées au cours d'une marche organisée à Abobo jeudi dernier. Nous vous proposons à cet effet la déclaration du porte-parole du Gouvernement."*

1754. Mr Gbagbo's spokesperson Don Mello read the official 4 March 2011 government *communiqué* immediately thereafter, which stated in part:

*"Des informations relayées par les chancelleries et médias internationaux font état de ce qu'une manifestation de femmes RHDP, réprimée par les Force de défense et de sécurité, aurait fait des morts. Les Forces de défense et de sécurité de CÔTE D'IVOIRE, dans un communiqué, ont affirmé qu'elles ne se reconnaissent ni de près, ni de loin, dans ces accusations. Le Gouvernement élève une vive*

*protestation contre cette grossière manipulation. Le Gouvernement dénonce la recherche effrénée des charges contre le président de la République.... Le Gouvernement condamne la promptitude avec laquelle certaines chancelleries et la presse internationale relatent, avec légèreté, les accusations fantaisistes et sans fondements. Il s'agit, entre autres, de la recherche de prétendus charniers de manifestants morts devant des caméras étrangères et par la suite curieusement ressuscités... Le Gouvernement met en garde les auteurs de telles accusations inacceptables et intolérables et se réserve le droit d'engager des poursuites contre ceux qui s'adonnent à la manipulation de l'opinion nationale et internationale. Je vous remercie."* (emphasis added).

Here, the FDS described accusations of FDS involvement in the 3 March 2011 incident as "*fantaisistes et sans fondements*." This *communiqué* refers to "*prétendus charniers*" and goes so far as to claim that footage of 3 March 2011 murder victim Moyamou Kone shows she is "curiously resuscitated" while she was attempting to get up from the ground after being shot in the throat. There is no other plausible reading of this *communiqué* other than as a denial of FDS responsibility for the deaths of the women at the 3 March 2011 protest.

1755. Also on 4 March 2011 at the 13h00 RTI news broadcast, FDS spokesperson Babri made a statement, denying FDS involvement in the killing of the women at the 3 March 2011 demonstration, describing the allegations as false and unfounded: [...] *les Forces de défense et de sécurité de Côte d'Ivoire déclarent purement et simplement ne pas se reconnaître dans cette accusation forcément mensongère et sans fondement*.

1756. Babri's statement is repeated again within the next couple days on the RTI, immediately after RTI journalists/broadcasters show a purported video of the 3

March 2011 demonstration showing allegedly armed men in the crowd, when in reality, this video is not at all of 3 March 2011. The journalist also blames international media for a plot against Mr Gbagbo.

1757. On 5 March 2011, Interior Minister Guiriéoulou condemned the international press for their continued claims that the FDS were responsible for the killing of the women on 3 March 2011. The RTI broadcaster/journalist introduced the Minister by explicitly referring to the FDS denial of responsibility for the murders and describing the international media's allegations of FDS responsibility as false:

*“Depuis le jeudi 3 mars 2011, des informations relayées par des chancelleries et médias internationaux font état de ce qu’une manifestation des femmes du RHDP aurait été réprimée par les Forces de défense et de sécurité et fait six femmes tuées à ABOBO-GARE. Malgré le démenti formel des FDS, l’acharnement par la même presse sur ces allégations mensongères fait rage et se poursuit. C’est pourquoi, pour établir la réalité des faits, le ministre de l’Intérieur qui avait à ses côtés son collègue de la Défense et du Service civique a animé, ce samedi à son cabinet, une conférence de presse, dont en voici un extrait.”*

1758. Immediately after, Mr Gbagbo's Interior Minister Guiriéoulou continued this theme, claiming that it was an attempt by international media to discredit the Gbagbo regime:

*“Le Gouvernement constate que depuis la proclamation des résultats définitifs, les élections présidentielles du 28 novembre 2010, ayant vu la réélection du Président Laurent GBAGBO, il y a un acharnement médiatique et diplomatique contre les autorités ivoiriennes, sans investigation préalable, pour établir les preuves de ces allégations. Ce parti pris est symptomatique d’une complicité, du fait d’une*

*déformation et d'un travestissement de l'information. Cette manipulation de l'information est l'expression d'une volonté manifeste d'intoxiquer l'opinion internationale. Cette presse - nous avons pu le constater - participe également à des mises en scène ignobles pour accabler le Gouvernement et atteindre ainsi ses objectifs."*

1759. The following day, on 6 March 2011, RTI repeats the same message. The first RTI broadcaster/journalist indicates:

*"Revenons sur la marche des femmes du RHDP qui s'est soldée par sept morts à Abobo. Et le ministre de la Défense et celui de l'Intérieur ont animé ensemble une conférence dans la journée d'hier. Ils ont dénoncé la façon dont les chaînes de télévisions étrangères ont traité le sujet, et certains commentaires ont été aussi faits par les ... des chancelleries, et c'est... des rapports ont été produits."*

1760. The next reporter says in part :

*"Prétendues tueries des femmes du RHDP, ce jeudi à ABOBO GARE, le ministre de l'Intérieur et son collègue de la Défense et du Service civique, ont [phon.] rencontré la presse pour établir la vérité, un grossier montage en réalité pour salir et discréditer le régime en place."*

1761. Both Interior Minister Guiriéoulou and Defence Minister Alain Dogou then made statements to the press perpetuating the false narrative that this is all part of an international conspiracy to discredit the Gbagbo regime. Immediately after these statements, video footage is played of the 3 March 2011 murder victim Moyamou Kone attempting to get up from the ground after being shot in the throat. A commentator clearly described this footage as a desperate fabrication:

*“Cette fois ci, ce sont les images de i-Télé qui présente un reportage où sept femmes auraient été tuées par les FDS, lors de la marche des femmes à ABOBO GARE. Cette jeune dame semble morte, mais en réalité elle est vivante, elle se relève. Elle revient donc à la vie. Cette jeune dame meurt quand elle veut et revient à la vie quand elle le veut. Même JÉSUS a mis trois jours avant de revenir à la vie ... En malinké, langue ivoirienne du nord de la CÔTE D’IVOIRE, on le dit comme ça: « Ne te lève pas, ce n’est pas fini. » Une mise en scène lamentable et désespérée.”*

1762. The next commentator falsely alleged there were youths armed with machetes at the women’s march on 3 March 2011, and blames UNOCI for organising “scénarios dignes des fictions hollywoodiennes” in Abobo. Parts of this broadcast were repeated again the same night, and the following day.

1763. From all of the overwhelming evidence cited above, there is no reasonable conclusion to draw from these broadcasts other than they were propagating an FDS denial of involvement in the 3 March 2011 murder of seven women, and describing it is a fabrication and/or part of an international conspiracy against Mr Gbagbo. By denying responsibility for egregious crimes, this video evidence demonstrates how Mr Gbagbo and the FDS used RTI in the implementation of the Common Plan to stay in power at all costs, and to cover up their attack on pro-Ouattara civilians in Abidjan.

1764. This pattern of Mr Gbagbo using the RTI to deny FDS responsibility continued with the 17 March 2011 FDS shelling of Abobo. On 18 March 2011, instead of calling for an investigation into the shelling, Mr Gbagbo, through his spokesperson, called on all Ivorians to assume greater responsibility and collaborate more with the FDS to neutralise all suspicious individuals. This statement alone shows Mr Gbagbo’s state of mind immediately after the FDS shelling on 17 March 2011, in that he is rallying support for the FDS and calling



for suspicious persons to be neutralised, despite media reports alleging the FDS just killed dozens of civilians in Abobo.

1765. Mr Blé Goudé further alleges the Prosecution “misconstrued” his broadcast from the RTI studio on 21 March 2011, objecting to the notion that he “instructed” Ivorians to stay tuned to RTI. Whether classified as instructions, orders, the directions are clear. Mr Blé Goudé tells Ivorians to watch the RTI and not *ITÉLÉ*, and to listen to *Radio Côte d’Ivoire* and their neighbourhood committees:

*“[...] Mais toi-même, tu vas chercher quoi à ITÉLÉ ? Pourquoi vous allez vous empoisonner sur des télévisions qui ont pour mission de paniquer la population? Vous regardez la RTI, vous écoutez Radio Côte d’Ivoire, et puis c’est terminé. Vous écoutez aussi les comités qui sont dans les quartiers, là où l’information vraie passe.”* (emphasis added)

1766. Here, Mr Blé Goudé essentially described anything but pro-Gbagbo media as untruthful and unreliable.

1767. Further evidence of Mr Gbagbo’s use of the RTI to implement the Common Plan to stay in power at all costs comes near the end of the crisis. On 2 April 2011, for the first 12 minutes of the RTI broadcast, a scrolling orange banner appears, ordering all FDS soldiers in Abidjan to various barracks, and asking the population to come out massively in support of the Republic. The first excerpt contains Laurent Gbagbo talking on the phone and has a banner indicating “*LE PRESIDENT DE LA REPUBLIQUE S.E.M. LAURENT GBAGBO EST BIEN EN PLACE ET A SON POSTE.*” On 3 April 2011, for the full length of the broadcast – wherein several pro-Gbagbo leaders call on the population and the youth to gather at Mr Gbagbo’s residence to support him – a scrolling orange banner appeared ordering all FDS soldiers in Abidjan to various barracks from 3 April to 4 April at 08h00. These facts demonstrate the RTI being used as a tool to

disseminate military orders and rally support for Mr Gbagbo in order to keep him in power at the beginning of the Battle of Abidjan.

**E. Mr Gbagbo and his subordinates failed to repress the commission of crimes by forces under their control**

1768. Where the Prosecution has argued in its Trial Brief that, faced with crimes committed by his subordinates, Mr Gbagbo failed to take reasonable steps to punish them and prevent future crimes, Mr Gbagbo chose instead to reframe the question as: did the armed forces act professionally? The feature of acting professionally does not assist the Chamber in assessing Mr Gbagbo's intent to carry out his plan to stay in power, nor does it under article 28 qualify as an essential element of superior responsibility. As Mr Gbagbo does not expand and limits himself to stating "*les éléments portés au dossier de l'affaire le montre sans ambiguité*", the Chamber should dismiss this argument entirely.

1769. Mr Gbagbo also claims that the Prosecution does not set the legal framework which should have applied, the powers of the President to prosecute and punish and which judicial procedures apply during wartime. The Prosecution obtained evidence from high-ranking generals as to the procedure in place and as to which institutions and organs were expected to investigate or prosecute.

1770. Mr Gbagbo continues by arguing that it should not be expected that investigation initiated between December and March 2011 could have been completed by April 2011, at the moment of his arrest; Mr Blé Goudé makes a similar argument citing to the fog of war as an additional difficulty in running investigations. The Prosecution's Trial Brief dealt with the failure to investigate at greater length and the Gbagbo Motion seems to ignore many of the salient features. However, to respond briefly on the issue of the expeditiousness of investigations, the Gbagbo regime swiftly arrested, investigated, indicted and sentenced the protestors of the 16 December 2010 march; within two weeks, the

majority of the arrested protesters had been released and a number of them (28) received their sentenced by 3 January 2011. With respect to officers Mr Gbagbo wanted removed, such as Youssouf Kouyaté of the National Police, Mr Gbagbo was able to remove him by simply instructing Witness P-0046, the Head of the National Police; Witness P-0046 abided immediately. Therefore, the evidence on record demonstrates that when Mr Gbagbo's regime had the will to investigate and punish, it was capable of doing so. The Prosecution invites the Chamber to compare these examples to the timid sentence relating to the 3 and 17 March 2011 incidents at the very end of a two-page document prepared and focused on a completely different topic. Indeed, this document of 24 March 2011 entitled "*Réquisition aux fins d'enquête*," issued by the military prosecutor Ange Kessi, focuses on the provision of fuel by rebel units. At the end of the document, the last paragraph requires the GDR – the *Gendarmerie's Groupement de Documentation et Recherche*, led at the time by Colonel Gnahoré Beugré – to conduct an investigation. It is striking that the killing of several dozen civilians (taking both incidents together) is treated as a sideshow to an investigation on the provision of fuel by rebel forces. It is submitted that Mr Gbagbo and his subordinates had no intention to punish the perpetrators of crimes against perceived Ouattara supporters, as they never had before and were not prepared to start to:

*"I can tell you that this painful time is a scar and shows the impunity, the impunity that reigned in Côte d'Ivoire and really is, laid the framework—or, rather, was the fertile grounds in which the seed of the post-electoral crisis were sown."*

1771. Mr Gbagbo argues that most police or *Gendarmerie* reports show that an investigation was opened relating to certain incidents, including when the FDS was involved. Most of these reports deal with petty crimes; none of them relate to the 5 charged crimes or 27 additional crimes or attacks listed as part of the widespread or systematic attack, except for one relating to the Wassakara incident

of 1 December 2010. Specifically, looking at the material cited at footnote 400 (Annex 5, Gbagbo Motion), these always refer to the drafting of a note (*“une information a été ouverte”*) without any evidence of a proper investigation or follow-up. A large number of these incidents reported in the material cited at footnote 400 relate to isolated incidents that are unrelated to the charges in this case. Worst, in one instance, on 4 December 2010, a *Gendarmerie-BMO* unit killed an 11-year old boy and wounded 7 others but the police report shows no recording of the usual information report. Further, Mr Gbagbo claims the Prosecution made no efforts to verify the result of these “investigations”, however the testimony of Witness P-0009 reveals that no FDS elements had ever been punished for the 16 December 2010 incident, the 3 March 2011 incident, or the 17 March 2011 incident.

1772. With respect to the 17 March 2011 incident, Mr Gbagbo quotes Witness P-0009’s self-serving claim that there was no need to punish FDS elements since they were not involved. Mr Gbagbo decides to ignore the lack of seriousness of Witness P-0009’s internal inquiry with respect to this incident. The fact that Mr Gbagbo’s government issued a statement on the RTI – five days after the incident – claiming they had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama mortuary and, (iii) that no complaint had been registered at police stations with respect to an FDS operation, speaks volumes as to the lack of seriousness of the inquiry. Witness P-0411 testified that the damages caused at the Abobo market were still visible two years later.

1773. Further, Mr Gbagbo claims that Witness P-0564’s testimony shows that she had been requested by the state prosecutor to establish the cause of death of victims from 28 November 2010 onwards, but that she had to stop her work due to the conflict as of February 2011. The Prosecution agrees that Witness P-0564 testified to those facts. However, Mr Gbagbo, Witness P-0009 and his

subordinates all had access to FDS elements involved in the killing of the seven women on 3 March 2011 [REDACTED]

[REDACTED] as well as the BASA elements who witnessed Commanders Brice Kamanan and Pégard Egné launching the shells from Camp Commando on 17 March 2011.

1774. With respect to the 3 March 2011 incident, Mr Gbagbo cites to a 10 March 2011 CECOS internal report claiming that investigations were conducted. This document does not demonstrate the initiation of a criminal investigation for the killing of seven female civilian demonstrators. On the contrary, the document is inaccurate (claiming that the GR BTR-80 was at the back of the convoy). The CECOS itself had no units in this convoy and the document appears to be drafted with a view to ascertaining CECOS' absence. Moreover, Mr Gbagbo misleads the Trial Chamber in claiming that it is only after having received this and other reports that the authorities issued a press release to respond to media accusations of FDS involvement since the press release was issued the very next day, rendering this claim implausible. Furthermore, while Witness P-0009 claims that the information he had was that the FDS was not involved, in the afternoon of 3 March 2011, the CPCO briefed the CEMA, the COMTER and other generals at the daily briefing that the military had repressed a women's march and that there were six or seven female casualties. Mr Gbagbo claims that the new authorities have not sentenced any of the perpetrators. This is not material to Mr Gbagbo's responsibility.

1775. Mr Blé Goudé claims that it was physically impossible to investigate the 3 March 2011 incident as access to the crime scene was limited. The UNOCI's Human Rights office certainly did not have difficulty investigating, between 3 and 9 March 2011, by meeting families of victims, representatives of the RHDP women in Abobo, local municipal representatives, and on 10 March 2011,

conducted an *in situ* mission. Furthermore, nothing stopped the FDS from initiating an internal inquiry to interrogate those officers on the ground that day.

1776. The evidence on record demonstrates that Mr Gbagbo was on notice that his subordinates may have been involved in crimes against the civilian population, not only from internal sources, but also by way of reports sent to him by international organisations. Mr Gbagbo claims that most of these reports were dated after his arrest. This is incorrect. His own Minister of Interior Émile Guiriéoulou reported on the RTI stage on 20 December 2010, having received information relating to the existence of mass graves. Interestingly, while Mr Guiriéoulou denied that such graves existed during the RTI interview, the FDS elements denied access to a UNOCI team on mission to verify the information. Mr Kassaraté, head of the *Gendarmerie*, would echo the FDS's denial and reluctance to look into the existence of mass graves when, on 18 January 2011, he is reported on the RTI as saying to the international community looking for mass graves, that the *Gendarmerie* and the FDS will never give this opportunity to the international community and reminds it of the location of real mass graves. Mr Gbagbo cannot ignore the 31 December 2010 report of the UN High Commissioner for on Human Rights, or the UN Reports of 25 February and 30 March 2011. While some reports post-date Mr Gbagbo's arrest, it is misleading to state that reports of international organisations were not published during the period of the post-election violence.

1777. With regards to the international commission of inquiry created by Mr Gbagbo on 7 January 2011, Mr Gbagbo provides references to his own submissions during the confirmation process. As stated in Section II of this Response, it is impermissible way to challenge the Prosecution's case with material that is not submitted on the record, and defeats the very purpose of a no case to answer motion. As for Mr Blé Goudé, he claims that the Commission did not complete its mission due to the deteriorating security situation in Abidjan. The Commission's report states that it was delivering the result of its

investigation. Therefore, as far as this Commission understood it (whether rightly or wrongly), its mission was complete.

1778. Mr Blé Goudé also claims that Ms Pillay's letter, sent on the same day as the speech given by Mr Gbagbo – during which he announced the creation of the commission – could not have prompted Mr Gbagbo to create the commission but that it was done at his own initiative. The Prosecution draws no conclusion as to the sequence of events that day, but rather notes that Mr Gbagbo created this commission on 7 January 2011, three weeks after the incidents, by which time most demonstrators had been either released or imprisoned. Given the total lack of punishment following the incident of 16 December 2010, the Prosecution argues that this Commission was not a genuine attempt at investigating or prosecuting the perpetrators of the crimes committed that day:

- i. None of the members of the Commission were members of the Ivoirian judicial system or investigative bodies;
- ii. At no time did they interview any of the FDS Generals in charge of the army, police or Gendarmerie. Had the commission met with police authorities, they would have discovered the sheer volume of reports collected on multiple incidents throughout the month of December, beginning with the killing of RHDP militants at Wassakara on 1 December 2010;
- iii. The members of the Commission were given a month to investigate, and by 16 February 2011 delivered their findings. These hold, in 16 lines (only 8 of which relate to Abidjan):
  - i. The kidnapping of a Kouakou Ali, Bakayoko Ali and Ouattara Amadou in Abobo during curfew;

- ii. One casualty and many wounded during the attack on the headquarters of the PDCI-RDA; and
  - iii. Theft of funds belonging to RHDP militants taken to police stations during the RTI march.
- iv. The lack of specificity and the brevity of this report betrays a lack of interest in conducting a proper investigation on the killings, persecution, rapes and inhumane treatment which took place from 28 November 2010 onwards;
- v. During a 9 March 2011 RTI broadcast reporting on the results of the Commission, it was reported the Commission wished for the killings, forced displacements, rape and pillage to be investigated to avoid impunity for the perpetrators, thereby confirming that the Gbagbo regime created this commission to give the impression that investigations were being carried out. As was heard from the testimony of the Generals, a mere internal inquiry was conducted without a proper investigation, and no one was held accountable.
- vi. The Commission was required to provide recommendations to prevent such violations in the future. However, the Commission never addressed the prevailing climate of impunity and instead proposed the dissolution of the CEI and asked restraint from the international community and for no interference in the Ivorian electoral process.



**F. Response to Defence arguments regarding Blé Goudé's individual criminal responsibility and the 25 February 2011 incident**

1. Mr Blé Goudé's membership in the Common Plan (Blé Goudé Motion, Section VI.A)

1779. Mr Blé Goudé claims that the Prosecution failed to prove that he was part of the conception of the Common Plan. To do so, Mr Blé Goudé's umbrella argument is that he is absent from the pre-2010 narrative because, as he claims, he played no role in the recruitment of youth into the FDS following the *coup d'état* of 2002, that he had no role in creating of militia such as the GPP or the FLGO.

1780. By presenting in this manner, Mr Blé Goudé reduces the Prosecution's case on his involvement in the conception and implementation of the Common Plan in this period to two very narrow sub-topics. However, Mr Blé Goudé's contribution to the conception and implementation of the plan is multifaceted and spans over a period of ten years. The Prosecution will not follow the structure of Mr Blé Goudé's motion, nevertheless it will incorporate a response to Mr Blé Goudé's arguments relating to the 2002-2003 recruitment and Mr Blé Goudé's role in the creation of militia groups.

*(a) Mr Blé Goudé's contribution to the conception of the common plan*

1781. As stated above in Section V.C.8(a)(i)a., Mr Blé Goudé held close ties with Mr Gbagbo since – at least – the October 2000 elections, he created the COJEP (a pro-Gbagbo organisation) in 2001, he was 100% on board with Mr Gbagbo's policies, he had strong relations with Simone Gbagbo, Philippe Mangou and Édouard Tiapé Kassaraté. Following the attempted *coup d'état* of September 2002, he helped organise a pro-Gbagbo youth movement which became known as the *Jeunes Patriotes*; he contributed to the creation of the GPP; and he was involved in the FDS recruitment in 2003 (*Génération Blé Goudé*). In September 2010, following a

GPP demonstration, Mr Blé Goudé sent one of his associates – Ahoua Stallone – to instruct the GPP to start providing military training to members of the FESCI; he double-checked this was taking place by meeting with Witness P-0435 and asking him whether his “emissary” had conveyed his message. On 3 December 2010, he appeared on the RTI news broadcast and congratulated the youths of Côte d’Ivoire for their support and their contribution in the re-election of “their candidate”. And by 6 December 2010, he was appointed Minister of Youth, but four days later, reminded the youth that he is still 100% the *Général de la rue*. As stated earlier, the Common Plan is not expected to be formally adopted and enshrined in a text; it is inferred from circumstantial evidence. The evidence in this case demonstrates that from 2001 onwards, Mr Blé Goudé’s views matched those of Mr Gbagbo, that – in his own way – he conceived ways to maintain Mr Gbagbo in power by all means, and later ensured their implementation.

1782. Mr Blé Goudé is wrong when he states that the evidence showing his involvement in the conception of the plan prior to the year 2010 is solely based on the testimony of Witness P-0435. While this witness had intimate knowledge of Mr Blé Goudé’s attendance and contribution to the meeting on the creation of the GPP on 23 March 2003, his presence and encouragement at GPP trainings and his instructions on 7-8 November 2004 for the GPP to provoke the French forces in Abidjan, other sources demonstrate Mr Blé Goudé’s involvement prior to 2010. For example, the UN Secretary-General reported in September 2005 that speeches made by Mr Blé Goudé as “leader of the Young Patriots” resulted in the UNOCI being denied access to the town of Agboville. The UNSC again reported the UNOCI being under attack by Young Patriots in January 2006. Witness P-0431 testified about filming several rallies whereby Mr Blé Goudé’s leadership role emerged, such as anointing chapter leaders in Treichville, giving speeches, youth wearing t-shirts with Mr Blé Goudé’s face printed on them with the slogan “*Génération Blé Goudé*.” Mr Blé Goudé himself was proud of the *Patriotes*’ rapid

capacity to gather, a quality he deemed as very important. Witness P-0048 also testified to Mr Blé Goudé's leadership role in rallying up the Patriots in January 2003 to protest against the Linas-Marcoussis agreement. The evidence of Mr Blé Goudé's contributions during the 2002-2010 phase is not limited to one witness.

1783. Between 2002 and 2011, Mr Blé Goudé did play an important role in recruiting youth into the FDS. On this topic, Mr Blé Goudé claims that he did not play any part in the recruitment itself, based on the testimony of Witness P-0009, in an attempt to draw the impression that "humour" is what led to the concoction of the term "*Génération Blé Goudé*." The Prosecution does not argue that Mr Blé Goudé's role was instrumental in the actual *administrative* act of recruitment. The Prosecution refers to the arguments elaborated at Section V.D.5.(d) above, and submits that there is evidence that the term "*Génération Blé Goudé*" referred to young Ivorians who joined the FDS and that Mr Blé Goudé played an essential role in the recruitment.

1784. Mr Blé Goudé argues that the testimony of Witnesses P-0164 and P-0316 on the ethnicity of those recruits joining the FDS cannot be relied upon. With respect to Witness P-0164, Mr Blé Goudé concedes that the witness's evidence was based on direct observations he made in his own unit, the BASA, but remarks that Witness P-0164 was not a witness of the recruitment process. In terms of evidence, Witness P-0164 provided to the Chamber his first-hand experience that the Young Patriots who were recruited in the BASA were mainly from the South-West and Centre-West of the country, most of whom were Bété or Guéré; it was rare to find recruits from the North. The fact that he was not part of the recruitment process did not prevent Witness P-0164 from learning the ethnic background of these recruits. Mr Blé Goudé argues that Witness P-0316's remark that the Patriots were "untouchable" were utterances by the recruits themselves, insinuating that the Chamber should give little value to this evidence. In fact, Witness P-0164 corroborates this evidence; he was clear that training the recruits was difficult

because the regular army officers were not being respected (*“ils étaient plus écoutés que nous”*) and that it was better to leave the Patriots alone (*“ils faisaient ce qu’ils voulaient”, “il n’y avait pas de moyen de les réprimander”*).

1785. Mr Blé Goudé also argues that Witness P-0435 did not participate in the 23 March 2003 meeting on the creation of the GPP and that his knowledge of date is based on a document which was not adduced at trial. Witness P-0435 was a member of the GPP, based in Abidjan, from 2003 to 2011. He worked closely with GPP President Bernard Yoko Yoko Bouazo as his deputy based at their headquarters in Adjamé 220 Logements. He learned of the meeting of 23 March 2003 because it was engraved in every GPP member’s memory as the official anniversary of the creation of the GPP; it was also written in GPP archival documents to which Witness P-0435 had access. At the time, they were provided t-shirts with GPP inscribed on them. Witness P-0435 also knew Bahi Tapé Donald and Gnaka Oré Michel, two of Charles Groguhet’s bodyguards who would travel with Groguhet when he met certain personalities such as Blé Goudé, and they provided Witness P-0435 with information relating to these meetings. The Trial Chamber can safely infer that the GPP was indeed created on 23 March 2003 during a meeting and that the decision was taken by youth leaders Blé Goudé, Eugène Djué, Jean-Yves Dibopieu and Charles Groguhet. Witness P-0435 adds that Charles Blé Goudé and Charles Groguhet were of the FESCI and that they were close. The Prosecution also refers the Chamber to Section V.D.5(e)(i), above.

*(b) Mr Blé Goudé’s participation to meetings instrumental to the policy*

1786. Mr Blé Goudé maintains that there is no evidence of his attendance at a meeting which would have “activated” the Common Plan. As explained in the applicable law, the Common Plan can be informal and can develop extemporaneously. Indeed, criminal plans and policies are seldom recorded for

posterity. As such, there is no requirement for evidence pointing to a meeting “activating” the plan.

1787. Mr Blé Goudé also maintains that his presence on 22 occasions at the Presidential Residence between 17 November 2010 and 14 March 2011 does not indicate that they actually met. However, absent evidence to the contrary, the logbook does indicate when a visitor is visiting the President with the letters “PR” under the third column entitled “Pers D.” As stated by [REDACTED], while it is possible that someone’s name appears in the logbook and that person does not eventually get to meet the President, normally they would see the President. Despite the fact that the Defence tried to get the witness to say otherwise in its questioning, the witness stated that “Generally that is what happens. When you have “PR” it means the visitor came to see the president of the republic.” On the logbook, the Prosecution also refers the Chamber to Section II of this Response.

1788. Further, Mr Blé Goudé suggests that there is no correlation between the time spent at the Residence and the time actually spent with the President. The principal point here is that Mr Blé Goudé did visit Mr Gbagbo at the Presidential Residence on a number of occasions, and that the Trial Chamber can make a reasonable inference, based on the sequence of events, as to the topic of discussion during these meetings. For example, while the logbook cannot tell the topic of the discussion during Mr Blé Goudé’s visit on 12 January 2011, the testimony of Witness P-0010 is indicative of the importance of this meeting. The witness remembers that a meeting took place with Mr Gbagbo relating to the security situation in Abobo; an RTI news report relating to this video reports that all key leaders in the FDS and the government were present, including the CEMA, Mr Kassaraté, Mr Bi Poin, Mr M’Bia, the Prime Minister, Minister of Defence Dogou and Mr Blé Goudé. Their presence is confirmed by entries in the presidential visitors’ logbook.

1789. This meeting of 12 January 2011 also contradicts another argument Mr Blé Goudé raises that he never attended a meeting between Mr Gbagbo and the high commanders or between the high commanders themselves.

1790. With respect to the 23-24 2011 February meetings, the Prosecution invites the Chamber to appreciate Mr Blé Goudé's visits to the Residence on 23 and 24 February within the context of the FDS offensives on Abobo and the attacks on civilians in Yopougon, starting on 25 February.

1791. Finally, on the issue of meetings, whether at the Residence, the Palace or elsewhere, Mr Blé Goudé contributed to the Common Plan according to his ability to mobilise troops and capacity to draw large crowds in the course of numerous mass rallies and gatherings. As such, meetings with Mr Gbagbo are but one factor demonstrating his relationship with Mr Gbagbo, but not the only one. It is in this context that these meetings need to be understood.

*(c) Mr Blé Goudé's cooperation with the FDS leadership on the issue of recruitment*

1792. At paragraphs 535 to 545 of his Motion, Mr Blé Goudé addresses the issue of his cooperation with the FDS with respect to the recruitment of youth in the army in 2010-2011 and claims that not enough evidence has been adduced to support this claim. Mr Blé Goudé then proceeds to look at isolated items of evidence to reach this conclusion.

1793. Mr Blé Goudé erroneously refers to Witness P-0435's testimony relating to the instructions from Ahoua Stallone and Charles Blé Goudé on the training of the FESCI: this evidence relates primarily to training matters, not recruitment *per se*. Mr Blé Goudé then impermissibly proceeds into a credibility assessment of Witness P-0435, arguing that Witness P-0435 is unreliable, did not mention Mr Stallone's name in his interview and that his account of the exchange with Mr Blé Goudé at the pharmacy DeLorvie is false. With respect to Witness P-0435's reliability as a witness, the Prosecution refers back to Section II. As for the

allegation that Witness P-0435 did not mention Ahoua Stallone's visit in October 2010 at the GPP, the Defence submits, in support of this allegation, paragraph 70 of the confirmation decision, which is not a proper source to challenge a witness's credibility. To be fair, counsel did challenge Witness P-0435 on this issue: counsel correctly reminded the witness that he did report the same fact in his interview, but had not mentioned the name of Mr Stallone. The witness explained how he provided many names on many subjects in his interview and that on this occasion, the name was simply not mentioned, as he was under the impression that Stallone's name had already been mentioned.

1794. As for his account of an exchange with Mr Blé Goudé in a car parked in front of the pharmacy DeLorvie, this evidence came out as a result of a question during Defence questioning of this witness. With respect to Sergeant Blédé, Witness P-0435 explained that two separate questions were put to him: and how many times he had met with Charles Blé Goudé (to which he provided the details of this exchange in front of the pharmacy DeLorvie; while Sergeant Blédé was present, the exchange was with Mr Blé Goudé) and when did he first have an actual exchange with Sergeant Blédé (to which he correctly answered in January 2011). The fact remains that Mr Blé Goudé sent his associate, Ahoua Stallone, to initiate the training of FESCI members and that he double-checked with Witness P-0435 that this did indeed happen.

1795. With respect to recruitment, the Prosecution refers the Chamber to paragraphs 434 to 547 of its Trial Brief where it details Mr Blé Goudé's public calls upon the youth to support the army. Mr Blé Goudé also points to a lack of coordination between him and the FDS with respect to the call for enlistment he made. However, following his 19 March 2011 call – at Place CP1 – for the youth to present themselves at the *État-Major* two days later, the youth were indeed received on 21 March 2011 at the *État-Major* to enrol. The army could not have allowed thousands of Young Patriots to show up *en masse* on their premises

without prior notice. Furthermore, upon their arrival, the army did not rebuke them; Witness P-0087 explains that, in the large parade ground, “flooded with young men”, he saw three or four tables set out in the middle of a parade ground. At each table was a person wearing a *Jeunes Patriotes* t-shirt, taking each person’s identification cards and filling out forms by hand. Each paper was put to one side and then another Young Patriot would pick up the piles of paper and hand them to a group of uniformed army soldiers.

1796. Mr Blé Goudé relies on Witness P-0009’s testimony that he had not been forewarned of this recruitment; he further argues that the Prosecution fails to explain how Witness P-0009’s explanation on his follow-up meeting with Mr Blé Goudé (and the answers Mr Blé Goudé gave) is not convincing. The evidence shows that Mr Blé Goudé mentioned the CEMA twice during the RTI interview, stating that the CEMA is waiting for the youth at the *État-Major*. Furthermore, when Mr Blé Goudé told Mr Mangou, in the early hours of the morning of the enrolment, that “*il faudrait qu’on fasse semblant de distribuer les armes aux jeunes*” (“we should pretend to be distributing weapons to the young people”), Witness P-0009 claims he refused and told the youth to go back to their neighbourhood and register at the mayor’s office. While it is correct that on 22 March 2011, pro-Gbagbo youths (and others) began to enrol at decentralised enrolment points, including in Mr Blé Goudé’s presence and at his specific direction, the RTI news report shows Mr Mangou, on the morning of 21 March, welcoming around 20,000 young men and women, including *Jeunes Patriotes*, at the *État-Major*, highlighting their determination (“*Chers amis jeunes, je suis donc venu ce matin pour saluer cette grande mobilisation. Pour saluer votre engagement. Pour saluer votre détermination à défendre la souveraineté de la Côte d’Ivoire*”) and asking them if he can count on them (“*Je voudrais donc paraphraser le président GBAGBO et vous demander à vous : est-ce que je peux compter sur vous pour la défense*”). And indeed, the enrolment began on



this day with young men handing over their identification, filling out forms and handing them over to older military soldiers.

1797. Mr Blé Goudé reported on the RTI that this was the beginning (“*le lancement*”) of the campaign of enrolment, but that it was difficult for all to travel over to the *État-Major*; hence a plan was developed to de-centralize the enrolment in the neighborhoods and he listed a number of locations such the stadium of the BAE in Yopougon, the Silla field in Niangon, in Marcory at the *Terrain des Jeunes* and the stadium Sogefia, and Place Laurent Gbagbo in Port-Bouët, and many more. Hence, the enrolment in the army was an ongoing process, and so was Mr Blé Goudé’s cooperation with the army.

2. Mr Blé Goudé’s argument that there is no proof that he acted as an intermediary between Mr Gbagbo and the pro-Gbagbo youth (Blé Goudé Motion, paragraphs 546-565)

1798. In regards to Mr Blé Goudé’s submissions on the insufficiency of evidence regarding his role in the creation of the GPP, and the general credibility of Witness P-0435, these matters have already been addressed above and will not be rehearsed here.

1799. Mr Blé Goudé claims that Witness P-0435’s account of how he helped him out of Cote d’Ivoire is implausible. The Prosecution submits that Witness P-0435’s testimony is reliable in this regard and that the issues raised by Defence counsel do not affect it. The fact that Witness P-0435 is uncorroborated in regards to Mr Blé Goudé being in Cote d’Ivoire after the 30 March 2011 should not affect his reliability in this regard. Further, that Witness P-0435 would not have recalled the exact date is not unreasonable given the circumstances of the event and the fact that it took place years before his statement to the OTP or testimony. Last, there is no confusion as to where Witness P-0435 picked Mr Blé Goudé from, and the fact

that there might have been bombings at the time does not necessarily mean that these impeded Witness P-0435.

1800. Mr Blé Goudé claims that the evidence linking him with Zéguen Touré is weak given that it is based on only one meeting of which the exact purpose was not clear. The Prosecution submits that this meeting was quite significant as it was called by Mr Blé Goudé on 14 December 2010 to mobilise the *Jeunes Patriotes* to protect the RTI from the demonstrators of the march planned for 16 December 2010. It is reasonable to infer that Zéguen was invited to attend because of his links with Mr Blé Goudé. The Defence is correct in pointing out that the GPP was not mentioned in the evidence, but it must be recalled that the evidence on the record demonstrates that they participated in repressing the march – as did the *Jeunes Patriotes*.

1801. Mr Blé Goudé alleges that the Prosecution cited an “inadmissible” video – CIV-OTP-0002-0995 – as the only evidence showing a personal link between Mr Blé Goudé and Mr Guy Gbetri. First, the Prosecution maintains that the video is relevant and admissible given its content – the issue of whether or not it contains spliced images is only relevant to its probative value. Further, this is not the only item of evidence demonstrating a link between Mr Blé Goudé and Guy Gbetri. A video shows Mr Blé Goudé standing outside his home in Yopougon next to Guy Gbetri and Zagbayou of the GPP with a crowd of youth gathered to see their “General” and ready to join the FDS. Mr Blé Goudé was indeed known as the “General” and leader of the *Jeunes Patriotes*, and as such it would only be normal that Guy Gbetri – a leader of the *Jeunes Patriotes* in Yopougon – would refer to him as such and meet with him.

1802. Mr Blé Goudé claims that the Prosecution’s allegation regarding Mr Blé Goudé’s links with Zagbayou are also speculative, that Witness P-0435’s testimony is irrelevant on this issue and that the video cited by the Prosecution does not demonstrate a personal link with Mr Blé Goudé. Witness P-0435’s

evidence is not irrelevant in this regard. In fact, Witness P-0435 testified that Mr Blé Goudé and Mr Dibopieu came to encourage the GPP during trainings provided by Colonel Zagbayou and other trainers. Further, the Prosecution submits that the content of the video in and of itself demonstrates a personal link with Zagbayou. In it, Mr Blé Goudé stands alongside both Guy Gbetri and Zagbayou in addressing the crowd of youth.

1803. Mr Blé Goudé states that the evidence on the record demonstrates that his links with militia leaders was limited. As proof of this the Defence highlights Mr Blé Goudé's absence from a meeting hosted by Eugene Djué, accompanied by Zéguen Touré and Watchard Kedjebo. The Prosecution submits that Mr Blé Goudé's absence from the said meeting is not indicative of much; a host of other reasons could explain his absence. Further, Mr Blé Goudé's further assertion that it demonstrates he was not involved with armed groups – is quite a stretch and completely ignores the significant body of reliable evidence on record demonstrating the contrary. The Prosecution highlights in this regard that Mr Blé Goudé was the "General" and leader of the *Jeunes Patriotes* and called a meeting of the youth leaders on 14 December 2010, attended by JFPI leader Navigué Konaté, FESCI leader Augustin Mian and GPP leader Zéguen Touré amongst others (as explained above).

1804. Mr Blé Goudé refers to the Defence questioning of Witness P-0500 to claim that it has been demonstrated that Maho Glofiéhi's presence at a rally with Mr Blé Goudé was completely unrelated to his activities as the head of the FLGO. The Prosecution submits that this claim is not supported by the evidence. In fact the Defence only succeeded in demonstrating that Maho Glofiéhi was also a *Chef Coutumier* of the great West and that in general he would attend public political functions such as the rally. It must be recalled that the rally occurred on 29 December 2010, and that during this rally Mr Blé Goudé instructed the youth to get ready with their bare hands. It is clear that this was not a normal benign rally

– as the Defence suggests – but one held in the midst of the post-election violence and calling for the youth to be ready for violence. In this case, Maho Glofiéhi was clearly present as the head of the FLGO and not simply as a *Chef Coutumier*. Maho Glofiéhi was also present at another critical rally with Mr Blé Goudé on 19 March 2011, when Mr Blé Goudé called on the youth to enlist in the army.

1805. Mr Blé Goudé alleges that the Prosecution’s claim that he was the “political authority” of all patriotic movements and thus in charge of their funding is based solely on the testimony of Witness P-0435. This assertion is incorrect. The Prosecution relies on different sources of evidence to support the allegation that Mr Blé Goudé was the “General”, leader of the *Jeunes Patriotes* and leader of the *Galaxie Patriotique*. Further, the evidence on record demonstrates that some of the leaders of the *Galaxie Patriotique* received bonuses directly from the Presidential Palace, from the Director of Cabinet of the President – Mr Blé Goudé himself received bonuses to hold meetings. In relation to Witness P-0435, it must be recalled that he testified that Mr Blé Goudé received subsidies from the *pouvoir en place* which was confirmed by independent evidence and demonstrates the reliability of his testimony on this matter.

1806. Mr Blé Goudé further claims that evidence from witnesses with extensive knowledge of youth groups shows that the groups were independent and did not receive funding from Mr Blé Goudé; and the Defence also claims that Witness P-0097’s testimony makes it clear that Mr Blé Goudé was not the *de facto* authority over the *Galaxie Patriotique*. Although there might have been discontent amongst the leaders of the different patriotic movements, the overwhelming evidence on the record points to the conclusion that Mr Blé Goudé was the leader of the *Galaxie Patriotique*. In this regard, the testimonial evidence on record is confirmed by videos in which Mr Blé Goudé presented himself as the General and leader of the *Galaxie Patriotique* and was also recognised as such. Most importantly it is Mr Blé Goudé who gave the *mots d’ordres* to the youth, and called important meetings

attended by other youth leaders - because he was in fact the leader of the *Jeunes Patriotes* and the patriotic movements.

1807. In regards to the Prosecution allegation that he funded the GPP, Mr Blé Goudé argues that Witness P-0435's uncorroborated hearsay evidence in this regard is incapable of satisfying a reasonable Chamber. Contrary to what is alleged by Mr Blé Goudé, Witness P-0435 did respond to the question as to how he knew that Touré Zégouen received money from Mr Blé Goudé. In response to this question Witness P-0435 testified that when the GPP members would have disputes over their *per diems*, there were information reunions, during which "*nos responsables nous confirmaient que c'est cette somme-là qu'ils avaient reçue de nos soutiens tant militaires que politiques*" – in this last part the witness is obviously referring to Mr Blé Goudé amongst others. The reliability of this information is bolstered by the fact that Witness P-0435 confirms that Moussa (Touré) Zégouen and General Jeff Fada were present at these meetings.

1808. Mr Blé Goudé alleges that the receipts and money orders allegedly received by youth leaders, and Witness P-0625's testimony are irrelevant to the charges since these monies have no nexus to the alleged crimes. The Prosecution submits that these receipts and the evidence on record demonstrate that Mr Gbagbo and his Inner Circle financed the pro-Gbagbo forces, including the patriotic movements and by the same token the *Jeunes Patriotes* members. These *Jeunes Patriotes* were subsequently used by Mr Gbagbo and his Inner Circle to commit crimes.

1809. Mr Blé Goudé alleges that the Prosecution is requesting the Chamber to draw the unsubstantiated inference that the funds indicated in the receipts collected at the Presidential Palace were used for other activities than for funding meetings – such as funding leaders and their members. The Prosecution submits that the frequency of the payments, the large sums of money involved, that they were made prior to and during the postelection violence and the fact that the *Jeunes Patriotes* would have required some type of financial support during the period,

point to the conclusion that these payments – emanating from the Presidency – were meant principally to fund the patriotic movements and ultimately harness their support. That the money could have been used by the leaders to hold (more) meetings, with food and entertainment during the post-election violence – as is suggested by the Defence – is not a reasonable inference given the evidence on record.

3. Mr Blé Goudé's argument that there is no nexus between his "*mots d'ordres*" and the crimes committed in the 25-28 February 2011 incident (Blé Goudé Motion, paragraphs 566-624)

1810. Mr Blé Goudé ultimately argues at paragraphs 566 to 624 of his Motion that there is no nexus between his "*mots d'ordres*" and the crimes committed in the 25-28 February 2011 incident. The Prosecution responds here to the specific arguments made by Mr Blé Goudé, but otherwise relies on the arguments presented in its Trial Brief to demonstrate that the crimes were committed in response to Mr Blé Goudé's *mot d'ordre*. It also addresses in Section IV.D some discrete arguments about the pre-existing tension in Yopougon and the role of police, to the extent that these overlap with arguments made by Mr Gbagbo.

(a) Mr Blé Goudé's argument that the incident could have been a retaliatory action in response to the burning of a student bus (Blé Goudé Motion, paragraphs 20, 587)

1811. Mr Blé Goudé argues that "the incident could have also been likely caused as a retaliatory action in response to a group of students' bus, number 85, being burned down near the *Institut des aveugles*." He states, based on Witness P-0449's testimony, that "the fights started after people from Doukouré burnt down a bus in Yao Sehi, an event that happened before the start of Charles Blé Goudé's speech." He goes on to state that "[t]he record further shows that by the time the Baron Bar ended, the *gbakas* near Doukouré were already burning." The suggestion seems to be that the Yao Séhi youth began their attack before the end of the *Bar le Baron* meeting, and therefore independently from any influence from Mr Blé Goudé.

1812. The Prosecution submits the following in response.

1813. First, similarly to the argument in Section V.F.3(b), Mr Blé Goudé has not demonstrated how instances of apparently retaliatory *gbaka*-burning by some pro-Gbagbo youth, even if prior to Mr Blé Goudé's speech at *Bar le Baron*, has any relevance to the ensuing commission of the crimes of murder and inhumane acts committed by the police and the same or other pro-Gbagbo youth and militias against the inhabitants of Doukouré. As Witness P-0440 noted, about the phenomenon of burned bodies during the incident, these "*ne sont pas la résultante des affrontements, mais sont dû essentiellement aux barrages d'auto défense érigés sur les voies par les jeunes*." Mr Blé Goudé appears to argue that, had he not given his speech at *Bar le Baron*, the same crimes would have nevertheless been committed in the same way by the same perpetrators. This ignores i) the witness testimony demonstrating that the Yao Séhi youth who initiated the stone-throwing against Doukouré residents had come from the meeting at *Bar le Baron* (see Section IV.D); ii) that the police, in any case, came out in support of the Yao Séhi youth, firing live bullets and grenades at the Doukouré youth; and iii) all evidence

demonstrating that the killings and other inhumane acts committed by pro-Gbagbo youth and militias – including burning deaths at roadblocks – occurred pursuant to Mr Blé Goudé’s *mot d’ordre* (see Sections V.F.3(c) and (d)).

1814. Second, in any event, Mr Blé Goudé misstates the testimony of Witness P-0449 by attributing the burning of the bus to people from Doukouré. When asked who had burned the bus, the witness replied “*Les auteurs de cet incident, je ne saurais vous le dire*”. There is no direct evidence as to what group of persons burned the bus. However, it emerged from Witness P-0440’s investigation that in the *parlements* and *agoras*, people were saying that it was RDR or RHDP youth who had burned the bus, such that it was necessary to burn the *gbakas* in retaliation, as the *gbakas* belonged mainly to RDR or RHDP people. The burning of the bus was therefore used as a pretext for pro-Gbagbo youth to burn the *gbakas*, which they did during the day of 25 February 2011.

1815. Finally, Witness P-0449’s testimony, viewed in its whole, tends to suggest that it was once he left the meeting, that the students began attacking the *gbakas*, the Prosecution acknowledges that the evidence is unclear on this point. A *compte-rendu* prepared by Witness P-0440 on the morning of 25 February 2011 shows that the burning of the *gbakas* had commenced prior to 08:40am that morning (as indicated by the time stamp), with two noted as burned at that point.

1816. The Prosecution notes that Witness P-0449, in his testimony, first stated that the students whose bus had been burned “came to tell us”, referring to those already assembled at the *Bar le Baron*. Asked what the youths did, the witness replied:

*“Ces jeunes-là sont venus se recueillir auprès du général Charles Blé Goudé pour prendre les conseils et la conduit à tenir. Je pense bien que la conduit à tenir. Il y a d’autres qui sont rentrés – je pense bien – à la maison.”*



1817. Some moments later, when asked about leaving the *Bar le Baron*, he said:

*“[...] quand nous sommes partis, déjà, il y avait les, gbaka [...] les étudiants en revanche se sont pris aux différents conducteurs sous le prétexte qu’ils ont cassé leur véhicule, parce qu’ils n’ont pas pu aller à l’école, ils n’ont pas pu quitter l’université, donc eux aussi ils vont empêcher les gbaka aussi de rouler.”*

1818. These passages would appear to indicate that the youths whose bus had been burned came to see Mr Blé Goudé at *Bar le Baron* to seek guidance, and at the conclusion of the meeting, went out and began attacking the *gbakas*. Mr Blé Goudé appears to rely only upon the following evidence elicited during Defence questioning of this witness::

Q. Monsieur le témoin, ma dernière question avait été: est-ce que vous aviez pu les [...] ceux qui s’en seraient pris au gbaka, vous m’avez répondu « non » ; c’est ça ?

R. C’est exact.

Q. Vous n’avez pas vu parce que vous étiez encore au meeting; c’est ça?

R. Oui, Maître.

*(b) Mr Blé Goudé’s argument that the Prosecution has not proved that the perpetrators of the crimes in the 25-28 February 2011 incident were present at the Bar le Baron speech (Blé Goudé Motion, paragraphs 20, 586, 588)*

1819. Mr Blé Goudé argues that the Prosecution has not established i) the timeframe of his speech at the *Bar le Baron* in the morning of 25 February 2011; ii) whether or not Maguy le Tocard’s group was present at the speech; or iii) whether those

present were part of the group that committed the crimes. Specifically, he asserts that “(s)everal witnesses testified that the violence in Yopougon Doukouré, on 25 February 2011, started before Charles Blé Goudé’s speech at Le Baron Bar was terminated or even started.” Mr Blé Goudé also challenges the Prosecution’s reliance on Witness P-0442 in alleging that pro-Gbagbos who had attended his meeting at *Bar le Baron* had come down the *Boulevard Principal* and thrown stones at the Doukouré residents. He argues that Witness P-0442 did not attend the meeting himself, that he did not say that the people who threw stones had attended the meeting or not, and did not explain how he identified the people who were throwing stones as pro-Gbagbo.

1820. The Prosecution responds as follows. First, Witness P-0442 gave clear and unchallenged evidence that the “pro-Gbagbo” who had been at Mr Blé Goudé’s meeting at *Bar le Baron* came down the *Boulevard Principal* and threw stones at the Doukouré residents. [REDACTED]

[REDACTED] Witness P-0442 said:

*“Moi j’étais au kiosque, le 25 février. Blé Goudé faisait un meeting au Baron de Yopougon. C’est après le meeting, ils descendaient. On voit la foule qui vient, les gens sont en train de dire: « Il faut fermer le kiosque, il faut fermer le kiosque. » Avec des pierres, ils sont venus, ils sont en train de nous lapider, ils sont en train de nous lapider.”*

1821. When asked who he meant by “ils”, he said: “Les pro-Gbagbo. J’ai dit, Blé Goudé faisait un meeting au Baron de Yopougon ce jour-là. C’est après le meeting, ils sont venus... le... la foule est venue.”

1822. In questioning by the Defence, when asked about his knowledge of the meeting, Witness P-0442 explained that it was the same crowd (“*foule*”) who had gone to the meeting and then came back:

*“J’ai dit que voilà, les deux quartiers, voilà, c’est la route qui nous sépare pour des gens... pour une foule qui sort pour aller. Ceux-là, ils vont où? Ils vont au meeting de Blé Goudé, il est en train de faire un meeting au chose, là-bas, au baron. Tu vas dire quoi? C’est après ça, ils revenaient maintenant.”*

1823. When it was further put to him in cross-examination that he could not say that the attackers were Mr Gbagbo supporters, he first explained that it was because *“C’est eux qui nous lapidaient”*, then further explained that it was because *“on se connaît entre nous.”*

1824. Second, other witness evidence also demonstrates that the group that started the stone-throwing was pro-Gbagbo:

- a. Witness P-0407 referred to an incident in Yopougon prior to 12 April 2011, in which the *“jeunes pro-Gbagbo du quartier de Yao Séhi”* attacked Doukouré, the Doukouré youths pushed them back to the 16<sup>th</sup> arrondissement police station, and the police intervened on the side of the Yao Séhi youth.
- b. Witness P-0109 said that the group was composed of youths from Yao Séhi. When asked how he knew this, he replied *“Parce qu’on les connaît, on les connaît. Au fait, c’est la politique qui nous a mis... qui a fait qu’il y a eu, peut-être, une séparation entre ces jeunes-là et nous.”*
- c. Witness P-0433 similarly described the stone-throwing as being between the youths of Doukouré and the youths of Yao Séhi.
- d. Witness P-0459 explained that Yao Séhi was majority pro-FPI.
- e. Witness P-0436 described a crowd of people who first threw stones at a sign with the effigy of Mr Alassane Ouattara before throwing stones at people in the Doukouré neighbourhood.

1825. Third, the Prosecution is not required to prove that the individual perpetrators were present at the *Bar le Baron* speech. Instead it emphasises the immediacy of the violent response by the Yao Séhi youth and the perpetrators – police, and pro-Gbagbo youth and militias – following Mr Blé Goudé’s words, delivered in geographic proximity (at Yopougon’s *Bar le Baron*) and temporal proximity (on the morning of 25 February 2011). It is the immediacy of the response that demonstrates the effect of the speech on the perpetrator groups. Here the Prosecution also refers the Chamber to its *prima face* case against Mr Blé Goudé under article 25(3)(b) of the Statute, as set out at Section VI.B.3(c).

(c) *Mr Blé Goudé’s argument about the interpretation of the Bar le Baron speech: that his call to check the comings and goings should be understood to entail only defensive action against armed guerrilla insurgents (Blé Goudé Motion, paragraphs 20, 567-584)*

1826. Mr Blé Goudé argues that his call for residents to check the comings and goings of their neighbourhoods must be understood in the context of an armed conflict taking hold of Abidjan and involving armed guerrilla insurgents, and that “[t]he fears that this group would begin taking over Yopougon were real and the crowd feared for its security.” It was not a call for violence against civilians, but a call to peaceful action. This, in his submission, negates the link between the incident in Yopougon and any policy or act of Mr Blé Goudé.

1827. Mr Blé Goudé points to i) violence perpetrated by opposing youth groups against the pro-Gbagbo youth during the post-electoral crisis; ii) the ongoing “CIV2” investigation carried out by the Office of the Prosecutor, from which some materials have been disclosed to the Defence; and iii) the presence of *Mongobas* and *Commando Invisible* in Abobo, to argue that the need for self-defence was genuine and proportionate. He also emphasises his use of the expression “*mains nues*” in his various speeches to apparently demonstrate his non-violent intentions and message.

1828. The Prosecution submits in response that:

- a. Mr Blé Goudé has not substantiated why his speech should be read against the context of an armed conflict taking hold of Abidjan. He has pointed to no evidence, for example, that the crowd was fearful for its safety and perceived – reasonably or otherwise – the need for self-defence.
- b. Mr Blé Goudé’s use of the expression “*mains nues*” in his speeches, while on its face an expression of peace, cannot diminish the overall effect of his speech at *Bar le Baron*, which prompted immediate violent action. The reasons for this are outlined at Section V.F.3(d).

1829. On the *Bar le Baron* speech specifically, Mr Blé Goudé submits that, given that the Prosecution has not been able to obtain and submit a full and uninterrupted version of his speech, it is not possible to verify whether important parts of the speech are missing from the case record. He submits, based on video CIV-D25-0038-0001, that the scene of the crowd shouting “*on veut pas*” occurs at the conclusion of his speech, rather than before it, and suggests that this sequencing is “vital”. He also emphasises apparently exculpatory statements contained in the speech, where he denounces throat slitting, falling into the trap of civil war and civilians fighting each other, and argues that the Prosecution has failed to produce evidence to demonstrate that the speech was a call to violence against the civilian population. He also argues that he did not tell the youth, in his speech, that they must follow his instructions.

1830. The Prosecution submits in response that:

- a. The absence of a full and uninterrupted version of the *Bar le Baron* speech does not detract from the available evidence, including video evidence, about what Mr Blé Goudé said and what the immediate reaction was. Furthermore, Mr Blé Goudé is unable to point to any evidence about the

content of any portions of the speech not captured in available video evidence. His mere speculation about whether any “very important parts” were missed has no evidential value.

- b. In relation to the sequencing of the crowd shouting “*on veut pas*”, there is no continuous video footage that would demonstrate whether this scene preceded or followed Mr Blé Goudé’s speech. In the video referred to by Mr Blé Goudé – CIV-D25-0038-0001 – there is a scene change between footage of him speaking (up to 00:01:10) and footage of the crowd shouting “*on veut pas*” (from 00:01:10). There is nothing to indicate that the sequencing employed by the video editor was chronological. Indeed, the opposite sequencing is used in video CIV-OTP-0074-0083, where the footage of the crowd shouting “*on veut pas*” (00:16:31 to 00:16:42) precedes images from Mr Blé Goudé’s speech (from 00:16:42). Mr Blé Goudé further fails to explain the significance of the crowd shouting “*on veut pas*”, including its chronological significance.
- c. The passages of Mr Blé Goudé’s speech claimed to be pacific and exculpatory should not be so construed. The reference to throat-cutting (“*Voyez-vous, comment dans un pays, des gens ils prennent une machette et un couteau et ils égorgent. Ça, c’est quoi ça ?*”) is a clear reference to the actions of an unstated “other” side. Therefore his denunciation of this practice is not pacific; it is intended to stimulate fear and push the youth towards violent action. Similarly, the references to avoiding civil war and to civilians fighting each other are not pacific, in light of the tenor of the rest of the speech; Mr Blé Goudé also orders the youth to stop UNOCI from circulating, to monitor the entries and exits to the neighbourhoods, to report any “*personne étrangère*”, and to await the call to go to the Golf Hotel. In any case, to any extent that such calls can be construed as pacifying, they do not diminish the overall effect of Mr Blé Goudé’s speech

at *Bar le Baron*, which prompted immediate violent action. The reasons for this are outlined at Section V.F.3(d).

- d. While there is no evidence that Mr Blé Goudé explicitly ordered the youth to follow his instructions during his speech at *Bar le Baron*, in announcing the meeting the night before, he explicitly did so with the aim “to issue the last instructions”. This also followed multiple occasions of priming the youth for an expected “*mot d’ordre*” (an expression used by Mr Blé Goudé himself, and therefore requiring no definition from the Prosecution).

1831. Finally, the Mr Blé Goudé notes Witness P-0440’s denial of his attending the 16<sup>th</sup> district police station on 25 February 2011, and of a person being burned outside the police station (murder victim 5). As outlined above under Section IV.D, the Prosecution relies on the testimony of Witness P-0436 as to this murder, as well as the presence of “*le Général*” at the 16<sup>th</sup> district police station on that day.

(d) *Mr Blé Goudé’s argument that the killings at roadblocks were not a result of his speech (Blé Goudé Motion, paragraphs 601-609)*

1832. Mr Blé Goudé submits that the Prosecution has failed to prove a nexus between Mr Blé Goudé’s *mots d’ordres* and the acts of violence at roadblocks. He argues that there were acts of violence in the whole city of Abidjan, and that the victims of violence during the post-electoral period were from various ethnic groups and not uniquely pro-Ouattara. He refers to the wording of the *Préfet de Police’s* report to argue that those manning the roadblocks were criminals taking advantage of the situation to commit crimes “*des délinquants qui commettent des infractions*”. He refers to an ANSI *Note d’Information* and argues that the Prosecution has failed to prove that he had any means to compel the police or administration to take measures. He refers to Witness P-0097’s testimony about roadblocks being a form of monetary extortion. Finally, he refers to Witness P-

0449's testimony to argue that Prosecution has failed to prove that certain groups were targeted at the roadblocks.

1833. The Prosecution submits in response that:

- a. In arguing that the victims of violence were from various ethnic groups and not uniquely those perceived as pro-Ouattara, Mr Blé Goudé cites only to violence that occurred outside Yopougon, namely in Abobo and the Western village of Duékoué. The Prosecution's case on the 25-28 February 2011 incident is confined to events in Yopougon. The existence of other victims in other locations during the post-electoral crisis has no bearing on the nexus between Mr Blé Goudé's *mots d'ordres* and the killings at roadblocks in Yopougon.
- b. It is equally irrelevant to this nexus that those manning roadblocks could be described as "*délinquants*" committing crimes. As argued below at Section V.F.3(f), it is significant that Mr Blé Goudé was aware of the commission of crimes at the roadblocks and did not act to stop them. This supports the inference that the violence at roadblocks was occurring pursuant to his call.
- c. There is no requirement for the Prosecution to prove that Mr Blé Goudé had the means to compel the police or the administration to take measures against those committing crimes at roadblocks. Indeed, Mr Blé Goudé had the capacity himself to put a stop to the roadblocks. As Witness P-0440 noted in his report, "*seul un appel à la télévision nationale par l'initiateur de ces barrages peut y metre véritablement un frein.*" He testified that the referenced instigator was Mr Blé Goudé. In writing this report, he had in mind that it was only necessary for Mr Blé Goudé, as the person who had called the youth onto the street, to ask them to go home.



- d. The reference to Witness P-0097's testimony is selective in citing only the portion relating to monetary extortion. Some three pages later in the transcript, Witness P-0097 testified about intimidation in the form of "burning people alive", a phenomenon he referred to as "article 125" due to the cost of 100 francs for petrol and 25 francs for a box of matches.
- e. The portion of Witness P-0449's testimony cited does nothing to counter the Prosecution's case that certain ethnic groups were targeted at roadblocks. After referring to those manning the roadblocks, Counsel for Mr Blé Goudé asked whether "*il est exact de dire qu'à ces barrages où il y a vos voisins de quartier, il y a des gens de toutes les ethnies de la Côte d'Ivoire*", which the witness confirmed. This line of questioning appears to relate not to the persons targeted at the roadblocks, but to the persons manning them.

1834. Mr Blé Goudé also challenges the reliability of the UNOCI call centre reports. The Prosecution responds to these submissions at Section IV.

*(e) Mr Blé Goudé's argument that the proliferation of roadblocks after 25 February 2011 cannot be attributed to his speech (CBG Motion, paras. 591-599, and para.617)*

1835. Mr Blé Goudé argues that the Prosecution has failed to prove that the proliferation of roadblocks after 25 February 2011 could be attributed to his speech at *Bar le Baron*. He argues that the erection of roadblocks was "spontaneous" and uncoordinated, was aimed at securing the neighbourhood and at self-defence, and that there was no targeting of specific ethnic groups. He refers to Witness P-0097's testimony about a "second version" of the events of 25 February 2011, in which young people rebelled against the transporters and their *gbakas*. He refers to the erection of roadblocks by the youth of Doukouré from 25 February 2011. He points to the existence of *Commando Invisible* roadblocks in Abobo. Additionally, in a later paragraph of his Motion, he argues based on the

language of his 4 March 2011 address on RTI that he did not direct or instruct people to erect roadblocks.

1836. The Prosecution submits in response that:

- a. Mr Blé Goudé relies on portions of Witness P-0449's testimony in cross-examination to claim that the roadblocks were "spontaneous" and uncoordinated. The Prosecution notes at the outset that the witness explained, in response to non-leading questions from the Prosecution, that at the *Bar le Baron* meeting Mr Blé Goudé asked those assembled to erect roadblocks in the different neighbourhoods to stop UNOCI and to exercise vigilance to monitor the entries and exits of "*différentes personnes*", that these roadblocks were erected "*(d)ès la fin du meeting*", and that he personally erected such a roadblock. That the witness subsequently agreed in cross-examination that the roadblocks were "spontaneous" cannot detract from this clear testimony about the immediacy of the youth's reaction to Mr Blé Goudé's order in erecting the roadblock. Similarly, the witness's testimony during cross-examination about lack of coordination ("*il n y a pas une coordination entre un barrage et un autre*") does not detract from his evidence that the roadblocks were erected in response to Mr Blé Goudé's order. Indeed, in the same passage the witness contradicted himself somewhat by adding, referring to the youths manning the roadblocks, "*Ils venaient, ils communiquaient avec l'autre pour voir comment est-ce qu'ils allaient organiser.*"
- b. In relation to Mr Blé Goudé's argument about security and self-defence being the stated aim of the roadblocks, the Prosecution notes that such a stated aim is not inconsistent with the roadblocks being mounted upon the order of Mr Blé Goudé. To the contrary, as already stated, the references in the *Bar le Baron* speech to the threat of throat-cutting and genocide were

intended to stimulate fear and to push the youth towards violent action. The references by those manning the roadblocks to “self-defence” are therefore consistent with the tenor of Mr Blé Goudé’s speech.

- c. In relation to the targeting of victims at roadblocks, Mr Blé Goudé relies on an instance in which Witness P-0087 did not see people being checked on the basis of ethnicity at a certain roadblock. However, the Prosecution notes that those manning the same roadblock told him about stopping Burkinabés, Malians, Togolese and Senegalese, and that people from other West African countries who came to Côte d’Ivoire wanted to destroy the country. This video shows, in contemporaneous form, what the practice was on the ground, consistent with Mr Blé Goudé’s call to “*vérifier les entrées et les sorties de vos quartiers et dénoncer toute personne étrangère qui vient dans votre quartier.*” It therefore demonstrates the implementation of the order.
- d. In relation to the claimed alternate explanation given by Witness P-0097 about the proliferation of roadblocks, the “second version” whereby young people rebelled against transporters (*gbaka* drivers) is in no way incompatible with the roadblocks being erected on Mr Blé Goudé’s order. As argued in Section V.F.3(a) above, Mr Blé Goudé has not demonstrated how instances of apparently retaliatory *gbaka*-burning by some pro-Gbagbo youth in any way diminishes his responsibility for the crimes committed in Yopougon from 25 February 2011. Witness P-0097 himself explained, some moments after the excerpt cited by Mr Blé Goudé, that after the *Bar le Baron* meeting, he saw roadblocks held by *Jeunes Patriotes* in the neighbourhood.
- e. In relation to the roadblocks erected by Doukouré youth in their neighbourhood, as Mr Blé Goudé acknowledges, this occurred from 25

February 2011. These were erected in response to the events of 25 February, at the entry points to Doukouré to stop the militiamen from returning. The Prosecution does not claim that these defensive roadblocks were erected by the residents of Doukouré in compliance with Mr Blé Goudé's speech.

- f. Similarly, Mr Blé Goudé's references to *Commando Invisible* roadblocks in Abobo is also misguided. The Prosecution does not claim that any such roadblocks were erected in compliance with Mr Blé Goudé's speech.
- g. Finally, Mr Blé Goudé interprets the words of his 4 March 2011 address ("*J'en profite pour lancer un message à ceux qui dressent les barrages dans les quartiers, je leur ai dit de protéger leur quartier*") to suggest that he only instructed people to protect their neighbourhoods, but not to erect roadblocks. This is not a reasonable reading of his speech at *Bar le Baron*, which instructed those present to "check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood." There is no other meaning to be taken from these words, other than the establishment of a mechanism to check comings and goings, i.e. a roadblock. This was indeed the understanding of Witness P-0449, as detailed above.

(f) *Mr Blé Goudé's argument that he was not informed of the violence committed at roadblocks, but made several attempts to end the violence in Yopougon and at roadblocks (Blé Goudé Motion, paragraphs 610-624)*

1837. Mr Blé Goudé simultaneously argues i) that "The Prosecution has failed to prove that Charles Blé Goudé was informed of the violence committed at roadblocks"; and ii) that "Charles Blé Goudé made several attempts to end the violence in Yopougon and at roadblocks". He argues that Witness P-0440's testimony is insufficient to show that he was informed of the violence at the

roadblocks. He then goes on to detail the apparent attempts he made to stop the violence at the roadblocks: the 4 March 2011 address on RTI, the 18 March 2011 roadblock address, the 19 March 2011 call to enrol, his 23 March 2011 statement, his 26 March 2011 statement, his 3 or 4 April 2011 statement, and his 5 April 2011 address.

1838. The Prosecution submits first and foremost that Mr Blé Goudé's position as outlined above amounts to a concession that Mr Blé Goudé had knowledge of the violence at the roadblocks. It cannot logically be argued that he attempted to end violence of which he had no knowledge. The best evidence of Mr Blé Goudé's knowledge are the following references in his various addresses.

- a. In his 4 March 2011 RTI address to the youths at the roadblocks, Mr Blé Goudé said: "il faut éviter de racketter les gens parce que nous, nous voulons assurer la sécurité des gens avec politesse, éviter de tomber dans le piège de vous attaquer aux Sénégalais, aux Togolais, par-ci, par-là."
- b. In his 14 March 2011 press conference, Mr Blé Goudé again asked those at the roadblocks: "*Soyez polis et évitez de racketter.*" While he claims not to believe reports of racketeering ("*Je sais que vous ne rackettez pas mais pour vous discréditer, l'on raconte n'importe quoi*)," this nevertheless demonstrates that such information had reached him.
- c. In RTI footage of Mr Blé Goudé at a roadblock on 18 March 2011, he again refers to the need for "*politesse*" and "*gentillesse*".

1839. The Prosecution further submits in response that Mr Blé Goudé made no genuine attempt, in these addresses to the youth, to end the violence at the roadblocks:

- a. His own reports of mediation and reconciliation and his requests to stop racketeering or attacking certain West African nationalities in his 4 March

address, ring hollow against his congratulating the youths on 14 March 2011 for erecting roadblocks to protect their neighbourhoods, which he said had discouraged the rebels, and against subsequent calls to reinforce the roadblocks (as detailed directly below).

- b. In RTI footage of Mr Blé Goudé at a roadblock on 18 March 2011, what he characterises as a “call to act with kindness” is instead a call to maintain and even reinforce the roadblocks: *“Renforcez les corridors et vérifiez les véhicules avec beaucoup de politesse, avec beaucoup de gentillesse, mais avec beaucoup de fermeté aussi.”* Mr Blé Goudé has not identified where, in this footage, he condemned acts of violence by those manning the roadblocks.
- c. Mr Blé Goudé has not demonstrated how his 19 March 2011 call for the youth to enrol in the army amounted to any denunciation or attempt to stop the violence committed at the roadblocks. Indeed, it was at this speech that he announced *“la fin de la résistance aux mains nues.”*
- d. Mr Blé Goudé has also not demonstrated how his statements of 23 March 2011, 26 March 2011 and 3-4 April 2011 amounted to any denunciation or attempt to stop the violence committed at the roadblocks.
- e. In relation to Mr Blé Goudé’s 5 April 2011 address, the Prosecution relies on the following portions to demonstrate that he congratulated and encouraged the youth for their resistance and instructed them to reinforce the roadblocks. Once more, Mr Blé Goudé has not demonstrated how this address amounted to any denunciation or attempt to stop the violence committed at the roadblocks.

*“Vous méritez que l’on vous félicite parce que, depuis, vous êtes restés debout. Ainsi donc je vous félicite, je vous encourage, je vous exhorte en ces moments difficiles à être solidaires les uns avec les autres.”*

*“Quant à vous, dans vos quartiers, vous avez dressé des barrages, il faut les renforcer.”*

(g) *Other arguments made by Mr Blé Goudé*

1840. Mr Blé Goudé argues that the Prosecution has failed to prove that youth leaders disseminated his *mot d'ordre* of 25 February 2011. The Prosecution submits, with reference to the excerpts included in Part VII, E.6. of its Trial Brief, that the coordination of the message is to be inferred from the proximate timeframe (25 February 2011 for Nicaise Douyou and Jean-Marie Konin's messages; 28 February 2011 for Idriss Ouattara's message), and the strikingly similar content and language used in relation to denouncing rebels and monitoring the neighbourhoods.

1841. Mr Blé Goudé argues that Witness P-0441 cannot be believed in his identification of “Agbolo” as one of the militiamen who attacked the Lem mosque, since the basis for his knowledge was not elicited. The Prosecution refers to the multiple passages in which Witness P-0441 substantiated his identification of Agbolo.

- a. The witness described Agbolo as the person who would always accompany Mr Blé Goudé, opening his door when he got into his car. He said he saw this many times at Macarana stadium, where Mr Blé Goudé would play football.
- b. The witness said that on a day prior to the attack on the mosque, when Agbolo attended the mosque to take the microphone away from the witness, he himself said *“je suis le garde du corps de M. Charles Blé Goudé.”*
- c. The witness said that the day of the attack on the mosque was not the first time that he had seen him: *“J'avais l'habitude de voir Agbolo.”* When questioned on this further he said he wasn't sure if the word “bodyguard”

was correct, but that Agbolo was someone he would call “*le protégé du patron*”, as he was always in front of Mr Blé Goudé’s door.

4. Mr Blé Goudé’s argument that there is no nexus between his speeches and the alleged crimes (Blé Goudé Motion, Section VI.4.B)

1842. Mr Blé Goudé argues, in order to challenge the nexus between his speeches and the crimes, that the Prosecution takes his speeches out of context, that he never called upon his audience to commit violent acts, and that in every speech cited by the Prosecution he asked the youth to remain calm and discouraged recourse to violence as a solution. He goes on to show instances of apparently peaceful language in the speeches relied upon by the Prosecution. Mr Blé Goudé ultimately argues that the Prosecution has failed to demonstrate that he mobilised the youth to commit violent acts, or to create an atmosphere in which the youth felt threatened.

1843. The Prosecution maintains its reliance on Mr Blé Goudé’s speeches from mid-December 2010 to the early days of April 2011 as demonstrating his galvanisation and mobilisation of the youth to commit violent acts and his issuing of instructions or *mots d’ordres*, as argued in the “Yopougon Narrative” section of the Prosecution’s Trial Brief. It is the Prosecution’s case that, while Mr Blé Goudé did not use explicit language to call upon his audience to commit violent acts, this was nevertheless the effect of his repeated instructions, encouragement and – in particular – his approval of violence at the roadblocks (*see* Section V.F.3(f)). His speeches prior to 25 February 2011 – while not overtly calling for violence – primed the youth to be ready for an expected “*mot d’ordre*” to be issued by him in response to the (genocidal) threat presented by, variously, France, UNOCI and the “rebels” (including Mr Ouattara). The strength of his message was such that apparent appeals to peace and non-violence could not dilute its true meaning:



- i. On 14 December 2010, Mr Blé Goudé makes his first appearance on the RTI in his new capacity as Minister for Youth. As he emphasises in his submissions, he instructs the youth to “*Restez tranquilles*”, however these apparently pacific words must be read in the broader context of the interview. In the interview, Mr Blé Goudé explains that he is at the service of the youth of Côte d’Ivoire and “reassures” them that they have not lost their General: “*Je suis général à 100%, et puis 100% ministre.*” This means, he elaborates that “*[...] je travaille à donner de l’emploi aux jeunes, mais en même temps, quand j’aurai le sentiment que mon pays est menace, qu’on veut déstabiliser mon pays, j’enlève ce costume, je mets ma casquette noire et j’oriente les choses.*” It is against this background that Mr Blé Goudé goes on to tell the youth to “*Restez tranquilles*”, as part of the following larger passage:

*“Dès cet instant, nous n’avons rien à craindre et personne ne peut nous influencer, et personne ne peut nous menacer, et personne n’arrivera à nous intimider avec les appels par-ci, par-là. C’est pourquoi je demande aux jeunes – c’est moi qui les galvanisais dans la rue, c’est moi que dois dire – « Restez tranquilles. Le temps est arrivé pour qu’on se mette au travail. Pour le moment, nous sommes au travail, laissez les gens bavarder. Quand la Côte d’Ivoire sera en danger, je vais vous appeler ».”*

In other words, Mr Blé Goudé was telling the youth to remain calm, as no action was required at that time, but to expect his call “when” the country would be in danger. He then calls them to a meeting at the *Palais de la Culture* on the next day, 15 December 2010. As explained directly below, it was at that meeting that he vilified the UN and France and told the youth to get ready, to remain determined and that “we” are ready to die for the cause. Viewed in this context, the words “*restez tranquilles*” have no genuine meaning.

- ii. On 15 December 2010, the rally at the *Palais de la Culture* went ahead. Mr Blé Goudé told the youth assembled that UN SRSG Choi, the UN and France were preparing a genocide in Côte D'Ivoire, that the UNOCI had made available its radio to the rebels and that the UN had made available its jeeps to the rebels and had lent them its uniforms – which the rebels were now using to bring weapons to the Golf Hotel. He finished his statement by saying:

*“Chers amis, chers amis, je vous demande, dès cet instant, de vous apprêter. Soyons soudés, soyons soudés, soyons solidaires, soyons déterminés, soyons surs de notre force et ne reculons devant rien ! Je vous lance ce message, du haut de cette tribune. Nous voulons vivre pour voir notre pays se développer, mais aussi nous sommes prêts à mourir pour que cette cause-là puisse se réaliser. Que l'on le sache.”*

- iii. Three days later, on 18 December 2010, Mr Blé Goudé responded to allegations apparently made in the international media, stating that he had not called upon anyone to attack anyone else, including UNOCI and the French. While such a clarification may – in isolation – appear pacifying in nature, the remainder of the speech maintained the line that the French President and the UN were preparing a genocide in Côte d'Ivoire, and the rebels were hiding behind the UN. In what the RTI journalist described as *“un appel à la mobilisation et à la vigilance”*, Mr Blé Goudé repeated to the youth to *“soyez prêts”*.

- iv. At a rally in Koumassi on 21 December 2010, Mr Blé Goudé told the crowd, *“on vous a démontré la force de la non-violence”*, before going on to say :

*“Je vais vous inviter bientôt à libérer la Côte d'Ivoire totalement, parce qu'on a des voisins encombrants qui sont à la République*

*hôtelière du Golf... depuis que cette crise a éclaté. [...] Charles Blé Goudé a dit aux patriotes que nous allons lancer l'assaut final pour libérer totalement la Côte d'Ivoire."*

There is nothing to indicate that, and Mr Blé Goudé has not demonstrated why, this liberation of the country through a "final assault" would be through peaceful means.

- v. In a press conference on 23 December 2010, Mr Blé Goudé reassured French people living in Côte d'Ivoire that "we" had no problem with them and had no intention to attack them. Again, while such a clarification may – in isolation – appear pacifying in nature, Mr Blé Goudé maintained the line in this press conference also that France and the UN were preparing a genocide in Côte d'Ivoire.
- vi. At a rally on 29 December 2010 in Yopougon, Mr Blé Goudé called upon the youth to get ready to attack the Golf Hotel with bare hands. Mr Blé Goudé appears to argue that this call was not literal, given the obvious disparity between a group of unarmed youth and the heavily armed soldiers at the Golf Hotel. However, as argued in the Prosecution's Trial Brief, the evidence indicates that there was a plan in place to attack the Golf Hotel, which envisaged the use of civilian roadblocks (*blocus civils*) – manned by youths, including from FESCI and COJEP, in coordination with the police *en civil*. Weaponry was therefore not strictly necessary in order for the youths to assist in the envisaged attack against the Golf Hotel. That this attack never came into fruition is of no relevance.
- vii. In relation to the 6 January 2011 rally in Koumassi, Mr Blé Goudé argues that his use of the names "joker", "liar", "swindler", "rapist", "robber" and "imposter" for Mr Ouattara, fell within "the normal course of political and democratic expression, which can go so far as to scoff at one's political

opponent.” He does not elaborate on this, and the argument should be rejected outright.

- viii. In relation to the 7 January 2011 rally in Yopougon Niangon, Mr Blé Goudé emphasises his words of prayer that there be no war in Côte d’Ivoire and no fighting between ethnicities. These apparently pacific words cannot reasonably diminish Mr Blé Goudé’s broader message, outlined in the Prosecution’s Trial Brief, identifying Mr Ouattara as the leader of the rebellion and telling the youth to await his “*mot d’ordre*”.
- ix. In relation to the rally of the same day in Attécoubé, Mr Blé Goudé argues that his reference to a *mot d’ordre* can only relate to the *États généraux de la Jeunesse*, without any basis for urging such an inference. Firstly, the reference to the “*États généraux de la Jeunesse*” occurs some five sentences prior to the call to “*attendez le mot d’ordre du général.*” Secondly, these latter words are directly followed by the words, “*Vous devez veiller à ce que des forces étrangères ne viennent pas nous déranger.*” Thirdly, it is instructive that Mr Blé Goudé gave another speech on the same day in Yopougon Niangon, in which he also urged the youth to wait for his *mot d’ordre*, in the context of Mr Ouattara and the Golf (see directly above).
- x. At a rally in Anono on 15 January 2011, Mr Blé Goudé told the crowd:
 

*“Regardez toute la clique du Golf Hôtel. Des veieux comme ça ! Vous avez fini de bouffer à la main de la Côte d’Ivoire de 1960 à aujourd’hui ! [...] Vous n’avez pas honte ? Ce qui se passe là, là, moi je peux supporter ça ! Je n’arrive plus à supporter ça une seule minute. Je ne peux pas accepter ça. C’est pourquoi nous voulons demander votre bénédiction, nous voulons demander votre soutien. Donnez votre soutien à vos enfants qui sont là, pour qu’il se débarrassent de ces voisins gênants, parce que bientôt je vais donner le mot d’ordre.”*

Mr Blé Goudé states that there is no objective reason to infer that this *mot d'ordre* related to engaging in violent acts. This inference is open on the plain words spoken about “getting rid of these annoying neighbours”, in combination with the commentary by the RTI journalist Mambo Abbé, as well as the outbreak of violence following the ultimate delivery of Mr Blé Goudé’s anticipated *mot d'ordre* at the Bar le Baron on 25 February.

- xi. In relation to the 23 January 2011 rally at Champroux stadium, Mr Blé Goudé argues that the organisers had peaceful intentions, relying solely on the assertion that the words “no to war” could be seen on the podium. This is belied by Mr Mangou’s message to the youth that:

*“Nous devons tous ensemble faire bloc autour de lui [Gbagbo] pour que nous puissions mener ce combat. Nous, nous ne sommes pas découragés. Nous irons jusqu’au bout, jusqu’au sacrifice suprême. Et nous savons que vous aussi, vous êtes décidés à mener ce combat.”*

- 1844. Mr Blé Goudé does not point to any examples of peaceful discourse between between 24 January and 24 March 2011, inclusive. From mid-March onwards, Mr Blé Goudé abandoned the rhetoric of “*mains nues*” and – as detailed in Section V.F.3(f) – made statements demonstrating support for the roadblocks. On 19 March 2011, at a rally in Place CP1 of Yopougon, Mr Blé Goudé called upon the pro-Gbagbo youth to enlist in the army. The RTI introduced this event as “*la fin de la résistance aux mains nues*”, as Mr Blé Goudé’s “*dernières consignes*” and stated that Côte d’Ivoire was pushed to self-defence. Mr Blé Goudé said the entire UN was making war on Côte d’Ivoire, that they were forcing him to change his attitude, and to do what he didn’t want to do. In the aftermath of the march, Mr Blé Goudé is filmed standing on top of a vehicle addressing the youth of Yopougon again, telling them to be vigilant in their *quartiers*. His subsequent speeches must be read in light of his renunciation of resistance “*aux mains nues*.”

- i. At a rally held on 26 March 2011, Mr Blé Goudé told the crowd that Ivorians do not want civil war, that they want to live quietly in their country with Mr Gbagbo as President. In his submissions, he qualifies this as a call for peace. However, he omits the passages of that speech in which he vilified the UN, ECOWAS and the international community:

*“Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit Nicolas Sarkozy. Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit Ban Ki-Moon. Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit Obama. Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit la CÉDÉAO. Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit l’Union européenne. Il n’y aura pas de guerre civile en Côte d’Ivoire comme le prévoit l’ONU.”*

- ii. Also during an interview on 26 March 2011, Mr Blé Goudé referred to perceived Ouatara supporters as rebels. In his submissions, Mr Blé Goudé makes unsubstantiated claims about the meaning of the term “rebel”, including impermissibly referring to material not on the record. These submissions should be disregarded in their entirety.
- iii. In relation to his address of 3 or 4 April 2011, Mr Blé Goudé submits that he “makes a clear distinction between the role of the army which is to fight, and the role of the citizens he addresses, namely to stay vigilant”. This is not borne out by the words spoken, which refer to the army of Côte d’Ivoire and the “valiant patriots” definitively liberating the country “together”:

*“Car l’assaut final, annoncé par les rebelles à plusieurs reprises, qui n’a jamais eu lieu, cet assaut final... viendra de l’Armée de Côte d’Ivoire et viendra des vaillants patriotes que vous êtes. Et ensemble, nous allons libérer définitivement notre pays.”*

- iv. While Mr Blé Goudé's address of 5 April 2011 refers to the "regular army" of Côte d'Ivoire fighting, it urges the "patriots" to whom it is addressed to stay "*debout*" and "*solidaires les uns avec les autres*". Especially in light of the address of 3-4 April 2011, in which Mr Blé Goudé aligns the "valiant patriots" with the army, it cannot be argued that he clearly distinguishes between the army's role to the fight and the role of the patriots. Furthermore, in light of his knowledge of the violence at roadblocks (see Section V.F.3(f)), Mr Blé Goudé's instruction to reinforce the roadblocks is a call to continue violent action.

1845. It cannot be reasonably argued that Mr Blé Goudé always tried to calm and reassure his audience. For the reasons set out in the Prosecution's Trial Brief, and further expanded upon in this section, Mr Blé Goudé's speeches were intended to mobilise the youth into violent action, and this in fact materialised. Furthermore, Mr Blé Goudé has not been able to provide any evidential basis for his alternative hypothesis that he, "by announcing imprecise *mots d'ordre*, was trying to canalize a youth that was exasperated and scared and prevent them from engaging in violence by making them hold on to the idea that they would be able to assist in the near future." This evidence of Mr Blé Goudé's subjective state of mind has not been led at the present stage of proceedings.

1846. Mr Blé Goudé finally argues that the Prosecution has not explained how the perpetrators of violence knew to disregard Mr Blé Goudé's public statements to remain calm. As argued above, the strength of Mr Blé Goudé's messages were such that any apparent appeal to peace and non-violence could not dilute its true meaning. It is clear from the content and tenor of Mr Blé Goudé's speeches that they did not amount to genuine calls for peace. The RTI reinforced this understanding on 16 January 2011 by explicitly announcing that, due to the need for discretion, "*les mots d'ordre utiliserons les canaux protégés.*"

5. Mr Blé Goudé's argument that there is no nexus between his recruitment activities and the alleged crimes (Blé Goudé Motion, Section VI.4.C)

(a) *Mr Blé Goudé's argument that the Prosecution misinterprets his call for enrolment (Blé Goudé Motion, Section VI.4.C(i), paragraphs 646-654)*

1847. Mr Blé Goudé argues, firstly, that the Prosecution has not proved that one purpose of Mr Blé Goudé's call to the youth of 19 and 20 March 2011 to enlist in the army was to act as a cover for past and present collaboration of the pro-Gbagbo youth with the FDS. This purpose is the natural inference that flows from: i) Mr Blé Goudé's involvement in the pro-Gbagbo youths' past collaboration with the FDS; and ii) his statements to the effect that he viewed enrolment as the way to legalise or legitimise the arming of the pro-Gbagbo youths.

1848. In his first enrolment announcement of 19 March 2011, Mr Blé Goudé situates the enrolment among past collaborations by stating: *"En 2002, beaucoup de nos camarades sont rentrés dans l'Armée pour aller libérer la Côte d'Ivoire."* This was a reference to the historical recruitment of youth into the army – in which Mr Blé Goudé played a key role – following the 2002 attempted *coup d'état*. However, there had also been less overt collaboration between the youths and the FDS during the post-electoral crisis up to that point. The evidence of this is summarised in the Prosecution's Trial Brief.

1849. From Mr Blé Goudé's own words, it is clear that he viewed enrolment of the youths as a way to legalise or legitimise their arming. As Mr Blé Goudé said during an interview on the RTI on 20 March 2011, and as cited in his Motion:

*"Vous voyez pour défendre une Nation, quand vous voulez prendre une arme, il faut que vous ayez droit à cette arme, il faut que vous ayez droit d'avoir cette arme. Cela veut dire, ou vous êtes policier, ou vous êtes gendarme ou vous êtes militaire. Mais on ne peut pas dans*



*un pays qu'on veut diriger distribuer des armes à des civils qu'ils mettent sous leurs habits et puis ils tirent partout dans le pays, ils égorgent partout dans le pays, ce n'est pas comme ça qu'on va diriger la Côte d'Ivoire. C'est pourquoi, pour nous, les jeunes patriotes ou les jeunes tout court, tous ceux qui brûlent d'envie de libérer leur pays, de participer à leur manière à la libération de leur pays et qu'ils jugent que c'est de manière militaire qu'ils vont le faire, mais il y a une voie, c'est la voie légale, c'est de rentrer dans l'Armée régulière de Côte d'Ivoire."*

1850. The only reasonable inference, given these historical and continuing collaborations between the youth and the FDS, combined with the call to enlist in order to follow the "legal path", is that the call was a cover for past and present collaborations.

1851. The same holds for Mr Blé Goudé's second argument, that the Prosecution has not proved that the purpose of the call to enrol was to facilitate the arming of the youth. Mr Blé Goudé refers to passages from his two statements of 20 March 2011, and raises an issue of translation (into English) of the phrase: "*Je ne veux pas qu'on puisse distribuer des armes dans les quartiers.*" These passages only reinforce Mr Blé Goudé's intention to facilitate the arming of youth through enlistment in the army. It is irrelevant whether Mr Blé Goudé referred to personally distributing weapons himself. As Mr Blé Goudé submits, the point of these statements is to reject the illegal distribution of weapons in the neighbourhoods, in favour of an apparently legal, state-sanctioned distribution. Whether entirely illegal or with a sheen of apparent legality, his words still speak to facilitating the arming of the pro-Gbagbo youth. As one of the youths in attendance on 20 March 2011 said "*C'est mieux de mourir les armes à la main que de mourir à la maison, en train d'être découpée par une machette.*"

1852. Mr Blé Goudé also offers an additional rationale behind his call for enlistment: that he was responding to a long-lasting exasperation of the population, who was sick of being attacked in its neighbourhood by the *Commando Invisible* and other pro-Ouattara forces. The Prosecution notes at the outset that Mr Blé Goudé has offered no evidence to demonstrate that the pro-Gbagbo youths to whom Mr Blé Goudé addressed his call for enlistment had been the actual victims of attacks by pro-Ouattara forces in their neighbourhoods. The Prosecution does, however, concur with Mr Blé Goudé that the evidence shows that the pro-Gbagbo youth were fearful, and that they desired to come under the flag to defend their nation against the “rebels”. Yet the evidence also shows that this was not the result of a spontaneous popular uprising to which Mr Blé Goudé merely responded; it was the culmination of months of Mr Blé Goudé’s fear-mongering, mobilisation, and instructions to remain primed for the *mot d’ordre*.

(b) *Mr Blé Goudé’s argument that the Prosecution failed to prove that he played an essential role in the recruitment and enlistment of the youth into the FDS (Blé Goudé Motion, Section VI.4.C(ii), paragraphs 655-662)*

1853. In arguing that the Prosecution failed to prove his essential role in the recruitment and enlistment of the youth in the FDS, Mr Blé Goudé cross-refers to other sections of his Motion. The Prosecution likewise cross-refers to its arguments in response, as follows:

- i. In relation to the 2003 recruitment into the FDS, see Section V.D.5(d).
- ii. In relation to the collaboration and integration of pro-Gbagbo youth and militia into the FDS, see Section V.D.17.
- iii. In relation to the existence of the parallel structure, see Section V.D.17(d).

1854. Mr Blé Goudé also argues that Witness P-0435 cannot be believed on his testimony about a conversation he had with Mr Blé Goudé in October 2010, in

which Mr Blé Goudé told him that members of the GPP would be inserted into the army. On the general points made about Witness P-0435's credibility, the Prosecution refers to Section II. Further, Mr Blé Goudé's submission that the witness, in his prior statements, did not mention Mr Blé Goudé or Ahoua Stallone specifically as requesting training, fails to demonstrate why the witness's testimony on this point should not be believed. In relation to the apparent contradiction in the witness's evidence about the first time he met Sergeant Blédé, the witness gave a reasonable explanation for saying that January 2011 was the first time he and Blédé crossed paths:

*"[...] la première fois où on s'est... où on a vraiment échangé, où on s'est rencontrés, on a vraiment échangé, c'était en janvier [...] Lorsqu'ils sont venus en... en octobre, je n'ai pas... il a discuté avec lui. Quand je suis monté dans la voiture, lui et moi, on n'a pas conversé pour quoi que ce soit."*

1855. Put more succinctly some moments later, he said: *"J'ai dit que la première fois que nous nous sommes rencontrés, quand je parle de rencontre, je parlais de quand on a eu à échanger lui et moi."*

1856. Mr Blé Goudé argues that the Prosecution cannot rely on his visit to the *État-Major* to demonstrate his essential role in the recruitment of youth into the FDS. The Prosecution does not of course rely on this evidence alone, and maintains that Mr Blé Goudé's statement of support for the FDS is consistent with his role in the recruitment of pro-Gbagbo youth in the FDS. Contrary to Mr Blé Goudé's argument, this statement of support prepared the ground for his March call for enlistment by mobilising the youth in support of the army:

*"Malheureusement, là où il y a combat, là où on livre un combat, on se livre aussi. Malheureusement, donc, nous avons*

perdu certains de nos frères d'armes... Parce que c'est ensemble que nous défendons notre pays, chacun dans son domaine."

1857. In relation to Mr Blé Goudé's arguments about the outcome of his call for enrolment, for the reasons given at Section V.F.1(c), it is entirely irrelevant that the planned enlistment did not materialise. Further, there is no reason for the Chamber to disregard the video excerpts relied upon by the Prosecution about enrolment at the decentralised enrolment points on 22 March 2011. These videos are on the Prosecution's List of Evidence and were submitted in their entirety, consistent with paragraph 47 of the directions on the conduct of proceedings.

## **VI. PROSECUTION CASE UNDER ARTICLES 25(3)(B), (C) AND (D) AND RESPONSE TO DEFENCE ARGUMENTS**

### **A. Introduction**

1858. This section addresses the three remaining modes of responsibility under article 25(3). As such, it encompasses the Prosecution's response to the broad arguments made by Mr Gbagbo in his Motion at Annex 5, paragraphs 1-8, 589-599 and Mr Blé Goudé in his Motion at paragraphs 502-508.

1859. As in Section V, the Prosecution first sets out the law on individual criminal responsibility under each respective mode before setting out its case against the Accused in summary form.

1860. The Prosecution submits that there is – at minimum - sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict Mr Gbagbo of all the crimes charged based on articles 25(3)(b) or (d) as a mode of liability, and Mr Blé Goudé of all of the crimes charged based on articles 25(3)(b), (c) or (d) as a mode of liability.

1861. For the avoidance of any doubt, Mr Gbagbo is charged, under articles 25(3)(b) and (d), with crimes against humanity - murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.

1862. Mr Blé Goudé is charged, under articles 25(3)(c) and (d), with crimes against humanity – murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 25-28 February 2011, 3 March 2011, 17 March 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.

1863. Mr Blé Goudé is also charged, under article 25(3)(b), with crimes against humanity – murder, other inhumane acts (or attempted murder), and persecution – arising out of the 16 December 2010, 25-28 February 2011 and 12 April 2011 incidents, and the crime against humanity of rape – arising out of the 16 December 2010 and 12 April 2011 incidents.

1864. Throughout the process of responding to Mr Gbagbo and Mr Blé Goudé's motions, the Prosecution has re-evaluated its evidence with a critical eye with the goal of ensuring the fairness and efficiency of proceedings. In response to Mr Blé Goudé's arguments on the nexus between Mr Blé Goudé and the 3 March and 17 March 2011 incidents, the Prosecution does not oppose the second ground of relief Mr Blé Goudé requests, specifically, the dismissal of the charges against him related to the third and fourth incidents. It is the Prosecution's hope that such relief will assist in expediting the proceedings going forward.

1865. In the event this relief is granted, the Prosecution would like to remind the Chamber that there would be no substantive change in the crimes or modes of liability facing Mr Blé Goudé for the crimes of murder, rape, other inhumane acts

(or attempted murder) and persecution committed in the context of the incidents of 16 December 2010, 25-28 February 2011, and 12 April 2011.

## **B. Article 25(3)(b)**

### **1. Law of ordering, soliciting and inducing the commission of a crime under article 25(3)(b) of the Statute**

1866. “Ordering”, “soliciting” and “inducing” fall into a broader category of “instigating”. As held by Pre-Trial Chamber I in both the *Gbagbo* and the *Blé Goudé* Confirmation Decisions, the three modes of liability cover similar factual situations and their elements have similar legal requirements, with the exception of the requirement of a position of authority, which is particular to “ordering”.

1867. Irrespective of some discrete distinguishing features, the elements of the modes of liability under article 25(3)(b) can generally be described as follows:

- i. The person was in a position of authority (for ordering only);
- ii. The person instructed another person in any form to either commit a crime, or to perform an act or omission in the execution of which a crime was carried out;
- iii. The order or act of solicitation or inducement had a direct effect on the commission or attempted commission of the crime; and
- iv. The person acted with intent; and
- v. The person had the requisite knowledge.

*(a) The person was in a position of authority (relevant for ordering only)*

1868. The Prosecution must establish that there was a superior-subordinate relationship between the instigator and the perpetrator of the crime. According to

the established jurisprudence of the *ad hoc* international criminal tribunals, this position of authority may be differentiated from the superior-subordinate relationship for command responsibility under article 28. It does not require proof of effective command, control or authority, nor is it necessary to show that there was an official or formal superior-subordinate relationship. 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”, in the sense that they *perceived* his or her words as orders to perform certain acts or omissions, and that they felt obliged to comply.

1869. The accused’s position of authority may be informal or of a purely temporary nature and it may emanate for instance from his or her “social, economic, political or administrative standing”. It may be inferred from the fact that a subordinate acted upon an order that was directed at him or her.

(b) *The person instructed, solicited or induced another person in any form to either commit a crime, or to perform an act or omission in the execution of which a crime is carried out*

1870. The Prosecution must establish that the accused “prompted” another person to commit a crime or to perform another act or omission in the execution of which a crime was carried out. The term “prompting” has been defined as “exerting psychological influence on another person”.

1871. This element has distinguishing features for each of the three modes of liability under article 25(3)(b): *Ordering* requires proof that the accused used his or her position of authority to prompt another person to commit a crime or to perform another act. *Soliciting* means asking or urging the physical perpetrator to commit a criminal act. It does not presuppose that the accused was in a certain

relationship with the physical perpetrator of the offence. *Inducing* means that the accused exerted influence over the physical perpetrator, either by strong reasoning, persuasion or conduct implying the prompting of the commission of the offence. According to the Trial Chamber in the *CAR Article 70* case, inducement is a stronger method of instigation compared to solicitation, as the latter does not require proof that the accused exerted influence, but merely asked or urged the physical perpetrators to commit a crime. However, this does not mean that it requires a higher degree of impact or effect on the commission of the crime.

1872. For all three modes of liability under article 25(3)(b), the accused may exert influence “in any form” and an order or act of solicitation or inducement may be performed directly on the physical perpetrators of the crimes or may be committed through an intermediary. It is not necessary that the accused was present when the instigated crime was committed.

1873. While ordering requires direct or circumstantial proof of positive action by the accused, a person may solicit or induce the commission of a crime “either by implied or express conduct”.

(c) *The order or act of solicitation or inducement had a direct effect on the commission of the crime*

1874. For all modes of liability under article 25(3)(b) it must be established that the accused’s conduct had a direct effect on the commission or attempted commission of the crime. The instigator need not have control over the crime and the law does not otherwise qualify the degree to which the accused’s conduct must impact on the commission of the crime. According to the Appeals Chamber in the *CAR Article 70* case, “[w]hat matters is that there is a *causal relationship* between the act of instigation and the commission of the crime, in the sense that the accused person’s actions prompted the principal perpetrator to commit the crime”. While the



Appeals Chamber made this statement in the context of solicitation, it referred to the effect of acts of instigation in general.

1875. What constitutes a causal relationship between the accused's conduct and the commission of a crime is a matter of evidence and needs to be assessed on a case-by-case basis. Public speeches have previously been found to meet the threshold requirement for incitement. For instance, in a recent judgment, the International Criminal Tribunal for the Former Yugoslavia ("ICTY") Appeals Chamber in the *Šešelj* case held that the accused contributed to the commission of crimes by others through a public speech. The factors that informed the Appeals Chamber's decision in that case are also relevant in the case at hand. In determining whether there is a causal relation between a public speech and crimes, a Chamber should further look at the circumstances external to and surrounding the statements and not limit itself to the words used. In the *Nahimana* case, the International Criminal Tribunal for Rwanda ("ICTR") Appeals Chamber held that in relation to direct and public incitement to commit genocide, "[t]he principal consideration is thus the meaning of the words used *in the specific context*: it does not matter that the message may appear ambiguous to another audience in another context". According to the ICTR Appeals Chamber "it may be helpful to examine how a speech was understood by its intended audience in order to determine its true message".

(d) *The accused acted with intent*

1876. Because article 25(3)(b) does not prescribe any particular *mens rea*, the general requirements under article 30 apply. Accordingly, it must be established that the accused meant to engage in the conduct that constitutes an order, or an act of solicitation or inducement. In addition, the Prosecution must show that the accused either meant to contribute to the crime, or that he or she was aware that the crime would be committed in the ordinary course of events as a consequence

of the realisation of his or her act or omission. The latter does not require proof that the accused was aware that his or her conduct was the *sole* cause of the crime but that the crime would occur in the ordinary course of events, as a result of all relevant factors, including his or her conduct.

(e) *The accused had the requisite knowledge*

1877. Pursuant to article 30(3), the Prosecution must establish that the accused was aware that the circumstances relevant to the charged crimes (e.g. murder, inhumane acts, rape and persecution) existed, or that, in the ordinary course of events, the crimes of murder, inhuman acts, rape and persecution would be committed.

1878. For ordering, the Prosecution must further establish that the accused was aware that he or she was in a position of authority *vis-à-vis* the perpetrator of the crime.

2. Prosecution's Case under article 25(3)(b) – Mr Gbagbo

1879. The Prosecution submits that there is sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict both Mr Gbagbo of all the crimes charged based on article 25(3)(b) as a mode of liability. Mr Gbagbo is charged, under article 25(3)(b), with crimes against humanity – murder, rape, other inhumane acts (serious injury to body and great suffering) or, alternatively attempted murder and persecution – arising out of the 16 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents.

(a) *Mr Gbagbo was in a position of authority over the perpetrators of the crimes*

(i) FDS

1880. The Prosecution's evidence presented demonstrates that Laurent Gbagbo was in a position of authority because he possessed *de jure* and *de facto* authority over the FDS, perpetrators of the crimes.

1881. Mr Gbagbo was in a position of authority over the FDS because as the claimed president and under the Constitution of Côte d'Ivoire, he was the *Chef d'État* and the *Chef Suprême des Armées*. While his position was challenged, he continued operating as President and the army carried on, making themselves available to him. Mr Gbagbo had a superior-subordinate relationship with the FDS and having these authority positions vested in him, the FDS regarded Mr Gbagbo as speaking with authority and felt obliged to comply with his orders. Moreover, Generals and witnesses in leadership positions who testified before the Trial Chamber recognised Mr Gbagbo as the Supreme Commander of the armed forces to whom they reported and from whom they received instructions.

1882. In addition, Mr Gbagbo's authority over the FDS is further demonstrated because:

- i. He received regular updates of the FDS activities directly from the CEMA and was briefed by him, on the security situation, developments on the ground, FDS operations and the overall security situation, both in Abidjan and beyond;
- ii. He was constantly informed of the events on the ground including through his intelligence services such as the ANSI, [REDACTED]
- iii. He had regular meetings with top FDS commanders at both his Residence and the Presidential Palace including: (i) on 14-15 December 2010, before the march on the RTI, the commanders received instructions from Mr Gbagbo that the march was prohibited and should not take place; (ii) on 12 January 2011, FDS leaders met with Mr Gbagbo to report on the FDS operation in Abobo; (iii) on 24 February 2011 during which a proposal to

declare Abobo a war zone was raised and not adopted, and during which Mr Gbagbo instructed the FDS to do everything to hold on to Abobo and liberate the N'Dotr  roundabout (iv) on 14 March 2011 during which a proposal to Mr Gbagbo that he withdraw as President was suggested and (v) on 3 April 2011 where Mr Gbagbo encouraged the FDS leadership to continue the battle;

- iv. He imposed and extended the curfew on 26 November 2010 that was followed by the FDS during the crisis which Witness P-0009 confirmed only Mr Gbagbo had the authority to do.
- v. He imposed the curfew on 12 January 2011 under presidential decree No. 2011-08 in the commune of Abobo-Gare and Anyama.
- vi. He promoted the senior commanders of the FDS to the highest military ranks, including Philippe Mangou, Georges Guiai Bi Poin, Faussignaux Gagbei Vagba and Brunot Dogbo Bl , to the highest military ranks;
- vii. He requisitioned the armed forces by Presidential Decree No. 2010-306 in order to "secure the second round of elections".

1883. In addition, Mr Gbagbo stated very clear his position of authority over the FDS commanders:

- i. On 7 August 2010, when he publicly told the FDS commanders that "*Si je tombe, vous tombez*" ("If I fall, you fall");
- ii. On 4 December 2010 where Mr Gbagbo took the oath of office before the President of the Constitutional Council and a large number of dignitaries and invitees. In his inaugural speech, Mr Gbagbo emphasised that the "Electoral Commission does not proclaim the results of the elections" as it only provides the provisional results. Mr Gbagbo concluded his speech by

affirming that: “*La souveraineté de la Côte d’Ivoire, c’est elle que je suis chargé de défendre et elle je ne la négocie pas [...] pour que notre souveraineté ne soit pas piétinée, n’appelons pas les autres à s’ingérer dans nos affaires.*” That same day, the FDS officers showed support to Mr Gbagbo by pledging allegiance to him after the competing announcements of the result of the second round of the 2010 elections. Following the announcement of the election results by the CEI, FDS senior officers Mangou, Kassaraté, Bredou M’Bia, Guiai Bi Poin, Vagba and others waited for the announcement of the Constitutional Council and then visited Mr Gbagbo at his Residence to congratulate him and place themselves at Mr Gbagbo’s disposal.

(ii) Pro-Gbagbo youth, militia and mercenaries

1884. Mr Gbagbo’s authority over the youth, militia and mercenaries was established and maintained through intermediaries (including Mr Blé Goudé). As such, there was an informal superior-subordinate relationship between Mr Gbagbo and the youth, militia and mercenaries. Mr Blé Goudé, as the leader of the *Galaxie Patriotique*, made decisions and facilitated all the major meetings or rallies relating to ensuring Laurent Gbagbo hold on power. It can be inferred that Mr Blé Goudé’s support for Mr Gbagbo, his vision as a politician and his position as President of Côte d’Ivoire, meant that Mr Gbagbo was considered as the main authority and that the youth, militia and mercenaries regarded him as such while complying with Mr Blé Goudé’s orders and instructions.

1885. Mr Gbagbo’s authority over pro-Gbagbo youth, militia and mercenaries is further demonstrated by the provision of weapons and financial support to these groups by Mr Gbagbo and his close subordinates, the close association between Mr Gbagbo and Mr Blé Goudé (which enabled Mr Gbagbo to exercise authority over the pro-Gbagbo youth), and the integration of militias and mercenaries into the FDS forces.

1886. Mr Gbagbo's authority is further supported by the following facts:

- i. The appointment of Charles Blé Goudé as the Minister of Youth, Vocational Training and Employment, which vested him with governmental authority and legitimacy, securing control over the pro-Gbagbo youth and thus, enabling Mr Gbagbo to exercise authority over the pro-Gbagbo youth;
- ii. The recruitment in 2010 and early 2011 of many pro-Gbagbo youth and militia members into the FDS who underwent military training at official FDS centres, including the training of youth recruits in Akakro that took place on 22 and 23 December 2010 which was confirmed or authorised by the *État-Major*;
- iii. The financial support given to the GPP from the office of the First Lady Simone Gbagbo as stated by Witness P-0435;
- iv. The money received by pro-Gbagbo youth and militia from Mr Gbagbo and his subordinates as stated by Witness P-0435. It is also demonstrated by the receipts from the secretariat of the Presidency for August 2010;
- v. [REDACTED]  
[REDACTED] Commander KB of the Navy following each mission and payments from the authorities;
- vi. The transport of the Liberian combatants from Ghana in January 2011 to the Ivory Coast financed by Mr Blé Goudé as stated by Witness P-0435;
- vii. Mr Blé Goudé's message conveyed by Stallone Ahoua to the GPP leader in late September 2010 to calm down and rest assured that Mr Gbagbo was informed of GPP concerns and of the protest march, and that the process would be carried out after the elections (referring to the integration into the

army or reception of indemnities in the disarmament process). In addition, Mr Blé Goudé requested that the GPP initiate training sessions for *Jeunes Patriotes*, members of the COJEP and the FPI youth, before the elections that was indeed provided to approximately 600 youth members – FPI, COJEP and FESCI – until December 2010, at which time the recruits integrated into FDS units;

- viii. Following the demonstration of the GPP and other militia groups, the echoes of which had reached Mr Gbagbo, Witness P-0435 was called to meet with Mr Blé Goudé in October 2010 where Mr Blé Goudé stated that members of the GPP would be inserted into the army but that now, the elections were the priority and that the GPP should make an inventory of the locations where the RHDP were holding meetings, and find out if they were hosting anyone in their homes;
- ix. The recruitment of militia into the FDS from trainings performed at the GPP centre at Yopougon Sable until December 2010 when young patriots were integrated within the various FDS camps in order to follow the basic military training courses – although the time-frame for these was reduced significantly. After medical visits, at old Akouédo camp or the military hospital in Abidjan, the elements deemed apt (fit) to enter military service were, after training, then assigned to various units within the Army, such as the 1<sup>st</sup> BCP, BB and the BASS and BASA. The integration of elements of paramilitary units is indicative of Mr Gbagbo's authority to integrate militia members in the army;
- x. Witness P-0435's evidence that the GPP also conducted military training of young people in areas outside of Abidjan at the request of individuals who were very close to Laurent Gbagbo, such as Affi N'Guessan (in Bongoanou) and Minister Assoa Adou (in Abengourou and Niablé).

*(b) Mr Gbagbo ordered the pro-Gbagbo forces*

1887. Mr Gbagbo ordered the pro-Gbagbo forces to carry out actions. While these orders were not criminal in nature, Mr Gbagbo's liability under article 25(3)(b) arises because the execution of these orders led to the commission of the charged crimes.

1888. Throughout the post-electoral violence, Mr Gbagbo met regularly with his Generals at the Presidential Residence and Palace during which time he was kept informed of the ongoing security situation, including instances of civilian casualties. During these meetings, Mr Gbagbo also issued orders that were subsequently carried out through patrols and other operations and directly issued orders to some members of the FDS, at times circumventing the normal chain of command.

1889. The Prosecution demonstrated that Mr Gbagbo issued orders throughout the crisis:

- i. Mr Gbagbo ordered by Presidential Decree No. 2010-306, the requisition of the armed forces on the territory of Côte d'Ivoire, in order to "secure the second round of the elections". Mr Gbagbo attempts to dilute the importance of such an act by arguing that only he could sign a requisition but that there is no evidence that they were his initiative. However, there is no evidence that these orders were imposed on Mr Gbagbo. The fact that he is the only one who could sign them is precisely part of his Presidential powers. To apply his signature to a requisition which will unleash the army with its full force into the streets of Abidjan is not a purely administrative function;
- ii. Mr Gbagbo imposed curfews which Witness P-0009 confirms only Mr Gbagbo had the authority to do;



- iii. Mr Gbagbo ordered the blockade of the Golf Hotel – where Alassane Ouattara was residing and to which a number of FDS soldiers had defected and the prevent them from being able to leave – which was effectively put in place in the lead up to the 16 December 2010 march on the RTI;
- iv. In early 2011, Mr Gbagbo still passed decrees related to defence matters and his subordinates appointed new officials within the Defence Ministry;
- v. On 10 February 2011, Mr Gbagbo presided over a *Conseil des ministres*, from which Don Mello read a communiqué over the RTI, saying Mr Gbagbo gave “*instructions, pour renforcer les moyens humains et matériels, pour mieux sécuriser ABOBO et DUÉKOUÉ et maintenir le couvre-feu à Abobo*”;
- vi. On 17 February 2011, Mr Gbagbo presided over a *Conseil des ministres*, from which Don Mello read a *communiqué* over the RTI. Instead of referencing the civilian casualties that were mounting in Abobo, the *communiqué* alleged that unidentified rebels committed crimes in Abobo and that Mr Gbagbo: “*a déploré ces crimes odieux et a donné des instructions fermes au ministre en charge de la Défense et de la Sécurité afin que les efforts soient redoubles pour identifier ces criminels*”;
- vii. On 18 February 2011, the CEMA, following Mr Gbagbo’s orders, issued a *renforcement dispositif sécurité* to be in place that same day at 21h00. The COMTER (Detoh Letho) was the overall commander responsible for the coordination of the troops deployed in the five zones of Abidjan. Zone 2 (Abobo-Anyama) was given one additional platoon from the 1<sup>st</sup> Departmental Legion of the *Gendarmerie*;
- viii. On 24 February 2011 meeting during which a proposal to declare Abobo a war zone—which would have forewarned the civilian population and

specifically allowed people to evacuate-- was raised and not adopted, and during which Mr Gbagbo instructed the FDS to do everything to hold on to Abobo and liberate the N'Dotré roundabout –and after enquiring about the presence of the population in that zone, Mr Gbagbo gave the instruction to make sure there are not too many dead.

- ix. The top FDS generals confirmed that they followed Mr Gbagbo's orders on the 23 or 24 February 2011 to "stand firm and not to cede Abobo," to liberate the N'Dotré roundabout, and do everything it takes to retake control of the MACA-Abengourou axis;
- x. During a cabinet meeting on 3 March 2011, Mr Gbagbo resolved to stand firm in the performance of his duties and to continue "defending the sovereignty of the State," and the FDS continued their operations throughout March 2011.

1890. Regarding the 16-19 December 2010 incident, Mr Gbagbo directly ordered the repression of protest movements against him, including the instruction that the march on the RTI on 16 December 2010 be prohibited. Evidence of this is the meeting on 14-15 December 2010, before the march, where Mr Mangou, Kassaraté, Detho Letho, Dogbo Blé, Bredou M'Bia and General Marc Aka Kadjo met with Mr Gbagbo and received instructions from Mr Gbagbo that the march was prohibited and should not take place. In this instance, while the instruction itself is not criminal in nature, he knew that its implementation, in the ordinary course of events, will bring about the commission of crimes, in light of the fact that (a) armed forces were deployed on the ground to face unarmed civilian demonstrators, (b) the implementation of similar past instructions during the protest marches in December 2000 and March 2004 had resulted in high numbers of casualties and (c) his speeches on 5 August 2010 and 27 August 2010, his demonising of his political opponent and the UNOCI incited to violence.

1891. Regarding the 3 and 17 March 2011 incidents, Mr Gbagbo ordered that the FDS should do everything possible to hold Abobo and neutralise the *Commando Invisible*, which resulted in the installation of heavy weaponry at Camp Commando, including the installation of the 120mm mortars which can only be used by authorisation of the President himself. Furthermore, the top FDS generals confirmed that they followed Mr Gbagbo's orders on 23 or 24 February 2011 to "stand firm and not to cede Abobo", to liberate the N'Dotré roundabout, and do everything it takes to retake control of the MACA-Abengourou axis.

1892. The evidence shows a clear pattern of Mr Gbagbo issuing orders or instructions, followed by their implementation by his subordinates on the ground. This meant that Mr Gbagbo's subordinates, both civilian and military, expected instructions and orders from their President and made sure they were implemented. This evidence is similar to the case of *Stanislav Galić*, the Bosnian Serb commander in charge of the Sarajevo-Romanija Corps in charge of the siege of Sarajevo between 1992-1994. In that case, there was no evidence of written orders, but there was evidence of a regular campaign of sniping and shelling against the civilian population. The Trial Chamber found *Galić* guilty of having ordered the crimes proved at trial and held the following:

"The Majority notes that the Prosecution's case does not depend upon written orders given by General Galić but on evidence concerning General Galić's knowledge of crimes committed in Sarajevo by forces under his command, the high degree of discipline he enjoyed from his subordinates and his failure to act upon knowledge of commission of crimes, which, according to the Prosecution, "establishes beyond reasonable doubt that the targeting of civilians was ordered by him" [...] While the Majority has no doubt that, indeed, General Galić issued such orders, it has found that crimes were committed

against civilians in a widespread fashion and over a long period of time by SRK troops. The Majority has already noted above that the manner of commission of these crimes reveals a striking similarity of pattern throughout. All this has led the Majority to draw the conclusion that the criminal acts were not sporadic acts of soldiers out of control but were carried out pursuant to a deliberate campaign of attacking civilians, which must have emanated from a higher authority or at least had its approval.”

*(c) Mr Gbagbo induced the commission of the crimes*

1893. Mr Gbagbo induced the commission of crimes mainly through intermediaries and subordinates, including Mr Blé Goudé. According to the law, this inducement can be exercised “in any form”. Mr Gbagbo’s inducement is seen through: (a) through his statements and actions prior to and during the crisis (which emphasised his goal of remaining in power by all means) to the pro-Gbagbo forces and (b) through his acceptance of the use of force

1894. Mr Gbagbo solicited and induced the commission of crime through his statements and actions prior to and during the crisis (which emphasised his goal of remaining in power by all means):

- i. His statement towards his military officers on 7 August 2010, stating that their positions in the army were at stake should he not win the elections; that was the logic behind the ominous “If I fall, you fall”;
- ii. On 27 August 2010, Mr Gbagbo incited the FDS by telling them they are the combatants of the republic, that they will not be punished as judges will repair damages afterwards (“Si il y a des dégâts, les juges après, rétabliront”) and stated that he does negotiate when it is time to negotiate,

but that sometimes he needs to revert to force: *“Quand les bras se lancent, les bras se lancent”*;

- iii. The slogan on his political campaign *“on gagne ou on gagne”* (we win or we win), meant that Mr Gbagbo and his supporters would not accept defeat or the election of any other candidate;
- iv. His statements demonising the UNOCI stating that UNOCI was no longer welcomed in Côte d’Ivoire and that of his subordinates, such as Minister of Foreign Affairs, Alcide Djédjé, who made a stinging speech against the UN on the same day. On 21 December 2010, Mr Gbagbo publicly stated that his government had requested the departure of UNOCI. This stance alone shows the length to which Mr Gbagbo was prepared to go: alienating the UN, and therefore the international community which had facilitated for several years the implementation of peace agreements and which had provided security and support for the elections;
- v. On 21 December 2010, Mr Gbagbo went as far as tying the fate of Côte d’Ivoire to his own when he declared in a speech to the nation that the international community’s recognition of Mr Ouattara as the winner of the election amounted to declaring war on Côte d’Ivoire;
- vi. On 29 December 2010, during an interview with Euronews, Mr Gbagbo explained that he is the winner of the elections, that it is not in his agenda for him to resign, but he is asking for a recount of the votes and also told the Ivorians that they would have a choice between a candidate for Ivory Coast (i.e. himself) and a candidate for foreigners (i.e. Mr Ouattara).
- vii. On 31 December 2010, during his end of year address to the nation, Mr Gbagbo reiterated that he was the legitimate winner of the election. He

stated: “So, like yesterday, in 2002, I am where the Ivorians placed me by their votes. We will not give in”;

- viii. On 4 April 2011, he encouraged his troops to continue the fight – despite months of violence marred by civilian deaths – by stating to Witness P-0009: “*Bon, reprenez le combat. Mangou est... le général est là. Allez-y, reprenez le combat*”.

1895. Mr Gbagbo also induced the commission of crimes through his acceptance of the use of force:

- i. On 27 August 2010, Mr Gbagbo incited the FDS by telling them they are the combatants of the republic, that they are not judges and that if there are damages (“*dégâts*”), the judges will fix them afterwards. This speech gave a clear signal to the FDS not to worry about being forceful, foreseeing (probably based on his past experience of repression) that crimes will be committed and reassuring his troops that the judicial system will not interfere while they are in the midst of it (this is the only interpretation to “*les juges après, rétabliront*” (emphasis added));
- ii. On 24 February 2011, during a meeting with Mr Gbagbo and members of the government and high level officials of the FDS, Witness P-0009 shows him the position occupied by the enemy. Mr Gbagbo asked two questions: is the population still in the zone and made the recommendation: “*Faites-en sorte qu’il n’y ait pas trop de morts*” and then he put his finger on the Maca-N’Dotré position and asked if it was occupied. Witness P-0009 said no but other generals said yes. Mr Gbagbo gave them a mission: “*Libérez l’axe MACA-Abengourou*”.

1896. According to the case law, within the context of inducement/solicitation, the means by which the accused’s influence is communicated does not itself need to

be direct but may be committed through intermediaries. Mr Gbagbo instigated the pro-Gbagbo youth during the post-electoral violence largely through Mr Blé Goudé and other subordinates, who communicated the pro-Gbagbo message to youth leaders and ensured the successful integration of militia groups into the FDS. The evidence below demonstrates this by:

- i. Calling the UNOCI to depart Côte d'Ivoire and ordering the pro-Gbagbo youth to obstruct UNOCI movements;
- ii. Calling the youth to resist and suffer for a new nation and that they are willing to die for that Côte d'Ivoire;
- iii. Calling the youth for a revolution as they choose Mr Gbagbo as their President.

1897. Mr Blé Goudé called on the youth to enlist in the army on 19 March 2011 at Place CP1; in addition to this, Mr Gbagbo and his subordinates used pejorative and hate language against political opponents, *inter alia*, referring to them as bandits; enemies and terrorists. These utterances demonised perceived Ouattara supporters who became the target of the attacks:

- i. On 27 August 2011, at Divo, Mr Gbagbo addressed his adversaries as enemies: “Vous avez pour ennemis, je n’ai pas dit adversaires, j’ai dit pour ennemis, tout ceux qui sont contre la République”;
- ii. On 15 January 2011, during a rally at the Palais de la Culture, Simone Gbagbo addressed Mr Ouattara as the “chef bandit” and accused him of having rigged the elections;
- iii. On a *communiqué* from the Government, it is stated that Mr Gbagbo addressed Mr Ouattara and his supporters as “terrorists”;

- iv. On 19 March 2011, Mr Blé Goudé made it clear that people “who [were] not from their culture” and wore “gris-gris” were attackers and threats, thereby converting perceived Ouattara supporters as targets;
- v. On 26 March 2011, Mr Blé Goudé addressed perceived pro-Ouattara supporters as a “new class” that plants death and desolation, making a clear distinction between pro-Gbagbo supporters and them: *“Mais depuis un moment, une nouvelle classe est née en CÔTE D’IVOIRE qui sème la mort, qui sème la désolation, qui égorge. Et dans sa lancée, Alassane OUTTARA et ses militants ont égorgé beaucoup de nos concitoyens.”* On the next day, Charles Blé Goudé tied the notion of being “Ivoirien” with support for democracy and for Laurent Gbagbo, and distinguishes this from the war and the “fusicratie” associated with Alassane Ouattara. Asking rhetorically *“Qui quitte Abidjan ?”* he speaks of shop owners (i.e. Northerners) including Mauritians leaving their boutiques, and about his wish to find jobs for Ivorians. When the shop owners come back, he says, they will find new owners in Côte d'Ivoire. This is met with massive applause from the crowd. He later refers to his political opponents as being not “Ivoirien” because they cut throats.

1898. All of these factors created a climate which endorsed the use of violence by forces under Mr Gbagbo’s control.

(d) *Mr Gbagbo’s orders and inducement had a direct effect on the commission of crimes.*

1899. The 16 December 2010 march on the RTI was suppressed and crimes committed as a result of a direct order from Mr Gbagbo to do so.

1900. On 14-15 December 2010 the Generals met with Mr Gbagbo to receive his instructions that the march was prohibited and should not take place. In this instance, while the instruction itself is not criminal in nature, he knew that its



implementation, in the ordinary course of events, will bring about the commission of crimes, in light of the fact that: (a) armed forces were deployed on the ground to face unarmed civilian demonstrators, (b) the implementation of similar past instructions had resulted in high numbers of casualties and (c) his speeches incited to violence.

1901. The crimes committed on 3 March and 17 March 2011 are the result of Mr Gbagbo's orders.

1902. Mr Gbagbo's orders on 24 February 2011 that Abobo be held by the FDS troops and his orders to liberate the MACA-Abdengourou Axis and the N'Dotr  roundabout, resulted in the installation of heavy artillery – including 120mm mortars – at Camp Commando in Abobo and the CEMA testified that this was authorised as a result of Mr Gbagbo's requisition of the army. These led members of the FDS to open mortar fire on Abobo on 17 March 2011 that led to the commission of the crimes.

1903. This instruction also meant that the FDS presence was reinforced, that convoys were driving up and down the main routes leading to Abobo while indiscriminately shooting at dwellings which bordered the road as part of a pattern of indiscriminate shooting whereupon everyone (*"tout le monde"*) in FDS convoys fired assault weapons along the road to Camp Commando in Abobo. This resulted in the shooting which took place on 3 March 2011 at a gathering of women in Abobo who were peacefully protesting against Mr Gbagbo's illegal hold onto power.

1904. The crimes committed in Doukour  and Mami Fatai in Yopougon on 12 April 2011 occurred as a result of Mr Gbagbo's own instigation, and as a result of his instigation by intermediaries such as Mr Bl  Goud .

1905. On 3 April 2011, as General Mangou arrived at the Presidential residence after having spent three days at the South African embassy, Mr Gbagbo stated, upon

seeing Mr Mangou's return: *"Bon, reprenez le combat. Mangou est... le général est là. Allez-y, reprenez le combat"*. It is worth noting at this juncture that, by this time, Mr Gbagbo was surrounded at his residence with elements of GPP and Liberian fighters who ended up in Yopougon on 12 April 2011 (including [REDACTED] and took part in the commission of charged crimes. These troops were also receiving instructions from Mr Gbagbo *via* his subordinates from the *Garde Républicaine* (commander General Dobgo Blé, his subordinates Commandant Kipré and Colonel Mody), as well as from Commandant Seka Seka as far as the Liberian mercenaries are concerned.

1906. With respect to inducement by intermediaries, Mr Blé Goudé made calls to mobilise and called on the youth and militias to fight to maintain Mr Gbagbo's position of power and secure their neighbourhoods against foreigners:

- a. On 24 February 2011, Mr Blé Goudé calls on the pro-Gbagbo youth to take part in a mass general meeting convened to issue the last instructions at the Bar Le Baron in Yopougon at 09h00 on 25 February 2011;
- vi. On 25 February 2011, Mr Blé Goudé instigated the pro-Gbagbo youth and militia to erect roadblocks and commit violent action;
- vii. On 14 March 2011, Mr Blé Goudé thanked those who erected the roadblocks and said that they would visit and talk to the Ivorian people in the neighbourhoods;
- viii. On 20 March 2011, during an interview at the RTI, Mr Blé Goudé thanked the youth at the roadblocks – *"ceux qui veillent pour que les autres dorment, ceux qui maintiennent l'ordre dans les quartiers avec politesse"* – and said he had called the youth to enlist so that they could be armed, legally (*"on ne peut pas dans un pays qu'on veut diriger distribuer des armes à des civils qu'ils mettent*

*sous leurs habit et puis ils tirent partout dans le pays [...] il y a une voie, c'est la voie légale, c'est de rentrer dans l'Armée régulière de Côte d'Ivoire");*

- ix. On April 5 2011, the RTI broadcast a video showing Mr Blé Goudé commending the "patriots" and urging them to continue fighting to maintain Mr Gbagbo in power, and ordering them to reinforce the roadblocks and support the operations of the armed forces.

*(e) Mr Gbagbo's conduct was intentional*

1907. Mr Gbagbo intended to instruct and/or instigate pro-Gbagbo forces to carry out certain actions, in the execution of which the charged crimes were committed. His intent is established through:

- a. His statements emphasising his intent to hold into power at all costs, which is the driving force behind his instructions to repress the pro-Ouattara civilian population:
  - i. On 7 August 2010, he publicly told the FDS commanders that "*Si je tombe, vous tombez*" (If I fall, you fall);
  - ii. On 29 December 2010, during an interview with Euronews, Mr Gbagbo explained that he is the winner of the elections, that it is not in his agenda for him to resign, but he is asking for a recount of the votes and also told the Ivorians that they would have a choice between a candidate for Ivory Coast (i.e. himself) and a candidate for foreigners (i.e. Mr Ouattara);
  - iii. On 31 December 2010, in his address to the nation, Mr Gbagbo referred to the armed rebellion in the interior of the country "*une rébellion armée à l'intérieur*" and accused the international community, namely the UN and a number of powerful countries ("*quelques pays puissants du monde*") which he did not name, of interfering in the internal affairs of Côte d'Ivoire. This

time he referred to a *coup* attempt “il s’agit d’une tentative de coup d’Etat menée sous la bannière de la communauté internationale”. He also promised to the Ivorian people that they will not give in “*Nous n’allons pas céder*”;

- iv. On 1 January 2011 Mr Gbagbo demanded that the Constitution, the legislation and the procedures of the country be respected and he declared that when these are respected he is the president of the republic and there is no debate: “*D’abord, qu’on respecte la Constitution, qu’on respecte les lois qui en découlent, et qu’on respecte les procédures qui en découlent. Quand on a respecté cela - la Constitution, les lois et les procédures – c’est moi qui suis le Président de la République, il n’y a pas de débat*”;
- v. On 13 February 2011, speaking at a thanksgiving mass, Laurent Gbagbo referred to the struggle they are engaged in to transform Côte d’Ivoire by themselves instead of change being imposed on them and stated that they will win this struggle “*Nous allons gagner*”;
- vi. In early April in 2011, Laurent Gbagbo from his residence says that French force destroyed Ivorian military capacity. He proposes to first decide who won the elections before negotiations can start on solving the conflict. Laurent Gbagbo states that he does not regret having continued to remain in his position in the last four months;
- vii. On 3 April 2011, he encouraged his troops to continue the fight – despite months of violence marred by civilian deaths – by stating to Witness P-0009: “*Bon, reprenez le combat. Mangou est... le général est là. Allez-y, reprenez le combat*”.

1908. These instructions to use force against perceived Ouattara supporters must be understood in the context of his design to stay in power at all cost. This includes statements betraying his intention to side-line candidates from running against

him and preparing his subordinates to face a situation where his hold on power is at risk:

- i. In 2001, declaring that the Constitution had been amended to deal with the “Ouattara problem”, (specifically article 35 of the Constitution that was made to “eliminate Ouattara) political opponents were targeted under his presidency despite the peace process initiated at Linas-Marcoussis and the delayed implementation of this and other agreements, culminating in the massacre of over 120 RHDP militants in March 2004;
- ii. He based his election campaign on demonising his opponents and used slogans that indicated his intention to stay in power. Witness P-0048 explained that Mr Gbagbo’s electoral campaign portrayed his opposition candidates with slogans such as “*En face de la majorité présidentielle, il n’y avait rien*” and “*on gagne ou on gagne*”, meaning that whatever happens they will win;
- iii. Mr Gbagbo impressed upon his FDS leaders by tying their fate to his by addressing to them with “*Si je tombe, vous tombez aussi*”, during his speech on 7 August 2010;
- iv. Training FESCI and COJEP youths in Abidjan. Witness P-0435 stated that he trained youth in the use of weapons, military discipline and military language code for them to be integrated into the army in December 2010.

1909. Mr Gbagbo’s intent is in particular inferred from his use and reliance on militia groups such as the GPP and the Liberian fighters. Mr Gbagbo having served his military service is no stranger to the concept of discipline. The GPP’s activities were nothing less than criminal. The Prosecution recalls that their motto was “*la trahison engendre le sang*”. The GPP would kill its own elements should they disobey or question the leadership. Allowing such a group to fight alongside

regular FDS units meant that Mr Gbagbo was prepared to engage in a criminal conduct.

1910. Moreover, that the killing of civilians would be the consequence of using heavily armed army units in an urban setting is something Mr Gbagbo had accepted, as he requested his troops to not kill too many civilians.

(i) Mr Gbagbo built the loyalty of officers who would help him stay in power

1911. Mr Gbagbo, as Supreme commander of the armed forces, was able to count on the FDS to get him to power in 2000, to repel the 2002 attempted *coup*, clamp down on protestors in 2000 and 2004 (with the assistance of burgeoning youth groups), and secure his political campaign of 2010. Having promoted loyal FDS leaders in August 2010, they supported him and asked their subordinates to vote for him; they also displayed their allegiance on 3 December 2010.

1912. In parallel to this, Mr Gbagbo also had established direct communication with a number of devout and loyal officers within the FDS, who remained by his side until the end of the conflict, while other FDS officers stepped down, seeing the unreasonable continuance of the conflict despite repeated calls by the AU, ECOWAS and the UN. For example, Mr Gbagbo had direct access to Colonel Dadi at BASA, and Dogbo Blé at the *Garde Républicaine*. These chiefs coordinated with armed militias, such as the GPP, some of whom were already based at the Presidential Residence as of February 2011, such as the GPP and Liberian mercenaries.

1913. Mr Gbagbo also ensured that he had in Yao N'Dré a long-time supporter (and former Minister in one of his government) in charge of the Constitutional Court which would hand him the keys to the Presidency. Mr Gbagbo had set the stage to put his plan into motion the moment he needed his various associates, advisors and supporters.

- (ii) Mr Gbagbo encouraged the recruitment and/or arming of youth, militias, and mercenaries:

1914. The evidence presented establishes that prior to the post-election violence the Gbagbo government had resorted to the use of Liberian mercenaries (LIMA) to help the FDS / FANCI battle the rebels in the West. Witness [REDACTED] testified that the Liberian mercenaries received money from the Ivorian Government at the time – which was normal since they worked for them. Many of these mercenaries were once again employed by the Gbagbo government through FDS officers Seka Seka and Commander KB during the post-election violence. [REDACTED]

[REDACTED] continued receiving money from the General Staff until 2010.

1915. Witness [REDACTED] testified that [REDACTED] of 13 or 14 Liberian mercenaries, ex-LIMA members, met with Commander KB of the Navy, and subsequently with Seka Seka – Simone Gbagbo's bodyguard – at the Cité Rouge – one of the largest University Campuses of Cocody. Witness [REDACTED] of Liberian mercenaries based themselves at the Cité Rouge for approximately one month – during which they participated in a mission for Commander KB. It can be inferred from Witness [REDACTED]'s testimony that he was already at the Cité Rouge when the 16 December 2010 march occurred. Subsequently, they were based at the Presidential Residence for a period of four to five months, during which they performed security functions and engaged in combat against the rebels under the orders of Seka Seka.

1916. Witness P-0347, who was the *Garde Républicaine* Commander of the Abidjan *Groupe* at the time of the postelection crisis, testified that on one evening, prior to the battle of Abidjan, he noticed approximately 100 unknown elements, aged 25 to 35, in his barracks. Witness P-0347 had not been notified of their arrival and had therefore been placed before a *fait accompli*. He believed that these elements were Liberian given the fact that they spoke English and their particular accent – with which Witness P-0347 was familiar. These elements were not under

Witness P-0347's orders but rather under those of his subordinates, Captain Blé Kouassi and the Deputy assistant Kokobo (of the *Garde Républicaine*). When asked in Court why he did not report the presence of these unauthorised elements to the Chief of Staff of the *Garde Républicaine*, Witness P-0347 testified that he had been put to the side and in any case they could not have been in his camp without "*la benediction du Chef de Corps*" – General Dogbo Blé of the *Garde Républicaine*.

(iii) Mr Gbagbo's failure to either denounce the crimes committed and ensure their genuine investigation

1917. *During the crisis, the modus operandi of the judicial system under Mr Gbagbo was denial, followed by a gradual recognition of certain aspects of the crime, combined with cover-ups and justification, illustrating a lack of willingness in punishing perpetrators.* On 12 January 2011, during an interview with *Canal+*, Mr Gbagbo firmly stated that Côte d'Ivoire is not at the edge of a blood bath thereby demonstrating his blunt denial of the crisis.

1918. Even before the first charged incident, the notorious killing of RDR militants in their headquarters in Wassakara illustrated a pattern of denial the pro-Gbagbo groups would follow throughout the post-election violence. The police were present immediately after the incident, and collected evidence by interviewing survivors; the head of the *Gendarmerie* received information that his subordinates may have committed a crime, and discussed the incident with the head of the perpetrator unit (the Yopougon *Gendarmerie* squadron). The FDS made two televised statements about this incident, but the police chief who reported the incident, testified that it was never investigated.

1919. On 4 March 2011, and although Mr Gbagbo and his subordinates had evidence implicating the FDS in the incident, spokespersons Don Mello and Mr Babri denied, on the RTI, any FDS responsibility for the attack. The FDS *communiqué* was approved by Minister of Defense Dogou. The CEMA testified



that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the communiqué. On 5 March 2011, Interior Minister Guiriéoulou condemned the international press for their continued claims that the FDS were responsible for the killing of the women on 3 March 2011. He claimed that it was an attempt to discredit Mr Gbagbo's regime. As of 5 March 2011, pro-Gbagbo media denounced this incident as a set-up. On 8 March 2011, the *Conseil des ministres* again denied all responsibility, and advanced that accusations against the FDS were pure fabrication. As stated by Witnesses P-0330, P-0607 and P-0009, no one was punished for this crime and the sole piece of evidence showing a mild interest in the killing of the 3 March 2011 victims was a passing remark by

1920. The overwhelming evidence on record demonstrates that the denials from Mr Gbagbo and his subordinates were not only a failure to investigate or punish, but a plan to cover up their crime, demonstrating his intent to engage in the conduct.

1921. Although Mr Gbagbo and his subordinates had knowledge of the involvement of the FDS in the 17 March 2011 incident, no proper investigation was conducted and no one was punished. On 22 March 2011, the Gbagbo government issued a statement on the RTI claiming they had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama mortuary and, (iii) that no complaint had been registered at police stations with respect to an FDS operation.

1922. *Witness P-0009 states that he was informed of the shelling at the Abobo market by the forces impartialles – General Palasset – and that the Minister of Defence was also informed in this way. Witness P-0009 requested Witness P-0047 to do an investigation – although it was not properly done – and Witness P-0009 informed the Minister of Defence, who in turn informed Mr Gbagbo.*

1923. The evidence shows that these denials served to absolve Mr Gbagbo and the FDS of their responsibilities in the eyes of public opinion and betray an intent to

engage in the conduct. The physical damage to various shelling locations was still visible when Expert Witness P-0411 visited the sites more than two years after the events. In the immediate aftermath of the shelling, videos of the carnage were uploaded online and are still publicly available. The register of the Anyama morgue for the calendar year of 2011, clearly identifies the victims of the 17 March 2011 shelling.

1924. The evidence on record demonstrates that the denials from Mr Gbagbo and his subordinates were not only a failure to investigate or punish, but yet again, as with the 3 March 2011 incident, meant to cover up their crimes and demonstrates Mr Gbagbo's intent to engage in the conduct.

(iv) Mr Gbagbo had the requisite knowledge of the circumstances relevant to the charged crimes

1925. Throughout the crisis, Mr Gbagbo was aware of the ongoing situation in Côte d'Ivoire via reports of his subordinates. Moreover, numerous reports from regional organisations and respected international organisations reported on the ongoing civilian casualties throughout the post-electoral violence. The High Commissioner for Human Rights, Navanethem Pillay directly addressed the continuing human rights violations in Côte d'Ivoire during a 31 December 2010 communication with Mr Gbagbo and FDS leadership. That same day, Mr Gbagbo acknowledged the existence of the post-election violence and created an international commission to investigate any crimes committed. The commission's work resulted in vague conclusions that apportioned minimal responsibility to the FDS and which were met with contempt by FDS leadership. There is also evidence that the FDS and the Police actively obstructed external investigation attempts by the UN into civilian deaths.

1926. In addition, the Prosecution's prima facie evidence suggests that accurate reporting of civilian casualties by pro-Gbagbo officers would have been seen as

discrediting (or even as traitorous to) the authorities. *When pro-Gbagbo forces did choose to launch investigations into casualties during the crisis, their focus was overwhelmingly on FDS victims, to the exclusion of other groups.*

1927. Mr Gbagbo was aware that crimes against civilians will be committed in the ordinary course of events as a consequence of his actions and instructions, and that the civilians perceived to support Mr Ouattara will be targeted. In addition to the facts presented in the above section relating to Mr Gbagbo's intent, his awareness is established by:

- i. Mr Gbagbo's ongoing conduct over several months with knowledge, at least as of December 2010, of the consequences;
- ii. Mr Gbagbo's knowledge that the use of heavy weaponry by armed forces under his control in densely populated areas would cause civilian casualties. This is established by his knowledge and understanding of heavy weaponry at the FDS disposal and instruction to the FDS leadership, with respect to the civilian population in Abobo to "make sure there are not too many dead";
- iii. His continued use of youth and militias to supplement FDS forces, in spite of the violent nature of their behaviour throughout the post-electoral violence;
- iv. His repeated and public denials of FDS involvement in any crimes, despite numerous reports to the contrary, including by international organisations.

1928. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that

include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

a. Mr Gbagbo was informed of casualties during the 16 December 2010 incident

1929. After the 16 December 2010 incident, Mr Gbagbo made a speech in which he noted that the 16 December 2010 march resulted in 20 deaths, including 10 members of the FDS. He did so despite being informed, by the CEMA, of civilian deaths on the same day as the march. At no point did Mr Gbagbo or his associates take steps to submit civilian deaths to competent authorities for investigation. *In at least one instance, internal-FDS investigations were limited to determinations of individual's links to foreign countries, in particular France.*

b. Mr Gbagbo was informed of casualties during the 3 March 2011 incident

1930. On 4 March 2011, and although Mr Gbagbo and his subordinates had evidence implicating the FDS in the incident, spokespersons Don Mello and Mr Babri denied, on the RTI, any FDS responsibility for the attack. The FDS *communiqué* was approved by Minister of Defense Dogou. The CEMA testified that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the communiqué. On 8 March 2011, the *Conseil des ministres* again denied all responsibility, and advanced that accusations against the FDS were pure fabrication. The Trial Chamber can safely infer that Mr Gbagbo was informed of the outcome of this incident.

c. Mr Gbagbo was informed of casualties during the 17 March 2011 incident

1931. *Mr Gbagbo and his subordinates had knowledge of the involvement of the FDS in this incident .* Witness P-0009 states that he was informed of the shelling at the Abobo market by the forces impartialles – General Palasset – and that the Minister of Defence was also informed by this way. Witness P-0009 requested Witness P-0047 to do an investigation – although it was not properly done – and Witness P-0009 informed the Minister of Defence, who informed Mr Gbagbo. Although Mr Gbagbo and his subordinates had knowledge of the involvement of the FDS in this incident, no proper investigation was conducted and no one was punished. To the contrary, on 22 March 2011, the Mr Gbagbo government issued a statement on the RTI claiming they had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama mortuary and, (iii) that no complaint had been registered at police stations with respect to an FDS operation.

d. *Mr Gbagbo was aware that in the ordinary course of events, the crimes perpetrated on 12 April 2011 would be committed*

1932. With respect to the 12 April 2011 incident in Yopougon, Mr Gbagbo was arrested the previous day and the Prosecution argues that Mr Gbagbo knew that in the ordinary course of events, crimes would be perpetrated by his subordinates as a result of his ordering, inducing or soliciting.

1933. As stated earlier, Mr Gbagbo encouraged his subordinates to carry on combating on 3 April 2011 in front of General Mangou, Konan Boniface and General Dobgo Blé . Furthermore, on 9 April 2011, he issued a communiqué asking all Ivorians to remain mobilised until the “rebirth” of Côte d’Ivoire. During this period of early April 2011, troops at the residence included, amongst others, loyal members of the *Garde Républicaine*, members of the GPP, which Mr Gbagbo knew to have a criminal past, and Liberian fighters loyal to Mr Gbagbo.

1934. Mr Gbagbo's insistence to hold on to power, his prior orders to hold on to Abobo resulting in several deaths including the seven women on 3 March 2011 and the dozens of casualties resulting from the shelling from a 120mm mortar from Camp Commando, demonstrate his knowledge of the "*dégâts*" (damages) created by his prior instructions and the likelihood of further crimes committed in the ordinary course of conduct resulting from his further encouragements, instructions and inducements to "carry on the fight".

(v) Mr Gbagbo was aware that his conduct was part of the widespread or systematic attack

1935. Mr Gbagbo knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.7

### 3. Prosecution's Case under article 25(3)(b) – Mr Blé Goudé

1936. Mr Blé Goudé is further liable under article 25(3)(b) for ordering, inducing or soliciting the commission of the crimes charged. As the acknowledged leader of the *Jeunes Patriotes* and the *Galaxie Patriotique*, Mr Blé Goudé engaged in a sustained effort to mobilise the youth for violence and exerted an influence over the militias. His orders to the youth before the incidents of 16-19 December 2010, 25 February 2011, and 12 April 2011 had a direct effect on the commission of the crimes.

(a) *Mr Blé Goudé was in a position of authority over the perpetrators*

1937. As argued above at Section V.C.8(a)(ii)(b) and (c), Mr Blé Goudé was the leader of the pro-Gbagbo youth, or was at least regarded by the pro-Gbagbo youth as such. His authority over the pro-Gbagbo youth was demonstrated by his

mobilising them to commit violent acts, financing their activities, training and arming them, and playing an essential role in their recruitment and enlistment into the FDS.

1938. Mr Blé Goudé's authority of the pro-Gbagbo youth is further demonstrated by their compliance with his instructions, with which they felt obliged to comply. The most compelling example of the pro-Gbagbo youth's compliance with Mr Blé Goudé's instructions was their immediate mounting of roadblocks following his order at the Bar Le Baron on 25 February 2011. As Witness P-0625 testified: *"La population, vous savez, l'appel de Blé Goudé, quand il fait un appel, le monde le « suive » [...] ils allaient le suivre, ils allaient lui obéir"*. Mr Blé Goudé's orders to the youth even took precedence over those of the Police. Witness P-0440 testified that on 28 February 2011, the *Jeunes Patriotes* refused categorically to remove their roadblocks because Mr Blé Goudé had told them to monitor the neighbourhood and so they were doing their job and *"seul M. Blé Goudé peut leur demander de rentrer [...]"*.

1939. Mr Blé Goudé was also in a position of authority over the GPP. As argued above at Section V.C.8.(a)(ii)(b) this position was demonstrated through his role in creating the GPP, his personal links to GPP members, his provision of financial support and food to the GPP, and the GPP's compliance with Mr Blé Goudé's instructions to train the youth of COJEP and FESCI.

(b) *Mr Blé Goudé ordered or induced the pro-Gbagbo youth and militia to either commit a crime, or to perform an act or omission in the execution of which a crime was carried out*

1940. As argued above at Section V.C.8(a)(ii)(e), Mr Blé Goudé mobilised and incited the youth to commit violent acts. His public speeches, the highlights of which were broadcast on the RTI, kept the youth in a state of alert, at his disposal, and awaiting his instructions. By vilifying the UN and France, referring to the

existence of a genocidal threat, using xenophobic and inflammatory language and repeatedly referring to the need to defend themselves, Mr Blé Goudé's speeches were designed to create an atmosphere in which the pro-Gbagbo youth felt threatened.

1941. Additionally – and recalling that a person may solicit or induce the commission of a crime by implied conduct – Mr Blé Goudé's funding of the activities of the pro-Gbagbo youth, supported for their military training and arming, and contribution to the recruitment of pro-Gbagbo militias, also prompted these youth and militias to commit crimes against perceived Ouattara supporters.

1942. It is the Prosecution's case that, while Mr Blé Goudé did not use explicit language in his speeches to call upon his audience to commit violent acts, this was nevertheless the effect of his repeated instructions, encouragement and – in particular – his approval of violence at the roadblocks (*see* Section V.F.4)

1943. In terms of the specific incidents alleged, Mr Blé Goudé instructed the perpetrators to either commit a crime, or to perform an act or omission in the execution of which a crime was carried out, in the following ways.

- i. In relation to the 16-19 December 2010 incident, on 14 December 2010, Mr Blé Goudé held a meeting of youth leaders with the aim of mobilising the *Jeunes Patriotes* to protect the RTI from demonstrators in the march planned for 16 December 2010. When called to mobilise, the *Jeunes Patriotes* therefore knew what they ought to do, that is, to set up roadblocks. The call to mobilisation occurred the next day, on 15 December 2010, at a rally held by Mr Blé Goudé at the Palais de la Culture. There, Mr Blé Goudé told the pro-Gbagbo youth that UN SRSG Choi, the UN and France were preparing a genocide in Côte D'Ivoire. He concluded his statement by saying that they wanted to live to see the country develop but that "*nous*



*sommes prêts à mourir pour que cette cause-là puisse se réaliser*". The resulting crimes committed by pro-Gbagbo youth are detailed at Section IV.C.1

- ii. In relation to the 25-28 February 2011 incident, Mr Blé Goudé held a meeting at the Bar Le Baron of Yopougon in the morning of 25 February 2011, at which he called the pro-Gbagbo youth to "check comings and goings in [their] neighbourhoods and report any stranger or foreigner [*personne étrangère*] entering [their] neighbourhood". This was the *mot d'ordre* that Mr Blé Goudé had primed the youth to receive. The call was broadcast on the 20h00 edition of the RTI news on 25 February 2011, re-broadcast on the 13h00 edition of 26 February 2011, and re-broadcast with some differences in footage on the 20h00 edition of 26 February 2011. This was a call to engage in violence against perceived Ouattara supporters, and was received as such and implemented without delay by the pro-Gbagbo forces, including the pro-Gbagbo youth and pro-Gbagbo militia. The resulting crimes committed by pro-Gbagbo youth and militias are detailed at Section IV.D.1
- iii. The 12 April 2011 incident occurred as part of a continuum of violence perpetrated against perceived Ouattara supporters, set in motion by Mr Blé Goudé's call of 25 February 2011, which led to the establishment of the roadblocks. Mr Blé Goudé, rather than condemning the violence perpetrated at these roadblocks, actively encouraged their continued use, for example on 4 March 2011, 14 March 2011, 18 March 2011 and 20 March 2011, and called upon the youth to enlist in the army on 19 March 2011. On April 5 2011, the RTI broadcast a video showing Mr Blé Goudé commending the "patriots" and urging them to continue fighting to maintain Mr Gbagbo in power, and ordering them to reinforce the roadblocks and support the operations of the armed forces. The resulting crimes committed by pro-Gbagbo militias are detailed at Section IV.G.1

(c) *Mr Blé Goudé's order or act of solicitation or inducement had a direct effect on the commission of the crimes*

1944. The instructions issued by Mr Blé Goudé had a direct effect on the commission of crimes during the post-electoral violence. His speeches and rallies kept the youth in a constant state of alert, at his disposal, and waiting for his instructions. This was the case especially in relation to three of the charged incidents.

- i. In relation to the 16-19 December 2010 incident, the violent actions of the youth at roadblocks were performed in execution of Mr Blé Goudé's order of 14 December 2010. As Witness P-0625 explained, the meeting was convened by Mr Blé Goudé at the town hall of Cocody to give information about the upcoming march. At the meeting, the *Jeunes Patriotes* were asked to form "*corridors*", meaning roadblocks: "[...] *quand on lance la mobilisation... on lance appel que la RTI nationale doit être attaquée ou venir être prise par la force, on vous demande de vous mobiliser pour protéger.*"
- ii. In relation to the 25-28 February 2011 incident, the actions of pro-Gbagbo forces, including youths and militia members, during the violence which took place on 25 February and in the context of the roadblocks erected from 25 February 2011 onwards, occurred in direct response to Mr Blé Goudé's *mot d'ordre* at the Bar Le Baron on the same morning, broadcast later that day (and re-broadcast). While Mr Blé Goudé did not use explicit language to call upon his audience to commit violent acts, the context was such that explicit language was not necessary for the message to be understood. This context included the location of the speech in Yopougon, being a traditional pro-Gbagbo stronghold, with some areas – notably the Lem and Doukouré districts – which were inhabited mostly by Ivorians of Dioula ethnicity and Muslim faith. Yopougon was home to at least three – up to as many as ten – pro-GBAGBO *parlements*. Yopougon had, since as

early as October 2010, been the location of GPP training of pro-Gbagbo youths. Mr Blé Goudé also lived in Yopougon, and COJEP's headquarters were also based there. In these circumstances, an explicit message to take violent action was not necessary. Indeed, the immediacy and force of the reaction by the pro-Gbagbo youth and militias to Mr Blé Goudé's call in itself demonstrates that the message was received by these perpetrators with no lack of clarity. In a similar vein, and as argued at Section V.F.3(b), it is immaterial whether the individual perpetrators of crimes were in attendance at Mr Blé Goudé's Bar Le Baron speech; it is the immediacy of the response – both in geographic and temporal terms – to Mr Blé Goudé's words that demonstrates the effect of the speech on the perpetrator groups. Finally, any possible doubt about the meaning of Mr Blé Goudé's call of 25 February 2011 should be dispelled by his subsequent conduct in approving of the violence at the roadblocks (*see* Section V.F.3(e)).

- iii. The 12 April 2011 incident occurred as part of a continuum of violence sparked by the same *mot d'ordre* of 25 February 2011, and culminating in Mr Blé Goudé's instructions of 5 April 2011 to pro-Gbagbo forces to continue fighting and reinforce the roadblocks. By failing to put a stop to the violence of which he had knowledge, and – once more – by approving of the violence, Mr Blé Goudé prompted the continuation of violence in Yopougon from 25 February 2011 until the day following Mr Gbagbo's arrest.

(d) *Mr Blé Goudé acted with intent*

1945. Mr 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. His intent in relation to the above orders and instructions are demonstrated by the same facts that are described in

Section VI.B.3(b), 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 Mr Gbagbo in power at all cost, including by attacking civilians.

1946. Additionally, Mr Blé Goudé was aware that crimes would be committed in the ordinary course of events as a consequence of his acts and omissions, as detailed at Section VI.B.3(c). For example, his intent is also illustrated by his statement that in a revolution, there are always collateral effects.

1947. Mr Blé Goudé's intent is in particular inferred from his involvement in the creation, funding of and issuance of instructions to a violent militia group, the GPP. The GPP's activities were nothing less than criminal. The Prosecution recalls that their motto was "*la trahison engendre le sang*". The GPP would kill its own elements should they disobey or question the leadership. Mr Blé Goudé's contribution to the creation of such a group and his continued relationship with the leadership of that group (including the issuance of instructions) demonstrates his intent to engage in criminal conduct.

*(e) Mr Blé Goudé had the requisite knowledge*

1948. Mr 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 Mr Ouattara. This is demonstrated by the same facts described in Section V.C.10, and in addition, by the fact that he knew of the violent nature of the pro-Gbagbo youth and militias yet exploited their allegiance with a view to committing violence against civilians perceived to support Ouattara, which he helped identify as targets.

1949. Additionally, Mr Blé Goudé was aware that he was in a position of authority *vis-à-vis* the perpetrators of the crimes, as demonstrated by his references to “orientating” the youth.

1950. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

*(f) Mr Blé Goudé was aware that his conduct was part of the widespread or systematic attack*

1951. Mr Blé Goudé knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.11 namely:

- i. Mr Blé Goudé’s galvanisation and mobilisation of the youth to commit violent acts;
- ii. His use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces; and
  - a. His role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

### C. Article 25(3)(c)

#### 1. Law of assisting in the commission of a crime under article 25(3)(c) of the Statute

1952. Aiding, abetting or otherwise assisting in the commission or attempted commission of a crime constitutes a single mode of liability, which can broadly be characterised as *assisting* in the (attempted) commission of a crime. The elements of this single mode of liability under article 25(3)(c) can be described as follows:

- i. The person assisted in the commission or attempted commission of a crime;
- ii. The person acted with the purpose of facilitating the commission of a crime;
- iii. The person had intent with regard to the crime within the meaning of article 30(2)(b); and
- iv. The person had the requisite knowledge.

(a) *The person assisted in the commission or attempted commission of a crime*

1953. Article 25(3)(c) requires proof that the person assisted in the commission or attempted commission of a crime. It is not required that the accused assist a specific person, whether considered a principal perpetrator, intermediary perpetrator or otherwise. Rather the assistance needs to be provided in the commission or attempted commission of a *crime*. Accordingly, as a matter of law, it is not necessary to show that the principal perpetrator was aware of the accused's existence or his or her assistance to the commission of the crime.

1954. The person may assist in the commission of a crime in any way, such as by providing practical or material assistance (which includes the provision of the

means for the commission of the crime) or by offering moral or psychological support (which may take the form of encouragement or even sympathy for the commission of the crime). The encouragement or support shown need not be explicit. Under certain circumstances, the act of being present at the crime scene (or in its vicinity) as a “silent spectator” can be construed as tacit approval or encouragement of the crime. The accused need not necessarily be personally present during the commission of the offence.

1955. The assistance to the crime may be given before, during or after the crime has been perpetrated. Assistance after the commission of a crime is contingent on a prior offer or agreement of assistance between the principal and the accessory that the latter would lend assistance after the commission of the crime.

1956. The accused’s assistance to the commission of the crime must not necessarily have been “causal” in the sense of having had an effect on the commission of the crime. As recently held by the Appeals Chamber in the *CAR Article 70* case, “the text of [article 25(3)(c)] only requires that *the assistance in the commission* (or attempted commission) of the crime be provided for the purpose of facilitating such commission without indicating whether the conduct must have also had an effect on the commission of the offence”. What constitutes assistance to the crime is a matter of evidence, but the standard is “certainly fulfilled when the person’s assistance in the commission of the crime facilitated or furthers the commission of the crime”.

1957. Under article 25(3)(c), the degree of the accused’s assistance to the commission of the crime is not qualified, and in particular, it need not be substantial or significant.

1958. Criminal responsibility under article 25(3)(c) is dependent on the commission or at least the attempted commission of an offence by the principal perpetrator. However, establishing liability under this provision is independent of whether the principal perpetrator was identified, charged or convicted.

*(b) The person acted with the purpose of facilitating the commission of a crime*

1959. Under article 25(3)(c) the Prosecution must establish that the accused assisted in the commission of the crime “for the purpose of facilitating the commission of the crime”. Accordingly, it is not sufficient that the accused knew that his or her conduct would assist in the commission of the crime, but the accused must have lent his or her assistance “with the aim of facilitating the commission of the crime”. However, the term “purpose” does not relate to the commission of the crime. The elevated subjective standard relates only to the accused’s facilitation of the crime, and not the crime itself. This means that there is no need to establish that the accused specifically intended the commission of the crime.

*(c) The person had intent with regard to the crime within the meaning of article 30(2)(b)*

1960. Liability under article 25(3)(c) requires proof that the accused had intent with regard to the crime pursuant to article 30(2)(b). This means that the accused must at least be aware that the principal perpetrator’s crime would occur in the ordinary course of events. This does not mean that the accused need to know all the details of the crime in which he or she assisted, or the factual circumstances in which it is committed. To meet the threshold under article 30(2)(b), it is sufficient to establish that the accused was aware that the principal would, in the ordinary course of events, commit the *type* of offences charged — in this case crimes of murder, inhumane acts, rape and persecution.

*(d) The person acted with the requisite knowledge*

1961. Pursuant to article 30(3), the Prosecution must establish that the accused was aware that the circumstances relevant to the charged crimes (e.g. murder, inhumane acts, rape and persecution) existed, or that, in the ordinary course of events, the crimes of murder, inhuman acts, rape and persecution would be committed.



## 2. Prosecution's Case under article 25(3)(c) – Mr Blé Goudé

1962. The evidence and facts establishing Mr Blé Goudé's responsibility under article 25(3)(b), shows that Mr Blé Goudé's conduct had a direct impact on forming and reinforcing the determination of the pro-Gbagbo forces to commit the crimes. The same evidence and facts are equally relevant to his article 25(3)(c) liability, as they show how Mr Blé Goudé's contribution provided assistance and material support to the direct perpetrators with respect to all crimes and all counts charged. Mr Blé Goudé aided and abetted or otherwise assisted in the commission of the crimes charged for the incidents of 16-19 December 2010, 25-28 February 2011 and 12 April 2011.

1963. Article 25(3)(c) provides for a lower level of participation in that, should the Trial Chamber find that his contribution was not essential (as required under article 25(3)(a)) to the implementation of the Common Plan, or that his activities did not amount to ordering or instructing, then the Chamber may find that his contributions were nevertheless conducted with a view to assist, and did so assist, the direct perpetrators in the commission of the crime.

*(a) Mr Blé Goudé assisted in the commission or attempted commission of a crime*

1964. Mr Blé Goudé was the link between Mr Gbagbo and the pro-Gbagbo youth. In particular, he exercised a coordinating role of the activities of the pro-Gbagbo youth. By doing so, he provided assistance towards the commission of the crimes in the following ways:

- i. With respect to all charged crimes, Mr Blé Goudé contributed to the establishment and organisation of a structure which allowed the execution of the common plan and occasioned the commission of those crimes. As expanded upon at Section V.C.8(a)(ii) under the relevant sub-headings, Mr Blé Goudé lent his assistance to the commission of the crimes charged by:

- ii. Securing the allegiance of the youth to him and their compliance with his instructions by galvanising them;
- iii. Ensuring through his leadership, that the pro-Gbagbo youth groups acted in unity;
- iv. Acting as a vital intermediary between Mr Gbagbo and the pro-Gbagbo youth;
- v. Organising the dissemination of instructions through various channels of communication;
- vi. Mobilising the youth to commit violent acts;
- vii. Contributing to the financing of the activities of pro-Gbagbo youth;
- viii. Playing an essential role in the recruitment and enlistment of pro-Gbagbo youth in the FDS;
- ix. Providing support for the military training and arming of pro-Gbagbo youth;
- x. Contributing to the recruitment of pro-Gbagbo mercenaries; and
- xi. Supporting and encouraging co-operation between the pro-Gbagbo youth, the militias and the FDS.

1965. Further, with respect to all charged crimes, Mr Blé Goudé made a sufficient number of highly motivated, well-financed, armed and trained youth available to cooperate with and support the operations of the FDS. In doing so, Mr Blé Goudé provided support to the FDS for the commission of the crimes charged. Specifically:

- i. With respect to the 16 December 2010 march on the RTI, Mr Blé Goudé held a meeting of leaders of the *Galaxie Patriotique* on 14 December 2010 to mobilise the *Jeunes Patriotes* and set up roadblocks to stop the RTI march. Mr Blé Goudé made a speech the previous night at the Palais de la Culture accusing the UN and France of preparing for genocide against Côte d'Ivoire and saying that people are ready to die to see the country develop. Members of the *Galaxie Patriotique*, including elements of the GPP and the FESCI, took part in the repression of the march. Mr Blé Goudé's instructions on 14 December 2010 and his speech of 15 December 2010 provided moral assistance towards the commission of the crimes.
- ii. With respect to the 25-28 February 2011 attack on Yopougon, Mr Blé Goudé's announcements and instructions (*mots d'ordre*) on 24 and 25 February provided assistance in mobilising the youth and encouraging them in raising roadblocks, and arresting, mistreating and killing "foreign" persons or "strangers".
- iii. With respect to the attacks in Yopougon on 12 April 2011, once more, Mr Blé Goudé addressed the young patriots on 3 or 4 April 2011 and asked them to support the FDS by being alert and standing up in their neighbourhoods. In another address to the patriots on 5 April 2011, he urged the youth again to support the FDS and called the population to film any "suspicious movement". Hence, just a week before the GPP, Liberian mercenaries and FDS surged into Yopougon, Mr Blé Goudé's words provided further encouragement to continue targeting perceived Ouattara supporters, which resulted in the killings and rapes on 12 April 2011.

1966. Overall, Mr Blé Goudé's activities had the effect of strengthening the capability of the pro-Gbagbo forces to commit the crimes charged. Finally, by addressing his hate speeches against perceived Ouattara supporters, Mr Blé

Goudé identified them as the targets of the attacks of the pro-Gbagbo forces, and assisted the crimes by directing the attention of the direct perpetrators to the targeted victim group.

*(b) The person acted with the purpose of facilitating the commission of a crime*

1967. Mr Blé Goudé's activities, as outlined above, were performed for the purpose of facilitating the commission of the crimes carried out by the pro-Gbagbo forces. His acts of assistance – particularly 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 Mr Gbagbo in power at all cost, including by attacking civilians.

*(c) Mr Blé Goudé acted with intent with regard to the crimes*

1968. As argued above at Sections V.C.9 and VI.B.3(d), Mr Blé Goudé was aware that the type of crimes charged would be committed in the ordinary course of events. The law does not require, under this mode of liability, for Mr Blé Goudé to know all the details of the crimes, or their factual circumstances. Mr Blé Goudé's intent and knowledge with regard to the crimes are demonstrated by the same factors as outlined at Section V.C.9, above. For example, his intent is also illustrated by his statement that in a revolution, there are always collateral effects.

1969. Mr Blé Goudé's intent is in particular inferred from his involvement in the creation, funding of and issuance of instructions to a violent militia group, the GPP. The GPP's activities were nothing less than criminal. The Prosecution recalls that their motto was "*la trahison engendre le sang*". The GPP would kill its own elements should they disobey or question the leadership. Mr Blé Goudé's contribution to the creation of such a group and his continued relationship with the leadership of that group (including the issuance of instructions) demonstrates his intent to engage in criminal conduct.

*(d) Mr Blé Goudé had the requisite knowledge*

1970. Mr Blé Goudé was aware that in the ordinary course of events, the crimes charged would be committed. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

*(e) Mr Blé Goudé was aware that his conduct was part of the widespread or systematic attack*

1971. Mr Blé Goudé knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.11, namely:

- i. Mr Blé Goudé's galvanisation and mobilisation of the youth to commit violent acts;
- ii. His use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces; and
- iii. His role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

#### D. Article 25(3)(d)

1. Law of contributing, in any other way, to the commission or attempted commission of a crime by a group of persons acting with a common purpose under article 25(3)(d) of the Statute

1972. To establish individual criminal responsibility under article 25(3)(d) of the Statute, the Prosecution must establish the following:

- i. A crime within the jurisdiction of the Court was attempted or committed;
- ii. The crime was committed or attempted by a group of persons acting with a common purpose;
- iii. The accused contributed to the crime, in any way;
- iv. The contribution was intentional; and
- v. The contribution was made either (a) with the aim of furthering the criminal activity or criminal purpose of the group, or (b) in the knowledge of the intention of the group to commit the crime.

*(a) Crime within the jurisdiction of the Court was attempted or committed*

1973. It must be established that the crime within the jurisdiction of the Court has been committed or attempted. This requires proof both of the objective and subjective elements of the crime, as well as the relevant contextual elements.

*(b) The crime was committed or attempted by a group of persons acting with a common purpose*

1974. The Prosecution must establish “the existence of a group of persons driven by and acting with a common purpose”. The concept of common purpose within the meaning of article 25(3)(d) is similar to the statutory requirement of common plan

under article 25(3)(a), in the sense that the common purpose must include an “element of criminality”, but does not need to be specifically directed at the commission of a crime. Hence, a group with a legitimate political and strategic goal which also entails criminality of the execution of a crime may constitute a group of persons acting with a common purpose within the meaning of article 25(3)(d).

1975. However, the two concepts are not identical. The relevant material fact to be established under article 25(3)(d) is not the existence of an *agreement* among specific individuals, but the *collective or shared intent* of a group of persons. This is consistent with article 25(3)(d)(ii) that refers to the “intention of the group”. It follows that a common purpose — contrary to a common plan under article 25(3)(a) — does not justify the reciprocal attribution of the respective acts among its members.

1976. The group’s collective intent may be established without focussing on the intent of each individual member of the group and may be inferred, *inter alia*, from “the group’s collective decisions and actions or its omissions”, its “concerted action”, or from the intention of the leaders of the group, provided that they played a major role in that group, such as being significantly involved in creating the group, leading the group, or organising its criminal activities.

1977. The common purpose needs to be defined by specifying its scope, the criminal element, the geographic and temporal purview, the type, the origins or characteristics of the victims pursued, and the identity of the members of the group, although not each of them needs to be identified by name. A common purpose may be express or implied. It need not have been previously arranged or formulated, and it may materialise extemporaneously. The members of the group of persons can, to some extent, change over time. It is not necessary to show that the group was organised in a military, political or administrative structure.

1978. Only the crimes that fall within the scope of the common purpose — i.e. crime where there is a collective or shared intent of the group — can be attributed to the group's common purpose. This does not require a shared intent with respect to all the details of the crimes. It is sufficient to show that the group of persons was aware that certain types of crimes would be committed in the ordinary course of events.

1979. The Prosecution does not need to show that the accused was a member of the “group of persons” acting with a common purpose. However, the person(s) who *committed* the crime must belong to the group. The term “commission” used in article 25(3)(d) does not necessarily entail that the crimes be physically perpetrated by any member(s) of the group. Trial Chamber II in the *Katanga* case accepted that members of the group acting with a common purpose may commit a crime in any of the manners enumerated in article 25(3)(a). In addition, the term “commission” in article 25(3)(d) should not be limited to those situations covered by article 25(3)(a) and should be interpreted in accordance with the use of the term in article 25(2), which encapsulates all forms of individual criminal responsibility under article 25. Accordingly, criminal liability under article 25(3)(d) will attach as long as the crime forms part of the common purpose and can be imputed — pursuant to *any* mode of liability under article 25 — to the group of persons. For instance, the accused can be liable under article 25(3)(d) for crimes induced by a group of persons acting with a common purpose, but physically perpetrated by persons who are not part of the group, as long as the accused contributed to the commission of the crime through the group.

(c) *The accused contributed to the crime, in any way*

1980. Article 25(3)(d) applies when the accused contributed to the group's commission or attempted commission of the crime “in any other way” that is not captured under articles 25(3)(a) to (c). To show that an accused contributed to the



commission of a group crime, it needs to be established that his or her conduct influenced or had a bearing on its occurrence or the manner of its commission. It is not necessary to show that the crime was contingent on, or even determined by the accused's contribution. Once such influence or bearing on the crime is established, the level or degree of contribution does not need to be qualified further. In other words, the threshold under article 25(3)(d) only excludes contributions that are "inconsequential", "immaterial", or "neutral" to the commission of the crime.

1981. Also, contrary to co-perpetration under article 25(3)(a), an accused is liable pursuant to article 25(3)(d) only for those crimes to whose commission he or she contributed, and not for all crimes committed by the group of persons acting with a common purpose.

1982. The accused's contribution to the crime must be assessed on the basis of his or her conduct and may be linked to an objective element of a crime (for instance by facilitating in any way the commission of the objective elements of the crime) or to the subjective elements of the crime (for instance through tacit or explicit encouragement).

1983. The contribution to the crime may be made directly through the physical perpetrators (if they are members of the group) or through other members of the group acting with a common purpose. The accused may be remote from the crime site, and his or her contribution may be made prior, during or after the commission of the crime. The latter is contingent on proof of a prior understanding between the accused and the group that the accused would provide a particular contribution.

*(d) The contribution was intentional*

1984. The *mens rea* requirement for article 25(3)(d) deviates from the general rule of article 30. Accordingly, the requirement that the accused's contribution was

intentional applies only to his or her conduct, and not the consequence of such conduct. Nor does it apply to the activity, purpose or criminal intention of the group. As a result, the Prosecution must show that the accused meant to engage in the relevant conduct constituting the contribution to the group crime, in the sense that his or her actions or omissions were deliberate and made with awareness of the relevant conduct. Some Chambers have also required proof that the accused was aware that his or her conduct “contributed to the activities of the group of persons acting with a common purpose”.

- (e) *The contribution was made either (a) with the aim of furthering the criminal activity or criminal purpose of the group, or (b) in the knowledge of the intention of the group to commit the crime*

1985. 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. Accordingly, the accused’s intent, which the Prosecution must establish, relates only to his or her *facilitation of the group’s criminal activity or purpose*. The Prosecution need not establish that the accused intended to facilitate the specific crime itself, nor that he or she intended the commission of the crime. It is therefore not required for the accused to satisfy the mental element of the crimes charged. As pointed out by Pre-Trial Chamber I in the *Mbarushimana* case, this stands in sharp contrast with liability under article 25(3)(a) of the Statute, where the accused must meet the subjective elements of the crimes charged.

1986. Under article 25(3)(d)(ii), which is an alternative to article 25(3)(d)(i), the Prosecution must establish that the accused had knowledge of the intention of the group to commit the crime. Such knowledge requires proof that the accused was aware of the group’s collective intention to commit the crime. This means that the accused was aware either that the group meant to cause the crime, or that the group was aware that the crime will be committed in the ordinary course of

events. Although such knowledge must be established for each specific crime for which the accused is held responsible (a general criminal intention will not suffice), this does not mean that the accused must be aware of all the details of the crimes, but knowledge of the group's intention with respect to certain *types* of crimes suffices will suffice. In this case, the accused must have been aware that the group of persons harboured the intention to commit crimes of murder, inhumane acts, rape and persecution.

2. Prosecution's Case under article 25(3)(d) – Mr Gbagbo and Mr Blé Goudé (common elements i. and ii.)

1987. Mr Gbagbo and Mr Blé Goudé are criminally responsible under an accessory mode of participation, article 25(3)(d), for contributing to the commission of the crimes charged.

1988. Mr Gbagbo is liable under this mode of liability for the crimes charged during the 16-19 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents.

1989. Mr Blé Goudé is liable under this mode of liability for the crimes charged during the 16-19 December 2010, 25-28 February 2011 and 12 April 2011 incidents.

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

1990. The crimes for which Mr Gbagbo and Mr Blé Goudé have been charged were perpetrated by the pro-Gbagbo forces and members of the Inner Circle, including Mr Gbagbo and Mr Blé Goudé. These persons, who to the largest extent possible are identified in other parts of this brief, constitute a group of persons within the meaning of article 25(3)(d). They shared a common purpose to attack civilians perceived to support Ouattara in Abidjan between 27 November 2010 and about 12 April 2011, and targeted them on ethnic, religious, and national grounds.

Although legally irrelevant, the common purpose was motivated by the shared intention of the member of the group to keep Mr Gbagbo in power by all means.

1991. Article 25(3)(d) does not require for the accused to be a member of the group; the accused must merely assist the group contributing to the commission or attempted commission of the crime, without having to be a member of it. However, in this case, the overwhelming evidence shows that Mr Gbagbo and Mr Blé Goudé were not only members of this group, they were its leaders and main beneficiaries. Mr Gbagbo himself is indeed central to the common purpose.
1992. A group's common purpose under article 25(3)(d) must include an "element of criminality", but does not need to be specifically directed at the commission of a crime. The record in this case demonstrates that the common purpose to attack civilians perceived to support Ouattara did in fact contain an "element of criminality" such that it included the use of violence against perceived Ouattara supporters and civilians.
1993. Rather than an agreement among individuals, which is relevant for liability under article 25(3)(a), common purpose liability merely requires a collective or shared intent of a group of persons. In this case, the group's intention can be inferred from the intention of the leaders of the group, Mr Gbagbo and Mr Blé Goudé themselves, given that they played a major role in the group, and were significantly involved in creating the group, leading the group, and organising its criminal activities. Furthermore, the group's intention can be further inferred from the intent of Mr Gbagbo and Mr Blé Goudé and from their contributions to the crimes charged that are listed in the next section.
1994. As demonstrated above, the FDS and other pro-Gbagbo forces were considerably well-organised and hierarchical – to such an extent sufficient that they met the criteria for liability under article 25(3)(a). The threshold for group structure or membership under article 25(3)(d) liability is far lower – it is not even necessary to show that the group was organised in a military, political or

administrative structure. Accordingly, the Inner Circle and pro-Gbagbo forces (including the FDS, pro-Gbagbo youth groups and militias) clearly meet this lower organisational threshold.

1995. The pro-Gbagbo forces and members of the Inner Circle, including Mr Gbagbo and Mr Blé Goudé, constituted a group of persons who shared a common purpose to use violence against civilians perceived to support Ouattara in Abidjan between 27 November 2010 and about 12 April 2011, and targeted them on ethnic, religious, and national grounds. The group's shared or collective intent may be inferred, *inter alia*, from "the group's collective decisions and actions or its omissions", its "concerted action," which in this case, include the pro-Gbagbo forces' sustained and concerted attack on the civilian population in Abidjan who was perceived to support Ouattara during the crisis. The following factors further demonstrate the intent of the group to pursue this common purpose:

- i. The pro-Gbagbo forces were hierarchically organised and followed orders (the FDS, the *Galaxie Patriotique* (including pro-Gbagbo youths and militia), and mercenaries integrated into the FDS);
- ii. The pro-Gbagbo forces acted in coordination, collaborated with or provided support to one another;
- iii. The manner in which they carried the article 7(1) acts out followed several patterns;
- iv. The superior officers of the pro-Gbagbo forces did not take measures to prevent, punish or repress the prohibited acts carried out by their subordinates.

3. Prosecution's Case under article 25(3)(d) – Mr Gbagbo's contributions and *mens rea* (elements iii. to v.)

(a) *Mr Gbagbo contributed to the commission of the crimes, in any way*

1996. Mr Gbagbo's conduct constitutes both *material and moral* support to those acting with a common purpose who committed the crimes charged. Mr Gbagbo was instrumental to the design and strategic implementation of the common purpose.

1997. The implementation of Mr Gbagbo's instructions described above evidences Mr Gbagbo's influence over the FDS, militia, youth and mercenary groups who committed the crimes. As the figurehead, and *de jure* and *de facto* leader of the pro-Gbagbo forces, Mr Gbagbo therefore incurs criminal responsibility for the crimes committed by those who shared the common purpose.

1998. Mr Gbagbo contributed to the crimes committed by the pro-Gbagbo forces during the 16-19 December 2010, 3 March 2011, 17 March 2011 and 12 April 2011 incidents by:

- i. Designing the common purpose to stay in power by all means;
- ii. Creating structures which enabled him to implement the common purpose;
- iii. Tolerating the existence of militia groups such as the GPP and approving their work during the post-election violence;
- iv. Issuing instructions to his subordinates to prohibit the 16 December 2010 march;
- v. Ordering his forces to lay siege to the Golf Hotel and its residents;

- vi. Mr Gbagbo and his Inner Circle used pejorative and hate language against political opponents, inter alia, referring to them as bandits; enemies and terrorists;
- vii. Providing financial, logistical and moral support to Mr Blé Goudé in order to incite the Yopougon pro-Gbagbo youth and militia members to fight to protect the nation and not to let it fall into the hands of the enemy, such as:
- viii. Calling the UNOCI to depart Côte d'Ivoire;
  - i. Calling all Ivoirians to stay mobilised until the rebirth of Côte d'Ivoire;
  - ii. Calling on the people to continue to resist and fight for the liberation of Côte d'Ivoire against Ouattara and his terrorists; and
  - iii. Failing to investigate crimes committed by his subordinates despite having information of civilian casualties and the possibility that subordinates were involved.

1999. Mr Gbagbo also contributed to the crimes committed in the context of the individual charged incidents through his instructions as President of Côte d'Ivoire and Supreme Commander of the armed forces.

2000. With respect to the 16 December demonstrations on the RTI, Mr Gbagbo instructed his armed forces that the march be prohibited, thereby signalling to his commanders to deploy armed units against demonstrators opposed to his politics. Building up to this point, Mr Gbagbo had taken steps to secure his victory by filing a request with the Constitutional Council to declare as invalid the results of the second round of the elections for the departments of Bouaké, Korhogo, Boundiali, Dabakala, Ferkessedougou, Katiola, Beoumi and Sassakou. On the same day, units of *Gendarmerie* led by commander Koukougnon killed four RHDP militants at their headquarters in Yopougon Wassakara; despite this

incident being report in the news and despite Mr Gbagbo's knowledge of it, no investigations were conducted. Hence, the post-election violence was ignited with the first major killing of political opponent, with the knowledge of the FDS top brass and that of Mr Gbagbo; the impunity of this incident paved the way to what was to come. Further, Mr Gbagbo ordered the blockade of the Golf Hotel on 11 December 2010. Therefore, by the time of his instruction to prohibit and prevent the march on the RTI, Mr Gbagbo's and the FDS's track record was one of repression, murder and deprivation of freedom of movement to his political opponent Mr Ouattara and his supporters. His specific instruction to prohibit and prevent the march meets –at minimum – the threshold of “any contribution” as required by article 25(3)(d).

2001. With respect to the 3 March and 17 March 2011 incidents, Mr Gbagbo directed his armed forces to stand fast and not to lose Abobo, which resulted in the dispatching of heavily armed convoys from and to Camp Commando on a daily basis, as well as the deployment of a 120mm mortar used to shell the Abobo market. Again, the build up to this incident demonstrates Mr Gbagbo's resolve to launch military units in a densely populated neighbourhood, following meetings with FDS Generals on 4 January 2011, on 12 January 2011 at the residence with FDS Generals and co-Accused Mr Blé Goudé, on 17 February 2011 at the *Conseil des Ministres*, and finally the meeting of 24 February 2011 with FDS Generals. Each time, his instructions gave the FDS the green light to operate in Abobo. These instructions meet – at minimum – the threshold of “any contribution” as required by article 25(3)(d), by permitting the army, with its heavy weapons and artillery, to operate daily in a residential commune. By having failed to punish the crimes committed by the FDS during the December 2010 protest marches, Mr Gbagbo also gave the green light to the FDS to operate as they pleased. In addition, by failing to punish the FDS units in the killing of the seven women during the 3 March 2011 protest march in Abobo, he provided further comfort to



the FDS that their acts would go unpunished, thereby adding a further contribution to the next incident on 17 March 2011.

2002. Finally, with respect to the 12 April 2011 incident, Mr Gbagbo had all the information at his disposal to be on notice that by requesting the pro-Gbagbo forces, to continue to fight, it would lead to the commission of further crimes. Indeed, on 3 April 2011, at the Presidential Residence and in front of General Mangou, Dogbo Blé and Konan Boniface, Mr Gbagbo still urged his troops to continue fighting. The head of the GR, Dogbo Blé, had by then incorporated 60 members of the GPP, including Witness P-0435 who ended up in Yopougon on 12 April 2011 [REDACTED] Further, Mr Gbagbo had seen the fighters who were used by the remaining loyal FDS officers in April 2011: on 2 April 2011, elements of the GPP – including some of their commanders – members of the FESCI and Liberian mercenaries were met first by Mr Gbagbo's son, Michel, as well as Mr Gbagbo himself. Mr Gbagbo congratulated them, stating that his was proud of the young Ivoirians, that they had already won the war, because Mr Gbagbo's goal was to show that France was supporting the rebellion. He didn't stop there. On 9 April 2011, Mr Gbagbo's spokesperson released a public *communiqué* stating that "*Le Président de la République exprime toute sa détermination à continuer la lutte*" (the President expresses his firm determination to continue to fight). These instructions meet – at minimum – the threshold of "any contribution" as required by article 25(3)(d).

(b) *Mr Gbagbo's contribution was intentional*

2003. Mr Gbagbo's contributions, as summarised above, were intentional and made in pursuance of the common purpose to attack civilians perceived to support Ouattara. His intent may be inferred from his participation in the common purpose, his anticipation of the use of force, his requisition of the armed forces, his public interventions including his determination to continue to fight

throughout the post-electoral period, and his provision of financial and material assistance to irregular forces (including youth, militia, and mercenaries).

2004. Mr Gbagbo's intent is in particular inferred from his use and reliance on militia groups such as the GPP and the Liberian fighters. Mr Gbagbo having served his military service is no stranger to the concept of discipline. The GPP's activities were nothing less than criminal. The Prosecution recalls that their motto was "*la trahison engendre le sang*". The GPP would kill its own elements should they disobey or question the leadership. Allowing such a group to fight alongside regular FDS units meant that Mr Gbagbo was prepared to engage in a criminal conduct.

2005. Moreover, that the killing of civilians would be the consequence of using heavily armed army units in an urban setting is something Mr Gbagbo had accepted, as he requested his troops to not kill too many civilians.

2006. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

- (c) *Mr Gbagbo contributed 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 crimes*

2007. Mr Gbagbo carried out his contribution with the aim of furthering the criminal activities and purpose of the group, conceived by himself, Mr Blé Goudé, and members of the Inner Circle. In the alternative, he contributed to the crimes in the knowledge of the intention of the group to commit the crimes. His intent to contribute towards the criminal purpose can be inferred from:

- a. His resolve to stay in power despite having lost the elections and due to his reaction despite the repeated calls by the United Nations, the African Union and the ECOWAS to step down and hand over power. It is instructive here to note that Mr Gbagbo's position (and that of his subordinates) had been that France was interfering with Ivorian politics; ironically, the suspicion of external interference had to be enlarged to include African institutions too, explaining Mr Gbagbo's speech of 15 January 2011 ridiculing the ECOWAS.
- b. His repeated instructions to prohibit protest marches and to attack neighbourhoods inhabited mainly by perceived Ouattara supporters;
- c. His complete failure to punish perpetrators of crimes committed against perceived Ouattara supporters;
- d. His creation of a inquiry commission as a smoke-screen aimed at delaying matters, instead of genuinely initiating investigations and prosecutions of crimes committed by the FDS or pro-Gbagbo youth, militia and mercenaries; and
- e. His instructions to continue the fight despite having clear indications from the international community that he should step down, and despite a

constant flow of information about crimes committed by the FDS, the youth and militia or mercenaries.

2008. In this way, Mr Gbagbo facilitated the criminal purpose of his group.

*(d) Mr Gbagbo was aware that his conduct was part of the widespread or systematic attack*

2009. Mr Gbagbo knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. In relation to liability under article 25(3)(d), in particular, he knew or intended it as such pursuant to or in furtherance of the common purpose that he shared with other members of the group. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.5

4. Prosecution's Case under article 25(3)(d) – Mr Blé Goudé's contribution and *mens rea* (elements iii. to v.)

*(a) Mr Blé Goudé contributed to the commission of the crimes, in any way*

2010. Mr Blé Goudé contributed to the crimes committed by the pro-Gbagbo forces and the Inner Circle, including the Accused, who shared a common purpose to attack civilians perceived to support Ouattara in Abidjan between 27 November 2010 and about 12 April 2011, in the context of the 16-19 December 2010, 25-28 February 2011 and 12 April 2011 incidents.

2011. Mr Blé Goudé's conduct constituted *moral and material* support or other assistance to the group of persons acting with a common purpose who committed the crimes charged. Therefore, Mr Blé Goudé's conduct discussed in the context of articles 25(3)(b) and (c) equally applies under article 25(3)(d).

2012. With respect to all charged crimes, Mr Blé Goudé contributed to the establishment and organisation of a structure which allowed the execution of the common plan and occasioned the commission of those crimes. As expanded upon

at Section V.C.8(a)(ii) under the relevant sub-headings, Mr Blé Goudé lent his assistance to the commission of the crimes charged by:

- i. Securing the allegiance of the youth to him and their compliance with his instructions by galvanising them;
- ii. Ensuring through his leadership, that the pro-Gbagbo youth groups acted in unity;
- iii. Acting as a vital intermediary between Mr Gbagbo and the pro-Gbagbo youth;
- iv. Organising the dissemination of instructions through various channels of communication;
- v. Mobilising the youth to commit violent acts;
- vi. Contributing to the financing of the activities of pro-Gbagbo youth;
- vii. Playing an essential role in the recruitment and enlistment of pro-Gbagbo youth in the FDS;
- viii. Providing support for the military training and arming of pro-Gbagbo youth;
- ix. Contributing to the recruitment of pro-Gbagbo mercenaries; and
- x. Supporting and encouraging co-operation between the pro-Gbagbo youth, the militias and the FDS.

2013. In addition, Mr Blé Goudé contributed to the commission of the crimes by playing a central role in the conception of the common purpose of the group, as set out in paragraphs Section V.C.8(a)(i) and by meeting with Mr Gbagbo and

other members of his Inner Circle to discuss a strategy to implement this common purpose.

2014. Because the crimes charged were perpetrated by members of the pro-Gbagbo forces with a view to implementing the common purpose, by participating in its conception and by coordinating its implementation, Mr Blé Goudé played a significant role in contributing to the commission of these crimes.

*(b) Mr Blé Goudé's contribution was intentional*

2015. Mr 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.C.9, VI.B.(d) and VI.C.(c)

2016. Mr Blé Goudé's intent is in particular inferred from his involvement in the creation, funding of and issuance of instructions to a violent militia group, the GPP. The GPP's activities were nothing less than criminal. The Prosecution recalls that their motto was "*la trahison engendre le sang*". The GPP would kill its own elements should they disobey or question the leadership. Mr Blé Goudé's contribution to the creation of such a group and his continued relationship with the leadership of that group (including the issuance of instructions) demonstrates his intent to engage in criminal conduct. For example, his intent is also illustrated by his statement that in a revolution, there are always collateral effects.

2017. In addition to murder, he was aware that the same incidents would cause injuries (inhumane treatments) in the ordinary course of events and that the pro-Ouattara supporters were those who were targeted (persecution). In addition, the evidence shows that already prior to the 2010-2011 post-election violence, pro-Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by

regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.

*(c) Mr Blé Goudé contributed 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 crimes*

2018. Mr 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, Mr Gbagbo, and the Inner Circle. In the alternative, he contributed to the crimes knowing 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.C.9, which includes:

- a. The establishment of pro-Gbagbo organisations such as the COJEP and the GPP;
- b. His galvanisation and mobilisation of the youth to commit violent acts;
- c. His use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces;
- d. His role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

*(d) Mr Blé Goudé was aware that his conduct was part of the widespread or systematic attack*

2019. Mr Blé Goudé knew or intended his conduct under all four modes of liability under article 25 to be part of a widespread or systematic attack against the civilian population. In relation to liability under article 25(3)(d), in particular, he knew or intended it as such pursuant to or in furtherance of the common purpose that he

shared with Mr Gbagbo and the other members of the group. This intent or knowledge is demonstrated by the same factors outlined at Section V.C.9 namely:

- i. Mr Blé Goudé's galvanisation and mobilisation of the youth to commit violent acts;
- ii. His use of rhetoric aimed at identifying perceived Ouattara supporters as the targets of attacks by the pro-Gbagbo forces; and
- iii. His role in the recruitment of youth into the FDS, and his call to the youth to enrol in the armed forces of 19 and 20 March 2011.

## **VII. INDIVIDUAL CRIMINAL RESPONSIBILITY – ARTICLE 28**

2020. Mr Gbagbo is responsible, under article 28, both pursuant to paragraphs (a) and (b), for the charges crimes relating to the four charged incidents. As President of the Côte d'Ivoire and Supreme Commander of the armed forces, Mr Gbagbo bears responsibility for the crimes committed during the post-election violence, for his failure, as a superior, to exercise control properly over his subordinates through his failure(s) to prevent and/or to repress the charged crimes, or to submit them to the competent authorities for investigation and prosecution.

### **A. Law on article 28**

2021. Mr Gbagbo was a military commander, or person effectively acting as a military commander, who knew or should have known that his subordinates were committing or about to commit the charged crimes. Alternatively, if Mr Gbagbo was a superior of any other kind, he knew or consciously disregarded information that his subordinates were committing or about to commit such crimes, in the course of activities that were within his effective responsibility and control. It need not be shown that Mr Gbagbo intended his subordinates' crimes.



2022. Mr Gbagbo failed to take all necessary and reasonable measures to prevent the commission of the crimes committed in the course of all four incidents. In addition, he failed to repress and punish the perpetrators of the crimes committed in the course of three of the four charged incidents, namely the incidents of 16-19 December 2010, 3 March 2011 and 17 March 2011, or otherwise to submit them for investigation.

2023. Superior responsibility differs from the other accessorial modes of liability in articles 25(3)(b) to (d): it is a “*sui generis*” mode of liability based on the superior’s failure to carry out their international law duty to exercise proper control over their subordinates. The superior’s criminal responsibility is linked to the subordinates’ crimes due to the ‘personal nexus’ with those crimes established by the superior’s *mens rea*, his/her effective control over their perpetrators and the need for a personal dereliction by the superior *vis-à-vis* those specific crimes. However, it does not amount to participation in them. It is for this reason among others, and as further explained below, that the reference to causation in article 28 must be understood as explaining that the superior’s *criminal responsibility* ensues from their failure to adequately control their subordinates, and does not entail that the superior’s conduct must causally contribute to the occurrence of the subordinates’ crimes. This is the only correct interpretation, according to the established principles.

2024. Accordingly, the Prosecution must prove the following essential elements of superior responsibility under article 28(a), as elaborated in the following paragraphs:

- i. Crimes within the jurisdiction of the Court must have been committed;
- ii. The accused must have been: a military commander, a person effectively acting as a military commander;

- iii. If the accused was a military commander or a person effectively acting as a military commander under article 28(a);
- iv. The accused must have had effective command and control, or effective authority and control over the forces that committed the crimes;
- v. The accused must have known, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- vi. The accused must have failed to take all necessary and reasonable measures within their power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution.

2025. If the accused was any other kind of superior under article 28(b), the Prosecution must prove the following essential elements:

- i. Crimes within the jurisdiction of the Court must have been committed;
- ii. The accused must have had effective authority and control over the subordinates that committed the crimes;
- iii. The accused must have known, or consciously disregarded information which clearly indicated, that the forces were committing or about to commit such crimes;
- iv. The crimes must have concerned activities that were within the effective responsibility and control of the superior; and
- v. The accused must have failed to take all necessary and reasonable measures within their power to prevent or repress the commission of such

crimes or to submit the matter to the competent authorities for investigation and prosecution.

1. Crimes within the jurisdiction of the Court must have been committed

2026. The Prosecution must prove the existence of forces or other subordinates who took part in the commission of the crimes for which the superior or military commander is found responsible. These forces may have committed or participated in the crimes through one of the accepted modes of liability in the Statute (such as committing, planning, instigating, aiding and abetting, etc.). These forces do not need to be individually identified, provided that their identity (for example, as a unit or group) is sufficiently established to the extent necessary to assess the existence of any superior-subordinate relationship with the accused.

2. The accused must have been either a military commander, a person effectively acting as a military commander, or any other kind of superior

2027. The accused must have been senior in some sort of formal or informal hierarchy to the forces that committed or participated in the crimes charged. Article 28 requires that this senior position is established by proof either that the accused was a military commander, a person effectively acting as such, or any other kind of superior. This requirement is closely associated with the requirement that the superior holding such a position also exercises effective control over their subordinates.

2028. The term “military commander” refers to those persons who are formally or legally appointed (*de jure*) to carry out a military command function. This includes all persons appointed to exercise command within the armed forces or non-State organised armed groups, irrespective of their rank or level, and thus encompasses all personnel from the commander of an army down to the leader of a section or squad. Consequently, in some States, a military commander may not

perform an exclusively military function — for example, a Head of State who is the Commander-in-Chief of the armed forces may be a *de jure* commander.

2029. Persons “effectively acting as military commanders” comprise those individuals who were not formally or legally appointed to carry out a military command function but nonetheless do so in practice (*de facto*), at whatever level. This may be due to the particular circumstances, and the nature of the power wielded by the individual in question. What is important is that persons effectively acting as military commanders are comparable to military commanders, in that they exercise command of a ‘military’ (sometimes called ‘paramilitary’) nature over a group of persons, usually through a chain of command. Again, a person effectively acting as a military commander need not perform an exclusively military function.

2030. All “other” kinds of superior still potentially fall, for the purpose of article 28(b), as superiors who may be held criminally responsible for the crimes of their subordinates. Such persons need not have a military or paramilitary role, *de jure* or *de facto*, and can for example include not only persons in civilian organisations who exercise control through a formal chain of command (such as a civilian police force) but also persons in civilian organisations who exercise control through other means (such as a civilian corporation or political structure).

3. The accused must have had effective command and control, or effective authority and control, over the forces that committed the crimes

2031. The contrasting terms “effective command and control” and “effective authority and control” impose no material difference in the standard of control which must be established; rather, they simply denote the potential distinction in “the *modalities, manner, or nature* in which a military commander or person acting as such exercises control over his or her forces”.[...] Regardless of whether an accused is a military commander or a person effectively acting as such, [...] the

required level of control remains the same.” This same logic, within the context of article 28(a), applies equally to article 28(b), consistent with the identical terminology in these provisions (“effective authority and control”).

2032. The required standard for all superiors under article 28 is simply known as “effective control”, consistent with the analogous requirement in customary international law. Effective control is defined principally in terms of the superior’s *material ability* to prevent or repress the commission of the crime(s), going beyond the mere ability to exercise influence over the perpetrators.

2033. Consistent with the various kinds of superior-subordinate relationship to which it applies, “the question of whether a commander” or other superior “had effective control over particular forces is case specific”, and “more a matter of evidence than of substantive law”. Consequently, while there are a number of factors “that may *indicate* the existence of ‘effective control’”, none is dispositive or essential. These factors include but are not limited to:

- i. The official position of the commander within the military structure and the actual tasks that they carried out;
- ii. Their power to issue orders, including their capacity to order forces or units under their command, whether under their immediate command or at lower levels, to engage in hostilities;
- iii. Their capacity to ensure compliance with orders including consideration of whether the orders were actually followed;
- iv. Their capacity to re-subordinate units or make changes to command structure;
- v. Their power to promote, replace, remove, or discipline any member of the forces, and to initiate investigations ;

- vi. Their authority to send forces to locations where hostilities take place and withdraw them at any given moment;
- vii. Their independent access to, and control over, the means to wage war, such as communication equipment and weapons;
- viii. Their control over finances;
- ix. Their capacity to represent the forces in negotiations or interact with external bodies or individuals on behalf of the group;
- x. Whether they represent the ideology of the movement to which the subordinates adhere and has a certain level of profile, manifested through public appearances and statements.

2034. Effective control does not require the superior to have sole or exclusive control over the subordinates in question, nor require the relationship of subordination to be direct. To the contrary, effective control — and thus the responsibilities of a superior — may attach to *all* persons in the chain of command who have the material ability to prevent or punish the acts of the subordinate(s), whether through intermediate subordinates or, if required, through their own direct intervention. Whether the test is met is, again, simply a question of fact, having regard to the “reality of the relationship” of subordination without “[u]ndue emphasis upon the ostensible structures and overt declarations of the belligerents”.

4. The accused either knew or should have known that their subordinates were committing or about to commit such crimes, or consciously disregarded information clearly showing such conduct

2035. Superior responsibility under the Statute is not a strict liability, and depends on the existence of the relevant state of mind or degree of fault, prescribed by

article 28. Which combination of the three *mens rea* standards applies depends on whether the superior is a military commander or person effectively acting as such under article 28(a) or any other kind of superior under article 28(b).

2036. In all cases, it suffices if the superior is shown to have “known” of their subordinates’ imminent or actual crimes. However, in the alternative, it also suffices that military commanders or persons effectively acting as such, owing to the circumstances at the time, “should have known” of the subordinates’ crimes; or that other kinds of superiors “consciously disregarded information which clearly indicated” the subordinates’ crimes.

(a) *Knowledge that subordinates were committing or about to commit crimes*

2037. Knowledge for the purpose of article 28 cannot mean “certainty” about the subordinates’ commission of crimes. This necessarily follows from the recognition in article 28 that responsibility can be established based on the superior’s inadequate response to a *future* occurrence (liability for “failure to prevent” subordinates’ crimes), and the common-sense proposition that “absolute certainty about a future occurrence can never exist”.

2038. Nor can knowledge mean “virtual certainty” for the purpose of article 28 because this is the standard set by the Appeals Chamber to establish that a person is aware that a consequence “will occur in the ordinary course of events” — which suffices under article 30(2)(b) to establish that “a person has *intent* [...] [i]n relation to a consequence” (emphasis added). It is abundantly well established in customary international law that superior responsibility does not impose any requirement to prove intent, and this is likewise reflected in article 28 itself.

2039. Consequently, knowledge for the purpose of article 28 must be interpreted to encompass a sufficient degree of cognitive awareness of a past or future event, but which is not such that it necessarily establishes *intent* for the occurrence of that event. Although the particular terminology employed to describe this *mens*

*rea* state may vary, it might be described as a requirement to prove that the superior *subjectively* appreciated information concerning their subordinates' crimes, to such a degree that a reasonable superior in the same circumstances would have accepted this information as true. This conforms to international practice, which links the assessment of a superior's knowledge to an enquiry into the "specific situation of the superior concerned at the time in question".

2040. This is also consistent with the approach of international humanitarian law — from which the concept of superior responsibility is derived — in which it is understood that military commanders must act on the basis of their best appreciation of the information available to them, in good faith, even though that information may be imperfect or lacking in some details. Setting the *mens rea* for superior responsibility too restrictively would defeat its object and purpose, which is to encourage superiors to take seriously their duties to prevent and punish the crimes of their subordinates.

2041. Notwithstanding the degree of knowledge which must be established, it is also settled that the superior is not in any event required to appreciate the specifics of the subordinates' crimes. For example, they need not know the identity of the specific perpetrator(s), nor is it required that they "mastered every detail of each crime committed by the forces, an issue that becomes increasingly difficult as one goes up the military hierarchy".

2042. The knowledge of the accused can be established either through direct evidence or circumstantially. Examples of direct evidence may include: the accused's explicit admission of knowledge; other statements by the accused about the crimes; orders by the accused to commit crimes; and statements by other persons directly implicating the accused's knowledge of crimes (for example, accounts of a conversation with the accused, concerning the crimes, by the other party to the conversation).



2043. If a circumstantial assessment is undertaken, a wide range of facts and factors may be relevant to determining that, in combination, the accused's knowledge of the crimes is the only reasonable inference available. Relevant indicators may include:

- i. The number, nature, scope, location, and timing of the illegal acts;
- ii. The type and number of forces involved;
- iii. The means of available communication;
- iv. The *modus operandi* of similar acts;
- v. The scope and nature of the superior's position and responsibility in the hierarchical structure;
- vi. The location of their command at the time;
- vii. The notoriety of illegal acts, such as whether they were reported in media coverage of which the accused was aware.

*(b) Owing to the circumstances at the time, the accused should have known that subordinates were committing or about to commit crimes*

2044. This alternate standard, under article 28(a), only applies to military commanders and persons effectively acting as military commanders.

2045. In essence, the "should have known" standard merely requires the commander to have "been negligent in failing to acquire knowledge" of their subordinates' illegal conduct, when required to do so by the circumstances. The emphasis is on the failure of the superior to discharge their "active duty [...] to take the necessary measures to secure knowledge of the conduct of [their] troops". As the *Bemba* Pre-Trial Chamber explained, "[t]he drafting history of this provision reveals that it was the intent of the drafters to take a more stringent

approach towards commanders and military-like commanders compared to other superiors that fall within the parameters of article 28(b) of the Statute”, and this is “justified by the nature and type of responsibility” assigned to military and similar superiors.

2046. It follows from these considerations that, unlike ‘knowledge’, this alternate *mens rea* under article 28(a) does not require any proof that the commander had any subjective awareness of the *subordinates’ crimes*. Instead, it merely requires proof of the commander’s subjective awareness of the *circumstances which triggered the duty to inquire* into the conduct of their subordinates. Retaining this latter subjective requirement ensures that article 28(a) does not become a form of strict liability.

2047. In order to preserve the meaningful nature of the distinction between this alternate *mens rea* standard in article 28(a) and the alternate *mens rea* standard in article 28(b), however, the circumstances which trigger the commander’s duty of inquiry can be general in nature and need not relate to a specific fact or incident putting the commander ‘on notice’ of particular criminality.

2048. Likewise, while customary international law jurisprudence concerning the factors relevant to applying the “had reason to know” test may sometimes be useful to this Court, it remains the case that this test is *higher* than that applicable under article 28(a). This is because the customary international law standard is applicable both to military and civilian superiors alike; whereas, in marked contrast, the drafters of the Statute elected to establish *different* standards for such different kinds of superior, and thus acknowledged the specific obligations and practices which uniquely affect members of the military.

2049. In assessing whether, owing to the circumstances at the time, the commander ‘should have known’ of the subordinates’ crimes, the Court may properly consider the steps that a reasonable commander (in the circumstances of the accused) would have taken to inform themselves of the conduct of their

subordinates, and whether those steps would have alerted a reasonable commander in that position to the subordinates' crimes. Article 28(a) does not impose liability on the commander for failing to do the impossible.

*(c) The accused consciously disregarded information which clearly indicated that subordinates were committing or about to commit crimes*

2050. This alternate standard, under article 28(b), applies to all superiors other than those described in article 28(a). In essence, the "consciously disregarded" standard may amount to a form of 'wilful blindness'.

2051. First, it is necessary to show that the superior subjectively appreciated that they did not acquaint themselves with certain information which was available to them. In this sense, again, the alternate *mens rea* under article 28(b) is not strict liability, even though the superior need not have any subjective awareness of the *subordinates' crimes*. Moreover, this alternate *mens rea* under article 28(b) is less burdensome upon the superior than the alternate *mens rea* under article 28(a), because the superior is not obliged to seek out the information; rather, the information must be already available to them.

2052. Second, the information in question must "clearly indicate" the subordinates' actual or imminent crimes. In this sense, at the very highest possible interpretation, the information must be of a nature that — if the superior had acquainted themselves with it — the superior could then be said to 'know' of the subordinates' crimes in the meaning of article 28(b). Accordingly, it is not necessary that the information contains specific as to the identity of the subordinate(s) in question or the details of every criminal incident.

5. Crimes concerned activities within the effective responsibility and control of the superior under article 28(b)

2053. Quite apart from the applicable *mens rea*, article 28(b) is also distinguished from article 28(a) by the requirement that, objectively speaking, the subordinates' crime "concerned activities that were within the effective responsibility and control of the superior." Whether this test is met depends on an assessment of the nature and scope of the superior's authority over the subordinates, but is generally intended to ensure that non-military superiors are not responsible for crimes committed by subordinates entirely out of the context of their function as subordinates. This does *not* mean, however, that a subordinate's crime becomes a 'private' act of this kind merely because criminal behaviour is, by definition, not part of their legitimate role — rather, this element requires consideration of the *context* in which the crime takes place.

6. The accused must have failed to take all necessary and reasonable measures within his power to prevent or repress the commission of such crimes or to submit the matter to the competent authorities for investigation and prosecution

2054. Article 28 imposes "three distinct duties" upon superiors and "it is clear that failure to discharge any of these duties may attract criminal liability" under article 28. Failure to prevent the crimes, when a commander is under a duty to do so, "cannot be remedied by subsequently punishing the perpetrators."

2055. What constitutes "all necessary and reasonable measures" to prevent or repress the crimes committed by forces, or to submit the matter to the competent authorities, "is established on a case-by-case basis [...] and must be addressed '*in concreto*'". In general terms, "'necessary' measures are those appropriate for the [superior] to discharge [their] obligation, and 'reasonable' measures are those reasonably falling within the [superior]'s material power". Consequently,

assessment of this question is closely linked to the determination of the superior's effective control.

2056. A superior violates their duty to prevent when they fail to take necessary and reasonable measures to stop crimes that are about to be committed or (overlapping with the duty to repress) crimes that are being committed. Measures which might potentially be relevant to this analysis include, but are not limited to:

- i. Ensuring that subordinates are adequately trained in international humanitarian law;
- ii. Issuing general orders aiming at ensuring subordinates' compliance with international humanitarian law, and taking measures to verify compliance;
- iii. Taking appropriate measures to maintain discipline among subordinates and promote obedience to orders, including measures to repress prior criminality;
- iv. Issuing specific orders as necessary to prevent or halt criminality, which may involve operational measures, re-subordination of units, changes to the chain of command, and so on; and
- v. Expressing public disapproval and criticism of criminal conduct, and acting accordingly.

2057. A superior violates their duty to repress crimes if they fail to take all necessary and reasonable measures to stop ongoing crimes (as just described) and fail to punish the subordinates responsible for those crimes. In practice, however, the superior may reasonably be expected not only to take such direct personal action as is within their material possibility (such as issuing operational orders which effectively terminate crimes, remove suspects from a position to continue their criminal behaviour, and so on) but also to take appropriate measures to submit

the matter to competent investigative and prosecutorial authorities if such functions are not within the superior's competence or the superior's powers are otherwise inadequate.

2058. Measures taken by the superior to prevent or to repress their subordinates' crimes must be "genuine", in the sense that the superior "is required to act in good faith in adopting such measures". This means that referral of allegations to manifestly incompetent or non-functioning authorities is insufficient, as is the knowing implementation of measures which will necessarily be ineffective. Conversely, the superior discharges their duty where they take all necessary and reasonable measures in good faith; thus, they may not be required to take the most drastic actions within their power (such as ordering a wholesale withdrawal of troops) where more targeted measures (such as implementing disciplinary procedures, removing individual subordinates, etc.) are necessary and reasonable. It is only when the superior is aware that such targeted measures are inadequate that further, more wide-reaching steps may become "necessary", and thus must be taken.

7. The subordinates' crimes need not have resulted from the conduct of the superior

2059. Article 28 states, in English, that a superior "shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly". However, it is commonly accepted that this passage is ambiguous on its face as to whether: (a) the superior's *criminal responsibility* is incurred "as a result" of their failure to exercise proper control over their subordinates (by failing to prevent and punish their crimes); or (b) whether it must be shown that the subordinates' *crimes* occurred as a result of the superior's failure to exercise proper control. The other equally authoritative linguistic versions of the Statute are similarly ambiguous

(Arabic, Russian, and Spanish), or favour the interpretation that it is the superior's responsibility which results from their failure to exercise proper control (French and Chinese).

2060. Further assessment of the context of article 28, and its object and purpose as well as its drafting history, confirms the view that the subordinates' crimes need not be shown to have resulted from the conduct of the superior. As the Prosecution has elsewhere explained in detail, this follows from various factors, including: the impossibility of uniformly applying a causation requirement to the various types of superior responsibility (accounting for the different types of superior, the different *mens rea* standards, and the different duties imposed upon superiors); the unique *raison d'être* of superior responsibility in giving effect to the superior's duties under international humanitarian law; and the absence of any consensus among the drafters at Rome to require a causal contribution, and thus to depart from the consistent position in customary international law. Indeed, no chamber of this Court has been able to apply a causation requirement to article 28 without considerable logical acrobatics. Nor, as explained above, is there any need for such a requirement, since other aspects of article 28 adequately — indeed, amply — satisfy the principle of culpability.

2061. For all these reasons, the subordinates' crimes need not be shown to have resulted from the conduct of the superior.

2062. Yet, to any extent that a causal requirement is applied, it may still logically only apply to breach of the 'failure to prevent', and the standard can be no greater than that the superior's conduct increased the risk that the subordinates' crimes would be committed.

**B. The Prosecution's Case under article 28 with respect to Mr Gbagbo and response to Mr Gbagbo's motion**

2063. The Prosecution submits that there is sufficient evidence on which a reasonable Trial Chamber could find Mr Gbagbo liable under article 28 of the Statute for his failure, as a superior, to exercise control properly over his subordinates through his failure(s) to prevent and/or to repress the charged crimes, or to submit them to the competent authorities for investigation and prosecution.

2064. The evidence shows that by virtue of his position and his acts, Mr Gbagbo was a superior, had control over his subordinates and that, despite having knowledge of crimes committed by his subordinates, he systematically failed to take necessary and reasonable measures to prevent or repress the commission of these crimes.

2065. The Prosecution describes below how the evidence on record meets the requisite standard.

1. Crimes within the jurisdiction of the Court must have been committed by forces

2066. As developed in the sections dealing with the incidents, the forces which committed the charged crimes consisted of elements of the armed forces (FANCI) such as the BASA, elements of the CECOS-BMO, elements of the *Garde Républicaine*, police units, police intervention units such as the CRS and the BAE, as well as elements of the militia group GPP, Liberian fighters, *Jeunes Patriotes* and elements of the FESCI. These units are well defined by the witness who testified as far as their structure and membership. The majority of the perpetrator groups were part of the hierarchical structure of the FDS and under Mr Gbagbo's effective control. However, some of the perpetrator groups were not integrated within the FDS' structure but Mr Gbagbo's subordinates had effective control over them. Moreover, while the jurisprudence does not require to identify the



perpetrator by name, the identity of the group to which they belong is always identified, and in the case of the 3 March and 17 March 2011 incidents, witnesses provided the names of the FDS officers responsible for these killings.

2067. All these units committed the charged crimes *via* one of the charged modes of liability, mostly as direct physical perpetrators, as described in the section dealing with the incidents.

## 2. Mr Gbagbo as a military commander or any other kind of superior

2068. The role fulfilled by Mr Gbagbo as a head of State entailed both civilian and military functions. For this reason, Mr Gbagbo is charged under both articles 28(a) and 28(b). Typical of a head of State, Mr Gbagbo's subordinates consisted of both military officers and civilian officials.

2069. The evidence demonstrates that Mr Gbagbo was a military commander, as envisaged by article 28(a). Mr Gbagbo was the Supreme Chief of the Armed Forces from October 2000 until 11 April 2011, pursuant to article 47 of the Constitution of Côte d'Ivoire. This *de jure* status was confirmed *de facto* by FDS Generals in leadership positions who all testified before the Trial Chamber that Mr Gbagbo was the Supreme Commander of the armed forces to whom they reported and from whom they received instructions. His functions were not exclusively of a military nature, but as commander-in-chief of the armed forces, he issued orders and instructions that demonstrate his role as a key military figure; these include several orders mentioned earlier, such as the order requisitioning the armed forces of 14 November 2010, several curfew orders starting with the one issued on 26 November 2010, the order on the blockade of the Golf Hotel, the instruction of 24 February 2011 to hold the district of Abobo and the instruction to the FDS to keep fighting in early April 2011.

2070. With respect to militia groups involved in the charged crimes, Mr Gbagbo's role was again one of a military commander. The evidence shows that the GPP –

which was involved in both the 16 December 2010 and the 12 April 2011 incidents – received logistical and material support from the FDS (such as an office within the FDS headquarters, membership cards, food and logistical assistance from the army (Col. Sako), as well as weapons during the post-election violence. As put by Witness P-0435, a member of the GPP, it was created by the authorities of Côte d’Ivoire. It was a political decision and from its inception, the GPP was supported by the government in power. The GPP received instructions to go into action on 16 December 2010 to prevent the march on the RTI and was used by the CECOS to arrest and detain demonstrators. As such, this group was a tool or an agent of Mr Gbagbo’s subordinates: this position relies on jurisprudence according to which a subordinate can be culpable under any mode of liability, whether as a principal or as an accessory. During the 16 December 2010 incident, Mr Gbagbo’s FDS subordinates used members of a militia group to violently disperse and arrest demonstrators.

2071. When a number of FDS high ranking officers defected, a residual group of FDS officers loyal to Mr Gbagbo – such as Dogbo Blé – took over the leadership of the FDS and conducted operations until, and even after, Mr Gbagbo’s arrest. In this context, Mr Gbagbo remained a military commander as defined by article 28(a). The troops which committed crimes on 12 April 2011 in Yopougon – that is the GPP militia group, Liberian mercenaries and members of the *Jeunes Patriotes* – were receiving their instructions in April 2011 from the subordinates of the *Garde Républicaine*’s commander General Dogbo Blé, such as Commandant Kipré and Colonel Mody, as well as from Commandant Seka Seka as far as the Liberian mercenaries are concerned. By then, the GPP had been integrated into the FDS and 60 of its elements – who were involved in the 12 April 2011 incident – were incorporated into the *Garde Républicaine* on Mr Gbagbo’s instructions.

2072. With respect to youth groups involved in the charged crimes such as the FESCI, Mr Gbagbo’s role was one of a civilian leader in accordance with article

28(b). There was a superior-subordinate relationship between Mr Blé Goudé and these youth groups both formally as Minister of Youth and informally as leader of the *Galaxie Patriotique*.

3. Mr Gbagbo's effective control over his subordinates

2073. Mr Gbagbo had effective control over his subordinates, both military and civilian. He had the material capacity to take measures to prevent or repress their commission of crimes or refer the matter to the competent authorities. In his "no case to answer" motion, Mr Gbagbo conducts a superficial review of isolated facts, rather than tackling the issue of effective control as a distinct topic. For this reason, Mr Gbagbo challenges should be rejected by the Chamber.

2074. With respect to each of the charged incidents, forces responsible for crimes on the ground included:

(a) *For the 16 December 2010 incident:*

- i. Police intervention units: the CRS and the BAE;
- ii. Regular Police;
- iii. CECOS units, including the *Brigade de Maintien de l'Ordre* (BMO);
- iv. Members of the GPP national base in Adjamé, including [REDACTED]
- v. Members of the *Jeunes Patriotes*;
- vi. Members of the FESCI;
- vii. Elements of the *Garde Républicaine*; and
- viii. Liberian mercenaries.

(b) *For the 3 March 2011 women's march in Abobo, the direct perpetrator group involved was:*

- i. The elements in the *Garde Républicaine* BTR-80 tank;
- ii. The police elements in the RG-12 Police armoured vehicle;
- iii. A camouflaged green pick-up truck mounted with a heavy machine gun;
- iv. A troop-transportation vehicle.

(c) *For the 17 March 2011 shelling of the Abobo market, the direct perpetrator group involved was:*

- i. Elements of the BASA based at Camp Commando.

(d) *For the 12 April 2011 attack on Yopougon, the direct perpetrator groups involved were:*

- i. Militia members;
- ii. Liberian mercenaries; and
- iii. Pro-Gbagbo youth.

2075. Mr Gbagbo exercised effective command, authority and control – both directly and through the chain of command – over the FDS, as well as the capacity to punish or prevent crimes committed by mercenaries, pro-Gbagbo youth and militia members under the control of his subordinates throughout the period of the charges. The FANCI, Police, *Gendarmerie* and GR units were controlled by Mr Gbagbo through the Minister of Defence Dogou, the Minister of Interior Guiriéoulou and the CEMA, Mangou, and all subordinated to Mr Gbagbo through the official chain of command.

2076. Mr Gbagbo's effective control of the FDS can be inferred through the following factors:

- i. The chief of the armed forces, Philippe Mangou, reported to both the Defence Minister and to Mr Gbagbo. The CEMA reported to Mr Gbagbo every day.
- ii. When Mr Gbagbo issued orders, such as the imposition of a curfew, these orders were reflected in written orders of the military leadership addressed to their subordinated units. In fact, although the CEMA agreed that the curfew (which he had initially recommended) should not be put in place, the FDS nevertheless respected Mr Gbagbo's curfews and circulated extensions of the curfew to all subordinated units;
- iii. General Kassaraté was the commander in chief of the *Gendarmerie*; he reported to the Ministers of Defence and of the Interior and, for military missions, to the CEMA, and sometimes directly to Mr Gbagbo;
- iv. The Commander of the Presidential Palace and head of the *Garde Républicaine*, General Dogbo Blé, received orders directly from Mr Gbagbo;
- v. General Bredou M'bia was the head of the Police, or DGPN. Bredou M'bia was under the authority of the Minister of the Interior and reported to both the Minister and Mr Gbagbo;
- vi. Youssouf Kouyaté was the *préfet de police adjoint* in charge of public security. According to Witness P-0046, the head of the national police, Kouyaté had not committed any mistakes; however Commanders close to Mr Gbagbo such as Colonel Ahouman and Dogbo Blé had asked for his removal because of alleged ties with Chérif Ousmane, a rebel leader; Witness P-0046 refused to remove Kouyaté. It is only when Mr Gbagbo ordered the removal of Youssouf Kouyaté that Witness P-0046 abided;
- vii. When Mr Gbagbo asked the FDS to hold Abobo, the FDS engaged in operations to retake the zone of N'dotré and its two strategic axes;

viii. When the FDS needed additional weapons or ammunitions, it is to Mr Gbagbo that they turned to;

ix. When international mediators visited Côte d'Ivoire to broker peace deals, it is with Mr Gbagbo that they interacted and negotiated.

2077. With respect to the GPP, the evidence demonstrates that Mr Gbagbo, as Supreme Commander, had effective control over the subordinates, which controlled the GPP such as the Minister of Defence Alain Dogou and the head of the *Garde Républicaine* Dogbo Blé. Hence, his control over this group emerges *via* articles 28(a) and (b).

2078. Mr Gbagbo's controlled his subordinates, who exercised control over the GPP as a military commander pursuant to article 28(a). The GPP was created by the authorities of Ivory Coast. It was a political decision. Therefore, from its inception, the GPP was supported by the government in power. The GPP received, for a long time, monthly payments and food from the FDS through Colonel Sako as focal point. When the GPP was in trouble with the local population in Yopougon in November 2006, it is the FDS that moved the GPP to the *École de police* and *Gendarmerie* premises. By December 2010, several hundred GPP elements were integrated in the army and a list circulated in February 2011 indicated the FDS units in which the GPP and other militia members were integrated. While the GPP clashed with the Police of the 7<sup>th</sup> arrondissement on 16 December 2010, this was because the GPP was detaining demonstrators following the instructions given by the CECOS-BMO. The CECOS-BMO commander on the ground that day was Lieutenant Zokoury Yves Ouïdi, [REDACTED]

[REDACTED] The *Garde Républicaine* provided weapons to the GPP in February 2011 and integrated 60 members of the GPP in its ranks. Apart from the weapons given to the GPP members that were recruited

into the FDS, the GPP obtained kalashnikovs from the “*Commissaire du Commissariat de Bracodi*” (Police), as well as a case of “defensive” grenades from the Presidential Palace – under instruction from Colonel Mody.

2079. Mr Gbagbo also exercised control over the GPP as a superior pursuant to article 28(b). The GPP was a paramilitary unit created and funded by Mr Gbagbo’s co-Accused – and subordinate – Mr Blé Goudé. At the approach of the elections, the GPP received funding from Simone Gbagbo and weapons from Damana Pickass, the FPI’s representative in the electoral commission. The GPP received instructions, during the post-election violence, from Defence Minister Dogou and from Mr Gbagbo’s *Chef de Cabinet*, Désiré Tagro. On 16 December 2010, GPP leader Bouazo received instructions for the GPP to disperse crowds (wearing FDS armbands) during the march on the RTI, which—if considered in light of all the evidence—strongly suggests that instructions were coming from governmental authorities.

2080. As a military commander pursuant to article 28(a), Mr Gbagbo exercised control over the *Garde Républicaine* – through its commander Dogbo Blé – who had control over the Liberian fighters. The Liberians had been involved in fighting for the FDS as early as 2002-2003 in the West, and received funds from pro-Gbagbo civilian and military leaders in Côte d’Ivoire. During the post-election violence, they were present in Abidjan and received payments from the authorities. Initially in December 2010, some of the Liberians, [REDACTED] [REDACTED] worked under marine commander KB, and as of early 2011, they were integrated in Seka Seka’s unit. As such, the presence, financing and use of Liberians mercenaries in operations depended upon, *inter alia*, FDS officers KB and Seka Seka.

2081. Mr Gbagbo controlled the pro-Gbagbo youth *via* Mr Blé Goudé pursuant to article 28(b), who acted as the intermediary between Mr Gbagbo and the pro-Gbagbo youth. Known as the “*Général*”, and also as the leader of the *jeunes* or

*jeunes patriotes*, Mr Gbagbo nominated Mr Blé Goudé as his Minister of Youth and Education in December 2010. Mr Blé Goudé exercised control through his position as the acknowledged leader of the pro-Gbagbo youth, and as a result of his speeches including *mots d'ordre* and speeches, which galvanised the youth, and mobilised and encouraged them to commit violent acts. Mr Blé Goudé's main strength was his ability to galvanise and rally the pro-Gbagbo youth instantaneously and *en masse*. For instance, through his "*mot d'ordre*" on 25 February 2011, Mr Blé Goudé instigated pro-Gbagbo youth and militia to erect roadblocks and commit violent action. *Galaxie Patriotique* leaders also mobilised the pro-Gbagbo youth, through their repetition and dissemination of Mr Blé Goudé's messages. Mr Blé Goudé's *mot d'ordre* was rehearsed by youth leaders who instructed all Ivoirians to participate and not to shelter "rebels", and by Jean-Marie Konin (President of FENOPACI). As Witness P-0625 testified: "*La population, vous savez, l'appel de Blé Goudé, quand il fait un appel, le monde le suit...ils allaient le suivre, ils allaient lui obéir*". To the pro-Gbagbo youth, Mr Blé Goudé's orders took precedence over those of the Police. Witness P-440 testified that on 28 February 2011, the *Jeunes Patriotes* refused categorically to remove their roadblocks because Mr Blé Goudé had told them to monitor the neighbourhood and so they were doing their job and "*seul Blé Goudé peut leur demander de rentrer[...]*".

2082. From October 2000 to 11 April 2011, Mr Gbagbo's *de jure* authority which he exercised, and his *de facto* control over the perpetrators during the post-election crisis, enabled him to prevent and repress the commission of crimes had he chosen to do so. In addition, Mr Gbagbo was in a position to submit the matter to the competent authorities for investigation and prosecution.

2083. The following factors establish Mr Gbagbo's authority, command and control over the perpetrator groups (either direct perpetrators but also over other subordinates who used militia groups and mercenaries as tools), namely, he had



the power to take the necessary and reasonable measures to prevent, repress and punish his subordinate's crimes.

2084. Mr Gbagbo's cursory review at pages 170-171 of Annex 5 of his motion does not address the issue of effective control. Mr Gbagbo's arguments are not based on any substantive analysis of the evidence submitted but, rather, are limited to isolated items of evidence and credibility assessments. The Prosecution notes that Mr Gbagbo selects three sub-paragraphs 755(e), (g) and (k) out of an entire section of the Trial Brief to challenge Mr Gbagbo's effective control over his subordinates, militia groups or mercenaries.

#### 4. Mr Gbagbo's knowledge

2085. The Trial Chamber heard evidence throughout the trial demonstrating that Mr Gbagbo had knowledge, either directly or indirectly, or, owing to the circumstances at the time, should have known that the forces under his control were committing or about to commit crimes in Abidjan, in particular the charged incidents, or that he consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes. The evidence not only meets the requisite standard but consists of compelling evidence that Mr Gbagbo knew, should have known or consciously disregarded information relating to the crimes committed by his subordinates.

2086. The Prosecution submits that the four-paragraph section of Mr Gbagbo motion dealing with the "knowledge" element does not seriously address the issue, nor does it show a failure on the Prosecution's part to meet the requisite standard at this stage of the case. While the evidence on record contains many examples that Mr Gbagbo had established a functioning reporting system and received information relating to civilian casualties from his subordinates and advisors, Mr Gbagbo's motion does not address any of this evidence. At paragraph 615 (Annex 5), Mr Gbagbo claims that the Prosecution provides no

example of information received by Mr Gbagbo prior to the commission of the crime. That is not the standard: information can be received prior, during or after to the commission to the crime.

*(a) Mr Gbagbo's knowledge of criminality in his subordinated forces*

2087. Prior to the 2010 elections, Mr Gbagbo was aware of acts of violence committed against his political opponents by armed forces under his control. In past episodes of violence, such as the repression of the RHDP march in March 2004, Mr Gbagbo was aware of the FDS operation and an international inquiry produced a report reporting on the casualties resulting from the violence against political opponents. Mr Gbagbo's knowledge of this incident is clear from the statement he issued after the incident and the existence of a report by the international commission of inquiry. Hence Mr Gbagbo was aware that FANCI units, in the context of the repression of a demonstration, had committed acts leading to a large number of civilian casualties.

2088. The following factors – jointly considered - establish Mr Gbagbo's knowledge of crimes committed by subordinates during the post-electoral violence:

- i. Functioning chain of command within the FDS, including daily briefing from the CEMA, regular reporting and a functioning communications system.
- ii. Mr Gbagbo's subordinates, such as the CEMA and the Ministers of Defence and Interior, provided him with regular reports as to the ongoing security situation in Abidjan and beyond, including information on civilian deaths.
- iii. His knowledge that militia and mercenaries – who had previously committed crimes, were armed and financed by the FDS, pro-Gbagbo

ministers – were fighting as part of the pro-Gbagbo forces, some of whom were based at his residence.

- iv. Mr Gbagbo received information and intelligence from various sources, including from the ANSI, an intelligence agency he created in 2005, whose director reported directly to him and who – in addition – was his special advisor for police-related matters. The ANSI sent reports to Mr Gbagbo on a regular basis on matters relating to the use of young patriots in the armed forces, the military situation of the *Forces Nouvelles*, acts of violence committed by self-defence groups in Yopougon and *Jeunes Patriotes* throughout Abidjan, the behaviour of FDS soldiers pretending to be attacked and shooting pre-emptive shots, warnings to Mr Gbagbo of RHDP demonstrations, and information on FDS officers who joined the *Forces Nouvelles*. The information collected by the ANSI was first dispatched to Mr Gbagbo who then shared the information with relevant organs.
- v. Mr Gbagbo surrounded himself with special advisers in addition to the formal government ministers and FDS generals. Hence, he put in place structures to gather information and receive advice on a number of issues.
- vi. Early in the post-election crisis, the killing of at least four RDR militants “in cold blood” in Yopougon Wassakara was widely known and reported twice on the RTI by the FDS spokesperson, on 2 and 11 December 2010. Mr Gbagbo himself was informed of the incident. Moreover, the head of the *Gendarmerie*, Édouard Kassaraté, who was responsible for investigating crimes committed by the FDS was also informed of the incident by his subordinates. Therefore, in the early stages of the crisis, Mr Gbagbo was aware of the killing of political opponents by his subordinates.

(b) *Mr Gbagbo's knowledge with respect to the 16 December 2010 incident*

2089. With respect to the 16 December 2010 incident, Mr Gbagbo received phone calls from the CEMA informing him of developments during the day, including the fact that there had been civilian casualties. Hence, Mr Gbagbo had knowledge of civilian casualties and this placed him on notice that crimes had happened and that he should look into it.

2090. A multitude of organisations under his command, such as the FANCI, the Police, the CECOS, the *Gendarmerie* and the GR, were on the ground and the fact that civilians had been killed during the repression of the march was widely known. By 21 December 2010, Mr Gbagbo displayed his knowledge of a number of casualties during a televised address to the nation where he stated that there were 20 casualties during the march, including 10 dead on the side of the FDS. Mr Gbagbo was further informed on 31 December 2010 by the High Commissioner of Human Rights, Ms Pillay, of crimes committed by the FDS. Indeed, on 31 December 2010, Mr Gbagbo and three high ranking FDS officers received personal letters from Ms Pillay bringing to their attention killings, unlawful arrests and torture of Ouattara supporters in the month of December. These letters alone demonstrated the severity of the situation in Abidjan and were brought directly to Mr Gbagbo's attention. As stated in Section VII.A, the knowledge of the accused can be established through direct evidence or circumstantial evidence. Mr Gbagbo's statement of 21 December 2010 is an explicit admission of his knowledge. In the alternative, the totality of the evidence leaves no doubt that Mr Gbagbo was aware of civilian casualties at the hands of the FDS during the march on the RTI and was on notice that crimes may have been committed by his subordinates.

2091. Mr Gbagbo's failure to seriously address the crimes committed during the RTI march – as will be developed below in the section dealing with necessary and reasonable measures – amounted to a failure to prevent future crimes by units

such as the GPP and the Liberian mercenaries, who were involved in the charged incident of 12 April 2011, and other non-charged crimes such as the killing of Burkinabés in Adjamé-Washington (by the GPP) and the killing of two French and two other foreigners taken from the Novotel hotel (by the Liberian fighters).

*(c) Mr Gbagbo's knowledge of crimes committed on 3 and 17 March 2011 in Abobo*

2092. With respect to the 3 March incident, information relating to this incident became available immediately. As put by Witness P-0156, the CPCO was informed, and from the moment Colonel Sako is aware, the information starts circulating. Within 24 hours, news networks were reporting the incident and the CEMA consulted with the Minister of Defence about the language of a press release which denied any FDS involvement in the incident. The CEMA testified that such press releases would be at times reviewed by Mr Gbagbo himself. Furthermore, the government's spokesperson delivered a press *communiqué*, also denying the involvement of the FDS in the incident and claiming it was a fabrication. The Ministry of Interior also issued a press release accusing the international press of fabricating claims of FDS involvement and stating it was to discredit Mr Gbagbo's regime. Mr Gbagbo was on notice that at least seven women had been killed by an FDS convoy. Mr Gbagbo's knowledge of allegations that seven women had been killed by his subordinates was the only logical inference based on the totality of the circumstantial evidence adduced.

2093. With respect to the 17 March 2011 incident, which carried a great number of casualties, the CEMA was informed the same day and contacted his subordinates to gather information. On 22 March 2011, the Mr Gbagbo government issued a press release – read on the RTI – stating that they had looked into the claims and noticed no destruction at the Abobo market, nor had any victims been registered. Mr Gbagbo's knowledge that his subordinates had shelled Abobo, causing civilian casualties is again the only possible inference based on the totality of

circumstantial evidence. This did not seem to concern Mr Gbagbo who had requested his troops to not kill too many civilians.

2094. Both the 3 and 17 March 2011 incidents took place in Abidjan, in the same city which hosts the seat of the government and the Presidential Residence. The information was readily available, covered by local media and reported by Mr Gbagbo's immediate subordinates. Mr Gbagbo was on notice that killings took place and that his armed forces were involved. As stated in Section VII.A, the location of illegal acts (and therefore, the proximity of the accused) is a relevant and additional indicator of knowledge. The proximity of the accused to the charged crimes as a relevant factor under this mode of liability is confirmed not only by the jurisprudence of this court, but has been repeatedly held in the numerous jurisprudence of the *ad hoc* Tribunals on superior responsibility. In the *Bogosora* case, in which slaughters at roadblocks were committed in the Rwandan capital Kigali, the Trial Chamber also considered the presence of the accused's headquarters in this city as indicative of the fact that the accused had reason to know about the crimes committed. In *Aleksovski*, the Trial Chamber elevated that factor to count as a "significant indicium". In the context of the massacre of Ahmići, in *Blaškić*, the Trial Chamber considered, amongst several pieces of evidence, "the fact that it is difficult to believe that the accused had no foreknowledge of an attack planned in an area coming within his area of responsibility only a few kilometres from his headquarters." The same Chamber reiterated the view that, regarding the murders and violence in Rotilij, "through his subordinates, General Blaškić must have known what was going on in the village which lay 4.6 kilometres from HVO Kiseljak headquarters".

2095. As such, the totality of the evidence demonstrates to the requisite standard that Mr Gbagbo was aware of the killings in Abobo on 3 and 17 March 2011 and was on notice that his subordinates may have committed a crime.

*(d) Mr Gbagbo's awareness that the crimes in Yopougon on 12 April 2011 were about to be committed*

2096. With respect to the 12 April 2011 incident in Yopougon, Mr Gbagbo was arrested the previous day and the Prosecution does not argue that Mr Gbagbo had knowledge of the commission of the crimes. However, the Prosecution argues that Mr Gbagbo failed to prevent this incident, while having a sufficient degree of awareness that the crimes were about to be committed. The following evidence is relevant as to establish Mr Gbagbo's knowledge with respect to the events of 12 April 2011:

- i. By the end of March 2011, GPP and Liberian mercenaries were stationed at the Residence. They met with Mr Gbagbo and he knew of their presence and their activities on the ground. FDS Generals had also told these groups that Mr Gbagbo was aware of their operations and was glad to have them on board. Mr Gbagbo's claim that these groups did not exist during the conflict finds no support in the evidence.
- ii. Mr Gbagbo was aware that the GPP was a group which were involved in acts of violence in the past. Even during the post-election crisis, GPP elements were committing acts of vandalism and had clashed with the police. Mr Gbagbo knew of their existence and tolerated the fact that they still constituted a paramilitary group, as evidenced by Mr Blé Goudé's call for the GPP to train FESCI members, the fact that the GPP felt free to send letters to the authorities, including the DGPN, and to Commandant Dua of the Presidency.
- iii. Mr Gbagbo had received information about civilian casualties both from the CEMA and from High Commissioner Pillay during the march on the RTI on 16 December 2010, an operation in which both the GPP and Liberian mercenaries took part. By failing to punish the crimes committed

on 16 December 2010, he allowed impunity to reign, thereby giving *carte blanche* to these units to commit crimes repeatedly, such as the above-mentioned killing of Burkinabés in Adjamé-Washington by the GPP, or the killing of two Frenchmen and two other foreigners from the Novotel hotel by the Liberian fighters, based – in both scenarios – on illegal instructions from the head of the *Garde Républicaine*. These groups felt they could operate freely and with impunity. Mr Gbagbo should have known that Liberian mercenaries were involved in operations as they came under the control of his wife's *aide-de-camp*, Commandant Seka Seka.

- iv. Commander Seka Seka and his group killed, on 8 April 2011, Mr Ouattara's spokesperson's (Witness P-0048) two bodyguards and two assistants, and dragged Witness P-0048 to the Presidential residence where he was held at the back of the residence. While he was held at the residence, Witness P-0048 was seen by many such as Dakouri – director of the BCAO – one of the FPI leaders – Aboudramane Sangaré, Stéphane Kipré's wife (Mr Gbagbo's daughter), Ms Bro Grébé of the *Femmes Patriotes*, and others. During the killing, Mr Gbagbo's son-in-law, Stéphane Kipré, was in a 4x4 vehicle at the scene of the crime. At the residence, Kipré told Witness P-0048 that Simone Gbagbo gave instructions to transport Witness P-0048 from the residence to a place of his choice. This was additional notice to Mr Gbagbo and his close associates of the violent and criminal proclivities of the troops under his control.

2097. The factors listed at paragraph 1443 above, as well as the evidence below, established, Mr Gbagbo's knowledge that units were about to commit the crimes in Yopougon on 12 April 2011. Despite the FDS Generals' call for Mr Gbagbo to resign, despite the African Union's repeated calls for Mr Gbagbo to step down and despite the mass defection of FDS Generals on 31 March 2011, Mr Gbagbo still urged his troops to continue fighting on 3 April 2011. Instead of taking



measures with respect to the crimes committed by the GPP and the Liberian fighters, he congratulated them.

2098. The high ranking FDS Commander who was in charge of operations in Yopougon on 12 April 2011 with other pro-Gbagbo militia and mercenaries was the COMTHEATRE, Konan Boniface, an officer loyal to Mr Gbagbo. It is in his presence and that of Dogbo Blé that Mr Gbagbo told General Mangou, on 3 April 2011, to continue the fight. A *communiqué* issued on 9 April 2011 by Mr Gbagbo's spokesperson stated that "*Le Président de la République exprime toute sa détermination à continuer la lutte*" (the President expresses his firm determination to continue the struggle).

2099. The majority of the FDS units which were based in Plateau and Cocody had made their way to the Locodjoro base and Witness P-0435 found them there on 12 April 2011. The pro-Mr Gbagbo forces still controlled Yopougon at that time and were involved in combat from 12 to 17 April 2011.

2100. Hence, Mr Gbagbo knew that the pro-Gbagbo forces were about to commit crimes against perceived Ouattara supporters and had committed crimes against perceived Ouattara supporters in the previous months. The evidence demonstrates Mr 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 Mr Gbagbo exercised a high level of control over the same pro-Gbagbo forces; and that Mr Gbagbo held frequent meetings with his close associates or subordinates, including FDS commanders, to be briefed on the situation on the ground.

2101. In the event that the Chamber finds that Mr Gbagbo did not have actual knowledge, the Prosecution submits that the same evidence discussed above demonstrates that Mr Gbagbo, owing to the circumstances at the time, should have known, or consciously disregarded information which clearly indicated, that the pro-Mr Gbagbo forces committed crimes, or were about to commit crimes

against perceived Ouattara supporters, in particular those crimes committed in the context of the charged incidents.

- (e) *Mr Gbagbo knew or consciously disregarded information which clearly indicated that subordinates were committing or about to commit such crimes (article 28(b)).*

2102. As stated in Section VII.B.3 above (*Mr Gbagbo's effective control over his subordinates*). Mr Gbagbo may also be held responsible pursuant to article 28(b) should the Trial Chamber hold that with respect to the GPP, the FESCI and/or the *Jeunes Patriotes*, he is to be considered a superior "not described in" article 28(a). For the application of article 28(b), the following factors need to be taken into account.

2103. With respect to the 16 December 2010 incident, Section VII.B.4(b) above establishes that Mr Gbagbo knew that civilians had been killed by his subordinates.

2104. Similarly, with respect to the 12 April 2011 incident, Section VII.B.4(d) above shows Mr Gbagbo's knowledge with respect to the criminal acts of his subordinates, for this scenario the GPP and the Liberian fighters. As described at paragraph 2096 above, Mr Gbagbo knew that the GPP, a group which he knew to have been involved in criminal acts in the past, as well as the Liberian fighters were stationed at the residence and were taking part in combat with formal FDS units such as the *Garde Républicaine*.

5. Mr Gbagbo was aware that his conduct was part of the widespread or systematic attack

2105. Mr Gbagbo knew or intended his conduct to be part of a widespread or systematic attack against the civilian population. In particular, he knew or intended it as such pursuant to or in furtherance of his resolve to stay in power by

all means. This knowledge is demonstrated by the same factors outlined at Section VII.B.(4).

6. Activities within Mr Gbagbo's responsibility and control (article 28(b) only)

2106. The Prosecution recalls Mr Gbagbo's superior position as a civilian leader (in the context of article 28(b) and his effective control over the pro-Gbagbo forces who committed the crimes, and his resolve to stay in power by all means. The crimes concerned activities that were within Mr Gbagbo's responsibility and control, in the aftermath of the elections and as part of the attack on the civilian population to maintain Mr Gbagbo in power.

7. Mr Gbagbo's failure to prevent or repress or submit the matter to the competent authority

2107. Despite his *de jure* power and his *de facto* ability to prevent or halt the commission of crimes, Mr Gbagbo failed to take the necessary and reasonable measures within his material ability, to prevent or to repress crimes committed against the civilian population or submit the matter to the competent authorities. No investigation was conducted with respect to crimes committed by his forces as early as 2000. No genuine investigation was conducted either throughout the post-election violence even if Mr Gbagbo's subordinates provided him with regular reports as to the ongoing security situation in Abidjan and beyond, including informing him on civilian deaths. The evidence suggests that not only did Mr Gbagbo have the material ability to prevent the incidents for which he is charged, but once they occurred, he further failed to adopt the reasonable and necessary measures to investigate or punish the perpetrators or to submit the matter to the competent authorities. Conversely, cover-ups of crimes were condoned and at times encouraged by his subordinates, associates and advisors.

(a) *Mr Gbagbo failed to punish the crimes related to the 16 December 2010 incident*

2108. As stated in Section VII.B(4)(b), Mr Gbagbo knew that civilians had been killed during the 16 December 2010 march. He was quick however to point out the number of FDS casualties. As highlighted in Section VII.A, a necessary measure is one appropriate for superiors to discharge their obligations; in this case, it would have been appropriate, upon receiving information of casualties during the 16 December 2010 march, for Mr Gbagbo to, at minimum, refer the matter to investigative bodies, such as the police, the *Gendarmerie* or the military prosecutor (*commissaire de gouvernement*). Instead, in his 21 December 2010 televised speech, Mr Gbagbo commemorated the FDS members who had lost their lives, stating they were martyrs and that they died to defend the Ivoirian constitution; he added “we are being terrorized” (“*On veut nous terroriser*”). The next steps taken by Mr Gbagbo betray his failure to take necessary and reasonable measures, “falling appropriately in [his] material power.”

2109. The Prosecution submits that Mr Gbagbo’s establishment of an international commission of inquiry on 7 January 2011 served to cover up crimes committed by the FDS during the 16 December 2010 march and month of December and does not constitute a necessary and reasonable measure to investigate the crimes committed. Had the perpetrators of the 16 December 2010 crimes and those of the Wassakara killings of early December been prosecuted, this would have sent a strong signal to pro-Gbagbo forces that such acts were not tolerated, and would have prevent future crimes. But they were tolerated.

2110. The inquiry had serious shortcomings; Mr Gbagbo was aware of them and could have corrected them. The climate of impunity which reigned throughout his regime was prolonged during the post-election crisis by the creation of a powerless commission of inquiry, whose sole role – the Prosecution argues – was to delay matters and avoid prosecuting FDS members. The shortcomings include the following:

- i. The manner in which the commission was established shows no genuine interest in investigating the crimes against Ouattara supporters. None of the members of the Commission were members of the Ivoirian judicial system or investigative bodies such as the *Gendarmerie*, the Prosecutor's office or the police. The seven members were:
- ii. Four Ivoirians: Mr Djidji Kadjo Alphonse, Marc Richmond, Ms Mawa Coulibaly and Ms Dépreuba Bétatrice; and
- iii. Three foreigners: Mr Willy Rubeya (a Burundian lawyer), Mr Robert Charvin (a French law professor), Mr Jean Martin Mbenba (former Minister of Human Rights in Congo Brazzaville).
- iv. At no time did they interview any of the FDS Generals in charge of the army, police or *Gendarmerie*:
- v. General Kassaraté, the head of *Gendarmerie* – the main organ invested with the power to investigate crimes committed by the FDS – was not consulted by this Commission until they issued their findings, to which he responded in a few lines, dismissing accusations against the FDS. Rather than proposing to look into the matter, as would be expected from an investigative body, Kassaraté defended the FDS, claiming that the FDS lost many of its members when conducting missions.
- vi. Had the commission met with Police authorities, they would have discovered the sheer volume of reports collected on multiple incidents throughout the month of December, beginning with the killing of RHDP militants at Wassakara on 1 December 2010.
- vii. As provided by the decree creating the Commission, Mr Gbagbo expected a report. The conclusions of the Commission reached after six weeks of work, fit in seven brief sentences and further demonstrate its sham nature.

With respect to the events on the 16 December 2010, a two-line conclusion provides that protestors were victims of extortion during arrests. A reasonable inference can be made that Mr Gbagbo was informed of the thin findings of the Commission as its results were communicated to various entities, including the LMP of which Mr Gbagbo was the leader and the FDS leadership, and the results were publicised on the RTI three weeks later, on 9 March 2011. As Mr Gbagbo created the commission by virtue of a presidential decree, he was entitled and expected to correct it.

- viii. The RTI announced on 16 February 2011 that the Commission had sent letters to the parties accused of being involved in criminal acts, including the FESCI, the FDS, the RHDP, the LMP, the FAFN and the UNOCI. The Prosecution obtained a copy of General Kassaraté's response, taking no initiative to further look into the allegations as would be expected from an investigative body, but rather Kassaraté defends the FDS, rebukes the claims and states that the FDS lost many of its members when conducting missions.
- ix. The lack of specificity and the brevity of this report betray a lack of interest in conducting a proper investigation on the killings, persecution, rapes and inhumane treatment which took place from 28 November 2010 onwards.
- x. Neither Mr Gbagbo nor his spokesperson seem to have followed up, nor were any statements made by the government with respect to the findings of the Commission. No one was punished for the 16 December 2010 incident, the Wasskara massacre and other incidents targeting perceived Ouattara supporters in December 2010.
- xi. During a 9 March 2011 RTI broadcast reporting on the results of the Commission, it was reported the Commission wished for an investigation to be carried out into the killings, forced displacements, rape and pillage to

avoid impunity for the perpetrators. This meant that the Commission did not consider itself as an investigative body, thereby confirming that Mr Gbagbo's regime created this commission to give the impression that investigations were being carried out.

- xii. The Commission was required to provide recommendations to prevent such violations in the future. However, the Commission never addressed the prevailing climate of impunity and instead proposed the dissolution of the CEI and asked restraint from the international community and for no interference in the Ivorian electoral process. No recommendations were made with respect to the civilian victims of the 16 December 2010 march or any of the crimes committed while the Commission was conducting its work in Côte d'Ivoire.

2111. As stated above, Mr Gbagbo had the material capacity to take measures against the perpetrators: the Ivorian judicial swiftly arrested, prosecuted and sentenced some of the civilian demonstrators. It is relevant to note that while the Ivorian judicial system's reaction was immediate in prosecuting and sentencing the demonstrators, it is only after Commissioner Pillay's letter of 31 December 2010 that Mr Gbagbo decided to create an international commission of inquiry which produced scant results.

*(b) Mr Gbagbo failed to punish FDS perpetrators of the killings of 3 and 17 March 2011 in Abobo*

2112. As established in Section VII.B(4. (c) above (*Mr Gbagbo's knowledge of crimes committed on 3 and 17 March 2011 in Abobo*), Mr Gbagbo, his associates (such as his spokesperson) and subordinated FDS officers received information both on 3 and 17 March 2011 claiming that the FDS was involved in these incidents. The killings in Abobo on 3 and 17 March 2011 were scarcely investigated in the immediate

aftermath and thereafter their existence denied or simply covered-up by accusation of being a *montage* in the case of the 3 March 2011 incident.

With respect to the killing of the seven women during the women's march of 3 March 2011, although Mr Gbagbo and his Inner Circle knew of the FDS' involvement in the incident, spokespersons Don Mello and Babri denied, on the RTI, any FDS responsibility for the attack on 4 March 2011. Following a brief internal gathering of information, the FDS *communiqué* was approved by Minister of Defence Dogou. The CEMA testified that he had been told by the Minister of Defence that the latter had informed Mr Gbagbo of the communiqué. On 5 March 2011, Interior Minister Guiriéoulou condemned the international press for their continued claims that the FDS were responsible for the killing of the women on 3 March 2011. He claimed that it was an attempt to discredit Mr Gbagbo's regime. As of 5 March 2011, pro-Gbagbo media denounced this incident as a set-up. On 8 March 2011, the *Conseil des ministres* again denied all responsibility, and advanced that accusations against the FDS were pure fabrication. On 23 March 2011, Mr Blé Goudé alleged 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 – in line with the response of Mr Gbagbo and members of his Inner Circle. No one was punished for this crime.

2113. The result of the above is that Mr Gbagbo knew that no investigation was being carried out. The main work conducted by the FDS and Mr Gbagbo's ministers was to shield off the FDS and deny that the seven women were killed as a result of a shooting attributed to the FDS. Reliance on a few telephone calls by the FDS internally does not amount to a serious investigation. This is not the case of a remote commander with an inability to deploy investigative means to a foreign jurisdiction. Mr Blé Goudé claims that it was physically impossible to investigate the 3 March 2011 incident as access to the crime scene was limited. First, the UNOCI's Human Rights office certainly did not have difficulty



investigating, between 3 and 9 March 2011, by meeting families of victims, representatives of the RHDP women in Abobo, local municipal representatives, and on 10 March 2011, conducted an *in situ* mission. Second, nothing stopped the FDS from initiating an internal inquiry to interrogate those officers on the ground that day. Witness P-0156 was not asked to write a report to his superiors about the 3 March 2011 event.

2114. With respect to the 17 March 2011 incident, although Mr Gbagbo and his subordinates knew of the involvement of the FDS in this incident, no proper investigation was conducted and no one was punished. To the contrary, on 22 March 2011, the Mr Gbagbo's government issued a statement on the RTI claiming it had done an investigation and that: (i) no damage had been observed at the Abobo market, (ii) no victims had been registered at the Abobo and Anyama morgue and, (iii) that no complaint had been registered at police stations with respect to an FDS operation. The evidence on record demonstrates that the denials from Mr Gbagbo and members of his Inner Circle served to cover up their crimes.

2115. The sole piece of evidence showing a slight interest in the killing of the 3 and 17 March 2011 victims was a passing remark by the Military Prosecutor at the end of a *Réquisition aux fins d'enquête*; the document's principal aim was to initiate an investigation into the actions of the *Commando Invisible*. Indeed, this document of 24 March 2011 entitled "*Réquisition aux fins d'enquête*" issued by the military prosecutor Ange Kessi focuses on the provision of fuel by rebel units. At the end of the document, the last paragraph requires the GDR – the *Gendarmerie's Groupement de Documentation et Recherche* led at the time by Colonel Gnahoré Beugré – to conduct an investigation. It is striking the killing of several dozen civilians (taking both incidents together) is treated as a sideshow to an investigation on the provision of fuel of rebel forces. This is further proof that Mr

Gbagbo and his subordinates had no intention to punish the perpetrators of crimes against perceived Ouattara supporters

*(c) Mr Gbagbo failed to prevent the crimes committed during the 12 April 2011 incident*

2116. With respect to the 12 April 2011 incident, Mr Gbagbo had all the information at his disposal to be on notice that by requesting the pro-Gbagbo forces, to continue to fight, it would lead to the commission of further crimes. Instead, Mr Gbagbo relied on pro-Gbagbo forces which had been involved in criminal acts in the past and encouraged them to continue:

- i. On 2 April, elements of the GPP – including some of their commanders – members of the FESCI and Liberian mercenaries were met first by Mr Gbagbo's son Michel, as well as Mr Gbagbo himself. Mr Gbagbo congratulated them, stating that his was proud of the young Ivoirians, that they had already won the war, because Mr Gbagbo's goal was to show that France was supporting the rebellion. Among those present were Witness P-0435, Michael Djokouehi (a Captain in the GPP), Tchang (a GPP commander who had been stationed at the residence since February), Colonel Katé, Commander Meledje, a number of other GPP elements, and Colonel Gouanou.
- ii. On 3 April 2011, at the Presidential Residence and in front of General Mangou, Dogbo Blé and Konan Boniface, Mr Gbagbo still urged his troops to continue fighting. The Prosecution notes that Dogbo Blé at this stage had incorporated 60 members of the GPP, including Witness P-0435 who ended up in Yopougon on 12 April 2011 and [REDACTED]  
[REDACTED]
- iii. On 5 April 2011, Mr Gbagbo's subordinate, his co-Accused Mr Blé Goudé urged the "patriots" to continue fighting to maintain Mr Gbagbo in power.

Mr Blé Goudé 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, Mr Blé Goudé also called on the population to film any “suspicious movement” in their neighbourhoods and to “send [the recordings] to Ivoirian television”. The Prosecution recalls that as leader of the *Galaxie Patriotique*, of which the GPP was an armed wing, messages such as the above-cited one must be taken into account when Mr Blé Goudé conveys messages echoing Mr Gbagbo’s goals and instructions. Also, such messages to reinforce roadblocks and support the FDS, echo the same message delivered by Mr Blé Goudé and which led to the charged incident of 25-28 February 2011.

- iv. On 9 April 2011, Mr Gbagbo’s spokesperson released a public *communiqué* stating that “*Le Président de la République exprime toute sa détermination à continuer la lutte*” (the President expresses his firm determination to continue to fight).

2117. Taking all these factors into account and Mr Gbagbo’s knowledge that the GPP and Liberian fighters were taking part in combat, it was necessary for Mr Gbagbo, to discharge his obligations, to take appropriate measures to prevent the GPP and Liberian fighters from taking part in operations, instead of approving their incorporation into the FDS, congratulating them and encouraging their superiors to continue the fight. It would have been reasonable, and within his material power, to put a stop to their activities.

(d) *Measures available to Mr Gbagbo*

2118. Although the election results were challenged, Mr Gbagbo continued to exercise 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 the pro-Gbagbo forces.

2119. Mr Gbagbo had the full judicial apparatus at his disposal, through his Minister of Justice, as well as the *Gendarmerie*, an institution empowered to investigate crimes committed by the military or the police. Arrests and prosecutions did take place against pro-Ouattara demonstrators, showing that the judicial system was fully in operation. On 16 December 2010 and in the following days, the FDS, aided at times by pro-Gbagbo youth, militia and mercenaries, arrested at least 257 persons – men and women 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 gathered the week following the march, 43 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 Préfecture* in Plateau. Several days of hearings were held before the Tribunal, on 30 December 2010, 45 demonstrators were released due to lack of evidence, whereas on 3 January 2011, 28 demonstrators were sentenced to 1-month imprisonment while 22 demonstrators were released.

2120. The follow measures were also available to Mr Gbagbo:

- i. Mr Gbagbo had the communication channels to instruct the pro-Gbagbo forces not to commit the crimes or denounce their commission. For example, by way of his access to the national television channel, the RTI, as well as his access to ministers and military commanders, Mr Gbagbo could instruct all pro-Gbagbo forces, in public speeches and in direct conversations, not to commit any crimes; and he could denounce and condemn the crimes committed by his subordinates, both in public speeches and in private conversations;

- ii. Mr Gbagbo could issue concrete orders to Government officials and FDS commanders, as can be seen from the various decrees he signed, orders he gave to FDS Generals (such as ordering Witness P-0009 not to move his units towards the Golf Hotel on 16 December 2010, or his instructions to hold Abobo), or his proximity to some officers to whom he passed on instructions such as Colonel Dadi. On this last point, Mr Gbagbo argues that Witness P-0239 was at a low level and could not have access to such information. However, nothing in Witness P-0239's testimony puts in doubt that Colonel Dadi frequently stated being in contact with Mr Gbagbo and receiving instructions from him;
- iii. The militia and mercenaries, who were well-organised and trained, jointly conducted their operations with the FDS, under the FDS's direction. Mr Gbagbo had the power and the capacity to instruct his subordinates, such as the Minister of Defence or the head of the *Garde Républicaine* with respect to the use of militia groups and the importance of discipline;
- iv. Mr 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;
- v. Through senior FDS commanders, Mr Blé Goudé and other leaders of the pro-Gbagbo youth and militias, Mr Gbagbo could dictate the line of conduct to be adopted by the members of these movements and mercenaries;
- vi. Mr Gbagbo could order the deployment and withdrawal of FDS units from certain sectors and his subordinates would comply; and

- vii. Mr Gbagbo had the resources to trigger and ensure the effective conduct of appropriate investigations and prosecution of the crimes allegedly conducted by the pro-Mr Gbagbo forces.

#### 8. The causality criteria

2121. As stated in Section VII.A.7 above, superior responsibility does not require causation. If the Chamber were to decide that article 28 requires a causal link between the commander's failure to exercise control properly over his forces and the subordinate's crimes, the standard to establish Mr Gbagbo's responsibility under article 28 should be no higher than the commander's failure increased the risk of the commission of the subordinate's crimes.

2122. Mr Gbagbo's omissions increased the risk that his forces would commit crimes. Mr Gbagbo's failure to exercise control properly over the pro-Gbagbo forces and the link between this failure and the crimes charged is already addressed by the facts and evidence described under sub-section VII.B.7 above. As argued above, Mr Gbagbo had *de jure* and *de facto* control over the FDS and effective control over the pro-Gbagbo forces which committed the crimes and failed to take the necessary and reasonable measures within his material ability through which he could have prevented each of the four incidents for which he is charged, had he chosen to take appropriate action.