

## **Annex C**

### **Dissenting Opinion**

**Judge Herrera Carbuccion**

**(Public redacted version)**

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## Section 1: Introduction

1. Mr Gbagbo and Mr Blé Goudé were charged for crimes against humanity of murder and attempted murder, rape, other inhumane acts and persecution in the context of post-election violence in the Republic of Côte d'Ivoire. Their trial started in January 2016 and the Prosecutor called the last witness in support of her case in January 2018. Thereafter, defence counsel representing Mr Gbagbo and Mr Blé Goudé requested the full acquittal of their clients.<sup>1</sup>
2. On 15 January 2019, the majority of the Chamber (Judge Cuno Tarfusser and Judge Geoffrey Henderson) granted the Defence requests which resulted in the full acquittal and release of Mr Gbagbo and Mr Blé Goudé. I respectfully disagreed.<sup>2</sup> I now give the full reasons for my dissent on the merits. I have also included a French summary of my key findings at the end of this opinion.
3. The majority stated that there was “no need for the Defence to submit further evidence” because the Prosecutor had not “satisfied the burden of proof in relation to several core constitutive elements of the crimes as charged”.<sup>3</sup> The majority concluded that the Prosecutor had:
  - [...] failed to demonstrate that there was a “common plan” to keep Mr Gbagbo in power, which included the commission of crimes against civilians.
  - [...] failed to demonstrate the existence of the alleged policy to attack the civilian population on the basis of the alleged pattern of violence and other circumstantial evidence cited in support.
  - [...] failed to demonstrate that the crimes as alleged in the charges were committed pursuant to or in furtherance of a State or organisational policy to attack the civilian population.
  - [...] failed to demonstrate that public speeches by Mr Gbagbo or Mr Blé Goudé constituted ordering, soliciting or inducing the alleged crimes or that either of the accused otherwise knowingly or intentionally contributed to the commission of such crimes.<sup>4</sup>
4. I respectfully disagree with the majority's conclusions.

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<sup>1</sup> “Version corrigée de la ‘Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquittal portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée”, 25 September 2018, ICC-02/11-01/15-1199-Corr ; “Public Redacted Version of ‘Corrigendum to the “Blé Goudé Defence No Case to Answer Motion””, ICC-02/11-01/15-1198-Corr-Red.

<sup>2</sup> “Dissenting Opinion to the Chamber’s Oral Decision of 15 January 2019”, 15 January 2019, ICC-02/11-01/15-1234, para. 48.

<sup>3</sup> ICC-02/11-01/15-T-232-ENG, p. 3, lines 2-4.

<sup>4</sup> ICC-02/11-01/15-T-232-ENG, p. 3, lines 6-17.

5. I take the view that the aim of permitting submissions of no case to answer is not to terminate a case prematurely.<sup>5</sup> In the case at bar I find that there is sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict the accused. In applying the relevant test at this stage of the proceedings, I will follow the approach adopted by other tribunals: “[T]he task of a trier of fact is that of assessing all the relevant evidence presented with a holistic approach; this is all the more necessary in cases as complex as the ones before the International Tribunal”.<sup>6</sup> To reach my decision I have assessed all the necessary evidence, direct and circumstantial, in the record. A trier of fact 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 this Court.<sup>7</sup>
6. Establishing the truth behind events and preventing all forms of revisionism have always been the underlying objectives of all international criminal justice systems.<sup>8</sup> If we allow a president in a democratic society who refuses to step down in the aftermath of a contested election to target citizens of that society and commit crimes against humanity with impunity, we fail to comply with the values and purposes enshrined in the Rome Statute (“Statute”) and espoused by the international community.
7. There are 716 victims participating in these proceedings.<sup>9</sup> I have no doubt of the harm suffered by the victims and the violation of their human rights. It is important to recognise all the victims, in particular the women who have been the victims of rape, for their valued testimony during the trial proceedings. Due respect for the rights of the accused must be balanced with the right of participation of victims, who have an

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<sup>5</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber II, *Prosecutor v. Pavle Strugar*, “Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98 Bis” (“*Strugar* Rule 98 bis Decision”), 21 June 2004, IT-01-42-T, para. 20.

<sup>6</sup> Special Court for Sierra Leone (SCSL), Appeals Chamber, *Prosecutor v. Charles Ghankay Taylor*, “Judgment” (“*Taylor* Appeals Judgment”), 26 September 2013, SCSL-03-01-A, para. 235; ICTY, Appeals Chamber, *Prosecutor v. Sefer Halilović*, “Judgment” (“*Halilović* Appeals Judgment”), 16 October 2007, IT-01-48-A, para. 128.

<sup>7</sup> Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Corrigendum to Decision on the admissibility of four documents”, 20 January 2011, ICC-01/04-01/06-1399-Corr, para. 24.

<sup>8</sup> Statement of Judge Claude Jorda, United Nations Security Council Official Records, 4161st meeting, S/PV.4161, 20 June 2000, p. 3.

<sup>9</sup> Registry, “Third Transmission of the Updated Consolidated List of Participating Victims”, 7 December 2018, ICC-02/11-01/15-1227.

interest in the proper and transparent administration of justice and the establishment of the truth.<sup>10</sup>

8. A view is not necessarily right just because it is the view of the majority.<sup>11</sup> My approach to the facts and evidence differs from the majority's approach, and accordingly it is my view that, on the basis of the evidence in the record, a reasonable Trial Chamber could conclude as follows:

## **I. Key findings and conclusions available to a reasonable Trial Chamber**

### The common plan

9. Pursuant to article 7 of the Statute, it is necessary to determine whether there was a specific entity, be it an organisation or a State, capable of carrying out an attack in furtherance of a policy. Thus, the "common plan" and the "inner circle" are not material elements of crimes against humanity under article 7. In the present case and in accordance with the applicable law, the analysis must focus on the existence of a policy to attack the civilian population.

### Attack against the civilian population

10. A reasonable Trial Chamber could conclude as follows. At least 101 identified individuals were killed, 17 identified women were raped, 71 identified individuals were victims of attempted murder and 18 identified individuals suffered inhumane acts. The aforesaid crimes were committed within the context of the five main incidents in the case, and in the context of other incidents, which together make out the requisite course of conduct under article 7(1) of the Statute. The employment of lethal force against unarmed civilians and the use of heavy weaponry in densely populated residential areas of Abidjan by the Ivorian Defence and Security Forces ("FDS") indicate that FDS actions were part of an indiscriminate attack against the civilian population. A reasonable Trial Chamber could conclude that acts of violence committed against the

<sup>10</sup> S. Zappalà, "The Rights of Victims v. the Rights of the Accused", *Journal of International Criminal Justice*, Volume 8, Issue 1, 1 March 2010, p. 161. Available at <https://doi.org/10.1093/jicj/mqq001>.

<sup>11</sup> "When history demonstrates that one of the Court's decisions has been a truly horrendous mistake, it is comforting ... to look back and realize that at least some of the [J]ustices saw the danger clearly and gave voice, often eloquent voice, to their concern." A. Scalia, former Associate Justice of the Supreme Court of the United States, quoted in R. B. Ginsburg, "The Role of Dissenting Opinions", in *My Own Words* (Simon and Schuster, 2016), p. 276, at p. 283.

civilian population (killing, injuring, raping and otherwise persecuting people; burning people alive at roadblocks) by the FDS and other non-State actors, namely the *Jeunes Patriotes* and mercenaries, were not isolated or spontaneous acts and were committed within the context of a State policy. It could conclude that this attack occurred at the behest of the State.

#### Civilian character of victims

11. A reasonable Trial Chamber could find and hold as follows. The attack was intended to target the civilian population. Criminal acts were committed in an environment of threats, harassment and attacks against perceived Ouattara supporters, including Muslim and Dioula members of the population, in the context of contested election results and Mr Gbagbo's decision to remain in power. Unarmed victims were detained, raped, killed, injured, and burned at roadblocks. The direct perpetrators were aware of the civilian character of the victims, and the presence of rebel groups does not necessarily affect that character, particularly when victims are targeted on a discriminatory basis. Moreover, means and methods used in the course of an attack which are seriously harmful to the victims cannot be justified under the head of "self-defence" or military necessity. Such acts include, *inter alia*, the use of lethal force against unarmed civilians, the shelling of residential areas, and rape, particularly when these acts are committed against children, elderly persons, women or religious leaders, or when they are committed in locations of a civilian nature, such as victims' homes, markets or religious buildings, or during religious services.

#### State policy

12. A reasonable Trial Chamber could conclude as follows. In a context of contested election results, Mr Gbagbo sought to remain in power at any cost, claiming to be the legitimate President of Côte d'Ivoire. Mr Gbagbo, Mr Blé Goudé and other State and non-State actors (mainly the *Jeunes Patriotes* and mercenaries) who had military and political roles in Mr Gbagbo's government were determined to keep Mr Gbagbo (and themselves) in power. Mr Gbagbo, together with these individuals, used the State apparatus which he had led for over a decade, and the powers given to him by law, to implement a State policy that targeted the civilian population perceived as opposing his continued incumbency as President of Côte d'Ivoire. The violation of human rights can

be traced to the State. The State apparatus headed by Mr Gbagbo tolerated the attack against the civilian population by denying any wrongdoing on the part of the FDS despite a failure to investigate and reports of FDS involvement. The implementation of the State policy can be inferred from the failure to take any measures genuinely and impartially to investigate, prevent or punish the crimes committed by State or non-State actors against civilians. Mr Blé Goudé was instrumental in the mobilisation of the *Jeunes Patriotes*, whom he encouraged and incited to erect roadblocks. His conduct led these youth militias to mobilise and take action that culminated in the commission of crimes against anyone perceived as pro-Ouattara (civilians belonging to certain ethnic, religious, national and political groups, UNOCI and outsiders).

#### The State and the principle of proportionality

13. The State has a duty to protect its citizens, and the principle of proportionality applies in every case where civilians are harmed. In international law as in domestic law, ends do not justify means. The State's power is not unlimited, and not all means of imposing order are lawful. The shelling of an urban area is contrary to international humanitarian law and internationally recognised human rights, since a disproportionate attack is *per se* unlawful and cannot be justified by military necessity. Even in situations of urban guerrilla warfare or when armed elements are hidden among the civilian population, the State and those who represent the State have an obligation and a duty to protect civilians. When the State apparatus targets citizens of the State without fear of sanction, it acts against the fundamental values of a democratic society, and the individuals at the head of the State apparatus must be held accountable.

#### Widespread and systematic attack

14. Although the exact number of victims may never be determined, a reasonable Trial Chamber could conclude that the attack against the civilian population was widespread. Besides the numbers of victims identified under each count charged and for each incident, mass graves and forensic records show that hundreds of bodies were recovered during the post-election violence. Those graves and records are *prima facie* evidence that widespread murder occurred. A reasonable Trial Chamber could also conclude as follows. The crimes occurred in a time frame of approximately four months and affected significant parts of Abidjan, a city with a population of more than three

million inhabitants, including the densely populated area of Abobo. The attack was systematic, as it was implemented by the State apparatus, which was led by Mr Gbagbo as President, together with other political and military authorities. The State itself, with its legal framework and power structure, provided the systematic element of the attack. Non-State actors received financial, military and other resources from, were mobilised and instructed by and acted with the support, agreement and acquiescence of the State, in clear violation of its duty to protect civilians.

#### Nexus and knowledge

15. It is not necessary to prove that the accused had knowledge of the details of the attack. Furthermore, it is the attack, not the individual acts of the accused, which must be directed against the targeted population. The evidence supports the allegation that Mr Gbagbo and Mr Blé Goudé were aware that there was a widespread and systematic attack against the civilian population on political, ethnic or religious grounds and that their acts were part of that attack.

#### Modes of liability

16. Judges are limited, in their analysis, by the facts and circumstances of the charges confirmed against the accused. However, judges have a discretion to examine only the mode of liability that most accurately describes the conduct of the accused.

#### Responsibility of Laurent Gbagbo

17. Regard being had in this case to his position as President of Côte d'Ivoire and Supreme Commander of the FDS, Mr Gbagbo's criminal responsibility is more adequately analysed according to article 28(a) of the Statute. A reasonable Trial Chamber could conclude that Mr Gbagbo exercised *de facto* and *de jure* control over the FDS until his arrest on 11 April 2011. However, the evidence is insufficient to prove his individual criminal responsibility in relation to the incident of 12 April 2011. A reasonable Trial Chamber could conclude that Mr Gbagbo is individually responsible as a commander pursuant to article 28(a) of the Statute for the following crimes against humanity under article 7 of the Statute committed during the post-election violence against unarmed civilians and in particular during the march on *Radio Télévision Ivoirienne* ("RTI") of 16 December 2010 ("March on RTI"), the women's march of 3 March 2011

(“Women’s March”) and the shelling of Abobo on 17 March 2011: (a) murder; (b) rape; (c) other inhumane acts; (d) attempted murder; and (e) persecution. A reasonable Trial Chamber could conclude that Mr Gbagbo directed and coordinated the defence policy of the State, and that he had the authority in law and the ability in fact to issue orders, including the authority to prohibit attacks against the civilian population. It could conclude that he: (a) had a hierarchical relationship to the FDS members who were among the direct perpetrators of the crimes; (b) had authority over and effective control of the FDS through an effective chain of command and system of reporting; (c) had additionally requisitioned the armed forces and bolstered the reporting lines at the time of the post-election violence; (d) had knowledge of the army, its operations and its weapons; (e) was in Abidjan at all material times; and (f) received contemporaneous and immediate reports of crimes committed by the FDS in connection with the aforesaid incidents. On the evidence thus far adduced, it would be unreasonable to find that Mr Gbagbo did not know, or that he should not have known owing to the circumstances described above, that the FDS were going to commit crimes and had indeed committed crimes in the context of those incidents. A reasonable Trial Chamber could thus conclude that despite such knowledge Mr Gbagbo failed to take all necessary and reasonable measures within his power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution.

#### Responsibility of Charles Blé Goudé

18. The Prosecutor’s concession of insufficient evidence to support the charges against Mr Blé Goudé for his alleged involvement in the commission of the crimes in the incidents of 3 March 2011 and 17 March 2011 is accepted.<sup>12</sup> In the light of Mr Blé Goudé’s apparent role in the implementation of the State policy, particularly vis-à-vis the *Jeunes Patriotes*, his individual criminal responsibility is more appropriately analysed under article 25(3)(b) of the Statute. A reasonable Trial Chamber could conclude that Mr Blé Goudé is individually responsible pursuant to article 25(3)(b) of the Statute for inducing and soliciting the commission of the following crimes against humanity under article 7 of the Statute, perpetrated generally during the post-election

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<sup>12</sup> “Prosecution’s Response to Defence No Case to Answer Motions”, 10 September 2018, ICC-02/11-01/15-1207, para. 25.

violence at roadblocks by the *Jeunes Patriotes* and in particular during the march on RTI of 16 December 2010 and attacks in the *commune* of Yopougon, Abidjan, between 25 and 28 February 2011 and on 12 April 2011, against unarmed civilians: (a) murder; (b) rape; (c) other inhumane acts; (d) attempted murder; and (e) persecution. Although Mr Blé Goudé described his own actions during the post-election violence as *mots d'ordre*, his alleged participation is more appropriately defined as instigation (soliciting and inducing). The evidence indicates that Mr Blé Goudé was aware of his position as leader of the *Galaxie Patriotique* and of what that position entailed, and that he was aware of his influence over the *Jeunes Patriotes*, who were among the direct perpetrators of the crimes. A reasonable Trial Chamber could conclude that the hate speech used by Mr Blé Goudé at rallies and in his televised appearances on RTI while he was leader not only of the *Jeunes Patriotes* but also of the FDS officers in the *Génération Blé Goudé*, his calls to the youth to mobilise, his encouragement of them to erect roadblocks (and to be suspicious of outsiders and obstruct United Nations operations in Côte d'Ivoire), and his instructions to them to await his *mot d'ordre*, in the context of the post-election violence, are all factors determining his contribution to the violence committed by the direct perpetrators against civilians perceived as Ouattara supporters.

19. A reasonable Trial Chamber could conclude that Mr Blé Goudé had knowledge of the acts of violence committed or about to be committed by the *Jeunes Patriotes* in the context of the relevant incidents concerning his individual criminal responsibility, and that he was aware of his position as leader as well as of the context of pre-existing tensions. Having regard to the context of the post-election violence and the fact that the *Jeunes Patriotes* had a history of involvement in violent acts, a reasonable Trial Chamber could conclude that Mr Blé Goudé was aware that his hate speech would instigate the *Jeunes Patriotes* to further violence. Accordingly it could conclude that he substantially contributed by his incitement and instigation to the crimes committed by the *Jeunes Patriotes*, and that he at the same time contributed to the implementation of the State policy which targeted the civilian population during the post-election violence. It could conclude that, given his leadership position among the *Jeunes Patriotes*, which he acknowledged, his disapproval of serious acts of violence could have prevented the further commission of crimes. For deliberately ignoring the acts of violence committed and the imminence of further violence, Mr Blé Goudé could

reasonably be held liable. A reasonable Trial Chamber could conclude that through his acts and omissions Mr Blé Goudé prompted the *Jeunes Patriotes* to commit crimes.

## II. Background

20. The present case involves two accused, Laurent Gbagbo and Charles Blé Goudé. The Prosecutor's case, as confirmed by the Pre-Trial Chamber, is centred on the 2010 presidential election in Côte d'Ivoire. It alleges that Laurent Gbagbo and others (his "inner circle", including Mr Blé Goudé) jointly designed and implemented a common plan to stay in power. This common plan allegedly evolved to include a State or organisational policy to launch a widespread and systematic attack against civilians perceived to support his political opponent in the election, Alassane Ouattara. The Prosecutor submits that the common plan and policy comprised acts such as murder, rape, other inhumane acts and persecution directed against the civilian population and in particular members of the population perceived as being supporters of Mr Ouattara.<sup>13</sup>
21. The charges confirmed allege that, at the relevant time, Mr Gbagbo exercised control and authority over the FDS and also directly and indirectly had control and authority over pro-Gbagbo youth, militia members and mercenaries, all of whom together with the FDS are referred to as "pro-Gbagbo forces". It is alleged that these pro-Gbagbo forces were the physical perpetrators of the aforesaid crimes. The charges confirmed focus on five main incidents: (i) the attack of 16-19 December 2010 on civilians participating in the March on RTI; (ii) the attack of 3 March 2011 on civilians participating in the Women's March in Abobo; (iii) the shelling on 17 March 2011 of the Abobo market and surrounding area; (iv) the attack of 12 April 2011 on civilians in the *commune* of Yopougon, Abidjan; and (v) the attack of 25-28 February 2011 on civilians in the *commune* of Yopougon, Abidjan.<sup>14</sup>

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<sup>13</sup> Pre-Trial Chamber I, "Decision on the confirmation of charges against Laurent Gbagbo" ("*Gbagbo* Confirmation Decision"), 12 June 2014, ICC-02/11-01/11-656-Conf; "Decision on the confirmation of charges against Charles Blé Goudé" ("*Blé Goudé* Confirmation Decision"), 11 December 2014, ICC-02/11-02/11-186.

<sup>14</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186.

### III. Summary of submissions

#### A. Defence for Laurent Gbagbo

22. In its submission of no case to answer, the Defence for Mr Gbagbo argues that the Prosecutor has not led sufficient evidence to prove: (a) the existence of an inner circle or common plan; (b) the existence of an attack against the civilian population (i.e. the occurrence of some of the alleged incidents or their connection to an alleged common plan or organisational policy); (c) the occurrence of the five main incidents and the existence of the alleged victims; and (d) Mr Gbagbo's criminal responsibility. The Defence for Mr Gbagbo impugns the quality of the evidence presented by the Prosecutor, submitting that there were methodological errors in the Prosecutor's investigations. It also contends that the Prosecutor presented uncorroborated and unconvincing evidence as well as a great deal of hearsay evidence.<sup>15</sup>

#### B. Defence for Charles Blé Goudé

23. The Defence for Mr Blé Goudé submits that the Prosecutor has failed to present sufficient evidence to prove: (a) the existence of an organisational policy; (b) the nexus between the alleged victims and the incidents on which the charges were laid; (c) the responsibility of Mr Blé Goudé for the crimes charged; and (d) the nexus between Mr Blé Goudé and the crimes charged (i.e. the existence of a common plan and pro-Gbagbo groups).<sup>16</sup> The Defence for Mr Blé Goudé makes a submission of no case to answer on the ground that the Prosecutor "has not adduced sufficient evidence to sustain a conviction", contending at the same time that the Prosecutor's evidence is not sufficiently

credible and reliable [...] to conclude that under article 7(2)(a) Charles Blé Goudé jointly with Laurent Gbagbo and his alleged inner circle conceived and implemented a common plan, which developed into a State or organisational policy aimed at a widespread and systematic attack against perceived Ouattara supporters".<sup>17</sup>

<sup>15</sup> "Version corrigée de la 'Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée'" ("Gbagbo Submission of No Case to Answer"), 23 July 2018, ICC-02/11-01/15-1199-Corr.

<sup>16</sup> "Public Redacted Version of 'Corrigendum to the "Blé Goudé Defence No Case to Answer Motion"', ("Blé Goudé Submission of No Case to Answer"), 28 September 2018, ICC-02/11-01/15-1198-Corr-Red.

<sup>17</sup> Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198-Corr-Red, para. 4.

### C. Prosecutor

24. The Prosecutor submits that “there is – at minimum – sufficient evidence, if accepted, on which a reasonable Trial Chamber could convict Mr Gbagbo”.<sup>18</sup> Conversely the Prosecutor states that as regards Mr Blé Goudé she does not oppose the dismissal of the charges against him related to the incidents of 3 March 2011 and 17 March 2011.<sup>19</sup> In respect of the contextual elements of crimes against humanity, the Prosecutor informs the Chamber that she does not rely on the evidence related to nine of the incidents upon which she originally relied to prove the course of conduct involving the multiple commission of acts under article 7(1) of the Statute.<sup>20</sup> As regards the applicable test, the Prosecutor is of the view that the question to be resolved at this stage of the proceedings, in accordance with the practice of the ad hoc tribunals as well as that of this Court in the case of *Ruto and Sang*, is “whether there is evidence on which a reasonable Chamber *could* convict”.<sup>21</sup>

### D. Legal Representative of Victims

25. The Legal Representative of Victims (“LRV”) expresses the victims’ concern as to the delay in the proceedings caused by the submissions of no case to answer. The LRV argues that the evidence presented by the Prosecutor clearly shows that her clients were targeted and persecuted.<sup>22</sup> She submits that the evidence available, taken at its highest, discloses the commission of the crimes charged and is sufficient to show that Mr Gbagbo and Mr Blé Goudé cooperated and exercised their influence over other persons. She further contends that the evidence points to an intention to commit the crimes.<sup>23</sup>

<sup>18</sup> “Annex 1 – Prosecution’s Consolidated Response to the Defence No Case to Answer” (“Prosecutor’s Response”), 10 September 2018, ICC-02/11-01/15-1207-Conf-Anx1, para. 18.

<sup>19</sup> Prosecutor’s Response, ICC-02/11-01/15-1207-Conf-Anx1, para. 22.

<sup>20</sup> Prosecutor’s Response, ICC-02/11-01/15-1207-Conf-Anx1, para. 183.

<sup>21</sup> Prosecutor’s Response, ICC-02/11-01/15-1207-Conf-Anx1, paras. 28-30. Reference is made to Rule 98 *bis* of the respective Rules of Procedure and Evidence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), and to Judge Henderson’s dissenting opinion on a request by Mr Gbagbo for leave to appeal a decision concerning the submission of documentary evidence.

<sup>22</sup> “Response to Defence Submissions on the specific factual issues for which the evidence presented could be insufficient to reasonably support a conviction (ICC-02/11-01/15-1198-Conf and ICC-02/11-01/15-1199)” (“LRV Response”), 10 September 2018, ICC-02/11-01/15-1206-Conf, para. 3.

<sup>23</sup> LRV Response, ICC-02/11-01/15-1206-Conf, paras. 8-10.

## Section 2: Applicable test and assessment of evidence

26. As already noted in my Dissenting Opinion of 15 January 2019, the applicable test is that of “whether there is evidence on which a reasonable Trial Chamber could convict”,<sup>24</sup> and such determination should be made on the basis of the evidence as a whole.<sup>25</sup> In order to respond to specific evidentiary issues raised by the Defence, this test has been applied as follows.
27. An assessment of the credibility of evidence at this stage of the proceedings is exceptional and may be made only where the evidence in question is incapable of belief by any reasonable Trial Chamber and, even then, within certain parameters.
28. There are many factors and circumstances to take into account when evaluating the credibility and reliability of witnesses, such as their culture, socioeconomic status, relationship with the accused, age, vulnerability, involvement in the events and risk of self-incrimination. As regards reliability, the Chamber may consider, *inter alia*, the capacity and quality of the witness’s recollection, the consistency and precision of the account, the plausibility of the information provided, coherence with prior statements and the witness’s conduct during testimony. The Chamber may also consider whether the witness suffered trauma and therefore had difficulty providing a coherent, complete and logical account.
29. Evidence does not materialise in a vacuum and therefore cannot be analysed in a vacuum. The Chamber must assess evidence in the context of the entire trial proceedings and the circumstances underlying each individual testimony. The Trial Chamber may also accept parts of a witness’s testimony while rejecting others, thereby acknowledging that it is possible for a witness to be accurate on some issues and less accurate on others.<sup>26</sup>

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<sup>24</sup> Judge Herrera Carbuccia, “Dissenting Opinion to the Chamber’s Oral Decision of 15 January 2019”, ICC-02/11-01/15-1234.

<sup>25</sup> ICTY, Trial Chamber, *Prosecutor v. Slobodan Milošević*, “Decision on Motion for Judgement of Acquittal”, 16 June 2004, IT-02-54-T, para. 13.

<sup>26</sup> Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, “Decision on Defence Applications for Judgments of Acquittal”, ICC-01/09-01/11-2027-Conf-Corr; “Dissenting Opinion of Judge Herrera Carbuccia” (“*Ruto and Sang* Dissenting Opinion”), ICC-01/09-01/11-2027-AnxI, para. 24.

30. The Defence has argued that evidence needs to be corroborated; however, that is explicitly prohibited under rule 63(4) of the Rules of Procedure and Evidence (“Rules”), which provides that “a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular crimes of sexual violence”. Accordingly, a single piece of evidence may be enough to support a fact at issue.<sup>27</sup> While this does not necessarily mean that any piece of evidence provides a sufficient evidentiary basis to reach a finding of fact, requiring corroboration as a rule is inconsistent with the applicable law.<sup>28</sup> A Chamber may still rely on eyewitness testimony, even in the absence of corroborating evidence, including forensic evidence.<sup>29</sup>
31. As regards United Nations and NGO reports, they are considered *prima facie* reliable provided that they offer sufficient guarantees of impartiality.<sup>30</sup> They were relied upon only to corroborate other evidence concerning a particular incident or to give further detail about the circumstances in which the alleged crimes were committed. They did

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<sup>27</sup> *Ruto and Sang Dissenting Opinion*, ICC-01/09-01/11-2027-AnxI, para. 25; Trial Chamber II, *The Prosecutor v. Germain Katanga*, “Judgment pursuant to article 74 of the Statute” (“*Katanga Trial Judgment*”), 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 110. The Chamber determined that “[t]he extent to which a single piece of evidence suffices to prove a fact at issue is entirely dependent on the issue in question and the strength of the evidence under consideration”. See also ICTY, Trial Chamber, *Prosecutor v. Dusko Tadić*, “Opinion and Judgement” (“*Tadić Trial Judgment*”), 7 May 1997, IT-94-1-T, paras. 537-539. In relation to the corroboration of evidence, the Chamber affirmed that “the principle reflected in the Latin maxim *unus testis, nullus testis*, which requires testimonial corroboration of a single witness’s evidence as to a fact in issue, is in almost all modern continental legal systems no longer a feature. [...] [T]here is no ground for concluding that this requirement of corroboration is any part of customary international law and should be required by this [...] Tribunal.”

<sup>28</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (“*Lubanga Appeals Judgment*”), 1 December 2014, ICC-01/04-01/06-3121-Red, para. 218.

<sup>29</sup> ICTR, Trial Chamber, *Prosecutor v. Alfred Musema*, “Judgement and Sentence” (“*Musema Trial Judgment*”), 27 January 2000, ICTR-96-13, para. 52. The Chamber stated: “The value of the evidence presented to the Chamber is in no way altered by the non-provision of other evidence. The Chamber is free to evaluate all evidence before it on the basis of its relevance and probative value. The absence of forensic or real evidence shall in no way diminish the probative value of the evidence which is provided to the Chamber; in particular, the absence of forensic evidence corroborating eyewitness testimonies shall in no way affect the assessment of those testimonies, the relevance, reliability and probative value of which shall be assessed as discussed above. Similarly, the failure of one Party to present evidence to the Chamber shall not in any way affect the Chamber’s assessment of the probative value of such evidence if it is presented by the other Party.”

<sup>30</sup> Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment pursuant to article 74 of the Statute” (“*Bemba Trial Judgment*”), 21 March 2016, ICC-01/05-01/08-3343, para. 270; “Public Redacted Version of Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute” of 6 September 2012”, 8 October 2012, ICC-01/05-01/08-2299-Red, paras. 35 and 36. See also *Chambre Africaine Extraordinaire d’Assises, Ministère Public c. Hissein Habré*, “*Jugement*”, 30 May 2016 (“*Habré Judgment*”), para. 261.

not serve as the sole source of evidence to prove any allegations related to the acts and conduct of the accused or other matters material to the charges.

32. During the course of the proceedings and in its no case to answer submissions, the Defence challenged *viva voce* testimony given at trial, in particular its admissibility, insofar as the witnesses concerned provided hearsay evidence, indirect evidence and/or circumstantial evidence. In principle, witnesses are persons who refer to facts that come to their knowledge through their sensory perceptions (sight, sound, touch). Nonetheless, that does not deprive hearsay evidence of all probative value; it simply indicates that such evidence might be accorded lesser weight or probative value, depending “upon the infinitely variable circumstances which surround hearsay evidence”.<sup>31</sup> Moreover, no provision of the statutory framework precludes a Chamber from relying on indirect or circumstantial evidence.<sup>32</sup> Accordingly, a judge may infer the existence of a fact at issue on the basis of other facts or circumstances.<sup>33</sup> Where, in the light of the evidence, there is only one reasonable finding to be made from particular facts, the Chamber may conclude that they are proved beyond reasonable doubt.<sup>34</sup>
33. The Defence has likewise argued that, in general, the Prosecution witnesses were biased as they belonged to Mr Ouattara’s political party. As discussed in Sections 3 and 4 below, the real or perceived political affiliation of victims was one of the characteristics of the attack against the civilian population committed by the State apparatus in the context of the post-election violence and, accordingly, a relevant element enabling a reasonable Trial Chamber to conclude that there was persecution against Mr Ouattara’s real or perceived political supporters. Accordingly, the fact that victims and witnesses were ethnically or politically related to Mr Ouattara is not per se sufficient to raise doubts concerning their credibility. It would thus be unreasonable to exclude their testimony solely on that basis.

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<sup>31</sup> Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, “Judgment on the Prosecutor’s appeal against the decision of Trial Chamber II entitled ‘Judgment pursuant to article 74 of the Statute’” (“*Ngudjolo Appeals Judgment*”), ICC-01/04-02/12-271-Corr, 7 April 2015, para. 226.

<sup>32</sup> See MICT, Appeals Chamber, *Prosecutor v. Radovan Karadžić*, “Judgement” (“*Karadžić Appeals Judgment*”), 20 March 2019, MICT-13-55-A, para. 17.

<sup>33</sup> C. Tapper, *Cross & Tapper on Evidence* (2010), p. 30.

<sup>34</sup> *Katanga Trial Judgment*, ICC-01/04-01/07-3436-tENG, para. 109; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment pursuant to Article 74 of the Statute” (“*Lubanga Trial Judgment*”), 14 March 2012, ICC-01/04-01/06-2842, para. 111.

34. The Defence has also contended that the in-court testimony of 35 witnesses was different or contradictory to their prior statements given to investigators. In that regard, it must be noted that minor inconsistencies between prior statements and in-court testimony do not automatically render evidence unreliable. Witnesses cannot be expected to recall events in precise sequence or detail, and discrepancies between accounts given by different witnesses do not necessarily lead to a finding of a lack of reliability.<sup>35</sup> Specific circumstances, such as the lapse of time since the events, the prior testimony and the in-court testimony, interpretation issues, in addition to issues of post-traumatic stress disorder or other conditions affecting memory, must be taken into consideration when assessing witnesses' testimony. Accordingly, the main responsibility of the Trial Chamber is to look past such inconsistencies, while evaluating them "to consider whether the evidence taken as a whole is reliable and credible".<sup>36</sup>
35. The Defence has similarly argued that there are contradictions in the evidence provided by dual-status witnesses, in particular owing to inconsistencies between their testimony and their victim application forms. As noted above, inconsistencies between narratives do not render testimony inadmissible. In that regard, considering the applicable test at this stage of the proceedings, such inconsistencies or contradictions do not render the testimony of the dual-status witnesses concerned "incapable of belief on any reasonable view".<sup>37</sup> The essence of participation is to allow victims to be part of the proceedings by making their voices heard, including to and through their counsel.<sup>38</sup> Although some of these victims also testified as witnesses, their testimony and their application forms must be analysed bearing in mind the distinct nature, purpose and methodology of victims' participation.<sup>39</sup> Moreover, as shown in Sections 3 and 4 below, the testimony

<sup>35</sup> ICTY, *Prosecutor v. Nikolai Šainovi et al.*, "Trial Judgement" ("Šainovi Trial Judgment"), 26 February 2009, IT-05-87-T, para. 49.

<sup>36</sup> *Lubanga Appeals Judgment*, ICC-01/04-01/06-3121-Red, para. 23. The Appeals Chamber referred in this judgment to ICTY, Appeals Chamber, *Prosecutor v. Zoran Kupreški et al.*, "Appeal Judgement", IT-95-16-A, 23 October 2001, para. 31.

<sup>37</sup> See for example, ICTY, *Strugar Rule 98 bis Decision*, para. 43. The Chamber stated "[...] it is sufficient if there is some evidence capable of establishing the allegation that he was a civilian. The fact that there may be other evidence which tends to contradict that conclusion is a matter for consideration at the end of the trial."

<sup>38</sup> International Federation for Human Rights ("FIDH"), "Five Myths about victim participation in ICC proceedings", December 2014, p. 11. Available at: <https://www.fidh.org/IMG/pdf/cpi649a.pdf>.

<sup>39</sup> Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011", ICC-01/05-01/08-2012-Red, 9 February 2012, para. 100.

of these witnesses is consistent with the whole of the evidence analysed, in particular their testimony as regards the crimes committed, the patterns in the commission of the crimes and the identification of the direct perpetrators.

36. In this regard, the recent conclusion of Trial Chamber VI in the case of *The Prosecutor v. Ntaganda* is worth quoting as it relates to similar challenges against dual status witnesses. The judges in that case concluded as follows:

The Chamber further notes that the credibility of certain witnesses who are also participating victims (dual status) has been challenged on the basis of inconsistencies between their testimony and the information provided in their victim application forms. In this regard, the Chamber notes that, with the exception of two witnesses, the dual status witnesses in this case were, as most applicants, assisted by intermediaries in completing their application forms. While certain intermediaries have received general guidance and information by the VPRS prior to assisting applicants, stressing that statements should be read back to the applicants for their acknowledgement before signing, the VPRS also emphasised the limits of the training it provided, and was not in a position to indicate whether the intermediaries did in fact read back the statements to the relevant applicants. In this regard, the Chamber also notes that a number of dual status witnesses testified that the forms had not been read back to them, and/or that the intermediaries had inaccurately recorded aspects of their statements. As such, the conditions of production of victim applications differ from those of formal witness statements, which are taken by a party, assisted by staff qualified to do so, and recorded after having been read back to the witness. Accordingly, the Chamber has generally attributed less weight to inconsistencies between a witness's testimony and a victim application, than to inconsistencies with a formal witness statement. Major identified inconsistencies have been assessed on a case-by-case basis, considering, inter alia, the nature and scope of the inconsistencies, the explanations provided by the witness in this regard, and the conditions of production of the application, including, in particular, whether the form was completed with the assistance of an intermediary or individuals formally connected to the Court [footnotes omitted].<sup>40</sup>

37. The Defence has also challenged the use of intermediaries between the Prosecution witnesses and the Court. However, this practice in itself does not render a testimony unreliable, especially as intermediaries often interact with the Court in the conduct of its activities.<sup>41</sup> In the context of Court proceedings, it is logical that third parties cooperate with the Court in order to overcome social, cultural and linguistic barriers between international justice and the population in a given situation country. Third parties may also be useful and even necessary to ensure that interaction between the Court and vulnerable witnesses and victims is respectful of their needs in order to avoid

<sup>40</sup> Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment (“*Ntaganda Trial Judgment*”), 8 July 2019, ICC-01/04-02/06-2359, para. 85.

<sup>41</sup> See Code of Conduct for Intermediaries (March 2014). Available at: <https://www.icc-cpi.int/iccdocs/lt/CCI-Eng.pdf>.

retraumatisation or revictimisation.<sup>42</sup> Accordingly, the fact that intermediaries were used is insufficient to render the testimony inadmissible.

38. The Defence has also argued that forensic evidence submitted by the Prosecution is unreliable.<sup>43</sup> As with all the evidence submitted at trial, the Chamber must take account of the circumstances in which the alleged crimes were committed and the particularities of the case at bar. In the light of the widespread nature of crimes against humanity, forensic authorities (such as P-0564) may have been unable to take all the steps that would be considered appropriate in normal times. Despite potential shortcomings owing to the circumstances of a particular case, forensic evidence may still be useful to provide further information as to the cause of death of an alleged victim or group of victims.<sup>44</sup> As to the medical evidence (or lack thereof) contested by the Defence, it is important to note that expert medical evidence is not required to corroborate a witness's testimony in relation to the crimes of rape, ill treatment or attempted murder. Although the Prosecution did provide such medical evidence, only under rare circumstances would that type of evidence actually be required in the context of crimes against humanity.<sup>45</sup>
39. In the light of the serious allegations made by the Defence against P-0435, it is also appropriate to analyse whether his testimony is incapable of belief on any reasonable view for the purpose of these no case to answer proceedings. It must be noted that, although there are other insider witnesses (e.g. P-0009, Philippe Mangou) whose testimony contained even more significant contradictions compared to their previous statements, those witnesses were not challenged by the Defence as being "incapable of belief". Moreover, allegations that a witness may be a delinquent or may have ulterior motives for implicating the accused do not bar a Chamber from relying on that

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<sup>42</sup> See rule 86 of the Rules.

<sup>43</sup> See for example, Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Anx3-Corr, paras. 655-657.

<sup>44</sup> ICTY, *Tadić* Trial Judgment, para. 240. The Chamber determined: "The Trial Chamber is cognisant of the fact that during the conflict there were widespread beatings and killings [...]. [...] Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death. However, there must be evidence to link injuries received to a resulting death. [...] When there is more than one conclusion reasonably open on the evidence, it is not for this Trial Chamber to draw the conclusion least favourable to the accused, which is what the Trial Chamber would be required to do in finding that any of the four prisoners died as a result of their injuries or, indeed, that they are in fact dead."

<sup>45</sup> ICTY, Trial Chamber, *Prosecutor v. Dragoljub Kunarac et al.*, "Order on Defence Experts", 29 March 2000, IT-96-23, para. 5; Appeals Chamber, *Prosecutor v. Zlatko Aleksovski*, "Judgement", 24 March 2000, IT-95-14/1-A, para. 64.

witness's evidence. Such allegations constitute but one circumstance that the Chamber must take into consideration when weighing the probative value of the testimony in relation to the entire set of circumstances in which it was given.<sup>46</sup> [REDACTED] are not sufficiently persuasive in the context of the instant case as a whole to disqualify the witness.

40. To be "incapable of belief", the evidence must be obviously incredible or unreliable; the Chamber should not be undertaking fine assessments of credibility or reliability. However, a finding that the evidence is not obviously incredible does not foreclose the Chamber, at the end of the trial, from finding that the evidence is, in fact, neither credible nor reliable.<sup>47</sup>
41. In the *Ruto and Sang* case, the only previous ruling of this Court that dealt with the same issue, the majority of the Chamber (from which I dissented) made the following determinations which, in their view, rendered the testimony of the witness who was under oath "incapable of belief": (i) he had initially misled the Court and rectified his testimony only during cross-examination; (ii) he had admitted to his involvement in witness interference; (iii) he had admitted to having signed a pre-written affidavit recanting his earlier statement, despite knowing most of the content of that affidavit to be untrue; and (iv) he had demonstrated a willingness to lie in return for personal gain and induce others to lie, apparently without concern for the significant implications of such dishonesty. Ultimately, the majority of the Chamber in the *Ruto and Sang* case concluded that there was nothing to suggest that the witness had acted under duress or out of fear of retribution.<sup>48</sup>
42. In my view, none of the aforesaid actions tainted the testimony of P-0435. There is nothing in the record to suggest that P-0435 was interfered with or that he told untruths to the Court. P-0435's testimony was internally consistent. Moreover, there were no material or evident contradictions between his previous statement and his testimony in

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<sup>46</sup> ICTY, Trial Chamber, *Prosecutor v. Radovan Karadžić*, "Judgement" ("*Karadžić* Trial Judgment"), 24 March 2016, IT-95-5/18-T, para. 16.

<sup>47</sup> SCSL, Trial Chamber, *Prosecutor v. Alex Tamba Brima et al.*, "Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98", 31 March 2006, SCSL-04-16-T, para. 11.

<sup>48</sup> Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, "Decision on Defence Applications for Judgments of Acquittal", Reasons of Judge Fremr, ICC-01/09-01/11-2027-Red-Corr, paras. 42-43.

court that rendered it “incapable of belief”. Contrary to what the Defence asserts, the testimony of P-0435 is not the foundation of the case against Mr Blé Goudé. In exercising my authority to assess the evidence freely, and independently of the Prosecution’s reliance on P-0435, none of the conclusions I have reached and which I expound upon in the sections below are based solely on this witness’s testimony. In fact, most of the instances in which I refer to P-0435 (especially in Section 3 of this opinion) relate to elements of his testimony that are corroborated by other evidence in the record.

43. The Defence has also challenged the admissibility of statements submitted under rule 68(2) and (3) of the Rules. In that regard, I have considered those statements admissible insofar as the Chamber has already performed the required assessment pursuant to the aforesaid provisions.<sup>49</sup> Principally, as regards statements submitted under rule 68(2) of the Rules, the Chamber has already determined that they bear sufficient indicia of reliability and that they do not relate to the acts and conduct of the accused or to issues at the core of the case.<sup>50</sup> In relation to rule 68(3) statements, I have also considered them admissible for the purpose of these no case to answer proceedings since they meet the aforesaid conditions. Additionally, the Defence had the unlimited right to cross-examine those witnesses in court.<sup>51</sup>

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<sup>49</sup> I must recall that these statements were submitted by the majority, as Judge Henderson had dissented in this regard.

<sup>50</sup> See, *Ntaganda* Trial Judgment, ICC-01/04-02/06-2359, para. 58. The Chamber decided: “A first specific category of non viva voce evidence includes prior recorded testimony admitted pursuant to Rule 68. If a witness’s prior recorded testimony was introduced under Rule 68(3) of the Rules, the Chamber assessed that prior recorded testimony together with and in light of the testimony given during the present proceedings. Concerning prior recorded testimony introduced under Rule 68(2)(b) in relation to a person that is not present before the Chamber, the Chamber recalls that it had satisfied itself, in addition to the formal requirements, and bearing in mind, inter alia, the factors listed in Rule 68(2)(b)(i), that the testimony goes to proof of ‘a matter other than the acts and conduct of the accused’, and is not prejudicial to or inconsistent with the rights of the accused [footnotes omitted]”. See also, for example, ICTY, *Karadžić* Trial Judgment, para. 24. The Tribunal stated: “The evidence submitted pursuant to rule 68 could be used for corroboration because one could not base a conviction on the uncorroborated evidence of a witness whose evidence was submitted pursuant to this rule.”

<sup>51</sup> See Supreme Court of the United States, *Crawford v. Washington*, 541 U.S. 36 (8 March 2004). In relation to determining whether an out-of-court statement should be considered admissible, the Court noted that the Sixth Amendment’s Confrontation Clause provides that, “[i]n all criminal prosecutions, the accused shall enjoy the right [...] to be confronted with the witnesses against him”. The Court held that there were exceptions to the general rule of exclusion, and that testimonial statements might be admissible when (a) the witness appeared at trial and was available for cross-examination about prior statements or (b) the witness was unavailable but the defendant had had a prior opportunity for cross-examination; the Court also suggested that (c) dying declarations might be admissible because they were clearly an exception accepted by the framers of the United States Constitution. The Court held that, at minimum, “testimonial” out-of-court statements would include prior

44. The Appeals Chamber affirmed that the evidence submitted and discussed at trial “constitutes the evidentiary basis for the final decision on the guilt or innocence of the accused”. It also stated 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”.<sup>52</sup>
45. During the Prosecution’s presentation of evidence, thousands of items of non-testimonial evidence were submitted. Numerous objections were raised by the Defence to most of this evidence which included, *inter alia*, documents, videos, audio recordings, photographs and physical exhibits. In the light of the objections raised by the Defence, the Chamber had the duty to consider the “relevance, probative value and potential prejudice to the accused of each item of evidence *at some point in the proceedings*”.<sup>53</sup>
46. Earlier in the proceedings the Chamber determined that this analysis would be deferred until the end of the trial.<sup>54</sup> The Chamber further explained that this approach would “prevent multiple determinations on one and the same item of evidence [from being] made at different stages of the trial”.<sup>55</sup> It must be noted that neither the Gbagbo Defence nor the Blé Goudé Defence put forth any arguments in their respective no case to answer submissions on the need to determine the admissibility of evidence at this stage. The Defence was already informed of the relevance and probative value of this evidence vis-à-vis the charges: first, by the Confirmation Decisions and subsequently in the many submissions made by the Prosecution in the case at bar (i.e. Pre-Trial Brief, Mid-Trial Brief and the Prosecution’s response to the no case to answer submissions, in addition to the Prosecution’s requests for the submission of documents which give details in that regard).

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testimony at a preliminary hearing, prior testimony before a grand jury or at a former trial, and statements made during police interrogations.

<sup>52</sup> Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, “Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled ‘Judgment pursuant to Article 74 of the Statute’”, 8 March 2018, ICC-01/05-01/13-2275-Red, para. 607.

<sup>53</sup> “Decision on the submission and admission of evidence” (“Submission Decision”), 29 January 2016, ICC-02/11-01/15-405, para. 10, emphasis added.

<sup>54</sup> Submission Decision, ICC-02/11-01/15-405, para. 12. I again note here that this decision was taken by the majority, as Judge Henderson had dissented.

<sup>55</sup> Submission Decision, ICC-02/11-01/15-405, para. 14.

47. Bearing in mind that the majority of the Chamber has decided to terminate these proceedings, I refer to the admissibility of some items or categories of evidence challenged by the Defence. However, I must clarify that this concise assessment does not relieve me of my obligation as a judge to assess the admissibility of each item of evidence at the end of the trial. As already stated in my Dissenting Opinion of 15 January 2019, I am of the view that these proceedings should have continued. Accordingly, I would have carried out this individual evaluation before making a determination under articles 66(3) and 74 of the Statute.
48. Although I do not address in this opinion all the arguments raised by the parties,<sup>56</sup> or discuss every item of evidence relevant to a particular finding of fact, I clearly set out the basis for my determination,<sup>57</sup> namely that there is sufficient evidence upon which a reasonable Trial Chamber could convict Mr Gbagbo and Mr Blé Goudé of the crimes with which they are charged in the instant case.<sup>58</sup> Additionally, I refer to pieces of material evidence to prove a factual allegation submitted into the record, even if the parties did not refer explicitly to them in the context of the present no case to answer proceedings.<sup>59</sup> The Confirmation Decisions define the scope of the charges,<sup>60</sup> but the Chamber has the authority to assess freely all the evidence in the record. Accordingly, judges are not obliged to discuss every allegation made by the Defence, nor is it necessary to follow the structure or the arguments raised by the parties.<sup>61</sup> I have evaluated the evidence submitted on that basis.<sup>62</sup>

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<sup>56</sup> *Karadžić* Appeals Judgment, para. 20. “[...] Chamber has inherent discretion in selecting which submissions merit a detailed reasoned opinion in writing, and it will dismiss arguments which are evidently unfounded without providing detailed reasoning.”

<sup>57</sup> Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘Judgment pursuant to Article 74 of the Statute’” (“*Bemba* Appeals Judgment”), ICC-01/05-01/08-3636-Red, 8 June 2018, para. 53.

<sup>58</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 226; *Katanga* Trial Judgment, ICC-01/04-01/07-3436-ENG, para. 81.

<sup>59</sup> Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, “Judgment pursuant to Article 74 of the Statute”, ICC-01/05-01-13-1989-Red, 19 October 2016, para. 200.

<sup>60</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 32; *Lubanga* Trial Judgment, ICC-01/04-01/06-2842, para. 8.

<sup>61</sup> Rule 63(2) of the Rules.

<sup>62</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 22. See also *Ngudjolo* Appeals Judgment, “Joint Dissenting Opinion of Judge Ekaterina Trendafilova and Judge Cuno Tarfusser”, ICC-01/04-02/12-271-AnxA, para. 31.

49. The analysis contained in this opinion is limited to the evidence submitted and discussed at trial.<sup>63</sup> An evaluation of the probative value of the evidence must be based on human experience as well as logic, and will depend upon the particular circumstances of the case and the nature of the evidence.<sup>64</sup> Where the Defence proposes an alternative conclusion without further substantiation of its argument or does not establish any basis for this conclusion in the trial record, such submissions must be disregarded.<sup>65</sup> In their no case to answer submissions, the Defence referred to items of evidence that are not in the record of the case.<sup>66</sup> These are items that were disclosed by the Prosecution pursuant to article 67(2) of the Statute or rule 77 of the Rules or items of evidence that the Defence itself might have intended to submit in the presentation of its case. Accordingly, these items cannot be taken into consideration for the purpose of the no case to answer determination.
50. Most of the documentary evidence submitted into the record is in French. Likewise, most of the video footage, including relevant speeches and communiqués made by Mr Gbagbo and Mr Blé Goudé or other significant persons involved in the post-election violence, is in French. All witness statements submitted under rule 68 of the Rules are also in French. Most of the witnesses, including the top FDS insiders, testified in French. Many crime-base witnesses testified in Dioula, which was first interpreted into French and subsequently into English.
51. Although simultaneous interpretation was available throughout the trial, along with French and English transcripts that were produced in real time and edited and corrected by the Registry thereafter, this opinion is based on the actual words and voices heard at trial. Although this opinion is drafted in English, the evidence is quoted, where possible, in its original language. The only exception is the evidence of witnesses who testified in Dioula, which has been analysed and is referred to in this opinion in French, as this is the first language into which their evidence was translated. Although the translation and interpretation services of the Court have been of essence in this multilingual trial, the Defence has raised objections to the consistency of translations on

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<sup>63</sup> Article 74(2) of the Statute. See also *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 78.

<sup>64</sup> ICTY, Trial Chamber, *Prosecutor v. Delalic et al.* (“*Celebici* case”), “Decision on the Motion of the Prosecutor for the admissibility of evidence”, 19 January 1998, IT-96-21, para. 17.

<sup>65</sup> *Karadžić* Appeals Judgment, para. 572.

<sup>66</sup> For example, the Defence for Gbagbo refers to potential witness D29 in its submissions and refers to withdrawn Prosecution witness P-0234.

several occasions throughout the trial. Thus, reliance on the original language of the evidence avoids dependence on translations which, although helpful and often necessary for judges who do not understand one or more of the languages used in trial, may still distance judges from the original meaning of a word or message.<sup>67</sup> In the instant case in particular, in which nuances in language are of great significance, the original language of evidence has been left intact in order to avoid any misunderstandings arising from translation.

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<sup>67</sup> P. Wald, “Dealing with Witnesses in War Crime Trials: Lessons from the Yugoslav Tribunal” in *Yale Human Rights and Development Journal*, Volume 5, Issue 1, Article 6 (2002). The late Judge Wald stated: “Although simulcast translations by earphone are available, along with a written transcript on the TV screen, it is still very different from hearing the actual words and voice of a witness. Sometimes when a counsel speaks both Bosnian/Croatian/Serbian and English, he will jump up and object to a ‘wrong’ translation (sometimes he is right). But otherwise a judge is almost completely dependent on the translation for the content as well as the inflections of voice in which the witness’s testimony is given.”

### Section 3: Contextual elements of crimes against humanity

52. The Pre-Trial Chamber confirmed the charges against Mr Gbagbo<sup>68</sup> and Mr Blé Goudé<sup>69</sup> of crimes against humanity of murder, rape, persecution and other inhumane acts or attempted murder under article 7 of the Statute, committed as part of a widespread or systematic attack directed against a civilian population.

#### I. Applicable law

53. Pursuant to article 7 of the Statute, crimes against humanity have two main contextual elements. First, the conduct must be part of a widespread or systematic attack directed against any civilian population. Article 7(2)(a) of the Statute further provides that the aforesaid attack means “a course of conduct involving the multiple commission of acts” against any civilian population “pursuant to or in furtherance of a State or organizational policy to commit such attack”. Second, crimes against humanity require a mental element, namely that the perpetrator “knew that the conduct was part of or intended the conduct to be part of”<sup>70</sup> the aforesaid attack, in addition to the general *mens rea* requirement under article 30 of the Statute.<sup>71</sup>
54. The Elements of Crimes give further guidance as to the application and interpretation of article 7 of the Statute, which “must be strictly construed”. However, pursuant to articles 9 and 21 of the Statute, the Elements of Crimes are to be applied and interpreted in a manner that is consistent with the Statute and internationally recognised human rights. Thus, the contextual elements of crimes against humanity must be strictly construed, but not to the point of running contrary to the object and purpose of the Statute or to internationally recognised human rights. Likewise, the Elements of Crimes are not to be read as creating additional requirements (or adding two legal elements to the crimes), but solely as relevant and useful factors that may be considered in determining whether the contextual elements are proved.<sup>72</sup>

<sup>68</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf.

<sup>69</sup> *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186.

<sup>70</sup> Elements of Crimes, Article 7, *passim*.

<sup>71</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 37.

<sup>72</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 38.

55. The definition of crimes against humanity has to be understood in the context of each particular case. It must be borne in mind that the classical relationship between a State and its citizens may not be readily discernible and that non-state actors may play a significant role. Accordingly, the focal point of the concept of crimes against humanity should be not the state or organisation behind the crimes, but the impact the attack had on the affected civilian population's fundamental rights, and in particular the question whether the civilian population was targeted. The emphasis is thus placed on the distinctive perversion of politics underlying the category of crimes against humanity, so that violations of the most fundamental human rights are criminalised regardless of whether there is a specific government or organisation behind them.<sup>73</sup>

#### **A. Existence of an attack directed against the civilian population**

##### *1. Course of conduct involving the multiple commission of acts referred to in article 7(1) of the Statute*

56. The expression “course of conduct” refers to a “campaign or operation carried out against the civilian population”,<sup>74</sup> that is to say against any group distinguishable by nationality, ethnicity or other features,<sup>75</sup> including perceived political affiliation.<sup>76</sup> The expression was not designed to include isolated acts; rather it “describes a series or overall flow of events as opposed to a mere aggregate of random acts”.<sup>77</sup> The existence of an attack is demonstrated by the multiple commission of human rights violations pursuant to or in furtherance of the policy of a State or organisation.<sup>78</sup> There is no general minimum threshold defining the number of acts required, since this number may differ depending on the case and its circumstances, including the size of the organisation, the duration of the attack, the geographical area involved and the size of

<sup>73</sup> *Ruto and Sang Dissenting Opinion*, ICC-01/09-01/11-2027-AnXI, para. 44.

<sup>74</sup> *Bemba Trial Judgment*, ICC-01/05-01/08-3343, para. 149; *Katanga Trial Judgment*, ICC-01/04-01/07-3436-ENG, para. 1101; *Gbagbo Confirmation Decision*, ICC-02/11-01/11-656-Conf, para. 209.

<sup>75</sup> *Gbagbo Confirmation Decision*, ICC-02/11-01/11-656-Conf, para. 209.

<sup>76</sup> *Gbagbo Confirmation Decision*, ICC-02/11-01/11-656-Conf, para. 209. See also Pre-Trial Chamber II, *The Prosecutor v. Uhuru Muigai Kenyatta et al.*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, ICC-01/09-02/11-382-Red, para. 110.

<sup>77</sup> *Gbagbo Confirmation Decision*, ICC-02/11-01/11-656-Conf, para. 209; *Bemba Trial Judgment*, ICC-01/05-01/08-3343, para. 149.

<sup>78</sup> V. Valencia Villa, “Los crímenes de lesa humanidad: Su calificación en América Latina y algunos comentarios en el caso Colombiano”, in H. Olásolo Alonso and S. Cuenca Curbelo, *Perspectiva Iberoamericana sobre la Justicia Penal Internacional* (2011), p. 119, at p. 120.

the civilian population.<sup>79</sup> The minimum threshold in the case must not, however, be that required for a “widespread attack”. Otherwise the disjunctive requirement of a “widespread or systematic” attack under article 7(1) of the Statute would become inoperable.

57. For example, in the *Šešelj* case, the Appeals Chamber of the Mechanism for International Criminal Tribunals (“MICT”) considered that there were a number of factors and circumstances relevant to determining the existence of an attack against the civilian population, such as the existence of an armed conflict or clashes (including street-to-street fighting), the commission of violations of the laws and customs of war against civilians (e.g. murder, torture, cruel treatment and pillage),<sup>80</sup> and evidence of a “deteriorating political climate in the period leading up to the commission of the crimes”.<sup>81</sup>

## 2. *Directed against the civilian population*

58. The use of the term “population” in this element imports the collective nature of the crimes, thereby excluding isolated acts of violence.<sup>82</sup> In relation to the term “civilian population”, it should be understood as referring to a number of persons not necessarily encompassing the entire civilian population of a given location, or an identifiable group of people (for example, on the basis of racial, religious or other characteristics). The term “civilian population” is therefore to be understood as denoting the collective and plural nature of the attack.<sup>83</sup> The term “must be interpreted broadly and refers to a population that is predominantly civilian in nature”.<sup>84</sup> Most importantly, the presence of

<sup>79</sup> *Bemba* Appeals Judgment, separate opinion of Judge Van den Wyngaert and Judge Morrison, ICC-01/05-01/08-3636-Anx2, para. 59.

<sup>80</sup> MICT, Appeals Chamber, *Prosecutor v. Vojislav Šešelj*, Judgement (“*Šešelj* Appeals Judgment”), 11 April 2018, MICT-16-99-A, paras. 66 and 67.

<sup>81</sup> MICT, *Šešelj* Appeals Judgment, para. 67.

<sup>82</sup> This was the idea recognized by the Nuremberg Charter: “[...] the use of the word *population* appears to indicate that a larger body of victims is visualised, and that single or isolated acts against individuals may be considered to fall outside the scope of the concept”. United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (1948), p. 193.

<sup>83</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 42.

<sup>84</sup> ICTY, Trial Chamber II, *Prosecutor v. Fatmir Limaj et al.*, “Judgement” (“*Limaj* Trial Judgment”), 30 November 2005, IT-03-66-T, para. 186; ICTY, Trial Chamber, *Prosecutor v. Dario Kordi and Mario erkez*, “Judgement” (“*Kordi and erkez* Trial Judgment”), 26 February 2001, IT-95-14/2-T, para. 180.

armed persons within a population does not, of itself, alter the civilian nature of that population.<sup>85</sup>

59. The *Šešelj* Appeals Judgment confirmed that the term “civilian population” refers to a population which is predominantly civilian and that the presence within it of individuals who do not come within the definition of civilians, or the fact that civilians are present in clashes or “street fighting”, does not necessarily deprive a population of its civilian character.<sup>86</sup> In addition, “an attack against the civilian population is not limited to the use of armed force, but encompasses any mistreatment of the civilian population”.<sup>87</sup> The MICT Appeals Chamber in *Šešelj* held that the following criteria were among those relevant to assessing whether an attack was directed against a civilian population: (a) the means and methods used in the course of the attack; (b) the status and number of victims; (c) the discriminatory nature of the attack; (d) the nature of the crimes committed; (e) the resistance to the assailants at the time; and (f) the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>88</sup>

#### **B. State or organisational policy to commit such attack**

60. An organisation for the purposes of article 7 of the Statute must be understood as a group of persons or an organised body of people with a particular purpose and “sufficient resources, means and capacity”<sup>89</sup> to bring about the commission of the crimes. However, this does not mean that each individual’s exact level of seniority or command position within the organisation need be established. Organisations can be fluid and adaptable to the policy to commit the attack. Their structure need not be strictly defined or formalised. The concept of the organisation should therefore turn on

<sup>85</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1105. See also ICTY: *Tadić* Trial Judgment, paras. 638-643; Appeals Chamber, *Prosecutor v. Tihomir Blaškić*, “Judgement” (“*Blaškić* Appeals Judgment”), 29 July 2004, IT-95-14-A, paras. 113 and 114; *Limaj* Trial Judgment, para. 186; and ICTR: Trial Chamber II, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, “Judgement” (“*Kayishema and Ruzindana* Trial Judgment”), 21 May 1999, ICTR-95-1-T, para. 128; Trial Chamber, *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, “Judgement and Sentence” (“*Rutaganda* Trial Judgment”), 6 December 1999, ICTR-96-3-T, para. 72; *Musema* Trial Judgment, para. 207.

<sup>86</sup> MICT, *Šešelj* Appeals Judgment, paras. 60 and 69.

<sup>87</sup> MICT, *Šešelj* Appeals Judgment, para. 69.

<sup>88</sup> MICT, *Šešelj* Appeals Judgment, para. 69.

<sup>89</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1119.

the question “whether a group has the capability to perform acts which infringe on basic human values”<sup>90</sup> and not on the organisation’s form or degree of structure.

61. Factors that have been considered in assessing a group’s capability include, *inter alia*: (i) whether the group is under responsible command or has a hierarchy; (ii) whether the group in fact possesses the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population; and (vi) whether the group is part of a larger group which fulfils some or all of the above-mentioned criteria.<sup>91</sup>
62. As regards the “policy” element, it is generally accepted that crimes against humanity are not isolated, randomly occurring (i.e. spontaneous) events but rather the result of a deliberate attempt to target a civilian population, either by taking action against civilians or by deliberately abstaining from action against such an attack.<sup>92</sup> Moreover, the policy need not be defined or formalised, and its existence can be determined by analysing the circumstances in which the crimes were committed, for example by the identification of patterns, trends or similarities that could only derive from the coordination of previously agreed platforms or structures.<sup>93</sup> A finding as to the existence of a policy may in fact take into account “broader considerations, including

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<sup>90</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 43. See also *The Prosecutor v. William Samoei Ruto, Henry Kiprongo Kosgey and Joshua Arap Sang*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, ICC-01/09-01/11-373, pp. 184-185; *Situation in the Republic of Kenya*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (“Kenya Situation Authorization”), 31 March 2010, ICC-01/09-19-Corr.

<sup>91</sup> Kenya Situation Authorization, 31 March 2010, ICC-01/09-19-Corr, para. 93.

<sup>92</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 45. See also Supreme Court of Peru, *Casos Barrios Altos, La Cantuta y Sótanos del SIE (Alberto Fujimori Fujimori)*, Judgment of 7 April 2009, A.V. 19-2001, paras. 715-717. The Supreme Court of Peru determined that the murders and grievous bodily harm committed in the Barrios Altos and La Cantuta incidents were also fundamentally crimes against humanity because they were committed within the framework of a State policy of selective but systematic elimination of alleged members of subversive groups. This policy was designed, planned and controlled at the highest levels of State power, and carried out by State agents – members of military intelligence – using the military apparatus; moreover, in accordance with their objectives, it affected a significant number of defenceless members of the civilian population.

<sup>93</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 46.

factors that are not criminal acts at all, for example, the organisational context in which the crimes occurred”.<sup>94</sup>

63. The criteria developed by the International Criminal Tribunal for the former Yugoslavia (ICTY) remain relevant in the interpretation of the Statute. The following passage from the *Jelisi* trial judgment is of particular significance as regards the factors which may demonstrate the policy to commit a widespread or systematic attack:

The existence of an acknowledged policy targeting a particular community, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of an attack.<sup>95</sup>

64. As noted by Pre-Trial Chamber I in the confirmation of the charges against Mr Gbagbo, there is no requirement that the policy be formally adopted.<sup>96</sup> The policy may be implicit and need not be formalised. It is also possible to deduce that a policy existed from the way in which the acts occurred.<sup>97</sup> A State or organisational policy may be part of an ongoing process whose every aspect is not always predetermined before the operation or course of conduct pursued against the targeted civilian population has commenced or even once it has started.<sup>98</sup> The policy requirement simply excludes a mere conjunction or convergence of random or fortuitous acts unconnected by a plan or other common nexus. In other words, the policy element may reasonably be inferred from other factors, including events on the ground.<sup>99</sup> Factors that may be considered in

<sup>94</sup> *Bemba* Appeals Judgment, “Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofma ski” (“Dissenting Opinion of Judges Monageng and Hofma ski”), ICC-01/05-01/08-3636-Anx1-Red, para. 532.

<sup>95</sup> ICTY, Trial Chamber, *Prosecutor v. Goran Jelisi*, “Judgement” (“*Jelisi* Trial Judgment”), IT-95-10-T, 14 December 1999, para. 53.

<sup>96</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 215.

<sup>97</sup> ICTY, Trial Chamber, *Prosecutor v. Zoran Kupreški et al.*, “Judgement” (“*Kupreški* Trial Judgment”), IT-95-16-T, 14 January 2000, para. 551. The Trial Chamber stated: “In any case, it appears that such a policy need not be explicitly formulated, nor need it be the policy of a State”. See also ICTY, *Tadi* Trial Judgment, para. 653; ICTR, Chamber I, *The Prosecutor v. Jean-Paul Akayesu*, “Judgement” (“*Akayesu* Trial Judgment”), 2 September 1998, ICTR-96-4-T, para. 580; *Rutaganda* Trial Judgment, para. 69; *Musema* Trial Judgment, para. 204.

<sup>98</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1110.

<sup>99</sup> MICT, *Šešelj* Appeals Judgment, para. 86. See also J. R. de Prada Solaesa, “*Crímenes de Derecho Internacional. Crímenes contra la Humanidad*”, in H. Olásolo Alonso and S. Cuenca Curbelo, *Perspectiva Iberoamericana sobre la Justicia Penal Internacional* (2011), p. 89, at p. 103. The author states that the interpretation must focus on the existence of a policy, which need not be formally defined or adopted. Its existence excludes any random acts without further planning or a common link to a policy. In conclusion, the author proposes that this requirement is of “low profile” or “limited intensity” from an evidentiary point of view, as it can be inferred from other evidence. The Spanish original text states the following: “[L]a interpretación que se debe dar a la existencia de ‘una política’, es que esta no tiene por qué ser detallada ni

deciding whether to infer the policy element include, *inter alia*: the context and background of the crimes; the political and military structures and operation of authority in a given territory, including the mobilisation of armed forces; military offensives; political programmes appearing in writings and speeches; media propaganda; links between the military hierarchy and a political structure or programme; discriminatory measures; and the scale of the acts of violence.<sup>100</sup> Moreover, exceptionally, a policy may “be implemented by a deliberate failure to take action, which is consciously aimed at encouraging [the] attack”.<sup>101</sup>

### C. Widespread or systematic character of the attack

65. While the term “widespread” requires a minimum scale of crimes, the term “systematic” refers to the method and policy behind the crimes. Thus, “systematic” attacks require a clearer or more complex plan or policy than “widespread” attacks. By the same logic, the bar for satisfying the general “policy” requirement applicable to both widespread and systematic attacks should not be set so high as to obliterate the distinction between the two types of attack. Whether the attack is alleged to be widespread or systematic, or both, single isolated acts or a mere aggregate of random acts should be excluded. A minimum quantitative and qualitative threshold must be crossed.<sup>102</sup>
66. The “widespread” component refers to the scope of the attack, on the basis of the number of civilians targeted or the geographical area involved. However, a widespread

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*definida ni adoptada formalmente, y que su existencia únicamente excluye que se trate de una mera conjunción o confluencia de actos aleatorios o casuales sin la existencia de una planificación o nexo común a modo de ‘política’. En definitiva, según esta interpretación que propugnamos, se trataría de un requerimiento de bajo perfil, es decir de intensidad limitada, que, desde el punto de vista probatorio, sería razonablemente inferible de otros elementos”.*

<sup>100</sup> MICT, *Šešelj Appeals Judgment*, paras. 109-114; ICTY, Trial Chamber, *The Prosecutor v. Tihomir Blaškić*, “Judgement” (“*Blaškić Trial Judgment*”), 3 March 2000, IT-95-14-T, para. 204. See also Court of Bosnia and Herzegovina, *Prosecutor’s Office of Bosnia and Herzegovina v. Mitar Rašević and Savo Todović*, X-KR/06/275, “Verdict of 28 February 2008”, p. 40. The Court of Bosnia and Herzegovina, when interpreting the “policy” element under Article 172 of the Criminal Code of Bosnia and Herzegovina – which is identical to article 7 of the Rome Statute – recognized that the policy element “largely involves factual considerations on a case-by-case basis and with regard to the totality of the circumstances”. The court held that the following factors were relevant to a determination whether to infer the existence of a policy: concerted action by members of an organization or State; distinct but similar acts by members of an organization or State; preparatory acts prior to the commencement of the attack; prepared acts or steps undertaken during or at the conclusion of the attack; the existence of political, economic or other strategic objectives of a State or organization furthered by the attack; and, in the case of omissions, knowledge of an attack or attacks and wilful failure to act.

<sup>101</sup> Elements of Crimes, footnote 6.

<sup>102</sup> *Ruto and Sang Dissenting Opinion*, ICC-01/09-01/11-2027-AnxI, para. 39.

attack may be made out by a series of inhumane acts having cumulative effect or by the singular effect of one inhumane act of extraordinary magnitude.<sup>103</sup> In the case at bar, the Pre-Trial Chamber considered the following factors relevant in determining the widespread nature of the attack: (i) that the attack involved a large number of acts; (ii) that the attack targeted and victimised a significant number of individuals; (iii) that the attack extended over a period of more than four months; and (iv) that the attack affected the entire city of Abidjan, home to more than three million people.<sup>104</sup>

67. The “systematic” requirement, on the other hand, refers to the organised character of the attack: for example, its patterns, and its non-accidental and non-isolated nature. What makes an attack systematic will depend on the particulars of each case, for instance whether there was some kind of pre-formulated guidance to the direct perpetrators to carry out the attack against the civilian population.<sup>105</sup>
68. As noted above, the ICTY identified the following relevant factors in deciding whether an attack was systematic: (a) the existence of a policy; (b) the establishment of “parallel” institutions meant to implement the policy; (c) the involvement of high-level political or military authorities; (d) the use of considerable financial, military or other resources; and (e) the scale or nature of the violence against the civilian population.<sup>106</sup> Conversely, an attack is not systematic when it amounts to “latent harassment, targeted and limited” and “spontaneous incidents”.<sup>107</sup>
69. In cases where the crimes are committed in furtherance of a State policy and State agents thus violate their duty of protection owed to civilians and instead attack them, the State itself, with its legal framework and power structure, provides the “systematic” element of crimes against humanity.<sup>108</sup> The State can thus take a leading role in the commission of the crimes, but it can also actively sponsor, promote or merely tolerate

<sup>103</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 40.

<sup>104</sup> *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, para. 131.

<sup>105</sup> *Ruto and Sang* Dissenting Opinion, ICC-01/09-01/11-2027-AnxI, para. 41.

<sup>106</sup> ICTY, *Jelisić* Trial Judgment, para. 53. See also ICTY, Appeals Chamber, *Prosecutor v. Dragoljub Kunarac et al.*, “Judgement”, 12 June 2002, IT-96-23 & IT-96-23/1-A, para. 95; ICTY, *Limaj* Trial Judgment, para. 183; ICTY, Trial Chamber II, *Prosecutor v. Blagoje Simi et al.*, “Judgement”, 17 October 2003, IT-95-9-T, para. 4; ICTY, Trial Chamber I, Section A, *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, “Judgement”, 17 January 2005, IT-02-60-T, para. 546.

<sup>107</sup> MICT, *Šešelj* Appeals Judgment, para. 58.

<sup>108</sup> See D. Robinson, “Essence of Crimes against Humanity Raised by Challenges at ICC”, *EJIL: Talk!* (Blog of the *European Journal of International Law*, 27 September 2011), at <http://www.ejiltalk.org/essence-of-crimes-against-humanity-raised-by-challenges-at-icc/>

them. Because the State has a duty to protect the civilian population, its tolerance of an attack is sufficient insofar as the failure to intervene is purposeful and constitutes a refusal to take measures to protect the population attacked.<sup>109</sup> Tolerance of such crimes demonstrates a failure to take adequate steps to ensure the protection of the civilian population.<sup>110</sup>

#### **D. Nexus and knowledge of the attack**

70. Article 30 of the Statute provides that persons shall be criminally responsible “only if the material elements are committed with intent and knowledge”.
71. In cases of crimes against humanity, article 7(1) of the Statute provides that the perpetrator must act with knowledge of the attack. The perpetrator must thus be aware that there is a widespread or systematic attack directed against a civilian population and that his or her act is part of that attack.<sup>111</sup> However, the Elements of Crimes make clear that it is not necessary that the perpetrator be aware of the details of the plan or policy of the State or organisation.<sup>112</sup>
72. Furthermore, while the element of discriminatory intent is not required in general for crimes against humanity,<sup>113</sup> it is required for the crime of persecution.<sup>114</sup> These mental elements of knowledge of the attack and discriminatory intent are required in addition to the general *mens rea* requirement under article 30 of the Statute.

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<sup>109</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), pp. 345-346. See ICTY, *Kupreški* Trial Judgment, para. 552. The Trial Chamber stated: “The need for crimes against humanity to have been at least tolerated by a State, Government or entity is also stressed in national and international case-law. The crimes at issue may also be State-sponsored or at any rate may be part of a governmental policy or of an entity holding *de facto* authority over a territory.”

<sup>110</sup> *Karadžić* Trial Judgment, para. 3501.

<sup>111</sup> C. K. Hall and K. Ambos, “Article 7: Crimes against humanity”, in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (C.H. Beck – Hart – Nomos, 2016), p. 144, at p. 175; W. A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press, 2010), p. 156; G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 347; ICTY, *Karadžić* Trial Judgment, para. 479.

<sup>112</sup> Elements of Crimes, Article 7, Introduction, para. 2: “[...] the last element 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 organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack”. See *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1125.

<sup>113</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. II (Oxford University Press, 2014), p. 78.

<sup>114</sup> R. Cryer et al., *An introduction to International Criminal Law and Procedure* (Cambridge University Press, 2<sup>nd</sup> ed., 2010), p. 235.

73. In cases where article 28 is applicable, it is not necessary to show that the accused fulfilled the remaining *mens rea* requirements in relation to the material elements of crimes against humanity:

[I]n cases where it is alleged that the accused should have known of or consciously disregarded information about the commission of crimes, it would be incongruous with the form of responsibility alleged to require an examination of whether the accused actually knew that the conduct was part of an attack against the civilian population.<sup>115</sup>

## II. Findings of fact and conclusions of law available to a reasonable Trial Chamber

### A. Existence of an attack directed against the civilian population

#### 1. *Course of conduct involving the multiple commission of acts referred to in article 7(1) of the Statute*

74. At the outset, it is important to note the circumstances of the instant case to understand why the evidence supports the allegation that the incidents discussed below were not accidental or spontaneous but in fact were in accordance with a policy implemented by a State apparatus. Specifically, the context was one of a contested election characterised by political polarisation.<sup>116</sup> Mr Gbagbo had been in power as President of Côte d'Ivoire for a decade, and thus enjoyed an advantageous position in the legal, institutional, political and social spheres. This structure of authority headed by Mr Gbagbo also logically placed members of his government and the FDS commanders he had appointed or promoted in a privileged position of power. Mr Gbagbo's standing as President and Supreme Commander was in diametrical opposition to the civilian status of the victims, as analysed below, who had either a political or an ethnic affiliation (real

<sup>115</sup> *Bemba Appeals Judgment*, Dissenting Opinion of Judges Monageng and Hofma ski, ICC-01/05-01/08-3636-Anx1-Red, para. 494.

<sup>116</sup> Video evidence shows the sequence of events. On 2 December 2010, the *Commission Électorale Indépendante* (CEI) announced from the Golf Hotel that Alassane Ouattara had won the election; the Constitutional Council stated, however, that it was the only institution that could announce the final election results. In the afternoon of 3 December 2010, the Constitutional Council proclaimed Mr Gbagbo to be the elected President of Côte d'Ivoire. See video CIV-OTP-0074-0049 at 00:03:33-00:08:51 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0102-2092 at p. 2094, line 49); video, CIV-OTP-0075-0058 at 00:05:36-00:11:21 (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript CIV-OTP-0087-0143 at p. 0144, lines 25-35); RTI report on how the French press reported on the election results; video CIV-OTP-0074-0049 at 00:22:05-00:23:13 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0087-0353 at p. 0354) shows the communiqué of the National Communication Council, ordering the suspension of all international television channel broadcasts; video CIV-OTP-0074-0050 at 00:32:00-00:33:13 (excerpt from RTI broadcast of 3 December 2010 at 20.00; no transcript) shows the Ivorian Ambassador to the United Nations stating that Mr Choi should not get involved in the election. The broadcast ends with the confirmation that Mr Gbagbo has been proclaimed President, according to the Constitutional Council.

or perceived) to Alassane Ouattara, Mr Gbagbo's leading political adversary in the election.

75. With that in mind, the evidence analysed below is sufficient to support the allegations that acts of murder, attempted murder, rape and serious injury were committed against civilians during the post-election violence, not only in the context of the five main incidents but also in the context of other incidents which, considered together, demonstrate the course of conduct described in article 7(1) of the Statute. On the basis of the evidence, a reasonable Trial Chamber could conclude that the incidents analysed below were not random but were part of a systematic attack against civilians, committed by: (a) the FDS;<sup>117</sup> (b) non-State actors, acting jointly with the FDS;<sup>118</sup> or (c) non-State actors who were encouraged or sponsored to commit such crimes by the State apparatus, or at least were not prevented from doing so.<sup>119</sup> Thus, a reasonable Trial Chamber could conclude that the State apparatus participated in, or at least tacitly condoned, the commission of the crimes.
76. The evidence also supports the allegation that Mr Gbagbo and the State apparatus he led could have prevented armed confrontations and the resulting human casualties – suffered by both the FDS and, to a much greater extent, the civilian population – by simply stepping down and negotiating a peaceful process.<sup>120</sup> The evidence moreover

<sup>117</sup> Incidents of 30 November 2010, 1-2 December 2010, 4 December 2010, 6 December 2010, 26 February 2011, 3 March 2011, 17 March 2011 and 22 March 2011.

<sup>118</sup> Incidents of 16 December 2010, 25 December 2010, 15 March 2011 and 19 March 2011.

<sup>119</sup> Incidents of 24 February 2011, 25-28 February 2011, 3-4 March 2011, 4-8 March 2011, 11 March 2011 and 12 April 2011.

<sup>120</sup> There is evidence that in March 2011 several FDS commanders, including Philippe Mangou, urged Mr Gbagbo to resign and find a peaceful solution to the crisis. See P-0010, T-139-FRA-CONF, pp. 102-103: “*Nous savions que le Président avait déjà, depuis le début, proposé des solutions politiques, mais nous avons quand même demandé au chef... au chef d'état-major s'il pouvait encore se faire notre interprète auprès du chef de l'État. [...] Et rapidement, avant que nous ne passions à un autre sujet, savez-vous si le CEMA a transmis ces préoccupations qui avaient été évoquées par vous à l'état-major ? Est-ce que cela a été communiqué à M. Gbagbo ?*” R. [16:51:32] *C'est le CEMA qui allait là-bas. Moi, je n'étais pas avec lui. Mais le CEMA nous a dit : 'Oui, j'ai transmis vos préoccupations au chef de l'État. En temps utile, il nous donnera sa réponse.' ”* P-0011, T-134-CONF-FRA, pp. 84-86 : “*Q. [16:07:06] Monsieur le témoin, nous sommes... Alors, là, c'est le 14 mars. Durant cette période, est-ce que des généraux, des grands commandants des Forces de défense et de sécurité ont demandé au Président, alors Laurent Gbagbo, de remettre le pouvoir à Alassane Ouattara et de démissionner ?*” R. [16:07:25] *Monsieur le Procureur, j'ai entendu cela. Mais nous avons tenu une réunion à l'état-major des armées pour apprécier la situation d'ensemble. Et nous avons demandé au chef d'état-major, le général Philippe Mangou, d'aller rencontrer M. le Président de la République pour lui demander quelle est sa lecture de la situation actuelle. Le général Mangou s'est rendu, donc, à cette rencontre-là. Et quand il est revenu il nous a dit exactement, à peu de mots près : 'Je me suis entretenu avec le Président. Ce qu'il m'a dit, je vais pas vous le dire, mais il m'a dit qu'il vous recevrait tous pour vous donner sa décision.' Cela ne m'a pas plu. Je suis sorti, je suis allé à Agban. Lui, on l'avait (phon.) envoyé en mission, il fallait qu'il nous rapporte ce*

substantiates allegations that, on the contrary, Mr Gbagbo and his most loyal cohorts were unwilling to negotiate peace,<sup>121</sup> instead deepening the rift among the people. Mr Gbagbo, for example, declared that the international community (which did not accept him as the elected president) was at war with Côte d'Ivoire.<sup>122</sup>

77. There is sufficient evidence upon which a reasonable trier of fact could be satisfied that civilians were targeted during the five main incidents in question in the case at bar but also in general during the post-election violence. These incidents are analysed below.

*i. March on RTI (16-18 December 2010)*

78. Evidence shows that, on 16 December 2010, a peaceful demonstration organised by the *Rassemblement des houphouëtistes pour la démocratie et la paix* ("RHDP") was held upon a call made by Guillaume Soro some days earlier to have a new general director put in place at RTI.<sup>123</sup>

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*qu'il a dit. Q. [16:08:51] Est-ce que vous avez appris durant cette période quelle a été la position de M. Laurent Gbagbo ? R. [16:09:03] La seule que je sais avec certitude, parce qu'il l'a dit devant moi, il voulait un recomptage des voix. Q. [16:09:22] Cette réunion que nous avons vue à l'écran, cette visite à la résidence présidentielle, quelles décisions ont été prises à ce moment-là ? R. [16:09:33] Vous allez encore être surpris. C'est toujours la même chose : garantir la sécurité des personnes et des biens dans cette période de difficultés."*

<sup>121</sup> Evidence shows that Mr Gbagbo ordered the departure of UNOCI and the French *Force Licorne* on 19 December 2010, thus acting contrary to what was agreed in the peace accords. See video CIV-OTP-0074-0057 at 00:04:51-00:13:46 (excerpt from RTI broadcast of 18 December 2010 at 20.00; transcript, CIV-OTP-0087-0421 at pp. 0422-0423). Report on Declaration of Education Minister in relation to UNOCI, stating that the peacekeeping mission was already no longer impartial as of 29 November 2010, after the second round of the election. He condemns Mr Choi's unwillingness to recognise the election results declaring Mr Gbagbo president. He also states that UNOCI radio has become a means of communication for the RHDP, that it instigates hate and civilian disobedience and that UNOCI soldiers have attacked the FDS, supporting *Forces Nouvelles* attacks. He likewise asserts that the President, Mr Gbagbo, requests the immediate departure of UNOCI from Côte d'Ivoire. Another example is video CIV-OTP-0064-0106 at 00:03:01-00:10:52 (excerpt from RTI broadcast of 5 January 2011 at 20.00; transcript, CIV-OTP-0104-0102 at pp. 0103-0105, lines 1-110). Excerpt shows Mr Alcide Ilahiri Djédjé announcing that it was agreed that a peaceful solution was to be found, while at the same time stating that the blockade of the Golf Hotel would be lifted only if the *Forces Nouvelles* left Abidjan and UNOCI left Côte d'Ivoire. On 7 January 2011, it was reported in a public communiqué that Mr Gbagbo had rejected the African Union-ECOWAS peace proposal. See video CIV-OTP-0075-0066 at 00:00:00-00:06:30 (excerpt from RTI broadcast of 7 January 2011 at 20.00; transcript, CIV-OTP-0087-0203 at pp. 0204-0205, lines 1-59). Excerpt shows Ahoua Don Mello reading a communiqué.

<sup>122</sup> On 21 December 2010, Mr Gbagbo addressed the country on RTI. Although he asserted that he did not want war, he also claimed that the international community had declared war against Côte d'Ivoire when it accepted Mr Ouattara's victory. See video CIV-OTP-0026-0016, time stamp 00:10:02-00:23:25.

<sup>123</sup> Witness P-0547 stated: "*Un jour, nous écoutions les émissions de la radio Onuci et j'ai entendu [...] Guillaume, Soro Guillaume, l'ancien Premier ministre de Gbagbo, et il nous disait que toute personne qui a voté pour \* le RHDP, il les a invités à se rendre à la RTI. Et, arrivés là-bas, les instructions étaient de lever les mains vides et montrer à Laurent Gbagbo les mains nues et que nous, en tant qu'Ivoiriens, nous... nous... nous voulons qu'ils reconnaissent qu'Allassane Ouattara a été choisi comme Président. Et ainsi, la paix reviendrait au... dans le pays, car les populations étaient très fatiguées.*" (T-13-CONF-FRA, p. 18). [REDACTED].

79. Contrary to the submissions of the Defence, there is ample evidence that the FDS hierarchy and Mr Gbagbo were aware that the march was going to take place and that meetings had been held to organise the repression of the march, which was to be prohibited upon Mr Gbagbo's order.<sup>124</sup> Evidence also supports the allegation that Mr Blé Goudé summoned youth leaders in preparation for the March on RTI.<sup>125</sup>
80. Video evidence of the days preceding the March on RTI is telling. In a televised address to police prefects on 12 December 2011, Emile Guiriéoulou, Minister of the Interior, instructs the police to act as if they were on a war footing and that special measures had to be taken. He stated:
- 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.*<sup>126</sup>
81. The above statement is indicative that, as early as 12 December 2011, the State apparatus was anticipating the use of excessive force.
82. There is sufficient testimonial evidence to support the allegation that unarmed civilians were detained, beaten and murdered on 16 December 2010. Witnesses P-0547, P-0555, P-0106, P-0230 and P-0107 testified about their experiences as direct victims who were

<sup>124</sup> Fax from the *Préfet de Police Abidjan*, 12 December 2010, CIV-OTP-0045-0748, which Bredou M'bia recognised in Court (P-0046, T-125-CONF-FRA and T-127-CONF-FRA), containing information about the march. Philippe Mangou testified in court that he was informed of the march and that the Minister of the Interior had ordered that it be prohibited (P-0009, T-196-CONF-FRA). Philippe Mangou also acknowledged in court that Mr Gbagbo had given instructions to prohibit the march: "*Q. Monsieur le témoin, est-ce que vous êtes au courant d'une réunion au cours de laquelle la marche a fait l'objet d'une discussion, et qui aurait eu lieu le 14 décembre? R. [10:04:27] Oui, Monsieur le Président. Q. [10:04:29] Est-ce que vous pouvez nous parler de cette réunion? De quoi s'agissait-il? R. [10:04:35] 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*" (T-196-CONF-FRA, p.13). Georges Guiai Bi Poin confirmed this in court (P-0010, T-139-CONF-FRA, pp. 10-12), as did Edouard Kassaraté, who also referred to the instructions given before the march (P-0011, T-134-CONF-FRA, pp. 19-20). See also RTI video showing FDS communiqué on the eve of the march. Video CIV-OTP-0064-0089 at 00:03:02-00:06:28 and 00:30:27-00:33:41 (excerpts from RTI broadcast of 15 December 2010 at 13.00).

<sup>125</sup> P-0625, T-27-FRA, pp. 25-26. The witness referred to the meeting called by Mr Blé Goudé on 14 December 2010 to mobilise people to protect RTI. This was also confirmed by P-0435, who testified that such a meeting had indeed taken place (T-89-CONF-FRA, pp.64-67).

<sup>126</sup> Video CIV-OTP-0074-0063 at 00:16:10-00:17:56 (excerpt from RTI broadcast of 12 January 2011 at 20.00; transcript, CIV-OTP-0087-0491 at p.0492, lines 22-27, emphasis added).

seriously injured while participating in what they all called a peaceful demonstration of unarmed civilians opposing Mr Gbagbo's decision to remain in power.<sup>127</sup>

83. Witness P-0107 described how he was injured on the day of the march:

*J'ai reçu la balle depuis le 16 décembre 2010, sur la marche de la RTI. Le Premier ministre Soro Guillaume avait lancé le mot d'ordre d'aller libérer la RTI. C'est sur l'événement que j'ai reçu la... la balle –genou gauche. Q. [15:22:09] Alors, en conséquence de cette blessure par balle, comment vous sentez-vous aujourd'hui ? Comment ça va ? R. [15:22:20] Bon, il y a du mieux, un peu. Il y a du mieux, un peu. Jusqu'à présent, la balle est toujours logée dans... dans le genou gauche. Q. [15:22:39] Dans votre déclaration, vous disiez que, avant cette marche, vous aviez un métier, [...] Est-ce que vous avez pu continuer à travailler après la marche ? R. [15:23:04] Non, non, jusqu'à présent, je travaille plus, d'abord.<sup>128</sup>*

84. Witnesses P-0230, P-0107, P-0588, P-0589 and P-0184 all witnessed the murders of civilians during the March on RTI.<sup>129</sup> Witness P-0547 also testified that bodies were being thrown into a cargo truck.<sup>130</sup>

<sup>127</sup> P-0547 testified that he was shot and beaten by the FDS during the March on RTI (T-13-CONF-FRA, pp.19-26. See also medical receipts CIV-OTP-0073-10591, CIV-OTP-0073-1054, CIV-OTP-0073-1053, CIV-OTP-0073-1057. P-0107 described how he intended to participate in the March on RTI but on his way there FDS officers told him and others to back off, as mercenaries ahead would kill them. He described how, when the crowd resisted, the FDS threw grenades and later started shooting and spraying tear gas. P-0107 said he saw many dead bodies (approximately 20, including two boys). He also heard rocket launchers. P-0107 was shot while trying to run away towards Cocody University. P-0107 was detained with others and later taken to the hospital, where doctors did not want to treat him (Rule 68(3) Statement CIV-OTP-0020-0064 and related annexes, including medical documents and photographs). P-0555 stated that he saw many FDS officers in Cocody on the day of the march. He also saw militias acting together with the FDS. He was forced to undress and was beaten. He was then detained with other persons (more than 20 people in a cell). He also saw a man who had been burned and later died as a result (Rule 68(3) Statement CIV-OTP-0077-0128 and annexes). P-0106 stated that he saw young FESCI members beating and attacking unarmed demonstrators, and that he was also severely beaten. He also saw foreign mercenaries in an FDS vehicle that was supporting FESCI. He was injured and saw demonstrators injured by bullets. P-0106 almost lost his arm because of his injury. He was told not to remain at the Yopougon university hospital centre (CHU), as Gbagbo forces would look for the injured and kill them (Rule 68(3) Statement CIV-OTP-0019-0211 and annexes and medical report written by P-0410, CIV-OTP-0059-0367 [REDACTED]. P-0230 described how marchers were running in all directions and shots were coming from all directions. He was shot and injured (Rule 68(3) Statement CIV-OTP-0044-2628 and medical report written by P-0410, CIV-OTP-0059-0243[REDACTED]).

<sup>128</sup> T-107-CONF-FRA, p. 100. See also medical report prepared by P-0410 (CIV-OTP-0059-0310), [REDACTED].

<sup>129</sup> P-0230 stated that people were killed during the March on RTI, in particular his brother (CIV-OTP-0044-2657, CIV-OTP-0044-2658, CIV-OTP-0044-2659, CIV-OTP-0044-2661 and Rule 68(3) Statement CIV-OTP-0044-26283). P-0107 described that he saw some 20 dead bodies on that day (Rule 68(3) Statement CIV-OTP-0020-0064). P-0588 described how his brother was killed and that he saw four other people being killed (Rule 68(3) Statement CIV-OTP-0084-00791). P-0589 described how his brother was killed; he also saw other unidentified dead bodies at Macaci (Rule 68(3) Statement CIV-OTP-0084-01051 and annexes, including death certificate). P-0184 saw the body of a civilian killed around Samanké (T-215-CONF-FRA, pp.15-16, 18; video, Annex 4 to P-0184, CIV-OTP-0032-0039 and corresponding transcript CIV-OTP-0037-0105). P-0184 confirmed that she filmed that video with her phone. She identified the body she saw on 16 December 2010 on her way home.

<sup>130</sup> "Celui qui était près du conducteur, du chauffeur, il est descendu, il avait une radio en main, mais la tenue qu'il avait, c'était la tenue de la Garde républicaine. Et il a donné des ordres aux autres. Il a dit tous ceux qui

85. Witness P-0589 testified as follows about his brother's death and the impact it had on their families:

*La mort de mon frère a été un gros impact sur nous, surtout sur moi-même, parce que... parce qu'au moment il est décédé, on est restés trois garçons. Et c'est lui qui me suivait, en fait, c'est lui qui m'épaulait, en fait, de dépenses (phon.), la famille, donc sa mort, vraiment, m'a beaucoup touché. Voilà pourquoi j'ai décidé de témoigner, même pour ça.*<sup>131</sup>

86. The testimony of the aforesaid witnesses is further corroborated by P-0435, [REDACTED].<sup>132</sup> That evidence is also supported by the testimony of P-0414, who explained that the UNOCI Medical Centre was compelled to treat the many injured people on the day of the March on RTI, as they were not being treated at hospitals in Abidjan.<sup>133</sup> Witness P-0625 also confirmed in court that there were many marchers who were intercepted and killed during the march.<sup>134</sup>
87. The evidence moreover supports the allegations that the FDS were involved in the commission of the crimes. Apart from the testimony above, evidence submitted shows that police, army, and gendarmerie and specialised units such as the Security Operations Command Centre ("CECOS") and the Law Enforcement Brigade ("BMO") were on duty at the time of the incident.<sup>135</sup> According to Philippe Mangou, who was the

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*étaient couchés, il fallait qu'ils les prennent et qu'ils les jettent, qu'ils les mettent dans le camion cargo. Ils les ont ramassés, ils les ont jetés dans le camion cargo.*" (T-13-CONF-FRA, p. 25).

<sup>131</sup> T-114-CONF-FRA, p. 66.

<sup>132</sup> On the evidence of witness P-0435, the *Groupe des Patriotes pour la Paix* ("GPP") was ready to assist the FDS and was instructed to intercept people coming back from Cocody and hand them over to the authorities. [REDACTED] (T-89-CONF-FRA, pp. 67, 71-78). See also evidence as to the peaceful nature of the march: P-0107, Rule 68(3) Statement, CIV-OTP-0020-00644 at pp. 0072-0073, 0075, paras. 54-59, 76; P-0106, Rule 68(3) Statement, CIV-OTP-0019-02114 at pp. 0216-0217, paras. 27-30; P-0172, Rule 68(3) Statement, CIV-OTP-0028-05504 at p. 0556, paras. 40-42; P-0184, T-215-CONF-FRA, p. 16; P-0578, CIV-OTP-0084-01421 at p. 0151, para. 45.

<sup>133</sup> Witness P-0414 stated that the UNOCI Medical Centre received injured people on 16 December 2010. She stated that UNOCI doctors refused to transfer the injured people to other hospitals because there were allegations that people were disappearing from hospitals and that doctors were not treating certain types of wounds or people because of their political affiliation or ethnic group. She explained that the UNOCI Medical Centre is usually for staff, but that during that period, doctors said they could not leave people untreated. She said the chief of the Medical Centre was informed about this (CIV-OTP-0054-0582 at p. 0623, paras. 280-282).

<sup>134</sup> T-27-FRA, p. 20. P-0625 stated: "*C'est des barrages qu'ils ont faits pour empêcher les manifestants à arriver. Et vous savez que les barrages comme ça, ou des barrages civils, dès que les jeunes, les manifestants qui sont en train de venir, c'est des civils, vous savez que c'est un affrontement. C'est un affrontement qui est né, qui est créé. Et il y a eu des affrontements, il y a eu des morts, ce jour. Il y a eu des morts. Je connais pas combien et je sais pas qui a tiré, mais il y a eu des morts. Et je crois que vous avez le rapport, ou bien vous avez les preuves. Je vous ai dit, ici, je suis pas venu pour cacher quelque chose. Il y a eu des morts. Mais qui a tiré, ou qui est mort, je sais pas. Mais il y a eu des morts. Il y a eu des morts parmi les manifestants.*"

<sup>135</sup> [REDACTED]. P-0109, T-154-CONF-FRA, p. 30 (identified gendarmerie); P-0106, Rule 68(3) Statement CIV-OTP-0019-02114 at pp. 0216-0217, paras. 28-30, p. 0218, para. 33, p. 0219, paras. 38-40 (identified BMO)

chief of staff at that time, the army and CECOS were positioned in Abidjan on the day of the March on RTI.<sup>136</sup> Bredou M'bia, the chief of police, denied that the police had played any role during the March on RTI. He said the police had not heard about the march until that day and had not taken any measures in advance.<sup>137</sup> However, documentary evidence recognised by this same witness in court proves the contrary.<sup>138</sup> Furthermore, Philippe Mangou's testimony contradicted Bredou M'Bia's denial of any involvement whatsoever on his part as chief of police (and therefore, of the police) in the March on RTI. Philippe Mangou asserted that, on the day of the march, in addition to the army post there was also a police post reporting directly to the Ministry of the Interior. Georges Guiai Bi Poin substantiated that statement and testified that Mangou had called him on 16 December 2010 instructing him to deploy CECOS units to block off demonstrators who had breached the area controlled by the police forces. He confirmed that the FDS had used lethal weapons, including grenades, to push back the demonstrators.<sup>139</sup> Documentary evidence in the record further supports allegations of FDS involvement in the incident and of reports of crimes being provided to the hierarchy,<sup>140</sup> which included General Édouard Kassaraté who was the *Commandant Supérieur de la Gendarmerie Nationale*<sup>141</sup> and Bredou M'bia who, at that time, was reporting directly to the Minister of the Interior.<sup>142</sup>

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together with FESCI); P-0172, Rule 68(3) Statement CIV-OTP-0028-05504 at p. 0556, paras. 41 and 44 (identified "*corps habillés*").

<sup>136</sup> P-0009, T-196-CONF-FRA, p. 18.

<sup>137</sup> P-0046, T-125-CONF-FRA, pp. 29-30.

<sup>138</sup> Daily Information Report (*Bulletin Quotidien d'Information* ("BQI")), CIV-OTP-0045-0748, dated 12 December 2010, which P-0046 acknowledged that he had seen and marked as "*vu*". The document states that the police will have an observation post during the planned march.

<sup>139</sup> P-0010, T-139-CONF-FRA, p. 18, lines 2-18 and p. 21, lines 2-13.

<sup>140</sup> P-0009, T-196-CONF-FRA, pp. 14-19. See also Ministry of the Interior, Command Post ("PC") Operations document of 17 December, CIV-OTP-0045-0742. Calendar/Diary, *État Major Première Légion Gendarmerie Départementale*, 16 December 2010, CIV-OTP-0043-0336; *Directeur Général/Direction Générale de la Police Nationale* ("DGPN") Correspondence, 26 January 2011, CIV-OTP-0045-0994 (refers to allegations against BMO); BQI, 17 December 2010, CIV-OTP-0045-0735 at p. 0736 (recognised by P-0560, a police commissioner).

<sup>141</sup> Calendar/Diary, *Etat-Major Première Légion Gendarmerie Départementale*, 16 December 2010, CIV-OTP-0043-0332. Document was recognised by P-0011 in court (T-134-CONF-FRA).

<sup>142</sup> Report from DGPN to the Minister of the Interior, 27 January 2011, CIV-OTP-0010-0028, at pp. 0029, 0031 and 0032, recognised by P-0046 in court (T-124-CONF-FRA and T-125-CONF-FRA); correspondence: note to the Minister of the Interior, 23 February 2011, CIV-OTP-0047-0485 at 0485-0487, 0489-0490, reporting to the Minister of the Interior about the incident of 16 December 2010 (March on RTI). This document states that 7 people were killed, 13 injured and 7 detained. P-0046 (T-124-CONF-FRA) recognised his signature. See also DGPN Report, 16 December 2010, CIV-OTP-0045-0973 at pp. 0973-0974.

88. The evidence also supports allegations that militia (namely the *Groupement des Patriotes pour la Paix* (“GPP”)),<sup>143</sup> mercenaries<sup>144</sup> and pro-Gbagbo youth (identified by witnesses and documentary evidence as “Blé Goudé groups”, *Jeunes Patriotes* or members of the Federation of Students and School Pupils of Côte d’Ivoire (“FESCI”)), were among the direct perpetrators of the aforesaid crimes.<sup>145</sup> For the purpose of this analysis these youth groups will be referred to collectively as *Jeunes Patriotes*.
89. The Defence submits that the protestors were armed rebels. In response, the Prosecution has acknowledged that there were FDS casualties between 16 and 18 December 2010, but that they were unrelated to the March on RTI.<sup>146</sup> In its submission, the Defence relies mainly on a video that it asserts shows two unidentified armed men.<sup>147</sup> However, the same video shows many more visibly unarmed individuals walking towards the march. This video also includes footage of a loud explosion and subsequently of unarmed individuals wounded and killed by what sounds like heavy weaponry. Some of the other evidence referred to by the Defence has either not been submitted into the record of the case<sup>148</sup> or refers to other areas of Abidjan or other dates.<sup>149</sup>
90. Although some evidence indicates that there were FDS casualties around the Cocody area, that same evidence also confirms that civilians supporting or perceived to be

<sup>143</sup> P-0435, T-89-CONF-FRA, pp. 64-67. P-0435 testified that FESCI members trained by the GPP were placed on alert in preparation for the March on RTI and were ordered to support the FDS.

<sup>144</sup> P-0106 identified foreign mercenaries in a BMO truck that were supporting the FESCI (Rule 68(3) Statement, CIV-OTP-0019-0211 at paras. 27-30). P-0578 also testified about militiamen and mercenaries present during the March on RTI (Rule 68(3) Statement CIV-OTP-0084-0142 and annexes). P-0555 also saw the FDS accompanied by militias. He said the militias had masks and civilian clothing, while some of the FDS also had masks but were wearing uniforms (Rule 68(3) Statement, CIV-OTP-0077-01282 at p. 0135, paras. 30-35). P-0107 also identified among the direct perpetrators armed men who spoke English (Rule 68(3) Statement CIV-OTP-0020-00644 at pp. 0076-0078, paras. 89-99). [REDACTED].

<sup>145</sup> P-0625, T-27-FRA, pp. 25-26. The witness referred to the meeting called by Mr Blé Goudé on 4 December 2010 to mobilise people to protect RTI. P-0106, Rule 68(3) Statement CIV-OTP-0019-02114 at 0216-0217, paras. 28-30, 0218, para. 33, p. 0219, paras. 38-40 (identified BMO together with FESCI). P-0363, Rule 68(3) Statement CIV-OTP-0046-02754 at pp. 0283-284 paras. 35, 39-42 (identified *Jeunes Patriotes*). BQI, 16 December 2010, CIV-OTP-0046-0027: police report to the Minister of the Interior referring to the arrest of individuals who were RHDP supporters and wearing amulets. It states that FESCI youth acting under the auspices of the police identified individuals.

<sup>146</sup> T-221-CONF-ENG, pp. 26-27. The Prosecution submits that the FDS casualties were in other areas of Abidjan (Carrefour Marie-Thérèse and Abobo near PK18 Carrefour).

<sup>147</sup> Video CIV-OTP-0083-1394.

<sup>148</sup> For example, document CIV-OTP-0071-0676 is not submitted.

<sup>149</sup> For example, document CIV-OTP-0045-0973 refers to police killed in Abobo.

supporting the RHDP were targeted during the incident.<sup>150</sup> For example, an FDS report listing victims of the March on RTI, which was recognised in court by Bredou M'bia, identifies FDS casualties but also civilian injuries and deaths.<sup>151</sup>

91. Moreover, even if there were evidence indicating the presence of armed men in Abidjan or even within the context of the March on RTI,<sup>152</sup> that fact does not disprove the civilian status of the aforesaid victims.<sup>153</sup> Evidence supports claims that all the victims and many of the eyewitnesses were unarmed and intended to participate in a peaceful march.<sup>154</sup> As will be further discussed in Section 4 below, evidence indicates that victims were injured or killed by perpetrators who were identified as pro-Gbagbo youth, militias, mercenaries and FDS, who had been ordered to repress the march. For example, P-0578 described the scene which he had personally witnessed. He testified that he had heard gunfire while young people from Williamsville were trying to cross the bridge towards the Habitat neighbourhood. He saw uniformed FDS (*“corps habillés”*) who arrived in white pick-up trucks and started shooting at the young people who were unarmed. On his evidence, nobody shot at the vehicles, which had weapons mounted in the back.<sup>155</sup>
92. Witnesses also testified that, on the day of the March on RTI and in the days that followed, many civilians had been detained because of their perceived or real support

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<sup>150</sup> Document CIV-OTP-0043-0334 refers to the FDS being attacked by unidentified individuals in Riviera 2, Cocody, close to the American Embassy on 16 December 2010. Document CIV-OTP-0045-0793 refers to armed men in Cocody at p. 0905. However, the same page reports that the RHDP were attacked when they were trying to “take bread to the rebels”. At page 0906, it refers to a UNOCI vehicle attacked by students in Cité Rouge, Cocody. See for example, document CIV-OTP-0045-0975, referred to by the Gbagbo Defence, which describes incidents occurring in other areas of Abidjan on the day of the March on RTI or to events on other unrelated dates before or after the March on RTI.

<sup>151</sup> CIV-OTP-0045-1157. See also P-0046, T-125, p. 64, lines 19-22; p. 65, lines 4-10.

<sup>152</sup> Defence refers in particular to the testimony of Philippe Mangou (P-0009).

<sup>153</sup> ICTY, Trial Chamber, *Prosecutor v. Pavle Strugar*, “Judgement” (*“Strugar Trial Judgment”*), 31 January 2005, IT-01-42-T, para. 284. See also *Prosecutor v. Mile Mrkšić et al.*, “Judgement”, 5 May 2009, IT-95-13/1-A, paras. 32-33. The Appeals Chamber held in that case that the Trial Chamber had erred in law in concluding that the victims of the underlying crimes must be civilians as it had consequently erroneously created an additional requirement for the chapeau requirements of “attack directed against a civilian population” of crimes against humanity.

<sup>154</sup> For example, P-0107 stated in court: “[16:08:29] *Non, non c’était pas la force parce que l’ancien Président n’était pas président; Puis à la RTI on ne fait que dire les mensonges, donc, \*ça énervant (phon.) tout le monde. Donc, c’est pourquoi il a demandé à leurs civils d’aller marcher pour la libération de la RTI ; une marche pacifique*” (T-107-CONF-FRA, p. 114). [REDACTED].

<sup>155</sup> T-84-CONF-FRA, pp. 13-20 and 30-31.

of Mr Ouattara.<sup>156</sup> For example, one of the police documents submitted as evidence refers to the profiling practices used by the FDS to detain people during the March on RTI. The report states:

*Le jeudi 16 décembre 2010 aux environs de 8h30 nous avons interpellé un jeune du nom d'ABE AKON FRANCIS. Après l'avoir palpé nous n'avons rien trouvé de suspect sur lui. Il ne procède aucune pièce d'identité. Selon lui, se rendait au Golf voir son ami. Comme il est habillé d'un tee-shirt "ADO", nous avons trouvé bon de le conduire au commissariat.*<sup>157</sup>

93. Evidence also supports the allegation that some female detainees were raped.<sup>158</sup>

[REDACTED]:

[REDACTED].<sup>159</sup>

94. The perpetrators who injured, murdered, detained and raped unarmed civilians were identified as FDS, working together with *Jeunes Patriotes*, the GPP and mercenaries, namely Liberian.<sup>160</sup>

<sup>156</sup> Police situation report, 22 December 2010, CIV-OTP-0045-0999 at p. 1002; Bredou M'bia (P-0046, T-125-CONF-FRA) recognised his signature. The document refers to journalists of France 24 who had allegedly been detained. BQI document "Interpellation de 10 individus", 16 December 2010, CIV-OTP-0046-0027: police report to the Minister of the Interior referring to the arrest of individuals who were RHDP supporters and wearing amulets. P-0435 testified that the GPP had detained people and handed them over to the FDS (T-89-CONF-FRA, p. 72). P-0010 also confirmed that CECOS had arrested people during the march (T-139-CONF-FRA, p. 48). See document concerning the situation of demonstrators held by the Abidjan police, 22 December 2010, CIV-OTP-0047-0535 at p. 0536, dated 24 December 2010 (although the written note says 24 February 2011). Bredou M'bia (P-0046, T-125-CONF-FRA, T-126-CONF-FRA) recognised this as a list sent to the Minister of the Interior. Bredou M'bia explained that women, men and children had been kept separate while in detention. List of people arrested, 16 December 2010, CIV-OTP-0045-1438 at pp. 1438-1440, dated 31 December 2010 (but the letter concerns the events of 16 December 2010 and the following days (persons arrested). Report from the DGPN to the Minister of the Interior, 22 December 2010, CIV-OTP-0047-0533: report about arrests of demonstrators. List of people arrested on 16 December 2010 and the following days, 24 December 2010, CIV-OTP-0045-0717. List of people arrested, 19 December 2010, including demonstrators held by the Abidjan Police, CIV-OTP-0045-0718 at 0718-0722: Bredou M'bia (P-0046, T-125-CONF-FRA) recognised this as a police document. He said that he had been informed that demonstrators had been brought before a court in Abidjan.

<sup>157</sup> CIV-OTP-0046-0080, emphasis added.

<sup>158</sup> [REDACTED].

<sup>159</sup> [REDACTED].

<sup>160</sup> As noted above, the witnesses identified the perpetrators as FDS, armed youth and mercenaries. P-0547 identified the perpetrators as Republican Security Company ("CRS"), Republican Guard ("GR") and "gendarmes commando" (T-13-CONF-FRA2, pp.19-26). [REDACTED] which he described was assisting the FDS during the march. He specifically mentioned that the CRS1, CECOS and the police (particularly the DGPN) were present during the March on RTI (T-89-CONF-FRA, pp. 27-35, 67, 71-78). P-0107 identified the perpetrators as FDS and *Jeunes Patriotes*, (Rule 68(3) Statement CIV-OTP-0020-00644). P-0555 identified the perpetrators as FDS accompanied by militias. He was detained by the police in a police station and then at the MACA (*Maison d'arrêt et de correction d'Abidjan*) (Rule 68(3) Statement CIV-OTP-0077-01282). P-0106 identified the perpetrators as youth (FESCI) acting together with CECOS/BMO and later supported by CRS and GR (See Rule 68(3) Statement CIV-OTP-0019-02114). [REDACTED]. There is also documentary evidence related to the FDS coordination in preparation for the March on RTI. See for example, CIV-OTP-0045-0748,

95. In the light of the above, and contrary to the Defence argument that the FDS were following their legal obligation of “*maintien de l’ordre*”, there is evidence to support the allegation that the FDS were ordered to prohibit the march and to repress the demonstrators.<sup>161</sup> There is also evidence that RTI was not attacked and that the march was to support the appointment of a new director.<sup>162</sup> Accordingly, a reasonable Trial Chamber could conclude that the FDS, acting together with other non-State agents, failed to perform its duty to protect civilians. Instead, the evidence submitted supports allegations that the State apparatus attacked unarmed civilians and refused to take measures to protect the people.<sup>163</sup> Use of lethal force and manifestly criminal acts such as rape against the civilian population, even if the protestors were taking part in an unauthorised march,<sup>164</sup> is unjustifiable and unnecessary.<sup>165</sup>
96. The Prosecutor submits that at least 24 unarmed civilians were killed, 52 unarmed civilians were injured and 11 unarmed women and girls were raped.<sup>166</sup> Although the number of identified victims will be analysed in Section 4 below under each count, it is unnecessary to focus on an exact number given the nature of the crimes at hand<sup>167</sup> and the test applied at this stage of the proceedings. In reality, the total number of victims could be higher, as the evidence above also refers to many unidentified victims who were detained, killed, injured and raped in the context of the March on RTI. In conclusion, there is sufficient evidence upon which a reasonable trier of fact could be

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Fax from the *Préfet de Police d’Abidjan*, 12 December 2010 (P-0046 referred to it in his testimony T-125 and T-127). Philippe Mangou also testified about the FDS’s preparation for the march (P-0009, T-196-CONF-FRA, p. 3).

<sup>161</sup> P-0046, T-125, p.79, lines 20-28. Bredou M’bia testified that the Minister of the Interior ordered the dispersal of the march.

<sup>162</sup> P-0010, T-140-CONF-FRA, p.70, lines 16-19. Georges Guiai Bi Poin stated: “R. [15:55:03] *Merci, Monsieur le Président. Les attaques de la RTI, quand ça s’est déroulé, j’étais plus là. Parce que jusqu’au 31 mars 2011, la RTI n’était pas attaquée, sauf pendant la marche du 16 décembre où il y a eu des vellétés de venir installer un nouveau directeur. Voilà.*”

<sup>163</sup> See ICTY, *Kupreški* Trial Judgment, para. 551.

<sup>164</sup> As noted above, Philippe Mangou, Georges Guiai Bi Poin and Edouard Kassaraté all confirmed that Mr Gbagbo and the Minister of the Interior ordered that the march be prohibited (P-0009, T-196-CONF-FRA, p. 13; P-0010, T-139-CONF-FRA, pp.19-14; P-0011, T-134-CONF-FRA, pp. 19-20).

<sup>165</sup> European Court of Human Rights (“ECtHR”), *Güleç v. Turkey*, “Judgment” (“*Güleç v. Turkey*”), 27 July 1998, paras. 71 and 73. The Court held that the use of very powerful weapons during an unauthorised demonstration was not absolutely necessary.

<sup>166</sup> T-221-CONF-ENG, p. 22. These are the latest numbers given by the Prosecution at the hearing of 1 October 2018.

<sup>167</sup> ICTR, *Kayishema and Ruzindana* Trial Judgment, para. 402: “The Trial Chamber has made a finding with regard to the number of the Tutsis present at the Church. Therefore, in light of the testimony that most of the persons assembled at the Church were slaughtered, the Trial Chamber deems it unnecessary to focus on exact numbers. Suffices to say we find that thousands of persons were massacred at this site and therefore the Prosecution has met its burden beyond a reasonable doubt with regard to this allegation.”

satisfied that civilians were killed, injured and raped in the context of the March on RTI, and that this incident was part of a widespread attack against a civilian population.

*ii. Women's March (3 March 2011)*

97. There is evidence in the record that another demonstration took place on 3 March 2011 in Abobo, in which unarmed women marched carrying branches and posters, and dancing and chanting.<sup>168</sup> According to the evidence submitted, the objective of the march was to pressure Mr Gbagbo into ceding power.<sup>169</sup> P-0184, one of the organisers of the Women's March, testified that no one participating in the march was armed.<sup>170</sup> This was confirmed by P-0114, who also stated that no one at the Women's March was armed.<sup>171</sup> P-0190, who also attended the march, described its peaceful nature and testified that unarmed women were killed during the demonstration.<sup>172</sup>
98. Video evidence submitted into the record shows images of the Women's March before, during and after the attack. The Defence challenged the authenticity of this video evidence and referred in its submissions to other videos that allegedly prove its theory that the incident is a fabrication. However, those other videos have not been submitted into the record and thus cannot be analysed by the Chamber. Had the Defence presented its case, it would have been in a position to submit further video evidence related to this incident. Accordingly, this analysis is limited to the video evidence submitted into the record.
99. P-0114, [REDACTED], commented on it in his court testimony.<sup>173</sup> The Prosecutor additionally submitted two expert reports (and subsequent expert testimony) to support the authenticity of the video footage (namely the fact that the images and sound were

<sup>168</sup> P-0580 attended the march and explained that she and her sister were holding a poster (T-186-CONF-FRA, pp. 84-86). P-0582 also participated in the march and testified about its pacific nature (T-187-CONF-FRA, pp. 64-67).

<sup>169</sup> P-0190 testified that the march had been organised to demand that Mr Gbagbo step down (T-21-CONF-FRA, pp. 60-63). P-0172 also confirmed that the march was organised to demand that Mr Gbagbo follow the Constitution and accept that Mr Ouattara had won (Rule 68(3) Statement CIV-OTP-0028-0550, para. 53).

<sup>170</sup> P-0184, T-215-CONF-FRA, pp. 27-28.

<sup>171</sup> Rule 68(3) Statement CIV-OTP-0076-09511, para. 26; T-161-CONF-FRA, p. 10.

<sup>172</sup> T-21-CONF-FRA, pp. 60-85.

<sup>173</sup> Video CIV-OTP-0077-0411 (enhanced version is CIV-OTP-0082-0357) shows the moment when the victims were shot during the march. [REDACTED]. (see Rule 68(3) Statement CIV-OTP-0003-0716 and T-161-CONF-FRA). At 00:04:30:00, P-0114 says that this woman's head was "gâtée". At 00:05:00:24, a woman is shown who, P-0114 explained, was struck by a bullet in her throat. At 00:05:08:14, another woman appears who, P-0114 stated, had her shoulder shattered. At 00:05:19:21, a woman appears to attempt to stand up but was unable to, according to P-0114. See also video CIV-OTP-0003-0716.

not edited).<sup>174</sup> This video was also commented upon by several witnesses, who recognised individuals participating in the march, including the alleged victims.<sup>175</sup> Other witnesses identified FDS vehicles and weapons.<sup>176</sup> Philippe Mangou testified that he had seen these same images on the evening of 3 March 2011 and was in shock when he saw the dead women. He added that, on that day, he had instructed General Détoh Létho to carry out an investigation. Détoh Létho then reported back that the FDS were not involved. Although he was unable to tell who the perpetrators were, Philippe Mangou acknowledged, when viewing the video in court, that he personally believed those women had been killed during the event. He also identified the FDS vehicles that were visible and recognised the sound of shots of guns and Kalashnikovs heard in the video.<sup>177</sup>

100. Other video footage has been submitted in relation to this incident. For example, in one video P-0172 recognised the push carts he used to transport injured people and dead bodies after the Women's March.<sup>178</sup> In another video showing images of the funeral of the victims, family members who testified in court (some of whom were present at the funeral) recognised the bodies of the victims.<sup>179</sup>
101. The aforesaid videos, together with other testimonial, documentary and forensic evidence, support allegations that seven women, all identified,<sup>180</sup> were killed and that others were injured during the Women's March on 3 March 2011.<sup>181</sup> For three of the

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<sup>174</sup> P-0606 (report CIV-OTP-0082-0341) and P-0583 (expert report CIV-OTP-0089-1030) gave their expert view on the authenticity of the video.

<sup>175</sup> [REDACTED].

<sup>176</sup> [REDACTED], recognised a BTR-80 with a 14.5 mm gun that could be removed. He also recognised a gendarmerie 4x4 cargo vehicle and an ambulance. He said it appeared to be a relay convoy. P-0330 (T-69-CONF-FRA, pp. 13-16), when shown screenshots of the video, recognised an armoured vehicle BTR-80 of the GR, a pick-up truck with a mounted weapon of the 1st BCP and an ambulance. He also recognised a cargo truck that could carry some 30 men, which was used by the police, CRS and Anti-Riot Brigade ("BAE"). He also recognised a South African vehicle RG12 which was used by the BAE and the GEB. P-0607 (T-170-CONF-FRA), at 03:10 to 04:45 and in screenshots, recognised the BTR-80, a pick-up truck with a 12.7 mm gun belonging to BASA, an ambulance, a gendarmerie transport vehicle and a RG12 of the police/BAE. He said that the first vehicle to shoot was the armoured vehicle, which fired a shot into the air to disperse the crowd.

<sup>177</sup> P-0009, T-200-CONF-FRA, pp. 60-70.

<sup>178</sup> CIV-OTP-0044-07381 at 00:00:25 to 00:01:18; P-0172 (T-174-CONF-FRA).

<sup>179</sup> CIV-OTP-0042-0591. [REDACTED].

<sup>180</sup> In his forensic report, P-0601 identified three alleged victims (Forensic Report on DNA identification, CIV-OTP-0084-3930, T-162-ENG, pp. 26-28, 32, 73). Other victims were identified by their family members in photos and in other documentary evidence submitted.

<sup>181</sup> [REDACTED] CIV-OTP-0032-0054-00013 (in particular at pp. 0091-0093, 0095 and 0097). P-0105 saw dead bodies at the Banco roundabout on 3 March 2011 and recognised friends of hers in the videos that were broadcast later that day on television (Rule 68(3) Statement CIV-OTP-0019-02453, T-213-CONF-FRA, pp. 25-

victims identified by DNA test results matching those of their family members who testified,<sup>182</sup> the cause of death by gunshot was also confirmed by forensic experts.<sup>183</sup> While the DNA results are analysed in further detail in Section 4 below under each count, some of the evidence related to this incident is analysed in the paragraphs that follow for the purpose of first establishing the existence of the attack.

102. P-0579 testified that his daughter was killed and that he recognised her body at Abobo Hospital on the day of the march.<sup>184</sup> P-0172 went to the location of the Women's March and recognised the body of his sister-in-law and saw six other bodies.<sup>185</sup> P-0106 went to the location of the march immediately after he heard the detonations. He saw seven women in total who had been killed, and took photographs of them. He also saw other people who were injured.<sup>186</sup> P-0237 testified that his daughter had been killed during the Women's March.<sup>187</sup> P-0580 testified that his sister had been killed during the demonstration.<sup>188</sup> P-0582 testified about her daughter's death during the Women's March.<sup>189</sup> P-0581 testified about his sister, also killed during the Women's March.<sup>190</sup> There are death certificates for five of the seven victims.<sup>191</sup> There is also evidence that other identified and unidentified women were injured during the incident.<sup>192</sup>
103. As noted above, despite Philippe Mangou's evidence that he received reports stating that the FDS were not involved, he recognised FDS vehicles in the video of the march and believed the images showing the dead women to be real, as well as the sounds of

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34). P-0584 and P-0585 testified in court and wrote forensic reports that corroborate these deaths and the causes of death (medical report, CIV-OTP-0078-0542, T-189-ENG, T-201-FRA).

<sup>182</sup> P-0601, T-162-ENG, pp. 26-28, 32, 73. The expert witness explained the DNA identification results in relation to the three victims with matching DNA.

<sup>183</sup> Autopsy report CIV-OTP-0081-0518; autopsy report CIV-OTP-0081-0523; autopsy report CIV-OTP-0081-0528.

<sup>184</sup> T-39-CONF-FRA, pp. 23-24 and 46; a death certificate was submitted to corroborate this.

<sup>185</sup> Rule 68(3) Statement CIV-OTP-0028-05504; T-174-CONF-FRA, pp. 6-8, 54-56.

<sup>186</sup> Rule 68(3) Statement CIV-OTP-0019-02114 and T-116-CONF-FRA.

<sup>187</sup> Rule 68(3) Statement CIV-OTP-0081-03802; T-175-CONF-FRA, pp. 6, 29, 33, 35-37, 39-41; death certificates corroborate the testimonial evidence.

<sup>188</sup> CIV-OTP-0081-04161; T-186-CONF-FRA; T-187-CONF-FRA.

<sup>189</sup> Rule 68(3) Statement CIV-OTP-0081-04682; T-187-CONF-FRA, there is also matching DNA evidence.

<sup>190</sup> T-188-CONF-FRA, pp. 5-11.

<sup>191</sup> CIV-OTP-0028-0572; CIV-OTP-0028-0573; CIV-OTP-0028-0574; CIV-OTP-0028-0575; CIV-OTP-0039-0055. See also CIV-OTP-0082-1048 and CIV-OTP-0082-1049.

<sup>192</sup> P-0184, [REDACTED] attended the event, was injured. When she was in hospital, she saw other women she knew who were also injured (T-215-CONF-FRA, pp. 35-38, 48, 52-53). P-0579 also testified that he saw injured women at the location of the Women's March (T-39-CONF-FRA, p. 46). P-0105 likewise testified about a woman who was injured during the Women's March (Rule 68(3) Statement, CIV-OTP-0019-02453, para. 32).

guns heard on the video.<sup>193</sup> Other evidence in the record further supports allegations that an FDS convoy travelling from Camp Commando to Camp Agban<sup>194</sup> drove through the Banco roundabout as the Women's March was passing.<sup>195</sup> Documentary evidence in the record supports the allegation that CECOS elements were also present at the Women's March.<sup>196</sup>

104. [REDACTED]:

[REDACTED].<sup>197</sup>

105. [REDACTED].<sup>198</sup> [REDACTED].<sup>199</sup> [REDACTED].<sup>200</sup> [REDACTED]; there is no evidence that the safety of the FDS had been compromised.

106. [REDACTED].<sup>201</sup> The moment when the FDS allegedly shot at the crowd was described by P-0184, one of the organisers of the Women's March who was present at the event:

*J'ai vu les femmes qui étaient en train d'applaudir, et quand j'ai regardé à ma droite, j'ai vu un char qui venait, sur le char, il y avait un drapeau blanc, qui était suivi... c'est à cause de la vue du drapeau blanc que les femmes ont applaudi. Parce que pour nous, peut-être les gens venaient pour sécuriser la marche, et c'était suivi d'un cargo militaire. Et à notre grande surprise, quelques secondes après leur passage, on a entendu des tirs, les tirs d'obus, boum, boum, moi, j'ai entendu deux coups [...].*<sup>202</sup>

107. P-0190, another woman attending the march, described the situation when the shots were fired. While she was not injured, she saw women (including her friend) being shot at and saw their blood and their body parts on her clothes.

<sup>193</sup> T-200-CONF-FRA, pp. 61-68.

<sup>194</sup> [REDACTED]. P-0184, who was at the march, saw the FDS convoy (T-215-CONF-FRA, p. 32).

<sup>195</sup> See references above to the FDS witnesses who identified the vehicles driving in the convoy.

<sup>196</sup> CIV-OTP-0048-1574; CIV-OTP-0064-0120.

<sup>197</sup> T-170-CONF-FRA, pp. 19-20.

<sup>198</sup> P-0607, T-170-CONF-FRA, p. 32. This is also confirmed by expert evidence on the sound of gunfire in the video (P-0583, T-185-CONF-FRA and forensic examination of video CIV-OTP-0077-0411, CIV-OTP-0089-1030).

<sup>199</sup> T-170-CONF-FRA, pp. 27-30.

<sup>200</sup> T-170-CONF-FRA, p. 34.

<sup>201</sup> Video CIV-OTP-0077-0411. P-0114 explained that the armoured vehicle started [REDACTED]. The women started running in all directions. [REDACTED]. He believed the armoured vehicle fired only once and that the vehicle behind it fired two shots. P-0114 [REDACTED] a woman and a man were leading the group of women. [REDACTED] some of the signs that women had made and said that, as he was approaching some palm trees, he heard the "boom" and fell to his knees (Rule 68(3) Statement CIV-OTP-0076-0951, para. 27 and T-161-CONF-FRA, pp. 39-40, 62). P-0172 described how he arrived at the Banco roundabout immediately after he heard the loud noise and saw seven dead bodies, which he helped transport to the hospital (Rule 68(3) Statement CIV-OTP-0028-0550, paras. 68-101).

<sup>202</sup> P-0184, T-215-CONF-FRA, p. 32.

*J'ai vu... J'ai vu les gens étaient tombés, ils ne bougeaient... et... et ces personnes ne bougeaient pas, et je ne me suis pas approchée, mais ces personnes qui sont tombées ne bougeaient pas du tout. Bon, en d'autres circonstances, j'aurais pu m'approcher, mais je n'ai pas pu m'approcher parce que j'avais peur. Mais j'ai vu les gens étaient tombés, ils ne bougeaient pas, et je ne pouvais pas m'approcher non plus. [...] Oui, je... je n'étais pas blessée. [...] était devant moi. [...] était juste... devant moi, elle n'a pas bougé. [...] À un moment, quelque chose est tombé devant, la terre même tremblait. Nous sommes "tous" tombées. Moi, je me suis relevée et j'ai couru pour me mettre, un peu à l'écart. [...] J'ai couru. Je n'étais pas seule. Nous nous sommes perdues. Je ne retrouvais pas celles avec qui j'étais, donc je suis allée me cacher. Tout le monde cherchait refuge. Et le char... Une fois que les chars sont passés, je suis sortie pour demander ce qui se passait. [...] Et il y a un jeune qui a dit : "Mais regardez cette femme-là, elle a du sang." J'ai... Bon, j'ai... j'ai touché derrière mon dos, j'ai vu... j'ai vu le sang, mes habits étaient tachetés, donc j'ai dû enlever mes habits pour les jeter. [...] J'avais du sang et j'avais quelque chose qui ressemblait à du pus. [...] ça ressemblait à un... un mouton qu'on a tué et qu'on a cassé la tête, et la cervelle, ça ressemblait à sa cervelle.*<sup>203</sup>

108. In addition, a CECOS report dated 10 March 2011, recognised by Georges Guiai Bi Poin, head of CECOS, refers to civilian casualties and FDS involvement in the Women's March. It also corroborates the visual and oral evidence in the record that the FDS convoy was composed of a transport truck and two armoured fighting vehicles (a BMP-1 of the Republican Guard and a BTR-80 of the Armoured Squadron Unit ("GEB")).<sup>204</sup> [REDACTED], the CECOS report does not indicate that the protestors were armed or that anyone fired at the convoy. Also, contrary to the submission of the Defence, the report does not state that the *Commando Invisible*, rebels or any other armed group were present during the incident.<sup>205</sup>

109. Thus, the evidence attests to the allegation that the FDS turned to the excessive use of force by firing indiscriminately at a crowd of unarmed women, which resulted in the deaths and serious injuries of civilians.<sup>206</sup> Even if the convoy had been fired [REDACTED] such fire would have been from small calibre weapons that could have not caused any damage to the FDS vehicles. The evidence further supports allegations that the FDS fired first and were not provoked. All the evidence – with the sole exception of [REDACTED] testimony – supports the fact that the shots were fired towards the crowd and not "*au bleu*". As stated above, there is no evidence that there were any rebels or armed persons present at the march.

<sup>203</sup> P-0190, T-21-CONF-FRA, pp. 23-25 and 66-71.

<sup>204</sup> CIV-OTP-0048-15743. Although Georges Guiai Bi Poin denied that he had requested the report at the time of the events (in March 2011), he stated that he had requested the information after the post-election violence to respond to judges in Côte d'Ivoire who were investigating the matter later in 2011 (P-0010, T-139-CONF-FRA, T-140-CONF-FRA).

<sup>205</sup> CIV-OTP-0048-1574.

<sup>206</sup> ECtHR, *Güleç v. Turkey*, paras. 71, 73.

110. In the light of the evidence adduced, a reasonable Trial Chamber could conclude that this demonstration was suppressed by the FDS in a disproportionate manner, to the extent that unarmed women were shot in their vital organs, resulting in seven deaths and several injuries. A reasonable Trial Chamber could also conclude that the FDS disregarded any criteria of necessity and proportionality, and consequently attacked civilians unlawfully and indiscriminately.
111. Philippe Mangou testified that he had been informed of the civilian casualties and FDS involvement on that same day, 3 March 2011,<sup>207</sup> as had Détoh Létho.<sup>208</sup> Despite the aforesaid reports and videos (and that persons at the top of the hierarchy like Philippe Mangou had seen those videos on 3 March 2011), there is evidence that the State apparatus rapidly denied any civilian deaths or FDS involvement and concluded that the incident was fabricated by the foreign press.<sup>209</sup> Although Philippe Mangou had issued instructions to carry out an investigation, there is evidence that the incident was not seriously investigated and was instead covered up. In fact, Philippe Mangou confirmed in court that he had never received a report about this incident.<sup>210</sup> The

<sup>207</sup> P-0009, T-196-CONF-FRA, pp. 47-48: “[12:07:47] Avez-vous été informé qu’il y a effectivement des femmes qui seraient mortes lors d’une démonstration à Abobo ? R. [12:07:59] Oui. Oui, j’ai été informé. Q. [12:08:04] Par... Par qui ? R. [12:08:07] Alors, j’ai été informé par deux personnes : la première personne, toujours par les forces... les forces impartiales ; la deuxième personne, par le ministre, le ministre qui m’a apporté l’information. Donc, il m’a appelé pour me demander si nos éléments avaient effectué des tirs sur des femmes.”

<sup>208</sup> P-0047, T-204-CONF-FRA, p. 2: “R. [09:36:56] C’était le 3 mars même, aux environs de 10 heures, 11 heures. Le général Mangou m’a appelé pour me dire qu’il aurait eu des informations sur une marche des femmes à Abobo ; est-ce que je suis au courant ? Je lui ai répondu par la négative, parce que nous n’avons jamais parlé d’une marche qui allait se dérouler le 3 mars à Abobo. Le matin, je n’ai jamais eu... je n’avais pas eu de... de consigne de sa part pour encadrer une quelconque marche à Abobo le 3 mars.”

<sup>209</sup> Video CIV-OTP-0026-0006, dated 4 March 2011, time stamp 22:13 to 25:39, of an FDS communiqué regarding the events of the Women’s March. Philippe Mangou (P-0009, T-197-CONF-FRA) confirmed that this was the FDS communiqué that he had referred to in his testimony. See also video CIV-OTP-0026-0018, dated 5 March 2011, at 10:34 to 13:03, of a communiqué being read. In court, Philippe Mangou (P-0009, T-196-CONF-FRA) confirmed that no investigations had been opened, nor sanctions imposed, in relation to the Women’s March. See also document CIV-OTP-0045-0173, dated 3 March 2011, which refers to a march in Attécoubé but makes no reference to the Women’s March in Abobo. This document was shown in court to Bredou M’bia (P-0046, T-126-CONF-FRA, T-127-CONF-FRA), who stated that this was because another police post was sending the information. Similarly, document CIV-OTP-0045-0184, BQI of 3 March 2011, makes no reference to the Women’s March incident. See also BQI dated 3 March, CIV-OTP-0046-0294. Video CIV-OTP-0015-0524 shows a press conference that took place on 23 March 2011 in which Mr Blé Goudé refers to the incident of 3 March 2011 as a fabrication.

<sup>210</sup> P-0009, T-196-CONF-FRA, pp. 56-57. “[12:32:59] À votre connaissance, est-ce qu’il y a eu une enquête, par la suite, pour voir si des femmes étaient mortes, outre le fait de votre enquête interne demandant à M. Détoh Létho ? Est-ce qu’il y a une enquête qui est allée au-delà de cela pour déterminer si, effectivement, il y avait des femmes qui étaient mortes ? R. [12:33:22] Nous, nous avons demandé qu’une enquête soit faite. Je crois que si l’enquête avait été effectivement faite, on aurait été informés des résultats. Mais on n’a pas été informés du résultat, donc, je suppose qu’il n’y a pas eu d’enquête. Q. [12:33:39] Est-ce que vous avez été informé, à quelque moment que ce soit, depuis les événements, si des éléments avaient été punis, donc, entre le 3 mars et le 11 avril 2011 ? R. [12:33:51] Non.” See also report from the Military Tribunal of Abidjan, 24 March 2011,

communiqué below, read on RTI on 4 March 2011, denies any FDS involvement, in contradiction to evidence to that effect, including from FDS insiders:

*Sur la base de propos de pseudo témoins, des agences de presse ont diffusé l'information selon laquelle les Forces de défense et de sécurité de la République de Côte d'Ivoire seraient coupables de la mort de six femmes tuées par balles au cours de la marche des militantes du RHDP à ABOBO, le jeudi 3 mars 2011. Cette information a été automatiquement relayée depuis hier par des médias internationaux. Tout en s'inclinant très sincèrement sur la mémoire de ces femmes tuées, victimes d'actes d'un autre âge, 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. A l'intention de ces médias qui, de façon curieuse et suspecte, s'accordent auteur de cette accusation, les Forces de défense et de sécurité rappellent que des marches similaires des militants du RHDP ont eu lieu à ADJAME, à MARCORY, à TREICHHVILLE. À ATTECOUBE à BASSA et dans d'autres localités, les jours précédents. Ces marches ont été toutes dispersées par les Forces de défense et de sécurité de Côte d'Ivoire à l'aide de moyens conventionnels, sans qu'aucun cas de tueries par balles n'ait été déploré ni d'actes de barbarie observés. Les Forces de défense et de sécurité de Côte d'Ivoire s'insurgent contre certains [phon.] adeptes des informations pour qui la légèreté et la manipulation des faits sont établis comme des règles professionnelles. Aussi le chef d'état-major des armées demande-t-il à ses accusateurs de rechercher les auteurs présumés de cette tuerie de femmes à ABOBO ailleurs car il affirme que la zone d'Abobo n'a jamais été le théâtre d'opérations des Forces de défense et de Sécurité de Côte d'Ivoire ce jour précis du jeudi 3 mars 2011, jour de la marche. Enfin, le chef d'état-major des armées précise que les troupes des Forces de défense et de sécurité de la République de Côte d'Ivoire sont restées stationnées dans leur cantonnement d'ABOBO.<sup>211</sup>*

112. The passage above is relevant in establishing that the State apparatus (of which Philippe Mangou was part) did not investigate the deaths of the women, as it is stated that those who accused the FDS should be the ones to find the perpetrators. This passage is also relevant in establishing, contrary to the submissions of the Defence, that Abobo was not entirely a rebel stronghold<sup>212</sup> and that the State apparatus lied when it stated that Abobo was not the theatre of operations of the FDS on that date. There is evidence in the record, including from Philippe Mangou himself, that the FDS were carrying out a major offensive in Abobo as of 24 February 2011.<sup>213</sup> In fact, in another communiqué

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CIV-OTP-0001-0285. The document calls for an investigation into the Women's March and Abobo shelling. Edouard Kassaraté (P-0011, T-134-CONF-FRA) said he was aware of this document, although no investigation ever took place (as noted by Philippe Mangou). See also testimony of P-0607 (T-170-CONF-FRA, pp. 74-75), who confirmed nobody was investigated or punished for this incident.

<sup>211</sup> RTI broadcast of 4-5 March 2011, CIV-OTP-0026-0018, transcript CIV-OTP-0051-2220, emphasis added.

<sup>212</sup> The evidence shows that the *Commando Invisible* was present in Abobo, in particular in PK18 and Anankoua Kouté (P-0321, T-61-CONF-FRA, p. 82, lines 20-22; P-0011, T-135-CONF-FRA, p. 71, lines 10-19; P-0414, CIV-OTP-0054-0582, para. 163 and P-0520, T-52-CONF-FRA, p. 59, lines 11-12).

<sup>213</sup> P-0009, T-194-FRA, pp. 3-4. "Q. [09:38:39] La deuxième offensive commence à quelle date ? R. [09:38:43] La deuxième offensive commence le 25 février, à l'issue de la rencontre que nous avons eue avec le Président Laurent Gbagbo le 24 février. Q. [09:38:57] Et cette rencontre du 24 février, vous avez... que vous avez eue avec le Président, elle a lieu à quel endroit ? R. [09:39:07] Cette rencontre a eu lieu au Palais de la Présidence de la République, où nous avons déployé une carte de la zone, pour faire le point de situation au Président de la République." At p. 59: "À un moment donné, le Président de la République s'est levé de son siège, il est venu vers la... la carte. Je lui ai montré la position tenue par l'ennemi, la position des troupes amies. Et le Président

dated 25 February, the government publicly announced Mr Gbagbo's order to reinforce the FDS presence in Abobo.<sup>214</sup> Furthermore, as noted above, evidence indicates that an FDS convoy passed through the location of the Women's March on 3 March 2011. This was confirmed by Philippe Mangou in court, when he recognised the FDS vehicles and also affirmed that he believed the images showing the dead women to be real.<sup>215</sup>

113. Accordingly, there is sufficient evidence upon which a reasonable trier of fact could be satisfied that the FDS killed and injured unarmed women on 3 March 2011 and that this incident was part of an attack against a civilian population.

*iii. Abobo shelling (17 March 2011)*

114. The Pre-Trial Chamber found that, on 17 March 2011, a number of mortar shells landed in the centre of Abobo and resulted in the deaths or injuries of several individuals, in particular at the Siaka Koné market, the SOS Village neighbourhood and the Derrière Rails sector.<sup>216</sup>
115. P-0411, a former army officer with extensive experience in the use of indirect fire systems such as mortar shells, submitted a report after visiting the affected areas of the Siaka Koné market and SOS Village. His report supports the allegations that mortar shells hit the area around the Siaka Koné market<sup>217</sup> and SOS Village.<sup>218</sup>

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*m'a... a fait... a posé deux questions. La première question : 'Est-ce que la population est encore dans la zone ?' Nous avons dit '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.'"* At p. 62: *"On s'est laissés, avant la pause déjeuner, au 24 février, lors d'une rencontre entre les généraux et le Président, ministre de l'Intérieur, ministre de la Défense. Que se passe-t-il ? Comment se termine la rencontre, le meeting ? R. [14:35:58] Donc, à l'issue de cette rencontre, le Président nous confie une nouvelle mission : c'est de libérer l'axe... c'est de libérer l'axe MACA-Abengourou, parce que, avait-il dit, c'est un axe stratégique. Il faut permettre la circulation des personnes du Sud vers l'Est, vice versa, et la circulation des produits, également, du Sud vers l'Est. Donc, quand nous avons reçu cette mission, c'est là que je suis allé voir le ministre Alain Dogou pour lui demander, pour lui proposer que... qu'Abobo soit déclarée zone de guerre, pour éviter les premières difficultés que nous avons connues."* At p. 79: *"[...] Ça n'a même pas fait l'objet d'une planification, c'était même pas à la réunion avec le Président. C'est quand j'ai reçu la mission de libérer l'axe N'Dotré-Abobo."*

<sup>214</sup> Video CIV-OTP-0026-0020 at 00:03:20 to 00:03:56 (excerpt from RTI broadcast of 25 February 2011 at 13.00; transcript, CIV-OTP-0044-2534 at p. 2536, lines 31-35).

<sup>215</sup> T-200-CONF-FRA, pp. 61-68.

<sup>216</sup> *Gbagbo Confirmation Decision*, ICC-02/11-01/11-656-Conf, para. 53; *Blé Goudé Confirmation Decision*, ICC-02/11-02/11-186, para. 42.

<sup>217</sup> Expert witness P-0411 (T-168-CONF-ENG, pp. 76-83); expert report CIV-OTP-0073-0906; 360° presentation of Siaka Koné market, CIV-OTP-0073-0862.

<sup>218</sup> Expert witness P-0411 (T-168-CONF-ENG, pp. 85-91 and T-0169-CONF-ENG, pp. 1-6); expert report CIV-OTP-0073-0906; annex to expert report CIV-OTP-0049-0048; 360° presentation of SOS Village, CIV-OTP-0073-0862; photos CIV-OTP-0049-0160 and CIV-OTP-0049-0154.

116. Although it is not necessary at this stage to assess the credibility of P-0411's expert report, it is worthy of note, in the light of the Defence submissions, that most of his findings are corroborated by other evidence in the record (including insider and crime-base witnesses, medical and forensic evidence, photos, 360° presentations and videos), analysed below. P-0411's expert evidence is admissible considering his expertise, the methodology used, and other evidence submitted in the case.<sup>219</sup>. Moreover, testimonial and other evidence analysed below further supports allegations that the Siaka Koné market and SOS Village were hit by mortar shells on 17 March 2011. Had the Defence had the opportunity to present its case, it would have been able to adduce any evidence it deemed appropriate to oppose or contradict the expert's conclusions (i.e. the suggested theory that the shelling came from the *Commando Invisible*). While P-0411's report on its own might be insufficient to determine that the mortar shells were fired from Camp Commando (as his report concludes that this is a possibility and not an affirmation), the other evidence analysed below does provide confirmation thereof.
117. P-0369, a Human Rights Watch ("HRW") officer at the time of the post-election violence who visited the affected area in July 2011, confirmed the aforesaid scenario at the Siaka Koné market and SOS Village, where he saw the impact of the shelling which was still visible in and around the buildings in the area.<sup>220</sup>
118. As regards the shelling in Derrière Rails, evidence is limited. P-0411 and P-0369 did not visit this location. Two witnesses testified, however, that one person had died as a result of the shelling in Derrière Rails on 17 March 2011.<sup>221</sup> P-0414 gave evidence that mortar shells had hit Derrière Rails, albeit on another date, namely 22 March 2011.<sup>222</sup>

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<sup>219</sup> See *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 94. In evaluating the testimony of expert witnesses, the Chamber considered factors such as their established expertise, the methodology used, the extent to which their findings were consistent with other evidence tendered in the case and the general reliability of the experts' evidence.

<sup>220</sup> T-40-CONF-ENG, pp. 75 *et seq.* See also HRW Report, CIV-OTP-0004-0072 at p. 0141. P-0369 confirmed that this describes what he saw during his visit to the Siaka Koné market in July 2011.

<sup>221</sup> P-0297 (Rule 68(3) Statement CIV-OTP-0089-0557) and P-0105 (Rule 68(3) Statement CIV-OTP-0019-0245). See Section 4 below for the evidence pertaining to this victim identified as Doumbia Makarikia.

<sup>222</sup> P-0414, commenting on the UNOCI report dated 23 March 2011 (CIV-OTP-0044-1692 at p. 1694) confirmed that there was shelling on 22 March 2011. Rule 68(3) Statement CIV-OTP-0054-0582 at p. 0622, para. 276.

119. There is evidence in the record that Abobo was a densely populated area,<sup>223</sup> heavily affected by the post-election violence.<sup>224</sup> P-0369 described the areas he visited as residential and characterised the SOS Village as “a densely populated residential area”.<sup>225</sup> Evidence also supports the claim that the majority of the inhabitants of Abobo were perceived to be “pro-Ouattara”.<sup>226</sup>
120. Several witnesses who testified in court were present in the immediate aftermath of the shelling<sup>227</sup> and interviewed survivors.<sup>228</sup> One of these witnesses was P-0414 who visited the area, specifically the SOS Village and Siaka Koné market, on 17 March 2011. The findings of that mission are contained in a UNOCI report, which P-0414 corroborated in court.<sup>229</sup> The report summarises what P-0414 saw on 17 March 2011:

*3. Dans le cadre de sa mission, l'équipe de l'ONUCl s'est rendu au marché du rond-point de la mairie d'Abobo où elle a pu constater un impact d'obus au sol et des marques d'éclats projetés en étoile tout auteur, contre les étalages. Elle a également constaté d'autres traces similaires à quelques mètres du premier lieu. Selon les informations recueillies par les témoins encore présents sur les lieux, les incidents se seraient produits vers 13h30-14h et seraient le fait de personnes situées au camp Commando.*

*4. Suite aux informations recueillies par la DDH et sur place, la mission s'est ensuite rendue au village d'enfants SOS à Abobo. Là-bas, elle a visité trois lieux. Tout d'abord une maison avec un trou béant dans la toiture. Des graviers jonchaient le lit et les morceaux du toit récoltés étaient entreposés dans la cour. Ensuite, elle a vu une ruelle ou un autre obus aurait frappé. La délégation a pu constater que les murs alentours étaient constellés d'impacts laissant penser à des éclats des suites d'une déflagration. Sur le même lieu, des traces de sang étaient également visibles. Enfin, la délégation s'est rendue dans une autre habitation dans laquelle des parties du toit manquaient et dont l'un des habitants nous a annoncé que la déflagration avait fait plusieurs victimes, dont un mort. Des traces de sang étaient également visibles dans la rue devant la maison.*

<sup>223</sup> P-0046, T-126-CONF-FRA, p. 60. Bredou M'bia stated: “R. [12:44:39] Oh ! Abobo... Abobo, il faut mettre peut-être un million et demi, mais c'est un quartier dortoir comme Yopougon. La journée il y a moins de monde, mais la nuit, il y a beaucoup plus de monde.”

<sup>224</sup> P-0414, CIV-OTP-0054-0582 at pp. 0597-0598, para. 94.

<sup>225</sup> T-40-CONF-ENG, p. 76.

<sup>226</sup> P-0330, T-68-CONF-FRA, pp.10-11. The witness stated: “[10:01:14] On peut peut-être débiter par citer les groupes ethniques qu'on pouvait trouver. R. [10:01:22] Donc, je... je précise qu'il y avait tous les groupes ethniques, mais la prédominance était plus les... les... les hommes du Nord, du Nord, d'abord, de la Côte d'Ivoire, et au-delà du Nord de la Côte d'Ivoire. [...] Donc, comme je disais tout à l'heure, les habitants, il y avait une prédominance des populations du Nord et des... des personnes au-delà des frontières du... de la Côte d'Ivoire. Donc, il y avait beaucoup de Burkinabés, beaucoup de Maliens et beaucoup de Nigériens.”

<sup>227</sup> P-0580 also visited the Siaka Koné market on 17 March 2011 and saw the shell marks and bodies of victims (T-186-CONF-FRA, pp. 60-62, Rule 68(3) Statement CIV-OTP-0081-0416 at p. 0421, para. 24).

<sup>228</sup> P-0184 (T-215-CONF, pp. 40-45) [REDACTED] 40 people died on 17 March 2011. She stated that many people were killed or injured during the period between 19 February 2011 and 11 April 2011 when Mr Gbagbo was arrested. She recalled an incident in which shelling killed two children in PK18.

<sup>229</sup> P-0414 stated in court that she had interviewed victims and witnesses of the attack of 17 March 2011 during her visit to the affected area, including SOS Village and the Abobo market: T-74-FRA. She recognised and confirmed the information contained in the UNOCI report, CIV-OTP-0044-1617, which refers to the incident and to the UNOCI Call Centre report, CIV-OTP-0044-1654).

*5. En outre, lors de son investigation, la mission a pu s'entretenir avec quelques blessés légers et des témoins. Ceux-ci ont déclaré que les obus au marché avait fait environ 12 morts et que ceux au village d'enfants, environ 13, soit un total provisoire de 25 personnes décédées. Le nombre de blessés n'a pu être établi, mais il semblerait que leur grande majorité ait été amenée à l'hôpital d'Abobo-sud, géré actuellement par Médecins Sans Frontières (MSF).<sup>230</sup>*

121. Another video submitted into the record, from MSF, confirms the aforesaid testimony and UNOCI report. The video shows MSF doctors at Abobo Hospital explaining the events of 17 March 2011, and in particular providing the number of injured persons who were treated at the hospital that day as a result of the shelling.<sup>231</sup>
122. Videos and photographs in the record also show the immediate aftermath of the shelling at the Siaka Koné market.<sup>232</sup> Moreover, the testimony of witnesses who survived the shelling<sup>233</sup> and who suffered injuries or lost family members during the incident further supports allegations that these areas of Abobo were hit by mortar shells on 17 March 2011 and that civilians were injured and killed as a result.<sup>234</sup> Forensic evidence

<sup>230</sup> CIV-OTP-0044-1617.

<sup>231</sup> MSF video, Welcome to Abobo, CIV-OTP-0051-2092 at 00:01:25 to 00:02:21, 00:06:03 to 00:06:41 (transcript, CIV-OTP-0052-0287 at pp. 0288-0289, lines 15-44; p. 0290, lines 89-95).

<sup>232</sup> Video CIV-OTP-0042-0593 at 00:02:48-00:10:23-00:10:35. Video shows the aftermath of the alleged attack on the Siaka Koné market on 17 March 2011, with images of injured people and dead bodies, including the body of a child. It also shows what appears to be a shell mark, and the remains of a shell. P-0362 [REDACTED] identified people in the video and the bodies of victims (T-206 and T-207). P-0105 also commented on the video and identified people who were killed (T-213). There is an image of a child at 07:39[REDACTED]. P-0411 (T-169) identified a 120 mm mortar at time stamp 9:29:19; and at time stamp 10:23 to 10:35:16, the base of a tail fin of a 120 mm mortar system. P-0362 (T-206, T-207), at time stamp 02:48 to 3:53, stated that the people lying down were dead; they were just passing by when the shell landed and that the woman was taken to the hospital. P-0362 identified the people who were transporting the bodies after the shelling. P-0105 (T-213) recognised at 3:46:13 a man and his wife, who she saw walking when the shell landed. They had both been killed. See also MSF video, "Welcome to Abobo", CIV-OTP-0051-2092 at 00:01:25 to 00:02:21, 00:06:03 to 00:06:41 (transcript, CIV-OTP-0052-0287 at pp. 0288-0289, lines 15-44; p. 0290, lines 89-95).

<sup>233</sup> P-0107 (Rule 68(3) Statement CIV-OTP-0020-00644 at p. 0085, paras. 156-157) recalls that he heard the shelling and later heard that this was at the market in Abobo. P-0117 (T-111-CONF, pp. 31-35) said she heard the shelling from her home and later heard that the shelling had hit the market. P-0360 (Rule 68(2) Statement CIV-OTP-0046-12032 at p. 1207, paras. 16-26) explained that he witnessed the shelling at the SOS Village, which hit a house where a friend of his and other people he knew were killed and others were injured. [REDACTED] (Rule 68(3) Statement CIV-OTP-0046-0275). In court, he identified the locations where people were injured and killed (including a boy and a woman who died (T-191-CONF-FRA and 360° presentation CIV-OTP-0073-0862).

<sup>234</sup> P-0536 was injured when a shell hit her and her son (who died). According to her testimony, 10 other people walking with her also died (P-0536, T-23-CONF, pp. 9-10). P-0364 referred to injuries which she had suffered on 17 March 2011. She stated that she had been at home when a shell fell next door. The witness and her children, along with many other neighbours, fled to seek refuge in the mosque. While they were there, another shell fell on the mosque, injuring people including the witness and her son. According to P-0364, the shelling killed a Senegalese neighbour while he was showering (Rule 68(3) Statement, CIV-OTP-0071-04372; T-190-FRA, pp. 5-7; medical certificate, CIV-OTP-0046-1265, and photos taken by the witness, CIV-OTP-0046-1261, CIV-OTP-0046-1262, CIV-OTP-0046-1263 and CIV-OTP-0046-1264; CIV-OTP-0044-0729; CIV-OTP-0071-2155). P-0489 explained that she had been injured by a [REDACTED].

submitted into the record further shows that victims were struck by this type of weapon.<sup>235</sup>

123. P-0536, who was walking with her 4-year-old son when the shelling occurred, testified as follows:

*Q. Dites-nous ce qui vous est arrivé. R. Bon, j'étais blessée. Il y a beaucoup de sang qui coulait dans mon ventre. Mais c'est bon (phon.), juste, j'ai regardé dans mon ventre, y avait pas de trou, mais c'est pas... pas mes côtes qui étaient blessées. Il y avait le trou par... côté côtes (phon.). Je tenais plus, je suis... je me suis évanouie, je suis tombée. Après, j'ai ouvert les yeux. Il y a un jeune [...] il a pris brouette. Il m'a mis dedans, il m'a envoyée à l'hôpital [...] Là, je n'ai plus la voix pour parler. Si le gars me demande, j'attends, mais je ne peux pas parler. Mais je coulais beaucoup de larmes. Je pleure et je n'arrive pas à parler. Et je souffrais beaucoup. Q. Alors, nous allons revenir là-dessus. Au moment où vous avez ouvert les yeux, est-ce que vous avez vu où est-ce que vous étiez blessée ? R. Non. Pas du tout, mon corps était blessé. Q. Est-ce que vous avez vu d'autres personnes ou quelqu'un d'autre qui était blessé ? R. Bon, nous tous, c'étaient cinq personnes qui étaient "vivants". Les dix personnes sont "morts". Q. Et qu'est-il arrivé aux gens avec qui vous marchiez ? R. Bon, c'est le même obus. Q. Madame, est-ce que vous avez vu votre fils ? R. Oui. Q. Pourriez-vous nous dire ce qui est arrivé à votre fils ? R. Lui aussi, il était blessé. Son nez, d'ici, était coupé. Et puis sa tête, ici, était blessée. Bon, je le cherchais, je le voyais pas. Bon, il a crié "maman". Quand j'ai crié son nom, [...], il a dit "maman". Quand j'ai tourné, il était déjà mort.<sup>236</sup>*

124. The expert evidence of P-0411 supports the allegations that 120 mm mortars hit the locations where the shelling purportedly took place, namely areas around the SOS Village and Siaka Koné market,<sup>237</sup> including a mosque,<sup>238</sup> and that those mortars were launched from Camp Commando targeting that area of Abobo.<sup>239</sup> Several insider witnesses confirmed that the FDS were stationed at Camp Commando at the time, and that mortars in Camp Commando had been positioned pointing towards this area of Abobo.<sup>240</sup> P-0330, a gendarmerie captain during the post-election violence, testified

<sup>235</sup> [REDACTED] See reports and related documents: CIV-OTP-0078-0476, CIV-OTP-0073-1112, CIV-OTP-0073-1088, CIV-OTP-0073-1115, CIV-OTP-0073-1090, CIV-OTP-0073-1119, CIV-OTP-0073-1093, CIV-OTP-0073-11221, CIV-OTP-0073-1095, CIV-OTP-0037-0151, CIV-OTP-0073-1126, CIV-OTP-0037-0181, CIV-OTP-0037-0200, CIV-OTP-0037-0211, CIV-OTP-0037-0222, CIV-OTP-0037-0232, CIV-OTP-0037-0241, CIV-OTP-0037-0250, CIV-OTP-0037-0272, CIV-OTP-0037-0283, CIV-OTP-0037-0364.

<sup>236</sup> P-0536, T-23-CONF-FRA, pp. 9-10.

<sup>237</sup> Although P-0411 said he could not conclude with certainty that 120 mm mortars were used, he said that the report in its totality points towards that possibility. He concluded that, without a doubt, the ammunition used was "low cost" and of Russian origin (T-168-CONF-FRA, pp. 87, 95, 96; T-169-CONF-FRA, pp. 7-9).

<sup>238</sup> 360° presentation CIV-OTP-0073-0862. P-0411 explained that panorama 17 was taken from the roof of a mosque. In other panoramas (19, 21, 23, 24), he recognised strike marks attributable to the high velocity fragmentation of heavy-cased ammunition (T-168-CONF-FRA and T-169-CONF-FRA).

<sup>239</sup> T-169-CONF-FRA, pp. 15-16 and expert report CIV-OTP-0049-0056.

<sup>240</sup> 360° presentation, CIV-OTP-0073-0862. Looking at panorama 11, P-0164 showed the location where the mortar had been placed, pointing towards the *Mairie* roundabout (T-164-CONF-FRA pp. 67-68, 71-72). Looking at panorama 16, P-0330 identified the building from which the FDS had set up a position on the roof on 3 March 2011 (T-69-CONF-FRA). Looking at panorama 1, P-0411 explained that the damage pattern was consistent with a mortar detonation at ground level. The report as a whole concluded that the damage had been

that there were 120 mm mortar shells in Camp Commando during the post-election violence.<sup>241</sup> P-0238, a Surface-to-Air Artillery Battalion (“BASA”) officer during the post-election violence, also stated that BASA had 120 mm mortar shells during the post-election violence.<sup>242</sup> Philippe Mangou and Détoh Létho likewise confirmed that BASA had 120 mm mortar shells in Camp Commando.<sup>243</sup> P-0226, who was at Camp Akouédo on 17 March 2011, heard the mortar shells being launched into the middle of the city. The next day he saw FDS officers, who had been involved in the shelling, being received as heroes when they returned to Akouédo.<sup>244</sup> P-0239, a BASA officer during the post-election violence, confirmed that 120 mm mortar shells were used in Camp Commando to target areas in Abobo on 17 March 2011.<sup>245</sup> P-0164, a BASA officer during the post-election violence, confirmed that there were 120 mm mortar shells in Camp Commando and that they were fired towards Abobo on 17 March 2011. He also testified that a relative of his, who was living in the SOS Village, had called him to say that mortar shells had hit the area on that date. This part of P-0164’s testimony was in fact confirmed by P-0226 who, in his testimony, referred to P-0164’s reaction to the shelling of 17 March 2011, as a relative of his had almost been killed.<sup>246</sup>

125. P-0164 confirmed in court that the use of mortars in Abobo was unjustifiable, even if there had been a real military target in Abobo (i.e. the *Mairie* roundabout). He explained that the imprecision of the mortar would obviously lead to civilian deaths, especially at the market, which was located next to the roundabout:

*R. [10:51:27] En agglomération, par rapport à notre crise, moi, je vois pas la raison pour laquelle on aurait utilisé ces armes-là ; le RPG, même, suffisait. [10:51:43] Pourquoi ces armes sont habituellement utilisées en campagne, comme vous disiez ? R. [10:51:51] Bon, en campagne, je peux dire comme ça : quand on est en train de combattre contre une force ennemie en pleine brousse, qu’on utilise ça, moi, je vois pas d’impact sur la population civile, mais en pleine ville, vous êtes sûr que si j’avais utilisé ça en pleine ville, on serait pas en train de me poursuivre aujourd’hui. La preuve : ceux qui l’ont fait à Abidjan, précisément à Abobo, n’ont pas réussi leur mission parce que, quand l’obus a été tiré, quand il est tombé au carrefour Mairie...et d’ailleurs, même si ça tombait au carrefour Mairie, eh, il y allait avoir d’autres impacts, parce que le carrefour Mairie ne fait pas 600 mètres de diamètre. C’est pas évident. Donc, même s’il tombait au milieu du carrefour, juste à côté du carrefour se trouvait la mairie et le marché. Et vous êtes d’accord avec moi*

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caused by 120 mm mortar, although other heavy weaponry could not be ruled out (T-168-CONF-FRA and T-169-CONF-FRA).

<sup>241</sup> T-69-CONF-FRA, p. 2.

<sup>242</sup> T-80-CONF-FRA, p. 73, T-81-CONF-FRA, p. 13, T-82-CONF-FRA, p.18.

<sup>243</sup> T-193-FRA, p. 74; T-203-FRA, p. 9 and T-204-CONF-FRA, p.16.

<sup>244</sup> T-166-CONF-FRA, pp. 60-63.

<sup>245</sup> T-167-FRA, pp. 43-45, 52, 62-79.

<sup>246</sup> T-164-CONF-FRA, pp. 23, 40, 55.

*qu'en Afrique, le marché, il est toujours bondé de monde, vulnérable. Et lorsque ces obus ont été tirés à Abobo, c'est dans le marché, d'abord. La première chose que je sais, c'est au niveau de SOS que c'est tombé ; ça a fait des dégâts là-bas. Le second obus, j'aurais appris comme ça, pendant que j'étais encore en prison, que c'était tombé à... chose... au marché d'Abobo. Et au... une arme, sinon un obus, qui a des éclats qui peuvent aller jusqu'à 300 mètres de rayon, il est mieux de ne pas les utiliser dans ces secteurs-là [...] Q. [14:54:44] Pour ce qui concerne l'ordre que vous avez reçu, vous avez demandé que vous souhaitiez obtenir un ordre par écrit. Pourquoi est-ce que vous avez demandé à ce que cela vous soit remis ? R. [14:54:57] Mais vous savez que le 120, lorsqu'on le tire, ce n'est pas une affaire d'un ou deux morts ; c'est plusieurs morts, et surtout, sachant que le carrefour Mairie, il y a le marché qui est tout juste à côté, il y a les enfants qui errent par-ci, par-là il y a les femmes qui vont au marché ; il y a des gens qui se débrouillent, par-ci par-là. Et si je tirais le 120 à ce carrefour, je sais un peu les impacts. Est-ce qu'il fallait m'engager dans quelque chose qui allait me compromettre demain ? Ou j'allais avoir ça sur la conscience ? Non, moi je le ferais pas. Ce pour "lequel" j'ai pas exécuté la mission [...].<sup>247</sup>*

126. Regarding the Defence's argument in relation to the credibility of P-0164 and P-0239,<sup>248</sup> it must be noted that the Defence does not substantiate its allegation that their testimony is completely unreliable or incapable of belief. The Defence alleges that their testimony is incoherent and in contradiction with the testimony of Philippe Mangou (P-0009), who it claims is more credible than those witnesses. However, the fact that Philippe Mangou was the CEMA and a high-ranked official does not mean that his testimony must be given more weight or that any evidence contradicting his testimony is per se unreliable. Where the witnesses were able to recall the essence of the events in acceptable detail, minor discrepancies among witnesses are not a bar to their reliability.<sup>249</sup> Accordingly, the accounts of P-0164 and P-0239 are relevant to the charges and admissible for the purpose of the no case to answer submission.

127. P-0411 also confirmed that, because of their imprecision, mortars are not customarily used in urban areas but in areas where the enemy is concentrated in one place and no civilians are present. He stated the following on the use of mortars:

*Q. [10:08:47] Avant de passer à autre chose, vous dites que les obus de ce type ne sont pas... ne conviennent pas à des zones urbaines. Les systèmes de mortier conviennent dans quel contexte? R. [10:09:04] Ils conviennent dans un contexte où il y a une concentration d'ennemis et pas de population civile, par exemple. Si vous êtes dans le cadre d'une opération de contre-insurrection et que la zone a été évacuée de civils, du point de vue militaire, il conviendrait alors, d'utiliser un système de mortier. Je ne dis pas que c'est toujours le cas, qu'il ne convient jamais d'utiliser de mortier dans une zone urbaine, je dis simplement qu'un système de mortier convient lorsque vous vous trouvez dans une zone que vous souhaitez empêcher le... l'ennemi d'utiliser, ou si vous souhaitez à... causer des dégâts, blessés et morts confondus, du côté de l'ennemi. En revanche, dans une zone où il y a une forte concentration de population civile, où l'on risque de causer des dégâts*

<sup>247</sup> T-164-CONF-FRA, pp. 29-30, 70-71, emphasis added.

<sup>248</sup> *Gbagbo* No Case to Answer Submission, ICC-02/11-01/15-1199-Conf-Anx3, paras. 429-436 and 437-441.

<sup>249</sup> ICTY, *Šainović* Trial Judgment, paras. 49-50.

collatéraux immenses, l'utilisation d'un obus ou de munitions à douilles renforcées, comme le mortier de 120 mm, donc une arme de campagne, ne serait pas tout à fait indiquée. On utiliserait alors un autre système d'arme.<sup>250</sup>

128. Although Georges Guiai Bi Poin stated in court that there were “collateral victims” in FDS operations,<sup>251</sup> this does not seem to apply to the shelling of 17 March 2011; he confirmed that Camp Commando was not surrounded by any armed group.<sup>252</sup> Philippe Mangou also testified in court that the FDS had not been attacked on that date,<sup>253</sup> while Détoh Létho said that there was no reason justifying mortar shelling in Abobo on 17 March 2011.<sup>254</sup> Similarly, P-0164 confirmed in court that when he was at Camp Commando there were no attacks against the FDS, either by shelling or small calibre weapons. Further, there is no evidence indicating that there were any military targets at the Siaka Koné market, the SOS Village or the Derrière Rails area on that date. In fact, there is no evidence in the record that any proportionality or necessity assessment took place either before or after the attack. P-0164, who had previously been ordered to fire mortar shells from Camp Commando, said that the orders did not specify who the enemy was, but that he was simply ordered to fire to destroy something or someone but did not know who or what.<sup>255</sup> The shelling of a civilian neighbourhood, without differentiating between civilian and military targets, makes it indiscriminate and thus contrary to customary international law.<sup>256</sup>

129. Despite the Defence argument that the use of mortars in an urban area is not illegal, the real question is whether a military action is necessary and reasonable. Given the context

<sup>250</sup> T-169-CONF-FRA, pp. 12-23, emphasis added.

<sup>251</sup> P-0010, T-139-FRA-CONF, p. 103, lines 1-4. He stated: “R. [16:49:15] *Oui, mais c’est tout ça, c’est tout cet ensemble-là, parce qu’on est quand même des Ivoiriens. C’est tout cet ensemble de personnes. Il y avait de plus en plus de tués de part et d’autre, et aussi des personnes qui étaient victimes... on va dire de façon impudique – je n’aime pas tellement ce terme-là – ‘victimes collatérales’.*” [Emphasis added].

<sup>252</sup> P-0010, T-140-CONF-FRA, p. 27, lines 12-18.

<sup>253</sup> P-0009, T-197-CONF-FRA, p. 11, lines 14-16. The witness stated in court: “R. [09:58:30] *C’est bien ça, mais surtout qu’il nous avait précisé que, ce jour-là, les FDS n’ont pas été attaquées, voilà, qu’ils puissent riposter, pour qu’il puisse avoir des effets collatéraux de ce genre.*”

<sup>254</sup> P-0047, T-206-CONF-FRA, p. 55, lines 3-11. The witness stated: “Q. [13:07:22] *Le 17 mars 2011, en tant que commandant des opérations à Abidjan, y avait-il quelque raison que ce soit d’utiliser des mortiers de quelque type que ce soit à Abobo – et ce, pour autant que vous le sachiez? R. [13:07:45] Il n’y avait pas de raison. Le tir au mortier ne s’effectue pas n’importe comment. Quand on mène une bataille, il y a... il y a la discipline de feu. Même les soldats, avant de s’engager, ils ne tirent pas au hasard. Donc il n’y avait pas de raison. Cette question, je sais pas, moi, je ne vois pas tellement le... le bien-fondé de cette question, il n’y a pas de raison qu’on tire au mortier, soit le 16 ou 17 mars, à Abobo. Il n’y avait pas de raison.*” [Emphasis added].

<sup>255</sup> P-0164, T-165-CONF-FRA, p. 103, lines 3-14. The witness stated in court: “*Mais là, je n’étais pas engagé dans un combat. Il n’y avait pas des ennemis que j’affrontais directement, mais on me dit, il y a quelqu’un là-bas et qu’il faut tirer.*”

<sup>256</sup> Karadžić Appeals Judgment, paras. 485-486.

of Abobo, a densely populated urban residential area, there is evidence upon which a reasonable Trial Chamber could conclude that the attack against the civilian population was unjustified, unnecessary and disproportionate. This conclusion would be valid regardless of whether the *Commando Invisible* or any other armed group was active in the area, as alleged by the Defence.<sup>257</sup>

130. The State has a duty to protect its citizens, and the principle of proportionality applies in every context in which civilians are harmed. In international law as in domestic law, ends do not justify means. The State's power is not unlimited and not all means are permitted to impose order. In this regard, the Inter-American Court of Human Rights ("IACtHR") has stated the following:

Without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action.<sup>258</sup>

131. The European Court of Human Rights ("ECtHR") has similarly established that the personal responsibility of a government official for his or her acts is the basis of the rule of law, and that the indiscriminate shelling of civilians and their neighbourhoods is neither acceptable nor reconcilable with any of the grounds regulating the use of force in international law, including international humanitarian law.<sup>259</sup> The mortar shelling of an urban area is therefore unlawful under international humanitarian law<sup>260</sup> and constitutes a violation of internationally recognised human rights, as a disproportionate attack is per se unlawful and cannot be justified by military necessity.<sup>261</sup>

132. As regards this incident, the Defence has also contended that Mr Gbagbo and other FDS generals did not give any order to use mortars on 17 March 2011. However, such

<sup>257</sup> *Bemba Appeals Judgment*, Concurring Separate Opinion of Judge Eboe-Osuji, ICC-01/05-01/08-3636-Anx3, paras. 333-334; ICTY, Appeals Chamber, *Prosecutor v. Jadranko Prlić et al.*, "Judgement", Volume III, 29 November 2017, IT-04-74-A, Dissenting Opinion of Judge Pocar, ("*Prlić Appeals Judgment*") paras. 8-9; Appeals Chamber, *Prosecutor v. Dario Kordić and Mario Čerkez*, "Judgement", 17 December 2004, IT-95-14/2-A, para. 686; *Kupreškić Trial Judgment*, para. 513.

<sup>258</sup> IACtHR, *Velásquez Rodríguez v. Honduras*, "Judgment of 29 July 1988", para. 154. See also Israel Supreme Court sitting as the High Court of Justice, *Public Committee against Torture v. Government of Israel*, HCJ 769/02, "Judgment", 14 December 2006, para. 46.

<sup>259</sup> See ECtHR, *Benzer and Others v. Turkey* ("*Benzer v. Turkey*"), "Judgment", 12 November 2013, para. 184.

<sup>260</sup> Article 13, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted on 8 June 1977.

<sup>261</sup> ICTY, *Prlić Appeals Judgment*, Dissenting Opinion of Judge Pocar, para. 9.

an order may be inferred from the evidence in the record. There is evidence that Mr Gbagbo explicitly ordered the FDS to launch an attack in Abobo on 24 February 2011.<sup>262</sup> Although P-0239 testified that Mr Gbagbo would have needed to sign an authorisation to use 120 mm mortars in an urban area like Abobo,<sup>263</sup> Philippe Mangou testified that the FDS, and especially BASA, had the power to fire mortars pursuant to Mr Gbagbo's requisition of the armed forces,<sup>264</sup> and specifically after Mr Gbagbo's

<sup>262</sup> Philippe Mangou, P-0009, T-194-FRA, p. 3, lines 18-25, p. 59, lines 9-22, p. 62, lines 4-23, p. 80, lines 3-13; Georges Guiai Bi Poin, P-0010, T-141-CONF-FRA, p. 2, lines 15-25; T-139-CONF-FRA, p. 83, lines 7-28; Edouard Kassaraté, P-0011, T-134-CONF-FRA, p. 71, lines 21-28; p. 72, lines 7-25 (when shown video CIV-OTP-0026-0020, P-0011 affirmed that the president gave instructions to do everything to remove the Commando Invisible from Abobo Gare.)

<sup>263</sup> P-0239, T-167-FRA, pp. 54-56 : "R. [12:26:59] Arrivés au camp Commando, nous avons trouvé... on devait aller relever des gens qui étaient déjà là. Donc, je pense qu'ils nous ont signalé la présence de l'ennemi vers Anonkoua-Kouté. Donc, il... le commandant qui était là a demandé qu'on parte là-bas. Donc, nous avons... chacun a pris son... chacun a pris son matériel, nous sommes partis. Et là, nous, nous sommes restés au niveau de Dépôt 9 avec nos mortiers. Et puis les autres ont continué le chemin. Et nous, nous avons mis notre matériel en batterie. Et je pense qu'on nous a demandé d'effectuer les tirs. Le chef qui était là, un adjudant-chef, a demandé un ordre de tir. Lui, qui lui a dit de tirer, il lui a demandé : 'Bon, je... je suis prêt à tirer, mais je veux un ordre de tir, parce que c'est des armes qu'on n'utilise pas comme ça. Demain, il ne faudrait pas qu'on me 'poursuive'. Donc, en voyant qu'il y avait cette polémique, qui va donner un papier pour dire que 'ah ! il faut tirer ces armes', le capitaine Zadi qui était là, à ce moment, a... lui-même avait des mortiers de 81 ou bien 82, lui-même, il a exécuté des tirs avec ça. Après, les autres qui étaient allés, qui avaient continué le chemin, ils ont... ils ont replié et nous avons plié nos bagages, nous sommes retournés au camp Commando. Q. [12:28:45] D'accord. Alors, tout d'abord, Dépôt 9, ça se trouve où, Monsieur le témoin ? R. [12:28:51] Dépôt 9, ça se trouve à Abobo sur la route d'Anyama, avant d'arriver à la nouvelle gare d'Abobo. Q. [12:29:03] Et à cet endroit, vous dites qu'on vous a demandé de tirer ; qui... qui est la personne qui a demandé de tirer ; qui... qui est la personne qui a demandé de tirer les obus de 120 millimètres ? R. [12:29:17] Euh... le... C'est le capitaine Zadi - Zadi - qui était avec nous, c'est lui qui nous a demandé de tirer. Et notre chef qui était l'adjudant Yapo a dit : 'Non, on ne peut pas tirer, il faut un ordre écrit.' Q. [12:29:34] Le capitaine Zadi, il est de quelle unité ? R. [12:29:39] Bon, je ne sais pas de quelle unité il était. Je ne sais pas, mais lui... je... je l'ai vu quand il était basé à Marie-Thérèse, dans la cour même de Marie-Thérèse même, il était basé là-bas, il avait son équipe là-bas. C'est là-bas je l'ai vu pour une deuxième fois où je l'ai retrouvé avec nous à Abobo. Q. [12:30:10] D'accord. Pour être clair, vous nous dites que vous ne savez pas à quelle unité il appartenait... R. [12:30:15] Non. Q. [12:30:16] Il n'était pas du BASA ? [...] Q. [12:31:12] Vous avez dit que le capitaine Zadi lui-même avait des mortiers de 81, 82 ? R. [12:31:18] Bon, je ne sais pas, 81 ou bien 82, je ne sais pas, entre les deux. Q. [12:31:23] D'accord. Vous avez dit qu'il a exécuté des tirs avec ça. R. [12:31:27] Oui. Q. [12:31:28] Est-ce que, ça, vous l'avez vu de vos propres yeux ? R. [12:31:33] Ah, mais oui, c'était devant nous, devant nous qu'il a exécuté les tirs. Q. [12:31:37] Et en quelle direction est-ce qu'il a exécuté ces tirs ? R. [12:31:41] Bon, il a dit qu'il tirait... il y avait... qu'il y a un gros trou derrière le Dépôt 9 en direction d'Anyama, là. Il y avait un gros trou là-bas, que c'est là-bas on dit les gens sont, que c'est là-bas, lui, il tirait. Bon, puisque, moi, je n'ai jamais utilisé le mortier 85, le mortier que j'ai utilisé avant de le... le 120, ça, il faut une carte, il faut... il faut une carte, [...]." See also Map, CIV-OTP-0037-0467 (on which P-0239 marked the position of mortars used by Colonel Zadi).

<sup>264</sup> P-0009, T-196-CONF-FRA, pp. 39-41: "Q. [11:49:58] Avez-vous autorisé, cette journée-là, l'utilisation d'un tel mortier ? R. [11:50:12] Non. Alors, je voulais préciser tout à l'heure : le mortier 60, c'est une arme d'infanterie. Donc, le chef de l'unité peut l'utiliser sans autorisation du chef d'état-major des armées. Q. [11:50:26] Et où ce mortier a-t-il été... est-il tombé, lorsque vous parlez aux forces onusiennes ? R. [11:50:35] Ça, je ne peux pas le savoir. Je ne peux pas le savoir, puisque je n'étais pas sur le terrain. [...] R. [11:53:56] Je ne me rappelle pas. Par contre, ce que je sais du mortier de 120 dont, moi, j'ai autorisé le tir, après avoir fait le tir, j'ai demandé qu'on réintègre ce mortier, parce que ce mortier, déjà, même, à lui seul, il fait 600 kilos - 600 kilos. Donc, c'est une arme impressionnante et qui est généralement utilisée en arrière de l'ennemi... en arrière... pardon, en arrière de l'ennemi. Or, là, ce qu'on recherchait, c'était de montrer l'arme

instructions of 24 February 2011.<sup>265</sup> Philippe Mangou also indicated that Mr Gbagbo gave instructions but also delegated, knowing that the FDS were doing their job. Philippe Mangou explained that when he received general operational instructions from the President, he executed them accordingly and decided on the details of the operations himself.<sup>266</sup> However, as noted by P-0010, even if Mr Gbagbo did not get involved in the details of operations, he was the only one of all the presidents of Côte d'Ivoire who had been in the army and knew the army perfectly, including the weapons used and their calibre.<sup>267</sup> As noted above, there is abundant evidence that BASA was in possession of 120 mm mortar shells at Camp Commando during the post-election violence.<sup>268</sup> There is additional evidence that, during the post-election violence, the commanding officer at Camp Commando (Rigobert Dadi) had control over weapons and ammunition and received orders directly from Mr Gbagbo.<sup>269</sup>

133. Philippe Mangou acknowledged that he had used mortar shells in Abidjan after 24 February 2011, in particular in the Banco Forest, which borders Abobo.<sup>270</sup> He also testified that the FDS fired mortar shells in PK18 on 26 February in order to liberate the roundabout. Philippe Mangou testified about this shelling on 26 February 2011, which he confirmed was reported directly to the Minister of Defence and to Mr Gbagbo:

*Q. [11:46:57] Nous sommes dans le cadre de l'offensive menée par M. Toaly... le commandant Toaly, le 25 février, pour aller libérer l'axe. R. [11:47:12] D'accord. Q. [11:47:13] Donc, lors de cette opération, est-ce que vous avez été informé par vos hommes qu'il y avait eu utilisation d'un mortier de 60 ? R. [11:47:22] Si je dois être informé, normalement, c'est le général Détoh qui m'informe. Q. [11:47:37] Vous va-t-il informé, le*

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*à l'ennemi, de lui faire voir les effets. Et à l'issue du coup, on a réintégré cette arme, le mortier... le mortier de 120. Mais, par contre, les mortiers 60 sont restés."*

<sup>265</sup> Philippe Mangou, P-0009, T-194-FRA, p. 3, lines 18-25, p. 59, lines 9-22, p. 62, lines 4-23, p. 80, lines 3-13; Georges Guiai Bi Poin, P-0010, T-141-CONF-FRA, p. 2, lines 15-25; T-139-CONF-FRA, p. 83, lines 7-28; Edouard Kassaraté, P-0011, T-134-CONF-FRA, p. 71, lines 21-28; p. 72, lines 7-25 (when shown video CIV-OTP-0026-0020, P-0011 affirmed that the president gave instructions to do everything to remove the Commando Invisible from Abobo Gare.)

<sup>266</sup> P-0009, T-198-FRA, p. 24, lines 8-21; p. 26, lines 19-23; p. 27, lines 1-4. Philippe Mangou testified: "*Donc, le Président, à ce niveau, ne donne pas de détails. Lui, il me dit : 'Libérez l'axe.' Maintenant, à moi de voir : si je veux aller commencer par Abengourou pour libérer, ça, c'est mon problème ; si je veux partir par la MACA, ça, c'est mon problème. Mais les détails de l'opération me reviennent.*"

<sup>267</sup> P-0010, T-141-FRA, p. 21, lines 15-21.

<sup>268</sup> P-0330, T-69-CONF-FRA, pp. 2-9; P-0239, T-167-FRA, pp. 52-54 and 71-72; P-0164, T-164-CONF-FRA, pp. 40 and 55.

<sup>269</sup> P-0047, T-203-FRA, p. 9; P-0239, T-167-FRA, pp. 48 and 82.

<sup>270</sup> P-0009, T-194-FRA, p. 56. Philippe Mangou stated: "*Au cours de l'exécution de cette mission, ça a été très difficile, très difficile, parce que nos éléments qui évoluaient sur l'axe MACA-N'Dotré, on venait vraiment prudemment à cause de la forêt du Banco. Et c'est là qu'avant de partir, j'ai ordonné, Monsieur le Président, sur demande du général Détoh, un tir au mortier 60, qui était un tir de flambage et un tir de harcèlement.*" See also T-196-CONF-FRA, pp. 44-47 and 61.

général Détoh Létho ? R. [11:47:40] Oui, oui. Q. [11:47:41] Il vous a informé qu'il y avait eu l'utilisation d'un mortier de 60 ? R. [11:47:47] Je crois, hein. [...] Q. [12:01:39] Alors, je vais revenir, donc, à la même page – le 1079. Même, je vais revenir en arrière – pardon – à la page 1078, ligne 1170. “Est-ce qu'il y a eu un rapport qui a été fait au Président de l'opération compte tenu que vous avez réussi à prendre le carrefour ?” Réponse : “Oui.” “Vous en avez...” Et la page suivante, ligne 1175. “Vous en avez parlé ?” : question. Réponse : “Alors, j'ai rendu compte au Président que le carrefour a été libéré. Le carrefour a été libéré, mais il se trouve que, quelques jours plus tard – quelques jours plus tard –, puisque mes hommes ne pouvaient pas tenir sur le terrain par manque de munitions, je les ai fait partir à l'escadron, et le carrefour a été récupéré par le Commando invisible.” Question : “Est-ce que le ministre de la Défense a été informé que des obus avaient été utilisés ?” Réponse : “Oui, il savait, puisque les forces impartiales en parlaient.” Question : “Est-ce que le Président a été informé que des obus avaient été utilisés ?” Réponse : “Le Président a été informé.” Question : “Quelle a été la réaction du Président lorsqu'il a été informé qu'il y avait des obus qui avaient été utilisés ?” Réponse : “Bon, lorsqu'il a su que les obus ont été utilisés, le Président nous a posé des questions.” Question : “Oui.” Personne entendue — vous, votre réponse : “Voilà, il nous a posé des questions sur comment ça s'était passé. Donc, nous lui avons donné la réponse. Mais, nous-mêmes, nous n'étions pas sur les lieux pour lui rendre compte de l'ampleur, voilà, des dégâts, c'est-à-dire que ça a été... que ça a défoncé un toit, que ça avait tué des gens. Moi, j'ai... voilà, on n'a... on n'a pas fait ce compte rendu. [...] Q. [12:06:54] (Intervention en français) Vous rappelez-vous... R. [12:06:57] Je me rappelle très bien, c'est le compte rendu qui a... qui a été fait....<sup>271</sup>

134. Philippe Mangou also testified that Mr Gbagbo gave him the following precautionary instructions as regards the offensive in Abobo:

*À un moment donné, le Président de la République s'est levé de son siège, il est venu vers la... la carte. Je lui ai montré la position tenue par l'ennemi, la position des troupes amies. Et le Président m'a... a fait... a posé deux questions. La première question : “Est-ce que la population est encore dans la zone ?” Nous avons dit “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.”<sup>272</sup>*

135. The Supreme Court of Peru, in the *Fujimori* judgment, stated the following, which I have translated:

The president's orders to the Armed Forces do not necessarily require specific formalities; within the diverse and broad scope of his presidential intervention, orders he issues may thus be verbal or written, express or implicit, made public or kept restricted, which was precisely the regular practice of the accused.<sup>273</sup>

136. In the case at hand, Mr Gbagbo's order to start military operations in Abobo, a densely populated area, knowing that heavy weaponry would be used (and was indeed used in compliance with his orders), together with the above precaution to “try to avoid too

<sup>271</sup> P-0009, T-196-CONF-FRA, p. 38, 44-47. Philippe Mangou P-0009 confirmed that, on 26 February 2011, 60 mm mortars were fired in Abobo by the FDS.

<sup>272</sup> P-0009, T-194-FRA, p. 59, emphasis added.

<sup>273</sup> Supreme Court of Peru, *Casos Barrios Altos, La Cantuta y Sótanos del SIE (Alberto Fujimori Fujimori)*, Judgment of 7 April 2009, para. 635. The original Spanish text reads: “Las órdenes del presidente a las FFAA no requieren necesariamente de formalidades determinadas; por eso, en el diverso y amplio ámbito de su intervención presidencial, las órdenes que emita pueden ser verbales o escritas, expresas o implícitas, de conocimiento público o reservado, que fue precisamente la práctica recurrente del imputado.”

many deaths”, could lead a reasonable Trial Chamber to infer that Mr Gbagbo had the intent to use heavy weaponry in Abobo as of 24 February 2011 and was aware of the consequences those military operations under his command would have on the civilian population of Abobo.<sup>274</sup> There is enough direct and circumstantial evidence capable of persuading a reasonable Trial Chamber that Mr Gbagbo ordered the offensive in Abobo that led to the shelling of 17 March 2011. If a Trial Chamber found that Mr Gbagbo ordered the military operations in Abobo, it would also be appropriate for that Chamber to infer the necessary intent because of the obvious risk to life and property that shelling a densely populated urban area entails.<sup>275</sup>

137. Moreover, the evidence in the record indicates that there was no serious investigation into the 17 March 2011 incident, despite the FDS hierarchy’s having received reports (and seen media coverage) on the shelling and the civilian casualties.<sup>276</sup> General Détoh Létho confirmed that he did not investigate the matter and did not know of any government or FDS visit to or investigation at the location of the alleged incident.<sup>277</sup> This was confirmed by P-0239, who was at Camp Commando on 17 March 2011, and testified that the mortar shells had been fired from that site and that no one had visited the site to verify this. He stated that, to his knowledge, no investigation was conducted and that he was simply informed that the government had issued a communiqué denying the shelling.<sup>278</sup>
138. Although there was no apparent investigation, Philippe Mangou testified that Détoh Létho had reported back to him that mortars had not been used. He stated that the use of mortars seemed impossible but conceded that the FDS had been operating in the area and had instead used grenades at the market. The following is relevant in that regard:

*R. [12:36:55] Alors, l’enquête interne, c’était de poser la question de savoir si, effectivement, nos éléments avaient tiré. Non, ils n’ont pas tiré. Et quand, nous-mêmes, nous voyons les caractéristiques de l’arme, le mortier 60, comme je l’ai souligné, qui est une arme d’infanterie avec laquelle on peut effectuer un tir de 1000... de 100 à 1000, nos éléments étaient au camp Commando, à vol d’oiseau, ça peut être à 1500-2000 mètres, et puis, au camp Commando il y a quand même de grandes bâtisses. Mettre un mortier 60 en batterie, ne pas avoir de visuel avec le marché et puis effectuer des tirs, ça nous a semblé*

<sup>274</sup> R. May and M. Wierda, *International Criminal Evidence* (Transnational Publishers, Inc., 2002), p. 256.

<sup>275</sup> ICTY, *Strugar* Rule 98 bis Decision, para. 90.

<sup>276</sup> P-0047 testified that he and his colleagues at the Operations Planning and Coordination Centre (“CPCO”) had seen the media coverage about the alleged incident (T-206-FRA, p. 49).

<sup>277</sup> T-204-CONF-FRA, pp. 19-22; T-206-FRA, p. 49.

<sup>278</sup> P-0239, T-167-FRA, pp. 80-81; T-168-FRA, p. 69.

*vraiment impossible. Ça nous a semblé impossible. Q. [12:37:52] Qu'est-ce que Détoh Létho vous a mentionné? R. [12:37:56] Détoh Létho nous a plutôt dit que nos éléments avaient utilisé des grenades, voilà, qu'ils avaient utilisé des grenades; c'est ce qu'il avait dit, mais pas des tirs de... de roquettes de... de... de 60. Q. [12:38:10] Quel type de grenades? R. [12:38:12] Nous avons deux types de grenades: nous avons les grenades offensives, nous avons les grenades défensives. Je vous ai défini chaque grenade ici, mais je vais reprendre. La... Q. [12:38:29] Est-ce que c'est une offensive ou une défensive qui a été utilisée? Est-ce que Détoh Létho l'a mentionné? R. [12:38:44] Non, il ne me l'a pas précisé expressément.<sup>279</sup>*

139. In fact, Philippe Mangou's testimony above confirms the testimony of P-0238, who stated that BASA carried out a "mopping up operation" or "*ratissage*", returning to areas at which they had fired to search for enemies in hiding, and that they used grenades for such operations.<sup>280</sup>
140. The government communiqué of 18 March 2011, calling for greater collaboration between citizens and the FDS in order to "neutralise suspicious persons" moreover makes no reference whatsoever to the incident of 17 March 2011.<sup>281</sup> On the contrary, despite the lack of an investigation, the State apparatus headed by Mr Gbagbo nonetheless issued another communiqué on 22 March 2011, declaring that an investigation had taken place and that no damage was observed at the Abobo market, no victims were registered at the Abobo and Anyama morgues on Thursday 17 March 2011, and that the FDS were not involved.<sup>282</sup> This communiqué also contradicts Philippe Mangou's statement above, in which he asserted that the FDS had been involved and that grenades had been used. It likewise goes against Détoh Létho's testimony, in which he said that he had not investigated the matter and that he did not

<sup>279</sup> P-0009, T-196-CONF-FRA, p. 58, lines 5-24, emphasis added.

<sup>280</sup> T-81-CONF-FRA, pp. 56-58.

<sup>281</sup> Video CIV-OTP-0069-0374 at 00:07:30 to 00:08:06 (Ahoua Don Mello communiqué, excerpt from RTI broadcast of 18 March 2011 at 20.00; transcript, CIV-OTP-0088-0047 at pp. 0048-0049, lines 41-45). He states: "*Une plus grande collaboration entre les citoyens et les FDS, afin que toutes les présences suspectes dans notre environnement soient neutralisées.*"

<sup>282</sup> Video, 22 March 2011, CIV-OTP-0069-0376 at 00:06:30 to 00:11:40 (excerpt from RTI broadcast of 22 March 2011 at 20.00; transcript, CIV-OTP-0102-2054 at pp. 2055-2056, lines 1-57). Ahoua Don Mello communiqué, lines 13-22: Ahoua Don Mello [ADM]: "*Communiqué du Gouvernement. Le jeudi 17 mars 2011, des informations ont été diffusées par des médias étrangers, faisant état d'une intervention des Forces de défense et de sécurité à l'arme lourde sur un marché situé dans la commune d'ABOBO. Cette intervention aurait fait plus de 27 morts et plusieurs blessés. Le Gouvernement ivoirien, soucieux du respect des droits de l'homme, a aussitôt ordonné des investigations à l'effet de vérifier la matérialité des faits. Il en ressort les constats suivants : aucun dégât par obus n'a été observé dans les marchés de la commune d'ABOBO le jeudi 17 mars 2011; aucune victime d'une prétendue attaque par obus n'a été enregistrée dans les morgues d'ABOBO et d'ANYAMA le jeudi 17 mars 2011; aucune plainte consécutive à une opération des Forces de défense et de sécurité n'a été enregistrée dans les services de police.*"

know of any government official or FDS officer who had visited the location of the incident.<sup>283</sup>

141. The Prosecution submits that at least 31 civilians were killed and 36 civilians were injured.<sup>284</sup> While the number of identified victims will be analysed in Section 4 below under each count, there is already sufficient evidence upon which a reasonable trier of fact could be satisfied that civilians were killed and injured as a result of mortar shells fired by the FDS from Camp Commando towards residential areas of Abobo, in particular the area around the Abobo Siaka Koné market and the SOS Village, and that this was part of an attack against the civilian population.

*iv. Yopougon (25-28 February 2011)*

142. The Pre-Trial Chamber found that, in the Yopougon *commune* of Abidjan during the period commencing shortly after Charles Blé Goudé's speech at Le Baron Bar on 25 February 2011, and until 28 February 2011, pro-Gbagbo forces killed at least 24 people and wounded at least 7. The Pre-Trial Chamber also found that victims were targeted because they were perceived to be Ouattara supporters, as they were nationals of neighbouring West African countries, Muslims, natives of northern Côte d'Ivoire or members of the Dioula ethnic group.<sup>285</sup>
143. There is evidence that, in an RTI broadcast of 24 February 2011, Mr Blé Goudé made a call to impede the movements in Abidjan of UNOCI soldiers. He stated that the UNOCI was lying and engaging in warfare alongside the rebels. He then summoned the youth to attend a "General Assembly" at Le Baron Bar in Yopougon the next day to receive instructions ("*les dernières consignes*").<sup>286</sup> The next day, as planned, the meeting took place and Mr Blé Goudé spoke at Le Baron Bar,<sup>287</sup> giving orders to impede the UNOCI

<sup>283</sup> P-0047, T-204-CONF-FRA, pp. 19-22; T-206-FRA, p. 49.

<sup>284</sup> T-221-CONF-ENG, pp. 43-44. These are the final numbers given by the Prosecution at the hearing of 1 October 2018.

<sup>285</sup> *Blé Goudé Confirmation Decision*, ICC-02/11-02/11-186, para. 38.

<sup>286</sup> CIV-OTP-0064-0086, 00:39:41 to 00:45:16 (excerpt from RTI broadcast of 24 February 2011 at 20.00; transcript, CIV-OTP-0044-2534 at pp. 2556-2557, lines 838-903). P-0108 identified Guy Gbetri (T-145-CONF-FRA, pp. 95-96).

<sup>287</sup> Mr Blé Goudé's full speech was not submitted into the record. There are various clips, namely: clip 1(a): video, CIV-OTP-0064-0087, 00:14:02 to 00:14:33 (excerpt from RTI broadcast of 25 February 2011 at 20.00; transcript, CIV-OTP-0063-2998 at p. 3001, lines 57-61); clip 1(b): video, CIV-OTP-0064-0087, 00:14:45 to 00:15:14 (excerpt from RTI broadcast of 25 February 2011 at 20.00; transcript, CIV-OTP-0063-2998 at p. 3001, lines 65-69); clip 2: video, CIV-D15-0001-0586, 00:01:09 to 00:03:59 (transcript, CIV-OTP-0094-0023 at pp.

from circulating and also to denounce any outsiders (“*dénoncer toute personne étrangère qui vient dans votre quartier*”).<sup>288</sup>

144. There is evidence that Mr Blé Goudé’s call on 24 and 25 February 2011 had a direct effect on the people of Yopougon and especially the *Jeunes Patriotes*. P-0440 described the following:

*[B]ien, c’est M. Blé Goudé, parce que si je ne m’abuse, je ne sais plus si c’est lors d’un meeting ou bien si c’est à la télévision nationale, mais il avait appelé les jeunes à surveiller leur quartier par des barrages qu’on appelait à l’époque “barrages d’autodéfense”. Et il disait que, pour la plupart, les quartiers sont infiltrés de rebelles ; il fallait surveiller les quartiers. Et donc, les jeunes ont érigé des barrages un peu partout. Voilà. Et donc, je me suis dit : puisque, à ces barrages-là, il y avait des hommes qui étaient tués, si on voulait que ça cesse, il fallait que le... la même personne qui a appelé ces jeunes dans la rue les appelle pour leur demander de rentrer tranquillement chez eux, d’arrêter de faire les barrages, que s’ils avaient des informations contre un individu quelconque, qu’ils avisent la police. Donc, c’est pour tout ça que j’ai fait ce rapport. [...] Il faut dire qu’à l’époque M. Blé Goudé était beaucoup écouté. Donc, quand il lançait ce genre d’appels, c’est pratiquement le lendemain qu’on voyait ce genre de barrages. Je ne me souviens plus du jour où il a lancé cet appel, mais toujours est-il que, lorsqu’on arrivait au 25 février, il y avait plus de huit personnes qui avaient été tuées à ces barrages-là, pour la plupart calcinées. C’est-à-dire... on lynche la personne et qu’on brûle ensuite, ou bien, même, souvent la personne est vivante, on la brûle vive. Et donc, nous avons estimé qu’il fallait qu’on fasse quelque chose – absolument.*<sup>289</sup>

145. There is evidence that, starting on 25 February 2011, clashes broke out around the area of the *Boulevard Principal* dividing the Doukouré and Lem neighbourhoods from the Yao Séhi neighbourhood. Evidence also indicates that, while Doukouré and Lem are inhabited mostly by people referred to as Dioula (from the north of Côte d’Ivoire and from West African countries), Yao Séhi is inhabited mostly by people from the west of Côte d’Ivoire.<sup>290</sup> According to two witnesses, early that day, the pro-Gbagbo youth of Yao Séhi and the youth from Doukouré and Lem threw stones at each other along the aforesaid main road.<sup>291</sup>

146. The evidence in the record nonetheless supports allegations that these confrontations were a reaction by the *Jeunes Patriotes* to Mr Blé Goudé’s speeches (on 25 February

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0224-0225, lines 29-55); clip 3: video CIV-OTP-0074-0083, 00:17:47 to 00:17:52 (excerpt from RTI broadcast of 26 February 2011 at 20.00; transcript, CIV-OTP-0097-0213 at p. 0217, line 113).

<sup>288</sup> Clip 1(a), CIV-OTP-0064-0087.

<sup>289</sup> P-0440, T-157-CONF-FRA, pp. 23-24, emphasis added.

<sup>290</sup> P-0433, T-147-CONF-FRA, p. 6, lines 13-17.

<sup>291</sup> P-0433, T-147-CONF-FRA, p. 17, lines 25-28, p. 18, lines 1-11; P-0109, T-154-CONF FRA, p. 41, lines 12-17.

2011 but also on previous dates).<sup>292</sup> P-0438 stated that, after the rally at Le Baron Bar, the youth descended on Doukouré and burned down the mosque and other buildings, while chanting “à chacun son Dioula”.<sup>293</sup> P-0442 also described how, immediately after the rally at Le Baron Bar, he saw those attending the event walking towards Doukouré, throwing stones.<sup>294</sup> P-0109 similarly testified that the youth were saying “Aujourd’hui, on va tuer tous les Dioula”.<sup>295</sup>

147. A police report from that period, recognised in court by its author P-0440, states that between 25 and 28 February 2011, 14 people were killed in Yopougon, of whom 4 had been lynched and 8 had been burned, while 2 had been shot at.<sup>296</sup> P-0440 testified that those who were burned alive were not in combat but were civilians detained at roadblocks monitored by *Jeunes Patriotes*. He reported as follows:

*Il est à noter que les huit (8) corps calcinés ne sont pas la résultante des affrontements, mais sont dus essentiellement aux barrages d’auto-défense érigés sur les voies par les jeunes. Au cours de leur contrôle à la recherche d’armes et de rebelles, dès qu’un individu leur paraît suspect, il est automatiquement lynché et calciné. Ainsi, un simple soupçon suffit à mettre fin à une vie de façon atroce. Si rien n’est fait, le nombre de victime va s’accroître de jour en jour et le clivage entre les différentes communautés va s’agrandir. Les tensions sont palpables et le risque d’implosion est grand. Nous pensons qu’il faut mettre un terme à ces barrages d’auto défense qui sont devenus des mouroirs pour certaines communautés.*<sup>297</sup>

148. Although there is evidence that other groups (such as the RHDP) protected their own neighbourhoods, P-0440 stated that only the *Jeunes Patriotes* had the power to erect roadblocks on main public roads.<sup>298</sup> P-0440 stated that anyone attempting to remove the roadblocks would automatically be treated as a “rebel”.<sup>299</sup> P-0438 described a roadblock he passed on 25 February 2011, saying “c’étaient des jeunes hommes habillés en civil [...] certains étaient armés de machettes et d’autre de couteaux”.<sup>300</sup>

149. There is evidence that people were burned alive during the incident. P-0436 stated that he saw a man beaten and burned alive in front of the police station of the 16th

<sup>292</sup> These speeches are further analysed in Section 5 in relation to Mr Blé Goudé’s individual criminal responsibility.

<sup>293</sup> P-0438, T-150-CONF-FRA, p. 8.

<sup>294</sup> P-0442, T-19-CONF-FRA, p. 86.

<sup>295</sup> P-0109, T-154-CONF FRA, p. 33, lines 14-18.

<sup>296</sup> CIV-OTP-0046-0029.

<sup>297</sup> CIV-OTP-0046-0029, emphasis added. [REDACTED].

<sup>298</sup> P-0440, T-157-CONF-FRA, p. 21.

<sup>299</sup> P-0440, T-157-CONF-FRA, p. 37.

<sup>300</sup> P-0438, T-150-CONF-FRA, p. 41.

arrondissement, at the same time as Mr Blé Goudé was entering the police premises on 25 February 2011. P-0436 described the event as follows:

*Avant ça, j'ai vu... Avant l'arrivée de Blé Goudé au commissariat, j'ai vu le jeune Bakayoko Lassina qui est sorti de la foule, parce qu'entre... nous, on était juste après le pont du... le pont du 16è c'est-à-dire au quartier Doukouré. De là, on voyait devant la police, parce que c'est pas loin. On a vu quelqu'un sortir de la foule et qui a été interpellé. Il a fui pour rentrer au commissariat. Ils l'ont... Les policiers l'ont repoussé dehors, et la foule s'est ruée sur lui avec des coups de... de cailloux, de bois. Ils l'ont fait tomber. Ils ont mis des pneus sur lui, ils ont mis le feu. Quand Blé Goudé rentrait au commissariat, le jeune homme était en train de brûler.<sup>301</sup>*

150. P-0438 similarly stated that he saw the burned bodies of two people on 25 February 2011.<sup>302</sup> P-0438 also said that a man he knew well (“his brother”) was stopped at the Saguidiba roundabout and was beaten and burned to death on the same day.<sup>303</sup> This account was confirmed by P-0459, who testified that he was at the “grin”(an informal place to meet and have tea) when he saw the same young Malian man being chased and then beaten and killed. P-0459 explained that, although the victim was first beaten by a crowd, an FDS officer later came and shot the victim dead.<sup>304</sup> The following passage describes the event:

*[...] il a pris peur, il a voulu fuir pour revenir vers le grin. Donc, il a fui, il a pu traverser la voie, mais arrivé au niveau de... du bâtiment de l'ancien impôt, il y a un jeune qui l'a saisi là-bas, un jeune qui se faisait passer pour un réparateur du portable, enfin, c'est un réparateur du portable à ce moment-là, c'est l'activité qu'il exerçait, mais il connaissait Ahmed. C'est lui qui a saisi Ahmed, et puis, il lui a fait les poches, les gens sont venus, et ils ont commencé à le lyncher, ils ont commencé à le lyncher avec tout... tout ce qui peut tomber dans la main ... Q. [16:44:41] Alors, je...R. [16:44:41] ... (inaudible) faire tomber, ils l'ont battu, et il est mort d'une... d'une mort... d'une mort atroce –d'une mort atroce. Ils ont été sans pitié pour lui. Ils l'ont battu avec tout ce qui leur tombait sous la main. Il est tombé. On lui a asséné un coup de gourdin à la nuque, et tout ça, il est tombé. Ils se sont acharnés sur lui. À un certain moment, il y a un monsieur qui est arrivé. Il était dans une tenue que les militaires portaient, une tenue bleu marine, la culotte est bleu marine, le haut aussi est bleu marine, mais manches courtes. Bon, habituellement, on appelle ça les tenues de corpé (phon.). C'est le nom qu'ils donnent à ces tenues-là. Lui, il est venu. Lui, il avait une arme. Et au moment où ils étaient en train de le battre, il est arrivé, et la foule a dit : “C'est un assaillant. C'est un assaillant.” Et lui, il lui a tiré un coup de feu, étant au sol. Il lui a tiré un coup de feu. Et il y a un autre jeune qui a pris... qui a pris un morceau de brique pour... pour le taper sur la tête – taper sur la tête. Et malgré tout ça, on continuait de le battre. Et on continuait de le battre. On continuait de le battre. Et puis, quand ils ont estimé peut-être qu'il était mort, ils ont commencé à crier qu'il fallait le brûler – il fallait le brûler. Et c'est en ce moment-là que les riverains, ceux qui habitent aux... aux alentours, ils se sont plaints. Ils ont dit : “Non, non, non, vous l'avez tué là, mais vous n'allez pas le brûler ici. Allez le brûler ailleurs, mais pas ici.” Et ils ont commencé à trimbaler son corps. C'était insoutenable. C'était insoutenable. Ils l'ont envoyé sur la voie. Nous, on pouvait plus voir. L'angle sous lequel ils l'ont envoyé,*

<sup>301</sup> P-0436, T-148-FRA, pp. 20-22.

<sup>302</sup> P-0438, T-150-CONF-FRA, pp. 17, 35-36.

<sup>303</sup> P-0438, T-150-CONF-FRA, pp. 2, 17, 21, 35.

<sup>304</sup> P-0459, T-152-CONF-FRA, p. 67, lines 8-10; p. 72, lines 6-20; p. 73, lines 6-7.

*nous, on pouvait plus voir, et puis, c'était trop pénible à supporter. Moi, j'ai quitté, j'ai quitté les lieux... quitté les lieux.*<sup>305</sup>

151. The police report prepared by P-0440 attests that certain communities were targeted in these attacks.<sup>306</sup> As noted above, evidence in the record shows that, although the ethnic composition of Yopougon was diverse, the majority of inhabitants, especially in Doukouré and Lem, were Malinké, Dioula or Burkinabé/Malian, who were perceived to be pro-Ouattara.<sup>307</sup> Evidence shows that the houses and stores of people living in those communities were also pillaged.<sup>308</sup>
152. During his testimony, P-0440 further described what would happen to “northern” people at the roadblocks manned by the *Jeunes Patriotes* in Yopougon, since they were all perceived to be “rebels”:<sup>309</sup>

*Pour ce qu'on a appris, c'est que quand ils arrivaient, ils leur faisaient faire un contrôle d'identité, pour les plus chanceux qui ont des noms à consonance nordiste, on leur demandait une rançon, ils payaient de l'argent, et ils passaient. Mais ceux qui n'avaient pas de chance ou qui étaient vraiment considérés comme assaillants ou rebelles étaient lynchés et brûlés. Alors, pour la plupart, ils avaient du pétrole qu'ils achetaient, à 100 Francs, avec une boîte d'allumettes, et lorsqu'on finit de vous lyncher, on vous passe un pneu sur le corps, on y met du pétrole et le feu.*<sup>310</sup>

153. Evidence suggests that the Muslim community was particularly targeted. There is evidence that the Doukouré and Sidéci mosques were attacked between 25 and 28 February 2011.<sup>311</sup> P-0438 described the attack on the Lem mosque, which started on the Muslim day of prayer, a Friday, on 25 February 2011 at around 13.00. He stated that “la mosquée a été brûlée devant moi”.<sup>312</sup> P-0369, who visited the area in early March 2011, saw that the Lem mosque had been largely destroyed and that bullet casings were still visible.<sup>313</sup> There is also testimonial and forensic evidence that Korans and rugs

<sup>305</sup> P-0459, T-152-CONF-FRA, p. 75, lines 21-28, p. 76, lines 1-22, emphasis added.

<sup>306</sup> CIV-OTP-0046-0029.

<sup>307</sup> P-0433, T-147-CONF-FRA, p. 6; P-0441, T-37-CONF-FRA, pp. 38-39; [REDACTED] P-0440, T-157-CONF-FRA, pp. 81-82; P-0568, T-209-CONF-FRA, p. 36; P-0459, T-153-CONF-FRA, p. 2; P-0442, T-19-CONF-FRA, p. 76.

<sup>308</sup> CIV-OTP-0046-0029; P-0109, T-154-CONF-FRA, pp. 32-34.

<sup>309</sup> P-0440, T-157-CONF-FRA, p. 57. He stated: “*Dans leur entendement, rebelles ou assaillants ne pouvaient provenir que du Nord.*”

<sup>310</sup> P-0440, T-157-CONF-FRA, p. 33.

<sup>311</sup> CIV-OTP-0046-0029 refers to vandalism in the Doukouré and Sidéci mosques.

<sup>312</sup> T-150-CONF-FRA, p. 4.

<sup>313</sup> P-0369, T-40-CONF-ENG, p. 67. See also video CIV-OTP-0043-0269 at 28:30, shown to P-0441 at T-35-CONF-FRA, p.87. Video shows the destruction of the Lem mosque.

were burned during the attack on the Lem mosque.<sup>314</sup> P-0441 saw first-hand that the watchman at the Lem mosque was killed and then cut into pieces.<sup>315</sup> [REDACTED] Maguy Le Tocard, who was a leader of the *Jeunes Patriotes* in Yopougon.<sup>316</sup> P-0433 testified that two neighbours, whom he knew, had been killed that day,<sup>317</sup> and said that a hearse had picked up the bodies on the following day.<sup>318</sup>

154. Contrary to the Defence arguments that the FDS played no role,<sup>319</sup> evidence supports the allegation that grenades were used by the police on civilians,<sup>320</sup> some of whom were killed.<sup>321</sup> There is also evidence that the *Jeunes Patriotes*, together with BAE elements, used grenades and tear gas on the civilian population on that day.<sup>322</sup> P-0438 confirmed that the BAE was present when the Lem mosque was attacked and in fact used tear gas and grenades on civilians fleeing the mosque.<sup>323</sup> He stated in relation to the BAE's presence in this attack:

*[...] il y a un véhicule de... de la BAE qui était garé au carrefour. Ils avaient des grenades lacrymogènes et donc, ils ont jeté des... des grenades, ils ont même blessé des gens. Jusqu'aujourd'hui, un des blessés boite, et c'était donc les gaz lacrymogènes. Donc, la personne qui a été blessée l'a été par une grenade, et nous avons secouru, et ma femme et moi, nous l'avons installé dans une maison. Donc, les autres ont été blessés, peut-être, mais ce que je peux dire, ça se rapporte à ce blessé que nous avons secouru. Peut-être qu'il y a eu d'autres blessés, je ne sais pas [...] Il y a des endroits où ils étaient nombreux, là où ils ont jeté des lacrymogènes, mais je ne peux pas vous dire exactement combien d'éléments de la BEA (phon.) étaient présents sur les lieux –BAE, plutôt. [...] C'est ce que je vous ai dit. Ils ont jeté des grenades lacrymogènes à la main, il y en a qui ont atterri dans la cour de la mosquée et dans la rue principale. Et on était au parking, et c'est là où j'ai vu le blessé [...].<sup>324</sup>*

<sup>314</sup> P-0583's crime scene report on the Lem mosque, CIV-OTP-0076-1952. See also P-0441, T-35-CONF-FRA, pp. 79-81.

<sup>315</sup> T-35-CONF-FRA, pp. 72-77, 82-83.

<sup>316</sup> [REDACTED].

<sup>317</sup> T-147-CONF-FRA, pp. 25-28.

<sup>318</sup> T-147-CONF-FRA, pp. 33-34 and 45.

<sup>319</sup> Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, para. 706; Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, para. 589.

<sup>320</sup> P-0046 (T-126-CONF-FRA, p. 73) and P-0440 (T-157-CONF-FRA, p. 73) testified that the police at the 16th *arrondissement* had grenades. P-0442 (T-19-CONF-FRA, p. 87, T-20-CONF-FRA, pp. 9-13 and 29), and P-0436 (T-148-FRA, pp. 20-22 and 44-46) confirmed that the police used tear gas and grenades, while P-0459 (T-151-CONF-FRA, pp. 70-71) and P-0440 (T-157-CONF-FRA, p. 93 and T-158-CONF-FRA, p. 87) made reference to tear gas being used against civilians.

<sup>321</sup> P-0436 saw one person injured and another killed by a grenade (T-148-FRA, pp. 20-22 and 44-46).

<sup>322</sup> P-0109 (T-154-CONF-FRA, p. 45, T-155-CONF-FRA, p. 4), P-0449 (T-159-CONF-FRA, p. 89); P-0438 (T-150-CONF-FRA, pp. 10 and 15-16).

<sup>323</sup> P-0438, T-150-CONF-FRA, pp. 41-42 and 44-45.

<sup>324</sup> P-0438, T-150-CONF-FRA, pp. 41-42 and 44-45. The witness stated: “*Je vous ai dit... Ce que j'ai dit, je le maintiens à ce sujet. Tout s'est produit à un... à la même période : lacrymogènes, l'incendie de la mosquée, donc mes propos ne changent pas. Je ne peux pas ajouter quoi que ce soit. Donc, tout ce que j'ai dit doit être maintenu.*”

155. P-0441 also identified CECOS vehicles that were present during the attack.<sup>325</sup> P-0442 testified that the police, together with the pro-Gbagbo youth, shot at civilians and used tear gas and grenades on them. He explained what he saw when the attack started in Doukouré, where he witnessed the police injuring and killing people:

*[...] J'ai vu. Ils sont allés au 16è. En retour, on les voit, les policiers sont devant, les manifestants sont derrière, ils sont en train de venir. Nous, on a arrêté. Bon, les policiers sont en train de dire : "Reculez, reculez." Mais pendant ce temps, ceux... ceux qui sont derrière, ils sont en train de nous lapider avec les pierres. "Ah, chef, ceux-là sont en train de nous lapider." Dites-leur (phon.): "Reculez, seulement." Nous, on recule. Mais ils sont en train de nous lapider avec les pierres. Mais quand je dis "Ils sont en train de nous lapider", les pierres blessaient les gens, même comme vous êtes loin, c'est pourquoi (inaudible) un m'a blessé, là. Ça blessait les gens. Bon, c'est pourquoi les gens n'ont pas pu résister. Bon, nous aussi, on a commencé à lapider. Ils sont derrière les policiers. Eux-mêmes sont devant eux. Bon, comme on a... on a commencé à lapider, ça... bon, eux, ils ont commencé à tirer, même, des lacrymogènes, balles réelles, des grenades partout, la foule. Il y a eu des blessés, des morts, sur la voie. Il y a eu des blessés sur la voie. Il y a eu des morts. Ils tiraient en balles réelles contre nous. Comment d'autres personnes sont derrière vous en train de lapider d'autres personnes ? Vous ne parlez pas, nous, on recule, nous on peut pas reculer. On a commencé à se lapider. Bon, eux aussi, ils ont commencé à tirer dans la foule.*<sup>326</sup>

156. P-0436 similarly testified that five minutes after Mr Blé Goudé visited the police station at the 16th *arrondissement* on 25 February 2011, the police emerged, marching towards Doukouré and attacking people along the way. At that moment, P-0436 saw a policeman throw a grenade, which killed one person and injured another.<sup>327</sup>
157. P-0441 testified that, when the Lem mosque was attacked on 25 February 2011, the Republican Guard arrived with a truck to transport looted items.<sup>328</sup> He testified that CECOS and the militia returned to the mosque the following day to cause further damage to the building.<sup>329</sup>
158. The Defence submits that the attackers were not identified.<sup>330</sup> First, as noted above, several witnesses recognised FDS officers among the attackers. Moreover, victims and witnesses recognised militia and "pro-Gbagbo youth" among the perpetrators. Although the witnesses may have used general descriptions in their testimony, their evidence suggests that the attackers were a clearly identifiable group in the context of the post-

<sup>325</sup> P-0441, T-35-CONF-FRA, pp. 63-64.

<sup>326</sup> P-0442, T-19-CONF-FRA, pp. 86-87; T-20-CONF-FRA, pp. 8-14, emphasis added.

<sup>327</sup> P-0436, T-148-FRA, pp. 20-22 and 44-46.

<sup>328</sup> P-0441, T-35-CONF-FRA, pp. 85-88; P-0433, T-147-CONF-FRA, pp. 32-33.

<sup>329</sup> P-0441, T-35-CONF-FRA, pp. 37-39, 62-85; T-36-CONF-FRA, pp. 15-18.

<sup>330</sup> Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, para. 587.

election violence in Yopougon, as most of the witnesses had regularly seen the group in the area before the attack.

159. P-0440, who drafted a police report and was present in Yopougon during the incident, described the attackers as “*jeunes patriotes du parlement de Yopougon*”.<sup>331</sup> P-0441 described what he saw on 25 February 2011 and explained that the *Parlement* group was the same as the “*miliciens*”, and when he saw them approaching the mosque that day he knew that something would go wrong, as they had already attacked a mosque previously.<sup>332</sup>
160. Evidence in the record shows that these *parlements* were places for FPI and Gbagbo supporters to meet.<sup>333</sup> Evidence also links these *parlements* with Mr Blé Goudé. P-0441, P-0440 and P-0433 all confirmed that Mr Blé Goudé used to meet with these *parlement* members or *miliciens* in Yopougon.<sup>334</sup> Evidence also supports allegations that these youth groups went beyond merely assembling at political meetings. An RTI video of 22 January 2011 depicts scenes of Mr Blé Goudé at his home in Yopougon, greeted by hundreds of young men. One of them, identified as youth leader Guy Gbetri, states that they are ready to fight for their “*Général*”.<sup>335</sup> The same video shows Mr Blé Goudé addressing them. Although he states that he does not want to go to war, he does not rule out that possibility when he says: “*Je ne veux pas de guerre. Mais quand je dis que je ne veux pas de guerre, cela ne veut pas dire que je suis faible.*” In fact, the RTI commentator states in relation to these images: “*Si la situation l'exige, la patrie sera défendue.*”<sup>336</sup> Similarly, a police report dated 9 January 2011 states that Mr Blé Goudé spoke at a rally where some 6,000 youths were present. It is reported that Mr Blé Goudé spoke out against Ouattara and the international community, and asked the audience to remain calm but vigilant while waiting for the *mot d'ordre*.<sup>337</sup>

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<sup>331</sup> CIV-OTP-0046-0029.

<sup>332</sup> P-0441, T-35-CONF-FRA, pp. 41-45.

<sup>333</sup> P-0442, T-20-CONF-FRA, p. 33; P-0436, T-148-FRA, pp. 19-20; P-0109, T-154-CONF-FRA, p. 12; P-0108, T-145-CONF-FRA; P-0433, T-147-CONF-FRA, p. 12; P-0435, T-88-CONF-FRA, pp. 11-16.

<sup>334</sup> P-0441, T-35-CONF-FRA, pp. 42-43; P-0440, T-157-CONF-FRA, p. 30; P-0433, T-147-CONF-FRA, p. 12.

<sup>335</sup> Video CIV-OTP-0064-0113, 00:45:44 to 00:46:20, RTI broadcast of 22 January 2011, time stamp 45:45 to 47:00.

<sup>336</sup> Video CIV-OTP-0064-0113, 00:45:44 to 00:46:20, RTI broadcast of 22 January 2011, time stamp 45:45 to 47:00.

<sup>337</sup> *Rapport de Permanence Centrale du 09 au 10 Janvier 2011*, CIV-OTP-0046-0124 at p. 0127; P-0625, T-27-FRA, p. 21, lines 2-7. The witness explained the *mot d'ordre* meaning: “*R. Je... Je vous explique. Quand je*

161. Among the direct perpetrators of the attack on the Lem mosque, P-0441 identified Agbolo and Maguy Le Tocard, leaders of the “*miliciens*”, who he also said were from the *parlement de Yopougon*.<sup>338</sup> P-0440 also testified that Maguy Le Tocard was the leader of the youths training near the police station in Yopougon.<sup>339</sup> A video in the record corroborates this testimony, as it shows Maguy Le Tocard and youths training in Yopougon, and expressing their readiness to kill, chanting “*Gbagbo ou rien*”.<sup>340</sup> During his testimony, P-0435 commented on the video and recognised Maguy Le Tocard and his office in Yopougon in front of the police station.<sup>341</sup> Other evidence in the record corroborates the allegation that Maguy Le Tocard’s office was next to the police station of the 16th *arrondissement*. P-0108 stated: “*Maguy le Tocard, c’est un monsieur qui formait les miliciens. Il avait juste son bureau à côté du 16è et c’est là il formait les jeunes.*”<sup>342</sup>
162. The evidence also supports allegations that the pro-Gbagbo youth in Yopougon were armed with machetes, *gourdins*, hammers and knives, as well as Kalashnikovs and grenades.<sup>343</sup> There is also evidence that these youths were trained, with the direct involvement of the FDS, well in advance of the post-election violence. P-0435 testified that, as early as October 2010, youth militias were being trained in Yopougon.<sup>344</sup> This was corroborated by P-0436, who also stated that youths from Yao Séhi were recruited and trained before the election.<sup>345</sup> This was similarly confirmed by P-0442, who lived in Yopougon and used to see the BAE training the youths (doing the so-called “*footing*” and chanting against the “*Mossi*” and outsiders).<sup>346</sup> P-0440 also gave evidence that corroborates the above witnesses and stated that many of the youths doing *footing* were

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*parle de ‘mot d’ordre’, ça veut dire que le... le responsable, les leaders que nous sommes, nous donnons des mots d’ordre à nos supporters, ou à nos sympathisants, ou à nos groupes : ‘Bon, écoutez, demain, il y a telle chose, il y a telle chose qui voudraient (phon.) avoir lieu, donc vous allez... vous faites un barrage ici, vous allez... vous faites ça.’ C’est ça, les mots d’ordre qu’on donnait.”*

<sup>338</sup> P-0441, T-35-CONF-FRA, pp. 59 and 67.

<sup>339</sup> P-0440, T-155-CONF-FRA, pp. 83-84.

<sup>340</sup> CIV-OTP-0028-0008, 00:01:18 to 00:01:29 (transcript, CIV-OTP-0027-0440 at p. 0441, lines 25-28).

<sup>341</sup> P-0435, T-90-CONF-FRA, pp. 38-39. Witness commented on video CIV-OTP-0028-0008, 00:00 to 02:28.

<sup>342</sup> P-0108, T-145-CONF-FRA, pp. 64-65.

<sup>343</sup> CIV-OTP-0046-0029 refers to knives, machetes, *gourdins* and hammers. P-0438 stated that the youths had machetes and knives (T-150-CONF-FRA, p. 41). Video, CIV-OTP-0028-0008, 00:00 to 02:28 shows images of the *Jeunes Patriotes* of Maguy Le Tocard’s group with Kalashnikovs. P-0109 (T-154-CONF-FRA, p. 45, T-155-CONF-FRA, p. 4) and P-0449 (T-159-CONF-FRA, p. 89) testified that militia, together with the BAE, used grenades. P-0440 (T-157-CONF-FRA, pp. 32-33) stated that although most of the youths had knives, *gourdins* and hammers, some of the youths at the roadblocks in Yopougon had Kalashnikovs.

<sup>344</sup> P-0435, T-87-CONF-FRA, pp. 15-16, 20-26, 33, 41-42.

<sup>345</sup> P-0436, T-148-FRA, pp. 10 and 14-16.

<sup>346</sup> P-0442, T-19-CONF-FRA, pp. 82-85.

armed and in fact wanted to show off their strength when training in the streets of Yopougon.<sup>347</sup> [REDACTED] similarly testified that the youths trained, accompanied by the police, and chanted songs against the “*Mossi*”.<sup>348</sup>

163. For that reason, and contrary to the Defence argument, there is sufficient evidence to support allegations that the acts of violence from 25 to 28 February 2011 were not spontaneous. The aforesaid evidence supports the allegation that the incident was part of a wider attack led by the *Jeunes Patriotes* who followed Mr Blé Goudé<sup>349</sup> and were acting together with the FDS when they targeted the civilian population of Yopougon perceived to be pro-Ouattara.
164. The fact that there had already been clashes between the neighbourhoods of Yao Séhi and Doukoure<sup>350</sup> does not affect the aforesaid conclusion that the attack was planned. As will be further analysed in Section 5 below in relation to Mr Blé Goudé’s individual criminal responsibility, the fact that some of the violence could have started before Mr Blé Goudé’s speech at Le Baron Bar<sup>351</sup> is also inconsequential, in particular since Mr Blé Goudé’s previous speeches and mobilisation efforts were simply precursors to his speech on 25 February 2011.
165. The Prosecution submits that at least 19 people were killed and 13 injured between 25 and 28 February 2011 in Yopougon.<sup>352</sup> Although the number of identified victims will be analysed in Section 4 below under each count, there is sufficient evidence upon which a reasonable trier of fact could be satisfied that the attacks of 25-28 February 2011 were not spontaneous but part of a planned attack against the civilian population. A reasonable Trial Chamber could conclude that the crimes committed in the context of this incident were perpetrated by the *Jeunes Patriotes*, who followed Mr Blé Goudé and whose acts were supported, or at least condoned, by the State apparatus led by Mr Gbagbo.

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<sup>347</sup> P-0440, T-155-CONF-FRA, pp. 83-85, 90-91.

<sup>348</sup> [REDACTED].

<sup>349</sup> Mr Blé Goudé’s influence over the *Jeunes Patriotes* is further analysed in Section 5 in relation to his individual criminal responsibility.

<sup>350</sup> Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, paras. 547-548; Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, paras. 19 and 587.

<sup>351</sup> See, for example, P-0438, T-150-CONF-FRA at pp. 5-6, who mentioned that, at around 10.00, he saw that a *gbaka* had been burned. However, he could not say who had burned it or who the owner was.

<sup>352</sup> T-221-CONF-ENG, p. 35.

v. *Yopougon (12 April 2011)*

166. The Pre-Trial Chamber found that, on or around 12 April 2011 in the Yopougon neighbourhoods of Doukouré and Mami Fatai (areas inhabited mostly by people identified as Dioula and from the north of Côte d'Ivoire and from West African countries), pro-Gbagbo forces armed with guns and machetes attacked people on the street and broke into homes, killing, raping and injuring residents. It also found that this violence was politically motivated and directed against real or perceived Ouattara supporters.<sup>353</sup>
167. P-0459 testified that there was tension in Yopougon after Mr Gbagbo's arrest was broadcast on France 24. The pro-Gbagbo youth met at the *parlement* in Yopougon and thereafter attacked Doukouré. Although P-0459 was not in Doukouré, he lived in a nearby neighbourhood and could hear the shots from his home. A while after the attack started, he saw people seeking refuge in his neighbourhood and narrated what took place in Doukouré.<sup>354</sup> While his evidence is indirect, other witnesses corroborate this testimony.
168. [REDACTED] confirmed that all the victims were Dioula and were unarmed.<sup>355</sup> Similar evidence was given by P-0567, who stated that she had heard gunshots in the night between 11 and 12 April 2011. When she came out of her house on the morning of 12 April 2011, she saw 18 bodies of people she knew, all of them Dioula men and teenagers from Mami Fatai who were not rebels or armed but as she described, "*des jeunes tranquilles*".<sup>356</sup> P-0568 corroborated this evidence, testifying that he heard gunshots during the night between 11 and 12 April 2011 and that, on the morning of 12 April 2011, he saw bodies of people he knew, including his two sons and neighbours.<sup>357</sup> P-0109 similarly testified that, on the morning of 12 April 2011, he saw bodies around Yopougon, some of them with gunshot wounds and others that had been burned. He

<sup>353</sup> *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, para. 45.

<sup>354</sup> T-153-CONF-FRA, pp. 23-26.

<sup>355</sup> [REDACTED].

<sup>356</sup> Rule 68(3) Statement CIV-OTP-0069-0051, paras. 22-25. T-208-CONF-FRA, p. 37, lines 4-13.

<sup>357</sup> Rule 68(3) Statement CIV-OTP-0069-0069, paras. 29-43.

personally knew many of those killed as neighbours and acquaintances.<sup>358</sup> P-0109 confirmed that all the victims he knew were Dioula.<sup>359</sup>

169. There is evidence to suggest that, as in the previous incident in Yopougon, the Muslim, Dioula and other groups perceived as pro-Ouattara were targeted. P-0433 stated that Doukouré was a predominantly Dioula neighbourhood and that most of the victims of the 12 April 2011 incident belonged to that ethnic group.<sup>360</sup> P-0226 stated that, after Mr Gbagbo's arrest, there were roadblocks in various areas in Yopougon, including Sidéci, Niangon, SICOGI and the cemetery.<sup>361</sup> P-0459 stated that people were stopped at such roadblocks and were checked to see whether they were Dioula.<sup>362</sup> This is confirmed by P-0109, who testified that he was stopped by armed men on 12 April 2011. After checking his identity, the armed men shot at him and his friend.<sup>363</sup> P-0109 stated, "*une fois tu es dioula, quand on prend tes pièces, tu es considéré comme un rebelle – c'est ce qu'on disait. Et quand on t'attrape, que tu es rebelle, on te brûle*".<sup>364</sup> [REDACTED].<sup>365</sup>

170. Evidence also indicates that the attack was indiscriminately committed against civilians, as most of them were in their homes and not, as alleged by the Defence, members of an armed force or rebel group taking part in armed hostilities. In that regard P-0441 testified that, on 12 April 2011, attackers came into Doukouré and began going from door to door, forcing their way in, taking goods from the houses and killing inhabitants.<sup>366</sup> Her testimony is corroborated by other witnesses who survived such attacks.

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<sup>358</sup> T-154-CONF-FRA, pp. 59-63.

<sup>359</sup> T-154-CONF-FRA, pp. 66.

<sup>360</sup> P-0433, T-147-CONF-FRA, pp.6-7. The witness testified: "*Donc, Doukouré, c'est en grande partie des Malinké, bon, si vous voulez, des... des Dioula, avec les... comment on appelle... les hommes de la CÉDÉAO, et les Burkinabés, les Maliens. Bon, ensuite, maintenant, à Yao Séhi, en grande partie, bon, ce sont ceux qui viennent de l'Ouest, et avec quelques... quelques Malinké et puis... Sénoufo aussi. [...] [12:18:29] Seriez-vous... seriez-vous en mesure de nous dire l'ethnie des personnes blessées que vous avez vues, si vous le savez ? R. [12:18:39] En grande partie, c'étaient des... c'étaient des Dioula. Exceptionnellement, une fille que nous avons traitée, qui était bété. Sinon, tout le reste, c'étaient des... c'étaient des Dioula.*"

<sup>361</sup> T-166-CONF-FRA, pp. 42-47.

<sup>362</sup> T-153-CONF-FRA, p. 28.

<sup>363</sup> T-154-CONF-FRA, pp. 50-52.

<sup>364</sup> T-154-CONF-FRA, pp. 50.

<sup>365</sup> [REDACTED].

<sup>366</sup> T-36-CONF-FRA, p. 23, lines 7-12.

171. [REDACTED].<sup>367</sup>

172. [REDACTED].<sup>368</sup> [REDACTED]:

[REDACTED].<sup>369</sup>

173. [REDACTED].<sup>370</sup>

174. [REDACTED].<sup>371</sup> [REDACTED].<sup>372</sup> [REDACTED].<sup>373</sup>

175. P-0567 testified that attackers entered her house in Mami Fatai neighbourhood, killing her four brothers and a friend who were there, and that she herself was beaten by the attackers. She stated that the attackers apparently already had information on how many young men were in the house. She stated that they first killed three of her brothers and their friend and then continued looking for the fourth brother, who was hiding under a bed and was killed once they found him.<sup>374</sup> P-0567 also said that, after they had finished killing, they looted the house and ate the family's food.<sup>375</sup>

176. Evidence also supports the allegation that people were burned alive on 12 April 2011. P-0109 said that people were burned and that the so-called "Article 125" (100 francs for gasoline and 25 francs for the matches)<sup>376</sup> was implemented on that date.<sup>377</sup> P-0554 testified that she saw the body of a man being burned alive on 12 April 2011. He was a

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<sup>367</sup> [REDACTED].

<sup>368</sup> [REDACTED].

<sup>369</sup> [REDACTED].

<sup>370</sup> [REDACTED].

<sup>371</sup> [REDACTED].

<sup>372</sup> T[REDACTED].

<sup>373</sup> [REDACTED].

<sup>374</sup> Rule 68(3) Statement, CIV-OTP-0069-0051, paras. 32-40.

<sup>375</sup> Rule 68(3) Statement, CIV-OTP-0069-0051, paras. 41-42.

<sup>376</sup> P-0440 explained what "Article 125" meant (T-157-CONF-FRA, pp. 33-34).

<sup>377</sup> T-154-CONF-FRA, pp. 51, 61-63. P-0440 (T-157-CONF-FRA, pp. 33-34) explained what the concept of Article 125 entailed in the context of the post-election violence: "[11:48:42] *Pour ce qu'on a appris, c'est que quand ils arrivaient, ils leur faisaient faire un contrôle d'identité, pour les plus chanceux qui ont des noms à consonance nordiste, on leur demandait une rançon, ils payaient de l'argent, et ils passaient. Mais ceux qui n'avaient pas de chance ou qui étaient vraiment considérés comme assaillants ou rebelles étaient lynchés et brûlés. Alors, pour la plupart, ils avaient du pétrole qu'ils achetaient, à 100 Francs, avec une boîte d'allumettes, et lorsqu'on finit de vous lyncher, on vous passe un pneu sur le corps, on y met du pétrole et le feu. Q. [11:49:47] Et bon, vous avez parlé du pétrole, de la boîte d'allumettes. Est-ce que, d'après ce que vous savez, est-ce que cela était connu sous un nom particulier, cette procédure ? R. [11:50:03] Ah ! Oui. À l'époque, ils appelaient cela l'article 125, c'est-à-dire qu'ils payent du pétrole 100 Francs, payent une boîte d'allumettes à 25 Francs, et on vous... on vous brûle. Donc, ils avaient surnommé cela l'article 125.*"

taxi driver whose car had also been burned.<sup>378</sup> Similarly P-0226 saw a man being burned alive at a roadblock because he was identified as “Dioula”.<sup>379</sup>

177. There is evidence that mass graves were dug following the attack of 12 April 2011. Several witnesses testified that they had been present when bodies were being buried. P-0438 saw piles of dead bodies and helped dig the mass graves in a parking area next to the Lem mosque. He said that there were some 70 bodies in that mass grave.<sup>380</sup> P-0441, when commenting on a video showing a mass grave and bodies at the Lem mosque,<sup>381</sup> confirmed that after 12 April 2011 he had buried 34 bodies.<sup>382</sup> During his testimony he gave the names of three victims from his neighbourhood.<sup>383</sup> P-0109 testified that 29 bodies had been buried on 13 April 2011, and that he had personally collected them. He saw 17 of these bodies at the mass grave site.<sup>384</sup> The testimony of the aforesaid witnesses was corroborated by P-0369, who saw mass graves in the Doukouré and Mami Fatai neighbourhoods of Yopougon when he visited the area after the post-election violence.<sup>385</sup> In the light of the evidence discussed above, a reasonable Trial Chamber could connect the existence of mass graves to the acts of violence committed in those neighbourhoods.<sup>386</sup>
178. The perpetrators of the attack on 12 April 2011 were identified by eyewitnesses as youth militias acting together with English-speaking mercenaries and the FDS. P-0109 identified the attackers as a mix of youth militias and mercenaries wearing black masks.<sup>387</sup> [REDACTED] described the perpetrators as hooded armed men.<sup>388</sup> [REDACTED] testified that, of the [REDACTED] attackers who entered [REDACTED] home, [REDACTED] man was wearing a military uniform and the

<sup>378</sup> Rule 68(3) Statement CIV-OTP-0077-0153, para. 69.

<sup>379</sup> T-166-CONF-FRA, pp. 43-44.

<sup>380</sup> P-0438, T-150-CONF-FRA, pp. 49 -50.

<sup>381</sup> Video CIV-OTP-0012-0048. T-36-CONF-FRA, p. 30, lines 23-26; p. 31, lines 23-28; p. 32, lines 1-6.

<sup>382</sup> P-0441, T-36-CONF-FRA, p. 23, lines 13-28; p. 26, lines 1-3.

<sup>383</sup> P-0441, T-36-CONF-FRA, p. 26, lines 8-17.

<sup>384</sup> T-154-CONF-FRA, pp. 59-60 and 65.

<sup>385</sup> HRW Report, CIV-OTP-0002-0631, discussed by P-0369 during testimony (T-40-CONF-ENG). P-0369 confirmed that he visited Yopougon in May 2011 and saw first-hand the mass graves.

<sup>386</sup> See ICTY, Kupreški Trial Judgment, paras. 277-278; ICTR, Kayishema and Ruzindana Trial Judgment, para. 356.

<sup>387</sup> T-154-CONF-FRA, pp. 50 and 52.

<sup>388</sup> [REDACTED].

other [REDACTED] were dressed in civilian clothing and wearing red headbands.<sup>389</sup> P-0568 described the perpetrators as hooded men who spoke English.<sup>390</sup> P-0226 likewise identified those monitoring roadblocks on 12 April 2011 as the FDS, youth militia and mercenaries.<sup>391</sup>

179. As in the case of the incident of 25-28 February 2011, several witnesses identified among the youth militia individuals whom they already knew. P-0567 knew some of the members of the pro-Gbagbo youth militia, since they were neighbours from Mami Fatai.<sup>392</sup> [REDACTED].<sup>393</sup> P-0459 identified a youth he had seen at the *parlement* of Yopougon as one of the attackers on 12 April 2011.<sup>394</sup> [REDACTED].<sup>395</sup> [REDACTED].<sup>396</sup> [REDACTED]:

[REDACTED].<sup>397</sup>

180. [REDACTED].<sup>398</sup> [REDACTED].<sup>399</sup> [REDACTED].<sup>400</sup> [REDACTED].<sup>401</sup> [REDACTED].<sup>402</sup>

181. The Defence's contention that rebels had infiltrated Yopougon by 12 April 2011 is not substantiated by sufficient evidence in the record.<sup>403</sup> Moreover, the presence of rebel groups, even if proved, does not necessarily affect any link that could reasonably be

<sup>389</sup> [REDACTED]. In relation to this identification, see also testimony of P-0009, T-194-FRA, p. 8, lines 6-10. He stated: "*Il faut noter que, la veille de l'attaque, il y a un jeune qui était passé leur dire: 'Mais Mangou, lui, il veut que Gbagbo parte. Il sait pas, c'est lui-même qui va partir entre les quatre bois.' Donc, ceux qui m'attaquaient portaient des bandeaux rouges, ils étaient en taxi, et c'étaient des attaques, des tirs à l'arme... à... à la kalache, au RPG.*" [Emphasis added]. See also the incident of 15 March 2011, discussed below, in which the imam of the Great Mosque of Port-Bouët was killed. The perpetrators were also identified as armed militia wearing red scarves.

<sup>390</sup> Rule 68(3) Statement, CIV-OTP-0069-0069, para. 32.

<sup>391</sup> T-166-CONF-FRA, pp. 42-47. Although in his testimony the witness said that he was able to identify the FDS by their clothing but could not be certain whether the individuals were really FDS or just wearing FDS uniforms, a reasonable Trial Chamber could infer that these were pro-Gbagbo groups, since they were targeting people perceived to be pro-Ouattara. As mentioned by the witness in his testimony, a man was burned at one of these roadblocks simply for being Dioula.

<sup>392</sup> Rule 68(3) Statement CIV-OTP-0069-0051, para. 27.

<sup>393</sup> [REDACTED].

<sup>394</sup> T-153-CONF-FRA, pp. 24-25.

<sup>395</sup> [REDACTED].

<sup>396</sup> [REDACTED].

<sup>397</sup> [REDACTED].

<sup>398</sup> [REDACTED].

<sup>399</sup> [REDACTED].

<sup>400</sup> [REDACTED].

<sup>401</sup> [REDACTED].

<sup>402</sup> [REDACTED].

<sup>403</sup> Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, paras. 532, 537-546.

established between the attack of 12 April 2011 and previous acts of violence in Yopougon as of 25 February 2011, given the particularity of these acts of violence apparently targeting the perceived pro-Ouattara civilian population. Nor would rebel presence in the area affect the fact that the victims were civilians who, as noted above, were in their homes and unarmed when killed, injured or raped.<sup>404</sup> As stated by P-0435, at the time in question, it was difficult to identify forces as they had all been ordered to dress in civilian clothing. However, he clarified that the attackers were able to identify each other using verbal codes.<sup>405</sup> P-0435 further explained that pro-Gbagbo forces controlled Yopougon until 18 April 2011.<sup>406</sup> He also testified that, on 12 April 2011, forces loyal to Mr Gbagbo were still based at the Locodjoro naval base.<sup>407</sup> This was corroborated by P-0238, who stated in court that in his view the *Commando Invisible* was not able to infiltrate Yopougon, as this area was very well guarded by the *Jeunes*

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<sup>404</sup> As noted above in the section on applicable law, the term “civilian population” must be interpreted broadly and “refers to a population that is predominantly civilian in nature”. Even if rebels were present, this “does not as such alter its civilian nature”. ICTY, *Limaj* Trial Judgment, para. 186; *Kordi and erkez* Trial Judgment, para. 180. *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1105; ICTY, *Tadi* Trial Judgment, paras. 638-643; *Blaški* Appeals Judgment, paras. 113 and 214; ICTR, *Kayishema and Ruzindana* Trial Judgment, para. 128; *Rutaganda* Trial Judgment, para. 72; and *Musema* Trial Judgment, para. 94; MICT, *Šešelj* Appeals Judgment, paras. 60 and 69.

<sup>405</sup> P-0435, T-90-CONF-FRA, pp. 74-75. “Donc, quand j’ai dit qu’il était difficile de savoir qui était qui, donc, c’est-à-dire qu’il était difficile de... juste au vu, de savoir à... à qui... à quel corps ou bien à quelle organisation appartenait un individu armé à ce moment-là, parce que, que ce soit nous, le mouvement des GPP, et que ce soit les FDS, en tout cas, la majorité, nous... à la majorité, nous étions en tenue civile, parce que même au Palais présidentiel, avant que nous... nous nous délocalisons à Yopougon, c’est début... déjà, début du mois d’avril, déjà, on avait reçu instruction du colonel Mody de se mettre en tenue civile. Et on avait juste des... des gilets... des gilets en couleur treillis qu’on mettait sur nos vêtements qui nous permettaient de... de se reconnaître, parce que lorsque nous avons auparavant délogé le FRCI au niveau de l’état-major, ils avaient... ils avaient pris des... emporté des tenues qui étaient à la garnison de l’état-major. Donc, ils avaient des tenues des différents corps des FDS qui... qu’ils avaient portées. Donc, on ne pouvait pas... si on se mettait en ces mêmes tenues-là, on allait avoir des problèmes à se différencier si... lors des combats. [...] Donc, c’est juste par des codes comme on dit, par des ‘codes verbaux’ qu’on... on se reconnaissait.”

<sup>406</sup> P-0435, T-90-CONF-FRA, p. 63: “Q. [14:46:11] Et pour combien de temps est-ce que vous avez contrôlé Yopougon suite à l’arrestation du Président Gbagbo ? R. [14:46:25] C’était jusqu’à... jusqu’au lundi... au lundi qui a suivi, hein... jusqu’au lundi qui a suivi, parce que... c’est jusqu’au lundi qui a suivi que les Forces républicaines ont réussi à... à... avec l’armée française ont réussi à déloger tous les combattants qui étaient... qui étaient à Yopougon.”

<sup>407</sup> P-0435, T-90-CONF-FRA, pp. 62-63: “R. [14:43:41] Le 12, nous sommes... nous avons rejoint la base... la base navale, qui est dans la commune d’Attécoubé, la base navale de la Marine à Locodjoro. [...] Il y avait... il y avait déjà des... des chefs de guerre libériens qui étaient déjà là, il y avait d’autres commandants aussi du GPP, dont Maguy le Tocard et Tchang, tout ça, qui étaient déjà là. Il y a le commandant Konan, lui qui était... lui, il était... il avait déjà récupéré, en tout cas, la majorité des armes qui étaient à la... à la poudrière de la base navale, il avait évacué avec une bonne partie de ses éléments. Donc, lorsque nous sommes arrivés, il y avait... il y avait les FDS aussi qui étaient... qui étaient à la Marine aussi.”

*Patriotes*.<sup>408</sup> Similarly, Philippe Mangou testified that the *Commando Invisible* had not been able to set up in Yopougon during the post-election violence.<sup>409</sup>

182. Moreover, the eyewitnesses above were certain that the perpetrators had been pro-Gbagbo forces, including *Jeunes Patriotes* from their own neighbourhood acting together with mercenaries and the FDS. Witnesses had been able to make this determination because they had seen the perpetrators before in the neighbourhood, because they personally knew some of them or because the attackers had said that they were targeting the Dioula when committing the crimes. In fact, there is no evidence in the record that any other armed group (such as the *Commando Invisible*) would have had any motive to target this particular ethnic group (the Dioula).
183. The above evidence was also corroborated by Philippe Mangou, according to whom these armed men were not FDS soldiers but members of youth militias. Philippe Mangou testified that, on 3 April 2011, on his way back from the presidential residence, he had seen five trucks carrying armed men who, he said, were not soldiers from Côte d'Ivoire.<sup>410</sup> He also stated that he had attended a disarmament ceremony in Yopougon which was also attended by Maguy Le Tocard and Eugène Djué (both identified as leaders of the *Jeunes Patriotes*).<sup>411</sup> This evidence was further corroborated by P-0625, who testified that after Mr Gbagbo's arrest he had personally gone to Yopougon to calm the youth, including Maguy Le Tocard and his group, asking them to lay down their arms because their leader had been arrested and it was no longer necessary to continue the war.<sup>412</sup>
184. In the light of the evidence analysed above, a reasonable trier of fact could infer that pro-Gbagbo forces were in Yopougon on 12 April 2011 and committed attacks that targeted the perceived pro-Ouattara civilian population. On the basis of the evidence in the record, it would be unreasonable, as alleged by the Defence, to conclude that the

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<sup>408</sup> [REDACTED].

<sup>409</sup> T-197-CONF-FRA, p. 44, lines 2-8.

<sup>410</sup> P-0009, T-194-FRA, p. 25, lines 8-27.

<sup>411</sup> P-0009, T-194-FRA, p. 38, lines 15-28; pp. 39-41; video CIV-OTP-0047-0650; transcript CIV-OTP-0048-1654, journalist: "*Pacification du district d'ABIDJAN. L'appel du Premier Ministre invitant les miliciens à déposer les armes a été entendu : des miliciens pro-GBAGBO retranchés à YOPOUGON ont décidé de déposer les armes.*" [Emphasis added].

<sup>412</sup> P-0625, T-28-CONF-FRA, p. 85, lines 9-24.

deaths, injuries and rapes resulted from armed confrontation involving rebels infiltrated in Yopougon.

185. The Defence contends that the attack was spontaneous and isolated and was committed by “bandits”.<sup>413</sup> However, as noted above, the perpetrators of the aforesaid crimes were mainly identified as *Jeunes Patriotes* and, to a lesser extent, FDS personnel and mercenaries. Moreover, the evidence above shows that the perpetrators were engaged not in mere opportunistic pillaging or acts of common criminality but in an attack upon perceived Ouattara supporters on ethnic, religious and national grounds. Eyewitnesses who lived in that area and who are fully familiar with the context of Yopougon during the post-election violence testified that they knew many of these attackers, as they were young people from the neighbourhood who had been training and were involved in intimidation and violence well in advance of the attack. Although activities such as “footing” may seem harmless, when analysed in the context of the post-election violence, the evidence that these groups had weapons and that they were chanting against the Dioula supports allegations that these *Jeunes Patriotes* were trained and prepared to commit acts of violence. It would be unreasonable, given the context, to conclude that these youth had acted spontaneously.
186. Furthermore, evidence supports allegations that the youths were acting on the same “*mot d’ordre*” given by Mr Blé Goudé, and that their acts followed a similar pattern of crimes committed previously during the post-election violence, in particular on 25-28 February 2011.<sup>414</sup> As will be further analysed in Section 5 below, given Mr Blé Goudé’s actions after the incident in Yopougon on 25-28 February 2011, a reasonable Trial Chamber could conclude that the *Jeunes Patriotes* were prompted to commit the crimes.

<sup>413</sup> Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, paras. 532 and 551.

<sup>414</sup> *Ntaganda* Trial Judgment, ICC-01/04-02/06-2359, para. 693, referring to *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1113. In considering the systematic character of the attack, the Chamber shall assess whether a series of repeated actions seeking to always produce the same effects on a civilian population were undertaken and, in doing so, it may consider whether: (i) identical acts took place or similarities in criminal practices can be identified; (ii) the same modus operandi was used; or (iii) victims were treated in a similar manner across a wide geographic area.

187. The Prosecution submits that at least 61 people were killed, 6 women raped and 3 people wounded on 12 April 2011 in Yopougon.<sup>415</sup> Although the number of identified victims will be analysed in Section 4 below under each count, the nature of the attack and the number of targeted victims, affecting a particular group of persons, could lead a reasonable Trial Chamber to conclude that the attack was widespread and systematic and targeted the civilian population on the basis of their perceived support for Ouattara, nationality, religion or ethnicity.

*vi. Other incidents*

188. In addition to the aforesaid five main incidents, evidence in the record also supports allegations that a series of crimes was committed in the context of the post-election violence. There is evidence that the incidents described below occurred during the relevant time period.

189. On 30 November 2010, two identified young Malian men who were working in a poultry farm were killed during a raid in the Sotrepim neighbourhood of Abidjan. The perpetrators were identified as FDS. This incident was reported by UNOCI and corroborated by two other reports. There is no report of the victims being armed.<sup>416</sup>

190. On 1-2 December 2010, a raid was conducted on the *Rassemblement des Républicains de Côte d'Ivoire* ("RDR") headquarters in Wassakara, Yopougon, where RDR supporters had decided to spend the night because of threats they had received. The perpetrators were identified as gendarmes, together with unidentified men in civilian clothing, who entered the premises and killed at least four people and wounded seven, while detaining other unidentified individuals. This incident was reported to the police and the gendarmerie (including Bredou M'bia and Édouard Kassaraté). There is no report of the victims being armed.<sup>417</sup>

<sup>415</sup> T-221-CONF-ENG, pp. 56-57. These are the final numbers given by the Prosecutor at the hearing of 1 October 2018.

<sup>416</sup> UNOCI report, 23 December 2010, CIV-OTP-0044-0903 at p. 0907 (refers to people named Tangara Ousmane and Minki Bakary, allegedly killed on 30 November 2010); P-0564, report CIV-OTP-0050-0003 at p. 0022, No. 640 (refers to death of Milogo Bakary), at p. 0024, No. 734 (refers to the death of Tangara Ousmane); report entitled "*Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne*", CIV-OTP-0052-02922 at p. 0295, at p. 0359, No. 138 (death of Tangara Ousmane).

<sup>417</sup> Police letter, 10 December 2010, CIV-OTP-0046-0099. This police document refers to the incident and was recognised in court by P-0046, P-0440 and P-0011. P-0011 confirmed that it reported on the said incident (T-132-FRA, pp. 78-88); video, CIV-OTP-0061-0547, 00:03:00 to 00:05:54 (excerpt from RTI broadcast of 11

191. On 4 December 2010 in Port-Bouët, two identified civilians were found shot to death. The perpetrators were not identified, but the incident was reported to the police. There is no report of the victims being armed.<sup>418</sup>
192. On 6 December 2010 in Adjamé-Boribana, armed FDS identified as CECOS/BMO opened fire on RHDP demonstrators, killing an identified young man and injuring another. This incident was reported to the police, including Bredou M'bia. There is no report of the victims being armed.<sup>419</sup>

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December 2010 at 13.00; transcript, CIV-OTP-0094-0291). P-0011 recognised General Gohourou and said that this was related to the incident involving Koukougnon. He said that he called Koukougnon but that he never received a copy of the report on the investigation carried out by the police. P-0440, T-158, CONF-FRA, pp. 88-90: “Q. [15:45:26] Alors, regardez l’écran, j’aurais dû apporter des copies papier, mais enfin, je crois que ça va aller plus vite comme ça. Donc, vous allez regarder l’écran, regardez à la seconde, en bas, la deuxième ligne à partir du bas, - pardon -, vous verrez ‘Yopougon-Wassakara’, en date du 2 décembre 2010, à 6 heures. Et prenez un petit moment, s’il vous plaît, pour lire cette rubrique. (Le témoin s’exécute) R. [15:46:08] Oui, j’ai lu. Q. [15:46:14] Est-ce que c’est l’incident qui vous a été montré plus tôt sur une... sur un extrait vidéo par les représentants de M. Blé Goudé ? R. [15:46:32] C’est tout à fait ça. Q. [15:46:34] Et ‘ce dernier petit’ case... cette dernière petite case à droite, qui dit : ‘Une enquête est ouverte sous...’, et cetera. Est-ce qu’il y a eu une enquête ouverte au sujet de cet incident et qui l’a ‘fait’ ? R. [15:46:59] Bien entendu, c’est nous-mêmes qui avons fait cette enquête, et je me rappelle très bien que le fédéral Zaba avait été entendu. Le fédéral FPI de Yopougon. Q. [15:47:16] Dans le numéro de... d’enregistrement, MPI et cetera, est-ce qu’il y a quelque chose dans cet... dans ce numéro d’enregistrement, OP et cetera, est-ce que cela... est-ce qu’il y a quelque chose dans ce numéro qui indique que c’était bien le commissariat du 16<sup>e</sup> qui ouvrait l’enquête ? R. [15:47:49] Bien entendu, nous avons écrit : ‘Une enquête est ouverte si... sous OP’. Ça veut dire numéro d’opération, 18663 par police urbaine – PU, ça veut dire police urbaine 16 –, quand on met ‘16’, ça veut bien dire du 16<sup>e</sup> arrondissement. Q. [15:48:05] Et très rapidement, à la page précédente, à la page 0850, 0850, s’il vous plaît. (Le greffier d’audience s’exécute) La deuxième rubrique, ici, est-ce que vous pourriez nous dire à quoi cela fait référence ? R. [15:48:56] Ça fait référence à la tuerie qui a eu lieu au siège du... Ah ! Non. Excusez-moi. Oui, ça fait référence à cela, la tuerie qui a eu lieu à la base du RDR à Wassakara.” P-0009, T-195-CONF-FRA, pp. 86-87; video, CIV-OTP-0074-0049, 00:11:59 to 00:13:24 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0087-0349 at p. 0350, lines 5-26). The video was shown to P-0009, who said that the gendarmerie was in charge of the investigations related to this incident. See also video CIV-OTP-0064-0095, 00:03:40 to 00:06:31 (excerpt from RTI broadcast of 11 December 2011 at 20.00; transcript, CIV-OTP-0101-0735, lines 16-32).

<sup>418</sup> List of bodies entering IVOSEP morgue from March to June 2011, CIV-OTP-0029-0476 at p. 0476, Nos. 1, 2; List entitled Events [deaths] VGE. Refers to individuals Kabore Moumouni and Bayoh Alassane, whose bodies were admitted to the morgue on 4 December 2010 from Port-Bouët. Police report, 4 December 2010, CIV-OTP-0045-0527 at pp. 0528-0529. Document refers to the said incident and states that bodies bore several gunshot wounds.

<sup>419</sup> Police report, 6 December 2010, CIV-OTP-0045-0751. P-0046 (T-123-CONF-FRA, T-128-CONF-FRA) recognised this as a simplified report but denied having seen it. He recognised the fax number. P-0010 (T-138) said he had never seen this document. He said he was never informed of the incident described therein (alleged shooting of civilians by BMO men). DGNP compilation, 22 November 2010-7 February 2011, CIV-OTP-0045-0793 at pp. 0865-0866. Police report, 6 December 2010, summary from 22 November 2010 to 7 February 2011. At p. 0959, P-0046 (T-126-CONF-FRA) recognised that he had received this document summarising the various events that had occurred during the time frame. He could not recall sending it to the Minister, but he said he must have done so. P-0440 (T-158-CONF-FRA) indicated that a statement was taken from Federal Zaba Zadi Lazar. The number of the report matches the one used by the reports of the 16<sup>th</sup> arrondissement. CIV-OTP-0045-0750. Relates to two persons taking part in a demonstration who were killed by the CRS. P-0046 (T-123-CONF-FRA) recognised this as a simplified report. P-0560 (T-123-CONF-FRA) recognised his signature. He

193. On 25 December 2010, individuals identified as pro-Gbagbo students attacked RHDP members who were trying to buy food at the *Parti Démocratique de Côte d'Ivoire* ("PDCI") headquarters in Cocody. The police and the gendarmerie intervened; 12 pro-Gbagbo students and 11 RHDP militants were wounded, 3 of them by gunshot. This incident was reported to the police, including Bredou M'bia. There is no report of the victims being armed.<sup>420</sup>
194. On 24 February 2011 in Yopougon-Gesco, an identified man was lynched and burned alive by a crowd that suspected him of being a "*dozo*" or rebel. The incident was reported to the police. There is no report of the victim being armed.<sup>421</sup>
195. On 26 February 2011 and in the days that followed, the FDS shelled PK18 using 60 mm mortars. On that same day, UNOCI reported having received calls from people in Abobo referring to heavy shelling in the area which cut off electricity. UNOCI received reports about unidentified persons being injured and killed, and also about civilians fleeing the area. Casualties and damage were reported to Philippe Mangou, who reported the use of mortars in the area to Mr Gbagbo. There is no report of victims being armed.<sup>422</sup>

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explained that this was a simplified report, to inform on events as they happened, in matters of urgency. It was more succinct than a BQI.

<sup>420</sup> DGPN compilation, 22 November 2010 to 7 February 2011, CIV-OTP-0045-0793 at p. 0921. Summary of 22 November 2010 to 7 February 2011. At p. 0959, P-0046 (T-126-CONF-FRA) recognised that he had received this document summarising the various events that had occurred at various places at various times. He could not recall sending it to the Minister, but thinks he must have done so. P-0440 (T-158-CONF-FRA) indicated that a statement was taken from Federal Zaba Zadi Lazar.

<sup>421</sup> BQI No. 38, 24 February 2011, CIV-OTP-0045-0391 at p. 0393, Abidjan Police Prefecture; BQI No. 0017, 24 February 2011, CIV-OTP-0045-0396 at p. 0396, *Chef PC Opérations*, Ministry of the Interior (refers to the said incident); UNOCI report, 24 February 2011, CIV-OTP-0044-1514 at 1516; *liste de victimes CHU de Treichville*, CIV-OTP-0029-0462 at p. 0463, no. 55; media article, 2 March 2011, CIV-OTP-0055-0450 at p. 0451: Ivoireinfo.com, "*Début de Guerre civile en Côte d'Ivoire : Laurent Gbagbo et Blé Goudé lancent 'la solution finale' contre l'ONUCI, les opposants et les étrangers Ouest-africains Spécial*". This document makes reference to a man who was allegedly burned to death in Yopougon (admissible but solely to confirm date and not for the accuracy of its contents).

<sup>422</sup> P-0009, T-196-CONF-FRA, p. 38: "*Q. [11:46:57] Nous sommes dans le cadre de l'offensive menée par M. Toualy... le commandant Toualy, le 25 février, pour aller libérer l'axe. R. [11:47:12] D'accord. Q. [11:47:13] Donc, lors de cette opération, est-ce que vous avez été informé par vos hommes qu'il y avait eu utilisation d'un mortier de 60 ? R. [11:47:22] Si je dois être informé, normalement, c'est le général Detoh qui m'informe. Q. [11:47:37] Vous a-t-il informé, le général Detoh Letho ? R. [11:47:40] Oui, oui. Q. [11:47:41] Il vous a informé qu'il y avait eu l'utilisation d'un mortier de 60 ? R. [11:47:47] Je crois, hein.*" Pp. 44-45: "*Q. [12:01:39] Alors, je vais revenir, donc, à la même page – le 1079. Même, je vais revenir en arrière – pardon – à la page 1078, ligne 1170. 'Est-ce qu'il y a eu un rapport qui a été fait au Président de l'opération compte tenu que vous avez réussi à prendre le carrefour ?' Réponse : 'Oui.' 'Vous en avez...' Et la page suivante, ligne 1175. 'Vous en avez parlé ?' : question. Réponse : 'Alors, j'ai rendu compte au Président que le*

196. During the night between 3 and 4 March 2011, a group identified as pro-Gbagbo youth armed with “*gourdins*” burned alive a physically disabled man from Burkina Faso and lynched another man, also Burkinabé, in Port-Bouët. The incident was reported to the police. The police report indicates that such events occurred regularly as the youth monitoring the roadblocks accused Burkinabé people of hiding rebels. There is no report of the victims being armed.<sup>423</sup>
197. On 4 and 8 March 2011 in Yopougon, a group identified as *Jeunes Patriotes* armed with “*gourdins*”, broke into and pillaged the stalls of market traders from Senegal and Nigeria. The attackers were allegedly protesting against UNOCI. The incident was reported to the police but there was no mention of the victims being armed.<sup>424</sup>
198. On 11 March 2011 in Yopougon, armed men with Kalashnikovs identified as pro-Gbagbo youth stoned and killed a man from Burkina Faso, suspecting him of being a rebel informant. Other people (eight in total) were burned to death that same day. The incident was reported to the police but there was no mention of the victims being armed.<sup>425</sup>

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*carrefour a été libéré. Le carrefour a été libéré, mais il se trouve que, quelques jours plus tard – quelques jours plus tard –, puisque mes hommes ne pouvaient pas tenir sur le terrain par manque de munitions, je les ai fait partir à l’escadron, et le carrefour a été récupéré par le Commando invisible.’ Question : ‘Est-ce que le ministre de la Défense a été informé que des obus avaient été utilisés ?’ Réponse : ‘Oui, il savait, puisque les forces impartiales en parlaient.’ Question : ‘Est-ce que le Président a été informé que des obus avaient été utilisés ?’ Réponse : ‘Le Président a été informé.’ Question : ‘Quelle a été la réaction du Président lorsqu’il a été informé qu’il y avait des obus qui avaient été utilisés ?’ Réponse : ‘Bon, lorsqu’il a su que les obus ont été utilisés, le Président nous a posé des questions.’ Question : ‘Oui.’ Personne entendue – vous, votre réponse : ‘Voilà, il nous a posé des questions sur comment ça s’était passé. Donc, nous lui avons donné la réponse. Mais, nous-mêmes, nous n’étions pas sur les lieux pour lui rendre compte de l’ampleur, voilà, des dégâts, c’est-à-dire que ça a été... que ça a défoncé un toit, que ça avait tué des gens. Moi, j’ai... voilà, on n’a... on n’a pas fait ce compte rendu.’” P. 47: “Q. [12:06:54] (Intervention en français) Vous rappelez-vous... R. [12:06:57] Je me rappelle très bien, c’est le compte rendu qui a... qui a été fait.” See also Human Rights Division Call Centre, 27 February 2011, CIV-OTP-0044-1538 at pp. 1538-1541. This document is relied upon because it is corroborated by the testimony of P-0009 that, on that date, 60 mm mortars were used in Abobo by the FDS.*

<sup>423</sup> BQI, 7 March 2011, CIV-OTP-0045-0180 at p. 0181 (police report refers to the said incident); BQI, 4 March 2011, CIV-OTP-0045-0213 at pp. 0214-0215 (police report refers to the said incident); list, CIV-OTP-0073-1074 (contains names of alleged witnesses, collected from the Ministry of Justice of Côte d’Ivoire); report, CIV-OTP-0050-0003 at p. 0011, No. 95 (submitted via P-0564, entry refers to death of Dabre Issa).

<sup>424</sup> BQI, 4 March 2011, CIV-OTP-0045-0213 at p. 0214 (police report refers to the said incident).

<sup>425</sup> P-0108, T-145-CONF-FRA, pp. 53-54: “Q. [12:41:35] Monsieur le témoin, quand avez-vous vu pour la première fois ces jeunes personnes avec des armes à Yopougon ? R. [12:41:40] Juste quand il y a eu le déclenchement même de la crise où, je dirais, Lologo Moumouni a été tué, le lendemain, à Doukouré, il y a eu... à la mosquée, il y a eu huit morts. Je crois, c’est le troisième jour, le 16<sup>e</sup> ... la police du 16<sup>e</sup> a quitté les lieux du 16<sup>e</sup>, c’est en ce moment-là que les armes ont commencé, de part et d’autre, à sortir. C’est en ce moment-là que la milice de Monsieur... le chef des miliciens...comment on appelle même... Maguy le Tocard, a pris le 16<sup>e</sup>. Q. [12:42:43] Monsieur le témoin, êtes-vous en train de dire que la première fois que vous avez vu des jeunes

199. On 15 March 2011, the 74-year-old imam of the Great Mosque in Port-Bouët II was killed in the mosque. The perpetrators were identified as the BAE, gendarmes and armed militia members wearing red scarves, who also used grenades and Molotov cocktails on the homes of civilians who they shot at as they were fleeing their homes. The incident was reported to the police, including Bredou M'bia. There is no report of the victims being armed.<sup>426</sup>

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*avec des armes, c'était après qu'un dénommé Lologo Moumouni a été tué ? Est-ce que vous vous souvenez de la date à laquelle il a été tué ? R. [12:43:04] Ben, non. Q. [12:43:06] Je vais vous rafraîchir la mémoire. Au paragraphe 107 de votre déclaration, est-ce que vous vous souvenez avoir dit cela — déclaration du 11 mars 2011 ? R. [12:43:24] Oui. Q. [12:43:30] Vous avez dit avoir vu des kalachnikovs. Est-ce qu'il y avait d'autres armes ? Est-ce que vous avez vu les jeunes avec d'autres armes ? R. [12:43:39] C'est les kalaches." Pp. 85-88: "R. [15:44:24] Ben, c'était un après-midi, je me reposais, lorsque mon portable a sonné à plusieurs reprises. Ce jour-là, je me suis endormi, ça fait que j'ai pas entendu le... mon portable sonner. Et lorsque... quelque chose m'a interpellé, je me suis réveillé ; je voyais beaucoup d'appels. Et c'est comme ça, pour sortir de... de chez moi pour venir dans la buvette, j'ai vu des gens courir pour venir me dire : 'Ben, tiens, chef, tu vas aller rapidement intervenir, parce que les jeunes du parlement ont attrapé Moumouni, disant comme s'il est rebelle.' Parce que Lologo Moumouni, il faut dire qu'il est de père burkinabé, sa mère est burkinabé, et ça fait plus de... plus de 15 ans que nous vivons ensemble dans ce quartier. Aussitôt, j'ai appelé un certain Jean-Louis qui fait partie du bureau de Monsieur... du parlement, le monsieur du parlement. Effectivement, il a essayé de faire les démarches, et aux environs de 15 heures, 16 heures, entre 15 heures, 16 heures, cela s'est passé entre 15 heures, 16 heures, mais c'est la date que j'ai pas, ça, il m'appelle et il me dit : 'Bon, ben, Moumouni est mort. Ils l'ont tué.' Alors là, nous étions tous abattus. Donc, c'était la course, maintenant, vers nos... nos parents étrangers, donc que ça soit ses frères que nous connaissons, et tous ont pris la fuite. Il y a un, même, nous étions obligés de le protéger en lui portant des chapeaux pour 'le' faire quitter le quartier. Bon, c'est après il y a eu les... les Maliens, les... on a tout fait pour qu'ils puissent s'évader. C'est comme ça, pour la mort de Moumouni, on n'a pas pu faire quelque chose, et puis il a été tué par les jeunes du parlement, et la police de l'arrondissement allait faire le constat et puis faire partir le corps à la morgue. Q. [15:48:01] Avez-vous su comment Moumouni avait-il été tué ? R. [15:48:07] Comment ? Q. [15:48:12] Est-ce que vous savez comment ses assassins l'ont tué, qu'est-ce qu'on lui a fait ? R. [15:48:23] Ben, à coups de pierres, à coups de bois. C'est à coups de pierres et à coups de bois qu'il a été tué. [...] Q. [15:52:46] Monsieur le témoin, c'est un assassinat dont vous avez entendu parler, vous ne l'avez pas vu vous-même. Y a-t-il eu des événements, des assassinats que vous avez vus personnellement, à Yopougon, pendant la crise ? R. [15:53:04] Oui, c'est juste, disons, à 50 mètres du pont où des jeunes ont pris des individus, puis (phon.) ils ont tiré sur eux. Je sais pas de quelle origine ils sont, mais on les a traités de rebelles. Ils ont tiré sur eux. Ils étaient... ils étaient trois. Et ils ont mis... ils ont pris des pneus, et puis, bon, ben, ils ont commencé à les... les brûler. Q. [15:53:53] Vous avez dit que c'était à 50 mètres du pont, au commissariat du 16<sup>e</sup> Est-ce que c'était proche d'un bâtiment en particulier ? R. [15:54:07] Oui, Nelson Mandela. Il y avait un établissement là, en face de... du 16<sup>e</sup>. Q. [15:54:17] Et ces jeunes que vous avez vus, qui ont tiré et qui ont brûlé, c'était qui ? R. [15:54:26] C'étaient les... les jeunes de Maguy."*

<sup>426</sup> P-0046, T-126-CONF-FRA, pp. 45-46: "Q. [11:34:38] Alors, ma question est la suivante, Monsieur le témoin: on voit qu'il y a question que, le 15 mars, l'imam de la grande mosquée de Port-Bouët aurait été déclaré mort par balle. Est-ce que vous avez été informé de cet incident ? Est-ce que c'est quelque chose dont vous vous rappelez ? R. [11:34:57] Oui, je me rappelle."; letter, CIV-OTP-0048-1348 at p. 1349; P-0046 (T-126-CONF-FRA) recognised the type of document and confirmed that indeed, on that date, the imam of the Grande Mosquée of Port Bouët was shot and killed. Report, 16 March 2011, CIV-OTP-0045-1121, document shows report of police and other FDS forces in the various areas in Abidjan. There is no report emanating from Abobo-Anyama and other areas report technical difficulties. No mention of the incident in Port-Bouët (even though P-0046 confirmed in court that he knew about the incident). Two UNOCI reports refer in more detail to the incident. Although, in general, UNOCI or NGO reports are deemed inadmissible for the accuracy of their content, the following reports are admissible but solely in relation to the said incident, which was confirmed as reported by P-0046. The reports are admissible, as they give greater detail about the context in which the alleged incident took place, the alleged perpetrators and victims. UNOCI report, CIV-OTP-0044-0392 at p. 0416;

200. On 19 March 2011 the police, reinforced by GPP militia members, raided the home of a Malian imam in Williamsville, killing six people, including the imam and his 90-year-old mother. There is no report of civilians being armed.<sup>427</sup>
201. On 22 March 2011, the FDS fired shells in Abobo, Derrière Rails. That evening, UNOCI received calls reporting the deaths of at least five people, including a woman and three children, and wounding at least three others.<sup>428</sup>
202. In addition to the aforesaid incidents referred to in the evidence and relied upon by the Prosecutor in her response to the submission of no case to answer, there is further evidence in the record that supports the allegations of the course of conduct involving multiple commissions of acts referred to in article 7(1) of the Statute.
203. As noted above, there is evidence that people were burned alive in Abidjan during the post-election violence, mainly at roadblocks.<sup>429</sup> P-0266, who was working at the *Ivoire Sépulture* (“IVOSEP”) morgue during the post-election violence, stated that numerous people were burned, especially in Yopougon. As part of his work he collected many burned bodies in Yopougon on a weekly basis, in particular in areas controlled by the

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UNOCI report, 17 March 2011, CIV-OTP-0044-1654 at pp. 1654-1658, 1661; AI Report, CIV-D15-0001-3091 at p. 3113; P-0164 also testified about this incident. T-164-CONF-FRA, p. 80: “R. [15:22:47] *Le jour où j’ai été attaqué, entre le 13 et le 14, par la gendarmerie et la BAE, après le coup de fil de Dadi, bien sûr ; c’est soit le 13 ou le 14. Q. [15:23:07] Bien. Alors y a-t-il... quelque chose s’est-il passé le lendemain de cette attaque, puisqu’on parle du lendemain de l’attaque ? R. [15:23:18] Le lendemain de l’attaque, l’imam de la mosquée de Port Bouët II, l’imam Diabaté Moussa, j’ai appris qu’il a été tué par balle aux environs de 18 h 45 ; c’est-à-dire à l’heure de la prière de 18 h 45.”*

<sup>427</sup> P-0435, T-89-CONF-FRA, pp. 79-83: [REDACTED]. See also the following documents that corroborate the testimony of P-0435. UNOCI report, CIV-OTP-0044-0392 at pp. 0416-0417; United Nations report, 14 June 2011, CIV-OTP-0002-0598 at p. 0608; *Conseil des Maliens* report, CIV-OTP-0052-02922 at p. 0308; AI report, May 2011, CIV-D15-0001-3091 at p. 3113. Although these documents cannot be admitted in their totality for the accuracy of their content, the relevant excerpts, which corroborate the testimony of P-0435, are admissible.

<sup>428</sup> UNOCI report, 23 March 2011, CIV-OTP-0044-1692 at p. 1694 (used during the testimony of P-0414). P-0414, CIV-OTP-0054-0582 at p. 0622, para. 276. P-0414, referring to CIV-OTP-0044-1692, stated that she vaguely remembered the incident. It was in the evening, and she could see the light from the fires from the UNOCI terrace. She thinks there was no electricity. The first call was received at 18.29 reporting the incident. She did not know whether there was a mission to verify this event. Other UNOCI reports refer to the alleged shelling: UNOCI report, 23 March 2011, CIV-OTP-0044-1201 at p. 1204; UNOCI report, 25 March 2011, CIV-OTP-0044-1211 at p. 1212. The aforesaid documents are admissible, insofar as they corroborate P-0414’s testimony that there was shelling that evening and that UNOCI received calls reporting civilian casualties related to this shelling.

<sup>429</sup> P-0109, T-154-CONF-FRA, pp. 51-52: “[14:30:29] *J’étais en plein centre du quartier. Là, j’étais plus au bord, parce que le... en bordure de route, c’était devenu dangereux pour nous, parce que les... les partisans du FPI circulaient beaucoup, ils marchaient, ils marchaient, ils marchaient. Seulement, ils avaient... comment on appelle, là, ils avaient créé un truc, on disait ‘l’article 125’, où c’est en ce moment on brûlait beaucoup les gens. Donc, nous-mêmes, notre identité, on ne pouvait plus se promener avec notre carte d’identité. On ne sortait même plus du quartier.”*

*Jeunes Patriotes*.<sup>430</sup> According to the testimony of P-0440, who was the chief of the police station at the 16th *arrondissement* in Yopougon during the post-election violence, people were routinely being burned at roadblocks monitored by pro-Gbagbo youth who were implementing the so-called “Article 125” practice.<sup>431</sup> This “Article

<sup>430</sup> P-0266, Rule 68(2) Statement, CIV-OTP-0066-04631 at pp. 0467-0468, para. 17: “*Pendant la crise postélectorale, le travail est devenu le plus en plus intense car il y avait des affrontements entre les populations. Il y avait beaucoup de cas de personnes brûlées, surtout à Yopougon. Les personnes qui étaient d’origine étrangère étaient brûlées. Par exemple les mossis étaient ciblés. Les mossi ce sont les burkinabé. C’est comme ça qu’on les appelle en Côte d’Ivoire. Ils étaient ciblés parce que souvent ils portaient des amulettes. Ce sont des gris-gris qui sont supposés les protéger contre les machettes, les accidents, etc. Pendant la crise, dès que tu avais des amulettes au niveau des biceps, on disait que tu étais un rebelle et tu pouvais te faire brûler. Nous avons eu à ramasser beaucoup de corps de gens brûlés dans la rue à Yopougon, surtout à Yopougon SIDE0, Yopougon Gnangon (notamment dans des sous quartier Gnangon à gauche et Gnangon à droite). Ça se passait plus dans ces quartiers parce que ce sont des quartiers qui étaient majoritairement habites par des pro-FPI. Ces quartiers étaient habités essentiellement par les guérés, une ethnie de l’ouest. Dans ces quartiers, les jeunes pro-FPI faisaient des barrages et contrôlaient les gens. Quand les personnes arrêtées à ces barrages n’arrivaient pas à bien s’exprimer en Français, ils les mettaient de côté, soit pour les fouiller et pour leur prendre leurs biens. La personne arrêtée est un peu malmenée (fouillée, frappée) et si elle a des amulettes et qu’elle résiste, les jeunes commencent à l’abattre avec des bouts de bois et d’autres amènent des pneus pour la brûler car ils disent que c’est un rebelle. Je ne peux pas estimer le nombre de corps calcinés que j’ai eu à ramasser lors de mes sorties pendant la crise, mais ce qui est c’est qu’il y en a eu beaucoup, surtout pendant les dernières semaines de la crise. Chaque semaine lors de mes sorties j’ai eu à ramasser des corps calcinés. Il y a des fois où il on arrivait pendant que le corps était encore en train de brûler. On trouvait des jeunes armes de bouts de bois autour du corps et quand on voulait éteindre le feu, ils nous menaçaient. Et même quand ce n’était pas lors de mes sorties, mes collègues mentionnaient toujours les des points qu’on faisait à la fin de la journée le ramassage de corps calciné.*” [Emphasis added].

<sup>431</sup> P-0440, T-157-CONF-FRA, p. 24: “*R. [11:19:18] Il faut dire qu’à l’époque M. Blé Goudé était beaucoup écouté. Donc, quand il lançait ce genre d’appels, c’est pratiquement le lendemain qu’on voyait ce genre de barrages. Je ne me souviens plus du jour où il a lancé cet appel, mais toujours est-il que, lorsqu’on arrivait au 25 février, il y avait plus de huit personnes qui avaient été tuées à ces barrages-là, pour la plupart calcinées. C’est-à-dire... on lynche la personne et qu’on brûle ensuite, ou bien, même, souvent la personne est vivante, on la brûle vive. Et donc, nous avons estimé qu’il fallait qu’on fasse quelque chose — absolument.*” See also p. 31: “*R. [11:40:01] Ça, c’est pas d’après moi, mais c’est d’après eux-mêmes. Ils appelaient ‘assaillants’ et ‘rebelles’ tous ceux qui étaient, à la limite, ressortissants du Nord, tous ceux qui étaient d’origine du Burkina Faso, du Mali, du Niger ou autre. En tout cas, tous ceux qui étaient au-delà de Bouaké étaient considérés, à la limite, comme ‘assaillants’ ou ‘rebelles’;* pp. 33-34: “*[11:48:42] Pour ce qu’on a appris, c’est que quand ils arrivaient, ils leur faisaient faire un contrôle d’identité, pour les plus chanceux qui ont des noms à consonance nordiste, on leur demandait une rançon, ils payaient de l’argent, et ils passaient. Mais ceux qui n’avaient pas de chance ou qui étaient vraiment considérés comme assaillants ou rebelles étaient lynchés et brûlés. Alors, pour la plupart, ils avaient du pétrole qu’ils achetaient, à 100 Francs, avec une boîte d’allumettes, et lorsqu’on finit de vous lyncher, on vous passe un pneu sur le corps, on y met du pétrole et le feu. Q. [11:49:47] Et bon, vous avez parlé du pétrole, de la boîte d’allumettes. Est-ce que, d’après ce que vous savez, est-ce que cela était connu sous un nom particulier, cette procédure ? R. [11:50:03] Ah ! Oui. À l’époque, ils appelaient cela l’article 125, c’est-à-dire qu’ils payent du pétrole 100 Francs, payent une boîte d’allumettes à 25 Francs, et on vous... on vous brûle. Donc, ils avaient surnommé cela l’article 125. Q. [11:50:36] Et comment est-ce que vous étiez informé de ces tueries et de ces mises à feu au niveau des barrages routiers ? R. [11:50:51] Ben, les gens nous appelaient, la population nous appelait. Il faut dire qu’à l’époque, il y avait un numéro vert, qui était le 170. Lorsque vous êtes dans une zone, quand vous composez le 170, ça sonne immédiatement dans le... dans le commissariat du quartier. Et donc, les gens nous appelaient pour nous dire : ‘À tel endroit, voilà ce qui vient de se passer.’ On parlait, on faisait le constat. Et moi-même, j’ai eu un cousin qui a subi pratiquement... qui a failli subir le même sort. Donc on savait plus ou moins comment ça se passait. Q. [11:51:37] Et lorsque vous dites que vous vous êtes rendu sur les lieux pour mener à bien une enquête, est-ce que vous, vous êtes allé vous-même personnellement sur les lieux, lorsqu’une personne avait été brûlée pour, justement, mener à bien une enquête ? R. [11:51:58] Ah ! Oui, à plusieurs reprises, moi-même, j’ai fait le constat. Mais il arrivait un moment où je n’y allais plus, je laissais mes officiers faire les constats. Q. [11:52:17] Et quelle était la fréquence des rapports*

125” practice was also confirmed by [REDACTED] testified that the procedure was adopted to deal with the number of people being stopped at roadblocks in Yopougon and was actually an instruction from youth leaders Jean-Yves Dibopieu and Maguy Le Tocard. [REDACTED] most of the victims were from the north or Burkinabé or Malian who were seen as Ouattara supporters.<sup>432</sup> P-0625 also referred to a young man who was burned alive because he was caught with a “gris-gris” and thus identified as a “rebel”.<sup>433</sup> P-0107 testified that he saw a young Burkinabé man who was burned alive at a roadblock in Abobo.<sup>434</sup> [REDACTED] also gave similar evidence about a man [REDACTED] being burned alive [REDACTED].<sup>435</sup> P-0238 referred to a similar event in Siporex, Yopougon, where he saw one person being burned alive during the post-election violence and many bodies that appeared to have been burned after Mr Gbagbo’s arrest.<sup>436</sup> P-0105 stated that she saw smoke from what appeared to be people being burned at the Siaka Koné market at the end of March 2011.<sup>437</sup> P-0097 testified that two teenagers were also burned in Yopougon.<sup>438</sup> P-0185 witnessed a similar scene,

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*que vous receviez, au sujet de personnes qui avaient été tuées ou qui avaient été brûlées, ou les deux ? Toujours aux barrages routiers. Donc, quelle était la fréquence de ces rapports qui vous arrivaient ? R. [11:52:36] Alors, jusqu’au 28, nous étions à huit corps calcinés, mais au-delà du 28 février, les choses se sont plus ou moins aggravées, et là c’était devenu quasi quotidiennement qu’on nous appelait pour nous dire : ‘Il y a un corps qui a été brûlé’, ou bien : ‘Un individu a été lynché à mort.’” [Emphasis added].*

<sup>432</sup> [REDACTED].

<sup>433</sup> P-0625, T-27-CONF-FRA, p. 8. He stated: “Parce que je vous donne un exemple. Il y avait un... le... le jeune qui a été brûlé vivant, qui disait qu’il venait de Séguéla, juste parce qu’ils l’ont attrapé, il avait... il avait des gris-gris sur lui. Et pour eux, c’est un rebelle qui est arrivé, donc ils l’ont pris, ils l’ont brûlé vivant.” [Emphasis added].

<sup>434</sup> P-0107, T-109-CONF-FRA, pp. 9-10: “Les... les... les... l’après-midi, je vais au carrefour. J’ai vu qu’un jeune homme a été pris par eux. Ils ont dit que c’était un étranger. Ils ont écrit (phon.) ‘Burkina, Burkina’. Ils ont commencé à le battre, continuant à le battre. Donc, je n’y pouvais rien. Donc, je l’ai seulement regardé en train d’être battu. Et on lui a versé de l’essence dessus. Donc, à l’époque, quand on vous prenait, quand vous étiez dioula ou... ou étranger, on dit : vous êtes... il faut appliquer ‘l’article 125’, à savoir une boîte d’allumettes qui coûte 25 francs et un litre d’essence qui coûte 100 francs. Donc, ils voulaient le brûler, et moi, je suis reparti à la maison. Je ne pouvais pas supporter cela. [09:37:44] Je les ai vus en train de le battre. Ils l’ont battu. Ils ont dit que c’était un étranger, et c’est pourquoi ils le battaient. Ils ont commencé à dire qu’ils vont acheter l’essence et les allumettes pour le brûler. Donc, sur ces faits, je suis reparti à la maison. Je pouvais les approcher, mais si vous les approchez, vous risquez vous-même d’être pris à partie. Ainsi, je suis retourné à la maison. [...] Non. Ils n’ont pas dit qu’ils vont acheter des allumettes. J’ai dit... j’ai dit ‘article 125’, ça veut dire que l’allumette coûte 25 francs, le pétrole coûte 100 francs. Donc, ce qu’ils disent, après, ils te brûlent. Voilà, c’est ce qu’ils disaient. Q. [09:41:18] Alors, toujours lors de votre entretien avec le Bureau du Procureur, voici ce que vous avez dit, il s’agit toujours du même paragraphe 48. Vous avez dit – et je cite en français : (intervention en français) ‘Il y a un des jeunes qui criait : “c’est un étranger, c’est un Malien, c’est eux qui ont voté Alassane”’ (interprétation) fin de la citation. R. [09:42:11] Oui.”

<sup>435</sup> [REDACTED].

<sup>436</sup> T-81-CONF-FRA, pp. 83-85.

<sup>437</sup> Rule 68(3) Statement CIV-OTP-0019-0245.

<sup>438</sup> P-0097, T-46-CONF-FRA, pp. 41-43: “Dans le quartier de Yopougon, nous y reviendrons dans votre témoignage, l’article 125. Avez-vous été témoin de l’application de cet article 125 ? R. [12:03:13] Oui et non. Oui, parce qu’une fois, j’étais sur mon balcon, et puis en bas, j’ai vu un attroupement. Quand je suis descendu, on m’a fait savoir qu’il y a deux jeunes gens qui passaient ; en ce moment, il y avait beaucoup de barrages.

when [REDACTED] saw a young man [REDACTED] being stopped at the Guéré roundabout. He was later stoned and burned to death by a crowd.<sup>439</sup>

204. P-0440, a policeman at the time, reported such violence at the roadblocks.<sup>440</sup> This was confirmed by Bredou M'bia who affirmed in court that he received reports of incidents of people being burned alive at roadblocks, especially following Mr Blé Goudé's call on 25 February 2011.<sup>441</sup>

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*Donc, il y a deux jeunes gens qui passaient, et ils devaient être vers les 11, 12, en tout cas, le plus grand maximum, ça doit être 15 ans, et donc, ils passaient et puis sur le barrage, on les a interceptés. On leur a demandé : 'Où allez-vous ?' Ils ont rétorqué : 'Nous allons derrière la mosquée.' Ils habitent derrière la mosquée. Mais vous savez, à cette époque, la mosquée était révélateur d'une identité. Lorsqu'ils ont dit qu'ils allaient derrière la mosquée, ils étaient... enfin, ils étaient entourés, par les autres, et c'est comme ça qu'un jeune dans le public a dit : 'Ceux-là, on les a jamais vus ici.' Je répète : 'Ceux-là, on les a jamais vus ici, au quartier.' Ce qui signifie que ces jeunes hommes étaient étrangers au quartier, et que c'est certainement la première fois qu'on les voyait là. Et donc, quand il a... quand l'autre... enfin, ceux qui tenaient le barrage, bien entendu, quand un a dit 'ceux-là, on ne les a jamais vus ici', d'autres dans le groupe ont renchéri : 'Ce sont des rebelles.' Et quand on a dit que ce sont des rebelles, alors, ils ont commencé à trimballer les enfants. Et dans mon quartier, il y a juste un caniveau, je peux rester à mon balcon et puis voir des bananiers, il y a des bananiers là-bas, on a commencé à trimballer les enfants vers les bananiers. Et en ce moment, quand on dit de quelqu'un qu'il est rebelle, on savait plus ou moins le sort qui lui était réservé. Et donc, sachant plus ou moins ce qui lui serait... enfin, le sort qui serait le leur, moi, je n'ai pas continué à aller derrière ceux qui trimballaient les enfants. Je suis remonté sur mon bâtiment et sur mon balcon. Et quelques instants plus tard, j'ai observé de la fumée et après l'événement, on a dit les gens partaient regarder les enfants qui avaient été calcinés."*

<sup>439</sup> [REDACTED].

<sup>440</sup> P-0440, T-157-CONF-FRA, p. 36: "Q. [11:56:55] Est-ce que vous avez fait des rapports au sujet de ces incidents que vous avez décrits, lorsque des gens étaient tués et brûlés ? R. [11:57:08] Comme je vous l'ai déjà dit, il ne peut pas y avoir un événement sans qu'on ne fasse un rapport. Donc, pour tout individu, il y avait un rapport. Q. [11:57:25] Est-ce qu'il s'agissait d'un rapport écrit ou d'un rapport oral ? R. [11:57:33] C'étaient des rapports écrits. On le faisait aussi oralement, mais pour la plupart, c'étaient des rapports écrits. Tous les rapports qu'on a... tous les cas de tueries, on a fait des rapports écrits. On fait éventuellement des rapports 'oral', mais à la suite on fait l'écrit. Q. [11:58:05] Et est-ce que vous prépariez, vous rédigez vous-même les rapports écrits ? R. [11:58:14] Non, ce genre de rapports n'étaient pas faits par moi, c'était fait par les officiers de permanence qui faisaient le constat sur le terrain, qui faisaient ce genre de rapports. Mais moi, quand je fais un rapport, c'est qu'il y a une situation... je fais un rapport d'une situation globale." P-0440, T-155-CONF-FRA2, p. 75: "[15:28:30] Alors, pour en revenir à la chaîne de commandement, qui se trouvait... ou plutôt qui était le supérieur hiérarchique de M. Tianéré ? R. [15:28:45] Le supérieur hiérarchique du... du chef de district, donc de M. Tianéré, c'était le préfet de police. Q. [15:28:57] Et comment s'appelle-t-il ? Qui était-il pendant la crise ? R. [15:29:09] C'était le commissaire divisionnaire Djehannin Bi Tra. Q. [15:29:29] Et qui se trouvait au-dessus de lui ? R. [15:29:38] Au-dessus de lui, il y avait le directeur général adjoint chargé des services de sécurité publique. C'était le commissaire divisionnaire Sami Bi. Q. [15:30:02] Et, finalement, qui se trouvait au-dessus de lui, qui était son supérieur ? R. [15:30:07] Et lui, son supérieur, c'était le directeur général de la police nationale. C'était le... l'administrateur général Bredou M'Bia."

<sup>441</sup> P-0046, T-126-CONF-FRA, pp. 36-37: M. MacDONALD : [11:05:31] J'appellerai la pièce 0045-0135. (Le greffier d'audience s'exécute) Q. [11:06:08] Est-ce que vous voyez la pièce devant vous ? R. [11:06:11] Rien du tout. (L'huissier d'audience s'exécute) O.K. Q. [11:06:24] Alors, vous ne pouvez pas voir parce qu'on va monter jusqu'en haut. Il y a une date du '4 mars 2011, 19 h 44, préfet de police d'Abidjan', ainsi qu'un numéro de téléphone. Alors, si on pouvait monter l'image. (Le greffier d'audience s'exécute) Non, vers le haut, il faut aller plus haut. (Le greffier d'audience s'exécute) Plus haut encore, plus haut pour que le témoin puisse voir. M. LE JUGE PRÉSIDENT TARFUSSER (interprétation) : [11:06:59] Oui. (Le greffier d'audience s'exécute) M. MacDONALD : [11:07:05] Bon. Q. [11:07:08] Il s'agit bien d'un document de la police ? R. [11:07:12] Tout à fait, c'est un document de la police. Q. [11:07:22] Je vais lire juste pour les fins du dossier : 'J'ai l'honneur de

205. Moreover, there is evidence that the UNOCI Call Centre received numerous reports of people being burned to death in Abidjan, especially during the incident of 26-28 February 2011.<sup>442</sup> There is also video footage in the record of a man being burned. When this video was shown to Bredou M'bia in court, he confirmed that a BAE vehicle appears in the images.<sup>443</sup> Although these reports and video by themselves are insufficient to prove the “Article 125” practice, they support the above testimony from various witnesses that people were burned at roadblocks which were mainly monitored by the *Jeunes Patriotes* during the post-election violence.
206. While the aforesaid “Article 125” was perhaps the most extreme form of violence at roadblocks, there is evidence that other forms of violence were also used at roadblocks during the post-election violence. P-0435 recognised such a roadblock in a video and explained that the GPP would carry out searches and stop suspect persons.<sup>444</sup> Regardless of any editorial comments made in the video, the images nevertheless depict

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*vous...’ Et je lis sur la première page — donc, la page 0135 : ‘J’ai l’honneur de vous rendre compte que les rapports reçus de nos collaborateurs, chefs d’arrondissements, des infractions ont été constatées au cours des contrôles effectués par les populations dans les barrages posés à l’intérieur des quartiers. En effet, suite à l’appel du ministre Blé Goudé, des barrages ont été posés dans les quartiers aux fins de sécurisation. Malheureusement, au sein des populations en charge de ces barrages, se trouvent des délinquants qui commettent des infractions. D’autres formes d’infractions ont été constatées en marge de celles précitées.’ Est-ce que vous vous rappelez le type... Est-ce qu’on vous a rapporté – pardon – le type d’infractions qui étaient commises à ces barrages tenus suite au mot d’ordre de M. Blé Goudé ? R. [11:08:42] C’est des infractions qui m’ont été rapportées. M. MacDONALD : [11:08:49] Et je vais attirer l’attention de la Chambre sur la pièce... la page 0137. Alors, il y a une section ‘Les meurtres’, qu’on voit à la page 0136 et, par la suite, les détails. Et je cite : ‘De même, les cas de personnes tuées et brûlées à Yopougon ont été perpétrés par des individus qui ont érigé des barrages d’autodéfense. Au quotidien, ces infractions... ces violations infractionnelles graves continuent d’être perpétrées dans différentes zones.’ Q. [11:09:46] Est-ce que, effectivement, il vous a été rapporté que des personnes ont été brûlées vives ? R. [11:09:58] Oui, c’est des rapports de mes collaborateurs.’ [Emphasis added].*

<sup>442</sup> UNOCI reports: 27 February 2011, CIV-OTP-0044-1480; 27 February 2011 (evening), CIV-OTP-0044-1542 at p. 1546, entry 38; 27 February 2011 (morning), CIV-OTP-0044-1538 at pp. 1538 and 1540, entries 4 and 24 and 28 February 2011 (morning), CIV-OTP-0044-1547 at pp. 1549-1550, entries 31-32, 35-36, 38. See also UNOCI report, 26 February 2011 (evening), CIV-OTP-0044-1531 at p. 1533, entry 20. P-0414, who was working at the UNOCI Call Centre, gave evidence explaining the functioning of the call centre and the methodology employed to gather and verify the information in its reports: CIV-OTP-0054-0582 at pp. 0589-0597, paras. 37-92; at pp. 0599-0602, paras. 103-124; T-74-CONF-FRA, pp. 31-41.

<sup>443</sup> Video of 28 February 2011, CIV-OTP-0003-0013 (transcript, CIV-OTP-0008-0049; source: France 24 article, CIV-OTP-0003-0418 at pp. 0419-0420). Video shows men being burned in the presence of the BAE. In court, P-0046 (T-124) recognised the BAE vehicle markings.

<sup>444</sup> P-0435, T-90-CONF-FRA, pp. 38-42, commenting on video CIV-OTP-0028-0008 at 00:00 to 02:28. Although the video is not dated, P-0435 stated that the images correspond to March 2011. See also video CIV-OTP-0055-0464, at 00:00:00 to 00:03:11; transcript, CIV-OTP-0062-0959 at p. 0961, lines 7-84. This is an interview with a *Jeune Patriote*. It shows someone (identified as Akra Paul, alias “Gouverneur ONUCF”) monitoring a roadblock with others in the area of Cocody. He says that since the previous Friday, when Blé Goudé decreed the “Operation Corridor”, the neighbourhoods and villages have been at war with UNOCI, which supports the rebels. He says that all the roadblocks were erected after Mr Blé Goudé’s “mot d’ordre”. He states that they are ready to support them.

heavily armed men in civilian clothing but also in military attire monitoring roadblocks in Abidjan, especially in Yopougon. They also depict youths training at a location that P-0435 identified as in front of Maguy Le Tocard's office next to the police station in the 16th *arrondissement*. In this same video, Maguy Le Tocard is interviewed and states that they are ready to attack with weapons or machetes.<sup>445</sup>

207. Other witnesses' testimony relating to violence against unarmed civilians is also relevant. For example, [REDACTED] was stopped at a roadblock, which was monitored by armed youths, and subsequently raped along with other people [REDACTED].<sup>446</sup> P-0109, on his evidence, was shot at by pro-Gbagbo youths and saw the bodies of other people who had been killed.<sup>447</sup> P-0048, an RDR member, testified

<sup>445</sup> CIV-OTP-0028-0008, 00:55 to 01:04.

<sup>446</sup> [REDACTED].

<sup>447</sup> P-0109, T-154-CONF-FRA, pp. 51-52: "R. [14:31:21] Oui, on était ensemble au quartier, nous étions assis. Comment allait... Bon, quand... quand on était assis, ce jour, on parlait comment... est-ce que tout ça va finir dans la paix, on se réconfortait comme ça, pour que, un jour, bon, demain, Dieu nous accorde longue vie, ça peut aller. Donc, moi, je suis allé avec un ami, allé chercher la nourriture. Nous sommes allés. On a mangé. C'est à notre retour, quand nous sommes arrivés au niveau de nos amis, que ces gens sont arrivés. Puis, ils ont dit : 'Venez ici.' Bon, il y avait des grands frères, disons, des doyens. Quand on dit 'doyen', c'est la quarantaine, voilà. C'est eux qui se sont levés, et puis ils sont venus, et là, il y avait deux groupes. On ne savait pas... Et quand ils se sont levés, la première personne qui était devant, ils ont pris son portefeuille, ils ont ouvert le portefeuille, ils ont pris sa carte d'identité, ils ont regardé. Ils ont pris pour la deuxième personne, ils ont regardé. Là, ils sont quittés là, et ceux qui sont venus ont ouvert le feu. Donc, quand ils ont ouvert le feu, j'étais avec un ami, parce qu'on était... c'est... on était... on faisait un groupe, mais un peu détaché. Parce que nous, quand nous sommes arrivés, on tenait le dos comme ça sur un mur, et puis on causait. Donc, quand ils ont ouvert le feu, on a eu le temps au moins de tourner, rentrer dans un couloir. Et quand nous sommes montés (phon.) dans un couloir, il y a d'autres qui sont rentrés, ils ont commencé à tirer, tirer, tirer. Bon, moi, j'ai reçu une balle dans mon pied, puis, je me suis couché comme si j'étais mort. Q. [14:33:44] Alors, vous dites que... ils ont regardé la carte d'identité d'une première personne qui était devant. R. [14:33:57] Oui. Oui. Q. [14:33:58] C'est qui, 'ils' ? R. [14:34:03] Ceux qui étaient... Il y a des gens qui vient (phon.) en machette, qui avaient des machettes en main. Ceux qui avaient des machettes en main, c'est eux qui étaient devant, c'est eux qui ont regardé la carte d'identité de ces personnes-là. Maintenant, ceux qui avaient des armes, ils étaient tout juste derrière ceux qui avaient des machettes avec des... des bois en main." At p. 53: "Q. [14:37:46] Et qu'est-ce qui s'est passé quand vous étiez... Combien de temps vous êtes resté à faire le mort ? R. [14:37:52] Disons, quelques minutes – quelques minutes. Et pendant que j'étais couché, j'entendais des pas de pieds. Et puis, ce qui m'a étonné beaucoup, il y a eu quelque chose que j'ai entendu qui disait : 'No Gbagbo, no Côte d'Ivoire.' J'ai entendu ça à la voix... par une voix, et comme je ne pouvais pas ouvrir les yeux... Voilà." At p. 60-61: "[...] Le matin, quand on sortait, avant de partir, nous sommes allés, nous avons marché, et il y a une découverte que j'ai vu le matin, les corps qu'ils ont tués, ils ont tout... Disons, ceux qui n'ont pas eu de blessures ni de trucs ont fait sortir les corps des maisons, des carrefours, et ont déposé ça au terrain du quartier où il y a eu la fosse commune. Q. [15:37:22] Alors, où est-ce que vous avez vu ces corps ? R. [15:37:26] Euh... tout juste au terrain, à la rentrée du quartier, près de la mosquée. Q. [15:37:41] Et est-ce que vous avez pu voir si... R. [15:37:51] Les corps ? Q. [15:37:54] Les corps, oui. R. [15:37:55] Oui, bien sûr. Je suis... avec les gens que j'étais, qui ont reçu les balles, ils étaient couchés là. Les gens que... où... Du moment où on est arrêté et puis, ils ont demandé de venir contrôler les cartes d'identité avec ceux que j'étais, ils étaient couchés là, avec ceux que je connais bien, beaucoup, qui étaient là aussi. Eux, ils ont été tués à la maison. Parce que ceux qui ont assisté à ces enterrements-là... parce que l'enterrement s'est pas fait devant moi, mais le ramassage des corps, j'ai suivi un peu avant de quitter le quartier. [...] Et est-ce que vous connaissiez ces gens d'avant ? R. [15:41:15] Oui, oui, très bien. Les noms cités, ce sont des gens que je connais très bien."

that on 8 April 2011 the FDS, acting under Commander Séka Séka's instructions, had stopped him and killed his driver and bodyguards.<sup>448</sup> P-0239 also testified that the FDS had fired indiscriminately in Abobo without taking any precautions to protect civilians living in the area.<sup>449</sup> According to P-0107, in January 2011, the situation in Abobo was very difficult because the armoured vehicles came into the area every day and fired indiscriminately at people.<sup>450</sup> The evidence given by P-0114 is that there was a convoy composed of at least two armoured vehicles and BAE vehicles that passed every day, firing along the way. He said that many people had been killed by such convoys; the witness calculated that he had seen some 60 people killed in that manner.<sup>451</sup> Similarly, on P-0172's evidence, every time the FDS convoy passed, they fired and someone was killed.<sup>452</sup> This was confirmed by P-0164, a BASA commander during the post-election violence, who also stated that the FDS had fired indiscriminately on their way from Camp Commando to Akouédo Camp.<sup>453</sup> P-0578 testified that, every day during the post-election violence, the FDS had left Camp Agban in pickups, firing towards Williamsville. He said that, after the shelling in Abobo and an attack on Camp Agban by Ibrahim Coulibaly (also known as "IB") supporters, there had been intense shelling

<sup>448</sup> T-54-FRA, pp. 68 *et seq.*

<sup>449</sup> P-0239, T-167-FRA, p. 53: "*R. [12:25:26] 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. [12:25:57] Est-ce que le véhicule dont vous faisiez partie au BASA, est-ce que vous avez tiré aussi ? R. [12:26:06] Oui, le véhicule (inaudible), on a tiré aussi. Q. [12:26:12] Et vous tiriez vers où ? R. [12:26:14] 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. [12:26:28] D'accord. Et vous tiriez sur quoi ? R. [12:26:31] 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.*" [Emphasis added].

<sup>450</sup> Rule 68(3) Statement of P-0107, CIV-OTP-0020-0064-R01, para. 123, and T-107-CONF-FRA.

<sup>451</sup> Rule 68(3) Statement of P-0114, CIV-OTP-0076-0951-R01, para. 19-21, T-158-CONF-FRA.

<sup>452</sup> Rule 68(3) Statement, CIV-OTP-0028-05504, para. 111. P-0172 stated: "*Le Camp commando était toujours occupé par la Gendarmerie. Les chars allaient se ravitailler au Camp Agban de la Gendarmerie à Adjamé et retournaient au Camp commando d'Abobo. Après le 3 mars, chaque jour qu'ils rentraient ils tiraient. Abobo était une zone de guerre. Chaque fois qu'ils tiraient, ils tuaient quelqu'un. Quand ils entraient, ils tiraient et quand ils sortaient, ils tiraient.*" [Emphasis added].

<sup>453</sup> T-164-CONF-FRA, p. 64: "*[14:38:21] Régulièrement, quand... Moi, par exemple, quand je faisais le tronçon Akouédo-camp Commando, et les autres fois aussi, la seule chose que j'ai constatée, c'est qu'au départ, avant la tuerie des dames, quand on... quand on arrivait par-là, c'est-à-dire au niveau de carrefour Mairie, personne ne tirait. On mettait seulement... chose... comment on appelle ça, une 12.7 face à... il y a un quartier où il y a les rails, là – j'oublie le nom – on mettait une 12.7 là-bas et puis, bon, on prenait la voie et on partait, sans même tirer. Mais juste après qu'on nous ait parlé de la tuerie des femmes, quand on arrivait au niveau du carrefour Sans manquer, les tirs commençaient souvent jusqu'au camp Commando. C'est-à-dire on tirait sur tout ce qu'on voyait. Et nous, comme on était avec... chose... comment on appelle... les 12.7, et puis, éléments de mortiers... on avait, certes, notre arme individuelle, mais moi, je demandais à mes éléments de ne pas tirer. Parce que si, effectivement, nous devons ouvrir le feu, il faut voir des hommes en armes en face de soi, ou bien des hommes agressifs, mais c'était pas le cas.*" [Emphasis added].

from Camp Agban in the direction of Williamsville.<sup>454</sup> P-0230 stated that pro-Gbagbo militia had killed seven people in Adjamé Hotel. He stated that this militia had set up close to a police station and that, at the time (end of December 2010), Abidjan had become “hell”.<sup>455</sup> P-0625 likewise described widespread violence and death during the post-election violence.<sup>456</sup> Georges Guiai Bi Poin in fact confirmed in court that the FDS had fired at any civilian who failed to stop when ordered. It is his evidence that such persons were presumed to be armed.<sup>457</sup>

208. Evidence in the record referring to the existence of mass graves also supports the allegations that the civilian population was attacked, as they constitute *prima facie* evidence that widespread murder occurred.<sup>458</sup> P-0584, a forensic expert for the Prosecution, testified that more than 700 bodies of alleged victims had been exhumed after the post-election violence at the *Carré des Indigents*, a mass grave in Abobo.<sup>459</sup> This was corroborated by P-0564, a forensic pathologist at the *Institut de médecine légale* of Côte d’Ivoire, who stated that her medical team had evaluated 789 bodies; the cause of death for 647 was violent and 590 of them presented traumatic injuries.<sup>460</sup> As

<sup>454</sup> Rule 68(3) Statement of P-0578, CIV-OTP-0084-0142, paras. 122-140, T-84-CONF-FRA. The witness declared at para. 140: “*Les tirs d’obus ont commencé suite à l’attaque de camp Agban par les partisans de IB. Il y a eu des bombardements d’obus intenses sur notre quartier. C’était comme une riposte mais faite de façon incontrôlée. Pendant ces temps-là on ne pouvait plus sortir. L’électricité et l’eau étaient coupées pendant un mois et demi au moins et sont revenus vers la mi-mai. Les obus ont été lancés sur Williamsville à partir du camp Agban. C’était après les bombardements sur Abobo. Les obus étaient lancés soit pendant la nuit soit certains matins. Les obus venaient de la gendarmerie d’Agban.*” [Emphasis added].

<sup>455</sup> Rule 68(3) Statement, CIV-OTP-0044-2649, para. 62. Although P-0230 stated he did not see the killing, he saw the bodies at the location where they were killed immediately after. He personally knew three of the victims and was contacted to come there by other acquaintances of his who were at the hotel and witnessed the killings.

<sup>456</sup> T-30-CONF-FRA, p. 90. P-0625 stated: “*Mais quand je dis que c’est vrai, qu’il y a eu la crise, il y a eu beaucoup de morts. Les gens parlent de 3 000 ; ici, moi, je dis c’était plus que 3 000. Comme j’ai pas compté, moi, j’ai pas le bilan. J’ai pas les documents, mais je sais que y a trop de morts. Il y a vraiment trop de morts en Côte d’Ivoire, et trop de violence — trop de violence.*” [Emphasis added].

<sup>457</sup> P-0010, T-140-CONF-FRA, pp. 50-51: Georges Guiai Bi Poin stated: “*Dans le document qui m’est présenté ici, l’avant-dernière colonne, ‘21/12/2010’, ‘02 individus non identifiés’, ‘lieu: Duékoué’, ‘nationalité: ignorée’, et ‘observation’, il est écrit: ‘Abattus par les FANCI’ – les FANCI, c’est les... les armées...les Forces armées de Côte d’Ivoire – ‘suite à un refus d’obtempérer’. Généralement, ce sont les signes comme ça qui mettent un peu les forces sur les dents. Il est en civil, on lui dit de s’arrêter pour qu’il soit contrôlé, il refuse. Et, a priori – a priori –, dans le contexte dans lequel on était, les forces peuvent être amenées à penser que ces gars-là, ou bien ces personnes-là sont armées, c’est pour ça qu’elles refusent de se faire contrôler. Je ne dis pas qu’elles sont forcément armées, mais le fait de refuser de se faire contrôler dans un contexte comme le contexte de 11 décembre 2012, on peut supposer que ce sont des civils, mais armés.*”

<sup>458</sup> R. May and M. Wierda, *International Criminal Evidence* (Transnational Publishers, Inc., 2002), p. 253.

<sup>459</sup> Medical report, CIV-OTP-0078-0542 at p. 0546, related to 3 March 2011. At p. 0543, P-0584 (T-201) explained that he went on two missions to Abidjan to collect biological samples for DNA tests. P-0584 explained that more than 700 alleged victims’ bodies were exhumed from the “*Carré des Indigents*” mass grave in Abobo.

<sup>460</sup> T-219-CONF-FRA, p. 24.

noted above, eyewitnesses such as P-0441 and P-0109 correspondingly testified that they saw many dead bodies and mass graves in Yopougon after the incident of 12 April 2011.<sup>461</sup> They also personally knew some of the victims buried there.<sup>462</sup> P-0369 confirmed this, testifying that he personally saw eight mass graves in Doukouré in the aftermath of the events of 12 April 2011. He said all of the mass graves had been recently dug. He stated that one of the mass graves contained 29 bodies.<sup>463</sup>

209. The Defence submits that the FDS were carrying out military operations required to defend citizens and to suppress rebel groups. It contends that the FDS had no objective of attacking Ouattara supporters.<sup>464</sup> However, the evidence analysed above is consistent with an indiscriminate attack against unarmed civilians. The civilian status of these individuals may be inferred in the light of other evidence referred to above in the record, in particular that none of the above-mentioned FDS reports relating to these incidents (when such reports were drawn up) refer to victims being armed. Moreover, as noted above, the evidence as a whole refers to victims identified as pro-Ouattara, namely because they were identified as Dioula, Muslim, Burkinabé, “*dozos*”, etc. None

<sup>461</sup> See ICTY, *Kupreški* Trial Judgment, paras. 277-278. In this judgment, the ICTY Trial Chamber determined that if there is no forensic evidence, it is sufficient to rely on witnesses who testified about the burial of the victims and the existence of mass graves. See also ICTR, *Kayishema and Ruzindana* Trial Judgment, para. 356.

<sup>462</sup> P-0441, T-36-CONF-FRA, pp. 23-30. P-0441 stated that, after Mr Gbagbo's arrest, armed men came to every house in the neighbourhood to pillage goods and that they killed people. They had 4x4 vehicles. After that day, the witness buried 34 victims, all of them men and most in their 30s and 40s. The corpses were buried in a barren area nearby. P-0441 helped to bury 34 victims, all male. He knew three of the victims personally. Video, CIV-OTP-0012-0048, showing what appears to be a mass grave and bodies, was shown in court to P-0441 who confirmed that that was where he counted the bodies. P-0109, T-154-CONF-FRA, p. 65: “*Q. [15:51:48] Et, Monsieur le témoin, tout à l'heure, vous avez parlé des corps. Et donc, où est-ce que qu'ils ont été enterrés, ces corps ? R. [15:52:01] Ils ont été enterrés dans le quartier, dans le quartier, sur le parking où on jouait au foot. [15:52:10] Et tout à l'heure, je crois que vous avez dit que c'était à côté de la mosquée ; c'est ça ? R. [15:52:16] Oui, c'est là-bas. C'est là-bas. Le parking est... est collé à la mosquée. Q. [15:52:24] Et est-ce que vous savez combien de corps ont été enterrés ? R. [15:52:32] Bon, à... le jour... le jour je... je quittais là, je pense bien, j'en ai vu 17, le jour que j'ai quitté là. Et ceux qui ont fait l'enterrement, c'est, après, eux qui nous ont formés... qu'ils sont actuellement là, c'est eux qui nous ont informés qu'il y avait 29 corps dans la fosse commune. Parce qu'il y avait des corps qui n'étaient pas sur place au moment où, nous, on partait. Parce que du moment où je quittais, avec mon ami, les lieux où le corps... les corps se trouvaient, il y a encore des corps qui venaient, mais ce n'était pas... il n'était pas obligé d'être là, c'est moi, seulement, je souffrais. Mais, je voulais simplement voir, réellement, est-ce que tous ceux qui sont morts, je les connais.*” Video CIV-OTP-0012-0048 shows what appears to be a mass grave and bodies. In court, P-0441 (T-36) confirmed that the minaret shown at 02:58 is of Lem mosque and stated that he had counted 34 bodies there.

<sup>463</sup> HRW Report, 2 June 2011, CIV-OTP-0002-0631 at pp. 0644-0645. P-0369 (T-40-CONF-ENG) was shown pages 0631, 0632 and 0644 of the report. He confirmed that the reference to mass graves corresponds to what he personally saw and also to testimony he took. P-0369 explained that, in the case of Doukouré, he had previously visited the area and the mount where the mass graves were located did not exist in his previous visit, which was just recent. P-0369 personally saw the mass graves referred to in this report (eight recently dug mass graves; one mass grave with 29 bodies).

<sup>464</sup> T-227-CONF-FRA.

of the evidence above, including FDS reports, refers to military targets or military opponents as contended by the Defence.<sup>465</sup>

## 2. *Directed against the civilian population*

210. The indiscriminate character of an attack can be indicative of the fact that the attack was directed against the civilian population. This is true in the context of the incidents analysed above, in which mortars were used in residential areas, or where lethal weapons were used indiscriminately.<sup>466</sup> As noted above, there is evidence that criminal acts were committed in an environment of threats, harassment and attacks against perceived Ouattara supporters in the context of contested election results.

211. In all the aforesaid incidents, the perceived pro-Ouattara population was targeted. These perceived pro-Ouattara groups included Muslims and Dioula. They were identified as such by the perpetrators because they were wearing *gris-gris*, or were perceived to be associated with Mr Ouattara because they had Malian or Burkinabé nationality, were from northern Côte d'Ivoire or had a Muslim or "Dioula" name. During a speech on 19 March 2011, Mr Blé Goudé identified the "enemy" when he said that the United Nations was on the side of the Ouattara supporters, whom he identified as "*des gens qui ont des amulettes partout, des gris-gris partout*".<sup>467</sup> This is consistent with evidence in the record that the attackers had said things such as "*à chacun son Dioula*"<sup>468</sup> and "*Aujourd'hui, on va tuer tous les Dioula*", when they committed the attacks.<sup>469</sup> For

<sup>465</sup> ICTY, *Strugar* Trial Judgment, para. 284.

<sup>466</sup> *Ntaganda* Trial Judgment, ICC-01/04-02/06-2359, para. 921: "Therefore, the use of weapons that have inherently indiscriminate effects in an area where civilians are present may constitute an attack directed at the civilian population or individual civilians".

See also, *Karadžić* Appeals Judgment, para. 506: "[...] the indiscriminate character of an attack can be indicative of the fact that the attack was indeed directed against the civilian population [...] Considering that the Appeals Chamber has affirmed the Trial Chamber's conclusions that the shelling [...] was indiscriminate, an additional finding that the attacks were disproportionate is not necessary to sustain the Trial Chamber's inference that the attacks were 'directed against civilians'."

<sup>467</sup> See Mr Blé Goudé's speech on 19 March 2011. Video, rally at Place CP1 Yopougon, 19 March 2011, CIV-OTP-0015-0476, 00:05:16 to 00:07:29; 00:08:14 to 00:08:18 (transcript, CIV-OTP-0020-0454).

<sup>468</sup> P-0438, T-150-CONF-FRA, p. 8.

<sup>469</sup> P-0109, T-154-CONF-FRA, p. 33, lines 14-18, [REDACTED]. See, *Ntaganda* Trial Judgment, ICC-01/04-02/06-2359, para. 671. The Trial Chamber determined as regards the attack against the civilian population: The Chamber recalls that, at the training camps, UPC/FPLC recruits were taught that the Lendu as such, including civilians, were the enemy. At training camps, recruits sang songs inciting them to attack and kill the Lendu. During deployment, the expression 'kupiga na kuchaji', which was understood to mean attacking all the Lendu, including civilians, and to loot their property, was commonly used in UPC/FPLC commanders' orders to soldiers. During the assaults that followed these orders, civilians were murdered and raped. The senior commanders further ordered forcible transfer of the civilian population. In addition to these acts which are

example, P-0109 testified that, after the second round of the election, he had seen *Jeunes Patriotes* stopping taxis and cars that belonged to Dioula. P-0109 also testified that the Dioula – who were seen as equivalent to “rebels” or outsiders who did not belong in Côte d’Ivoire – were attacked on the basis of their ethnicity.<sup>470</sup>

212. There is evidence that the political activities of pro-Ouattara groups were targeted and suppressed. Evidence related to the March on RTI being prohibited and disproportionately suppressed is relevant. Equally relevant is the evidence related to the suppression of the Women’s March, including with the use of heavy weaponry. Other evidence analysed above also indicates that the headquarters of pro-Ouattara political parties were likewise targeted, as was the case in the attack on the RDR headquarters in Wassakara on 1-2 December 2010.
213. The incidents above also support allegations that the religious buildings of perceived Ouattara supporters were attacked. This is the case in the attacks on the Lem mosque, the Sidéci mosque and the Port-Bouët mosque described above. In those incidents there is evidence that, apart from the physical damage caused to the buildings, sacred items such as rugs and Korans were destroyed. The evidence above similarly specifies that people attending the mosque (in the case of the Lem mosque on Friday, the Muslim day of prayer) were targeted. Moreover, the evidence above shows that people associated with the mosques, including leaders, were also killed (the watchman of the Lem mosque and the imam of the Port-Bouët mosque). [REDACTED].
214. There is also evidence that shows that disproportionate force was used against the perceived pro-Ouattara population when the neighbourhoods where this population predominantly lived were attacked. P-0414 explained in court that some areas such as Yopougon, Koumassi, Abobo and Port-Bouët had more problems during the post-election violence. She explained that other neighbourhoods such as Deux Plateaux, Marcory, Cocody and the area housing the embassies were “less problematic”.<sup>471</sup> Although the evidence shows that Abidjan is a city where numerous ethnic groups and

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specified in Article 7(1), orders were given to direct fire at civilians. UPC/FPLC soldiers also looted items belonging to civilians and destroyed their houses. As demonstrated below, these acts formed part of a planned and coordinated military campaign and, as such, they are to be considered as more than a mere aggregate of random acts [footnotes omitted].

<sup>470</sup> P-0109, T-154-CONF-FRA-ET, pp. 24-25.

<sup>471</sup> P-0414, CIV-OTP-0054-0582 at pp. 0597-0598, para. 94.

nationalities live alongside one another, there is also evidence that certain neighbourhoods were inhabited at the time of the post-election violence, for the most part, by groups perceived to be pro-Ouattara. As explained by P-0433, Yopougon was a mixed neighbourhood, but sub-neighbourhoods such as Sicogi-Lem and Doukouré were populated mostly by Malinké, Dioula, West Africans and Muslims.<sup>472</sup> Other witnesses also testified that the majority of the people in Doukouré and Lem were pro-Ouattara.<sup>473</sup> Abobo was considered a pro-Ouattara *commune*, inhabited mostly by people from the north of Côte d'Ivoire, Burkinabés, Malians and Nigeriens.<sup>474</sup> As described by P-0172, Abobo was considered to be an RDR neighbourhood, and therefore an “enemy” to Mr Gbagbo.<sup>475</sup> P-0107 stated that, until Mr Gbagbo’s arrest, the situation was still serious in Abobo because each night the FDS would come to houses and summarily execute people. He explained the situation as follows: “[I]ls faisaient de porte à porte et si tu es Dioula on te tue. Ils disaient qu’Abobo était une zone rebelle”.<sup>476</sup> As discussed above, there is evidence to support allegations that these areas of Abidjan were most affected during the post-election violence. As noted above and further analysed in Section 4 below, all the identified victims of the crimes committed during the five main incidents were recognised as Dioula.

215. Lastly, as discussed above, there is evidence that roadblocks were erected with the purpose of checking people’s identities. [REDACTED] testified that Dioula were targeted at these roadblocks.<sup>477</sup> P-0459 similarly testified that people were stopped at roadblocks to check whether they were Dioula.<sup>478</sup> As previously noted, P-0109, a Dioula who was shot at such a roadblock explained that being Dioula was equated with being a rebel.<sup>479</sup> P-0226 similarly testified that a man was burned alive at a roadblock solely for being “Dioula”.<sup>480</sup> In video evidence in the record,<sup>481</sup> youths monitoring such a roadblock explain that they have a list with registration plates of vehicles that they

<sup>472</sup> T-147-CONF-FRA, p. 6.

<sup>473</sup> P-0433, T-147-CONF-FRA, p. 6; P-0441, T-37-CONF-FRA, pp. 38-39; P-0404, T-212-CONF-FRA, p. 5; P-0440, T-157-CONF-FRA, pp. 81-82; P-0568, T-209-CONF-FRA, p. 36; P-0459, T-153-CONF-FRA, p. 2; P-0442, T-19-CONF-FRA, p. 76.

<sup>474</sup> P-0330, T-68-CONF-FRA, pp. 10-11.

<sup>475</sup> Rule 68(3) Statement, CIV-OTP-0028-05504, paras. 106-107.

<sup>476</sup> Rule 68(3) Statement, CIV-OTP-0020-0064-R01, para. 155, T-107-CONF-FRA.

<sup>477</sup> [REDACTED].

<sup>478</sup> T-153-CONF-FRA, p. 28.

<sup>479</sup> T-154-CONF-FRA, pp. 50-52.

<sup>480</sup> T-166-CONF-FRA, pp. 43-44.

<sup>481</sup> CIV-OTP-0015-0594.

were to stop and report to the authorities. One of the youths says that they stopped two cars carrying Burkinabé and Senegalese people. In this same video, a young man who identifies himself as a member of the *Jeunes Patriotes* also explains that they stopped RHDP members. He says they do this because the *Jeunes Patriotes* are a self-defence group fighting urban guerrillas. P-0106 explained that Mr Blé Goudé had said “*chacun est son policier*”. In his view, this meant that everyone had to behave like a policeman and if there was a stranger or someone wearing a *gris-gris*, the youths at the roadblocks killed or burned the person.<sup>482</sup> As noted above, there is evidence that the so-called “Article 125” attacks, in which people were burned alive, were perpetrated against perceived Ouattara supporters by the *Jeunes Patriotes* at roadblocks which they controlled. P-0172 stated that, during the crisis, the FDS (“*les corps habillés*”) asked for identity cards. If someone turned out to be Malinké, Baoulé, Muslim or foreign he was in trouble.<sup>483</sup>

216. The Defence submits that the *Commando Invisible* or the *Forces Nouvelles* were active in the areas where the above incidents occurred. However, as noted above, the presence of armed groups or armed individuals within the civilian population does not deprive the population of its civilian character.<sup>484</sup> Moreover, evidence specifies that many of the crimes occurred in locations of a civilian nature, namely homes, mosques, markets and the headquarters of political parties. But even if the attacks had occurred, as alleged by the Defence, in the context of urban guerrilla warfare or with armed elements among the civilian population, the State apparatus still had the obligation and duty to protect civilians.<sup>485</sup> All human beings require the protection of their human rights,<sup>486</sup> especially from those representing the State.

<sup>482</sup> Rule 68(3) Statement CIV-OTP-0019-0211, paras. 59-62.

<sup>483</sup> Rule 68(3) Statement, CIV-OTP-0028-05504, paras. 108 and 109. The witness stated: “*Lors de la crise, on prenait notre pièce d’identité et si quelqu’un était Malinké, Baoulé, Musulman ou étranger, il avait un problème. Chaque jour, des chars arrivaient et tiraient en désordre. C’étaient les corps habillés qui demandaient les pièces d’identité. Ils peuvent être dans le cargo et dès qu’ils voyaient quelqu’un, ils descendaient et nous disaient : ‘contrôle de pièce d’identité’. Ils mettaient la pièce d’identité dans leur poche et nous demandait de monter dans le cargo. Si on a de la chance il nous frappe, sinon, on est porté disparu. Ils volaient tout ce qu’on avait sur nous : portable, etc. Je ne connais personne qui a été portée disparue. J’ai appris cela dans le quartier c’est-à-dire, on voyait quelqu’un sortir et après on ne le revoyait plus.*”

<sup>484</sup> MICT, Šešelj Appeals Judgment, paras. 60 and 69.

<sup>485</sup> *Habré* Judgment, para. 1386: “*La Chambre tient à souligner également qu’il est totalement prohibé de prendre des civils pour cible. Par conséquent, si la rébellion de certains membres d’une communauté peut justifier une réponse légale des autorités étatiques à leur rencontre, elle ne peut jamais justifier la répression de*

217. The specific situation of the victims is also relevant to consider in the determination of their character as civilians.<sup>487</sup> In the case at hand, the evidence analysed above indicates that victims – including women, children, elderly persons and religious leaders – were all unarmed and that numerous victims were targeted on a discriminatory basis. There is also evidence that the means and method used in the course of the attack were seriously detrimental to the victims and went beyond any reasonable “self-defence” or military necessity. Evidence suggests that (a) lethal force was used against unarmed demonstrators; (b) unarmed people were beaten, murdered and burned at roadblocks or in their homes; (c) residential areas were shelled; and (d) rapes were committed.
218. In the light of the above, a reasonable Trial Chamber could conclude that the civilian population was the principal, as opposed to incidental, target of the attack and that the acts of violence were not isolated<sup>488</sup> or carried out in self-defence.<sup>489</sup> As will be analysed below, there is evidence that supports allegations that this attack was committed pursuant to a State policy, and is thus in violation of the State’s duty to protect its people.

#### **B. State or organisational policy to commit such attack**

219. The Pre-Trial Chamber found sufficient evidence to establish substantial grounds to believe that the attack on the civilian population was carried out pursuant to or in furtherance of a State or organisational policy to commit such an attack.<sup>490</sup>
220. This case is centred on Mr Gbagbo and his political objective of remaining in power after the contested 2010 presidential election in Côte d’Ivoire. He had been President of Côte d’Ivoire since 2000 and remained the self-proclaimed President after the disputed election results of 3 December 2010 and until his arrest on 11 April 2011.

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*l’ensemble de la communauté ou de l’ethnie à laquelle appartiennent ces personnes.”* See also ICTY, *Kupreški* Trial Judgment, para. 513.

<sup>486</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. II (Oxford University Press, 2014), p. 65; G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 335.

<sup>487</sup> ICTY, *Blaški* Trial Judgment, para. 214.

<sup>488</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 674; *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1104.

<sup>489</sup> MICT, *Šešelj* Appeals Judgment, para. 69; ICTY, *Karadžić* Trial Judgment, para. 475.

<sup>490</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 221; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, para. 128.

221. Although Mr Gbagbo's individual criminal responsibility is analysed in Section 5 below, it is important to note at this stage that, under article 47 of the Ivorian Constitution, Mr Gbagbo was the Supreme Commander of the FDS.<sup>491</sup> There is evidence that in that capacity Mr Gbagbo was consulted, received reports and gave instructions to subordinates within the State apparatus. Philippe Mangou testified in this connection that he had received orders from Mr Gbagbo throughout the post-election violence:

*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 ? R. [10:56:53] Le Président Laurent Gbagbo. Q. [10:57:02] Je comprends que le Président... outre... une des fonctions du Président, c'est d'être également le chef suprême des armées. R. [10:57:10] Oui, le Président est le chef suprême des armées. Q. [10:57:15] Et ça, c'est prévu, donc, par la Constitution ivoirienne ? R. [10:57:19] C'est prévu dans la Constitution ivoirienne.<sup>492</sup>*

222. Similarly, Édouard Kassaraté testified that Article 7 of the Law of 12 June 1961 – in particular its provision that “*le Président de la République, Chef des armées, dirige et coordonne la politique de la défense*” – was in force at the time of the post-election violence.<sup>493</sup> The above evidence indicates that Mr Gbagbo directed and coordinated the defence policy of the State.

223. The evidence relating to the series of events described above, in which civilians were targeted, indicates that Mr Gbagbo used the State apparatus which he had led for over a decade, and the powers given to him by law, to implement a State policy that targeted the civilian population perceived as opposing his continued incumbency as President of

<sup>491</sup> See also legislation, CIV-OTP-0003-0146 at 0151, article 34 at 0155: Constitution of Côte d'Ivoire. Article 47 reads: “*Le Président de la République est le Chef suprême des Armées. Il préside le Conseil supérieur de la Défense.*” Legislation, CIV-OTP-0025-0971 at 0979-0980, 24 February 2011 referring to the President of the Republic, the CEMA and the Presidential Security Group (“GSPR”). Witness P-0520 testified (T-50-CONF-FRA) that General Touvoloy was the head of the *cabinet* referred to at page 0979. P-0520 explained that the special advisers to the President were directly answerable to the President. They could request appointments to see him. The GSPR was responsible for the safety of Mr Gbagbo. This was coordinated by the chief of the military staff. The commander of the Republican Guard was Dogbo Blé, and that of the GSPR was Colonel Ahouma. The GR was a military unit, while the GSPR was a group of police, gendarmes, soldiers and civilians. Legislation, 6 December 2007, CIV-OTP-0054-0210 at 0211-0219, *Journal Officiel* dated 6 December 2007, including Decree 467-2007 on the organisation of the Ministry of the Interior. Legislation, CIV-OTP-0054-0293 at 0295-0300: *Journal Officiel* dated 7 January 2002, including Decree 783-2001 on the functioning of the Police.

<sup>492</sup> P-0009, T-193-FRA, p. 25.

<sup>493</sup> P-0011, T-131-CONF-FRA, pp. 5-6 and CIV-OTP-0054-0002.

Côte d'Ivoire.<sup>494</sup> There is no evidence in the record suggesting that Mr Gbagbo took any concrete action to prevent the attacks against the civilian population, despite having the power to do so. In fact, there is evidence indicating that, on the contrary, Mr Gbagbo ordered operations that were clearly detrimental to the safety of the population and which he knew would inevitably result in civilian casualties.

224. In this regard, the meeting that took place on 24 February 2011, convened by Philippe Mangou, in which all high-ranking FDS officers and some Ministers (including Emile Guiriéoulou and Alain Dogou) met with Mr Gbagbo, is significant. During that meeting, Philippe Mangou and other FDS officers proposed to Mr Gbagbo the declaration of a war zone in Abobo in order to evacuate and protect civilians. According to close, high-level insiders (Philippe Mangou, Édouard Kassaraté and Détoh Létho), Mr Gbagbo rejected this proposal.<sup>495</sup> The evidence in the record supports the allegation that, instead, Mr Gbagbo ordered the FDS commanders to do everything they could to hold on to Abobo and liberate the road to the N'Dotr  roundabout,<sup>496</sup> and that he authorised the use of mortars in this densely populated area of Abidjan.<sup>497</sup> Accordingly, the evidence indicates that the State apparatus headed by Mr Gbagbo violated its duty to protect the civilian population, since Mr Gbagbo and his senior FDS officers were aware that crimes were about to be committed and refused to take measures to protect the population that would inevitably be victimised as a result of the FDS operations.<sup>498</sup>

225. The evidence also supports allegations that Mr Gbagbo remained the supreme leader at the top of the military and political hierarchy throughout the post-election violence. Philippe Mangou testified that, in his view, once the results were announced, the role of the FDS was not to fight to keep in power someone who had been defeated: he

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<sup>494</sup> The Defence teams do not challenge the allegation that the election results were contested and that the international community endorsed Mr Ouattara as the winner of the 2010 election. It is also not contested that, despite this, Mr Gbagbo believed he should remain in power as President.

<sup>495</sup> P-0009, T-193-FRA, pp. 85-88; T-194-FRA, pp. 69-80; P-0011, T-135-CONF-FRA, pp. 68-69 and T-136-CONF-FRA, pp. 51-52; P-0047, T-203-FRA, pp. 34 and 43.

<sup>496</sup> P-0010, T-139-CONF-FRA, pp. 77-78; P-0047, T-203-FRA, pp. 32-34. P-0010, T-139-CONF-FRA, p. 83.

<sup>497</sup> P-0239, T-167-FRA, pp. 57-58: The witness testified that the use of mortars and other weapons of war, required authorisation from the President. P-0009, T-194-FRA, p. 56 and T-196-CONF-FRA, p. 36: Philippe Mangou confirmed that he had authorised the use of mortars, albeit stating that the mortars were positioned towards Banco Forest.

<sup>498</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), pp. 345-346.

explained that the FDS had protected the person who in their view was still President.<sup>499</sup> However, as Philippe Mangou testified in court, as the post-election violence evolved, this posture changed, and on 11 March 2011 he met with Mr Gbagbo and Mr Blé Goudé and proposed that Mr Gbagbo resign.<sup>500</sup> Philippe Mangou stated that Mr Gbagbo rejected his proposal and actually perceived it as a betrayal (a view which Mr Blé Goudé also expressed to Philippe Mangou and which, he testified, had negative consequences for him and his family).<sup>501</sup> Similarly, there is evidence that, on 9 April 2011, Philippe Mangou, Kadet Bertin and Brunot Dogbo Blé were involved and consulted in the negotiation of a ceasefire. However, Mr Gbagbo again rejected this proposal for peace and was still clinging to power when he was arrested on 11 April 2011.<sup>502</sup>

### *1. The State policy*

226. The State has a duty to protect its citizens, which entails the obligation to limit and control its own “violating power” in respect of its citizens’ rights. If the State orders a violation of those rights or fails to prevent such a violation, it does not live up to this special duty and thus its highest representatives incur criminal responsibility for being part of the State organisation.<sup>503</sup>
227. Pursuant to article 7 of the Statute, it is necessary to determine whether there was a specific entity, be it an organisation or a State, capable of carrying out an attack in furtherance of a policy. Thus, the “common plan” and the “inner circle” are not material elements of crimes against humanity under article 7. In the case at bar, the evidence indicates that the entity was the State apparatus, with Mr Gbagbo at its head. Although the international community did not endorse Mr Gbagbo as President of Côte d’Ivoire after the contested election results (and certainly after the meeting of the African Union, on 9 December 2010, which recognised Mr Alassane Ouattara as the

<sup>499</sup> P-0009, T-197-CONF-FRA, p. 76, lines 1-21.

<sup>500</sup> P-0009, T-194-FRA, pp. 5-11.

<sup>501</sup> P-0009, T-194-FRA, p. 11: “R. [10:02:26] Alors, effectivement, après avoir eu la conversation avec le Président de la République, après que... après, même, l’attaque de ma résidence, tous les soirs, à la télévision, il y avait une bande déroulante qui passait qui disait : ‘Le chef de l’État va s’adresser à la nation ; le chef de l’État va s’adresser à la nation.’ Moi, quand j’ai vu ça, j’étais content parce que j’ai dit à mon épouse : ‘Bon, ben, ça y est, il va faire enfin sa déclaration.’ Malheureusement, il n’y a pas eu de déclaration.”

<sup>502</sup> P-0009, T-194-FRA, pp. 27-30.

<sup>503</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. I (Oxford University Press, 2013), p. 159.

democratically elected President of Côte d'Ivoire, and the African Union's endorsement of Mr Ouattara as President in March 2011),<sup>504</sup> Mr Gbagbo still functioned as the President and, together with the FDS and his government officials, exercised *de facto* and *de jure* control. Evidence in fact shows that most of the top FDS officials and members of government exercised their State functions up until Mr Gbagbo's arrest on 11 April 2011 (regardless of whether they had attempted, as Philippe Mangou did, to convince Mr Gbagbo to resign).

228. As noted by Trial Chamber II of the ICTY in *Limaj*:

Due to structural factors and organisational and military capabilities, an "attack directed against a civilian population" will most often be found to have occurred at the behest of a State. Being the focus of organised authority within a given territory, able to mobilise and direct military and civilian power, a sovereign State by its very nature possesses the attributes that permit it to organise and deliver an attack against a civilian population; it is States which can most easily and efficiently marshal the resources to launch an attack against a civilian population on a "widespread" scale, or upon a "systematic" basis.<sup>505</sup>

229. It is thus not necessary to prove that there was an "inner circle" (as in the Prosecutor's theory) operating as a separate entity or fixed identified group of persons. In the case at hand, the analysis must be centred on whether Mr Gbagbo and the State apparatus he led, which included among others his cabinet and senior FDS officials, implemented a policy to attack the civilian population. There is evidence that non-State actors were also involved in the post-election violence. Accordingly, it is important to determine whether these private elements, although not legally within the State structure, interacted with the State in the implementation of the State policy. For example, evidence that the non-State actors were sponsored or supported by the State authorities, or at least not prevented by them from committing attacks against the civilian population, is relevant. It is also relevant to analyse whether non-State actors shared responsible command with some State agents. Most importantly, it is important to determine whether these private elements, with the acquiescence of the State, had the personnel and physical capacity to commit attacks against the civilian population.<sup>506</sup>

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<sup>504</sup> CIV-OTP-0002-0621, communiqué of the 252<sup>nd</sup> meeting of the Peace and Security Council of the African Union, Addis Ababa, Ethiopia, 9 December 2010, recognising Alassane Ouattara as the democratically elected President of Côte d'Ivoire and urging Laurent Gbagbo to respect the results of the election and to facilitate the transfer of power to the President-Elect, in the best interests of Côte d'Ivoire, the region and Africa as a whole. P-0009, T-197-CONF-FRA, p. 76, lines 24-28; p. 77, lines 1-3.

<sup>505</sup> ICTY, *Limaj* Trial Judgment, para. 191.

<sup>506</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 343.

Moreover, it is important to determine whether the violence can be traced to the State apparatus,<sup>507</sup> either because it financed, provided weapons to or coordinated attacks together with these non-State actors or simply because it did not stop them.

230. Accordingly, for the purpose of this case and the elements under article 7 of the Statute, it is sufficient to prove that Mr Gbagbo, together with a number of other individuals with whom he shared the objective of staying in power, used the State apparatus to coordinate and implement that objective.
231. The Pre-Trial Chamber identified only Mr Blé Goudé and Simone Gbagbo as members of the alleged “inner circle”; otherwise it did not confirm a definite list of its members.<sup>508</sup> This has also been the Prosecutor’s theory since the start of the case: it was submitted that allegiances evolved until many of the members of the inner circle stepped down or were sidelined by members of the alleged parallel structure.<sup>509</sup>
232. The analysis below thus focuses mainly on how the State apparatus in place, with Mr Gbagbo at its head, carried out the attack against the civilian population.<sup>510</sup> The evidence analysed below indicates that the following individuals wielded *de jure* or *de facto* power because of their associations with the State apparatus and ultimately with

<sup>507</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 345.

<sup>508</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 86.

<sup>509</sup> See, for example, para. 221 of the Prosecutor’s Mid-Trial Brief, ICC-02/11-01/15-1136-Conf-Anx1-Corr3: “By the end of March 2011, Mangou, Détoh Létho, Guiai Bi Poin and Kassaraté had stepped down or had been permanently side-lined.”

<sup>510</sup> Supreme Court of Peru, *Casos Barrios Altos, La Cantuta y Sótanos del SIE (Alberto Fujimori Fujimori)*, Judgment of 7 April 2009, para. 717. The court decided as follows (my English translation): Now, from the above it is clear that the acts of murder and serious injuries with which these proceedings are concerned transcend their strictly individual or ordinary scope and satisfy, in full, the prerequisites which characterise crimes against humanity. The murders and serious injuries in *Barrios Altos* and *La Cantuta* are also crimes against humanity – fundamentally, because they were committed within the framework of a State policy of selective but systematic elimination of alleged members of subversive groups. This policy was designed, planned and controlled at the highest levels of State power and carried out by State agents – military intelligence officers – using the military apparatus; moreover, in accordance with their objectives, it affected a significant number of defenceless persons within the civilian population. The original Spanish text reads: “*Ahora bien, a partir de lo expuesto resulta evidente que los actos de asesinato y lesiones graves, objeto de juzgamiento, trascienden su ámbito estrictamente individual o común al adecuarse, plenamente, a los presupuestos que identifican a los delitos contra la humanidad. Los asesinatos y lesiones graves de Barrios Altos y La Cantuta son también delitos contra la humanidad. Fundamentalmente, porque ellos se cometieron en el marco de una política estatal de eliminación selectiva pero sistemática de presuntos integrantes de grupos subversivos. Esta política, de un lado, fue diseñada, planificada y controlada desde los más altos niveles de poder del Estado, y ejecutada por agentes públicos – efectivos de inteligencia militar– que se sirvieron del aparato castrense para hacerlo; y, de otro lado, conforme a sus objetivos, afectó a un número importante de personas indefensas de la población civil.*”).

the Head of State, President and Supreme Commander, Mr Gbagbo, self-proclaimed as he was after 3 December 2010 but nonetheless in power until his arrest on 11 April 2011.

## 2. Mr Blé Goudé and the State policy

233. Although Mr Blé Goudé's individual criminal responsibility as an accused in this case is analysed in Section 5 below, it is significant to note at the outset what his position was during the post-election violence and vis-à-vis the State policy. Evidence referred to below shows that Mr Blé Goudé's speeches and rallies went beyond rhetoric and were part of the State policy.<sup>511</sup>
234. There is evidence that Mr Blé Goudé was a well-known youth leader and a close and trusted associate of Mr Gbagbo.<sup>512</sup> Evidence in the record shows (and this is not contested by the Defence) that, on 6 December 2010, Mr Gbagbo appointed Mr Blé Goudé to the position of Minister of Youth, Vocational Training and Employment.<sup>513</sup> However, the evidence indicates that Mr Blé Goudé also retained his position of "General of the youth" and that he made this clear to his audience: the youth who sympathised with Mr Gbagbo, the *Jeunes Patriotes*.<sup>514</sup> Video evidence in the record shows that since the beginning of the post-election violence Mr Blé Goudé had reiterated to the *Jeunes Patriotes* that they should wait for his instructions or "*mots*

<sup>511</sup> Karadžić Trial Judgment, para. 3487.

<sup>512</sup> "*Ma part de vérité*", 1 January 2006, CIV-OTP-0057-1245 at 1304: "*En ce qui me concerne, le 4 juin reste une date importante. C'est ce jour-là que j'ai créé le COJEP.*" P-0009, T-193-FRA, p. 39: "*À votre connaissance, quelle était la relation entre M. Blé Goudé et M. Gbagbo ? R. [12:09:45] Difficile à définir, mais je vous dirais qu'il est très proche du Président Laurent Gbagbo. Blé Goudé a créé le COJEP, qui est le Congrès des jeunes patriotes, qui est un peu, j'allais dire, un appendice du... du... du... pro-Gbagbo. Mais il faut noter que, depuis le 17 août 2010, ils ont pris la décision que le COJEP serait un parti et qu'il ne serait plus un appendice, hein, du FPI. Mais je sais que dans les différents rassemblements que Blé Goudé faisait, il rencontrait très souvent le Président Laurent Gbagbo, il lui était très proche. Voilà ce que je peux vous dire.*" P-0009, T-194-FRA, p. 5, lines 7-11: "*Effectivement, le 11 mars 2011, aux environs de 16 h 30, j'étais donc à l'état-major des armées, lorsque le Président de la République, par voie téléphonique, m'a demandé de venir le voir. Et quand je suis arrivé, le Président m'a dit ceci : 'Mon général, tu es... — il me tutoie habituellement — tu es, avec Blé Goudé, mon homme de confiance.'*"

<sup>513</sup> Presidential decree, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0051.

<sup>514</sup> Video, CIV-OTP-0061-0568 at 00:23:31-00:30:02 (excerpt from RTI broadcast of 14 December 2010 at 20.00; transcript, CIV-OTP-0086-0818 at 0819-0821, lines 1-104). This is an interview of Mr Blé Goudé at the RTI studio. He explains the meaning of his new position as Minister. He states that the purpose of the meeting which is to take place the following day (15 December 2010) at the *Palais de la Culture* is to discuss what the Ministry will do. Mr Blé Goudé explains that he is a Minister but that he remains no less the General of the youth. He predicts that when the country is in trouble he will take off his suit and put on his black cap. He says that everything will come with time. When there is a need, he will call upon the youth.

*d'ordre*".<sup>515</sup> As the post-election violence evolved, Mr Blé Goudé appeared in other videos as "*Le Général*", having eschewed his suit in favour of the characteristic black cap that he explained was his "code" to the *Jeunes Patriotes*.<sup>516</sup> For example, a video dated 4 February 2011 shows Mr Blé Goudé on RTI addressing the *Jeunes Patriotes* as their "*Général*". He says: "*c'est le général qui vous lance le mot d'ordre*".<sup>517</sup> Evidence analysed in Section 5 below suggests that this "*mot d'ordre*" and further calls issued by Mr Blé Goudé during the post-election violence led to the attack in Yopougon on 25-28 February 2011 and 12 April 2011.

235. Evidence also supports allegations that Mr Blé Goudé had *de facto* control over a significant number of FDS officers, who disregarded the formal hierarchy and responded only to him.<sup>518</sup> As Philippe Mangou explained in court, some of these FDS

<sup>515</sup> Video, CIV-OTP-0026-0022 at 00:24:44-00:29:31 (excerpt from RTI broadcast of 20 December 2010 at 20.00; transcript, CIV-OTP-0052-0813 at 0821-0822, lines 268-314). This is an RTI report on a *Jeunes Patriotes* rally in Port-Bouët. It is noteworthy that the RTI journalist refers to Mr Blé Goudé as the leader: "*Commençons en images par les meetings de soutien au Président Laurent GBAGBO ; rendons-nous dans la commune de PORT-BOUËT où un meeting a été animé par le ministre de la Jeunesse, leader des patriotes, Charles BLÉ GOUDÉ.*" Video, CIV-OTP-0064-0107 at 00:08:50-00:13:26 (excerpt from RTI broadcast of 8 January 2011 at 20.00; transcript, CIV-OTP-0086-1001 at 1002-1004, lines 1-84). This is an RTI report on Mr Blé Goudé's visit to the *Espace Laurent Gbagbo* in Yopougon. Mr Blé Goudé is shown addressing a large crowd. At the end of his address, Mr Blé Goudé tells the crowd to wait peacefully for the "*mot d'ordre du Général*".

<sup>516</sup> Video, CIV-OTP-0028-0103 at 00:10:52-00:11:56 (transcript, CIV-OTP-0044-2590 at 2594, lines 141-160). This is an undated interview of Mr Blé Goudé in which he confirms that he is acting as Minister and General and says the following when the journalist asks him about his black cap: "*CBG: Non, c'est un langage. [...] C'est un langage. [...] Ceux qui travaillent avec moi et à qui ce langage-là est décodé ... bon, ceux qui travaillent avec moi, à qui ce langage-là est adressé, ils ont le code. Chaque jeune patriote a le code. Et je pense que ça suffit pour moi. [...] Mais soyez-en sûr, ça, c'est pas une casquette de fétiche. [...] Parce que les gens racontent beaucoup de choses. Non, moi je ne suis pas un féticheur. Moi, je suis un fils de Dieu, moi je confie tout ce que je fais, je confie cela à Dieu, parce que je pense qu'il a la capacité de transformer tout. Il a la capacité d'orienter tout, et notre temps n'est pas son temps. Et ceux qui n'ont pas compris cela, ils sont toujours hors-jeu. C'est une casquette que je porte et c'est un langage bien précis que chaque jeune patriote comprend.*"

<sup>517</sup> Video, CIV-OTP-0064-0114 at 00:23:00-00:32:01 (excerpt from RTI broadcast of 1 February 2011 at 20.00; transcript, CIV-OTP-0086-1036 at 1037-1040, lines 1-136). This is a report on a speech of Mr Blé Goudé at Le Baron Bar. Mr Blé Goudé criticises the United Nations Secretary General for not accepting a new count of votes in Côte d'Ivoire. He then states that the United Nations Secretary General has no power to decide who will be the Head of State. He states that all of Africa is looking at Côte d'Ivoire. He says that the people of Côte d'Ivoire should not accept the President of Burkina Faso as a member of the African Union mediation team. He finally says that "we" do not have weapons, but have the force of mobilisation. He thus calls on those who agree with him to mobilise at the Place de la République the following Saturday, 5 February 2011. He says that this is a *mot d'ordre* of the General. He says: "*c'est le général qui vous lance le mot d'ordre...*" See also video, CIV-OTP-0064-0116 at 00:12:19-00:12:48 (excerpt from RTI broadcast of 4 February 2011 at 20.00; transcript, CIV-OTP-0086-1048 at 1049, lines 1-20).

<sup>518</sup> P-0316, T-182-CONF-FRA, p. 75: "*Q. [15:13:27] Avez-vous remarqué quoi que ce soit de particulier par rapport au comportement qu'ils avaient à votre égard, puisque vous étiez leur supérieur hiérarchique ? R. [15:13:43] Oui, c'est des... c'est des gens qui ne respectent rien. Ils ne considèrent rien, parce que, d'après eux, eux, ils sont venus nous arracher le pouvoir. Donc, ils n'avaient aucun respect pour leurs gradés, ils ne respectent absolument rien. Oui. Ils pouvaient même te dire ce qu'ils veulent quand ils veulent, comme ils*

officers were former *Jeunes Patriotes* who had been recruited in 2003 and were called the “*Génération Blé Goudé*”.<sup>519</sup> There is evidence that Mr Blé Goudé was also in charge of financing youth movements within the *Galaxie Patriotique*,<sup>520</sup> including the *parlements* and *agoras*.<sup>521</sup> As noted above, particularly in Yopougon, the evidence directly links the *parlements* to the attacks against civilians that occurred there during the post-election violence. In particular, evidence links Mr Blé Goudé with the *Parlement de Yopougon*, which was led by Maguy Le Tocard, who, as mentioned above, was directly involved in the perpetration of crimes in Yopougon and had his office in front of the police station in the 16th *arrondissement* in Yopougon.<sup>522</sup>

236. There is also evidence linking Mr Blé Goudé to the financing of militias, namely the GPP.<sup>523</sup> For example, Bredou M’bia commented on a video dated 22 January 2011 in

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*veulent : que non, eux, ils ont un parapluie. Leur parapluie, c'est Blé Goudé. On ne peut rien leur faire. Oui, ils le disaient.”*

<sup>519</sup> P-0009, T-196-CONF-FRA, p. 81: “R. [15:14:34] Merci, Monsieur le Président. Donc, durant la crise postélectorale, quand on prend la crise de 2002 jusqu’à 2010, nous avons fait trois recrutements. En 2003, nous avons recruté 4 000 personnes, parce qu’on avait des problèmes d’effectifs, on a recruté 4 000 personnes. Ce sont ceux-là, Monsieur le Président, qu’on a appelés la génération Gbagbo... pardon — Blé Goudé, excusez-moi, ‘la génération Blé Goudé’.” P-0435, T-87-CONF-FRA, pp. 63-64: “Q. [14:46:24] Combien d’éléments avaient été insérés et est-ce que c’était un groupe connu sous un nom ou bien ? R. [14:46:33] La... La première vague... La première vague, on l’a appelée... on a appelé... on les appelés ‘Promotion Blé Goudé’ ; c’était la première vague qui est partie. [...] Q. [14:47:48] Pouvez-vous nous expliquer pourquoi ce... ces éléments étaient appelés ‘Promotion Blé Goudé’ ? R. [14:47:57] Bon, puisque c’étaient des éléments qui... qui... qui étaient (inaudible) des éléments du... du GPP, donc les patriotes, comme on dit, les patriotes, donc le nom ‘promotion Charles Blé Goudé’ est venu du fait que d’autres les appelaient ‘les enfants de Blé Goudé’, puisque c’était lui qui était le... le chef de la Galaxie patriotique dont, nous, on faisait... notre mouvement faisait partie. Donc c’est le nom... c’est, en tout cas, c’est le nom, c’est sous cette appellation que cette promotion a été... a été nommée en tout cas.”

<sup>520</sup> P-0176 testified that the point which all the movements in the *Galaxie Patriotique* had in common was Mr Gbagbo. P-0176, T-144-CONF-FRA, p. 4: “[09:41:14] Oui. La Galaxie patriotique, comme je vous l’ai dit, c’est tous ceux qui aimaient le Président Laurent Gbagbo. Le point focal de la Galaxie, c’était le point commun, c’était le Président Laurent Gbagbo.”

<sup>521</sup> P-0435, T-88-CONF-FRA, p. 10, lines 14-27: “R. [10:05:04] Il pouvait passer par... soit par Jean-Yves Dibopieu. Il pouvait passer par Damana Pickass, Adia Pickass. Il pouvait aussi entrer directement aussi en contact aussi avec M. Charles Blé Goudé, puisque tous les mouvements patriotiques étaient sous l’autorité politique de Charles Blé Goudé qui était le président de la Galaxie patriotique. Et donc le... le financement de ces mouvements, c’est-à-dire que ce soit le GPP, que ce soit les Agoras et Parlements, mouvements de... tout ce qui était appelé mouvement dit ‘patriotique’, était à la charge de M. Blé Goudé. C’est lui qui était le lien directement avec les autorités.”

<sup>522</sup> See evidence above: P-0441, T-35-CONF-FRA, pp. 59 and 67; P-0440, T-155-CONF-FRA, pp. 83-84; CIV-OTP-0028-0008 at 00:01:18-00:01:29 (transcript CIV-OTP-0027-0440 at 0442, line 41); P-0435, T-90-CONF-FRA, pp. 38-39. The witness commented on video CIV-OTP-0028-0008 at 00:00 to 02:28; P-0108, T-145-CONF-FRA, pp. 64-65.

<sup>523</sup> P-0435, T-88-CONF-FRA, p. 10, lines 8-27: “[...] vous avez dit qu’il [Bouazo] pouvait utiliser d’autres canaux pour avoir des ressources dont il avait besoin. Alors, est-ce que vous pouvez nous expliquer quels sont ces autres canaux ? R. [10:05:04] Il pouvait passer par... soit par Jean-Yves Dibopieu. Il pouvait passer par Damana Pickass, Adia Pickass. Il pouvait aussi entrer directement aussi en contact aussi avec M. Charles Blé Goudé, puisque tous les mouvements patriotiques étaient sous l’autorité politique de Charles Blé Goudé qui était le président de la Galaxie patriotique. Et donc le... le financement de ces mouvements, c’est-à-dire que ce

which Mr Blé Goudé gave an envelope to Commander Loba of the BAE. Bredou M'bia confirmed that the envelope contained CFAF 2 million (about 3,000 euros) and that the sum of money was given to Loba because he was the link with the *Jeunes Patriotes*.<sup>524</sup>

Bredou M'bia testified as follows:

*R. [10:47:28] Je peux confirmer qu'il y a eu un contact, un seul, avec le commandant de la Brigade antiémeute, puisqu'il m'a appelé un jour pour dire que le ministre Blé Goudé lui avait remis deux millions de francs CFA. Et donc, c'est le seul contact, à ma connaissance, dont mes commandants ont eu à me faire le compte rendu. [...] Q. [10:48:39] Alors, je vais vous référer à votre déclaration antérieure, [...] et je vous cite : "Mais comme je l'ai... parce que j'ai toujours estimé lourd que quelqu'un vienne donner de l'argent à un commandant d'unité. Et puis, si c'était 100 francs, 200 francs ou bien 1000 francs, bon. Mais deux millions, c'est qu'il y a quelque chose. Et quand plus tard j'ai compris que les gens travaillaient ensemble, j'ai dit : 'Bon, écoutez, ça va être ça.'" Vous rappelez-vous avoir dit ça au Bureau du Procureur ? R. [10:49:53] Tout... Tout à fait, j'ai bien dit... Moi, je n'ai rien dit. [...] Donc, je sais qu'il y a eu contact." Et vous dites plus tard : "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 c'est pour certainement nourrir les plus jeunes patriotes.' Donc, c'est comme ça que j'ai fait la relation. Moi, c'est comme ça que j'ai fait la relation." <sup>525</sup>*

237. The evidence also indicates that Mr Blé Goudé had the power to mobilise people.<sup>526</sup>

There is evidence that Mr Blé Goudé communicated with the youth via SMS messages.<sup>527</sup> However, most of the evidence relates to Mr Blé Goudé's communications

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*soit le GPP, que ce soit les Agoras et Parlements, mouvements de... tout ce qui était appelé mouvement dit 'patriotique', était à la charge de M. Blé Goudé. C'est lui qui était le lien directement avec les autorités."*

<sup>524</sup> Video, CIV-OTP-0064-0113 at 00:44:20–00:49:37 (excerpt from RTI broadcast of 22 January 2011 at 20.00; transcript, CIV-OTP-0086-1028, at 1029-1031, lines 1-103). P-0046 (T-126) recognised the person receiving the package and envelope at time stamp 00:45:30 as Commander Loba Emmanuel. P-0046 said he could not recognise the signs that the young men on the video were making with their hands. He recognised them as *Jeunes Patriotes*.

<sup>525</sup> P-0046, T-126-CONF-FRA, pp. 28-30.

<sup>526</sup> P-0625, T-28-CONF-FRA, pp. 4-5: "À main nues', quand il fait son discours, il présente toujours ses mains nues, pour dire à main nues, on peut le déloger, parce que comme on vous le dit, si Blé Goudé faisait l'appel le jour pour attaquer ou bien déloger la population ou ceux qui habitaient à l'hôtel du Golf, s'il faisait cet appel et que les gens viennent déloger les gens à l'hôtel, ça allait être, ça allait se faire. La population, vous savez, l'appel de Blé Goudé, quand il fait un appel, le monde le 'suit'. Il est là. Les gens allaient venir, ils allaient... ils allaient le suivre, ils allaient lui obéir, aller déloger ceux qui étaient à l'hôtel du Golf, à mains nues. Mais peut-être, ce qu'il reste à savoir, est-ce qu'on peut contrôler 50 000 personnes ou bien 20 000 personnes ? C'est quand l'appel de Blé Goudé, c'est quand il appelle, il appelle toujours les mains nues. Ils allaient déloger les gens à l'hôtel du Golf. S'il avait fait, ils allaient les déloger."

<sup>527</sup> P-0625, T-26-CONF-FRA, pp. 64-65: "R. Les communications de nos organisations ? Q. C'est ça. R. Nous, on était très bien organisés. On était très, très bien organisés. On communiquait... Souvent, si on devait faire des meetings ou des... des réunions, on envoyait des messages. Le... le président de la Galaxie patriotique, Blé Goudé, nous envoie des messages : on a telle réunion dans tel coin. Et tout le monde a le message ; les leaders de la Galaxie patriotique avaient les messages. Et on partait, on se retrouvait pour faire la réunion. Q. Pour qu'on comprenne bien, quand vous dites que le président de la Galaxie patriotique, M. Blé Goudé, communiquait avec vous, il communiquait comment, par quel moyen ? R. On... on nous envoyait... Son service de communication nous envoyait des messages pour dire : on a telle réunion, dans telle commune, dans tel endroit, et on se retrouve — par téléphone. Si vous voulez que je précise, par cellulaire. On recevait les messages par cellulaire. J'ai... j'ai commencé à comprendre qu'ici il faut préciser les choses. C'est... c'est technique, pour vous. Il y a pas de problème. Par cellulaire. Q. Donc, des cellulaires, des portables. Et vous

with youth via rallies and the State media, namely RTI, which broadcast and promoted his rallies and gave him airtime to make speeches and issue instructions to the *Jeunes Patriotes*.

238. Evidence indicates that in preparation for his “*mot d’ordre*” at Le Baron Bar on 25 February 2011, and generally throughout the post-election violence, Mr Blé Goudé, together with Philippe Mangou and other FDS and youth leaders, planned, organised and held rallies (for example on 15 January 2011,<sup>528</sup> 23 January 2011,<sup>529</sup> 25 February

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*faites référence... Vos deux... vos deux pouces bougeaient. Je comprends que vous faites référence à de la messagerie texte, donc les fameux SMS ? R. Bien, Monsieur le Procureur. C’est ça, les... les SMS, les messageries.”* Pp. 68-69: “*Q. Et quand c’est un meeting ? R. Quand c’est meeting, c’est... c’est plus de 10 000. Ça dépend de... de... du message. Ça dépend du message, de la situation politique de... de cette période. Si Blé veut faire un grand meeting, il suffit de d’abord envoyer le message à tous les leaders pour les avertir, et chacun de nous envoie le message ‘à les’ différentes bases pour la mobilisation.*”

<sup>528</sup> Video of a *Jeunes Patriotes* rally in Abobo, 15 January 2011, CIV-OTP-0018-0006 at 00:06:20-00:08:32 (transcript, CIV-OTP-0021-0048 at 0051-0052, lines 83-143). This video shows Mr Blé Goudé giving a speech to the camera and, thereafter, footage of Mr Blé Goudé at a rally. Mr Blé Goudé in the video calls for a meeting the following day at Le Baron Bar in Yopougon (there is no transcript of this first excerpt). The rest of the video shows Mr Blé Goudé addressing the crowd at the Place CP1. Mr Blé Goudé (filing 1099, Annex 1, p. 103) challenges the authenticity and relevance of this video excerpt. Although the broadcast of the video on RTI and the footage of UNOCI vehicles cannot be verified, the video clearly shows Mr Blé Goudé issuing a message, first before the camera and later in a stadium (the Blé Goudé Defence does not challenge, in itself, the authenticity of Mr Blé Goudé’s message). Regardless of the exact date, given the context, the date can be estimated to have been during the post-election violence, and the video is relevant, at least, to showing his state of mind, intent and knowledge at the time of the events.

<sup>529</sup> Video of Charles Blé Goudé at Stade Champroux, 23 January 2011, CIV-OTP-0041-0470 at 00:04:09-00:06:32 (transcript, CIV-OTP-0044-2597 at 2599, lines 53-73). This video shows a report on the rally. Mr Blé Goudé arrives at the stadium and is cheered by the crowd. There is some footage of persons dancing on stage at the rally. Thereafter, Mr Blé Goudé addresses the crowd. Mr Blé Goudé (filing 1099, Annex 4, p. 41) has challenged the relevance (OTP’s interpretation of the speech) and authenticity of the footage (but not the contents of Mr Blé Goudé’s speech). In the excerpt, Mr Blé Goudé states: “*Je voudrais, en ce qui concerne cette cérémonie ... vous, vous savez la vérité ; en CÔTE D’IVOIRE, on sait la vérité ; en CÔTE D’IVOIRE, on sait tout. Donc ce n’est même pas pour vous que je parle. Je parle pour ceux qui savent et qui font comme s’ils ne savent pas. Et qui se réunissent à DAKAR, qui se réunissent à BAMAKO, qui se réunissent au nom de la CEDEAO, qui se réunissent au nom de l’UEMOA et qui disent à GBAGBO : ‘Démissionne !’ Qui disent à GBAGBO, ‘Il faut partir !’ Et qui font des plans militaires pour venir enlever GBAGBO au pouvoir. Est-ce qu’ils peuvent le réussir ? Est-ce qu’ils peuvent le réussir ? Et ils lancent des appels à la division de notre armée. Ils lancent des appels à la trahison, faisant croire que les généraux de l’armée de CÔTE D’IVOIRE ont rejoint la rébellion. Chers amis, je voudrais ici exprimer la fierté des Ivoiriens, je voudrais ici exprimer le soutien des Ivoiriens à cette armée digne, qui est plus que jamais soudée, qui est sur les routes, qui est dans la brousse, qui est au front et qui démontre que la CÔTE D’IVOIRE est certes poutre un petit pays, mais derrière la CÔTE D’IVOIRE, il y a une grande armée qui est debout et que je voudrais qu’on applaudisse ce soir. [...]* Nous sommes là pour saluer notre police, nous sommes là pour saluer notre gendarmerie, nous sommes là pour saluer les Eaux et Forêts et les douanes ... ce soir, cette après-midi, dans ce stade. L’armée de CÔTE D’IVOIRE se bat pour quoi ? Elle se bat pour la légalité constitutionnelle en CÔTE D’IVOIRE, elle se bat pour la constitution de la CÔTE D’IVOIRE, elle se bat pour la dignité de CÔTE D’IVOIRE, et elle est prête ; et derrière elle, il y a une jeunesse debout. Cette jeunesse est debout autour d’un leader, qui incarne une cause noble et qui est Laurent GBAGBO.” Video, CIV-OTP-0074-0068 at 00:09:35-00:13:02 (excerpt from RTI broadcast of 24 January at 20.00; transcript, CIV-OTP-0087-0539 at 0540-0541, lines 1-66). This is an RTI report on the rally at Stadium Champroux. It shows Mr Blé Goudé and Philippe Mangou arriving at the stadium together. Mr Blé Goudé gives a speech and then Mr Mangou speaks. Video, *Grande mobilisation*, 23 January 2011, CIV-

2011,<sup>530</sup> 19 March 2011<sup>531</sup> and 20 March 2011<sup>532</sup>). The evidence, mostly videos, shows rallies with an observable enormous turnout of young persons in support of Mr Gbagbo. Evidence suggests that Mr Blé Goudé's speeches at these events contributed to the implementation of the State policy.

239. In the context of the incident of 25-28 February 2011, Mr Blé Goudé's instruction to set up roadblocks at Le Baron Bar was followed by RTI announcements showing other youth leaders echoing his call.<sup>533</sup> Evidence also supports allegations that roadblocks

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OTP-0047-0670 at 00:00:00-00:12:52 (transcript, CIV-OTP-0048-1660 at 1661, lines 10-15, and 1666, lines 227-228). This video shows a rally at Stadium Champroux. Philippe Mangou addresses the crowd.

<sup>530</sup> Video, CIV-OTP-0064-0087 at 00:14:02-00:14:33 (excerpt from RTI broadcast of 25 February 2011 at 20:00; transcript, CIV-OTP-0063-2998 at 3001, lines 57-61). See also P-0449, T-159-CONF-FRA, p. 38. P-0449 attended this rally. He said that the entire *Galaxie Patriotique* was there. The rally began between 10:00 and 11:00 and lasted until 13:00. Charles Blé Goudé spoke for around 30 minutes. Mr Blé Goudé asked people to set up roadblocks and encouraged people to be vigilant, especially of UNOCI vehicles – since these were in fact disguised *Forces Nouvelles*. He called upon the Ivorian people to stay vigilant because people were starting to attack (people were being burned, for example). Roadblocks were in fact set up throughout all the neighbourhoods and *communes*, at their entrance points. These roadblocks were set up as soon as the rally was over. The witness himself and others set up a roadblock after the rally.

<sup>531</sup> Video of a rally at Place CP1, Yopougon, 19 March 2011, CIV-OTP-0015-0476 at 00:05:16-00:07:29; 00:08:14-00:08:18 (transcript, CIV-OTP-0020-0454). This exhibit was authenticated in court by P-0087 and P-0088. Mr Blé Goudé states in the video: “*Jeunes de CÔTE D’IVOIRE, est-ce que vous êtes prêts à aller dans l’armée pour servir notre pays? [...] Cette question, je vais la poser quatre fois. Et quatre fois vous allez me répondre. Jeunes de CÔTE D’IVOIRE, est-ce que vous êtes prêts à entrer dans l’armée pour servir notre pays? [...] Alors, je vous ai entendus. Maintenant c’est à moi de vous répondre. Maintenant c’est à moi de vous répondre. [...] C’est à moi en tant que votre général de vous répondre et je vais vous répondre aujourd’hui et je vais répondre maintenant. [...] La comédie à trop duré ... la comédie à trop duré. Même le silence. Les gens veulent prendre notre silence et notre implication politique comme une faiblesse. [...] Les gens veulent prendre notre silence et notre implication politique comme une faiblesse. Mais nous ne pouvons plus rester là. Alors que nous avons les moyens humains. Alors que la jeunesse est prête. Alors qu’on est beaucoup. Alors qu’il y a assez de crimes maintenant pour le prouver.*” Video of a rally at Place CP1, Yopougon, 19 March 2011, CIV-OTP-0015-0460 at 00:00:16-00:00:36 (transcript CIV-OTP-0019-0150 at 1051, lines 10-12; translation at CIV-OTP-0019-0144 at 0144, lines 10-12), authenticated by P-0087 in court. The person interviewed by P-0087 is not identified.

<sup>532</sup> Video, CIV-OTP-0064-0092 at 00:20:19-00:22:29 (excerpt from RTI broadcast of 20 March 2011 at 20:00; transcript, CIV-OTP-0088-0044). This is an RTI report on a rally of Mr Blé Goudé in Port-Bouët. Footage is shown of the rally at the Place Laurent Gbagbo in Port-Bouët. Mr Blé Goudé calls on all young persons to go the next day to the CEMA headquarters so that they can be enlisted.

<sup>533</sup> Video, CIV-OTP-0064-0087 at 00:16:30-17:15 (excerpt from RTI broadcast of 25 February 2011 at 20:00; transcript, CIV-OTP-0063-2998 at 3002, lines 109-111). This excerpt shows Doyou Nicaise being interviewed, stating that Ivorians should denounce the presence of rebels. Otherwise, they themselves will be treated as rebels. Another person, Jean-Marie Konin, states that people should wake up and mobilise against UNOCI, which is helping the rebels and Burkinabé armed men. People of Côte d’Ivoire should help with the liberation of Côte d’Ivoire against UNOCI, *Force Licorne* and the barbaric international community. See also the testimony of P-0440, T-157-CONF-FRA, p. 22: “*R. [11:13:13] Oui, parce qu’un moment, on a constaté qu’il y avait beaucoup d’exactions sur la population civile. Ils rançonnaient les gens, et c’est à ces barrages-là aussi que les gens étaient tués, des gens qu’on assimilait à des assaillants ou bien des rebelles étaient tués. Donc, on a fait le rapport pour qu’on nous demande de faire lever tous ces barrages-là. Mais effectivement, le... je crois que ça doit être le lundi 28, mon chef m’a dit qu’il fallait qu’on fasse des patrouilles pour demander aux jeunes de lever les barrages. On a fait cette patrouille-là sur les grandes voies. Par exemple, sur le boulevard principal, on a pu faire lever les barrages. Mais les voies qui donnaient accès au quartier, ils ont refusé catégoriquement d’enlever les barrages. Parce que, disent-ils, que c’est M. Blé Goudé qui leur a demandé de surveiller leur*

were actually erected as a result. P-0449, a FESCI member during the post-election violence, explained the relationship between Mr Blé Goudé and the *Jeunes Patriotes* and the erection of roadblocks on 25 February 2011:

*Q. [11:40:45] Alors, vous nous avez dit que M. Blé Goudé a demandé d'ériger des barrages. Est-ce qu'ils ont été érigés ? R. [11:40:59] Oui. Q. [11:41:01] Où ? R. [11:41:06] Dans tous les quartiers, dans toutes les communes et aux entrées des différentes villes, je pense bien. Q. [11:41:23] Et quand est-ce qu'ils ont été érigés par rapport à ce discours de M. Charles Blé Goudé ? R. [11:41:35] Dès la fin du meeting. Q. [11:41:44] Vous, dans votre quartier, est-ce que vous avez érigé un barrage ? R. [11:41:50] Oui. Q. [11:41:57] Et quel est le nom du quartier ? R. [11:42:01] Niangon-Sud, à droite, Yopougon. Q. [11:42:15] Quand vous dites, dans votre quartier — c'est Niangon-Sud —, est-ce qu'il y a une cité en particulier dans laquelle on a érigé le barrage ? R. [11:42:27] Le quartier comprend plusieurs cités, hein, plusieurs cités, mais c'est sur une voie... toute une voie que nous avons érigé le barrage. Q. [11:42:42] Si je comprends bien, pour que le dossier soit clair, c'est la voie Niangon-Sud ? R. [11:42:50] Oui, Monsieur.*

*[...] Q. [11:58:05] Vous avez fait mention de vos camarades en relation avec les barricades qui vous ont informés. Et vos camarades en question, c'étaient des gens qui appartenaient à quel mouvement ? R. [11:58:26] Excusez-moi. On avait des camarades qui appartenaient à différents mouvements. Il fallait... Déjà, nous nous appelions "camarades" parce que nous appartenons déjà à des mouvements qui s'apparentaient. Et donc, nous circulions pour voir à peu près les différents camarades dans les différents barrages. Et dire "les différents mouvements", je pense que ce sont des camarades qui appartenaient au mouvement des Jeunes Patriotes.<sup>534</sup>*

240. Video evidence in the record dated 14 March 2011 shows Mr Blé Goudé congratulating (via the State media, RTI) those who had erected the roadblocks following his instructions.<sup>535</sup> This evidence supports allegations that those erecting and monitoring the roadblocks were responding to Mr Blé Goudé and were not, as alluded to by the Defence, "criminal gangs" acting on their own initiative and pursuant to their own criminal plans. The fact that Mr Blé Goudé communicated via the State media with the youth monitoring the roadblocks is also relevant to demonstrating that the State endorsed such actions.

241. Another relevant example is the evidence related to the rallies on 19 and 20 March 2011. It is suggested that these rallies led thousands of young men to enlist at the

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*quartier ; donc, ils font leur travail en surveillant leur quartier, seul. Blé Goudé peut leur demander de rentrer pour qu'ils rentrent. Sinon, si tel n'est pas le cas, eux ils vont continuer de surveiller leur quartier."*

<sup>534</sup> P-0449, T-159-CONF-FRA, pp. 38-39 and 43-44.

<sup>535</sup> Video, CIV-OTP-0069-0371 at 00:11:48-00:11:55 (excerpt from RTI broadcast of 14 March 2011 at 20:00; transcript, CIV-OTP-0087-0724 at 0725-0726, lines 43-45): "[...] 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."

CEMA headquarters. Words are no substitute for the images seen in this video evidence, which, editorial comment aside, are telling. However, for the purpose of this analysis, the video can be described as showing countless young men at the CEMA on 21 March 2011 stating their readiness to enlist.<sup>536</sup> The footage shows that Mr Blé Goudé had the power to influence and mobilise the youth, who effectively reported to the CEMA on 21 March 2011, as instructed by Mr Blé Goudé. Also, evidence on the incidents described above, particularly the attack in Yopougon on 12 April 2011, suggests that Mr Blé Goudé mobilised these youth for the implementation of the State policy.

242. Although in his testimony Philippe Mangou denied having effectively enlisted these young men,<sup>537</sup> there is no evidence in the record indicating that he actually appeared at the CEMA headquarters or on RTI denying this enlistment or instructing the *Jeunes Patriotes* to leave the CEMA headquarters or to stop this mobilisation and recruitment process. In fact, evidence suggests that Philippe Mangou and the State knew about this mobilisation and supported it, particularly since, instead of stopping the mobilisation, RTI commended it when it broadcast images of the youth arriving at the CEMA headquarters and made the editorial comment that this was in response to the attack by rebels supported by France, Burkina Faso and UNOCI.
243. In a further RTI broadcast dated 29 March 2011, a communiqué was read by Philippe Mangou's spokesperson, again celebrating the mobilisation, which contradicts his in-court testimony denying any enlistment of youth during the post-election violence:

*Le Chef d'Etat-Major des Armées salue, à cet effet, la forte mobilisation et l'engagement de ces jeunes ivoiriens qui se sont rendus massivement, ce jour-là, à l'Etat-Major des Armées, pour se faire inscrire dans le cadre de l'appel sous les drapeaux. Aussi, le général de corps d'armée Philippe MANGOU, Chef d'Etat-Major des Armées, les informe-t-il que le moment*

<sup>536</sup> Video, CIV-OTP-0069-0375 at 00:05:40-00:08:52 (excerpt from RTI broadcast of 21 March 2011 at 20.00; transcript, CIV-OTP-0087-0730): this excerpt shows the youth who came to the CEMA headquarters to be mobilised following the call by Mr Blé Goudé. Video of *Jeunes Patriotes* enlisting in the army, CIV-OTP-0043-0269 at 00:04:08:00-00:05:20:00 (transcript, CIV-OTP-0047-0611 at 0614-0615, lines 69-97): this is an RTI report on youth coming to the CEMA headquarters to enlist. Unidentified men explain why they are there. Then Mr Blé Goudé is interviewed and he states: "On a pris la décision de la décentralisation pour éviter encore que nos amis dépensent, qu'ils payent de l'argent par-ci par-là pour payer le transport et qu'ils s'exposent encore à d'autres risques. [...] [E]n restant dans les quartiers, vous surveillez les quartiers mais en même temps vous vous inscrivez. Nous voulons préciser que cette opération-là, elle est gratuite." Video of *Jeunes Patriotes* enlisting in the army, 21 March 2011, CIV-OTP-0015-0501 (full video) (transcript, CIV-OTP-0063-2902): this video was authenticated in court by P-0087 and P-0088. It shows images of *Jeunes Patriotes* enlisting at the CEMA headquarters on 21 March 2011.

<sup>537</sup> P-0009, T-196-CONF-FRA, p. 72.

*de leur enrôlement effectif dans l'armée nationale est arrivé. Il précise que le début de cette vaste opération d'enrôlement est fixé le mercredi 30 mars 2011. Les appels des inscrits se feront par vagues, à partir des contacts téléphoniques donnés à l'Etat-Major des Armées lors de leur recensement et inscription. Enfin. Le Chef d'Etat-Major des Armées voudrait, ici, inviter l'ensemble des jeunes inscrits à garder leur calmes, et les rassurer que tous seront appelés.*<sup>538</sup>

244. Evidence supports allegations that RTI was a fundamental tool for Mr Blé Goudé to reach his audience, either via interviews or by broadcasts of his rallies. In this regard P-0625 testified that Mr Blé Goudé and youth leaders had access to RTI to pass on any message or information to the *Jeunes Patriotes*:

*Quels moyens utilisait-il pour lancer ces appels à la mobilisation ? Vous avez parlé hier du système de messagerie cellulaire, les SMS. Quel... Quel autre moyen était utilisé ? R. Comme je vous ai dit, ça dépend de la gravité, ou de l'appel de la mobilisation, ou de ce qui s'est passé. M. Blé Goudé utilisait la communication, c'est-à-dire la RTI nationale, les messages et la radio pour mobiliser et faire appel "à les" Ivoiriens de se mobiliser pour défendre la souveraineté de la Côte d'Ivoire. Q. Est-ce qu'il y avait d'autres leaders qui, également, faisaient des appels, à votre connaissance ? R. Oui, il y avait des... il y avait d'autres leaders qui faisaient des appels, qui passaient à la télé, qui faisaient des appels, selon des groupes. Q. Et quand vous dites qu'ils passaient à la télé, vous faites toujours référence à la RTI ? R. Oui, à la RTI, à la Radiotélévision nationale. Q. Je pense qu'il y a une... une... certainement une chose que la Chambre aimerait comprendre : comment était-ce possible, pour les leaders de la jeunesse patriotique, de pouvoir passer à la RTI ? Expliquez-nous. R. Mais la RTI est la... C'est... La RTI, c'est la télévision nationale de la Côte d'Ivoire. Et si un leader de la Galaxie patriotique a un message ou il y a un problème et qu'on doit lancer le message, mais ils vont à la RTI. Le directeur de la RTI leur permet de passer des informations. C'est comme ça, ça s'est passé.*<sup>539</sup>

245. Although Mr Blé Goudé's individual criminal responsibility is further analysed in Section 5 below, for the purpose of the evaluation of the State policy, there is enough evidence upon which a reasonable Trial Chamber could conclude that Mr Blé Goudé was not a "simple citizen" as submitted by the Defence, but, on the contrary, was an influential actor in the implementation of the State policy – as a member of Mr Gbagbo's government but principally as leader of the *Jeunes Patriotes* who were involved in the commission of crimes during the post-election violence.

### 3. Simone Gbagbo and the State policy

246. Simone Gbagbo is also referred to by the Pre-Trial Chamber as a member of the "inner circle".<sup>540</sup> A significant number of documentary exhibits relied upon by the Prosecutor

<sup>538</sup> Video, CIV-OTP-0069-0382 at 14:29-16:11 (excerpt from RTI broadcast of 29 March 2011 at 20.00; transcript, CIV-OTP-0087-0814, emphasis added).

<sup>539</sup> P-0625, T-27, CONF-FRA, pp. 22-23.

<sup>540</sup> A warrant for Simone Gbagbo's arrest was issued by the Pre-Trial Chamber on 29 February 2012 but is still awaiting execution. See ICC-02/11-01/12-1.

as regards Simone Gbagbo have not been considered for the purpose of the submissions of no case to answer, including documents allegedly belonging to her, among them agendas and diaries. Most of these documents have no known date, author, signature or stamp and therefore do not meet the minimum threshold of authenticity. However, there is still some limited evidence linking her with the State policy, which is analysed below.

247. There is evidence in the record that Simone Gbagbo and Mr Blé Goudé had a good relationship.<sup>541</sup> Evidence also indicates that during the post-election violence she was the main leader of the *Congrès National de la Résistance pour la Démocratie* (“CNRD”).<sup>542</sup> Philippe Mangou testified that, during the post-election violence, Simone Gbagbo would hold a meeting at the Presidential Palace every evening at 19.30.<sup>543</sup> P-0625 corroborated this and testified that he attended such meetings.<sup>544</sup> P-0625 said that other political leaders, including members of the *Galaxie Patriotique*, would meet with Simone Gbagbo. P-0625 stated the following in relation to the first meeting convened by Simone Gbagbo during the post-election violence:

*Donc, notre première réunion, on était juste quelques leaders de la Galaxie patriotique, on a entretenu... nous “sommes” échangé avec la première dame et les personnalités qui étaient là pour une autre rencontre où on devait se rencontrer une deuxième fois pour en discuter de l’évolution, de la situation sociopolitique qui était dans le pays, et ce qui se passait, il fallait en discuter et voir quelles sont les dispositions à prendre et qu’est-ce qu’il faut faire.*<sup>545</sup>

248. P-0625 stated that there was a second meeting, which was again attended by government and youth leaders:

<sup>541</sup> P-0009, T-193-FRA, p. 39: “Je crois qu’il [Blé Goudé] doit avoir aussi de bonnes relations avec l’épouse du Président.”

<sup>542</sup> P-0625, T-28-CONF-FRA, p. 8, lines 5-10.

<sup>543</sup> T-194-FRA, p. 9, lines 26-27.

<sup>544</sup> P-0625, T-28-CONF-FRA, p. 8, lines 5-10: “Q. À votre connaissance, qui était le président du CNRD ? R. Je crois avoir déjà répondu à cette question hier : j’ai dit la... la CNRD, pour savoir qui était le président, qui dirigeait ça, je ne savais pas, je vous ai dit. Mais nous, on recevait des convocations au nom de la première dame, M<sup>me</sup> Simone Ehivet Gbagbo pour venir assister à des réunions avec elle. Donc, si c’est elle qui était le président de ça ou pas, je ne sais pas. [...] R. Je crois que moi personnellement, j’ai commencé à... en... en 2000... 2010. C’est là que j’ai commencé à recevoir des convocations à assister à des réunions.” Simone Gbagbo’s diary, CIV-OTP-0018-0810 at 0830, 0832, 0836 and 0840 (but solely as referred to by P-0625). P-0625, T-28-CONF-FRA, pp. 8-9: “Donc, notre première réunion, on était juste quelques leaders de la Galaxie patriotique, on a entretenu... nous ‘sommes’ échangé avec la première dame et les personnalités qui étaient là pour une autre rencontre où on devait se rencontrer une deuxième fois pour en discuter de l’évolution, de la situation sociopolitique qui était dans le pays, et ce qui se passait, il fallait en discuter et voir quelles sont les dispositions à prendre et qu’est-ce qu’il faut faire.”

<sup>545</sup> P-0625, T-28-CONF-FRA, pp. 8-9, emphasis added.

*Et je crois c'est là la deuxième réunion, qui était un peu... un peu plus grande, où il y avait je crois plusieurs personnes, il y avait plus de 100, 150 personnes, [...] Oui, Monsieur le Procureur. Il y avait moi... il y avait moi-même, il y avait Anoï Castro, il y avait Youssouf Fofana, de La Voix du nord, il y avait Zéguen Touré, il y avait... il y avait... il y avait un ami aussi, qui s'appelait Koné Largaton, qui était de la Galaxie patriotique — Koné Largaton, dit “le grand cheval”, et il y avait d'autres associations qui étaient là.<sup>546</sup>*

249. A video shows Simone Gbagbo addressing a delegation from *La Majorité Présidentielle* (“LMP”) political alliance, on 23 December 2010. She said on that occasion:

*Nous sommes confrontés à une situation difficile. C'est un combat, c'est la guerre sous plusieurs formes qu'on nous a menée. Si nous voulons nous en sortir, si nous voulons ne pas être écrasés, nous devons, nous-mêmes, nous relever, redresser la tête, résister, avoir confiance en nous, avoir confiance en notre cause, apprendre à combattre, à supporter des souffrances, s'il y en a, à être prêts à faire des sacrifices que la situation impose, et puis, à nous engager résolument dans la révolution de nos mentalités, pour que notre pays-là soit un pays nouveau. GBAGBO Laurent a initié un ordre nouveau et cet ordre nouveau-là va finir par s'imposer.<sup>547</sup>*

250. This speech is similar to other speeches given in the context of the post-election violence. For example, the mention of a “war” calls to mind the speech given by Minister Emile Guiriéoulou to police prefects on the eve of the March on RTI. The reference to a need to make sacrifices – to have a revolution – also bears a resemblance to the language used by Mr Blé Goudé in various speeches and interviews analysed in this opinion.

251. There is evidence that Simone Gbagbo organised and spoke at rallies in support of the State policy.<sup>548</sup> For example, a video shows a CNRD rally that Simone Gbagbo organised on 15 January 2011, which was attended by various youth leaders,<sup>549</sup> including Mr Blé Goudé, and was broadcast by RTI.<sup>550</sup> The footage shows a large

<sup>546</sup> P-0625, T-28-CONF-FRA, pp. 9-12, emphasis added.

<sup>547</sup> Video, CIV-OTP-0064-0098 at 00:15:17-00:17:43 (excerpt from RTI broadcast of 23 December 2010 at 20.00; transcript, CIV-OTP-0086-0949 at 0950, lines 28-34).

<sup>548</sup> Video, CIV-OTP-0075-0058 at 00:03:07-00:03:48 (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript, CIV-OTP-0102-2556). See freeze frame 00:02:55 for Mr Blé Goudé (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript, CIV-OTP-0102-2556).

<sup>549</sup> CIV-OTP-0074-0064 at 00:45:43 (excerpt from RTI broadcast of 14 January 2011 at 20.00). This excerpt shows the reading of a communiqué by Mian Augustin, identified as leader of the CNRD youth. Other unidentified men are around him. He calls for the CNRD rally to be presided by Simone Gbagbo. Leaders of other groups follow, inviting all to the rally.

<sup>550</sup> Video, CIV-OTP-0012-0007 at 00:01:09-00:01:32 (transcript, CIV-OTP-0062-0929 at 0931-0932, lines 65-73). This is a France 24 video that shows Simone Gbagbo addressing a crowd at the same rally and also shows Mr Blé Goudé during the event. Mr Blé Goudé is interviewed and says: “L’ONU a... s’est détournée de sa mission principale. L’ONU n’est plus une force de paix. En Côte d’Ivoire, c’est l’ONU qui convoie les rebelles, c’est l’ONU qui les organise, c’est l’ONU qui leur donne un radio. La radio de l’ONU aujourd’hui est devenue la radio des rebelles.”

audience listening and cheering while Simone Gbagbo gives a speech.<sup>551</sup> She states the following:

*Simone GBAGBO [SG] : Frères et sœurs, il faut rester calme. Il faut rester serein, Dieu travaille. Et il travaille puissamment pour nous. Il faut chercher à le reconnaître dans ce qui nous arrive. Frères, je vous dis si vous avez des grigris aux reins. Arrachez-les et jetez-les. [...] Si vous avez des fétiches dans vos maisons, enlevez-les, et jetez-les. Le temps des fétiches est passé. [...] Et puis vous voyez, chaque fois qu'on les prend, c'est les grigris on trouve. C'est les fétiches on trouve. Est-ce que toi qui est dans l'autre camp, tu peux t'allier à des défenseurs des rebelles? Si les rebelles s'allient aux grigris et aux fétiches, est-ce que toi tu as intérêt à aller t'allier aux grigris et aux fétiches ? En tout cas, moi, je vous dis que c'est Dieu qui mène notre combat, et que ce Dieu-là, il nous a déjà donné la victoire. C'est pour ça ... c'est pour ça qu'il faut que nous restions calmes et sereins. Mais, quand je dis calmes et sereins, je ne dis pas amorphes. Il faut que nous restions mobilisés dans nos maisons, dans nos villages, dans nos quartiers, dans nos villes. Il faut que nous restions vigilants dans nos départements, dans nos districts, dans nos régions, et il faut que nous recommencions à vivre. Parce que la vie continue. Le temps des débats sur les élections de GBAGBO Laurent, des chefs bandits, ce temps-là est passé. Notre président est vigoureusement installé au pouvoir, et il travaille. Et il faut qu'il travaille, et il faut que les ivoiriens travaillent. Il faut que la nation toute entière travaille, parce que l'AFRIQUE nous attend. Et quand je dis travailler, je dis relever tous les défis. Et quand je dis relever tous les défis, je dis d'abord, récupérer la totalité du territoire ivoirien. C'est notre travail à nous tous. C'est le travail bien sur des forces de défense et de sécurité, mais c'est nous aussi notre travail. Il faut les appuyer. Je dis, délivrer le peuple du nord, délivrer le peuple du centre, délivrer le peuple de l'ouest de la rébellion. Je dis nettoyer nos forêts. Je dis nettoyer nos champs, récupérer nos champs de café et de cacao qui sont pillés. Je dis au gouvernement, prendre les dispositions pour organiser les élections législatives, et les élections municipales, et les élections en général, parce que nous, nous voulons avancer. Nous ne voulons pas tomber dans le piège du chef rebelle qui veut nous obliger à faire du surplace. Nous, nous devons avancer. [...] Que Dieu bénisse la CÔTE D'IVOIRE, Que Dieu bénisse Laurent GBAGBO, que Dieu bénisse l'AFRIQUE.<sup>552</sup>*

252. Her speech resembles in tone and content the speeches given by Mr Blé Goudé at the time. She refers to the need to get rid of fetishes and *gris-gris*, and then calls the people who wear them “defenders of the rebels”. She says the population must remain vigilant and support the FDS in recovering their country, to “clean the forests”. In the context of the post-election violence, it would be unreasonable to analyse this speech otherwise than as hate speech, an inducement to further polarisation and hostility against perceived Ouattara supporters, namely the Dioula, who according to Simone Gbagbo were equivalent to rebels, to supporters of the “bandit chief”, Mr Ouattara, and who had to be eradicated from Côte d’Ivoire.

<sup>551</sup> Video, 15 January 2011, CIV-OTP-0012-0003 at 00:00:58-00:06:00 (transcript, CIV-OTP-0019-0018 at 0019, lines 6-43). Video CIV-OTP-0022-0057 at 00:11:55-00:12:46 (transcript, CIV-OTP-0053-0005 at 0008) shows the same CNRD rally on 15 January 2011. In the aforesaid time frame, Simone Gbagbo asks the crowd to repeat after her: “*Oh honte! La CEDEAO*”.

<sup>552</sup> Video, 15 January 2011, CIV-OTP-0012-0003 at 00:00:58-00:06:00 (transcript, CIV-OTP-0019-0018 at 0019, lines 6-43, emphasis added).

253. In another video Simone Gbagbo is seen visiting civilians allegedly injured by UNOCI soldiers. On that occasion she expressed her negative views about United Nations involvement in Côte d'Ivoire and stated:

*[...] devant toutes ces souffrances-là qui sont infligées à la population et je pense que ce que l'ONUCI fait là, c'est vraiment ... c'est insupportable, c'est insupportable, c'est inacceptable. Et puis c'est très grave quand même, c'est grave quand même. Que l'ONUCI se mette à tirer sur des gens qui sont pas armés, c'est grave. C'est à tout ça là qu'on dit non, c'est pour ça qu'on dit qu'ils n'ont qu'à partir. Et il faut partir parce que s'ils sont inscrits dans ce comportement-là, ils n'ont plus rien à faire chez nous.*<sup>553</sup>

254. During her visit, Simone Gbagbo states that the United Nations has wilfully killed unarmed persons and must therefore leave. There is no evidence in the record indicating that the United Nations was involved in such killings. On the contrary, evidence indicates that this video, dated 31 December 2010, coincides with other RTI broadcasts at the time which attacked the United Nations and threatened its expulsion as a result of its claims following the March on RTI.

255. Apart from the political activities in which Simone Gbagbo was involved during the post-election violence, evidence also suggests that she had links with militia and youth groups. For example, P-0435 testified that the GPP would request money directly from the Secretariat of Simone Gbagbo.<sup>554</sup> Similarly, P-0483, a Liberian mercenary, testified that Simone Gbagbo's *aide de camp* and bodyguard, Séka Séka,<sup>555</sup> met with him and

<sup>553</sup> Video, CIV-OTP-0026-0024 at 00:51:07-00:52:56 (excerpt from RTI broadcast of 31 December 2010 at 20.00, transcript, CIV-OTP-0052-0550 at 0570, lines 745-750).

<sup>554</sup> P-0435, T-87-CONF-FRA, p. 43, lines 9-18.

<sup>555</sup> P-0483, T-100-CONF-ENG, p. 64: "So he told me that and I said, 'Okay, no problem.' What I was suggesting at that time was because that area was full of youths and they were not people who were in army. He was the only person who was taking care of the securities who were controlling the riots. By then he told me that they were not in any position again to give us anything like arms, but he said, 'We got a good news that there will be somebody who will be ready to help you.' So, and that was the president's wife's bodyguards. They call him Séka Séka. He told me about Séka Séka." See also P-0011, T-132-FRA, p. 91: "[15:35:32] Très bien. Monsieur le témoin, je passe à un autre sujet. Est-ce que vous connaissez une personne s'appelant Séka Yapo Anselme ? R. [15:35:43] Oui. C'est un officier de gendarmerie. Q. [15:35:47] D'accord. Et en l'an 2010, en l'an 2010-2011, durant la crise postélectorale, quel était son poste ? R. [15:36:01] Le commandant Séka Yapo Anselme était l'aide de camp de M la première dame, M<sup>me</sup> Ehivet Simone Gbagbo." CIV-OTP-0044-0053 (a request from Séka Séka for equipment, with the letterhead indicating his function); this document was shown to P-0011 (T-132-CONF-FRA, T-134-CONF-FRA), who said that Séka Yapo Anselme was the *aide de camp* of Simone Gbagbo. P-0011 said that Séka could not directly ask him for weapons; the request would have been through the Commander of the GSPR. P-0011 said that it was his Chef de Cabinet who had "ok'd" that request from Séka. P-0011 was confronted with this signature on his behalf signed by his deputy ("OK du CSG"). P-0010, T-137-CONF-FRA, p. 80: "Q. [15:56:51] Qui est Séka ? R. [15:56:54] C'était l'officier de gendarmerie qui était en service à la Présidence de la République. Q. [15:57:10] Et quel était son rôle ? R. [15:57:15] Il était l'aide de camp de la première dame. Q. [15:57:22] Pouvez-vous... Pouvez-vous nous lui... nous donner son nom complet ? R. [15:57:31] Séka Yapo Anselme."

other Liberian mercenaries so that they would join the pro-Gbagbo forces.<sup>556</sup> Philippe Mangou in fact confirmed that such mercenaries under Séka Séka's command were stationed at the Presidential Residence until April 2011. In this regard, he stated:

*[...] Maintenant, c'est sur le chemin... c'est sur le chemin du retour... c'est sur le chemin du retour que j'ai vu cinq véhicules de transport de troupes banalisés, pleins — je ne dirais même pas de soldats — de mercenaires... de mercenaires, je dis bien de mercenaires, conduits par le commandant Séka — Séka. Parce que, dans cette crise, je ne sais pas trop pourquoi, mais j'ai été au-devant de la crise pendant les 10 années de crise. Pendant les 10 années de crise, trois ans sur le théâtre des opérations en tant que commandant du théâtre des opérations, j'ai fait beaucoup, beaucoup de tournées, je suis allé dans les plus petits hameaux où étaient nos hommes, je les connais... je leur connais le visage, peut-être pas de nom, je connais l'attitude de nos soldats. Même chef d'état-major, j'ai fait ces tournées. 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 Séka 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.<sup>557</sup>*

256. According to the above testimony of Philippe Mangou, Séka Séka, as Simone Gbagbo's *aide de camp*, in theory did not have troops under his responsibility. However, during the post-election violence, Séka Séka had under his command a large group of mercenaries. These mercenaries, as stated by Philippe Mangou, were not new to Côte d'Ivoire, and certainly not unknown to the CEMA, who had seen them throughout the ten years prior to the post-election violence.

257. As noted above, evidence related to Simone Gbagbo is limited. However, from this evidence a reasonable Trial Chamber could infer that the State apparatus headed by Mr Gbagbo endorsed her political activity during the post-election violence, which contributed to or at least facilitated the implementation of the State policy. Moreover, the evidence related to Séka Séka above also suggests that her role was more than political.

<sup>556</sup> See T-100-CONF-ENG and T-101-ENG. P-0483 stated: "And that was our first mission after we left KB. Séka Séka told us that these guys already know about arms. So if there is anything we want them to help us with, I think we must tell them; after which KB told us that they do not have anything. But he said if we want him to go with us, we must wear the same military fatigue like him. He said we should be in full uniform, and the youths at the Cité rouge know already--knew us already, so we should be in full uniform. He said they told us that there was a helicopter gunship that came to the port. So they wanted us to be there with them and -- but protect their own side of Marcel Gossio." (T-100-CONF-ENG pp. 72-73).

<sup>557</sup> P-0009, T-194-CONF-FRA, p. 25.

#### 4. State actors in the implementation of the State policy

258. As noted above, evidence indicates that the State apparatus with Mr Gbagbo at its head carried out an attack against the civilian population in the context of the post-election violence. It is thus important to analyse the FDS structure and hierarchy within that State apparatus at the time of the post-election violence. It is also important to analyse how the State was involved, either directly or indirectly, in the commission of the crimes or in the failure to prevent and investigate the crimes.
259. Evidence shows that within this State apparatus the FDS had a well-defined structure and hierarchy. At the material time, the FDS were the official Ivorian military and law enforcement organisation, comprised of the National Armed Forces (“FANCI”), the Ground Forces (led by the “COMTER”), the National Navy (led by the “COMAR”), the Air Force (led by the “COMAIR”), the Republican Guard (“GR”),<sup>558</sup> the Gendarmerie and the police.<sup>559</sup> There were also other organised units which sometimes combined elements of the aforesaid three entities (e.g. CECOS and the Rapid Intervention Mobile Detachment (“DMIR”)).<sup>560</sup>

<sup>558</sup> See, for example, Law of 12 June 1961, articles 17-18, CIV-OTP-0054-0002 at 0004-0005. P-0011 (T-131) explained that the structure described therein remained in place in 2010. Legislation, 6 May 1961, CIV-OTP-0054-0257 at 0264; legislation, 14 June 1990, CIV-OTP-0055-0028 at 0029 (creation of the GR). P-0009, T-193-FRA, pp. 15-16: “Alors, la Garde républicaine : le décret de création de la Garde républicaine mettait donc la Garde républicaine sous la responsabilité du chef d’état-major des armées. Mais compte tenu du fait que le commandant de la Garde républicaine était, en même temps, commandant de la Garde républicaine et commandant militaire du Palais, il voyait tout le temps le Président, donc, il en était l’interlocuteur privilégié. Il avait deux chefs: il avait le Président, il avait le chef d’état-major des armées. Et pour la circonstance, quand vous avez Dieu et l’ange, les regards se tournent vers Dieu. Des six ans passés... sept ans passés à l’état-major.”

<sup>559</sup> Law of 12 June 1961, CIV-OTP-0054-0002 at 0003-0011. P-0011 (T-131-CONF-FRA) explained that the structure described therein remained in place in 2010. Legislation, CIV-OTP-0054-0035 at 0037-0038: *Journal Officiel* of 19 October 1961. Legislation, 20 December 1961, CIV-OTP-0054-0013 at 0013-0034: *Journal Officiel* of 13 November 1961, containing Decree 61-361 on the structure of the Gendarmerie. Legislation, 6 May 1961, CIV-OTP-0054-0257 at 0264-0278: *Journal Officiel* dated 6 May 1961, containing Decree 61-96, which related to the gendarmerie and the FDS. Legislation, 14 June 1990, CIV-OTP-0055-0028 at 0028-0029 (creation of the GR: see footnote 499). Legislation, 6 December 2007, CIV-OTP-0054-0210 at 0211-0219: *Journal Officiel* dated 6 December 2007, includes Decree 467-2007 on the organisation of the Ministry of the Interior. Legislation, CIV-OTP-0054-0293 at 0295-0300: *Journal Officiel* dated 7 January 2002, including Decree 783-2001 on the functioning of the Police.

<sup>560</sup> In relation to CECOS see P-0011, T-131-CONF-FRA, p. 21: “Et pour finir sur ces questions de structure, j’aimerais vous demander aussi : vous êtes au courant d’une unité spéciale dénommée le CECOS, n’est-ce pas ? R. [10:28:19] Oui. Q. [10:28:20] Et est-il exact qu’un certain nombre dans... de gendarmes en faisaient partie aussi ? R. [10:28:24] Pas seulement les gendarmes, c’était une unité interarmées : gendarmerie, police et militaire.” As regards the DMIR, see P-0046, T-124-CONF-FRA, pp. 40-41: P-0046 explained that the DMIR was created in 2002 and was attached to the CEMA. Among the DMIR’s ranks were individuals from the police, BAE and CRS [REDACTED].

260. Although Mr Gbagbo was at the top of the FDS hierarchy, Philippe Mangou as CEMA was a key link between the FDS actions (or inaction) and Mr Gbagbo. In relation to that link, there is evidence that Philippe Mangou answered directly and simultaneously to the Minister of Defence, Alain Dogou, and to Mr Gbagbo.<sup>561</sup> In a number of instances throughout his testimony, Philippe Mangou reiterated that Mr Gbagbo had received reports of events. In this regard he stated that he had reported to both of them in order to ensure that they were both informed:

*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.*<sup>562</sup>

261. Philippe Mangou also testified that, although the Minister and Mr Gbagbo had delegated some activities to him, he still reported back to them on any action taken. In this regard, Philippe Mangou testified as follows:

*Au niveau de l'état-major, c'est pareil. Donc, quand il y a un problème pour lequel le chef d'état-major doit s'exprimer, il envoie le porte-parole s'exprimer. Il y a eu plusieurs déclarations qu'il a faites. Tout est fonction de la situation du moment. Quand la situation du moment demande qu'il fasse une déclaration, ben, je l'appelle, je fais le compte rendu au ministre de la situation qui prévaut. Quelquefois, le ministre de la Défense me dit : "O.K. Faites un... un communiqué", et j'appelle le porte-parole pour dire : "Faites un communiqué", et nous rendons compte au Président Laurent Gbagbo. Quelquefois, quand il y a un communiqué à faire, le Président lui-même demande qu'on lui lise le passage. On lui lit le passage. Quand tout le monde est d'accord, on fait le communiqué. Mais c'est souvent aussi que nous-mêmes, au vu de certaines situations, nous faisons le communiqué et nous rendons compte aux autorités.*<sup>563</sup>

262. Georges Guiai Bi Poin also confirmed that within the FDS hierarchy Philippe Mangou answered directly to Mr Gbagbo. He stated:

*Savez-vous si le chef d'état-major, lui-même, a rendu des comptes à ses supérieurs ? R. [10:11:40] Le chef d'état-major, il doit rendre des comptes à ses supérieurs, mais je ne suis pas avec lui. Logiquement, il doit rendre des comptes à ses supérieurs, mais je ne peux pas vous dire que j'étais avec lui, ou bien qu'il a rendu des comptes, je ne peux pas l'affirmer. J'imagine que, dans la hiérarchie de l'armée, on rend toujours compte à ses chefs. Voilà. Mais je ne peux pas l'affirmer. Ce sont des suppositions que je fais. Il a dû rendre compte à ses chefs. [...]Q. [10:13:50] Avant de regarder de nouveau votre entretien, de qui s'agissait-il, c'est-à-dire le supérieur du chef d'état-major ? Qui était cette personne, même si c'est évident ? R. [10:14:10] Dans notre système, le chef d'état-major a, au-dessus de lui, le ministre de la Défense et aussi le chef des armées, qui est le Président de la République.*<sup>564</sup>

<sup>561</sup> P-0009, T-193-FRA, pp. 13-14, pp. 39-40 and pp. 76-77; P-0010, T-138-FRA, pp. 12-13.

<sup>562</sup> P-0009, T-193-FRA, pp. 13-14, emphasis added.

<sup>563</sup> P-0009, T-193-FRA, pp. 76-77, emphasis added.

<sup>564</sup> P-0010, T-138-FRA, pp. 12-13, emphasis added.

263. There is evidence that, in addition to his superior-subordinate relationship with Mr Gbagbo, Philippe Mangou was also, at a personal level, a trusted associate<sup>565</sup> who had instant access to the President.<sup>566</sup> There is evidence that, at some point during the post-election violence, this relationship evolved, and that others such as Mr Blé Goudé,<sup>567</sup> Dogbo Blé and Rigobert Dadi<sup>568</sup> eventually became Mr Gbagbo's most trusted men. As noted above, this trust between Mr Gbagbo and Philippe Mangou was significantly affected when Philippe Mangou suggested that Mr Gbagbo resign.<sup>569</sup>
264. However, regardless of the fluctuations in his personal relationship with Mr Gbagbo, the evidence indicates that Philippe Mangou had operational control of the FDS during the post-election violence. Although in court Philippe Mangou suggested that other senior FDS officers had been responsible for each of the units and forces, this was

<sup>565</sup> P-0009 said that Mr Gbagbo regarded him and Mr Blé Goudé as his trusted associates. See T-194-FRA, p. 5: *“Effectivement, le 11 mars 2011, aux environs de 16 h 30, j'étais donc à l'état-major des armées, lorsque le Président de la République, par voie téléphonique, m'a demandé de venir le voir. Et quand je suis arrivé, le Président m'a dit ceci : 'Mon général, tu es... — il me tutoie habituellement — tu es, avec Blé Goudé, mon homme de confiance.’”* [Emphasis added].

<sup>566</sup> P-0009, T-194-FRA: *“[...] S'ils sont gentils, ils nous mettront en prison. Mais s'ils ne sont pas gentils, ah, nous allons tous passer.’ J'ai dit : 'Ah oui, ça, c'est vrai, on n'a pas d'armes, on n'a pas de munitions. Bon, allons-y voir le Président.’ Et c'est là que Blé Goudé va me dire : 'Non, comme tu es le chef d'état-major des armées, va le voir.’ Déjà, à ce niveau, j'ai senti qu'il y avait quelque chose qui n'allait pas. Et quand je me suis rendu chez moi, à domicile, j'ai raconté un peu l'histoire à mon épouse qui m'a dit : 'Non, mais il faut aller voir le Président.’ J'ai appelé le Président, et il m'a dit : 'O.K. Passe me voir aux environs de 23 h 30.’ Donc, à 23 h 30, je me suis rendu chez le Président. Je l'ai trouvé. Il avait sa table de travail et il y a un petit bureau tout rond. Il était assis tout seul, et je me suis mis en face de lui, et je lui ai dit : 'Monsieur le Président, Blé Goudé est venu me voir, donc nous sommes d'accord et nous vous encourageons à démissionner.’ Il m'a dit : 'O.K. N'en parle à personne.’”*

<sup>567</sup> P-0009, T-194-FRA, p. 10: *“Donc, je reviens un peu sur l'histoire pour dire que le Président aurait pu me recevoir avec Blé Goudé. Mais, donc, informé de ce que je voulais qu'il démissionne, ils ont effectivement voulu savoir si j'étais franc et loyal. Et la venue de Blé Goudé à l'état-major, c'était un peu pour me donner le baiser de la mort, s'assurer par lui-même qu'effectivement j'avais conseillé au Président de démissionner. Donc, voici pour ce qui est de la rencontre du 11 mars 2011 à 16 h 30.”* This shift in power is also noticeable in the events of 20 and 21 March 2011. It is significant that, although P-0009 stated that Mr Blé Goudé visited him on 20 March 2011 after issuing a call to the youth to enlist the next day at the CEMA headquarters, to which he had apparently not consented and with which he did not agree, he simply let it pass. See P-0009, T-196-CONF-FRA, pp. 65-66: *“R. [14:35:09] Donc, le 20 mars, M. Charles Blé Goudé était donc passé sur les antennes de la Radiotélévision ivoirienne pour faire passer un message au journal de 20 heures. À l'issue, donc, de son message, il a convié les jeunes à venir à l'état-major pour se faire enrôler. Je suivais le journal, donc, j'ai pratiquement saisi la fin du... du message, et j'ai attendu que le journal finisse. Je l'ai appelé et je lui ai dit : 'Mais vous prenez des engagements sans même m'informer. Vous donnez des rendez-vous aux jeunes, je ne suis pas informé. De quoi s'agit (phon.)?’ Alors, il m'a dit : 'Bon, frère, ne t'en fais pas, j'arrive. Je viens te voir à la résidence.’ Bon, il a mis un peu de temps pour arriver, et quand il est arrivé, il m'a expliqué que c'était une stratégie de sa part. Comme il sait que nous n'avons pas d'armes et de munitions, il a voulu convier les jeunes. Leur nombre pourrait influencer l'ennemi et l'empêcherait de nous attaquer. Donc, voici comment il a justifié son action. Je ne pouvais plus repartir sur les antennes, parce que ce n'était pas l'heure de grande affluence, donc j'ai laissé passer. Voilà comment ça s'est passé.”*

<sup>568</sup> [REDACTED].

<sup>569</sup> P-0009, T-194-FRA, pp. 5 and 11.

contradicted by those officers when, in their testimony at trial, they confirmed that they had often reported back to Philippe Mangou in his capacity as CEMA.

265. Philippe Mangou testified as follows, making the suggestion that he had not controlled the operations of the FDS:

*Alors, je n'ai pas le contrôle opérationnel de toutes les branches des forces de sécurité. Il y a, disons, dans l'armée, quatre grandes entités : vous avez les forces terrestres, avec un commandant qui était le général Détoh Létho Firmin ; les forces aériennes, en abrégation, le commandement, c'est le com-air, avec le général Aka Kodjo Marc; vous avez le... le... la marine nationale, le commandant, en abrégation, le com-air, qui est l'amiral Vagba. Vous avez la gendarmerie nationale, avec ses différents démembrements, aux ordres du général Tiapé Kassaraté. Ça, ce sont les entités composant les forces armées. Mais je vais vous parler un peu de la police — parce que nous avons travaillé avec elle — qui, elle, est un corps militarisé, une force de première catégorie, qui, elle, était commandée par le directeur général de la police nationale, le commissaire général Brindou, mais qui était... qui rendait compte au ministre de l'Intérieur qui était M. Émile Guiriéoulou. [...] CECOS, qui était commandé par le général Guiai Bi Poin, qui était composé d'éléments mixtes de la police, de la gendarmerie, de l'armée, et dont les missions étaient la lutte contre le grand banditisme. Donc, voici, en gros, ces éléments-là. Alors, tout à l'heure, je vous disais que je ne commandais pas toutes les unités, parce qu'on prélevait de ces unités quelques éléments... on prélevait de ces unités quelques éléments qu'on projetait sur le terrain. C'étaient ceux-là qui étaient sous la responsabilité de Détoh, mais les éléments qui n'ont pas pu être prélevés, parce que le chef d'état-major peut pas prendre toute la gendarmerie, toute la police, toutes les forces terrestres, toutes les forces maritimes, toute la... pour mettre... pour les mettre sur le terrain. Donc, on prélevait des éléments. Ceux qui étaient prélevés étaient sous la responsabilité de Détoh, mais ceux qui n'étaient pas prélevés restaient en réserve d'intervention sous la responsabilité de leur chef. Les éléments de la police qui n'ont pas pu être prélevés sont sous la responsabilité de Brindou, les éléments de la gendarmerie qui n'ont pas pu être prélevés sont sous la responsabilité de Kassaraté... — j'ai entendu des chefs dire ici, ils étaient à la maison, ils n'ont pas suivi — de Kassaraté, des éléments de l'armée qui n'ont pas pu être prélevés, forces terrestres, puisque Détoh était le commandant, donc, étaient sous la responsabilité de son adjoint, le colonel Koulouba, ainsi de suite.<sup>570</sup>*

266. However, Georges Guiai Bi Poin stated that, on the contrary, senior FDS officials had reported to Philippe Mangou on a regular basis:

*Le chef d'état-major est en contact avec ses chefs régulièrement. Il est en contact avec ses chefs régulièrement, comme nous autres on est en contact avec le chef d'état-major régulièrement, parce qu'il est notre chef. Que ce soient les contacts physiques, que ce soient les contacts téléphoniques, régulièrement, ça se passe comme ça.<sup>571</sup>*

267. Similarly, although Philippe Mangou suggested in his testimony that he had not had control, for example, of CECOS, documentary evidence suggests the contrary, namely that Philippe Mangou not only received reports from his subordinates but also gave

<sup>570</sup> P-0009, T-193-FRA, pp. 14-15.

<sup>571</sup> P-0010, T-138-FRA, p. 14.

instructions on operations before and during the post-election violence.<sup>572</sup> In this regard, Édouard Kassaraté testified that, during the post-election violence, Philippe Mangou had been responsible for planning operations. He stated the following:

*[...] Quant au chef d'état-major, les mêmes textes de la République stipulent : en cas de crise ou d'événement grave, le chef d'état-major est responsable de la planification opérationnelle. À ce titre, les autres forces maintiennent à sa disposition les moyens humains et les moyens matériels. [...] [15:27:59] Est-ce que vous vous souvenez avoir émis un ordre d'opération avant le premier tour des élections, donc avant le 31 octobre 2010 ? R. [15:28:14] Comme je vous l'avais dit, pendant toute cette période — avant, pendant et après —, c'est le chef d'état-major qui a la responsabilité de la planification des opérations. Et, à ce titre-là, nous recevons donc son ordre d'opération que nous exécutons.*<sup>573</sup>

268. During his testimony regarding the requisition of the armed forces, Édouard Kassaraté reiterated that Philippe Mangou had been in charge of FDS operations:

*Et est-ce que...Pardon. Et à tout moment durant la période électorale, est-ce que vous avez appris que les Forces armées nationales avaient été réquisitionnées ? R. [10:06:42] Comme je vous ai... je vous l'ai expliqué, le chef d'état-major avait la mission de la planification des opérations de sécurisation. Donc, naturellement, il nous invitait aux réunions ou il envoyait des messages pour telle ou telle mission à tel endroit et à tel temps.*<sup>574</sup>

269. Other evidence in the record confirms the above testimony that Philippe Mangou orchestrated FDS operations and that he convened and chaired meetings with Mr Gbagbo and other high-ranking FDS officials during the post-election violence.<sup>575</sup> In this regard, Georges Guiai Bi Poin testified as follows about the meetings between Mr Gbagbo and FDS officers, in which military operations were reported and discussed with Mr Gbagbo and his close collaborators:

*[...] Mais les rencontres que nous avons eues avec le chef de l'État pendant la période de la crise, c'étaient des rencontres dont l'objet était autour des opérations militaires. Et*

<sup>572</sup> The following documents contain instructions from Philippe Mangou to the FDS: correspondence, 30 October 2010, CIV-OTP-0048-0497, a letter on behalf of the CEMA to the Director General of Water and Forests requesting that elements from his unit be put temporarily under military command; message to all units regarding maximum alert, 9 November 2010, CIV-OTP-0048-0748, in which the CEMA lifts the state of maximum alert and orders soldiers to be at their units from 9 November 2010; correspondence, 4 March 2011, on creating a sixth zone in Abidjan, CIV-OTP-0045-0108, fax no. 633 re: "Additif à sécurisation ville d'Abidjan"; correspondence, 17 March 2011, CIV-OTP-0045-0119, fax dated 17 March 2011 re: setting up an intervention unit within the armed forces; correspondence, 16 March 2011, re: disposition of forces throughout Abidjan, CIV-OTP-0045-0112.

<sup>573</sup> T-131-CONF-FRA, pp. 94-95, emphasis added.

<sup>574</sup> T-132-CONF-FRA, p. 14.

<sup>575</sup> P-0011, T-135-CONF-FRA, pp. 87-88: "[...] L'armée, c'est un corps hiérarchisé. Et quand nous allions voir M. le chef de l'État, chef suprême des armées, c'est le chef d'état-major des armées qui prenait la parole et qui rendait compte de la situation — en l'occurrence, le général Philippe Mangou. Q. [15:28:44] C'était le seul à parler ? R. [15:28:45] C'était le seul à parler, à moins que le Président de la République pose des questions : 'Qui a quelque chose à dire ou à ajouter ?'"

*donc, c'est les militaires, par la voix du chef d'état-major, qui venaient pour faire le point de la situation militaire au chef des armées. Et pour ce faire, on avait des réunions... on avait une réunion préparatoire. Et le chef d'état-major qui, lui, conduisait les opérations, donc on n'avait pas... il n'avait pas besoin d'être briefé, puisque c'est lui-même qui conduisait les opérations. Et donc, il réunissait toutes les informations militaires, tous les renseignements militaires de terrain, et puis, il se faisait accompagner non seulement par les généraux, mais par les staffs respectifs de certains grands commandants — police, gendarmerie —, et puis lui-même. Ils avaient des staffs un peu plus importants avec des officiers supérieurs de haut rang qui nous accompagnaient. Et donc, quand on nous installait dans la salle, le Président entrait — lui aussi, il était entouré de ses principaux collaborateurs, ses conseillers aussi. Et donc, il donnait la parole au chef d'état-major qui faisait le compte rendu de la situation militaire. Voilà comment ça se passait.*<sup>576</sup>

270. As noted above, all high-ranking FDS officers, Mr Gbagbo and his closest advisers were present at meetings in which FDS operations were discussed, and where, accordingly, tasks were delegated for the implementation of the State policy. There is evidence supporting allegations that the following FDS officers routinely carried out operations during the post-election violence and reported back to their superiors, including Philippe Mangou and Mr Gbagbo: the Commander of the Gendarmerie and its sub-units, the National Gendarmerie Intervention Unit (“UIGN”) and the GEB, Édouard Kassaraté;<sup>577</sup> the Director of National Police, Bredou M’bia;<sup>578</sup> the COMTER, Firmin Détoh Létho;<sup>579</sup> the head of CECOS and the *École de Gendarmerie*, Georges

<sup>576</sup> P-0010, T-141-CONF-FRA, ET, pp. 17-19, emphasis added.

<sup>577</sup> P-0011, T-130-FRA, pp. 7, 12: “[...] *Que faisiez-vous lors de la crise post-électorale ? LE TÉMOIN : [14:56:03] J'étais général, commandant supérieur de la Gendarmerie nationale de Côte d'Ivoire. [...] Q. [15:08:21] C'est cela. Alors, vous avez dit 'général', mais de quel niveau ? Général de quel niveau, Monsieur le témoin ? R. [15:08:27] Général de corps d'armée, quatre étoiles.*” P-0009, T-193-FRA, p. 14 : “*Vous avez la gendarmerie nationale, avec ses différents démembrements, aux ordres du général Tiapé Kassaraté.*”

<sup>578</sup> P-0046, T-123-CONF-FRA, p. 12: P-0046, as Director-General of the Police, would report to the Ministry of the Interior, who, during the post-election violence, was Mr Guiriéoulou. The Minister, like other members of the cabinet, reported to the President. P-0046, T-124-CONF-FRA, pp. 9-10: “[...] *Alors, continuons sur les conversations avec le ministre. Est-ce que c'est... Habituellement, lorsqu'il y a besoin de se parler face-à-face, qui se déplace, généralement : vous ou le ministre ? R. [10:15:52] Évidemment, c'est moi qui suis le subordonné. Si j'ai besoin de lui parler, c'est moi qui me déplace, ou, s'il a besoin de moi, c'est moi qui me déplace. Q. [10:16:10] Outre cette communication téléphonique à l'heure indiquée le matin, en temps de crise, quelle est la fréquence de communication ? Quelle peut être la fréquence de communication, dans une journée, avec le ministre ? R. [10:16:25] Il n'y a pas de règle préétablie. Tout dépend des circonstances. S'il y a une urgence ou il y a un problème quelconque et que... s'il a le temps, je peux peut-être l'approcher, s'il n'y a pas... Sinon, s'il n'y a pas de fréquence préétablie... Q. [10:16:53] D'accord, merci.*”

<sup>579</sup> P-0047, T-204-CONF-FRA, pp. 63-64: “*R. [13:38:46] Voilà. Donc, quant à moi, je suis resté plus de cinq à six ans entre le grade de lieutenant-colonel à colonel. J'étais sur le terrain, et c'est en 2009 que j'ai été nommé colonel plein. Ensuite, en 2010, quand je devais prendre le commandement des forces terrestres, j'ai été nommé colonel major et, en même temps, j'ai eu mon décret de nomination comme Com-ter — cela le 10 avril 2010. Donc, j'ai passé successivement, comme il se doit, les galons.*” CIV-OTP-0048-0545 (promotion of Détoh Létho), discussed by P-0047 at T-206-CONF-FRA, pp. 56-57: “[...] *Vous nous avez dit que vous avez été promu au grade de colonel major au mois d'avril 2010. Pourriez-vous nous dire quand vous avez été promu général de brigade, par conséquent ? R. [13:11:13] J'ai été promu... J'ai été promu général de brigade le 1er avril... ? Q. [13:11:37] Vous nous avez dit que vous avez été promu au grade de colonel major en avril 2010, donc, le grade de général de brigade, je suppose que c'était ultérieurement, mais je vais vous montrer le décret, CIV-OTP-*

Guiai Bi Poin;<sup>580</sup> the Commander of the GR, Bruno Dogbo Blé;<sup>581</sup> Mr Gbagbo's Private Chief of Staff ("CEMP/PR"), Touvoly Bi Zogbo;<sup>582</sup> the COMAR, Vagba Faussignaux;<sup>583</sup> and the Theatre-of-Operations Commander ("COMTHEATRE"), head of the DMIR and of the Navy Commandos ("FUMACO"), Boniface Kouakou Konan.<sup>584</sup> As noted above, there is also evidence supporting allegations that some mid-level FDS officers played a significant role in the implementation of the State policy. This was the case of Séka Séka,<sup>585</sup> who as noted above had a large group of

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0048-0545 — très brièvement. La première page, je vous prie. Je vais vous montrer ce document, Monsieur le témoin. (Le greffier d'audience s'exécute) M. LE JUGE PRÉSIDENT TARFUSSE (interprétation): [13:12:18] C'est peut-être moi, mais je ne vois pas la pertinence de savoir quand il a été promu général de brigade. M. PACK (interprétation): [13:12:25] Je vais poser une question qui permettra de montrer la pertinence de cette information. Q. [13:12:34] Donc, vous voyez le décret, la date est le 5 août 2010. Ensuite, vous voyez la promotion grade de général de brigade 'Détoh Létho'. Donc vous avez été promu le 5 août 2010 au grade de général de brigade ; est-ce que cela rappelle quelque chose ? R. [13:13:03] Non, ici, ce... ce décret-là est signé, mais quand... quand il y a la... les nominations, il y a un... il y a un pallier, parce que... vous avez vu, ça, c'est... ça, c'est le décret qui donne le nom de tous ceux qui ont... qui vont passer généraux en cette année-là. Mais vous... vous avez pu voir il y en a qui vont passer en janvier, janvier-mars-avril, d'autres mars-avril-mai et, en juillet, d'autres passent, et en octobre, les derniers passent. Donc, moi, je suis nommé avril... — j'ai vu avril, hein ? —, 1er avril 2010, mais je me retrouvais sur le... le décret qui nommait tous les généraux en cette année-là."

<sup>580</sup> P-0010, T-137-CONF-FRA, pp. 6: "R. [09:52:45] Le dernier poste que j'ai occupé, j'étais commandant de l'école de gendarmerie d'Abidjan. En même temps, j'assumais les fonctions de commandant du Centre de commandement des opérations de sécurité, le CECOS — le dernier poste, les deux derniers postes que j'ai occupés. P-0011, T-132-FRA, pp.3-4 : R. [09:36:09] Le commandant du CECOS, c'est le général de division Guiai Bi Poin Georges. Q. [09:36:22] Avait-il d'autres responsabilités ? R. [09:36:27] Oui. Le général était aussi commandant de l'École de gendarmerie d'Abidjan."

<sup>581</sup> Legislation, 10 May 2001, CIV-OTP-0054-0349 at 0358: appointment of Dogbo Blé as commander of the GR. See also the notice of the CEMA to the FDS on the promotion of officers, 5 August 2010, CIV-OTP-0048-0545.

<sup>582</sup> P-0009, T-193, p. 19: "Alors, le chef d'état-major particulier du Président de la République, c'était le général Touvoly Bi Zogbo — Touvoly Bi Zogbo. Donc, le rôle du chef d'état-major particulier, c'est de pouvoir rendre compte au Président de la République de tout ce qui concerne, disons, les affaires militaires, la sécurité militaire. Il est un peu le pendant militaire auprès du chef de l'État." At p. 49: "R. [12:38:05] Alors, le général, c'est un grand ancien à moi — un grand ancien à moi. Je ne le fréquentais pas du tout. On se rencontrait dans les cérémonies, c'est des... des relations d'ancien-cadet, de respect, c'est tout. Voilà. Sinon, lui, il est vraiment plus... plus... plus ancien que moi."

<sup>583</sup> Legislation, 3 May 2001, CIV-OTP-0054-0329 at 0335-0336: Decree appointing Vagba Faussignaux as head of the *Marine Nationale*.

<sup>584</sup> [REDACTED].

<sup>585</sup> P-0483, T-100-CONF-ENG, p. 64: "So he told me that and I said, 'Okay, no problem.' What I was suggesting at that time was because that area was full of youths and they were not people who were in army. He was the only person who was taking care of the securities who were controlling the riots. By then he told me that they were not in any position again to give us anything like arms, but he said, 'We got a good news that there will be somebody who will be ready to help you.' So, and that was the president's wife's bodyguards. They call him Séka Séka. He told me about Séka Séka." See also P-0011, T-132-FRA, p. 91: "[15:35:32] Très bien. Monsieur le témoin, je passe à un autre sujet. Est-ce que vous connaissez une personne s'appelant Séka Yapo Anselme ? R. [15:35:43] Oui. C'est un officier de gendarmerie. Q. [15:35:47] D'accord. Et en l'an 2010, en l'an 2010-2011, durant la crise postélectorale, quel était son poste ? R. [15:36:01] Le commandant Séka Yapo Anselme était l'aide de camp de M<sup>me</sup> la première dame, M<sup>me</sup> Ehivet Simone Gbagbo." CIV-OTP-0044-0053 (a request from Séka Séka for equipment, with the letterhead indicating his function, shown to and recognised by P-0011 at T-132-CONF-FRA and T-134-CONF-FRA). P-0010, T-137-CONF-FRA, p. 80: "Q. [15:56:51] Qui est Séka ? R. [15:56:54] C'était l'officier de gendarmerie qui était en service à la Présidence de

mercenaries under his command stationed at the Presidential Residence. As discussed above, there was also Rigobert Dadi,<sup>586</sup> who was largely in charge of weapons at Camp Commando and received direct instructions from Mr Gbagbo.

271. As noted above, Mr Gbagbo often had his close associates (“*principaux collaborateurs*” or “*ses conseillers*”) in meetings where operations were discussed.<sup>587</sup> The evidence indicates that the following Ministers and former Ministers under Mr Gbagbo were involved in the post-election violence: Alain Dogou (Minister of Defence),<sup>588</sup> Emile Guiriéoulou (Minister of the Interior),<sup>589</sup> Alcide Ilahiri Djédjé (Minister of Foreign Affairs and United Nations Ambassador),<sup>590</sup> Hubert Oulaï (Former Minister of Public Service),<sup>591</sup> Désiré Tagro (*Secrétaire Général a la*

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*la République. Q. [15:57:10] Et quel était son rôle ? R. [15:57:15] Il était l'aide de camp de la première dame. Q. [15:57:22] Pouvez-vous... Pouvez-vous nous lui... nous donner son nom complet ? R. [15:57:31] Séka Yapo Anselme.”*

<sup>586</sup> [REDACTED].

<sup>587</sup> P-0010, T-141-CONF-FRA, p. 17-19.

<sup>588</sup> Presidential Decree 2010-310, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0049-0050.

<sup>589</sup> Presidential Decree 2010-312, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0050-0051.

<sup>590</sup> Presidential Decree 2010-312, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0050-0051.

<sup>591</sup> P-0483, T-101-ENG, p. 19: “Q. [10:21:44] Okay. Anyone else? A. [10:21:53] Oulaï Hubert. Most of the elderly Krahn people were present. It was mostly the Krahn people and few Ivorian friends to people who were present there.” See also T-102-CONF-ENG, pp. 36: “Q. [11:57:10] So when did you start seeking help again? A. [11:57:35] It was in 2010, and the first person I contacted was Hubert Oulaï, because sometimes they went to have the peace party, so he was well-known in the government. So in 2010-2011, the country had a little bit of problem. And so when I went to him, he told me that things would be okay and things would not be like before. So I said okay. Q. [11:58:22] And Hubert Oulaï helped you as a fellow Krahn, did he? A. [11:58:34] Yes. Q. [11:58:37] And he would often receive other Krahn people as visitors, right? A. [11:59:00] Yes, because by then he was in very good position. After the war he was minister of public functions, so a lot of Krahn people were getting help from him.” P-0108 (T-145-CONF-FRA, p. 84) also testified in this regard as follows: “Q. [15:38:00] Vous avez mentionné le nom de Oulaï, Oulaï ou Oulaï ? R. [15:38:07] C'est... c'est le ministre... l'ex-ministre de la fonction publique. Ils étaient entretenus, c'est à Guiglo qu'ils partaient prendre le salaire, qu'ils partaient prendre les paies. Q. [15:38:25] Connaissez-vous le nom complet de ce M. Oulaï ou Oulaï ? R. [15:38:33] Je dis bien, c'est... il fut... il fut ministre de la fonction publique. Il fut ministre de la fonction publique. C'est... voilà. Q. Si je vous disais que son nom complet, c'est M. Hubert Oulaï, est-ce que ça vous paraîtrait exact ? R. [15:39:02] Oui, c'est ça.” See also P-0500, T-181-FRA, pp. 15-17: “R. [10:13:21] On est arrivés, on a demandé à JC où, effectivement, on doit aller à Guiglo. Voilà. Parce que c'est la guerre et donc les... les cadres (phon.) de Guiglo nous envoient pour défendre leurs familles. Voilà. Et... Et on est partis. Q. [10:13:57] Vous avez parlé de cadres, qui sont ces cadres ? Est-ce que vous pouvez nous expliquer un peu plus davantage ? R. [10:14:09] Quand je lui ai demandé qui sont ces cadres, il m'a dit... il m'a dit qu'il y a... comment il s'appelle ? Il m'a dit qu'il y a Hubert Oulaye, il y a... Il m'a donné d'autres noms dont je ne me souviens plus. [10:14:44] Alors, vous nous avez parlé d'Oulaye Hubert ; est-ce que vous pourriez... est-ce que vous pouvez nous dire davantage sur cette personne ? Qui est cette personne ? R. [10:14:54] Oulaye Hubert, personnellement, moi, je ne le connais pas, parce que si j'entends parler de lui, mais je ne le connais pas. Ce que je sais, c'est un cadre de l'Ouest. Voilà. Q. [10:15:10] Est-ce que vous avez su, à l'époque ou jusqu'à aujourd'hui, si cette personne était alliée ou liée à un parti politique ? R. [10:15:22] C'est... C'est après que j'ai su qu'il est du FPI. [...] Q. [10:20:08] Est-ce que vous avez su à n'importe quel moment, que ce soit à cette époque ou par la suite, qui faisait ce regroupement... ce recrutement pour aller à Guiglo ? R. [10:20:20] JC nous a dit : ‘C'est les cadres qui nous envoient pour défendre les populations, les familles.’”

*Présidence*),<sup>592</sup> Kadet Bertin (special adviser to the President on defence issues),<sup>593</sup> Pascal Affi N'Guessan (FPI President)<sup>594</sup> and Drahamane Sangaré (“number 2” in the FPI).<sup>595</sup>

272. There is evidence that, up until the end of the post-election violence, most of the aforesaid individuals had military or political roles in the implementation of the State policy. Evidence also suggests that these individuals were determined to keep Mr Gbagbo (and themselves) in power. In this regard, video evidence shows a meeting that was broadcast on RTI on 4 April 2011, at which Mr Gbagbo received all the high-ranking FDS officers. RTI's reporting indicates that the CEMA, Philippe Mangou, still held his position, and that Mr Gbagbo was still in control and in power. The footage then shows Mr Gbagbo receiving all the FDS generals, including Vagba Faussignaux, Boniface Konan, Alphonse Gouanou, and Édouard Kassaraté.<sup>596</sup>
273. As in the case of Philippe Mangou, there is evidence that some of the individuals mentioned above also had close personal relationships with Mr Gbagbo. Evidence indicates that their connections to the President went beyond their official positions and included common acquaintances, friendships and shared origins. Édouard Kassaraté testified that Mr Blé Goudé and Philippe Mangou had a very close relationship. He also

<sup>592</sup> Video, CIV-OTP-0061-0538 at 00:00:00-00:07:10 (excerpt from RTI broadcast of 7 December 2010 at 20.00; transcript, CIV-OTP-0104-0273), showing a spokesperson of the government announcing Tagro's appointment as Minister and Secretary General of the Republic. This video also shows Mr Tagro announcing the appointment of other members of government. Video, CIV-OTP-0061-0540 at 00:08:40-00:10:27 (excerpt from RTI broadcast of 8 December 2010 at 20.00; transcript, CIV-OTP-0102-0497), showing a ceremony in which authority is transferred to the new Minister of Defence, Mr Guiriéoulou, from the outgoing Minister, Mr Tagro.

<sup>593</sup> P-0435, T-87-CONF-FRA, p. 49: “*Q. [12:33:15] Donc, si nous parlons de 2003, est-ce que vous vous rappelez qui était le ministre de la Défense à cette époque-là? R. [12:33:23] 2003, je pense que c'était le ministre Kadet Bertin.*” [REDACTED].

<sup>594</sup> P-0048, T-56-CONF-FRA, pp. 41-42: “[12:23:39] *Vous avez dit ici, lors des jours précédents, qu'à Marcoussis est allé M. Affi N'Guessan — si je me trompe vous m'arrêtez —, M. Affi N'Guessan qui était président du FPI, parce que, dans la Constitution de Côte d'Ivoire, le Président de la République, automatiquement, ne peut plus être président d'un parti politique. C'est exact? R. [12:24:12] C'est exact.*”

<sup>595</sup> P-0625, T-25-CONF-FRA, p. 58: “*Q. J'aimerais revenir, maintenant, sur un nom qu'on a vu tout à l'heure, M. \*Aboudrahamane Sangaré? R. Oui, Aboudrahamane Sangaré est le numéro 2 du... du parti, du FPI, du Président Laurent Gbagbo, et il était inspecteur général de l'État.*” P-0048, T-54-FRA, p. 77: “*R. [15:24:28] M. Aboudramane Sangaré a été l'un des... l'un des principaux dirigeants du Front populaire ivoirien. Et avant cette crise, il était l'inspecteur général d'État, après, je crois, avoir été, ministre des Affaires étrangères.*”

<sup>596</sup> Video, CIV-OTP-0047-0817 at 00:00:03-00:03:05 (open source footage of RTI broadcast of 4 April 2011; transcript, CIV-OTP-0049-2838 at 2839-2840, lines 1-59).

described his own relationship with Mr Blé Goudé as fraternal.<sup>597</sup> Philippe Mangou stated that his relationship with Mr Blé Goudé was also one of “brothers”.<sup>598</sup>

274. There is also evidence that the loyalty of the FDS hierarchy to Mr Gbagbo went beyond the bounds of their legal and professional duties. For example, there is evidence that, during the 2010 election, and in particular before the second round, Philippe Mangou,<sup>599</sup> Édouard Kassaraté<sup>600</sup> and Rigobert Dadi instructed subordinates to vote for Mr Gbagbo.<sup>601</sup>

275. [REDACTED] described how Philippe Mangou summoned his subordinates before the second round of the election and instructed them to vote for Mr Gbagbo. [REDACTED] stated that other FDS officers, including Détoh Létho and Rigobert Dadi, were also present.

[REDACTED].<sup>602</sup>

276. Édouard Kassaraté and Georges Guiai Bi Poin both testified that Philippe Mangou had summoned all high-ranking FDS officers to the Presidential Residence to pledge allegiance to Mr Gbagbo immediately after the contested election results were

<sup>597</sup> P-0011, T-134-CONF-FRA, p. 55: “Q. [14:46:23] Et à votre connaissance, quelle était la relation entre le général Mangou et M. Charles Blé Goudé ? R. [14:46:36] C’est une question personnelle. Je ne saurais le dire. Seuls M. Blé Goudé et M. Mangou peuvent expliquer leur relation. Quant à moi, j’avais une relation fraternelle avec M. Blé Goudé, parce qu’il y a longtemps que nous nous connaissions.” P. 56: “M. LE JUGE PRÉSIDENT TARFUSSE (interprétation): [14:49:06] Mais, en dehors de ce mot ‘intime’, il y a une différence entre ce que vous avez dit auparavant. Vous avez dit que vous ne pouviez pas le dire, vous avez dit ‘C’est une question personnelle, je ne peux pas dire...’ Vous avez parlé de la relation entre le général Mangou et Charles Blé Goudé et ce que vous avez dit au cours de l’entrevue, vous avez dit, là, qu’ils avaient une relation très proche, vous appelez cela comme vous voulez. La question est la suivante : est-ce que, ce que vous venez de dire est exact, ou vous ne savez pas et il faut leur poser la question, ou est-ce que, ce qui est exact, c’est ce que vous avez dit il y a quelques années, lorsque l’enquêteur vous a posé la question et vous avez dit que la relation était très proche. Je ne sais pas exactement quel mot il faut utiliser. R. [14:50:09] Je préfère le terme ‘très proche’.”

<sup>598</sup> P-0009, T-194-FRA: “[...] Blé Goudé est arrivé. Blé Goudé et moi, nous avons l’habitude de nous appeler ‘frère’.”

<sup>599</sup> P-0238, T-80-CONF-FRA, pp. 35-36.

<sup>600</sup> P-0330, T-69-CONF-FRA, pp. 40-41: “R. [12:18:34] Merci, Monsieur le Procureur. Si j’ai demandé ce huis clos partiel, je vais répondre à votre question. Et effectivement, notre grand chef, le commandant supérieur de la gendarmerie, a convoqué, un jour, une réunion où il nous a demandé, dans la salle, de... de... de voter, c’est-à-dire qu’il ne l’a pas dit directement — ‘votez pour le candidat M. Laurent Gbagbo’ —, mais il l’a dit. Q. [12:19:25] Comment l’a-t-il dit ? R. [12:19:28] Donc, il nous a dit : ‘Le deuxième tour va s’effectuer. Je vous demande de bien voter, de savoir voter, parce que je ne souhaite pas que ce pays soit dirigé par un étranger.’ Q. [12:19:52] Et à ce moment-là, lors de cette réunion, est-ce c’est des représentants de toutes les unités... des commandants de toutes les unités de la gendarmerie qui étaient présents ? R. [12:20:04] Merci, Monsieur le Procureur. C’est, effectivement, les représentants de... les commandants d’unités de la place d’Abidjan qu’on pouvait appeler rapidement. Donc, c’est eux qui étaient présents.” [Emphasis added].

<sup>601</sup> P-0239, T-167-FRA, p. 47: “[...] il disait que si jamais le Président est... Allassane vient au pouvoir, il va radier tous... tous les militaires [...]”

<sup>602</sup> [REDACTED].

announced.<sup>603</sup> There is video evidence showing how, similarly, Édouard Kassaraté then reminded his subordinates at the Gendarmerie of their duty to be loyal to Mr Gbagbo.<sup>604</sup>

277. There is evidence that this loyalty towards Mr Gbagbo, and the implementation of the State policy to keep him in power, continued throughout the post-election violence. For example, on the evidence, by the beginning of April 2011, Édouard Kassaraté's allegiance was being questioned by other FDS officers.<sup>605</sup> However, in court, Édouard Kassaraté confirmed that despite some defections within the FDS he was still reporting to Mr Gbagbo in April 2011.<sup>606</sup> [REDACTED] confirmed that Édouard Kassaraté was still *in situ* at Camp Agban on 9 April 2011.<sup>607</sup> There is also evidence that Vagba Faussignaux, who had strong personal and professional ties with Mr Gbagbo, stayed loyal to him until the end of the post-election violence.<sup>608</sup> Likewise, video evidence

<sup>603</sup> P-0011, T-132-FRA, pp. 93-94; P-0010, T-138-CONF-FRA, pp. 36, 71.

<sup>604</sup> Video, CIV-OTP-0075-0061 at 00:29:50-00:33:20 (excerpt from RTI broadcast of 6 December 2010 at 20.00; transcript, CIV-OTP-0094-0323 at 0324-0325, lines 1-47).

<sup>605</sup> P-0011, T-134-CONF-FRA, p. 91: “Q. [16:23:21] Mais ils vous ont parlé, ils vous ont dit quelque chose ? R. [16:23:25] C’est une foule, hein, on m’a traité de traître, de tous les noms, de traître, traître, et les gens avaient des armes au poing. Et ma sécurité m’a protégé. Et puis après, le colonel Ahouman est venu me chercher, j’ai été voir le patron. Je lui ai rendu compte. Il m’a dit, bon, il a appris ça, mais de laisser tomber. Voilà. Je suis ressorti.”

<sup>606</sup> P-0011, T-134-CONF-FRA, pp. 89-91: “Q. [16:20:04] Vous rappelez-vous, Monsieur le témoin, de votre dernière visite à la résidence présidentielle avant l’arrestation de M. Laurent Gbagbo ? R. [16:20:16] Oui. Q. [16:20:16] A-t-elle... a-t-elle eu lieu durant cette période du mois d’avril ? R. [16:20:22] Oui. Q. [16:20:24] Lorsque vous êtes... arrivé à la résidence, pouvez-vous nous dire si vous avez vu des soldats ? R. [16:20:38] Oui. Q. [16:20:46] Est-ce que vous avez vu des membres de milices ou des mercenaires ? R. [16:20:47] Non. J’avais pas d’indication, tout le monde était en treillis. Q. [16:20:59] Êtes-vous entré dans la résidence présidentielle à cette occasion ? R. [16:21:04] Oui, je suis entré, je peux vous faire un rappel, si vous permettez. Q. [16:21:10] Très brièvement, s’il vous plaît. Il nous reste quelques minutes avant la fin. R. [16:21:15] D’accord. Rapidement, si c’est les mêmes dates, j’ai vu que beaucoup de généraux n’étaient plus à leur poste. J’ai pris sur moi la décision d’aller rencontrer M. le chef de l’État au plan purement personnel pour lui faire des suggestions de remettre le pouvoir à... au Président Alassane Ouattara. Il y a eu des échauffourées entre moi-même, ma garde et les éléments qui étaient à la porte et puis, bon, ben, quelques minutes plus tard, le colonel Ahouman est venu me chercher pour dire que le Président avait besoin de moi. J’ai été le voir, il m’a dit qu’il a appris ce qui s’est passé, mais, j’ai laissé tomber. Aussitôt, j’ai pris ma route, je suis revenu à Agban. On n’a pas eu plus d’entretiens. C’était pour lui rendre compte des incidents qui s’étaient passés à la porte. Voilà.”

<sup>607</sup> [REDACTED].

<sup>608</sup> P-0009, T-193-FRA, p. 41. P-0009 described the relationship between Gbagbo and Vagba as follows: “Très bonne relation, très bonne relation. Ils se connaissent bien. Quelquefois, même, il y a de petites plaisanteries entre eux ; à l’issue des réunions, Ils plaisantent, et je crois qu’ils sont... ils sont même de la même région, de Gagnoa. Oui. Vagba doit être de Gagnoa et puis le Président, de Mama, mais cela ne se justifie... ne justifie pas le fait qu’il y ait une certaine relation entre eux. C’est pas ça je crois qu’ils se connaissaient depuis fort longtemps.” T-194-FRA, p. 9: “[...] Et puis, le lendemain, je suis allé au travail, et l’amiral Vagba est venu me voir. Donc, nous étions encore en train de parler du problème des munitions, des armes que nous n’avons pas, et je lui ai dit : ‘Amiral, j’ai eu une discussion avec le Président. Il m’a demandé de ne pas en parler à qui que ce soit. Mais toi, compte tenu de tes relations, et puisque tu m’es aussi proche, je vais te dire ce dont j’ai discuté avec le Président.’” Pp. 29-30: “J’ai allumé la télévision. Effectivement, à 11 h 30, il n’y avait plus de tirs. Je regarde à la télévision, je vois les gens sont sortis, ils ont commencé, même, à se ravitailler. Et le premier coup de fil que je reçois vient de la Présidence : c’est l’amiral Vagba qui m’appelle pour me dire : ‘Mais, mon

from RTI shows Emile Guiriéoulou<sup>609</sup> and youth leaders associated with the post-election violence, such as Damana Pickass<sup>610</sup> and Navigué Konaté,<sup>611</sup> in television appearances on 3 April 2011, calling for mobilisation and support for Mr Gbagbo around the Presidential Palace and the Presidential Residence. There is also evidence that Minister Abou Drahamane was at the Presidential Palace supporting Mr Gbagbo until April 2011.<sup>612</sup> Georges Guai Bi Poin testified that, when he left his post at the *École de la Gendarmerie* on 31 March 2011, Commander Séka Séka, who was supporting Mr Gbagbo until the end of the post-election violence, took over along with some CECOS elements posted there.<sup>613</sup> As noted above, Philippe Mangou also testified that mercenaries under the command of Séka Séka were posted around the area of the

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*général, vous avez demandé la reddition de l'armée ?' Excusez-moi, Monsieur le Président, du mot que je vais utiliser. Je lui ai dit : 'Tu m'emmerdes ! Vous êtes dans le bunker avec le Président, vous ne savez même pas ce qui se passe, vous ne pouvez pas demander au Président d'attendre cinq ans ou bien vous voulez qu'on vienne le tuer, d'abord ?' Il m'a dit : 'Bon, je rends compte au chef.' J'ai pensé qu'il allait me passer le Président. Il me passe le chef de cabinet du Président de la République, M. Kuyo, et je répète la même chose à M. Kuyo qui m'a dit : 'O.K., je vais rendre compte au chef.' Et puis après, j'attends. Et Béréna m'appelle et me dit : 'Bon, maintenant que le cessez-le-feu est intervenu, il faut que nous arrêtons une heure pour nous retrouver à Seboko, au siège de l'ONUCI, pour discuter des modalités de tout ce qui se passe.'"* See also [REDACTED].

<sup>609</sup> Video, CIV-OTP-0064-0131 at 00:00:07-00:08:04 (excerpt from RTI broadcast of 3 or 4 April 2011 at 8.00; transcript, CIV-OTP-0086-1165 at 1166-1167, lines 4-51; see lines 10-12). Guiriéoulou, on behalf of the government, demands that the Ivorian population, and those in Abidjan, mobilise in defence of the country. He commends the courageous population for mobilising and calls on them to continue mobilising around the Presidential Palace and the Presidential Residence. He calls on the population to come out and mobilise to save Cote d'Ivoire.

<sup>610</sup> Video, CIV-OTP-0064-0130 at 00:13:00-00:15:30 (excerpt from RTI broadcast of 3 April 2011 at 16.00; transcript, CIV-OTP-0091-0465 at 0466). Excerpt shows Damana Pickass at RTI.

<sup>611</sup> Video, CIV-OTP-0064-0130 at 00:04:10-00:05:06 (excerpt from RTI broadcast of 3 April 2011 at 16.00; transcript CIV-OTP-0091-0465 at 0466).

<sup>612</sup> P-0625, T-28-CONF-FRA, p. 57: "C'est ainsi que je crois bien — comme lui-même il est là, si ce qui est dit, ça peut me contredire —, arrivée une délégation, un cortège, où il y avait la première dame, il y avait aussi je crois Aboudramane Sangaré [referring to a meeting on 6 February 2011]." P-0048, T-54-FRA, p. 76, P-0048 said he saw Sangaré when he arrived at the Residence on 8 April 2011.

<sup>613</sup> P-0010, T-138-CONF-FRA, p. 8: "Q. [09:56:41] Au cours de la crise, quand êtes-vous parti de l'école de gendarmerie ? R. [09:56:52] Le 31 mars 2011. Q. [09:56:58] Alors, je vous pose des questions à propos de Séka. Lorsque vous avez quitté l'école de gendarmerie, savez-vous ce qui s'est passé là-bas ? Qui est arrivé, qui a pris l'école ? Est-ce que vous êtes au courant de tout cela ? R. [09:57:21] Il m'a été rapporté... il m'a été rapporté que, lorsque j'ai quitté l'école, le commandant Séka, il est venu à l'école quelques jours après, et puis, il a... il s'est installé à peu près à l'école. Quand je dis 's'installer', je n'ai pas dit que... ça veut dire qu'il a... il a pris, en quelque sorte, les différentes personnes qui étaient restées à l'école sous son commandement. C'est ce qui m'a été rapporté." Pp. 11-12: "[...] parce que le commissaire Robé qui, lui, était chez lui pour des raisons de sécurité, quand il a appris que Séka était à l'école de gendarmerie et qu'il voulait mettre la main sur les... les éléments du CECOS qui étaient là-bas, le commissaire Robé est donc venu à l'école de gendarmerie pour lui dire que si le commandant du... du CECOS n'est pas là, lui, en tant que responsable opérationnel, il avait peur pour les problèmes de sécurité, mais il vient maintenant pour s'occuper et prendre sous son... sous sa responsabilité les éléments du CECOS qui sont restés à l'école. Normalement, dans l'armée, la hiérarchie, c'est par rapport aux galons, aux grades. Et Robé était lieutenant-colonel, et Séka, commandant. Et il a donc refusé que Robé prenne la responsabilité de ses propres hommes. Et comme il était assez menaçant, Robé a donc dû rentrer chez lui, et quand j'ai appris ça, j'en ai... je m'en suis ouvert au commandant supérieur, au téléphone. Il n'était pas content, mais c'était une période où — parce que vous n'avez pas précisé... c'était une période entre le 2 avril 2011, et le 10 avril, c'était une période où la crise était généralisée à Abidjan."

Presidential Residence at least until 3 April 2011.<sup>614</sup> According to the testimony of Philippe Mangou and P-0625, Pascal Affi N'Guessan was still unwilling to stand down, even after Mr Gbagbo's arrest.<sup>615</sup>

278. In the light of the above, there is evidence upon which a reasonable Trial Chamber could conclude that, throughout the post-election violence, the State apparatus had a well-functioning hierarchy with Mr Gbagbo at its head. Evidence indicates that Philippe Mangou was the person in charge of the FDS operations described in relation to the incidents above, and that he reported directly to the President and to the Minister of the Interior, Emile Guiriéoulou. There is also evidence that other senior FDS officials (in particular Édouard Kassaraté, Georges Guiai Bi Poin, Bredou M'bia, Détho Létho and Vagba Faussignaux) were formally and effectively members of the State apparatus and thus participated in the implementation of the State policy and the incidents above. The evidence further indicates that other FDS officers and other individuals took part in the implementation of the State policy, on the basis of their personal, political or military ties with the State apparatus headed by Mr Gbagbo. In this connection, there is evidence that Mr Gbagbo relied on such mid-level FDS officers throughout the post-election violence to circumvent the hierarchy and retain ultimate control over resources – in particular, weapons and ammunition.

##### 5. *Weapons and ammunition in the implementation of the State policy*

279. Evidence supports allegations that Mr Gbagbo and the FDS (and specifically the State apparatus of Côte d'Ivoire that Mr Gbagbo had led for the past decade) had sufficient weapons and ammunition to carry out an attack against the civilian population in furtherance of the State policy to keep him in power. There is evidence that primarily CECOS, BASA, and the GR were given ammunition and weapons that the rest of the FDS had difficulty in obtaining. Philippe Mangou testified that the mercenaries under

<sup>614</sup> P-0009, T-194-CONF-FRA, p. 25.

<sup>615</sup> P-0009, T-194-FRA, p. 32: “*Et je me suis dit qu’il faut que j’aille au Golf pour faire allégeance. Donc, j’ai pris contact avec le général Béréna pour dire que je souhaitais me rendre au Golf. Mais, avant de partir, j’ai appelé le Premier ministre Affi N’Guessan pour lui dire : ‘Monsieur le Premier ministre, je vous rends compte que je vais au Golf pour faire allégeance.’ Il m’a dit : ‘Non, non, non, ne partez pas, ne partez pas. Il faut qu’on se serve de l’armée pour négocier.’ J’ai dit : ‘Non, je vais faire allégeance.’ Et c’est comme ça que je me suis rendu au Golf. Là également, dans les transcrits que j’ai lus avant de venir, c’était marqué la date du 13, mais ce n’était pas le 13, c’est le 12 avril, le lendemain, que je suis allé faire allégeance au Golf.*” P-0625, T-28-CONF-FRA, p. 85: “[...] ils ont décidé que j’appelle le président Affi N’Guéssan, le président du parti de M. Laurent Gbagbo, le \*FPI [...]”

Séka Séka's command were “superbly armed”.<sup>616</sup> He also stated that CECOS was very well armed, since it had been purposely created in 2005 to circumvent the arms embargo.<sup>617</sup> Philippe Mangou stated the following in relation to the armament of CECOS, which he explained had “weapons of war” that went beyond the scope of its original mission to fight crime:

*Q. [12:02:19] Très bien. Alors, j'aimerais, maintenant, revenir sur le sujet du CECOS et leurs moyens organiques. Et je vais me référer à ce que vous avez dit précédemment, dans votre témoignage — donc, hier, 25 septembre, RT, page 20, lignes 8 à 13 —, en discutant des moyens organiques et l'armement donc des... du CECOS — et je cite : “Et au fil des missions, on a même... on s'est même aperçu que le CECOS a été doté de mitrailleuses lourdes 12.7, de mitrailleuses qui peuvent effectuer des tirs jusqu'à 1200 mètres. Le CECOS a été doté de RPG. Le RPG, on s'en sert pour lancer les roquettes non guidées. Et il y avait même des grenades offensives et des grenades défensives.” Êtes-vous capable de nous expliquer ou de nous situer, à votre connaissance, quand le CECOS a... aurait-il reçu ce type d'armement ? R. [12:04:17] Je ne pourrai pas vous dire avec précision quand le CECOS a reçu, mais ce que je peux vous dire, c'est que la proposition de la création du CECOS m'avait été confiée, et le Président m'a dit : “C'est une unité de lutte contre le grand banditisme.” Donc, fort de cette information, l'armement que nous, nous avons mis dans le texte que nous devons présenter au Président, c'était des PA et, à la rigueur, des kalaches, puisque c'était pour lutter contre le grand banditisme. Et quand le CECOS a été créée, c'était l'armée qui devait mettre à la disposition du CECOS des éléments, puisque le CECOS était composé de gendarmes, de militaires et de policiers. Au départ, le CECOS travaillait conformément à sa mission reçue, faisait le maillage de la ville d'Abidjan, mais, au fur et à mesure qu'on avançait dans le temps, le CECOS ne jouait plus son rôle, le rôle qui était le sien. Et on l'a vu progressivement dans la réglementation de la circulation à Bassam, on l'a vu sur l'autoroute, empiétant même souvent dans les domaines de la police et de la gendarmerie. Et au fur et à mesure qu'on avançait dans le temps, on a vu que le CECOS avait des 12.7, avait des RPG et, même, avait des grenades. Vous-même, voyez la section qui est intervenue, le BMO. C'est la Brigade de maintien de l'ordre. Or, là, c'est pas une mission du CECOS. Or, ces armes dont dispose le CECOS, ce sont véritablement des armes de guerre. Quand vous prenez le RPG, le RPG, c'est pour la destruction des engins blindés.”<sup>618</sup>*

<sup>616</sup> P-0009, T-194-FRA, p. 25. He testified as follows: “Étaient-ils armés ? R. [10:47:10] Superbement armés, superbement armés, à telle enseigne que, moi-même, je me suis posé la question, j'ai dit : ‘Mais on a demandé des munitions. À chaque réunion, on demande au Président Gbagbo les armes, les munitions.’”

<sup>617</sup> United Nations Security Council Resolution, 15 November 2004, CIV-OTP-0047-0659 at 0660, para. 7; presidential decree on the creation of CECOS, CIV-OTP-0025-0958. P-0009, T-198-FRA, pp. 41-43: “Q. [11:54:18] Concernant le CECOS, est-ce que vous confirmez qu'eux aussi avaient peu d'armes ? R. [11:54:28] Non, bien au contraire, j'ai fait ressortir le fait que le CECOS était mieux armé, même, que l'armée, la police et la gendarmerie. Donc, par rapport à ce que nous, on avait, le CECOS avait des moyens en armement. Alors, je vais... je vais vous dire pour le CECOS, parce que, frappés par un embargo, toutes les unités militaires qui avaient le vocable ‘armée’ ou bien ‘militaire’ étaient frappées d'embargo. Vous prenez le GSPM, puisque la dénomination, c'est ‘Groupement des sapeurs- pompiers militaires’, le GSPM était frappé d'embargo, alors que, les éléments du GSPM, ce n'est pas pour aller faire la guerre. On connaît leur mission, c'est de secourir les accidentés et puis ceux qui sont confrontés à des problèmes. Mais le GSPM, compte tenu du fait qu'il y a le vocable ‘militaire’, était frappé d'embargo, ne pouvait pas avoir d'armes — ne pouvait pas. Alors, je crois que le CECOS, le Président a contourné un peu l'embargo. Le fait que le CECOS, la mission du CECOS soit de lutter contre le grand banditisme, ça a un peu camouflé le terme ‘militaire’. Donc le CECOS a pu avoir des véhicules de gamme civile. On leur a vendu le... les véhicules de gamme civile. Et, en sous-main, le CECOS a pu s'équiper comme il se devait. Le temps que les gens s'en rendent compte, bon, le CECOS avait les moyens dont il voulait — voilà, dont il voulait.”

<sup>618</sup> P-0009, T-194-FRA, pp. 41-42, emphasis added.

280. As regards the GR, Philippe Mangou also stated that it was very well armed and confirmed that it had a depot of weapons in the basement of the Presidential Palace:

*Q. [12:18:43] Par rapport au reste des Forces de défense et de sécurité, si on compare, comment était le... l'armement ou les quantités de l'armement de la Garde républicaine ? R. [12:18:54] Par rapport aux autres forces, la quantité doit être moindre, mais j'avoue... j'avoue que la Garde républicaine a quand même suffisamment de munitions par rapport aux autres corps. Voilà. Mais je suis jamais... je suis jamais entré dans la soute à munitions, mais je sais qu'ils en ont, voilà — la soute à munitions de la Garde républicaine. Q. [12:19:26] Où se trouvait cette soute ? R. [12:19:29] Alors, cette soute se trouve donc dans l'enceinte du Palais — dans l'enceinte du Palais —, au côté nord-ouest du palais. Q. [12:19:44] À quel étage ? R. [12:19:46] Non, c'est une soute enterrée — une soute enterrée.<sup>619</sup>*

281. In fact, other documentary, testimonial and video evidence in the record confirms the testimony of Philippe Mangou that such a basement with weapons did exist.<sup>620</sup> One such video in the record is particularly significant, as it shows the basement referred to by Philippe Mangou. Other witnesses recognised the location and the weapons.<sup>621</sup> Philippe Mangou commented on that video and recognised other weapons and military resources that were available at the Presidential Palace during the post-election violence, including anti-aircraft vehicles and a vehicle with a 20 mm cannon belonging to BASA.<sup>622</sup> In this regard, Détoh Létho confirmed that BASA had 120 mm mortars, vehicles with 20 mm cannons and rocket launchers.<sup>623</sup>

282. In addition to the evidence above related to Rigobert Dadi's control of weapons at Camp Commando, there is also evidence indicating that he was in control of ammunition and weapons stored in the basement at the Presidential Palace. [REDACTED] Dadi had in fact concealed weapons when United Nations inspectors checked FDS arsenals prior to the post-election violence.<sup>624</sup>

283. P-0164, who guarded the basement where the weapons were located at the Presidential Palace, testified: “*Il y avait énormément de munitions au BASA pendant la crise.*” He stated: “*tout le matériel, comme munitions, qu'on devait utiliser pour aller sur le*

<sup>619</sup> P-0009, T-198-FRA, p. 47, emphasis added.

<sup>620</sup> CIV-OTP-0071-0223: P-0347 (T-78-CONF-FRA, pp. 16-19) recognised this as the document that he used to have to fill in to request ammunition. He said that such requests had been common at the time, since the President was the Supreme Commander of the army and these resources could then be provided to other corps in order for them to carry out their missions for the country.

<sup>621</sup> CIV-OTP-0048-1651. P-0009 (T-194-CONF-FRA), P-0625 (T-20-CONF-FRA) and P-0347 (T-78-CONF-FRA and T-79-CONF-FRA).

<sup>622</sup> T-194-CONF-FRA.

<sup>623</sup> P-0047, T-203-FRA, p. 9.

<sup>624</sup> [REDACTED].

*terrain se prenait au garage de maintenance.*”<sup>625</sup> Détoh Létho confirmed this when he testified that he had seen the munitions, including “*bitubes en quantité énorme*”, in the said basement.<sup>626</sup>

284. Other evidence indicates that the Commander of the GR, Bruno Dogbo Blé, and Mr Gbagbo’s Private Chief of Staff, Touvolé Bi Zogbo, were also in charge of the distribution of ammunition during the post-election violence.<sup>627</sup>
285. There is also evidence from a police document, signed by Bredou M’bia, that refers to an alleged mission by a police representative who travelled to Kiev, Ukraine in October 2010 to purchase weapons (semi-automatic firearms and grenades). The document mentions that there were ways to acquire weapons despite the embargo, via the Ivorian diplomatic mission in Guinea.<sup>628</sup> There is also evidence that the FDS similarly obtained weapons through an arms dealer at the end of March 2011; these were then distributed to the GEB, BASA and CECOS.<sup>629</sup> Also, as noted above, there is evidence, including from Philippe Mangou, indicating that during the offensive in Abobo after 24 February 2011 the FDS deployed weapons of war, including mortar shells.<sup>630</sup>
286. It is relevant to note Philippe Mangou’s testimony that in December 2010 he met with Mr Gbagbo, who told him that a militia had been set up to start operations in the north-eastern part of Abidjan. The said militia would be led by Ibrahim Coulibaly (also known as “IB”). This same person, IB, has been identified by the evidence as the commander of the *Commando Invisible*,<sup>631</sup> the principle armed group that the Defence alleges was leading guerrilla warfare against the FDS. Philippe Mangou’s testimony is thus relevant, since he indicated that it was in fact Mr Gbagbo who had armed IB and thus the *Commando Invisible*.<sup>632</sup> Philippe Mangou testified that during that meeting

<sup>625</sup> T-164-CONF-FRA, p. 25.

<sup>626</sup> P-0047, T-203-FRA, p. 9; P-0047, T-206-CONF-FRA, p. 52.

<sup>627</sup> [REDACTED].

<sup>628</sup> CIV-OTP-0045-0102, dated 17 October 2010.

<sup>629</sup> [REDACTED].

<sup>630</sup> P-0009, T-196-CONF-FRA, p. 61, lines 10-13.

<sup>631</sup> See, for example, P-0321, T-61-CONF-FRA, p. 79; P-0106, T-116-CONF-FRA, pp. 32-33; P-0011, T-135-CONF-FRA, p. 66.

<sup>632</sup> T-197-CONF-FRA, pp. 32-33.

with Mr Gbagbo he had protested and asked that resources be given to the FDS instead.<sup>633</sup>

287. There is evidence that the *Jeunes Patriotes*, the GPP, mercenaries and other non-State actors had weapons during the post-election violence. As noted above, many witnesses saw these armed groups during the incidents analysed above. Additionally, other evidence in the record further supports the testimony of the crime-base witnesses. For example, P-0483, a Liberian mercenary, testified that he used to go to the CEMA to get food. He further stated that Oulaï Delafosse also used to get ammunition at the CEMA headquarters and then distribute it among the mercenaries.<sup>634</sup> P-0435 testified that the GPP had had weapons, including AK-47's, RPGs, machine guns, Kalashnikovs and grenades.<sup>635</sup> P-0440 similarly stated that most of the *Jeunes Patriotes* in Yopougon had been armed with Kalashnikovs,<sup>636</sup> to the point where Maguy Le Tocard offered the police in Yopougon his weapons and his men before the first round of the election.<sup>637</sup> The evidence also supports the allegation that these weapons and other resources which non-State actors had were obtained through the State apparatus.<sup>638</sup>

288. Thus, there is evidence upon which a reasonable Trial Chamber could conclude that the State apparatus under Mr Gbagbo had the weapons and ammunition to implement the

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<sup>633</sup> T-197-CONF-FRA, p. 31. Philippe Mangou stated: "*Mais Monsieur le Président, si vous avez cet argent, remettez-le-nous [FDS]. Vous savez que nous n'avons pas d'armes et de munitions.*"

<sup>634</sup> T-99-CONF-ENG, pp. 64-78.

<sup>635</sup> P-0435, T-89-CONF-FRA, p. 40.

<sup>636</sup> P-0440, T-155-CONF-FRA, pp. 85 and 90-91.

<sup>637</sup> P-0440, T-155-CONF-FRA, pp. 83-85.

<sup>638</sup> A series of receipts in the record shows that youth groups received funds from the Presidency via Mr Blé Goudé: order to pay Charles Blé Goudé, 7 September 2007, CIV-OTP-0025-0787; order to pay Charles Blé Goudé, 21 March 2005, CIV-OTP-0025-0682; order to pay Charles Blé Goudé, 3 August 2004, CIV-OTP-0025-0709. These are payment orders issued by the Presidency of the Republic addressed to the Financial Manager of the Presidency (Jacques Anouma) requesting funds for Blé Goudé. See also receipt, Serge Koffi, FESCI, 16 May 2009, CIV-OTP-0025-0456; receipt, Serge Koffi, FESCI, 15 September 2010, CIV-OTP-0025-0600; receipt Serge Koffi, FESCI, 21 January 2011, CIV-OTP-0025-0634; receipt, Serge Koffi, FESCI, 4 March 2011, CIV-OTP-0025-0645. These are all receipts for funds allegedly granted to the aforesaid individuals. Values range from CFAF 100,000 to CFAF 1,500,000 each (about 150 to 2,200 euros). See also receipt, Youssouf Fofana, Voix du Nord, 16 May 2009, CIV-OTP-0025-0450; receipt, Youssouf Fofana, Voix du Nord, 18 November 2010, CIV-OTP-0025-0617; receipt, Youssouf Fofana, Voix du Nord, 5 January 2011, CIV-OTP-0025-0624. These are all receipts for funds allegedly granted to the aforesaid individuals. Values again range from CFAF 100,000 to CFAF 1,500,000 each. P-0483 testified that he had received money directly from the government during the post-election violence (an equivalent of CFAF 20,000 to CFAF 50,000, about 30 to 70 euros per week, in addition to food and supplies): T-99-CONF-ENG, pp. 89-96.

State policy. Although some sectors of the FDS lacked weapons and ammunition,<sup>639</sup> other entities within the FDS and other non-State actors directly involved in the implementation of the State policy had sufficient resources to perpetrate the aforesaid attack against the civilian population. Evidence suggests that this parallel weapons and ammunition distribution had been created not only to bypass the United Nations arms embargo, but also to centralise the distribution of weapons, including by having them directly deposited under the Presidential Palace.

#### 6. *The State media in the implementation of the State policy*

289. Evidence indicates that RTI was a key instrument of Mr Gbagbo and the State apparatus in the implementation of the State policy. This State television channel became the only media outlet to have exclusive broadcast rights during the post-election violence and was therefore used to reach a large audience in order to propagate news and statements in favour of the State policy. The video evidence from RTI submitted at trial shows footage of Mr Gbagbo, Mr Blé Goudé, Simone Gbagbo, Philippe Mangou and many other State and non-State agents speaking and taking part in events in support of Mr Gbagbo and his State policy. There is also evidence indicating that Mr Blé Goudé made use of State media to communicate with the *Jeunes Patriotes* and to mobilise them.
290. The string of RTI broadcasts submitted into the record supports allegations that the State apparatus led by Mr Gbagbo had been unwilling to negotiate since the start of the post-election violence. The RTI video evidence also supports allegations that Mr Gbagbo was unwilling to cede any power or to recognise any outcome other than victory for himself in the 2010 election.
291. RTI video evidence shows that, immediately after the contested election result was announced by the Electoral Commission on 2 December 2010 (and before the Constitutional Council proclaimed the election outcome in Mr Gbagbo's favour),<sup>640</sup> the State apparatus broadcast a statement by Damana Pickass alleging that the Electoral

<sup>639</sup> Détoh Létho confirmed in court that he had complained about the lack of weapons but later found out that BASA and other units did not have this problem during the post-election violence. T-203-FRA, p. 9 and T-204-CONF-FRA, pp. 27-28.

<sup>640</sup> "Décision portant proclamation des résultats définitifs de l'élection présidentielle du 28 novembre 2010", CIV-OTP-0018-0039, dated 3 December 2010.

Commission had acted illegally.<sup>641</sup> Similarly, in another broadcast of 2 December 2010, RTI reported that the Electoral Commission could not announce the result and that only the Constitutional Council could proclaim the victor in the election. The President of the Constitutional Council was then interviewed saying that the Council had received more than 20,000 reports of irregularities and that the final result would be announced in the following hours, while at the same time stating that the actions of the Electoral Commission had been unconstitutional.<sup>642</sup> Other RTI broadcasts on that same day disregarded any assertion inconsistent with a victory by Mr Gbagbo.<sup>643</sup> Unsurprisingly, in an RTI broadcast on 3 December 2010, the State apparatus confirmed that Mr Gbagbo had been proclaimed President,<sup>644</sup> and only persons who supported his victory were interviewed.<sup>645</sup> On 4 December 2010, RTI broadcast Mr Gbagbo's swearing-in ceremony.<sup>646</sup>

292. Similarly, on 9 December 2010, when the African Union recognised Alassane Ouattara as President, RTI omitted any information in this regard and instead transmitted messages insisting that respect for the Constitution meant loyalty to Mr Gbagbo. On that same day, RTI showed the appointment of Mr Gbagbo's new government, including Mr Blé Goudé as Minister.<sup>647</sup> Détoh Létho appeared on RTI urging the FDS to remain loyal to the "law" and the "State" and to avoid being "bought" or

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<sup>641</sup> Video, CIV-OTP-0075-0057 at 00:00:35-00:05:27 (excerpt from RTI broadcast of 1 December 2010 at 20.00; transcript, CIV-OTP-0087-0133 at 0134-0135). This video shows Damana Pickass explaining what happened when the Electoral Commission announced the result (an announcement which he had interrupted). He says that Yacouba acted illegally.

<sup>642</sup> Video, CIV-OTP-0074-0049 at 00:03:33-00:08:51:00 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0102-2092 at 2094, line 49). The same footage was played again that evening, see 00:23:19-00:27:56:13.

<sup>643</sup> See, for example: video, CIV-OTP-0075-0058 at 00:05:36-00:11:21 (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript, CIV-OTP-0087-0143 at 0144, lines 25-35). This was a report on how the French press had reported the election results. People were asked for their reactions to reporting by the international press (France 24).

<sup>644</sup> Video, CIV-OTP-0074-0050 at 00:32:00-00:33:13 (excerpt from RTI broadcast of 3 December 2010 at 20.00; no transcript).

<sup>645</sup> Video, CIV-OTP-0075-0058 at 00:03:07-00:03:48 (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript, CIV-OTP-0102-2556).

<sup>646</sup> Video, CIV-OTP-0075-0059 at 00:00:49-00:10:01 (excerpt from RTI broadcast of 4 December 2010 at 20.00).

<sup>647</sup> Video, CIV-OTP-0061-0564 at 00:08:56-00:11:53, 00:11:53-00:15:15 and 00:15:15-00:19:28 (excerpts from RTI broadcast of 9 December 2010 at 20.00; transcripts, CIV-OTP-0102-0522 at 0523, lines 1-41; CIV-OTP-0102-0525 at 0526-0527, lines 1-54; CIV-OTP-0102-0528 at 0529-0530, lines 1-62).

“distracted”.<sup>648</sup> RTI also showed Emile Guiriéoulou addressing police prefects and instructing them not to question the election result and to support Mr Gbagbo:

*Mesdames et Messieurs les préfets, en votre qualité de représentants du chef de l'Etat, dans les différentes circonscriptions administratives, point n'est besoin de rappeler que vous avez une claire perception et une connaissance nette de votre rôle. Notamment en cette période particulière. Il s'agit, entre autres, de traduire le message de compassion du gouvernement à tous ceux qui ont perdu des proches ainsi que leurs biens. De procéder à un inventaire exhaustif des dégâts matériels enregistrés. De veiller à la sécurité des personnes et des biens. D'organiser des réunions de sensibilisation avec les différentes couches socio-professionnelles à l'effet de leur expliquer le sens de la décision du Conseil constitutionnel et d'appeler au retour de la paix et à son maintien. D'assurer et de garantir la présence effective de l'Etat. De maintenir la paix, la cohésion sociale. Et enfin, de servir avec loyauté les institutions de la République. C'est le lieu de rappeler que le principe de loyauté, socle de votre autorité, est une vertu cardinale qui vous tient à égale distance des intérêts partisans, politiques et régionaux. La loyauté à l'égard des institutions de la République, notamment juridictionnelles, ne vous permet pas de juger de l'opportunité ou du bien-fondé des décisions des institutions, mais de vous donner les moyens d'en assurer l'application pour la paix et la cohésion sociale. Il est ici nécessaire d'insister sur l'article 98 de notre constitution, qui stipule et je cite : “Les décisions du Conseil constitutionnel ne sont susceptibles d'aucun recours. Ses décisions s'imposent aux pouvoirs publics, à toute autorité administrative, juridictionnelle, militaire et à toute personne physique et morale.” Comme c'est le cas dans tous les pays du monde. C'est pourquoi, au nom du gouvernement, je condamne avec la dernière énergie, les dérives de certaines autorités préfectorales observées ces jours-ci. Des préfets, en effet, se sont permis de contredire, publiquement, le Conseil constitutionnel en affirmant que la décision de cet organe juridictionnel, d'annuler une partie des résultats de l'élection présidentielle du 28 novembre 2010 pour fraude massive, ne serait pas fondée. Ces préfets s'érigent ainsi, en militants des porte-paroles des partis politiques. Ce qui du reste, est en flagrante violation avec l'obligation de réserve qui régit leur fonction. Fort heureusement, votre présence massive à cette rencontre est la preuve que la quasi majorité des autorités préfectorales de notre pays, consciente de ses devoirs, se démarque de cette malencontreuse initiative. Soyez-en remerciés. Mesdames et Messieurs les préfets, le chef de l'Etat vous demande d'assumer vos fonctions avec assurance, sureté, loyauté et engagement dans la construction et la consolidation de la paix et la cohésion sociale fortement perturbée ces huit dernières années. C'est à cette condition que vous aiderez vos administrés à atteindre les objectifs de développement.”<sup>649</sup>*

293. This rhetoric, which emphasised that loyalty to Mr Gbagbo was loyalty to and respect for the law and the Republic, was repeated by RTI broadcasts in the subsequent days of December 2010 and throughout the post-election violence. RTI emphasised loyalty to “la République” and “la Constitution”, both personified in Mr Gbagbo.<sup>650</sup>

<sup>648</sup> Video, CIV-OTP-0061-0564 at 00:19:28-00:22:35 (excerpt from RTI broadcast of 9 December 2010 at 20.00; transcript, CIV-OTP-0100-0022 at 0023, lines 1-40).

<sup>649</sup> Video, CIV-OTP-0061-0546 at 00:06:09-00:12:26 (transcript, CIV-OTP-0087-0367): *intervention du ministre Guiriéoulou devant les Préfets de régions et départements.*

<sup>650</sup> Video, CIV-OTP-0061-0542 at 00:03:20-00:07:31 (excerpt from RTI broadcast of 12 December 2010 at 20.00; transcript, CIV-OTP-0087-0175 at 0176-0177, lines 1-77). This video shows a visit by Mr Mangou to the FDS forces, during which he orders them to respect the Constitution and to be vigilant (see also a similar speech in CIV-OTP-0088-0765). Video, CIV-OTP-0069-0371 at 00:12:22-00:13:28 (excerpt from RTI broadcast of 14 March 2011 at 20.00; transcript, CIV-OTP-0094-0270 at 0271, lines 1-15). This excerpt shows a report on a meeting of generals of the FDS with Mr Gbagbo, held in order to express their loyalty (in response to information about desertions). The reporter states that “grandes décisions seront arrêtées”.

294. RTI video evidence also shows communiqués in which UNOCI impartiality was questioned<sup>651</sup> and in which UNOCI and its officials were threatened, in particular Mr Choi, who was the UNOCI representative in Côte d'Ivoire during the post-election violence. In a communiqué dated 3 December 2010, Alcide Djédjé stated that Mr Choi should not get involved in the election and that he was acting contrary to the United Nations Charter and the sovereignty of Côte d'Ivoire. He then threatened Mr Choi: *“C’est la dernière fois que Monsieur Choi se comporte de cette façon. Nous le mettons en garde. La prochaine fois, nous demandons son départ immédiat.”*<sup>652</sup> There is evidence that by 18 December 2010 the stance against UNOCI was categorical and that Mr Gbagbo decided to expel UNOCI from the territory of Côte d'Ivoire with immediate effect. This was reported on RTI as a decision based on UNOCI's lack of impartiality and Mr Choi's unwillingness to recognise Mr Gbagbo as President. RTI reported that UNOCI radio had become a means of communication for the RHDP which instigated hate and civilian disobedience. It also reported that UNOCI soldiers had attacked the FDS and had supported *Forces Nouvelles* attacks.<sup>653</sup>
295. There is evidence in the record indicating that RTI was also used by Mr Gbagbo's government and the FDS to read out communiqués denying civilian casualties and FDS involvement.<sup>654</sup> For example, as early as 2 December 2010, RTI transmitted a government communiqué denying civilian casualties in the aforementioned raid in Wassakara on 1-2 December 2010.<sup>655</sup> Likewise, on 17 December 2010, immediately

<sup>651</sup> P-0097, video CIV-OTP-0074-0057, showing such a communiqué.

<sup>652</sup> Video, CIV-OTP-0074-0050 at 00:26:15-00:32:36 (excerpt from RTI broadcast of 3 December 2010 at 20.00; transcript, CIV-OTP-0087-0361 at 0362, lines 4-5), RTI interview of Alcide Djédjé.

<sup>653</sup> Video, CIV-OTP-0074-0057 at 00:04:51-00:13:46 (excerpt from RTI broadcast of 18 December 2010 at 20.00; transcript, CIV-OTP-0087-0421 at 0422-0423).

<sup>654</sup> Video, CIV-OTP-0061-0594 at 00:05:31-00:10:31 (excerpt of RTI broadcast of 5 March 2011 at 20.00, transcript, CIV-OTP-0088-0768 at 0769-0770, lines 1-45): this video shows a report on the Women's March stating that the international press is reporting lies. It shows the government press conference given by Emile Guiriéoulou denying the events of 3 March 2011. Video, CIV-OTP-0026-0018 at 00:52:16-00:55:27 (excerpt of RTI broadcast of 4 March 2011, transcript, CIV-OTP-0051-2220 at 2238, lines 663-677): this video shows a report on the Women's March stating that the *Commando Invisible* was present during the “so-called peaceful march”. The report states that the marchers were heavily armed. Images show men marching with heavy weapons. The report says that the women were killed by the *Commando Invisible*. Video, CIV-OTP-0064-0094 at 00:12:07-00:15:14 (excerpt of RTI broadcast of 29 December 2010 at 20.00, transcript, CIV-OTP-0102-1834): in this extract it is reported that the international media is issuing false reports about events in Abidjan. The report covers the press conference given by Emile Guiriéoulou denying the allegations made by the international press. He refers to the International Criminal Court and to what it will say about the French killing Ivorians.

<sup>655</sup> Video, CIV-OTP-0074-0049 at 00:11:23-00:13:24 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0087-0349). In this incident, analysed under “other incidents” above, the FDS

after the March on RTI incident, a communiqué was read by Emile Guiriéoulou stating that the incident had involved “RHDP rebels” attacking the FDS,<sup>656</sup> although evidence in the record suggests that authorities had received reports indicating otherwise.<sup>657</sup> Another such communiqué denying civilian casualties during the March on RTI was read on 21 December 2011.<sup>658</sup> Similarly, on the day after the Women’s March, and although the FDS had received reports about the civilian casualties, the government spokesperson denied the incident on RTI.<sup>659</sup> In the same manner, RTI reported that the allegations of the shelling in Abobo on 17 March 2011 were false.<sup>660</sup>

296. As stated by Philippe Mangou in his testimony, Mr Gbagbo was ordinarily consulted about such government communiqués, either directly or through the Minister of the Interior. He stated:

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raided the RDR headquarters, killing and injuring unarmed persons. Bredou M’bia and Edouard Kassaraté both confirmed that they had received reports of this incident.

<sup>656</sup> Video, CIV-OTP-0026-0028 at 01:04:11-01:07:02 (excerpt from RTI broadcast of 17 December 2010 at 13.00; transcript, CIV-OTP-0063-2955 at 2969-2970). Video, CIV-OTP-0026-0016 at 00:36:37-00:42:06 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 0663-0664). This excerpt shows the Minister of the Interior referring to rebels attacking the FDS after the March on RTI.

<sup>657</sup> See also video, CIV-OTP-0074-0057 at 00:25:03-00:30:01 (excerpt from RTI broadcast of 18 December 2010 at 20.00; transcript, CIV-OTP-0087-0437 at 0438-0440) showing Philippe Mangou visiting the military hospital to see FDS personnel injured by the *Forces Nouvelles* and UNOCI; video, CIV-OTP-0064-0078 at 01:26:11-01:30:21 (excerpt from RTI broadcast of 19 December 2010 at 20.00; transcript, CIV-OTP-0094-0239 at 0240-0241) showing a report on FDS officers injured and killed during the RHDP march on RTI (16 December 2010). It is reported that, of the 20 persons killed, 10 were FDS personnel. It is stated that mercenaries were present at the march. Minister Guiriéoulou is interviewed and states that Liberian mercenaries were murdering FDS officers during the March on RTI. It is stated that what is being reported by the international press is fabricated.

<sup>658</sup> Video, CIV-OTP-0026-0016 at 00:36:37-00:42:06 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 0663-0664), showing the Minister of the Interior referring to rebels attacking the FDS after the March on RTI.

<sup>659</sup> Video, CIV-OTP-0026-0018 at 00:10:34-00:13:03 (excerpt from RTI broadcast of 4 March 2011 at 20.00; transcript, CIV-OTP-0051-2220 at 2226-2227, lines 187-214). See also video, CIV-OTP-0064-0087 at 00:12:35-00:16:00 (excerpt from RTI broadcast of 25 February 2011 at 20.00; transcript, CIV-OTP-0063-2998 at 3000-3001, lines 25-76); video, CIV-OTP-0064-0094 at 00:12:07-00:15:14 (excerpt of RTI broadcast of 29 December 2010 at 20.00, transcript, CIV-OTP-0102-1834).

<sup>660</sup> Video, CIV-OTP-0069-0374 at 00:03:30-00:14:15 (excerpt from RTI broadcast of 17 March 2011 at 20.00; transcript, CIV-OTP-0088-0047 at 0048, lines 1-62). This video shows a government spokesperson reading out a communiqué after the Council of Ministers meeting of that day. He states that terrorist attacks have been committed by rebels against the FDS in Abidjan, particularly in Abobo, Yopougon, and in other areas of Abidjan and Côte d’Ivoire. He refers to confrontations between the FDS and rebels and the death of FDS officers. He refers to a war against terrorism. He calls for the population to be vigilant and to neutralise any suspects. He then refers to the international community’s rushed decision to declare Mr Ouattara President and its support for the rebels. Video, CIV-OTP-0069-0376 at 00:06:30-00:11:40 (excerpt from RTI broadcast of 22 March 2011; transcript, CIV-OTP-0087-0281 at 0282, lines 1-47): the government spokesperson denies the allegations of the international media regarding the incident of 17 March 2011. He states that investigations were immediately ordered by the government and that there was no attack and no civilian casualties. He states that the same is true of the allegations about 3 March 2011, which are also unfounded. Conversely he states that the massacre of Anankoua-Kouté, committed by the rebels, was not reported by the international media. He states that the attacks and the mass graves reported by the international media are imaginary.

*Q. [12:15:28] Donc, qui a approuvé le communiqué, cette journée-là ? R. [12:15:44] Le ministre de la Défense a approuvé. [...] Q. [12:15:47] À votre connaissance, est-ce que le Président, M. Gbagbo, a été consulté à quelque moment que ce soit ? R. [12:15:56] Consulté... Être consulté par... par moi ou bien par le ministre ? Q. [12:16:04] Peu importe. Par vous ou par le ministre, à votre connaissance ? R. [12:16:08] C'est bien ce que j'ai dit tout à l'heure... Q. [12:16:13] Oui. R. [12:16:14] C'est bien ce que j'ai dit tout à l'heure, je disais que j'ai fait le compte rendu au ministre, donc je suppose que le ministre a dû rendre compte au Président de la République.<sup>661</sup>*

297. The evidence in the record also supports allegations that RTI was widely used by Mr Blé Goudé and other youth leaders to mobilise the *Jeunes Patriotes*.<sup>662</sup> This is relevant to showing not only the acquiescence of Mr Gbagbo's government, but also its sponsorship of the mobilisation of the *Jeunes Patriotes* and their actions during the post-election violence. Videos show RTI broadcasts announcing rallies and other mobilisation events organised by Mr Blé Goudé and other youth leaders, often together with the FDS.<sup>663</sup> Other videos show RTI communicating information to the youth monitoring the roadblocks. For example, a video broadcast of 23 January 2011 shows the spokesperson representing the CEMA reading a communiqué in which it is stated that UNOCI has departed from its duplicitous tactic of transporting weapons in civilian vehicles. The spokesperson then announces that lists of the registration plates of those

<sup>661</sup> P-0009 referred to a communiqué that was read on RTI denying any FDS responsibility regarding the Women's March. See T-196-CONF-FRA, p. 50.

<sup>662</sup> See P-0625, T-27, CONF-FRA, pp. 22-23.

<sup>663</sup> Video, CIV-OTP-0064-0101 at 00:42:14-00:42:16 (excerpt from RTI broadcast of 30 December 2010 at 20.00; transcript, CIV-OTP-0086-0980 at 0982, line 59): RTI report on a rally in Yopougon on 29 December 2010. Video, CIV-OTP-0064-0083 (excerpt from RTI broadcast of 20 January 2011 at 20.00; transcript, CIV-OTP-0048-1670), as noted above, showing Mr Blé Goudé with Dakouri and Kassy meeting with the FDS generals and announcing the Champroux meeting in support of the FDS. At time stamp 6:36-8:32, the video shows a meeting between Mr Blé Goudé and Philippe Mangou. Edouard Kassaraté was also present at the meeting, which he confirmed in court. Video CIV-OTP-0064-0112 at 00:17:02-00:19:30 (excerpt from RTI broadcast of 21 January 2011 at 20.00; transcript, CIV-OTP-0086-1025), shows the youth gathering at the CEMA headquarters to enlist in the army following Blé Goudé's call for the rally in honour of the FDS at Champroux stadium. Video CIV-OTP-0064-0087 at 00:16:30-17:15 (excerpt from RTI broadcast of 25 February 2011 at 20.00; transcript, CIV-OTP-0063-2998 at 3002, lines 109-111) shows Doyou Nicaise being interviewed stating that Ivorians should denounce the presence of rebels, otherwise they themselves will be treated as rebels. Another person, Jean-Marie Konin, states that people should wake up and mobilise against UNOCI, which is helping the rebels and Burkinabé armed men. People of Côte d'Ivoire should assist in the liberation of Côte d'Ivoire against UNOCI, *Force Licorne* and the barbaric international community. Video, CIV-OTP-0064-0092 at 00:20:19-00:22:29 (excerpt from RTI broadcast of 20 March 2011 at 20.00; transcript, CIV-OTP-0088-0044): RTI report on a rally with Mr Blé Goudé in Port-Bouët. Footage is shown of the rally at the Place Laurent Gbagbo in Port-Bouët. Mr Blé Goudé calls on all young persons to go the next day to the CEMA headquarters to be enlisted. Video CIV-OTP-0069-0375 at 00:05:40-00:08:52 (excerpt from RTI broadcast of 21 March 2011 at 20.00; transcript, CIV-OTP-0087-0730) shows the youth who came to the CEMA headquarters to be mobilised in response to Mr Blé Goudé's call. Editorial comments made by the RTI commentator state that this is in response to the attack by the rebels, supported by France, Burkina Faso and UNOCI.

vehicles have been circulated to identify the vehicles.<sup>664</sup> In fact, there is other video evidence showing the *Jeunes Patriotes* with the said lists in March 2011, suggesting that this practice was repeated during the post-election violence.<sup>665</sup> Similarly, another RTI broadcast, dated 18 March 2011, shows government spokesperson Ahoua Don Mello reading a communiqué stating that greater cooperation is needed between the citizens and the FDS in order to detect and neutralise any suspicious persons: “*une plus grande collaboration entre les citoyens et les FDS, afin que toutes les présences suspectes dans notre environnement soient neutralisées.*”<sup>666</sup> In early April 2011, RTI broadcast Mr Blé Goudé’s last address to Ivorians and in particular to the *Jeunes Patriotes*, asking them to continue supporting the FDS and to liberate the country.<sup>667</sup>

298. RTI was also used by Mr Gbagbo’s government to discredit any negotiation efforts to resolve the post-election violence. For example, in an RTI broadcast dated 10 March 2011, Alcide Djédjé stated that the meetings in Addis Ababa had been a failure. RTI then criticised the role of the “so-called” international community, headed by France, and its interaction with the African Union.<sup>668</sup>
299. Evidence indicates that, up until the end of the post-election violence, RTI was broadcasting material favourable to Mr Gbagbo’s position in power. For example, in a broadcast of 3 April 2011, RTI showed the pro-Gbagbo youth that had been mobilised in front of the Presidential Residence. It then interviewed Bertin Kadet, who insisted that they (Gbagbo supporters) would win: “*avoir l’esprit calme, être sereine et continuer le combat. C’est un combat que nous avons engagé [...]. Nous allons gagner la guerre.*”<sup>669</sup> In another RTI broadcast, dated 4 April 2011, it was reported that Philippe Mangou was still in his position and that Mr Gbagbo was in control and in power. Thereafter, the report shows Mr Gbagbo receiving all the FDS generals,

<sup>664</sup> Video, CIV-OTP-0064-0084 at 00:05:12-00:07:13 (excerpt from RTI broadcast of 23 January 2011 at 20.00; transcript, CIV-OTP-0094-0233 at 0234, lines 1-25).

<sup>665</sup> Video, 29 March 2011, CIV-OTP-0015-0594, in particular at time stamp 20.02 (transcript, CIV-OTP-0021-0013, in particular at page 0021). The young men being interviewed say that the list of vehicle registration plates was given to them by the army.

<sup>666</sup> Video, CIV-OTP-0069-0374 at 00:07:30-00:08:06 (excerpt from RTI broadcast of 18 March 2011 at 20.00; transcript, CIV-OTP-0088-0047 at 0048-0049, lines 41-45, emphasis added).

<sup>667</sup> Video, CIV-OTP-0064-0131 at 00:08:05-00:11:17 (excerpt from RTI broadcast of 3 or 4 April 2011 at 08.00; transcript, CIV-OTP-0086-1168 at 1169-1171, lines 1-80).

<sup>668</sup> Video, CIV-OTP-0061-0567 at 00:05:33-00:10:34 (excerpt from RTI broadcast of 10 March 2011 at 20.00; transcripts, CIV-OTP-0102-2404 at 0205, lines 1-24, and CIV-OTP-0102-2406 at 2407, lines 1-42).

<sup>669</sup> Video, CIV-OTP-0064-0128 at 00:15:46-00:18:12 (excerpt from RTI broadcast of 3 April 2011 at 20.00; transcript, CIV-OTP-0086-1142).

including Vagba Faussignaux, Boniface Konan, Alphonse Gouanou and Édouard Kassaraté.<sup>670</sup>

300. There is abundant video evidence in the record showing pro-Gbagbo messages on RTI; the above are limited illustrative examples of video evidence submitted into the record. On the other hand, there is no evidence in the record showing any opposition leader or spokesperson speaking on RTI or any communiqué or report on civilian casualties from the “Ouattara side”. Most importantly, this one-sided RTI broadcasting was supported by the fact that, by 2 December 2010, the government of Mr Gbagbo had forbidden the transmission of foreign radio and television channels.<sup>671</sup>

301. It would thus be reasonable to conclude that Mr Gbagbo and the State apparatus he headed controlled RTI throughout the post-election violence and used it to implement the State policy.

#### 7. *Planning and coordination of the State policy*

302. There is evidence that, throughout the post-election violence, Mr Gbagbo met with all of the above high-ranking FDS officers on a regular basis. They reported to Mr Gbagbo and received instructions from Mr Gbagbo, either directly or through his CEMA, Philippe Mangou. As noted above, evidence indicates that the FDS had a clear hierarchy and structure which was in place during the post-election violence. However, evidence also suggests that some FDS officers reported individually and directly to Mr Gbagbo in connection with operations during the post-election violence, irrespective of whether they had other officers directly above them.

303. For example, Édouard Kassaraté answered to the Minister of Defence, but also directly to Mr Gbagbo, as explained in testimony by his subordinate, [REDACTED]:<sup>672</sup>

*R. [11:28:38] Le général Kassaraté rend compte, donc, au ministre de la Défense ; il rend compte au ministre de la Défense, lequel ministre de la Défense rend compte, donc, au... au Président de la République. C'est comme ça la chaîne de commandement. Mais pour des*

<sup>670</sup> Video, CIV-OTP-0047-0817 at 00:00:00–00:03:06 (open source download of RTI broadcast of 4 April 2011; transcript, CIV-OTP-0049-2838 at 2839, lines 1-57).

<sup>671</sup> Video CIV-OTP-0074-0049 at 00:22:05-00:23:13 (excerpt from RTI broadcast of 2 December 2010 at 20.00; transcript, CIV-OTP-0087-0353 at 0354) shows the reading of the communiqué of the National Communication Council. See also the DGPN compilation, 22 November 2010 to 7 February 2011, CIV-OTP-0045-0793 at 0853, entry 20.30.

<sup>672</sup> [REDACTED].

*questions d'information, pour des questions d'information, je précise que dans notre réglementation, il n'y a pas de subordination pour les questions d'information. Donc, pour des questions d'information, de renseignement, il peut rendre compte directement au Président de la République.*<sup>673</sup>

304. Philippe Mangou similarly testified that Dogbo Blé had a privileged status vis-à-vis Mr Gbagbo and reported to him frequently and directly:

*Alors, la Garde républicaine: le décret de création de la Garde républicaine mettait donc la Garde républicaine sous la responsabilité du chef d'état-major des armées. Mais compte tenu du fait que le commandant de la Garde républicaine était, en même temps, commandant de la Garde républicaine et commandant militaire du Palais, il voyait tout le temps le Président, donc, il en était l'interlocuteur privilégié. Il avait deux chefs: il avait le Président, il avait le chef d'état-major des armées. Et pour la circonstance, quand vous avez Dieu et l'ange, les regards se tournent vers Dieu. Des six ans passés... sept ans passés à l'état-major.*<sup>674</sup>

305. There is evidence that Rigobert Dadi, despite being a mid-level FDS officer who, as noted above, was directly implicated in the shelling of Abobo on 17 March 2011, received instructions directly from Mr Gbagbo. In this regard, P-0239 testified as follows:

*Q. [12:12:20] À quel moment est-ce qu'il a fait allusion au Président Gbagbo ? Donc vous parlez des rassemblements, c'était durant quelle période ? R. [12:12:32] C'était pendant la période crise électorale... crise électorale qu'il faisait allusion. Il a même dit: il y aura des voitures, quand il allait voir le Président, je sais qu'il va avoir le matériel, parce que le Président lui fait confiance. Effectivement, quand il est parti, il a envoyé des 4x4. Avant cela même, avant que, peut-être je n'ai pas eu à mentionner dans mon audition, il y avait des Russes et des gens qui sont arrivés pour la formation du personnel sur les armes spécifiques, telles que l'orgue de Staline ; des Blancs, bon, je ne sais pas s'ils étaient russes ou pas, mais ils parlaient anglais. Voilà. Q. [12:13:15] Juste encore pour être spécifique, lorsque vous parlez de la période postélectorale, est-ce que c'était... lorsqu'il fait mention du Président Gbagbo, est-ce que c'était après votre libération ou avant votre arrestation ? R. [12:13:28] Après... Après, quand je suis sorti de la prison, que ce discours se tenait, parce que, avant que je n'aie en prison, j'avais pas entendu de discours comme ça au BASA, quand j'y étais. Il n'y avait pas trop ce discours. Q. [12:13:54] Et, donc, comment est-ce que vous avez appris que le commandant Dadi faisait allusion au Président Gbagbo ? R. [12:14:03] Ah, même lui-même le dit : "Je reçois des ordres directement du Président, personne ne peut me donner les ordres. Ce que je dis, je suis l'un de ses conseillers." Lui-même le dit, ouvertement.*<sup>675</sup>

306. Philippe Mangou testified that high-ranking FDS officers had attended meetings with Mr Gbagbo to report to him on the situation on the ground. At such meetings, operational decisions were taken on curfews and other matters. For example, there is evidence of one such meeting on 12 January 2011, at which operations in Abobo were

<sup>673</sup> [REDACTED].

<sup>674</sup> P-0009, T-193-FRA, pp. 15-16, emphasis added. See also T-193-FRA, p. 47 and legislation, 14 June 1990, CIV-OTP-0055-0028 at 0028-0029 (creation of the GR). [REDACTED].

<sup>675</sup> P-0239, T-167-FRA, p. 48, emphasis added. See also P-0238, T-80-CONF-FRA, p. 53, and T-82-CONF-FRA, p. 29.

discussed, and of another on 24 February 2011, when Mr Gbagbo gave instructions for the major FDS offensive in Abobo.<sup>676</sup> There is also evidence that Mr Gbagbo ordered the requisition of the armed forces on 14 November 2010<sup>677</sup> and that he signed off on several curfews as of 26 November 2010.<sup>678</sup> Philippe Mangou testified that these were presidential decrees which became problematic after 27 December 2010 and which, although they were not published, did indeed exist.<sup>679</sup> The fact that Mr Gbagbo did not want these decrees to be public is also relevant because as a matter of evidence it goes to establish the existence of the State policy.

307. Evidence shows that other, lower-level FDS officers, including Séka Séka, also attended such operational meetings. Georges Guiai Bi Poin testified about one such meeting in which Séka Séka had intervened and proposed operations in Abobo, which was not welcomed by higher-ranked officers.<sup>680</sup>
308. As regards the March on RTI incident, there is evidence that meetings were held on the eve of the march. Philippe Mangou testified that there had been a meeting of FDS high officials with Mr Gbagbo on 14-15 December 2010, at which they had all received instructions from Mr Gbagbo to impede the planned March on RTI.<sup>681</sup> There is evidence that Bredou M'bia, upon the instruction of Philippe Mangou, was in charge of coordinating operations during the March on RTI of 16 December 2010.<sup>682</sup> Bredou M'bia was at the top of the police hierarchy;<sup>683</sup> he issued operational orders related to

<sup>676</sup> P-0009, T-194-FRA, p. 3, lines 18-25; p. 59, lines 9-22; p. 62, lines 4-23; and p. 80, lines 3-13. See also P-0010, T-141-CONF-FRA, p. 2, lines 15-25; T-139-CONF-FRA, p. 83, lines 7-28; P-0011, T-134-CONF-FRA, p. 71, lines 21-28 and p. 72, lines 7-25; video CIV-OTP-0026-0020.

<sup>677</sup> Presidential decree, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0018-0049; transmission of decree by the CEMA to the FDS, 15 November 2010, CIV-OTP-0071-2452 at 2455.

<sup>678</sup> For example, *Décret n° 2010-307 instituant un couvre-feu*, 26 November 2010, CIV-OTP-0045-1183 at 1184 (Presidential Decree 2010-307, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0049). See also CIV-OTP-0060-0567, CIV-OTP-0074-0063, CIV-OTP-0074-0076 and CIV-OTP-0074-0079, showing RTI broadcasts reporting on the imposition of curfews.

<sup>679</sup> P-0009, T-195-CONF-FRA, pp. 8-12.

<sup>680</sup> P-0010, T-137-CONF-FRA, pp. 80-81, and T-138-CONF-FRA, pp. 4-7.

<sup>681</sup> P-0009, T-196-CONF-FRA, pp. 10-13: “[10:04:14] Monsieur le témoin, est-ce que vous êtes au courant d’une réunion au cours de laquelle la marche a fait l’objet d’une discussion, et qui aurait eu lieu le 14 décembre ? R. [10:04:27] Oui, Monsieur le Président. [...] Q. [10:05:37] (Intervention en français) Et lors de cette rencontre, quel a été...avez-vous reçu des instructions du Président ? R. [10:05:48] Oui, nous avons reçu les instructions. Les instructions, c’est celles que la marche ne doit pas avoir lieu, qu’elle était interdite.”

<sup>682</sup> P-0010, T-139-CONF-FRA, p. 11; P-0009, T-196-CONF-FRA, pp. 13-18.

<sup>683</sup> P-0440, T-155-CONF-FRA, p. 75.

this and other operations during the post-election violence.<sup>684</sup> There is also evidence that Détoh Létho, who was commander of operations in Abidjan during the post-election violence,<sup>685</sup> issued orders and received reports during the March on RTI incident, but always under the command of Philippe Mangou.<sup>686</sup> Evidence also suggests that Désiré Tagro was likewise involved and gave instructions to GPP elements led by Bouazo<sup>687</sup> during the March on RTI.<sup>688</sup>

309. Philippe Mangou explained that, on 5 January 2011, Mr Gbagbo met again with all of the above high-ranking FDS officials and with Emile Guiriéoulou, Alain Dogou and Désiré Tagro. Philippe Mangou testified that on that occasion Mr Gbagbo signed the decree of requisition of the armed forces and personally handed it to Philippe Mangou.<sup>689</sup> As noted above, evidence indicates that the requisition of the armed forces actually occurred before that date, on 14 November 2010. According to Philippe Mangou, on 5 January 2011 all high-ranking FDS officers met and decided on the deployment of the FDS.<sup>690</sup>

<sup>684</sup> P-0009, T-193-FRA, pp. 67-68. See, for example, police correspondence, 18 February 2011, CIV-OTP-0045-1478: Letter No. 140 of the Police Chief of Bas-Sassandra advising the DGPN, Bredou M'bia, to adopt measures for an upcoming RHDP demonstration on 21 February 2011. See also Ministry of the Interior correspondence, CIV-OTP-0045-1193, *Message-Départ*: P-0046 (T-125-FRA-CONF) recognised this as a message he had sent to his collaborators indicating that there was a curfew in Abobo and Anyama.

<sup>685</sup> Correspondence, 16 March 2011, CIV-OTP-0045-0112: P-0156 (T-171-CONF-FRA) recognised this fax as a document from the CEMA indicating the six zones into which Abidjan was divided: Yopougon, Adjamé-Plateau, Abobo-Anyama, Cocody, south Abidjan and the port of Abidjan. P-0156 recognised the stamp and signature of Philippe Mangou. Détoh Létho (T-203-CONF-FRA) said that he had seen this document before. Détoh Létho testified that he had had to coordinate the six zones of Abidjan. The "PC Escadron Abobo", Zone 2, was not necessarily an army force. This depended on the day. The specific unit would be designated by the CPCO. The head of the Abobo zone would receive orders from the CEMA, Philippe Mangou.

<sup>686</sup> Correspondence, CIV-OTP-0071-0672, 19 December 2010: message from COMTER to Chief PC *Période Electorale* giving instructions on where the FDS were to be positioned (mixed patrols involving CECOS, police, Gendarmerie and military) and referring to a curfew. CIV-OTP-0071-0670, 21 December 2010: message from COMTER to Chief PC *Période Electorale*, giving instructions on where the FDS were to be positioned (mixed patrols involving CECOS, police, Gendarmerie and military) and referring to the blocked UNOCI convoy and the curfew. CIV-OTP-0071-0674, 18 December 2010: message from COMTER to Chief PC *Période Electorale*, giving instructions on where the FDS were to be positioned (mixed patrols involving CECOS, police, Gendarmerie and military) and referring to the curfew. CIV-OTP-0071-0676, 18 December 2010: message from COMTER to Chief PC *Période Electorale*, giving instructions on where the FDS were to be positioned (mixed patrols involving CECOS, police, Gendarmerie and military) and referring to the situation of insecurity following the RHDP march (incident of 16 December 2010) and to reinforcements put in place thereafter. CIV-OTP-0071-0700, 19 December 2010: letter from COMTER to CEMA and Chief CPCO referring to a Senegalese individual captured on 17 December 2010. CIV-OTP-0071-0703, 19 December 2010: message from COMTER to CEMA referring to a suspect captured on 16 December 2010.

<sup>687</sup> P-0435, T-89-CONF-FRA, p. 78. P-0435 received instructions about carrying cordelettes from Bouazo.

<sup>688</sup> P-0435, T-89-CONF-FRA, pp. 65-67, and T-92-CONF-FRA, pp. 67-68.

<sup>689</sup> P-0009, T-193-FRA, pp. 20-24.

<sup>690</sup> P-0009, T-195-CONF-FRA, p. 22.

310. Coordination is also evidenced in FDS documents in the record. For example, a message from the Gendarmerie dated 18 February 2011 describes how operations were organised and different FDS units were deployed in Abidjan, and how they were assigned tasks and operations. It also indicates that there were joint operations among the different units of the FDS, including the Gendarmerie, police, and military.<sup>691</sup>
311. As noted above, a significant operation resulted from a meeting that took place on 24 February 2011, convened again by Philippe Mangou, at which all high-ranking FDS officers and some Ministers (including Emile Guiriéoulou and Alain Dogou) met with Mr Gbagbo. During that meeting, several FDS officers suggested declaring Abobo a war zone (a proposal that Mr Gbagbo rejected). There is evidence that, despite the situation on the ground (and Mr Gbagbo's knowledge thereof), Abobo was not declared a war zone and civilians were thus not evacuated or protected.<sup>692</sup> Instead, Philippe Mangou testified, Mr Gbagbo ordered the FDS to do everything it could to hold on to Abobo and to liberate the N'Dotré road.<sup>693</sup> Evidence indicates that, as a result of these orders, mortar shells were used in Abobo, although Philippe Mangou testified that the use of weapons of war was not possible given the circumstances of armed confrontations in Abobo and because the area was densely populated.<sup>694</sup>

#### 8. *Non-State actors involved in the implementation of the State policy*

312. As already discussed, the evidence indicates that private individuals took part in the implementation of the State policy, and that they did so under the command, or at least with the support and acquiescence of, Mr Gbagbo, his government and the FDS. One

<sup>691</sup> Gendarmerie, *message porté*, CIV-OTP-0044-0026: *message porté* dated 18 February 2011.

<sup>692</sup> P-0009, T-193-FRA, pp. 85-88; T-194-FRA, pp. 69-80; P-0011, T-135-CONF-FRA, pp. 68-69, and T-136-CONF-FRA, pp. 51-52; P-0047, T-203-FRA, pp. 34 and 43.

<sup>693</sup> P-0009, T-194-FRA, pp. 3-4 and 58-59; P-0010, T-139-CONF-FRA, pp. 77-85, and T-141-CONF-FRA, p. 21; P-0011, T-134-CONF-FRA, pp. 71-72; video, CIV-OTP-0026-0020 at 00:03:20-00:03:56 (excerpt from RTI broadcast of 25 February 2011 at 13.00; transcript, CIV-OTP-0044-2534 at 2536, lines 31-35). This excerpt shows the spokesperson for Mr Gbagbo's government (Ahoua Don Mello) stating that the President had given instructions to reinforce security in Abobo.

<sup>694</sup> P-0009, T-194-FRA, p. 63: "*Il n'était pas question pour nous d'aller détruire Abobo, mais il était question de, comme je l'ai souligné hier, aménager un ou deux quartiers, les sécuriser et permettre à la population qui était otage du Commando invisible, leur donner 24 heures à 72 heures et permettre à cette population de venir dans la zone sécurisée, afin que nous puissions, nous, avoir une certaine lisibilité, voir qui est réellement notre ennemi, afin de traiter cet élément ennemi. Sinon, avec la population en place, il nous était impossible de réagir.*"

such group was the mercenaries, who, as noted above, were under the command of Séka Séka during the post-election violence.

313. For example, on 21 December 2010, Mr Gbagbo addressed the *Jeunes Patriotes* in the aftermath of the March on RTI. In that speech, in which he rejected any crimes on the part of the FDS, Mr Gbagbo addressed the youth and told them: “*Je demande aux jeunes de rester calmes.*”<sup>695</sup> However, as the evidence shows, this message was not followed or was understood differently. Perhaps this is attributable in part to the social and political context of the post-election violence, but it was also due to the lack of any explicit prohibition on acts of violence by the FDS or non-State actors, including the *Jeunes Patriotes*, during the March on RTI and the post-election violence in general. In fact, there is no evidence in the record of any RTI broadcast or of any government or FDS communiqué at any time during the post-election violence condemning any act of violence by the *Jeunes Patriotes* or any other non-State actor aligned with Mr Gbagbo during the post-election violence. This is despite evidence in the record that such crimes were reported within the FDS, not only after the March on RTI and the events in Yopougon on 25-28 February 2011, but also in relation to other incidents.<sup>696</sup>

314. In addition to the *Jeunes Patriotes*, various other youth groups are identified in the evidence (e.g. the parlements, the GPP and FESCI). All of these groups had a common denominator during the post-election violence: evidence indicates that they all responded to Mr Blé Goudé’s call to mobilisation.<sup>697</sup> For example, the GPP was a militia group based in Abidjan.<sup>698</sup> As Édouard Kassaraté explained, this was a group of *Jeunes Patriotes* that acted during the post-election violence and was under the command of Bouazo.<sup>699</sup> Although Édouard Kassaraté said that the GPP had not been armed during the post-election violence,<sup>700</sup> this was contradicted by Détoh Létho, who,

<sup>695</sup> Presidential speech, 21 December 2010, video CIV-OTP-0026-0016 at 00:18:30-00:18:40 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at page 0660, line 216).

<sup>696</sup> See, for example, the documents related to the reporting of the events of 3-4 March 2011, during which a man was burned alive by the *Jeunes Patriotes*: BQI, 7 March 2011, CIV-OTP-0045-0180 at 0181 (police report referring to the said incident); BQI, 4 March 2011, CIV-OTP-0045-0213 at 0214-0215 (police report referring to the said incident); list, CIV-OTP-0073-1074 (containing names of alleged witnesses, collected from the Ministry of Justice of Cote d’Ivoire); report, CIV-OTP-0050-0003 at 0011, no. 95 (submitted via P-0564, referring to the death of Dabre Issa).

<sup>697</sup> This is mostly analysed in Section 5, below, under Mr Blé Goudé’s individual criminal responsibility.

<sup>698</sup> P-0009, T-196-FRA, p. 71, lines 16-18.

<sup>699</sup> P-0011, T-132-FRA, pp.7-8.

<sup>700</sup> T-132-FRA, p. 8.

as discussed below, indicated that the GPP had been recruited and trained by the FDS during the post-election violence.

315. There is evidence that Mr Blé Goudé, together with FDS commanders such as Philippe Mangou, Édouard Kassaraté, Georges Guiai Bi Poin and Détoh Létho, worked together on the mobilisation and recruitment of the *Jeunes Patriotes*. The evidence related to the meeting at the CEMA headquarters on 20 January 2011 is significant. Although Détoh Létho first denied ever having worked with *Jeunes Patriotes* militias,<sup>701</sup> he was later confronted with a document dated 22 February 2011, signed by his deputy and dealing with the said recruitment and with the distribution of *Jeunes Patriotes* among the FDS. Détoh Létho then confirmed that he had been aware of the allocation of these recruits to different sections.<sup>702</sup> He testified as follows in relation to the recruitment referred to in the said document: “*C’est-à-dire, il y a eu un recrutement, directement, et pour leur formation, le chef d’état-major des armées a envoyé des messages aux forces pour les former. Et ceux-là, selon le message de référence, ceux-là devaient être formés aux forces terrestres.*”<sup>703</sup> When confronted with the testimony of Philippe Mangou, who had denied in court having seen this document, Détoh Létho confirmed that the recruitment had been ordered by headquarters, and specifically by Philippe Mangou.
316. Commenting on the same document, Détoh Létho recognised the different youth groups from which the recruits were drawn. One of these groups was the LIMA militia.<sup>704</sup> As regards the GPP, in addition to Détoh Létho, P-0435<sup>705</sup> likewise testified that FDS recruits included members of the GPP who had been allocated to different units,

<sup>701</sup> P-0010 and P-0011 were shown a video and recognised this as the meeting at the CEMA headquarters on 20 January 2011. Video CIV-OTP-0064-0083 at 06:00 (commented on by P-0010, T-142-FRA-CONF, p. 8): “Q. [10:02:16] Merci, Monsieur le témoin. Je vais vous montrer une autre vidéo. En fait, je... le... l’Accusation, dans son interrogatoire, avait cité la vidéo mais ne l’avait pas présentée. Donc, avant de vous poser une... une quelconque question, je vais vous présenter la vidéo : 0064-0083 de la minute 06:36 à la minute 08:53. Le transcript, c’est 0094-0336, à la page 0337, ligne 1, et page 0338, ligne 46. [...] Q. [10:06:32] Monsieur le témoin, est-ce que vous aviez déjà vu auparavant cette vidéo ? R. [10:06:41] J’étais présent dans la salle, donc la vidéo ne m’est pas totalement nécessaire.” See also P-0047, T-204-CONF-FRA, pp. 36-37, lines 20-21: “[...] les jeunes de chaque région se sont organisés eux-mêmes pour défendre leur région [...]. Mais, en dehors de ceux-là, je ne sais pas, pendant la... crise postélectorale, s’il y a eu d’autres milices. En dehors des groupes que nous connaissions, ici, en Côte d’Ivoire, je ne sais pas si, pendant la crise postélectorale, d’autres milices étaient sur le terrain. Mais, dans l’armée de terre, moi, je n’en connaissais pas. Je n’ai jamais travaillé avec un milicien, et cetera, et cetera. Je ne sais pas. À mon niveau, il n’y avait pas de... de... de... de milices.”

<sup>702</sup> Message from COMTER, 21 February 2011, CIV-OTP-0071-0850. P-0047 (T-204-CONF-FRA, p. 40) recognised the signature of his deputy.

<sup>703</sup> T-204-CONF-FRA, pp. 40-41.

<sup>704</sup> T-204-CONF-FRA, p. 41.

<sup>705</sup> P-0435, T-88-CONF-FRA, p. 9; T-89-CONF-FRA, p. 18.

including BASA, the Para-Commando Battalion (“BCP”) and the First Armoured Battalion.<sup>706</sup>

317. Evidence also refers to Dogbo Blé’s involvement in the integration of the GPP and other *Jeunes Patriotes* militias into the GR. P-0435 gave the following evidence in this regard, which was corroborated by P-0316:<sup>707</sup>

*Bon, avant que nous... nous nous installions d’abord au Palais même, il faut dire que moi, je ... je m’y rendais déjà depuis le mois de février, que ce soit récupérer des munitions ou l’armement qu’on avait. Et... comment le dire, on a mené des opérations dans... dans... dans certaines zones sous les ordres du commandant Kipré. Donc, au mois de mars, le commandant Kipré a demandé à ce qu’un détachement du GPP puisse venir les appuyer là-bas. [...] R. [10:01:28] Bon, les... les opérations qu’on nous confiait étaient... étaient diverses à... l’escorte de certaines personnalités, il fallait les mettre en lieu sûr ; soit le convoi, aller chercher la nourriture à la Garde républicaine à... à Treichville ; soit aussi de... par exemple, il y a... il y a eu un moment où l’état-major avait été occupé par les Forces... les combattants des Forces nouvelles, donc, nous étions... nous avons participé aux combats pour pouvoir reprendre l’état-major et le ministère de la Défense et aussi la caserne des sapeurs-pompiers ; on avait aussi fait toute mission aussi de sécurisation du périmètre autour du Palais présidentiel. [...] nous étions appuyés par les éléments de la Garde républicaine et du... du BASA. Donc, on avait... on avait des... on avait des armes lourdes, donc, ce qui a fait qu’on a pu avoir le dessus. [...] le colonel Moudy nous a informés que le Président avait pris une décision... avait été informé de... de l’efficacité des éléments qu’ils avaient à disposition. Et donc, il avait décidé d’intégrer d’office les éléments qui étaient présents à cette mission-là, qui étaient aussi au palais, les éléments du GPP, à la Garde républicaine. Et donc, il avait reçu ce message du chef de corps, le général Dogbo Blé. Et donc, ils ont demandé à voir... puisque d’abord, lorsque nous sommes arrivés, déjà, ils avaient déjà la liste, les éléments... on avait déjà fait une liste qui avait été “remis” au colonel Mody. Donc, ils avaient l’effectif. Donc, ils ont demandé... ils ont demandé à savoir... d’actualiser la liste, pour savoir s’il y avait des éléments qui étaient là en plus, qui étaient là, ou soit si y avait des éléments qu’étaient... qui n’étaient pas présents, parce qu’il y a d’autres, pendant ce... ce... à ce moment-là, qu’étaient au niveau de l’état-major, donc, de leur demander de venir au Palais s’enregistrer. Donc, c’était la... la... bon, je peux dire comme la récompense, quoi. [...] Le Président de la République, M. Laurent Gbagbo, parce que cette décision-là aussi s’étendait aussi aux éléments qui étaient à la CRS en ce moment et qui avaient le BEPC étaient aussi concernés. Au cas où on n’avait pas ce diplôme-là, ils seraient versés dans un corps (inaudible). Donc, c’est... cette décision-là s’étendait aux mêmes éléments qui étaient au... chose, au Palais... à la résidence du Président, aussi. Ce n’était pas qu’à nous seuls à... au Palais. [...]. C’était vers le mois de mars 2011 [...].<sup>708</sup>*

318. P-0435 testified extensively about the link between the GPP, the youth leaders (including Mr Blé Goudé) and the government of Mr Gbagbo. His evidence, which has been challenged in its entirety by the Defence, must be analysed in the light of the testimony of Édouard Kassaraté mentioned above, who confirmed that by February 2011 elements of the GPP had been integrated into the FDS. Thus it is reasonable to infer that ties existed between the GPP and the FDS prior to their formal recruitment in early 2011, which is one of the most significant aspects of the testimony of P-0435 analysed below.

<sup>706</sup> T-204-CONF-FRA, p. 41. P-0435 (T-96-CONF-FRA) testified that these elements were integrated into the regular armed forces in February 2011 and fought in Abobo after their training.

<sup>707</sup> P-0316, T-183-CONF-FRA, pp. 3 and 6.

<sup>708</sup> P-0435, T-90-CONF-FRA, pp. 10-12, emphasis added.

319. P-0435 testified that Alain Dogou had ties with the GPP and that he had met with its leaders to assess cooperation and support, with a particular focus on training.<sup>709</sup> Similarly, P-0431 stated that Pascal Affi N'Guessan had been involved with the *Jeunes Patriotes* since 2006<sup>710</sup> and continued to have links, during the post-election violence, to youth leaders including, in particular, Damana Pickass.<sup>711</sup> P-0435 testified in this regard that Damana Pickass had provided weapons to members of the GPP during the post-election violence<sup>712</sup> and that his bodyguard was a member of the GPP.<sup>713</sup> It is important to recall that Damana Pickass had already appeared on 2 December 2010 on RTI alleging that the Electoral Commission had acted illegally.<sup>714</sup> P-0435 also gave evidence linking Pascal Affi N'Guessan to the GPP and indicating in particular that he had requested the GPP to conduct the military training of the youth.<sup>715</sup> It is also important to recall that Philippe Mangou and P-0625 both testified that Pascal Affi

<sup>709</sup> T-88-CONF-FRA, pp. 9-10; T-89-CONF-FRA, p. 18.

<sup>710</sup> P-0431, T-43-CONF-ENG, p. 50. The witness testified as follows: "A. That rally took place at the mayor's office in Yopougon. Q. What was the rally broadly about? A. The rally was -- actually I would describe more it was a meeting, not a rally. It was a meeting predominantly of FESCI leaders and Young Patriots leaders, and it was in response to the spokesperson from FPI. I believe his last name is -- his first name is Affi, his last name N'Guessan. The meeting was in response to a comment which was to stop *audience foraine*, the mobile courts, and I quote, 'by all means necessary,' end quote. And the meeting was to discuss the actions these two groups would be taking in response to that statement."

<sup>711</sup> P-0176, T-143-FRA, p. 21: "Q. [10:37:56] Vous dites que M. Damana Pickass n'était pas n'importe qui. Qu'est-ce que vous voulez dire par 'ça' ? R. [10:38:05] Je... J'ai entendu... Guillaume Gbato m'a dit c'était un des collaborateurs respecté du Président Affi, il était... selon mon jeune frère... du Président Affi N'Guessan. Et il était aussi un des jeunes qui voyaient aussi le Président Laurent Gbagbo. Mais il était plus, dans le bureau du... du parti du Président Gbagbo, un jeune leader respecté et, surtout, collaborateur proche du Président Affi N'Guessan — Pascal Affi N'Guessan. Voilà."

<sup>712</sup> P-0435, T-89-CONF-FRA, p. 42: "Donc, pour cette mission-là aussi, nous avions... pour cette mission, nous avons envoyé des équipages, des pickups et six éléments chacun. Chaque équipage avait compté six éléments qui ont été dotés. Hormis cela, on avait reçu quatre kalachnikovs du commissaire du... j'ai pas son nom en tête actuellement, mais c'était le commissaire du commissariat de Bracodi. Donc, on avait remis quatre kalachnikovs et moi, personnellement, je suis allé récupérer trois kalachnikovs avec M. Damana Pickass à son domicile, mais j'ai... on a récupéré deux à son domicile et la troisième, je suis allé la chercher à Yopougon avec son garde du corps Chinois."

<sup>713</sup> P-0435, T-87-CONF-FRA, p. 55: "[...] dont Damana Pickass. Donc je savais que... c'est Damana Pickass qui, par la suite, lors de... deux ans après, lors de la proclamation des résultats, qui a déchiré les résultats. D'abord, même son garde du corps personnel, même, c'était un élément du GPP, c'était un élément du GPP."

<sup>714</sup> Video CIV-OTP-0075-0057 at 00:00:35-00:05:27 (excerpt from RTI broadcast of 1 December 2010 at 20.00; transcript, CIV-OTP-0087-0133 at 0134-0135) shows Damana Pickass explaining what happened when the Electoral Commission announced the results (which announcement had been interrupted by Pickass). He says that Yacouba acted illegally.

<sup>715</sup> P-0435, T-89-CONF-FRA, p. 18: "On avait... on a eu à former des éléments pour... à Bongouanou. Ça, c'était le commandant de Bongouanou, Abi Adjei, qui était, lui, proche du président Affi N'Guessan. Donc, sur ses instructions, il a demandé... quand je dis 'il a demandé', je parle du président Affi N'Guessan qui a demandé à ce que les éléments soient formés, les jeunes de sa localité, Bongouanou, puissent être initiés au maniement des armes, afin, au cas échéant, de pouvoir faire face à la rébellion armée qui pourrait chercher à s'installer dans sa localité."

N'Guessan was one of the last defenders of the State policy, since he was unwilling to stand down even after Mr Gbagbo's arrest.<sup>716</sup>

320. As noted above, P-0435 testified that the GPP leader Bouazo had requested funds directly from Simone Gbagbo during the post-election violence.<sup>717</sup> P-0435 also testified that Bouazo had ordered GPP elements to intimidate people during the second round of the election.<sup>718</sup> P-0435 testified that another GPP leader, Moussa Touré (aka

<sup>716</sup> P-0009, T-194-FRA, p. 32: *"Et je me suis dit qu'il faut que j'aille au Golf pour faire allégeance. Donc, j'ai pris contact avec le général Béréna pour dire que je souhaitais me rendre au Golf. Mais, avant de partir, j'ai appelé le Premier ministre Affi N'Guessan pour lui dire : 'Monsieur le Premier ministre, je vous rends compte que je vais au Golf pour faire allégeance.' Il m'a dit : 'Non, non, non, ne partez pas, ne partez pas. Il faut qu'on se serve de l'armée pour négocier.' J'ai dit : 'Non, je vais faire allégeance.' Et c'est comme ça que je me suis rendu au Golf. Là également, dans les transcrits que j'ai lus avant de venir, c'était marqué la date du 13, mais ce n'était pas le 13, c'est le 12 avril, le lendemain, que je suis allé faire allégeance au Golf."* P-0625, T-28-CONF-FRA, p. 85: *"[....] ils ont décidé que j'appelle le président Affi N'Guéssan, le président du parti de M. Laurent Gbagbo, le \*FPI [...]."*

<sup>717</sup> P-0435, T-87-CONF-FRA, pp. 49-52: *"Q. [12:34:40] Je vous ramène donc dans le temps, en 2010. Tout à l'heure, vous nous avez dit que, pour recevoir le minimum, Bouazo adressait un courrier au secrétariat de la Première dame. Alors, vous avez dit ensuite qu'il recevait des retours favorables. Comment savez-vous cela ? R. [12:35:02] Bon, lorsqu'il recevait... lorsqu'il recevait... il obtenait gain de cause, il m'en informait. Soit si on avait des besoins, il remettait de l'argent à l'intendance pour pouvoir... pour la nourriture, pour les besoins des éléments qui étaient de permanence, par exemple, lorsqu'il avait gain de cause, il m'en informait. [...] Q. [12:37:34] Vous avez dit 'le secrétariat de la Première dame.' R. [12:37:38] \* Il a dit qu'il... qu'il s'adressait au secrétariat de la Première dame. Q. [12:37:43] La question, c'était : pourquoi ? R. [12:37:47] Bon, d'abord... d'abord, comme je l'ai dit, le GPP était une organisation qui était là pour assurer... comment dire... c'est... qui était là pour s'assurer à ce que le pouvoir en place ait une résistance au niveau de sa jeunesse. C'est-à-dire, depuis la création du GPP, c'était, au départ, pour faire face à la rébellion, donc, c'était du camp du parti au pouvoir. Bouazo, qui était lui-même membre du FPI, bon, chacun... comme j'ai dit, chacun... le Président avec... avait un truchement direct, c'est-à-dire, comme j'ai parlé des membres de la Galaxie patriotique, il pouvait avoir un temps des besoins, mais si... il a ses entrées personnelles ou ses contacts personnels auprès des personnalités du pouvoir, ça... il pouvait utiliser d'autres canaux pour d'avoir des... des ressources dont il avait besoin. Donc, je pense que c'est dans ce cadre-là, parce que... qui... qu'il passait par le cabinet de la Première dame, comme il l'a dit. [...] R. [12:39:48] Au cours de... voilà... d'abord l'année... au cours de l'année 2009... 2009 jusqu'en 2010, il y a eu quand même... je peux dire deux à trois fois quand même, où il a sollicité les... il a sollicité l'aide de la Première dame. Voilà. Q. [12:40:20] Est-ce que vous êtes au courant des montants qu'il a reçus ? R. [12:40:27] Bon, il y a une fois... il y a une fois, on avait... on a dit il avait des retards de loyers, une fois il avait des retards de loyers, et puis les éléments aussi... je crois... si c'était pas en décembre... décembre... je crois décembre... je crois que c'est ça, décembre... en tout cas, dans le premier trimestre 2009, le premier trimestre 2009, on avait... il y avait des retards de loyers avec le propriétaire du local qui nous servait de bureau puis de choses... de dortoir, donc, là, il a reçu une aide, je crois s'élevant à 500 000 francs... 500 000 francs CFA."*

<sup>718</sup> P-0435, T-88-CONF-FRA, pp. 20-24: *"Q. [10:43:38] Il y a un moment donné où vous nous avez mentionné que lors de... de ces footings, vous chantiez des chants militaires. R. [10:43:50] Mm-hm. Q. [10:43:52] Quelles étaient, si vous vous souvenez, les paroles de ces chants ? R. [10:43:58] Il y avait... Bon, ce sont, ça... c'était un peu un dialecte, qu'on dit un dialecte dioula, parce qu'on dit... les paroles disaient... (suite de l'intervention non interprétée), c'est-à-dire que... [...] Et les paroles sont ? R. [10:44:25] En français, en français, oui, oui. En français ça veut dire... bon que, bon que... Je vais paraphraser quand même. Ça veut dire que les hommes ce sont les (inaudibles), bon... un mot un peu mal... indécent. Donc, les hommes se sont levés et les femmes... les femmes... les femmes [...] R. [10:44:50] Voilà. 'Le sexe de l'homme s'est levé, les femmes fuient'. Voilà. C'est-à-dire que c'est nous qui sommes les hommes et que ceux qui sont en face, les rebelles et les partisans, sont des femmes qui vont... qui vont fuir devant nous. Il y avait d'autres paroles aussi qui disaient 'assaillants... les assaillants ont tué mes parents, je vais me venger'. Donc, on chantait ce genre de chanson. Il y avait des*

Zéguen),<sup>719</sup> had carried out operations parallel to those of Bouazo<sup>720</sup> and had received instructions directly from Mr Blé Goudé.<sup>721</sup>

321. It has already been observed, above, that receipts submitted into the record refer to Eugene Kouadio Djué, a *Jeunes Patriotes* leader, as having received significant funds from Mr Gbagbo's government on a periodic basis during the post-election violence. Values on the receipts range from CFAF 100,000 to CFAF 1,500,000 (about 150 to 2,200 euros).<sup>722</sup> The receipts are also indicative that government support to the *Jeunes Patriotes* had already started in 2009 in preparation for the 2010 election.
322. Evidence also links youth leader Navigué Konaté to the State policy. For example, he appeared on RTI on 19 December 2010 in support of Mr Gbagbo, demanding the departure of the United Nations from Côte d'Ivoire and mobilising the youth to attack United Nations forces. Although he first states that this is not an attack against ONUCI, he then calls for *Jeunes Patriotes* to organise and coordinate within neighbourhoods and *communes* in the implementation of the State policy:

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*chansons aussi... d'autres chansons aussi qui disaient que les commandos n'ont pas peur du feu, n'ont pas peur des balles, ils n'ont pas peur que... quel que soit le danger qui leur fera face ils ne pourront pas avoir peur. C'était ce genre de chants-là, des chants de galvanisation, des chants aussi d'intimidation."* See the reference to the testimony of P-0109 in Section 3, above, as to how the *Jeunes Patriotes* stopped taxis and conducted checks for Dioula after the second round of the election (T-154-CONF-FRA-ET, pp. 24-25).

<sup>719</sup> P-0625, T-27-FRA, p. 25: "R. D'accord. Il y avait le président Blé, il y avait Navigué, il y avait Mian... Mian Augustin, le secrétaire général du Fesci, et puis il y avait les différents... il y avait les différentes personnes. Il y avait Youssouf Fofana, il y avait Zeguen Touré, il y avait moi-même."

<sup>720</sup> P-0435, T-87-CONF-FRA, p. 16, lines 1-8: "Q. [10:20:52] Vous nous avez parlé de bicéphalisme. Est-ce que vous pouvez nous expliquer qu'est-ce qui a mené à ce bicéphalisme ? R. [10:21:06] D'abord, parce que sous la présidence de Zeguen, Touré Moussa (inaudible) Zeguen et de Jeff, il y avait vraiment... les éléments... il y avait beaucoup d'indiscipline dans nos rangs, et aussi il y avait la presse nationale et internationale [...]."

<sup>721</sup> P-0435, T-87-CONF-FRA, p. 17, lines 23-27: "Le GPP, politiquement, était un mouvement qui est né pour soutenir, pour... le pouvoir du FPI contre la rébellion. Donc, lorsque Touré Moussa Zeguen était à la tête du GPP, il était toujours... il recevait les instructions politiquement directement des membres de la Galaxie patriotique, qui était dirigée par M. Charles Blé Goudé."

<sup>722</sup> See, for example, 18 November 2010, CFAF 1,300,000, CIV-OTP-0025-0613; 18 November 2010, CFAF 300,000, CIV-OTP-0025-0614; 5 January 2011, CFAF 1,300,000, CIV-OTP-0025-0461; 20 August 2009, CFAF 300,000, CIV-OTP-0025-0468; 20 August 2009, CFAF 1,300,000, CIV-OTP-0025-0469; 3 September 2009, CFAF 300,000, CIV-OTP-0025-0478; 3 September 2009, CFAF 1,300,000, CIV-OTP-0025-0479; 21 September 2009, CFAF 1,300,000, CIV-OTP-0025-0487; 21 September 2009, CFAF 300,000, CIV-OTP-0025-0494; 21 October 2009, CFAF 300,000, CIV-OTP-0025-0496; 21 October 2009, CFAF 1,300,000, CIV-OTP-0025-0497; 21 November 2009, CFAF 1,300,000, CIV-OTP-0025-0505; 26 November 2009, CFAF 300,000, CIV-OTP-0025-0506; 24 December 2009, CFAF 1,300,000, CIV-OTP-0025-0515; 22 January 2010, CFAF 1,300,000, CIV-OTP-0025-0525; 22 January 2011, CFAF 300,000, CIV-OTP-0025-0526; 22 February 2010, CFAF 300,000, CIV-OTP-0025-0532; 22 February 2010, CFAF 1,300,000, CIV-OTP-0025-0533; 25 March 2010, CFAF 1,300,000, CIV-OTP-0025-0541; 25 March 2010, CFAF 300,000, CIV-OTP-0025-0542; 26 April 2010, CFAF 1,300,000, CIV-OTP-0025-0550; 26 April 2010, CFAF 300,000, CIV-OTP-0025-0551; 20 May 2010, CFAF 300,000, CIV-OTP-0025-0559; 15 September 2010, CFAF 300,000, CIV-OTP-0025-0595; 15 September 2010, CFAF 1,300,000, CIV-OTP-0025-0596; 4 March 2011, CFAF 300,000, CIV-OTP-0025-0640.

*Le Président de la République et son gouvernement, viennent de prendre une mesure demandant gentiment aux forces partiales de quitter le territoire ivoirien [...] Nous lançons un appel à la jeunesse ivoirienne. Il ne s'agit pas de s'attaquer aux forces de l'ONUCI. Il ne s'agit pas de les agresser dans les rues. Il ne s'agit pas de les brutaliser. Des mesures suivantes sont prises, et il faut qu'on s'attelle à les respecter. Première chose : il est interdit aux forces onusiennes de se servir dans les stations ivoiriennes. Il est interdit aux forces onusiennes de partir dans nos supermarchés et de faire des achats. Il sera interdit, donc, aux forces onusiennes de se soigner si jamais quelqu'un parmi eux tombe malade. Nous demandons donc aux Ivoiriens qui ont donné leur maison en location aux agents de l'ONU, de leur dire gentiment de quitter et de plier bagages. Voilà quelques mesures, et nous allons nous organiser dans les quartiers, dans les communes et dans les villages, dans toutes les villes, pour que ces mesures-là soient appliquées, pour que les forces onusiennes nous laissent tranquilles, et qu'elles partent gentiment parce que, devant la brutalité, il faut avoir de l'intelligence.<sup>723</sup>*

323. Video evidence also shows him addressing the youth at a *Parlement* on 4 January 2011, calling on them to mobilise and to fight in support of Mr Gbagbo. In the said video, Navigué Konaté also makes it clear that the *Jeunes Patriotes* had been working together with Mr Gbagbo since 2002 in what he called an eight-year fight.<sup>724</sup> Navigué Konaté was also filmed on various occasions together with Mr Blé Goudé, including the rally on 15 December 2010<sup>725</sup> and during an RTI interview on 14 March 2011 in which they both thanked the *Jeunes Patriotes* for erecting roadblocks.<sup>726</sup> Video evidence also shows Navigué Konaté visiting a *Jeunes Patriotes* roadblock on 18 March 2011 and issuing to the youth an “*appel historique*” to come to Place CP1 in Yopougon.<sup>727</sup> As the

<sup>723</sup> Video, CIV-OTP-0064-0078 at 01:07:19-01:10:09 (excerpt from RTI broadcast of 19 December 2010 at 20.00; transcript, CIV-OTP-0086-0899 at 0900-0901, lines 1-66, emphasis added).

<sup>724</sup> Video CIV-OTP-0064-0105 at 00:21:12-00:23:34 (excerpt from RTI broadcast of 4 January 2011 at 20.00; transcript, CIV-OTP-0086-0995 at 0996-0997, lines 1-56; see also lines 28-34) shows Koné Navigué at a *parlement/agora* addressing the youth. An interviewee states that the youth should remain ready to be mobilised. Later, Koné Navigué is also interviewed. He says: “*Nous avons débuté un combat depuis le 19 septembre 2002 pour la défense des institutions de la République. Aujourd'hui, nous avons 8 ans de combat, 8 ans de combat. Il nous reste que quelques heures pour finir le combat, pour remporter la victoire, pour gagner cette bataille. Nous demandons aujourd'hui à toute la jeunesse ivoirienne de rester mobilisée autour du chef de l'Etat, de rester soudée autour du chef de l'Etat. Pour qu'enfin on finisse on en finisse avec cette bataille, pour que la CIV retrouve son indépendance politique, économique et sociale pour le bonheur de nos enfants de nos petits-enfants.*”

<sup>725</sup> Video, CIV-OTP-0074-0054 at 00:25:10-00:31:21 (excerpt from RTI broadcast of 15 December 2010 at 20.00; transcript, CIV-OTP-0087-0387 at 0389, lines 63-103). This is a report on a rally led by Mr Blé Goudé with the youth at the *Palais de la Culture* on that day. Mr Blé Goudé states that UNOCI, Choi and France are preparing a genocide; that they are supporting the rebels with *Radio ONUCI*; that UNOCI is arming the rebels and arming the Golf Hotel. He says that there is an occupation. He says that they cannot negotiate with Soro, because he remains a rebel, and that with “*mains nues*” they will take over, because they have the support of God.

<sup>726</sup> Video, CIV-OTP-0069-0371 at 00:08:42-00:12:22 (excerpt from RTI broadcast of 14 March 2011 at 20.00; transcript, CIV-OTP-0087-0724 at 0725-0726, lines 1-52). This excerpt shows Mr Blé Goudé, together with other youth leaders, addressing the Ivorians and telling them to mobilise, to fight and to wait for the historic call. He congratulates those that have erected roadblocks and asks them to continue, but to be polite.

<sup>727</sup> Video CIV-OTP-0069-0374 at 00:24:12-00:27:50 (excerpt from RTI broadcast of 18 March 2011 at 20.00; transcript, CIV-OTP-0087-0727 at 0728-0729, lines 1-74) shows a report on Mr Blé Goudé's visit, in the company of others including Navigué Konaté, to a roadblock which, it is claimed, some *Jeunes Patriotes* had

evidence indicates, this “historic call” led to the youth mobilisation at the CEMA headquarters on 21 March 2011.<sup>728</sup>

324. As noted above, there is evidence that roadblocks were supported by the State authorities. In particular, instructions and congratulations to the youth monitoring the roadblocks were given via RTI. Apart from the RTI videos, other footage in the record is also relevant. For example, a video submitted via P-0087 is relevant in that it depicts an interview with young men monitoring a roadblock. The young men show a list of vehicle registration plates and explain that they obtained this list from the army and have been instructed to stop these cars if they see them drive through the roadblock.<sup>729</sup> As noted above, another video in the record shows a man being burned alive at a roadblock in the presence of the BAE, which Bredou M’bia recognised in court.<sup>730</sup>
325. Evidence in the record also connects officials of Mr Gbagbo’s government with non-State actors, and in particular the Front for the Liberation of the Great West (“FLGO”), a mercenary group. A document in the record indicates that Désiré Tagro, on behalf of the Presidency, gave financial and other support to the FLGO in October 2010.<sup>731</sup> Similarly, P-0500, who was a member of the FLGO, P-0520, who worked at the National Intelligence Agency (“ANSI”) during the post-election violence and P-0435 all testified that Kadet Bertin, acting on behalf of Mr Gbagbo, had financed and coordinated the actions of militias before the post-election violence.<sup>732</sup> Similarly, P-

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been monitoring until they were allegedly killed there by Alassane Ouattara’s men. Mr Blé Goudé addresses the families of the *Jeunes Patriotes* killed and then visits the roadblock. Mr Blé Goudé states that there is a war in Côte d’Ivoire and that he is the leader of the *Galaxie Patriotique*; he calls upon all those at home to come to a historic event on the following Saturday at 14.00 at Place CP1, Yopougon.

<sup>728</sup> Video, CIV-OTP-0069-0375 at 00:05:40-00:08:52 (excerpt from RTI broadcast of 21 March 2011 at 20.00; transcript, CIV-OTP-0087-0730). This is an RTI report on youth coming to the CEMA headquarters to enlist.

<sup>729</sup> Video, 29 March 2011, CIV-OTP-0015-0594, in particular at time stamp 20.02 (transcript, CIV-OTP-0021-0013, in particular at page 0021). The young men being interviewed say that the list of vehicle registration plates was given to them by the army.

<sup>730</sup> Video of 28 February 2011 burning, CIV-OTP-0003-0013 (transcript, CIV-OTP-0008-0049; source: France 24 article, CIV-OTP-0003-0418 at 0419-0420). This video shows men being burned in the presence of the BAE. In court, P-0046 (T-124) recognised the BAE vehicle markings.

<sup>731</sup> Receipt, Paul Nonzi, 12 October 2010, CIV-OTP-0025-0381: handwritten letter, Paul Nonzi (mentioned by P-0500 as FLGO president) and Richard Djo of the FLGO. (Next to “Ok” appears the date, 13 October 2010). The document shows a request for financial aid to host Laurent Gbagbo during an upcoming visit. The Prosecutor submits that the “Ok” confirms that Mr Gbagbo’s Financial Director at the Presidency approved the request. Letter from Paul Nonzi to Désiré Tagro, 31 December 2010, CIV-OTP-0025-0817 at 0818: handwritten letter addressed to Secretary General Tagro and signed by Paul Nonzi. There is a handwritten note stating that the person concerned should be invited to a meeting.

<sup>732</sup> P-0500, T-181-FRA, pp. 51-56, 59-60. P-0435, T-89-CONF-FRA, pp. 19-21. P-0520, T-50-CONF-FRA, pp. 66-67.

0483, P-0500 and P-0108 testified that Hubert Oulaï had financed militias and Liberian mercenaries, namely the FLGO, before and during the post-election violence.<sup>733</sup>

326. Evidence in the record indicates that Séka Séka and Rigobert Dadi also had links with mercenaries and militiamen. As stated above, these two lower-ranking FDS commanders acquired more power, including access to weapons, during the post-election violence. There is evidence that Séka Séka commanded a group of mercenaries and militiamen posted at the Presidential Residence during the post-election violence. P-0483 and P-0500 confirmed that they had been posted there to

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<sup>733</sup> P-0483, T-101-ENG, p. 19; T-102-CONF-ENG, p. 36. P-0108, T-145-CONF-FRA, p. 84. P-0500, T-181-FRA, pp. 15-17.

protect the President.<sup>734</sup> As noted above, P-0009 also confirmed that Séka Séka and the mercenaries under his command were at the Presidential Residence until April 2011.<sup>735</sup>

327. P-0164 also testified that Rigobert Dadi had had control and influence over the *Génération Blé Goudé*.<sup>736</sup> As noted above, this was a group of *Jeunes Patriotes* who had been integrated into the FDS before the post-election violence and who, as their name suggests, also answered to Mr Blé Goudé.<sup>737</sup>

<sup>734</sup> P-0500, T-181-FRA, p. 79: “[15:00:52] Vous vous êtes dirigé à la résidence présidentielle ; qu'est-ce qui est arrivé lorsque vous êtes arrivé ? R. [15:00:58] Quand moi, je suis arrivé, j'ai trouvé d'autres jeunes, voilà. Avec ces... Avec ces jeunes-là, on a essayé de former un groupe, voilà. Q. [15:01:13] Alors, vous dites ‘des jeunes’, il s'agit de qui ? Est-ce que c'étaient des gens du FLGO ou d'autres personnes ? R. [15:01:20] Non, d'autres personnes. Q. [15:01:22] Est-ce que vous connaissiez ces personnes-là ? Est-ce que vous les aviez déjà vues auparavant ? R. [15:01:28] Oui, c'étaient des amis aux Lauriers. Q. [15:01:33] Et dites-nous, lorsque vous êtes arrivé là-bas, à la résidence présidentielle, est-ce que vous avez rencontré qui que ce soit du FDS ou quoi que ce soit ? R. [15:01:47] J'ai rencontré un type du nom de Melèdje. Q. [15:01:55] Qui est Melèdje ? R. [15:02:08] Melèdje, il doit être un militaire. Q. [15:02:10] Est-ce que vous vous rappelez de... dans quelle unité ou dans quelle section il se trouvait ? R. [15:02:16] Non. P.83 : [15:10:37] Moi, je faisais partie d'un groupe particulier au départ. Q. [15:10:42] Qui vous a mis dans ce groupe particulier ou qui l'a désigné ? R. [15:10:47] C'est... C'est Tchang, un ami. Q. [15:10:51] Qui est Tchang ? R. [15:10:54] Mais Tchang, c'est un... c'était un agent de sécurité dans le temps, il était agent de sécurité au Black Market d'Adjamé. Q. [15:11:12] Alors, simplement pour qu'on puisse bien comprendre, vous étiez avec Tchang dans un groupe ? R. [15:11:18] Oui. P. 92 : Q. [15:32:17] Ça va. Vous avez parlé de Tchang, d'un dénommé Tchang, est-ce que vous êtes en mesure de nous dire s'il appartenait à une quelconque unité militaire ou d'un groupe, à votre connaissance, si vous l'avez su à l'époque ou par la suite ? R. [15:32:34] Tchang, avant, était agent de sécurité au Black market. Si Tchang s'est retrouvé à la résidence, c'est parce qu'il sait que c'est... il est... il est... c'est un jeune ivoirien. Et quand la Côte d'Ivoire a besoin de ses enfants, personne ne doit s'arrêter, personne ne doit tourner, c'est pour ça que Tchang est venu à la résidence, comme plein d'autres jeunes ivoiriens. Sinon, s'il était dans un autre groupe, ça, je ne sais pas.” Pp. 88-89: “Q. [15:25:08] Alors, expliquez-nous qu'est-ce qu'il faisait au juste, Séka, le commandant Séka, à la résidence présidentielle, lorsque vous êtes retournés la deuxième fois ? R. [15:25:21] Bon, la deuxième fois, quand on est retournés... quand je suis retourné, on a passé la nuit sans heurts. Matin, la résidence a été attaquée. Voilà, et c'est... dans la défense, là, que j'ai... que j'ai connu le commandant Séka. Voilà. Q. [15:25:41] Et à ce moment-là, est-ce qu'il y avait d'autres unités du FDS qui étaient présentes également ? R. [15:25:50] Il y avait des militaires qui étaient là.” P-0483, T-101-FRA, pp. 66-67: “[14:36:44] Enfin, disons que vous étiez responsable de la sécurité du Président, vous fournissiez les services de sécurité du Président ; alors, que faisiez-vous exactement pour assurer sa sécurité ? R. [14:36:57] Eh bien, s'il y avait des assaillants autour de la résidence, on faisait quelque chose, on essayait de les repousser. Q. [14:37:05] Et y avait-il un endroit bien précis dont vous étiez chargé près de la résidence ? R. [14:37:11] Oui. Tous les alentours de la présidence... de la résidence (se reprend l'interprète) à Cocody, la RTN... RTI et la gendarmerie. \*Nous n'avons pas traversé vers des zones plus éloignées. [14:37:53] Et vous parlez de votre groupe de Libériens ; alors, vous étiez entre vous ou il y avait d'autres personnes, lorsque vous étiez en train de travailler dans ces alentours, comme vous dites ? R. [14:38:09] Oui. Oui, oui, on était accompagnés du capitaine Zoh qui était, en fait, l'adjoint de Séka Séka. Donc, si Séka Séka n'était pas disponible, c'était Zoh qui allait avec nous. C'est tout.”

<sup>735</sup> P-0009, T-194-FRA, p. 25, lines 8-27.

<sup>736</sup> P-0164, T-164-CONF-FRA, p. 18: “R. [10:17:36] Dire qu'il n'y avait pas du tout de possibilité de les sanctionner, mais ils étaient très peu sanctionnés parce qu'ils étaient plus écoutés que nous-mêmes. Q. [10:17:54] Mais qui les écoutait ? R. [10:17:56] Le chef de corps, le commandant BASA, et comme le commandant BASA avait une très grande influence sur tous ceux qui étaient officiers au BASA, qui pouvait oser dire non à ce qu'il disait ? Je pense pas, parce que si vous dites non soit c'est votre carrière, soit c'est votre vie.”

<sup>737</sup> P-0009, T-196-CONF-FRA, p. 81. P-0316, T-182-CONF-FRA, p. 75.

328. The State has an obligation to protect civilians whose lives are at risk from the criminal acts of non-State actors. In the case at hand, the State apparatus's failure to take any preventive measures to avoid the commission of the crimes against the targeted population is *prima facie* evidence of the State policy.<sup>738</sup> Moreover, in the light of the evidence adduced at trial, there is evidence that the State apparatus headed by Mr Gbagbo in fact supported these non-State actors and even relied upon them for the implementation of the State policy. Most significantly, evidence indicates that non-State actors were mobilised, recruited and incorporated into the FDS before and during the post-election violence. Accordingly, a reasonable Trial Chamber could conclude that the State policy included non-State actors who were actively involved in its implementation.

#### 9. Other armed groups

329. As noted above, there is evidence in the record that armed groups, including the *Forces Nouvelles* and the *Commando Invisible*, were operating in Côte d'Ivoire and specifically in some areas of Abidjan (namely Abobo) during the post-election violence. The Prosecutor has also conceded that these and other armed groups were present in Abidjan at the relevant time.<sup>739</sup> All parties agree that the *Commando Invisible* used guerrilla warfare and concealed itself within the civilian population.<sup>740</sup> In fact, the Prosecutor's theory as regards actions in Abobo accepts that the *Commando Invisible* was present in Abobo and that Mr Gbagbo gave instructions to remove them from the area.<sup>741</sup> Thus, the fact that the violence between the FDS and other armed groups may

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<sup>738</sup> ECtHR, *Mastromatteo v. Italy*, Judgment, 24 October 2002, para. 68. The court held that the State's obligation extends beyond its primary duty to secure the right to life. A positive obligation will arise where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. See also Article 4 of the African Charter on Human and Peoples' Rights, 27 June 1981.

<sup>739</sup> T-221-CONF-ENG. See also Prosecutor's Response, ICC-02/11-01/15-1207-Conf-Anx1, paras. 363-381.

<sup>740</sup> Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, paras. 24 and 82; Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, paras. 632-638; Prosecutor's Response, ICC-02/11-01/15-1207-Conf-Anx1, para. 364. See also the Prosecutor's submissions at T-221-CONF-ENG and the submissions of the Defence for Mr Blé Goudé at T-226-CONF-ENG and T-227-CONF-ENG.

<sup>741</sup> P-0011, T-134-CONF-FRA, pp. 71-72. P-0010, T-139-CONF-FRA, pp. 77-83. P-0009, T-193-FRA, pp. 74-75; T-195-CONF-FRA, pp. 83-84; T-196-CONF-FRA, pp. 36-37 and 60-62. P-0239, T-167-FRA, pp. 57-58, 92-93.

have amounted to armed conflict does not exclude the possibility that crimes against humanity were committed.<sup>742</sup>

330. The area of contention is therefore the following. On the one side, the Prosecutor alleges that the *Commando Invisible* did not have total control of Abobo,<sup>743</sup> while on the other side the Defence contends that it did.<sup>744</sup> The Prosecutor contends that there was a policy to attack the civilian population, whereas the Defence contends that the FDS and other non-State agents were acting in self-defence. Regardless of whether or not there were other armed groups active in the area, the principles of distinction and proportionality still apply. The question whether a military advantage could have been achieved from an attack requires an assessment of whether it was reasonable to believe, in the circumstances of the persons contemplating the attack in the instant case, on the basis of information available to them, that there was an effective contribution to a military action and that there was a legitimate military objective.<sup>745</sup>
331. As noted above, it is relevant to highlight that Philippe Mangou stated that Mr Gbagbo had financed (perhaps accidentally) the *Commando Invisible*.<sup>746</sup> Philippe Mangou stated that, instead of conducting operations in the north-east, the armed group financed by Mr Gbagbo (the *Commando Invisible* led by IB) had gone straight down to the south-east to conduct operations in Abobo.<sup>747</sup> Evidence also suggests that, contrary to the Defence's contention, the *Commando Invisible* protected the population in Abobo from the attacks of the official forces.<sup>748</sup>
332. It is also significant that the evidence in the record indicates that actions of other armed groups against the FDS were not new to the State apparatus. As the Defence pointed out in their submissions, Mr Gbagbo had dealt with actions led by Mr Ouattara since

<sup>742</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG.

<sup>743</sup> Prosecutor's Response, ICC-02/11-01/15-1207-Conf-Anx1, paras. 363 *et seq.*

<sup>744</sup> Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, para. 25; Gbagbo Submission of No Case to Answer, ICC-02/11-01/15-1199-Conf-Anx3, para. 220.

<sup>745</sup> *Karadžić* Appeals Judgment, paras. 488-489.

<sup>746</sup> P-0321, T-61, p. 82, lines 24-25; P-0106, T-116, p. 33, lines 14-15; P-0011, T-135, p. 69, lines 16-17; P-0010, T-140, p. 20, lines 8-9; P-0046, T-127, p. 18, line 11; P-0625, T-29, p. 6, line 14; P-0414, T-75, p. 48, line 16.

<sup>747</sup> P-0009, T-197 CONF-FRA, p. 31, lines 11-28; p. 32, lines 1-28; p. 33, lines 1-8.

<sup>748</sup> P-0106, T-116, pp. 33-34; P-0414, T-76, p. 47, lines 12-13.

1999.<sup>749</sup> The Prosecutor's evidence also supports allegations that, at least as of 2002, Guillaume Soro emerged as the leader of a rebel group.<sup>750</sup> As noted by the Defence, the FDS were thus aware that, in their operations, they had the obligation to ensure that civilians would not be the victims of armed confrontations between the FDS and other groups.<sup>751</sup>

333. As noted repeatedly above in the context of the incidents relevant to the case, even if there were armed groups in Abidjan carrying out operations within the civilian population, this does not negate the civilian status of the victims<sup>752</sup> – in particular since, as noted in the analysis of each incident and each count, the identified victims were all unarmed.<sup>753</sup> The key element to analyse is whether, despite the presence of armed groups and the existence of guerrilla warfare, and notwithstanding FDS knowledge of the applicable rules protecting civilians: (a) the civilian population was deliberately targeted; (b) precautionary measures were not taken to protect civilians; and (c) no investigations were opened nor sanctions imposed as a result.

334. The first element – whether the civilian population was targeted – has already been analysed above under each incident and each charge. However, it must be reiterated that the use of lethal force against a civilian population is unjustifiable and

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<sup>749</sup> T-226-CONF-FRA, p. 4: “*Le Procureur reproche à Laurent Gbagbo d’avoir, comme il le dit — comme le Procureur le dit — ‘diabolisé’ Alassane Ouattara. Et je vous donne un exemple au paragraphe 1211 de sa réponse, par exemple. Et l’exemple que prend le Procureur, c’est quand il rappelait qu’Alassane Ouattara, quand Laurent Gbagbo rappelait qu’Alassane Ouattara était responsable des tentatives des coups d’État qui secouent la Côte d’Ivoire depuis 1999.*” See also Mr Gbagbo’s speech in Agboville in November 2010, where he mentions that Mr Ouattara has been responsible for a number of attempted coups since 1999: video, campaign rally in Agboville, CIV-OTP-0063-2801 (transcript, CIV-OTP-0063-3256); corroboration as to date and location can be found in the following media article: CIV-OTP-0064-0204.

<sup>750</sup> P-0048, T-53-FRA, p. 35.

<sup>751</sup> T-224-CONF-FRA: “*Et qu’ont dit aussi les témoins du Procureur, Monsieur le Président, Madame, Monsieur ? Ils ont indiqué que les interventions de l’armée et de la police avaient été faites selon les règles, que le droit international humanitaire avait été respecté et que toutes les mesures avaient été prises, en toutes circonstances, pour que les civils ne soient pas les victimes de la guerre qui faisait rage entre les rebelles et les autorités républicaines.*” The evidence of insider witnesses, particular Philippe Mangou, is relevant. He stated that he and other FDS officers had insisted that civilians should be evacuated before starting the operations in Abobo at the end of February 2011. P-0009, T-193-FRA, pp. 85-88, and T-194-FRA, pp. 69-80; P-0011, T-135-CONF-FRA, pp. 68-69, and T-136-CONF-FRA, pp. 51-52; P-0047, T-203-FRA, pp. 34 and 43.

<sup>752</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1105. ICTY, *Limaj* Trial Judgment, para. 186; *Kordi and erkez* Trial Judgment, para. 180; *Tadi* Trial Judgment, IT-94-1-T, 7 May 1997, paras. 638-643; *Blaški* Appeals Judgment, paras. 113 and 214. ICTR, *Kayishema and Ruzindana* Trial Judgment, para. 128; *Rutaganda* Trial Judgment, para. 72; *Musema* Trial Judgment, para. 94. MICT, *Šešelj* Appeals Judgment, paras. 60 and 69.

<sup>753</sup> ICTY, *Strugar* Trial Judgment, para. 284.

unnecessary.<sup>754</sup> This applies regardless of whether protestors are taking part in an unauthorised march (as in the case of the March on RTI), whether armed men are present among the civilians (as contended by the Defence in relation to the March on RTI and the Women’s March), or whether armed groups are present in the area (as contended by the Defence in relation to the incident of 17 March 2011 and the two incidents in Yopougon).

335. The evidence in the record suggests that the actions of the FDS together with other State and non-State actors, with the objective of keeping Mr Gbagbo in power, were illegal and were not actions of “*maintien de l’ordre*” or in defence of a “*République*” or democratic values. As regards the March on RTI, the evidence analysed above indicates that the dispersal of the marchers by lethal force was unnecessary and unjustifiable. The rape of women in the RTI context cannot be in any way justified. In the context of the Women’s March, as noted above, the death of seven women and the wounding of others was equally unnecessary and unjustifiable. In relation to the incident of 17 March 2011, the shelling of a densely populated residential area (including a market) was once again unnecessary and unjustifiable. As regards the two incidents in Yopougon, the evidence analysed above indicates that all the identified victims were unarmed civilians, many of whom were killed, injured or raped in their homes, in residential areas or in other civilian locations (such as mosques). Accordingly, the involvement of the FDS, together with non-State actors, was equally unjustified and unnecessary.
336. The Defence allegation that the use of lethal force was a lawful measure of self-defence in the context of the post-election violence is not persuasive without further evidence. The evidence in the record supports allegations that the State apparatus murdered, injured, raped and unnecessarily targeted its citizens without fear of sanction. When such conduct occurs, the State apparatus in question acts against the fundamental values of a democratic society,<sup>755</sup> and those heading it must be held accountable.

<sup>754</sup> ECtHR, *Güleç v. Turkey*, paras. 71, 73.

<sup>755</sup> ECtHR, *McCann and Others v. the United Kingdom*, Judgment, 27 September 1995, para. 149; *Tagayeva and Others v. Russia*, Judgment, 13 April 2017, para. 595. The court held that the use of lethal force remains governed by the strict rules of “absolute necessity” within the meaning of Article 2 of the European Convention, to avoid unnecessary harm.

337. There is evidence in the record that the *Forces Nouvelles* and other rebel groups, when they advanced to Abidjan at the end of March 2011,<sup>756</sup> committed crimes against the civilian population, in particular against Gbagbo supporters. It is a fundamental obligation on the part of the State of Côte d'Ivoire and on the part of the Prosecutor, subject to the principle of complementarity, to investigate and prosecute such alleged crimes. However, in the case at hand, the accused cannot take this alleged fact as an excuse to deny the existence of all the victims in the case (considering them all to be “rebels”) with the aim of exonerating the State apparatus headed by Mr Gbagbo from its own misdeeds and shielding the accused from individual criminal responsibility for crimes committed.

*10. Failure to investigate and to prevent the commission of crimes*

338. As noted above, evidence also supports allegations that the State apparatus led by Mr Gbagbo failed to investigate and to prevent the violence against the civilian population.

339. More specifically, as regards the March on RTI, there is evidence that the top FDS hierarchy was informed of the alleged crimes committed and still did not seriously investigate. Evidence shows that Mr Gbagbo was informed of civilian casualties that same day.<sup>757</sup> However, in his New Year's speech, Mr Gbagbo denied the civilian status of the victims, placing the emphasis solely on FDS casualties and the presence of rebels.<sup>758</sup> Although in that same speech Mr Gbagbo said that he would create an impartial Commission of Inquiry (and a decree was signed to that effect),<sup>759</sup> the evidence indicates that this investigation did not take place and that the FDS denied any responsibility even before the creation of a Commission of Inquiry. Georges Guiai Bi Poin was shown his response denying any FDS responsibility in reaction to a letter of the United Nations High Commissioner for Human Rights (“UNHCHR”). Although he first stated that he had asked a subordinate to report back on the incident, upon

<sup>756</sup> P-0520, T-52-CONF-FRA, pp. 59-60; P-0009, T-197, p. 12, lines 24-26; P-0011, T-136, CONF-FRA, p. 21, lines 5-12.

<sup>757</sup> P-0009, T-196-CONF-FRA, p. 24.

<sup>758</sup> Video, CIV-OTP-0026-0024 at 31:07-43:10 and 01:08:35-01:21:45 (excerpts from RTI broadcasts of 31 December 2010 at 13.00 and 20.00; transcript CIV-OTP-0052-0550 at 0565-0566, lines 500-598; at 0578-0579, lines 1032-1081).

<sup>759</sup> CIV-OTP-0045-0379 at 0383-0385: DGNP document dated 16 and 21 February 2011. These are letters from P-0046 to the Deputy Director General of Public Security (no. 0390) and from the president of the “International Commission for the Investigation of Allegations of Violations of Human Rights in Côte d'Ivoire” to the Minister of the Interior.

confrontation he confirmed that he had never received a report on any result of the Commission of Inquiry.<sup>760</sup> Édouard Kassaraté confirmed in court that he had never received such a report either.<sup>761</sup>

340. In relation to the incident of 25-28 February 2011, there is evidence that civilian deaths were reported within the FDS.<sup>762</sup> In fact, the evidence analysed above supports the allegation that the FDS were involved in the violence against unarmed civilians, including persons taking part in Friday prayers at the Lem mosque.<sup>763</sup> However, there is no evidence that the FDS or Mr Gbagbo's government took any action to investigate.

341. Evidence adduced indicates that the incident of the Women's March was also not seriously investigated<sup>764</sup> and was dismissed out of hand by Mr Gbagbo's government.<sup>765</sup> When asked about the investigation which he had allegedly ordered, Philippe Mangou ultimately admitted that no investigation had taken place:

*[12:32:59] À votre connaissance, est-ce qu'il y a eu une enquête, par la suite, pour voir si des femmes étaient mortes, outre le fait de votre enquête interne demandant à M. Détoh Léto ? Est-ce qu'il y a une enquête qui est allée au-delà de cela pour déterminer si, effectivement, il y avait des femmes qui étaient mortes ? R. [12:33:22] Nous, nous avons demandé qu'une enquête soit faite. Je crois que si l'enquête avait été effectivement faite, on*

<sup>760</sup> P-0010, T-139-CONF-FRA, pp. 42-43. CIV-OTP-0094-0305 at 0313-0314: letters from UNHCHR dated 31 December 2010 and responses thereto. P-0010 (T-139; T-140; T-142) confirmed that he had received this letter in January 2011. He had written a response and found it some time ago after consulting with his former secretaries. He had received a further letter afterwards, and a visit from several UNOCI officials, who were in constant contact with P-0010 during the post-election violence. When P-0010 received the letter from the UNHCHR, he sought further information and asked a subordinate, Captain Katy Bi, to investigate before responding. P-0010 said, however, that he did not know if there had ever been a written report back. At page 0315, P-0010 recognised his response to the UNHCHR.

<sup>761</sup> P-0011, T-134-CONF-FRA, p. 57: "*Q. [14:50:59] Je parle de la Commission d'enquête internationale créée en Côte d'Ivoire par le Président Laurent Gbagbo le 7 janvier 2011. Alors ma question : est-ce que vous avez reçu un rapport ou des résultats des... de ces enquêtes, de cette commission ? R. [14:51:18] Ah, d'accord, je vous comprends. Non je n'ai pas reçu de rapport de cette commission.*"

<sup>762</sup> See police report and testimony of P-0440, CIV-OTP-0046-0029, analysed above.

<sup>763</sup> P-0046 (T-126-CONF-FRA, p. 73) and P-0440 (T-157-CONF-FRA, p. 73) testified that the police in the 16th *arrondissement* had grenades. P-0442 (T-19-CONF-FRA, p. 87; T-20-CONF-FRA, pp. 9-13 and 29) and P-0436 (T-148-FRA, pp. 20-22 and 44-46) confirmed that the police used tear gas and grenades, while P-0459 (T-151-CONF-FRA, pp. 70-71) and P-0440 (T-157-CONF-FRA, p. 93, and T-158-CONF-FRA, p. 87) also made reference to tear gas. P-0441, at T-35-CONF-FRA, pp. 63-64, said that CECOS had participated in the attack. P-0442 (T-19-CONF-FRA, pp. 86-87; T-20-CONF-FRA, pp. 8-14) said that the police had also participated in the attack. P-0441 (T-35-CONF-FRA, pp. 37-39, 62-88; T-36-CONF-FRA, pp. 15-18 and P-0433 (T-147-CONF-FRA, pp. 32-33) testified that CECOS and the Republican Guard had been involved in the attack on the Lem Mosque.

<sup>764</sup> CIV-OTP-0045-0173. CIV-OTP-0045-0184, BQI of 3 March 2011, makes no reference to the Women's March incident. See also BQI dated 3 March, CIV-OTP-0046-0294.

<sup>765</sup> Video, CIV-OTP-0026-0018 at 00:10:34-00:13:03 (excerpt from RTI broadcast of 4 March 2011 at 20:00; transcript, CIV-OTP-0051-2220 at 2226-2227, lines 187-214); P-0009, T-196-CONF-FRA, pp. 49-56, on the reading of a government communiqué related to the Women's March. P-0009 confirmed that there had never been any sanctions or investigations in relation to the Women's March.

*aurait été informés des résultats. Mais on n'a pas été informés du résultat, donc, je suppose qu'il n'y a pas eu d'enquête. Q. [12:33:39] Est-ce que vous avez été informé, à quelque moment que ce soit, depuis les événements, si des éléments avaient été punis, donc, entre le 3 mars et le 11 avril 2011 ? R. [12:33:51] Non.*<sup>766</sup>

342. As regards the shelling in Abobo on 17 March 2011, there is evidence that the use of mortar shells as a result of the operation ordered on 24 February 2011 was reported directly to Mr Gbagbo.<sup>767</sup> There is also evidence that despite the reports and media coverage, no serious investigation took place and that the government again rapidly denied any responsibility. The State apparatus led by Mr Gbagbo also denied the civilian status of the victims.<sup>768</sup>
343. As noted in the analysis of other incidents, in Section 3 above, evidence also suggests that no investigation took place. No FDS officers appear to have been investigated; nor do any appear to have been sanctioned for crimes of murder, rape or ill-treatment, or for any other acts of violence committed against unarmed civilians during the post-election violence.
344. In this regard, the ECtHR has held that State authorities have a positive obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.<sup>769</sup> In the case at hand, evidence suggests that the State apparatus led by Mr Gbagbo did not prevent the violence committed against civilians. The implementation of the State policy may be inferred from the failure to take any measures genuinely and impartially to investigate or punish the crimes committed against civilians.

<sup>766</sup> P-0009, T-196-CONF-FRA, pp. 56-57. See also the report from the Military Tribunal of Abidjan, 24 March 2011, CIV-OTP-0001-0285. The document calls for an investigation into the Women's March and the Abobo shelling. P-0011 (T-134) said that he was aware of this document (although no investigation had ever taken place, as noted by Philippe Mangou). See also testimony of P-0607 (T-170-CONF-FRA, pp. 74-75), who confirmed that no one had been investigated or punished for this incident.

<sup>767</sup> P-0009, T-196-CONF-FRA, p. 45, lines 1-23; p. 47, lines 4-7.

<sup>768</sup> P-0047, T-206-FRA, p. 49. P-0047, T-204-CONF-FRA, pp. 19-22. P-0239, T-167-FRA, pp. 80-81; T-168-FRA, p. 69. Video, CIV-OTP-0069-0374 at 00:07:30-00:08:06 (communiqué of Ahoua Don Mello; excerpt from RTI broadcast of 18 March 2011 at 20:00; transcript, CIV-OTP-0088-0047 at 0048-0049, lines 41-45). Video, 22 March 2011, CIV-OTP-0069-0376 at 00:06:30-00:11:40 (excerpt from RTI broadcast of 22 March 2011 at 20:00; transcript, CIV-OTP-0102-2054 at 2055-2056, lines 1-57).

<sup>769</sup> ECtHR, *Branko Tomaši and Others v. Croatia*, Judgment, 15 January 2009, 46598/06, paras. 50, 51. The court stated that "a positive obligation will arise where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."

### C. Widespread or systematic character of the attack

345. As noted above, civilians were murdered, raped and subjected to inhumane treatment during the post-election violence. The exact number of victims may never be determined. However, for the purpose of the submissions of no case to answer, an analysis of the identified victims per charge and per incident is undertaken in Section 4 below. According to that analysis, a significant number of victims have been identified for the five main incidents, namely at least 101 victims of murder, 11 victims of rape, 71 victims of attempted murder and 18 victims of inhumane acts. Moreover, evidence related to other incidents analysed above is also relevant to demonstrating the widespread nature of the attack, not only because additional victims are identified, but also, and mainly, because the evidence supports allegations that the violence was widespread and was inflicted on unarmed civilians who were killed and injured.<sup>770</sup> Evidence also shows that, apart from suffering loss of life, physical injuries and emotional harm, civilians suffered material loss as a result of shelling, raids and the pillaging of their homes, shops and mosques. Evidence analysed under the “other incidents” indicates that at least 24 unarmed civilians were killed and at least 32 other unarmed civilians were injured as a result of these incidents. There is also evidence analysed above that indicates that there were other instances of shelling and that homes and shops were raided and pillaged. There is also evidence of attacks on mosques.
346. However, it is unnecessary to focus on exact numbers for the purpose of the contextual elements under article 7 of the Statute, as the essence of the “widespread” character of an attack results very often in victims’ not being identified or accounted for.<sup>771</sup> The evidence in the record indicates that criminal acts against civilians occurred in a time frame of approximately four months and affected significant parts of Abidjan, a city which is home to a population of over 3 million inhabitants and includes the densely-populated district of Abobo. Moreover, there is evidence suggesting that the number of victims was most likely greater than the number of identified victims

<sup>770</sup> See the section above in which “other incidents” in addition to the five main incidents are analysed.

<sup>771</sup> ICTR, *Kayishema and Ruzindana* Trial Judgment, para. 402: “The Trial Chamber has made a finding with regard to the number of the Tutsis Present at the Church. Therefore, in light of the testimony that most of the persons assembled at the Church were slaughtered, the Trial Chamber deems it unnecessary to focus on exact numbers. Suffices to say we find that thousands of persons massacred at this site and therefore the Prosecution has met its burden beyond a reasonable doubt regard to this allegation.” See also ICTY, Trial Chamber, *Prosecutor v. Naser Oric*, “Judgement”, (“*Oric* Trial Judgment”), 30 June 2006, IT-03-68-T, para. 27.

analysed in Section 4, below. The evidence relating to the existence of mass graves and records indicating that more than 700 bodies were examined by forensic experts at the time of the post-election violence, in addition to other evidence in the record supporting these allegations,<sup>772</sup> could lead a reasonable Trial Chamber to conclude that the attack was “widespread”.

347. Moreover, as noted above, there is sufficient evidence supporting allegations that the attack was systematic. The evidence is indicative of a policy that was implemented by the State apparatus headed by Mr Gbagbo. As President and Supreme Commander of the armed forces of Côte d’Ivoire, Mr Gbagbo did not act alone. Evidence analysed above shows that high-level political authorities and top military commanders were involved. There is also evidence that the State apparatus employed considerable military resources and that this included the use of weapons of war in urban areas. Evidence above also supports allegations that non-State actors, particularly *Jeunes Patriotes* militias, received financial, military and other resources as part of the implementation of the State policy. Most importantly, evidence indicates that these private elements were mobilised and instructed by the State, and that they acted with the State’s support, agreement and acquiescence.
348. Evidence shows that the crimes were mainly committed directly by the FDS or the *Jeunes Patriotes*. The evidence also suggests that the State apparatus headed by Mr Gbagbo did nothing to prevent the attacks on unarmed civilians and that no serious investigations were carried out to sanction those responsible. There is also evidence, analysed above, that the State media, namely RTI, was used to implement the State policy. The State apparatus used RTI to mobilise and instruct the *Jeunes Patriotes* and to systematically deny the existence of any civilian victims or FDS wrongdoing. The evidence also indicates that human rights violations followed a pattern in that they were committed against unarmed civilians who were targeted for their perceived affiliation with Mr Ouattara. The fact that this violence was committed in many instances by State agents or under the auspices of the State, in clear violation of the State’s duty to protect civilians, is crucial. As noted above, the State itself, with its legal framework and power structure, provided the systematic element for the attack. Accordingly, a reasonable

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<sup>772</sup> See, above, the testimony of P-0369 and corresponding report on the existence of mass graves in Yopougon.

Trial Chamber could conclude that the attacks were not accidental or isolated, but preconceived by a State apparatus that wanted to keep Mr Gbagbo in power in the context of the post-election violence. A reasonable Trial Chamber could therefore conclude that the attack was systematic.

#### **D. Nexus and knowledge of the attack**

349. Although the accused's knowledge and intent will be further analysed in Section 5 below, it is relevant to examine here the nexus and knowledge aspects of the contextual elements of article 7 of the Statute. It must be stressed that it is not necessary to prove that the accused had knowledge of the details of the attack. It is the attack, not the individual acts of the accused, which must be directed against the targeted population.<sup>773</sup>
350. On the evidence analysed above, Mr Gbagbo received information about the crimes committed against civilians, either directly or through his subordinates. It is important to recall that Philippe Mangou confirmed that he had always taken orders directly from Mr Gbagbo and that he had reported back to him either directly or via his Minister of Defence. Although Mr Gbagbo delegated some tasks to his subordinates, they always reported back. As noted above, there is evidence that Mr Gbagbo held meetings with high-ranking FDS officers and members of his cabinet during the post-election violence. More specifically, evidence analysed above supports allegations that Mr Gbagbo's instructions in meetings with his subordinates resulted in operations in the course of which the FDS committed crimes against unarmed civilians (namely the incidents of the March on RTI of 16-18 December 2010, the Women's March of 3 March 2011 and the shelling of Abobo on 17 March 2011). The legal framework in place during the post-election violence, together with the testimonial and documentary evidence in the record examined above, indicates that Mr Gbagbo had full knowledge of those operations. Evidence suggests – and this has never been contested by the Defence – that Mr Gbagbo was at all times in Abidjan until his arrest on 11 April 2011. With the exception of the attack of 12 April 2011, Mr Gbagbo was in close geographical proximity to the attacks and was on notice of the crimes committed by the FDS under his command.

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<sup>773</sup> ICTY, *Karadžić* Trial Judgment, para. 479.

351. As analysed above, the evidence indicates that throughout the post-election violence and until his arrest on 11 April 2011, Mr Gbagbo had control over his government and over the FDS. The evidence above supports the allegation that Mr Gbagbo had the authority in law and the ability in fact to issue orders, including the authority to prohibit attacks against the civilian population. Evidence above supports allegations that the FDS-led violent repression of unarmed civilians on 16 December 2010 resulted from Mr Gbagbo's instructions to prohibit the demonstration organised by the political party of Mr Ouattara. It was Mr Gbagbo's duty as President and Supreme Commander of the FDS to order an effective investigation and prevent further violence against civilians. However, the evidence analysed above indicates that investigations did not take place and that the violence continued to be perpetrated and continued to be ignored by Mr Gbagbo and the State apparatus under his command. Evidence referred to above likewise incriminates the FDS in the murder and injury of unarmed women who demonstrated on 3 March 2011 against Mr Gbagbo's government. Once more, evidence indicates that this act of violence perpetrated by the FDS targeted Mr Ouattara's supporters and was dismissed out of hand by the State apparatus. Similarly, evidence supports allegations that the unlawful shelling of the densely populated residential area of Abobo on 17 March 2011, which also resulted in the death and injury of unarmed civilians, including children, was dismissed out of hand by the State apparatus without any serious investigation, despite reports of FDS involvement.

352. As noted above, there is evidence that, in December 2010, the UNHCHR informed Vagba Faussignaux, Georges Guiai Bi Poin and Dogbo Blé of crimes allegedly committed by the FDS during the March on RTI.<sup>774</sup> Additionally, there is evidence that

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<sup>774</sup> CIV-OTP-0094-0305 at 0313-0314: letters addressed by UNHCHR on 31 December 2010 and responses thereto, at 0309 (addressed to Dogbo Blé and specifically mentioning the commission of crimes by the GR in the context of the March on RTI of 16 December 2010), and at 0313 (Dogbo Blé's response dated 06 January 2011). P-0010 (T-139, T-140, T-142) confirmed that he had received this letter in January 2011. He had written a response to it, which he found some time ago after consulting with his former secretaries. He had received a further letter afterwards, and a visit from four or five UNOCI officials who were in constant contact with P-0010 during the crisis. Upon receiving the letter from the UNHCHR, P-0010 had sought further information and asked a subordinate, Captain Katy Bi, to investigate before responding. P-0010 did not know if there was a written report. At page 0315, P-0010 recognised his response to the UNHCHR. Regarding page 0317, P-0010 said in court that he had not investigated any further the events of 16 December because the matter did not concern him. P-0010 said that after he had instructed Captain Katy Bi to investigate the matter he had approached the Prosecutor to inform him, but that it was up to him to take action. At page 0311, P-0010 said that he had not received from the United Nations the reports referred to in their letter. As regards the United Nations teams allegedly investigating in the field, P-0010 said that he could not confirm whether those investigations had taken place. He received a visit from UNHCHR staff after he sent the response to this letter.

the UNHCHR sent further correspondence to Vagba Faussignaux in relation to the blockade of the Golf Hotel.<sup>775</sup> The evidence analysed above suggests that these communications were ignored, since no investigations took place and the implementation of the State policy continued and, moreover, intensified.<sup>776</sup> In fact, it would be inconceivable to conclude that the information on these crimes reported by the United Nations to Mr Gbagbo's subordinates would have been withheld from him by his subordinates, who reported to him during the post-election violence.<sup>777</sup> The evidence above also indicates that, by February 2011, Philippe Mangou, Édouard Kassaraté and Georges Guiai Bi Poin were aware of their possible criminal liability before the International Criminal Court and sought legal advice in this regard.<sup>778</sup> Thus, it is reasonable to infer that they were aware, at least generally, of the contextual elements and modes of liability possibly applicable to them for the crimes being committed by the FDS at the time. Regard being had to the reporting lines, but also to the personal relationships, between these FDS generals and Mr Gbagbo (analysed above), it would be reasonable to infer that Mr Gbagbo was aware of his possible criminal liability for his acts and omissions as Head of State.

353. Mr Gbagbo, who claimed to be the legitimate President of Côte d'Ivoire, was also the Supreme Commander of the FDS, and, as noted above, had excellent knowledge of armed operations and the military in general. Accordingly, evidence indicates that Mr Gbagbo failed to fulfil his obligation to protect the right to life of citizens and to give instructions to initiate effective investigations against FDS officers for crimes allegedly committed. On the contrary, evidence shows that, via his spokesperson or Ministers, Mr Gbagbo rapidly dismissed all allegations as false, labelling all civilian casualties as rebels. Even if, as alleged by the Defence, there were some armed elements mixed in with the civilian population during the post-election violence, the indiscriminate use of

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P-0010 said that the United Nations representatives contacted him rather regularly during the post-election violence about the activities of CECOS. P-0010 could not remember the names of those United Nations representatives. P-0010 said that he had only sent that letter to the UNHCHR.

<sup>775</sup> CIV-OTP-0094-0305 at 0313-0314. Letters of UNHCHR on 31 December 2010 and responses thereto; at 0307, letter addressed to Vagba Faussignaux.

<sup>776</sup> This is shown by the use of heavy weaponry as of 24 February 2011 and in particular during the incidents of 3 March 2011 and 17 March 2011.

<sup>777</sup> *Karadžić* Appeals Judgment, paras. 620 and 642.

<sup>778</sup> There is evidence of an alleged meeting between these three high-level FDS officers and a French lawyer to discuss this matter and sanctions imposed by the European Union. While P-0011 (T-134-CONF-FRA, pp. 70-71) claimed not to remember this meeting, P-0010 did remember it and confirmed that it had taken place (T-139-CONF-FRA, pp. 74-75).

lethal force and heavy weaponry against unarmed civilians is unjustifiable in a democratic society.<sup>779</sup> The extent of the violation of human rights described above proves that the incidents were not spontaneous acts. Most significantly, this violence can be traced to the State.<sup>780</sup> That State was personified in Mr Gbagbo, who was its head, and the policy of the State was to keep him in power.

354. Given that the crimes described above were widespread and systematic, and that they were not investigated or prevented by Mr Gbagbo's government, it would be reasonable to conclude that Mr Gbagbo knew that these crimes were part of the State policy to keep him in power. It is important to note that the evidence in the record indicates that victims were unarmed civilians supporting or perceived as supporting Mr Gbagbo's political opponent. Thus, a reasonable Trial Chamber could conclude that Mr Gbagbo was aware of the impact his orders would have on civilian lives, particularly given his unwillingness to follow suggestions by his subordinates to allow a civilian evacuation of Abobo, coupled with his orders (and insufficient prevention) on 24 February 2011. In sum, evidence suggests that Mr Gbagbo took no action to prevent the FDS from committing similar crimes in the future, and that he took no serious steps to investigate the crimes committed. Accordingly, there is evidence upon which a reasonable trier of fact could be satisfied that Mr Gbagbo knew that his conduct (which encompassed both actions and omissions) was part of, or intended his conduct to be part of, a widespread and systematic attack.<sup>781</sup>

355. Similarly, on the evidence analysed above, Mr Blé Goudé was involved from the outset in the implementation of the State policy in his dual role as Minister of Youth and President of the *Jeunes Patriotes* – “*Le Général*”. His connection to the State apparatus led by Mr Gbagbo, and to the State policy aimed at keeping him in power, is substantiated by evidence in the record. Mr Blé Goudé's systematic appearance on RTI is telling: it suggests that the government headed by Mr Gbagbo promoted Mr Blé

<sup>779</sup> See ECtHR, *Benzer v. Turkey*, para. 184.

<sup>780</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 345.

<sup>781</sup> *Ntaganda* Trial Judgment, ICC-01/04-02/06-2359, para. 1171. The Trial Chamber determined in that case: “Noting Mr Ntaganda's position within the UPC/FPLC, his presence in the relevant area at the beginning of the First Operation, as well as his personal conduct, notably the specific orders he conveyed to UPC/FPLC soldiers, the Chamber concludes beyond reasonable doubt that he intended the acts of killings, rapes, sexual slavery, forcible transfer, and persecution, perpetrated by the UPC/FPLC soldiers to be part of the widespread and systematic attack against the civilian population [footnotes omitted]”.

Goudé's image as a youth leader and as a Minister, and it demonstrates State sponsorship and support given to Mr Blé Goudé's calls for mobilisation and "*mots d'ordre*". The nexus between Mr Blé Goudé and the State policy is also evidenced in his call for mobilisation at the CEMA headquarters, described above, since it reveals that Mr Blé Goudé's actions were closely linked to the State policy. Mr Blé Goudé's interviews in which he accepted the role of opinion leader and compared the post-election violence to historic revolutions also indicate that he knew his actions were part of a broader systematic plan; while he portrayed those actions as efforts to save the "*République*", they were in essence – on the analysis developed throughout this opinion – aimed at keeping Mr Gbagbo in power.<sup>782</sup> Mr Blé Goudé's last televised message in April 2011 also shows the nexus between Mr Blé Goudé and Mr Gbagbo and the State policy to keep him in power. It also demonstrates Mr Blé Goudé's awareness of his status as leader of the youth who were working together with the FDS to implement the State policy. The following passage is illuminating:

*Pour l'heure, l'Armée est en train de faire des ratissages et 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. Car personne d'autre que nous-mêmes ne viendra libérer la Côte d'Ivoire. [...] On me demandait hier, sur un chaîne internationale [...] si Gbagbo Laurent était encore à son domicile. Mais, je n'avais pas besoin de leur répondre, parce qu'ils savent très bien que Gbagbo Laurent n'est pas un fuyard [...] Non, je ne suis pas un fuyard. Charles Blé Goudé est bel et bien là où il doit être. [...] 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.*<sup>783</sup>

356. Mr Blé Goudé's rhetoric in his speeches, in which he compared the post-election violence to a revolution and to a "difficult birth" and referred to the inevitable "collateral damage", could also lead a reasonable Trial Chamber to infer that he had knowledge of the link between his actions and the crimes being committed against the civilian population. The hate speech used by Mr Blé Goudé in rallies and on RTI, as a leader of non-State actors (namely the *Jeunes Patriotes*), his calls to the youth to mobilise, his encouragement of them to erect roadblocks (and to be suspicious of outsiders and obstruct United Nations operations in Côte d'Ivoire), and his instructions to them to await his *mot d'ordre* are all factors to consider in determining his

<sup>782</sup> Video CIV-OTP-0015-0578, authenticated in court by P-0087 (T-177-ENG). This video is further analysed in Section 5, below.

<sup>783</sup> Video, CIV-OTP-0064-0131 at 00:08:05-00:11:17 (excerpt from RTI broadcast of 3 or 4 April 2011 at 08.00; transcript, CIV-OTP-0086-1168 at 1170).

contribution to the violence committed against civilians perceived as Ouattara supporters. The fact that there were tensions among the communities and previous episodes of violence between them, far from disassociating Mr Blé Goudé from the post-election violence, on the contrary, shows that he was aware of that context of violence between communities and political parties. The evidence above shows that Mr Blé Goudé had the power either to cool or to kindle these pre-existing tensions in the context of the post-election violence. Yet, evidence supports allegations that Mr Blé Goudé chose to instigate and contribute to the violence using rhetoric which engendered hate and exacerbated ethnic divisions and tensions.<sup>784</sup> A reasonable Trial Chamber could thus conclude that Mr Blé Goudé was aware that his conduct was part of, or intended his conduct to be part of, the widespread and systematic attack.<sup>785</sup>

357. Accordingly, a reasonable Trial Chamber could conclude that Mr Gbagbo, Mr Blé Goudé and FDS officials, and some non-State actors, took actions in furtherance of the State policy despite allegations of civilian casualties and allegations of crimes being committed as a result of the State policy. Evidence suggests that they were all working towards one common purpose, which was to keep Mr Gbagbo in power and to preserve each other's positions of power within the Gbagbo government. Therefore, a reasonable Trial Chamber could infer that the accused were aware that there was a widespread and systematic attack against the civilian population on political, ethnic or religious grounds, and that their acts were part of that attack.

## **E. Conclusion**

358. In the light of the evidence analysed above, a reasonable trier of fact could conclude that there was a systematic and widespread attack against the civilian population and that it was carried out pursuant to a State policy. This conclusion could reasonably be reached on the following basis:<sup>786</sup>

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<sup>784</sup> *Karadžić* Trial Judgment, para. 3486. The Trial Chamber stated: "[...] this rhetoric was used by the Accused to engender fear and hatred [...] and had the effect of exacerbating ethnic divisions and tensions."

<sup>785</sup> See the analysis above in relation to Mr Blé Goudé's rallies and speeches and corresponding video evidence. See, for example, video CIV-OTP-0015-0578, analysed above, and Mr Blé Goudé's characterisation of rebels as "*des gens qui ont des amulettes partout, des gris-gris partout.*"

<sup>786</sup> ICTY, *Blaškić* Trial Judgment, para. 204.

359. In a context of contested election results, Mr Gbagbo decided to remain in power at all costs, in accordance with his claim to be the legitimate President of Côte d'Ivoire. Mr Gbagbo shared this intention to remain in power with Mr Blé Goudé, senior FDS officials and other officials of the government. The phrase used by Mr Gbagbo in the context of the post-election violence – “*si je tombe, vous tombez*”, embodied this common objective and served at the same time to encourage FDS soldiers to remain loyal to Mr Gbagbo and responsive to his authority.<sup>787</sup>
360. Mr Gbagbo was able to control and exercise his *de jure* authority over the FDS through the official State hierarchy, which included his cabinet and senior FDS officials.
361. Mr Gbagbo also had *de facto* control because the FDS hierarchy was loyal and obedient to him and remained effective until the end of the post-election violence. Although there were disagreements and defections, the military hierarchy with Mr Gbagbo at its head remained in place.
362. Although Mr Gbagbo delegated some tasks to his subordinates, he continued to control military operations in Abidjan. For example, he ordered the requisition of the armed forces, the institution of curfews and the carrying out of operations in Abobo.
363. The employment of lethal force by the FDS against unarmed civilians and the use of heavy weaponry in densely-populated residential areas of Abidjan indicate that FDS actions were part of an indiscriminate attack against the civilian population. Accordingly, allegations of self-defence against other armed groups (i.e. rebels, the *Commando Invisible* and the *Forces Nouvelles*) are unfounded because there was a violation of the principle of proportionality whereby harm was done to unarmed civilians who were not rebels or who were not taking part in hostilities.
364. The State apparatus headed by Mr Gbagbo tolerated the attack by denying any wrongdoing on the part of the FDS despite the lack of investigations and the reports of FDS involvement.
365. The State apparatus led by Mr Gbagbo sponsored the attack by providing heavy weaponry to FDS units involved in the violence, in particular BASA, CECOS and the

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<sup>787</sup> P-0010, T-138-CONF-FRA, p. 34, lines 13-24; *note de renseignement*, CIV-OTP-0045-0322.

GR. It also provided money and weapons to the *Jeunes Patriotes* and other non-State actors.

366. Violent rhetoric and hate speech was used during the post-election violence, particularly by Mr Blé Goudé, in the course of rallies and broadcasts whereby the State media (RTI) was used in the implementation of the policy.
367. Throughout the post-election violence there was a strong *Jeunes Patriotes* presence in Abidjan, in particular at roadblocks in Yopougon, where acts of violence were committed against civilians.
368. These acts of violence committed against the civilian population (killing, injuring and raping) were not isolated or spontaneous acts, and they were committed within the context of a State policy.
369. Mr Blé Goudé was instrumental in the mobilisation of youth militias, which he encouraged and incited to erect roadblocks. His actions led the youth to mobilise and to take action against anyone perceived as being pro-Ouattara (civilians of certain ethnic, religious, national and political groups, UNOCI and outsiders).
370. Mr Gbagbo and the State apparatus did not investigate the crimes, denied the civilian status of victims and did not prevent the commission of acts of violence. Instead, the State instigated, sponsored and directed the commission of the crimes.
371. Accordingly, the evidence in this case is sufficient to support the allegation that the crimes committed against civilians were part of a widespread and systematic attack against the civilian population, and that there was a State policy to commit these acts (whether formalised or not).<sup>788</sup> Accordingly, a reasonable Trial Chamber could conclude that the requirements of article 7(2)(a) of the Statute are met.

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<sup>788</sup> ICC-02/11-01/11-656-Conf, para. 215; ICTY, *Tadić* Trial Judgment, para. 653.

## Section 4: The counts

### I. Introduction

372. The context in which the criminal conduct below occurred has been analysed in Section 3 above. The status of victims as civilians and the identity of perpetrators as FDS acting together with *Jeunes Patriotes* and other pro-Gbagbo non-State actors (including mercenaries) has been also analysed in the previous section.
373. Documentary evidence containing anonymous hearsay has been excluded for the purpose of the analysis of the counts below. This has been the case of some United Nations reports submitted by the Prosecutor,<sup>789</sup> as well as the document submitted by the LRV.<sup>790</sup> These documents are *prima facie* unreliable as the sources of information contained therein are unknown. As the information in these documents relates to matters central to the charges, it would be inappropriate to admit them for the truth of their contents.
374. However, when documents contain direct or indirect evidence from known sources these have been considered in the analysis. This is so because the information contained therein is verifiable and could have been contested by the Defence in the presentation of its case.
375. The report of forensic pathologist P-0564 and the documents introduced through her testimony and expert report have also been taken into consideration in the analysis below. P-0564 examined the bodies of victims of the post-election violence contemporaneously. In fact, her work started upon request of the Ivorian authorities on 20 January 2011. P-0564 confirmed that the title of the report “*Rapport Circonstancié sur la prise en charge médico-légales des victimes décédées au cours des événements post-électorales survenus en Côte d’Ivoire*” is the result of this request. She testified that the same authorities had identified the places where the bodies were located.<sup>791</sup>

<sup>789</sup> CIV-OTP-0044-0392, CIV-OTP-0044-1738, CIV-OTP-0044-1480, CIV-OTP-0044-1542 and CIV-OTP-0044-1547.

<sup>790</sup> CIV-OTP-0052-0292.

<sup>791</sup> The complete testimony of P-0564 is available at T-219-FRA and T-220-FRA. Her report is available at CIV-OTP-0050-0003.

376. P-0564 explained in her testimony that the circumstances of the post-election violence were exceptional, given the number of bodies that had to be examined. She testified that work had been suspended from 12 February to 28 April 2011 because of the insecurity in Abidjan. P-0564 described her workload as of 29 April 2011 as enormous on account of the number of bodies awaiting examination and family members waiting to receive the remains of their deceased relatives. P-0564 said that it had been her role, as the person in charge of the team of five pathologists, to meet with the family members and sign the relevant certificates. Given these exceptional circumstances, she had received some 20 to 30 families per day. She could not confirm how many medical reports she had drafted during that period. When the Defence suggested that the examination of 65 bodies in one day was inconceivable, P-0564 confirmed that this had in fact been done in the unique circumstances of the situation.
377. As regards the findings contained in her report, P-0564 explained that the identities of the victims and the dates of death had been provided by family members. She clarified that her expertise had been used to determine the causes of death. Upon examination or autopsy of the bodies, P-0564 testified, family members usually received a death certificate, a statement (*procès-verbal*) and a certificate of non-contagious disease, which were required for burial purposes.
378. P-0564 testified that her report CIV-OTP-0050-0003 had been drafted on 21 April 2011 and contained detailed information about deceased victims up to that date. With regard to page 0046 of the report, P-0564 confirmed that her team had examined 789 bodies. According to her testimony, some bodies had been exhumed and most of them were sent to the *Institut de médecine légale*. Some bodies were in a state of putrefaction, and priority was given to decomposing bodies so that these could be released to the families. P-0564 explained that bodies in state of decomposition could nonetheless be examined. She confirmed that she had personally performed 50 autopsies. She stated that another colleague and a member of the judicial police had also been present.
379. With regard to page 0049, P-0564 explained that most of the causes of death appeared to be violent, traumatic and non-natural. She stated that some bodies had been burned and presented injuries from firearms and bladed weapons. She said that in some instances it had not been possible to determine the origin of the injuries. The Defence questioned the expert's conclusion that 373 victims presented injuries from firearm

projectiles. The Defence contended that these conclusions were unfounded and without proper ballistic reports. P-0564 clarified that this conclusion resulted from the findings made during the examinations, upon which it was evident that injuries had been caused by firearms.

380. P-0564 explained that the sex of bodies in a state of decomposition was determined by looking at the skeleton (specifically the pelvis). For some bodies, samples for DNA testing were also taken. With regard to page 0035, P-0564 explained that her conclusions regarding the *commune* and ethnicity of the victims were not based on the autopsies. She said that ethnicity was based on information provided by the relatives. Conclusions as to *commune* were based on the location of the morgue from which the body had come.
381. Although P-0564 confirmed that the bodies examined in January-February 2011 had included members of the FDS, she indicated that most of the bodies had been identified as civilians. With regard to page 0032, P-0564 explained that the identification of bodies as those of FDS members was based on the personal or professional identification cards found on the bodies. The Defence questioned her about the decision to treat any body that did not have such identification as civilian. P-0564 explained that the conclusion that a body was that of a civilian was also based on information provided by relatives. She further clarified that only those bodies that had been identified by relatives were classified as civilians. When the Defence suggested that there were bodies from the *Commando Invisible*, P-0564 testified that she had not categorised bodies as belonging to members of the *Commando Invisible* because she had not received any information in this regard.<sup>792</sup>
382. P-0564's written report confirms that a large number of persons were killed during the post-election violence. Her report also concludes that many of the bodies examined by P-0564 and her team were identified civilians who died as a result of violent, traumatic and non-natural events. On the basis of the foregoing, and despite the Defence's challenges to the conclusions of this expert witness and her methodology, a reasonable Trial Chamber could conclude that her expert findings, made under the particular and exceptional circumstances of the post-election violence, and with due regard for the

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<sup>792</sup> T-219-FRA and T-220-FRA.

explanations given by the expert during her testimony, are satisfactory and acceptable. Accordingly, her report is admissible for the purpose of the analysis below.

## II. Murder

### A. Applicable law

383. Article 7(1)(a) of the Statute lists murder as the first underlying act of crimes against humanity. In order to fulfil the contextual requirement of crimes against humanity, the underlying acts, with the exception of extermination, need not be carried out against a large number of victims. Thus, an act of murder directed against a single victim can be qualified as a crime against humanity provided that the nexus with the context is fulfilled.<sup>793</sup>
384. The Elements of Crimes give the following clarifications in relation to murder: (i) it means that the perpetrator killed one or more persons; (ii) the term “killed” is a synonym of “caused death”; and (iii) the act of murder needs to be linked to the contextual elements of crimes against humanity.<sup>794</sup>
385. Unquestionably, murder requires the intentional killing of a human being.<sup>795</sup> Nonetheless, to prove the victim’s death, the Prosecutor need not show that the body of the victim was found. Circumstantial evidence of the death may suffice, provided that the victim’s death is the only reasonable conclusion that can be drawn.<sup>796</sup> Moreover, the identity of the victims need not be established.<sup>797</sup> A limited number of identified victims will usually suffice, and the Prosecutor is not required to positively identify every victim or give a precise number of persons killed.<sup>798</sup>

<sup>793</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 348.

<sup>794</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 766; K. Ambos, *Treatise on International Criminal Law*, Vol. II (Oxford University Press, 2014), pp. 79-80.

<sup>795</sup> ICTR, *Akayesu* Trial Judgment, para. 589; *Rutaganda* Trial Judgment, para. 80.

<sup>796</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 768.

<sup>797</sup> *Katanga and Ngudjolo Chui* case, “Decision on the confirmation of charges” (“*Katanga* Confirmation Decision”), ICC-01/04-01/07-717, para. 422.

<sup>798</sup> R. May and M. Wierda, *International Criminal Evidence* (Transnational Publishers, Inc., 2002), p. 253.

386. In the present case, the Pre-Trial Chamber confirmed that at least 184 persons had been killed during the post-election violence.<sup>799</sup>

## **B. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

### *1. March on RTI (16 December 2010)*

387. The Prosecutor submits that 24 identified and other unidentified civilians were killed during the March on RTI.<sup>800</sup>

388. Pursuant to the evidence submitted, including testimonial, documentary and forensic evidence, the following 26 victims of murder have been identified: Diabate Lacine,<sup>801</sup> Aly Doukouré,<sup>802</sup> Alabi Ismaila Amidou,<sup>803</sup> Soumahoro Mohamed,<sup>804</sup> Lacina Bakayoko,<sup>805</sup> Lanzeni Ballo,<sup>806</sup> Timite Koumadi,<sup>807</sup> Togola Seydou,<sup>808</sup> Cissé Modi,<sup>809</sup>

<sup>799</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 193; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, para. 115. The Pre-Trial Chamber concluded that at least 45 persons had been killed during the March on RTI, 24 persons during the Yopougon incident of 25-28 February 2011, 7 women during the Women's March, 40 persons in the 17 March 2011 incident and 68 persons during the attack in Yopougon on 12 April 2011.

<sup>800</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>801</sup> P-0230 stated that persons were killed during the March on RTI, including his brother (T-105-CONF-FRA, pp. 13-14). See certificate CIV-OTP-0044-2657, CIV-OTP-0044-2658, CIV-OTP-0044-2659, CIV-OTP-0044-2661 and Rule 68(3) Statement CIV-OTP-0044-2628.

<sup>802</sup> P-0589 (T-114-CONF-FRA, pp. 65-67) described how his brother was killed. He also saw other unidentified dead bodies at Macaci. See Rule 68(3) Statement, CIV-OTP-0084-01051 and annexes, including death certificate. Police Reports, CIV-OTP-0045-0510, CIV-OTP-0045-0973 (recognised by P-0046, T-124-CONF-FRA, T-125-CONF-FRA).

<sup>803</sup> Police Reports, CIV-OTP-0045-0510, CIV-OTP-0045-0973 (recognised by P-0046, T-124-CONF-FRA, T-125-CONF-FRA). See also forensic documents CIV-OTP-0084-3866, CIV-OTP-0073-1074, CIV-OTP-0084-3308 and CIV-OTP-0084-4015; P-0564 Report, CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054.

<sup>804</sup> Police Reports, CIV-OTP-0045-0510, CIV-OTP-0045-0973 (recognised by P-0046, T-124-CONF-FRA, T-125-CONF-FRA). See also forensic documents, CIV-OTP-0084-3866, CIV-OTP-0084-4090, CIV-OTP-0084-3290; P-0564 Report, CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054.

<sup>805</sup> P-0588 described how his brother was killed and said that he saw four other persons killed (Rule 68(3) Statement, CIV-OTP-0084-0079 and related annexes, T-112-CONF-FRA and T-113-CONF-FRA). See also forensic documents, CIV-OTP-0084-3866, CIV-OTP-0084-4064; P-0564 Report, CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054.

<sup>806</sup> P-0590 identified the body of his brother in the Anyama morgue (Rule 68(2) Statement, CIV-OTP-0084-0018 and CIV-OTP-0104-0423 and annexes). See also forensic documents, CIV-OTP-0084-3866, CIV-OTP-0084-4023; P-0564 Report, CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054.

Koné Souleymane,<sup>810</sup> Alimami Diaby,<sup>811</sup> Coulibaly Peeguedjo,<sup>812</sup> Maiga Musa,<sup>813</sup>  
 Ouattara Lamissa,<sup>814</sup> Sangare Amidou,<sup>815</sup> Lankouandé Daouda,<sup>816</sup> Kamara  
 Moustapha,<sup>817</sup> Traoré Inza,<sup>818</sup> Yeo Souleymane,<sup>819</sup> Bamba Amadou,<sup>820</sup> Yeo  
 Katienninfoli,<sup>821</sup> Ouedraogo Boubacar,<sup>822</sup> Kante Brahimna,<sup>823</sup> Sylla Mohamed  
 Soumaila,<sup>824</sup> Ouattara Amara<sup>825</sup> and Kouyate Adama.<sup>826</sup>

<sup>807</sup> Police Reports, CIV-OTP-0045-0510, CIV-OTP-0045-0973 (recognised by P-0046, T-124-CONF-FRA, T-125-CONF-FRA). Police compilation of events from 22 November 2010 to 7 February 2011 (recognised by P-0046 (T-126-CONF-FRA) and P-0440 (T-158-CONF-FRA) at 0736-0737). BQI, Police Daily Report dated 17 December 2010 (recognised by P-0560 (T-121-CONF-FRA) and T-0046 (T-123-CONF-FRA and T-125-CONF-FRA)). See also CHU Treichville morgue register, CIV-OTP-0063-0818 at 0848, entry 5527 (recognised by P-0471 in Rule 68(2) Statement, CIV-OTP-0066-0416).

<sup>808</sup> Police Reports CIV-OTP-0045-0510, CIV-OTP-0045-0973, recognised by P-0046, T-124-CONF-FRA, T-125-CONF-FRA. See also CHU Treichville morgue register, CIV-OTP-0063-0818 at 0848, entry 5545 (recognised by P-0471 in Rule 68(2) Statement CIV-OTP-0066-0416).

<sup>809</sup> Police document listing victims, CIV-OTP-0045-1157, recognised by P-0046 (T-125-CONF-FRA). CHU Treichville morgue register CIV-OTP-0063-0818 at 0849, entry 5557 (recognised by P-0471 in Rule 68(2) Statement CIV-OTP-0066-0416).

<sup>810</sup> Police document listing victims, CIV-OTP-0045-1157, recognised by P-0046 (T-125-CONF-FRA).

<sup>811</sup> Forensic documents CIV-OTP-0084-3866, CIV-OTP-0084-4019 and CIV-OTP-0084-4015; P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054.

<sup>812</sup> CHU Treichville morgue register CIV-OTP-0063-0818 at 0848, entry 5536 (recognised by P-0471 in Rule 68(2) Statement CIV-OTP-0066-0416); List of victims collected by P-0184, CIV-OTP-0032-0054.

<sup>813</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4069.

<sup>814</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4075.

<sup>815</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4082.

<sup>816</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4066.

<sup>817</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4050.

<sup>818</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4096.

<sup>819</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4102.

<sup>820</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4025.

<sup>821</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4100.

<sup>822</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d'Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4079.

389. Additionally, there is evidence suggesting that two other unidentified persons were killed during the incident. First, a dead body is seen in the video submitted via P-0184, who confirmed that she had seen this body on her way home on 16 December 2010.<sup>827</sup> The other unidentified person is someone referred to as “Cherif”, who P-0184 said had been burned and later died as a result.<sup>828</sup>
390. In addition to the evidence related to the above identified individuals, evidence analysed in Section 3 further supports allegations that the aforesaid deaths resulted from the March on RTI. Evidence in the record also suggests that more unidentified civilians were probably murdered during the March on RTI. According to the testimony of P-0625, there were many deaths when marchers were intercepted at roadblocks during the March on RTI.<sup>829</sup> P-0547, P-0555, P-0106, P-0230 and P-0107, who were present at the demonstration, witnessed attacks on unarmed civilians by pro-Gbagbo forces. In particular, P-0107 testified that the FDS threw grenades and later started shooting and using teargas against unarmed civilians. P-0107 said that during the incident he saw many dead bodies (approximately 20, including two boys). The same witness also heard rocket launchers.<sup>830</sup> Likewise, P-0230 testified that marchers were running in all directions and shots were coming from all directions.<sup>831</sup> P-0547 also testified that bodies were thrown into a cargo truck of the Republican Guard during the incident.<sup>832</sup> This was confirmed in court by Bredou M’bia, who, when shown a police

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<sup>823</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d’Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4053.

<sup>824</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d’Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4094.

<sup>825</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d’Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic documents CIV-OTP-0084-3866 and CIV-OTP-0084-4071.

<sup>826</sup> P-0564 Report CIV-OTP-0050-0003; List of victims from the *Institut de médecine légale*, collected from the Ministry of Justice of Côte d’Ivoire, CIV-OTP-0073-1074; List of victims collected by P-0184, CIV-OTP-0032-0054; Forensic document CIV-OTP-0084-4061.

<sup>827</sup> Video CIV-OTP-0032-0039 at 00:16 (P-0184, T-215-CONF-FRA, pp. 15-18).

<sup>828</sup> Rule 68(3) Statement CIV-OTP-0077-0128 and T-111-CONF-FRA, p. 52 and T-112-CONF-FRA, p. 50).

<sup>829</sup> T-27-FRA, p. 20, lines 2-25.

<sup>830</sup> Rule 68(3) Statement CIV-OTP-0020-0064.

<sup>831</sup> Rule 68(3) Statement CIV-OTP-0044-2628.

<sup>832</sup> “[C]elui qui était près du conducteur, du chauffeur, il est descendu, il avait une radio en main, mais la tenue qu’il avait, c’était la tenue de la Garde républicaine. Et il a donné des ordres aux autres. Il a dit tous ceux qui étaient couchés, il fallait qu’ils les prennent et qu’ils les jettent, qu’ils les mettent dans le camion cargo. Ils les ont ramassés, ils les ont jetés dans le camion cargo” (T-13-CONF-FRA, p. 25).

document, confirmed that bodies of victims had been collected after the March on RTI.<sup>833</sup>

2. *The attack in Yopougon (25-28 February 2011) – Mr Blé Goudé only*

391. The Prosecutor submits that 19 identified civilians were killed during the attack in Yopougon on 25-28 February 2011.<sup>834</sup>

392. Testimonial and documentary evidence supports allegations that the following seven identified victims were killed during the incident: Siaka Bakayoko,<sup>835</sup> Ahmed (last name unknown),<sup>836</sup> Cissé Moustapha,<sup>837</sup> Traore (last name unknown),<sup>838</sup> David (last name unknown),<sup>839</sup> Cissé Yaya,<sup>840</sup> Mamadou Niakaté<sup>841</sup> and Modibo Kamara.<sup>842</sup>

393. P-0436 compiled a list of alleged victims from the Doukouré neighbourhood in Yopougon as part of his work at the *Collectif des Victimes du Quartier de Doukouré Yopougon* (“CVQDY”). He explained his methodology, particularly how he had recorded the sources of information in the document. The information is therefore not anonymous hearsay. It is verifiable and, as such, could have been contested by the Defence in the presentation of its case. Accordingly, it is admissible for the purposes of this analysis.

394. At page 0321 of the list of victims prepared by P-0436, the following eight victims are identified in the context of this incident: Bakayoko Lacina, Bakayoko Salimata, Bamba

<sup>833</sup> T-125-CONF-FRA, pp. 65-67.

<sup>834</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>835</sup> P-0109 (T-154-CONF-FRA, pp. 45-46), P-0436 (T-148-FRA, pp. 22, 32-33 and 45) saw the victim injured and later found out that he had died. P-0442 (T-20-CONF-FRA, p. 13), CVQDY list CIV-OTP-0058-0320 (submitted through P-0436, T-148-FRA).

<sup>836</sup> P-0442 (T-20-CONF-FRA, p. 14).

<sup>837</sup> See Section 3, above. P-0441 saw first-hand how the watchman at the Lem mosque was killed and then cut into pieces. P-0441 (T-35-CONF-FRA). See also P-0433 (T-147-CONF-FRA, pp.33-34, who saw the fingers of the victim); CVQDY list CIV-OTP-0058-0320.

<sup>838</sup> P-0433 (T-147-CONF-FRA, p. 24) saw the victim killed in front of his house. See also P-0436 (T-148-FRA, p. 45).

<sup>839</sup> P-0433 (T-147-CONF-FRA, p. 25-28) described how a neighbour, called David, was killed.

<sup>840</sup> P-0109 (T-154-CONF-FRA, 48). CVQDY list CIV-OTP-0058-0320.

<sup>841</sup> See Section 3, above. Both P-0438 and P-0459 knew the victim, a young Malian man. P-0459 saw the victim’s burning at the Saguidiba roundabout. P-0438 (T-151-CONF-FRA, pp. 2 and 11-12 and T-152-CONF-FRA, pp. 11-18); P-0459 (T-152-CONF-FRA, pp. 72-82), CVQDY list CIV-OTP-0058-0320.

<sup>842</sup> P-0438 (T-150-CONF-ENG, pp.20-21).

Souleymane, a hotel manager called Zanga (unknown last name), Bamba Abdoulaye, Dosso Lama, Tiene Yaya and Diomande Maetie.<sup>843</sup>

395. Moreover, despite being hearsay in nature, the information contained in the list prepared by P-0436 is corroborated by other evidence in the record, as discussed in Section 3 above. For example, the police report drafted by P-0440 and his testimony attest that, between 25 and 28 February 2011, 14 persons were killed in Yopougon, of whom four were lynched and eight burned, while two had been shot.<sup>844</sup> P-0438 also testified that he had seen the burned bodies of two persons on 25 February 2011.<sup>845</sup> Additionally, video and documentary evidence in the record shows two victims who were burned to death, one of whom is identified as Konaté Abdoulaye; the other person remains unidentified.<sup>846</sup> The absence of forensic evidence does not diminish the probative value of this evidence, and the Chamber is free to evaluate all evidence before it on the basis of its relevance and probative value.<sup>847</sup> In the case at hand, the evidence referred to above – videos, documents and eyewitness testimony – supports allegations that victims died during this incident.

396. Accordingly, although the exact number of victims may never be established and was possibly greater, there is evidence in the record indicating that at least 16 individuals were killed in Yopougon on 25-28 February 2011.

### 3. *Women's March (3 March 2011) – Mr Gbagbo only*

397. The Prosecutor submits that seven identified women were killed during the Women's March.<sup>848</sup>

398. As noted in Section 3 above, video evidence submitted into the record shows images of the Women's March before, during and after the attack.<sup>849</sup> Philippe Mangou, who saw

<sup>843</sup> CVQDY list CIV-OTP-0058-0320.

<sup>844</sup> CIV-OTP-0046-0029.

<sup>845</sup> P-0438, T-150-CONF-FRA, pp. 17, 35-36.

<sup>846</sup> Police document, BQI of 28 February 2011, CIV-OTP-0045-0389 and video CIV-OTP-0003-0013.

<sup>847</sup> ICTR, *Musema* Trial Judgment, para. 52.

<sup>848</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>849</sup> Video CIV-OTP-0077-0411 (enhanced version is CIV-OTP-0082-0357) shows the moment when the alleged victims are shot during the march. [REDACTED] (*see* Rule 68(3) Statement CIV-OTP-0003-0716 and T-161-CONF-FRA). At 00:04:30:00 P-0114 says that this woman's head is "*gâtée*". At 00:05:00:24, a woman is shown who P-0114 explained was struck by a bullet through her throat. At 00:05:08:14, another woman

the same video in court, confirmed that he had watched the images on the day of the incident and had been shocked. He denied FDS involvement, but, contrary to the allegations of the Defence, he did not deny that these women had been killed; neither did he suggest in his testimony that the video was a fabrication. In fact, while viewing the video in court, Philippe Mangou recognised the FDS vehicles and acknowledged that he personally believed that these women had been killed, although he could not identify the perpetrators.<sup>850</sup>

399. In fact, Philippe Mangou explained that in the African tradition there is much respect for death. He stated that he personally believed that these women were dead, as their parents had wept for their daughters for many years now:

*[A]lors, ce qui, moi, me dérange, c'est qu'il y a des débats contradictoires : il y en a qui disent que ces femmes sont mortes; il y en a qui disent qu'elles ne sont pas mortes. Moi, Monsieur le Président, je suis là... je suis pour la thèse de ceux qui disent que les femmes sont mortes, d'abord parce que nous, nous faisons confiance aux autorités qui ont presque tous les moyens légaux pour vérifier si, effectivement, ces femmes sont mortes ou pas—ces autorités affirment la mort des...des femmes—, mais qu'en plus, Monsieur le Président, dans nos traditions africaines, on respecte beaucoup la mort. On ne peut pas s'amuser à jouer au mort. On peut peut-être demander à une femme de feindre, de pleurer pendant un jour une personne qui n'est pas morte, mais on ne peut pas leur demander de le faire pendant sept ans. Ça fait sept ans que ça dure et ces femmes pleurent tout le temps leurs enfants [...].*<sup>851</sup>

400. Video evidence in the record was also commented upon by witnesses who recognised individuals participating in the Women's March, including the identified victims who lost their lives. In video CIV-OTP-0077-0411, at 05.46 and 06.03, Nachamy Bamba (wearing a green and white striped t-shirt) was identified.<sup>852</sup> At 05.00.00 to 05.04.00 of the enhanced version of the same video, Adjara Touré (wearing a t-shirt with blue letters and a red skirt) was recognised.<sup>853</sup> At 05.53.00, Gnon Rokia Outtara (wearing a white t-shirt) was recognised.<sup>854</sup> At 04.51 and 05.23, Moyamou Koné (wearing a

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appears; P-0114 stated that her shoulder was shattered. At 00:05:19:21, a woman appears to attempt to stand up. P-0114 said she was unable to stand up. See also video CIV-OTP-0003-0716 [REDACTED]. P-0606 (report CIV-OTP-0082-0341) and P-0583 (expert report CIV-OTP-0089-1030) gave their expert views on the authenticity of the video.

<sup>850</sup> P-0009, T-200-CONF-FRA, pp. 60-70.

<sup>851</sup> T-200-CONF-FRA, p.62, lines 17-27, emphasis added.

<sup>852</sup> P-0237, Rule 68(3) Statement, CIV-OTP-0081-03802 and T-175-CONF-FRA. See also photos of the body provided by P-0237 CIV-OTP-0037-0013, 0014, 0017.

<sup>853</sup> An enhanced version of video was used (CIV-OTP-0082-0357). P-0581 (T-188-CONF-FRA). See also CIV-OTP-0042-0590, at 15.09. Screenshot shown to the witness: CIV-OTP-0040-0422.

<sup>854</sup> P-0579, T-39-CONF-FRA, pp. 23-34 and 33-34.

yellow t-shirt) was identified.<sup>855</sup> At 05.13, Malon Sylla (wearing an orange t-shirt and blue headscarf) was identified.<sup>856</sup> At 04.54, Fatoumata Coulibaly was identified.<sup>857</sup> The only victim not identified in the video is Amy Coulibaly.

401. P-0184, who was one of the organisers of the Women's March and was present during the event, personally saw and recognised the dead body of Bamba Nachamy. P-0184 later heard that others had been killed. However, she did not see this herself, as she was taken to the hospital with an injury immediately afterwards.
402. During her testimony, P-0184 explained the methodology she had followed to compile a list of victims of the post-election violence, which was submitted into the record. She confirmed that all the sources of information were included in the list and explained that the following victims had been identified: Amy Coulibaly, Koné Moyamou, Touré Adjara, Fatoumata Coulibaly, Malon Sylla and Ouattara Gnon Rokia. P-0184 testified that she had later visited the families of the aforesaid deceased victims and corroborated the information which she had compiled in the list.<sup>858</sup> Accordingly, in the light of the testimony of P-0184 and other evidence in the record, the list is admissible for the purposes of the analysis of the deaths of these seven women.
403. The evidence provided by P-0184 was further corroborated by P-0172, who said that he had arrived at the Banco roundabout immediately after hearing a loud blast. Upon arriving, P-0172 saw that people were holding the body of Amy Coulibaly (he did not know her personally, but knew her family well). According to P-0172, Malon Sylla was still alive when he arrived but later died in hospital. He testified that the body of Bamba Nachamy had been on the ground and that when her family arrived they took the body to their home. P-0172 and others then transported the bodies of Fatoumata Coulibaly (a relative of his), Moyamou Koné, Gnon Rokia Ouattara and Adjara Touré to Abobo Sud Hospital.<sup>859</sup> This evidence was further corroborated by P-0106, who also went to

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<sup>855</sup> P-0582 (Rule 68(3) Statement CIV-OTP-0081-0468). Screenshot of the video at CIV-OTP-0081-0496 to 0504.

<sup>856</sup> P-0580 (Rule 68(3) Statement CIV-OTP-0081-0416). Screenshot of the video at CIV-OTP-0081-0433 and 00434.

<sup>857</sup> P-0172 (Rule 68(3) statement CIV-OTP-0081-0436). Screenshot of the video at CIV-OTP-0081-0447 and 0449.

<sup>858</sup> T-215-CONF-FRA, pp.35-38. P-0184 provided a list of victims, CIV-OTP-0032-0054-00013.

<sup>859</sup> Rule 68(3) Statement, CIV-OTP-0028-0550. See also video CIV-OTP-0044-0738, in which the witness recognised the pushcart used to transport the bodies to the hospital.

the place of the march immediately after he heard the detonations. He saw in total seven women who had been killed; he saw other persons who had been injured.<sup>860</sup>

404. The forensic DNA report of P-0601 identified three victims: Moyamou Koné, Gnon Rokia Ouattara and Malon Sylla.<sup>861</sup>

405. The evidence as a whole, including direct and indirect witnesses and video and documentary evidence in the record, supports the allegation that seven women were killed on 3 March 2011. Four witnesses gave evidence of Nachamy Bamba's death.<sup>862</sup> Three witnesses gave evidence of Adjaré Touré's death.<sup>863</sup> Three witnesses gave evidence of Gnon Rokia Outtara's death, also attested by DNA and other forensic evidence.<sup>864</sup> Four witnesses gave evidence of Moyamou Koné's death, also attested by forensic evidence.<sup>865</sup> Three witnesses gave evidence of Malon Sylla's death, also attested by documentary evidence.<sup>866</sup> Two witnesses gave evidence of Amy Coulibaly's

<sup>860</sup> Rule 68(3) statement CIV-OTP-0019-0211 and T-116-CONF-FRA.

<sup>861</sup> Forensic Report on DNA identification, CIV-OTP-0084-3930, T-162-ENG pp.26-28, 32, 73.

<sup>862</sup> In addition to P-0184 and P-0114, above, see also P-0237 (T-175-CONF-FRA and Rule 68(3) Statement and annexes), who described how his daughter was killed. Annexes contain pictures of the victim's body as well as the *permis d'inhumation* and the *extrait du registre de décès*. P-0105 saw dead bodies at Banco roundabout on 3 March 2011 and recognised Bamba Nachamy on the videos that were shown later on that day on television (Rule 68(3) Statement CIV-OTP-0019-0245, T-213-CONF-FRA, pp.25-34).

<sup>863</sup> See evidence of P-0172, P-0184 and P-0581, above.

<sup>864</sup> In addition to the evidence of P-0184 and P-0172, and the DNA report discussed above. P-0579 (who as noted above, identified the victim in the video) also testified that he recognised the body of his daughter in Abobo General Hospital. He said her throat had been torn apart by a bullet (T-39-CONF-FRA). P-0172 testified that he saw P-0579 at the crime scene with his daughter's body. He stated that her body was taken to a mass grave in Abobo (CIV-OTP-0028-0550). His evidence is corroborated by the DNA match of the body, which was exhumed from a mass grave. See also the autopsy report confirming the cause of death by gunshot to neck, shoulder and chest (P-0585, T-189) and CIV-OTP-0081-0523.

<sup>865</sup> In addition to the evidence of P-0184 and P-0172 above and the DNA report, see also P-0582, mother of the victim, who saw her daughter at the march and later saw her dead body at the Abobo General Hospital (Rule 68(3) Statement CIV-OTP-0081-0468 and annexes). P-0105 also testified that the victim's sister (who was a friend of hers) told her about the death (Rule 68(3) Statement, CIV-OTP-0019-0245). There are also autopsy reports that confirm her cause of death by gunshot (P-0585, T-189 and CIV-OTP-0081-0528).

<sup>866</sup> In addition to the evidence of P-0184 and P-0172 above, see also P-0580 (Rule 68(3) Statement CIV-OTP-0081-0416), who, as described by P-0172, arrived at the crime scene when his sister was still alive. He said she had been shot in the area of her shoulder. He said that she was taken to the hospital, where she died. His evidence is corroborated by forensic reports that confirm her cause of death as gunshot to the shoulder and blood in the lungs. Screenshot of the video at CIV-OTP-0081-0433 shows this injury. Further documentary evidence corroborates these accounts: death certificate CIV-OTP-0028-0575, and morgue registries matching the information, CIV-OTP-0070-0015, CIV-OTP-0070-0248, CIV-OTP-0070-0128, CIV-OTP-0070-0551.

death, also attested by documentary evidence.<sup>867</sup> Four witnesses gave evidence of Fatoumata Coulibaly's death, also attested by video evidence.<sup>868</sup>

406. Accordingly, on the basis of the evidence, a reasonable Trial Chamber could conclude that seven identified women were killed at the Women's March on 3 March 2011.

*4. Shelling of Abobo market and the surrounding area (17 March 2011) – Mr Gbagbo only*

407. The Prosecutor submits that at least 31 identified civilians were killed during the shelling of 17 March 2011.<sup>869</sup>

408. As noted in Section 3 above, the evidence submitted, including testimonial, documentary, audiovisual and forensic evidence, supports allegations that mortar shells fired by the FDS landed in the areas of Siaka Koné market and SOS Village. There is also limited testimonial evidence that mortar shells landed in Derrière Rails on 17 March 2011.

409. Four individuals allegedly killed on 17 March 2011 are identified in the list compiled by P-0184,<sup>870</sup> without any further information or evidence to corroborate the findings contained therein. Specifically, there is no reference to the sources of information that could have allowed the Defence to challenge this information. Accordingly, without further evidence or information, these deaths could not be sufficiently proven.<sup>871</sup> Six unidentified individuals allegedly killed on 17 March 2011 are referred to only in INTERFU documents submitted into the record via bar table motions. These documents do not contain sufficient indicia of authenticity, as they are not signed or dated.<sup>872</sup> Accordingly, for lack of further corroboration of the information contained therein, the Prosecutor has not provided enough evidence to prove these deaths or to connect them to the incident.

<sup>867</sup> In addition to P-0184 and P-0172 above, see also death certificate of Amy Coulibaly, CIV-OTP-0028-0572.

<sup>868</sup> In addition to P-0184 and P-0172 above, see also P-0105, who, similarly to P-0172, testified that there was a woman, Fatoumata Coulibaly, whose head was completely blown off. P-0190, who also knew Fatoumata Coulibaly and was present at the march, said that she had had the brain matter and blood of the victim on her clothes.

<sup>869</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>870</sup> CIV-OTP-0032-0054-0001.

<sup>871</sup> The deaths of 4 individuals referred to in Annex E4 of the Mid-Trial Brief (entries 1, 13, 14 and 15) are not sufficiently corroborated.

<sup>872</sup> CIV-OTP-0037-0151 and CIV-OTP-0084-2629.

410. There is evidence detailing the circumstances in which three specific persons were killed while walking past the Siaka Koné market on 17 March 2011. Evidence shows that Brou Konan Junior Yves, a four-year old boy, was killed while he was walking past the market with his mother.<sup>873</sup> Evidence also shows that a man named Koffi François<sup>874</sup> and his wife, N'Guessan Adjo Therese,<sup>875</sup> were killed while they were walking along the market. There is also evidence that four men were killed while sitting at the Siaka Koné market, having a break from their daily work. Bamba Lacina was killed, and his body is visible in video CIV-OTP-0046-1283, next to the table.<sup>876</sup> Diakite Yaya, described by evidence in the record as a young Malian man, was also hit in the legs by a mortar shell. In the video, the victim is seen while still alive. However, there is evidence that he died thereafter as a consequence of the injuries he suffered.<sup>877</sup>

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<sup>873</sup> P-0536 (T-23-CONF-FRA, p. 10) is the mother of the victim, a 4-year old boy, and was with him when the shell hit the market. She recognised his photograph in her interview with OTP investigators (CIV-OTP-0071-0062 was not shown in court upon agreement among the parties). Her evidence is also corroborated by P-0360 who was at the market and saw the child (Rule 68(2) Statement CIV-OTP-0046-1203 and photo CIV-OTP-0089-0577). Documents from the Anyama morgue and INTERFU and forensic evidence submitted via P-0594 and P-0564 further corroborate his death on that date (Rule 68(2) statement CIV-OTP-0083-0035, CIV-OTP-0083-0052, CIV-OTP-0083-0063, CIV-OTP-0084-3167, CIV-OTP-0084-4003, CIV-OTP-0037-0250, and CIV-OTP-0084-2629). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>874</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: P-0294 Rule 68(2) Statement (CIV-OTP-0041-0388): the witness recognised his brother and his wife, who were killed at the Siaka Koné market. He got to the scene immediately after. This was confirmed by P-0362, who was at the market during the shelling and saw the couple who had died close to where he was (Rule 68(3) Statement CIV-OTP-0046-1271). This is also supported by documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0067); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0073-1090 and Black register of INTERFU, CIV-OTP-0084-3167, report CIV-OTP-0073-1100, CIV-OTP-0073-1126, report CIV-OTP-0077-0002 and death certificate CIV-OTP-0037-0222. The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>875</sup> In addition to the evidence referred to above, about her husband, see also *fiche d'examen de corps* CIV-OTP-0073-1093 and death certificate, CIV-OTP-0037-0272.

<sup>876</sup> P-0362 was next to the Siaka Koné market (at the station), when the shells hit the area. He filmed video CIV-OTP-0046-1283. He knew the victim and saw him next to a table, with impacts on his back. P-0362 (T-206) recognised the victim in the video (time stamp 00.15 to 00.35). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>877</sup> P-0105 (Rule 68(3) Statement CIV-OTP-0019-0245) was at the market when the shelling occurred and saw how the victim was injured. He later learned from his parents at the hospital that the victim had died. P-0105 recognised the victim in video CIV-OTP-0046-1283. P-0362, who was also at the scene, saw the victim with his legs shattered and learned from his brother that the victim had died two days after the shelling. P-0362 also recognised the victim in video CIV-OTP-0046-1283. The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001). These accounts are corroborated by evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0060); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0073-1082 and CIV-OTP-0083-0072, report CIV-OTP-0078-0476, CIV-OTP-0073-1126, report CIV-OTP-0073-1106, CIV-OTP-0077-0002, report CIV-OTP-0097-0313, Black register of INTERFU, CIV-OTP-0084-3167; Evidence submitted via P-0584 (forensic report for the victim at CIV-OTP-0084-4416 and INTERFU document CIV-OTP-0084-2869 and report CIV-OTP-0083-1350). At page 4424, P-0584 stated that the extent of the injuries to the legs and the fact that there were injuries at different locations on the body was typical of an explosion, a primary injury caused by the initial blast and then a secondary injury caused by projectiles, although other causes of death are

Evidence shows that someone called Adama, who was also close to the same table, died as a result of the shelling. His body is shown on top of the table in the same video.<sup>878</sup>

There is also evidence that Bamba Daouda was hit in the leg by a mortar shell. He is seen alive in the video but evidence indicates that he died as a result of his injuries three days later.<sup>879</sup>

411. There is also evidence that two persons died in the area surrounding the Siaka Koné market on 17 March 2011. Kouakou M'baye Ndiaye, described as a Senegalese merchant, was hit by a mortar shell while he was at his home. According to witnesses, his intestines were visible and he was holding them while he was still alive. He died on his way to the hospital.<sup>880</sup> Doumbia Makarikia was killed near her house on her way back from the Siaka Koné market, near the area of Derrière Rails.<sup>881</sup>

412. Documentary and forensic evidence also indicates that the following 12 individuals were killed as a result of the shelling on 17 March 2011: Coulibaly Drissa,<sup>882</sup> Coulibaly

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possible. P-0584 explained that he had not extracted or seen the extraction of the piece of metal from the body of Diakté Yaya. He said that that he had been shown the fragment at the NFI. He said that other fragments could have passed through the body in areas where there was more damage (e.g. the legs). Pieces of metal could have also been removed in hospital, or stayed in the victim's clothes, etc. Report CIV-OTP-0084-0434 explains why there were apparently two bodies identified as Diakté Yaya.

<sup>878</sup> P-0362 (T-206-CONF-FRA, p. 103 and Rule 68(3) Statement CIV-OTP-0046-1271), who was at the scene when the shell fell, saw how the body was perforated. He recognised the victim in video CIV-OTP-0046-1283 (at 00.35 to 00.52).

<sup>879</sup> P-0362 (T-206-CONF-FRA, p. 76 and Rule 68(3) Statement CIV-OTP-0046-1271), who was at the scene when the shell fell, took the victim to the hospital. He recognised the victim in video CIV-OTP-0046-1283 (at 00.00 to 00.14).

<sup>880</sup> P-0360 (Rule 68(2) Statement CIV-OTP-0046-1203) testified that a shell fell in a courtyard close to his home, killing a Senegalese man and injuring others. This is corroborated by P-0363 (Rule 68(3) Statement CIV-OTP-0046-0275), who testified that a second shell fell on a courtyard. He saw a Senegalese man, whom he knew by the name of N'Diaye, who was injured in the torso and whose intestines were visible. The man was taken to the hospital but died before arrival. P-0489 (Rule 68(2) Statement CIV-OTP-0071-2199) also testified that her Senegalese neighbour was wounded by the shell and that she saw him holding his intestines while still alive. These accounts are also supported by documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0084-3983, Black register of INTERFU, CIV-OTP-0084-3167, and death certificate CIV-OTP-0037-0364. The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>881</sup> P-0297 testified that his sister was killed on 17 March 2011 in the area of Derrière Rails. (T-192-CONF-FRA, pp.18-20 and Rule 68(3) Statement CIV-OTP-0041-0412). His account is further corroborated by documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055 and CIV-OTP-0083-0070). See also evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167, *fiche d'examen de corps* CIV-OTP-0073-1095, report CIV-OTP-0073-1122, report CIV-OTP-0077-0045, report CIV-OTP-0077-0002, report CIV-OTP-0078-0476 and death certificate CIV-OTP-0037-0283.

<sup>882</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0060, CIV-OTP-0084-3167); evidence submitted via P-0564 (T-

Mamadou,<sup>883</sup> Sangare Kola,<sup>884</sup> Sibide Ibrahima,<sup>885</sup> Sibide Seyou,<sup>886</sup> Somplei Theophile,<sup>887</sup> Coulibaly Lacina,<sup>888</sup> Bamba Amara,<sup>889</sup> Koné Konoutie,<sup>890</sup> Diarrasouba Hamidou,<sup>891</sup> Hien Mamdierenil Patrice<sup>892</sup> and Ouedraogo Moumouni.<sup>893</sup>

219), *fiche d'examen de corps* CIV-OTP-0073-1077, report CIV-OTP-0073-1100, CIV-OTP-0073-1126, report CIV-OTP-0077-0002; death certificate submitted via P-0364 (CIV-OTP-0037-0200). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>883</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0069); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0084-3977 and Black register of INTERFU, CIV-OTP-0084-3167; death certificate submitted via the bar table (CIV-OTP-0037-0241). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>884</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0060); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0073-1085, report CIV-OTP-0073-1109, CIV-OTP-0073-1126, report CIV-OTP-0077-0002, report CIV-OTP-0078-0476; Black register of INTERFU, CIV-OTP-0084-3167 and death certificate (CIV-OTP-0037-0211). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>885</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0060); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0073-1079, report CIV-OTP-0073-1103, CIV-OTP-0073-1126, report CIV-OTP-0077-0002, report CIV-OTP-0078-0476; Black register of INTERFU, CIV-OTP-0084-3167 and death certificate (CIV-OTP-0037-0181). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>886</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0061); evidence submitted via P-0564 (T-219), *fiche d'examen de corps* CIV-OTP-0073-1088, report CIV-OTP-0073-1112, CIV-OTP-0073-1126, report CIV-OTP-0077-0025, report CIV-OTP-0077-0002, report CIV-OTP-0078-0476; Black register of INTERFU, CIV-OTP-0084-3167 and death certificate (CIV-OTP-0037-232). The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>887</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055, CIV-OTP-0083-0065) and Black register of INTERFU, CIV-OTP-0084-3167. The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>888</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055) and evidence submitted via P-0564 (Black register of INTERFU, CIV-OTP-0084-3167).

<sup>889</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055) and evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167, death certificate of INTERFU CIV-OTP-0037-0164 and *fiche d'examen de corps* CIV-OTP-0084-3974.

<sup>890</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055) and evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167.

<sup>891</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055) and evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167.

413. As noted in Section 3 above, evidence shows that that the area affected by the shelling was densely populated and residential.<sup>894</sup> According to the evidence of P-0414, who visited the affected area on that date and interviewed witnesses and survivors, and the UNOCI report submitted through this witness, at least 25 persons died on that date as a result of the shelling.<sup>895</sup> Testimonial evidence, such as that given by P-0489, who was admitted to hospital after being injured during the incident, is also revelatory of the magnitude of the harm caused to civilians on that day. The witness described the scene in her neighbourhood and thereafter at the hospital as follows:

*Les gens du quartier ont amené le sénégalais, dans un pousse-pousse, au même hôpital où il a succombé sous mes yeux. Je ne pouvais pas arrêter de le regarder. C'est pour cela que je ne peux pas l'effacer de ma mémoire. C'était très dur et effrayant. Ce jour-là, l'hôpital était plein de blessés et de gens qui avaient succombé sur place. Les blessés étaient emmenés à l'hôpital dans des poussepousses. Dans les pousse-pousse, à cause du sang qui coulait, les gens avaient mis des nattes.*<sup>896</sup>

414. Accordingly, although the exact number of victims killed cannot be determined, the number was probably greater than the number of people identified above. On the basis of the evidence referred to above, a reasonable Trial Chamber could thus conclude that at least 21 identified persons were killed on 17 March 2011 as a result of the shelling in the area of the Siaka Koné market in Abobo.

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<sup>892</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0055 and CIV-OTP-0083-0066) and evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167.

<sup>893</sup> The following evidence indicates that the victim died as a result of the shelling on 17 March 2011: documentary and forensic evidence submitted via P-0594 (Rule 68(2) Statement CIV-OTP-0083-0035 and annexes CIV-OTP-0083-0052, CIV-OTP-0083-0061) and evidence submitted via P-0564, Black register of INTERFU, CIV-OTP-0084-3167. The victim is also identified in the list compiled by P-0184 (CIV-OTP-0032-0054-0001).

<sup>894</sup> P-0046, T-126-CONF-FRA, p. 60: "R. [12:44:39] Oh ! Abobo... Abobo, il faut mettre peut-être un million et demi, mais c'est un quartier d'ortoir comme Yopougon. La journée il y a moins de monde, mais la nuit, il y a beaucoup plus de monde." See also P-0414, CIV-OTP-0054-0582 at 0597-0598, para. 94.

<sup>895</sup> P-0414 stated in court that she had interviewed victims and witnesses of the attack of 17 March 2011 during her visit to the affected area, including SOS Village and the Abobo market: T-74-FRA. She recognised and confirmed the information contained in the UNOCI report, CIV-OTP-0044-1617, which refers to the incident and to the UNOCI Call Centre report, CIV-OTP-0044-1654.

<sup>896</sup> Rule 68(2) Statement, CIV-OTP-0071-2199, para. 21.

5. *Yopougon incident (12 April 2011) – Mr Blé Goudé only*

415. The Prosecutor submits that 61 identified persons were killed during the attack in Yopougon on 12 April 2011.<sup>897</sup>
416. Several witnesses saw people killed during the incident, and others saw the corpses of victims buried in mass graves in the aftermath. Not all victims were identified. For example, as noted in Section 3 above, P-0109, P-0438 and P-0441 personally worked on the mass burial of victims. While they were able to identify among the corpses people they knew, they said in evidence that the number of people they buried after the attack was significant. In this regard, P-0441 counted 34 bodies in the mass grave next to the Lem Mosque, P-0438 counted some 70 bodies and P-0109 counted 29 bodies at the mass grave site.<sup>898</sup>
417. P-0109 identified 11 men he knew as neighbours or acquaintances in the mass grave site he described, namely: Mustapha, Bruno, Lass, Baba, IB, Daou, Chaka, Adamo, Loss, Papa d’Awa (father of Awa), and Papa d’Ibrahim (father of Ibrahim).<sup>899</sup> P-0441 identified three men he knew: Fofana Adama, Mr Ouattara and Mr Touré.<sup>900</sup>
418. P-0567 said that on the morning of 12 April 2011 she had been walking with her brothers in the Mami Faitai neighbourhood and recognised people she knew among the dead, namely Cissé Amara, Cissé Bazo and Doumbia Vie. She described the scene as follows:

*Le lendemain matin, quand le quartier est redevenu calme, je suis sortie de la maison avec mes frères [...]. Avec des amis du quartier, on a décidé de marcher, tous ensemble, vers l’endroit où on avait entendu les tirs la veille. Arrivés à un parking situé au milieu du quartier Mami Faitai, près de l’école primaire Sainte Marita, nous avons vu des corps. Il y en avait 19. Je le sais car je les ai moi-même comptés. Tous étaient des jeunes hommes du quartier Mami Faitai. Il y avait parmi eux des adultes et des adolescents. Tous étaient de l’ethnie dioula. Parmi les victimes j’ai reconnu DOUMBIA Ibrahim, CISSE Amara, CISSE*

<sup>897</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>898</sup> P-0438, T-150-CONF-FRA, pp. 49-50. Video CIV-OTP-0012-0048. T-36-CONF-FRA, p. 30, lines 23-28; P-0109, T-154-CONF-FRA, pp. 59-60 and 65. HRW Report, CIV-OTP-0002-0631, discussed by P-0369 during testimony (T-40-CONF-ENG). P-0369 confirmed he had visited Yopougon in May 2011 and had seen firsthand the mass graves.

<sup>899</sup> T-154-CONF-FRA, pp. 54-63.

<sup>900</sup> T-36-CONF-FRA, p. 26 and CVQDY List, CIV-OTP-0058-0320.

*Bazo et DOUMBIA Vie. En ce qui concerne Bazo et Vie, je ne sais pas si c'est leur vrai prénom mais en tout cas c'est comme ça qu'on les appelait dans le quartier.*<sup>901</sup>

419. The aforesaid account of P-0567 was corroborated by [REDACTED], who similarly testified that she had seen 17 bodies at the same car park in the Mami Fatai neighbourhood on that same day.<sup>902</sup>
420. Similarly, P-0568 testified that he had heard gunshots throughout the night of 11 to 12 April 2011. At around 4 am on 12 April 2011, the witness came out of his house and saw that two of his sons had been killed: Doumbia Bakary and Doumbia Brahima. He saw their bodies in the same lot in Mami Fatai.<sup>903</sup> He was later told that three other friends of the family had been killed: Koné Adama, Banssé Seydou and Koné Souleymane.<sup>904</sup>
421. Three witnesses testified that a man named Abdoulayé Djiré was killed inside a house in Yopougon during the incident.<sup>905</sup> P-0567 testified that, on 12 April 2011, her four brothers and a friend were killed at their home. They were identified as Camara Inza, Camara Dou, Camara Mamadou, Diawara Issa and Diomandé Ibrahim.<sup>906</sup> [REDACTED].<sup>907</sup> [REDACTED].
422. There is also evidence of the killing of other unidentified persons during the incident. For example, [REDACTED].<sup>908</sup> Other witnesses, such as P-0109<sup>909</sup> and P-0226,<sup>910</sup>

<sup>901</sup> Rule 68(3) Statement, CIV-OTP-0069-0051, para. 23.

<sup>902</sup> [REDACTED].

<sup>903</sup> [REDACTED].

<sup>904</sup> [REDACTED].

<sup>905</sup> [REDACTED].

<sup>906</sup> Rule 68(3) Statement, CIV-OTP-OTP-0069-0051, paras. 32-42. CVQDY List, CIV-OTP-0058-0320.

<sup>907</sup> [REDACTED].

<sup>908</sup> [REDACTED].

<sup>909</sup> T-154-CONF-FRA, pp. 51, 61-63. P-0440 (T-157-CONF-FRA, pp. 33-34) explained what the concept of Article 125 entailed in the context of the post-election violence: “[11:48:42] *Pour ce qu'on a appris, c'est que quand ils arrivaient, ils leur faisaient faire un contrôle d'identité, pour les plus chanceux qui ont des noms à consonance nordiste, on leur demandait une rançon, ils payaient de l'argent, et ils passaient. Mais ceux qui n'avaient pas de chance ou qui étaient vraiment considérés comme assaillants ou rebelles étaient lynchés et brûlés. Alors, pour la plupart, ils avaient du pétrole qu'ils achetaient, à 100 Francs, avec une boîte d'allumettes, et lorsqu'on finit de vous lyncher, on vous passe un pneu sur le corps, on y met du pétrole et le feu. Q. [11:49:47] Et bon, vous avez parlé du pétrole, de la boîte d'allumettes. Est-ce que, d'après ce que vous savez, est-ce que cela était connu sous un nom particulier, cette procédure ? R. [11:50:03] Ah ! Oui. À l'époque, ils appelaient cela l'article 125, c'est-à-dire qu'ils payent du pétrole 100 Francs, payent une boîte d'allumettes à 25 Francs, et on vous...on vous brûle. Donc, ils avaient surnommé cela l'article 125.*”

<sup>910</sup> T-166-CONF-FRA, pp. 43-44.

similarly testified that “Article 125” attacks were carried out on 12 April 2011, and that people were burned alive.

423. From the totality of the evidence submitted, a reasonable trier of fact could conclude that at least 31 identified individuals were killed between 11 and 12 April 2011. Moreover, there is enough evidence to suggest that the number of victims killed on 12 April 2011 was probably greater. In particular, there is evidence that persons were burned at roadblocks and that unidentified bodies were buried in mass graves in the immediate aftermath of the incident.

#### *6. Other deaths*

424. As noted above, P-0584 exhumed more than 700 bodies after the post-election violence; these were later examined by P-0564. P-0564 testified that some of these bodies were burned, while others had injuries from firearms and bladed weapons. In her report, P-0564 concluded that 373 bodies had injuries from firearm projectiles. Also, as noted above, there is evidence that shows the existence of mass graves during the post-election violence. Moreover, evidence also supports the allegations that people were burned at roadblocks during the post-election violence. Although there is some evidence that FDS officers died during the post-election violence, and this is indeed recognised by the Prosecutor, these deaths are not linked to the deaths of unarmed civilians analysed above. Most importantly, the evidence does not indicate that the deaths of unarmed civilians were justified. As repeatedly stated throughout this opinion, the presence of armed groups or armed individuals within the civilian population does not negate the civilian status of the aforesaid victims.<sup>911</sup> Evidence shows that murder was committed in the context of an attack against the civilian population and that the above identified victims most probably represent only part of the total number of victims of the post-election violence.

### **C. Conclusion**

425. An attack against civilians does not require results, such as the determination of a certain number of persons killed.<sup>912</sup> Although the evidence suggests that a larger

<sup>911</sup> ICTY, *Strugar* Trial Judgment, para. 284.

<sup>912</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 871.

number of civilian victims were killed during the post-election violence, a reasonable Trial Chamber could conclude that: (i) at least 101 identified civilians were killed in the aforesaid five incidents in the context of the attack against the civilian population described in Section 3, above; (ii) the intent of the direct perpetrators to kill civilians may be inferred from the use of lethal weapons, the shooting and shelling of the civilian population and the burning of victims at roadblocks; (iii) the perpetrators knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack against a civilian population; and (iv) these killings constitute murder as crime against humanity under article 7(1)(a) of the Statute.

### III. Rape

#### A. Applicable law

426. Pursuant to article 7(1)(g) of the Statute and the Elements of Crimes, rape encompasses the invasion of a person's body by conduct resulting in penetration, however slight, of any part of the body of the victim or 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. The invasion must have been 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 the victim or another person, or by taking advantage of a coercive environment; or the invasion must have been committed against a person incapable of giving genuine consent.

427. It must be stressed that the victim's lack of consent is not a legal element of the crime of rape under the Statute.<sup>913</sup> To establish rape constituting a crime against humanity within the meaning of article 7(1)(g) of the Statute, it must be demonstrated that the conduct was part of a widespread or systematic attack directed against a civilian population.<sup>914</sup> Accordingly, in addition to the requirements of intent and knowledge under article 30 of the Statute, the Chamber must also satisfy itself that the perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread

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<sup>913</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para.105; *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 965.

<sup>914</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 967.

or systematic attack directed against a civilian population.<sup>915</sup> In the assessment of the evidence the Chamber must be guided by the provisions of rules 70 and 71 of the Rules.

428. The Pre-Trial Chamber confirmed that at least 38 persons had been raped in the course of two incidents during the post-election violence.<sup>916</sup>

## **B. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

### *1. March on RTI (16 December 2010)*

429. The Prosecutor submits that 11 women were raped during the attacks related to the March on RTI.<sup>917</sup>

430. [REDACTED].<sup>918</sup> [REDACTED].<sup>919</sup>

431. [REDACTED].<sup>920</sup> [REDACTED].<sup>921</sup> [REDACTED].<sup>922</sup> [REDACTED].<sup>923</sup>

432. [REDACTED].<sup>924</sup>

### *2. Yopougon incident (12 April 2011) – Mr Blé Goudé only*

433. The Prosecutor submits that 6 women were raped during the attack in Yopougon on 12 April 2011.<sup>925</sup>

434. [REDACTED].<sup>926</sup> [REDACTED].<sup>927</sup> [REDACTED].<sup>928</sup>

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<sup>915</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 971; *Habré* Judgment, para. 1512.

<sup>916</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 195; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, paras. 52 and 117. The Pre-Trial Chamber concluded that at least 16 women and girls had been raped during the March on RTI and 22 women during the attack in Yopougon on 12 April 2011. It also concluded that at least nine women had been raped during the Yopougon incident of 25-28 February 2011.

<sup>917</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>918</sup> [REDACTED]. See also report of P-0410 (CIV-OTP-0059-0094 and T-217-CONF-FRA).

<sup>919</sup> [REDACTED].

<sup>920</sup> [REDACTED].

<sup>921</sup> [REDACTED].

<sup>922</sup> [REDACTED].

<sup>923</sup> [REDACTED].

<sup>924</sup> [REDACTED].

<sup>925</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>926</sup> [REDACTED].

<sup>927</sup> [REDACTED].

### C. Conclusion

435. There is evidence in the record to support the allegation that 11 women were raped in the context of the March on RTI because they were identified as Ouattara supporters. There is also evidence that six women were raped during the attack in Yopougon on 12 April 2011. Although the witnesses who testified about these rapes did so in closed session, it is important to note publicly that evidence shows that all of these victims were raped because they were identified by the perpetrators as supporters of Alassane Ouattara, either because of their political affiliation or because of their ethnicity. There is evidence that a child was among the victims, and that some of the victims were attacked in their homes and in front of their children, who most probably suffered trauma as a result.
436. Bredou M'bia confirmed that he had received reports of rapes during the post-election violence, specifically from the Police Prefect.<sup>929</sup> There is no evidence in the record that the State apparatus headed by Mr Gbagbo investigated the rapes that were reported in the context of the March on RTI. There is no evidence in the record that the rapes that occurred on 12 April 2011 in Yopougon were investigated or prosecuted by any Ivorian authority in the aftermath of the post-election violence.
437. Moreover, although the Prosecution does not make any allegation as to crimes of rape during the incident of 25-28 February 2011, there is evidence in the record that at least one identified man was raped during that incident.<sup>930</sup> However, for the purpose of the counts, this rape has been analysed under the count of inhumane acts.
438. Sexual violence is not only motivated by sexual desire. It is also a strategy for asserting social control and for humiliating, retaliating against or intimidating victims.<sup>931</sup> In the case at hand, and given the context of the post-election violence and the widespread and systematic nature of the attack, it is possible to infer that the perpetrators knew that the conduct was part of, or intended it to be part of, an attack using sexual violence as a weapon to humiliate and punish Ouattara supporters (be they real or perceived).

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<sup>928</sup> [REDACTED].

<sup>929</sup> P-0046, T-126-CONF-FRA, p. 48, lines 24-28; p. 49, lines 1-21.

<sup>930</sup> [REDACTED].

<sup>931</sup> United Nations Security Council, *Conflict-related sexual violence*, Report of the Secretary General, 23 March 2015, para. 20.

Therefore, there is evidence upon which a reasonable Trial Chamber could conclude that the crime against humanity of rape was committed as a part of a widespread and systematic attack against the civilian population under article 7(1)(g) of the Statute.

#### **IV. Other inhumane acts or attempted murder**

##### **A. Applicable law**

439. Pursuant to article 7(1)(k) of the Statute, “other inhumane acts” encompass the infliction of great suffering or serious injury to body or to mental or physical health by means of an inhumane act.
440. The Elements of Crimes require that: (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; (iii) the perpetrator was aware of the factual circumstances that established the character of the act; (iv) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (v) 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.
441. According to article 7(1)(k) of the Statute and the principle of *nullum crimen sine lege* enshrined in article 22 of the Statute, inhumane acts are to be considered serious violations of international customary law and the basic rights of human beings drawn from the norms of international human rights law. They are of a similar nature and gravity to the acts referred to in article 7(1) of the Statute.<sup>932</sup> Article 7(1)(k) of the Statute and article 7(1)(k) in the Elements of Crimes further require that great suffering, or serious injury to body or to mental or physical health, occur by means of an inhumane act.<sup>933</sup>
442. Pursuant to articles 7(1)(a) and 25(3)(f) of the Statute, persons can be criminally responsible for attempting to commit a crime. An attempt as a distinct criminal offence occurs when a person acts with the intent to commit a crime, but fails. For an attempt to

<sup>932</sup> *Katanga* Confirmation Decision, ICC-01/04-01/07-717, para. 448.

<sup>933</sup> *Katanga* Confirmation Decision, ICC-01/04-01/07-717, para. 453.

be punishable, the perpetrator must take a significant step towards initiating the criminal action (in this case, killing a person) that is interrupted by intervening circumstances.<sup>934</sup> The attempt of murder must be committed, in the mind of the perpetrator, in the context of a widespread and systematic attack directed against any civilian population. The objective conduct element must be linked, subjectively, to the context element.<sup>935</sup>

443. The Pre-Trial Chamber confirmed that at least 126 persons had been injured during the post-election violence, and that, in view of the weaponry used and the injuries suffered, that conduct could fall under other inhumane acts. Alternatively, the Pre-Trial Chamber found that there were substantial grounds to believe that the conduct which led to the injuries was designed to bring about, as a consequence, the death of the victims, and that as such the acts constituted attempted murder.<sup>936</sup>

## **B. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

### *1. March on RTI (16 December 2010)*

444. The Prosecutor submits that 52 identified persons and other unidentified persons were injured during the March on RTI.<sup>937</sup>
445. There is evidence that persons were injured by gunshots, grenades and mortar shells during the March on RTI. P-0230, who participated in the demonstration, said that unarmed marchers were running in all directions and shots were coming from all directions. He was shot at and injured.<sup>938</sup> Similarly, P-0107 said that he had intended to participate in the March on RTI but that, on his way to the demonstration, FDS officers told him and others to back off, because mercenaries ahead would kill them. The

<sup>934</sup> A. Cassese et al., *International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2013), pp. 199-200.

<sup>935</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. I (Oxford University Press, 2013), p. 259.

<sup>936</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, paras. 197-203; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, paras. 119-121. The Pre-Trial Chamber concluded that at least 54 persons had been injured during the March on RTI, 7 persons during the Yopougon incident of 25-28 February 2011, 3 persons during the Women's March, 60 persons during the 17 March 2011 incident, and 2 persons during the attack in Yopougon on 12 April 2011.

<sup>937</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>938</sup> See Rule 68(3) Statement CIV-OTP-0044-26283 and medical report prepared by P-0410 (CIV-OTP-0059-0233), which concluded that the witness still had a bullet inside his body (pp. 0234 and 0241).

witness said that when the crowd resisted the FDS threw grenades and started shooting and using tear gas against demonstrators. P-0107 saw many dead bodies and heard rocket launchers during the incident. While trying to run away towards Cocody University, he was shot. P-0107 was later detained with others and taken to the hospital, where doctors did not want to treat him.<sup>939</sup> P-0106, who was also at the demonstration, stated that he saw young FESCI members and foreign mercenaries in an FDS vehicle beating and attacking unarmed demonstrators. The witness was also severely beaten and injured and saw demonstrators injured by bullets. P-0106 said that he had almost lost his arm due to an injury sustained during the incident. He testified that when he went to the hospital in Yopougon for treatment he was told not to remain there, as “Gbagbo forces” were tracking down and killing the wounded.<sup>940</sup> P-0547, who also participated in the demonstration, testified that he was shot and beaten by the FDS.<sup>941</sup> P-0513 testified that a neighbour of hers was shot at the March on RTI. He also told the witness that people were being killed at the hospital.<sup>942</sup>

446. As noted above, P-0184 visited victims and families of victims during the post-election violence, including victims of the March on RTI, whom she included in the list submitted into the record.<sup>943</sup> For the purpose of the counts, only the victims whose full names and dates of birth are provided, and who are linked to the March on RTI by the information compiled, have been taken into consideration. Although the list prepared by P-0184 is hearsay evidence, the sources are not anonymous. P-0184 testified that she had personally met with victims and families. She herself compiled the contact information on the list.<sup>944</sup> Thus, the information is verifiable and, as such, could have been contested by the Defence in the presentation of its case. Accordingly, in the light of the testimony of P-0184 and other evidence in the record, the list is admissible for

<sup>939</sup> Rule 68(3) Statement CIV-OTP-0020-0064 and related annexes, including medical documents and photographs. In court, P-0107 described his injury (T-107-CONF-FRA, pp. 97-103).

<sup>940</sup> Rule 68(3) Statement CIV-OTP-0019-0211 and annexes and medical report prepared by P-0410 (CIV-OTP-0059-0367, which concluded that the witness had considerable scars on the areas of his body where he had allegedly been injured).

<sup>941</sup> T-13-CONF-FRA, pp. 19-26. See also medical receipts CIV-OTP-0073-10591, CIV-OTP-0073-1054, CIV-OTP-0073-1053, CIV-OTP-0073-1057 and photograph CIV-OTP0073-1061; CIV-OTP0073-1062 and CIV-OTP0073-1069.

<sup>942</sup> T-104-CONF-FRA, pp. 30-31.

<sup>943</sup> P-0184, T-215-CONF-FRA and CIV-OTP-0032-0054-00013.

<sup>944</sup> T-215-CONF-FRA, pp. 46-48, 53 and 76.

the purpose of the analysis of the deaths of the following individuals included in the list.

447. According to the list provided by P-0184,<sup>945</sup> the following civilians, all identified by name and date of birth, were shot in the context of the March on RTI: Koné Lamine, shot during the March on RTI; Diarrasouba Noufo, shot during the march and treated at a private hospital; Sangaré Yacou, hit by a grenade during the march; Pokou Koffi Guillam, shot during the march; Dagnogo Maimouna, shot during the march and treated at a clinic in Abobo; Ouattara Lacina, shot during the march and treated at CHU Treichville; Koné Brehima, shot during the march and treated at the PK18 clinic; Bamba Mamadou, hit by a grenade during the march; Aboubacar Samassi, shot during the march; Guindo Adama, beaten and was hit by a mortar shell; Minata Sanfo, hit by a grenade; Tiemoko Gongbe Venance, shot by the FDS during the march; Guindo Ibrahim, hit by a grenade during the march; Tolo Brahima, hit by a grenade during the march; Siaka Ouattara, hit by a grenade during the march; Coulibaly Yacouba, hit by a grenade during the march.
448. In an attempted murder, the perpetrator must have the intent to kill another person. Despite the perpetrator taking a substantial step, death of the victim does not occur because of circumstances independent of the perpetrator's intentions. The evidence described above reveals that the aforesaid victims were shot at with lethal weapons. Thus, it is reasonable to conclude that the perpetrators had the specific intent to murder rather than the intent to cause injuries.<sup>946</sup>
449. The crime of murder, under article 7(1)(a) of the Statute, even in its attempted form, in accordance with article 25(3)(f) of the Statute, cannot be charged simultaneously under article 7(1)(k) of the Statute as "other inhumane acts".<sup>947</sup> The evidence above indicates that the intention of the perpetrators was to kill. Accordingly, although the victims suffered serious injuries, the crime is better characterised as attempted murder.<sup>948</sup>

<sup>945</sup> P-0184, T-215-CONF-FRA and CIV-OTP-0032-0054-00013. See also ICC-02/11-01/15-1136-CONF-AnxE.1, pp. 18-26.

<sup>946</sup> *Katanga* Confirmation Decision, ICC-01/04-01/07-717, para. 458.

<sup>947</sup> *Katanga* Confirmation Decision, ICC-01/04-01/07-717, para. 461.

<sup>948</sup> A. Cassese et al., *International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2013), p. 201.

450. There is also evidence that inhumane acts were perpetrated against civilians during the March on RTI. Evidence indicates that victims in these instances suffered physical or mental harm, but the intention to kill is not apparent. [REDACTED].<sup>949</sup> P-0555, who was on his way to the demonstration with two other friends, stated that FDS and militia members forced him to undress and that they beat him. His two other friends were also beaten. He was then forced to pose for a photograph wearing a *gris-gris*. The same witness was later detained with other persons (more than 20 persons in a cell). While in detention he also saw a man who had been burned and later died as a result.<sup>950</sup>
451. Similarly, according to the list compiled by P-0184, the following civilians, all identified by name and date of birth, are victims of inhumane acts perpetrated in the context of the March on RTI: Sahanogo Sekouba, who was the security guard of the RHDP headquarters, was tortured by the Republican Guard and later treated by UNOCI doctors; Sahibou Traoré was beaten to the point of paralysis and treated at CHU Treichville; Diomandé Drissa was stopped during the March on RTI by CECOS and injured with machetes by some *Jeunes Patriotes* who later wrote on his back “*LMP Abobo Avocatier*”; Niangoran Adjo Valentine was severely beaten by FDS forces; Doumbia Adjaratou was severely beaten by FDS forces; Koné Nahawa was detained and tortured by the FDS; Karimou Keita was detained and tortured by the FDS; Soumahoro Mamadi was detained and tortured by the FDS; Ouattara Solihou was detained and tortured by the FDS; Diaby Souleymane was detained and tortured by the FDS; Doumbia Ben Bakari was detained and tortured by the FDS; Cissé Salimata was beaten by the FDS and treated at the SOS Village clinic; Bakary Touré was detained and tortured by the FDS; and Koné Oumar was detained and tortured by the FDS.
452. Finally, a list prepared by the *Direction Générale de la Police Nationale* (“DGPN”), and which was recognised by Bredou M’bia,<sup>951</sup> attests that two civilians were injured during the March on RTI between 16 and 17 December 2010: Touré Lasso, assaulted by some *Jeunes Patriotes* at the *Cité Universitaire d’Abobo II*; and Sangaré Soumaila, burned by a crowd of people in Cocody, allegedly because he had a machete. Although in the case of the latter victim the perpetrators are not identified, in view of the context

<sup>949</sup> T-107-CONF-FRA2, pp. 11-21.

<sup>950</sup> Rule 68(3) Statement CIV-OTP-0077-0128 and annexes and T-111-CONF-FRA, pp. 50-67.

<sup>951</sup> CIV-OTP-0045-1157, P-0046 (T-125-CONF-FRA).

analysed in Section 3, above, it would be reasonable to conclude that he was also victim of the relevant incident. Moreover, there is no evidence in the record, despite the said DGPN report, that these two instances of serious injuries were investigated by the police.

453. On the evidence analysed above, a reasonable Trial Chamber could conclude that at least 21 civilians were shot at during the March on RTI. Given the context of the demonstration and the use of lethal weapons against civilians, the conduct which caused the injuries in these instances could amount to attempted murder. There is also evidence that at least 18 civilians suffered serious injuries or degrading treatment amounting to inhumane acts.

2. *The attack in Yopougon (25-28 February 2011) – Mr Blé Goudé only*

454. The Prosecutor submits that 13 identified civilians were injured during the attack in Yopougon on 25-28 February 2011.<sup>952</sup>
455. P-0442 testified that he was injured in the leg by a grenade on 25 February 2011.<sup>953</sup> P-0436 confirmed this, having also been present, and said that the police had thrown the grenades. Another man next to the witnesses was killed.<sup>954</sup> P-0442 also testified that a man called André was shot and sustained injuries to his arms and hands.<sup>955</sup> [REDACTED].<sup>956</sup> P-0109 testified that he was hit by a grenade.<sup>957</sup> P-0109 and P-0436 both testified that someone named Soumahoro Sékou was shot in the arm.<sup>958</sup> P-0436 also testified that another man, named Soumahoro Youssouf, was shot in the leg, and that a man named Sanao Siata suffered a bullet wound to the torso.<sup>959</sup> P-0438 testified that a person named Chemokogoro was hit by a grenade.<sup>960</sup>

<sup>952</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>953</sup> T-20-CONF-FRA, pp. 9-10. See also medical certificates and photographs of injuries (CIV-OTP-0062-0872, CIV-OTP-0062-0880, CIV-OTP-0062-0881, CIV-OTP-0062-0876, CIV-OTP-0062-0879, CIV-OTP-0062-0878, CIV-OTP-0062-0884, CIV-OTP-0062-0877).

<sup>954</sup> T-148-FRA, p. 22 and CVQDY list CIV-OTP-0058-0320.

<sup>955</sup> T-20-CONF-FRA, pp. 13-14.

<sup>956</sup> [REDACTED].

<sup>957</sup> T-154-CONF-FRA, pp. 42-45.

<sup>958</sup> P-0109, T-154-CONF-FRA, pp. 45-47 and P-0436, T-148-FRA, p. 45. See also CVQDY list CIV-OTP-0058-0320.

<sup>959</sup> P-0436, T-148-FRA, p. 45. See also CVQDY list CIV-OTP-0058-0320.

<sup>960</sup> T-150-CONF-FRA, pp. 42 and 44.

456. The injuries that are referred to solely in the UNOCI Call Centre report (CIV-OTP-0044-1542) have not been taken into consideration, as they are anonymous hearsay. To do so would be unfair to the Defence, since the Defence would have been unable to contest these allegations originating from unknown sources.

457. On the evidence analysed above, a reasonable Trial Chamber could conclude that at least eight civilians were shot in the context of the attack in Yopougon on 25-28 February 2011. Given the context of the attack and the use of lethal weapons against civilians, the conduct that resulted in these injuries could amount to attempted murder.<sup>961</sup> There is also evidence that one civilian was raped during the attack. No charges of rape were brought in relation to the incident, but this conduct could amount to an inhumane act because it caused serious bodily and mental harm to the victim.

### 3. *Women's March in Abobo (3 March 2011) – Mr Gbagbo only*

458. The Prosecutor submits that at least six identified civilians were injured during the Women's March.<sup>962</sup>

459. P-0184, who was one of the organisers of the demonstration and was present at the event, saw two persons injured during the incident: a person referred to as Ivakaba and a person named Amy Ouattara. Both were wounded by gunshots and had to undergo surgery.<sup>963</sup> P-0184, who, as noted above, compiled a list, included on it the following four persons, all identified by name and date of birth, as victims who had suffered injuries as a result of gunshots during the Women's March: Camara Sekou, Sylla Ousmane, Bayo Kabine and Coulibaly Massandje.<sup>964</sup>

460. On the evidence analysed above, a reasonable Trial Chamber could conclude that at least six persons were shot during the Women's March. Given the context of the demonstration and the use of lethal weapons, the conduct that resulted in these injuries could amount to attempted murder.

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<sup>961</sup> See paras. 7-79.

<sup>962</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>963</sup> T-215-CONF-FRA, pp. 52-53.

<sup>964</sup> P-0184 (T-215-CONF-FRA), CIV-OTP-0032-0054-0001. See ICC-02/11-01/15-1136-Conf-AnxE.3, p. 9.

4. *Shelling of Abobo market and the surrounding area (17 March 2011) – Mr Gbagbo only*

461. The Prosecutor submits that at least 36 identified civilians were injured during the shelling of 17 March 2011.<sup>965</sup>
462. P-0489,<sup>966</sup> P-0105,<sup>967</sup> P-0536<sup>968</sup> and P-0364<sup>969</sup> testified to injuries they personally suffered as a result of the shelling. According to other testimonial evidence and documentary evidence in the record, the following individuals were injured as a result of the shelling on 17 March 2011: Cissé Sekou,<sup>970</sup> Issa Bokoum,<sup>971</sup> Kaboré Francois,<sup>972</sup> Kahoun Kouassi Mathurin,<sup>973</sup> Kone Moussa,<sup>974</sup> Sanogo Ami,<sup>975</sup> Yembone Moumouni,<sup>976</sup> Komo,<sup>977</sup> Diomandé Amara,<sup>978</sup> a person referred to as Solo,<sup>979</sup> and elderly woman referred to as Nan and two small boys who were with her,<sup>980</sup> Moussa Gana,<sup>981</sup> Diomande Sékou,<sup>982</sup> Ballo Seydou,<sup>983</sup> a person referred to as Papiss<sup>984</sup> and a person referred to as Ismael.<sup>985</sup>

<sup>965</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>966</sup> Rule 68(2) Statement CIV-OTP-0071-2199 and P-0184 list, CIV-OTP-0032-0054-0001.

<sup>967</sup> Rule 68(3) Statement CIV-OTP-0019-0245, paras. 17-28. T-216-CONF-FRA, pp. 10-11. See also CIV-OTP-0056-0038 and P-0184 list, CIV-OTP-0032-0054-0001.

<sup>968</sup> T-23-CONF-FRA, pp. 8-24. P-0360 Rule 68(2) Statement CIV-OTP-0046-1203, para. 23.

<sup>969</sup> Rule 68(3) Statement CIV-OTP-0046-1254, paras. 14-19. P-0363 Rule 68(3) Statement CIV-OTP-0046-0275, para. 28 (P-0363 heard about the injuries suffered by P-0364 because they lived near one another). See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>970</sup> P-0363, Rule 68(3) Statement CIV-OTP-0046-0275, para. 25. See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>971</sup> P-0364, Rule 68(3) Statement CIV-OTP-0071-0437, para. 35 and CIV-OTP-0071-2199, para. 25. See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>972</sup> P-0364, Rule 68(3) Statement CIV-OTP-0071-0437, para. 36 and P-0184 list, CIV-OTP-0032-0054-0001.

<sup>973</sup> P-0364, Rule 68(3) Statement CIV-OTP-0071-0437, para. 36 and P-0184 list, CIV-OTP-0032-0054-0001.

<sup>974</sup> P-0363 Rule 68(3) Statement CIV-OTP-0046-0275, para. 25. P-0594 Rule 68(2) Statement CIV-OTP-0083-0035, paras. 27-63. See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>975</sup> P-0297 Rule 68(3) Statement CIV-OTP-0041-0412, para. 46 and T-192-CONF-FRA, p. 19. See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>976</sup> P-0364, Rule 68(3) Statement CIV-OTP-0071-0437, para. 36. See also P-0184 list, CIV-OTP-0032-0054-0001.

<sup>977</sup> P-0360 Rule 68(2) Statement CIV-OTP-0046-1203, para. 20.

<sup>978</sup> P-0362 Rule 68(3) Statement CIV-OTP-0046-1271, para. 20. T-206-CONF-FRA, pp. 74 and 102.

<sup>979</sup> P-0362 Rule 68(3) Statement CIV-OTP-0046-1271, para. 20. T-206-CONF-FRA, p. 106.

<sup>980</sup> P-0363 Rule 68(3) Statement CIV-OTP-0046-0275, para. 26. T-191-CONF-FRA, p. 13.

<sup>981</sup> P-0362 Rule 68(3) Statement CIV-OTP-0046-1271, para. 21. T-206-CONF-FRA, p. 74.

<sup>982</sup> P-0362, T-206-CONF-FRA, p. 74.

<sup>983</sup> P-0362, T-206-CONF-FRA, p. 74.

<sup>984</sup> P-0364 Rule 68(3) Statement, CIV-OTP-0071-0437, para. 35.

<sup>985</sup> P-0364 Rule 68(3) Statement, CIV-OTP-0071-0437, para. 35.

463. P-0184, who, as noted above, compiled a list of victims, included in the said list the following additional civilians, all identified by names and date of birth, who also suffered injuries as a result of the shelling: Kone Adjara, Kone Siaka, Kouyate Moussa, Traore Samassi, Siaka Sidibe, Bakayoko Kassim, Ouattara Mahaman, Ouattara Fatche, Fofana Lassina, Kouakou Kouadio Rodriguez, Sidibe Terenako, Diakite Mahissiata, Sidibe Mariam and Yao Kouassi Augustin.<sup>986</sup>

464. On the evidence analysed above, a reasonable Trial Chamber could conclude that at least 36 unarmed civilians were seriously injured as a result of the shelling of 17 March 2011. Given the context of the attack (a densely populated residential area) and the weapons used (mortar shells), the conduct that resulted in these injuries could amount to attempted murder.

5. *Yopougon incident (12 April 2011) – Mr Blé Goudé only*

465. The Prosecutor submits that at least three persons were injured during the attack in Yopougon on 12 April 2011.<sup>987</sup>

466. P-0109 testified that he and a friend were stopped at a roadblock. They were shot and injured. P-0109 was shot in the foot.<sup>988</sup> P-0567 testified that she was beaten by attackers who entered her house and killed her brothers and a friend.<sup>989</sup>

467. On the evidence analysed above, a reasonable Trial Chamber could conclude that at least 3 unarmed civilians were injured as a result of the attack in Yopougon on 12 April 2011. However, despite the context of the attack, the conduct that resulted in these injuries does not amount to attempted murder because the intent to kill the victims cannot be presumed in the light of the evidence given. On the one hand, P-0109 and his friend were shot from a close distance, in their feet. P-0567 was struck in the head with a gun, whereas other persons in her house were shot and killed instantly. Moreover, from the evidence submitted, the injuries suffered by the victims and the manner in

<sup>986</sup> P-0184 list, CIV-OTP-0032-0054-0001. See ICC-02/11-01/15-1136-Conf-AnxE.4, pp. 38-41.

<sup>987</sup> T-221-CONF-ENG. These are the last numbers given by the Prosecutor during the hearing of 1 October 2018.

<sup>988</sup> T-154-CONF-FRA, pp. 52-53. CIV-OTP-0020-0404 (photograph of injury). See also medical report of P-0410, CIV-OTP-0056-0019 and T-217-CONF-FRA. See also CVQDY List, CIV-OTP-0058-0320.

<sup>989</sup> Rule 68(3) Statement CIV-OTP-0069-0051, paras. 36, 43 and 85-88 and T-209-CONF-FRA, p. 10.

which the injuries were inflicted do not appear to rise to the level required to make out the crime of inhumane acts.

468. Accordingly, there is insufficient evidence to support the allegations of attempted murder or inhumane acts as regards the 12 April 2011 incident.

### **C. Conclusion**

469. There is sufficient evidence that at least 71 identified civilians were victims of attempted murder, and that at least 18 identified civilians were victims of inhumane acts.
470. In the light of the evidence, and pursuant to article 30 of the Statute, a reasonable Trial Chamber could conclude that the perpetrators knew, when they shot at civilians indiscriminately with firearms and heavy weapons, and when they beat and tortured them, that death or serious injury would occur in the ordinary course of events.
471. Therefore, there is evidence on which a reasonable trier of fact could conclude that the constitutive elements of “other inhumane acts” under article 7(1)(k), and of attempted murder under articles 7(1)(a) and 25(3)(f) of the Statute, are made out.

## **V. Persecution**

### **A. Applicable law**

472. Article 7(1)(h) of the Statute and the Elements of Crimes define persecution as severely depriving, contrary to international law, one or more persons of fundamental rights by targeting a person, group or collectivity by reason of the identity of a group or collectivity on political, racial, ethnic, national, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law. The conduct must be committed in connection with another crime within the jurisdiction of the Court (in this case, murder, rape and inhumane acts or attempted murder).
473. The Pre-Trial Chamber confirmed that at least 348 victims of murder, rape and injuries had been targeted by reason of their identity as perceived supporters of Alassane Ouattara, particularly at pro-Ouattara demonstrations, or as inhabitants of areas perceived as supporting Alassane Ouattara. It concluded that the acts of violence

constituted persecution on political grounds, ethnic grounds (against persons from northern Côte d'Ivoire or of Dioula or Baoulé ethnicity), national grounds (against persons from West African countries and their descendants) and religious grounds (against Muslims), motivated by the fact that members of these groups were considered to be supporters of Alassane Ouattara.<sup>990</sup>

## **B. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

474. As noted in Section 3, above, the acts of murder, attempted murder and rape and the inhumane acts committed in the context of the aforesaid incidents were directed at the civilian population perceived as pro-Ouattara. The victims included many persons identified as being members of the Dioula ethnic group.<sup>991</sup> The victims also included persons from the Muslim community, which was targeted when mosques were destroyed and religious leaders were attacked.<sup>992</sup> Persons of certain nationalities, such as Malians and Burkinabés, were also targeted.<sup>993</sup> As noted above, there is also evidence that areas of Abidjan where the target population predominantly lived were singled out.<sup>994</sup>
475. Most importantly, all of these communities were victimised because of their real or perceived political affiliation with Mr Gbagbo's opponent in the 2010 election, Alassane Ouattara. There is evidence that rhetoric against this target group was used by the accused and other persons involved in the implementation of the State policy. There is also evidence from a significant number of victims, referred to above, that the direct perpetrators also identified their victims as Dioula or pro-Ouattara when committing the crimes. In fact, the evidence analysed above indicates that all of the victims identified

<sup>990</sup> *Gbagbo* Confirmation Decision, ICC-02/11-01/11-656-Conf, paras. 204-205; *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, paras. 122-123.

<sup>991</sup> P-0433, T-147-CONF-FRA, p. 17, lines 25-28, p. 18, lines 1-11; P-0109, T-154-CONF FRA CT, p. 41, lines 12-17; P-0438, T-150-CONF-FRA, p. 8; P-0442, T-19-CONF-FRA, p. 86; P-0185, T-211-CONF-FRA, pp. 18-19, Rule 68(3) Statement of P-0107, CIV-OTP-0020-0064-R01, para. 155, T-107.

<sup>992</sup> CIV-OTP-0046-0029 refers to vandalism in the mosques of Doukouré and Sidéci. T-150-CONF-FRA, p. 4. P-0369, T-40-CONF-ENG, p. 67. See also video CIV-OTP-0043-0269 at 28:30 (shown to P-0441 at T-35-CONF-FRA, p. 87), which shows the destruction of the Lem mosque. See P-0583's crime scene report on the Lem mosque, CIV-OTP-0076-1952; P-0441, T-35-CONF-FRA, pp. 79-81.

<sup>993</sup> P-0433, T-147-CONF-FRA, p. 6; P-0441, T-37-CONF-FRA, pp. 38-39; P-0404, T-212-CONF-FRA, p. 5; P-0440, T-157-CONF-FRA, pp. 81-82; P-0568, T-209-CONF-FRA, p. 36; P-0459, T-153-CONF-FRA, p. 2; P-0442, T-19-CONF-FRA, p. 76.

<sup>994</sup> CIV-OTP-0046-0029; P-0109, T-154-CONF-FRA, pp. 32-34. P-0414, CIV-OTP-0054-0582 at 0597-0598, para. 94.

in this case have two common attributes: they were unarmed, and they were targeted for what they represented. They represented the part of the Ivorian population that, within the context of the post-election violence, did not support Mr Gbagbo. Although some of the victims were politically active, many of them were simply targeted for having an “enemy” last name, for practising the religion linked to Alassane Ouattara, for sharing similar origins with Alassane Ouattara or for wearing a *gris-gris*.

476. As a result of their real or perceived association with Alassane Ouattara, the aforesaid victims were severely deprived of their fundamental rights as a result of a State policy whose effect and purpose was discrimination against this part of the civilian population.<sup>995</sup> Many victims were deprived of their fundamental rights to life, to liberty and security.<sup>996</sup> Other victims were subjected to torture and inhumane treatment.<sup>997</sup> Some were also subjected to crimes of rape and forced nudity.<sup>998</sup> Children also suffered as a consequence of the attack on the civilian population, either directly or indirectly as a consequence of crimes committed against their parents, which they were forced to witness.<sup>999</sup> Victims’ freedom of religion was also violated when mosques were attacked. These holy places and the objects in them were destroyed and denigrated while worshipers attended services on the day of prayer.<sup>1000</sup> Property belonging to the target group was also destroyed and pillaged.<sup>1001</sup> Furthermore, political dissidents were victimised for holding opinions different to those of Mr Gbagbo and for attempting to assemble and protest peacefully against his State policy aimed at keeping him in power.<sup>1002</sup>

### C. Conclusion

477. Accordingly, there is evidence upon which a reasonable Trial Chamber could conclude that the crime of persecution was committed against a political group (those supporting

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<sup>995</sup> Article 2, Universal Declaration of Human Rights and Article 1, International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>996</sup> Article 3, Universal Declaration of Human Rights.

<sup>997</sup> Article 5, Universal Declaration of Human Rights.

<sup>998</sup> Article 2, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

<sup>999</sup> Articles 3, 6 and 16 of the Convention on the Rights of the Child.

<sup>1000</sup> Article 18, Universal Declaration of Human Rights.

<sup>1001</sup> Article 17, Universal Declaration of Human Rights.

<sup>1002</sup> Article 19, Universal Declaration of Human Rights.

Alassane Ouattara) and against national, ethnic and religious groups perceived as pro-Ouattara (namely Dioula, Malians, Burkinabés and Muslims).

## **Section 5: Individual criminal responsibility**

478. The determination of whether there is evidence upon which a tribunal could reasonably convict should be made on the basis of the evidence as a whole. When the evidence taken at its highest would be insufficient to enter a conviction, then a decision of acquittal should be entered in regard to the charges in question.
479. The Prosecutor concedes that there is insufficient evidence to support the charges against Mr Blé Goudé in relation to two incidents: specifically, his involvement in the commission of the crimes in the incidents of 3 March 2011 and 17 March 2011. Accordingly, the Prosecutor's concession is accepted.
480. As regards Mr Gbagbo, the evidence is insufficient to prove his individual criminal responsibility in relation to the incident of 12 April 2011. Although, as discussed in Sections 3 and 4 above, there is some evidence that members of the FDS participated in the incident, Mr Gbagbo was arrested on 11 April 2011 and thus was no longer in control of the FDS by the time the incident occurred. While evidence suggests that Mr Gbagbo, as head of the State apparatus, could have prevented the commission of the crimes on the days prior to his arrest, the evidence in the record is insufficient to determine his individual criminal responsibility vis-à-vis this incident.
481. Accordingly, the individual criminal responsibility of Mr Gbagbo and Mr Blé Goudé as regards these incidents will not be analysed further for the purposes of this Section. However, this does not affect the findings and conclusions made with regard to the contextual elements of crimes against humanity, namely that evidence related to these incidents and other incidents analysed in Section 3 above indicates that there was a course of conduct involving the multiple commission of crimes pursuant to a State policy to commit such an attack.
482. Evidence in the record indicates that both accused were influential in the implementation of the State policy. At the time of the post-election violence, Mr Gbagbo was the undisputed leader of the implementation of the State policy, since he was the President and Supreme Commander of the FDS. Moreover, the evidence also gives force to the allegations that Mr Gbagbo supported, endorsed and did not prevent the commission of the crimes by the FDS under his command and by non-State

actors, in particular the *Jeunes Patriotes*. Evidence also indicates that Mr Blé Goudé was the undisputed leader of these youth militias. He was also a member of Mr Gbagbo's government and worked closely with the State apparatus in the implementation of the State policy. Accordingly, the participation of both accused must be understood within the context of this State policy, in particular as regards their knowledge that their acts were part of an attack against the civilian population. However, for the purpose of the discussion of their individual criminal responsibility in this Section, the specific individual acts which Mr Gbagbo and Mr Blé Goudé personally committed (or the actions they omitted to take) are analysed on the basis of the incidents applicable to each of them respectively.

## **I. Legal characterisation of the conduct of the accused / mode of liability**

483. The Prosecutor intended to hold the accused accountable under each mode of liability under article 25(3) of the Statute. She also made submissions concerning Mr Gbagbo's responsibility pursuant to article 28 of the Statute. The Pre-Trial Chamber confirmed the charges against Mr Gbagbo under article 25(3)(a), (b) or (d) of the Statute, in the alternative. Notice was given pursuant to regulation 55(2) of the Regulations of the Court of the possibility that the legal characterisation of the facts set out in the confirmation decision could be changed to include Mr Gbagbo's liability under article 28 of the Statute.<sup>1003</sup> In relation to Mr Blé Goudé, the Pre-Trial Chamber confirmed the charges pursuant to article 25(3)(a), (b), (c) or (d) of the Statute, in the alternative.
484. In Section 3 of this opinion it was concluded that the requirements for the contextual elements of crimes against humanity were met. The present Section will discuss, on the basis of the evidence analysed above, the particular mode of liability that best corresponds to the accused's participation in the State policy examined above.
485. Judges are limited, in their analysis, to the facts and circumstances of the charges confirmed against the accused. However, judges are not obliged to evaluate the evidence and make findings of fact in relation to each and every one of the modes of

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<sup>1003</sup> "Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court", 19 August 2015, ICC-02/11-01/15-185. See also Appeals Chamber, "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I", 18 December 2015, ICC-02/11-01/15-369.

liability alternatively charged. Thus, judges have a discretion to examine only the mode of liability that most accurately describes the conduct of the accused.<sup>1004</sup>

486. In the light of Mr Gbagbo's position as President of Côte d'Ivoire and Supreme Commander of the FDS, and the fact that he had the capacity to issue instructions during the post-election violence, his criminal responsibility is most adequately analysed under article 28 of the Statute.

487. In relation to Mr Blé Goudé, the evidence submitted reveals that he contributed significantly to the implementation of the State policy and had a substantial effect on the commission of the crimes. His role in the implementation of the State policy and his individual criminal responsibility are most appropriately analysed under article 25(3)(b) of the Statute.<sup>1005</sup>

488. Consequently, the present analysis is limited to these two modes of liability, which most appropriately reflect the specific individual acts of the accused and consequently their criminal responsibility.

## II. Mr Gbagbo

### A. Applicable law

489. Article 28 of the Statute provides as follows:

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander 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 over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

<sup>1004</sup> ICTY, *Sainovic* Trial Judgment, para. 76.

<sup>1005</sup> Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, public redacted version of the corrected version of the "Decision on the Prosecutor's Application for a warrant of arrest, Article 58", ICC-01/04-01/06-1-Corr-Red, para. 78; *Katanga* Confirmation Decision, ICC-01/04-01/07-717, paras. 485-486.

- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

490. As noted above, Mr Gbagbo was President of Côte d'Ivoire and Supreme Commander of the Armed Forces at the time of the post-election violence and until 11 April 2011. Accordingly, in this case it might be possible to apply both article 28(a) and article 28(b) of the Statute. However, for the purposes of this opinion, and in view of the test to be applied, his criminal responsibility is analysed under article 28(a) of the Statute. That provision is more suitable to an analysis of Mr Gbagbo's specific individual acts as they relate to the composite of criminal acts committed by the FDS under his command in the three incidents analysed below, namely the March on RTI, the Women's March and the shelling of Abobo.

491. Pursuant to article 28 of the Statute, the following elements have to be established: (a) crimes within the jurisdiction of the Court were committed by forces; (b) the accused was either a military commander or a person effectively acting as a military commander; (c) the accused had effective command and control, or effective authority and control, over the forces that committed the crimes; (d) the accused either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; (e) the accused 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; and (f) the crimes committed by the forces must have been a result of the failure of the accused to exercise control properly over them.<sup>1006</sup>

492. Before proceeding to the work of analysis, it is paramount to emphasise the distinct nature of international criminal law, which is clearly reflected in the principle of command and superior responsibility enshrined in article 28 of the Statute. Unlike other concepts used at international criminal trials, which emanate directly from criminal law (e.g. the principle of legality), the concept of command and superior responsibility is an original creation of international criminal law and international human rights law.<sup>1007</sup> Article 28 of the Statute allows judges to hold responsible not only military commanders but also civilian authorities (constituted *de jure* or *de facto*), who under traditional criminal law principles would escape justice. Because of the nature of the crimes, the principle of command and superior responsibility departs from the traditional principles of criminal law, allowing judges to hold individuals responsible for acts committed by their subordinates. Most importantly, it allows judges to hold individuals responsible for their actions, but also for their omissions, namely their failure to prevent the commission of crimes by subordinates or their failure to punish their subordinates after the acts have been committed.<sup>1008</sup>
493. The commander or superior has an obligation to prevent and punish. These are not alternative and equally satisfactory options. Where the commander or superior knew or had reason to know that subordinates were about to commit crimes and failed to prevent them, he or she cannot make up for the failure to act by punishing the subordinates afterwards.<sup>1009</sup>
494. Article 28 of the Statute has been considered by some to import a special mode of liability by omission, linked to the status of a superior.<sup>1010</sup> Others have considered that

<sup>1006</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 170.

<sup>1007</sup> G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 221.

<sup>1008</sup> S. Boelaert-Suominen, "Prosecuting superiors for crimes committed by subordinates: a discussion of the first significant case law since the Second World War", *Virginia Journal of International Law*, 41, 2001, p. 750.

<sup>1009</sup> ICTY, *Blaškić* Trial Judgment, para. 336.

<sup>1010</sup> ICTY, Appeals Chamber, *Celebici*, "Judgement", 20 February 2001, IT-96-21-A, paras. 197-198. The ICTY stated: "As long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control."

it provides for a *sui generis* subsidiary mode of liability.<sup>1011</sup> The present analysis of article 28 of the Statute is guided by the *raison d'être* of that article. Article 28 was included in the Statute to prevent impunity for those in power – those who, by traditional criminal law standards, would have escaped justice. The essence of article 28 is that it holds responsible those who, under the veil of the rule of law, in fact abuse the rule of law against the population they are supposed to protect. The application of traditional criminal law standards (*lex generalis*) in proceedings where article 28 of the Statute is applicable (*lex specialis*) is a perversion of this norm and invalidates its existence. Such an interpretation of the law, together with the *de facto* or *de jure* position of command or authority of the accused vis-à-vis the victims of the crimes, can only lead to unreasonable conclusions. Judicial analysis of article 28 must pierce this veil of “strict” application of criminal law that ignores the object and purpose of international criminal law, and particularly of article 28 of the Statute. Unless article 28 of the Statute is analysed with this in mind, those holding power and authority who commit crimes against those they are supposed to protect will be acquitted, and victims will be denied justice.

## **B. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

495. The analysis below takes into consideration the findings discussed in Section 3, above, on which a reasonable Trial Chamber could conclude that the elements of crimes against humanity are established. The analysis below also takes into account that, on the evidence in the record, the direct perpetrators of the crimes in the three incidents concerning Mr Gbagbo were mainly members of the FDS. As regards the March on RTI, there is also evidence indicating that non-State actors, namely militiamen, *Jeunes Patriotes*, and mercenaries, operated jointly with the FDS in the commission of the crimes. However, for the purposes of this Section, the analysis will focus on whether Mr Gbagbo had effective control over the FDS as the main perpetrators of the crimes in relation to the three incidents concerned (the March on RTI, the Women’s March and the shelling of Abobo).

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<sup>1011</sup> ICTY, Trial Chamber I, *The Prosecutor v. Sefer Halilović*, “Judgement” (“*Halilović Trial Judgment*”), 16 November 2005, IT-01-48-T, para. 44; Trial Chamber, *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, “Judgement”, 15 March 2006, IT-01-47-T, para. 71.

*1. The status of military commander*

496. Mr Gbagbo, like any other accused before this Court, has the undeniable right to be presumed innocent until proven guilty. However, the analysis of the evidence must take into account the context of the post-election violence and, in particular, Mr Gbagbo's position as President of Côte d'Ivoire and Supreme Commander of the FDS. At the time of the events, Mr Gbagbo had an indefeasible duty to protect the population of Côte d'Ivoire and to exercise his authority responsibly. The negligent or abusive exercise of power in disregard of this legal obligation to protect civilians results in criminal responsibility under article 28 of the Statute. In this regard, a negligent wielder of authority who fails to acquire knowledge of subordinates committing crimes may be criminally responsible, not for the actions of the subordinates, but for his or her own failure to act.
497. The context in which the crimes occurred is important to the analysis of the evidence and the link between the crimes and Mr Gbagbo. At the time of the post-election violence, Mr Gbagbo had been in office as President of Côte d'Ivoire for a decade. He was therefore at the top of a power structure which encompassed not only the government and the military, but also Ivorian society and the country's political landscape as a whole. There is evidence that, during the decade which he spent at the top of the Ivorian power structure, Mr Gbagbo installed persons whom he trusted in top military and government positions. Above all, at the time of the post-election violence, Mr Gbagbo's position of power was diametrically opposed to the position of the victims, who, as discussed above, were all unarmed civilians who had, or were perceived to have, some link to his political opponents.
498. Pursuant to article 47 of the Ivorian Constitution, Mr Gbagbo, as President of the Republic, was also Supreme Commander of the FDS.<sup>1012</sup> Hence there was a superior-

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<sup>1012</sup> Legislation, CIV-OTP-0003-0146 at 0151, article 34 at 0155, article 47: Constitution of Côte d'Ivoire. Article 47 reads: "*Le Président de la République est le Chef suprême des Armées. Il preside la Conseil supérieur de la Défense.*" Legislation, CIV-OTP-0025-0971 at 0979-0980, 24 February 2011, referring to the President of the Republic, the CEMA and the GSPR. Witness P-0520 testified (T-50-CONF-FRA) that General Touvolvy was the head of the *cabinet* referred to at page 0979. P-0520 explained that the special advisers to the President were directly answerable to the President. They could request appointments to see him. The GSPR was responsible for Mr Gbagbo's safety. This was coordinated by the chief of the military staff. The commander of the Republican Guard was Dogbo Blé; that of the GSPR was Colonel Ahouma. The GR was a military unit, while the GSPR was a group of police, gendarmes, soldiers and civilians. Legislation, 6 December 2007, CIV-OTP-0054-0210 at 0211-0219: *Journal Officiel* dated 6 December 2007, including Decree 467-2007 on the organisation of the

subordinate relationship establishing Mr Gbagbo's command of those who answered to him.<sup>1013</sup> For the purposes of the present case, and by virtue of his position, Mr Gbagbo was the most senior person in the FDS hierarchy.<sup>1014</sup>

499. In the military hierarchy, Mr Gbagbo was above all other individuals. He had *de jure* control over the entirety of the FDS until 11 April 2011, when he was arrested.<sup>1015</sup> In this *de jure* position, Mr Gbagbo held undisputed hierarchical authority over the FDS, and, as provided by the Constitution of Côte d'Ivoire, he retained ultimate control. Mr Gbagbo had the legal power to issue decrees and instructions, and the authority to requisition the FDS. Evidence in the record shows that he used these powers during the post-election violence.<sup>1016</sup> Within the Ivorian legal framework and the FDS hierarchy, Mr Gbagbo had the legal ability to issue orders to the FDS, which had a legal obligation to comply with those orders. The evidence shows that there was a link between Mr Gbagbo's ability in law and his ability in fact to command and control the FDS, and that this link operated not only throughout the post-election violence but also in the three specific incidents relevant to his individual criminal responsibility.<sup>1017</sup>

500. Under Ivorian law (Article 7 of the Law of 12 June 1961) Mr Gbagbo held the following powers, which Édouard Kassaraté confirmed were *de facto* applicable during the post-election violence: "*Le Président de la République, Chef des armées, dirige et coordonne la politique de la défense*".<sup>1018</sup> Mr Gbagbo was the highest authority within the FDS and as such, directed and coordinated its actions.

## 2. *Effective command and control over the FDS*

501. The term "command" denotes authority over armed forces. This authority entails the power or right to give orders and to enforce obedience.<sup>1019</sup> The term "effective control" refers to the manifestation of a superior-subordinate relationship between the commander and the forces or subordinates.

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Ministry of the Interior. Legislation, CIV-OTP-0054-0293 at 0295-0300: *Journal Officiel* dated 7 January 2002, including Decree 783-2001 on the functioning of the Police.

<sup>1013</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. I (Oxford University Press, 2013), p. 208.

<sup>1014</sup> ICTY, *Halilović* Appeals Judgment, 16 October 2007, IT-01-48-A, para. 59.

<sup>1015</sup> P-0009, T-193-FRA, p. 25.

<sup>1016</sup> ICTR, *Kayishema and Ruzindana* Trial Judgment, paras. 482-483.

<sup>1017</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. I (Oxford University Press, 2013), p. 209.

<sup>1018</sup> P-0011, T-131-CONF-FR, pp. 5-6, emphasis added. See also CIV-OTP-0054-0002.

<sup>1019</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 180.

502. As already explained above, Mr Gbagbo was at the summit of the Ivorian command structure and had the power and ability to give orders to the FDS in his capacity as Supreme Commander under Ivorian law.<sup>1020</sup> Accordingly, there was a *de jure* hierarchical relationship between Mr Gbagbo and the FDS. For example, Bredou M'bia, as Director General of the Police, was controlled by Mr Gbagbo through the Minister of the Interior, who, during the post-election violence, was Emile Guiriéoulou. Bredou M'bia reported to the Minister, who ultimately reported to the President.<sup>1021</sup> Mr Gbagbo's *de facto* authority is an issue of fact to be determined by reference to the circumstances of the case.<sup>1022</sup>
503. The evidence in the record indicates that Mr Gbagbo had already reinforced the loyalty of FDS subordinates before the post-election violence, in August 2010. Georges Guiai Bi Poin testified that he had understood Mr Gbagbo's words – "*si je tombe, vous tombez*" – to mean that, as a soldier, he had to be loyal to the authorities above him.<sup>1023</sup> There is also evidence that loyalty to Mr Gbagbo, and not necessarily to the "Republic" or to the law, had already been inculcated in the FDS before the second round of the election.<sup>1024</sup> As noted above, evidence indicates that, immediately after the contested election results were announced, Mr Gbagbo summoned FDS commanders to ensure their loyalty in what would become the beginning of the post-election violence.<sup>1025</sup>

<sup>1020</sup> T-224-CONF-FRA. The Defence for Mr Gbagbo stated in court that the President – the Presidency – of the Republic of Côte d'Ivoire is an institution which has its own various prerogatives and operational protocols.

<sup>1021</sup> P-0046, T-123-CONF-FRA, p. 12, lines 1-13.

<sup>1022</sup> ICTY, Trial Chamber, *The Prosecutor v. Mi o Staniši and Stojan Župljanin*, "Judgement" ("*Staniši and Župljanin Trial Judgment*"), 27 March 2013, IT-08-91-T, para. 111. In the case at bar, the evidence related to *de facto* authority was mainly given by FDS officers and other insiders, in particular P-0009, whose credibility was not challenged by the Defence.

<sup>1023</sup> P-0010, T-138-CONF-FRA, p. 34, lines 13-24: "R. [11:50:03] *Je me... Je me souviens que le Président a prononcé ces mots, mais je ne sais pas dans quelles circonstances précises. Je ne me rappelle plus dans quelles circonstances précises. Maintenant, comme vous dites que c'est dans le discours du 7 août 2010, j'imagine que c'est vrai. Mais je me rappelle très bien de... de l'expression: 'Si je tombe, vous tombez'. Q. [11:50:43] Alors, d'après vous, qu'est-ce que cela signifiait? M. LE JUGE PRÉSIDENT TARFUSSEUR interprétation): [11:50:49] Q. [11:50:49] Comment avez-vous compris cette expression, vous-même? Comment l'avez-vous perçue? Comment l'avez-vous interprétée? R. [11:50:59] Pour moi, un soldat a un devoir de loyauté vis-à-vis des autorités. Et pour moi, c'est une incitation adressée à nous, soldats, et continuer à être des soldats loyaux vis-à-vis de l'autorité." Note de renseignement, CIV-OTP-0045-0322.*

<sup>1024</sup> See the evidence, analysed above, that Philippe Mangou, Edouard Kassaraté and Rigobert Dadi instructed subordinates to vote for Mr Gbagbo.

<sup>1025</sup> See the video evidence at CIV-OTP-0075-0061 of an RTI broadcast showing the said meeting between Mr Gbagbo and FDS generals.

Moreover, throughout the post-election violence, RTI broadcasts emphasised FDS loyalty to Mr Gbagbo.<sup>1026</sup>

504. Evidence also shows that this loyalty and Mr Gbagbo's effective control over the FDS continued throughout the post-election violence. Philippe Mangou's testimony is telling in that it shows that Mr Gbagbo intervened directly and even retaliated whenever the formal FDS structure was not responsive to his personal interests. Philippe Mangou testified that he had received the "kiss of death" from Mr Blé Goudé because during a meeting on 11 March 2011 he had advised Mr Gbagbo to resign.<sup>1027</sup> He testified that, as a result of his advice, his family home had been attacked on 14 March 2011.<sup>1028</sup> Philippe Mangou stated that Vagba Faussignaux had told him that this had been a "test" of his loyalty to Mr Gbagbo. Minister Alain Dogou similarly told Philippe Mangou that he had also been "quarantined" for criticising Mr Gbagbo.<sup>1029</sup>
505. Philippe Mangou also explained that, after his attempt to seek refuge with his family on 30 March 2011, he had been forced to resume his position as CEMA when Mr Gbagbo instructed Konan Boniface to bring him to the Presidential Residence on 3 April 2011. He said that, despite his view that Mr Gbagbo should resign and his attempt to leave the FDS, he had been obliged to remain in his position as CEMA under Mr Gbagbo's command.<sup>1030</sup> As Philippe Mangou stated during his testimony, Mr Gbagbo was still optimistic on 3 April 2011, as the FDS had maintained control of the Presidential Palace.<sup>1031</sup> At a meeting televised in an RTI broadcast dated 4 April 2011, Mr Gbagbo received all his high-ranking Ministers and officers. RTI reported that the CEMA was

<sup>1026</sup> Video CIV-OTP-0061-0542 at 00:03:20-00:07:31 (excerpt from RTI broadcast of 12 December 2010 at 20.00; transcript, CIV-OTP-0087-0175 at 0176-0177, lines 1-77) shows a visit of Mr Mangou to the FDS forces during which he orders them to respect the Constitution and to be vigilant (see also a similar speech in CIV-OTP-0088-0765). Video CIV-OTP-0069-0371 at 00:12:22-00:13:28 (excerpt from RTI broadcast of 14 March 2011 at 20.00; transcript, CIV-OTP-0094-0270 at 0271, lines 1-15) shows a report on a meeting of generals of the FDS with Mr Gbagbo in which they express their loyalty (in response to information about desertions). The reporter states that "*grandes décisions seront arrêtées*".

<sup>1027</sup> P-0009, T-194-FRA, p. 10: "*Donc, je reviens un peu sur l'histoire pour dire que le Président aurait pu me recevoir avec Blé Goudé. Mais, donc, informé de ce que je voulais qu'il démissionne, ils ont effectivement voulu savoir si j'étais franc et loyal. Et la venue de Blé Goudé à l'état-major, c'était un peu pour me donner le baiser de la mort, s'assurer par lui-même qu'effectivement j'avais conseillé au Président de démissionner. Donc, voici pour ce qui est de la rencontre du 11 mars 2011 à 16 h 30.*"

<sup>1028</sup> T-194-FRA, pp. 8-9.

<sup>1029</sup> T-194-FRA, pp. 9-10.

<sup>1030</sup> T-194-FRA, pp. 10-19. See video CIV-OTP-0047-0817.

<sup>1031</sup> T-194-FRA, p. 18.

still in his position and that Mr Gbagbo was in control and in power.<sup>1032</sup> The Defence has not contested that top FDS commanders and government officials, including Vagba Faussignaux,<sup>1033</sup> Emile Guiriéoulou<sup>1034</sup> and Abou Drahamane, remained in their positions and were loyal to Mr Gbagbo until April 2011.<sup>1035</sup> Indeed, Philippe Mangou testified that, although he negotiated a ceasefire on 9 April 2011, Mr Gbagbo rejected this and FDS personnel under his command continued fighting until his arrest on 11 April 2011.<sup>1036</sup> There is also evidence that FDS personnel loyal to Mr Gbagbo were still based in Abidjan on 12 April 2011.<sup>1037</sup>

506. Evidence analysed in Section 3, above, shows that Mr Gbagbo met with the FDS high commanders and gave them instructions throughout the post-election violence. This was confirmed by the various FDS officials who testified in court about these meetings. There is evidence that Mr Gbagbo received reports and, most importantly, gave instructions to the FDS. There is evidence connecting these instructions to the excessive use of force and the commission of crimes by the FDS during the three incidents relevant to Mr Gbagbo. Evidence analysed in Section 3, above, indicates that Philippe Mangou, who had direct access to Mr Gbagbo, was actively involved in FDS operations during the incidents relevant to this case, particularly the March on RTI and the operations that started in Abobo after 24 February 2011. As discussed in Section 3, above, it would be reasonable to conclude that operations conducted as part of this offensive led to the commission of crimes on 3 March 2011 and 17 March 2011.

507. There is evidence that, during the post-election violence, Mr Gbagbo reinforced direct reporting lines connecting him to his Ministers and to the military. For example, by way of a decree dated 24 February 2011, which also coincided with his instructions to start an offensive in Abobo, Mr Gbagbo established the position of *Chef de Cabinet Militaire du Président* to assist him in his capacity as Supreme Commander of the Armed Forces and to coordinate activities and manage both military and paramilitary

<sup>1032</sup> Video, CIV-OTP-0047-0817 at 00:00:03-00:03:05 (open source footage of RTI broadcast of 4 April 2011; transcript, CIV-OTP-0049-2838 at 2839-2840, lines 1-59).

<sup>1033</sup> P-0009, T-193-FRA, p. 41.

<sup>1034</sup> P-0009, T-193-FRA, p. 41.

<sup>1035</sup> P-0625, T-28-CONF-FRA, p. 57. P-0048, T-54-FRA, p. 76.

<sup>1036</sup> T-194-FRA, pp. 27-30.

<sup>1037</sup> P-0435, T-90-CONF-FRA, pp. 62-63.

staff attached to the President.<sup>1038</sup> Mr Gbagbo thus had authority to receive reports and to issue orders to his subordinates in the context of their operations; in fact, he increased this power during the post-election violence.<sup>1039</sup> It is also important to highlight that Mr Gbagbo was at all times and until 11 April 2011 in Abidjan, and thus in close proximity to the events and to his subordinates. He was not a remote commander.<sup>1040</sup> On the contrary, he was in the immediate vicinity of the events, both geographically and temporally. Moreover, as noted by Georges Guiai Bi Poin, Mr Gbagbo knew the army perfectly, including its weapons and their calibres, from first-hand experience.<sup>1041</sup> It can logically be inferred that Mr Gbagbo likewise understood military operations and, in particular, considerations of proportionality vis-à-vis the calibre of weapons used and foreseeable outcomes.

508. Evidence analysed above indicates that Mr Gbagbo issued orders and that those orders were followed.<sup>1042</sup> He had effective control of the FDS – and the power to prevent the FDS from committing crimes – throughout the post-election violence.<sup>1043</sup>
509. Additionally, there is evidence indicating that Mr Gbagbo had effective control over the FDS in relation to the three relevant incidents.
510. As regards the March on RTI, the evidence analysed above shows that Mr Gbagbo met with FDS generals prior to the march and ordered its prohibition and repression.<sup>1044</sup>

<sup>1038</sup> Decree 2011-62 of 24 February 2011, *Organisation et Fonctionnement de la Présidence de la République*, CIV-OTP-0025-0971, p. 0979.

<sup>1039</sup> ICTY, *Blaški* Appeals Judgment, para. 69.

<sup>1040</sup> *Bemba* Appeals Judgment, ICC-01/05-01/08-3636-Red, para. 171.

<sup>1041</sup> P-0010, T-141-FRA, p. 21, lines 15-21.

<sup>1042</sup> ICTY, *Halilović* Trial Judgment, para. 58; ICTY, *Strugar* Trial Judgment, paras. 393-405.

<sup>1043</sup> See for example, the evidence analysed above provided by key insider witnesses, particularly in relation to the offence in Abobo ordered on 24 February 2011. Philippe Mangou, P-0009, T-194-FRA, pp 3-4; 59, lines 9-22, p. 62, lines 4-23, p. 80, lines 3-13; Georges Guiai Bi Poin, P-0010, T-141-CONF-FRA, p. 2, lines 15-25; T-139-CONF-FRA, pp. 77-78 and 83, lines 7-28; Edouard Kassaraté, P-0011, T-134-CONF-FRA, p. 71, lines 21-28; p. 72, lines 7-25 (when shown video CIV-OTP-0026-0020, P-0011 affirmed that the president gave instructions to do everything to remove the Commando Invisible from Abobo Gare.); Détoh Létho, P-0047, T-203-FRA, pp. 32-34. See also, Presidential decree referred to above, *Journal Officiel*, 9 December 2010, CIV-OTP-0018-0047 at 0018-0049; transmission of decree by the CEMA to the FDS, 15 November 2010, CIV-OTP-0071-2452 at 2455; and video referred to above and showing the spokesperson for Mr Gbagbo's government (Ahoua Don Mello) stating that the President had given instructions to reinforce security in Abobo, CIV-OTP-0026-0020 at 00:03:20-00:03:56 (excerpt from RTI broadcast of 25 February 2011 at 13.00; transcript, CIV-OTP-0044-2534 at 2536, lines 31-35). This excerpt shows the spokesperson for Mr Gbagbo's government (Ahoua Don Mello) stating that the President had given instructions to reinforce security in Abobo.

<sup>1044</sup> See evidence analysed in Section 3 above, particularly the testimony of Philippe Mangou, who testified in court that he was informed of the march and that the Minister of the Interior had ordered that it be prohibited. Philippe Mangou also acknowledged in court that Mr Gbagbo had given instructions to prohibit the march (P-

Evidence (including from the FDS generals) confirms that the FDS, together with non-State actors, were subsequently involved in operations during the March on RTI. These same FDS generals testified that they had reported back to Mr Gbagbo about the incident, including on FDS involvement in the commission of crimes against civilians.<sup>1045</sup> Accordingly, it would be unreasonable to conclude, on the evidence thus far presented, that the superior-subordinate relationship and the effective authority of Mr Gbagbo vis-à-vis the FDS in the context of the March on RTI are not proven.

511. As regards the Women's March, the FDS generals testified that they had received reports of the women's deaths and informed Mr Gbagbo. Philippe Mangou confirmed that the FDS had been present in Abobo (and stationed at Camp Commando) at the time of the incident. Although he first denied that the convoy was an FDS convoy, he later identified the FDS vehicles and the weapons shown and heard in the video of the incident.<sup>1046</sup> Accordingly, it would be unreasonable to conclude, on the evidence thus far presented, that the superior-subordinate relationship and the effective authority of Mr Gbagbo vis-à-vis the FDS in the context of the Women's March are not proven.
512. Finally, as regards the shelling of Abobo on 17 March 2011, Philippe Mangou confirmed that the FDS were conducting operations in Abobo that day. Although he said that grenades, not mortars shells, had been used, his evidence contradicts government communiqués that later denied any FDS involvement. Philippe Mangou confirmed that he had received reports of the incident and had informed the Minister of Defence, who logically would then have reported to Mr Gbagbo.<sup>1047</sup>

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0009, T-196-CONF-FRA, p.13). See also corroborating evidence of Georges Guiai Bi Poin (P-0010, T-139-CONF-FRA, pp. 10-12) and Edouard Kassaraté (P-0011, T-134-CONF-FRA, pp. 19-20) who also referred to the instructions given before the march.

<sup>1045</sup> As noted above, Philippe Mangou testified he personally reported to Mr Gbagbo in relation to this incident (P-0009, T-196-CONF-FRA, pp. 14-19 and 24). See evidence analysed above in relation to reports of crimes received by FDS hierarchy, particularly: Ministry of the Interior, PC Operations document of 17 December, CIV-OTP-0045-0742. Calendar/Diary, *État Major Première Légion Gendarmerie Départementale*, 16 December 2010, CIV-OTP-0043-0336; DGPN Correspondence, 26 January 2011, CIV-OTP-0045-0994 (refers to allegations against BMO); BQI, 17 December 2010, CIV-OTP-0045-0735 at p. 0736 (recognised by P-0560, a police commissioner).

<sup>1046</sup> See Section 3, above, and specifically P-0009, T-200-CONF-FRA, pp. 61-68.

<sup>1047</sup> T-196-CONF-FRA, pp. 57-59. See also video showing the government communiqué of 22 March 2011, CIV-OTP-0069-0376 at 00:06:30 to 00:11:40 (excerpt from RTI broadcast of 22 March 2011 at 20.00; transcript, CIV-OTP-0102-2054 at pp. 2055-2056, lines 1-57). It is also relevant to reiterate the evidence of Philippe Mangou that Mr Gbagbo would approve such government communiqués (T-196-CONF-FRA, p. 50).

513. Moreover, although there is evidence that Mr Gbagbo could delegate to his subordinates,<sup>1048</sup> there is also evidence that, as regards the weapons in Camp Commando (from which mortar shells were fired on 17 March 2011), Mr Gbagbo gave direct orders to Rigobert Dadi, who at the time of the post-election violence was BASA's commanding officer at Camp Commando and had control of weapons and ammunition there.<sup>1049</sup> Accordingly, it would be unreasonable to conclude, on the evidence thus far presented, that the superior-subordinate relationship and the effective authority of Mr Gbagbo vis-à-vis the FDS in the context of the incident of 17 March 2011 are not proven.

3. *Knew or should have known that the forces were committing or about to commit such crimes*

514. The “knew or should have known” element in article 28 of the Statute is distinct in that it requires only one of the two component elements of the *mens rea*. Knowledge requires proof that the commander had information about the existence of the crimes. It is not necessary for the commander to know the identities of the specific individuals who committed the crimes or every detail of each crime committed by subordinates.<sup>1050</sup> It is also unnecessary to prove that the commander shared the intent of the direct perpetrators.

515. The “should have known” standard is satisfied by proof that the commander failed to acquire knowledge where this would have been required by the circumstances.<sup>1051</sup> This element is fulfilled when the superior, on the basis of the available information, should

<sup>1048</sup> P-0009, T-198-FRA, p. 24, lines 8-21; p. 26, lines 19-23; p. 27, lines 1-4: “Donc, le Président, à ce niveau, ne donne pas de détails. Lui, il me dit : ‘Libérez l’axe.’ Maintenant, à moi de voir : si je veux aller commencer par Abengourou pour libérer, ça, c’est mon problème ; si je veux partir par la MACA, ça, c’est mon problème. Mais les détails de l’opération me reviennent.” P-0009, T-195-CONF-FRA, p. 44, lines 24-25; p. 51, lines 9-11: “Q. [12:25:30] Vous a-t-il donné des instructions suite à votre débriefing? R. [12:25:36] Non, le Président n’a pas donné d’instruction. Il savait que nous étions requis, que nous faisions notre travail.”

<sup>1049</sup> P-0047, T-203-FRA, p. 9; P-0239, T-167-FRA, pp. 48 and 82.

<sup>1050</sup> Bemba Trial Judgment, ICC-01/05-01/08-3343, para. 194.

<sup>1051</sup> O. Triffterer and R. Arnold, “Article 28: Responsibility of Commanders and Other Superiors”, in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (C.H. Beck – Hart – Nomos, 3<sup>rd</sup> ed., 2016), p. 1099.

have known that his subordinates were committing or about to commit such crimes.<sup>1052</sup>

The *mens rea* can be established either by direct or circumstantial evidence.<sup>1053</sup>

516. As discussed above, Mr Gbagbo held the highest authority in respect of the FDS. He controlled the apparatus of power. In relation to the FDS, he had the authority in law and the ability in fact to issue orders and to prevent and prohibit the use of violence and lethal force against the civilian population. He also had the power to initiate or to give the instructions to initiate an effective investigation.<sup>1054</sup>
517. To understand Mr Gbagbo's knowledge, in general, as regards the post-election violence, one has to analyse the entire context. Doing otherwise can only result in illogical conclusions detached from the reality of the post-election violence. Mr Gbagbo was the President and Supreme Commander of the FDS. At all times until his arrest, Mr Gbagbo was in Abidjan in close proximity to the events. There is ample evidence, analysed above, that he gave orders which were followed, and that subordinates reported back to him. There is also evidence that he was exceptionally knowledgeable in military operations and weapons.
518. In the light of the above, it would be impossible for a reasonable Trial Chamber to conclude that Mr Gbagbo lacked knowledge of FDS involvement in the commission of the crimes. In fact, his presence in Abidjan at his meetings with subordinates are sufficient to support the inference that he had knowledge.<sup>1055</sup> Mr Gbagbo effectively reinforced his authority over the FDS from the beginning of the post-election violence, in particular with the requisition of the armed forces on 14 November 2010 (Presidential Decree 2010-306) to provide security for the second round of the election. There is evidence that, throughout the post-election violence, and in particular in the context of the March on RTI, Mr Gbagbo gave instructions that led to the commission

<sup>1052</sup> ICTY, *The Prosecutor v. Stanislav Gali*, "Judgement and Opinion" ("*Gali* Trial Judgment"), 5 December 2003, IT-98-29-T, para. 706.

<sup>1053</sup> *Bemba* Trial Judgment, ICC-01/05-01/08-3343, paras. 191-193; *Bemba* Appeals Judgment, Dissenting Opinion of Judges Monageng and Hofma ski, ICC-01/05-01/08-3636-Anx1-Red, para. 269.

<sup>1054</sup> *Halilovi* Trial Judgment, para. 58.

<sup>1055</sup> *Karadži* Appeals Judgment, para. 610: "[...] The Trial Chamber concluded that 'the only reasonable inference' was that [the subordinate] 'shared the knowledge and observations he had gathered during his trip with [the accused]' [...]. In this respect, it relied on: (i) reports sent to Kova on 12 and 13 July 1995 regarding the Srebrenica operation; (ii) the fact that Kova and Karadži had met on 13 July 1995; (iii) Kova's presence in the [...] areas, [...]; and (iv) the encounters he had with [subordinates]."

of crimes.<sup>1056</sup> Again, evidence shows that Mr Gbagbo ordered an offensive in Abobo on 24 February 2011 and simply instructed Philippe Mangou to avoid too many deaths: “*Faites en sorte qu’il n’y ait pas trop de morts.*”<sup>1057</sup> Mr Gbagbo encouraged the FDS generals to continue the fight and congratulated all FDS forces for their work in Abobo.<sup>1058</sup> Evidence also shows that Mr Gbagbo ordered FDS officers to do everything they could to hold Abobo, while at the same time denying the possibility of evacuating civilians.<sup>1059</sup> On 3 April 2011, Some days before his arrest, Mr Gbagbo instructed Philippe Mangou: “*Reprenez le combat.*”<sup>1060</sup> On 9 April 2011, despite Philippe Mangou’s negotiation of a ceasefire, Mr Gbagbo continued ordering the FDS to fight.<sup>1061</sup> Evidence also indicates that all the crimes were committed during his tenure as President and Supreme Commander and were directed against political opponents.

519. As discussed above, there is evidence that Mr Gbagbo received reports and updates on events from the FDS generals, the Minister of Defence and the Minister of the Interior. Philippe Mangou confirmed that he had always taken orders directly from Mr Gbagbo, who had full knowledge of the operations and was aware of the use of mortars in civilian areas,<sup>1062</sup> and of the occurrence of deaths.<sup>1063</sup> Philippe Mangou confirmed in court that he had reported to Mr Gbagbo that mortar shells had been used during an operation of 25 February 2011; however, he testified that he had not told Mr Gbagbo

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<sup>1056</sup> Fax from the *Préfet de Police* of Abidjan, 12 December 2010, CIV-OTP-0045-0748, which P-0046 recognised in Court, giving information about the march (T-125; T-127). P-0009 testified in court that he had been informed of the march and that the Minister of the Interior had ordered that it should be prohibited (T-196-CONF-FRA). P-0009 also accepted in court that Mr Gbagbo had instructed that the march be prohibited: “*Monsieur le témoin, est-ce que vous êtes au courant d’une réunion au cours de laquelle la marche a fait l’objet d’une discussion, et qui aurait eu lieu le 14 décembre? R. [10:04:27] Oui, Monsieur le Président. Q. [10:04:29] Est-ce que vous pouvez nous parler de cette réunion? De quoi s’agissait-il? R. [10:04:35] 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 [T-196-CONF-FRA, p. 13].” P-0010 confirmed this in court (T-139-CONF-FRA, pp. 19-14), as did P-0011, who also referred to the instructions given before the march (T-134-CONF-FRA, pp. 19-20). See also the RTI video showing an FDS communiqué on the eve of the march: video CIV-OTP-0064-0089 at 00:03:02-00:06:28 and 00:30:27-00:33:41 (excerpts from RTI broadcast of 15 December 2010 at 13.00).*

<sup>1057</sup> P-0009, T-194-FRA, p. 59.

<sup>1058</sup> P-0010, T-139-CONF-FRA, p. 83, lines 7-28.

<sup>1059</sup> P-0047, T-203-FRA, p. 43.

<sup>1060</sup> P-0009, T-194-FRA, p. 18.

<sup>1061</sup> P-0009, T-194-FRA, pp. 27-30.

<sup>1062</sup> P-0009, T-196-CONF-FRA, p. 38.

<sup>1063</sup> P-0009, T-196-CONF-FRA, p. 27.

about casualties or damage, as he had not been there; that information had come from UNOCI.<sup>1064</sup> Given Mr Gbagbo's position of authority and his knowledge of military operations and weapons, it was his duty as Supreme Commander to order reports on civilian casualties when, upon his orders, weapons of war were used in an urban area. Mr Gbagbo's generic order that there should not be too many deaths, together with the fact that he "made no efforts to ensure that these orders were implemented on the ground so as to generate a positive effect on the prevention of crime" is clearly insufficient to release him from his criminal responsibility as the highest commander of the FDS.<sup>1065</sup>

520. The Defence has argued that Mr Gbagbo's government was defending itself against armed rebel groups and that the FDS were acting within the confines of international humanitarian law.<sup>1066</sup> In this regard, is important to recall the conclusion reached in Section 3 above that the attack against the civilian population was not justified even if there were some armed elements mixed in with the civilian population.

521. In the light of this and other evidence analysed above, a reasonable Trial Chamber could conclude that it would have been impossible for the FDS to launch an attack against the civilian population without Mr Gbagbo's knowledge and approval. Moreover, in the light of Mr Gbagbo's experience and military knowledge, a reasonable Trial Chamber could conclude that Mr Gbagbo must have known that the indiscriminate shelling of a densely populated urban area would result in civilian deaths and was in contravention of international law.<sup>1067</sup> The evidence analysed shows that the chain of command functioned properly, as did the reporting and monitoring system. Taking into account the information available to Mr Gbagbo during the post-election violence, a reasonable Trial Chamber could conclude that he was on notice of the crimes committed by the FDS, and that these were part of the policy to keep him in power.

<sup>1064</sup> P-0009, T-196-CONF-FRA, p. 43, lines 16-18; p. 44, lines 24-28; p. 45, lines 1-23.

<sup>1065</sup> *Karadžić* Trial Judgment, para. 3410.

<sup>1066</sup> T-225-CONF-FRA.

<sup>1067</sup> See ECtHR, *Benzer and others v. Turkey*, para. 184. The Court considered that an indiscriminate aerial bombing of civilians and their villages could not be acceptable in a democratic society or reconcilable with any of the grounds regulating the use of force set out in Article 2 § 2 of the Convention, the customary rules of international humanitarian law or any of the international treaties regulating the use of force in armed conflicts.

522. As regards the March on RTI, there is evidence that on 14 December 2010 Mr Gbagbo summoned FDS generals to discuss the planned demonstration at RTI. Philippe Mangou and Georges Guiai Bi Poin both testified that Mr Gbagbo had ordered that the march be prohibited and that he had given instructions accordingly.<sup>1068</sup> There is also evidence that, acting on Mr Gbagbo's instructions, the FDS committed crimes by using excessive lethal force which resulted in deaths, and by engaging in the unlawful detention, beating and rape of unarmed civilians.<sup>1069</sup>
523. Although there is no evidence that Mr Gbagbo explicitly ordered the commission of these crimes against civilians, evidence shows that his order to repress the march was implemented in a brutal manner. Evidence also suggests that this violence was planned. As noted above, on 12 December 2011, Emile Guiriéoulou instructed the police to act as though in a state of war. This was then reported by RTI.<sup>1070</sup> On the eve of the march, 15 December 2010, the FDS spokesperson read out a communiqué on RTI stating that armed confrontations with demonstrators were expected. The government communiqué also stated that Mr Choi would be held responsible for any "unforeseen situation".<sup>1071</sup> Likewise, P-0347 testified that, on that same date, Dogbo Blé had instructed FDS officers to be prepared. Dogbo Blé said on that occasion that he was ready for the battle of Abidjan.<sup>1072</sup>

<sup>1068</sup> P-0009, T-196-CONF-FRA, p. 13, and P-0010, T-139-CONF-FRA, pp. 19-14.

<sup>1069</sup> See analysis in Sections 3 and 4, above.

<sup>1070</sup> Video, CIV-OTP-0074-0063 at 00:16:10-00:17:56 (excerpt from RTI broadcast of 12 January 2011 at 20.00; transcript, CIV-OTP-0087-0491 at 0492, lines 22-27).

<sup>1071</sup> RTI video showing an FDS communiqué on the eve of the march: CIV-OTP-0064-0089 at 00:03:02-00:06:28 and 00:30:27-00:33:41 (excerpts from RTI broadcast of 15 December 2010 at 13.00).

<sup>1072</sup> P-0347, T-77-CONF-FRA, p. 78, lines 6-28: "*Q. [15:15:27] Merci pour cette précision, Monsieur le témoin. Alors, vous nous avez parlé dans la séance antérieure du fait que le général Dogbo Blé Bruno est arrivé, à un moment donné, à votre camp. J'aimerais simplement, pour que le dossier soit clair à cet égard, essayer de le situer dans le temps, cette arrivée du... du général Dogbo Blé pour parler. Est-ce que vous vous rappelez vers quelle date ça, c'est? R. [15:16:23] Il a fait sa conférence de presse, je crois, le 15 décembre, et c'est après cette conférence de presse là qu'il est venu sur ma base. Q. [15:16:47] D'accord. Et vous avez mentionné une conférence de presse ; quelle était cette conférence de presse... presse? R. [15:16:59] Il avait invité certaines presses de la place. Et, en substance, il disait... il faisait état de ce qu'on devrait aller libérer le Golf, et que si jamais on voyait certaines personnes tourner autour de la caserne, dans le sens de recruter certains militaires, il fallait que ces personnes-là soient saisies et qu'on lui ramène ces personnes. Et aussi, il était prêt pour engager la bataille d'Abidjan. Voici, en clair, la substance de son message à la presse. Q. [15:18:00] Étiez-vous présent lorsque cette conférence de presse a eu lieu? R. [15:18:06] Affirmatif. Q. [15:18:10] Est-ce qu'il y avait d'autres officiers de présents? R. [15:18:18] Oui, tous les officiers, l'état-major était présent. Son adjoint, le colonel Aby, Kipré, Mody, moi et l'ensemble des officiers, en fait, qui n'étaient pas retenus par le service.*" [Emphasis added].

524. There is evidence that high-level FDS commanders who reported to Mr Gbagbo, directly or indirectly through his Minister of the Interior, including Philippe Mangou, Édouard Kassaraté and Bredou M'bia, were involved in the operations of 16 December 2010.<sup>1073</sup> There is also evidence that the targeting of pro-Ouattara civilians was reported by FDS officers to the above-mentioned FDS generals,<sup>1074</sup> who then reported directly to Mr Gbagbo. Philippe Mangou in fact testified that Mr Gbagbo had been informed of the civilian casualties on that same day.<sup>1075</sup> There is evidence that FDS premises such as police prefectures were used to commit manifestly criminal acts, including the rape of perceived Ouattara supporters.<sup>1076</sup> However, in two communiqués, dated 17 December 2010<sup>1077</sup> and 21 December 2011,<sup>1078</sup> these incidents were rapidly dismissed by Mr Gbagbo's government as an attack by "RHDP rebels" on the FDS, despite reports indicating that the reality had been otherwise.<sup>1079</sup> Additionally, during a televised speech on 21 December 2011, Mr Gbagbo confirmed that he had knowledge

<sup>1073</sup> P-0009 (T-196-CONF-FRA, pp. 14-19). BQI, CIV-OTP-0045-0748, dated 12 December 2010. Ministry of the Interior, PC operations document of 17 December, CIV-OTP-0045-0742. Calendar/diary, *État-Major Première Légion Gendarmerie Départementale*, 16 December 2010, CIV-OTP-0043-0336; DGNP correspondence, 26 January 2011, CIV-OTP-0045-0994 (refers to allegations against BMO); BQI, 17 December 2010, CIV-OTP-0045-0735 at 0736 (recognised by P-0560, a police commissioner). Report by DGNP to the Minister of the Interior, 27 January 2011, CIV-OTP-0010-0028, at 0029, 0031 and 0032 (recognised by P-0046 in court: T-124 and T-125); correspondence, note to the Minister of the Interior, 23 February 2011, CIV-OTP-0047-0485 at 0485-0487, 0489-0490, reporting to the Minister of the Interior on the incident of 16 December 2010, the March on RTI. This document states that 7 persons were killed, 13 injured and 7 detained. P-0046 (T-124) recognised his signature. See also DGNP report, 16 December 2010, CIV-OTP-0045-0973 at 0973-0974. Calendar/diary, *Etat-Major Première Légion Gendarmerie Départementale*, 16 December 2010, CIV-OTP-0043-0332. This document was recognised by P-0011 in court (T-134).

<sup>1074</sup> See, for example, the police report referred to in Section 3, CIV-OTP-0046-0080, in which the police reported that they had detained a man simply because he had been wearing an "ADO" t-shirt (Alassane Ouattara was referred to as "ADO" during the election). During his testimony, Bredou M'bia confirmed that bodies of victims had been collected after the March on RTI incident (T-125-CONF-FRA, pp. 65-67).

<sup>1075</sup> P-0009, T-196-CONF-FRA, pp. 24-25, 28-32.

<sup>1076</sup> See Sections 3 and 4, above, on allegations of rape by police at police stations. See also P-0046, T-126-CONF-FRA, pp. 48-49.

<sup>1077</sup> Video, CIV-OTP-0026-0028 at 01:04:11-01:07:02 (excerpt from RTI broadcast of 17 December 2010 at 13.00; transcript, CIV-OTP-0063-2955 at 2969-2970). Video CIV-OTP-0026-0016 at 00:36:37-00:42:06 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 0663-0664) shows the Minister of the Interior referring to an attack by rebels on the FDS after the March on RTI.

<sup>1078</sup> Video CIV-OTP-0026-0016 at 00:36:37-00:42:06 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 0663-0664) shows the Minister of the Interior referring to rebels attacking the FDS after the March on RTI.

<sup>1079</sup> See also video CIV-OTP-0074-0057 at 00:25:03-00:30:01 (excerpt from RTI broadcast of 18 December 2010 at 20.00; transcript, CIV-OTP-0087-0437 at 0438-0440), which shows Philippe Mangou visiting the military hospital to see FDS personnel wounded by the *Forces Nouvelles* and UNOCI. See video CIV-OTP-0064-0078 at 01:26:11-01:30:21 (excerpt from RTI broadcast of 19 December 2010 at 20.00; transcript, CIV-OTP-0094-0239 at 0240-0241), a report on FDS officers injured and killed during the RHDP March on RTI (16 December 2010), in which it is reported that, of the 20 persons killed, 10 were FDS personnel. It is stated that mercenaries were present at the march. Minister Guiriéoulou is interviewed and states that Liberian mercenaries were murdering FDS officers during the March on RTI. It is stated that the reports by the international press are lies.

of the civilian casualties.<sup>1080</sup> However, as discussed below, no action was taken to punish those responsible for perpetrating the crimes.

525. The evidence indicates that: (a) on 12 December and 15 December 2011, Mr Gbagbo's government made announcements in which it was foreseen that there would be armed confrontations and a "state of war"; (b) Mr Gbagbo met with FDS generals on the eve of the march to give instructions to repress the march; (c) these same FDS generals were involved in operations during the incident which resulted in the commission of crimes; and (d) these same FDS generals reported back to Mr Gbagbo on the day of the incident, informing him of civilian casualties.
526. There is also evidence that Mr Gbagbo's closest FDS officers received information directly from international representatives, who reported the commission of crimes by the FDS against the civilian population during the March on RTI on 31 December 2010.<sup>1081</sup> Evidence also shows that, as a result, Mr Gbagbo created a Commission of Inquiry on 7 January 2011.<sup>1082</sup> Accordingly, on the evidence thus far presented, it would be unreasonable to conclude that Mr Gbagbo did not know, or that he should not have known owing to the circumstances described above, that the FDS were going to commit crimes and had indeed committed crimes in the context of the March on RTI.
527. In relation to the Women's March, there is no evidence of explicit instructions from Mr Gbagbo, or from any other FDS general, to attack the women who were demonstrating. However, this incident and the subsequent shelling of Abobo on 17 March 2011 must be considered in the light of Mr Gbagbo's instructions on 24 February 2011. In furtherance of the offensive ordered on that date, the FDS carried out operations in Abobo during which heavy weaponry was used and civilians were indiscriminately targeted in this densely populated residential area of Abidjan. In fact, Mr Gbagbo's knowledge of the offensive, which started on 24 February 2011, has not been contested by the Defence.

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<sup>1080</sup> Presidential speech, 21 December 2010, video CIV-OTP-0026-0016 at 00:18:30-00:18:40 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 659, lines 188-189). Mr Gbagbo stated in this speech that there had been 20 casualties during the March on RTI, including 10 dead on the side of the FDS.

<sup>1081</sup> UNHCHR letter, CIV-OTP-0094-0305 at 0305-0317.

<sup>1082</sup> Decree 2011-06, CIV-OTP-0044-0019.

528. There is evidence that the top FDS hierarchy, including Philippe Mangou, Détoh Létho and Bredou M'bia, received reports of the women's deaths and FDS involvement immediately on 3 March 2011.<sup>1083</sup> Although he originally testified that he did not know who was responsible for the deaths, Philippe Mangou later acknowledged that the video footage was real (not a fabrication) and identified FDS vehicles in it. Philippe Mangou also testified that a UNOCI representative, and later the Minister of Defence, had informed him of the incident. Philippe Mangou said that he had made an internal inquiry and had been informed that his men had not been involved in the incident. Around noon that same day, Philippe Mangou spoke with Détoh Létho, who reported back to him that his men were also not implicated. Philippe Mangou testified, however, that no one had visited the area to verify what had really happened. Despite this, on the following day, the FDS produced the communiqué which was read out during the RTI news broadcast at 20.00. Although Philippe Mangou avoided saying whether Mr Gbagbo had been informed of this communiqué, he confirmed that the Minister of Defence had approved it.<sup>1084</sup> However, when confronted with his prior statement to investigators,<sup>1085</sup> Philippe Mangou confirmed that such a communiqué could have not been issued without Mr Gbagbo's authorisation, particularly since the images had been broadcast on television.<sup>1086</sup> Philippe Mangou confirmed that another, similar government communiqué had been issued on 5 March 2011.<sup>1087</sup> Philippe Mangou said that he had requested that there be an investigation; however, he confirmed that no investigation had taken place.<sup>1088</sup>
529. The evidence referred to above indicates that: (a) the FDS were conducting operations in Abobo as of 24 February 2011 on the instructions of Mr Gbagbo; (b) the top FDS hierarchy directly under Mr Gbagbo's authority, including Philippe Mangou and the Minister of Defence, received immediate reports of civilian casualties during the incident at the Women's March, and of FDS involvement in that incident; (c) the images of the incident were broadcast on television that same day; (d) no real investigations took place despite the aforesaid reports; and (e) Mr Gbagbo approved the

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<sup>1083</sup> P-0009, T-196-CONF-FRA, pp. 47-48. P-0047, T-204-CONF-FRA, p. 2.

<sup>1084</sup> T-196-CONF-FRA, pp. 47-51.

<sup>1085</sup> CIV-OTP-0051-1086 at page 1115.

<sup>1086</sup> T-196-CONF-FRA, pp. 51-52.

<sup>1087</sup> T-196-CONF-FRA, pp. 54-56.

<sup>1088</sup> T-196-CONF-FRA, p. 56.

communiqué of 4 March 2011 denying any civilian victims or FDS involvement. On this evidence, it would be unreasonable to conclude that Mr Gbagbo did not know, or that he should not have known owing to the circumstances described above, that the FDS had committed crimes in the context of the Women's March.

530. As regards the incident of 17 March 2011, there is again no evidence of explicit orders from Mr Gbagbo or from any other FDS commander to shell the area of Abobo on 17 March 2011. However, this incident must also be considered in the light of Mr Gbagbo's instructions on 24 February 2011, which led to FDS operations in Abobo, during which heavy weaponry was used in this densely populated residential area of Abidjan.
531. As discussed in Section 3, above, there is evidence that an authorisation from Mr Gbagbo was required to use 120 mm mortars in an urban area such as Abobo. However, there is also evidence that the FDS, and in particular BASA, was authorised to fire mortars pursuant to the requisition of the armed forces signed by Mr Gbagbo, and in particular after Mr Gbagbo's instructions on 24 February 2011 to do "everything" that could be done "to keep Abobo". It can also be reasonably inferred that Mr Gbagbo was aware of the civilian character of the population in Abobo, especially given that the areas targeted on 17 March 2011 were a residential neighbourhood and a marketplace. This can also be inferred from the evidence in the record that FDS generals proposed the evacuation of the civilian population prior to the offensive.
532. Philippe Mangou's evidence, which is virtually undisputed by the Defence, is significant in relation to this incident. Philippe Mangou confirmed that, upon receiving reports of the shelling, he had reported to the Minister of Defence, who logically would then have reported to Mr Gbagbo. He testified that Mr Gbagbo had been informed of the use of mortars on the same day on which the incident had occurred. Philippe Mangou also confirmed that the FDS had been conducting operations in Abobo that day. According to his evidence, upon receiving information about the shelling, he checked with Détoh Létho, who told him that his men had used grenades, not

mortars.<sup>1089</sup> It is important to reiterate that, although Mr Gbagbo could delegate to his subordinates, in matters regarding the weapons at Camp Commando (the evidence from which indicates that the mortar shells were fired on 17 March 2011), he gave his orders directly to Rigobert Dadi, who at the time of the post-election violence was BASA's commanding officer at Camp Commando and had control of weapons and ammunition there.<sup>1090</sup>

533. There is evidence that: (a) the FDS were conducting operations in Abobo as of 24 February 2011; (b) the FDS were conducting operations in the targeted areas on 17 March 2011; (c) the incident was reported within the FDS and to Mr Gbagbo; and (d) there was no investigation, and the FDS commanding officer did not visit the area after the attack despite the reports. On this evidence, it would be unreasonable to conclude that Mr Gbagbo did not know, or that he should not have known owing to the circumstances described above, that the FDS were going to commit or had indeed committed crimes in the context of the shelling of Abobo on 17 March 2011.

534. The Defence argues that Philippe Mangou took operational decisions,<sup>1091</sup> and that there was no explicit written order to use mortar shells or to attack civilians in the context of the post-election violence.<sup>1092</sup> As noted above, the attack against the civilian population was not justified even if there were some armed elements mixed in with the civilian population. Evidence indicates that the FDS made excessive use of lethal weapons and violence (including rape) during protests (in the cases of the March on RTI and the Women's March), against unarmed demonstrators who were exercising their rights of assembly, free expression and political participation in the context of a political crisis.<sup>1093</sup> Evidence also shows that the FDS acted in a manner contrary to international humanitarian law when it indiscriminately used lethal force in Abobo, a densely populated urban residential area (in the case of the incident of 17 March 2011).<sup>1094</sup>

<sup>1089</sup> P-0009, T-196-CONF-FRA, pp. 57-59.

<sup>1090</sup> See the evidence analysed in Section 3 above, particularly testimonies of P-0239 (T-167-FRA, p. 48) and P-0238 (T-80-CONF-FRA, p. 53 and T-82-CONF-FRA, p. 29).

<sup>1091</sup> T-225-CONF-FRA.

<sup>1092</sup> T-224-CONF-FRA.

<sup>1093</sup> IACtHR, *López Lone et al v. Honduras*, "Judgment of 5 October 2015", para. 160.

<sup>1094</sup> "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)", 8 June 1977, Articles 48, 51(2), 51(5)(b) and 57(b).

Evidence shows that these actions constituted the implementation of orders given by Mr Gbagbo to FDS generals during the post-election violence.

535. In order to prove Mr Gbagbo's *mens rea*, it is not necessary to show that he formally issued instructions to commit the crimes. As stated above, instructions may also be given informally or in an encoded manner, or they may even be taken for granted given a particular context.<sup>1095</sup> The *mens rea* under article 28 of the Statute need not be explicit; it may be inferred from the circumstances, and from the rest of the evidence, when this is the only reasonable inference.<sup>1096</sup>
536. In the case at bar, the evidence shows that, despite any delegation or lack of explicit orders to commit the crimes, Mr Gbagbo: (a) had a hierarchical relationship to the FDS, and thus to the direct perpetrators of the crimes; (b) had authority and effective control over the FDS through an effective chain of command and reporting system; (c) had additionally requisitioned the armed forces and strengthened reporting lines during the post-election violence; (d) had knowledge of the army, its operations and its weapons; (e) was in Abidjan at all times during the post-election violence; and (f) received contemporaneous and immediate reports of crimes committed by the FDS. On this evidence, it would be unreasonable to conclude that Mr Gbagbo did not know of the existence of the crimes committed by the FDS.<sup>1097</sup>

#### 4. *Failure to take necessary and reasonable measures within his power*

537. Under article 28 of the Statute, the superior has a duty to prevent the commission of the crimes and to punish those responsible for their commission or submit the matter to the competent authorities for investigation and prosecution. The doctrine of *Pflichtdelikte*, developed in German law, governs the duty of the State vis-à-vis its citizens to provide protection or to prevent the actualisation of a risk. This same concept can be used to

<sup>1095</sup> K. Ambos, "The Fujimori Judgment – A President's Responsibility for Crimes Against Humanity as Indirect Perpetrator by Virtue of an Organized Power Apparatus", 16 February 2011, *Journal of International Criminal Justice* (2011), p. 151; K. Ambos, "Cómo imputar a los superiores crímenes de los subordinados en el Derecho penal internacional? Fundamentos y formas", Universidad Externado de Colombia, 2008, p. 101; ICTY, *Gali* Trial Judgment, paras. 739-740.

<sup>1096</sup> ICTY, *Strugar* Trial Judgment, para. 333.

<sup>1097</sup> ICTY, *Gali* Trial Judgment, paras. 700-705.

assign criminal responsibility to a Head of State when he wilfully does not comply with his special duty to protect his people, be it by action, acquiescence or omission.<sup>1098</sup>

538. It is important to recall that the forces under Mr Gbagbo's control were trained in international humanitarian law,<sup>1099</sup> and that there was a hierarchical relationship (chain of command) and a reporting and monitoring system which functioned properly. Mr Gbagbo had a legal duty, not only as Supreme Commander of the FDS but also as President of Côte d'Ivoire, to take concrete measures to protect civilians. In fact, despite his knowledge of the military, there is no evidence that, when he encouraged the FDS to continue fighting, he also indicated that civilians should be protected or that any analysis of proportionality or military necessity should be made.
539. It is relevant to note that, as discussed in Section 3, above, Mr Gbagbo had power over the State-owned media, namely RTI. When Mr Gbagbo's government banned all non-State and foreign media at the outset of the post-election violence, RTI became the only television channel legally able to broadcast news in Côte d'Ivoire. This fact shows that the State apparatus headed by Mr Gbagbo was aware of the information transmitted by international media outlets in relation to the crimes being perpetrated by the FDS. Despite that information, and instead of investigating the commission of any alleged crimes, Mr Gbagbo decided to prohibit international media transmissions.<sup>1100</sup> Evidence shows that RTI was used throughout the post-election violence to refute and deny the commission of the crimes. In this regard, RTI was a concrete means available to Mr Gbagbo throughout the post-election violence to prevent the commission of the crimes. Instead of using RTI to deny the commission of any crimes and assert that unarmed civilian victims had been "rebels", Mr Gbagbo could have – *in concreto* and

<sup>1098</sup> G. Jakobs, *Strafrecht Allgemeiner Teil* (2<sup>nd</sup> ed., Berlin: de Gruyter, 1991), p. 57, cited in K. Ambos, "The Fujimori Judgment – A President's Responsibility for Crimes Against Humanity as Indirect Perpetrator by Virtue of an Organized Power Apparatus", 16 February 2011, *Journal of International Criminal Justice*, vol. 9, p. 156.

<sup>1099</sup> P-0164, T-164-CONF-FRA, p. 73. Correspondence, CIV-OTP-0071-0407 (FRAGO 69) at 0410, 0415.

<sup>1100</sup> *Karadžić* Appeals Judgment, paras. 550-551: "A review of the Trial Judgement therefore reveals that the Trial Chamber thoroughly considered [the accused's] position that he distrusted information he received from international representatives and the media. [...] Given the totality of the evidence considered by the Trial Chamber, the Appeals Chamber finds unpersuasive Karadžić's argument that the Trial Chamber erred by focusing on information he received, rather than information he 'reasonably believed'."

specifically – used RTI to publicly denounce the attacks against protestors and unarmed civilians perceived as Ouattara supporters.<sup>1101</sup>

540. There is no evidence in the record that Mr Gbagbo or other government officials acknowledged or denounced the infliction of such casualties on civilians perceived as pro-Ouattara, despite FDS reports submitted into the record which attest to such acts. Even if Mr Gbagbo did lose his ability to carry out serious investigations, as submitted by the Defence, he could at least have taken the reasonable and concrete action of using RTI to publicly condemn the commission of crimes against civilians. Apart from the sham Commission of Inquiry, Mr Gbagbo's government disregarded such a possibility in all subsequent RTI communications throughout the post-election violence. Despite evidence showing the absence of any investigation, all allegations of crimes committed against unarmed civilians by the FDS were quickly dismissed out of hand by Mr Gbagbo's government via RTI.<sup>1102</sup>

541. As regards the relevant incidents, there is evidence that, although the commission of the crimes against civilians was reported to Mr Gbagbo either directly or indirectly, he failed to take any action to prevent or punish the crimes and instead acted quickly to deny that any crimes had occurred. The fact that Mr Gbagbo denied all possible crimes, either directly or through the spokesperson for his government, shows that he received at least some kind of information about unlawful acts committed by the FDS, which would at least have put him on notice.<sup>1103</sup>

542. In relation to the March on RTI, as stated above, the only measure taken by Mr Gbagbo was the creation of the Commission of Inquiry on 7 January 2011. Although the Defence submits that the power to initiate an investigation rested with the judiciary and not with Mr Gbagbo, the creation of the Commission of Inquiry on 7 January 2011 contradicts such an assertion. It shows that Mr Gbagbo had effective control for purposes of prevention or punishment and for the purpose of taking measures which would culminate in proceedings against the alleged perpetrators.<sup>1104</sup> The creation of

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<sup>1101</sup> *Bemba* Appeals Judgment, ICC-01/05-01/08-3636-Red, para. 170. *Bemba* Trial Judgment, ICC-01/05-01/08-3343, para. 204.

<sup>1102</sup> *Bemba* Appeals Judgment, ICC-01/05-01/08-3636-Red, para. 173.

<sup>1103</sup> ICTY, *Celebici* Trial Judgment, 16 November 1998, IT-96-21-7, para. 393; *Celebici* Appeals Judgment, para. 238.

<sup>1104</sup> ICTY, *Halilović* Trial Judgment, para. 58; *Blaškić* Appeals Judgment, para. 69.

such a Commission of Inquiry proves not only that Mr Gbagbo had the legal and political authority to refer the matter to the appropriate judicial or military authorities so as to trigger an investigation,<sup>1105</sup> but also that he had the power to order an investigation directly.<sup>1106</sup> It further shows that Mr Gbagbo did not depend on other authorities or State powers to initiate investigations.<sup>1107</sup> Furthermore, even if Mr Gbagbo did not have the power to punish FDS officers directly (if, for example, that power rested with the military tribunals), he nonetheless had effective control because of his *de jure* and *de facto* authority to order, from his subordinates, reports that could have triggered investigations.<sup>1108</sup> Mr Gbagbo had the power to issue specific orders, through the Minister of Justice or the Minister of Defence, to investigate the crimes committed by the FDS.<sup>1109</sup> Moreover, in the light of the creation of the Commission of Inquiry of 7 January 2011,<sup>1110</sup> there is evidence that Mr Gbagbo had the power to prevent future crimes or to initiate an investigation to punish those responsible for the crimes committed during the March on RTI.

543. However, as discussed above, there is evidence that, instead of preventing the commission of future crimes, Mr Gbagbo appeared on RTI on 21 December 2010, where he denied any civilian casualties during the March on RTI and asserted that the international community was at war with Côte d'Ivoire.<sup>1111</sup> Despite the fact that an investigation was pending (and that the Commission of Inquiry had yet to be created), it

<sup>1105</sup> ICTY, *Staniši and Župljanin* Trial Judgment, para. 113.

<sup>1106</sup> Bemba Appeals Judgment, ICC-01/05-01/08-3636-Red, para. 167.

<sup>1107</sup> Bemba Appeals Judgment, ICC-01/05-01/08-3636-Red, para. 172.

<sup>1108</sup> ICTY, *Staniši and Župljanin* Trial Judgment, para. 113.

<sup>1109</sup> P-0011, T-131-CONF-FRA, p. 6, lines 27-28. The witness stated: “R. [09:48:11] À mon avis, il y a pas de dualité, c'est les textes de la République qui placent la gendarmerie sous l'autorité du ministre de la Défense.” T-131-CONF-FRA-CT, p. 4, lines 4-5. The witness declared: “[...] mais quand un militaire commet une infraction, les enquêtes relèvent de la gendarmerie nationale”; at T-134-CONF-FRA-ET, p. 58, lines 18-19, he affirmed: “quand il y a une affaire qui concerne les fautes des forces de sécurité, c'est la gendarmerie qui fait les enquêtes”. P-0009, T-196-CONF-FRA, p. 2, lines 22-24. The witness stated: “R. [09:35:27] Oui. Les enquêtes sur les crimes sont du ressort de la police ou de la gendarmerie, mais pour tout ce qui est crime commis par les éléments de l'armée, c'est la gendarmerie qui est compétente pour faire les enquêtes là-dessus.” P-0011, T-131-CONF-FRA, pp. 12-13. The witness declared: “[...] Donc, en cas d'infraction, cette hiérarchie est informée jusqu'au commandement supérieur de la gendarmerie qui en rend compte au ministre de la Défense, concomitamment au procureur militaire qu'on appelle commissaire du gouvernement.”

<sup>1110</sup> Decree 2011-06. See CIV-OTP-0044-0019, which makes reference to the said decree and was commented upon by Edouard Kassaraté (P-0011, T-134-CONF-FRA and 135-CONF-FRA). Although P-0011 said in court that this was not his signature, he did not contest the authenticity of the document (indicating that it may have been signed by his *Chef de Cabinet*). Also, he had previously stated in his interview with investigators that this was indeed his signature.

<sup>1111</sup> Video, CIV-OTP-0026-0016 at 00:10:02-00:23:25. Transcript, CIV-OTP-0052-0653, lines 129-163.

is clear from the following statement that Mr Gbagbo had already decided what the outcome of any investigation should be:

*Je tiens donc pour responsable des tueries, des incendies et des pillages perpétrés au cours de la marche insurrectionnelle du RHDP, le 16 décembre 2010, ceux qui, à l'intérieur comme à l'extérieur, ont décidé d'agir contre les lois ivoiriennes. Il nous font la guerre [...].*<sup>1112</sup>

Again, during his New Year's speech, Mr Gbagbo denied the civilian status of the victims.<sup>1113</sup>

544. There is also evidence that Mr Gbagbo's government began attacking UNOCI<sup>1114</sup> and other international actors<sup>1115</sup> who had reported the involvement of the FDS hierarchy in the commission of the crimes and had notified FDS generals accordingly.<sup>1116</sup> Further evidence given by FDS generals Édouard Kassaraté and Georges Guiai Bi Poin corroborates the allegation that the Commission of Inquiry was a sham investigation: both testified that they had never heard of any results from such a commission.<sup>1117</sup> Accordingly, the Commission of Inquiry had serious inherent shortcomings of which Mr Gbagbo was clearly aware, since he had already denied any wrongdoing on the part of the FDS before creating the mechanism. Mr Gbagbo had the power to create the Commission of Inquiry, but at the same time he had the power to ensure that it would not yield any results.<sup>1118</sup> Evidence indicates that Mr Gbagbo purposely limited the

<sup>1112</sup> Video, CIV-OTP-0026-0016 at 00:10:02-00:23:25. Transcript, CIV-OTP-0052-0653, lines 129-163.

<sup>1113</sup> Video, CIV-OTP-0026-0024 at 31:07-43:10 and 01:08:35-01:21:45 (excerpts from RTI broadcasts of 31 December 2010 at 13.00 and 20.00; transcript, CIV-OTP-0052-0550 at 0565-0566, lines 500-598; at 0578-0579, lines 1032-1081).

<sup>1114</sup> Video, CIV-OTP-0064-0106, at 00:03:01-00:10:52 (excerpt from RTI broadcast of 5 January 2011 at 20.00; transcript, CIV-OTP-0104-0102 at 0103-0105, lines 1-110): communiqué of Mr Gbagbo's government read out on 5 January 2011, in which Alcide Ilhari Djédjé stated that the blockade of the Golf Hotel would only be lifted if UNOCI left Côte d'Ivoire and the *Forces Nouvelles* left Abidjan.

<sup>1115</sup> Video, CIV-OTP-0075-0066 at 00:00:00-00:06:30 (excerpt from RTI broadcast of 7 January 2011 at 20.00; transcript, CIV-OTP-0087-0203 at 0204-0205, lines 1-59): government communiqué stating that Mr Gbagbo had rejected the African Union and ECOWAS proposal for peace.

<sup>1116</sup> See references above in relation to UNHCHR letters to FDS officials and responses thereto.

<sup>1117</sup> While commenting on document CIV-OTP-0044-0019, Edouard Kassaraté (P-0011, T-134-CONF-FRA, p. 57) said, on the one hand, that he had never heard of the results of the Commission of Inquiry, but acknowledged on the other hand the authenticity of a letter from his office denying any allegations made against the FDS by the said Commission. P-0010 (T-139-CONF-FR, pp. 42-43) also confirmed that no investigations had ever taken place.

<sup>1118</sup> *Bemba Appeals Judgment*, ICC-01/05-01/08-3636-Red, para. 180. The Appeals Chamber stated: "Whilst limitations in the results of an inquiry might be attributable to the manner of its establishment (for example, through deliberate exclusion or limitation of mandate), this is not necessarily so. It is important to establish, in this regard: (i) that the shortcomings of the inquiry were sufficiently serious; (ii) that the commander was aware of the shortcomings; (iii) that it was materially possible to correct the shortcomings; and (iv) that the shortcomings fell within his or her authority to remedy."

mandate of the Commission of Inquiry prior to its creation, publicly stating in December 2010 that the FDS and his government were not responsible for the crimes.<sup>1119</sup> These denials also refute the Defence allegation that Mr Gbagbo would have respected independent judicial findings. In his New Year's speech, Mr Gbagbo did not mention any civilian casualties and focused exclusively on FDS officers who, he said, had died honourably: "*tombées au champ d'honneur*".<sup>1120</sup> The evidence indicates that Mr Gbagbo's behaviour was directed at the general political objective of remaining in power rather than at investigating or preventing future crimes. Finally, the Commission of Inquiry did not make any recommendation with respect to the civilian victims of the incident at the March on RTI. Instead, the Commission of Inquiry proposed the dissolution of the Electoral Commission and asked the international community to stop interfering in the Ivorian electoral process.<sup>1121</sup>

545. In fact, Mr Gbagbo's creation of this Commission of Inquiry, coupled with his prior denials and his government's attacks on the United Nations, are also indicative of his knowledge that crimes were committed by the FDS during the March on RTI. Accordingly, no reasonable Trial Chamber could conclude, on the evidence thus far adduced, that the creation of the Commission of Inquiry with the aforesaid self-inflicted limitations was a reasonable measure under article 28 of the Statute. Orders that purport to establish formal investigations but actually do not result in *bona fide* investigations and prosecutions cannot be considered to constitute action taken to prevent or punish the crimes, particularly when, at the same time, the commander congratulates the direct perpetrators.<sup>1122</sup>

546. It would be reasonable, on the evidence thus far adduced, to conclude that Mr Gbagbo failed to take reasonable measures to prevent the commission of crimes by his subordinates and to give instructions to initiate an effective investigation into the incident at the March on RTI.<sup>1123</sup>

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<sup>1119</sup> *Bemba Appeals Judgment*, ICC-01/05-01/08-3636-Red, para. 181.

<sup>1120</sup> Video, CIV-OTP-0026-0024 at 31:07-43:10 and 01:08:35-01:21:45 (excerpts from RTI broadcasts of 31 December 2010 at 13.00 and 20.00; transcript, CIV-OTP-0052-0550 at 0565-0566, lines 500-598; at 0578-0579, lines 1032-1081).

<sup>1121</sup> Video, CIV-OTP-0061-0598 at 00:02:50-00:05:43; transcript, CIV-OTP-0104-0193.

<sup>1122</sup> *Karadžić Appeals Judgment*, para. 621.

<sup>1123</sup> *Habré Judgment*, para. 2258.

547. With regard to the Women's March, although Philippe Mangou testified that he had ordered an investigation, he later acknowledged that this investigation had in fact never yielded any results and that FDS involvement had quickly been denied via a government communiqué on 4 March 2011, the day after the incident.<sup>1124</sup> This government denial, which, as noted above, Philippe Mangou confirmed was authorised directly by Mr Gbagbo, was issued despite the failure to conduct an investigation on the ground,<sup>1125</sup> video footage clearly showing FDS vehicles (which Mr Mangou personally recognised in court)<sup>1126</sup> and testimony of FDS officers confirming that they had been present at the time and place of the incident.<sup>1127</sup> As noted above, Philippe Mangou acknowledged in court that he believed that the seven women had died during the incident and that those responsible should be identified.<sup>1128</sup> However, while viewing footage concerning one of the several government communiqués denying the incident of 3 March 2011, Philippe Mangou confirmed in court that no investigations had been opened, nor any sanctions imposed, in relation to the incident at the Women's March.<sup>1129</sup>

548. Accordingly, it would be unreasonable, on the evidence thus far adduced, to conclude that Mr Gbagbo took any reasonable measures to initiate an effective investigation or to submit the matter to the competent authorities for investigation and prosecution as required by article 28 of the Statute.

549. With regard to the incident of 17 March 2011, as noted above, there were reports within the FDS that mortar shells had been fired. Philippe Mangou confirmed that the FDS had indeed conducted operations in the area that day, and that it had opened fire (albeit with grenades, as opposed to mortar rounds). As discussed above, the evidence shows that,

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<sup>1124</sup> P-0009, T-200-CONF-FRA, pp. 60-70. Video CIV-OTP-0026-0006, dated 4 March 2011, at 22.13-25.39, shows the FDS communiqué which followed the events of the Women's March. P-0009 (T-197) confirmed that this was the communiqué of the FDS that he had referred to in his testimony. Video CIV-OTP-0015-0524 shows a press conference that took place on 23 March 2011 in which Mr Blé Goudé referred to the incident of 3 March 2011 as a fabrication.

<sup>1125</sup> See also document CIV-OTP-0045-0173, dated 3 March 2011, which refers to a march in Attécoubé but makes no reference to the Women's March in Abobo. See also similar documents: CIV-OTP-0045-0184 and CIV-OTP-0046-0294.

<sup>1126</sup> Philippe Mangou confirmed that he had viewed the video of the Women's March of 3 March 2011 and that it had left him in shock. In court, when he viewed the same video, he recognised FDS vehicles: P-0009, T-200-CONF-FRA, pp. 60-70.

<sup>1127</sup> [REDACTED]: T-170-CONF-FRA.

<sup>1128</sup> P-0009, T-200-CONF-FRA, pp. 62-63.

<sup>1129</sup> Video, CIV-OTP-0026-0018; P-0009 (T-196).

in subsequent communiqués broadcast by RTI, the government denied the civilian status of the victims and any FDS involvement. Philippe Mangou, Détoh Létho and P-0239 confirmed that, in relation to this incident, no investigation had taken place and no FDS officer had been punished.<sup>1130</sup> Despite the lack of an investigation, Mr Gbagbo's government issued a communiqué on 22 March 2011, which deceitfully declared that an investigation had taken place and denied any FDS involvement.<sup>1131</sup> In fact, the intention of the State apparatus headed by Mr Gbagbo, in issuing this communiqué which disseminated false information in the absence of any investigation, was to cover up the true actions of the FDS.<sup>1132</sup>

550. Moreover, in relation to this incident, which must be analysed as part of the offensive that Mr Gbagbo ordered in Abobo on 24 February 2011, it is relevant to recall that Mr Gbagbo rejected the proposal, made by FDS generals including Philippe Mangou, to evacuate civilians. The evacuation of civilians in Abobo was a specific and concrete measure that was suggested and available to Mr Gbagbo, and which could have avoided the indiscriminate killing and wounding of unarmed civilians during the incident in question.<sup>1133</sup>

551. In the light of the evidence presented thus far, it would be unreasonable to conclude that Mr Gbagbo took any reasonable measure to prevent or repress the commission of the crimes. Evidence shows that he failed to initiate an effective investigation or to submit the matter to the competent authorities for investigation and prosecution as required by article 28 of the Statute.<sup>1134</sup>

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<sup>1130</sup> Détoh Létho testified that he and his colleagues at the CPCO had seen the media coverage of the alleged incident. He confirmed that there had been no investigation (T-204-CONF-FRA, pp. 19-22; T-206-FRA, p. 49). P-0239 also confirmed this (T-167-FRA, pp. 80-81; T-168-FRA, p. 69). Video, CIV-OTP-0069-0374 at 00:07:30-00:08:06 (communiqué, Ahoua Don Mello, excerpt from RTI broadcast of 18 March 2011 at 20.00; transcript, CIV-OTP-0088-0047 at 0048-0049, lines 41-45).

<sup>1131</sup> Video, 22 March 2011, CIV-OTP-0069-0376 at 00:06:30-00:11:40 (excerpt from RTI broadcast of 22 March 2011 at 20.00; transcript, CIV-OTP-0102-2054 at 2055-2056, lines 1-57).

<sup>1132</sup> *Karadžić* Appeals Judgment, para. 618.

<sup>1133</sup> *Bemba* Appeals Judgment, ICC-01/05-01/08-3636-Red, paras. 169-170.

<sup>1134</sup> Extraordinary African Chambers, *Ministère Public c. Hisssein Habré*, "Jugement", 30 May 2016, para. 2258. The tribunal stated: "[P]ourtant, compte tenu de sa position de Chef suprême des armées et de Ministre de la Défense à partir de 1986, et de son contrôle effectif étendu sur les FANT et la DDS, Hisssein Habré avait la capacité de prendre de nombreuses mesures afin de prévenir les crimes de ses subordonnés et de les punir. Il avait, à cet égard, un rôle clé à jouer, son exemplarité étant susceptible d'avoir un impact important sur ses troupes. Il pouvait notamment rappeler avec force et conviction aux troupes sous son contrôle les dispositions du droit international humanitaire relatives à la protection des prisonniers de guerre, y compris quand il était sur le terrain des combats comme à Faya-Largeau fin juillet 1983. Il aurait également dû faire diligenter des

552. Finally, Mr Gbagbo's actions during the post-election violence must be evaluated with regard to the manner in which the situation evolved. He had several opportunities to step down or to negotiate an agreement that could have prevented the commission of crimes, in particular after the consequences of the incident at the March on RTI. At all times during the post-election violence, it was open to Mr Gbagbo to consider his actions or omissions and to desist from them. For example, he could have done so when the international community – specifically the African Union – recognised Mr Ouattara as the winner of the election and the democratically-elected President (first at a meeting in Ethiopia on 9 December 2010 and then at another meeting on 10 March 2011).<sup>1135</sup> After the latter meeting, Philippe Mangou proposed that Mr Gbagbo resign on 11 March 2011. As noted in Philippe Mangou's evidence, he suggested this to Mr Gbagbo not only because of the international community's decision, but also because, simply put, too many people had lost their lives.<sup>1136</sup> Another opportunity came when, at a meeting in March 2011, the FDS hierarchy again suggested that a political solution for peace should be reached. Again, Mr Gbagbo rejected this suggestion.<sup>1137</sup> Mr Gbagbo thus had available to him reasonable measures which, as advised by his subordinates, could have prevented the commission of crimes and in particular the shelling of Abobo on 17 March 2011.
553. The Defence alleges that the FDS were acting in self-defence in the context of the post-election violence. Even if this was the case (and the Defence would have led evidence in this regard in the presentation of its case), there is evidence that Mr Gbagbo knew that the FDS were committing crimes against civilians. Accordingly, he had an obligation to prevent the continued occurrence of such crimes or to punish those responsible. He could have amended the chain of command or demoted or dismissed State officials or senior commanders of the FDS to stop or prevent the commission of the crimes.<sup>1138</sup> However, he did not take any of these measures, contradicting his own

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*enquêtes pour les crimes dont il avait une connaissance effective et pour ceux pour lesquels il disposait d'informations suffisamment alarmantes ; prendre des sanctions disciplinaires immédiates, y compris à titre provisoire ; et rapporter les crimes de guerre commis, ou ses soupçons à cet égard, aux autorités judiciaires compétentes, En prenant de telles mesures, Hissein Habré aurait évité que ses subordonnées ne commettent d'autres crimes. Or, il n'a pris, ni même tenter de prendre, aucune de ces mesures."*

<sup>1135</sup> CIV-OTP-0002-0621. P-0009, T-197-CONF-FRA, p. 76, lines 24-28; p. 77, lines 1-3.

<sup>1136</sup> P-0009, T-194-CONF-FRA, p. 5, lines 6-27.

<sup>1137</sup> P-0010, T-139 CONF-FRA, pp. 102-103, and P-0011, T-134-CONF-FRA, pp. 84-86.

<sup>1138</sup> P-0009, T-193-FRA, pp. 39-44; T-198-FRA-CT, p. 93, lines 1-15. Legislation, 7 December 1995, CIV-OTP-0054-0095 at 0096, 0100. Presidential Decree 2010-210, 5 August 2010, CIV-OTP-0028-0004.

words: “*Je ne veux plus que le sang soit versé. Je ne veux plus de guerre. Je ne veux pas que le sang d’un seul Ivoirien soit versé.*”<sup>1139</sup> There is sufficient evidence that, on the contrary, FDS operations during the post-election violence caused unjustified deaths and harm to unarmed civilians. It must be highlighted that this was acknowledged by former high-level FDS commanders. In this regard, Détoh Létho concluded his testimony as follows, acknowledging that there had been many deaths during the post-election violence:

*Je m’en voudrais si je parlais de votre prétoire sans présenter mes condoléances les plus attristées à tous ceux qui ont perdu des parents, des proches, et souhaiter prompt rétablissement à tous ceux qui ont été blessés, et dire à tous les Ivoiriens que, c’est vrai, nous avons connu la guerre, c’est vrai qu’il y a eu des morts, mais que la Côte d’Ivoire est un grand pays.*<sup>1140</sup>

554. On the evidence adduced so far, it would be impossible, given Mr Gbagbo’s failure to take action as President and Supreme Commander of the FDS, together with the systematic government denial of any FDS wrongdoing, to conclude that Mr Gbagbo is free of any criminal responsibility under article 28 of the Statute. At the very least, on this evidence, Mr Gbagbo acquiesced to those crimes despite his duty to intervene and prevent their recurrence.<sup>1141</sup>
555. As noted above, the FDS were under Mr Gbagbo’s effective command, authority and control at the time of the post-election violence and in relation to the aforesaid three incidents. On the evidence adduced thus far, a reasonable Trial Chamber could conclude that Mr Gbagbo had knowledge that the FDS were involved in the commission of the aforesaid crimes and that he failed to take any necessary and reasonable measures within his power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution.<sup>1142</sup>

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P-0047, T-204-CONF-FRA, p. 64, lines 18-23. Legislation, 5 August 2010, CIV-OTP-0048-0545. P-0047, T-206-CONF-FRA-CT, pp. 56, lines 7-28. P-0011, T-135-CONF-FRA, p. 27. Presidential Decree 2005-245, 2 July 2005, CIV-OTP-0025-0958. *Ordre Général* no. 6, 5 August 2010, CIV-OTP-0048-0545. P-0047, T-206-CONF-FRA, p. 56, lines 27-28.

<sup>1139</sup> Presidential speech, 21 December 2010, video, CIV-OTP-0026-0016 at 00:20:03-00:20:22 (excerpt from RTI broadcast of 21 December 2010 at 20.00; transcript, CIV-OTP-0052-0653 at 659, lines 201-202).

<sup>1140</sup> P-0047, T-206-CONF-FRA, p. 61, lines 17-22, emphasis added.

<sup>1141</sup> W. Parks, “Command Responsibility for War Crimes”, *Military Law Review*, vol. 62, Fall 1973, p. 62.

<sup>1142</sup> Nuremberg Military Tribunal, *United States of America vs. Wilhelm List et al. (the Hostage Case)*, Case No. 7, Judgment of 19 February 1948, p. 1271. The Tribunal held: “If he fails to require and obtain complete

556. In conclusion, a reasonable Trial Chamber could find that Mr Gbagbo failed to discharge his obligation to prevent or punish the crimes committed by the FDS and to deter future violations of the human rights of the people of Côte d'Ivoire, whose duly elected representative he remained – in his submission – until his arrest on 11 April 2011. A reasonable Trial Chamber could thus conclude that Mr Gbagbo, as President and Supreme Commander of the FDS, is criminally responsible under article 28(a) of the Statute for the crimes committed by the FDS.

557. A reasonable Trial Chamber could conclude that Mr Gbagbo knew that his conduct was, or intended it to be, part of a widespread or systematic attack against a civilian population pursuant to a State policy, thereby exposing him to individual responsibility as a commander, in accordance with article 28(a) of the Statute, for the following crimes against humanity under article 7 of the Statute committed against unarmed civilians during the post-election violence, and in particular during the March on RTI of 16 December 2010, the Women's March of 3 March 2011 and the shelling of Abobo on 17 March 2011: (a) murder; (b) rape; (c) other inhumane acts; (d) attempted murder; and (e) persecution.

### **III. Mr Blé Goudé**

#### **A. Applicable law**

558. Article 25(3)(b) of the Statute provides as follows:

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted.

559. This subparagraph establishes the forms of participation of ordering, soliciting and inducing. Although ordering requires a position of authority, soliciting and inducing refer to a situation where someone is influenced by another to commit a crime. While soliciting is equivalent to urging and advising, inducing entails the enticement of another person to commit a crime.<sup>1143</sup> Instigation, which is a concept that includes both

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information, the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defense.”

<sup>1143</sup> K. Ambos, *Treatise on International Criminal Law*, Vol. I (Oxford University Press, 2013), p. 163.

soliciting and inducing, requires more than merely facilitating the commission of the crime, which may suffice for aiding and abetting. Incidentally, instigation does not presuppose any kind of superiority; this distinguishes it from ordering.

560. The following passage from the ICTY case of *Ori* clearly describes these modes of liability, distinguishing soliciting and inducing from ordering, and from aiding and abetting:

271. On the one hand, this has to be more than merely facilitating the commission of the principal offence, as it may suffice for aiding and abetting. It requires some kind of influencing the principal perpetrator by way of inciting, soliciting or otherwise inducing him or her to commit the crime. This does not necessarily presuppose that the original idea or plan to commit the crime was generated by the instigator. Even if the principal perpetrator was already pondering on committing a crime, the final determination to do so can still be brought about by persuasion or strong encouragement of the instigator. However, if the principal perpetrator is an “*omnimodo facturus*” meaning that he has definitely decided to commit the crime, further encouragement or moral support may merely, though still, qualify as aiding and abetting.

272. On the other hand, although the exertion of influence would hardly function without a certain capability to impress others, instigation, different from “ordering”, which implies at least a factual superior-subordinate relationship, does not presuppose any kind of superiority.<sup>1144</sup>

561. Instigation requires that the instigator wishes to provoke or induce the commission of the crime, or that he or she was aware of the substantial likelihood that the commission of the crime would result from his or her conduct.<sup>1145</sup> Furthermore, the presence of the instigator at the crime scene is not a requisite element of instigating, although it can be one of the factors considered in determining his or her *mens rea*.<sup>1146</sup>

562. Instigation may be carried out verbally and/or by other means of communication, depending on the position of the instigator. In *Br anin*, the ICTY considered that the accused made several “inflammatory and discriminatory statements” in which he advocated the dismissal of non-Serbs from employment, stating that few non-Serbs would be permitted to remain on the territory. The ICTY determined in that case that, in view of the accused’s various positions of authority, those statements “could only be

<sup>1144</sup> *Ori* Trial Judgment, paras. 271-272.

<sup>1145</sup> ICTY, Appeals Chamber, *The Prosecutor v. Ljube Boškoski and Johan Tar ulovski*, “Judgement” (“*Boškoski and Tar ulovski* Appeals Judgment”), 19 May 2010, IT-04-82-A, para. 68; *Staniši and Župljanin* Trial Judgment, para. 95; ICTR, Trial Chamber, *The Prosecutor v. Grégoire Ndahimana*, “Judgement”, 30 December 2011, ICTR-01-68-T, para. 718. See also G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), p. 214.

<sup>1146</sup> ICTY, Trial Chamber, *The Prosecutor v. Ramush Haradinaj et al.*, “Judgement”, (“*Haradinaj* Trial Judgment”), 29 November 2012, IT-04-84bis-T, para. 623.

understood by the physical perpetrators as a direct invitation and a prompting to commit crimes”.<sup>1147</sup> Several Chambers of the ICTY held that omission was also a possible form of instigation,<sup>1148</sup> if and when the instigator had a duty to prevent the crime from being brought about.<sup>1149</sup>

563. As stated above, and in contrast to ordering, instigation does not presuppose any kind of authority or effective control of the instigator. Although ordering requires that the crime be committed by executing or setting in motion the effect of the order, instigation requires only that the conduct be a substantial contributing factor to the commission of the crime.<sup>1150</sup>
564. Moreover, while there is a link between instigation and execution by the physical perpetrator, the involvement of the instigator is not a *conditio sine qua non* of the commission of the crime.<sup>1151</sup> It is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime.<sup>1152</sup>

## **B. Hate speech and incitement**

565. The International Convention on the Elimination of All Forms of Racial Discrimination<sup>1153</sup> identifies in its Article 4 the following four distinct types of hate speech: (a) dissemination of ideas based on racial superiority; (b) dissemination of ideas based on racial hatred; (c) incitement to racial discrimination; and (c) incitement to acts of racially-motivated violence.
566. As regards hate speech, the ECtHR in *Erbakan v. Turkey* stated:

<sup>1147</sup> ICTY, Trial Chamber, *The Prosecutor v. Radoslav Br anin*, “Judgement” (“*Br anin* Trial Judgment”), 1 September 2004, IT-99-36-T, para. 360.

<sup>1148</sup> ICTY, *Blaški* Trial Judgment, paras. 270 and 280; *Kordi and erkez* Trial Judgment, para. 387; *Limaj* Trial Judgment, para. 514.

<sup>1149</sup> ICTY, *Ori* Trial Judgment, para. 273.

<sup>1150</sup> H. Olásolo and E. Carnero Rojo, “Forms of Accessorial Liability under Article 25(3)(b) and (c)”, in C. Stahn (ed.), *The Law and Practice of the International Criminal Court* (Oxford, 2015), p. 574.

<sup>1151</sup> ICTY, *Haradinaj* Trial Judgment, para. 623. See also G. Werle and F. Jessberger, *Principles of International Criminal Law* (Oxford University Press, 3<sup>rd</sup> ed., 2014), pp. 213-214.

<sup>1152</sup> ICTR, Appeals Chamber, *Media* case, “Judgement” (“*Media* Appeals Judgment”), 28 November 2007, ICTR-99-52-A, para. 480.

<sup>1153</sup> Adopted by the General Assembly of the United Nations in 1965.

[T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance.<sup>1154</sup>

567. In this respect, the ICTR held in *Bikindi* that hate speech might in certain circumstances constitute a violation of fundamental rights, namely a violation of the right to respect for dignity when that speech incites to hate and discrimination, or a violation of the right to security when it incites to violence.<sup>1155</sup>

568. Likewise, the ICTR Appeals Chamber in *Nahimana et al.* (“*Media case*”) emphasised that hate speech in itself constituted actual discrimination:

[T]he Appeals Chamber considers that hate speech targeting a population on the basis of ethnicity, or any other discriminatory ground, violates the right to respect for the dignity of the members of the targeted group as human beings, and therefore constitutes “actual discrimination”. In addition, the Appeals Chamber is of the view that speech inciting to violence against a population on the basis of ethnicity, or any other discriminatory ground, violates the right to security of the members of the targeted group and therefore constitutes “actual discrimination”.<sup>1156</sup>

569. The ECtHR held in the case of *Féret v. Belgium* that a politician’s comments in an electoral context constituted public incitement to racial hatred against outsiders, even if those comments did not call for violence or criminal acts to be committed:

[L]a Cour estime que l’incitation à la haine ne requiert pas nécessairement l’appel à tel ou tel acte de violence ou à un autre acte délictueux. Les atteintes aux personnes commises en injuriant, en ridiculisant ou en diffamant certaines parties de la population et des groupes spécifiques de celle-ci ou l’incitation à la discrimination, comme cela a été le cas en l’espèce, suffisent pour que les autorités privilégient la lutte contre le discours raciste face à une liberté d’expression irresponsable et portant atteinte à la dignité, voire à la sécurité de ces parties ou de ces groupes de la population. Les discours politiques qui incitent à la haine fondée sur les préjugés religieux, ethniques ou culturels représentent un danger pour la paix sociale et la stabilité politique dans les Etats démocratiques.<sup>1157</sup>

### **C. Findings of fact and conclusions of law available to a reasonable Trial Chamber**

570. The analysis of whether someone has the power to influence others to commit a crime is a fact-based evaluation that must take into consideration the particular circumstances of the case. It is thus important to establish the link between Mr Blé Goudé and the *Jeunes Patriotes*, and the link between Mr Blé Goudé and the State policy. However, it

<sup>1154</sup> ECtHR, *Erbakan v. Turkey*, Judgment of 6 July 2006, para. 56.

<sup>1155</sup> ICTR, *Bikindi*, Trial Judgment, 2 December 2008, ICTR-01-72-T, para. 392.

<sup>1156</sup> ICTR, *Media Appeals Judgment*, para. 986.

<sup>1157</sup> ECtHR, Second Section, *Féret c. Belgique*, “*Arrêt*”, 16 July 2009, application no. 15615/07, para. 73.

would be unrealistic and detached from reality to consider Mr Blé Goudé's individual criminal responsibility without first analysing the historical context in which his actions took place.<sup>1158</sup> Culture, including the nuances of language, should be considered in determining what constitutes direct and public incitement to commit crimes. For this reason, it is necessary to examine how Mr Blé Goudé's actions and speeches, together with Mr Gbagbo's government support for them, were understood by his intended audience (the *Jeunes Patriotes*). This is necessary in order to determine Mr Blé Goudé's true message and to understand the influence it had on the *Jeunes Patriotes*.<sup>1159</sup>

571. It must be recalled that evidence analysed in Sections 3 and 4, above, indicates that: (a) the *Jeunes Patriotes* were among the direct perpetrators of crimes during the post-election violence; (b) the *Jeunes Patriotes* acted together with, or had the acquiescence or support of, the State apparatus, namely the FDS; and (c) historically, the *Jeunes Patriotes* supported Mr Gbagbo and had on previous occasions committed acts of violence in support of him.
572. Mr Blé Goudé gave his speeches and organised events in the context of the post-election violence. Evidence shows that he was aware that he was acting in the context of an internal political and ethnic conflict, which he categorised as a "revolution" and a "difficult birth".<sup>1160</sup> Evidence also shows that Mr Blé Goudé was a well-educated and well-connected person who had studied abroad, and that he was part of Mr Gbagbo's government but had also been a charismatic youth leader for over a decade.
573. As regards Mr Blé Goudé and the State policy, the evidence analysed in Section 3, above, indicates that during the post-election violence Mr Blé Goudé: (a) was a close and trusted associate of Mr Gbagbo and of Philippe Mangou; (b) was a Minister in Mr Gbagbo's government while remaining "*Général de la rue*"; (c) had *de facto* control over FDS officers of the so-called "*Génération Blé Goudé*"; (d) was in charge of the *parlements* and *agoras* of the *Jeunes Patriotes*, in particular in Yopougon; (e) was in

<sup>1158</sup> Supreme Court of Canada, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, para. 9.

<sup>1159</sup> ICTR, *Media Appeals Judgment*, para. 700.

<sup>1160</sup> Video, CIV-OTP-0015-0578, authenticated in court by P-0087 (T-177-ENG).

charge of the finances of the *Jeunes Patriotes*, including the GPP youth militia; (f) mobilised the *Jeunes Patriotes* throughout the post-election violence by way of rallies, SMS technology and RTI; and (g) mobilised the *Jeunes Patriotes* who were effectively enlisted into the FDS during the post-election violence.

574. Evidence in the record identifies Mr Blé Goudé as the leader of the *Galaxie Patriotique*,<sup>1161</sup> an umbrella organisation that had as its main purpose the defence of Côte d'Ivoire personified in Mr Gbagbo (“*la patrie*”).<sup>1162</sup> Evidence also indicates that Mr Blé Goudé supported the actions of Mr Gbagbo and his government to keep him in power.<sup>1163</sup> In fact, there is no evidence in the record showing any disagreement or contention between Mr Gbagbo and Mr Blé Goudé. On the contrary, evidence shows that, even while in hiding in April 2011 and when some FDS generals had already defected, Mr Blé Goudé kept urging the youth to continue fighting for Mr Gbagbo.<sup>1164</sup>
575. Philippe Mangou described Mr Blé Goudé as a patriotic and charismatic leader.<sup>1165</sup> Although Philippe Mangou described Mr Blé Goudé as a “brother”, he testified that, as the post-election violence evolved and FDS generals became critical of Mr Gbagbo and the State policy (and especially of the death toll), Mr Blé Goudé became even more powerful, sidelining other protagonists including Philippe Mangou. According to Philippe Mangou’s testimony, Mr Blé Goudé had direct access to Mr Gbagbo and gave the CEMA the “kiss of death” on March 2011 for having advised Mr Gbagbo to resign.<sup>1166</sup>
576. Although Mr Blé Goudé described his own actions during the post-election violence as “*mots d’ordre*”, his participation could be more appropriately defined as instigation (soliciting and inducing) under article 25(3)(b) of the Statute. Evidence indicates that Mr Blé Goudé had influence over the youth, but not necessarily authority, which requires an element of compliance. In fact, there is no evidence showing that the youth

<sup>1161</sup> P-0625, T-25-CONF-FRA, p. 84, lines 5-17; P-0176, T-144-CONF-FRA, p. 4, lines 27-28.

<sup>1162</sup> P-0625, T-25-CONF-FRA, p. 80, lines 25-28; p. 81, lines 1-3.

<sup>1163</sup> P-0625, T-25-CONF-FRA, p. 86, lines 2-4; T-28-CONF-FRA, p. 18, lines 25-27; P-0176, T-144-CONF-FRA, p. 4, lines 5-8.

<sup>1164</sup> Video, CIV-OTP-0064-0131 at 00:08:05-00:11:17 (excerpt from RTI broadcast of 3 or 4 April 2011 at 08.00; transcript, CIV-OTP-0086-1168 at 1170).

<sup>1165</sup> P-0009: T-195-CONF-FRA, p. 72, lines 8-10; T-200-CONF-FRA, p. 42, lines 11-15. The witness said that Mr Blé Goudé was a patriotic and charismatic leader, with the capacity to mobilise people.

<sup>1166</sup> P-0009, T-194-FRA, p. 10.

were compelled to follow Mr Blé Goudé's *mots d'ordre* or that they would suffer any consequence or punishment in the event of disobedience. Although participation as an instigator under article 25(3)(b) of the Statute may involve a position of authority, this is not required, and the contribution may consist solely of prompting or encouraging a decision to act. Hence, liability for inducing or soliciting can arise even if the power to decide on the execution of the crime remained the preserve of the *Jeunes Patriotes* as direct perpetrators.<sup>1167</sup>

577. Moreover, it is not necessary to show that Mr Blé Goudé generated the original idea or plan to commit the crime. In fact, even if there is evidence that the *Jeunes Patriotes* were already thinking of committing the crimes (as could be argued in the present case with regard to the pre-existing tensions and violence), it is sufficient to show that the final determination to commit the crimes was brought about by the persuasion and encouragement of Mr Blé Goudé. It is thus unnecessary to determine whether the *Jeunes Patriotes* were subordinate to Mr Blé Goudé. It is equally unnecessary to determine whether a number of other persons would necessarily have to be involved before the crime was actually committed. What must be shown is the causal link between the acts of instigation and the commission of the crimes, even where the former were public utterances (as were those of Mr Blé Goudé in the context of the post-election violence).<sup>1168</sup>

578. The evidence shows that youth groups and militias involved in the commission of crimes during the post-election violence were part of an informal, malleable and adaptable group (identified in the evidence by different names including *Jeunes Patriotes*, *Galaxie Patriotique*, youth militias, pro-Gbagbo youth or *Parlement de Yopougon*). For the purpose of analysing Mr Blé Goudé's individual criminal responsibility, it is important to determine whether Mr Blé Goudé's actions had any influence on these youth groups. Likewise, it is relevant to consider whether any omissions may have constituted possible forms of instigation, since Mr Blé Goudé was the leader of these groups ("*opinion leader*" in his own words)<sup>1169</sup> and was, at the same

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<sup>1167</sup> *Katanga* Trial Judgment, ICC-01/04-01/07-3436-tENG, para. 1396.

<sup>1168</sup> *Bra anin* Trial Judgment, para. 359.

<sup>1169</sup> Video, CIV-OTP-0015-0578, authenticated in court by P-0087 (T-177-ENG).

time, a government official who may have had a duty, at the time of the post-election violence, to prevent the crimes.<sup>1170</sup>

579. The evidence indicates that Mr Blé Goudé was aware of his position as leader, and of his influence over the youth, as shown by interviews in which he compared the post-election violence to a historic revolution and referred to his role as an opinion leader in what he thought would be a remarkable event in the history of Côte d'Ivoire.<sup>1171</sup> Evidence shows that, throughout the post-election violence, Mr Blé Goudé, together with Philippe Mangou and other FDS and youth leaders, planned, organised and appeared at rallies attended massively by the *Jeunes Patriotes*.<sup>1172</sup> The fact that Mr Blé Goudé appeared systematically on RTI also indicates that he was perceived as a leader and that, most importantly, he was aware of his leadership position in the implementation of the State policy.<sup>1173</sup>

580. The evidence equally indicates that Mr Gbagbo's government was aware of Mr Blé Goudé's role and position, not as a simple citizen as alleged by his Defence, but as a charismatic leader. The evidence analysed in Section 3, above, indicates that there was a connection between Mr Blé Goudé's role as youth leader and the State apparatus. As Mr Blé Goudé explained during an interview on RTI, he was a Minister in Mr Gbagbo's government but continued to be the "*Général*" of the *Jeunes Patriotes*.<sup>1174</sup> In fact, evidence suggests that Mr Gbagbo's government relied on Mr Blé Goudé to call upon the youth to support Mr Gbagbo and to take action in the implementation of the State policy. Government support is evident not only from his repeated RTI appearances, but also from the evidence showing his close relationship with the CEMA, Philippe Mangou, who, as noted above, appeared together with Mr Blé Goudé at several rallies.<sup>1175</sup> The fact that Mr Blé Goudé's speeches were also delivered on RTI provided an additional element of authority and official endorsement that strengthened

<sup>1170</sup> ICTY, *Ori* Trial Judgment, para. 273.

<sup>1171</sup> Video, CIV-OTP-0015-0578, authenticated in court by P-0087 (T-177-ENG).

<sup>1172</sup> See, in Section 3 above, references to rallies, for example on 15 January 2011, 23 January 2011, 25 February 2011, 19 March 2011 and 20 March 2011.

<sup>1173</sup> See conclusions in Section 3, above, concerning RTI in the implementation of the State policy.

<sup>1174</sup> Video, CIV-OTP-0061-0568 at 00:23:31-00:30:02 (excerpt from RTI broadcast of 14 December 2010 at 20.00; transcript, CIV-OTP-0086-0818 at 0819-0821, lines 1-104): interview of Mr Blé Goudé at the RTI studio.

<sup>1175</sup> See video, CIV-OTP-0002-0995, and transcript, CIV-OTP-007-0181. P-0009 recognised the video: T-195-CONF-FRA, p. 71, lines 27-28; p. 72, line 1.

his influence vis-à-vis the *Jeunes Patriotes*, the FDS (in particular the “*Génération Blé Goudé*”) and other non-State actors involved in the implementation of the State policy.

581. Leaders hold a position of authority when they have significant influence over the physical perpetrators, which leads the latter to follow their orders.<sup>1176</sup> As noted by the ICTR in *Semanza*, political or opinion leaders (such as Mr Blé Goudé) can incur personal responsibility even if their relationship to the perpetrators is temporary or informal.<sup>1177</sup> Moreover, it is not necessary to prove that Mr Blé Goudé transmitted his instructions directly to the perpetrators (i.e. that the direct perpetrators were present at meetings or rallies, or that they heard his speeches), since the evidence referred to above shows that the communication of messages was also indirect.<sup>1178</sup> In fact, there is evidence that Mr Blé Goudé made use of technology during the post-election violence, as he mobilised the youth not only at rallies but also via State television and SMS. The audience that Mr Blé Goudé addressed in his speeches, public appearances and rallies was thus flexible and malleable. The youth identified as *Jeunes Patriotes* were not a fixed number of individuals; they did not have to be members of an organised power structure, and they did not have to be under Mr Blé Goudé’s effective control. Evidence shows that the *Jeunes Patriotes* existed as a group, informal though it was, of youth responding to Mr Blé Goudé’s call during the post-election violence.

582. In fact, there is evidence that the *Jeunes Patriotes* predated the post-election violence. As noted above, Philippe Mangou said that some of these *Jeunes Patriotes* had already been mobilised within the FDS in 2003 (the “*Génération Blé Goudé*”). There is also evidence that, on previous occasions, the *Jeunes Patriotes* had responded massively and effectively to Mr Blé Goudé’s calls and had been involved in violence (e.g. in 2006).<sup>1179</sup> The Defence for Mr Blé Goudé submitted that, in 2006, Mr Blé Goudé had

<sup>1176</sup> See V. L. Hamilton and H. Kelman, *Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility* (Binghamton: Yale University Press, 1989), p. 77.

<sup>1177</sup> ICTR, Appeals Chamber, *The Prosecutor v. Laurent Semanza*, “Judgement”, ICTR-97-20-A, 20 May 2005, paras. 363 and 364.

<sup>1178</sup> The ICTY held: “[A]n order does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offence. Furthermore, what is important is the commander’s *mens rea*, not that of the subordinate executing the order.” See *Blaški* Trial Judgment, para. 282; *Kordi and erkez* Trial Judgment, para. 388.

<sup>1179</sup> See the book authored by Mr Blé Goudé, “*Ma part de Vérité*”, 1 January 2006, CIV-OTP-0057-1245. See also P-0048, T-53-FRA, pp. 55-63; P-0435, T-88-CONF-FRA, pp. 55-59; and T-89-CONF-FRA, pp. 5-7. See also videos related to the violence committed by the *Jeunes Patriotes* in 2006: CIV-OTP-0063-3200 at

given a clear and unambiguous order to the *Jeunes Patriotes* to stop the violence.<sup>1180</sup> This affirmation by the Defence confirms that, historically, *Jeunes Patriotes* involved in violence had responded to Mr Blé Goudé, who was able to stop the commission of crimes by the youth. It also shows that Mr Blé Goudé is and was aware of his leadership position and his power to influence the *Jeunes Patriotes* either by calling for peace (as alleged by the Defence in respect of 2006) or by calling for violence (as alleged by the Prosecutor in this case).

583. The above context must be taken into consideration in interpreting Mr Blé Goudé's actions and his influence on the commission of the crimes. Mr Blé Goudé's *mots d'ordre* and other statements must be analysed within the social and political context in which they were uttered, in particular where outsiders or certain sectors of the population having a real or perceived connection to Mr Ouattara were equated to rebels.
584. In order to determine whether the evidence thus far adduced is sufficient to establish Mr Blé Goudé's individual criminal responsibility, the incident of the March on RTI of 16-18 December 2010 and the two incidents in Yopougon on 25-28 February 2011 and 12 April 2011 are analysed below. However, these incidents were not isolated events and must be examined together. Likewise, Mr Blé Goudé's influence can only be appreciated by taking into consideration his participation in the post-election violence as a whole, with the understanding that there was more than one "*mot d'ordre*". The analysis of his participation must also take into account that his participation evolved over the course of the post-election violence. Mr Blé Goudé himself described this evolution, prospectively, in an interview on RTI on 14 December 2010. He stated that he was wearing a suit in his capacity as Minister, but that, if and when the country got into trouble, he would eschew his suit and don the black cap which denoted his role as *Général*. He said that he was 100 per cent Minister and 100 per cent *Général*.<sup>1181</sup> In

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00:00:00-00:01:48 (no transcript available), France 2 video dated 17 January 2006; CIV-OTP-0063-3202 at 00:01:29-00:04:15 (no transcript available).

<sup>1180</sup> CIV-D25-0008-0006. The Defence for Mr Blé Goudé referred in its submissions to this interview of Mr Blé Goudé published in a newspaper in 2006.

<sup>1181</sup> Video, CIV-OTP-0028-0103 at 00:10:52–00:11:56 (transcript, CIV-OTP-0044-2590 at 2594, lines 141-160): interview of Mr Blé Goudé. In this albeit undated interview, Mr Blé Goudé acknowledges that he is acting as Minister and as General (presumably indicating that the interview was given during the post-election violence). When the journalist asks Mr Blé Goudé about his black cap, he says: "*Non, c'est un langage. [...] C'est un langage. [...] Ceux qui travaillent avec moi et à qui ce langage-là est décodé ... ban, ceux qui travaillent avec moi, à qui ce langage-là est adressé, ils ont le code. Chaque jeune patriote a le code. Et je*

fact, as he had explained before, this cap was his code to the *Jeunes Patriotes*, which each of them understood.<sup>1182</sup>

585. Acts of instigation under article 25(3)(b) of the Statute may be carried out verbally and/or by other means of communication. Accordingly, it could even be reasonable to conclude, on the basis of Mr Blé Goudé's own words, that by simply appearing in public with his black cap he was mobilising the *Jeunes Patriotes* to take action. In fact, the evidence indicates that, as the post-election violence evolved, Mr Blé Goudé eschewed his suit in favour of his cap, as he had predicted. Just as his participation evolved, so did the involvement of the *Jeunes Patriotes*. By the end of the post-election violence, the *Jeunes Patriotes* and other non-State actors had taken positions at the Presidential Residence and were the main perpetrators of crimes during the incident of 12 April 2011.
586. Within the context of the March on RTI, and as discussed in Section 3, above, there is evidence that, on 16 December 2010, *Jeunes Patriotes* and youth militias intercepted unarmed marchers participating in the March on RTI, and that this culminated in the commission of the crimes of 16-18 December 2010. During the aforementioned interview of Mr Blé Goudé at RTI on 14 December 2010, he had already announced that his "*mot d'ordre*" would follow, and he had called for a meeting the next day (15 December 2010) at the *Palais de la Culture*.<sup>1183</sup>
587. This interview and the invitation he issued to the meeting of 15 December demonstrate Mr Blé Goudé's awareness of his leadership position and his power over the *Jeunes Patriotes*. As Mr Blé Goudé stated in his interview, one of the purposes of the meeting of 15 December 2010 was to form a partnership between the youth and Mr Gbagbo's government.<sup>1184</sup> Mr Blé Goudé also stated that he and the *Jeunes Patriotes* had a shared

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*pense que ça suffi pour moi. [...] Mais soyez-en sur, ça, c'est pas une casquette de fétiche. [...] Parce que les gens racontent beaucoup de choses. Non, moi je ne suis pas un féticheur. Moi, je suis un fils de Dieu, moi je confie tout ce que je fais, je confie cela à Dieu, parce que je pense qu'il a la capacité de transformer tout. Il a la capacité d'orienter tout, et notre temps n'est pas son temps. Et ceux qui n'ont pas compris cela, ils sont toujours hors-jeu. C'est une casquette que je porte et c'est un langage bien précis que chaque jeune patriote comprend."*

<sup>1182</sup> Video, CIV-OTP-0028-0103 at 00:10:52–00:11:56 (transcript, CIV-OTP-0044-2590 at 2594, lines 141-160).

<sup>1183</sup> Video, CIV-OTP-0061-0568 at 00:23:31-00:30:02 (excerpt from RTI broadcast of 14 December 2010 at 20.00; transcript, CIV-OTP-0086-0818 at 0819-0821, lines 1-104).

<sup>1184</sup> Transcript, CIV-OTP-0086-0818, lines 22-25.

stake in resistance, peace, the electoral campaign and the future.<sup>1185</sup> At the end of the interview of 14 December 2010, Mr Blé Goudé confirmed that he would meet with the *Jeunes Patriotes* on 15 December 2010 to discuss with them, in general, his proposals on how to move forward together.<sup>1186</sup>

588. P-0625, who attended the said meeting on 15 December 2010, and P-0435 confirmed in their testimony that Mr Blé Goudé had held a discussion with youth leaders and instructed them to protect RTI.<sup>1187</sup> Thus, in contradistinction to Mr Blé Goudé's "neutral" invitation of 14 December 2010, the evidence given by these witnesses shows that the objective of the meeting was not a general discussion as suggested ("*venir pour qu'on parle de l'avenir de la Côte d'Ivoire*"), but principally a discussion of what the *Jeunes Patriotes* were to do during the March on RTI. [REDACTED].<sup>1188</sup> This evidence was confirmed by various witnesses whose testimony is analysed in Sections 3 and 4, above, and who identified *Jeunes Patriotes* among the perpetrators who had acted together with the FDS during the March on RTI.<sup>1189</sup>

589. Although there is no further evidence as to what exactly Mr Blé Goudé said during the meeting of 15 December 2010, his actions must be analysed within the context of the post-election violence and, in particular, in the light of the manner in which the violence evolved. P-0625 testified that Mr Blé Goudé was the leader who would trigger any mobilisation of the *Jeunes Patriotes*. He testified that, once Mr Blé Goudé had issued a call, the *Jeunes Patriotes* would know what to do (this was in fact confirmed by Mr Blé Goudé when he explained the meaning of his black cap referred to above). P-0625 described Mr Blé Goudé's power to mobilise the *Jeunes Patriotes* as follows:

*R. Bon, je ne sais pas trop où vous voulez en venir, ou quels sont les appels de la Galaxie patriotique. La Galaxie patriotique a toujours eu des positions fermes et a toujours lancé "d'appels" "à les" Jeunes Patriotes de rester mobilisés pour défendre la souveraineté de la Côte d'Ivoire, de défendre l'indépendance de notre pays. C'est ça, les appels. On leur demande de se mobiliser, de défendre. C'est comme ça, ça s'est passé. Et chacun arrivait*

<sup>1185</sup> Transcript, CIV-OTP-0086-0818, lines 35-36.

<sup>1186</sup> Transcript, CIV-OTP-0086-0818, lines 97-100.

<sup>1187</sup> [REDACTED].

<sup>1188</sup> [REDACTED].

<sup>1189</sup> P-0106, rule 68(3) statement, CIV-OTP-0019-0211-R04 at 0216-0217, paras. 28-30; at 0218, para. 33; at 0219, paras. 38-40 (identifying the BMO together with the FESCI). P-0363, rule 68(3) statement, CIV-OTP-0046-0275-R04 at 0283 and 0284, paras. 35, 39-42 (identifying *Jeunes Patriotes*). BQI, 16 December 2010, CIV-OTP-0046-0027: police report to the Minister of the Interior referring to the arrest of individuals who were RHDP supporters and wearing amulets. It is stated that the identification of individuals was made by FESCI youth acting under the auspices of the police.

sur le terrain. Peut-être chacun faisait ce que lui-même sentait bon et qu'il avait envie de faire, je sais pas, mais c'est comme ça, ça s'est passé. On lançait toujours des appels à la mobilisation contre les envahisseurs, nous, on appelait la communauté internationale. Et l'ONU, c'est les envahisseurs. Q. Qui, au sein de la Galaxie, faisait ces appels ? R. Faisait les appels de... ? Mais les responsables de la Galaxie patriotique. Vous voulez faire... Blé pouvait faire les appels pour demander à la mobilisation de toutes les... "toutes" les Jeunes Patriotes, et chacun de... chacun de nous lançait les appels en (inaudible) à leurs... à leurs militants, à leurs... leurs supporters, dans leurs communes, dans les différents quartiers que le président Blé a lancé un appel de mobilisation, et les gens se... se mobilisaient. Q. Quand vous dites "Blé", vous dites M. Blé Goudé ? R. Blé Goudé, oui. C'est de lui il s'agit.<sup>1190</sup>

590. As stated in the passage from P-0625's testimony above, Mr Blé Goudé did not have the power to decide for the *Jeunes Patriotes* or to control their actions.<sup>1191</sup> However, Mr Blé Goudé had the power to trigger their actions and to activate their capacity to commit crimes for which, as noted above, they had received training and weapons. P-0625 testified that the *Jeunes Patriotes* had been mobilised mainly for the protection of sovereignty against foreign invasion and the United Nations. Mr Blé Goudé himself stated that the cause of the *Jeunes Patriotes* was to defend the Constitution and Mr Gbagbo, who, he said, "incarnated this noble cause".<sup>1192</sup> Thus, it was not necessary for Mr Blé Goudé to expressly order acts of violence in order to activate the mobilisation of the *Jeunes Patriotes*. His mere mention of these "common enemies" among the *Jeunes Patriotes* could reasonably suffice. As will be discussed below, evidence indicates this was Mr Blé Goudé's way of mobilising the youth.

591. In order to appreciate Mr Blé Goudé's influence in relation to the March on RTI, it is also relevant to analyse the sequence of events prior to the demonstration. This allows a better understanding of what Mr Blé Goudé was encouraging when he asked the *Jeunes Patriotes* to "defend RTI". In the case at bar, it is also critical to understand the context in which Mr Blé Goudé's message was delivered. As discussed above, the evidence indicates that the government foresaw the use of violence during the March on RTI. In images shown on RTI on 12 December 2010, the Minister of the Interior, Emile

<sup>1190</sup> P-0625, T-27-FRA, p. 22, lines 7-25, emphasis added.

<sup>1191</sup> ICTY, Trial Chamber, *The Prosecutor v. Tolimir*, "Judgement", 12 December 2012, IT-05-88/2-T, para. 902. The Court stated: "The mode of instigating can be express and/or implicit prompting by the accused. It is not a requirement for the accused to have any sort of authority or effective control over a perpetrator."

<sup>1192</sup> Video, Charles Blé Goudé at Stade Champroux, 23 January 2011, CIV-OTP-0041-0470 at 00:04:09-00:06:32 (transcript, CIV-OTP-0044-2597 at 2599, lines 53-73): "*Nous sommes là pour saluer notre police, nous sommes là pour saluer notre gendarmerie, nous sommes là pour saluer les Eaux et Forêts et les douanes ... ce soir, cette après-midi, dans ce stade. L'armée de CÔTE D'IVOIRE se bat pour quoi ? Elle se bat pour la légalité constitutionnelle en CÔTE D'IVOIRE, elle se bat pour la constitution de la CÔTE D'IVOIRE, elle se bat pour la dignité de CÔTE D'IVOIRE, et elle est prête ; et derrière elle, il y a une jeunesse debout. Cette jeunesse est debout autour d'un leader, qui incarne une cause noble et qui est Laurent GBAGBO.*" [Emphasis added].

Guiriéoulou, gave a speech to police prefects in which he stated that they were in a state of war and that the behaviour, actions and reactions of the police had to be adjusted to this state of war.<sup>1193</sup>

592. P-0435, P-0436, P-0441, P-0440 and P-0407 testified that the *Jeunes Patriotes* were armed and that they had already been mobilised and trained before the post-election violence.<sup>1194</sup> There is also evidence in the record that the *Jeunes Patriotes* had a history of involvement with the FPI and, in particular, that they had been involved in acts of violence in 2006.<sup>1195</sup> There is also evidence that the *Jeunes Patriotes* had already committed acts of violence before the second round of the election and before the March on RTI.<sup>1196</sup> For example, although it is outside the scope of the charges, it is relevant to note (for the purpose of context) that evidence in the record, corroborated by Philippe Mangou, indicates that on 19 November 2010 the RHDP headquarters was attacked by the *Jeunes Patriotes* and that at least 20 civilians were injured as a result.<sup>1197</sup> According to a report by the Ministry of the Interior dated 24 November 2010 and submitted into the record, Ouattara supporters were attacked by the *Jeunes Patriotes* in several incidents which occurred on 23-24 November 2010.<sup>1198</sup> According to the testimony of Philippe Mangou and Bredou M'bia, and documentary evidence

<sup>1193</sup> Video, CIV-OTP-0074-0063 at 00:16:10-00:17:56 (excerpt from RTI broadcast of 12 January 2011 at 20.00; transcript, CIV-OTP-0087-0491 at 0492, lines 22-27).

<sup>1194</sup> P-0435, T-87-CONF-FRA, pp. 15-16, 20-26, 33, 41-42; P-0436, T-148-FRA, pp. 10 and 14-16; P-0442, T-19-CONF-FRA, pp. 82-85; P-0440, T-155-CONF-FRA2, pp. 83-85, 90-91; P-0407, T-210-CONF-FRA, pp. 9-10.

<sup>1195</sup> See the evidence of P-0435 and P-0431 analysed above, on the relationship between the FPI spokesperson, Affi N'Guessan, and the *Jeunes Patriotes*, which dated from 2006 and continued until the end of the post-election violence. See also, above, the reference to Mr Blé Goudé's actions with the *Jeunes Patriotes* in 2006.

<sup>1196</sup> See the reference to the testimony of P-0109 in Section 3, above, as to how the *Jeunes Patriotes* stopped taxis and checked for Dioula after the second round of the election (T-154-CONF-FRA-ET, pp. 24-25). See also the testimony of P-0435, above, that the GPP intimidated people during the second round of the election (T-87-CONF-FRA, p. 16).

<sup>1197</sup> RHDP request of 19 November, CIV-OTP-0044-0060; Kassaraté's response of 22 November, CIV-OTP-0044-0059; list of identified injured persons, 20 November 2010, CIV-OTP-0045-1350; DGNP compilation, 22 November 2010 to 7 February 2011, CIV-OTP-0045-0793 at 0794, entry no. 1. According to Philippe Mangou, around 20 persons were injured during the incident (T-195-CONF-FRA, p. 6, lines 15-17). He stated: "*En effet, le 19 novembre 2011, un groupe de jeunes proches du FPI s'est rendu au QG du RHDP et a saccagé ce QG. Il s'en est suivi une bagarre de rue qui a fait près de 20 blessés.*" Page 0959: P-0046 (T-126) acknowledged that he had received this document summarising the events that had occurred at various places and times. He could not recall sending it to the Minister, but he thought that he must have done so. P-0440 (T-158) indicated that a statement had been taken from *fédéral* Zaba Zadi Lazar. The number of the report matches the number used on the reports for the 16th *arrondissement*.

<sup>1198</sup> Ministry of the Interior, 24 November 2010, CIV-OTP-0045-0023 at 0025: report issued by the *Permanence Centrale de la Préfecture* of Abidjan on the events of 23-24 November 2010. At p. 0025, 10.00, the incident in Riviera II is reported.

submitted into the record, during a previous RHDP demonstration on 27 November 2010 the *Jeunes Patriotes* participated in acts of violence against demonstrators which resulted in at least three deaths.<sup>1199</sup> It is relevant to note that there is no evidence in the record indicating that Mr Blé Goudé tried to dissuade the *Jeunes Patriotes* from committing any of the aforesaid acts of violence. In fact, P-0238 testified that, after the second round of the election, Mr Blé Goudé, via RTI, called on people to protect themselves and to stop the “infiltration”; this led the *Jeunes Patriotes* to erect roadblocks in Abidjan at which crimes were committed.<sup>1200</sup>

593. Although Mr Blé Goudé instructed the *Jeunes Patriotes* to “save RTI”, it would be reasonable to conclude, given his capacity as leader and his failure to condemn the violent acts of the preceding days, that Mr Blé Goudé’s directions prompted the commission of the crimes by the *Jeunes Patriotes* during the incident at the March on RTI. While the aim was stated neutrally as one of “saving” RTI, the principal consideration here is the meaning of the words in the specific context of the preceding and ongoing acts of violence committed by the *Jeunes Patriotes*, and what the *Jeunes Patriotes* would have understood the message to be. It does not matter that the message may appear ambiguous to another audience or in another context.<sup>1201</sup> Accordingly, Mr Blé Goudé’s instructions must be considered objectively, but with regard being had to the circumstances in which they were given, the manner and tone used and the persons to whom the message was addressed.<sup>1202</sup>

594. It is relevant to note that P-0435 testified that FESCI members had been trained by the GPP and placed on alert in preparation for the March on RTI, and that they had been ordered to support the FDS.<sup>1203</sup> In fact, a police report of 16 December 2010 confirms that the FESCI acted together with police on that date to intercept and attack perceived Ouattara supporters (it is reported that people were detained merely for wearing

<sup>1199</sup> P-0009, T-195-CONF-FRA-ET, p. 8; P-0184, T-215-CONF-FRA-ET, p. 11. DGNP, “*Rapports établis suite aux évènements du samedi 27/11/2010 à Abobo*”, 27 November 2010, CIV-OTP-0045-1068, at 1071-1074. Bredou M’bia (T-127) recognised the document referring to events that took place on 27 November 2010 in Abobo, and in particular to the deaths of three persons.

<sup>1200</sup> T-81-CONF-FRA, pp. 72-73.

<sup>1201</sup> ICTR, *Media Appeals Judgment*, para. 701.

<sup>1202</sup> Supreme Court of Canada, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, para. 106.

<sup>1203</sup> P-0435, T-89-CONF-FRA, pp. 64-67.

amulets).<sup>1204</sup> There is also documentary evidence (namely receipts dating from 2009, 2010 and 2011) indicating that the FESCI received funds from the Presidency via Mr Blé Goudé.<sup>1205</sup>

595. In order to understand the call issued by Mr Blé Goudé on 15 December 2010 and its effect on the *Jeunes Patriotes*, it is also relevant to analyse the evidence of Mr Blé Goudé's acts immediately after the incident. In this regard, there is again no evidence in the record that Mr Blé Goudé condemned the violence that occurred during the March on RTI, despite evidence and reports that the *Jeunes Patriotes* responding to his call to "protect RTI" had been involved in violence. In fact, evidence shows that, far from calling for peace or dissuading the *Jeunes Patriotes* from committing further acts of violence, Mr Blé Goudé made inflammatory and discriminatory statements in the days that followed the March on RTI, while congratulating and encouraging the youth. In this regard, it is significant to recall that, on 18 December 2010 (when, on the evidence, violence related to the March on RTI was still ongoing), Mr Blé Goudé spoke at a rally which was televised by RTI. Despite the reports of violence against unarmed civilians, analysed above, Mr Blé Goudé did not refer to or condemn any acts of violence or crimes committed by the *Jeunes Patriotes* or the FDS. Instead, he condemned the United Nations and France for genocide.<sup>1206</sup> He also stated that further action by the *Jeunes Patriotes* was coming, which could only reasonably be interpreted as his

<sup>1204</sup> This evidence is corroborated by a police report concerning the March on RTI which mentions that FESCI members had committed crimes while working together with the police. BQI, 16 December 2010, CIV-OTP-0046-0027: police report to the Minister of the Interior referring to the arrest of individuals who were RHDP supporters and wearing amulets. The report states that the identification of individuals was made by FESCI youth acting under the auspices of the police. See also the rule 68(3) statement of P-0106, who identified the perpetrators as youth (FESCI) acting together with CECOS/BMO and later supported by the CRS and GR (CIV-OTP-0019-0211).

<sup>1205</sup> A series of receipts in the record shows that youth groups received funds from the Presidency via Mr Blé Goudé: order to pay Charles Blé Goudé, 7 September 2007, CIV-OTP-0025-0787; order to pay Charles Blé Goudé, 21 March 2005, CIV-OTP-0025-0682; order to pay Charles Blé Goudé, 3 August 2004, CIV-OTP-0025-0709. These are payment orders issued by the Presidency of the Republic addressed to the Financial Manager of the Presidency (Jacques Anouma) requesting funds for Mr Blé Goudé. See also receipt, Serge Koffi, FESCI, 16 May 2009, CIV-OTP-0025-0456; receipt, Serge Koffi, FESCI, 15 September 2010; CIV-OTP-0025-0600; receipt, Serge Koffi, FESCI, 21 January 2011, CIV-OTP-0025-0634; receipt, Serge Koffi, FESCI, 4 March 2011, CIV-OTP-0025-0645. These are all receipts for funds allegedly granted to the aforesaid individual. Values range from CFAF 100,000 to CFAF 1,500,000 each (about 150 to 2,200 euros). See also receipt, Youssouf Fofana, Voix du Nord, 16 May 2009, CIV-OTP-0025-0450; receipt, Youssouf Fofana, Voix du Nord, 18 November 2010, CIV-OTP-0025-0617; receipt, Youssouf Fofana, Voix du Nord, 5 January 2011, CIV-OTP-0025-0624. These are all receipts for funds allegedly granted to the aforesaid individual. Values again range from CFAF 100,000 to CFAF 1,500,000 each. P-0483 testified that he had received money directly from the government during the post-election violence (an equivalent of CFAF 20,000 to CFAF 50,000 or about 30 to 70 euros per week, in addition to food and supplies): T-99-CONF-ENG, pp. 89-96.

<sup>1206</sup> Video, CIV-OTP-0064-0078.

approval of the violence that had preceded and was indeed ongoing on that date. On the same occasion, he concluded his speech as follows: “*Vous ne devrez plus dormir. Soyez prêts, soyez prêts, soyez prêts, soyez prêts, soyez prêts, soyez prêts, soyez prêts, soyez prêts, soyez prêts. Est-ce que vous êtes prêts ?*”<sup>1207</sup>

596. This sort of speech made by Blé Goudé during the post-election violence is particularly telling,<sup>1208</sup> since a prediction (true, false or exaggerated) of violence on the part of others may lead to violence that is deemed defensive or necessary.<sup>1209</sup> As will be discussed further below, that is what appears to have happened here, when Mr Blé Goudé said in March 2011 that he had been “forced” to depart from his peaceful course of action.

597. The RTI broadcast of that same rally reported that Mr Blé Goudé was mobilising “patriotic troops” in Yopougon:

*[...]A Yopougon Charles BLÉ GOUDÉ commence une tournée de mobilisation des troupes patriotiques. Ces combattants aux mains nues, cette remobilisation s'explique par l'actualité enflammée dont est sujette la Côte d'Ivoire. [...] L'heure de la résistance a donc sonné pour les patriotes ivoiriens, avec en tête leur Général Blé Goudé.*<sup>1210</sup>

598. Mr Blé Goudé also spoke at another rally at Place CP1, Yopougon, on 29 December 2010. The rally was once again broadcast by RTI. When he was interviewed by reporters, Mr Blé Goudé denied again any wrongdoing on the part of the *Jeunes Patriotes*, saying that the youth whom he represented were unarmed and had only their “*mains nues*”.<sup>1211</sup> However, another RTI video report on the same rally contains footage of Mr Blé Goudé addressing the crowd and stating that, as of 1 January 2011, he would “no longer be responsible for the safety of those at the Golf Hotel”.<sup>1212</sup> Such an affirmation, in the context of the post-election violence, shows that

<sup>1207</sup> Video, CIV-OTP-0064-0078 at 01:06:42-01:07:01 (excerpt from RTI broadcast of 19 December 2010 at 20.00; transcript, CIV-OTP-0102-1756 at 1759, lines 110-111).

<sup>1208</sup> See the speeches of 23 January 2011 and 25 February 2011.

<sup>1209</sup> Supreme Court of Canada, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, paras. 49, 66, 67, 76, 77.

<sup>1210</sup> Video, CIV-OTP-0064-0078 at 00:58:34-00:59:20 (excerpt from RTI broadcast of 19 December 2010 at 20.00; transcript, CIV-OTP-0102-1756 at 1757, lines 4-15, emphasis added).

<sup>1211</sup> Video, CIV-OTP-0064-0094 at 00:20:30-00:24:55 (excerpt from RTI broadcast of 29 December 2010 at 20.00; transcript, CIV-OTP-0086-0925): report on a rally held by Mr Blé Goudé at Place CP1 in Yopougon on 29 December 2010. Mr Blé Goudé is interviewed after the rally.

<sup>1212</sup> Video, CIV-OTP-0064-0101 at 00:41:34-00:42:30 (excerpt from RTI broadcast of 30 December 2010 at 20.00; transcript, CIV-OTP-0086-0980 at 0982, lines 47-55): RTI report on a rally in Yopougon on 29 December 2010.

Mr Blé Goudé knew that his youth troops (“*troupes patriotiques*”) were not empty-handed or unarmed and had the potential to compromise the security of those at the Golf Hotel. It also suggests that Mr Blé Goudé did not condemn acts of violence against supporters of the “Golf Hotel”, i.e. of Mr Ouattara. It would thus be reasonable to infer that Mr Blé Goudé knew that his speeches could prompt the *Jeunes Patriotes* to commit crimes, especially against people perceived to support Mr Ouattara.

599. Accordingly, a reasonable Trial Chamber could conclude that Mr Blé Goudé’s call to the *Jeunes Patriotes* to “protect RTI” on 15 December 2010 was neutral in appearance only. On the basis of the context described above, Mr Blé Goudé prompted the *Jeunes Patriotes* to commit acts of intimidation and violence against persons taking part in the March on RTI.<sup>1213</sup> The evidence referred to above indicates, first, that Mr Blé Goudé was aware that the *Jeunes Patriotes* would react to his call for mobilisation by committing acts of violence on 16-18 December 2010. Second, it shows that, by his actions and words after the incident at the March on RTI, he was prompting the *Jeunes Patriotes* to commit further crimes, which the evidence shows that they did, in particular during the events that occurred in Yopougon.
600. Therefore, in order to understand Mr Blé Goudé’s actions with regard to the incident of 25-28 February 2011 in Yopougon, it is important to analyse Mr Blé Goudé’s actions prior to his speech at Le Baron Bar on 25 February 2011. There is evidence that Mr Blé Goudé mobilised the *Jeunes Patriotes* not only at Le Baron Bar but also by way of prior events and speeches leading up to that one. Thus, it is irrelevant (and indeed explicable) that some violence had already started before the commencement of Mr Blé Goudé’s speech at Le Baron Bar on 25 February 2011. Mr Blé Goudé said himself, during his televised address to the youth on the eve of the incident, that he would give his final instructions (“*les dernières consignes*”) at Le Baron Bar.<sup>1214</sup> These orders were not the first he had given: evidence indicates that Mr Blé Goudé had prepared the ground for the violent events of 25 February 2011.

<sup>1213</sup> *Bra anin* Trial Judgment, para. 360.

<sup>1214</sup> CIV-OTP-0064-0086 at 00:39:41–00:45:16 (excerpt from RTI broadcast of 24 February 2011 at 20.00; transcript, CIV-OTP-0044-2534 at 2556-2557, lines 838-903). P-0108 identified Guy Gbetri (T-145-CONF-FRA, pp. 95-96).

601. It is significant that Mr Blé Goudé spoke at a rally in Niangon Nord, Yopougon, on 7 January 2011, which was broadcast by RTI. In his speech, he referred to Mr Ouattara as the chief of the rebels and instructed the audience to await his “*mot d’ordre*”.<sup>1215</sup> A similar rally was organised at Toits Rouges, Yopougon, on 9 January 2011, where Mr Blé Goudé gave a speech along the same lines. As RTI reported in relation to this rally, Mr Blé Goudé was keeping the “mobilisation flame” alive.<sup>1216</sup>
602. On 23 January 2011, Mr Blé Goudé, acting in his capacity as leader of the *Jeunes Patriotes*,<sup>1217</sup> organised a ceremony to pay tribute to the FDS.<sup>1218</sup> Philippe Mangou, who spoke and sang at the event, gave evidence in relation to this ceremony and authenticated the video submitted into the record.<sup>1219</sup> In his remarks at the event, Mr Blé Goudé uttered the following declaration with reference to Philippe Mangou and the *Jeunes Patriotes*, which is revelatory of the relationship between his call for mobilisation and the State policy, and of the use of force that the *Jeunes Patriotes* were prepared to make:

*Mon général à travers vous, les jeunes de CÔTE D’IVOIRE qui sont assis là ce soir ... d’autres qui sont à GAGNOA [phon], qui sont à DIMBOKRO qui sont à DABOU, qui sont STOTRO [phon.], qui sont BONOUA [phon], qui sont partout, ceux-là, je voudrais vous dire qu’ils sont là, ils sont à votre disposition ! Ils sont à votre disposition!*<sup>1220</sup>

603. Images speak louder than words. There is no satisfactory way to describe what the videos of these rallies show. It is important to note that all of the videos are RTI reports. It is also significant that they show massive attendance by what appears to be thousands of young people, mostly men. In one of the videos, an RTI reporter gives the following description of the rallies and of Mr Blé Goudé’s influence over the *Jeunes Patriotes*: “[...] la population se déplace massivement pour assister aux meetings, et semblent

<sup>1215</sup> Video, CIV-OTP-0064-0107 at 00:08:55-00:10:05 (excerpt from RTI broadcast of 8 January 2011 at 20.00; transcript, CIV-OTP-0086-1001).

<sup>1216</sup> Video, CIV-OTP-0064-0109 at 00:06:31-00:11:13 (excerpt from RTI broadcast of 10 January 2011 at 20.00; transcript, CIV-OTP-0086-1009).

<sup>1217</sup> P-0009, T-195-CONF-FRA, p. 56, lines 16-18.

<sup>1218</sup> See video, CIV-OTP -0048-1670, and transcript, CIV-OTP-0049-0040.

<sup>1219</sup> See video, CIV-OTP-0002-0995, and transcript, CIV-OTP-007-0181. P-0009 recognised the video: T-195-CONF-FRA, p. 71, lines 27-28; p. 72, line 1.

<sup>1220</sup> P-0009, T-195-CONF-FRA, p. 69, lines 13-19; video, CIV-OTP-0002-0995, and transcript, CIV-OTP-007-0181.

*adhérer, par leur enthousiasme, au discours des Jeunes Patriotes, tout en attendant leur mot d'ordre.*”<sup>1221</sup>

604. The footage of these rallies also shows that Mr Blé Goudé’s leadership went beyond rhetoric and a political movement of “*mains nues*”. In these videos, Mr Blé Goudé is presented by RTI as “*Président de l’Alliance des Jeunes Patriotes*”. Although he was formally a Minister in Mr Gbagbo’s government, as the post-election violence evolved (and as he had predicted on 14 December 2010), he eschewed his suit and began wearing his black cap. The fact that these rallies were systematically reported on and supported by RTI further demonstrates the acquiescence and support of Mr Gbagbo’s government with regard to Mr Blé Goudé’s call for mobilisation during the post-election violence. P-0625 explained that Mr Blé Goudé and other *Jeunes Patriotes* leaders had unlimited access to RTI. This witness described it as their means of communication.<sup>1222</sup> Philippe Mangou’s attendance at such rallies further supports allegations that the *Jeunes Patriotes* were prepared to take up arms and fight under the auspices of the State apparatus, and that Philippe Mangou publicly endorsed such an initiative.

605. On 25 February 2011 at Le Baron Bar, Mr Blé Goudé gave instructions to the *Jeunes Patriotes*. In the first excerpt submitted into the record, Mr Blé Goudé states the following:

*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.*<sup>1223</sup>

606. This first excerpt is relevant as it shows that there was already some pre-established organisation that would respond to Mr Blé Goudé’s call, as he anticipated that his instructions would go to the “neighbourhood presidents”, who would then presumably

<sup>1221</sup> Video, CIV-OTP-0064-0109 at 11:00, emphasis added.

<sup>1222</sup> P-0625, T-28-CONF-FRA, p. 89, lines 13-17. The witness stated: “[p]our avoir accès à la RTI, nous on avait aucun problème pour avoir accès à la RTI, parce que nous étions des leaders, nous étions en train de défendre notre République, donc la... la RTI était considérée notre lieu de communication. Donc, il n’y avait pas des... des de l’ordre particulier ou bien de protocole particulier, pour nous, d’avoir accès à... à la RTI pour faire des informations.”

<sup>1223</sup> Clip 1(a), CIV-OTP-0064-0087 at 00:14:02 (transcript, CIV-OTP-0063-2998).

give further instructions. It also shows the targets of the actions of the *Jeunes Patriotes*, as instructed by Mr Blé Goudé: UNOCI and “any outsider entering the neighbourhood”. The video excerpt also shows Mr Blé Goudé asking the *Jeunes Patriotes* to take the following actions: (a) prevent UNOCI from circulating; (b) contact the neighbourhood presidents; (c) meet with one another in order to receive information on how to set up roadblocks (which he refers to generally as “know and verify the entrances and exits to your neighbourhoods”); and (d) denounce any outsider entering your neighbourhood.

607. In the second excerpt, Mr Blé Goudé states the following:

*Avant une semaine, avant une semaine, le temps qu'on s'organise réellement, dans les quartiers, véritablement, et que nos systèmes soient rôdés, et qu'on sait qu'à Yopougon, derrière nous, il n'y a pas d'affrontements, et qu'on sait qu'à Koumassi, derrière nous, il n'y a pas d'affrontements, et qu'on sait que tous les groupes ont été organisés, et qu'on sait qui peut faire quoi et qui doit faire quoi, avant une semaine, je vais vous appeler devant le Golf Hôtel.*<sup>1224</sup>

608. This excerpt again shows that Mr Blé Goudé's leadership extended beyond Yopougon, and that he represented the *Jeunes Patriotes* in other areas of Abidjan. It further shows that the *Jeunes Patriotes* were organised and coordinated. The phrase “call you together in front of the Golf Hotel”, within the context of the post-election violence, could reasonably be understood as taking over the Golf Hotel and therefore removing Mr Ouattara and those supporting his status as president. In the context of the post-election violence, the previous acts of violence in which the *Jeunes Patriotes* had been involved and the previous rallies organised by Mr Blé Goudé in which military action by the *Jeunes Patriotes* was planned, calling all *Jeunes Patriotes* to meet at the Golf Hotel in one week's time, could reasonably be understood as a call to violence.

609. A third excerpt (submitted by the Defence) shows Mr Blé Goudé interacting with those attending the meeting as follows:

*Charles Blé Goudé: Il y a un piège dans lequel on ne doit pas tomber. Quel est ce piège? C'est la guerre civile. Moi je suis un responsable et vous êtes avec nous, nous sommes ensemble, nous avons un idéal. Nous ne voulons pas que notre pays s'emboie dans la guerre civile. Or, là où l'ONU ne réussit pas à installer la personnalité de son choix, l'ONU installe un État de non-droit. Au Libéria, personne ne contrôlait personne. Et quand tu arrives à l'aéroport, c'est eux qui contrôlent tout. À défaut d'avoir leur homme à la tête du pays, ils installent un pays de non-droit... où les populations se poursuivent, c'est*

<sup>1224</sup> Clip 1(b), CIV-OTP-0064-0087 at 00:14:45 (transcript, CIV-OTP-0063-2998).

*ça qu'ils cherchent. Et petit à petit, nous sommes en train de tomber dans ce piège. Écoutez-moi très bien, parce que eux ils n'ont rien à perdre, mais nous, nous avons notre pays à perdre. Je suis convaincu que cela vous ferait mal demain de voir tout Yopougon détruit. Vous savez, je peux tout de suite vous dire: "Allons dans tel quartier, on va attaquer les gens", et puis vous allez m'applaudir. Je n'ai pas besoin d'applaudissement, j'ai besoin de vous orienter, et c'est mon devoir, et c'est ma responsabilité. Moi je ne suis pas Alassane OUATTARA, je ne suis pas Guillaume SORO.*

*Intervenant non identifié : GBAGBO !*

*Charles Blé Goudé : GBAGBO Laurent n'est pas Alassane OUATTARA, GBAGBO Laurent n'est pas Guillaume SORO. Quand tu aimes un pays, ce pays-là, tu veux le voir évoluer. Voyez-vous, comment dans un pays, des gens ils prennent une machette et un couteau et ils égorgent. Ça c'est quoi ça ?*

*Intervenant non identifié : La démocratie.*

*Charles Blé Goudé : On n'a jamais eu ça en Côte d'Ivoire ici. Ça c'est Al-Qaïda qui fait ça. Vous comprenez, c'est comme ça que ça a commencé au Rwanda, ça n'a pas commencé autrement, hein. C'est comme ça que ça a commencé au Rwanda. Je ne veux pas, et j'insiste là-dessus devant la presse, je ne veux pas d'affrontement entre civils en Côte d'Ivoire. C'est ça qu'ils cherchent. La France et l'ONUCI cherchent à organiser un génocide en Côte d'Ivoire, notez ça, n'oubliez jamais ça.*<sup>1225</sup>

610. This third excerpt in itself could be seen as exculpatory, as Mr Blé Goudé states that he does not want a civil war in Côte d'Ivoire. He also says that he is not asking anyone to attack people in the neighbourhoods. However, this part of his speech (whose purpose he claims is to inform the press) must be analysed together with his previous explicit and concrete instructions to the *Jeunes Patriotes*. It must also be analysed concomitantly with his final remark, denouncing France and UNOCI for trying to organise genocide in Côte d'Ivoire, thus creating the existence of a threat from the "other group", namely Alassane Ouattara and Guillaume Soro, supported by France and UNOCI.<sup>1226</sup>

611. The fourth and last excerpt shows Mr Blé Goudé stating: "*Une fois que vous avez décidé là, c'est à moi maintenant et mes amis d'orienter.*"<sup>1227</sup> This excerpt again shows Mr Blé Goudé as a leader, but in particular that he was going to give further instructions. It is thus relevant to analyse Mr Blé Goudé's actions after 25-28 February, which would lead to the events in Yopougon on 12 April 2011.

<sup>1225</sup> Clip 2, CIV-D15-0001-0586 at 00:01:09 (transcript, CIV-OTP-0094-0023).

<sup>1226</sup> Supreme Court of Canada, *Mugesera v. Canada* (Minister of Citizenship and Immigration), Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, paras. 49, 66, 67, 76, 77.

<sup>1227</sup> Clip 3, CIV-OTP-0074-0083 at 00:11:48 (transcript, CIV-OTP-0097-0213).

612. There is evidence showing that those attending the rally left the event chanting against the Dioula.<sup>1228</sup> The evidence analysed in Sections 3 and 4 above also shows that all the victims identified in this incident were in fact of Dioula ethnicity living in Yopougon. The same evidence indicates that all of them were unarmed and were in their homes or at the mosque when they were attacked. *There* is also evidence that the youths acted under Mr Blé Goudé's "*mot d'ordre*" to erect roadblocks and to stop outsiders and also committed crimes there. They checked identity cards looking for people from the north perceived to be Ouattara supporters.<sup>1229</sup>
613. In order to analyse the effect of Mr Blé Goudé's actions vis-à-vis the *Jeunes Patriotes*, it is relevant to consider that Yopougon was Mr Blé Goudé's hometown and that he was an undisputed leader there. Evidence indicates that Mr Blé Goudé was in Abidjan throughout the post-election violence and was specifically in Yopougon on 25 February 2011 while the violence was under way. Although the presence of Mr Blé Goudé at the crime scene is not a requisite element under article 25(3)(b) of the Statute, it is a factor to consider in determining his *mens rea*.<sup>1230</sup> Moreover, his presence at the crime scene on 25 February 2011 is also indicative of his support for the events that were occurring.<sup>1231</sup> In fact, P-0436, who testified about Mr Blé Goudé's presence in Yopougon on that date, stated that Mr Blé Goudé entered the police premises at the 16th *arrondissement* just as a person was being burned alive in front of the police station.<sup>1232</sup>
614. In the analysis of Mr Blé Goudé's words and the effect they had upon the *Jeunes Patriotes*, it is relevant to recall the testimony of a Yopougon police officer, P-0440, who explained that Mr Blé Goudé had a lot of influence at the time and that only he could eliminate the roadblocks where people were being killed. P-0440 stated:

*Mais les voies qui donnaient accès au quartier, ils ont refusé catégoriquement d'enlever les barrages. Parce que, disent-ils, que c'est M. Blé Goudé qui leur a demandé de*

<sup>1228</sup> P-0438, T-150-CONF-FRA, p. 8; P-0442, T-19-CONF-FRA, p. 86; P-0109, T-154-CONF FRA CT, p. 33, lines 14-18.

<sup>1229</sup> See Section 3.

<sup>1230</sup> *Haradinaj* Trial Judgment, para. 623.

<sup>1231</sup> Supreme Court of Canada, *Mugesera v. Canada* (Minister of Citizenship and Immigration), Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, para. 169. The Supreme Court found: "A persecutory speech which encourages hatred and violence against a targeted group furthers an attack against that group. Also relevant is geographical proximity."

<sup>1232</sup> P-0436, T-148-FRA, pp. 20-22 and 44-46.

*surveiller leur quartier; donc, ils font leur travail en surveillant leur quartier, seul M. Blé Goudé peut leur demander de rentrer pour qu'ils rentrent. Sinon, si tel n'est pas le cas, eux ils vont continuer de surveiller leur quartier.*<sup>1233</sup>

615. P-0440 said in relation to Mr Blé Goudé and the violence of 25-28 February 2011 that Mr Blé Goudé's calls had an immediate effect: "*Donc, quand il lançait ce genre d'appels, c'est pratiquement le lendemain qu'on voyait ce genre de barrages.*"<sup>1234</sup> This testimony is corroborated by other evidence that links the perpetrators of the incident of 25-28 February 2011 to the *parlement* of Yopougon, where Mr Blé Goudé was a leading figure and where he used to address the young people on a regular basis, well in advance of 25 February 2011.<sup>1235</sup> During his testimony Bredou M'bia confirmed that, in fact, after Mr Blé Goudé's call on 25 February 2011, he had received reports of people being burned alive at roadblocks.<sup>1236</sup>

616. As noted above, the fact that there had already been clashes between the neighbourhoods of Yao Séhi and Doukouré<sup>1237</sup> does not affect the link between Mr Blé Goudé's actions and the incident of 25-28 February 2011. Similarly, the fact that some of the violence could have started before Mr Blé Goudé spoke at Le Baron Bar is also inconsequential.<sup>1238</sup> Far from detaching Mr Blé Goudé from the incident of 25-28 February 2011, such circumstances show, on the contrary, that he was aware of that context of violence between these two communities and that he knew he had the power to either stop or kindle these pre-existing tensions in the context of the post-election violence. Yet, evidence supports allegations that instead of giving unequivocal instructions to stop all violence, Mr Blé Goudé instructed the *Jeunes Patriotes* to erect roadblocks and to stop suspicious outsiders, UNOCI personnel and rebels who, as discussed above in the context of the post-election violence, were considered to be Ouattara supporters. P-0449, who was at the meeting at Le Baron Bar said that this was

<sup>1233</sup> P-0440, T-157-CONF-FRA, p. 22, lines 16-21, emphasis added.

<sup>1234</sup> P-0440, T-157-CONF-FRA, pp. 23-24.

<sup>1235</sup> See evidence analysed in Section 3 above. CIV-OTP-0046-0029. P-0441, T-35-CONF-FRA, pp. 41-45, 59 and 67. P-0442, T-20-CONF-FRA, p. 33; P-0436, T-148-FRA, pp. 19-20; P-0109, T-154-CONF-FRA, p. 12; P-0108, T-145-CONF-FRA; P-0433, T-147-CONF-FRA, p. 12; P-0435, T-88-CONF-FRA, pp. 11-16; P-0441, T-35-CONF-FRA, pp. 42-43; P-0440, T-157-CONF-FRA, p. 30; P-0433, T-147-CONF-FRA, p. 12.

<sup>1236</sup> T-126-CONF-FRA, pp. 36-37.

<sup>1237</sup> Gbagbo Submission of No Case to Answer, paras. 547-548; Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, Blé Goudé Submission of No Case to Answer, ICC-02/11-01/15-1198, paras. 19 and 587.

<sup>1238</sup> See, for example, P-0438, T-150-CONF-FRA, pp. 5-6, who mentioned that, at around 10.00, he saw that a "gbaka" had been burned. However he could not say who had burned it or who its owner was.

his understanding of Mr Blé Goudé's instructions.<sup>1239</sup> He also testified that the people involved in setting up the roadblocks belonged to movements that were different yet all related to the *Jeunes Patriotes*.<sup>1240</sup>

617. In relation to Mr Blé Goudé's message on 25 February 2011 and the resulting proliferation of roadblocks, P-0459 stated the following in court:

*Ce message a été lancé. Ça aussi, ce message, il a été lancé par Blé Goudé. Alors, ça, Blé Goudé, c'est... c'est lui qui a lancé ce message-là. Il avait dit aux gens de surveiller leur quartier, d'être les gardiens de leur quartier, de surveiller le voisin, toute personne suspecte, voilà, de signaler. Donc, à partir de ce moment-là, à partir du 25, les jours qui ont suivi immédiatement, les barrages ont commencé à être dressés. Il y en avait dans mon quartier, il y en avait dans mon quartier.*<sup>1241</sup>

618. The Defence for Mr Blé Goudé submitted images showing him speaking to Muslim leaders during the 2010 election campaign.<sup>1242</sup> However, this video is immaterial to the findings related to this incident. As noted above, evidence indicates that the tensions between communities increased specifically after the second round of the election, and even more as the post-election violence developed, as did Mr Blé Goudé's rhetoric against certain ethnic and religious groups, as noted above.
619. In the light of the above, a reasonable Trial Chamber could conclude that Mr Blé Goudé incited the violence that occurred in Yopougon on 25-28 February 2011, giving clear instructions to the *Jeunes Patriotes* during that period. However, as noted above, his "*mot d'ordre*" on 25 February 2011 must not be analysed in isolation, as it was the culmination of a series of statements by Mr Blé Goudé from the outset of the post-election violence. Given the social and political context of Côte d'Ivoire during the post-election violence, and especially the previous and ongoing acts of violence in which the *Jeunes Patriotes* were involved, Mr Blé Goudé's speech could reasonably be seen as a call for violence on the part of the *Jeunes Patriotes* (despite his disclaimer that he did not want a civil war). Mr Blé Goudé's calls to the *Jeunes Patriotes* to mobilise, to join the FDS, to defend the country against outsiders and UNOCI and to take over the Golf Hotel, were a call to violence and an incitement to hostility. Mr Blé Goudé's presence at the crime scene on 25 February 2011 further supports this

<sup>1239</sup> P-0449, T-159-CONF-FRA, p. 37, lines 7-28; p. 38, lines 1-28.

<sup>1240</sup> P-0449, T-159-CONF-FRA, p. 44, lines 19-24.

<sup>1241</sup> P-0459, T-153-CONF-FRA, p. 17, lines 19-24.

<sup>1242</sup> CIV-D25-0001-0742.

conclusion. Mr Blé Goudé's words and actions, along with his presence at the crime scene, influenced and encouraged the *Jeunes Patriotes* to commit criminal acts against unarmed civilians in Yopougon on 25-28 February 2011. Accordingly, a reasonable Trial Chamber could conclude that the speeches made by Mr Blé Goudé in the context of the post-election violence, considering the high degree of influence he had upon the youth, had a substantial impact that led to the commission of the crimes in Yopougon on 25-28 February 2011.<sup>1243</sup> In a context in which Ouattara supporters were equated with rebels, a reasonable Trial Chamber could conclude that his speeches (including, but not exclusively, his speech at Le Baron Bar) led to hatred of and discrimination against people perceived to be Ouattara supporters, namely "northerners", Dioula, Muslim and other immigrants who, in the context of the post-election violence, constituted the segment of the population perceived to be "outsiders", "rebels" and "pro-Ouattara".

620. Given the systematic broadcast of Mr Blé Goudé's speeches preceding his meeting at Le Baron Bar, a reasonable Trial Chamber could also conclude that these actions were supported by Mr Gbagbo's government and the FDS Chief of Staff, Mr Philippe Mangou, who co-hosted events leading up to this date.
621. As regards the incident of 12 April 2011, it is relevant to analyse Mr Blé Goudé's actions following the attack of February 2011.
622. As noted above, police officer P-0440 drafted a report after the incident of February 2011, in which he documented the crimes committed by the *Jeunes Patriotes*. He testified that, after this incident, his supervisor met with Mr Blé Goudé at the seat of COJEP in Toits Rouges in Yopougon, where he attempted to convince Mr Blé Goudé to instruct the *Jeunes Patriotes* to remove the roadblocks and stop committing crimes there. However, P-0440 said this meeting proved unsuccessful, as the roadblocks and violence continued. The following passage from P-0440's testimony is significant:

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<sup>1243</sup> MICT, *Šešelj Appeals Judgment*, para. 131. The Chamber determined: "In addressing the Prosecution's challenges in this regard, the Appeals Chamber is cognizant that the Prosecution was not required to establish that the crimes would not have been committed without Šešelj's involvement; it was sufficient to demonstrate that Šešelj's speeches were a factor substantially contributing to the conduct of the perpetrators."

*Q. [11:27:32] J'aimerais vous poser la question suivante: je reviens un petit peu en arrière. J'en reviens à votre rapport. Après avoir rédigé votre rapport, le 28 février, est-ce que vous avez pris d'autres mesures?*

*R. [11:28:37] Oui. Quand j'ai rédigé le rapport, j'espérais que notre hiérarchie allait appeler M. Blé Goudé pour lui demander de faire une autre annonce à la télévision, pour demander aux jeunes de rentrer chez eux, de ne plus ériger des barrages dans les quartiers. Malheureusement, ça n'a pas été le cas, puisque ça a continué. Et donc, j'ai rencontré mon chef, je lui ai dit que "voilà la proposition que je fais: je propose qu'on aille croiser M. Blé Goudé pour lui demander de faire cesser les barrages d'autodéfense." Comme ça, les tueries que nous avons dans les rues allaient cesser. Il m'a répondu que c'était une bonne idée. Sur-le-champ, il l'a appelé – je pense que c'est M. Blé Goudé qu'il a appelé –, et les instants qui ont suivi, il m'a demandé de l'accompagner. Nous sommes partis à... au siège du COJEP, à Yopougon Toits Rouges, où, effectivement, M. Blé Goudé était là. Quand nous sommes arrivés, les deux se sont entretenus en aparté. Je suis resté à côté, les deux se sont entretenus en aparté, pendant au moins 20 à 30 minutes. Et après cela, il est revenu pour qu'on retourne à notre base. Mais chemin faisant, il ne m'a rien dit. Je ne lui ai pas non plus posé de questions parce que j'ai compris que c'était un échec. Voilà.*<sup>1244</sup>

623. In an RTI broadcast of 14 March 2011, Mr Blé Goudé denied any wrongdoing on the part of the *Jeunes Patriotes* when he stated that allegations against them were false and made only to discredit the movement. The following passage of this RTI video shows that Mr Blé Goudé had knowledge of the crimes committed by the *Jeunes Patriotes* which, as shown below, he disregarded.

*[...] 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.*<sup>1245</sup>

624. Although in this video Mr Blé Goudé instructs the youth to act appropriately (“be polite and avoid racketeering”), this was clearly insufficient. Despite the level of violence at the roadblocks erected and monitored by the *Jeunes Patriotes* (and where people were killed and burned alive) in accordance with Mr Blé Goudé’s instructions,<sup>1246</sup> there is no evidence that Mr Blé Goudé, as their “Général” or opinion leader, strongly and explicitly condemned such actions. Instead, in this video Mr Blé Goudé congratulates the youths and orders them to continue with the roadblocks. Furthermore, Mr Blé Goudé says in this speech that the objective of the roadblocks is to dissuade rebels. However, in the context of the post-election violence, where Ouattara supporters or

<sup>1244</sup> P-0440, T-157-CONF-FRA, pp. 27-28, emphasis added.

<sup>1245</sup> Video, CIV-OTP-0069-0371, 00:11:48 to 00:11:55 (excerpt from RTI broadcast of 14 March 2011 at 20.00; transcript, CIV-OTP-0087-0724 at pp. 0725-0726, lines 43-45, emphasis added.

<sup>1246</sup> See analysis in Section 3 above.

Dioula were equated with rebels, this message could reasonably be seen as fuelling hatred and violence towards the section of the population perceived to be “rebels”.

625. It would be unreasonable to conclude, as suggested by the Defence, that Mr Blé Goudé’s speech above was sufficient to prevent the commission of the crimes. Although there is evidence, analysed in Sections 3 and 4, that serious crimes against human life and dignity were committed at the roadblocks, Mr Blé Goudé makes mention only of “racketeering”, which is not comparable, either in its level of violence or in its purpose, to the crimes actually committed. The evidence analysed in Sections 3 and 4 above suggests that the main goal of the *Jeunes Patriotes* was not to extort money but to cause harm (for example, by burning someone alive at a roadblock in a so-called “Article 125” attack). Thus, Mr Blé Goudé’s instruction to “behave” and to avoid racketeering was clearly insufficient and effectively ignored the serious criminal acts that the *Jeunes Patriotes* had committed. In fact, it would be reasonable to conclude that such orders were deliberately ineffective, otiose and minimal.<sup>1247</sup> Moreover, it could reasonably be said that, by congratulating the direct perpetrators (those who had erected the roadblocks) and by giving further instructions (to continue the roadblocks and the dissuasion of rebels), Mr Blé Goudé acknowledged his influence and power over the *Jeunes Patriotes*. It would also be reasonable to infer, from the fact that these congratulations and further instructions from Mr Blé Goudé to the *Jeunes Patriotes* were broadcast by RTI, that the government supported and tacitly approved of the actions taken by the *Jeunes Patriotes* and by Mr Blé Goudé because those actions were conducive to the implementation of the State policy.
626. Another video dated 4 March 2011, also an RTI broadcast, shows Mr Blé Goudé, who is introduced as “*Général Charles Blé Goudé*” and “*leader des Patriotes*”. In this video, Mr Blé Goudé publicly acknowledges his role as leader of the *Jeunes Patriotes* when he states “*c’est notre devoir en tant que leaders d’opinion d’aller vers ceux avec qui*

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<sup>1247</sup> *Karadžić Appeals Judgment*, paras. 393-394. “[...] the Trial Chamber found these statements to be disingenuous on a different basis, namely that such utterances were: (i) inconsistent with those pronounced before a Serbian audience or during private conversations; (ii) at odds with the reality on the ground and the crimes committed by Bosnian Serbs against the Bosnian Muslims and Bosnian Croats of which Karadžić was fully aware; or (iii) deliberately ineffective, “otiose”, and “minimal”. Accordingly, Karadžić’s contention that the Trial Chamber failed to point to a pattern of “exculpatory statements made in public, and inculpatory statements made in private” fails to show an error in the Trial Chamber’s assessment of his statements.” [Footnotes omitted].

*nous vivons dans les quartiers pour leur parler*”. The Defence submitted that this was a reconciliation effort that occurred between the *protagonists* who were involved in the incidents that happened in Yopougon from 25 to 28 February 2011.<sup>1248</sup> First of all, in its submissions, the Defence conceded that Mr Blé Goudé held a position of leadership and was listened to by these “protagonists”, who were also identified by victims and witnesses in this case as the perpetrators of the crimes committed on 25-28 February 2011. In this video, Mr Blé Goudé talks about reconciliation efforts he led between *gbaka* drivers and the *Jeunes Patriotes* in Yopougon. However, again, he makes no mention of the serious acts of violence reported on 25-28 February 2011. In view of the context of the post-election violence and the reports of serious crimes against unarmed civilians perpetrated by the *Jeunes Patriotes*, it would be unreasonable to conclude that this apparent reconciliation, limited only to the *gbaka* drivers, was sufficient to prevent the commission of further crimes. On the contrary, this evidence indicates that Mr Blé Goudé failed to condemn the serious crimes committed by the direct perpetrators (“protagonists”) of the incident that occurred between 25 and 28 February 2011, and who saw him as their “*Général*” and “opinion leader”.

627. The Blé Goudé Defence also submitted that, in the past, Mr Blé Goudé had given clear and unambiguous orders to stop violence.<sup>1249</sup> Referring to an article relating to the violence in 2006, the Defence pointed out that Mr Blé Goudé had given a clear order at the time: “*Je ne veux pas de guerre civile. Je veux que les affrontements cessent.*” It is important to note that, through this submission, the Defence concedes that Mr Blé Goudé had influence over the *Jeunes Patriotes* who, in 2006, were involved in acts of violence. Although Mr Blé Goudé said on 25 February 2011 that he did not want a civil war, he failed to give a clear instruction to stop all confrontations (as he allegedly did in 2006). Instead, on 25 February 2011, he gave explicit instructions to prevent UNOCI from circulating and to stop outsiders at roadblocks. Despite the violence that his speech triggered on 25 February, he again failed to give any such unequivocal instruction (“to stop all confrontations”) in the days that followed.

628. Mr Blé Goudé’s rhetoric about reconciliation must be analysed with other evidence in the record that shows that he was not genuinely seeking appeasement; instead, he

<sup>1248</sup> T-229-CONF-FRA, emphasis added.

<sup>1249</sup> CIV-D25-0008-0006.

insisted that the *Jeunes Patriotes* had to engage in combat and in war, up until the end of the post-election violence. For example, the actions of Mr Blé Goudé at a rally he organised at Place CP1, Yopougon, on 19 March 2011 are significant.<sup>1250</sup> Mr Blé Goudé is shown addressing a massive crowd of young people who cheer frantically for him.<sup>1251</sup> Mr Blé Goudé refers to those “making war” against Gbagbo supporters (“*ceux qui se réclament de Gbagbo Laurent*”).<sup>1252</sup> Mr Blé Goudé then states that his political movement will take military action and engage in combat: “*Je suis en train de me rendre compte qu’on veut m’obliger à changer ma ligne [...] la nécessité de combattre est [...] me pousse à me battre*”.<sup>1253</sup> He finally orders the *Jeunes Patriotes*, as their “*Général*”, to take action and join the army in the following passage:

*Jeunes de Côte d’Ivoire, est-ce que vous êtes prêts à aller dans l’armée pour servir notre pays? [...] Cette question, je vais la poser quatre fois. Et quatre fois vous allez me répondre. Jeunes de Côte d’Ivoire, est-ce que vous êtes prêts à entrer dans l’armée pour servir notre pays? [...] Alors, je vous ai entendus. Maintenant c’est à-moi de vous répondre. [...] C’est à moi en tant que votre général de vous répondre et je vais vous répondre aujourd’hui et je vais répondre maintenant. [...] La comédie à trop duré ... la comédie a trop duré. Même le silence. Les gens veulent prendre notre silence et notre implication politique comme une faiblesse. [...] Les gens veulent prendre notre silence et notre implication politique comme une faiblesse. Mais nous ne pouvons plus rester là. Alors que nous avons les moyens humains. Alors que la jeunesse est prête. Alors qu’on est beaucoup. Alors qu’il y a assez de crimes maintenant pour le prouver.*<sup>1254</sup>

629. This last excerpt shows the thread in Mr Blé Goudé’s rhetoric. Although Mr Blé Goudé appeared to lead a peaceful movement (“*main nues*”), he indeed led a group that had historically committed violence and which had been trained and armed to commit acts of violence during the post-election violence. As noted above, on 25 February 2011, Mr Blé Goudé said he did not want a civil war but in contradiction to this affirmation, he gave clear instructions to impede UNOCI from circulating, to erect roadblocks and to stop outsiders. On 22 January 2018, Mr Blé Goudé again gave a contradictory statement, stating on the one hand that he did not want war, but on the other hand anticipating the use of violence: “*Je ne veux pas de guerre. Mais quand je dis que je ne*

<sup>1250</sup> Video, rally at Place CP1 Yopougon, 19 March 2011, CIV-OTP-0015-0476, 00:05:16 to 00:07:29, 00:08:14 to 00:08:18 (transcript, CIV-OTP-0020-0454); video, rally at Place CP1 Yopougon, 19 March 2011, CIV-OTP-0015-0460, 00:00:16 to 00:00:36 (transcript, CIV-OTP-0019-0150 at p. 1051, lines 10-12; translation, CIV-OTP-0019-0144 at p. 0144, lines 10-12). Both videos were authenticated by P-0087.

<sup>1251</sup> Video, CIV-OTP-0015-0476, 00:45 to 02:06.

<sup>1252</sup> Transcript, CIV-OTP-0020-0454 at p. 0456.

<sup>1253</sup> Transcript, CIV-OTP-0020-0454 at p. 0457.

<sup>1254</sup> Video, rally at Place CP1 Yopougon, 19 March 2011, CIV-OTP-0015-0476, 00:05:16 to 00:07:29, 00:08:14 to 00:08:18 (transcript, CIV-OTP-0020-0454 at pp. 0457-0459, emphasis added).

*veux pas de guerre, cela ne veut pas dire que je suis faible.*”<sup>1255</sup> On 19 March 2011, while calling the *Jeunes Patriotes* to mobilise and join the army, he clearly stated who the enemy was. He said that the United Nations was on the side of the Ouattara supporters, whom he identified as people with amulets all over, with *gris-gris* all over (“*des gens qui ont des amulettes partout, des gris-gris partout*”).<sup>1256</sup> It would be unreasonable to conclude that these words, calling the *Jeunes Patriotes* to join the army (and hence use force) while identifying Dioula persons as enemies, would not result in violence against this segment of the population.

630. Evidence shows that, as a result of Mr Blé Goudé’s calls at rallies on 19 and 20 March 2011, a significant number of young men presented themselves for enlistment at CEMA headquarters on 21 March 2011. Again, words cannot describe the video images, but for the purpose of this analysis the turnout can be described once again as massive. The attitude of the young men and the environment depicted in the images can be described as violent, intense and explosive.<sup>1257</sup> Unsurprisingly, the rallies of 19 and 20 March 2011 and the subsequent arrival of the *Jeunes Patriotes* at the CEMA headquarters on 21 March 2011 to enlist were broadcast by RTI, again indicating government support and also a multiplied effect of Mr Blé Goudé’s call for mobilisation.<sup>1258</sup> Moreover, the video images show people attending the rallies and cameramen taking videos, which reasonably would have been further broadcast to reach an even larger audience.<sup>1259</sup>

631. The RTI interview of Mr Blé Goudé as the young people are arriving at the CEMA headquarters on 21 March 2011 is also relevant in demonstrating that the mobilisation (which, as noted above, was massive) went beyond the images shown and possibly

<sup>1255</sup> Video, CIV-OTP-0064-0113, 00:45:44 to 00:46:20; RTI broadcast of 22 January 2011, time stamp 45:45 to 47:00, emphasis added.

<sup>1256</sup> See Mr Blé Goudé’s speech on 19 March 2011; video, rally at Place CP1 Yopougon, 19 March 2011, CIV-OTP-0015-0476, 00:05:16 to 00:07:29, 00:08:14 to 00:08:18 (transcript, CIV-OTP-0020-0454).

<sup>1257</sup> Video, CIV-OTP-0069-0375, 00:05:40 to 00:08:52 (excerpt from RTI broadcast of 21 March 2011 at 20.00; transcript, CIV-OTP-0087-0730); shows the young people who came to the CEMA headquarters to mobilise following Mr Blé Goudé’s call; video, *Young Patriots* enlist in the army, CIV-OTP-0043-0269, 00:04:08:00 to 00:05:20:00 (transcript, CIV-OTP-0047-0611 at pp. 0614-0615, lines 69-97); video, *Young Patriots* enlist in the army, 21 March 2011, CIV-OTP-0015-0501 (full video) (transcript, CIV-OTP-0063-2902); video was authenticated in court by P-0087 and P-0088. Shows images of *Jeunes Patriotes* enlisting at the CEMA headquarters on 21 March 2011.

<sup>1258</sup> Video, CIV-OTP-0069-0375, 00:05:40 to 00:08:52 (excerpt from RTI broadcast of 21 March 2011 at 20.00; transcript, CIV-OTP-0087-0730).

<sup>1259</sup> Video, CIV-OTP-0069-0375 at 01:20, people attending are seen taking videos of Mr Blé Goudé’s speech. At 02:19, a number of cameramen are seen filming the speech. See in this regard the evidence of P-0625 that the *Jeunes Patriotes* mobilised using mobile phones (T-27-CONF-FRA, pp. 22-23).

reached a larger number of *Jeunes Patriotes*. It is also relevant in showing Mr Blé Goudé's state of mind and his awareness of his role as leader of the *Jeunes Patriotes* and their role in the implementation of the State policy. His interview is also relevant in proving that the actions of the *Jeunes Patriotes* were coordinated and planned. When he was interviewed, Mr Blé Goudé explained that he had decided to “decentralise”, in order to avoid the *Jeunes Patriotes* having to pay for transport to come to the CEMA headquarters. He explained that the *Jeunes Patriotes* could enlist in their neighbourhoods in what he described as an operation free of charge for the recruits:

*On a pris la décision de la décentralisation pour éviter encore que nos amis dépensent, qu'ils payent de l'argent par-ci par-là pour payer le transport et qu'ils s'exposent encore à d'autres risques. [...] en restant dans les quartiers, vous surveillez les quartiers mais en même temps vous vous inscrivez. Nous voulons préciser que cette opération-là, elle est gratuite.*<sup>1260</sup>

632. Other video evidence in the record is also relevant in demonstrating Mr Blé Goudé's awareness of his influence as well as of the likelihood that crimes would be committed as a result of his directions. In an interview with P-0087 on 26 March 2011, Mr Blé Goudé explains – as they are driving in a car and passing through several roadblocks monitored by young men who salute him – that the roadblocks are a self-defence response against the rebels. However, he goes further, comparing the actions of the *Jeunes Patriotes* to a revolution and acknowledging that there would be “collateral damage”, as in all revolutions. He also expects that the situation will worsen.<sup>1261</sup> It would be unreasonable to conclude that this collateral damage was solely economic or financial,<sup>1262</sup> as contended by the Defence, especially in the light of Mr Blé Goudé's interview and speeches. It was unlawful – even in the name of self-defence – for Mr Blé Goudé to give instructions and encouragement on 25 February 2011 to erect roadblocks, to stop UNOCI from circulating and to detain outsiders, in addition to issuing further instructions to continue with these actions. It would be unreasonable to conclude that Mr Blé Goudé anticipated only economic and financial loss when he called on the youth to mobilise (even if in self-defence) while at the same time using demeaning language against the Dioula. Evidence shows that the *Jeunes Patriotes* who erected and monitored roadblocks following Mr Blé Goudé's calls checked identity

<sup>1260</sup> CIV-OTP-0043-0269, 00:04:08:00 to 00:05:20:00 (transcript, CIV-OTP-0047-0611 at pp. 0614-0615, lines 69-97).

<sup>1261</sup> Video, CIV-OTP-0015-0578. Authenticated in court by P-0087 (T-177-ENG).

<sup>1262</sup> T-229.

cards looking for Dioula people (the target group he had specified).<sup>1263</sup> Evidence also indicates that the *Jeunes Patriotes* committed acts of violence against this segment of the population. Thus, it would be unreasonable to conclude that Mr Blé Goudé was unaware of the risk that civilians belonging to this target group would be harmed and that their mental and physical integrity would constitute the collateral damage, rather than such collateral damage being purely economic. A man of Mr Blé Goudé's education, political status and prominence on the local scene in Yopougon and even at the national level, would have necessarily known that his speech, vilifying the Dioula and other perceived pro-Ouattara groups, and encouraging acts of violence against that target group, would have the effect of furthering the commission of crimes.<sup>1264</sup>

633. Another example of Mr Blé Goudé's speech at a rally at *Place de la République* on 26 March 2011 is relevant in this regard.<sup>1265</sup> Mr Blé Goudé is shown addressing the crowd. He asks: "*Qui quitte Abidjan?*" And then explains: "*Les Mauritaniens ont laissé leurs boutiques. Ils sont partis, quand ils vont revenir, ils vont trouver des nouveaux boutiquiers en Côte d'Ivoire.*" There is evidence in the record that, after his speech targeting Mauritanian shopkeepers which was televised on RTI, shops belonging to people perceived as pro-Ouattara were pillaged in Siporex.<sup>1266</sup> Despite this direct link between his speech and the acts of pillage, there is no evidence in the record that Mr

<sup>1263</sup> ICTR, *Media Appeals Judgment*, para. 672. The Court concluded: "In the instant case, the Appellant himself identified and selected Tutsi at the roadblocks; he also gave instructions to those manning the roadblocks to stop and search every vehicle which passed, to ask for identity cards from those in the vehicles, and to set aside those whose identity cards indicated that they were Tutsi, who were then taken to Commune Rouge and killed. The Appellant has failed to show that it was unreasonable to conclude that his acts substantially contributed to the massacres of Tutsi civilians at the commune Rouge."

<sup>1264</sup> Supreme Court of Canada, *Mugesera v. Canada* (Minister of Citizenship and Immigration), Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, para. 177.

<sup>1265</sup> Video, CIV-OTP-0003-0018, 00:05:36 to 00:06:40 (excerpt from RTI broadcast of 26 March 2011; transcript, CIV-OTP-0008-0067).

<sup>1266</sup> P-0097, T-49-CONF-FRA, pp. 26-28: "*Monsieur le témoin, avez-vous... je réfère donc à votre déclaration. Vous faites référence à un événement, suite à cet... ce discours dans les... dans les environs de la pharmacie Siporex. Êtes-vous en mesure de nous laisser savoir le magasin où vous alliez plus spécifiquement dans ces environs et la nationalité du boutiquier ? [...] Ah ! Oui, j'indiquais qu'il y a tout un ensemble de magasins dans l'alignement sur la voie menant à Siporex qui ont été pillés à cette époque. Q. [10:09:06] Qu'est-ce qui était écrit au fronton de l'un de ces magasins ? R. [10:09:13] C'était... Mais si vous me... si vous me lisez, si c'est ça, je vais vous dire que c'est juste. Mais je sais qu'on a fait cas de... d'une écriture qui était au fronton de ce magasin. Q. [10:09:31] Alors, je vais vous rafraîchir la mémoire, [...] 'Au fronton de l'un de ces magasins pillés à Yopougon, à qui... et qui appartenait, pardon, à un ressortissant de la Mauritanie, j'ai pu lire la mention suivante 'La Côte d'Ivoire aux Ivoiriens'. Je connaissais ce commerçant.' R. Effectivement. Q. 'Je passais souvent devant son magasin et j'y... et j'y achetais des produits tels que le savon... du savon, pardon, du sucre, et cetera.' R. [10:10:31] Exactement, trait pour trait. Q. [10:10:34] Donc, suite à cet appel ? R. [10:10:43] Oui."*

Blé Goudé (or RTI, which broadcast the speech) ever condemned these acts of violence.

634. A final video, dated approximately 6 April 2011 (the content of which was not, however, contested by the Defence), shows Mr Blé Goudé, this time from an unknown hiding place, calling the *Jeunes Patriotes* to mobilise and fight. These were indeed his “*dernières consignes*”, in which he congratulates the *Jeunes Patriotes* and inspires them to continue their resistance:

*Certains de nos camarades, en tout cas, et ils sont nombreux, les leaders d'opinion, les meneurs de mouvement, depuis quelques jours, vous ont lancé un appel, un appel à la mobilisation sur le chef de l'état. Je voudrais ici les féliciter, tous les féliciter pour ce message prompt et féliciter et encourager ceux qui ont répondu à cet appel et qui sont devant la résidence du chef de l'état. Courage à vous camarades, félicitations à vous. Pendant combien de temps allons-nous regarder, pendant combien de temps allons-nous assister à ce que des gens assoiffés de sang, pilles, tuent, égorgent ? Notre armée dit qu'elle ratisse, notre armée dit qu'elle combat et elle combat très bien et elle est en train de ratisser. Nous encourageons cette armée, nous félicitons cette armée. C'est sur plusieurs fronts et qui fait honneur à la Côte d'Ivoire. Chers amis patriotes, continuons de résister.*<sup>1267</sup>

635. The aforesaid passage shows that Mr Blé Goudé called the *Jeunes Patriotes* to gather at the presidential residence and to keep fighting until the end. It also shows that the *Jeunes Patriotes* were an organised group up until that time, as Mr Blé Goudé congratulated “opinion leaders” and “coordinators of the movement” who had, in the preceding days, worked together with Philippe Mangou to mobilise the youth. This was corroborated by Philippe Mangou himself, who confirmed that on 3 April 2011, Mr Gbagbo had ordered him to resume combat (“*reprenez le combat*”), and that accordingly he had stayed in his position as CEMA at the presidential residence until 9 April 2011.<sup>1268</sup> Philippe Mangou also confirmed that heavily armed non-State agents were also stationed around the area of the presidential residence on 3 April 2011.<sup>1269</sup>

636. Mr Blé Goudé’s influence on the *Jeunes Patriotes* in their commission of crimes on 12 April 2011 does not need to be established through direct evidence and may be

<sup>1267</sup> Video, CIV-OTP-0047-0604, 00:00:00 to 00:05:40 (transcript, CIV-OTP-0051-1681 at p. 1682, lines 1-48). Unknown date (estimated 6 April 2011), emphasis added.

<sup>1268</sup> P-0009, T-194-CONF-FRA, pp.14-26.

<sup>1269</sup> P-0009, T-194-FRA, p. 25, lines 8-27.

demonstrated by circumstantial evidence.<sup>1270</sup> The accused's prompting may consist of a positive act but may also be accomplished by omission.<sup>1271</sup>

637. As discussed in Section 3 above, the evidence supports the allegations that the incident of 12 April 2011 in Yopougon followed a similar pattern to that of the February incident: (a) direct perpetrators were mainly identified as *Jeunes Patriotes* belonging to the *parlement* of Yopougon who were in the area on that date; (b) victims were all identified as Dioula (a general term that included Muslims and African nationalities associated with Mr Ouattara); and (c) crimes, including acts of murder, pillaging, beatings, burning and rape, were committed against unarmed civilians, many of whom were in their homes.
638. On the basis of the aforesaid course of events highlighting Mr Blé Goudé's actions and words leading up to 12 April 2011, a reasonable Trial Chamber could not conclude that Mr Blé Goudé's calls to the *Jeunes Patriotes* to mobilise, to be ready and to fight – creating a situation of apparent self-defence – or his support and encouragement to build roadblocks, were peaceful or inoffensive actions. It would be unreasonable for a Chamber to conclude, as suggested by the Blé Goudé Defence, that Mr Blé Goudé's "rhetoric is one of ongoing commitment to peace, non-violence, tolerance, forgiveness and social cohesion".<sup>1272</sup> Mr Blé Goudé, acting as "opinion leader" and "*Général*" of the *Jeunes Patriotes*, speaking in his and their hometown in March 2011, denouncing the United Nations as an enemy in a war and referring to the "other" group, the Dioula, in a denigrating manner ("*des gens qui ont des amulettes partout, des gris-gris partout*"), knowing the situation of tension and violence, especially after 25-28 February 2011, could only lead a reasonable Trial Chamber to conclude that Mr Blé Goudé was aware that his words would result in the commission of crimes against those perceived as belonging to this target group in the ordinary course of events.<sup>1273</sup>

<sup>1270</sup> ICTY, *Blaškić* Trial Judgment, para. 281; Appeals Chamber, *Prosecutor v. Stanislav Gali*, "Judgement" ("*Gali* Appeals Judgment"), 30 November 2006, IT-98-29-A, para. 178; *Boškoski and Tar ulovski* Appeals Judgment, para. 160. ICTR, Appeals Chamber, *Prosecutor v. Idelphonse Hategekimana*, "Judgement", 8 May 2012, ICTR-00-55B-A, para. 67; Appeals Chamber, *Prosecutor v. Jean de Dieu Kamuhanda*, "Judgement", 19 September 2005, ICTR-99-54A-A, para. 76.

<sup>1271</sup> SCSL, Trial Chamber, *Prosecutor v. Charles G. Taylor*, "Judgement" ("*Taylor* Trial Judgment"), 18 May 2012, SCSL-03-01-T, para. 472.

<sup>1272</sup> T-229-ENG.

<sup>1273</sup> ICTR, *Media* Appeals Judgment, para. 480.

639. As the self-proclaimed and government-endorsed leader of the *Jeunes Patriotes*, Mr Blé Goudé failed to take necessary and reasonable measures to prevent or stop the erection of the roadblocks in Yopougon after 25 February 2011. Instead, he congratulated the *Jeunes Patriotes* on their actions and explicitly instructed them to continue taking such action in the weeks that followed. Accordingly, a reasonable Trial Chamber could conclude that Mr Blé Goudé implicitly instructed and motivated the *Jeunes Patriotes* to commit crimes against perceived Ouattara supporters on 12 April 2011.<sup>1274</sup>
640. The evidence shows that Mr Blé Goudé had knowledge of the acts of violence committed or about to be committed by the *Jeunes Patriotes* in the context of the relevant incidents that concern his individual criminal responsibility. The evidence also indicates that he was aware of his position as leader, as well as of the context of pre-existing tensions. Considering the context of the post-election violence, Mr Blé Goudé was also aware that his hate speech would instigate the *Jeunes Patriotes* to commit further violence.
641. The evidence above indicates that Mr Blé Goudé consciously turned a “blind eye” to the acts of serious violence that the *Jeunes Patriotes* were committing throughout the period of post-election violence.<sup>1275</sup> Given his leadership position among the *Jeunes Patriotes*, his acknowledgement and disapproval of acts of violence against perceived Ouattara supporters could have prevented the commission of further crimes. For deliberately ignoring these known facts, Mr Blé Goudé could reasonably be held liable. A reasonable Trial Chamber, in considering the evidence analysed above, could thus conclude that Mr Blé Goudé was aware of the facts but disregarded them and implicitly approved the commission of the crimes when he congratulated the *Jeunes Patriotes* on their actions and instructed them to continue. A reasonable Trial Chamber could likewise conclude that Mr Blé Goudé knew what he was doing when he addressed the *Jeunes Patriotes* (giving his *mot d'ordre*) and why he was doing it (to implement the State policy to keep Mr Gbagbo in power).<sup>1276</sup>

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<sup>1274</sup> ICTY, *Gali* Appeals Judgment, paras. 177-178.

<sup>1275</sup> Davies, P., *Accessory Liability* (Hart Publishing, 2015), pp. 77-78.

<sup>1276</sup> ICTR, *Media* Appeals Judgment, Partly Dissenting Opinion of Judge Shahabuddeen, para. 73. The Judge stated: “The case is apt to be portrayed as a titanic struggle between the right to freedom of expression and

642. It is true that hate speech per se is not always criminal or an incitement to violence. To be so considered, it must be demonstrated that these speeches, including those inciting violence, contributed to the commission of a widespread and systematic attack during the post-election violence and in particular during the relevant incidents. A reasonable Trial Chamber could find, from the evidence, that Mr Blé Goudé's speeches, "*mots d'ordre*" and calls during the post-election violence, considered as a whole, and in the light of the particular social and political context of that post-election violence, substantially contributed to the acts of violence committed by the *Jeunes Patriotes*. The evidence analysed above supports the existence of a direct link between Mr Blé Goudé's speeches and "*mots d'ordre*" to the *Jeunes Patriotes* and the attacks they committed against unarmed civilians who were perceived to be Ouattara supporters. P-0625 stated in Court: "*La population, vous savez, l'appel de Blé Goudé, quand il fait un appel, le monde le "suit". Il est là. Les gens allaient venir, ils allaient... ils allaient le suivre, ils allaient lui obéir.*"<sup>1277</sup> It would thus be reasonable to conclude that the *Jeunes Patriotes* were the instrument of Mr Blé Goudé's will to implement the State policy. Considering his rhetoric, which targeted outsiders, UNOCI and Mr Ouattara, and in which Dioula (persons wearing *gris-gris*) were equated with rebels, it would be reasonable to conclude that Mr Blé Goudé knew that the civilians targeted would be those considered to be supporters of Alassane Ouattara.<sup>1278</sup> A reasonable Trial Chamber could also conclude that Mr Blé Goudé used hate speech that promoted discrimination and violence, ultimately denying victims of the crimes committed by the *Jeunes Patriotes* of their fundamental rights to life, liberty, security, physical integrity and human dignity.<sup>1279</sup>

643. Accordingly, a reasonable Trial Chamber could conclude that the requisite *actus reus* and *mens rea* for instigation are made out and that Mr Blé Goudé, through his acts and omissions, prompted the *Jeunes Patriotes* to commit crimes. A reasonable Trial Chamber could infer that Mr Blé Goudé had knowledge that these crimes would be

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abuse of that right. That can be said, but only subject to this: No margin of delicate appreciation is involved. The case is one of simple criminality. The appellants knew what they were doing and why they were doing it."

<sup>1277</sup> P-0625, T-28-CONF-FRA, p. 4, lines 23-28; p. 5, lines 1-7.

<sup>1278</sup> *Blé Goudé* Confirmation Decision, ICC-02/11-02/11-186, para. 162.

<sup>1279</sup> Supreme Court of Canada, *Mugesera v. Canada (Minister of Citizenship and Immigration)*, Judgment, [2005] 2 S.C.R. 100, 2005 SCC 40, para. 147.

committed as a result of his prompting, or at least that he possessed awareness of the substantial likelihood that crimes would be committed as a result of such prompting.<sup>1280</sup>

644. Accordingly, a reasonable Trial Chamber could conclude that Mr Blé Goudé substantially contributed, with his incitation and instigation, to the crimes committed by the *Jeunes Patriotes* and, at the same time, to the implementation of the State policy that targeted the civilian population during the post-election violence.
645. Although there is no direct link between Mr Blé Goudé's instigation and the crimes perpetrated by the FDS in Abobo on 3 March 2011 and 17 March 2011, it would be reasonable to conclude that his speeches and rallies, which were systematically broadcast by RTI, contributed to the State policy to keep Mr Gbagbo in power through the use of violence until his arrest in April 2011. For example, as noted above, on 23 March 2011, Mr Blé Goudé appeared on RTI stating that the shelling of 17 March 2011 had been a fabrication.<sup>1281</sup> Moreover, evidence analysed above also substantiates allegations that Mr Blé Goudé not only financed youth militias (non-State actors) but likewise paid FDS officers linked to them.<sup>1282</sup> Accordingly, there is evidence indicating that Mr Blé Goudé was instrumental in the overall government policy which led to the systematic and widespread attack against the civilian population.
646. In conclusion, a reasonable Trial Chamber could conclude that Mr Blé Goudé is individually responsible, pursuant to article 25(3)(b) of the Statute, for inducing and soliciting the commission of the following crimes against humanity, as described in article 7 of the Statute, carried out in general during the post-election violence at roadblocks by the *Jeunes Patriotes*, and in particular during the March on RTI of 16 December 2010 and attacks in Yopougon *commune*, Abidjan, between 25 and 28 February 2011 and on 12 April 2011: (a) murder; (b) rape; (c) other inhumane acts; (d) attempted murder; and (e) persecution of unarmed civilians.

<sup>1280</sup> ICTY, *Tolimir case*, Trial Judgment, 12 December 2012, IT-05-88/2-T, para. 901; SCSL, *Taylor Trial Judgment*, para. 471; ICTR, *Media Appeals Judgment*, para. 480.

<sup>1281</sup> Video, CIV-OTP-0015-0524, shows a press conference given by Mr Blé Goudé.

<sup>1282</sup> Video, CIV-OTP-0064-0113, 00:44:20 to 00:49:37 (excerpt from RTI broadcast 22 January 2011 at 20:00; transcript, CIV-OTP-0086-1028 at pp. 1029-1031, lines 1-103). At time stamp 00:45:30, P-0046 (T-126) recognised that the person receiving the package and envelope is Commander Loba Emmanuel.

#### IV. Conclusion

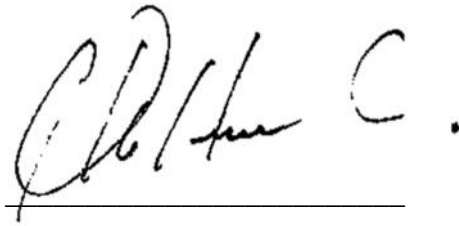
647. According to the *corpus iuris* of international law, crimes against humanity constitute a serious violation of human rights and affect humankind as a whole. The General Assembly of the United Nations has thus maintained since 1946 that those responsible for the commission of such crimes must be punished.<sup>1283</sup> As noted by the Inter-American Court of Human Rights, crimes against humanity are intolerable in the eyes of the international community and offend humanity as a whole. Damage caused by these crimes prevails in the national society and the international community, both of which demand that those responsible be investigated and punished. In this sense, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity clearly states that “no statutory limitation shall apply to [said internationally wrongful acts], irrespective of the date of their commission”.<sup>1284</sup>
648. For the reasons set out above, I firmly disagree with the majority’s decision to terminate this trial with the acquittal of the accused. On the basis of the evidence submitted into the record, the seriousness of the charges and the interests of the victims participating in these proceedings, the trial should have continued with the presentation of the Defence case.
649. The Chamber could have taken note of the Prosecutor’s withdrawal of the incidents of 3 March and 17 March 2011 in relation to Mr Blé Goudé. Given the insufficient evidence concerning Mr Gbagbo in relation to the 12 April 2011 incident, the Chamber could have granted the submission of no case to answer in that regard, but the remainder of the submissions of no case to answer should have been dismissed.

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<sup>1283</sup> See Resolutions 2583 (XXIV) of 1969 and 3074 (XXVIII) of 1973.

<sup>1284</sup> IACtHR, *La Cantuta v. Peru*, “Judgment”, 29 November 2006, para. 225.

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

A handwritten signature in black ink, appearing to read 'O. Herrera C.', is written above a horizontal line.

Judge Olga Herrera Carbuccion

Dated 16 July 2019

At The Hague, The Netherlands

## **Opinion de la juge Herrera Carbuccia**

### ***Résumé en français***

## I. Introduction et principales constatations et conclusions

1. Laurent Gbagbo et Charles Blé Goudé ont été accusés de crimes contre l'humanité (meurtre et tentative de meurtre, viol, autres actes inhumains et persécution) commis dans le cadre des violences postélectorales en République de Côte d'Ivoire. Leur procès s'est ouvert en janvier 2016 et l'Accusation a appelé à la barre son dernier témoin en janvier 2018. Les conseils de la Défense qui représentaient respectivement Laurent Gbagbo et Charles Blé Goudé ont ensuite demandé que leurs clients soient acquittés de toutes les charges<sup>1285</sup>.
2. Le 15 janvier 2019, la majorité de la Chambre (les juges Cuno Tarfusser et Geoffrey Henderson) a fait droit aux requêtes de la Défense, ce qui a conduit à l'acquittement de Laurent Gbagbo et de Charles Blé Goudé de toutes les charges, et à leur libération. J'ai manifesté mon désaccord quant à cette décision<sup>1286</sup>. J'expose dans mon opinion l'ensemble des motifs sur lesquels repose mon désaccord quant au fond. Ce qui suit est un récapitulatif en français de mes principales conclusions, en attendant la traduction du texte intégral de mon opinion.
3. La majorité a déclaré qu'il n'était « [TRADUCTION] pas nécessaire que les équipes de la Défense poursuivent la présentation des moyens de preuve » puisque le Procureur ne s'était pas « [TRADUCTION] acquitté de la charge de la preuve en ce qui concerne plusieurs éléments constitutifs essentiels des crimes tels que reprochés aux accusés »<sup>1287</sup>. La majorité a conclu que le Procureur :

[TRADUCTION]

[...] n'a pas démontré qu'il existait un plan commun destiné à maintenir Laurent Gbagbo au pouvoir et comprenant la commission de crimes à l'encontre de civils.

[...] n'a pas étayé l'allégation d'existence d'une politique ayant pour but d'attaquer une population civile sur la base des modes opératoires récurrents auxquels auraient répondu les violences et des autres éléments de preuve indirects cités à l'appui de cette allégation ;

[...] n'a pas démontré que les crimes tels qu'allégués dans les charges ont été commis [...] en application ou dans la poursuite de la politique d'un État ou d'une organisation ayant pour but d'attaquer la population civile ;

<sup>1285</sup> Version corrigée de la « Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée », 25 septembre 2018, ICC-02/11-01/15-1199-Corr ; *Public Redacted Version of "Corrigendum to the 'Blé Goudé Defence No Case to Answer Motion'"*, ICC-02/11-01/15-1198-Corr-Red.

<sup>1286</sup> Opinion dissidente relative à la décision rendue oralement par la Chambre le 15 janvier 2019, 15 janvier 2019, ICC-02/11-01/15-1234-tFRA, par. 48.

<sup>1287</sup> ICC-02/11-01/15-T-232-ENG, p. 3, lignes 2 à 4.

[...] n'a pas démontré que les discours prononcés en public par Laurent Gbagbo ou Charles Blé Goudé étaient constitutifs du fait d'ordonner, solliciter ou encourager la commission des crimes allégués, ni que l'un ou l'autre des accusés a contribué en connaissance de cause ou intentionnellement à la commission de tels crimes<sup>1288</sup>.

4. Je suis en désaccord avec les conclusions de la majorité.
5. Je suis d'avis qu'autoriser la présentation d'une requête en insuffisance des moyens à charge n'a pas pour fonction de mettre prématurément fin au procès<sup>1289</sup>. En l'espèce, j'estime qu'il existe des preuves suffisantes sur la base desquelles, si elles étaient admises, une chambre de première instance raisonnable pourrait déclarer les accusés coupables. En appliquant la norme d'administration de la preuve pertinente à ce stade de la procédure, je suivrai l'approche adoptée par d'autres juridictions : « Le juge du fait a pour tâche d'apprécier les éléments de preuve pertinents eu égard à l'ensemble des pièces du dossier ; c'est d'autant plus nécessaire que le Tribunal international a à connaître d'affaires complexes<sup>1290</sup> ». Pour parvenir à ma décision, j'ai apprécié tous les éléments nécessaires du dossier, des preuves directes et indirectes. Le juge du fait jouit d'un large pouvoir discrétionnaire quant à l'examen de tous types d'éléments de preuve. La nature des affaires portées devant la CPI rend cette latitude particulièrement nécessaire<sup>1291</sup>.
6. « Établir la vérité des événements et prévenir tout révisionnisme a été et est toujours une finalité sous-jacente à toute justice criminelle internationale<sup>1292</sup> ». Si, dans une société démocratique, nous permettons à un président qui refuse de quitter le pouvoir à la suite d'une élection contestée de prendre pour cible les citoyens de cette société et de commettre des crimes contre l'humanité en toute impunité, nous foulons aux pieds les valeurs et les buts consacrés par le Statut de Rome (« le Statut ») et embrassés par la communauté internationale.

<sup>1288</sup> ICC-02/11-01/15-T-232-ENG, p. 3, lignes 6 à 17.

<sup>1289</sup> Tribunal pénal international pour l'ex-Yougoslavie (TPIY), Chambre de première instance II, *Le Procureur c/ Pavle Strugar*, Décision relative à la demande d'acquiescement présentée par la Défense en application de l'article 98 bis du Règlement (« la Décision *Strugar* relative à la demande d'acquiescement »), 21 juin 2004, IT-01-42-T, par. 20.

<sup>1290</sup> Tribunal spécial pour la Sierra Leone (TSSL), Chambre d'appel, *Prosecutor v. Charles Ghankay Taylor, Judgment* (« l'Arrêt *Taylor* »), 26 septembre 2013, SCSL-03-01-A, par. 235 ; TPIY, Chambre d'appel, *Le Procureur c/ Sefer Halilovi*, Arrêt (« l'Arrêt *Halilovi* »), 16 octobre 2007, IT-01-48-A, par. 128.

<sup>1291</sup> Chambre de première instance I, *Le Procureur c. Thomas Lubanga Dyilo*, Rectificatif à la Décision relative à l'admissibilité de quatre documents, 20 janvier 2011, ICC-01/04-01/06-1399-Corr-tFRA, par. 24.

<sup>1292</sup> Allocution du juge Claude Jorda, Documents officiels du Conseil de sécurité, 4161<sup>e</sup> séance, S/PV.4161, 20 juin 2000, p. 3.

7. Au total, 716 victimes participent à la procédure en l'espèce<sup>1293</sup>. Les préjudices qu'elles ont subis et la violation de leurs droits fondamentaux ne font pour moi aucun doute. Il est important d'exprimer notre reconnaissance à toutes les victimes, en particulier aux femmes qui ont subi des viols, pour leur précieux témoignage au cours du procès. Le respect que l'on se doit d'accorder aux droits des accusés doit être mis en balance avec le droit de participation des victimes, qui ont un intérêt dans la bonne et transparente administration de la justice et dans l'établissement de la vérité<sup>1294</sup>.
8. Une opinion n'est pas forcément juste parce que c'est celle de la majorité<sup>1295</sup>. Mon approche quant aux faits et aux éléments de preuve diffère de celle de la majorité et j'estime ainsi qu'au vu des pièces du dossier, une chambre de première instance raisonnable pourrait tirer les conclusions exposées ci-après.

## **II. Principales constatations et conclusions auxquelles pourrait parvenir une chambre de première instance raisonnable**

### Plan commun

9. Au vu de l'article 7 du Statut, il est nécessaire de déterminer s'il existait une entité précise, qu'il s'agisse d'une organisation ou d'un État, capable de mener une attaque dans la poursuite d'une politique. Le « plan commun » et l'« entourage immédiat » ne sont ainsi pas des éléments matériels des crimes contre l'humanité au sens de l'article 7. En l'espèce, et conformément au droit applicable, l'analyse doit se concentrer sur l'existence d'une politique visant à attaquer la population civile.

### Attaque contre la population civile

10. Une chambre de première instance raisonnable pourrait tirer les conclusions suivantes.  
Au moins 101 personnes identifiées ont été tuées, 17 femmes identifiées ont été violées,

<sup>1293</sup> Greffe, *Third Transmission of the Updated Consolidated List of Participating Victims*, 7 décembre 2018, ICC-02/11-01/15-1227.

<sup>1294</sup> S. Zappalà, « The Rights of Victims v. the Rights of the Accused », *Journal of International Criminal Justice*, volume 8, numéro 1, 1<sup>er</sup> mars 2010, p. 161. Disponible à l'adresse suivante : <https://doi.org/10.1093/jicj/mqq001>.

<sup>1295</sup> « [TRADUCTION] Lorsque l'histoire démontre que l'une des décisions de la Cour a constitué une épouvantable erreur, il est réconfortant [...] de réaliser avec le recul qu'au moins certains des juges avaient clairement vu le danger et que leur voix, souvent éloquente, a fait connaître leurs préoccupations ». A. Scalia, ancien juge assesseur de la Cour suprême des États-Unis, cité par R. B. Ginsburg dans l'article « The Role of Dissenting Opinions », *My Own Words*, Simon and Schuster, 2016, p. 283.

71 personnes identifiées ont été victimes d'une tentative de meurtre et 18 personnes identifiées ont subi des actes inhumains. Les crimes susmentionnés ont été commis dans le contexte des cinq principaux événements examinés en l'espèce et dans le contexte d'autres événements qui, ensemble, établissent le comportement requis à l'article 7-1 du Statut. Le fait que les Forces de défense et de sécurité ivoiriennes (« les FDS ») aient eu recours à la force létale contre des civils non armés et à des armes lourdes dans des zones résidentielles densément peuplées d'Abidjan indique que les actions des FDS s'inscrivaient dans le cadre d'une attaque menée sans discrimination contre la population civile. Une chambre de première instance raisonnable pourrait conclure que les actes de violence (meurtres, blessures, viols et persécutions de toutes sortes ; fait de brûler vives des personnes à des barrages routiers) commis contre la population civile par les FDS et d'autres acteurs non étatiques, à savoir les Jeunes Patriotes et les mercenaires, n'étaient pas des actes isolés ou spontanés et s'inscrivaient dans le cadre d'une politique étatique. Elle pourrait conclure que cette attaque a été menée sur ordre de l'État.

#### Victimes ayant qualité de civils

11. Une chambre de première instance raisonnable pourrait tirer les conclusions suivantes. Les attaquants entendaient prendre pour cible la population civile. Des actes criminels ont été commis dans un climat de menaces, de harcèlement et d'attaques contre des partisans supposés d'Alassane Ouattara, y compris des membres musulmans et dioula de la population, sur fond de contestation des résultats de l'élection et de la décision de Laurent Gbagbo de rester au pouvoir. Des victimes non armées ont été détenues, violées, tuées, blessées et brûlées à des barrages routiers. Les auteurs directs des actes étaient conscients que les victimes étaient des civils et la présence de groupes rebelles n'a pas nécessairement d'incidence sur cette qualité, en particulier lorsque les victimes sont prises pour cible de façon discriminatoire. De plus, le recours à des moyens et méthodes d'attaque qui causent un grave préjudice aux victimes ne saurait se justifier par la « légitime défense » ou la nécessité militaire. À titre d'exemple, on peut citer le recours à la force létale contre des civils non armés, le bombardement de zones résidentielles et les viols, en particulier lorsque ces actes sont commis contre des enfants, des personnes âgées, des femmes ou des chefs religieux, ou lorsqu'ils sont

commis dans des lieux à caractère civil, tels que le domicile des victimes, un marché ou un édifice consacré à la religion, ou lors d'offices religieux.

### Politique d'un État

12. Une chambre de première instance raisonnable pourrait tirer les conclusions suivantes. Sur fond de contestation des résultats de l'élection, Laurent Gbagbo a tenté de se maintenir au pouvoir à tout prix, affirmant être le Président légitime de la Côte d'Ivoire. Laurent Gbagbo, Charles Blé Goudé et d'autres acteurs étatiques et non étatiques (principalement les Jeunes Patriotes et des mercenaires) ayant des rôles militaires et politiques au sein du gouvernement de Laurent Gbagbo étaient résolus à maintenir celui-ci (et eux-mêmes) au pouvoir. Conjointement avec ces individus, Laurent Gbagbo a utilisé l'appareil d'État qu'il avait dirigé pendant plus d'une décennie, ainsi que les pouvoirs qui lui étaient conférés par la loi, pour mettre en œuvre une politique d'État qui prenait pour cible la population civile perçue comme s'opposant à son maintien à la Présidence de la Côte d'Ivoire. Les violations des droits de l'homme peuvent être imputées à l'État. L'appareil d'État dirigé par Laurent Gbagbo a toléré l'attaque contre la population civile en niant toute conduite fautive de la part des FDS, alors même qu'aucune enquête n'avait été menée et que des informations indiquaient que les FDS étaient impliquées dans les faits. La mise en œuvre de la politique d'État peut être déduite de l'absence de toute mesure tendant véritablement et impartialement à enquêter, empêcher ou punir les crimes commis par des acteurs étatiques ou non étatiques contre des civils. Charles Blé Goudé a joué un rôle-clé dans la mobilisation des Jeunes Patriotes, qu'il a incités et encouragés à ériger des barrages routiers. Son comportement a mené ces milices de jeunes à se mobiliser et à se livrer à des actes qui ont abouti à la commission de crimes contre tous ceux considérés comme des partisans d'Alassane Ouattara (des civils appartenant à certains groupes ethniques, religieux, nationaux et politiques, les membres de l'ONUCI et les étrangers).

### L'État et le principe de proportionnalité

13. L'État a le devoir de protéger ses citoyens et le principe de proportionnalité s'applique dans tous les cas où des civils subissent un préjudice. En droit international comme en droit national, la fin ne justifie pas les moyens. Le pouvoir de l'État n'est pas illimité, et tous les moyens d'imposer l'ordre ne sont pas licites. Le bombardement d'une zone

urbaine est contraire au droit international humanitaire et aux droits de l'homme internationalement reconnus, puisqu'une attaque disproportionnée est par définition illicite et ne saurait se justifier par la nécessité militaire. Même dans des situations de guérilla urbaine ou lorsque des éléments armés se cachent parmi la population civile, l'État et ceux qui le représentent ont l'obligation et le devoir de protéger les civils. Lorsque l'appareil d'État prend pour cible les citoyens de l'État sans crainte de sanction, il agit contre les valeurs fondamentales d'une société démocratique et les individus au sommet de l'appareil d'État doivent être tenus responsables.

#### Attaque généralisée et systématique

14. Même si le nombre exact de victimes pourrait ne jamais être déterminé, une chambre de première instance raisonnable pourrait conclure que l'attaque menée contre la population civile était généralisée. Outre le nombre de victimes identifiées sous chaque chef d'accusation et pour chacun des événements en cause, les charniers et les documents médicaux-légaux montrent que des centaines de cadavres ont été retrouvés lors des violences postélectorales. Ces charniers et ces documents prouvent, de prime abord, que des meurtres ont été commis de façon généralisée. Une chambre de première instance raisonnable pourrait également tirer les conclusions suivantes. Les crimes ont été commis pendant une période d'environ quatre mois et ont touché des parties importantes d'Abidjan (une ville qui compte plus de trois millions d'habitants), y compris la zone densément peuplée d'Abobo. L'attaque était systématique, dans la mesure où elle a été mise en œuvre par l'appareil d'État, qui était dirigé par Laurent Gbagbo en tant que Président, conjointement avec d'autres autorités politiques et militaires. L'État lui-même, avec son cadre légal et sa structure de pouvoir, a fourni l'élément systématique de l'attaque. Les acteurs non étatiques ont reçu des moyens financiers, militaires et autres de la part de l'État, ont été mobilisés par l'État, ont reçu des instructions de la part de celui-ci, et ont agi avec le soutien, l'accord et l'assentiment de l'État, en violation manifeste du devoir de protection des civils.

#### Lien et connaissance

15. Il n'est pas nécessaire de prouver que l'accusé était au courant de tous les détails de l'attaque. De plus, c'est l'attaque, et non les actes individuels de l'accusé, qui doit être dirigée contre la population visée. Les éléments de preuve étayent l'allégation selon

laquelle Laurent Gbagbo et Charles Blé Goudé savaient qu'une attaque généralisée et systématique était menée contre la population civile pour des motifs d'ordre politique, ethnique ou religieux et que leurs actes s'inscrivaient dans le cadre de cette attaque.

#### Modes de responsabilité

16. Dans leur analyse, les juges sont limités par les faits et circonstances décrits dans les charges confirmées contre l'accusé. Toutefois, les juges ont le pouvoir discrétionnaire de n'examiner que le mode de responsabilité qui décrit le mieux le comportement de l'accusé.

#### Responsabilité de Laurent Gbagbo

17. Compte tenu en l'espèce de la position de Laurent Gbagbo en tant que Président de la Côte d'Ivoire et chef suprême des FDS, c'est l'article 28-a du Statut qui permet le mieux d'analyser sa responsabilité pénale. Une chambre de première instance raisonnable pourrait conclure que Laurent Gbagbo a exercé un contrôle *de facto* et *de jure* sur les FDS jusqu'à son arrestation le 11 avril 2011. Toutefois, les éléments de preuve ne suffisent pas à prouver sa responsabilité pénale individuelle en ce qui concerne les événements du 12 avril 2011.
18. Une chambre de première instance raisonnable pourrait conclure que Laurent Gbagbo est individuellement responsable en tant que chef militaire au sens de l'article 28-a du Statut des crimes contre l'humanité suivants, tels que visés à l'article 7 du Statut, qui ont été commis lors des violences postélectorales contre des civils non armés et en particulier lors de la marche sur la Radiodiffusion-télévision ivoirienne (RTI) le 16 décembre 2010 (« la marche sur la RTI »), de la marche des femmes du 3 mars 2011 (« la marche des femmes ») et du bombardement d'Abobo le 17 mars 2011 : a) meurtre ; b) viol ; c) autres actes inhumains ; d) tentative de meurtre ; et e) persécution. Une chambre de première instance raisonnable pourrait conclure que Laurent Gbagbo a dirigé et coordonné la politique de défense de l'État et qu'il avait l'autorité en droit et la capacité dans les faits de donner des ordres, y compris le pouvoir d'interdire les attaques contre la population civile. Elle pourrait conclure : a) qu'il avait une relation hiérarchique avec les membres des FDS qui faisaient partie des auteurs directs des crimes ; b) qu'il avait autorité sur les FDS et exerçait sur elles un contrôle

effectif au moyen d'une chaîne de commandement effective et d'un système de rapports à la hiérarchie ; c) qu'il avait en outre réquisitionné les forces armées et renforcé les lignes hiérarchiques à l'époque des violences postélectorales ; d) qu'il connaissait l'armée, son fonctionnement et ses armes ; e) qu'il était à Abidjan pendant toutes les périodes visées ; et f) qu'il était informé en temps réel et sans délai des crimes commis par les FDS en lien avec les événements susmentionnés. Il serait déraisonnable de conclure que Laurent Gbagbo ne savait pas, ou, compte tenu des circonstances exposées plus haut, qu'il n'était pas censé savoir que les FDS allaient commettre des crimes et en avaient effectivement commis dans le contexte de ces événements. Une chambre de première instance raisonnable pourrait donc conclure que, alors même qu'il en avait connaissance, Laurent Gbagbo n'a pas pris toutes les mesures nécessaires et raisonnables qui étaient en son pouvoir pour empêcher ou réprimer l'exécution des crimes ou pour en référer aux autorités compétentes aux fins d'enquête et de poursuites.

#### Responsabilité de Charles Blé Goudé

19. Je prends acte du fait que le Procureur a concédé l'absence de preuves suffisantes pour étayer les charges selon lesquelles Charles Blé Goudé aurait été impliqué dans la commission de crimes lors des événements du 3 mars 2011 et du 17 mars 2011<sup>1296</sup>. Compte tenu du rôle que Charles Blé Goudé semble avoir joué dans la mise en œuvre de la politique de l'État, en particulier vis-à-vis des Jeunes Patriotes, c'est l'article 25-3-b du Statut qui permet le mieux d'analyser sa responsabilité pénale individuelle. Une chambre de première instance raisonnable pourrait conclure que Charles Blé Goudé est individuellement responsable au regard de l'article 25-3-b du Statut du fait d'avoir encouragé et sollicité la commission des crimes contre l'humanité suivants, tels que visés à l'article 7 du Statut, qui ont été généralement commis lors des violences postélectorales à des barrages routiers par les Jeunes Patriotes, et en particulier lors de la marche sur la RTI le 16 décembre 2010 et des attaques menées dans la commune de Yopougon à Abidjan, entre le 25 et le 28 février 2011, et le 12 avril 2011, contre des civils non armés : a) meurtre ; b) viol ; c) autres actes inhumains ; d) tentative de meurtre ; et e) persécution. Même si Charles Blé Goudé a qualifié ses propres actions lors des violences postélectorales de « mots d'ordre », sa

<sup>1296</sup> *Prosecution's Response to Defence No Case to Answer Motions*, 10 septembre 2018, ICC-02/11-01/15-1207, par. 25.

participation alléguée se définit plutôt en termes d'incitation (sollicitation et encouragement). Il ressort des éléments de preuve que Charles Blé Goudé était conscient de sa position en tant que leader de la Galaxie patriotique et ce qu'elle signifiait, ainsi que de son influence sur les Jeunes Patriotes, qui faisaient partie des auteurs directs des crimes.

20. Une chambre de première instance raisonnable pourrait conclure que les propos haineux tenus par Charles Blé Goudé lors de rassemblements et de ses interventions télévisées sur la RTI alors qu'il était le chef non seulement des Jeunes Patriotes mais aussi des officiers des FDS membres de la Génération Blé Goudé, les appels à la mobilisation qu'il a adressés à la jeunesse, le fait qu'il a encouragé la jeunesse à ériger des barrages routiers (et à se méfier des étrangers et à faire obstacle aux opérations de l'Organisation des Nations Unies en Côte d'Ivoire), ses instructions à la jeunesse d'attendre son mot d'ordre, constituent dans le contexte des violences postélectorales autant de facteurs déterminants de la contribution qu'il a apportée aux violences commises par les auteurs directs contre des civils considérés comme des partisans d'Alassane Ouattara.
21. Une chambre de première instance raisonnable pourrait conclure que Charles Blé Goudé avait connaissance des actes de violence que les Jeunes Patriotes avaient commis ou allaient commettre dans le contexte des événements pour lesquels sa responsabilité pénale individuelle a été mise en cause, et qu'il était conscient tant de sa position de leader que du climat déjà tendu. Eu égard au contexte des violences postélectorales et au fait que les Jeunes Patriotes avaient déjà par le passé participé à des actes de violence, une chambre de première instance raisonnable pourrait conclure que Charles Blé Goudé était conscient que ses propos haineux inciteraient les Jeunes Patriotes à se livrer à d'autres violences. Par conséquent, elle pourrait conclure qu'il a apporté une contribution substantielle, en incitant et encourageant les Jeunes Patriotes à commettre des crimes, et qu'il a en même temps contribué à la mise en œuvre de la politique d'État qui prenait pour cible la population civile pendant les violences postélectorales. Elle pourrait conclure que, compte tenu de sa position de leadership à la tête des Jeunes Patriotes, une position qu'il revendiquait, la commission d'autres crimes aurait pu être empêchée s'il avait désapprouvé les violences graves. Charles Blé Goudé pourrait raisonnablement être tenu responsable pour avoir délibérément ignoré les actes

de violence commis, ainsi que l'imminence d'autres violences. Une chambre de première instance raisonnable pourrait conclure que, par ses actes et omissions, Charles Blé Goudé a poussé les Jeunes Patriotes à commettre des crimes.