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**TRIAL CHAMBER I**

**Before:**

**Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera-Carbuccia  
Judge Geoffrey Henderson**

**SITUATION IN COTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

**PUBLIC  
with Confidential Annex 1**

**Public Redacted Version of “Corrigendum to the ‘Blé Goudé Defence No Case to Answer Motion’ (ICC-02/11-01/15-1198-Conf), 23 July 2018,” 3 August 2018, ICC-02/11-01/15-1198-Conf-Corr**

**Source:       Defence of Mr Charles Blé Goudé**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric MacDonald

**Counsel for the Defence of Mr Blé Goudé**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'dry  
Jean-Serge Gbournon  
Séri Zoukou  
Lauriane Vandeler  
Antonina Dyk  
Marion Carrin  
Sara Pedroso

**Counsel for the Defence of Mr Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Legal Representatives of the Victims**

Ms. Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda  
Mr Enrique Carnero Rojo

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

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## I. INTRODUCTION

1. Towards the end of March 2011, as the FRCI rebel forces assisted by France and the ONUCI made their advance from the North of Côte d'Ivoire towards Yopougon, the post-electoral crisis that had gripped Abidjan for months was reaching its peak. Laurent Gbagbo's government forces were finding themselves unable to defend the country from attacks by rebel forces. In Abidjan, police units had long abandoned their posts in Abobo, and by the end of March there was no police force left in Yopougon.<sup>1</sup> They were unable to defend themselves and the civilian population against the onslaught of attacks by the well-armed guerrilla group, known as the *Commando Invisible*.<sup>2</sup> The people of Abidjan were suffering, and Charles Blé Goudé found his character tested- would he break with his ideology of non-violent protest and dialogue and reconciliation? The answer is a resounding no. On 23 March 2011, a mere week before the FRCI forces officially entered Abidjan, Mr Blé Goudé uttered these words during an interview with the RTI:

Je ne veux pas de guerre civile dans ce pays ! Je ne veux pas de guerre civile dans ce pays! Parce qu'on **ne trouvera pas un pays où il n'y a que des pros-Ouattara en faisant disparaître les pros-Gbagbo. Tout comme on ne trouvera jamais un pays avec des pro- Gbagbo en faisant disparaître les pros- Ouattara !** Cela n'existe pas!<sup>3</sup>

2. This extract comes from the Prosecution's evidence, and it reflects the wilful blindness that the Defence for Charles Blé Goudé ("the Defence") argued in its opening statement characterized the Prosecution's approach to the facts of this case. Now, at the close of the Prosecution's case, the Defence additionally observes that the testimony of the 82 witnesses has fallen on deaf ears with respect to the Prosecution.
3. In the course of the trial, the Prosecution's narrative crumbled, and its weak foundations were exposed. Thus, following the testimony of the Prosecution's last witness, Trial Chamber I ("the Chamber") invited the Prosecution to file a Trial Brief and reframe its narrative by taking into consideration "*the testimonies heard and the*

<sup>1</sup> P-0046, T-127-FR CT, pp. 18-19, 51.

<sup>2</sup> P-0321, T-65-CONF-FRA CT, pp. 4, 31

<sup>3</sup> Video, CIV-OTP-0064-0092 at 00:25:09 – 00:25:25 (excerpt from RTI broadcast of 20 March 2011 at 20h; transcript at CIV-OTP-0097-0161 at 0162, lns. 39-42). *Emphasis added*.

*documentary evidence submitted a trial.*”<sup>4</sup> The Prosecution’s Trial Brief<sup>5</sup> (“Trial Brief”) is the best illustration of the weakness of the Prosecution’s narrative. It shows that the case hinges on the uncorroborated testimony of a few patently incredible witnesses, and an inordinate amount hearsay evidence<sup>6</sup> for which the Chamber has no ability to evaluate its credibility and reliability.

4. Pursuant to the Chamber’s “Second Order on the further conduct of the proceedings,”<sup>7</sup> the Defence hereby files the present “No case to answer motion” (“the Motion”) and submits that the Prosecution has not adduced sufficient evidence to sustain a conviction. Therefore, Charles Blé Goudé is not guilty of the crimes charged as a matter of law. The fatal flaw in the Prosecution’s case is its inability to adduce sufficient credible and reliable evidence for any reasonable trial chamber 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>8</sup> The Motion will substantiate: (1) that the nature of the conflict that took a hold of Abidjan during the post-electoral crisis does not allow for the inference of a policy under the Statute, (2) that the Prosecution failed to prove a pattern of prohibited acts committed by pro-Gbagbo forces using similar methods and that (3) the Prosecution failed to prove the existence of an inner circle acting pursuant to a policy under the Statute. The Defence further submits that the Prosecution has led insufficient evidence to show a nexus between the alleged victims and the charged crimes.

5. In addition to the lack of sufficient evidence with respect to the *chapeau* elements of crimes against humanity, the Defence for Charles Blé Goudé (“the Defence”) will show that the Prosecution has failed to prove that Charles Blé Goudé is responsible for the crimes under any mode of liability under article 25 of the Statute. Moreover, it

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<sup>4</sup> *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Order on the further conduct of the proceedings, 9 February 2018, ICC-02/11-01/15-1124, para. 10. The Chamber additionally ordered the Defence to respond and indicate whether they wished to file a no case to answer motion. *Ibid*, para. 14.

<sup>5</sup> *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Third Corrected version to Annex 1 of Prosecution’s Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2. The original Trial Brief was filed on 19 March 2018.

<sup>6</sup> This includes testimonial and documentary evidence.

<sup>7</sup> *Prosecutor v. Charles Blé Goudé*, Second Order on the further conduct of the proceedings, 4 June 2018, ICC-02/11-01/15-1174.

<sup>8</sup> Trial Brief, paras 166-178.

is the position of the Defence that the evidence does not establish any nexus between Charles Blé Goudé and the crimes charged. Rather, the evidence leads to the inference that Charles Blé Goudé consistent with his ideology of non-violence tried to channel people's fears by calling on them to mobilise peacefully, which is more reasonable than the one the Prosecution is asserting.

6. With respect to the admissibility of documentary evidence, the Defence maintains its objections made in its responses to the Prosecution's requests to submit documentary evidence pursuant to paragraphs 43 and 44 of the revised directions on the conduct of the proceedings.<sup>9</sup> However, assuming *arguendo* that the Chamber in its adjudication of the Motion decides to take into account all evidence that has been submitted, the Defence submits that the Prosecution has still failed to adduce sufficient evidence upon which a reasonable trial chamber could convict Charles Blé Goudé.

## II. CONFIDENTIALITY

7. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the Defence files its Motion with **Annex 1** as "confidential" as it contains identifying information about protected witnesses and/or because it refers to testimony of witnesses given in private session.

## III. FAILURE TO PROVE THE EXISTENCE OF AN ORGANISATIONAL POLICY UNDER ARTICLE 7(2)(A) OF THE ROME STATUTE

### **III.1. The nature of the armed conflict that took hold of Abidjan during the post electoral crisis does not support the finding of a policy under article 7(2)(A) of the Rome Statute**

#### **A. Overview of the five incidents**

8. The Prosecution alleges in its Trial Brief, that, "*by 27 November 2010, the implementation of the Common Plan had developed to include a State or*

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<sup>9</sup> *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision adopting amended and supplemented directions on the conduct of the proceedings, 4 May 2016, ICC-02/11-01/15-498-Anx1.



*organisational policy to attack civilians who were perceived as Ouattara supporters.”*<sup>10</sup>

9. It further submits that a policy can be inferred from the manner in which the attacks occurred, which shows that there was a pattern of prohibited acts against civilians perceived as Ouattara supporters and that they were not simply unconnected and isolated acts.<sup>11</sup> In the Prosecution’s submission, this pattern is allegedly demonstrated by: (1) use of heavy weaponry and of parallel structure units in dispersing demonstrators, (2) identity checks and violence at the roadblocks, and (3) the use of attacks on neighbourhoods and religious institutions.<sup>12</sup> Moreover, the Prosecution submits that the pro-Gbagbo forces and the alleged inner circle acted pursuant to the State or organisational policy.<sup>13</sup>
  
10. Article 7(3) of the Elements of Crime explicitly states that the “policy to commit such attack” requires that the State or organization “actively promote or encourage such an attack against a civilian population.”<sup>14</sup> In exceptional circumstances, this requirement “may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.” In the case of such inaction by the State or organization, such a policy “***cannot be inferred solely from the absence of governmental or organizational action***”.<sup>15</sup> The Prosecution ignores this element in the Trial Brief.
  
11. In *The Prosecutor v. Katanga*, the Court found that the policy element could be inferred from the following factors: (1) the repeated actions occurring in the same sequence, or (2) the existence of preparations or (3) the collective mobilization orchestrated and coordinated by that State or organisation.<sup>16</sup> However, both in *Katanga* and in *The Prosecutor v. Mbarushimana*, it is clear that mere coordinated action and preparations that incidentally result in crimes against civilians or civilian casualties is not sufficient for the Court to conclude the existence of a policy under

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<sup>10</sup> Trial Brief, para. 172 .

<sup>11</sup> Trial Brief, paras. 172-173.

<sup>12</sup> Trial Brief, paras. 173-177.

<sup>13</sup> Trial Brief, para. 178.

<sup>14</sup> Elements of Crimes, Article 7(3).

<sup>15</sup> *Emphasis added.* Elements of Crimes, Article 7(3), footnote 6.

<sup>16</sup> *Prosecutor v. Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 1108.

article 7 of the Rome Statute.<sup>17</sup> In both *Katanga* and *Mbarushimana*, the purpose and the objectives of the state or organisation in its planning and its coordination of activities were dispositive for the Court.<sup>18</sup>

12. In *Mbarushimana*, the Prosecutor alleged that the militia group, the FDLR adopted the “policy” to create a “humanitarian catastrophe” whose aim was to “create a high cost in human misery,” which was so terrible that the international community would force the coalition forces to negotiate a political solution that was favorable to the FDLR.<sup>19</sup> The Court found that if proved, this allegation would of course satisfy the policy element of article 7.<sup>20</sup> However, on the basis of the evidence presented, the Court found that the Prosecution had failed to show that this allegation was true to the requisite evidentiary threshold.<sup>21</sup> It focused on insiders who mentioned that the objective of the attack was to remove completely the Congolese State forces and to destroy “enemy positions.”<sup>22</sup> It noted that there were substantial grounds to believe that the attacks were retaliatory in nature,<sup>23</sup> and that there was evidence both testimonial and documentary that showed that the FDLR took care to protect civilians.<sup>24</sup> For example, Witness 677 a former member of the FDLR affirmed that the group had a “general strategy of protecting civilians and getting them out of fighting.”<sup>25</sup> Witness 564 similarly stressed that the orders were to fight back when they were being attacked, and that nothing bad or harmful could be done to civilians who were neutral.<sup>26</sup> Moreover, the order which was given to consider civilians not siding with the FDLR as “enemies” was not given to target them, but to avoid

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<sup>17</sup> ICC-01/04-01/07-3436-tENG, 1148-1151 (finding that the primary objective of the Ngiti militia was the aim of wiping out the Hema civilian population, even if it included a military aim of ridding the area of the UPC); *Prosecutor v. Mbarushimana*, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, paras 263, 265.

<sup>18</sup> ICC-01/04-01/07-3436-tENG, 1148-1151; ICC-01/04-01/10-465-Red, paras 263, 265.

<sup>19</sup> ICC-01/04-01/10-465-Red, para. 245.

<sup>20</sup> ICC-01/04-01/10-465-Red, para. 246.

<sup>21</sup> The Court found by majority that the Prosecution failed to show the existence of a policy under Article 7. Judge Monageng dissented. *See* ICC-01/04-01/10-465-Red, appended dissenting opinion.

<sup>22</sup> ICC-01/04-01/10-465-Red, para. 254.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, paras 252, 256 (detailing evidence of orders to spare the civilian population or which stated concerns that the FDLR leadership would be blamed for civilian deaths).

<sup>25</sup> *Ibid.*, para. 252.

<sup>26</sup> *Ibid.*, para. 251.

*“infiltration into the FDLR by Umoja Wetu soldiers wearing civilian clothes and to prevent FDLR information from being passed on to the Congolese army.”<sup>27</sup>*

13. The Majority also observed that *none* of the FDLR insider witnesses “*directly and spontaneously confirm the existence of an order emanating from the FDLR leadership along the specific lines alleged by the Prosecution.*”<sup>28</sup> Witness 677 further stated that there was no way that the FOCA, the official armed branch of the FDLR would give an order to create a “humanitarian catastrophe.”<sup>29</sup> With regard to the few insiders who acknowledge the existence of an “order” to create a “human catastrophe,” the Pre-Trial Chamber reasoned that most “*only do so after specific, explicit, and insistent prompting by the investigator, and they attach to such order a meaning that is different to that which is alleged by the Prosecution.*”<sup>30</sup>

14. Additionally, the Pre-Trial Chamber found that the Prosecution presented insufficient evidence with regard to twenty-five incidents it charged as war crimes.<sup>31</sup> The Court was only able to confirm 5 occasions on which war crimes were committed, which were spread over a six months period.<sup>32</sup> Further, the Majority noted that of these 5 incidents only 4 of the attacks could be found to be against the civilian population.<sup>33</sup> In analysing these 4 attacks, the Chamber reasoned, as explained above, that they were launched out of retaliation for attacks carried out by the Congolese forces with an aim of targeting both military objectives and civilians perceived as supporting the Congolese forces.<sup>34</sup> Therefore, the Chamber held that these attacks could not be considered to be part of any larger organised campaign to target a civilian population.<sup>35</sup> Based upon this assessment and jurisprudence, it is therefore of essence to reconstruct the real purpose and objectives of the FDS’ military operations during the post-electoral crisis. The next paragraphs will show that this purpose and objective was purely defensive.

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<sup>27</sup> *Ibid*, para. 251.

<sup>28</sup> *Ibid*, para. 255.

<sup>29</sup> *Ibid*, para. 252.

<sup>30</sup> *Emphasis added. Ibid*, para. 257.

<sup>31</sup> *Ibid*, para. 265.

<sup>32</sup> *Ibid*.

<sup>33</sup> *Ibid*.

<sup>34</sup> *Ibid*.

<sup>35</sup> *Ibid*.

15. A review of the evidence in the instant case shows that like in *Mbarushimana* the organisation and preparatory activities of the FDS and the different youth groups and militia was protection against the possibility that the opposing side would resort to violence to accede to power in the aftermath of the elections. Similar to *Mbarushimana*, none of the Prosecution's insiders that the Pre-Trial Chamber found belonged to an alleged inner circle and the parallel structure spontaneously confirm the existence of a policy where they would resort to killing the pro-Ouattara or perceived pro-Ouattara civilian population such that Laurent Gbagbo would stay in power.<sup>36</sup> In fact, many of the insiders such as P-0009, P-0046, P-0156, and P-0321 confirm that their mission was to protect the civilian population during the crisis.<sup>37</sup> There is also documentary evidence demonstrating that the FDS were there to protect the civilian population and respect international humanitarian law.<sup>38</sup> Moreover, similar to *Mbarushimana*, there was a well-founded fear of rebel groups posing as civilians. Almost the totality of the Prosecution's insiders has testified to the existence of the *Commando Invisible* and the armed group's guerrilla warfare tactics.<sup>39</sup> Thus, the FDS operations and the roadblocks were not organized to target the pro-Ouattara or perceived pro-Ouattara civilians, but to protect the population from rebel forces. Every incident charged by the Prosecution can be viewed from the same defensive lens as the Court employed to analyse the attacks by the FDLR in *Mbarushimana*.

<sup>36</sup> See *Prosecutor v. Laurent Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf, paras 86, 98 (referring to high level commanders of the FDS and members of the parallel structure units such as P-0009, P-0010, P-0046, P-0047, P-0321). Those high ranking insiders who left their positions, such as P-0009, P-0010, P-0047 and P-0046 left because they did not have the means to keep fighting the rebels. P-0010 left the *Ecole de gendarmerie* after he learned he was the target of an attack by the rebel forces. Moreover, he learned that the school was bombed shortly thereafter. P-0010, T-138-CONF-FRA CT, p. 12. P-0046 left his position when he learned that the rebel forces had entered Yopougon and that he no longer had the means to protect himself. P-0046, T-126-CONF-FRA CT, p. 85-86. P-0009 testified that he left his position on 30 March 2011 because of the lack of munitions and because the fight was no longer worth it. P-0009, T-200-CONF-FRA CT, p. 45. P-0047 testified that he no longer had the means with which to continue fighting. P-0047, T-204-CONF-FRA CT, p. 43.

<sup>37</sup> See P-0156, T-171-CONF-FRA CT p. 69; P-0156, T-172-CONF-FRA CT, pp. 79-80; P-0156, T-172-CONF-FRA CT, p. 33; P-0321, T-64-CONF-FRA CT, p.21; P-0009, T-193-CONF-FRA CT, p. 76, P-0046, T-125-CONF-FRA CT, p.89.

<sup>38</sup> See CIV-OTP-0071-0523. P-0047 testified that this document was not linked to any particular event, but was a standard reminder of the rules of engagement. P-0047, T-206-CONF-FRA CT, pp. 19-20.

<sup>39</sup> P-0321, T-65-CONF-FRA CT, pp. 3-4, 31, P-0330, T-71-CONF-FRA CT, pp.29-30, P-0520, T-52-CONF-FRA CT, pp. 32-34; P-0347, T-79-CONF-FRA CT, p. 12; P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED]; P-0046, T-127-FRA CT pp. 15-19, P-0011, T-135-CONF-FRA CT, p.65; P-0010, T-137-CONF-FRA CT, p. 81, P-0047, T-203-CONF-FRA CT, p. 35, P-0009, T-199-CONF-FRA CT, p. 62.

16. There is ample evidence on the record that demonstrates that the 16 December 2010 march was not a pacifist march, but an insurrectional march intended to install a new RTI director by force.<sup>40</sup> P-0625 testified that in 2002 during the failed *coup* attempt by the rebels, there was an attempt to take over the RTI.<sup>41</sup> There is video evidence which shows the Ouattara government's Minister of Defence, Guillaume Soro telling his troops to prepare to install the RTI *Directeur Général* by force.<sup>42</sup> Several witnesses such as P-0046, P-0010, and P-0330 confirm that several FDS elements were killed during the march.<sup>43</sup> As reports of FDS elements being injured and killed came in, CECOS took the necessary precautions when it deployed elements to the *Carrefour de la vie*. Along with conventional means of dispersion, they carried fire weapons, but their use as specified by P-0010 during his testimony was to be limited to self-defence against lethal force.<sup>44</sup> P-0010 further confirmed that armed individuals hid among the demonstrators.<sup>45</sup> Given this evidence, the Prosecution has not shown to the requisite standard that the FDS intended to target unarmed civilians. The incidents of rape and killing have not been shown to be connected to the alleged inner circle or to be part of the FDS strategy to suppress the march. The uncorroborated anonymous hearsay evidence of one witness regarding the alleged instruction from Simone Gbagbo to rape women cannot be relied upon by any reasonable trial chamber.<sup>46</sup>

17. With regard to the incidents in Abobo, it is important to note the presence of armed rebel groups in the area. Armed groups were attacking the *commissariats* of Abobo to such an extent that the police was forced to abandon the commune because police

<sup>40</sup> P-0009, T-200-CONF-FRA CT, pp.7-8 ; P-0010, T-137-CONF-FRA CT, pp. 20-23 ; P-0010, T-139-CONF-FRA CT, pp.38-39.

<sup>41</sup> P-0625, T-29-CONF-FRA CT, p. 12.

<sup>42</sup> Video, CIV-OTP-0064-0101 at 00:32 48-00:33:38, Transcript, CIV-D15-0004-1500.

<sup>43</sup> P-0010, T-139-CONF-FRA CT, p. 39; P-0330, T-68-CONF-FRA CT, pp. 65, 72; P-0046, T-125-CONF-FRA CT, p.79.

<sup>44</sup> P-0010, T-137-CONF-FRA CT, pp. 21-23; P-0010, T-140-CONF-FRA CT, pp. 38-39.

<sup>45</sup> P-0010, T-140-CONF-FRA CT, p. 39.

<sup>46</sup> Witness P-[REDACTED]'s Rule 68(3) statement is the only evidence of such an alleged instruction, and it consists of anonymous hearsay. P[REDACTED], CIV-OTP-[REDACTED]-R04 at [REDACTED], para. 96. The Defence opposed the introduction of this witness' statement via Rule 68(3). See ICC-02/11-01/15-[REDACTED]-Conf. It should be further noted that she did not mention in the course of [REDACTED] testimony that the police officer was carrying condoms on his person for the purpose of raping women from the march. See P-[REDACTED], T-[REDACTED]-CONF-FRA CT; P-[REDACTED], T-[REDACTED]-CONF-FRA CT.

units could no longer defend themselves.<sup>47</sup> The FDS moved their operational headquarters to *Camp Commando* in Abobo, not so they could attack the civilian population, but because it was a location from which they could try to regain control of Abobo that had been taken over by the *Commando Invisible*.<sup>48</sup> Further, the rebel group's base of operations was located at the *Mairie d'Abobo*, thereby making it a legitimate military target.<sup>49</sup>

18. Given that by 17 March 2011, rebel groups had overtaken Abobo with the exception of *Camp Commando*, the Prosecution has not adduced sufficient evidence for a reasonable trial chamber to conclude that the FDS fired a mortar that day. The Chief of general staff, P-0009 and the Commander of terrestrial forces P-[REDACTED] both testified that a mortar was not fired from *Camp Commando* by the FDS on 17 March 2011.<sup>50</sup> P-0009 cited two examples in which he authorized the use of mortars, which were confirmed by P-0047, and neither of the two uses related to the 17 March 2011 alleged incident.<sup>51</sup> Witness P-0239 is the only witness who allegedly saw the mortar fired on 17 March 2011 from *Camp Commando*, and given his position in the parking lot it appears his vision could have been obstructed.<sup>52</sup> Moreover, P-0047 testified that there were no 120mm mortars present in *Camp Commando* since this weapon had been withdrawn from that base.<sup>53</sup> With regard to the women's march on 3 March 2011, there are significant inconsistencies within the testimonies of witness P-[REDACTED] and P-[REDACTED] with regard to whether the FDS [REDACTED] that day.<sup>54</sup> Further, [REDACTED] confirmed that [REDACTED].<sup>55</sup> The soldiers began [REDACTED] from the [REDACTED] because they [REDACTED] and [REDACTED].<sup>56</sup> This evidence is consistent with other evidence

<sup>47</sup> P-0046, T-127-CONF-FRA CT, pp.18-19. *See also*, CIV-OTP-[REDACTED], at approximately 32:26, Transcript, CIV-OTP-[REDACTED]-R03, at 0133, approximately ln. 695. The Defence is able to only give approximations since the transcript provided by the Prosecution does not mention [REDACTED], though it is clear from the [REDACTED]. *See* ICC-02/11-01/15-1099-Conf-Anx4.

<sup>48</sup> P-0321, T-61-CONF-FRA CT, pp. 78-79.

<sup>49</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED].

<sup>50</sup> P-0009, T-196-CONF-FRA CT, p. 58; P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED].

<sup>51</sup> *See* P-0009, T-196-CONF-FRA CT, p. 61; P-0047, T-204-CONF-FRA CT, p.16.

<sup>52</sup> P-0239, T-167-FRA CT, pp. 63-79; P-0239, T-168-CONF-FRA CT, pp. 2-6, CIV-[REDACTED].

<sup>53</sup> P-0047, T-204-CONF-FRA CT, p. 16.

<sup>54</sup> P-[REDACTED], T-[REDACTED]-CONF-FAR CT, pp. [REDACTED], [REDACTED]; P-[REDACTED], T-[REDACTED]CONF-FRA CT, p.[REDACTED].

<sup>55</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED], [REDACTED].

<sup>56</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, p. [REDACTED].

on the record detailing the constant [REDACTED] by the [REDACTED] against the FDS [REDACTED].<sup>57</sup>

19. The two incidents in Yopougon also cannot be linked to a policy to target pro-Ouattara or perceived pro-Ouattara civilians. The Defence has shown that the second incident resulted from escalating tensions between two neighbourhoods that preceded Charles Blé Goudé's speech.<sup>58</sup> The Defence was able to show through witnesses like P-0442 and P-0433 that the police intervened on February 25 because the Doukouré neighbourhood was "beating" the Yaho Sehi residents in a fight that escalated between rival neighborhoods.<sup>59</sup> Moreover, the Prosecution has led insufficient evidence to show the causal link between Charles Blé Goudé's speech and the second incident.<sup>60</sup>

20. The Prosecution has not adduced any evidence regarding the time at which Charles Blé Goudé began speaking at the Baron Bar. Witness P-0449, the only Prosecution witness to have been present at the Baron Bar speech, confirmed that the meeting at Baron Bar began at approximately 10:00 or 11:00 am, and stated that it lasted until approximately 1:00 pm.<sup>61</sup> Charles Blé Goudé spoke for approximately twenty to thirty minutes.<sup>62</sup> The Prosecution has not been able to produce a single witness who was present at the Baron Bar to confirm: (1) whether he was the first person to speak, which would mean his speech would have ended in the morning, (2) whether Maguy Le Tocard's armed group was present at the speech, (3) whether those present at the speech were part of the group that later committed the alleged crimes. Rather, the record shows that Mr Maguy le Tocard's group was not present since, according to the only COJEP witness to testify, there were no links between Le Tocard's movement and Charles Blé Goudé's movements.<sup>63</sup> The Defence was able to show through Witness P-0449 that the incident could have also been likely caused as a

<sup>57</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED]; T-[REDACTED]-CONF-FRA CT, pp. [REDACTED], [REDACTED].

<sup>58</sup> P-0442, T-20-CONF-FRA CT, pp. 59, T-21-CONF-FRA CT, pp. 20-21, 28-29; P-0436, T-149-CONF-FRA ET, pp. 4-5, 17, 47-48; P-0433, T-147-CONF-FRA CT, pp. 17-22, 85; P-0109, T-54-CONF-FRA CT pp. 93-98.

<sup>59</sup> P-0433, T-147-CONF-FRA ET, pp. 85; P-0442, T-20-CONF-FRA CT, p. 59-60, T-21-CONF-FRA CT, pp. 20-21, 28-29.

<sup>60</sup> See Motion, *Section.III.I.A. Overview of the five incidents*.

<sup>61</sup> P-0449, T-159-CONF-FRA CT, p. 37.

<sup>62</sup> *Ibid.*

<sup>63</sup> P-0449, T-160-CONF-FRA CT, p. 3.

retaliatory action in response to a group of students' bus, number 85, being burned down near the *Institut des aveugles*.<sup>64</sup> Some of those students went to the Baron Bar meeting, and others left.<sup>65</sup> The record further shows that by the time the Baron Bar ended, the *gbakas* near Doukouré were already burning. Therefore, P-0449 could not confirm the identity of those burning the *gbakas* because he was still attending the meeting when the perpetrators began setting them ablaze.<sup>66</sup> Further, Charles Blé Goudé's call for the residents to check the comings and goings of their neighbourhoods must be understood in the context of an armed conflict taking hold of Abidjan where police elements in Abobo were chased out of the Abobo commune because of armed guerrilla insurgents.<sup>67</sup> The fears that this group would begin taking over Yopougon were real and the crowd feared for its security. It is in this context that Charles Blé Goudé called on the population to guard the entrances and exits to their neighbourhoods so as to ensure that no armed civilians would cause further violence. Therefore, based upon P-0449's testimony, no reasonable Chamber could link these incidents in Yopougon to an alleged policy or to any act of Charles Blé Goudé.

21. With respect to the last Yopougon incident, several key Prosecution witnesses P-0010, P-0047, P-0238 and P-0347 all state that the Battle for Abidjan began on 31 March 2011.<sup>68</sup> This day marked the assault of FRCI and French and UN forces on Abidjan. The alleged fifth incident occurring from 11-12 April 2011 resulted from the chaos that ensued from the fighting between various armed groups that were aligned and not aligned with the FRCI and the FDS. The Prosecution has not been able to prove who was responsible for the alleged crimes since all the crime base witnesses provide a general description of the perpetrators, which lacks detail. These witnesses identified the perpetrators as being "pro-Gbagbo youth," "militia," and "mercenaries." These descriptions amount to pure speculation since the alleged victims did not recognize the perpetrators, and none of the perpetrators wore uniforms or other

<sup>64</sup> P-0449, T-160-CONF-FRA CT, pp. 4-8.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> P-0009, T-140-FRA ET, p. 28.

<sup>68</sup> See P-0010, T-141-CONF-FRA CT, pp. 8-9, P-0047, T-206-CONF-FRA CT, pp. 24, 50, P-0238, T-81-CONF-FRA CT, p. 42, 47-[REDACTED]. Witness P-0347 testified that it began in the second half of March 2011. P-0347, T-77-CONF-FRA CT, p. 65.



insignia tying them to a group.<sup>69</sup> The Prosecution did not produce a single high ranking FDS insider witness who would have been involved in the planning and coordination of operations after 31 March 2010. The two militia insiders P-0500 and P-0435 did not mention participating in any attacks on the neighbourhoods of Mami Faitai and Doukouré. Both testify to their presence at the Presidential Residence, which was a military target and was attacked by French forces.<sup>70</sup> Witness P-0435 claimed he participated in operations in April 2011, such as at Locodjoro, and was also based for a time at the Presidential Palace.<sup>71</sup> P-0500 additionally participated in a battle at the *École de Gendarmerie* where he fought against armed rebel fighters.<sup>72</sup>

22. Based on the aforementioned submissions, the Prosecution has not been able to show from the manner in which the alleged crimes were committed, that RHDP supporters, Dioula Muslims and other West African nationals were targeted. Even with respect to the roadblocks, the evidence as presented by the Prosecution shows that their primary objective was to check for suspicious individuals to see if they were cooperating with the rebel forces.<sup>73</sup> When there is evidence on the record of abuses occurring, many times the goal of such abuse was to obtain financial gain by those manning the roadblocks, which has no connection whatsoever to the policy as alleged by the Prosecution.<sup>74</sup> Accordingly, no reasonable trier of fact could accept an “organisational policy” pursuant to article 7(2)(a) of the Rome Statute.

<sup>69</sup> See e.g. P-[REDACTED], CIV-OTP-[REDACTED] at [REDACTED]- [REDACTED]-, T-[REDACTED]--CONF-FRA CT, p. [REDACTED]- (identifying the perpetrators she observed as pro-Gbagbo by [REDACTED]-- the only witness to describe pro-Gbagbo militia this way); P-0109, (“*Il y a avait des jeunes appelés les miliciens et puis il y avait des Libériens parmi eux... Ils étaient tous en tenue noire, pas de « galon.... Il n’y avait pas tout ça, mais ils étaient tous en noir, des cagoules noires, visage tout fermé...noir.*”)T-154-CONF-FRA CT, p.50, ln. 18-20, p.52, ln. 19-22; P-0441 (describing individuals he saw come to the neighbourhood some days before the attack, but who did not witness the actual events) T-36-CONF-FRA CT, p. 25; P-0567(recognized only one of the perpetrators, but the witness did not specify how she recognized him); T-209-CONF-FRA CT, p.11; P-0[REDACTED](describing [REDACTED]) T-[REDACTED]-CONF-FRA CT, p. [REDACTED]; P-0568(describing the perpetrators as armed men speaking in English) T-209-CONF-FRA CT, p. 64; P-[REDACTED] (describing the [REDACTED]) T-[REDACTED]-CONF-FRA CT, p.[REDACTED]; P-[REDACTED] (describing the [REDACTED]) T-[REDACTED]--CONF-FRA CT, [REDACTED]-.

<sup>70</sup> P-0435 T-90-CONF-FRA CT, p. 16; P-0500, T-181-CONF-FRA CT, pp. 81-82.

<sup>71</sup> See P-0435 T-90-CONF-FRA CT, p. 62; P-0435, T-94-CONF-FRA CT, p. 38.

<sup>72</sup> P-0500, T-181-FRA CT, pp. 85-87.

<sup>73</sup> P-0449, T-160-CONF-FRA CT, p. 32; P-0087, T-177-CONF-ENG CT, p.92; P-0087, T-178-CONF-ENG CT, p.105; Video, CIV-OTP-0015-0594, transcript, CIV-OTP-0100-0609.

<sup>74</sup> P-0442, T-20-CONF-CONF-FRA CT, pp. 66, 68-69.

23. Such a finding is further supported by the unprecedented conflict in terms of warfare experience during the post-electoral crisis. As of February 2011, the FDS began to face an unprecedented type of armed conflict, especially in Abobo.<sup>75</sup> The FDS military operations that were undertaken during the crisis were closely linked to the nature of warfare which emerged, as will be discussed below. The Prosecution completely overlooks this contextualization of the armed conflict in Abidjan.
24. During the course of the crisis, Abobo became a complex and intense combat zone where armed and diffused enemy combatants were raging. The FDS were in a defensive position; they were equally instructed to avoid civilian non-combatant casualties.<sup>76</sup> Due to the guerrilla warfare tactics employed by the group that came to be known as the *Commando Invisible*, the FDS were not able to identify the enemy they were facing.<sup>77</sup> Indeed, the group came to have that name for the precise reason that no one could identify who they were.<sup>78</sup> P-0156 testified that the combat was asymmetrical to the extent that the enemy did not carry any distinctive signs or uniform.<sup>79</sup> P-0009 also confirmed that the type of combat FDS was facing was asymmetric warfare as of 22-23 of February 2011.<sup>80</sup>

#### **B. The unforeseeable guerilla warfare tactics employed by the Commando Invisible**

25. The *Commando Invisible* began its attacks as early as December 2010, and they intensified by January 2011.<sup>81</sup> By the time the PC was set up in *Camp Commando* in mid-February 2011,<sup>82</sup> the *Commando Invisible* had gained complete control of Abobo, excluding this FDS base.<sup>83</sup> The curfews that were imposed in Abobo were taken as

<sup>75</sup> P-0009, T-199-CONF-FRA CT, pp. 61-63.

<sup>76</sup> P-0156, T-171-CONF-FRA CT, pp. 55, 61-62, 69; P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED]-, [REDACTED]-.

<sup>77</sup> P-0321, T-65-CONF-FRA CT, pp. 4, 31.

<sup>78</sup> P-0239, T-168-CONF-FRA CT, p. 17.

<sup>79</sup> P-0156, T-171-CONF-FRA CT, pp. 69.

<sup>80</sup> P-0009, T-199-CONF-FRA CT, pp. 62-63.

<sup>81</sup> P-0009, T-200-CONF-FRA CT, pp. 19-20.

<sup>82</sup> P-0330, T-68-CONF-FRA CT, p. 26.

<sup>83</sup> P-0321, T-61-CONF-FRA CT, pp. 77-79; P-[REDACTED], T-[REDACTED]-CONF-FRACT, p. [REDACTED]-.

exceptional measures to protect the population and the FDS from the *Commando Invisible* who were indistinguishable from the civilian population.<sup>84</sup>

26. P-0009 testified that the FDS' mission was compromised due to this guerrilla group's tactics.<sup>85</sup> P-0009 testified that it was not possible to use the FDS' heavy weapons because the mission of the government forces was to protect the civilian population, and not to indiscriminately target it.<sup>86</sup> Without clear intelligence, they were not able to target the enemy force.<sup>87</sup> P-0009 compared the situation to that of a terrorist occupying a hotel. Without being able to properly identify which individual is the attacker, the building cannot be attacked.<sup>88</sup> This evidence further casts doubt on the evidence showing that heavy weapons were used in Abobo.
27. P-0009 clarified that the differences between the war in 2002 and the combat in 2011 was that in 2002 the enemy separated themselves from the civilian population and the FDS was able to effectively fight against them.<sup>89</sup> Furthermore, in 2002 the theatre of operations comprised areas from which civilians had left, so it was easier for soldiers to fight and capture localities.<sup>90</sup>
28. The defensive nature of the FDS' operations is also reflected in the language usage of Witness P-0010, who repeated in front of the Chamber that the word 'offensive' was not used to describe attacks. Rather, this term was employed to describe recapturing former positions, and thus "counter-offensive" was a better suited term.<sup>91</sup> Thus, Prosecution's use of the term "military offensive" in Abobo, in paragraph 451 of the Trial Brief, is misplaced. Witness P-0238 additionally affirms that the FDS was exclusively responding to attacks in Abobo.<sup>92</sup>
29. These facts, sustained by the Prosecution's own witnesses, justify the conclusion that the FDS operations were not meant to target the civilian population. To the contrary,

<sup>84</sup> P-0009, T-195-CONF-FRA CT, pp. 35-38; P-0009, T-198-CONF-FRA CT, p. 11.

<sup>85</sup> P-0009, T-199-CONF-FRA CT, p. 63.

<sup>86</sup> P-0009, T-199-CONF-FRA CT, p. 63.

<sup>87</sup> P-0009, T-199-CONF-FRA CT, p. 63.

<sup>88</sup> P-0009, T-199-CONF-FRA CT, pp. 65-66.

<sup>89</sup> P-0009, T-199-CONF-FRA CT, pp. 64-65.

<sup>90</sup> P-0009, T-199-CONF-FRA CT, p. 64.

<sup>91</sup> P-0010, T-139-CONF-FRA CT, p.84.

<sup>92</sup> See P-0238, T-81-CONF FRA CT, pp. 56-57.

the fact that Abidjan was under an unprecedented attack faced with unprecedented guerilla warfare refutes the Prosecution's theory on an alleged "organisational policy".

30. The intensity and gravity of the insurgency and attacks by said (irregular) infiltrating forces were such that the logical inference is that the FDS operations were defensive in nature- their purpose being to defend the civilian population, instead of attacking them. The Prosecution, in paragraphs 441-462 of the Trial Brief, has developed the theory that as of February 2011, Laurent Gbagbo allegedly ordered the FDS to increase military operations in Abobo resulting in more civilian deaths. However, the Prosecution ignored its own evidence, which contextualises the exact purpose and reason for the military operations of the FDS in Abobo. When one analyses the evidence provided by the Prosecution's insiders, it is clear that such operations were predominantly conducted with a defensive purpose, i.e. to defend the civilian population against the acts of violence which at that time were conducted against the FDS and civilians. Based upon this observation, no reasonable trier of fact could determine that these operations were "offensive" in nature, such that it could support the Prosecution theory of an "organisational policy".

### **III.2. The Prosecution failed to prove a pattern of prohibited acts committed by pro-Gbagbo forces using similar methods**

#### **A. Insufficient evidence that the perpetrators of the alleged attack were pro-Gbagbo forces**

31. In its Decision Confirming the Charges against Laurent Gbagbo, Pre-Trial Chamber I found that pro-Gbagbo forces, which included elements of the FDS, youth, militia and mercenaries, and which were led by Laurent Gbagbo and his alleged inner circle, constituted an organisation under article 7(2)(a) of the Statute.<sup>93</sup> Thus, the Pre-Trial Chamber found that though composing several identifiable components, the Pro-Gbagbo youth constituted a determinate entity through it being controlled and led by the alleged inner circle.<sup>94</sup> As will be shown below, the Prosecution has not adduced sufficient credible evidence for any trial chamber to find that the separate entities

<sup>93</sup> *Prosecutor v. Laurent Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf, para. 219.

<sup>94</sup> *See ibid.*

consisting of the FDS, youth groups, and militia collaborated together under the direction of the alleged inner circle such that they could be constitute one entity.<sup>95</sup>

32. Rather, the record shows that the militia, mercenaries and youth groups that were participating in combat or the alleged crimes were acting under the direction of certain individuals, with no credible evidence that the alleged inner circle was aware of or directing their actions.<sup>96</sup> Without this linkage evidence to the alleged inner circle, the evidence of crime base witnesses identifying their perpetrators as pro-Gbagbo youth, or militia is insufficient to identify them as perpetrators belonging to the same organisation, since there is an equally reasonable inference that these actors were acting independent of one another, and the FDS. Since the Prosecution has failed to prove the collaboration and integration of youth, militia and mercenaries into the FDS at the behest of the alleged inner circle, the Prosecution has failed to prove that the pro-Gbagbo forces constituted and organization under article 7(2).

**B. Insufficient evidence that the alleged prohibited acts were carried out using similar methods**

- i. Insufficient evidence that heavy weaponry was used or, in the alternative, that it was used to indiscriminately target civilians

33. It is the Prosecution's theory that from the manner the FDS conducted their operations as of February 2011 in Abidjan and specifically the use of certain weaponry "[Laurent] Gbagbo and members of his Inner Circle deliberately targeted the civilian population of Abobo."<sup>97</sup> It also asserts, based on witness P-0411, that firing a 120mm mortar "into a populated area is extremely likely to cause casualties."<sup>98</sup>
34. First of all, the Prosecution failed to submit conclusive evidence that indeed such a type of mortar or other heavy weaponry was actually used in Abobo in the timeframe February 2011 – April 2011. In particular, the Prosecution's insiders P-0009 and

<sup>95</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>96</sup> See *ibid.*

<sup>97</sup> Trial Brief, para. 496.

<sup>98</sup> Trial Brief, para. 492.

[REDACTED] refuted this theory.<sup>99</sup> P-0009, in particular, explained that he only ordered two limited firings of 60mm mortars and 120mm mortars, on 23 and 25 February 2011, which contradicts the Prosecution's theory on the use of heavy weapons in the instant case.<sup>100</sup> P-0009 also explained that it was impossible for the FDS to fire 120mm mortars in an urban populated area.<sup>101</sup>

35. Secondly, the Prosecution's theory assumes that such a mortar was fired "into" a populated area. No evidence was provided that, even assuming *arguendo* that such a type of mortar was used, this weapon system was engaged with the purpose of targeting a populated area.

36. Thirdly, the Defence will, based on the military operational doctrines regarding the application of heavy weaponry in urban areas in general, demonstrate that the Prosecution overlooked the ramifications of these military doctrines, which were for instance also applied in the report reviewing the NATO bombing campaign in Former Yugoslavia, which led the Prosecutor at the ICTY to decide not to prosecute those involved in these bombings. These bombings had taken place in urban areas and resulted in approximately 500 civilian casualties.<sup>102</sup>

(a) Insufficient evidence that heavy weaponry was used

37. The Prosecution failed to prove where and when precisely heavy weaponry might allegedly have been used during the post-election crisis, which strongly disproves the Prosecution theory that the FDS targeted the civilian population.

38. The Prosecution alleges that "*heavy weaponry, in particular mortar shells, were used in many of the 34 incidents*",<sup>103</sup> but does not provide sufficient evidence to support the allegation. The Prosecution relies upon the testimony of P-0164 whereas P-0164 provided inferences that amount to opinion evidence and anonymous hearsay. First, although he acknowledged that he put mortar shells "*en batterie*" in *Camp*

<sup>99</sup> P-0009, T-196-CONF-FRA CT, p. 21 ; [REDACTED].

<sup>100</sup> P-0009, T-196-CONF-FRA CT, pp. 36-37, 60-62 ; [REDACTED].

<sup>101</sup> P-0009, T-193-CONF-FRA CT, p. 76, lns. 4-11.

<sup>102</sup> Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia (June 2000), p. 53, available at <http://www.icty.org/en/press/final-report-prosecutor-committee-established-review-nato-bombing-campaign-against-federal>, last consulted on 20 July 2018.

<sup>103</sup> Trial Brief, para. 174.

*Commando*, he also acknowledged never firing them.<sup>104</sup> Second, he came to the conviction that mortar shells were fired after speaking to Brice Kamanan, Pegard Egni and his aunt on the phone. However, none of these three individuals told him that mortar shells were fired on 17 March 2011. He came to such a conclusion through his own interpretation of what these three individuals told him, especially Pegard Egni and Brice Kamanan, whereas their words remained too vague to gain any certainty on the matter.<sup>105</sup> Such inferences as to whether an event that he did not witness or take part in happened or not amount to pure speculation. His statement about the reasons why, according to him, the *Commando Invisible* did not possess mortar shells during that period of time amounts to opinion evidence.<sup>106</sup> He finally said that people from *Camp Commando* confirmed that mortar shells were fired but was not able to identify who were the individuals who told him, which constitutes anonymous hearsay.<sup>107</sup> Finally, as elaborated below, Witness P-0009 completely undermined P-0164's testimony, especially regarding the alleged phone call given by P-0009 to Commander Niamké to persuade P-0164 to fire mortars. P-0009 denied having given this phone call and then, directly contradicted P-0164's testimony on the specifications of 120mm mortars.<sup>108</sup> The Prosecution also relies upon Witness P-0364's testimony. However, the fragments found in P-0364's body could not be attributed to mortars.<sup>109</sup>

*(1) Insider witnesses testified that no heavy weapons were used in February-March 2011, except for strictly limited cases that are unrelated to the charges*

39. Witness P-0009 testified that he ordered to fire mortars twice.<sup>110</sup> The first time was on 23 February 2011, and related to a 60 mm mortar, which was directed towards Forêt du Banco. It was a "*tir de flambage*" and a "*tir de harcèlement*". P-0009 explained that the "*tir de flambage*" was to test whether the mortar was working properly, which is confirmed by P-0047. He also explained that "*tir de harcèlement*" was done in order to avoid an ambush from the *Forêt du Banco*. The 60 mm mortar was then fired

<sup>104</sup> P-0164, T-164-CONF-FRA ET, pp. 71-73, 81-85.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

<sup>107</sup> P-0164, T-164-CONF-FRA ET, pp. 81-85.

<sup>108</sup> P-0009, T-200-CONF-FRA CT, pp. 57-58.

<sup>109</sup> P-0364, T-190-FRA CT, pp. 54-56.

<sup>110</sup> P-0009, T-196-CONF-FRA CT, pp. 36-37, 60-62 ; *See also* P-0047, T-204-CONF-FRA CT, p. 16.

to check whether any enemies were in the area. In the absence of response, it was concluded that no one was there.

40. P-0009 also authorized the firing of 120 mm mortar twice; he ordered a “*tir de flambage*” and next a “*tir d’arrêt*” on 25 February 2011.<sup>111</sup> The “*tir d’arrêt*” was fired close to the “*position amie*” and was aimed at deterring the enemy from attacking. The 120 mm mortar was then removed.<sup>112</sup> Witness P-0047 testified that the 120 mm mortar was also removed (“*réintégré en caserne*”) because it was too heavy to be used.<sup>113</sup>

41. With the exception of these two mortar firings, P-0047 testified that no other firing of mortars was requested or ordered during the post-electoral crisis in Abidjan, including Abobo.<sup>114</sup> He further stated that he did not order the use mortars in Abidjan and he did not know whether mortars were fired.<sup>115</sup>

42. Moreover, Witnesses P-0009 and P-0047 testified that the use of mortars in Abobo would have resulted in a profound change of the commune,<sup>116</sup> which did not occur. Moreover, answering to a question asked by the Presiding Judge, Witness P-0047 testified that it was technically impossible for a 60 mm mortar to reach the Abobo market if fired from *Camp Commando*.<sup>117</sup> Consistent with P-0009 and P-0047’s testimonies, P-0156 testified that there was no 120 mm mortar in the *Camp Commando* when he was stationed there.<sup>118</sup>

43. In the course of P-0010’s testimony, the Prosecution showed [REDACTED].<sup>119</sup> Witness P-0010 expressed [REDACTED].<sup>120</sup> P-0009 confirmed these [REDACTED].<sup>121</sup> [REDACTED] never saw the weapons mentioned in the document. P-0010 expressed [REDACTED].<sup>122</sup>

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<sup>111</sup> *Ibid.*

<sup>112</sup> P-0009, T-196-CONF-FRA CT, p. 41.

<sup>113</sup> P-0047, T-204-CONF-FRA CT, p. 16.

<sup>114</sup> P-0047, T-203-FRA CT, pp. 45-46.

<sup>115</sup> *Ibid.*, p. 46.

<sup>116</sup> P-0009, T-196-CONF-FRA CT, p. 61, lns. 8-13 ; P-0047, T-204-CONF-FRA CT, pp. 14-15.

<sup>117</sup> P-0047, T-204-CONF-FRA CT, p. 15 ; See also P-0009, T-196-CONF-FRA CT, p. 58.

<sup>118</sup> P-0156, T-172-CONF-FRA CT, p. 36 ; P-0047, T-204-CONF-FRA CT, p. 16.

<sup>119</sup> [REDACTED], CIV-OTP-0073-0215.

<sup>120</sup> P-0010, T-137-CONF-FRA CT, p. 77, T-139-CONF-FRA CT, pp. 4-6.

<sup>121</sup> P-0009, T-200-CONF-FRA CT, pp. 54-55.

<sup>122</sup> P-0010, T-139-CONF-FRA CT, p. 6.



44. The Defence also notes that P-0010 and P-0009 testified that in Abobo the *Commando Invisible* had mortars. They even saw FRCI troops, ex-FAFN, equipped with mortar barrels and 12,7 mm AK47 guns.<sup>123</sup> The heavy weaponry used by the *Commando Invisible* is confirmed by P-0009, which makes the Prosecution's theory that on 17 March 2011 only the FDS could have fired mortar shells even more doubtful.<sup>124</sup>
45. Regarding the alleged events of 17 March 2011, the Prosecution, throughout the Trial Brief, heavily relies on evidence given by Expert Witness P-0411.<sup>125</sup> However, the Defence submits that P-0411's methodology was seriously flawed, and his report was dangerously biased. During its examination, the Defence was able to draw the Chamber's attention to every element that made his testimony and report unreliable.

(2) The unreliability of Expert Witness P-0411's testimony and report

*The witness' analysis and conclusions lack any scientific basis*

46. P-0411 produced a report which serves to support the Prosecution's theory, without however seeking to establish the truth. The witness admits that he did not take into consideration alternative hypotheses in his report and indicated that this was because the Prosecution had asked him to produce a report on the basis of the elements provided by the Prosecution.<sup>126</sup>
47. P-0411 recognized the shortcomings in his reasoning. For instance, the Prosecution had taken the witness to visit two sites at the Siaka koné market, but the witness only mentioned one of the sites in his reports, because the other does not support the Prosecution's theory.<sup>127</sup> For the second site visited, the witness based his conclusions on three photos<sup>128</sup> provided by the Prosecution to determine the ballistic trajectory of fragments. P-0411 confirmed that it is not possible to determine the ballistic trajectory

<sup>123</sup> P-0010, T-140-CONF-FRA CT, pp. 22-24; P-0009, T-197-CONF-FRA CT, pp. 40-41 ; T-200-CONF-FRA CT, pp. 43-44 ; See also P-0009, T-197-CONF-FRA CT, pp. 23-24, 26-27.

<sup>124</sup> P-0009, T-197-CONF-FRA CT, pp. 40-41 ; See also P-0364, T-190-FRA CT, pp. 16-17.

<sup>125</sup> Trial Brief, paras 174, 490, 491, 493, 496, 498.

<sup>126</sup> P-0411, T-169-CONF-ENG CT, p. 42 lns. 12 to p. 43, ln. 1; p. 50, lns. 2-13.

<sup>127</sup> P-0411, T-169-CONF-ENG CT, p. 55, lns. 4-12; Also, the Prosecution accompanied P-0411 to visit four sites at the SOS Village, but the witness only mentions three of them in his report, see P-0411, T-169-CONF-ENG CT, p. 77, lns. 16-24; this approach is later confirmed during the examination by the Defence team of Mr Blé Goudé, T-169, pp. 88-89.

<sup>128</sup> CIV-OTP-0049-0056, p. 0063.

on the basis of a photo.<sup>129</sup> The witness based his conclusions on the three fragments,<sup>130</sup> which would have been provided to the Prosecution by an unidentified individual, in order to make a determination between these fragments and the explosion of a heavy cased high explosive Soviet mortar.<sup>131</sup> The witness recognized that his conclusions with respect to the origins of these fragments is uncertain<sup>132</sup> and admitted that his conclusions were not based on a scientific reasoning, but rather, on his personal experiences in Afghanistan.<sup>133</sup> With respect to the iron residue found on the third site, he did not carry out any sampling and recognized having been negligent in this regard.<sup>134</sup> It is clear that P-0411 recognized the shortcomings in his methods, analysis and conclusions, which further confirms that his report cannot be relied upon.

48. Moreover, it emerged clearly from his testimony that the witnesses' methodology is entirely flawed. For instance, when the witness mentioned in his report the exact location of the explosion<sup>135</sup> at the third site, he affirmed that this conclusion was drawn by extrapolation.<sup>136</sup> With respect to the fourth site, P-0411 confirmed that he drew his conclusions on the basis of what he had been told by the Prosecution, namely, that there had been no mortar fire.<sup>137</sup> The witness admitted that he considered *Camp Commando* as the starting point because this is what the Prosecution had indicated to him.<sup>138</sup> This methodology runs counter to the most elementary scientific methodology.

49. Although the witness indicated that each site, taken in isolation, could not support the Prosecution's theory,<sup>139</sup> he nonetheless drew a 'global' conclusion with respect to the four sites, a conclusion which supports the Prosecution's theory.<sup>140</sup> This reasoning is fundamentally flawed; in this context, four unfounded assumptions cannot possibly amount to one founded scientific finding. When questioned about how he came to this

<sup>129</sup> P-0411, T-169-CONF-ENG CT, p. 63, lns. 4-13.

<sup>130</sup> CIV-OTP-0049-0056, p. 0065.

<sup>131</sup> CIV-OTP-0049-0056, p. 0066.

<sup>132</sup> P-0411, T-169-CONF-ENG CT, p. 67 lns. 15-21.

<sup>133</sup> P-0411, T-169-CONF-ENG CT, p. 68, lns. 16-23.

<sup>134</sup> P-0411, T-169-CONF-ENG CT, p. 72, ln. 25 to p. 73, ln. 3.

<sup>135</sup> CIV-OTP-0049-0056 p. 0069.

<sup>136</sup> P-0411, T-169-CONF-ENG CT, p. 73, lns. 4-13.

<sup>137</sup> P-0411, T-169-CONF-ENG CT, p. 74, ln. 22- p. 75, ln. 2.

<sup>138</sup> P-0411, T-169-CONF-ENG CT, p. 83, lns. 17-23.

<sup>139</sup> P-0411, T-168-CONF-ENG CT, p. 89, ln. 12- p. 90, ln. 12; T-169-CONF-ENG CT, p. 25, lns. 7-11 ; p. 26, lns. 7-25 ; p. 58, lns. 5-14 ; p. 61, lns. 1-7 ; p. 86, lns. 5-20.

<sup>140</sup> CIV-OTP-0049-0048, p. 0049 ; P-0411, T-168-CONF-ENG CT, p. 89, ln. 12- p. 90, ln. 12; T-169-CONF-ENG CT, p. 25, lns. 7-11 ; p. 26, lns. 7-25 ; p. 58, lns. 5-14 ; p. 61, lns. 1-7 ; p. 86, lns. 5-20.

finding, the witnesses indicated that he had been asked to make an “*objective analysis*” on the basis of “*very subjective information*” with which he had been provided<sup>141</sup>, and emphasized that two years had elapsed since the incident.<sup>142</sup>

*(3) The witness recognized the possibility that the fragmentation observed is linked to other types of weapons*

50. Although the witness believed that the purported explosions were the result of heavy cased high explosive 120 mm Soviet-type mortars, P-0411 explained that the impact could have been caused by a “*different type of ammunition of a different event*”.<sup>143</sup> The witness explained that he had “*just commented on what was presented to me on the day by the OTP personnel and what I was asked to report on.*”<sup>144</sup> Upon being asked by the Presiding Judge whether the finding in the report with respect to the fragmentation pattern of a 120 millimetre soviet mortar shell could be “*compatible with something else?*”, the witness confirmed that “*out of the four sections, [...] the four physical locations we investigated, not one single location would definitively suggest that type of weapon system*”.<sup>145</sup> Combined with the fact that more than two and a half years had passed since the actual incident, “*a lot of the physical evidence has disappeared.*”<sup>146</sup> The witness’ testimony reveals that his report is significantly fraught with unfounded assumptions. During the cross-examination by counsel for the Defence team of Laurent Gbagbo, P-0411 confirmed yet again that the marks observed by the witness could be compatible with other kinds of weapons.<sup>147</sup>

51. The holistic approach advocated by the witness consisted of a global consideration of: (1) the physical objects which would indicate fragmentation of high velocity low angle fragmentation patterns, (2) his site visit to *Camp Commando*, (3) the videos which had been provided to him, and (4) the physical fragments.<sup>148</sup> However, it is noted that the individual conclusions made by the witness on each of these elements is highly questionable. First, with respect to the physical objects which would show

<sup>141</sup> P-0411, T-169-CONF-ENG CT, p. 87, lns. 18-20.

<sup>142</sup> The witness qualified this a “*huge lapse of time between the alleged incident and our subsequent investigation*”, P-0411, T-169-CONF-ENG, p. 87, lns. 16-25.

<sup>143</sup> P-0411, T-168-CONF-ENG CT, p. 81, ln. 21 to p. 82, ln. 5.

<sup>144</sup> P-0411, T-168-CONF-ENG CT, p. 82, lns. 3-5.

<sup>145</sup> P-0411, T-169-CONF-ENG CT, p. 24, ln. 20 – p. 25, ln. 11.

<sup>146</sup> P-0411, T-169-CONF-ENG CT, p. 25, lns. 12-14.

<sup>147</sup> P-0411, T-169-CONF-ENG CT, p. 57, ln. 23- p. 58, ln. 14.

<sup>148</sup> P-0411, T-169-CONF-ENG CT, p. 25, lns. 12-25.

marks of high velocity low angle fragmentation, the witness' analysis is based on unfounded assumptions; the witness starts from the disputable premise that the walls on which impact marks were observed on one side but on the other would have been partially repaired.<sup>149</sup> The witness confirmed that no biological or chemical investigation was made on fragments purportedly found in victims' bodies; the witness indicated that he was handed the fragments and was not asked to conduct any biological examination.<sup>150</sup> He only did a magnified visual inspection of the fragments.<sup>151</sup> P-0411 also confirmed that he did not take any sample from the sites which would have allowed him to analyse the residual material, and indicated that he had been negligent in this regard.<sup>152</sup> At *Camp Commando*, the witness explained that he was shown items of ammunition and ammunition packaging that was "*Russian in appearance*" but admitted that this alone was not conclusive.<sup>153</sup> Further, the witness testified that all the interviews on the day at *Camp Commando* were conducted in French,<sup>154</sup> the witness did not measure the height of the walls surrounding Camp Commando which would have allowed him to evaluate whether a mortar could have been shot from the leg assembly of a 120 mm mortar system,<sup>155</sup> and did not seek to find out since when the leg assembly had been at *Camp Commando*. The witness affirmed that he was categorically told that there were no mortars on-site and that they had never been used at the relevant time.<sup>156</sup>

52. With respect to the physical fragments, the witness indicated that he had not extracted any of them himself and that they had all been handed to him by the Office of the Prosecutor.<sup>157</sup> The witness also did not know who had handed these fragments to the Prosecutor,<sup>158</sup> and did not proceed to any forensic examination in order to ascertain

<sup>149</sup> P-0411, T-169-CONF-ENG CT, p. 99, ln. 9 to p. 100, ln. 10.

<sup>150</sup> P-0411, T-169-CONF-ENG CT, p. 26, ln. 8 – 25.

<sup>151</sup> P-0411, T-169-CONF-ENG CT, p. 26, lns. 8-25.

<sup>152</sup> P-0411, T-169-CONF-ENG CT, p. 72, ln. 23 to p. 73, ln. 3.

<sup>153</sup> P-0411, T-169-CONF-ENG CT, p. 70, lns. 16-25.

<sup>154</sup> P-0411, T-169-CONF-ENG CT, p. 79, ln. 6-7.

<sup>155</sup> P-0411, T-169-CONF-ENG CT, p. 79, lns. 13-18.

<sup>156</sup> P-0411, T-169-CONF-ENG CT, p. 78, lns. 9-23.

<sup>157</sup> P-0411, T-169-CONF-ENG CT, p. 69, lns. 16-17.

<sup>158</sup> P-0411, T-169-CONF-ENG CT, p. 101, lns. 8 to p. 102, ln. 7.

their origin.<sup>159</sup> Further, the witness recognized that the fragments could have come from other weapons.<sup>160</sup>

(b) Insufficient evidence that heavy weaponry was used to indiscriminately target civilians

53. In the alternative, if the Chamber were to accept that heavy weaponry was used during the post electoral crisis – which the defense contests – the Prosecution theory is unfounded for the following reasons which have to do with the use of artillery in urban areas and the military-operational dimensions of urban warfare under International Law. It is the position of the Prosecution that because of the use of purported heavy weaponry (i.e. the use of mortars) in densely-populated areas, in the knowledge that by their very nature, such weapons are imprecise, the FDS “deliberately” targeted the civilian population of Abobo.<sup>161</sup> In paragraph 174 of the Trial Brief, the Prosecution, without any substantiation or foundation, asserts that “heavy weaponry, in particular mortar shells, were used in many of the 34 incidents. By using weaponry of this type, the FDS deliberately targeted the civilian population of certain densely-populated neighbourhoods of Abidjan considered sympathetic to Ouattara”.<sup>162</sup> The Prosecution has not produced any linkage evidence regarding the mere observation that a certain weaponry was used during the alleged incidents and the qualification of “deliberate targeting the civilian population”.

54. Therefore, no reasonable Trial Chamber could accept this assertion as proof of “deliberate” targeting, especially when taking into consideration the rules of warfare. There is ample academic literature to refute the Prosecution’s general assertion. The Defence notes the observations by one of the leading experts on the laws of armed conflict, Professor Yoram Dinstein, who addresses this topic the following way:

The issue of avoiding or minimizing collateral damage to civilians and civilian objects underlies the task of ‘targeting’ – namely, the selection of appropriate targets from a list of military objectives – as well as that of the choice of weapons and ordnance. If it is planned to attack a small military objective surrounded by densely-populated civilian areas, the only legitimate *modus operandi* may be to resort to a

<sup>159</sup> P-0411, T-169-CONF-ENG CT, p. 26, lns. 1-17.

<sup>160</sup> P-0411, T-169-CONF-ENG CT, p. 82, lns. 1-5.

<sup>161</sup> Trial Brief, paras 492- 495

<sup>162</sup> Trial Brief, para. 174.

surgical raid with precision-guided munitions. This is not to endorse claims, made by some commentators, that (i) there is a duty to use precision-guided munitions in urban settings; or that (ii) countries with arsenals of ‘smart bombs’ are compelled to use them everywhere. Such claims would introduce an inadmissible discriminatory bias either in favour of, or against, more developed belligerent states equipped with expensive ordnance at the cutting edge of modern technology. Legally speaking, the position is fairly simple. LOIAC instructs the planners of an attack to take whatever steps that are necessary, in order to avoid or minimize collateral damage to civilians (in urban settings and elsewhere). If the attack against a specific military objective can be embarked upon within these parameters, it is perfectly legitimate. Otherwise, it must be recoiled from. The availability of precision guided munitions by no means forecloses alternative precautionary options. It must also be borne in mind that, should the attacker actually employ precision guided munitions, while more options in targeting are bound to open up, the attack would be susceptible to much closer scrutiny by any impartial observer.<sup>163</sup>

55. From this analysis, it follows that a military operation in densely-populated civilian areas, using for instance mortars, is not in itself an act in contravention to the rules of warfare, if its purpose is to defeat the enemy. In the instant case, the Prosecution’s insiders directly point to the enemy in Abobo as being clearly their military objective.<sup>164</sup>

56. Even a military operation or attack against an enemy (military objective) situated in such an area can be embarked upon with artillery within the parameters of the applicable rules of engagement.

57. The Defence also refers to the US Army Field Manual (V. 3-09, Sect. 1-115), which acknowledges that in order to avoid collateral damage, the use of artillery in an urban setting requires “*more detailed and restrictive rules of engagement*”.<sup>165</sup> Also here one can find that the use of artillery in an urban setting in itself is not an illegitimate military act and thus accordingly one cannot deduce the qualification “deliberately” from this mere operation. In this realm, Professor Peter Margulies observes that “*once*

<sup>163</sup> Prof. Yoram Dinstein *The Conduct of Hostilities*, Cambridge University Press 2004, pp. 126-127

<sup>164</sup> P-0009, T-193-CONF-FRA CT2, p. 76; See Motion, Section III.1.B. *The unforeseeable guerrilla warfare tactics employed by the Commando Invisible*.

<sup>165</sup> US Army Field Manual, V. 3-09, Sect. 1-115.

*those appropriately tailored rules are in place and observed, the laws of armed conflict (“LOAC”) do not further limit artillery’s use.”*<sup>166</sup>

58. In the instant case, the Chamber may note that at the time of the relevant military operations in Abidjan, conducted by the FDS, rules of engagement were applicable which permitted the use of this type of weaponry within the context of “self-defence”.<sup>167</sup>

59. The Prosecution ignores in this regard that “*excessively burdensome standards of attack risk creating perverse incentives for nonstate actors*” such as, in the instant case, the *Commando Invisible*, “*to embed warfighting capabilities deep within densely populated areas, which is itself a violation of LOAC.*”<sup>168</sup>

60. It is not contested by the Prosecution that at the time of the military operations as of February 2011 in Abidjan, the armed forces of Côte d’Ivoire (FDS) were facing attacks by nonstate actors such as embodied by the *Commando Invisible*, as set out above.<sup>169</sup>

61. Therefore, no reasonable Trial Chamber could accept that the FDS’ operations “*deliberately*” targeted the civilian population or were meant to target the civilian population, especially – as the Prosecution asserts in paragraph 174 of the Trial Brief – those civilians who were “*considered sympathetic to Ouattara*”.<sup>170</sup>

62. Accordingly, the Prosecution wrongly suggests a nexus between the alleged type of weaponry and the intentional targeting of persons sympathetic to Alassane Ouattara. No evidence whatsoever in this regard can be detected in the Trial Brief.

63. In fact, some of the Prosecution major insiders such as P-0009 and P-0047 have stated that the FDS forces did not fire on the Siaka Koné market on 17 March 2011<sup>171</sup> and

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<sup>166</sup> Prof. Peter Margulies, *LOAC and Artillery in Urban Areas: the Case of Gaza 2014*, 31 December 2015, Lawfare, Peter Margulies is professor of National Security at Roger Williams University School of Law.

<sup>167</sup> See Motion, Section III.1.B. *The unforeseeable guerrilla warfare tactics employed by the Commando Invisible.*

<sup>168</sup> Prof. Peter Margulies, *LOAC and Artillery in Urban Areas: the Case of Gaza 2014*, 31 December 2015, Lawfare, Peter Margulies is professor of National Security at Roger Williams University School of Law.

<sup>169</sup> See Motion, Section III.1.B. *The unforeseeable guerrilla warfare tactics employed by the Commando Invisible.*

<sup>170</sup> Trial Brief, para. 174.

<sup>171</sup> See Motion, Section III.2.B.i.(a) *Insufficient evidence that heavy weaponry was used.*

both testified that on the 3 March 2011, civilians were not fired upon by a military convoy.<sup>172</sup> Also in this regard no reasonable Trial Chamber could accept the assertion of a “*deliberate*” attack on the civilian population.

64. Finally, the Prosecution ignores the tactical function of the use of artillery in urban areas, which is part and parcell of the proportionality analysis under international humanitarian law.<sup>173</sup> In February 2011, FDS commanders were facing a serious tactical challenge, which was also elaborated by P-0009, who testified that the Ivorian armed forces never in history were confronted with the type of escalation of aggression as was manifested from February 2011 and onwards in Abidjan.<sup>174</sup> P-0009 also testified that this situation was totally unforeseeable for the FDS.<sup>175</sup>

65. This section will demonstrate that the FDS’ Rules of Engagement with respect to the use of heavy weapons were such that the Prosecution’s inference that the FDS “deliberately” killed civilians is impermissible. In particular, the Prosecution’s witnesses testified about the trainings received and the order of authorization needed to deploy such weapons, showing the absence of intent to kill civilians. The Prosecution’s evidence also shows the discretion granted under the Rules of Engagement with which FDS members could act when deciding to use heavy weaponry. The Prosecution’s evidence furthermore shows a great restraint from the soldiers in abiding by their training in this matter. The following Prosecution’s witnesses gave evidence in this regard.

66. P-0156 testified that when attacked, the Rules of Engagement were to avoid contact, or even combat, and to disengage. To do so, it was necessary to accelerate and, when fire was sustained, to fire in its direction.<sup>176</sup> It was only when the enemy pulled out of the territories that an offensive action was envisaged.<sup>177</sup> The various patrols that were carried out were intended to search, confirm or refine intelligence information.<sup>178</sup> The

<sup>172</sup> P-0009, T-196-CONF-FRA CT, pp. 47-49, T-200-CONF-FRA CT, pp. 60-70 ; P-0047, T-204-CONF-FRA CT, pp. 2-9 ; *See also, Motion, Section III.1.A. Overview of the five incidents.*

<sup>173</sup> Prof. Peter Margulies, LOAC and Artillery in Urban Areas: the Case of Gaza 2014, 31 December 2015, Lawfare, Peter Margulies is professor of National Security at Roger Williams University School of Law.

<sup>174</sup> P-0009, T-199-CONF-FRA CT, pp. 61-62.

<sup>175</sup> P-0009, T-199-CONF-FRA CT, pp. 64-66.

<sup>176</sup> P-0156, T-172-FRA CT, p. 33, lns. 8-19.

<sup>177</sup> P-0156, T-171-FRA CT, p. 62, lns. 3-11.

<sup>178</sup> P-0156, T-171-FRA CT p. 55.



Rules of Engagement were intended to spare the civilian population<sup>179</sup> and the operation orders were systematically provided for compliance with international humanitarian law.<sup>180</sup>

67. P-0009 stated that BASA had the 120 mm mortar,<sup>181</sup> and that they were granted authorisation to use this piece of equipment. They were acting within the framework of a requisition, and therefore had authorization – in case the Chamber would accept that heavy weaponry was used, which again the Defence contests.<sup>182</sup> P-0009 received the authorization to use heavy weapons on 5 January 2011. This requisition was published over the RTI and in newspapers.<sup>183</sup> Therefore, in case heavy weapons were used, which again the Defence contests, according to the applicable laws in Côte d'Ivoire during the post-election crisis, the authorization to use the 120 mm mortar was implied through this requisition.<sup>184</sup>

68. P-0226 testified that BASA's artillery the weapons are very specific and before using any artillery they would always need a written order.<sup>185</sup> With regard to the use of the 120 mm mortar in urban environments where non-combatants lived P-0009 stated that their mission was to defend the population – not to kill. If there were no combatants in a public area, mortars could not be used under those circumstances.<sup>186</sup> This is why they did not succeed in their mission in Abobo because those who were shooting at them were dissimulated amongst the population. They were not expected to shoot back.<sup>187</sup> P-0238 testified that BASA had heavy weapons as a deterrent effect.<sup>188</sup>

69. These elements contribute to the deconstruction of the Prosecution's theory regarding alleged FDS abuses against the civilian population and attests to the lack of belligerent will of the administration in place at the time.

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<sup>179</sup> P-0156, T-171-FRA CT, p. 69.

<sup>180</sup> P-0156, T-172-FRA CT, p. 80.

<sup>181</sup> P-0009, T-193-FRA CT, p. 74.

<sup>182</sup> *Ibid.*, pp. 74-75

<sup>183</sup> *Ibid.*

<sup>184</sup> P-0009, T-193-FRA CT, pp. 13-14, 23-24, 67, 74-75; T-194-FRA CT, pp. 51-52, 83-87, T-195-CONF-FRA CT, pp. 22, 83-85; T-196-CONF-FRA CT, p. 2; *See also* P-0047, T-203-FRA CT, p. 12.

<sup>185</sup> P-0226, T-167-FRA, p. 57.

<sup>186</sup> P-0009, T-193-FRA CT2, p. 76.

<sup>187</sup> *Ibid.*

<sup>188</sup> P-0238, T-83-CONF-FRA CT, p. 23..

70. This section has demonstrated that the FDS's Rules of Engagement were focused on the use of force from a purely defensive perspective, as well as to ensure the safety of the civilian population against attacks from rebel forces. The Prosecution's theory lacks any evidence that the FDS was involved in a targeting of the civilian population. Rather, the Prosecution's witnesses attest to the fact that the engagement of "heavy weaponry" – if used at all – was intended to be applied as a scarce tactic instead of a regular method, while applied with scrutiny in light of the military-operational context which was, as shown, unprecedented and complex.

(c) Military commanders' discretion to use heavy weaponry in urban areas

71. In the alternative, this section advances another argument as to why the Prosecution theory lacks an evidentiary basis. The mere fact that heavy weapons were allegedly used, assuming *arguendo* that this theory of the Prosecution would have merit in the eyes of the Chamber, does not constitute in itself a pattern of discriminatory intent to target civilians as suggested by the Prosecution.<sup>189</sup> This was already shown in the sections above. Military operational precedent demonstrates that the purported theory of the Prosecution does not have a factual foundation.

72. In 1999, a study was published by Major Wayne C. Grieme Jr., at the School of Advanced Military Studies of the United States Army Command and General Staff College, which discusses the use of heavy artillery in urban terrain.<sup>190</sup> In his introduction, Major Grieme writes:

During the twentieth century virtually every military operation conducted by the United States has included fighting in cities or on some lesser type of urban terrain. Whether in Berlin at the closing of World War II or securing a small village in Vietnam, United States forces have always been faced with conducting urban operations. (...) Today, more so than in the past, our geo-political environment is such that fighting on urban terrain has become even more increasingly probable. The

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<sup>189</sup> Trial Brief, para. 174.

<sup>190</sup> W.C., Grieme, *Heavy Artillery: Military Operations in Urban Terrain (MOUT)*, School of Advanced Military Studies, United States Army Command and General Staff College, Fort Leavenworth, Kansas, 1999, p. 5.

desire to limit casualties and reduce collateral damage in these type of operations make them harder to plan and even more difficult to execute.<sup>191</sup>

73. It was the reality in Côte d'Ivoire in 2011 that the FDS were confronted with an unforeseeable situation in military operational sense in which it was forced to engage in urban warfare. It is already this observation which contravenes the Prosecution's theory.<sup>192</sup>

74. Based on these observations, the FDS commanders had to perform military operations in a guerilla-like warfare situation, which had to be conducted in an urban area. Accordingly, the FDS commanders had to make decisions based on military-operational insights. The Prosecution's theory fails to acknowledge the FDS commanders' discretion to arrive at decisions on these complex military operations.

75. The issue of military commanders discretion *vis-à-vis* their responsibility or liability of military commanders under international criminal law arose in a report submitted to the ICTY Prosecutor by the committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia (FRY) which committee specifically investigated the NATO bombing campaign against the FRY from 24 March 1999 to 9 June in view of the question whether or not there was a sufficient basis to proceed with an investigation into some or all the allegations or into other incidents related to the NATO bombing<sup>193</sup> of, *inter alia*, the Chinese embassy in Belgrade and the Serbian Radio/TV Station "RTS" in April 1999. This campaign resulted in approximately 500 civilian casualties in urban areas.<sup>194</sup>

76. As to the matter of the controversy between military commanders' discretion and (international) criminal liabilities of military commanders, the committee and subsequently the ICTY-Prosecutor – by adopting it – formulated the following relevant criteria or guidelines:

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<sup>191</sup> *Ibid.*

<sup>192</sup> See Motion, III.1.B. *The unforeseeable guerrilla warfare tactics employed by the Commando Invisible.*

<sup>193</sup> Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia (2000), available at <http://www.icty.org/en/press/final-report-prosecutor-committee-established-review-nato-bombing-campaign-against-federal>, last consulted on 20 July 2018.

<sup>194</sup> *Ibid.*, para. 53.

- (i) In the first place, paragraph 29 of this report elaborates on the tension between international military law and the tasks of military commanders during military operations and acknowledges that military commanders also within the framework of enforcing international military law “*must have some range of discretion to determine which available resources shall be used and how they shall be used.*” From this discretionary authority necessarily emerges the primary role of the military commander’s personal assessment of the situation at hand. Of significance is that the report of the ICTY furthermore confirms that “precautionary measures” and the interpretation of these measures also could be based on and derive from earlier incidents.<sup>195</sup>
- (ii) Secondly, the ICTY Prosecutor concludes in paragraph 50 of the report – confronted with the question to which extent a military commander is obliged to expose his own forces to danger vis-à-vis civilian objects – that this has to be resolved on a case by case basis, and the answers might differ depending on the background and values of the commander. In view of the various backgrounds of the military commanders the differing degrees of combat experience or national military histories, the report holds that the criterion has to be that of a “reasonable military commander.”

77. In the instant case, the Prosecution failed to submit evidence that the military operations and the use of heavy weapons by the FDS did not meet the standard of “a reasonable commander”. The mentioned NATO bombing campaign’s report adopted by the ICTY Prosecutor addresses, in paragraph 28, the liability of military commanders in relation to disproportionate attacks on civilian targets or civilians, especially the aspect of the requisite *mens rea*. In this regard, the ICTY Prosecution articulates the view that this *mens rea* should be that of “intention or recklessness, not simply negligence.” Importantly, the ICTY Prosecutor holds that in order to assess this level of *mens rea*, it should be kept in mind that:

Both the commander and the aircrew actually engaged in operations must have some range of discretion to determine which available resources shall be used and how they shall be used. Further, a determination that inadequate efforts have been made to distinguish between military objectives and civilians or civilian objects should not necessarily focus exclusively on a specific incident. If precautionary measures have worked adequately in a very high percentage of cases, then the fact they have not

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<sup>195</sup> *Ibid.*, para. 29.

worked well in a small number of cases does not necessarily mean they are generally inadequate.<sup>196</sup>

78. Attention should be drawn to the words “*some range of discretion*” which clearly elaborates on the factor of military commanders’ discretionary powers. Apparently, the military operational obligations and responsibilities of military commanders constitute a decisive factor to determine the requisite level of *mens rea* in that it may increase the Prosecution’s burden of proof to establish the assertion that the FDS “deliberately” targeted the civilian population (i.e. Ouattara supporters). Furthermore, as the report to the Prosecutor at the ICTY points out:

Collateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reasons. Despite an obligation to avoid locating military objectives within or near densely populated areas, to remove civilians from the vicinity of military objectives, and to protect their civilians from the dangers of military operations, very little prevention may be feasible in many cases.<sup>197</sup>

79. In each different case, it is for the military commander to balance the military objective with the possibilities of preventive measures. Logically, the predominance of military commanders’ discretionary powers may not always be in accordance with the legal-political denominators of commanders’ criminal responsibility. Yet, this dilemma or controversy cannot be resolved – such as the Prosecution intends to do in the instant case – without answering the following question. To what extent is a military commander obligated to expose his or her own forces to danger in order to limit civilian casualties or damage to civilian objects?<sup>198</sup> The aforementioned report to the ICTY Prosecutor in relation to the NATO bombings in the Former Yugoslavia, answers this question as follows:

The answers to these questions are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to non-combatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military

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<sup>196</sup> *Ibid.*, para. 29.

<sup>197</sup> *Ibid.*, para. 51.

<sup>198</sup> *Ibid.*, para. 49.

histories would always agree in close cases. It is suggested that the determination of relative values must be that of the “reasonable military commander”.<sup>199</sup>

80. The Prosecution in the instant case failed to submit evidence that FDS commanders in 2010-2011 did not act as “*reasonable military commanders*” when fighting the insurgency by rebel forces. Based on the Prosecution’s own insider witnesses – as elaborated above – a presumption of acting as a “*reasonable commander*” is established. As a result, the Prosecution’s theory that there would have been an organizational policy is not proven. Accordingly, no reasonable Trial Chamber could determine that there was a policy to target the civilian population.

81. Apart from the lack of evidence that the FDS in the relevant period of time were allegedly involved in firing on the Siaka Koné Market on 17 March 2011 and firing on civilians by a military convoy on the 3 March 2011, this section of the Defence’s Motion has shown that no reasonable Trial Chamber could find that the FDS deliberately targeted civilians. When under circumstances the use of artillery in urban areas is not impermissible under international humanitarian law<sup>200</sup> (even assuming *arguendo* that these weapons might be imprecise), no reasonable trier of fact can accept a linkage which the Prosecution intends to make in paragraphs 492 and 495 of the Trial Brief between the use of weaponry and the element “*deliberately*”. This alleged linkage, as has been shown in this section, is flawed and speculative. After all, if a certain method of warfare or a certain military operation is permissible under international law and accordingly performed, such as in the instant case, in accordance with the applicable rules of engagement, one cannot say that the person using this weaponry acts with intent to kill civilians, not even acting with *dolus eventualis*.<sup>201</sup>

82. The conclusion of this section on the nature of the conflict and the FDS’ military operational actions which ensued is that there is no evidence to support an “*organisational policy*” to target the civilian population or Ouattara supporters.

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<sup>199</sup> *Ibid.*, para. 50.

<sup>200</sup> W.C., Grieme, Heavy Artillery: Military Operations in Urban Terrain (MOUT) (School of Advanced Military Studies, 1999), p. 5.

<sup>201</sup> *Ibid.*, p. 5.

ii. No evidence of the existence of a parallel structure used at dispersing demonstrators

83. The Prosecution alleges that “[p]arallel structure units such as the CECOS or GR were used in dispersing demonstrators such as in the 16-19 December 2010 and 3 March 2011 incidents”.<sup>202</sup> At the outset, the Defence notes that the Prosecution does not substantiate this specific allegation as it does not make reference to evidence to support it. More importantly, as developed extensively below,<sup>203</sup> the Prosecution failed to adduce sufficient evidence to demonstrate the existence of a parallel structure. Therefore, the allegation that parallel structure units would have been used in dispersing demonstrators is unfounded.

84. The Defence notes that the dispersion of demonstrators is a common law and order operation (“*maintien de l’ordre*”). Regarding the CECOS, P-0010 explained that, upon authorisation of the Minister of Defence, he created two sub-units within the CECOS, including the BMO, which was set up to provide support to the police and *gendarmerie*.<sup>204</sup> The BMO was composed of gendarmes and policemen and had been trained for law enforcement purposes.<sup>205</sup> Therefore, the support CECOS provided to the police in securing persons and property in the context of marches in Abidjan was part of the CECOS’s missions.<sup>206</sup>

85. Regarding the GR and the alleged events of 16-19 December 2010, the Defence submits that the Prosecution has failed to prove that GR units were used to disperse demonstrators. The Prosecution’s narrative of 16 December 2010 makes only two references to the GR.<sup>207</sup> However, when looking at the evidence invoked by the Prosecution to support the allegation, it appears that none of the items cited is relevant to the GR. Only one of them mentions the GR, the alleged notes taken by P-0045 while allegedly listening to coded radio conversations.<sup>208</sup> First, the witness

<sup>202</sup> Trial Brief, para. 174.

<sup>203</sup> See Motion, Section III.3.A.i. *The Prosecution failed to prove the constitution of a structure*, Section III.3.B. *The Prosecution failed to demonstrate that the alleged inner circle constituted an organisation pursuant to article 7(2)(a) of the Rome Statute*, Section III.3.D. *The Prosecution failed to prove the preparations for the implementation of the alleged common plan and policy after the first round of the elections*.

<sup>204</sup> P-0010, T-137-CONF-FRA CT, pp. 49-50.

<sup>205</sup> P-0010, T-137-CONF-FRA CT, pp. 50-51.

<sup>206</sup> P-0010, T-137-CONF-FRA CT, p. 55 ; T-139-CONF-FRA, pp. 15-16, 18.

<sup>207</sup> Trial Brief, paras. 353-371; See paras 354 and 357.

<sup>208</sup> Annex 5 to P-0045, CIV-OTP-0005-0026.

acknowledged that he made the document several months after December 2010.<sup>209</sup> He also acknowledged that he made summaries and inferences, from what he allegedly heard on the radio and, most importantly from information he collected elsewhere, so this document contains unsubstantiated allegations.<sup>210</sup> The Prosecution was never able to verify that the witness actually listened to channels of the FDS, and the GR in particular. In this regard, the fact that, for example, the witness identifies General Dogbo Blé Bruno only because of an “*authoritarian tone*” consists of pure speculation.<sup>211</sup> The Prosecution did not question the witness specifically on the allegations he made on the GR in the document. Therefore, the probative value of the document is *de minimus*. Moreover, the Prosecution refers to [REDACTED] written statement to support the allegation.<sup>212</sup> However, in the cited paragraphs of this statement, the witness does not make any reference to the GR.<sup>213</sup>

86. The Defence also submits that the alleged presence of the GR around the RTI building in Cocody would be consistent with its missions, as explained to the Chamber by the CEMA, P-0009; its mission was the protection of the President, protection of important individuals and protection of the institutions.<sup>214</sup> However, according to Witness P-0009, the dispersion of demonstrators, as a law and order operation, was not part of the GR’s missions, even after the January 2011 Requisition,<sup>215</sup> which further casts doubt on the Prosecution’s allegation in this regard.

87. Regarding the GR and the alleged events of 3 March 2011, the Defence notes that during his testimony, Witness P-0009 identified a BTR on a screenshot but was not able to determine whether it belonged to the *Bataillon blindé* or to the *Garde Républicaine*.<sup>216</sup> Moreover, P-0009 was certain as to the fact that the elements that were stationed at *Camp Commando* could not have participated to the alleged events of 3 March 2011.<sup>217</sup> He also explained that the presence of the convoy was not consistent with the traditional itinerary and the time frame of the rotation of the

<sup>209</sup> P-0045, T-119-CONF-FRA CT, p. 91, lns. 8-17.

<sup>210</sup> P-0045, T-119-CONF-FRA CT, pp. 88-97.

<sup>211</sup> P-0045, T-119-CONF-FRA CT, p. 96.

<sup>212</sup> Trial Brief, para. 357.

<sup>213</sup> [REDACTED].

<sup>214</sup> P-0009, T-193-FRA CT2, p. 21.

<sup>215</sup> *Ibid.*

<sup>216</sup> P-0009, T-200-CONF-FRA CT, p. 65.

<sup>217</sup> *Ibid.*, pp. 67-68.



troops.<sup>218</sup> Moreover, witness P-0347, a senior officer of the *Garde Républicaine*, testified that he learnt about the 3 March 2011 women's march through the media and a long time after the march.<sup>219</sup> As the *Garde Républicaine* Commander of the Abidjan *Groupement* at the time of the postelection crisis,<sup>220</sup> a reasonable trier of fact would consider that he would have known if the soldiers under his command had participated to the dispersion of demonstrators on 3 March 2011. He also did not know whether the Commander of the GR, General Dogbo Blé, received a report on the events of 3 March 2011.<sup>221</sup>

iii. Insufficient evidence of roadblocks being part of an alleged policy

88. The Prosecution alleges that “*following a speech by Charles Blé Goudé at Le Baron Bar on 25 February 2011, in which he called on the Jeunes Patriotes to monitor movements in the neighbourhoods, roadblocks began to proliferate in some communities, particularly in Youpougon. It was at these roadblocks that many Ivorians from Northern Côte d'Ivoire, especially the Dioula, and West African nationals were injured, executed or burned to death after identity checks*”.<sup>222</sup> At the outset, the Defence notes that, to support this allegation, the Prosecution relies upon [REDACTED].<sup>223</sup> The Defence submits that the Prosecution cannot reasonably supports facts that allegedly happened after 25 February 2011 with a testimony related to events predating those alleged facts.

89. Additionally, [REDACTED], never mentioned that the roadblock was held by Young Patriots and, most importantly, that the authors of [REDACTED] were Young Patriots. During [REDACTED] testimony, [REDACTED] did not provide any element that would allow concluding that [REDACTED] acted following a speech of Charles Blé Goudé.

90. The Prosecution also relies upon [REDACTED] testimony to support this allegation. However, important discrepancies arise as to the witness' testimony. [REDACTED]

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<sup>218</sup> *Ibid.*, p. 68.

<sup>219</sup> P-0347, T-78-CONF-FRA CT, pp. 4-7.

<sup>220</sup> P-0347, T-77-CONF-FRA-ET, pp.10-11.

<sup>221</sup> P-0347, T-78-CONF-FRA CT, pp. 8-10.

<sup>222</sup> Trial Brief, para. 175.

<sup>223</sup> [REDACTED].

reported that [REDACTED]. [REDACTED].<sup>224</sup> First, the event that [REDACTED] reported is not corroborated although [REDACTED] alleges that numerous people witnessed that same event. Second, during [REDACTED] testimony, [REDACTED] did not provide any element that would allow the linking of this alleged crime to any speech given by Charles Blé Goudé in February 2011 or at any other moment. Third, when asked by the Prosecution [REDACTED].<sup>225</sup> Therefore, the Defence submits that [REDACTED] testimony does not present sufficient credibility to support the allegation. Assuming *arguendo* that [REDACTED] would be considered by the Chamber as sufficiently credible, the evidence that [REDACTED] provided does not support the allegation.

91. The Prosecution also relies upon [REDACTED] to support the allegation.<sup>226</sup> [REDACTED] reported that roadblocks were erected in Yopougon following a call from Charles Blé Goudé on RTI but did not provide the date of this call. [REDACTED],<sup>227</sup> which as the Defence submits does not characterize a call to erect roadblocks. [REDACTED].<sup>228</sup> [REDACTED]. [REDACTED]. However, they are all anonymous hearsay, with the exception of one, witnessed by a friend [REDACTED], which is hence out of the scope of the Prosecution's allegation. [REDACTED]. Finally, and most importantly, [REDACTED].<sup>229</sup> For the foregoing reasons, the Defence submits that the evidence provided by [REDACTED] does not support the allegation.

92. The Prosecution also relies upon [REDACTED] written statement to support the allegation.<sup>230</sup> However, it is impossible to determine whether the events reported by [REDACTED] were directly witnessed or known through hearsay and if so, who the source of such hearsay was. As [REDACTED]'s written statement was admitted under Rule 68(2) of the Rules, the Defence was not provided with a possibility to question the witness on this issue. For the foregoing reasons, the Defence submits that

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<sup>224</sup> [REDACTED].

<sup>225</sup> [REDACTED].

<sup>226</sup> [REDACTED].

<sup>227</sup> [REDACTED]; See also P-0449, T-159-CONF-FRA CT, pp. 37-38.

<sup>228</sup> [REDACTED]; See also P-0449, T-159-CONF-FRA CT, p. 43.

<sup>229</sup> [REDACTED].

<sup>230</sup> [REDACTED].

[REDACTED]'s written statement should not be considered in the assessment of the Motion.

93. The Prosecution also relies upon Witness P-0109 to support the allegation.<sup>231</sup> P-0109 reported that on 13 April 2011, he had to go through a roadblock in Wassakara. According to him, the roadblock was held by civilians whom he did not identify as Young Patriots. He did not report any difficulty to pass the roadblock, except that he had to give money. He also reported that, on his way from Selmer to Andokoi, he saw five to six burnt bodies, but did not establish a link between the roadblock and the bodies. More precisely, he did not see the corpses on the roadblock or near the roadblock, but after he had passed the roadblock, *en route* to Andokoi.<sup>232</sup> At this stage, the Defence recalls that [REDACTED].<sup>233</sup> For the foregoing reasons, the Defence submits that the P-0109's testimony does not support this allegation.

94. The Prosecution also relies upon evidence adduced from Witness P-0087.<sup>234</sup> P-0087 reported that he went through a roadblock once, that he could not locate, and that he was able to pass without incident. Although he reported that it was not usually the case, he did not provide any evidence to support this allegation. He also said that, when he went through the roadblock, the person accompanying him told him that he "*felt*" people holding the roadblock had weapons, although neither him, nor P-0087 and P-0088 saw any weapons. For the foregoing reasons, the Defence submits that, on this point, the evidence provided by P-0087 amounts to opinion evidence and does not support the allegation.

95. The Prosecution also relies upon Witness [REDACTED]'s testimony to support the allegation.<sup>235</sup> When asked whether [REDACTED]. [REDACTED]. Therefore, [REDACTED]. [REDACTED]. [REDACTED].<sup>236</sup> For the foregoing reasons, the Defence submits that the evidence does not support the allegation.

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<sup>231</sup> P-0109, T-154-CONF-FRA-ET, pp.62-63.

<sup>232</sup> *Ibid.*

<sup>233</sup> [REDACTED].

<sup>234</sup> P-0087, T-177-ENG-ET, pp.95-99.

<sup>235</sup> [REDACTED].

<sup>236</sup> [REDACTED].

96. The Prosecution also relies upon a UNOCI daily situation report to support the allegation.<sup>237</sup> The report was submitted to the case record through paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings.<sup>238</sup> However, the Defence would like to recall its objections to the admission of the UNOCI daily situation reports<sup>239</sup> to emphasize that they do not meet the necessary indicia of reliability to be considered in the assessment of the Motion. The document is not signed, bears no seal, no logo and its authors are not mentioned. During the cross examination of P-0414, the witness acknowledged that the information contained in the daily situation reports were mostly “allegations”.<sup>240</sup> As the daily situation reports are partially based on the calls received at the call centre, the objections expressed by the Defence on the call centre reports also apply to the daily situation reports. Hence, the Defence incorporates by reference paragraphs of the Motion related to the analysis of these call centre reports.<sup>241</sup> As the daily situation reports are also partially based on the information contained in the follow-up reports,<sup>242</sup> the Defence would like to recall its objections on these reports. These reports bear no signature, so that their authors cannot be identified. During the cross-examination of P-0414, the Defence was able to demonstrate the lack of reliability of the follow-up reports made by ONUCI.<sup>243</sup> It encompasses *inter alia* discrepancies between the names of the people who called the call centre and who were called back for the follow-up, absence of dates on several follow-up reports and juxtaposition of French and English on certain reports. For the foregoing reasons, the Defence submits that the follow-up reports, which are heavily redacted, cannot be verified by the Defence. The cross-examination of Witness P-0414 has revealed that such reports presented a range of problem in terms of reliability. Because they cannot be verified, the Defence submits that they should not be considered in the assessment of the Motion.

<sup>237</sup> Trial Brief, para. 175, footnote 514, UNOCI Report CIVOTP-0044-1119; *See also* Trial Brief, para. 176, footnote 516, UNOCI Report, CIV-OTP-0044-0358.

<sup>238</sup> Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings, ICC-02/11-01/15-895, 28 April 2017.

<sup>239</sup> *See* Defence Response to the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings” (ICC-02/11-01/15-895-Conf), ICC-02/11-01/15-1028-Conf, 15 September 2017.

<sup>240</sup> P-0414, T-76-CONF-FRA CT, pp. 44-45, lns. 9-5.

<sup>241</sup> *See* Motion, Section VI.4.A.vi. *The killings at roadblocks were not a result of Charles Blé Goudé’s speech at Le Baron Bar.*

<sup>242</sup> *See, for example,* Suivi du cas no. 23 et 24 / Rapport du Call Center du 02/03/2011 CIV-OTP-0044-1740 ; Suivi du cas no. 23 et 24 / Rapport du Call Center du 03/03/201, CIV-OTP-0044-1745.

<sup>243</sup> P-0414, T-75-CONF-FRA CT, pp. 72-79.

97. For the foregoing reasons, the Defence has proved that the discrepancies raised above affect all the ONUCI reports based on the call centre reports, the follow-up reports and the daily situation reports invoked by the Prosecution in the Trial Brief and, as a consequence, submits that the reports prepared during the post-electoral crisis by UNOCI should not be considered in the assessment of the Motion.
98. Finally, the Prosecution relies upon an ANSI Note, dated 14 March 2011, that was shown to several witnesses. It is to be observed that the content of the note suggesting that any alleged crimes committed at roadblocks, is clearly in contradiction with Charles Blé Goudé's actions, and does not prove linkage.
99. In conclusion, the phenomenon of the "roadblocks" cannot sustain the Prosecution theory as to the existence of the alleged "policy".

iv. Insufficient evidence of targeting neighbourhoods and religious institutions

100. The Prosecution alleges that "*pro-Gbagbo forces, in particular the pro-Gbagbo youth, often identified their targets by attacking neighbourhoods or religious institutions where communities perceived as supporting Ouattara were usually found, and by marking their houses*".<sup>244</sup> At the outset, the Defence notes that part of the evidence referred to by the Prosecution to support the allegation is not actually related to the allegation, but rather, to the alleged erection of roadblocks.
101. To support the allegation, the Prosecution relies upon evidence provided to the Chamber by Witness P-0441. However, the Defence notes that the excerpt mentioned by the Prosecution in support of the allegation is limited to the question of whether or not people of Dioula ethnicity could be found at the Mosque in Doukouré at the time of the post-electoral crisis, which the witness eventually confirmed.<sup>245</sup> The Defence submits that this element alone could not support the allegation.
102. The Prosecution also relies upon Witness P-0625's testimony to support the allegation. During his testimony, P-0625 told the Chamber that people from CEDEAO countries and people wearing "*gris-gris*" were chased by individuals

<sup>244</sup> Trial Brief, para. 176.

<sup>245</sup> P-0441, T-37-CONF-FRA-ET, pp. 39-40.

identifying themselves as Patriots.<sup>246</sup> However, he also repeated, spontaneously and not less than three times, that the acts of violence, whether in 2010 or before that date, were never planned, hence emphasizing that these acts of violence were never part of a policy.<sup>247</sup> The witness also acknowledged that he himself wore *gris-gris*,<sup>248</sup> which makes it difficult to consider that it was a distinctive mark. Therefore, the Defence submits that not only the allegation is not supported by the evidence, but the evidence directly contradicts the allegation.

103. The Prosecution also relies on the written statement of [REDACTED].<sup>249</sup> However, [REDACTED] did not specify whether or not [REDACTED] directly witnessed the allegations [REDACTED] made in the relevant excerpts. As such, these allegations could be nothing more than anonymous hearsay, while substantial parts of the relevant paragraphs are inferences made by the witness.

104. The Prosecution relies upon Witness P-0109's testimony to support the allegation.<sup>250</sup> During his testimony, P-0109 told the Chamber that he saw young people that he identified as supporters of Laurent Gbagbo and members of FESCI because of their t-shirts, breaking and burning down cars because, according to the witness, they belonged to Dioulas. However, the Defence notes that when the witness was asked by the Prosecution how he knew the reason why the cars were attacked, he did not respond, simply explaining that the people who committed the act were supporters of Laurent Gbagbo and members of FESCI.<sup>251</sup> Therefore, the Defence submits that the evidence does not support the allegation, to the extent that the ethnic motive put forward by the Prosecution is nothing more than an inference made by the witness, which amounts to opinion evidence.

105. The Defence also notes that the Prosecution refers to an excerpt of the testimony of Witness P-0109 where he acknowledged that he did not see fights at the Mosque and did not see a man called Cissé being injured and later killed. He only saw his body at

<sup>246</sup> P-0625, T-27-FRA CT, pp.7-11.

<sup>247</sup> *Ibid.*, p. 8, lns. 8-22, p. 9, lns. 7-9, p. 10, lns. 21-27.

<sup>248</sup> *Ibid.*, p. 11.

<sup>249</sup> [REDACTED].

<sup>250</sup> P-0109; T-154-CONF-FRA-ET, pp.24-25.

<sup>251</sup> P-0109, T-154-CONF-FRA CT, p. 23.

the Mosque at the end of the afternoon on 25 February.<sup>252</sup> He also said that the fights started again, but did not witness them as he had left. Hence, the relevance of the evidence is absent, especially in light of the fact that it is opinion evidence as to the alleged fights in the evening of 25 February 2011.

106. Again, the Prosecution relies upon Witness P-0097's testimony on the alleged "article 125" to support the evidence. Therefore, the Defence incorporates by reference the paragraph of the Motion that is related to this part of his testimony.<sup>253</sup>

107. The Prosecution relies upon Witness P-0046's testimony to support the allegation.<sup>254</sup> P-0046 told the Chamber that he had been informed of the killing of an imam around 19 March 2011, after two phone calls made by him to the head of the CRS in Williamsville and he had no recollection of other murders of imams. When shown a BQI that supposedly proved that the Minister of Interior was informed of the killings,<sup>255</sup> although he recognized the format, he also said that as the document was neither dated, nor signed, it could not have reached the Minister of Interior.<sup>256</sup> For the foregoing reasons, the Defence submits that the evidence does not support the allegation as it only concerns what appears to be an isolated event from which the Prosecution failed to substantiate any alleged policy.

108. The Prosecution also relies on two videos recorded by Witness P-0088 and commented by P-0087.<sup>257</sup> The Defence submits that the content of the video does not support the allegation and incorporates by reference the paragraphs of the Motion that elaborate on both videos.<sup>258</sup>

109. The Prosecution also relies upon a daily situation report from ONUCI to support the allegation. The Defence incorporates by reference the relevant paragraph of the

<sup>252</sup> P-0109, T-155-CONF-FRA CT2, pp.14-15.

<sup>253</sup> See Motion, Section III.2.B.iii. *Insufficient evidence of roadblocks being part of an alleged policy.*

<sup>254</sup> P-0046, T-126-CONF-FRA-ET, p.42-46.

<sup>255</sup> CIV-OTP-0048-1348.

<sup>256</sup> P-0046, T-126-CONF-FRA CT, pp. 43-44.

<sup>257</sup> Video, 29 March 2011, CIV-OTP-0015-0594 (transcript CIV-OTP-0021-0013; translation CIV-OTP-0021-0109); Video, 29 March 2011, CIV-OTP-0015-0595 pp.48-49; (transcript CIV-OTP-0021-0026; translation CIV-OTP-0021-0078).

<sup>258</sup> See Motion, Section VI.4.A.iv. *The alleged proliferation of roadblocks after 25 February 2011 cannot be attributed to Charles Blé Goudé's speech.*

Motion that is dedicated to the issues of unreliability raised by the ONUCI daily situation reports.<sup>259</sup>

110. The Prosecution alleges that “*Militia members targeted other Dioula houses which they had identified with the aid of "the neighbourhood Bétés or Guérés" who pointed them out.*”<sup>260</sup> The Defence submits that, to support the allegation, the Prosecution only provided evidence that amounts to opinion evidence and anonymous hearsay. Hence, no reasonable Trial Chamber could accept this allegation.

111. To support the allegation, the Prosecution relies upon Witness [REDACTED]’s testimony.<sup>261</sup> [REDACTED] testified before the Chamber that [REDACTED]. [REDACTED]. However, when asked how [REDACTED].<sup>262</sup> As a consequence, [REDACTED]’s testimony on this issue amounts to anonymous hearsay. Also, the excerpt of Witness [REDACTED]’s written statement, mentioned by the Prosecution, is anonymous hearsay, seeing as the witness finally acknowledged that [REDACTED].<sup>263</sup>

112. Finally, the Prosecution relies upon Witness [REDACTED] to support the allegation.<sup>264</sup> [REDACTED] told the Chamber about [REDACTED]. [REDACTED]. [REDACTED].<sup>265</sup> However, [REDACTED] did not provide any objective element to substantiate [REDACTED] conviction. For the foregoing reasons, Witness [REDACTED]’s testimony on this specific element amounts to opinion evidence and should therefore be discarded.

### **III.3. The Prosecution failed to prove that Laurent Gbagbo and an alleged inner circle acted pursuant to a state or organisational policy**

113. The Prosecution contends that Laurent Gbagbo and the alleged inner circle would have acted pursuant to an organisational policy.

<sup>259</sup> See Motion, Section III.2.B.iii. *Insufficient evidence of roadblocks being part of an alleged policy.*

<sup>260</sup> Trial Brief, para. 176.

<sup>261</sup> [REDACTED].

<sup>262</sup> [REDACTED].

<sup>263</sup> [REDACTED].

<sup>264</sup> [REDACTED].

<sup>265</sup> [REDACTED].



114. In paragraph 219 of the confirmation of charges decision of Laurent Gbagbo, the Chamber, while noting the Prosecution’s submissions that “*GBAGBO and his inner circle constituted an organisation within the meaning of article 7(2) of the Statute*” which in turn had “*control over the pro-Gbagbo forces, which constituted an organised and hierarchical apparatus of power*”, ruled that “*for the purposes of its analysis of the contextual elements, it is appropriate to focus on the entire entity to which the policy to attack a civilian population is attributed, and not only on the individual(s) who adopt the policy at the highest level on behalf of the State or organisation*”. It added that “*in light of the evidence available, the Chamber is satisfied that the pro-Gbagbo forces, which included elements of the FDS, youth militia and mercenaries, and were led by Laurent Gbagbo and his inner circle, constituted an organisation within the terms of article 7(2)(a) of the Statute*”. Yet, the Prosecution departs from the Chamber’s decision in alleging that both the pro-Gbagbo forces and Laurent Gbagbo and his inner circle constituted a State or organisation respectively. The departure by the Prosecution from its initial allegations in the Pre-Trial Brief and as confirmed by the Pre-Trial Chamber, on such a key element, illustrates that its case theory is far from consistent.

#### **A. The Prosecution failed to prove the existence of an inner circle**

##### **i. The Prosecution failed to prove the constitution of a structure**

115. Despite announcing in its Trial Brief the upcoming substantiation of the existence of an inner circle,<sup>266</sup> the Prosecution never actually attempts to prove the existence of such a structure.<sup>267</sup> A few paragraphs after having announced that the Trial Brief would describe the existence of an inner circle, and having not covered this point in the meantime, the Prosecution claims that “*Blé Goudé enjoyed a special status within the inner circle*”,<sup>268</sup> and thereby assumes it exists. Continuously thereafter, the Prosecution refers to “*Gbagbo and members of the Inner Circle*”,<sup>269</sup> taking the existence of this alleged inner circle for granted. Yet, not one single piece of evidence directly points to the constitution of a separate entity comprising a fixed group of

<sup>266</sup> See Trial Brief, para. 12.

<sup>267</sup> The Defence notes that the term “inner circle” seems to have been created by the Prosecution itself as there is no evidence that would suggest that the alleged members of the inner circle used this term to refer to themselves.

<sup>268</sup> Trial Brief, para. 21.

<sup>269</sup> See, for instance, Trial Brief, para. 35.

identified persons having jointly agreed and devised an alleged common plan. While in the initial document of notification of the charges against Laurent Gbagbo, the Prosecution alleged that Laurent Gbagbo had, prior to the post-electoral crisis, created a “structure” among the Ivorian government and the FDS, leading to an absolute control over the FDS and allowing him to implement the common plan, this has not been repeated in the current allegations about the alleged inner circle.<sup>270</sup>

116. The Defence, in an attempt to understand who would represent this alleged inner circle, counted the number of individuals the Prosecution claims form part of it. The Defence reached a total of 23 individuals, and assumed to be members only those individuals on which the Prosecution specifically expounded in the section “*Members of the Inner Circle shared GBAGBO’s aim to maintain GBAGBO in power by all means*” as included in such an inner circle<sup>271</sup> and assumed also that the “*carré décisionnel*” is another term to refer to the inner circle.<sup>272</sup> It is noteworthy that the list of individuals who are at this stage alleged to have been members of the inner circle differs significantly from the list presented by the Prosecution in the Pre-Trial Brief. For instance, Séka Séka has now been expressly added to the list of alleged inner circle members.<sup>273</sup> While most of them have not been called as witnesses by the Prosecution, many of the active ministers have been removed,<sup>274</sup> whereas certain leaders of youth group have now been relegated to the position of “dependents” of the alleged inner circle members.<sup>275</sup>

117. Also, by the beginning of April, all the alleged main actors of the alleged inner circle had stepped down or left, including P-0009, P-0010, P-0011, P-0047, and Charles Blé Goudé. Yet, the alleged inner circle was still allegedly active thereafter, “*Laurent Gbagbo and Inner Circle rel[ying] more heavily on allegiances developed in the*

<sup>270</sup> ICC-02/11-01/11-124-Anx1-Corr, dated 16 May 2012, alleging at paragraph 75 that: « *Avant la crise postélectorale, GBAGBO a créé une structure au sein du Gouvernement ivoirien et des FDS, ce qui lui a assuré un contrôle absolu sur ces dernières et lui a permis de mettre en œuvre le Plan commun* ».

<sup>271</sup> For instance, the Prosecution expressly includes Dadi within the inner circle while not including Zadi, although also considered by the Prosecution as having been loyal to Laurent Gbagbo. See Trial Brief, paras 71-73.

<sup>272</sup> The Prosecution alternates between the two terminologies although the context does not always suggest he refers to the same concepts. See Trial Brief, paras 81; 79.

<sup>273</sup> See Trial Brief, para. 73 and Pre-Trial Brief, para. 27.

<sup>274</sup> See Pre-Trial Brief, para. 29, citing Dallo, Don Mello, and Voho Sahi who no longer appear in the list given in the Trial Brief, paras 77 and 78.

<sup>275</sup> Compare Trial Brief, para. 75 and Pre-Trial Brief, para. 28.

*parallel structure*”.<sup>276</sup> The Defence wonders who in the Prosecution’s submission composed the inner circle by then. The Prosecution seems to consider this alleged inner circle as a permanently changing and moving entity whose membership would be a reflection of what was happening at the time.

118. The Prosecution fails to identify any concrete evidence showing the alleged existence of the inner circle as a structure, separate from the state apparatus. It also fails to substantiate how it would have been operating and what would be its scope. The civil or military officers testified that [REDACTED].<sup>277</sup> In the same vein, the Prosecution has not adduced any evidence demonstrating that as from 2002, any preparatory meetings attended by a fixed group of persons where an alleged common plan, aiming *inter alia* at mobilizing and coordinating the so-called pro-Gbagbo forces, would have been discussed. Although the Prosecution refers to a number of meetings throughout the Trial Brief, where specific operations were allegedly discussed, it does not point to one single meeting during which the overall common plan would have been on the agenda. Instead, the alleged existence of the inner circle is exclusively based on assumptions and circumstantial evidence. In the Prosecution’s view, the existence of the alleged inner circle seems to be demonstrated mainly by: (i) the alleged close relationships between such and such alleged members; (ii) the alleged shared intent to maintain Laurent Gbagbo in power by all means, which proof of intent is itself based on circumstantial evidence and (iii) the alleged coordination of activities between the alleged members and Laurent Gbagbo, or between themselves, towards implementing the alleged common plan.

119. As developed below, the fact that Laurent Gbagbo might have been close to certain individuals does not make *ipso facto* these persons part of an inner circle.

120. Assuming *arguendo* that the Chamber would accept to consider such circumstantial evidence mentioned above in order to determine whether a reasonable chamber could find that an inner circle composed of the 23 individuals mentioned by the Prosecution existed, the evidence presented is not sufficient for a reasonable chamber to conclude that (i) those alleged members shared the intent to maintain Laurent Gbagbo in power

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<sup>276</sup> Trial Brief, para. 223.

<sup>277</sup> P-0009, T-195-CONF –FRA CT, p. 61; P-0009, T-200-CONF-FRA CT, p. 37; 50; P-0010, T-138-CONF-FRA, p. 36; P-0011, T-132-FRA CT, p. 94.

by all means, including by the commission of crimes against civilians perceived to be supporters of Alassane Ouattara or that (ii) the coordination of their activities was such as to reasonably be able to infer the conception and implementation of a common plan.

- ii. The Prosecution failed to prove the existence of an alleged inner circle, which shared the aim to keep Laurent Gbagbo in power by all means

121. In the Confirmation of Charges Decision, Pre-Trial Chamber I found that there was sufficient evidence to show that Laurent Gbagbo and a close number of associates shared his objective to stay in power by all means, including by the use of force against civilians.<sup>278</sup> At the close of the Prosecution case, this allegation has not been proven to the requisite threshold. The Prosecution has failed to adduce sufficient evidence upon which a reasonable Trial Chamber would conclude that these associates shared the alleged aim that Laurent Gbagbo stay in power by all means. To the contrary, some of the evidence cited by the Prosecution in support of this allegation leads to the conclusion that Laurent Gbagbo's associates supported disarmament and a peaceful resolution to the Ivoirian crisis.<sup>279</sup>

(a) Laurent Gbagbo

122. At the outset, the Defence notes that, for the most part, the Prosecution intends to support its allegations as to Laurent Gbagbo's intent to remain in power by all means and Charles Blé Goudé's sharing of this intent with evidence that significantly predates the temporal scope of the charges.<sup>280</sup> The Defence has always been of the view that such evidence, related to events dating back to the mid-1990s, does not accurately represent the situation that prevailed in 2010-2011.<sup>281</sup> For the foregoing reasons, the Defence submits that it would be unduly prejudicial to Charles Blé Goudé to take such evidence into consideration in the assessment of the Motion.

<sup>278</sup> ICC-02/11-01/11-656-Red, para. 79.

<sup>279</sup> ICC-02/11-01/11-656-Red; *See* Motion, *Section III.3.A.ii(g) former ministers citing* P-0500, T-181-FRA-ET, pp. 52-55, 59-62.

<sup>280</sup> Trial Brief, paras 12-24.

<sup>281</sup> *See*, for example, Consolidated Defence Response to ICC-02/11-01/15-998 and ICC-02/11-01/15-1089, ICC-02/11-01/15-1099-Conf, 15 January 2018, para. 19.

123. The Defence notes that the first allegations as to Laurent Gbagbo's intent to stay in power by all means and Charles Blé Goudé's sharing of this aim is not substantiated by evidence.<sup>282</sup>

124. The Defence notes that the entire section of the Trial Brief dedicated to Laurent Gbagbo's alleged intention to stay in power by all means exclusively relies on P-0048's testimony as he is the only witness cited in support of this part of the Trial Brief.<sup>283</sup> In the present section, the Defence will demonstrate that P-0048's evidence does not support the Prosecution's allegations and mostly amounts to opinion evidence. However, at the outset, considering the importance of P-0048's testimony in the Prosecution's narrative, the Defence submits that any relevant evidence provided by P-0048 would therefore be uncorroborated.

125. The Defence also notes that Witness P-0048 acknowledged himself that he was allied with armed groups, within what the witness refers to as the G7, claiming that "*on ne fait pas de la rebellion les mains nues*".<sup>284</sup> He reiterated this statement several times while mentioning his armed allies.<sup>285</sup> The witness had hence a direct interest during the crisis and was close to armed groups opposed to Laurent Gbagbo. For the foregoing reasons, the Defence submits that he cannot be deemed as credible by the Chamber, as to his statements directed against Laurent Gbagbo and Charles Blé Goudé and as to his account of the recent history of Côte d'Ivoire because of the strong bias that he holds against Laurent Gbagbo and Charles Blé Goudé, due to his political and armed activities.

126. The Prosecution alleges that the Presidential election of 2000 was "*overshadowed by issues of nationality, ethnicity and 'Ivoirité' [Ivorianness]*".<sup>286</sup> The Defence notes that the concepts of *Ivoirité* that the Prosecution seems to locate at the core of the Presidential election of 2000 is never defined, nor explained in the Trial Brief. P-0048 provided a vague definition of the concept<sup>287</sup> but, as he testified as a fact witness, such a definition amounts to opinion evidence and should not be considered by the

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<sup>282</sup> Trial Brief, para. 13.

<sup>283</sup> See Trial Brief, II.A.1. and II.A.2., paras 12-20.

<sup>284</sup> P-0048, T-54-FRA CT, pp. 24-26.

<sup>285</sup> P-0048, T-54-FRA CT, pp. 25-26.

<sup>286</sup> See Trial Brief, para. 15.

<sup>287</sup> P-0048, T-53-FRA CT, pp. 12-13.

Chamber. Besides, he did not say that the “*election was overshadowed by issues of nationality, ethnicity and Ivoirité*”.

127. The Prosecution uses selective portions of P-0048’s testimony to substantiate several allegations as to the political climate in Côte d’Ivoire between the mid-1990s and 2002.<sup>288</sup> However, the testimony provided by P-0048 does not support these allegations.

128. First, the Prosecution submits that “*Ivorians carrying a Northern sounding last name were arrested, murdered or disappeared.*”<sup>289</sup> However, P-0048 never made such a statement in the sections of his testimony quoted in support of the allegation. P-0048 said that some ethnic groups were “*challenged or questioned*” (“*mis à l’index*”)<sup>290</sup> and then he used the word “*targeted*”,<sup>291</sup> but did not provide details and did not make any reference to arrest, murder or disappearance. Besides, this statement was made in the middle of his evidence regarding cultural mergers in Côte d’Ivoire and their impact on Ivorian politics. The witness emphasized that “*in Côte d’Ivoire the various cultures have so deeply merged over time*”<sup>292</sup> and concluding that a strategy of challenging or questioning certain ethnic groups “*did not have any impact on cohabitation within various neighbourhoods on a daily basis*”.<sup>293</sup> The position of the witness on this topic, which completely contradicts the allegation made by the Prosecution is to be found in the same excerpt: “*It is true, however, that some politicians wanted to avail themselves of ethnic identity for their purposes, although the socio-cultural fabric of the country did not make it possible for this type of system of ethnic affinity to evolve.*”<sup>294</sup> Therefore, the allegation made by the Prosecution as to the arrests, murders and disappearances of Ivoirians carrying a Northern sounding last name remains unsubstantiated.

129. Second, the Prosecution alleges that “*Although originally opposed to the concept in 1995, GBAGBO (and other politicians such as Robert Guéï) eventually adopted it, causing a rift which explains in large part the armed conflict which broke out in 2002*

<sup>288</sup> See Trial Brief, para. 15; P-0048, T-53-FRA CT, pp. 10-13 and T-54-FRA CT, p. 6.

<sup>289</sup> Trial Brief, para. 15.

<sup>290</sup> P-0048, T-53-FRA CT, p. 10.

<sup>291</sup> *Ibid.*

<sup>292</sup> P-0048, T-53-FRA CT, pp. 10-13, *inter alia* p. 10, lns. 5-6.

<sup>293</sup> P-0048, T-53-FRA CT, p.10, lns. 21-22.

<sup>294</sup> P-0048, T-53-FRA CT, p.10, lns. 10-13.

*in Côte d'Ivoire.*"<sup>295</sup> In the excerpts referenced by the Prosecution for this allegation,<sup>296</sup> P-0048 never said that Laurent Gbagbo embraced the concept of *Ivoirité* for which, as recalled by the Defence, the Chamber was provided with a definition that amounts to opinion evidence.

130. Third, the Prosecution alleges that Laurent Gbagbo "*exploited the concept of Ivoirité and was keen to eliminate Ouattara from the presidential race based on ethnic grounds*", referring to the change in the Ivorian Constitution in 2000 that concerned Article 35.<sup>297</sup> The Prosecution seems to link Laurent Gbagbo to the constitutional amendment, but does not provide evidence in support of the allegation. First, P-0048 recalled that this constitutional amendment had been approved by referendum.<sup>298</sup> Second, the Defence recalls that Laurent Gbagbo was not in office when the constitutional amendment was proposed and approved and that he later competed at the Presidential election against General Gueï, who advocated for the constitutional change.<sup>299</sup> The fact that Laurent Gbagbo later publicly said that the aim of the constitutional amendment was to eliminate Alassane Ouattara from the Presidential election does not prove that he was at the origin of it, nor that he had the intent to do it in 2000.<sup>300</sup> Therefore, the Prosecution failed to attribute the constitutional amendment of 2000 and the later exclusion of Alassane Ouattara from the 2000 Presidential election to Laurent Gbagbo.

131. Fourth, the Prosecution alleges that Laurent Gbagbo "*took over power while the elections were contested*".<sup>301</sup> However, once again, the evidence does not support the allegation. P-0048 clearly stated that Robert Gueï tried to take over power before the vote count and compilation of the results were conducted, proclaiming himself as elected president.<sup>302</sup>

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<sup>295</sup> Trial Brief, para. 15.

<sup>296</sup> P-0048, T-53-FRA CT, p. 13.

<sup>297</sup> Trial Brief, para. 16.

<sup>298</sup> P-0048, T-53-FRA CT, pp. 18-19.

<sup>299</sup> P-0048, T-54-FRA CT, p. 6.

<sup>300</sup> P-0048, T-53-FRA CT, pp. 19, 24; Audio recording of Gbagbo's speech at the Forum de réconciliation, 14 November 2001, CIV-OTP-0052-0523 (transcript at CIV-OTP-0054-0241).

<sup>301</sup> Trial Brief, para. 17.

<sup>302</sup> P-0048, T-53-FRA CT, p.20, lns. 16-21.

132. Fifth, the sequencing of the 2000 Presidential election as provided by the Prosecution does not correspond to P-0048's testimony.<sup>303</sup> P-0048 indeed emphasized that not only Gbagbo supporters demonstrated in support of his election, but also that people opposed to and tired of a military regime joined them, as well as the army of Côte d'Ivoire, and even RDR supporters to protest against the militias surrounding and serving Robert Gueï.<sup>304</sup> Therefore, the Prosecution failed to prove that Laurent Gbagbo took over power while the elections were contested. The reality is that the election of Laurent Gbagbo as President was widely supported in Côte d'Ivoire, a support that went way beyond the FPI supporters and gathered even the RDR opposition's support.

133. Sixth, when addressing the reaction of RDR to the election of Laurent Gbagbo, the Prosecution, once again, misrepresents the witness' testimony. P-0048 stated that RDR "*duly noted and accepted the fact that President GBAGBO was the President who had been democratically elected of Côte d'Ivoire.*"<sup>305</sup> Contrary to the Prosecution's allegation,<sup>306</sup> the witness had no recollection of demonstrations organised by Ouattara's RDR supporters to demand new elections.<sup>307</sup> It is only when the Prosecution showed him a report from Human Rights Watch<sup>308</sup> addressing these alleged demonstrations that the witness first confirmed their existence, and finally reiterated that he had no recollection of them.<sup>309</sup> The Defence is astonished that, despite the witness stating<sup>310</sup> and repeating<sup>311</sup> that he had no recollection of a call from the RDR to demonstrate in the streets to demand new elections, the Prosecution maintains this allegation.

134. Regarding the use, in the Trial Brief, of reports made by NGOs or international organizations, such as UNOCI, the Defence hereby explains its position that shall apply to all the reports invoked by the Prosecution in the Trial Brief. First, the Defence submits that such reports contain mostly anonymous hearsay. Not only does

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<sup>303</sup> Trial Brief, para. 17.

<sup>304</sup> P-0048, T-53-FRA CT, pp. 20-23, lns. 22-15, pp. 24-25, lns. 23-5.

<sup>305</sup> P-0048, T-53-FRA CT, p.25, lns. 11-14.

<sup>306</sup> Trial Brief, para. 18.

<sup>307</sup> P-0048, T-53-FRA CT, p.25, lns. 18-20.

<sup>308</sup> HRW Report, August 2001, CIV-OTP-0052-0165 at 0176.

<sup>309</sup> P-0048, T-53-FRA CT, p. 28, lns. 15-21.

<sup>310</sup> P-0048, T-53-FRA CT, p. 25, lns. 18-20.

<sup>311</sup> P-0048, T-53-FRA CT, p. 28, lns. 15-21.



this anonymous hearsay make it impossible for the Defence to test the credibility of the anonymous witnesses cited in these reports, but it also introduces the risk of considering the report as corroboration of evidence provided by a witness, who in fact is an anonymous source of the report. Second, the Defence submits that, even for reports containing statements made by identified sources, these sources have not testified in the present trial and hence, their credibility could not be tested either by the Defence or by the Chamber. In the same way that the veracity of their testimony could not be verified, especially given the fact that these witnesses signed their account of facts blindly, without a possibility to read it or to have it read and without knowing what they were signing.<sup>312</sup> Therefore, the Defence submits that these reports should not be admitted to the case record and, if the Chamber admitted them, their probative value and their evidentiary weight should be very limited.

135. Seventh, the Prosecution addresses an incident that was revealed after Laurent Gbagbo's inauguration in October 2000 and alleges that: "*a mass grave was discovered in Yopougon, near the MACA: 52 men, undressed, had been killed, by members of the Abobo Gendarmerie. During the ten years of GBAGBO's Presidency, no one was held accountable for this killing and the perpetrators were released due to alleged lack of evidence.*"<sup>313</sup> To substantiate such an allegation, the Prosecution seems to rely on P-0048's testimony. However, the evidence provided by the witness does not support the allegation. P-0048 indeed stated that no one, even the UN, has been able to clarify what happened with these 52 men and to bring the persons responsible for the mass grave to trial, which tends to show that there has been an investigation of the incident. His knowledge of the incident is limited to these facts.<sup>314</sup> The additional evidence provided by the Prosecution lies in a report drafted by Human Rights Watch in 2001, including the attribution of the alleged crimes to members of the Abobo Gendarmerie.<sup>315</sup> The Defence reiterates that the reports made by NGOs should not be admitted to the case record and, assuming *arguendo* that they would be admitted, their probative value and evidentiary weight, as explained below, should be very limited. The Defence also submits that a report drafted less than one year after the discovery of the mass grave cannot lead to any definitive conclusions as to the undertaken

<sup>312</sup> See, for example, [REDACTED].

<sup>313</sup> Trial Brief, para. 18.

<sup>314</sup> P-0048, T-53-FRA CT, pp. 31-32, lns. 27-26.

<sup>315</sup> HRW Report, August 2001, CIV-OTP-0052-0165 at 0195-0196.

investigations. Besides, on this specific incident, the report was not shown to the witness. Therefore, the Prosecution tries to support its allegation using a specific part of a document that has not been debated by the parties and participants to trial because it has not been shown to the witness. The Defence thus submits that the Prosecution has failed to prove that the above-mentioned incident could be attributed to members of the *Gendarmerie* of Abobo in a context of general impunity. The conclusion drawn by the witness on impunity amounts to opinion evidence as it is not substantiated by other facts.

136. Eighth, the Prosecution alleges that “*GBAGBO’s Presidency did not heal the wounds left by Ivoirité*”.<sup>316</sup> To support this allegation, the Prosecution goes back to the fact that Alassane Ouattara was not allowed to run for the 2000 Presidential election. The Defence submits that the Prosecution cannot substantiate an allegation with facts that happened prior to the temporal scope of the allegation – the Laurent Gbagbo’s Presidency starting in October 2000. Moreover, as already submitted, the Prosecution failed to attribute Ouattara’s exclusion of the Presidential election to Laurent Gbagbo.

137. Finally, the Prosecution alleges that during demonstrations held in December 2000, “*RDR protesters and supporters were shot at and killed by members of the Gendarmerie, and arrested, detained, tortured and beaten by elements of the Police and Gendarmerie in the Ecole Nationale de Police and the Gendarmerie’s Camp Agban*.”<sup>317</sup> The allegation is exclusively supported by the same 2001 report from Human Rights Watch, excluding any witness’ testimony or other documents of stronger probative value.<sup>318</sup> The Defence therefore submits that the Prosecution failed to substantiate the allegation.

138. To conclude, the Defence submits that by referring to unsubstantiated allegations related to events that took place between the 1990s and 2000, the Prosecution has failed to prove Laurent Gbagbo’s alleged intent to remain in power by all means in 2010, ten years later.

(b) Charles Blé Goudé

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<sup>316</sup> Trial Brief, para. 19.

<sup>317</sup> Trial Brief, para. 20.

<sup>318</sup> HRW Report, August 2001, CIV-OTP-0052-0165 at 0204-0208.

139. The Prosecution alleges that Charles Blé Goudé was Laurent Gbagbo's close ally and worked together with him to keep him in power.<sup>319</sup> However, the Prosecution does not provide evidence that any reasonable chamber would accept.

140. At the outset, the Defence recalls that it would be unfair to consider the fact that Laurent Gbagbo intended to stay in power by running for the Presidential election would constitute evidence that he intended to remain in power by all means. As a consequence, the fact that Charles Blé Goudé was his campaign director for the youth and, later, served as a Minister in his government is insufficient to characterize that he shared any alleged objective to maintain Laurent Gbagbo in power by all means. Intending to remain in power through democratic means is different and separate from intending to remain in power by all means.

*(i) The Prosecution failed to prove that Charles Blé Goudé was very close to Laurent Gbagbo*

141. The Prosecution alleges that Charles Blé Goudé “*was very close to [Laurent] GBAGBO*” at least from Laurent Gbagbo's electoral campaign in October 2000.<sup>320</sup> To support this allegation, the Prosecution submitted a photo, taken on 21 October 2000, during the Presidential campaign, representing Laurent Gbagbo and Charles Blé Goudé together.<sup>321</sup> The fact that Charles Blé Goudé took part in Laurent Gbagbo's electoral campaign in 2000 does not reveal a “very close” link between the two of them. Besides, hugging is a common form of greeting in Côte d'Ivoire in general and amongst politicians in particular. Therefore, it is insufficient to establish a “very close” relationship between the co-Accused.

142. To substantiate the alleged “very close” relationship between Laurent Gbagbo and Charles Blé Goudé, the Prosecution also relies upon Witness P-0087's testimony. P-0087 said before the Chamber that he remembers that, during an interview, Charles Blé Goudé told him that he had dinner with Laurent Gbagbo and his wife, which gave the witness the “impression” that they were close personally and professionally.<sup>322</sup> First, the Defence notes that the Prosecution has not referred to the said interview in

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<sup>319</sup> Trial Brief, paras 21-24.

<sup>320</sup> Trial Brief, para. 22.

<sup>321</sup> CIV-OTP-0062-0970.

<sup>322</sup> P-0087, T-177-ENG CT, pp. 77-78.

support of the allegation. Second, a witness relating an “impression” amounts to opinion evidence that is not admissible before the Court. The Prosecution’s assertion hence remains unsubstantiated and speculative.

143. The Prosecution also relies upon Witness P-0009’s testimony to support this allegation. P-0009 indeed told the Chamber that “*in his various rallies, he would often meet with President Gbagbo, with whom he was in a very close relationship*”.<sup>323</sup> However, the Defence notes that the Prosecution did not provide any videos or photos picturing Laurent Gbagbo attending a meeting given by Charles Blé Goudé during the relevant time frame of the charges. Therefore, the Defence submits that the evidence invoked by the Prosecution is not corroborated.

144. The Prosecution also invokes Witness P-0009’s testimony to support the allegation that the COJEP, created by Charles Blé Goudé, was a pro-Gbagbo youth organisation. P-0009 indeed told the Chamber that COJEP was “*somewhat of an appendix, so to speak, of the pro-Gbagbos*”.<sup>324</sup> However, the Defence notes that he was not asked how he got knowledge of that information or how he came to that conclusion. The Defence also submits that the fact that COJEP supported Laurent Gbagbo during the 2010 Presidential election cannot suffice to characterize a close relationship between Laurent Gbagbo and Charles Blé Goudé as political support does not amount to personal relationships.

145. The Prosecution alleges that Charles Blé Goudé fully endorsed Laurent Gbagbo’s policies and worked together with him towards the same cause,<sup>325</sup> relying upon P-0087’s testimony to support the allegation. However, once again, P-0087 told the Chamber that “*there was certainly **the impression** that he was 100 per cent on board with Laurent GBAGBO’s policies*”,<sup>326</sup> hence providing opinion evidence that is not admissible before the Court. The witness indeed provided his own interpretation of Charles Blé Goudé’s words instead of restoring them.

146. The same evidence coming from Witnesses P-0087 and P-0009 is used by the Prosecution to support the allegation that Charles Blé Goudé “*was devoted*” to

<sup>323</sup> P-0009, T-193-FRA CT, p.39.

<sup>324</sup> P-0009, T-193-FRA CT, p.39.

<sup>325</sup> Trial Brief, para. 22.

<sup>326</sup> P-0087, T-177-ENG-ET, p.78. *Emphasis added*.

Laurent Gbagbo.<sup>327</sup> However, in addition to the above-mentioned arguments, the Defence raises that neither witnesses used the terms “devotion” or “devoted” in the course of their testimonies when addressing the relationship between the co-Accused.

*(ii) The Prosecution failed to prove that Charles Blé Goudé would have called the youth to take over the streets*

147. Referring to Witness P-0625’s testimony, the Prosecution alleges that “*whenever [Charles] BLE GOUDE called upon the population to do something, then people would come, people would follow what he said*”,<sup>328</sup> hence omitting substantial parts of P-0625’s testimony that contextualized and elaborated on this single and isolated sentence. P-0625 provided the Chamber with a re-contextualization of Charles Blé Goudé’s speeches, using and explaining the term “*les mains nues*”.<sup>329</sup> First, he explained that Charles Blé Goudé presented himself to the population “*les mains nues*” (“with bare hands”), meaning that he could be dislodged any time, emphasizing the peaceful nature of his civic actions. Second, after asserting that when Charles Blé Goudé would call on the population, people would follow him, he questioned the risk of having several thousand people following him. Hence, it was rendered necessary for Charles Blé Goudé to emphasize that the call was made “*les mains nues*”, referring to the definition given by P-0625 to avoid any casualties.<sup>330</sup> Witness P-0097 confirmed such a definition, emphasizing that the fight “*les mains nues*” was a symbolic fight through words, by opposition to a fight through weapons, referring respectively to Martin Luther King and Malcolm X.<sup>331</sup> Third, P-0625 went further, stating that the calls allegedly made by Charles Blé Goudé were never put into effect, to the extent that no one actually marched or tried to march on the Golf Hotel. He even remembered that such calls were never launched.<sup>332</sup> For the foregoing reasons, the Defence submits that the allegation, as formulated by the Prosecution aims to distort Witness P-0625’s testimony, giving a restrictive interpretation of his words. By

<sup>327</sup> Trial Brief, para. 22.

<sup>328</sup> Trial Brief, para. 23.

<sup>329</sup> P-0625, T-28-CONF-FRA CT, pp. 4-5.

<sup>330</sup> See also, Vidéo 4 January 2011, Interview to France 24, CIV-OTP-0019-0290 at 00:03:40 – 00:04:31 (transcript CIV-OTP-0062-0939 at 0943, lns. 120-126).

<sup>331</sup> P-0097, T-49-CONF-FRA CT, pp. 46-47, especially p. 47, lns. 11-22; See also, P-0449, T-160-CONF-FRA CT, p. 14.

<sup>332</sup> P-0625, T-28-CONF-FRA CT, pp. 4-5.

restoring the exact context and explanation provided by the witness, the Defence submits that the evidence does not support the allegation.

148. The Defence notes that the allegation formulated by the Prosecution that “[i]n his speeches, broadcast by the pro-GBAGBO media, BLÉ GOUDÉ used rhetoric inciting hatred against the international community and against civilians described as ‘foreigners’” is not supported by evidence, meaning that the Prosecution did not provide any reference to testimonies or documentary evidence to support it.<sup>333</sup>

149. The Prosecution then alleges that “[i]n response to calls from [Charles] BLE GOUDE, young people took over the streets and perpetrated violence in 2003, in 2004 and in 2006, obstructing political progress and undermining peace accords in order to keep [Laurent] GBAGBO in power”.<sup>334</sup> To substantiate the allegation, the Prosecution refers to several events and invokes several testimonies and items of documentary evidence.

150. First, the Prosecution mentions Witness P-0048’s testimony in support of the allegation, specifically related to the demonstrations that happened in Abidjan after the conclusion of the Linas Marcoussis Agreement in 2003.<sup>335</sup> The witness gave an account of the demonstrations that took place in Abidjan. However, the witness also acknowledged that he was not in Côte d’Ivoire during that period of time as he was still in Paris and travelled back to Abidjan several days after.<sup>336</sup> For the foregoing reasons, his entire testimony on the aftermath of the Linas Marcoussis Agreement in Abidjan amounts to hearsay, for which no source was provided. The Defence objected to the whole line of questioning as it called for opinion evidence, which was sustained.<sup>337</sup>

151. Besides, when P-0048 was asked by the Prosecution who was the head of the youth that demonstrated in the streets, he responded that the youth operated a “federation of energy” but did not mention any person who would be their leader, and more specifically, he did not mention Charles Blé Goudé as their leader or instigator of the

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<sup>333</sup> Trial Brief, para. 23.

<sup>334</sup> *Ibid.*

<sup>335</sup> P-0048, T-53-FRA CT, pp. 55-63.

<sup>336</sup> P-0048, T-53-FRA CT, pp. 55, 63.

<sup>337</sup> P-0048, T-53-FRA CT, p. 63.

movement.<sup>338</sup> For the foregoing reasons, the Defence submits that the evidence does not support the allegation as the witness did not report any calls from Charles Blé Goudé, he did not mention violence perpetrated by the youth and provided a testimony that contains inadmissible opinion evidence and anonymous hearsay as he was not in Côte d'Ivoire when the events happened.

152. Second, the Prosecution relies upon Witness P-0435's testimony to support the allegation. However, the Defence substantiates in the present Motion the considerable lack of credibility of this witness and, hence, incorporates by reference the relevant sections of the Motion.<sup>339</sup>

153. Third, the Prosecution relies on Witness P-0431 to substantiate the allegation, specifically as to events that happened in 2006. The witness described several rallies organised by FESCI and Young Patriots leaders he attended in July 2006 and the blockade of Abidjan on 19 July 2006, following a rally.<sup>340</sup> The main topic of those rallies was the *audiences foraines*. The Defence first notes that, when asked about the leaders of Young Patriots he allegedly saw at this rally, Witness P-0431 did not identify or name Charles Blé Goudé as one of these leaders. Second, the Defence notes that P-0431's testimony contains anonymous hearsay as to an alleged "message" from Charles Blé Goudé transmitted by an unknown speaker at a meeting. In this regard, the Defence also notes that, assuming *arguendo* that a message had been transmitted from Charles Blé Goudé, it would have been formulated in such broad terms that it cannot be characterized as any call to violence.<sup>341</sup> Finally, when questioned by the Defence on hostility from the Young Patriots towards the *audiences foraines*, he acknowledged that Charles Blé Goudé did not share this position and always advocated in favour of the *audiences foraines*.<sup>342</sup> For the foregoing reasons, the Defence submits that the evidence does not support the allegation.

<sup>338</sup> P-0048, T-53-FRA CT, pp. 61-62.

<sup>339</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible, Section III.3.B.ii.(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Section III.3.B.ii.(d) Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony, Section III.3.B.ii.(e) Witness p-0435 had every incentive to not tell the truth since [REDACTED]*.

<sup>340</sup> P-0431, T-43-CONF-ENG ET, pp. 44-73.

<sup>341</sup> P-0431, T-43-CONF-ENG CT, p. 67.

<sup>342</sup> P-0431, T-44-CONF-ENG CT, pp. 29-30.

154. Fourth, the Prosecution invokes Witness P-0097's testimony to support the allegation. The Defence notes that P-0097 told the Chamber that some unidentified individuals told him that the alleged "*mot d'ordre*" to stop the *audiences foraines* came from Pascal Affi N'Guessan, President of the FPI.<sup>343</sup> Therefore, the Defence submits that not only the evidence provided by the witness on the issue consists of anonymous hearsay, but it also does not concern Charles Blé Goudé.

155. To conclude, the Defence submits that the Prosecution has failed to prove that Charles Blé Goudé called the youth to take over the streets and perpetrate violence in 2003, 2004 and 2006, obstructing political progress and undermining peace accords in order to keep Laurent Gbagbo in power. Once again, the Defence submits that references to events that significantly predate the time frame of the charges are not relevant to the instant case.

*(iii) The Prosecution failed to prove that Laurent Gbagbo relied on the mobilisation of the youth from the moment he took office in October 2000*

156. The Prosecution alleges that "[Laurent] GBAGBO relied on the mobilisation and protests of the youth from the moment he took Office in October 2000",<sup>344</sup> relying upon Witness P-0048's testimony to support the allegation. However, the Defence notes that P-0048 told the Chamber that after the 2000 Presidential election, when both Robert Gueï and Laurent Gbagbo claimed they had won the election, the people who demonstrated in the streets, to support Laurent Gbagbo, were not only his supporters but also the people who rejected the idea of a military regime. Therefore, not only the youth supported Laurent Gbagbo's election.<sup>345</sup>

157. The Prosecution also relies upon a record of a speech from Laurent Gbagbo, calling his supporters to demonstrate on the streets to support his election.<sup>346</sup> However, the Defence notes that the call is made to all of his supporters and not specifically to the youth. For the foregoing reasons, the Defence submits that the evidence does not support the allegation.

<sup>343</sup> P-0097, T-48-CONF-FRA CT, pp. 74-79.

<sup>344</sup> Trial Brief, para. 23.

<sup>345</sup> P-0048, T-53-FRA CT, pp. 20-22.

<sup>346</sup> CIV-OTP-0052-0522 (audio recording of Laurent Gbagbo's call to militants on 24 October 2000; transcript at CIV-OTP-0054-0239).



(iv) *The Prosecution failed to prove that Charles Blé Goudé was the acknowledged leader of the Galaxie Patriotique*

158. The Prosecution alleges that “[Charles] BLE GOUDE was the acknowledged leader of the Galaxie Patriotique, a coalition of both armed and unarmed pro-GBAGBO youth organisations”.<sup>347</sup>

159. To substantiate the allegation, the Prosecution relies upon Witness P-0435’s testimony. P-0435 gave a very convoluted testimony as to [REDACTED]. The Defence refers the Chamber to its submissions below on the patent incredibility and unreliability of Witness P-0435.<sup>348</sup>

160. The Prosecution also relies upon P-0449’s testimony to substantiate the allegation. Witness P-0449 mentioned a meeting that took place at the *Cité Universitaire* of Cocody, during which Charles Blé Goudé was allegedly designated as leader of the *Galaxie Patriotique*.<sup>349</sup> However, the Defence notes that the witness did not attend the alleged meeting and that he gained knowledge of it through anonymous hearsay. The witness also said that it was public information, broadcast by the television, but the Prosecution does not mention the segments of its RTI videos that would illustrate such an allegation. Besides, Witness P-0449 also did not tell the Chamber that the *Galaxie Patriotique* contained armed groups, and even said that the movements to which he belonged did not have weapons.<sup>350</sup> For the foregoing reasons, the Defence submits that the evidence does not support the allegation.

161. Moreover, Witness P-0097 has provided a very detailed testimony on the leadership of the *Galaxie Patriotique*, stating that the fact that Charles Blé Goudé would present himself as the leader of the *Galaxie Patriotique* did not mean that he in fact was its leader.<sup>351</sup> First, P-0097 explained that after Charles Blé Goudé self-proclaimed himself as the leader of the *Galaxie Patriotique*, there was a blossoming of

<sup>347</sup> Trial Brief, para. 24.

<sup>348</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution’s theory is based almost exclusively on Witness P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible*, Section III.3.B.ii.(c) *Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence*, Section III.3.B.ii.(d) *Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony*, Section III.3.B.ii.(e) *Witness p-0435 had every incentive to not tell the truth since [REDACTED]*.

<sup>349</sup> P-0449, T-159-CONF-FRA CT, pp. 25-27.

<sup>350</sup> *Ibid* ; T-160-CONF-FRA CT, p. 3, lns. 15-21.

<sup>351</sup> P-0097, T-48-CONF-FRA CT, pp. 29-32.

movements and coalitions, which is also confirmed by Witness P-0048.<sup>352</sup> Second, he even said that he did not take Charles Blé Goudé's statement seriously because of the hierarchy reigning amongst former *Secrétaires Généraux* of FESCI. He held that it would have been difficult to conceive that a former *Secrétaire Général* would submit to the orders given by a more recent *Secrétaire Général*.<sup>353</sup> Third, he emphasized the idea of insubordination from several former FESCI leaders, using a comparison between the grades of *Maréchal* and *Général*. Charles Blé Goudé could call himself a *Général*, but the *Maréchaux*, i.e. the FESCI leaders that were in place before Charles Blé Goudé, would not obey him and would not submit to his directions.<sup>354</sup> Finally, he reported that Touré Moussa Zéguen said that he would not attend a meeting held by Charles Blé Goudé as he did not recognize his authority, calling him "*mon petit*".<sup>355</sup> For the foregoing reasons, the Defence submits that no reasonable Chamber could accept that Charles Blé Goudé was the acknowledged leader of the *Galaxie Patriotique*.

*(v) The Prosecution failed to prove that Charles Blé Goudé distributed funds to the leaders of each organisation under the Galaxie Patriotique*

162. The Prosecution alleges that Charles Blé Goudé distributed funds to the leaders of each organisation under the *Galaxie Patriotique*.<sup>356</sup>

163. To support the allegation, the Prosecution relies upon Witness P-0449's testimony, operating a distortion of this testimony. During the course of his testimony, P-0449 indeed clarified his written statement, stating that Charles Blé Goudé made a donation to his movement, but their primary income came from the sale of cards and other donations.<sup>357</sup> The Defence recalls that Witness P-0449 was at the head of a movement which consisted of a direct emanation of the COJEP, the UE-COJEP.<sup>358</sup> For the foregoing reason, alleging that Charles Blé Goudé distributed funds to UE-COJEP amounts to alleging that he financed his own movement. The Defence submits that no

<sup>352</sup> P-0048, T-53-FRA CT, p. 57.

<sup>353</sup> P-0097, T-48-CONF-FRA CT, pp. 30-31.

<sup>354</sup> P-0097, T-48-CONF-FRA CT, pp. 31-32.

<sup>355</sup> P-0097, T-48-CONF-FRA CT, p. 32.

<sup>356</sup> Trial Brief, para. 24.

<sup>357</sup> P-0449, T-159-CONF-FRA CT, pp. 21-23.

<sup>358</sup> P-0449, T-159-CONF-FRA CT, pp. 17-18.

reasonable Chamber could accept that Charles Blé Goudé distributed funds to each organisation under the *Galaxie Patriotique*.

164. The only testimony that could potentially support the evidence is the one given by P-0435. However, the Defence recalls its objections to the witness' credibility.<sup>359</sup>

(c) Simone Gbagbo

165. The Prosecution fails to adduce evidence demonstrating Simone Gbagbo's influence over the State institutions or that her activities intended to keep Laurent Gbagbo in power by all means and that she coordinated such activities with Laurent Gbagbo. None of the insider witnesses have testified to the above. [REDACTED], who could have assisted the Chamber in understanding Simone Gbagbo's specific role or goals have been withdrawn from the Prosecution's list of witnesses. P-0009 testified that he had had one single brief meeting with her during the whole post-electoral crisis, in the specific context of the Anonkoua-Kouté events.<sup>360</sup> He added, regarding meetings he attended at the residence that she would often greet the attendees and then would be asked by the President to leave, so that the relevant working session could start.<sup>361</sup> This indicates that she was not involved in any strategic meetings.

166. The Prosecution's central argument to demonstrate that Simone Gbagbo shared the objective to maintain Laurent Gbagbo in power by all means is that as Secretary-General of the CNRD, she would, during the post-electoral crisis, regularly organize CNRD meetings, which certain *Galaxie Patriotique* youth leaders would attend.<sup>362</sup> First, [REDACTED], refers to her as the Secretary-General of the CNRD.<sup>363</sup> Therefore, assuming [REDACTED], the period during which she acted as Secretary-General of the CNRD remains unclear. Second, the only evidence given in support of the regular occurrence of such CNRD meetings during the crisis, along with P-0625's

<sup>359</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible, Section III.3.B.ii.(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Section III.3.B.ii.(d) Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony, Section III.3.B.ii.(e) Witness P-0435 had every incentive to not tell the truth since [REDACTED]*.

<sup>360</sup> P-0009, T-193-FRA CT, pp. 36-37. [REDACTED].

<sup>361</sup> P-0009, T-193-FRA CT, p. 37, lns. 22-27.

<sup>362</sup> Trial Brief, paras 62; 64.

<sup>363</sup> [REDACTED], CIV-OTP-0018-0426 at 0426.

confirmation that he attended two meetings during the relevant period, are presumably Simone Gbagbo's agendas, where [REDACTED]<sup>364</sup> [REDACTED].<sup>365</sup>

167. First, given that the chain of custody of the documents found at the Presidential Residence was not preserved and that third parties with an obvious interest in the outcome of the case pillaged and plundered the Residence, serious doubts arise as to the reliability of any documents that were seized there. Indeed, as developed in the Defence's filing ICC-02/11-01/15-1028-Conf,<sup>366</sup> [REDACTED].<sup>367</sup> Furthermore, [REDACTED].<sup>368</sup> [REDACTED].<sup>369</sup> Therefore, the above elements raise serious doubt as to the reliability of these documents.

168. Second, regarding the different agendas,<sup>370</sup> [REDACTED].

169. Similarly, the Prosecution does not adduce sufficient evidence in support of his allegations that such meetings were "*often attended by youth leaders of the Galaxie Patriotique*", and that Idriss Ouattara would have attended one of them on 30 March 2011.<sup>371</sup> [REDACTED].<sup>372</sup> [REDACTED]. Therefore, there is no means of knowing whether this meeting took place and whether the individuals listed actually attended that meeting. In addition, this is a reference to [REDACTED]. [REDACTED].<sup>373</sup>

170. Therefore, the evidence presented is not sufficient to infer a relationship or cooperation between Simone Gbagbo and youth leaders. Even when assuming such a relationship, it would not make more or less probable the alleged aim of Simone Gbagbo to maintain Laurent Gbagbo in power by all means.

171. The different comments allegedly made by Simone Gbagbo in her diaries, which would then be personal to her, should not be relied upon as it would be prejudicial to Charles Blé Goudé to take them into account without confirmation as to its author or

<sup>364</sup> CIV-OTP-0018-0465, CIV-OTP-0018-1069.

<sup>365</sup> See CIV-OTP-0018-0810, CIV-OTP-0018-1069, CIV-OTP-0018-0464, CIV-OTP-0018-0465; CIV-OTP-0018-0250; CIV-OTP-0018-0406 and CIV-OTP-0018-1008.

<sup>366</sup> ICC-02/11-01/15-1028-Conf, paras 46-47.

<sup>367</sup> CIV-OTP-0024-0641, at 642.

<sup>368</sup> See CIV-OTP-0047-0122, pp. 0123-0124 ([REDACTED]).

<sup>369</sup> *Ibid.*

<sup>370</sup> CIV-OTP-0018-0810 together with Simone Gbagbo's alleged weekly and daily agenda cited by the Prosecution in the Trial Brief, paras 62-64.

<sup>371</sup> Trial Brief, paras 62; 64.

<sup>372</sup> CIV-OTP-0018-0406.

<sup>373</sup> P-0625, T-28-CONF-FRA CT, pp. 8-12.

any contextualization of their meaning.<sup>374</sup> As mentioned above, [REDACTED]. Too little information is provided in order to permit any inference in this regard. In any event, based on the evidence at hand, a reasonable Chamber could not find that the intent to maintain Laurent Gbagbo in power by all means, including by the commission of crimes, is the only or even the most reasonable inference from these alleged notes. Another reasonable conclusion could be that those notes were written in the context of a rebel attack the country was facing and the urge to protect the civilian population as opposed to attacking it.

(d) FDS senior figures

172. The Prosecution contends that all the FDS commanders were members of Laurent Gbagbo's alleged inner circle in that they played a key role in maintaining Laurent Gbagbo in power.<sup>375</sup> The Prosecution then elaborates as to the ways through which they would have done so. However, the Prosecution does not lead meaningful evidence to show that they were actual members of the alleged inner circle and that they played a key role in the alleged common plan. The fact that the individuals at the top of the FDS hierarchy continued to fulfil their professional duties after the elections, following the decision of the Constitutional Council ruling that Laurent Gbagbo was the re-elected President of Côte d'Ivoire, does not make them *de facto* members of an alleged structure that would have shared a common objective to maintain Laurent Gbagbo in power "*by all means*", including by the commission of crimes, and that they would have conceived and implemented a common plan to achieve their goal. Yet, the Prosecution fails to give any meaningful evidence as to their involvement in the conception [or implementation] of the alleged common plan. The Prosecution misleadingly refers to them as "*loyal FDS officers [who] played a key role in maintaining GBAGBO in power*"<sup>376</sup> while the most reasonable conclusion was that they were simply acting within the scope of their appointment within government institutions.

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<sup>374</sup> CIV-OTP-0018-0810.

<sup>375</sup> Trial Brief, para. 65.

<sup>376</sup> Trial Brief, para. 65.

173. Despite [REDACTED], the Prosecution could not find more than one witness, P-0238, to testify about it.<sup>377</sup> In addition, this evidence is purely based on a subjective interpretation by one witness and is not corroborated by any other witnesses or video items. The exact same arguments can be used regarding [REDACTED].<sup>378</sup>

174. Secondly, the claim that the FDS senior officers pledged allegiance to Laurent Gbagbo notwithstanding the CEI declaring Ouattara as winner of the elections with certification from the UN and that they would have actively waited, after the announcement of the election results by the CEI, for the announcement of the Constitutional Council, are not substantiated by any evidence.<sup>379</sup> As reported by the Prosecution itself, the Constitutional Council announced the final results on 3 December 2010, *i.e.*, (i) only one day after the CEI announced the preliminary results from the Golf Hotel and (ii) prior to Choi's certification, in a context where the internal disagreements within the CEI were public knowledge, the expiration of the legal three-day deadline for the CEI to make its announcement had passed and the President of the Constitutional Council had already announced to the Ivoirian population that the Constitutional Council was the only institution that could proclaim the final results of the elections.<sup>380</sup> Therefore, it is inaccurate to suggest that the waiting time would have been of such a length as to make it relevant in this discussion and to infer from it an intention from the FDS commanders to maintain Laurent Gbagbo in power by all means. In addition, Article 98 of the Constitution of Côte d'Ivoire made clear at the time that the decisions of the Constitutional Council were final and bound the public authorities, including any military authorities, legal entities or individuals.<sup>381</sup> From the FDS commanders' perspective, Choi's announcement of the results after the final decision of the Constitutional Council had been rendered, thereby acting beyond his mandate<sup>382</sup> and substituting himself to the Ivorian institutions, would be legitimately of no value. Using their allegiance to the successful candidate as per the decision of the country's highest legal authority to support the

<sup>377</sup> P-0238, T-80-CONF-FRA CT, pp. 35-36.

<sup>378</sup> P-0330, T-69-CONF-FRA CT, pp. 40-41.

<sup>379</sup> Trial Brief, paras 67 and 643.

<sup>380</sup> Trial Brief, paras 125-126; 129-130.

<sup>381</sup> *Loi n°2000-513 du 1er août 2000 portant constitution de la côte d'ivoire*, article 98.

<sup>382</sup> Security Council resolution 1765 dated 16 July 2007; 16<sup>th</sup> report of the general secretary of the UN on ONUCI (S/2008/250).

allegation of an inner circle is therefore simply unfounded and is clearly not the most and only reasonable inference to be drawn.

175. In this context, and having pledged allegiance, there is nothing surprising or reprehensible in the fact that the FDS senior officers would have from time to time met with Laurent Gbagbo during the crisis to [REDACTED].<sup>383</sup>

176. The artificial distinction made by the Prosecution between on the one hand the FDS senior officers who left their position by 31 March and on the other hand those who remained on Laurent Gbagbo's side a few additional days does not assist in any way the Prosecution's theory of an inner circle.<sup>384</sup> This distinction is so artificial that the Prosecution itself struggles in determining on which side one or the other FDS senior officer stands. For instance, in support of its allegation that certain officers remained on Laurent Gbagbo's side, the Prosecution cites [REDACTED]<sup>385</sup> while at the same time and in the same sentence it includes P-0011 in the officers having decided to leave their position.<sup>386</sup> Also, the evidence presented shows that [REDACTED].<sup>387</sup> [REDACTED].<sup>388</sup> Similarly, the fact that some of these officers would have shared ethnic ties with Laurent Gbagbo while, implicitly, others would not, is inapposite in that it does not assist the Chamber in determining whether this group of FDS officers, from various ethnic roots, constituted with Laurent Gbagbo and others an inner circle.<sup>389</sup>

177. In view of the foregoing, none of the evidence presented allows to infer, as being the only reasonable inference, that the named FDS senior commanders shared the intent to maintain Laurent Gbagbo in power, let alone the intent to maintain him in power by all means.

(e) Lower-ranking FDS officers linked to Laurent Gbagbo

<sup>383</sup> P-0009 states that [REDACTED]. See P-0009, T-195-CONF-FRA CT, pp. 50-51. P-0010 also stated that [REDACTED]. See P-0010, T-139-CONF-FRA CT, p. 83, lns. 25-28.

<sup>384</sup> Trial Brief, para. 69.

<sup>385</sup> Trial Brief, footnote 205, referring to P-0011, T-134-CONF-FRA-ET, p. 90.

<sup>386</sup> Trial Brief, para. 69 stating that "others such as Mangou, Detho Letho, Bredou M'Bia and Kassaraté decided to leave their position".

<sup>387</sup> P-0347, T-78-CONF-FRA CT, p. 11.

<sup>388</sup> Trial Brief, para. 69.

<sup>389</sup> Trial Brief, para.70; See Motion, Section III.3.C. ii. The Prosecution failed to prove that appointments were made on the basis of ethnicity and personal loyalty.

178. As far as the lower-ranking FDS officers are concerned, the main argument of the Prosecution in support of its allegation that the alleged inner circle would be comprised of lower-ranking FDS officers is their alleged loyalty to Laurent Gbagbo from 2000 until March-April 2011.<sup>390</sup> Assuming *arguendo* that this would have been the case – although given the absence of sources cited, the Prosecution fails to even attempt to substantiate this allegation – this is not sufficient to demonstrate that an inner circle would be composed of these individuals. P-0239 is [REDACTED] attesting that Laurent Gbagbo was giving direct instructions to Dadi who would have presented himself as his military adviser.<sup>391</sup> This was never, however, witnessed directly by P-0239, who only heard it from Dadi, who, from what many witnesses said, seemed to be obsessed with asserting his authority and power over his subordinates. Dadi's words, obtained through hearsay, about the importance he may have had to Laurent Gbagbo, should not be relied upon for the purpose of demonstrating a key element of the case, namely whether there was an inner circle and who was composing it.

179. In the same vein, the Prosecution fails to substantiate how Anselme Séka Yapo “*was one of the loyal FDS officers who remained by Gbagbo's side up to Gbagbo's arrest*” and how this would be sufficient to determine that an inner circle which included Séka Séka existed.<sup>392</sup>

180. Their inclusion into an alleged inner circle or their alleged loyalty to Laurent Gbagbo until the very end is far from being the only or even the most reasonable inference to be drawn from the alleged fact that these two individuals would have continued to fight even after the resignation of the CEMA.<sup>393</sup> Another reasonable conclusion, as developed below, could be that they exploited the chaos that was apparent in the command chain to overstep and promote themselves at a higher command position in order to finally be free to implement their isolated yet extreme approach to the eradication of the enemy. For instance, [REDACTED].<sup>394</sup> It is therefore not unconceivable that Séka Séka or Dadi were pursuing their own personal quest, without Laurent Gbagbo approving or even being informed of their actions.

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<sup>390</sup> Trial Brief, para. 71.

<sup>391</sup> P-0239, T-167-FRA CT, p. 48.

<sup>392</sup> Trial Brief, para. 73.

<sup>393</sup> Trial Brief, para. 71.

<sup>394</sup> [REDACTED].



Based on the availability of this possible inference, no reasonable trier of facts could accept the Prosecution's stance, i.e., low-ranking officers being part of an alleged inner circle.

(f) Leaders of youth and militia

181. In support of the allegation that certain youth groups and militia leaders supported Laurent Gbagbo's aim to stay in power by all means, the Prosecution relies on evidence for which a *prima facie* finding of relevance cannot be shown. For example, the Prosecution cites P-0176 to show that Mr Damana Adia Médard Pickass was in Laurent Gbagbo's inner circle.<sup>395</sup> However, P-0176's evidence on this issue was limited to his "young brother" Guillaume Gbapto telling him that Mr Pickass was a close collaborator of Mr Affi N'guessan. According to Mr Gbapto, Mr Pickass saw the President, but he was most often at the offices of the FPI party.<sup>396</sup> The witness did not specify how his "young brother" came to know this information, and also did not give any evidence as to the content of the meetings between Mr Pickass, Mr N'Guessan and Laurent Gbagbo. Further, P-0176 clearly did not have any close contacts with Mr Pickass. He testified that Mr Pickass was chosen as the "grandfather" of his party, but that he had never met him before the official opening of his party.<sup>397</sup> Therefore, his evidence is purely anecdotal and any shared aim between the three men cannot be inferred from the basis of his testimony.

182. The Prosecution further advances the argument that certain of Mr Pickass' actions during the crisis show his intent to resort to violence against civilians if necessary.<sup>398</sup> It is undisputed that Mr Pickass tore up the election results announced by the President of the CEI, Youssef Bakayoko, and that he called upon youth to mobilize peacefully in front of the Presidential Residence. However, neither of these facts

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<sup>395</sup> Trial Brief, para. 74.

<sup>396</sup> P-0176, T-143-FRA CT, p.21

<sup>397</sup> *Ibid*, p.20.

<sup>398</sup> Trial Brief, para. 74.

make more or less probable that he was willing to resort to violence against civilians to keep Laurent Gbagbo in power.<sup>399</sup>

183. For the remainder of the youth leaders, the Prosecution submits that they had “financial links” with members of the inner circle,<sup>400</sup> which in its view, would lead to a conclusion that youth leaders depended on the inner circle for financing purposes and received instructions from them. The evidence led by the Prosecution on this issue consists largely of money orders and receipts made out to different youth and militia leaders. With regard to the submitted money orders and receipts, the Defence refers the Chamber to its submissions made in filing ICC-02/11-01/15-1028-Conf, specifically paragraphs 31-35. In addition to the authenticity and reliability issues, the Defence also made submissions in its Annex A of filing 1028-Conf, referring to the limited probative value of these alleged receipts and money orders.

184. The alleged money orders and receipts contain no verifiable information regarding the intended use of these funds, and thus they cannot assist the Chamber in determining whether the alleged members of the inner circle were financing these groups to prepare them for the recourse to violence. The Prosecution did not adduce any concrete evidence, whether testimonial or documentary to show the uses of these funds. Moreover, as Judge Henderson recently noted, the amounts involved in the alleged receipts “*appear to be almost insignificant.*”<sup>401</sup> For example, the Prosecution submits that Touré Zéguen who led a faction of the GPP received support from

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<sup>399</sup> In his televised message, Mr Pickass states, “*je voudrais d’abord féliciter les Ivoiriens qui se sont mobilisés, hier, à la résidence du Chef de l’Etat, et y ont passé la nuit dans la gaieté, dans l’ambiance, dans la convivialité, cela en dépit des différents obstacles dressés par les rebelles*” Video, CIV-OTP-0064-0130 at 00:12:56-00:15:30, Transcript at CIV-OTP-0091-0465. This can hardly be seen as a call to mobilize youth for violence, especially since no crimes are alleged to have been committed near the Residence in April. Moreover, Pickass requests from the youth to help so that food distribution chains were not disrupted. The recourse to armed resistance, let alone violence against civilians, is not mentioned by Pickass, and thus cannot be reasonably inferred. The fact that Mr Pickass tore up the election results does not make more or less probable that he was willing to resort to violence. Article 2 of the law creating the CEI commission specifically stipulates “provisional or definitive proclamation of the results, all election results, with the exception of the presidential election and a referendum for which the definitive announcement of the results shall fall exclusively within the authority of the Constitutional Council.” Legislation, CIV-OTP-0021-1441. Given the clear dispositions of this law, Mr Pickass could have torn up the results out of frustration for not complying with the law, or from his frustration that Mr Bakayoko decided to announce the results by himself at the Golf Hotel, the party headquarters of President Ouattara.

<sup>400</sup> Trial Brief, para.75.

<sup>401</sup> Decision concerning the Prosecutor’s submission of documentary evidence on April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018 (Dissenting opinion), 1 June 2018, ICC-02/11-01/15-1172-Anx.

Laurent Gbagbo's *chef de cabinet*.<sup>402</sup> The receipts made out to Touré Zéguen amount to [REDACTED] between the years [REDACTED].<sup>403</sup> In this [REDACTED], the total amount of money received by Mr Zéguen amounts to [REDACTED] FCFA, which equals approximately [REDACTED] euros. Given the evidence on the record showing that the price for one automatic pistol was [REDACTED] FCFA,<sup>404</sup> it cannot reasonably be found that Mr Zéguen's militia was dependent on the members of an alleged inner circle for its purported criminal activities.

185. Similar to the receipts, the testimony of P-0435 with regard to Simone Gbagbo's payments to Bouazo Yoko Yoko provides scant information as to whether there were financial links between the GPP and the members of the alleged inner circle.<sup>405</sup> P-0435's testimony related to only three monetary transactions that occurred between Bouazo Yoko Yoko and Simone Gbagbo in 2009.<sup>406</sup> The witness did not know the amount for two of the three transactions, nor the intended purpose of the amounts received. P-0435 testified that in the first trimester of 2009 Bouazo Yoko informed him that he had received 500 000 FCFA from the First Lady. This testimony hardly establishes a clear interconnection between the activities of the militia and their receiving monies from members of the alleged inner circle during the crisis. The Prosecution also directly implicates Charles Blé Goudé in providing funds to Eugène Djué and Navigué Konaté, but does not cite any evidence to prove this allegation.<sup>407</sup> Moreover, Witness P-0097 who [REDACTED] and [REDACTED] testified that there was rivalry among different youth group leaders who decided to create their own movements due to their belief that Charles Blé Goudé was receiving more funds than them.<sup>408</sup> P-0176 testified that during the electoral campaign Konaté Navigué complained about Charles Blé Goudé receiving more funds than other campaigners.<sup>409</sup>

(g) Active or former ministers

<sup>402</sup> Trial Brief, para. 75.

<sup>403</sup> See [REDACTED].

<sup>404</sup> See [REDACTED] The Defence submits that the authenticity of this document has been called into question by Witness [REDACTED]. The Defence wishes to clarify its position and submit that it is using the document solely in reference to the price of certain items. However, it does not stipulate to the admissibility of the document for the purposes of showing weapons acquisition [REDACTED].

<sup>405</sup> Trial Brief, para. 275.

<sup>406</sup> P-0435, T-87-CONF-FRA ET pp. 51-52.

<sup>407</sup> Trial Brief, para. 275.

<sup>408</sup> P-0097, T-48-CONF-FRA CT, pp. 47-53.

<sup>409</sup> P-0176, T-143-CONF-FRA CT, pp. 75-78.

186. Save for the fact that the different ministers during the crisis were actual Laurent Gbagbo ministers, some of whom shared ethnic ties with Laurent Gbagbo, the Prosecution does not advance one single argument in favour of the existence of an alleged inner circle composed *inter alia* of these individuals and Laurent Gbagbo.

(i) *Active ministers*

187. The allegation that Mr Alain Dogou, the Minister of Defence, would have met with the GPP leadership is exclusively based on the testimony of P-0435 whose credibility has been seriously impugned. As developed below,<sup>410</sup> P-0435 claims to be in charge of military aspects of the GPP, and yet is almost never present for any important meeting in which military training and operations are discussed. It is Bouazo who informed P-0435 that Mr Dogou needed GPP elements present in Gagnoa, which constitutes uncorroborated hearsay.<sup>411</sup> Therefore, the Prosecution has failed to adduce sufficiently reliable evidence upon which a reasonable chamber would conclude, based on this single allegation from P-0435, that this member of the government was part of an alleged inner circle.

188. The fact that in certain public interventions, Guiriéoulou gave details as to the unpeaceful character of the 16 December march, which is also the Defence theory, or reported acts committed against the FDS, is not meaningful evidence that he was “*selectively portraying facts with a pro-Gbagbo bias*”.<sup>412</sup> The Prosecution fails to demonstrate that these reports were false or misleading. The content of these interventions alone does not demonstrate Guiriéoulou’s shared intent to maintain Laurent Gbagbo in power by all means.

189. The allegation that Alcide Djédjé would have espoused Laurent Gbagbo’ policy, stating “*that demonstrators should be referred to as “rebelles”*” is a misconstruction on the part of the Prosecution. [REDACTED].<sup>413</sup> It is because of their actions that these individuals have been legitimately categorised as rebels. [REDACTED]. It is

<sup>410</sup> See Motion, Section III.3.B.ii.(d) Witness P-0435 testified that he [REDACTED] when his statement was taken - [REDACTED] that also became apparent during his testimony.

<sup>411</sup> P-0435, T-88-CONF-FRA CT, pp. 9-10.

<sup>412</sup> Trial Brief, para. 77.

<sup>413</sup> CIV-OTP-0025-0082, at 0083.

because they were rebels or perceived as supporting the rebels that they had to be fought back, not because they were simple pro-RHDP supporters.

190. With respect to the alleged [REDACTED].<sup>414</sup> [REDACTED].<sup>415</sup> Therefore, [REDACTED]. Indeed, [REDACTED]. Contrary to the Prosecution's allegation, it appears from [REDACTED]. [REDACTED].<sup>416</sup> [REDACTED].<sup>417</sup> [REDACTED]. Therefore, [REDACTED].<sup>418</sup>

*(ii) Former ministers*

191. In addition to active ministers, the Prosecution includes former ministers, namely Mr Désiré Tagro, Mr Hubert Oulaï, Mr Bertin Kadet, Mr Abou Drahmane Sangaré, and Mr Pascal Affi N'Guessan as members of the alleged inner circle whose aim was to keep Laurent Gbagbo in power at all costs.<sup>419</sup> The Prosecution cites evidence that is either insufficient or so patently unreliable that a reasonable trial chamber would not be able to find the existence of this shared aim.

192. The Prosecution relies on evidence of alleged frequent meetings between Laurent Gbagbo and these alleged members of the "inner circle" in addition to opinion evidence elicited from Witness P-[REDACTED].<sup>420</sup> For almost all these meetings, the Prosecution has led no evidence with regard to their content. For example, the Prosecution submits that Mr Sangaré was present at important meetings with Simone Gbagbo and Laurent Gbagbo.<sup>421</sup> However, the evidence cited refers to one meeting in which Witness P-0625 did not partake.<sup>422</sup> He only heard that the President along with some "barons" of the FPI including Mr Sangaré met to make some important decisions.<sup>423</sup> Witness P-0625's testimony is silent as to Mr Sangaré's statements during that meeting. Similarly, the Prosecution relies on a video showing Mr Tagro

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<sup>414</sup> The weapon embargo was imposed on Côte d'Ivoire by UN Security Council resolution dated 15 November 2004, CIV-OTP-0047-0659, at 0660.

<sup>415</sup> P-0321, T-61-CONF-FRA, pp. 39-55.

<sup>416</sup> P-0321, T-61-CONF-FRA, p. 42.

<sup>417</sup> [REDACTED].

<sup>418</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA, pp. [REDACTED].

<sup>419</sup> Trial Brief, paras. 79-83.

<sup>420</sup> *Ibid.*, para. 79.

<sup>421</sup> *Ibid.*, para. 82.

<sup>422</sup> P-0625, T-28-CONF-FRA CT, p. 57.

<sup>423</sup> *Ibid.*

about to attend a meeting with several ministers.<sup>424</sup> However, no further evidence is cited as to the content of the meeting and the statements he would have made therein.

193. During the post-electoral period, there is only one meeting between Mr Tagro and Mr Mangou for whose content the Prosecution has presented evidence.<sup>425</sup> However, this evidence is completely irrelevant as to whether he shared an alleged aim to maintain Laurent Gbagbo in power by all means. P-0009 testified that on 10 December 2010, he met with Mr Tagro and Laurent Gbagbo to discuss the possibility of Koné Zakaria and the ex-FAFN members leading an operation in the Southeast of the country.<sup>426</sup> Neither the contours of this operation nor the consequences of it on the civilian population were discussed during this meeting, thus it is irrelevant to Mr Tagro's aim to keep Laurent Gbagbo in power by all means.

194. While Witness P-[REDACTED] testified that Mr Tagro, Mr Kadet, and Mr Sangaré were part of Laurent Gbagbo's "[REDACTED]," he was not in a position to know whether this was in fact the case.<sup>427</sup> Ultimately, P-[REDACTED] had very little contact with Laurent Gbagbo during the time of the charges. He testified that he participated in [REDACTED], which [REDACTED].<sup>428</sup> He then met Laurent Gbagbo [REDACTED], for [REDACTED].<sup>429</sup> The witness does not mention Mr Tagro, Mr Kadet or Mr Sangaré during either of these two encounters with Laurent Gbagbo. Therefore, his evidence on their role in Laurent Gbagbo's decision making is mere speculation on behalf of the witness and is equally irrelevant.

195. Additionally, the Prosecution alleges but fails to prove that certain of these members, namely Mr Tagro, Mr Oulaï and Mr Kadet were either: (1) "*significantly involved*,"<sup>430</sup> (2) "*key focal point[s]*"<sup>431</sup> or "*were play[ing] [a] significant role in the*

<sup>424</sup> Trial Brief, para. 79, footnote 249 [REDACTED] Video, CIV-OTP-0074-0055 at 00:07:51-00:12:12, in particular from 00:11:18-00:12:12 (excerpt from RTI broadcast of 16 December 2010 at 20h; transcript at CIV-OTP-0102-0484, in particular at 0487).

<sup>425</sup> Trial Brief, para. 79, footnote 239.

<sup>426</sup> P-0009, T-197-CONF-FRA-ET, pp. 31-34.

<sup>427</sup> P- [REDACTED], T- [REDACTED]-CONF-FRA CT, pp. [REDACTED]; P-[REDACTED], T-[REDACTED]-CONF-FRA CT, p. [REDACTED], P-[REDACTED], T-[REDACTED]-CONF-FRA CT, p. [REDACTED].

<sup>428</sup> P-[REDACTED], T-[REDACTED] -CONF-FRA CT, pp. [REDACTED]

<sup>429</sup> *Ibid*, p. [REDACTED].

<sup>430</sup> Trial Brief, para. 81.

<sup>431</sup> *Ibid*, para. 80.

events of 16 December 2010”<sup>432</sup> with militias and mercenaries. The Prosecution cites Witnesses P-0435, P-0500, and P-0483 in support of these allegations.<sup>433</sup> However, this evidence is either unreliable or contradicts the allegation it intends to prove. Witness P-0435’s testimony is the only evidence on record that implicates Mr Tagro in the GPP’s activities on the day of the 16 December 2010 march. His testimony on the matter is incapable of belief.<sup>434</sup>

196. P-0435 testified that Mr Tagro who was the *Sécretaire général de la Présidence* at the time, met with GPP leaders and gave them instructions to intercept demonstrators and hand them over to authorities.<sup>435</sup> P-0435 further testified that he was not present at this meeting, and that it was Mr Bouazo Yoko Yoko who relayed to him the information about the meeting. This hearsay evidence should be viewed with circumspection for two reasons: (1) the witness previously stated to Prosecution investigators that he did not know who gave the GPP instructions before the 16 December 2010 march,<sup>436</sup> and (2) the witness’ explanation as to why he himself did not attend the meeting is unclear and unconvincing. After the Defence confronted P-0435 with his previous inconsistent statement, P-0435 responded that there was no contradiction with his evidence before the Chamber because the Prosecution investigators were asking him about instructions given on the day of the march.<sup>437</sup> This evidence is incapable of belief considering the general question of the Prosecution investigator who did not specify the day the alleged instructions were given. The question of the Prosecution investigators was of a general nature, namely- “*qui vous a donné les instructions de par rapport à cette marche?*” and P-0435 replied clearly and succinctly, “*Bon, ça, je ne peux pas savoir.*”<sup>438</sup> Witness P-0435 further discredited himself when testifying that he was not present at this meeting with Mr Tagro because he was not interested in “political meetings” because he would be informed of the meeting later and because “*on ne sait jamais qui est-ce qu’on pouvait*

<sup>432</sup> *Ibid*, para. 79, footnote 241.

<sup>433</sup> *Ibid*, paras 79, 80-81.

<sup>434</sup> The Defence refers the Chamber to its submissions in the present motion on Witness P-0435’s patent incredibility. See Motion, Section III.3.B.ii.(b) *The Prosecution’s theory is based almost exclusively on Witness P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.*

<sup>435</sup> P-0435, T-89-CONF-FRA CT, pp. 64-67.

<sup>436</sup> P-0435, T-93-FRA CT, p. 7.

<sup>437</sup> P-0435, T-93-FRA CT, p. 4.

<sup>438</sup> P-0435, T-93-FRA CT, p. 4.

*rencontrer à...à ces endroits, parce que...*<sup>439</sup> This explanation is firstly inconsistent with Witness P-0435's evidence that he was in charge of all military operations of the GPP. The GPP's supposed coordination with the FDS to stop the march would have been a military operation, and thus he should have been included in the meeting. Secondly, the witness' answer is vague and unclear, which is demonstrated by him trailing off at the end of his sentence when he states that you never knew what you would find in such places.

197. Like Witness P-0435, P-0483, P-0108, and P-0500 also provide unreliable and insufficient evidence for any chamber to conclude that Mr Hubert Oulaï was a "key focal point" between Liberian mercenaries and the Gbagbo government, and that he had a role organizing militia in Guiglo.<sup>440</sup> P-0483 is the only Liberian combatant to have testified. While he testified to his own personal links to Mr Hubert Oulaï, he also clearly stated on record that he did not know whether any other LIMA members were close to Mr Oulaï.<sup>441</sup> Thus, this witness' testimony cannot be used in support of the proposition that Mr Oulaï was a "key focal point" as the Prosecution submits. Moreover, Witness P-0483 insisted that Hubert Oulaï was not paying him a salary, but that he went to him as first and foremost a young brother from the Krahn ethnic group.<sup>442</sup> Therefore according to the sole LIMA fighter to have testified these payments were unrelated to the witness fighting for LIMA. While P-0483's statement given to Prosecution investigators did in fact reference monthly payments, such a discrepancy could be due to the serious translation issues that occurred while transcribing the Witness P-0483's statement, an issue the Defence raised before he testified.<sup>443</sup>

198. Unlike Witness P-0483, P-0108 does not have insider quality information regarding LIMA mercenaries, and yet the Prosecution relies on his testimony to prove a link between Mr Oulaï and mercenaries.<sup>444</sup> His testimony with regard to Mr Oulaï and Liberian mercenaries consists of hearsay and is wholly unreliable since the Chamber

<sup>439</sup> P-0435, T-89-CONF-FRA CT, p. 66.

<sup>440</sup> Trial Brief, para. 80.

<sup>441</sup> P-0483, T-100-CONF-ENG CT, p. 62.

<sup>442</sup> P-0483, T-100-CONF-ENG CT, pp. 51-54. *See also* P-0483, T-102-CONF-ENG CT, p. 36.

<sup>443</sup> *See* Requête de la Défense en report de la venue du témoin P-0483, 9 November 2016, ICC-02/11-01/15-747, para. 10.

<sup>444</sup> Trial Brief, para. 80.



is unable to evaluate its source. The only evidence P-0108 provided regarding Hubert Oulai was that his Liberian neighbour, Mr Kuya Bola who was a Major<sup>445</sup> and a former soldier of Charles Taylor, told him that the Liberian mercenaries came in 2002 and that they were financed by Hubert Oulai.<sup>446</sup> Not only do these alleged activities pre-date the charges by 8 years, there is also no means for the Chamber to evaluate the reliability of this hearsay evidence that P-0108 received from Mr Bola. Witness P-0500 also provides unreliable hearsay evidence with respect to Mr Oulai's activities involving militia in Guiglo. P-0500 testified that in 2003 an individual named JC told him that the "people in charge" in Guiglo were requesting that P-0500 and others come defend their families in Guiglo.<sup>447</sup> The evidentiary value of this evidence is minimal since it comes from an unverifiable source who gave absolutely no indication of how he came to know that Hubert Oulai was in charge of these militia. Moreover, the timeframe predates the charges by seven years and is thus irrelevant to the aim to keep Laurent Gbagbo in power by all means in 2010/2011.

199. The Prosecution's attempt to link Mr Kadet to militias is even more tenuous than for Mr Oulai. The Prosecution makes the sweeping allegation that Mr Kadet was significantly involved in organizing paramilitary groups and militias.<sup>448</sup> The only evidence that he uses to prove this allegation is Witness P-0500 and P-0435's testimony. Witness P-0500's testimony on the matter completely contradicts the Prosecution's allegation. Witness P-0500, the only FLGO witness to testify, stated that he only met Mr Kadet on two occasions.<sup>449</sup> The first time he met him in a church with other disgruntled FLGO fighters who wanted to fight. This demand was refused. According to P-0500, Laurent Gbagbo accompanied by Mr Kadet asked for more time for the government's administration to solve the fighting in the West of the country.<sup>450</sup> Admittedly, the FLGO fighters gave Mr Kadet a list of their names at the end of the meeting, but the Prosecution has led no evidence with respect to how this list was later used to employ paramilitary groups. The second and last time P-0500 met Mr Kadet was again in the context of disarmament where Mr Kadet urged FLGO fighters

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<sup>445</sup> P-0108, T-145-CONF-FRA CT, pp. 83, 85.

<sup>446</sup> *Ibid*, p. 82.

<sup>447</sup> P-0500, T-181-FRA CT, pp. 15-16.

<sup>448</sup> Trial Brief, para. 81, footnote 246.

<sup>449</sup> P-0500, T-181-FRA CT, pp. 59-60.

<sup>450</sup> *Ibid*, pp. 52- 55.

not take up arms and fight in Vavoua because the peace process had begun.<sup>451</sup> He gave them 10,000 FCFA, a small sum for transport after their meeting.<sup>452</sup> This evidence does not support the conclusion that Mr Kadet organized paramilitary groups.

200. Witness P-0435 did directly implicate Mr Kadet in the training of 300 GPP elements in Gagnoa before the elections. However, his evidence is uncorroborated, which should not be the case since the military training of 300 men should have been an event that would have been documented or at least noticed by other witnesses. No such witnesses or documentary evidence was produced. Moreover, Witness P-0435 did not speak directly to Mr Kadet; it was a GPP element Zagbayou who had informed him that Mr Kadet had provided arms to these GPP elements.<sup>453</sup> However, even when assuming that Witness P-0435's testimony was not impugned on this point, it does not make it more likely or not that Mr Kadet shared Laurent Gbagbo's intent to maintain power by all means. Witness P-0435 testified that Gagnoa would be a military target for the rebels and therefore GPP elements were sent there for protection.<sup>454</sup>

201. For one member of the inner circle the Prosecution has produced "evidence" which shows the member's willingness to keep Laurent Gbagbo in power by all means. However, the "evidence" cited would not be considered for the truth of its content by any reasonable trial chamber. According to the Prosecution, Mr N'Guessan stated that the "*audience foraines*" have to be stopped by all means.<sup>455</sup> However, the evidence cited in support of the proposition is incapable of belief. Witness P-0431 did not hear Mr N'Guessan make this statement. In fact, he only saw newspapers, which reproduced the statement.<sup>456</sup> Within a court of law, a newspaper cannot be admitted for the truth of its content, since the Chamber has no way of evaluating whether the journalist honestly transcribed Mr N'Guessan's statements.

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<sup>451</sup> *Ibid.*, pp. 60-62.

<sup>452</sup> *Ibid.*, pp. 60-62.

<sup>453</sup> P-0435, T-89-CONF-FRA CT, pp. 19-21.

<sup>454</sup> *Ibid.*

<sup>455</sup> Trial Brief, para. 83.

<sup>456</sup> See CIV-OTP-0058-0649.

202. In conclusion, no reasonable Trial Chamber could find that these former Ministers were part of an alleged inner circle.

*(iii) Visits to the Presidential Residence*

203. The Prosecution's main evidence to support its theory that an alleged inner circle existed is the alleged main logbook of the visits to the Presidential Residence<sup>457</sup> which according to the Prosecution, "*shows the high frequency of visits by members of the Inner Circle to Gbagbo and the First Lady during the post-election violence*".<sup>458</sup>

204. [REDACTED].<sup>459</sup>

205. The Defence also refers the Chamber to the general observations made in the present submissions in relation to the unpreserved chain of possession and lack of *prima facie* reliability of all documents seized at [REDACTED].<sup>460</sup>

206. [REDACTED].<sup>461</sup> [REDACTED].<sup>462</sup>

207. [REDACTED].<sup>463</sup> [REDACTED].<sup>464</sup> Therefore, [REDACTED].

208. Also, [REDACTED].<sup>465</sup> [REDACTED].<sup>466</sup> [REDACTED].<sup>467</sup> [REDACTED].<sup>468</sup>

209. In light of the foregoing, this Presidential Residence logbook cannot in any way assist the Chamber with regard to determining [REDACTED] as suggested by the Prosecution,<sup>469</sup> as [REDACTED].<sup>470</sup> Therefore, all conclusions drawn by the

<sup>457</sup> CIV-OTP-0067-0402.

<sup>458</sup> Trial Brief, para. 84.

<sup>459</sup> [REDACTED]. See P-0501, T-72-CONF-FRA CT, p. 41, lns. 2-5; T-72-CONF-FRA CT, p. 35, lns. 20-25 and p. 38, lns. 4-14; T-72-CONF-FRA CT, p. 58, ln. 26; T-72-CONF-FRA CT, p. 58-59; T-72-CONF-FRA CT, p. 40, lns. 16-20; T-72-CONF-FRA CT, pp. 40-41.

<sup>460</sup> See Motion, Section III.3.A.ii.(c) *Simone Gbagbo*. [REDACTED]. See T-72-CONF-FRA CT, p. 36, lns. 21-26, p. 37, lns. 2-5.

<sup>461</sup> T-72-CONF-FRA CT, p. 66, lns. 2-21.

<sup>462</sup> T-72-CONF-FRA CT, p. 67, lns. 3-5.

<sup>463</sup> See, for an example of [REDACTED], T-72-CONF-FRA CT, p. 74, lns. 16-20.

<sup>464</sup> T-72-CONF-FRA CT, p. 44-45.

<sup>465</sup> T-72-CONF-FRA, CT p. 48, lns. 21-27.

<sup>466</sup> T-72-CONF-FRA CT, p. 47, lns. 1-5; p. 65, lns. 20-26.

<sup>467</sup> P-0009, T-193-CONF-FRA CT2, pp. 32-33.

<sup>468</sup> P-0011, T-135-CONF-FRA CT, p. 89, lns. 7-15.

<sup>469</sup> Trial Brief, para. 84.

<sup>470</sup> P-0011, T-135-CONF-FRA CT, p. 89, lns. 7-15.

Prosecution as to the existence of an alleged inner circle based on the frequency or length of the visits to the President as registered in the Presidential Residence logbook are unfounded and should not be relied upon.

iii. The Prosecution failed to prove any coordination of activities among members of an alleged inner circle

210. The Prosecution relies on an alleged coordination of actions to attempt to show that certain associates of Laurent Gbagbo would have constituted an alleged inner circle aiming at maintaining Laurent Gbagbo in power by all means.

211. Yet, certain pieces of evidence used by the Prosecution lead to the contrary conclusion that the different actions of the alleged members of the alleged inner circle were not coordinated. For instance, P-0009's testimony points to a lack of coordination between Charles Blé Goudé and himself regarding the call for enlistment made by Charles Blé Goudé on 19 March 2011 at Place CP1 and reiterated on 20 March 2011 in Port-Bouët. P-0009 explained that he had not been informed beforehand that Charles Blé Goudé would make that call, which he found out about by watching the news in the evening of 20 March. When requested by P-0009 to explain why he had made that call, Charles Blé Goudé told him that it was only a strategic move, since he knew there was no ammunition or weapon, in order to fool the enemy and "*prevent them from attacking us*".<sup>471</sup> Indeed, the number of young people ready to enlist would give the impression that the FDS were strong in terms of manpower. This scenario is corroborated by Charles Blé Goudé's statement during an RTI interview on 25 March 2011 : "*Je voudrais féliciter tous ces jeunes qui ont envahi l'état-major la dernière fois, donnant ainsi tort à M. CHOI qui, dans ses rêves, avait déjà pensé avoir des Jeunes Patriotes découragés. Pour nous, la démocratie c'est la loi du nombre. Pour nous, la démocratie c'est pas les machettes, c'est pas les fusils, c'est pas égorger les gens*".<sup>472</sup> P-0009 testified that it was then too late, when he found out, to go back to the RTI and deny the call.<sup>473</sup> This testimonial evidence not only indicates that P-0009 had not been involved in that decision but that he disagreed

<sup>471</sup> P-0009, T-196-CONF-FRA CT, pp. 66-67.

<sup>472</sup> Video, CIV-OTP-0069-0378 at 00:28:54-00:29:14 (excerpt from RTI broadcast of 25 March 2011 at 20h; transcript at CIV-OTP-0087-0764 at 0767, lns.49-53).

<sup>473</sup> [REDACTED].

with that call. Yet, the Prosecution refers to this call for enlistment made by Charles Blé Goudé to support its theory that “*FDS leadership worked with BLÉ GOUDÉ to recruit pro-GBAGBO youth and militias into the FDS*”.<sup>474</sup> This is expressly contradicted by P-0009’s testimony. The Defence also refers the Chamber to its analysis as to the lack of evidence of Charles Blé Goudé having participated to any strategic military meetings. The Prosecution military insiders testified that Charles Blé Goudé never attended any of these strategic or crisis staff meetings. P-0009 testified that he never had any meetings with Charles Blé Goudé at the Residence or at the Palace during the crisis.<sup>475</sup>

212. Moreover, many witnesses testified to fundamental disagreements between certain individuals allegedly members of the same inner circle. For instance, P-0238 testified that P-0047 and Dadi did not get along and that it dated way back, at the time when P-0047 was still group commander and that they were both engaged in the same missions outside of Abidjan.<sup>476</sup> Also, P-0047 explains that on 30 March 2011, when he and P-0009 went to see Dogbo Blé to ask for more ammunition, the two men disagreed on whether the FDS should engage into the Battle of Abidjan, Dogbo Blé being totally in favour of it while P-0047 feeling strongly against it.<sup>477</sup> Similarly, based on P-0010’s testimony, Séka Séka’s suggested approach to defeating the *Commando Invisible*, i.e. by bringing in more troops and weapons and by shooting back at the crowd from which the *Commando Invisible* was attacking, was the opposite of what the FDS senior commanders’ obligations dictated for them, i.e., to protect the population and refrain from using the same methods as the *Commando Invisible*’s. This is why the *État-Major* as a whole “*did not deem it necessary to take into account the few suggestions that he made*” and “*drew the attention of the chief of staff that at [their] meetings, [they] should not authorise all and sundry to come and make suggestions to [them] when he has not yet reached a level of knowledge, of requisite knowledge*”.<sup>478</sup> This shows that P-0010 and the other FDS commanders allegedly part of the inner circle did not share the same approach as Séka Séka – another member of the alleged member inner circle – on a fundamental element. It

<sup>474</sup> Trial Brief, section f at the top of page 99; paras 232-233.

<sup>475</sup> P-0009, T-193-FRA CT2, pp. 38-39.

<sup>476</sup> P-0238, T-80-CONF-FRA CT, p. 52.

<sup>477</sup> P-0047, T-206-CONF-FRA CT, pp. 50-51.

<sup>478</sup> P-0010, T-137-CONF-FRA CT, pp. 80-82 ; T-138-CONF-FRA CT, pp. 3-8.

also shows that Séka Séka's suggestions were simply ignored and that the FDS commanders did not consider Séka Séka as one of them.

213. It is reasonable to infer that P-0009 and P-0010 were not working together and that their relationship was not at its best either. Indeed, P-0009 explained that he did not see P-0010 much, that the CECOS was placed under the responsibility of the Ministry of Defence and that P-0010 was operating independently.<sup>479</sup> P-0009 further testified that before the crisis the CECOS was going beyond its primary mission consisting of fighting against major banditry. The CECOS also controlled traffic circulation in lieu of the *Gendarmerie* and had set up a section for law enforcement (BMO). Based on P-0009's testimony, it reached a point, before the post-electoral crisis, where P-0009 or his team had to call P-0010 to ask him to stay within the limits of the mission that had been assigned to the CECOS.<sup>480</sup>

214. P-0009 also testified to the change of attitude of Dogbo Blé, whose promotion had turned him into an individual disrespectful of the older generation of commanders. He added that *"c'est ce que nous avons déploré, ce changement brusque que nous n'avons pas compris. Et sinon, habituellement, quand moi, je l'ai connu, vraiment, il était très effacé, à peine... à peine si... s'il bavardait ; il rasait les murs pratiquement, pratiquement. Mais vous savez, quelquefois, la fonction, quand on l'occupe, on s'oublie soi-même et c'est quelquefois dangereux"*.<sup>481</sup>

215. Certain alleged members of the inner circle would have even been investigating one another or concealing key resources from each other. For instance, based on a report dated 30 December 2010, which P-0010 confirmed he received, P-0011 was the object of an investigation performed by the CECOS intelligence services and was being listed among the *Gendarmerie* officers *"whose turning over is not to be excluded"*.<sup>482</sup> [REDACTED].<sup>483</sup>

216. Thirdly, the Prosecution fails to substantiate how certain events would demonstrate a coordination of activities between certain alleged members of the inner circle. The

<sup>479</sup> P-0009, T-193-FRA CT, pp. 42-43.

<sup>480</sup> P-0009, T-198-FRA CT, pp. 48-49.

<sup>481</sup> P-0009, T-193-FRA CT, pp. 44-45.

<sup>482</sup> CIV-OTP-0025-0162 ; P-0010, T-139-CONF-FRA CT, p. 58.

<sup>483</sup> Trial Brief, para. 217.

allegation that there would be [REDACTED],<sup>484</sup> and [REDACTED], is not corroborated by any objective elements. The only pieces of evidence adduced by the Prosecution to support this allegation are (i) a video where Charles Blé Goudé hands over an envelope and food to [REDACTED] commander Loba<sup>485</sup> and (ii) [REDACTED].<sup>486</sup> The Prosecution fails to substantiate [REDACTED].<sup>487</sup> These elements must be read in the context of the tribute made to the FDS at Stade Champroux the following day to which he had invited the FDS wives. Also, as explained above, the various visits made at the Residence within the same time frame by certain individuals do not allow any assumption as to whether they actually met and what they discussed.

217. Therefore, with respect to the alleged coordination of activities between certain associates of Laurent Gbagbo which the Prosecution relies on to further emphasise the existence of an alleged inner circle is either far from sufficiently established or contradicted by other evidence.

**B. The Prosecution failed to demonstrate that the alleged inner circle constituted an organisation pursuant to article 7(2)(a) of the Rome Statute**

218. As extensively developed above, the Prosecution failed to adequately demonstrate the existence of a so-called inner circle composed of individuals listed by the Prosecution. At best, the Prosecution proved that Laurent Gbagbo had a cabinet of ministers and advisors who would assist him in the matters of running a State. Given that the Prosecution failed to prove the existence of an inner circle, it *ipso facto* failed to prove that the alleged inner circle constituted an organization, since it did not exist.

219. Assuming *arguendo*, that the Chamber would determine that the Prosecution proved the existence of an inner circle, the Defence will briefly elaborate on how the Prosecution failed to prove that there was an organization pursuant to article 7(2) of the Rome Statute. At the heart of the Prosecution's theory lies the so-called parallel structure through which the alleged control by Laurent Gbagbo and its alleged inner circle was to be effectuated.

<sup>484</sup> The qualification given to him of "parallel structure commander" is unsubstantiated.

<sup>485</sup> Vidéo, CIV-OTP-0064-0113, minutes 44:20-56:25.

<sup>486</sup> [REDACTED].

<sup>487</sup> [REDACTED].

- i. The Prosecution failed to prove that Laurent Gbagbo and the alleged inner circle had control over the so-called parallel structure as of 31 March 2011

220. The Prosecution claims that after 30 March 2011, Laurent Gbagbo and his alleged inner circle still had the means to carry out the alleged attack by relying “*more heavily on allegiances developed in the parallel structure which they continued to control through the fully functional chain of command*”.<sup>488</sup>

221. First of all, the Prosecution failed to adduce sufficient evidence as to the existence of a parallel structure. According to the Prosecution, “[t]his parallel chain of command operated within the ranks of regular FDS forces and provided a direct link between Gbagbo and the commanders of units which participated in the commission of the crimes charged”.<sup>489</sup> The evidence presented by the Prosecution as to an alleged direct link between (i) Laurent Gbagbo and the alleged inner circle and (ii) the three commanders (namely Dadi, Zadi and Loba) cited as commanding units constituting such a parallel structure is sparse and mainly based on hearsay or witnesses’ speculation. P-0239 is [REDACTED] alleging that Dadi was receiving direct instructions from Laurent Gbagbo or that he was his military adviser.<sup>490</sup> In addition, P-0239 only knows this because Dadi was boasting about it. Given the various testimonies about Dadi’s personality, Dadi’s words, obtained through hearsay, about the importance he may have had to Laurent Gbagbo, should not be relied upon for the purpose of demonstrating a key element of the case, namely that a parallel structure controlled by Laurent Gbagbo and his inner circle existed. The claim that [REDACTED].<sup>491</sup> As to Zadi, [REDACTED],<sup>492</sup> the combined analysis of P-0330 and P-0156’s testimonies raise serious doubts as to the reality of the event, as interpreted by the Prosecution. First, [REDACTED].<sup>493</sup> [REDACTED].<sup>494</sup> Therefore, the fact that he would not be aware of everything that was happening at the Camp is not necessarily surprising. Second, [REDACTED] Third and most importantly, P-0156

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<sup>488</sup> Trial Brief, para. 223.

<sup>489</sup> Trial Brief, para. 212.

<sup>490</sup> P-0239, T-167-FRA CT, p. 48.

<sup>491</sup> See for instance, *Motion, III.3.A.iii. The Prosecution failed to prove any coordination of activities among members of an alleged inner circle.*

<sup>492</sup> [REDACTED].

<sup>493</sup> [REDACTED].

<sup>494</sup> [REDACTED].



testified that during the period he was stationed at *Camp Commando*, namely from 28 February to 4 March, the base did not dispose of 120 mm mortars.<sup>495</sup> Since P-0330 testified that he defected on 3 March 2011, it could not be argued that the mortar arrived after P-0156 left the base.<sup>496</sup> Therefore, this testimony is not sufficient in itself to corroborate the theory that [REDACTED], or of the existence of a parallel structure which would include Zadi.

222. Secondly, the allegation that as a reward for their allegiance the alleged parallel structure, *i.e.*, that the CECOS, BASA and the *Garde Républicaine* would have been given more ammunition and weapons than the rest of the FDS had difficulty obtaining is totally unsubstantiated. First of all, as developed below, the Prosecution has failed to prove to the requisite threshold that these particular units would have been better equipped than the others.<sup>497</sup> Secondly, assuming *arguendo* that these units would have been better equipped, the evidence at hand contradicts the justification provided by the Prosecution as to why it would have been the case. As far as the CECOS is concerned, P-0009 believes they were better equipped merely because the CECOS was not a pure military unit and therefore, did not fall *stricto sensu* under the weapon embargo.<sup>498</sup> Regarding the BASA, [REDACTED].<sup>499</sup> With respect to the *Garde Républicaine*, the allegation that it would have had a large stockpile of ammunition in the basement of the Presidential Palace, in addition to the *Garde Républicaine*'s official stock, is unsubstantiated, as elaborated below. None of the [REDACTED] have ever had physical access to this alleged stock of ammunitions, which was allegedly located in the basement of the Presidency, as suggested on the video CIV-OTP-0048-1651. None of [REDACTED] ever saw what the boxes contained.<sup>500</sup> P-0009 testified that the *Garde Républicaine*, compared to the other forces, had a reasonable (*suffisamment*) amount of ammunition which was located in an underground ammunition bunker in the vicinity – North West – of the Presidential Palace.<sup>501</sup> P-0009 is very clear that the room seen on the open source and undated

<sup>495</sup> P-0156, T-172-CONF-FRA CT ET, p. 36.

<sup>496</sup> P-0330, T-67-CONF-FRA CT, p. 28, ln. 21 to p. 29, ln. 6; p. 30, ln. 24 to p. 31, ln. 1.

<sup>497</sup> See Motion, Section III.3.D.ii.(a) *The Prosecution failed to prove that the arming of certain units was part of the policy.*

<sup>498</sup> P-0009, T-198-FRA CT, pp. 41-42.

<sup>499</sup> See Motion, Section III.3.D.ii.(a) *The Prosecution failed to prove that the arming of certain units was part of the policy.*

<sup>500</sup> *Ibid.*

<sup>501</sup> P-0009, T-194-FRA CT, p. 47, lns. 13-17 and pp. 47-48.

video CIV-OTP-0048-1651, and containing a large number of boxes, presented as ammunition boxes, is not the ammunition bunker of the *Garde Républicaine*.<sup>502</sup> P-0321 explained that the *Garde Républicaine*'s weapon stock can be traced back to the crisis of 2002 and 2003, which indicates that the stock they had was legally obtained before the embargo. Finally, P-0347 corroborates P-0321's testimony that between 2004 and 2010, the *Garde Républicaine* did not receive any additional weapons or ammunition. Most importantly, it can in no event be inferred from the evidence adduced – as being the only reasonable inference – that the additional ammunitions or weapons stock that unit might have had, assuming it indeed received more, would have been given as a reward for its allegiance to Laurent Gbagbo and/or his alleged inner circle. The Prosecution has not led any evidence as to the circumstances in which the *Garde Républicaine* would have ended up with more ammunitions and weapons than other units.

223. It is noteworthy that [REDACTED], the GEB is not alleged to form part of the parallel structure. In the same vein, while the *sous-groupement tactique* commander, Zadi, is alleged to have been part of the parallel structure, the Prosecution did not adduce one single piece of evidence pointing to additional equipment having been received by the 1<sup>st</sup> BCP. The composition of such an alleged parallel structure seems therefore very arbitrary.

224. In light of the above analysis, since the Prosecution has not adduced sufficient evidence to demonstrate the existence of a parallel structure, it cannot be alleged that Laurent Gbagbo and his inner circle continued to control the FDS after the end of March 2011, through their heavier reliance on the alleged parallel structure, despite all the major senior commanders – supposedly part of the inner circle – having stepped down. As pointed out by the Prosecution itself, around the end of March 2011, all the main senior commanders, namely “*Mangou, Detoh Letho, Guiai Bi Poin and Kassaraté had stepped down or had been permanently side-lined*”.<sup>503</sup> Several witnesses testified to the absence of commandment in various camps. For instance, in the former Akouédo Camp, P-0316 testified that the 1<sup>st</sup> BCP commander, Mel Brice, had left and had asked his subordinates to stay at home. It is in those circumstances

<sup>502</sup> P-0009, T-194-FRA CT, pp. 47-48.

<sup>503</sup> Trial Brief, para. 222.

that Fulgence Akapia, a former 1<sup>st</sup> BCP commander who had deserted around 1987 and had not been back at any post thereafter, took over the 1<sup>st</sup> BCP commandment “illegally” despite the fact that “*no authority had appointed him there*”. P-0316 suggested that this had been made possible by the fact that there was no longer any commandment at the camp.<sup>504</sup> Similarly, P-0010 testified that at the end of March, there was no longer any commandment of the CECOS since he himself had left for security reasons. It is again under those specific circumstances that Séka Séka would have taken over responsibility of the few soldiers that had stayed at the *École de Gendarmerie*.<sup>505</sup> During his testimony, P-0010 reminded the Chamber that these facts that had been reported to him had been occurring in a period of widespread chaos in Abidjan (between 2 and 10 April 2011) and that “*there was not much that anyone could do given the critical situation in Abidjan*”.<sup>506</sup> The evidence adduced by the Prosecution indicates that certain lower-ranking commanders or former FDS took advantage of the chaos reigning at the time, by taking over the control of a certain number of soldiers who stayed in the different camps or other individuals hoping to be recruited. For example, [REDACTED].<sup>507</sup> Next, [REDACTED].<sup>508</sup> [REDACTED].<sup>509</sup> [REDACTED].<sup>510</sup> A similar lack of coordination and consensus among the FDS hierarchy is [REDACTED].<sup>511</sup> [REDACTED].<sup>512</sup> [REDACTED]. There is no meaningful evidence showing that Laurent Gbagbo orchestrated it or even had knowledge of it. As a result, the allegation as to the existence of a “parallel structure” cannot support the existence of an organisation.

- ii. The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units

225. One of the main cornerstones of the Prosecution’s case is the assertion that the different youth and militia groups were not disparate groups acting under their own

<sup>504</sup> P-0316, T-183-CONF-FRA, pp. 12-15.

<sup>505</sup> P-0010, T-138-CONF-FRA CT, pp. 8-12.

<sup>506</sup> *Ibid.*

<sup>507</sup> P-0347, T-78-CONF-FRA CT, pp. 11-12.

<sup>508</sup> *Ibid.*

<sup>509</sup> *Ibid.*

<sup>510</sup> *Ibid.*

<sup>511</sup> P-0238, T-81-CONF-FRA CT, pp. 48-50.

<sup>512</sup> *Ibid.*

leaders' command, but that they were connected through an alleged inner circle.<sup>513</sup> According to the Prosecution, it was through the inner circle's instructions that these groups were integrated into the alleged parallel structure units of the FDS.<sup>514</sup> The Prosecution has utterly failed to adduce credible evidence in this regard. The Defence will first address the Prosecution's evidence with respect to the collaboration and integration of the youth and militias spanning from August 2010 to 31 March 2011.<sup>515</sup> It will then address the alleged integration from 31 March until 12 April 2011. As substantiated in the previous paragraphs, it is the position of the Defence that the Prosecution has failed to establish the existence of a parallel structure within the FDS. Therefore, when the CEMA and the COMTER left their functions on 31 March 2011, there was no structure in place to ensure that Laurent Gbagbo and the alleged inner circle continued to control. No Prosecution insider witness adduced evidence to the extent that the alleged activities between militias and mercenaries would have been the result of a collective decision instead of a decision of a few individuals on the ground. Moreover, the arrival of the FRCI on 31 March 2011 marks a watershed moment in the crisis,<sup>516</sup> and for which the Prosecution has not presented a single insider witness who was leading and coordinating the FDS operations after this crucial date.<sup>517</sup>

(a) Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011

226. With respect to youth groups, the Prosecution presents evidence that is either: (1) irrelevant, (2) contradicts the very allegation the Prosecution seeks to prove, or (3) calls on the Chamber to make an inference that is impressible given that the evidence is insufficient to satisfy any reasonable trial chamber beyond a reasonable doubt. In

<sup>513</sup> Laurent Gbagbo Confirmation Decision, ICC-02/11-01/11-656-Conf, para. 87

<sup>514</sup> Trial Brief, para. 278.

<sup>515</sup> August 2010 is the period during which the Prosecution alleges the common plan began to be implemented. See Section II.C of the Trial Brief, paras 85-150.

<sup>516</sup> See P-0010, T-141-CONF-FRA CT, pp. 8-9, P-0047, T-206-CONF-FRA CT, pp. 24, 50, P-0238, T-81-CONF-FRA CT, p. 42, 47-[REDACTED]. Witness P-0347 testified that it began in the second half of March 2011. P-0347, T-77-CONF-FRA CT, p. 65.

<sup>517</sup> Out of all the Prosecution FDS witnesses who testified, the following witnesses remained active in their positions after 31 March: P-[REDACTED], P-[REDACTED], P-0347, P-0238, P-0226, P-0239, P-0156, P-0-[REDACTED]. None of these witnesses are alleged to be members of the inner circle, and thus provide little probative evidence as to whether the alleged members of the inner circle such as Charles Blé Goudé were aware of how FDS operations were being conducted. The Defence adds that it is not clear on the basis of the Prosecution's submissions whether it is the Prosecution's submission that P-0011 left his positions before 3 April 2011. See Trial Brief, para. 69.

support of its allegation that pro-Gbagbo youth integrated and collaborated with the FDS the Prosecution relies on both testimonial and documentary evidence which is irrelevant.<sup>518</sup> This irrelevant evidence consists of (1) P-0347's testimony regarding the recruitment into the *Garde Republicaine* and the training of recruits in Akakro and the documentary evidence related thereto,<sup>519</sup> (2) video and documentary relating to the "*Jeunes Patriotes*" desire to be recruited.<sup>520</sup>

227. P-0347 who at the time of the charges was the Commander of the *Groupelement no.1* of the *Garde Républicaine* at Treichville, testified that between 60 and 80 men were trained in Treichville's barracks, and were taken to Akakro.<sup>521</sup> Further, he stated that all were integrated into the *Garde Républicaine*.<sup>522</sup> P-0347 never mentioned the political allegiance of these recruits or whether they belonged to a particular youth group.<sup>523</sup> Therefore, his testimony is not relevant to the Prosecution's allegation that pro-Gbagbo youth integrated the FDS. Moreover, while P-0347 affirmed that a majority of the recruits were Bété, Dida, and Abbey ethnic groups, it is not clear from the record how the witness could know such information because as Witness P-0347 testified, an individual's last name does not necessarily correspond to his ethnic origin.<sup>524</sup>

228. Further, the Defence demonstrated through its examination of P-0347 that his evidence was unreliable with respect to the "unofficial" or "irregular" nature of this December 2010 recruitment. P-0347 initially testified that the CEMA did not oversee this recruitment into the *Garde Républicaine*, and that to his knowledge it was the General Dogbo Blé that charged Captain Blé with overseeing it.<sup>525</sup> However, upon being confronted with two documents, namely CIV-OTP-0048-1109 and CIV-OTP-0048-0330, P-0347 recognized that the CEMA authorized the recruitment.<sup>526</sup> Therefore, it is clear from P-0347's testimony that his initial impressions of the

<sup>518</sup> Trial Brief, paras, 281, 282, 283.

<sup>519</sup> Trial Brief, para. 279.

<sup>520</sup> P-0347, T-77-CONF-FRA CT p. 43.

<sup>521</sup> *Ibid.*

<sup>522</sup> P-0347, T-77-CONF-FRA ET, p. 33.

<sup>523</sup> See P-0347, T-77-CONF-FRA ET, p. 43.

<sup>524</sup> See P-0347, T-79-CONF-FRA CT, p. 49 (testifying that one of his officer's last name was Kouassi, which would be indicative of an ethnic group found in the centre of Côte d'Ivoire, but that this particular officer was from the Gagnoa region).

<sup>525</sup> See P-0347, T-77-CONF-FRA ET, pp. 35-36.

<sup>526</sup> P-0347, T-78-CONF-FRA ET, pp. 54-58.

training being irregular were incorrect. Further, while P-0347 testified that the document CIV-OTP-0048-1109 did not appear authentic, P-0009's testimony further corroborates that the training of recruits and integration of them in the *Garde Républicaine* was an official and regular recruitment.<sup>527</sup> P-0009 was fully aware that the training was expedited and did not last the full three months.<sup>528</sup> Given that this training was conducted with full knowledge of the CEMA and formed part of an official recruitment, the relevance of P-0347's testimony has not been established.

229. Of equal irrelevance is the Prosecution's reliance on a Police report and a televised appearance of Babri Gohourou, which relate to the "*Jeunes Patriotes*" wishing to enlist in the FDS.<sup>529</sup> This evidence establishes that there was a will among certain individuals to enlist in the FDS, and that the FDS leadership appreciated this; it is irrelevant to establishing whether the youth actually did in fact enlist in the FDS as response to the call. Moreover, it is noteworthy that P-0009 testified that no new recruits were integrated as a result of the 21 March 2011 call to enlist.<sup>530</sup> As expounded upon below, the objective of this call to enlist according to Witness P-0009 was not to effectively recruit new members into the FDS, but to give an impression that the government forces were strong on the eve of the Battle for Abidjan.<sup>531</sup>

230. The Prosecution also refers to the testimony of Witness P-0316 to link the official recruitment into the *Garde Républicaine* described by P-0347 to the alleged "clandestine" recruitment that Witness P-0316 allegedly observed.<sup>532</sup> However, no reasonable trial chamber could find such a link on the basis of the evidence before it.

231. Firstly, Witness P-0316's evidence on the issue is patently incredible. P-0316 testified that a *Jeune Patriote* from the *Galaxie Patriotique* by the name Zambi recruited P-0316's nephew and his friends in the Witness' home village.<sup>533</sup> P-0316 learned of the recruitment when his nephew called him from Akouédo former camp

<sup>527</sup> P-0009, T-196-CONF-FRA CT, p. 83.

<sup>528</sup> *Ibid.*

<sup>529</sup> Trial Brief, paras 283, 286.

<sup>530</sup> P-0009, T-195-CONF-FRA CT, p. 72.

<sup>531</sup> See Motion, Section VI.4.C.ii *The Prosecution failed to prove that Charles Blé Goudé played an essential role in the recruitment and enlistment of the youth into the FDS.*

<sup>532</sup> See Trial Brief, paras 279-281.

<sup>533</sup> P-0316, T-182-CONF-FRA CT, p. 76-79.

after Zambi, his nephew and the others in the group had been stopped at the roadblock manned at the camp's entrance.<sup>534</sup> The Witness then proceeded to explain that the following day when he went to the camp to pick up his nephew he witnessed a phone conversation between Commander Mel Brice and the COMTER.<sup>535</sup> During that phone conversation, the COMTER instructed Mel Brice to allow Zambi to leave, even though weapons were found in Zambi's vehicle.<sup>536</sup> This testimony, if true, would support the Prosecution's case regarding the collaboration between official military structures and youth groups. However, this testimony is patently implausible and would not be believed by any reasonable trial chamber since minutes earlier P-0316 had testified that Zambi had abandoned the nephew and the eight youths from the village the same night they were stopped at the roadblock in front of Akouédo former camp.<sup>537</sup> Thus, the witness' testimony that the following day he would have observed Mel Brice's conversation with the COMTER where they discussed releasing Zambi is incapable of belief. It would have been impossible for P-0316 to witness the conversation regarding Zambi's release if he had already been released the night before.

232. Second, P-0316's testimony also lacks crucial detail without which the Chamber is unable to draw the conclusions the Prosecution requests of it. P-0316 did not know the full name of this Zambi individual and did not know to which youth group he belonged. The witness simply claimed that he was a student who belonged to the *Galaxie Patriotique* and that he was a *Jeune Patriote*.<sup>538</sup> This lack of detail is surprising given that the witness testified that Zambi was also P-0316's nephew's uncle,<sup>539</sup> and therefore, he should have normally known such information. Additionally, P-0316 was unable to also answer basic questions about the individuals accompanying his nephew that were allegedly recruited, such as which units they were integrated into or their names.<sup>540</sup> Lastly, the witness' testimony proved to be unreliable with respect to the clandestine nature of the 2010 recruitment since during

<sup>534</sup> P-0316, T-182-CONF-FRA CT, p. 78.

<sup>535</sup> P-0316, T-182-FRA CT, p. 80.

<sup>536</sup> P-0316, T-182-FRA CT, p. 80.

<sup>537</sup> P-0316, T-182-CONF FRA, p. 76. P-0316 confirmed that Zambi left the night that he and P-0316's nephew were stopped at the roadblock. P-0316, T-184-CONF-FRA CT, p. 20.

<sup>538</sup> P-0316, T-182-FRA CT, p. 79.

<sup>539</sup> P-0316, T-182-FRA CT, p. 79.

<sup>540</sup> P-0316, T-183-FRA CT, pp. 2-4. The witness was only able to identify one of the two individuals as Serge. *Ibid.*

examination by the Defence it became clear that the witness did not know the difference between a voluntary recruitment and a conscription of armed forces.<sup>541</sup> In view of this unreliable testimony, there is insufficient evidence to conclude that there was a clandestine training of *Jeunes Patriotes* conducted at Akakro base in December 2010.

233. The Prosecution has also adduced patently insufficient evidence with respect to Charles Blé Goudé's alleged contribution to the FDS collaborating and integrating youth into their ranks.<sup>542</sup> No evidence has been adduced for the Chamber to conclude that the money which Charles Blé Goudé gave Commandant Loba was destined for the *Jeunes Patriotes*.<sup>543</sup> Witness [REDACTED] confirmed on the stand that Commandant Loba [REDACTED].<sup>544</sup> It was only after the crisis, that [REDACTED].<sup>545</sup> Never was [REDACTED] informed [REDACTED]. He only began [REDACTED].<sup>546</sup> On the basis of this evidence, no reasonable chamber could infer that the envelope Charles Blé Goudé gave Mr Loba was linked to the BAE working with "*Jeunes Patriotes*." It is based on speculation and a [REDACTED] source that cannot reasonably be expected to relate truthful information regarding the operations of the BAE, which [REDACTED]. A reasonable chamber could equally conclude numerous other reasons for Charles Blé Goudé giving this sum to Commandant Loba, such as to help pay for the widows of members fighting for the BAE as shown in the video depicting the exchange of money.<sup>547</sup>

234. Similarly, the Prosecution requests the Chamber to make an impermissible inference on the basis of the evidence it led through Witness P-0449.<sup>548</sup> The Defence avers that Witness P-0449 gave evidence regarding the presence of roadblocks in his neighbourhood following Charles Blé Goudé's speech at Baron Bar.<sup>549</sup> Never did he testify that individuals in the exercise of their functions as FDS members participated

<sup>541</sup> P-0316, T-183-FRA CT, pp. 64-66.

<sup>542</sup> Trial Brief, paras 284-285.

<sup>543</sup> Trial Brief, para. 284.

<sup>544</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, p. [REDACTED].

<sup>545</sup> See P-[REDACTED], T-[REDACTED]-CONF-FRA CT, p. [REDACTED].

<sup>546</sup> P-[REDACTED], T-[REDACTED]-FRA-CONF-FRA CT, p. [REDACTED].

<sup>547</sup> P-[REDACTED], T-[REDACTED]-CONF-FRA CT, pp. [REDACTED].; [REDACTED]

<sup>548</sup> Trial Brief, para. 285.

<sup>549</sup> P-0449, T-159-CONF-FRA-ET, pp. 44-45.



in these roadblocks.<sup>550</sup> However, this is the very inference the Prosecution calls on the Chamber to make when alleging that following Charles Blé Goudé's speech at Baron Bar, roadblocks were manned by FDS elements in addition to the members of his group and the youth.<sup>551</sup> Witness P-0449 did testify that there were "uniformed men" that were also manning the roadblocks.<sup>552</sup> However, his evidence is clear on this issue; the uniformed men were not participating as members of the FDS, but as neighbours wanting to assist in the protection of their neighbourhood.<sup>553</sup> Thus, in response to the Prosecution's question regarding the unit to which these "uniformed men," belonged to, the witness answered "*Il y avait tous les corps habillés, pourvu qu'ils habitent le quartier.*"<sup>554</sup> Therefore, the Prosecution has not adduced any evidence to show that this was an organized effort on behalf of the FDS to participate in the roadblocks manned by different individuals in the neighbourhoods. The emphasis of the roadblocks being centred on neighbourhood membership was further evidenced by Witness P-0449 stating that the COJEP did not have a particular role to play at the roadblocks to the best of his knowledge, but that everyone was participating in them.<sup>555</sup>

235. With respect to the first charged incident, the Prosecution similarly fails to establish that at the roadblocks the FDS and the "*Jeunes Patriotes*" collaborated together to stop protesters from marching on the RTI on 16 December 2010.<sup>556</sup> The Prosecution claims that Witness P-0625's testimony supports this allegation.<sup>557</sup> The Defence notes that Witness P-0625 is not a direct witness to any of the events on the day of the march.<sup>558</sup> Moreover, his testimony on this issue of collaboration between FDS and "*Jeunes Patriotes*" contradicts the fact the Prosecution wishes to prove. When asked whether the roadblocks of the FDS and the *Jeunes Patriotes* were conducted together

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<sup>550</sup> See *Ibid.*

<sup>551</sup> Trial Brief, para. 285.

<sup>552</sup> P-0449, T-159-CONF-FRA-ET, pp. 44-45.

<sup>553</sup> P-0449, T-159-CONF-FRA-ET, pp. 44-45.

<sup>554</sup> P-0449, T-159-CONF-FRA CT, p. 45.

<sup>555</sup> P-0449, T-159-CONF-FRA CT, p. 44.

<sup>556</sup> Trial Brief, para. 282.

<sup>557</sup> *Ibid.*

<sup>558</sup> P-625, T-27-CONF-FRA CT, p. 17 ("*je crois que le jour j'avais dit au jour que les gens devaient marcher, moi, je suis pas sorti.*")

or separately, P-0625 clearly answered that the FDS and the *Jeunes Patriotes* had separate roadblocks.<sup>559</sup>

(b) The Prosecution's theory is based almost exclusively on Witness P-0435's testimony, which proved to be uncorroborated, unreliable and patently incredible

236. Witness P-0435 is the [REDACTED] former GPP member to have testified in the present case. In the course of his testimony, he directly implicated Charles Blé Goudé in the training by GPP elements of FESCI members, COJEP members and other youth before the election.<sup>560</sup> Witness P-0435 also provided evidence that he aided Charles Blé Goudé in his departure from Côte d'Ivoire, which according to the witness occurred in early April 2011.<sup>561</sup> He is the only witness to provide such evidence, and the Prosecution has adduced no documentary evidence to corroborate his testimony. Witness P-0435 is also the only insider witness to implicate Bertain Kadet, Minister Tagro, Minister Dogou in the training, recruitment and use of GPP elements prior to the post-electoral crisis and during the charged incidents.<sup>562</sup> A cursory analysis of the Prosecution's Trial Brief will show that P-0435 is the foundation of the Prosecution's case to show that the FDS, militias, and youth groups were connected through the inner circle such that they constituted an organization under article 7(2) generally, and that Charles Blé Goudé contributed to its criminal activities specifically.<sup>563</sup>

237. While the Defence is of course aware that credibility assessments of witnesses are usually conducted by trial chambers at a later stage of the proceedings, the Defence submits that when the Prosecution's case against Charles Blé Goudé stands or falls on the basis of the testimony of one witness<sup>564</sup> a credibility assessment of that witness must be undertaken for two reasons. Firstly, Charles Blé Goudé's right to be tried without undue delay is enshrined under article 67(1)(c) of the Rome Statute. It would be an infringement of this right if the Chamber determined that the trial should continue for another two to three years on the basis of the testimony of one witness whom ultimately the Chamber determined was incredible. Secondly, pursuant to

<sup>559</sup> P-625, T-27-CONF-FRA CT, p. 19.

<sup>560</sup> Trial Brief, paras 90-91.

<sup>561</sup> P-0435, T-94-CONF-FRA CT, pp. 40-42.

<sup>562</sup> Trial Brief, paras 294-295.

<sup>563</sup> The Defence notes that Witness P-0435 is cited as the only evidence for no less than [REDACTED] allegations in the Prosecution's Trial Brief. [REDACTED] of these allegations concern Charles Blé Goudé specifically and for which the Prosecution does not cite any other evidence. *See* Motion Annex 1.

<sup>564</sup> *See* Motion, Annex 1.

article 64(2) and (3)(a) of the Rome Statute, the Chamber would be ensuring the expeditious conduct of the proceedings and preserving judicial economy by making a credibility determination on Witness P-0435. The Chamber has all the tools at its disposal to make such a determination at this stage, and there is no countervailing interest that is served by delaying this assessment to the end of the trial. If the Chamber determines to delay such a determination, the Defence will be put in a position to call numerous witnesses for the sole purpose of rebutting Witness P-0435, which will result in considerable time and expenses for the Court that could otherwise be saved.

238. Witness P-0435 is a thoroughly unreliable and incredible witness for four reasons:

(1) both on the stand and in his previous statements he omitted to mention or contradicted himself on key facts, (2) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or documentary evidence, (3) Witness P-0435 admitted on the stand that [REDACTED] when his statement was taken by the Prosecution investigators; [REDACTED] that also became apparent during his testimony, (4) the witness had every incentive not to tell the truth [REDACTED].

239. The Defence provides below a table to illustrate the key factual issues for which Witness P-0435 provides numerous contradicting versions whether during his testimony or in previous inconsistent statements. It should be noted that the table below is not exhaustive and lists just some of the most relevant examples of inconsistencies.<sup>565</sup>

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
1.	Whether Mr Ahoua Stallone issued instructions to	<b>Version 1</b> Witness P-0435 testified that the GPP was protesting against the government in September 2010. To put an end to these protests, Mr Ahoua Stallone came to the GPP base on behalf of Charles

<sup>565</sup> Other inconsistencies, especially those which significantly pre-date the crisis, have not been included.

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
	the witness on training FESCI and COJEP youth before the 2010 elections	<p>Blé Goudé to ask that they stop the protests and that they train youth in various groups such as the COJEP and the FPI.<sup>566</sup> The witness was not part of this discussion with Ahoua Stallone; Mr Bouazo was present and informed him of the content of the meeting.<sup>567</sup></p> <p><b>Version 2</b></p> <p>Witness P-0435 never mentioned in his previous statements to Prosecution investigators that Mr Ahoua Stallone asked for this training at the behest of Charles Blé Goudé. He omitted to mention both Charles Blé Goudé and Ahoua Stallone. Instead, the witness made a general reference to “people” who came to see the GPP elements so that they would put an end to their September 2010 protests, and train the youth.<sup>568</sup></p>
2.	Whether before the elections Charles Blé Goudé saw the witness and instructed him to train FESCI and COJEP youth before the 2010	<p><b>Version 1</b></p> <p>After the witness testified that starting in September 2010 the GPP began training students from FESCI and youths from different youth groups, the Prosecution asked the open-ended question, “<i>de qui venaient les instructions pour former ces jeunes de la FESCI?</i>”<sup>569</sup> The witness answered that Mr Ahoua Stallone came on behalf of Charles Blé Goudé as explained above.<sup>570</sup> P-0435 omitted to mention that Charles Blé Goudé also came to visit the witness personally in this regard just one month later.</p>

<sup>566</sup> P-0435, T-87-CONF-FRA CT, p. 42. P-435, T-87-CONF-FRA CT, p. 42.

<sup>567</sup> *Ibid.*, pp. 44-46.

<sup>568</sup> P-0435, T-93-FRA CT, pp. 74-76.

<sup>569</sup> P-0435, T-87-CONF-FRA CT, pp. 40-42.

<sup>570</sup> See Key fact at issue no.1, version 1 in the present table.

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
	elections	<p><b>Version 2</b></p> <p>When asked how many times P-0435 had interacted with Charles Blé Goudé before April 2011, the witness responded that he had met Charles Blé Goudé in front of the DeLorvie pharmacy sometime in October 2010.<sup>571</sup> P-0435 next proceeded to explain that Charles Blé Goudé asked whether he received the visit from Ahoua Stallone, and proceeded to reassure him that GPP members would be reintegrated into the army.<sup>572</sup></p> <p><b>Version 3</b></p> <p>As explained above,<sup>573</sup> in his previous statement to the Prosecution the witness only made a general reference to “people” coming to speak to the GPP about a training and never made mention of Mr Ahoua Stallone or Charles Blé Goudé.<sup>574</sup></p>
3.	Whether the first time Witness P-0435 met Sergeant Blédé was before or after the 2010 elections	<p><b>Version 1</b></p> <p>This fact became material when P-0435 testified that he met Charles Blé Goudé who was accompanied by Mr Blédé in October 2010 to discuss the GPP meeting with Ahoua Stallone and the tracking of RHDP meetings.</p> <p>P-0435 initially testified that the first time he met Sergeant Blédé was in January 2011.<sup>575</sup></p> <p><b>Version 2</b></p>

<sup>571</sup> P-0435, T-94-CONF-FRA CT pp.4-6

<sup>572</sup> *Ibid.*

<sup>573</sup> See Key fact at issue No., version 2 in the present table.

<sup>574</sup> *Ibid.*

<sup>575</sup> P-0435, T-89-CONF-FRA CT, p. 62 (“Dans la période...janvier... janvier 2011, janvier. En tout cas, dans... la période à partir de janvier 2011. C’est là qu’il y a eu... on s’est croisés pour la première fois”).

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
		During his examination by the Defence, P-0435 testified that when he met with Charles Blé Goudé in October of 2010 in front of the DeLorvie pharmacy he was accompanied by Sergeant Blédé. <sup>576</sup> He further testified that he even spoke to Sergeant Blédé moments before meeting Charles Blé Goudé. <sup>577</sup>
4.	Whether the witness knew who issued instructions to the GPP regarding the 16 December 2010 march	<b>Version 1</b>
		Witness P-0435 testified that on 14 December 2010, Minister Tagro met with Mr Bouazo Yoko and other leaders of self-defence movements, and Minister Tagro instructed the GPP to assist the FDS in intercepting marchers. <sup>578</sup>
		<b>Version 2</b>  In his previous statement to Prosecution investigators in response to the question, “ <i>qui vous a donné la commande ou les instructions de par rapport à cette marche ?</i> ,” the witness answered:  <p style="padding-left: 40px;">Bon, ça, <b>je ne peux pas savoir</b>. Mais je... ce que je sais est que Bouazo a envoyé les brassards FDS avec des cordelettes, les brassards FDS qu'on devait porter pour que le... pour que les FDS “savent” que nous sommes ensemble (emphasis added).<sup>579</sup></p>
5.	Whether the GPP apprehended	<b>Version 1</b>
		When examined by the Prosecution, P-0435 testified that the GPP would intercept marchers and keep them detained on the GPP

<sup>576</sup>P-0435, T-94-CONF-FRA CT pp.4-6. The witness was mumbling to such an extent that his testimony was difficult to follow. *Ibid.*

<sup>577</sup> *Ibid*

<sup>578</sup> P-0435, T-94-CONF-FRA CT pp.4-6.

<sup>579</sup> P-0435, T-93-CONF-FRA CT p.4 *citing* CIV-OTP-0063-1765 at page 1775.

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
	protesters and detained them on the day of the 16 December 2010 March	<p>premises until the military authorities would come and pick them up.<sup>580</sup></p> <p><b>Version 2</b></p> <p>In his previous statement to Prosecution investigators, P-0435 stated that the GPP had two missions: to disperse protesters and to block their access to the perimeter. They did not receive the order to apprehend protesters.<sup>581</sup> Therefore, when they intercepted protesters they would whip them, and then they would allow them to leave.<sup>582</sup> He further added, “<i>on les a dispersés, on les a pas envoyés aux commissariats ni quelque chose...on a dispersé, c’est ce que je vous ai dit</i>” (emphasis added).<sup>583</sup></p> <p><b>Version 3</b></p> <p>During the domestic trial against Simone Gbagbo, Witness P-0435 testified that the GPP would intercept and take marchers to different places, either the <i>Préfecture de police</i>, the CECOS base or to the GPP base where they would whip them.<sup>584</sup></p>
6.	Whether GPP elements were armed during the 16	<p><b>Version 1</b></p> <p>During his testimony, Witness P-435, when asked whether GPP elements were armed during the march, the witness answered: “<i>Certains-certains. Mais au niveau...comme je dis, au niveau</i></p>

<sup>580</sup> P-0435, T-[REDACTED]-CONF-FRA CT pp.[REDACTED].

<sup>581</sup> P-0435, T-93-CONF-FRA CT pp.25-26

<sup>582</sup> P-0435, T-96-CONF-FRA CT p.41

<sup>583</sup> P-0435, T-93-CONF-FRA CT pp.25-26 citing CIV-OTP-0063-1765 page 1790

<sup>584</sup> P-0435, T-96-CONF-FRA CT pp.52-53 citing CIV-OTP-0093-0060, at 0061

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
	<b>December 2010 march</b>	<p><i>d'Adjamé, particulièrement, nous... nous n'avons pas reçu l'instruction de sortir.</i>" <sup>585</sup></p> <p><b>Version 2</b></p> <p>In his previous statement to Prosecution investigators, P-0435 stated that there were no casualties at the march because no firearms were used.<sup>586</sup> The witness further explained that their instructions were to disperse the crowd with ropes.<sup>587</sup> In the same statement, the witness reiterated that there were no casualties because to the best of his knowledge, ropes are not capable of killing.<sup>588</sup> When explaining to the investigators the instructions he received, he affirmatively stated in reference to the GPP- "<i>on avait pas d'armes</i>" (emphasis added).<sup>589</sup></p> <p><b>Version 3</b></p> <p>During the domestic trial against Simone Gbagbo, Witness P-0435 testified that during the march in reference to the GPP – "<i>Oui, nous étions armés de kalachs.</i>"<sup>590</sup></p> <p><b>Version 4</b></p> <p>In response to being confronted with his testimony at the Simone Gbagbo trial, the witness responded that he conveyed two Kalashnikovs to two GPP members who were sent to Cocody during the march.<sup>591</sup></p>

<sup>585</sup> P-0435, T-89-CONF-FRA CT pp.67-68.

<sup>586</sup> P-0435, T-93-CONF-FRA CT, pp.17-18 *citing* CIV-OTP-0063-1765 at 1776.

<sup>587</sup> P-0435, T-93-CONF-FRA CT, p.22 *citing* CIV-OTP-0063-1765 at 1778.

<sup>588</sup> P-0435, T-93-CONF-FRA CT, p.24 *citing* CIV-OTP-0063-1765 at 1792.

<sup>589</sup> P-0435, T-93-CONF-FRA CT, p.22 *citing* CIV-OTP-0063-1765 at 1777-1778.

<sup>590</sup> P-0435, P-435, T-96-CONF-FRA CT, pp.25-26 *citing* CIV-OTP-0093-0060 at 0061.

<sup>591</sup> P-0435, T-96-CONF-FRA CT, pp.25.



No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
7.	Whether the witness participated in [REDACTED]	<b>Version 1</b>
		Witness P-435 testified that he was implicated [REDACTED]. <sup>592</sup> The Witness testified that [REDACTED], which were [REDACTED]. Witness P-0435 [REDACTED] and [REDACTED]. <sup>593</sup>
		<b>Version 2</b>
		In a [REDACTED], which was [REDACTED], Witness P-0435 stated:  [REDACTED]. (emphasis added). <sup>594</sup>
		<b>Version 3</b>
		During the [REDACTED], Witness P-0435 testified to the following: “[REDACTED].” <sup>595</sup>
		<b>Version 4</b>
		In his previous statement, P-0435 told Prosecution investigators in relation to [REDACTED] that: “[REDACTED].” <sup>596</sup>

<sup>592</sup> P-0435, [REDACTED].

<sup>593</sup> *Ibid.*

<sup>594</sup> P-435, [REDACTED] *citing* [REDACTED] page [REDACTED] (It should be noted the transcript contains an error. It clearly states [REDACTED] that the witness was at his “[REDACTED]” and not “[REDACTED]” as stated on page 20 of Corrected Transcript T-[REDACTED]).

<sup>595</sup> P-435, [REDACTED] *citing* [REDACTED].

<sup>596</sup> P-435, [REDACTED] *citing* [REDACTED].

No.	Key Fact at issue	Inconsistent versions of the key fact Witness P-435 provided
8.	Whether the witness knew the individual's name who informed him that Mr Blé Goudé had given money to recruit refugees from Buduburam camp	<b>Version 1</b>
		The Witness testified that Liberian mercenaries came to Côte d'Ivoire in January 2011 from Ghana, and that they were assisted by the <i>Garde Républicaine</i> . The source of this information was a member of the <i>Garde Républicaine</i> , Mr Charles Guéi. While they were in a refugee camp together after the crisis, Mr Guéi explained to Witness P-0435 that Charles Blé Goudé helped fund his expedition to retrieve Liberian refugees from Ghana and to transport them to Côte d'Ivoire in January 2011. <sup>597</sup>
		<b>Version 2</b>
		When Witness P-0435 met with Prosecution investigators he stated that he did not know Mr Guéi's last name. He only knew that his first name was Charles, because even his wife called him only by his first name. <sup>598</sup> Moreover, the Witness explained to Prosecution investigators that it would have been suspicious had he inquired about his last name. <sup>599</sup>  Confronted with his previous statement, the Witness provided a long and convoluted explanation. He testified that he had forgotten when he was questioned by Prosecution investigators that he had seen Charles' last name on his identification form at the Refugee Camp, while he was waiting in line to obtain food. <sup>600</sup>

<sup>597</sup> P-435, T-91-CONF-FRA CT, pp. 23-26.

<sup>598</sup> P-435, T-94-CONF-FRA CT, pp. 24-27 *citing* CIV-OTP-0063-1801 at page 1825,1828.

<sup>599</sup> *Ibid.*

<sup>600</sup> P-435, T-94-CONF-FRA CT, pp. 25.

(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence

240. As substantiated in Annex 1,<sup>601</sup> Witness P-0435 is often the only evidence in the record, which supports key Prosecution allegations. The Defence avers that under Rule 63(4) of the Rules, there is no requirement of corroboration before this Court. However, this rule does not negate the requirement that the evidence must be capable of satisfying a reasonable trial chamber. In addition to the serious aforementioned inconsistencies which seriously impugn the uncorroborated testimony of P-0435, there are also events to which P-0435 testified, which if true, would have been corroborated by other evidence in the record. Like the GPP elements described by Witness P-0435, Witnesses P-0547, P-0230 and P-0555 were at one point near or at the same location on the day of the 16 December 2010 march. Witness P-0547 came from Adjamé towards Cocody by taking the 220 route.<sup>602</sup> Witness P-0230 was surely at the same location given that he described that he and other marchers gathered from the starting point of 220 *logements*, the same location as the GPP base.<sup>603</sup> P-0555 was stopped at *Carrefour Marie-Thérèse* when he was coming from Rivieria, a neighbourhood of Cocody.<sup>604</sup> None of these witnesses mention seeing individuals with FDS armbands and ropes. None mention getting stopped by these individuals or detained at 220 *logements* before being handed to the authorities.

241. Witness P-0435 is also the only insider Witness to implicate directly key Ministers, including Charles Blé Goudé in the recruitment and training of militia in the run up to the election and shortly following the elections. None of the Prosecution's key insiders, including P-0009, P-0047, P-0011, and P-0010 testified to the October 2010 training by GPP elements of 600 COJEP members and other members of youth groups. More generally, P-0009, P-0047, P-0046, and P-0011 all deny working with militia during the crisis.<sup>605</sup> With regard to the 16 December 2010 march, P-0009, P-0046 and P-0047 did not mention in their testimony any plan of Minister Tagro to use GPP elements during the march. Similarly, P-0046, the Director General of the Police

<sup>601</sup> See Motion, Annex 1.

<sup>602</sup> See P-0547, T-19-CONF-FRA CT, p. 53.

<sup>603</sup> See P-0230, T-106-CONF-FRA CT, p. 65.

<sup>604</sup> See P-0555, T-112-CONF-FRA CT, pp. 15-16, 86.

<sup>605</sup> See P-0009, T-196-CONF-FRA CT, pp.72-73; P-0011, T-132-FRA CT, pp. 6-8; P-0047, T-204-CONF-FRA CT, pp.36-38; P-[REDACTED]. The Prosecution did not ask Witness P-0010 any questions regarding militia.

never mentioned 50 elements being recruited from the GPP into the FDS at the behest of Minister of Defence Alain Dogou, and specifically that some were detached to CRS1 in Williamsville.

242. The only mention of militia that [REDACTED].<sup>606</sup> P-[REDACTED] also testified [REDACTED].<sup>607</sup> While the Prosecution confronted the witness with his former statement on the matter, the Witness [REDACTED].<sup>608</sup> Moreover, in the former statement, the Prosecution investigators' questions demonstrate [REDACTED].<sup>609</sup>

243. Witness P-0435 also testified that the GPP worked with commander Kipré of the *Garde Républicaine* starting as early as October 2010.<sup>610</sup> Witness P-0347 who is the only senior officer of the *Garde Républicaine* to testify in this trial makes no mention of Commander Kipré's activities with the GPP. While he does mention Yagba Kipré in the context of the training in Akakro, the Defence has demonstrated that this was an official training of which P-0347 was not only made aware of, but eventually presided over its concluding ceremony.

244. [REDACTED], Witness P-0435 testified that the GPP [REDACTED]. It should be noted that the head of [REDACTED], P-[REDACTED] in addition to [REDACTED] respectively never [REDACTED]. In fact, P-0435's testimony is the only evidence of the existence [REDACTED]. [REDACTED] did answer questions with respect to [REDACTED].<sup>611</sup> Indeed, [REDACTED] testified that after the crisis, and therefore under President Ouattara's government [REDACTED].<sup>612</sup>

(d) Witness P-0435 testified that he [REDACTED] when his statement was taken - [REDACTED] that also became apparent during his testimony

<sup>606</sup> P-0046, T-126-CONF-FRA CT, pp. 17-25.

<sup>607</sup> *Ibid.*

<sup>608</sup> *Ibid.*

<sup>609</sup> *Ibid.*

<sup>610</sup> Trial Brief, paras 298, 290.

<sup>611</sup> Trial Brief, para. 299, footnote 920.

<sup>612</sup> [REDACTED]

245. The mental state of Witness P-0435 became a live issue before and during his testimony.<sup>613</sup> [REDACTED]:

[REDACTED].<sup>614</sup>

246. [REDACTED], Witness P-0435 provided testimony that lacked significant detail. For example, despite testifying that he was second in command of the GPP after Mr Bouazo Yoko Yoko, Witness P-0435 was not present for key incidents and was able to present precious little information to the Chamber regarding them. For example, with respect to the alleged funding provided by Simone Gbagbo, Witness P-0435 recalled three incidents in which Simone Gbagbo would have given cash to Mr Bouazo Yoko Yoko.<sup>615</sup> However, Witness P-0435 only knew the amount received on one occasion, and did not specify for what the funds were used.<sup>616</sup> Despite claiming that he was in charge of military operations for the GPP, Witness P-0435 was not present for the meeting with Mr Tagro regarding the 16 December 2010 march,<sup>617</sup> and could not tell the Chamber why Mr Tagro was meeting with the GPP.<sup>618</sup> He also did not speak with the minister of Defence Alain Dogou regarding the 50 elements that Mr Alain Dogou requested be integrated into the FDS in December 2010.<sup>619</sup> This information was relayed to him by Mr Bouazo, and again contains very little information as to why Mr Dogou made such a request for this specific amount of GPP members, and where exactly these 50 members were dispatched within the FDS.<sup>620</sup> P-0435 provided only the general detail that certain elements were sent to the CRS1, the Presidential Residence and the Palace.<sup>621</sup> Witness P-0435 also gave precious little information as to the joint operations he claimed Maguy Le Tocard led with Colonel Loba.<sup>622</sup> The Prosecution was only able to lead evidence regarding the approximate date of the said collaboration between Maguy Le Tocard and Colonel Loba,<sup>623</sup> but no

<sup>613</sup> [REDACTED]; See P-0435, T-96-CONF-FRA CT, p. 62-64.

<sup>614</sup> [REDACTED].

<sup>615</sup> P-0435, T-87-CONF-FRA pp. 51-52.

<sup>616</sup> *Ibid.*

<sup>617</sup> P-0435, T-89-CONF-FRA CT, p. 66.

<sup>618</sup> P-0435, T-93-CONF-FRA CT, p. 3.

<sup>619</sup> P-0435, T-88-CONF-FRA CT, pp. 9-10.

<sup>620</sup> *Ibid.*; P-0435, T-89-CONF-FRA CT, p.13

<sup>621</sup> *Ibid.* While not initially stating the number of elements sent to CRS1, Witness P-0435 later added the detail that 12 elements were sent to it. P-0435, T-89-CONF-FRA CT, p.13. However, it is unclear whether this is the total number since he testified that they started with 12 elements detached to the CRS1. *Ibid.*

<sup>622</sup> P-0435, T-88-CONF-FRA CT, p.19.

<sup>623</sup> P-0435, T-88-CONF-FRA CT, p. 19.

evidence was adduced regarding how P-0435 came to know this information, whether it was Maguy Le Tocard who told him that he was working with Loba, or whether he witnessed joint operations.

247. Witness P-0435 also showed that his testimony was easily influenced by others and his surroundings. While questioned by the Defence at trial, P-0435 admitted that when he was questioned by Prosecution investigators he was not in the right state of mind.<sup>624</sup> He had trouble recalling events, testified that with time his interviews with Prosecution investigators improved.<sup>625</sup> Also, while testifying, the witness demonstrated that he was easily influenced by the objections made by the parties. For example, whilst every effort was made to exclude the witness from certain objections, he was present for the objection that the partial transcripts from the Simone Gbagbo trial should not be used since they were not verbatim.<sup>626</sup> The Defence brought to the attention of the Chamber that the witness should not have heard the objection, but it was too late. Later, in his testimony the witness stated that the Simone Gbagbo transcripts were not complete and so he could not be sure of their veracity.<sup>627</sup> The Defence then asked the witness if he had heard during the course of his testimony the objection being made regarding the Simone Gbagbo trial transcripts. Witness P-0435 denied hearing the objection, though he was on the stand when the objection was made, and the Chamber did not have the opportunity to instruct him to take off his headphones.<sup>628</sup> P-0435 also heard the Prosecution's objection to only one statement from 2014 being read to the witness instead of reading the statement in conjunction with the 2015 statement.<sup>629</sup> Almost immediately following this objection, when the Defence confronted P-0435 with his previous statement from 2014, the Witness answered that the Defence counsel's question could not be split in two because the question he was asking was posed several times over the course of the Prosecution's interviews.<sup>630</sup> This answer parrots the objection made by the Prosecution.

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<sup>624</sup> P-0435, T-96-FRA CT, p. 62.

<sup>625</sup> P-0435, T-96--FRA CT, pp. 62-64.

<sup>626</sup> P-0435, T-91-CONF-FRA CT, p. 56.

<sup>627</sup> P-0009, T-196-CONF-FRA CT, pp. 55-57.

<sup>628</sup> P-0435, T-91-CONF-FRA CT, p. 56.

<sup>629</sup> P-0435, T-96-FRA CT, p. 42.

<sup>630</sup> P-0435, T-96-FRA CT, pp. 50-51.

248. The Defence respectfully recalls that the Witness was detained at the DST for over a week, during which he was questioned by Prosecution investigators.<sup>631</sup> He was next brought before national courts and [REDACTED], [REDACTED].<sup>632</sup> Therefore, there was [REDACTED].

(e) Witness P-0435 had every incentive to not tell the truth since [REDACTED]

249. In addition to the Witness' mental state impacting his credibility, his incentive to incriminate Charles Blé Goudé should also be considered when assessing his credibility. Witness P-0435 had every reason to provide incriminating evidence on behalf of the Prosecution. Firstly, P-0435 has been [REDACTED];<sup>633</sup> [REDACTED]. Secondly, following his Prosecution interview at the DST, the witness [REDACTED].<sup>634</sup> Given that following his interview the witness was [REDACTED]. Thirdly, the [REDACTED]. Given [REDACTED] for P-0435 to provide incriminating evidence, his uncorroborated testimony should be viewed with great circumspection.

(f) Without P-0435's evidence, the Prosecution is not able to prove that the collaboration between FDS and militia was premeditated and organized by the alleged inner circle

250. Without Witness P-0435's evidence, the Prosecution's case regarding the integration in and collaboration with militia at the behest of an alleged inner circle falls apart. The Prosecution advances the argument that Laurent Gbagbo and his inner circle, financed, recruited and armed pro-Gbagbo youth, militia members and mercenaries in preparation for the post-election violence.<sup>635</sup> With the exclusion of P-0435's evidence, the Prosecution is not able to sustain this allegation since the evidence cited is either insufficient, does not support the allegation or is incapable of belief.

251. Again, the Prosecution relies on the alleged receipts from the Presidency to establish that Laurent Gbagbo was involved in financing youth groups and militia.<sup>636</sup> As

<sup>631</sup> P-0435, T-91-CONF-FRA CT, pp. 13-14.

<sup>632</sup> *Ibid.*

<sup>633</sup> See [REDACTED]

<sup>634</sup> [REDACTED], CIV-OTP-0043-0175-R02.

<sup>635</sup> See Trial Brief, Section II.C.1.b.

<sup>636</sup> *Ibid.*, para. 88.

previously substantiated by the Defence,<sup>637</sup> the receipts lack sufficient indicia of reliability and are not relevant to establishing any material fact in the case given, the Prosecution has led no evidence showing for what specific purposes these monies were received. No evidence was also led to support the Prosecution's baseless allegation that the FDS supplied arms to FESCI members. In support of this allegation, the Prosecution cites Witness P-0347's testimony.<sup>638</sup> However, Witness P-0347 never mentioned the supplying of weapons to FESCI. The only reference he made to FESCI in the course of his testimony was in reference to Serge Koffi, and that to the best of his memory he recalled that he was the President of the organization.<sup>639</sup> This reference cannot possibly be relied upon to support the allegation that the FESCI was armed, and the inference that the weapons came from the inner circle.

252. Witness P-0483's evidence, while cited by the Prosecution simply does not support the conclusion submitted by the Prosecution, namely that mercenaries were systemically paid by the Gbagbo government.<sup>640</sup> Witness P-0483 testified in no uncertain terms that he did not know whether anyone else besides himself was given money at the *État-Major*. Further, he emphasized his limited knowledge in this regard when he stated to the Court, "*I'm telling you even during the crisis or before the crisis, I did not know if people were actually paid to go and fight.*"<sup>641</sup> Witness P-0483, the only LIMA member to testify in these proceedings, clarified the purpose of the 50,000 FCFA payment he received. The Witness insisted that the money he received "*was not a salary for us to go and fight war.*"<sup>642</sup> The Witness added that the money Paul Richard received was from the Krahn elites who worked for the Gbagbo government, and again he reiterated that "*this was not monies that were given to us by the government or Gbagbo.*"<sup>643</sup>

253. The other witnesses the Prosecution cites in regard to the financing and recruiting of mercenaries by the inner circle is either irrelevant to the allegation it seeks to prove or

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<sup>637</sup> See Motion, Section III.3.A.ii.(g) *Active or Former Ministers*.

<sup>638</sup> Trial Brief, para. 88.

<sup>639</sup> P-0347, T-78-CONF-FRA CT, p. 4.

<sup>640</sup> See Trial Brief, para. 88.

<sup>641</sup> P-0483, T-100-CONF-ENG CT, p. 6.

<sup>642</sup> P-0483, T-99-CONF-ENG CT, pp.89-91

<sup>643</sup> *Ibid*, p. 91.



incapable of belief.<sup>644</sup> Witness P-0108 testified that he had a Liberian neighbour, by the name of Kuya Bola who was a Liberian mercenary and who explained to him that he was financed by Hubert Oulai.<sup>645</sup> He added without specifying his source that the Liberians would receive their salary in Guiglo.<sup>646</sup> This evidence is anecdotal making it incapable of belief because neither the Defence nor the Chamber is able to evaluate the credibility of this neighbour Kuya Bola. Moreover, the witness as a crime base witness was not in a position to provide the Chamber with the information necessary to make the link between the alleged mercenaries he claimed he saw in his neighbourhood and the inner circle. This was demonstrated by the fact that he did not know Mr Oulai's last name and was not able to provide the Chamber with any evidence regarding the recruitment of the Liberians he observed.<sup>647</sup>

254. Witness P-0459 testified that there were Liberians in his neighbourhood.<sup>648</sup> However, when asked whether he knew what the Liberians were doing in his neighbourhood, the Witness could only speculate as to their activities, and he and his neighbours speculated that they were mercenaries.<sup>649</sup> This evidence is irrelevant to a potential finding of the Chamber regarding the link between the inner circle and mercenaries seeing as the witness provided no evidence linking the presence of the Liberians he observed and the inner circle. Moreover, there is evidence on the record suggesting that Liberian refugees were mistakenly believed to be mercenaries.<sup>650</sup> Therefore, the Prosecution's reliance on this testimony is misplaced.<sup>651</sup>

255. The Prosecution will attempt but fail to argue that the document CIV-OTP-0071-0850 is a document that corroborates P-0435's testimony regarding the integration of militia members into the FDS structures well before the Battle for Abidjan.<sup>652</sup> However, this document presents serious issues of reliability that arise both from its content and from the testimony of other Prosecution witnesses.

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<sup>644</sup> See Trial Brief, para. 88.

<sup>645</sup> P-0108, T-145-CONF-FRA CT, pp. 82-85.

<sup>646</sup> P-0108, T-145-CONF-FRA CT, p. 84.

<sup>647</sup> P-0108, T-145-CONF-FRA CT, p. 84.

<sup>648</sup> See Trial Brief, para. 88.

<sup>649</sup> P-0449, T-153-CONF-FRA CT, pp. 21-23.

<sup>650</sup> CIV-D15-0004-1975; P-0483, T-102-CONF-ENG CT, pp. 56-60.

<sup>651</sup> See Trial Brief, para. 88.

<sup>652</sup> See Trial Brief, paras 296-297.

256. First, the first two pages which present all external indicators of an official document from the COMTER do not contain the acronym “GAD.” In fact, the document mentions that in its annex there is a “*Liste des volontaires au recrutement*.” The document which the Prosecution advances is this annex begins on page 0852, and nowhere does it mention “*Liste des volontaires au recrutement*.”<sup>653</sup> Instead, the title of this annex is “*Repartition GAD pour la formation militaire*.”<sup>654</sup> The Defence does not question that the Prosecution may have retrieved both the cover page and the annex as a single document. However, the document’s integrity was not preserved, since Akouédo former camp where the COMTER maintained its archives was pillaged and the documents were either scattered or stolen.<sup>655</sup> One reasonable inference to explain the incongruence between the cover page and the “GAD” annex is that the annex was attached to the cover page in the aftermath of the crisis after Akouédo former camp was attacked and ransacked.

257. Second, the most senior ranking FDS officials at the time of the crisis, P-0047 and P-0009 did not recognize the document,<sup>656</sup> and both were unable to answer the meaning of acronym “GAD.”<sup>657</sup> Third, as mentioned previously P-0009 and P-0047 categorically denied working with militia during their service as the CEMA and COMTER.<sup>658</sup> Fourth, P-0009 further cast doubt on the reliability of the document when he testified that no recruits were integrated into the BB, contrary to what is stated on page 0859 of the document indicating that 100 individuals were recruited into the BB at Akouédo.<sup>659</sup>

258. The Prosecution also cites another document, namely CIV-OTP-0048-0205 which purports to show this alleged integration and collaboration of militias with the FDS before the battle of Abidjan.<sup>660</sup> In addition to the document lacking any extrinsic indicators of authenticity, the Defence submits that P-0483’s testimony further limits the value of the document. Witness P-0483 did not recognize a single name that the

<sup>653</sup> CIV-OTP-0071-0850.

<sup>654</sup> CIV-OTP-0071-0850.

<sup>655</sup> P-0047, T-206-CONF-FRA CT, p. 15.

<sup>656</sup> P-0009, T-196-CONF-FRA CT, p.79. It is not clear on the basis of Witness P-0047’s testimony whether he recognized the document. He only states that he must have seen it since the date of the document indicates that he was at the *État-Major*. P-0047, T-204-CONF-FRA CT, pp.39-40.

<sup>657</sup> P-0009, T-196-CONF-FRA CT, pp. 79-80; P-0047, T-204-CONF-FRA CT, p. 40.

<sup>658</sup> See P-0009, T-196-CONF-FRA CT, pp.72-73; P-0047, T-204-CONF-FRA CT, pp.36-38.

<sup>659</sup> See P-0009, T-196-CONF-FRA CT, p. 82.

<sup>660</sup> Trial Brief, para. 297.

Prosecution read out to him that was contained on this list.<sup>661</sup> Given that not a single witness could contextualize this document, it is insufficient for any trial chamber to find that the individuals listed were destined to be integrated into the FDS.

(g) The Prosecution failed to prove the control that the alleged inner circle would have exercised over the militia and youth during FDS operations after 31 March 2011

259. As previously submitted in the aforementioned paragraphs, 31 March 2011 marks a turning point in the crisis. Numerous FDS witnesses have testified that it is on 31 March 2011 that the FRCI troops entered Abidjan.<sup>662</sup> In the course of the governmental forces retreat, the FRCI troops assisted by the French and ONUCI forces advanced into Abidjan.<sup>663</sup> It is in this context that the government's Chief of Defence Staff, P-0009 and the Commander of the ground forces, but also the coordinator of operations in Abidjan, P-0047 resigned.<sup>664</sup> Other key members of the FDS that the Prosecution submits were part of the inner circle also left their posts, such as P-0010, the commander of CECOS,<sup>665</sup> and P-0046 had entered into hiding on 30 March 2011.<sup>666</sup> Given that the Prosecution has failed to prove the existence of a parallel structure as submitted above,<sup>667</sup> the Prosecution has failed to adduce evidence to show that actions led by the FDS as of 31 March 2011, in conjunction with certain militia members or youth groups, was coordinated by Laurent Gbagbo and the other members of the alleged inner circle. For example, P-0500's evidence shows that he did not go to the Residence as a member of the FLGO ready to fight on behalf of that militia. P-0500 went to the Presidential Residence on 31 March 2011, and expressly stated that the four friends who accompanied him were not part of the FLGO.<sup>668</sup> The witness further testified that upon arriving at the Residence he found other youth, and they formed a group. Again, the witness specified that the youth were not part of the

<sup>661</sup> P-0483, T-101-CONF-ENG CT, pp. 85-90.

<sup>662</sup> See P-0010, T-141-CONF-FRA CT, pp. 8-9, P-0047, T-206-CONF-FRA CT, pp. 24, 50 ; P-[REDACTED].

<sup>663</sup> P-0381, T-208-CONF-FRA CT, pp. 19-20; P-0239, T-168-CONF-FRA CT, pp. 21-22.

<sup>664</sup> P-0009, T-194-FRA CT, pp.12-14; P-0047, T-204-CONF-FRA CT, p. 43.

<sup>665</sup> P-0010, T-138-CONF-FRA CT, pp. 8-9.

<sup>666</sup> P-0046, T-126-CONF-FRA CT, p.85.

<sup>667</sup> See Motion, Section III.3.B.i. The Prosecution failed to prove that Laurent Gbagbo and the alleged inner circle had control over the so-called parallel structure as of 31 March 2011.

<sup>668</sup> P-0500, T-181-FRA CT, p. 78.

FGLO.<sup>669</sup> Similarly, while the Prosecution attempted to connect the presence of Augustin Mian and the other youths to the fighting that was occurring, it is clear from the record that there was no coordination between the P-0500's group and the youth who were playing music and were unarmed.<sup>670</sup>

260. It is not clear from Witness P-0500's testimony whether Séka Séka and Captain Meledjé were in charge of directing the operations of P-0500's group. P-0500 specifically stated that he was under the command of Commander Tchang, who was not part of the FDS.<sup>671</sup> Assuming the Chamber does accept Witness P-0500's statement as true regarding Séka Séka and Meledjé, the Prosecution has still failed to adduce any evidence regarding who made the decision to put Séka Séka and Meledjé in charge of these operations in which P-0500 participated.

261. The lack of evidence regarding the coordination of FDS operations with alleged militia and youth after 30 March 2011 is made all the more evident by the Prosecution's reliance on Witness P-0009 for the allegation that after he resigned, young Ivorians were recruited into *Garde Républicaine*.<sup>672</sup> P-0009 initially testified that he obtained this information from his bodyguards, nearly three months after the crisis when he left the South African embassy.<sup>673</sup> However, P-0009 did not provide any evidence regarding how his bodyguards obtained this information, and where they were during the events that followed 30 March 2011. He simply stated that they mentioned that young Ivoirians had integrated the *Garde Républicaine*.<sup>674</sup> Such evidence cannot be relied upon by any reasonable trial chamber reasonable trial chamber since it is impossible to evaluate its reliability and credibility.<sup>675</sup>

(h) The Prosecution failed to prove that Laurent Gbagbo and his alleged inner circle controlled mercenaries

262. The Prosecution submits that Laurent Gbagbo and the inner circle controlled mercenaries through the FDS chain of command, through which they received orders

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<sup>669</sup> *Ibid.*

<sup>670</sup> P-0500, T-182-CONF-FRA CT, pp. 2-3.

<sup>671</sup> P-0500, T-182-CONF-FRA CT, p. 3.

<sup>672</sup> Trial Brief, para. 288.

<sup>673</sup> P-0009, T-196-CONF-FRA CT, p. 78.

<sup>674</sup> *Ibid.*

<sup>675</sup> ICC-02/11-01/15-1188-Anx, para. 6.

and were given responsibilities.<sup>676</sup> The Prosecution has produced insufficient evidence for any reasonable chamber to make such a finding. For example, Witness P-0347 admitted that he did not know who authorised the decision to allow the 100 or more combatants to enter his barracks, but he assumed that Dogbo Blé was aware of it.<sup>677</sup> The Defence admits that Prosecution Witness P-[REDACTED] testified that [REDACTED].<sup>678</sup> This evidence does not demonstrate that these operations were known and approved by the FDS chain of command, and therefore known by the members of the alleged inner circle. The evidence on the record suggests that Séka Séka often acted independently, and that his operations were unknown to the FDS hierarchy.<sup>679</sup> The CEMA reprimanded Séka Séka that running operations on his own was strictly forbidden.<sup>680</sup>

263. Moreover, it appears from P-0483's testimony that P-0483 did not follow the orders issued to them. P-0483 described that following the election announcements there were "riots" around the RTI, and that instead of waiting for Commandant KB's instructions, he and his group of 15 or 16 individuals took matters into their own hands and resorted to their own "*tactical manoeuvres*."<sup>681</sup> Further, P-0483 also did not come to the Presidential Residence on any FDS' members orders.<sup>682</sup> He and his group decided to go on their own accord, and devised a plan to make it possible, which involved advancing towards the Residence while shooting away from it such that they would not be shot down by the security detail.<sup>683</sup>

264. The Prosecution also maintains that control was achieved through financial sponsorship. The evidence cited relates to [REDACTED] and Charles Blé Goudé.<sup>684</sup> The evidence relating to [REDACTED].<sup>685</sup> The record is silent as to any financial links between Charles Blé Goudé and Liberian refugees, with the exception of the uncorroborated testimony of Witness P-0435. The Defence refers to its

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<sup>676</sup> Trial Brief, para, 325.

<sup>677</sup> P-0347, T-77-CONF-FRA ET, pp. 66-67.

<sup>678</sup> Trial Brief, para, 311.

<sup>679</sup> P-0010, T-138-CONF-FRA CT, pp. 6-7,10.

<sup>680</sup> *Ibid.*

<sup>681</sup> P-0483, T-102-CONF-FRA CT, p. 44.

<sup>682</sup> P-0483, T-102-CONF-FRA CT, pp. 45-47.

<sup>683</sup> *Ibid.*

<sup>684</sup> Trial Brief, paras 326 to 327.

<sup>685</sup> *See* [REDACTED].

aforementioned submissions on the credibility assessment that should be made with respect to P-0435's testimony.<sup>686</sup> However, even without such a credibility determination being made, P-0435's evidence on this matter is incapable of belief. First, the evidence consists of hearsay that Witness P-0435 heard long after the crisis had ended when he was a refugee in Lomé.<sup>687</sup> Second, P-0435 provided no information as to his source other than stating that his name was Charles and that he worked for the *Garde Républicaine*.<sup>688</sup> Without further information, neither the Defence nor the Chamber can evaluate the credibility and reliability of Witness P-0435's source. Third, Witness P-0435 admitted that his source, Mr Charles had not specified the amount of money that Charles Blé Goudé gave.<sup>689</sup> Witness P-0435 testified that he gleaned this information from Liberian combatants he had met.<sup>690</sup> Thus, this evidence amounts to anonymous hearsay and according to the Defence cannot be relied upon. Additionally, Witness P-0435 did not mention the 5 million FCFA that the Liberian combatants were to receive in his previous statement to Prosecution investigators.<sup>691</sup>

265. For these aforementioned reasons, a reasonable chamber could not accept the testimony of Witness P-0435 on this issue, especially since it directly relates to the actions of Charles Blé Goudé who is not in a position to examine the sources of this evidence. Witness P-0435's testimony regarding the direct contribution of Charles Blé Goudé in the sponsorship of Liberian mercenaries stands in stark contrast with the evidence provided by the only LIMA member who testified before the Chamber, namely Witness P-0483. Witness P-0483 never had any contact with Charles Blé Goudé, with the exception of seeing him once at a funeral in 2003.<sup>692</sup>

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<sup>686</sup> See Motion, Section III.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.*

<sup>687</sup> P-435, T-91-CONF-FRA CT, pp. 23-26, Section III.B.ii.(c) *Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Table.*

<sup>688</sup> There is an inconsistency between the Witnesses' previous statement and his testimony regarding whether he knew the last name of Charles, his source. Compare P-435, T-91-CONF-FRA CT, pp. 23-26 with P-435, T-94-CONF-FRA CT, pp. 24-27 citing CIV-OTP-0063-1801 at page 1825,1828.

<sup>689</sup> P-0435, T-90-CONF-FRA CT, p. 26.

<sup>690</sup> P-0435, T-90-CONF-FRA CT, p.26.

<sup>691</sup> P-0435, T-94-FRA CT, pp. 29-30 citing CIV-OTP-0063-1801 at page 1829.

<sup>692</sup> P-0483, T-101-CONF-ENG, pp.24-28

iii. The Prosecution failed to prove that Laurent Gbagbo controlled the pro-Gbagbo youth via Charles Blé Goudé

266. The Prosecution has not adduced sufficient evidence so as to demonstrate to the requisite threshold that Charles Blé Goudé acted as an intermediary between Laurent Gbagbo and the pro-Gbagbo youth, allowing Laurent Gbagbo to control the pro-Gbagbo youth.

267. [REDACTED], if Charles Blé Goudé in his speeches used the expression “*général de la rue*”, this is because the secretary generals of the FESCI were known as generals. [REDACTED] Guillaume Soro and Ahipeau were also referred to as generals. And since Charles Blé Goudé had been appointed as secretary general of the FESCI in 1998, this was not surprising, as he was also called general.<sup>693</sup>

268. The fact that certain witnesses have testified that Laurent Gbagbo and Charles Blé Goudé were close or, based on the Presidential Residence logbook, that Charles Blé Goudé had access to Laurent Gbagbo does not demonstrate that Charles Blé Goudé was a conduit between Laurent Gbagbo and the youth. It is indeed not surprising that Charles Blé Goudé was appointed Minister of Youth and Employment in December 2010 because of his long-lasting political involvement with the youth, not because he would have been known as the “*general*” or the “*leader of the young patriots*”.<sup>694</sup> Among the witnesses the Prosecution cites to support its allegation that Charles Blé Goudé was extremely close to Laurent Gbagbo, it cites P-0176, who admits that he knew about that fact as much as the entire population did, which suggests he did not know much. P-0176’s deductions are for the most part based on what he saw on TV and what Charles Blé Goudé’s representatives in P-0176’s local area would tell him. The Prosecution also cites P-0087 who is a foreign journalist having spent a few weeks only in Côte d’Ivoire at the end of the crisis and who has never actually witnessed Laurent Gbagbo and Charles Blé Goudé’s relationship.<sup>695</sup> The absence of evidence thereto speaks for itself given that the Prosecution has to rely on the testimony of a journalist. As to the excerpt of P-0011’s transcript that the Prosecution uses to corroborate the fact that Laurent Gbagbo and Charles Blé Goudé were very

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<sup>693</sup> [REDACTED].

<sup>694</sup> Trial Brief, para. 237.

<sup>695</sup> Trial Brief, footnote 29 referring to P-0087, T-177-ENG-ET, pp.77-78.

close, it relates to the relationship of Philippe Mangou and Charles Blé Goudé and not that of Laurent Gbagbo and Charles Blé Goudé.<sup>696</sup> The Defence also refers to the extensive argumentation it made concerning Charles Blé Goudé's access to the Residence and the conclusions that can and cannot be drawn in relation thereto.<sup>697</sup> Charles Blé Goudé's alleged 22 visits at the Presidential Residence during the post-electoral crisis, assuming he did meet the President these 22 times, which has not been demonstrated, let alone their contents, would still be far less than other government ministers during the same period.<sup>698</sup> Given the importance of the alleged relationship between Charles Blé Goudé and Laurent Gbagbo to the Prosecution's case, it is noteworthy that the Prosecution failed to adduce any conclusive evidence as to their alleged closeness and coordination in the context of the alleged policy. The fact that the Prosecution relies on P-0087's testimony and the Presidential Residence logbook in an attempt to support its allegations is self-explanatory for the weakness of its evidence.

269. As developed below, the analysis of the entire content – as opposed to certain excerpts – of the different speeches presented by the Prosecution cannot reasonably lead to the Prosecution's conclusion that Charles Blé Goudé used a xenophobic rhetoric which mobilized the youth to commit violent acts or crimes.<sup>699</sup> The Prosecution hence failed to prove that Charles Blé Goudé exercised control over the youth in Côte d'Ivoire and proceeds by amalgamation between the different notions of control and influence. As the Defence shows in the Motion, neither the erection of roadblocks, nor their alleged proliferation can be attributed to Charles Blé Goudé's speeches. Moreover, the Prosecution failed to prove that the specific commission of acts of violence at roadblocks could be attributed to Charles Blé Goudé. The Defence incorporates by reference the paragraphs of the Motion related to the specific issue of Charles Blé Goudé's alleged "*mot d'ordre*".<sup>700</sup> It results from the foregoing that the Prosecution failed to prove that Charles Blé Goudé acted as an intermediary between the youth and Laurent Gbagbo.

<sup>696</sup> [REDACTED] P-0011, T-134, p. 56, lns. 8-19.

<sup>697</sup> Motion, Section VI.1.A.ii.(a) *The Prosecution failed to prove any participation in meetings instrumental to a policy.*

<sup>698</sup> See Trial Brief, para. 84.

<sup>699</sup> See Motion, Section VI.4. *The Prosecution failed to prove that Charles Blé Goudé "mobilis[ed] the youth to commit crimes/violent acts".*

<sup>700</sup> See Motion, Section VI.4.A. *No nexus between "mots d'ordres" and alleged crimes.*



270. The Prosecution alleges that “[t]o avoid accusations of advocating violence, *BLÉ GOUDÉ adapted his public messages*”.<sup>701</sup> While there is no evidence to disprove that this was the case, there is only clear evidence of calls to end violence. It has not satisfactorily been explained how the individuals that took part in the violence would have known that they should disregard the public statements made by Charles Blé Goudé to remain calm. As regards to the supposed “code” of Charles Blé Goudé’s baseball cap, the Prosecution has not led any further evidence as to whether the flipped-up cap was actually a code, whether any alleged “young patriots” knew its meaning and whether it was ever used to advocate violence.<sup>702</sup>

271. As substantiated by the Defence above, the Prosecution was unable to adduce sufficient evidence with respect to the collaboration and integration of pro-Gbagbo youth and militia into the FDS.<sup>703</sup> With respect to an alleged collaboration or integration before the Battle of Abidjan, the Prosecution either relies on the patently incredible testimony of P-0435, or irrelevant, insufficient and contradictory evidence with regard to youth groups and militias integrating and collaborating with the FDS.<sup>704</sup> Further, since the Prosecution failed to adduce evidence to the requisite standard of a parallel structure, it has not been able show that the alleged inner circle and Laurent Gbagbo exercised control over the operations that certain FDS members could have led with militia and youth after 30 March 2011.<sup>705</sup>

272. It is misleading and unfounded to refer to Charles Blé Goudé’s call for enlistment made on 19 and 20 March 2011 to allege that Charles Blé Goudé “*used his authority [...] in the recruitment of youth and militia to the FDS*”.<sup>706</sup> First, the reasonable conclusion that the objective of the call was never to actually recruit is corroborated by two elements: (i) the fact that, in the Prosecution’s own admission, this recruitment never materialised<sup>707</sup> and (ii) P-0009’s testimony which establishes that it was merely

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<sup>701</sup> Trial Brief, para. 240.

<sup>702</sup> [REDACTED] video, CIV-OTP-0028-0103 at 00:10:52–00:11:56 (transcript at CIV-OTP-0044-2590 at 2594, lns.141-160).

<sup>703</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>704</sup> See Motion, Section III.3.B.ii.(a) *Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011.*

<sup>705</sup> See Motion, Section III.3.B.i. *The Prosecution failed to prove that Laurent Gbagbo and the alleged inner circle had control over the so-called parallel structure as from 31 March 2011.*

<sup>706</sup> Trial Brief, para. 241.

<sup>707</sup> Trial Brief, para. 600.

a communication strategy from Charles Blé Goudé with no intention either on his part or on P-0009's part to follow the call through.<sup>708</sup> Thirdly, considering that the recruitment never materialised and the CEMA was not even aware of this call beforehand, it is unrealistic to allege that this call was part of a bigger strategy organized by Laurent Gbagbo and an alleged inner circle to further an alleged policy. A reasonable Chamber cannot find that the latter conclusion would be the most reasonable inference to be drawn from Charles Blé Goudé's call for enlistment. Fourthly, the Prosecution's allegation that the individuals called upon to be recruited included militia is totally unsubstantiated. In light of the foregoing, the assertion as to the use by Laurent Gbagbo and the inner circle of Charles Blé Goudé as a conduit between the youth and them to further an alleged policy is not demonstrated by the evidence in relation to the call for enrolment.

273. In conclusion, the foregoing arguments demonstrate that the so-called inner circle did not constitute an organisation.

### **C. The Prosecution failed to prove the early development and implementation of a common plan from 2000 onwards**

274. The Pre-Trial Chamber defined the common plan as "*an agreement between a plurality of persons to commit a crime*".<sup>709</sup> According to the jurisprudence of this Court, an agreement must encompass an element of criminality, meaning that it must involve the commission of a crime with which the accused person is charged.<sup>710</sup> In order for a person to be held individually criminally responsible as a co-perpetrator, the Prosecution must show that he or she made an "*essential contribution*" within the

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<sup>708</sup> See Motion, III.3.A.iii. *The Prosecution failed to prove any coordination of activities among members of an alleged inner circle*. Also, although it has not been specifically asked to P-0009, the most reasonable inference to be drawn from the fact that on 29 March 2011, Gohourou Babri thanked the youth on behalf of P-0009 for having responded to the call is that while the CEMA had no intention to recruit, the youth's expectation had to be managed. See Trial Brief, para. 241.

<sup>709</sup> ICC-02/11-02/11-186, para. 134.

<sup>710</sup> *Prosecutor v. Kenyatta*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 29 January 2012, ICC-01/09-02/11-382-Red, para. 399 ("Kenyatta confirmation of charges decision"); *Katanga confirmation of charges decision*, ICC-01/04-01/07-717, para. 523; *Prosecutor v. Lubanga*, Decision on the confirmation of charges, 7 February 2007, ICC-01/04-01/06-803-tEN, para. 344 ("Lubanga confirmation of charges decision").

framework of the common plan “*with the resulting power to frustrate the commission of the crime*”.<sup>711</sup>

275. At the outset, the Prosecution’s theory with respect to the common plan remains impermissibly vague. Even at this stage of the proceedings, the Prosecution fails to clearly identify the members of the alleged inner circle and this concept remains nebulous at best.<sup>712</sup> The Prosecution fails to identify Charles Blé Goudé’s specific contribution to the common plan, at which stage(s) this contribution would have been made, and with whom the common plan would have been conceived, developed or implemented, which would have permitted Charles Blé Goudé to exercise joint, combined and coordinated control over the alleged crimes.<sup>713</sup>

276. The Prosecution contends that Laurent Gbagbo and the alleged inner circle including Charles Blé Goudé, conceived, developed and implemented, from 2000 onwards (upon Laurent Gbagbo’s becoming President) a common plan which may, according to the Prosecution, be inferred from the following elements:

- a. prior to 2010, Laurent Gbagbo and the inner circle used violence as a means to further political objectives aimed at keeping Gbagbo in power, following similar methods and using groups employed during the post-electoral crisis;
- b. they consolidated and exercised joint control over the pro-Gbagbo forces by appointing loyal individuals to key positions including in the parallel structure;
- c. They recruited, armed and financed the pro-Gbagbo forces before and during the attack.<sup>714</sup>

277. As will be demonstrated below, the Prosecution provided no viable evidence as to these three elements. No reasonable trier of fact could conclude to the existence of a common plan which would have been conceived and developed from 2000 onwards.

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<sup>711</sup> See Motion, *Section V. Charles Blé Goudé is not responsible for the crimes charged*; ICC-02/11-02/11-186, para. 135, citing *Prosecutor v. Lubanga*, Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 473 (hereinafter “Lubanga Appeals Judgment”).

<sup>712</sup> See Motion, *Section III.3.(A) The Prosecution failed to prove the existence of an inner circle*.

<sup>713</sup> *Prosecutor v. Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 29 January 2009, ICC-01/05-01/08-424, para. 326 (“Bemba Confirmation of charges Decision”); *Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, 5 April 2012, ICC-01/04-01/06-2842, para. 994 (“Lubanga Trial Judgment”).

<sup>714</sup> Trial Brief, para. 178.

Most significantly, the Prosecution has failed to establish that Charles Blé Goudé would have contributed or had any role – whether directly or indirectly – in the conception, development or implementation of an alleged common plan.

278. The Prosecution’s allegations with respect to the development of a common plan from 2000 onwards<sup>715</sup> are entirely based on circumstantial evidence, which no reasonable trier of fact could accept for a conviction. Even if the Chamber were to consider the entirety of the evidence as “admissible” at this stage of proceedings, the evidence put forward by the Prosecution does not support its claim that Charles Blé Goudé would have made a contribution to the conception, development and implementation of a common plan.

279. A review of the Prosecution’s allegations in this respect reveals that Charles Blé Goudé’s alleged contribution is limited to: (i) his purported role in the creation of the GPP in 2003;<sup>716</sup> and (ii) his alleged role in the recruitment of youth into the FDS following the 2002 attempted *coup d’état* in Côte d’Ivoire.<sup>717</sup> These contentions are supported for the most part on the witness testimony of P-0435, who lacks any credibility and whose evidence has been contradicted by several other witnesses.<sup>718</sup>

280. The evidence presented by the Prosecution does not support a finding that (i) Charles Blé Goudé contributed to the conception and implementation of a common plan; and (ii) that an inference can be made of the conception and development of a common plan prior to 2010 by Laurent Gbagbo and the alleged inner circle on the basis of the three elements put forward by the Prosecution.<sup>719</sup>

i. The Prosecution failed to prove any symmetry of the methods employed in 2002-2010 and during the crisis

281. The Prosecution contends that there is symmetry between methods used by Laurent Gbagbo and the alleged inner circle from 2000-2010 and those used during the post-

<sup>715</sup> It is unclear exactly when the alleged common plan would have been conceived, but the Prosecution seems to suggest that it would have started upon Laurent Gbagbo’s election in 2000, *See* for instance Trial Brief, paras 5-6, 13, 22-23, 56, 242.

<sup>716</sup> Trial Brief, paras 27-28.

<sup>717</sup> Trial Brief, para. 30.

<sup>718</sup> *See* Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units*, where P-0435’s lack of credibility is discussed at length.

<sup>719</sup> Trial Brief, para. 178.

electoral crisis, which in its view is indicative of the existence of a common plan conceived from Laurent Gbagbo's election in 2000 onwards.<sup>720</sup> In the Prosecution's view, the first element from which the early conception and development of an alleged common plan could be inferred is that "*prior to 2010, the Inner Circle including Blé Goudé had used violence as a means to further political objectives aimed at keeping Gbagbo in power.*"<sup>721</sup> To support this claim, the Prosecution solely cross-references Section II.A.6. of the Trial Brief entitled "*2002-2010: GBAGBO and members of the Inner Circle targeted political opponents*".<sup>722</sup>

282. In that section, the Prosecution's attempt to draw a comparison between the alleged use of violence prior to 2010 with the methods used during the 2010-2011 crisis rests on two claims:<sup>723</sup> (i) the emergence of the *escadrons de la mort* in 2003 which would have been responsible for various disappearances; (ii) the FDS took part in operations in urban settings to violently repress political opponents in the context of the planned demonstration of 25 March 2004 organized by opposition parties.<sup>724</sup>

283. Before addressing this first allegation, three observations are in order. First, despite the Prosecution's use of the formulation "*the Inner Circle including Blé Goudé*",<sup>725</sup> Charles Blé Goudé is entirely absent from the narrative of events the Prosecution claims demonstrates the use of violence by Laurent Gbagbo and the alleged inner circle or the targeting of political opponents. Second, the evidence presented to support this claim relies virtually entirely on the witness testimony of P-0435, whose lack of credibility has been discussed at length.<sup>726</sup> Third, as addressed below, it is striking that the context of Côte d'Ivoire, particularly as of September 2002 when the rebellion broke out, triggering a crisis throughout the country, is virtually disregarded by the Prosecution's selective narrative of events.

<sup>720</sup> Trial Brief, Section II.A.2, *Gbagbo's intent starting at the 2000 election*, paras 14-20.

<sup>721</sup> Trial Brief, para. 178.

<sup>722</sup> Trial Brief, paras 43-46.

<sup>723</sup> The Prosecution cross-references Section II.A.6. *2002-2010: GBAGBO and members of the Inner Circle targeted political opponents* of the Trial Brief to support this claim.

<sup>724</sup> Trial Brief, paras 43-46.

<sup>725</sup> Trial Brief, para. 178.

<sup>726</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

284. From 2002 onwards, Côte d'Ivoire was going through an unprecedented<sup>727</sup> and turbulent chapter in its history. Shortly after being elected in 2000, Laurent Gbagbo's government underwent an attempted *coup d'état* in January 2001.<sup>728</sup> Another *coup d'état* was attempted in September 2002, led by the same perpetrators as the previous attempted *coup*,<sup>729</sup> which led to an outright rebellion. Rebels took over large parts of Côte d'Ivoire, mostly in the North, and the country was split in half, with the Southern part remaining under government control.<sup>730</sup> Numerous attacks were committed by rebel forces against the population,<sup>731</sup> which serves to demonstrate that Côte d'Ivoire was in a state of crisis. The authorities were grappling with security threats, endeavouring to ensure the safety of its population from the armed rebels, attempting to secure its territorial integrity *vis-à-vis* threats coming from neighbouring countries, and preventing a further attempted *coup d'état*.

285. In support of its claim that prior to 2010, "*Laurent Gbagbo and members of the inner circle repressed political opponents through violent means*", the Prosecution first relies on purported disappearances attributed to an alleged group that would have emerged in 2003 called the "*escadrons de la mort*".<sup>732</sup> The Prosecution contends that the disappearance of the comedian "Camara H" is attributable to the *escadrons de la mort*.<sup>733</sup>

286. As a sole reference to support this contention, the Prosecution relies on Witness P-0048, whose testimony directly contradicts the Prosecution's claim. First, P-0048 expressed serious doubts as to the very existence of a group called *escadrons de la mort*. P-0048 indicated that this was a name that been "*given at the time*" but that it did not "*have a precise name*", further adding that he and others did not know who created them or who was at the head of them, adding that "*no one could answer at the*

<sup>727</sup> P-0316, T-184-CONF-FRA, p. 15, lns. 15-17.

<sup>728</sup> P-0316, T-183-CONF-FRA CT, p. 55, lns. 9-19; [REDACTED] testified that [REDACTED].

<sup>729</sup> [REDACTED].

<sup>730</sup> [REDACTED], P-0048, T-56-CONF-FRA CT, pp. 3, 8-9.

<sup>731</sup> For instance, [REDACTED], [REDACTED]; in 2002, rebels attacked civilians and murdered gendarmes, P-0009, T-198-FRA CT, p. 31, lns. 6-11.

<sup>732</sup> Trial Brief, para. 44.

<sup>733</sup> Trial Brief, para. 44.

time”.<sup>734</sup> According to P-0048, all that was known was that there had been mysterious disappearances at the time.<sup>735</sup>

287. With respect to the political and ethnic identity of the purported victims, P-0048 testified that there was “no specificity” to those who disappeared.<sup>736</sup> To illustrate his point that no particular group had been targeted, P-0048 indicated that one person who had disappeared was Dioula (Camara H) whereas the other was Bété (M. Dakoury).<sup>737</sup> P-0048 emphasized that there was no certainty as to whether the disappearances were even linked to the *escadrons de la mort*.<sup>738</sup>

288. Hence, given the lack of evidence of the existence of the *escadrons de la mort* – which relies solely on the testimony of P-0048 – let alone that such a group would have targeted political opponents or had any links with Laurent Gbagbo and the alleged inner circle, it is disconcerting that the Prosecution relies on this source to support its claim that “*Laurent Gbagbo and members of his inner circle repressed political opponents through violent means*”.<sup>739</sup> The Prosecution’s claim with regard to the *escadrons de la mort* has no factual basis whatsoever and no reasonable inference can be made with respect to the development of an alleged common plan on the basis of this allegation. It must therefore be rejected.

289. The second allegation put forward by the Prosecution to support its claims that violent means were used by Laurent Gbagbo and the inner circle, which in the Prosecution’s view, would lead to an inference of the development of an alleged common plan prior to 2010 is that “*under Laurent Gbagbo’s presidency, the FDS took part in operations in urban settings to violently repress political opponents*”.<sup>740</sup> The

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<sup>734</sup> “R. [...] Mais c’était une expression qui était employée, mais on n’avait pas de nom précis, on n’avait pas de nom précis. Escadrons de la mort, **qui les a créés? Qui les dirigeait?** Personne ne pouvait répondre à cette période”, P-0048, T-53-FRA CT, p. 41, ln. 25 to p. 42, ln. 15.

<sup>735</sup> P-0048, T-53-FRA CT, p. 42, lns. 1-5.

<sup>736</sup> “Q. [12:16:00] Alors, quelle était la particularité des... des personnes ciblées par cet escadron de la mort? R. [12:16:10] **Il n’y avait pas de particularité.** Je vous dis que c’étaient des disparitions. Étaient-ils le fait de... d’Escadrons de la mort ou pas? **Mais il y a une chose qui est sûre, c’est qu’il n’y avait pas de particularité.** Je vous donne le cas de «H» qui est d’ethnie dioula et de M. Dakoury qui est d’ethnie bété. **Donc, on ne pouvait pas dire que c’est sur la base de telle ou telle considération ethnique que ces gens ont été tués**”, P-0048, T-53-FRA CT, p. 42, lns. 6-15.

<sup>737</sup> P-0048, T-53-FRA CT, p. 42, lns. 6-13.

<sup>738</sup> P-0048, T-53-FRA CT, p. 42, lns. 8-9.

<sup>739</sup> Trial Brief, paras 43-44.

<sup>740</sup> Trial Brief, para. 45.

only instance provided by the Prosecution to support this claim is the event that took place on 25 March 2004 in Abidjan during the G7 march.<sup>741</sup>

290. As P-0048 explained, a march had been organized by the opposition, the G7, which was a coalition of political parties and armed movements,<sup>742</sup> planned to take place on 23 March 2004. Days prior, in order to ensure public order and security throughout Côte d'Ivoire,<sup>743</sup> Laurent Gbagbo issued two decrees, on 11 March prohibiting protests in public roads and places,<sup>744</sup> and on 22 March 2004, requisitioning the army.<sup>745</sup>

291. The presidential decrees, which were within the constitutional powers of the President,<sup>746</sup> had been issued in the context of heightened tensions throughout the country, in light of the recent attempted *coup d'état* and ensuing crisis, in order to secure public order and safety.<sup>747</sup> The Prosecution's claim that the G7 march had been organized "*in response to Gbagbo and the FPI obstructing and blocking the peace process*" is contradicted by its own evidence.<sup>748</sup> Despite the prohibition of demonstrations throughout the country, the leaders of the opposition decided to hold the march nonetheless.<sup>749</sup>

292. With respect to the alleged attack on G7 demonstrators by the FDS, the Prosecution evokes the witness testimonies of P-0184, P-0172 and P-0048. Yet, the evidence fails to show that Laurent Gbagbo violently repressed political opponents. Although some

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<sup>741</sup> Trial Brief, para. 45.

<sup>742</sup> P-0048-T-53-FRA CT, p. 81, lns. 4-5; T-54, p. 17, lns. 6-7; T-55, p. 26, lns. 18-20.

<sup>743</sup> P-0048, T-53-FRA CT, p. 80, lns. 12-15; [REDACTED] CIV-OTP-0074-0238[REDACTED]; [REDACTED] CIV-OTP-0074-0241[REDACTED].

<sup>744</sup> [REDACTED] CIV-OTP-0074-0241.

<sup>745</sup> [REDACTED] CIV-OTP-0074-0238.

<sup>746</sup> The Prosecution indicates that the decrees were issued "*without consulting the Prime Minister*" (Trial Brief, para. 45); however, there was no such obligation on the President to consult and the Prosecution has brought no evidence to show that such obligation existed. The Prosecution's insinuation of impropriety is unfounded.

<sup>747</sup> [REDACTED], CIV-OTP-0074-0238 at 240; [REDACTED] CIV-OTP-0074-0241 at 0243.

<sup>748</sup> For instance, in his book *Devoir de Mémoire*, P-0048 emphasizes on several occasions that Laurent Gbagbo was, to the contrary, supporting the peace process. As an example, on page 35 of the book, P-0048 wrote that Laurent Gbagbo had proposed to organize a referendum on the Constitution, which was one of the rebels' demands, [REDACTED], CIV-OTP-0083-0332 at 0366, 0385; P-0048, T-55-FRA CT, p. 77, ln. 9 to p. 81, ln. 6.

<sup>749</sup> P-0048, T-53-FRA CT, p. 80, lns. 16-21.



witnesses purport to have seen helicopters flying overhead that day, *none* of them witnessed actual bombardments or civilians being fired upon from helicopters.<sup>750</sup>

293. Witness P-0184 testified that she was in Clouetcha that day, located 11 kilometres away from Anyama where civilians were, according to the witness, allegedly bombarded.<sup>751</sup> However, P-0184 confirmed that she did not see any Mi-24s firing upon supporters.<sup>752</sup> P-0184 testified that she saw FDS soldiers fire on civilians and was shot herself, and that she went into hiding at Clouetcha hospital; when asked by the Prosecution how she knew these were FDS soldiers who fired upon civilians, P-0184 responded that it was because “*they had guns*” and that “*they were armed*”, without any further specification.<sup>753</sup> When asked how she knew that they were FDS soldiers who went to the hospital apparently looking for her, P-0184 responded that she could not see them, but “[*w*]hen you are lying down close to the door, I saw their footwear. They were wearing ranger boots, and I heard what they were saying”.<sup>754</sup>

294. Witness P-0172, who allegedly was injured by a bullet on 25 March, could not identify the alleged perpetrators, simply stating that these were “*people wearing fatigues*” (“*les hommes en treillis*”).<sup>755</sup> P-0172 indicated that he could not present any medical report which could attest to his alleged wounds from the march and the Prosecution has adduced no such document.<sup>756</sup> Similarly, P-0048’s testimony fails to support the Prosecution’s contention that the FDS attacked the civilian population that day. His knowledge of the helicopters flying overhead was almost entirely based on the UN Commission of inquiry report of 13 May 2004,<sup>757</sup> which had been commissioned by Laurent Gbagbo to inquire into potential human rights violations. P-0048 did not provide evidence with respect to the political affiliation or ethnic origin, the numbers of alleged victims, as well as the identity of the alleged perpetrators, other than by reference to the UN Commission report. P-0048 admitted that he did not know much about the G7 march, stating “*c’est le peu que je sais de cette marche du*

<sup>750</sup> P-0048, T-55-FRA CT p. 55, ln. 19 to p. 56, ln. 7; P-0184, T-216, p. 26, ln. 9 to p. 27, ln. 7; P-0172, T-174-CONF-FRA, p. 14, lns. 25-26 (the witness merely mentions that “*there helicopters were shooting at people*”).

<sup>751</sup> P-0184, T-216-CONF-FRA CT, p. 26, ln. 25 to p. 27, ln. 6.

<sup>752</sup> P-0184, T-216-CONF-FRA CT, p. 26, ln. 25 to p. 27, ln. 7.

<sup>753</sup> P-0184, T-215-CONF-FRA CT, p. 7, lns. 14-17.

<sup>754</sup> P-0184, T-215-CONF-FRA CT, p. 8, ln. 26 to p. 9, ln. 4.

<sup>755</sup> P-0172, T-174-CONF-FRA CT, p. 14, ln. 20.

<sup>756</sup> P-0172, T-174-CONF-FRA CT, p. 102, lns. 9-28.

<sup>757</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238.

G7”; his knowledge of the march is largely based on the UN Commission report, whose probative value has been challenged by the Defence,<sup>758</sup> rather than on his personal or direct knowledge of the events.

295. The Prosecution’s assertion that civilians were attacked by FDS forces during the G7 march appears to be based to a large extent on the UN Commission report,<sup>759</sup> which exhibits several admissibility issues, particularly with respect to reliability, rather than on the witnesses’ knowledge provided by direct evidence. This report was submitted by the Prosecution pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings<sup>760</sup> and cannot be relied upon, for reasons thoroughly detailed by the Defence in its Consolidated response to the Prosecution’s requests seeking to introduce documentary evidence pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings.<sup>761</sup> This report does not meet the most basic and fundamental admissibility criteria and ostensibly relies on anonymous hearsay evidence.<sup>762</sup> The content of the report cited by the Prosecution in the Trial Brief is uncorroborated by any witness, including P-0048. [REDACTED],<sup>763</sup> [REDACTED].<sup>764</sup> Yet, in its Trial Brief, the Prosecution cites the UN Commission report to support its claim that the attack on 25 March 2004 was “*not aimed at dispersing civilians but rather, that they targeted specific groups, in particular members of ethnic or national communities from Burkina Faso, Mali and Niger*”,<sup>765</sup> which [REDACTED] and is uncorroborated by any witness.

296. None of the *viva voce* witness testimonies who testified with respect to the events of 25 March 2004 made *any* reference to civilians being targeted on the basis of their ethnicity. It is thus disconcerting that the Prosecution relies on this sole report to

<sup>758</sup> ICC-02/11-01/15-640-Conf and Annex A.

<sup>759</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238.

<sup>760</sup> ICC-02/11-01/15-498.

<sup>761</sup> ICC-02/11-01/15-640-Conf and Annex A; *See* dissenting opinion of Judge Henderson, ICC-02/11-01/15-773-AnxI.

<sup>762</sup> For instance, *See* UN Commission report, CIV-OTP-0052-0238 at 0241(Section “Méthodes de travail de la Commission”).

<sup>763</sup> At trial, the Defence’s objection to the use of the document with respect to P-0048 was sustained by the Chamber: “*M. LE JUGE PRÉSIDENT TARFUSSER (interprétation): [15:50:20] Oui, en plus, c’est un document, vous savez ce que je pense des documents. Alors, un document, le faire valider par quelqu’un qui ne l’a pas écrit, je ne sais pas. Je pense que c’est inutile. Ça ne sert à rien de montrer ce document au témoin, puisqu’il ne l’a pas écrit, il ne l’a pas coécrit, il n’en est pas le destinataire. Je ne vois pas le but*”, P-0048, T-53-FRA CT, p. 82, lns. 1-17.

<sup>764</sup> ICC-02/11-01/15-616-Conf, 14 July 2016, para. 8(a); Annex A, ICC-02/11-01/15-616-Conf-AnxA.

<sup>765</sup> Trial Brief, para. 46.

support all the allegations contained in paragraph 46 of the Trial Brief to substantiate an alleged pattern of violence prior to 2010 from which the early development of an alleged common plan may be inferred, while its own witnesses were unable to confirm this assertion.

297. Even if the Chamber were to rely on the UN Commission report, despite its highly contentious evidentiary nature, which conceivably relies on anonymous and hearsay evidence,<sup>766</sup> the Prosecution's reading of the report's findings is highly partial and selective. The report highlights the context of the planned demonstrations, in particular the objective security threats and insurrectional nature of the planned G7 march, including its findings with respect to the murder of at least two police officers, and the alleged beating and torture by demonstrators of another police officer.<sup>767</sup> The volatile situation in Côte d'Ivoire following the 2002 attempted *coup d'état*,<sup>768</sup> as well as multiple attempts by the Laurent Gbagbo government to negotiate and mediate in order to find peaceful avenues were also omitted.<sup>769</sup> Moreover, although the Defence argues that the UN Commission report cannot possibly be relied upon to support the Prosecution's claims, contrary to the Prosecution's assertion in the Trial Brief, the report itself does not indicate that persons of specific ethnic groups such as Burkina Faso, Mali or Niger were targeted in particular, but rather is much more nuanced, indicating that their inquiry "suggests" that persons of those nationalities *were among the purported victims*.<sup>770</sup>

298. Moreover, the Prosecution appears to rely on P-0048's account of what a guard who had been guarding his house had told him – namely, that "*soldiers wearing uniforms*" knocked on his house door and then left<sup>771</sup> – to somehow support the Commission report's finding, that "*killings took place within the dwellings of would-be protestors*,

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<sup>766</sup> The report's "methodology" section is entirely opaque. Also, above and beyond the reliability issues with which the report is fraught, it must also be noted that the Commission arrived in Abidjan on 15 April 2004, more than 3 weeks after the events, and stayed in Abidjan for merely two weeks, casting further doubt over the accuracy and depth of the report findings, UN Commission report of 13 May 2004, CIV-OTP-0052-0238 at 0240-0241.

<sup>767</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238 at 0250.

<sup>768</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238 at 0242.

<sup>769</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238 at 0242.

<sup>770</sup> UN Commission report, 13 May 2004, CIV-OTP-0052-0238 at 0246.

<sup>771</sup> P-0048, T-54-FRA p. 3, ln. 25 to p. 4, ln. 10.

*not in the streets*”.<sup>772</sup> There is, however, no connection between P-0048’s account and the UN Commission report’s finding.

299. In light of the above, the Prosecution’s claim that FDS “*took part in operations in urban settings to violently repress political opponents*”<sup>773</sup> is not supported by the evidence adduced by the Prosecution, which relates to one alleged event of 25 March 2004. None of the witnesses cited by the Prosecution in this respect could attest to the identity of the perpetrators who would have fired on the population that day. Moreover, with respect to the victims, there is no indication that “*political opponents*” had been targeted. The Prosecution witnesses’ testimonies simply do not support this claim.

300. The Prosecution’s contention that the conception or development of a common plan may be inferred from a symmetry between methods used prior to 2010 and during the 2010-2011 crisis has no merit and finds no support in the inconclusive and uncorroborated evidence adduced by the Prosecution. Namely, the Prosecution has failed to (i) put forward any evidence establishing the existence a group called *escadrons de la mort*, which purportedly targeted political opponents,<sup>774</sup> or any evidence which could link – even remotely – such a group to Laurent Gbagbo, the alleged inner circle or Charles Blé Goudé; (ii) demonstrate that Laurent Gbagbo and members of the alleged inner circle had repressed or targeted political opponents through violent means or that the “*FDS took part in operations in urban settings to violently repress political opponents*” and (iii) failed to establish that the events which unfolded on 25 March 2004 are indicative of early developments of an alleged common plan involving Charles Blé Goudé.

301. Charles Blé Goudé is entirely absent from the Prosecution’s factual narrative and evidence relating to its claim that Laurent Gbagbo and members of the inner circle targeted political opponents. No reasonable trier of fact would determine an evidentiary relation between these allegations and the conception, development or implementation of an alleged common plan to which Charles Blé Goudé would have contributed.

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<sup>772</sup> Trial Brief, para. 46.

<sup>773</sup> Trial Brief, para. 45.

<sup>774</sup> Trial Brief, para. 44.

- ii. The Prosecution failed to prove that appointments were made on the basis of ethnicity and personal loyalty

302. The second element advanced by the Prosecution which, it purports would demonstrate that Laurent Gbagbo and the alleged inner circle conceived, developed and implemented a common plan prior to 2010, is that between 2002-2010, Laurent Gbagbo and the alleged inner circle “*consolidated and exercised joint control over the pro-Gbagbo forces by appointing loyal individuals to key positions in the parallel structure.*”<sup>775</sup> To support this claim, the Prosecution solely cross-references Section II.A.10 of the Trial Brief<sup>776</sup> in which the Prosecution contends that Laurent Gbagbo made ethnically motivated appointments within the FDS by appointing officers whose “*personal loyalty to him was assured by their shared ethnic links*” and who “*were prepared to keep him in power by all means*”.<sup>777</sup>

303. At the outset, it must be noted that, as with the first element alleged by the Prosecution from which the conception and development of an alleged common plan could be inferred,<sup>778</sup> Charles Blé Goudé is entirely absent from the factual narrative and evidence<sup>779</sup> presented at trial with respect to this element of the alleged common plan. There is simply no evidence linking Charles Blé Goudé to a common plan which would include securing joint control over the “pro-Gbagbo forces” through ethnically-motivated nominations.

304. At trial, the Prosecution has consistently and unsuccessfully attempted, throughout its examination of several military insider and other witnesses, to draw a parallel between the ethnic origin of certain key figures and recruits within the FDS and the existence and development of an alleged common plan involving “*ethnically sectarian politics*”<sup>780</sup> to keep Laurent Gbagbo in power by all means. Despite its persistent efforts,<sup>781</sup> the Prosecution has been unable to gather a single piece of

<sup>775</sup> Trial Brief, para. 178.

<sup>776</sup> Trial Brief, paras 56-60.

<sup>777</sup> Trial Brief, para. 178, referencing *Section II.A.10. GBAGBO made appointments on the basis of ethnicity and personal loyalty.*

<sup>778</sup> See Motion, *Section III.3.C.i. The Prosecution failed to prove any symmetry of the methods employed in 2002-2010 and during the crisis.*

<sup>779</sup> Witness testimonies of [REDACTED], P-0009, P-0047, P-0238 and P-0239.

<sup>780</sup> Trial Brief, para. 57.

<sup>781</sup> [REDACTED]P-0347, T-77-CONF-FRA ET, pp. 40-43; P-0330, T-68-CONF-FRA CT, p. 29; P-0238, T-80-CONF-FRA CT, p. 66; P-0164, T-164-CONF-FRA CT, p. 16; P-0097, T-49-CONF-FRA CT, p. 72, 89, 92.

evidence upon which it could rest its theory of the existence of a policy of ethnic favouritism aiming at securing “*personal loyalty*”<sup>782</sup> in order to keep Laurent Gbagbo in power by all means. To the contrary, the evidence shows the irrelevance of ethnicity in the appointment process within the FDS, both before and during the 2010-2011 crisis.<sup>783</sup> Witnesses have also explained that the FDS was religiously and ethnically diverse, even before the Linas-Marcoussis agreements.<sup>784</sup> For instance, P-0010 testified that the leaders of the CECOS and the troops and officers of the *gendarmerie* came from all ethnic and religious affiliations.<sup>785</sup> P-0047 affirmed that the armed forces must consist of all ethnic backgrounds and that it never recruited soldiers on an ethnic basis.<sup>786</sup> P-0011 testified that his ethnicity played no role in his successive nominations.<sup>787</sup>

305. The Prosecution’s propositions that (i) alleged nominations were made on the basis of ethnicity and (ii) that those nominations are indicative of the early developments of an alleged common plan involving Charles Blé Goudé, must be rejected as there is no evidence to sustain such claims. The link between ethnicity of certain FDS officers and commanders and their position within the FDS is non-existent. It is therefore astonishing that the Prosecution did not grasp the opportunity to narrow its case, particularly in this respect.

306. The first point raised by the Prosecution to demonstrate that Laurent Gbagbo’s appointments purportedly made on the basis of ethnicity and “personal loyalty” is the appointment, in late 2000, of Faussignaux Gagbei Vagba, who was appointed as commander of the Navy<sup>788</sup> and that of Brunot Dogbo Blé,<sup>789</sup> who was appointed as commander of the *Garde Républicaine*. They are supposedly both of Bété origin [REDACTED].<sup>790</sup> According to the Prosecution, Dogbo Blé and Vagba remained “loyal to Gbagbo until his arrest in April 2010.”<sup>791</sup>

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<sup>782</sup> Trial Brief, para. 56.

<sup>783</sup> P-0009, T-198-FRA CT p. 92-94.

<sup>784</sup> P-0010, T-141-CONF-FRA CT, p. 42 lns. 21-28; P-0047, T-206-CONF-FRA CT, p. 38, ln. 13 to p. 39 ln. 18.

<sup>785</sup> P-0010, T-141-CONF-FRA CT p. 42 lns. 25-28.

<sup>786</sup> P-0047, T-206-CONF-FR CT, p. 38 ln. 27 to p. 39, ln. 3.

<sup>787</sup> P-0011, T-135-CONF-FRA CT, p. 29.

<sup>788</sup> Legislation, 3 May 2001, CIV-OTP-0054-0329 at 0335-0336.

<sup>789</sup> Legislation, 10 May 2001, CIV-OTP-0054-0349 at 0358.

<sup>790</sup> [REDACTED].

<sup>791</sup> Trial Brief, para. 56.

307. Dogbo Blé and Vagba were officers in the Ivorian army well before Laurent Gbagbo became President.<sup>792</sup> When questioned by the Prosecution about the relationship between Vagba and Laurent Gbagbo, P-0009 explained that they were “very good”,<sup>793</sup> but P-0009 was quick to add that this “*did not justify the fact of their relationship*”.<sup>794</sup> With respect to Dogbo Blé, P-0009 explained that the relationship between him and Laurent Gbagbo was a “*relationship between a boss and his collaborator or subordinate*”.<sup>795</sup> P-0009 added that he did know whether Laurent Gbagbo even knew Dogbo Blé before appointing him, but emphasized that he knew that Dogbo Blé was appointed to that position because of his competence and know-how.<sup>796</sup>

308. The Prosecution appears to argue that nominations were also made on the basis of “loyalty”, arguing that officers such as Vagba and Dogbo Blé remained loyal to Laurent Gbagbo until his arrest in April 2011. According to the Prosecution, this would be demonstrative of a policy from which an alleged common plan elaborated prior to 2010 could be inferred.

309. This claim put forward with respect to “loyalty” is perplexing. It is unclear how the loyalty of a military officer or commander towards his or her superiors – which is a legal requirement for any soldier or military commander worldwide, who must swear an oath of allegiance to his or her country – plays into the alleged conception, development and implementation of an alleged common plan, policy or pattern by Laurent Gbagbo and the alleged inner circle.

310. Several witnesses have explained their understanding of “loyalty” and explained that this meant for them that they did not have a duty to defend Laurent Gbagbo personally, but rather to defend the institutions of the Republic itself. For instance, [REDACTED] explained that [REDACTED]. [REDACTED] indicated that [REDACTED].<sup>797</sup> [REDACTED] explained that [REDACTED].<sup>798</sup> This is consistent

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<sup>792</sup> [REDACTED].

<sup>793</sup> “R. [...] *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 [...]*”, P-0009, T-193-FRA CT2, p. 41, lns. 15-18.

<sup>794</sup> P-0009, T-193-FRA CT, p. 41, lns. 6-21 : “*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*”.

<sup>795</sup> P-0009, T-193-FRA CT2, p. 47, lns. 17-20.

<sup>796</sup> P-0009, T-193-FRA CT2, p. 47.

<sup>797</sup> [REDACTED].

<sup>798</sup> [REDACTED].

with other witness testimonies, who have emphasized that it was their duty, as members of the FDS to restore the order of the Republic.<sup>799</sup>

311. Therefore, the Prosecution appears to confuse military allegiance – a cornerstone principle within any military structure – with what it terms “*personal loyalty*”,<sup>800</sup> despite several witnesses having clarified this distinction at trial. No reasonable chamber could accept that the Prosecution’s alleged “loyalty” argument as developed in its Trial Brief would be demonstrative of an alleged common plan.

312. Moreover, witnesses have explained that military nominations have always been effectuated on the basis of merit and following a strict procedure, which had always been respected during the relevant period. This was, for instance, confirmed by P-0009 who stated that during his mandate as CEMA, the normal procedures were always followed.<sup>801</sup> The documentary evidence adduced by the Prosecution shows that military nominations may be made, based on legislation enacted before Laurent Gbagbo’s presidency, in circumstances where a person has accomplished exceptional military services.<sup>802</sup> Therefore, it was not impossible for a person to be nominated for their exceptional merit or contribution.

313. The criteria for nominations within the FDS followed a number of strict criteria. P-0009 explained that high-level nominations were made according to seniority in rank, and marks from the preceding three years, punishments, diplomas or certificates obtained were all taken into account, leading to a computation of points on the basis of which appointments are made.<sup>803</sup> This work is done at the level of the chief of staff’s headquarters and the results are conveyed to the ministry of defence. The results are then reviewed together before appointments are made. These are then sent to the presidency, who takes into account the work done by the minister.<sup>804</sup> P-0009 explained that when an individual in the FDS worked well and was disciplined, there

<sup>799</sup> For instance, P-0009, T-195-CONF-FRA, pp. 64-65; T-200, p. 37; at trial, P-0010 explained that the expression “*si je tombe vous tomberez*” (CIV-OTP-0045-0322) used by Laurent Gbagbo meant that soldiers needed to continue to be soldiers and be loyal towards “the authorities” (“*continuer à être soldats loyaux vis-à-vis de l’autorité*”), not towards an individual or the President, P-0010, T-138-CONF-FRA CT, p. 34, lns. 20-24.

<sup>800</sup> See Trial Brief, Section II.A.10 GBAGBO made appointments on the basis of ethnicity and *personal loyalty*, paras 56-60.

<sup>801</sup> P-0009, T-198-FRA CT pp. 92-94.

<sup>802</sup> Article 57, Texte législatif du 7 décembre 1995, CIV-OTP-0054-0095 at 0099.

<sup>803</sup> P-0009, T-198-FRA CT, p. 92-93.

<sup>804</sup> P-0009, T-198-FRA CT, p. 92-93.



was no choice but to promote them, stressing that “you don’t just get a rank like that” (“[d]ans l’armée, le grade n’est pas donné”).<sup>805</sup>

314. Contrary to the Prosecution’s assertion that “FDS officers from *Bété* and related ethnic backgrounds were given key positions, often to the exclusion of officers from ethnic groups traditionally from the North of Côte d’Ivoire”,<sup>806</sup> not a single example of exclusion of an officer “from ethnic groups traditionally from the North of Côte d’Ivoire”<sup>807</sup> was provided by the Prosecution or has emerged from the evidence. The Prosecution has failed to explain what is meant by the expressions “*Bété* and related ethnic backgrounds” or “ethnic groups traditionally from the North of Côte d’Ivoire”. Also, [REDACTED] is but one example disproving the Prosecution’s narrative of ethnic favouritism to the exclusion of officers from “the North” under Laurent Gbagbo’s presidency. [REDACTED]. [REDACTED]<sup>808</sup>. [REDACTED]. [REDACTED],<sup>809</sup> [REDACTED]. Ex-rebel leaders such as Generals Bakayoko and Gueu Michel were nominated as Generals in the FDS by Laurent Gbagbo after the Ouagadougou political accord in 2007.<sup>810</sup> Equally unsubstantiated is the Prosecution’s claim that on the basis of their ethnicity, certain FDS officers were treated with “suspicion” within the FDS, as they were considered as “*potentially disloyal to the Gbagbo regime*”, thereby “*exacerbating ethnic divisions within the FDS*”.<sup>811</sup> To support its claim, the Prosecution cites the testimony of [REDACTED]. This witness explained that [REDACTED].<sup>812</sup> To illustrate this point, [REDACTED] mentioned as an example that [REDACTED]. The witness indicated that [REDACTED].<sup>813</sup>

315. The Prosecution cites a report dated 30 December 2010, apparently drafted by Katy Bi, an officer within the Information section of the CECOS,<sup>814</sup> who made observations with respect to certain officers.<sup>815</sup> When showed this document at trial, P-0010 indicated that this was not an “*investigation into FDS officers*” as suggested to

<sup>805</sup> P-0009, T-198-FRA CT, p. 94, lns. 11-15; P-0009, T-198-ENG ET, p. 86, lns. 3-7.

<sup>806</sup> Which, according to the Prosecution, “were ethnically closer to Gbagbo’s main political rival, Ouattara”, Trial Brief, para. 57.

<sup>807</sup> Trial Brief, para. 57.

<sup>808</sup> [REDACTED].

<sup>809</sup> [REDACTED].

<sup>810</sup> P-0009, T-198-FRA CT, p. 93, ln. 25 to p. 94, ln. 5.

<sup>811</sup> Trial Brief, para. 57.

<sup>812</sup> [REDACTED].

<sup>813</sup> [REDACTED].

<sup>814</sup> P-0010, T-139-CONF-FRA CT, p. 58, lns. 19-24.

<sup>815</sup> [REDACTED].

him by the Prosecution<sup>816</sup> and that he did not request this document. P-0010 explained that it was merely an information sheet (“une fiche”) prepared by Katy Bi, from his own initiative.<sup>817</sup> P-0010 further explained that it was open to the author’s superior to take this information sheet into consideration or not.<sup>818</sup> The document makes no mention of ethnicity but rather, conveys Katy Bi’s concerns with respect to certain officer’s military allegiances, given the context of frequent desertion.<sup>819</sup>

316. Similarly, P-0238 provides objective and rational reasons to explain why, according to him, certain persons were treated with “suspicion” at the time, which was based on the occurrences of desertion of FDS soldiers and officers who joined and fought alongside the enemy against the FDS. When asked by the Prosecution about why certain individuals were treated with “suspicion”, P-0238 explained that this was because some officers had “flipped” and joined the “other side”, which the witness explained meant the *Commando Invisible*: “*Parce qu’il y avait des gens qui...en fait, des militaires qui retournaient leur veste, qui partaient de l’autre côté (...). Donc, du coup, ça faisait un peu peur*”.<sup>820</sup>

317. [REDACTED]<sup>821</sup> [REDACTED].<sup>822</sup> [REDACTED].<sup>823</sup> [REDACTED].<sup>824</sup>

318. Another witness cited by the Prosecution to support its allegation of “suspicions” based on ethnicity within the FDS is P-0164, a former member of the BASA. P-0164 testified that he felt as though he was treated with suspicion; however, the fact that P-0164 was treated with suspicion and considered “potentially disloyal” was objectively foreseeable and entirely rational given that P-0164 was openly assisting pro-Ouattara rebels against the FDS, for instance by erecting roadblocks to prevent FDS, such as

<sup>816</sup> “Q. [...] C’est une enquête sur des officiers FDS; c’est cela? R. [13:01:21] Non, Madame. Et je n’ai pas commandé...Ce n’est pas une enquête et je n’ai pas commandé ce document”, P-0010, T-139-CONF-FRA CT, p. 59, ln. 1-6.

<sup>817</sup> P-0010, T-139-CONF-FRA, p. 59, lns. 1-6: “R. [...] C’est...On appelle ça une «fiche». Il a pris l’initiative, par rapport à tout ce qu’il a pu observer, d’adresser une fiche à l’attention de son chef, loisible à son chef d’en tenir compte ou de ne pas en tenir compte”.

<sup>818</sup> P-0010-T-139, CONF-FRA CT, p. 59, lns. 1-6.

<sup>819</sup> [REDACTED].

<sup>820</sup> P-0238, T-80-CONF-FRA CT, p. 40, ln. 21 to p. 41, ln. 2.

<sup>821</sup> [REDACTED].

<sup>822</sup> [REDACTED].

<sup>823</sup> [REDACTED].

<sup>824</sup> [REDACTED].

the BAE units, from passing.<sup>825</sup> The Prosecution's reliance on P-0164 is excessively misleading, given his desertion and that he had become an enemy fighter, to which he openly admitted at trial;<sup>826</sup> the witness confirmed that his mission in Port-Bouët, upon request by colonel Kouassi, had been transformed into an anti-governmental forces military operation.<sup>827</sup>

319. The Prosecution claims that the *“attempted coup of September 2002 gave Gbagbo and his Inner Circle further licence to rely on ethnic origin as a determining factor for enrolment, appointment and promotion within the FDS”* and that *“units headed by Bété commanders’ such as Dogbo Blé and Dadi were given preferential treatment in the supply of equipment and weapons”* are equally unsubstantiated by the evidence.<sup>828</sup>

320. To support these contentions, the Prosecution cites five witness testimonies,<sup>829</sup> none of which support the Prosecution's narrative. With respect to Dadi, there is no evidence demonstrating, whether explicitly or implicitly, that Dadi's ethnicity would have played any role in his role of commander of the BASA-BASS, or that he would have been nominated on the basis of any factor other than merit. Again, the Prosecution attempts to draw a linkage between an individual's ethnic background, and their role in the military structure, without, providing evidence suggesting a link between these two elements. None of the witnesses cited by the Prosecution draw such a link.

321. A closer look at the witness testimonies quoted by the Prosecution reveals that they made no mention of anything which may suggest a link between Dadi's ethnicity and his rank: at trial, P-0047 merely mentioned that Dadi was the commander of the BASA-BASS;<sup>830</sup> [REDACTED] simply testified that [REDACTED];<sup>831</sup> P-0238 simply mentioned that Dadi commanded the BASA-BASS and that he was from the Dida ethnic group;<sup>832</sup> P-0164 also merely indicated that Dadi was the commander of

<sup>825</sup> This clearly explains why the witness indicated that at the time, Dadi wanted to “eliminate him”, in light of the fact that he had openly become an enemy fighter against the FDS, P-0164, T-165-CONF-FRA CT, p. 31-34.

<sup>826</sup> P-0164, T-165-CONF-FRA CT, p. 31-34.

<sup>827</sup> P-0164, T-165-CONF-FRA CT, p. 31.

<sup>828</sup> Trial Brief, para. 58.

<sup>829</sup> P-0047, [REDACTED], P-0238, P-0239 and P-0164.

<sup>830</sup> P-0047, T-203-FRA CT, p. 8.

<sup>831</sup> [REDACTED].

<sup>832</sup> P-0238, T-80-CONF-FRA CT, p. 66.

the BASA-BASS, without any reference to his ethnicity;<sup>833</sup> and similarly, P-0239 also just mentioned in his testimony that Dadi was the *chef de corps*.<sup>834</sup>

322. For a reasonable inference to be made of a policy of favouritism or racial discrimination by Laurent Gbagbo, there must be at least some evidence to show that nominations were ethnically motivated, or that equally qualified candidates with another ethnic background were excluded in order to allow a less qualified person of a “favourable” ethnicity be appointed. Further, the Prosecution presented no evidence to support its sweeping claim that the attempted *coup d’état* would have given Laurent Gbagbo and the alleged inner circle “a licence to rely on ethnic origin as a determining factor for enrolment.”<sup>835</sup> The evidence shows, to the contrary, that ethnicity was irrelevant in FDS nominations and rankings. These allegations must therefore be rejected.

323. Turning to the Prosecution’s claims as to the alleged preferential treatment of certain Bété commanders such as Dadi in the supply of equipment and weapons,<sup>836</sup> the evidence presented by the Prosecution does not support such an allegation. Although cited by the Prosecution to support this claim, P-0047 emphasized at least twice in his testimony that he was not aware of the material available to Dadi.<sup>837</sup>

324. P-0238 explained that if within the FDS, the BASA was better equipped than other units, this was for “obvious” reasons and that it was “a given”<sup>838</sup> because the BASA, by its very nature, as the anti-aerial battalion, required more heavy weaponry: “*Enfin, c’est évident, parce que nous sommes... nous sommes de l’artillerie. Donc cela va de soi (...) on était plus armés parce que l’artillerie, les armes de l’artillerie, c’est un peu plus... plus costaud*”.<sup>839</sup>

<sup>833</sup> P-0164, T-165-CONF-FRA CT, p. 3.

<sup>834</sup> P-0239, T-167-CONF-FRA CT, p. 32, 43.

<sup>835</sup> Trial Brief, para. 58.

<sup>836</sup> Trial Brief, para. 58. [REDACTED].

<sup>837</sup> “*Je n’étais pas au courant de la quantité d’armes dont Dadi disposait. Je le dis parce qu’après la... après la crise, lorsque... après le 11 avril, j’allais dire, et que j’ai été maintenu comme ComTer, nous avons fait une visite terrain où j’ai découvert des bitubes en quantité énorme. Jusque-là, je ne le savais pas. Parce que sur la... sur... sur le terrain, nous en avions besoin, et on n’en trouvait pas. Donc, je... je vais vous dire que je ne maîtrisais pas en totalité le matériel que Dadi avait*”, P-0047, T-203-FRA-ET, p. 8 to 10 [10:01:29].

<sup>838</sup> P-0238, T-80-CONF-FRA CT, p. 72, ln. 20 to p. 73, ln. 2.

<sup>839</sup> P-0238, T-80-CONF-FRA CT, p. 72, ln. 20 to p. 73, ln. 2.

325. Similarly, [REDACTED] also explained [REDACTED].<sup>840</sup> This information contradicts the Prosecution's theory: [REDACTED]. Following this logic [REDACTED], also testified that [REDACTED]. There is furthermore no evidence that [REDACTED].

326. P-0239's testimony, which is also cited by the Prosecution, is inconclusive with respect to an alleged ethnic favouritism in certain FDS units. In his testimony, P-0239 explained what Dadi had been saying about himself and that he was boasting ("*s'est vanté*") about the "trust" that Laurent Gbagbo had in him and about how he could probably ask him for new arms and materials.<sup>841</sup> When asked by the Prosecution to explain the relationship between Dadi and Laurent Gbagbo and whether they would see each other often, P-0239 said that he assumed Dadi would see Laurent Gbagbo but he did not know how many times.<sup>842</sup> When asked by the Prosecution about the source of his knowledge, the witness responded that it was based on what Dadi had been saying, and that there was "*never fire without smoke*", confirming that it constituted hearsay evidence.<sup>843</sup> P-0239 confirmed that he could not provide any example of Dadi meeting with Laurent Gbagbo. Thus, P-0239's testimony in this respect is entirely based on hearsay and purported information of which he had direct or personal knowledge.

327. The Prosecution further contends that in 2002, Laurent Gbagbo nominated Bertin Kadet and later retained him as a special advisory on security matters, a position which he held until the end of the post-electoral crisis. According to the Prosecution, Kadet, who would have been nominated on the basis of ethnic favouritism, was "*instrumental in funding and coordinating the use of militias in this period*".<sup>844</sup>

328. The Prosecution's use of the formulation "*Bété relative*"<sup>845</sup> is misleading, insofar as *parent* – [REDACTED] – in Côte d'Ivoire does not have the same meaning as it does

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<sup>840</sup> [REDACTED].

<sup>841</sup> P-0239, T-167-FRA CT, p. 48, 92 [REDACTED]; See Motion, Section III.3.A.ii. (e) *Lower-ranking FDS officers linked to Laurent Gbagbo*.

<sup>842</sup> P-0239, T-167-FRA CT, p. 48.

<sup>843</sup> "Q. [15:04:33] [...] *est-ce que vous avez, vous, eu connaissance d'occasions où le colonel Dadi avait été voir le Président. Est-ce que, vous, vous avez connaissance d'exemples précis?* R. [15:04:48] *Bon, je n'ai pas de connaissance d'exemple, mais comme lui-même le dit de sa propre bouche, donc, on lui dira quoi?*", P-0239, T-167-FRA, p. 82, lns. 6-15.

<sup>844</sup> Trial Brief, para. 59; See Motion, Section III.3.A.ii.(g) *Active or Former Ministers*.

<sup>845</sup> Trial Brief, para. 59.

for instance in other parts of the world; *parent* does not necessarily imply family ties and is used to described persons from the same region of Côte d'Ivoire.<sup>846</sup>

329. One witness, [REDACTED], mentioned Kadet's ethnicity;<sup>847</sup> however, not a single piece of evidence suggests, whether directly or indirectly, any linkage between ethnicity and his or any other FDS officer's position or nomination. [REDACTED] explained that [REDACTED].<sup>848</sup> The other witnesses cited in support of this allegation, P-0010 and P-0435, merely mention that Kadet had been minister of defence at the time, without any mention of ethnicity, nominations or purported ties with Laurent Gbagbo.<sup>849</sup> This falls considerably short of demonstrating a purported policy of ethnic favouritism by Laurent Gbagbo from which the conception and development of an alleged common plan may be inferred.

330. With respect to Kadet's "*instrumental*"<sup>850</sup> role in funding and coordinating the use of militias in the period of 2002 onwards, again, the evidence put forward by the Prosecution – namely the testimonies of P-0500 and P-0435 – does not support this claim. P-0500, an ex-member of the FLGO, explained that in 2003, members of the FLGO reunited at the Saint-Paul Cathedral in Abidjan while on a hunger strike.<sup>851</sup> P-0500 testified that Laurent Gbagbo went to see them and proposed to give them some money for them to "go back to their families", ostensibly aiming at dismantling the group.<sup>852</sup> According to P-0500, Laurent Gbagbo was accompanied by five or six persons including Kadet.<sup>853</sup> The witness testified that the FLGO drafted a list of 678 FLGO members, which they gave to Kadet who then left.<sup>854</sup> P-0500 mentioned that he met with Kadet one other time, to ask him for advice. At this meeting, Kadet advised P-0500 to respect the disarmament process and not to mimic those who had attacked Côte d'Ivoire.<sup>855</sup> On this occasion, Kadet gave P-0500 and three others whom he was with 1000 francs CFA (approximately 2 euros) for their transportation costs to return

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<sup>846</sup> [REDACTED].

<sup>847</sup> [REDACTED].

<sup>848</sup> [REDACTED].

<sup>849</sup> P-0435, T-87-CONF-FRA CT, p. 49; P-0010, T-137-CONF-FRA CT, pp. 13-14.

<sup>850</sup> Trial Brief, para. 59.

<sup>851</sup> See Motion, Section III.3.A.ii.(g)(ii) *Former ministers*.

<sup>852</sup> P-0500, T-181-FRA CT, p. 52-53.

<sup>853</sup> P-0500, T-181-FRA CT, p. 53, lns. 25-28.

<sup>854</sup> P-0500, T-181-FRA CT, p. 55.

<sup>855</sup> P-0500, T-181-FRA CT, p. 61-62.

home from the meeting.<sup>856</sup> Such compensation clearly falls short of providing “*funding and coordinating the use of militias in this period*”.<sup>857</sup>

331. When asked whether he knew how many times special advisors, such as Kadet, were solicited by Laurent Gbagbo, P-0520 testified that this was “every time this was necessary” and that it was not a regularly scheduled meeting, to his knowledge.<sup>858</sup> Upon being showed the presidential logbook<sup>859</sup> entries at trial, P-0011 said he could not remember ever being at a meeting at the Presidential Residence where Kadet would have purportedly also been present.<sup>860</sup> When questioned about Kadet’s role, P-0500 responded that he was unsure, that he thought he was an advisor or “*something like that*”.<sup>861</sup> When asked by the Prosecution whose advisor he was, P-0500 responded “*conseiller... franchement, je ne sais pas de qui, mais il était conseiller à la présidence*”.<sup>862</sup> Again, P-0500 does not mention anything with respect to Kadet’s role, his ethnicity, or the role his ethnicity would have had in the nomination. As previously mentioned, P-0321 even suggests that Kadet’s nomination as advisor was a form of retrogradation from his previous role as minister.<sup>863</sup> Notwithstanding the multiple credibility issues with P-0435’s testimony, P-0435’s account does not support the Prosecution’s claim. P-0435 testified that Kadet had asked Zagbayou to train and eventually arm 300 youth in Gagnoa in order to fill a security gap, if needed, to assist the FDS in case the rebellion attacked the region.<sup>864</sup> However, it emerged from his testimony that P-0435 had no relationship whatsoever with Zagbayou and clearly did not have direct knowledge with respect to recruitment.<sup>865</sup>

332. These instances fall short of demonstrating Kadet’s “*instrumental*” role in “*funding and coordinating the use of militias in this period*”.<sup>866</sup>

<sup>856</sup> P-0500, T-181-FRA CT, p. 60, lns. 12-14.

<sup>857</sup> Trial Brief, para. 59.

<sup>858</sup> P-0520, T-50-CONF-FRA, p. 15, lns. 21-28.

<sup>859</sup> Presidential Residence Logbook, CIV-OTP-0088-0863.

<sup>860</sup> P-0011, T-132-FRA CT, p. 35.

<sup>861</sup> P-0500, T-181-FRA CT, p. 62, ln. 22.

<sup>862</sup> P-0500, T-181-FRA CT, p. 62, lns 24-25.

<sup>863</sup> “R. [...] Il était ministre délégué à la...à la Présidence. Mai en ce moment, il n’était plus que conseiller, au moment des faits, il était conseiller, conseiller à la Défense”, P-0321, T-62-CONF-FRA, p. 16, lns. 8-11.

<sup>864</sup> P-0435, T-89-CONF-FRA CT, p. 19.

<sup>865</sup> P-0435, T-93-CONF-FRA CT, p. 43, lns. 1-14; See Motion, Section III.3.B.ii. The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.

<sup>866</sup> Trial Brief, para. 59.

333. Another element the Prosecution claims shows that Laurent Gbagbo made appointments on the basis of ethnicity and “personal loyalty” is that “*in addition to officers with whom he shared ethnic ties, Gbagbo promoted FDS officers who proved themselves loyal in military operations against the 2002 rebellion. Some of these officers were from ethnic backgrounds other than Bété, although many of them were Christians from South or Central Côte d’Ivoire, rather than from Northern or Muslim backgrounds*”.<sup>867</sup> In support of this claim, the Prosecution cites three nominations: (i) Philippe Mangou; (ii) Boniface Kouakou Konan; and (iii) Jean-Noël Abéhi.<sup>868</sup> The evidence contradicts the Prosecution’s claims and establishes that the nominations of these three individuals were made on the basis of merit rather than ethnicity, personal loyalty, or any other factor.

334. With respect to P-0009, Philippe Mangou was already commander of the theatre of operations, a position which he held from 2002-2004 and was nominated general chief of staff in November 2004.<sup>869</sup> P-0009 testified at length with respect to his successive rankings and extensive military achievements and career which have merited him the nomination of chief of general staff, including receiving the National Defence Medal of France, which rewards particularly honourable service rendered by military personnel for their participation in operational activities.<sup>870</sup>

335. Philippe Mangou is Ébrié.<sup>871</sup> There is no linkage whatsoever between this fact and his nominations; rather, the evidence demonstrates that his promotions have always been based on merit.<sup>872</sup> P-0009 also made clear that he had no particular relationship with Laurent Gbagbo, that it has been a “*President to chief of staff relationship*”.<sup>873</sup>

336. The Prosecution claims that Mangou would have been rewarded with the position of chief of staff “*although Operation Dignité had failed*”.<sup>874</sup> This claim is perplexing. As raised above, the Prosecution appears to confuse ‘loyalty’ with military allegiance – a cornerstone principle essential to the functioning of any army. A military

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<sup>867</sup> Trial Brief, para. 60.

<sup>868</sup> Trial Brief, para. 60.

<sup>869</sup> P-0009, T-193-FRA CT2, p. 4.

<sup>870</sup> P-0009, T-193-FRA CT2, p. 4.

<sup>871</sup> P-0009, T-193-FRA CT2, p. 38, lns. 1-4.

<sup>872</sup> P-0009, T-193-FRA CT, pp. 3-4, 92-93.

<sup>873</sup> P-0009, T-197-FRA CT, p. 34.

<sup>874</sup> Trial Brief, para. 60.



commander's nomination based on merit and skill, as demonstrated by their performance in a military operation (regardless of whether the operation was "successful" or not) cannot possibly be seen as indicative of a policy of favouritism – ethnic or otherwise. Moreover, [REDACTED].<sup>875</sup> [REDACTED]'s testimony that [REDACTED].<sup>876</sup> It is certainly not demonstrative of an alleged policy of ethnic favouritism to the exclusion of others ethnic groups.

337. With respect to Boniface Kouakou Konan, the Prosecution cites the witness testimonies of P-0239, [REDACTED], P-0009 and P-0347, who testified to the fact that Konan was commander of the theatre of operations in Yamousoukro. When asked directly by the Prosecution about Konan's ethnicity, P-0347 and P-0321 responded that he was Baoulé.<sup>877</sup> With respect to Jean-Noël Abéhi, the evidence shows that [REDACTED].<sup>878</sup>

338. There is no mention of the role that the ethnicity of these particular military commanders may have played, or of any special link with Laurent Gbagbo or members of an alleged inner circle.

339. It is clear from the evidence adduced by the Prosecution that there was no policy of nominations made on the basis of ethnic ties or "personal loyalty" or otherwise within the FDS. To the contrary, the evidence shows that during Laurent Gbagbo's presidency, military commanders were lawfully promoted, following the regular procedure for military nominations on the basis of merit which follows a set of strict criteria. The Prosecution's claim that a policy of ethnic favouritism by Laurent Gbagbo and an alleged inner circle would be indicative of the early conception and development of a common plan prior to 2010 cannot be sustained.

340. Significantly, Charles Blé Goudé is entirely absent from the Prosecution's narrative and evidence presented in support of this alleged policy of ethnic or political favouritism in FDS nominations. The evidence squarely contradicts that any such practice or policy existed, and that Charles Blé Goudé would have played any role in

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<sup>875</sup> [REDACTED].

<sup>876</sup> [REDACTED].

<sup>877</sup> P-0321, T-62-CONF-FRA CT, p. 89; P-0347, T-79-CONF-FRA CT, p. 53, lns. 2-4.

<sup>878</sup> [REDACTED].

the conception, development or implementation of a common plan from 2000 onwards.

iii. The Prosecution failed to prove that the recruitment after the 2002 coup d'état was part of a common plan

341. The Prosecution alleges that the recruitment which followed the 2002 *coup d'état* forms part of a common plan conceived, developed and elaborated by Laurent Gbagbo and the alleged inner circle. It is demonstrated below that (i) Charles Blé Goudé played no role in the FDS recruitment in 2003, or any recruitment, whether formally or informally, and; (ii) the FDS recruitment which occurred after the 2002 attempted *coup d'état* did not form part of an alleged criminal common plan conceived, developed and implemented by Laurent Gbagbo and the purported inner circle.

342. The Prosecution's allegations with respect to Charles Blé Goudé's alleged involvement in the conception of a common plan from 2000 onwards can be summed up to: (i) his alleged implication in the creation of the GPP; (ii) his alleged call for recruitment of youth in the FDS; (iii) his alleged ties with the FLGO. The evidence does not support these allegations and on the contrary, suggests that Charles Blé Goudé's played no role in these factual allegations.

343. First, it is important to remind the context of the recruitment into the FDS following the events of 2002. The attempted *coup d'état* of 18 and 19 September 2002, which took place while Laurent Gbagbo was on an official visit in Italy,<sup>879</sup> took the country by surprise. As explained by P-0048, the rebellion that ensued opposed an "*armed group made up of persons who basically hailed from one part of Côte d'Ivoire*" with "*persons whose desire was to defend the legality of the state which had received its new authorities*".<sup>880</sup> Shortly preceding these events, in 2002, Laurent Gbagbo held the *forum de la reconciliation nationale* aiming to unite Ivorians in the aftermath of the *coup d'état* of December 1999, which had seen the departure of former President Henri Konan Bédié and the eruption of violence following General Guei's refusal to

<sup>879</sup> Trial Brief, para. 25.

<sup>880</sup> P-0048, T-53-FRA, pp. 38-39; T-53-ENG CT, p. 42, lns. 2-13.

cede power upon Laurent Gbagbo's election.<sup>881</sup> Upon being elected, Laurent Gbagbo had constituted a government of national unity, which included representatives of all the main political parties (PDCI, RDR, etc.).<sup>882</sup> This commitment to unity, appeasement and openness by the Ivorian authorities was disrupted by the attempted *coup d'état* of 2002. To speculate or make an inference that the recruitment which followed the 2002 *coup d'état* would be indicative of the early developments and implementation of an alleged common plan does not logically follow the surprising nature of these events and the crisis that would ensue, with which the Ivorian authorities and population had to grapple, as well as the significant shortage of staff in the FDS at the time. The rebellion had taken control of the Northern part of the country, splitting the country in two. The events of 2002, whose aftermath was felt throughout the years, were not foreseeable, and incompatible with the Prosecution's theory of the conception and elaboration of a common plan.

344. The evidence adduced by the Prosecution shows that at the time, there had already been a significant shortage in the Ivorian army.<sup>883</sup> [REDACTED] explained [REDACTED]<sup>884</sup> [REDACTED]. [REDACTED] explained that [REDACTED].<sup>885</sup> [REDACTED].<sup>886</sup> [REDACTED] also explained [REDACTED]. [REDACTED] testified that [REDACTED].<sup>887</sup> [REDACTED] explained that [REDACTED].<sup>888</sup> The witness also explained that [REDACTED].<sup>889</sup> [REDACTED].

345. The Prosecution claims that following the attempted *coup d'état*, a youth movement which “*became known as the Jeunes Patriotes*” mobilised to “*uphold the Gbagbo Presidency and oppose the rebellion.*”<sup>890</sup> As a sole reference, the Prosecution cites P-0048, whose testimony is, however more nuanced, and does not support this allegation. In the portion of P-0048's testimony relied on by the Prosecution, P-0048 does not indicate that the *Jeunes Patriotes* were formed to support the presidency of Laurent Gbagbo or that this was their aim; rather, P-0048 explains that the *Jeunes*

<sup>881</sup> P-0048, T-53-FRA CT, p. 24, lns. 21-24.

<sup>882</sup> P-0048- T-56-CONF-FRA CT, p. 60.

<sup>883</sup> P-0009, T-198-FRA CT, p. 71; [REDACTED]; P-0316, T-182-CONF-FRA, pp. 72-73.

<sup>884</sup> [REDACTED].

<sup>885</sup> [REDACTED].

<sup>886</sup> [REDACTED].

<sup>887</sup> [REDACTED].

<sup>888</sup> [REDACTED].

<sup>889</sup> [REDACTED].

<sup>890</sup> Trial Brief, para. 26.

*Patriotes* “were motivated by a genuine desire to defend the legal powers that be and to reject the rebellion”, implying that it was not Laurent Gbagbo they were supporting, but rather, the lawful President, whomever that may be.<sup>891</sup> P-0048 explained that youth had organised to “*refuse the rebellion*” (“*pour dire non à la rebellion*”) and that the name *Patriotes* had been attributed to them, but that this was not important (“*peu importe cette appellation*”).<sup>892</sup> P-0048 further explained that these youth constituted several groups, with different leaders (“*responsables*”) and played a decisive role to ensure that the legally elected government was not displaced.<sup>893</sup>

346. The evidence does not indicate that Charles Blé Goudé would have played a role in the recruitment, but rather, that the youth would have been self-motivated to support the lawfully elected government which was threatened by the rebellion. P-0048 also stressed that there was no charismatic leader of these apparent movements.<sup>894</sup>

347. The Prosecution alleges that following the *coup d'état* of 2002, “*self-defence groups emerged in Abidjan, such as the group that eventually became known as the GPP, an armed wing of the Galaxie Patriotique*”.<sup>895</sup> To support this contention, the Prosecution cites P-0048 who again, provides a much more nuanced narrative of events to support the Prosecution’s contentions. P-0048 explained that the Patriots were *perceived* as a self-defence group, that in reality it was composed of different groups without there being one charismatic leader, that it was self-proclaimed as a “*defender of the institutions of the Republic*”. P-0048 testified that he had never seen the GPP armed.<sup>896</sup>

348. With respect to the creation of the GPP and Charles Blé Goudé’s purported involvement in its creation, the Prosecution bases itself entirely on the witness testimony of P-0435, as a sole reference.<sup>897</sup> Not only is this evidence not corroborated, there are serious doubts as to P-0435’s credibility, as extensively demonstrated

<sup>891</sup> P-0048, T-53-FRA CT, p. 38, lns. 16-22.

<sup>892</sup> P-0048, T-53-FRA CT, p. 38, lns. 16-22.

<sup>893</sup> P-0048, T-53-FRA CT, p. 38, lns. 16-22.

<sup>894</sup> P-0048, T-54-FRA CT, p. 8, lns. 5-6.

<sup>895</sup> Trial Brief, para. 27.

<sup>896</sup> P-0048, T-54-FRA CT, pp. 7-8. ln. 23 – p. 8, ln. 19.

<sup>897</sup> Trial Brief, para. 29.

above.<sup>898</sup> The Prosecution alleges that “*it was decided to label the GPP as such during a meeting held on 23 March 2003 between Blé Goudé, Eugène Kouadio Djué, Jean Yves Dibopieu and the GPP’s first leader, Charles Groguehet*”.<sup>899</sup> P-0435 testified that he did not know where this alleged meeting took place. With respect to the date of this alleged meeting, P-0435 said his knowledge was based on what he had seen in the “archives of the GPP”.<sup>900</sup> No such purported document was, however, presented at trial. Moreover, P-0435 did not participate in this alleged meeting which would have supposedly created the GPP and therefore has no direct knowledge of the meeting, including with respect to Charles Blé Goudé’s purported role.<sup>901</sup> P-0435 also confirmed that he was not privy to information about the GPP’s operations and held no particular relationship with the GPP leaders.<sup>902</sup>

349. Thus, in the entirety of the portion of P-0435’s testimony cited by the Prosecution in this respect, only one reference is made with respect to Charles Blé Goudé, of a speculative meeting that would have taken place on 23 March 2003, with respect to which P-0435 has no direct knowledge. Clearly, Charles Blé Goudé played no part in the creation, financing, or activities of the GPP and no inference can be made that he participated in the conception of an alleged common plan which would involve the recruitment and financing of militia groups prior to 2010.

350. The Prosecution contends that the GPP was created to support the Laurent Gbagbo regime, “*as suspicions with respect to the army created the need to rely on a loyal base*”.<sup>903</sup> Again here, the testimony of P-0435 is cited here as a sole reference, and is much more nuanced; P-0435 explained that the GPP arose to support the “*institutions of the Republic*”.<sup>904</sup> He explained that given the context, whereby members of the armed forces instigated the attempted *coup d’état* in 2002, this had created a certain crisis of confidence.<sup>905</sup> P-0435 explained that he joined a group to face the rebellion threat in November 2002, which would later be known as the GPP, which was led by

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<sup>898</sup> See Motion, Section III.3.B.ii. The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.

<sup>899</sup> Trial Brief, para. 28.

<sup>900</sup> P-0435, T-93-FRA CT, p. 39, lns. 20 to p. 40, ln. 10.

<sup>901</sup> P-0435, T-93-FRA CT, p. 41, lns. 23-26.

<sup>902</sup> P-0435, T-93-FRA CT, p. 42-43.

<sup>903</sup> Trial Brief, para. 28.

<sup>904</sup> P-0435, T-88-CONF-FRA CT, p. 11, lns. 1-8.

<sup>905</sup> P-0435, T-87-CONF-FRA CT, p. 63, lns. 15-20.

Charles Groguhet and Zagbayou.<sup>906</sup> He indicated that the GPP was composed of “*young people from different parts of society who belonged to various ethnic groups, but they supported the government that was in place, the democratically elected government of President Gbagbo*”.<sup>907</sup>

351. The alleged proximity between Charles Blé Goudé and Groguhet suggested by the Prosecution<sup>908</sup> appears to be solely based on P-0435’s assertion that Groguhet would meet with “*certain personalities*”<sup>909</sup> such as Charles Blé Goudé and hearsay evidence that Groguhet’s bodyguards would have told P-0435 that Groguhet received money from Charles Blé Goudé.<sup>910</sup> This evidence is entirely uncorroborated and lacks any credibility. The Prosecution’s claim of alleged ties between Charles Blé Goudé and Charles Groguhet, who was the “*political front man of the GPP and the connection between the GPP and Blé Goudé at this time*”, is unsubstantiated by the evidence. The sole evidence cited by the Prosecution in this respect, P-0435’s testimony, confirms that it was Charles Groguhet who was in charge of recruitment, training and provisions.<sup>911</sup>

352. Therefore it appears that the only potential link between Charles Blé Goudé and Groguhet is that they have both, at one point or another in time and long before the purported events, been involved in the FESCI in the past, which clearly falls short of supporting the Prosecution’s contention that Groguhet “*was close to Blé Goudé*”.<sup>912</sup>

353. Moreover, P-0435’s account of the GPP’s activities and alleged ties with the FDS further cited by the Prosecution, such as its relocation to Azito was directly contradicted by the testimony of P-0009, who emphatically refuted P-0435’s account of the alleged recruitment of GPP elements into the FDS.<sup>913</sup> P-0435 testified that members of the GPP were deployed at SAPIA, not too far from Bondoukou,<sup>914</sup> which was also disavowed by P-0009, who was the commander of the theatre of operations

<sup>906</sup> P-0435, T-87-CONF-FRA CT, p. 304.

<sup>907</sup> P-0435, T-87-CONF-FRA CT, p. 13, lns. 19-25.

<sup>908</sup> Trial Brief, para. 28.

<sup>909</sup> P-0435, T-87-CONF-FRA CT, p. 5, lns. 24-28.

<sup>910</sup> P-0435, T-87-CONF-FRA CT, p. 58.

<sup>911</sup> P-0435, T-87-CONF-FRA CT, p. 6-7.

<sup>912</sup> Trial Brief, para. 28.

<sup>913</sup> P-0009, T-199-FRA, p. 40, lns. 3-20.

<sup>914</sup> P-0435, T-88-CONF-FRA CT, p. 40, lns. 28 to p. 41, lns. 1-7.

at the time;<sup>915</sup> P-0435 also affirmed that P-0009 had recommended 30 youth from Adjamé-Agban to be trained by the GPP, another assertion which was unequivocally refuted by P-0009 in his testimony.<sup>916</sup> No reasonable trier of fact could accept P-0435's testimony and no evidence links the GPP with the lawful FDS recruitment in 2003.<sup>917</sup>

354. The Prosecution, again relying exclusively on P-0435's testimony, alleges that from 2002 onwards, Charles Blé Goudé "*played a key role in recruiting into the FDS thousands of young people, from ethnic backgrounds loyal to Gbagbo, many of whom belonged to groupes d'auto-défenses*".<sup>918</sup> Two preliminary observations are in order.

355. First, this claim rests entirely on the witness testimony of P-0435 and a document which is entirely unrelated to Mr Blé Goudé and irrelevant to the time period discussed.<sup>919</sup> P-0435's knowledge of this recruitment and of Charles Blé Goudé's alleged role in any purported recruitment is extremely limited. As demonstrated above, P-0435's testimony cannot be relied upon.<sup>920</sup>

356. Second, the Prosecution has failed to establish the meaning of an "*ethnic background loyal to Laurent Gbagbo*".<sup>921</sup> This concept conveniently fits the Prosecution's narrative of an alleged common plan involving sectarian politics; however, it does not correspond to the factual context in Côte d'Ivoire from 2000 onwards.

357. The Prosecution cites, in support of Charles Blé Goudé's alleged "key" role in the recruitment into the FDS of thousands of young people, many of whom belonged to *groupes d'auto-défense*,<sup>922</sup> an apparent letter dated 21 February 2011 from the

<sup>915</sup> P-0009, T-200-CONF-FRA CT, p. 41, lns. 3-10.

<sup>916</sup> P-0009, T-199-FRA CT, pp. 37-38.

<sup>917</sup> P-0009, T-199-FRA CT p. 68.

<sup>918</sup> Trial Brief, para. 30.

<sup>919</sup> Trial Brief, para. 30, footnote 63.

<sup>920</sup> P-0435, T-94-FRA CT, p. 2, lns. 20-26; *See Motion, Section III.3.B.ii.(b) The Prosecution's theory is based almost exclusively on Witness' P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible; Section III.3.B.ii.(c). Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence; Section III.3.B.ii.(d). Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony; Section III.3.B.ii.(e). Witness p-0435 had every incentive to not tell the truth since [REDACTED].*

<sup>921</sup> Trial Brief, para. 30.

<sup>922</sup> Trial Brief, para. 30.

COMTER to other FDS units.<sup>923</sup> As previously mentioned, this document presents serious issues of reliability that arise both from its content and from the testimony of other Prosecution witnesses.<sup>924</sup> Contrary to the Prosecution's assertion that Charles Blé Goudé played a key role in the recruitment,<sup>925</sup> this document (i) makes no mention of Charles Blé Goudé, and (ii) bears no relevance to the period discussed of 2002 onwards.<sup>926</sup> This document also does not support in any way that the 2003 recruits were of "*ethnic backgrounds loyal*" to Laurent Gbagbo. Upon being showed this document in Court, P-0009 confirmed that he had never seen it and that it was not destined for the *État-Major*.<sup>927</sup> P-0009 also explained that he had never heard of the acronym "*GAD*".<sup>928</sup> Moreover, P-0009's understanding of *groupes d'auto-défense* are groups who form to fill a security gap, for instance in neighbourhoods in Abidjan where there is a high crime rate, to defend a neighbourhood where the police may not be present.<sup>929</sup>

358. Further, high ranking insider FDS military witnesses such as P-0009, P-0011 and P-0047, all denied at trial having worked with militias, both before and during the post-electoral crisis.<sup>930</sup>

359. The person with the most direct knowledge of the 2003 recruitment, the CEMA, explained at trial that the names such as "*génération Blé Goudé*" had been given by the local population to the new recruits. P-0009 emphasized that the reason such a name had been attributed to the new recruits was not because Charles Blé Goudé had played any role in the recruitment,<sup>931</sup> but rather, because these recruits were young Ivorians, who were highly educated, who demonstrated, and held meetings. Later in his testimony, P-0009 clarified the context of the 2003 recruitment, again

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<sup>923</sup> CIV-OTP-0071-0850.

<sup>924</sup> See Motion, Section III.3.B.ii.(f) Without P-0435's evidence, the Prosecution is not able to prove that the collaboration between FDS and militia was premeditated and organized by the alleged inner circle.

<sup>925</sup> Trial Brief, para. 30.

<sup>926</sup> This document appears to be dated 21 February 2011, CIV-OTP-0071-0850.

<sup>927</sup> P-0009, T-196-CONF-FRA CT, p. 79. It is not clear on the basis of Witness P-0047's testimony whether he recognized the document. He only states that he must have seen it since the date of the document indicates that he was at the *État-Major*. P-0047, T-204-CONF-FRA CT, pp. 39-40.

<sup>928</sup> Despite the purported meaning of this acronym "*Groupes d'auto-défense*" being suggested to the witness by the Prosecution at trial before he could answer this question, P-0009, T-196-CONF-FRA CT, p. 79, lns. 10-13, 23-28, p. 80, lns. 1-18.

<sup>929</sup> P-0009, T-196-CONF-FRA CT, pp. 73-74, 80-81.

<sup>930</sup> P-0009, T-196-CONF-FRA CT, p. 72-78; T-198-FRA CT, p. 79, ln. 22 to p. 81, ln. 9; P-0047, T-204-CONF-FRA CT, p. 36-37; P-0011, T-132-FRA CT, p. 6, ln. 9 to p. 8, ln. 24.

<sup>931</sup> P-0009, T-196-CONF-FRA CT, p. 81, lns. 14-20.



emphasizing that Charles Blé Goudé played no role in the recruitment. P-0009 explained that the expression “*génération Blé Goudé*” had been a “humorous” name given to these recruits.<sup>932</sup> As previously mentioned, P-0009, P-0164 and P-0321 there was a real need to recruit given the significant shortage of troops at the time, which is the objective reasons why 4000 persons had been recruited into the FDS in 2003.<sup>933</sup>

360. P-0164 also explained that such names (such as “*soldats Blé Goudé*”) had been informally given to the recruits by the local population, but that this was not an official name (“[...] *on les appelait comme ça, mais c’est pas un baptême militaire, c’est pas un nom de baptême militaire [...]*”) which corroborates P-0009’s account.<sup>934</sup> P-0009 further explains that the recruitment was made entirely lawful and made according to normal procedure, and that an official governmental communiqué had been issued setting out the parameters of the recruitment.<sup>935</sup>

361. With respect to the Prosecution’s claim that a number of youth who formed part of so-called *groupes d’auto-défense*, P-0009’s – who had direct knowledge of the 2003 recruitment – testimony directly contradicts P-0435’s account in this respect,<sup>936</sup> and emphatically stressed that the FDS did not recruit *auto-défense* groups, such as the GPP, stressing that this was not “serious” for a chief of staff, who has the responsibility of recruitment (“*Ça ne fait pas sérieux pour un chef d’état-major qui a la possibilité de faire recruter les gens dans l’armée*”). P-0009 made clear that they do not recruit and are not in contact with *auto-défense* groups such as the 30 youth from Adjamé-Agban.<sup>937</sup>

362. Further, the Prosecution contends that those recruited in 2002 and 2003 by the *État-Major* were mostly from the South, West, centre-West and South-Cest of Côte d’Ivoire, and would have been received at the Akouédo old camp before being trained and assigned to individual units.<sup>938</sup> The Prosecution cites witness P-0164, who

<sup>932</sup> P-0009, T-199-FRA CT, p. 38, lns. 4-17.

<sup>933</sup> P-0009, T-198-FRA CT, p. 71; P-0156, T-172-CONF-FRA CT, pp. 46-47; P-0316, T-182-CONF-FRA, pp. 72-73; P-0164, T-165-CON-FRA, p. 110, lns. 13-18.

<sup>934</sup> P-0164, T-164-CONF-FRA CT, pp. 18-19.

<sup>935</sup> P-0009, T-196-CONF-FRA CT, p. 81, lns. 18-23.

<sup>936</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>937</sup> P-0009, T-199-FRA CT, p. 37, lns. 13-24.

<sup>938</sup> Trial Brief, para. 31.

contended that recruits from the North were rare.<sup>939</sup> P-0164 clearly did not, however, have direct knowledge of the recruitment process;<sup>940</sup> his knowledge was very limited, given his role and function within the FDS, which was remote from any decision-making processes.<sup>941</sup>

363. P-0164's testimony with respect to the ethnic composition of the new recruits was entirely based on his impressions and personal observations; he was not part of the administration and did not have access to such information.<sup>942</sup> P-0164 made a generalisation with respect to the ethnicity of the 3000<sup>943</sup> recruits, which was entirely based on his own observations of a small proportion of recruits he had met at the time.<sup>944</sup> For instance, his contention that from the recruits he met there were several Bétés was based on his observation that many of them spoke Bété.<sup>945</sup> Significantly, P-0164 was a member of the BASA and could only make observations with respect to this unit, whereas the majority of recruits were dispatched into other sections, of which he had no direct knowledge; he simply had no access to knowledge of the 3000 recruits.<sup>946</sup> When asked about the source of his knowledge with respect to those who had been recruited in 2003, the witness responded that it was because he had seen them within his unit, the BASA.<sup>947</sup>

364. Given that the new recruits had been dispatched in different units within the FDS, P-0164's approximations are limited to his own unit, the BASA, which represents a small portion of the alleged 3000 (or according to P-0009, 4000) recruits. P-0164 confirmed at trial that he never had access to any list with the names of the recruit, let alone information concerning their geographic origin or ethnicity.<sup>948</sup> No such list was ever presented by the Prosecution. Thus, the inference made by the Prosecution based solely on the personal observations of one witness of the language spoken by recruits within his own unit (BASA) as to the conception and development of an alleged

<sup>939</sup> The witness mentioned that there were many Bété, Guéré, Kroumen, people from the South such Alladians, Ébriés, and a few rare persons from the East such as Attiés, Abé and other. But, the majorité were Bété and Guéré, P-0164, T-164-CONF-FRA CT, p. 15-16.

<sup>940</sup> P-0164, T-165-CONF-FRA CT, pp. 107-108.

<sup>941</sup> P-0164, T-165-CONF-FRA CT, p. 110.

<sup>942</sup> *Ibid.*

<sup>943</sup> P-0009 testified that they were 4000 recruits, P-0009, T-196-CONF-FRA CT, p. 81, lns. 12-13.

<sup>944</sup> P-0164, T-165-CONF-FRA CT, pp.110-111.

<sup>945</sup> P-0164, T-165-CONF-FRA CT, p. 111.

<sup>946</sup> *Ibid.*

<sup>947</sup> P-0164, T-164-CONF-FRA CT, p. 16.

<sup>948</sup> P-0164, T-165-CONF-FRA CT, p. 111-112.

common plan which involved which would have involved Charles Blé Goudé, cannot possibly be sustained. Moreover, as explained by P-0164, a higher proportion of recruits from the South of Côte d'Ivoire may be due to the fact that the recruitment could only have taken place in the government-controlled part of the country.<sup>949</sup>

365. The Prosecution contends that new recruits recruited in 2003 held a more favourable position within the FDS, and that they were “*untouchable*” because they had a “*shield in the form of Blé Goudé*.” For this assertion, the Prosecution relies on P-0164 and P-0316’s testimonies. Although P-0164’s testimony is cited to support the claim that there was difference in treatment between the so-called *Jeunes Patriotes* recruits and other recruits,<sup>950</sup> at trial, P-0164 could not provide one specific example to support this claim, which were based on his impressions.

366. The Prosecution’s claim that these recruits “*had a shield*”<sup>951</sup> does not accurately reflect the testimony of P-0316, who is cited in support of this allegation. Rather, P-0316 merely explained that these new recruits which he encountered in his own unit would boast about being “*untouchable*” and protected by Charles Blé Goudé. In his testimony, however, P-0316 repeatedly indicates that this is what the recruits *were saying about themselves*, but provided no concrete examples, thus constituting hearsay evidence.<sup>952</sup>

367. What these recruits may have been saying about themselves while boasting to their peers, must be distinguished from the factual reality, that is, the absence of actual influence Charles Blé Goudé may have had on those recruits. Although there is some evidence of the former, there is no evidence whatsoever with respect to the latter. A generalization cannot be made based on the observations of one witness, that this boasting would have also been prevalent within 4000 recruits across the other units of the FDS. There is no evidence which would point to Charles Blé Goudé’s shielding or

<sup>949</sup> P-0156, T-172-CONF-FRA ET, p. 47.

<sup>950</sup> Trial Brief, para. 32.

<sup>951</sup> Trial Brief, para. 32.

<sup>952</sup> R. [15:13:43] [...] *Oui. Ils pouvaient même te dire ce qu'ils veulent quand ils veulent, comme ils veulent : que non, eux, ils ont un parapluie. Leur parapluie, c'est Blé Goudé. On ne peut rien leur faire. Oui, ils le disaient. Q. [15:14:24] Vous dites qu'ils avaient un parapluie qui était Blé Goudé. Qu'est-ce que vous entendez par là? Qu'est-ce que vous voulez nous dire? R. [15:14:35] Oui, mais... Je veux vous dire qu'ils disaient qu'ils sont intouchables, qu'on ne peut rien leur faire et ils sont aidés dans cet acte même par des autorités militaires, voilà, qui... qui disaient «les anciens-là, s'ils font... cafouillez-les», voilà. Donc, c'est-à-dire, ils sont «intouchables», c'est ce que ça veut dire*”, P-0316-T-182-CONF-FRA ET, p. 75.

protecting of any recruits and not a single concrete example was provided by any witness including P-0316.

368. Relying on P-0316's testimony, the Prosecution's claim that "*these soldiers became militiamen, not soldiers – meaning that they served an individual, rather than the entire country*"<sup>953</sup> has no foundation. Not only does P-0316's testimony not support this claim, Prosecution insider witnesses have testified that Charles Blé Goudé was not involved in military questions or issues.<sup>954</sup>

369. With respect to the alleged involvement of Liberian "*mercenaries*" and the FLGO,<sup>955</sup> the Prosecution has failed to demonstrate that their involvement would have had formed part of an alleged common planned conceived and developed by Laurent Gbagbo and the alleged inner circle. Most significantly, the Prosecution has failed to establish any linkage between these groups and Charles Blé Goudé.

370. First, with respect to the Liberian fighters, the Prosecution has failed to demonstrate any link between Laurent Gbagbo and the alleged inner circle and this group of Liberians who opposed the rebels following the attempted *coup d'état*. The Prosecution seems to allege that the ethnic ties between certain persons of Krahn ethnicity who later became ministers in Laurent Gbagbo's government in 2010, and by the fact that a group of Liberians fought against the rebellion following the attempted *coup d'état* can lead to an inference of the conception, development and implementation of an alleged common.<sup>956</sup>

371. Again, Charles Blé Goudé does not appear in the Prosecution's narrative or in the evidence adduced with respect to the purported involvement of a group of Liberian "*mercenaries*" as of 2002-2003.<sup>957</sup>

372. First, the group of Liberians who opposed the rebels in the aftermath of the 2002 attempted *coup d'état* does not fit the Prosecution's own definition of "*mercenaries*". P-0483, the Prosecution's sole witness with respect to the alleged cooperation

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<sup>953</sup> Trial Brief, para. 32.

<sup>954</sup> P-0010, T-142-CONF-FRA CT, p. 11; P-0156, T-172-CONF-FRA ET, p. 66; P-0009, T-196-FRA CT, p. 81.

<sup>955</sup> Trial Brief, paras 33-34.

<sup>956</sup> Trial Brief, paras 33-34.

<sup>957</sup> See Motion, Section III.3.B.ii.(h) *The Prosecution failed to prove that Laurent Gbagbo and his alleged inner circle controlled mercenaries.*

between the FDS and the Liberians, testified that his group was fighting on a voluntary basis;<sup>958</sup> P-0483 made it clear that his motivation to fight was not financial but rather based on a desire to help the Krahn people in Côte d'Ivoire whom he calls his people.<sup>959</sup> P-0483 testified that “we came together”,<sup>960</sup> showing that the group was formed out of their own initiative rather than being recruited by Laurent Gbagbo or members of the inner circle. This evidence defies the Prosecution’s definition of a mercenary as a “fighter for hire”.<sup>961</sup>

373. P-0483 explained that Liberians in Côte d'Ivoire were already organized before Laurent Gbagbo came to power – during Bédié’s time – and some Krahns who had gone to the United States had later established themselves in Côte d'Ivoire.<sup>962</sup> With respect to the purported financing of the Liberians by elite Krahn persons living in Côte d'Ivoire, P-0483 insisted that any money which they may have received ‘was not a payment’, that it was “*not a salary for us to go and fight war*” that “*this was not money that was given to us by the government or Gbagbo*”.<sup>963</sup>

374. P-0483 repeatedly mentioned in his testimony that he and his group were never mandated or paid by Laurent Gbagbo’s government,<sup>964</sup> contradicting the Prosecution’s narrative. P-0483 explained his motivations to oppose the rebels, stating: “[...] *we were not paid by anybody to fight for them. We wanted to fight for ourselves. Yeah, even in America people - people join US marine who are not born in America, so I was not born in Côte d'Ivoire but I decided to help the government. I -*

<sup>958</sup> See Motion, Section III.3.A.(g) Active or former ministers.

<sup>959</sup> P-0483-T-102-CONF-ENG CT, p. 19.

<sup>960</sup> P-0483-T-102-CONF-ENG CT, p. 27.

<sup>961</sup> See Trial Brief, para. 33, footnote 83.

<sup>962</sup> P-0483-T-99-CONF-ENG CT, p. 8.

<sup>963</sup> P-0483-T-99-CONF-ENG CT, p. 91; See Motion, Section III.3.A.ii.(g) Active or Former Ministers.

<sup>964</sup> P-0483, T-99-CONF-ENG CT, p. 91-92, “A. [15:16:08] [...] *But this money was not a payment. It was not a salary for us to go and fight war. Let me give you summary. Paul Richard was most times using most of the elites, the Krahn elites that were working for the government, the Krahn that had money. So when they contributed and gave to Paul Richard, they were helping us, they were helping us in their own way. Do you understand? So when they gave these monies to Paul Richard, they gave us. But this was not monies that were given to us by the government or Gbagbo. [...] Those are not monies that were given to us by government. [...] It is not that the moneys were donated to us by the Ivorian government or by Gbagbo. It was the rich Krahn people who were living in Ivory Coast, the elites, that were contributing, giving to Paul Richard to give to us*”.

*and I did not do it because I'm Liberian, I'm an African and when there is fire on my neighbour's house all I need to do is to help him put out that fire".*<sup>965</sup>

375. P-0483 testified that they were not “concerned about Gbagbo being in power, because by then they thought because Liberian people were fighting in Côte d’Ivoire we were all bad people, so we only joined the government to fight and push those people because we wanted our people to be free within their country, so that is all”.<sup>966</sup>

P-0009 also explained this solidarity, by indicating that along the border between Liberia and Côte d’Ivoire lived the same ethnic groups. When one group is in danger, the other group, by solidarity, would come to its aid, which explains why the Liberians fought against the rebellion.<sup>967</sup>

376. The Prosecution has failed to show that an inference could be drawn from the Liberians’ involvement in fighting the rebels during the 2002 crisis, or from the money they received from “*elite Krahn*” living in Côte d’Ivoire, to sustain a theory of the conception and development of an alleged common plan from 2000 onwards. Significantly, the Prosecution has failed to show any contribution by Charles Blé Goudé.

377. Similarly, the Prosecution fails to demonstrate any linkage between Charles Blé Goudé and the FLGO, whom the Prosecution claims was “*sponsored and supported by Gbagbo, Blé Goudé and other members of the inner circle*”.<sup>968</sup>

378. P-0500 clearly testified that Charles Blé Goudé played no part in the creation of the FLGO. When asked by the Prosecution whether the leader of the FLGO, Maho Glofiéhi, ever mentioned having any relationship with Charles Blé Goudé, or whether Charles Blé Goudé ever played a role in the creation of the FLGO, the witness responded “*never*”.<sup>969</sup>

379. P-0500 also explained that among the members of the FLGO in 2003, there were Ivorians of all ethnic groups.<sup>970</sup> Although P-0500 testified that he had already met

<sup>965</sup> P-0483, T-99-CONF-ENG CT, p. 71.

<sup>966</sup> P-0483, T-99-CONF-ENG CT, p. 61.

<sup>967</sup> P-0009, T-196-CONF-FRA CT, p. 74.

<sup>968</sup> Trial Brief, para. 34.

<sup>969</sup> P-0500, T-182-CONF-FRA CT, p. 46, ln. 11 to p. 47, ln. 6.

<sup>970</sup> P-0500, T-181-FRA CT, p. 25, lns. 9-17.

Oulaï Delafosse of the FDS, when he was in Guiglo,<sup>971</sup> it quickly became clear that this information was entirely based on hearsay.<sup>972</sup> The Prosecution also cites P-0500's account of the incident at the St-Paul Cathedral, whereby FLGO members had conducted a hunger strike, during which Laurent Gbagbo would have given them money for them to "*go home to their families*", essentially dismantling the group. The only brief allusion to Mr Blé Goudé in connection with the FLGO is when P-0500 mentioned that someone had told him that Laurent Gbagbo was accompanied by others on that occasion, among them Charles Blé Goudé. However, despite P-0500 having been present at the time, he confirmed that he did not himself see Charles Blé Goudé.<sup>973</sup> This sole hearsay evidence cannot be relied upon to sustain the allegation that Charles Blé Goudé would have "*sponsored and supported*" the FLGO, along with Laurent Gbagbo and an alleged inner circle.<sup>974</sup>

380. The Prosecution has failed to adduce evidence which would allow a reasonable Chamber to find that "*Blé Goudé played a key role in recruiting into the FDS thousands of young people, from ethnic backgrounds loyal to Gbagbo, many of whom belonged to groupes d'auto-défense*".<sup>975</sup> This claim must therefore be rejected.

**D. The Prosecution failed to prove the preparations for the implementation of the alleged common plan and policy after the first round of the elections**

i. Insufficient evidence of recruitment, arming and financing of pro-Gbagbo youth, militia, and mercenaries before and during the alleged attack

381. The Prosecution alleges that Laurent Gbagbo and the inner circle implemented the common plan by arranging for the recruitment, arming, and financing of pro-Gbagbo youth, militia and mercenaries.<sup>976</sup> The evidence adduced by the Prosecution is patently insufficient to find that such recruitment arming and financing took place, as was substantiated in the Section regarding the pro-Gbagbo youth and militia's alleged collaboration with and integration in the FDS of the present motion.<sup>977</sup> However, the

<sup>971</sup> P-0500, T-181-FRA ET, p. 40 Ins. 20-28 to p. 41, Ins. 1-22.

<sup>972</sup> P-0500, T-181-FRA ET, pp. 42-46.

<sup>973</sup> P-0500, T-181-FRA ET, p. 54 Ins. 2-4.

<sup>974</sup> Trial Brief, para. 34.

<sup>975</sup> Trial Brief, para. 30.

<sup>976</sup> Trial Brief, paras 88-96.

<sup>977</sup> See Motion, Section III.3.B.ii *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

Defence wishes to make additional submissions in regard to the financing of different groups, and the allegation that Mr Dibopieu would have met with the witness P-0435 and requested that the GPP track the locations of RHDP meetings.

382. The documentary evidence upon which the Prosecution relies, which include receipts, a letter and money orders do not make more or less probable that such funds, if received, were employed to keep Laurent Gbagbo in power by all means.<sup>978</sup> As previously submitted in the aforementioned paragraphs, the Prosecution has not submitted concrete evidence showing for what purposes such funds were used.<sup>979</sup> Nor does the receipts' sum indicate that these funds if received would have been sufficient to fund the militias in their preparation for the use of violence.<sup>980</sup> For the single receipt cited by the Prosecution for which there is stated purpose,<sup>981</sup> namely document [REDACTED], the Prosecution has not proven at trial how the receipt of [REDACTED], for the purposes [REDACTED]. The Defence also notes the insignificant amount of money received, which amounts to [REDACTED]. This is hardly sufficient to prove the financing of a militia, despite the Prosecution's claim that the Presidency continued financing the FLGO during the post-election violence.<sup>982</sup> Further, the letter [REDACTED], does not show that [REDACTED].<sup>983</sup>

383. The evidence cited regarding Laurent Gbagbo and the inner circle's sponsorship of the FLGO before 2010 is equally insufficient to show that these funds were given to keep Laurent Gbagbo in power by all means.<sup>984</sup> Rather, the evidence shows that the funds were given in the context of disarmament.<sup>985</sup> For example, Witness P-0500 testified that towards the end of June 2006 he contacted Maho Glofiéhi in the context of the disarmament process because he and other FLGO members did not know the contours of this new disarmament policy.<sup>986</sup> It was in this context that the witness and other FLGO members went to Abidjan. They learned that Mr Glofiéhi was at the

<sup>978</sup> Trial Brief, para. 88.

<sup>979</sup> See Motion, Section.3.A.ii.(f) *Leaders of youth and militia*.

<sup>980</sup> See *ibid*.

<sup>981</sup> See Trial Brief, para. 276. The Defence reiterates its serious doubts as to the authenticity of the letter and corresponding receipt, as stated in its submissions. ICC-02/11-01/15-1028-ConfAnxA.

<sup>982</sup> See Trial Brief, para. 276.

<sup>983</sup> Trial Brief, para. 276 *citing* [REDACTED]. The Defence reiterates its objections with respect to the admission of this document. ICC-02/11-01/15-1028-Conf.

<sup>984</sup> Trial Brief, para. 275

<sup>985</sup> See Motion, Section.III.3.A.ii.(g) *Active or former ministers*; See P-0500, T-181-FRA CT, pp. 52-55, 59-62.

<sup>986</sup> P-0500, T-181-CONF-FRA CT, p. 63.



*Primature* and went there to meet him. The witness did not go inside the *Primature*, but learned that Mr Glofiéhi had received money there. However, the witness did not know: (1) who gave the money (2) the sum or (3) its intended purpose.<sup>987</sup> Given that the Prosecution has not advanced any evidence in this regard, the Defence's alternative inference that it was used in the context of disarmament is equally, if not more likely, than if it were used for arming or financing the violent activities of the FLGO.

384. With respect to the alleged "instructions" that P-0435 allegedly received from Mr Dibopieu at the behest of Charles Blé Goudé, the Defence submits that in addition to Witness P-0435 proving to be patently incredible,<sup>988</sup> the evidence is incapable of belief for three reasons. First, the evidence, like most of P-0435's evidence, is uncorroborated by any evidence on record. Second, it is clear from Witness P-0435's testimony that he had very little knowledge of the groups that made up the alleged *Galaxie Patriotique*.<sup>989</sup> When asked about the Galaxy's groups, the witness was only able to spontaneously come up with the names of four organizations, namely the JFPI, the GPP, the COJEP, and the *Agoras et Parlements*. The witness not only did not mention Jean Yves Dibopieu's group, the SOAF,<sup>990</sup> he also had never heard of the *Alliance de la Jeunesse pour le Sursaut National* ("AJSN"),<sup>991</sup> which is the federation of groups to which both the COJEP and SOAF belonged. Given P-0435's unfamiliarity not only with Mr Jean Yves Dibopieu's organization, but also the larger federation to which both he and Charles Blé Goudé belonged, his testimony on instructions he would have received from Mr Dibopieu on behalf of Charles Blé Goudé is implausible. Rather, it is much more likely that P-0435 never had contact with Mr Dibopieu nor Charles Blé Goudé, which explains his unfamiliarity with their organizations. In addition to the evidence being incapable of belief, it would be highly prejudicial for the Chamber to give any weight to this evidence against Charles Blé Goudé, given [REDACTED]. The Prosecution [REDACTED],<sup>992</sup> and thus the

<sup>987</sup> *Ibid.*, pp. 64-67.

<sup>988</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness' P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.*

<sup>989</sup> P-0435, T-94-CONF-FRA CT pp. 2-4.

<sup>990</sup> *Ibid.*

<sup>991</sup> P-0435, T-94-CONF-FRA CT pp. 2-4. For an explanation of the AJSN, see Book, Ma part de Vérité, CIV-OTP-0057-1245, p. 1306 and P-0449, T-159-CONF-FRA-ET, p. 91-92.

<sup>992</sup> Prosecution's notice of withdrawal of witnesses from its calling order, 6 June 2017, ICC-02/11-01/15-949-Conf.

Defence [REDACTED]. However, the Defence notes that it was the Prosecution's choice [REDACTED].

- ii. Insufficient evidence that the recruitment, arming and financing of the FDS as from the 2010 election was part of a policy

(a) The Prosecution failed to prove that the arming of certain units was part of the policy

385. The Prosecution fails to substantiate that “[a]s a reward for their allegiance, CECOS, BASA, and the Garde Républicaine were given ammunition and weapons that the rest of the FDS had difficulty obtaining”.<sup>993</sup>

386. As far as the CECOS is concerned, P-0009 testified that over the missions – although unable to give a precise timeframe - it became apparent that the CECOS was progressively better armed than the army, the police or the *gendarmerie*.<sup>994</sup> However, P-0009 and [REDACTED]'s testimonies are in contradiction on this point.<sup>995</sup> Regarding [REDACTED],<sup>996</sup> [REDACTED].<sup>997</sup> [REDACTED].<sup>998</sup> [REDACTED].<sup>999</sup>

387. Regarding the arming of the BASA, [REDACTED]. [REDACTED].<sup>1000</sup> The other piece of evidence concerning the BASA is the alleged [REDACTED].<sup>1001</sup> Therefore, it cannot be inferred from the evidence available that Laurent Gabgbo and the alleged inner circle took any part in the decision to allocate those ammunitions to certain units rather than others. In addition, [REDACTED].<sup>1002</sup> Finally, [REDACTED].<sup>1003</sup> The fact that P-0047 did not have a complete overview of the weapons inventory of the BASA<sup>1004</sup> or that [REDACTED]<sup>1005</sup> does not mean that this unit was armed through

<sup>993</sup> Trial Brief, para. 216.

<sup>994</sup> P-0009, T-198-FRA CT, p. 41-42.

<sup>995</sup> [REDACTED].

<sup>996</sup> [REDACTED], CIV-OTP-0073-0215.

<sup>997</sup> [REDACTED].

<sup>998</sup> [REDACTED].

<sup>999</sup> See [REDACTED].

<sup>1000</sup> [REDACTED].

<sup>1001</sup> [REDACTED].

<sup>1002</sup> [REDACTED].

<sup>1003</sup> [REDACTED].

<sup>1004</sup> P-0047, T-203-FRA CT, p. 9.

<sup>1005</sup> [REDACTED].

illegal means or that the materials they had were used to carry out attacks against the civilian population.

388. Similarly, the allegation that the *Garde Républicaine* would have kept a large stockpile of ammunition in the basement of the Presidential Palace, in addition to the *Garde Républicaine*'s official stock, is unsubstantiated.<sup>1006</sup> P-0009 testifies that the *Garde Républicaine* had, compared to the other forces, a reasonable (*suffisamment*) amount of ammunition which was located in an underground ammunition bunker in the vicinity – North West – of the Presidential Palace.<sup>1007</sup> P-0009 is very clear that the room seen on the open source and undated video CIV-OTP-0048-1651, and containing a large number of boxes, presented as ammunition boxes, is not the ammunition bunker of the *Garde Républicaine*.<sup>1008</sup> Secondly, P-0009 confirms that on the basis of the video only, it is impossible to determine whether there was actual ammunition in the boxes shown on the video and which type of ammunition it was, if any. However, a few details, such as the numerous errors on the box labels, the provenance of the said boxes, the obvious security and strategic non-sense of having this ammunition sitting in the basement of the Presidential Palace, raise his doubts as to the truthfulness of the information shown to him.<sup>1009</sup> Therefore, the allegation of the Prosecution that the *Garde Républicaine* would have kept a large pile of ammunition in the basement of the Presidential Palace, despite P-0009 finding that particular fact abnormal is unfounded and extremely misleading. While P-0321, in the context of the lack of resources of the *Gendarmerie* and of the cooperation among units, obtained two cases of ammunition directly from the *Garde Républicaine*,<sup>1010</sup> [REDACTED].<sup>1011</sup> Therefore, [REDACTED]. Furthermore, he explains that the *Garde Républicaine* weapon stock can be traced back to the crisis of 2002 and 2003,<sup>1012</sup> which indicates that the stock they had was legally obtained before the embargo. Finally, P-0347 corroborates P-0321's testimony stating that between 2004 and 2010 the *Garde Républicaine* did not receive any additional weapon or

<sup>1006</sup> Trial Brief, paras 216, 716.

<sup>1007</sup> P-0009, T-194-CONF-FRA CT, p. 47.

<sup>1008</sup> P-0009, T-194-CONF-FRA CT, p. 46-49.

<sup>1009</sup> P-0009, T-198-CONF-FRA CT, p. 57-67.

<sup>1010</sup> P-0321 had originally asked for 10 cases. P-0321, T-61-CONF-FRA CT, p. 31-32.

<sup>1011</sup> P-0321, T-61-CONF-FRA CT, p. 33.

<sup>1012</sup> P-0321, T-61-CONF-FRA CT, p. 31-32.

ammunition.<sup>1013</sup> During the crisis, as commander of the first *groupement* in Treichville he never found himself physically going to the Palace to obtain any ammunition.<sup>1014</sup> He specified that he did not see the ammunition boxes in the basement before they were taken away and was not present during the cleaning-up process that took place after the crisis, when those boxes were moved.<sup>1015</sup> He testifies that he saw those boxes after they had been moved to the garden of the Palace but does not recall having paid attention to the labels on the boxes. He did not check what was in the boxes when he saw them in the garden either. When requested to look at a screenshot of those boxes, he confirms that he has never seen boxes of weapons, ammunition or military equipment during his career with so many errors on the label or coming from the Israeli company indicated on the relevant box.<sup>1016</sup> Assuming *arguendo* that the video is authentic and the boxes seen on the video items contained ammunitions, the Prosecution fails to adduce one single piece of evidence that could have enlightened the Chamber as to how and when those ammunitions were obtained, for what purpose, and if part of it had actually been used to carry out an attack against the civilian population. Therefore, too little information is provided to make any inference in this regard.

389. In view of the foregoing, the Prosecution fails to adduce any conclusive evidence of the arming, by Laurent Gbagbo and an alleged inner circle, before and during the crisis, of specific FDS units allegedly constituting a parallel structure, for the purpose of carrying an attack against the civilian population. As the evidence, which mainly focuses on ammunitions, does not show that those ammunitions alleged to have been acquired had in fact been used, another reasonable conclusion could be that those ammunitions had not been intended for use in attacks against the pro-Ouattara population, but were acquired for defensive purposes. This is indeed corroborated by [REDACTED].

(b) The Prosecution failed to prove the financing of the alleged parallel structure

<sup>1013</sup> P-0347, T-79-CONF-FRA CT, p. 6.

<sup>1014</sup> P-0347, T-78-CONF-FRA CT, p. 15.

<sup>1015</sup> P-0347, T-79-CONF-FRA CT, p. 37-38.

<sup>1016</sup> P-0347, T-79-CONF-FRA CT, p. 37-42.

390. The Prosecution fails to substantiate that in addition to their regular salary, the commanders of the so-called parallel structure received monthly cash payments from the Presidential Palace, including from Dogbo Blé's office.

391. [REDACTED].<sup>1017</sup> Therefore, it does not allow the Prosecution to misleadingly suggest that Dadi, Zadi or Loba would have received these monthly cash bonuses because they would have been part of a parallel structure.

392. In the same vein, the evidence does not support the Prosecution's allegation that Loba would have received monthly cash payments directly from Charles Blé Goudé.<sup>1018</sup> As developed above, the evidence shows that there was once, in January 2011, one envelope handed over by Charles Blé Goudé to Loba in front of the cameras and in the context of the tribute to be paid to the FDS and their wives in the following days at Stade Champroux. Not a single witness testified to the content of the envelope. In parallel, [REDACTED].<sup>1019</sup> Therefore, it can certainly not be inferred from this piece of evidence that Charles Blé Goudé would have financed the parallel structure or any militiamen working in the parallel structure.

(c) The Prosecution failed to prove that the recruitment of the FDS during the post-electoral crisis was part of a policy

393. The Prosecution alleges that in 2010 and early 2011, there was an unannounced recruitment of many pro-Gbagbo youth and militia members into the FDS, who underwent unofficial military training.<sup>1020</sup> However, the Prosecution has adduced either insufficient or patently incredible evidence with regard to this allegation. As previously substantiated in the present motion,<sup>1021</sup> the evidence on the record shows that there was an official recruitment in January 2011 and for which there was a military training in December 2010.<sup>1022</sup> It does not show that the recruits came from militia groups and pro-Gbagbo youth movements. The Prosecution attempts but fails

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<sup>1017</sup> [REDACTED].

<sup>1018</sup> Trial Brief, paras 213, 228.

<sup>1019</sup> Motion, Section III.3.A.iii *The Prosecution failed to prove any coordination of activities among members of the alleged inner circle* and Section III.3.B.ii.(a) *Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011*.

<sup>1020</sup> Trial Brief, paras 225; 95.

<sup>1021</sup> See Motion, Section III.3.B.ii.(a) *Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011*.

<sup>1022</sup> P-0347, T-77-CONF-FRA ET, pp. 35-36 ; P-0347, T-78-CONF-FRA ET, pp. 54-58; P-0009, T-196-CONF-FRA CT, p. 83.

to link this recruitment to these groups through the testimonies of Witnesses P-0316 and P-0435.<sup>1023</sup> Their evidence on the matter is incapable of belief,<sup>1024</sup> and therefore the inference that Charles Blé Goudé would have relayed the instructions of Laurent Gbagbo and members of the inner circle to the youth and militia cannot be made.

394. Moreover, P-0009 explains the reasons for which there was a recruitment, which are unrelated to any alleged common plan to resort to violence against civilians in order to keep Laurent Gbagbo in power. In 2009, within the framework of the Ouagadougou accord, which required 4,000 people for the security of the elections, a decision was made to recruit 2,000 people who were trained under excellent conditions in January, February and March 2010 and were assigned to work within the army.<sup>1025</sup> Another recruitment of 3,184 men was made in January 2011 but for such a recruitment, given the situation prevailing in Abidjan and the urgency to increase the army's resources, those recruits did not undergo the standard three month training and were directly transferred to the relevant units for the commanders to carry out the training there.<sup>1026</sup>

395. These were the only recruitments completed during the post-electoral crisis. P-0009 confirms that no recruitment was completed following the call to enlistment made by Charles Blé Goudé on 19 and 20 March 2011. Therefore, this element also contradicts the Prosecution theory.

iii. Insufficient evidence that the meetings between Laurent Gbagbo and the alleged inner circle related to the planning and implementation of the policy

396. The Prosecution alleges that “[GBAGBO and the [alleged] Inner Circle, including BLÉ GOUDÉ] met frequently, received information regarding the preparations for and conduct of the attack, and issued plans, instructions and incitements for its implementation”.<sup>1027</sup> Throughout the Trial Brief, the Prosecution mentions several meetings that allegedly took place between 3 December 2010 and 3 April 2011

<sup>1023</sup> Trial Brief, paras 279-281; 294, 296-297.

<sup>1024</sup> See Motion, Section III.3.B.ii.(a) Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011; See Motion, Section III.3.B.ii.(b) The Prosecution's theory is based almost exclusively on Witness' P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.

<sup>1025</sup> P-0009, T-196-CONF-FRA ET, p. 82, T-199-FRA ET, p. 39.

<sup>1026</sup> P-0009, T-196-CONF-FRA ET, p. 82-83.

<sup>1027</sup> Trial Brief, para. 178.

between the members of the alleged inner circle.<sup>1028</sup> When recontextualizing the said meetings, it appears clear that the Prosecution has failed to prove that these meetings contributed to the conception or implementation of a State or organisational policy.

397. At the outset, the Defence notes the lack of relevance of all the meetings between Laurent Gbagbo and members of his government, identified as Council of Ministers or “*Conseil du Gouvernement*”,<sup>1029</sup> as these meetings are completely ordinary in the course of the government of a State. Besides, the Prosecution does not produce any evidence as to their content. The fact that “*communiqués*” were released after these meetings does not necessarily mean they reflect the content of the meetings. Therefore, the Defence submits that such meetings are not relevant to the case.

398. However, the Defence notes that the Prosecution alleges that after the *Conseil des ministres* held on 10 February 2011, Don Mello read a communiqué over RTI, saying that Laurent Gbagbo gave “*instructions, pour renforcer les moyens humains et matériels, pour mieux sécuriser ABOBO et DUEKOUE et maintenir le couvre-feu à Abobo*”.<sup>1030</sup> Therefore, contrary to the Prosecution’s allegation, the safety of Abobo was at the centre of the government’s preoccupations.

399. The Prosecution tendered into evidence from the paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings<sup>1031</sup> a document entitled *réunion de concertation* dated 3 December 2010 which, allegedly, would contain minutes of a meeting detailing the strategy to be implemented, going forward, by Laurent Gbagbo and his alleged inner circle.<sup>1032</sup> At the outset, the Defence would like to reiterate its objections as to the lack of authenticity and reliability of the document.<sup>1033</sup> The

<sup>1028</sup> See Trial Brief, Section II.C. Implementation of the Common Plan from August 2010; Section V. 16 December narrative; Section VI. Abobo Narrative; Section VII. Yopougon Narrative.

<sup>1029</sup> Trial Brief, paras 145, 337, 444 and 446.

<sup>1030</sup> Trial Brief, para. 444; Video, CIV-OTP-0074-0076 at 00:03:50-00:11:40 (excerpt from RTI broadcast of 11 February 2011 at 20h; transcript at CIV-OTP-0087-0607 at 0608, lns. 23-24).

<sup>1031</sup> See Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings, ICC-02/11-01/15-895, 28 April 2017.

<sup>1032</sup> Trial Brief, paras 131-132, *Réunion de concertation*, CIV-OTP-0018-0220, draft transcript available at CIV-OTP-0053-0335; See Report, Document Search at the Presidential Residence, Abidjan 14 February-1 March 2012, CIV-OTP-0024-0641 at 0645, entry 20; See also Addendum to Document Search at the Presidential Residence, Abidjan 14 February-1 March 2012, CIV-OTP-0098-0005.

<sup>1033</sup> See Annex A to Defence Response to the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings” (ICC-02/11-01/15-895-Conf), ICC-02/11-01/15-1028-Conf, 15 September 2017, with Confidential Annex A, ICC-02/11-01/15-1028-Conf-AnxA, item #531.

Prosecution itself alleges that the document “*appears to contain minutes of that meeting*”.<sup>1034</sup> Indeed, there can be no certainty as to the authenticity of the document. While the Prosecution contends that it has been collected in a room identified as Simone Gbagbo’s bedroom at the Presidential Residence, the document does not bear a letterhead, a signature or an official stamp. Handwritten notes throughout the document without the possibility to identify the author shed doubt as to the document’s reliability. Additionally, [REDACTED].<sup>1035</sup> Furthermore, the Prosecution, in its report CIV-OTP-0024-0641, did not mention that [REDACTED],<sup>1036</sup> [REDACTED]. Given that the chain of custody of this document was not preserved and that third parties with an obvious interest in the outcome of the case pillaged and plundered the Residence, serious doubts arise as to the authenticity of the document. For the foregoing reasons, the document does not bear sufficient indicia of reliability to be admitted and, if in the alternative, the Trial Chamber decided to admit it as evidence, it could not be of any determining value in the assessment of the Motion.

400. Assuming *arguendo* that the document would be authentic, contrary to the Prosecution’s arguments, it does not demonstrate any alleged strategy decided by any alleged inner circle in the implementation of any alleged common plan. The document mentions different cells and their aims to ensure that the outcome for the election is supported by the largest majority. The cells as mentioned in the document relate to diplomacy, politics, communication, mobilisation and humanitarian law. Its content reveals an alleged meeting between a Head of State and his counsel to handle the aftermath of a Presidential election and to prepare the constitution of the government, and does not reveal any action or decision that would be out of the ordinary governance of a State.<sup>1037</sup> Furthermore, the Defence notes that the Prosecution does not dispute the fact that Charles Blé Goudé did not attend the alleged meeting.

401. The Prosecution then alleges that “*the content of the document is further corroborated by the events of that day and of the following days*”<sup>1038</sup> whereas these events, as selectively mentioned by the Prosecution in the Trial Brief, do not reveal any link to the alleged minutes of the *réunion de concertation*. For instance, the fact

<sup>1034</sup> Trial Brief, para. 131. Emphasis added.

<sup>1035</sup> CIV-OTP-0024-0641.

<sup>1036</sup> CIV-OTP-0047-0122, at 0123-0124.

<sup>1037</sup> Trial Brief, para. 131.

<sup>1038</sup> *Ibid.*, para. 132.



that, during an interview to the RTI, Alcide Djédjé was introduced as special adviser to Laurent Gbagbo for “diplomatic affairs”<sup>1039</sup> is simply consistent with his position as Ambassador of Côte d’Ivoire to the UN and his career in diplomacy which makes him a specialist of diplomatic affairs.

402. The Prosecution then relies upon an interview given by Alcide Djédjé to the RTI on 3 December 2010 where he made reference to events of January 2006, recalling that the UN wanted to dissolve the National Assembly. The Prosecution alleges that such events had triggered a sit-in by Charles Blé Goudé, and violence by pro-Gbagbo youth groups against French interests. According to the Prosecution, this reference to the 2006 events is used by Alcide Djédjé to demonstrate that “*the pro-GBAGBO youths, led by Charles Blé Goudé, were an integral part of the strategy of GBAGBO and his [alleged] Inner Circle to maintain GBAGBO in power and that they could still be relied upon to ‘defend the institutions of the Republic’*”.<sup>1040</sup> Such an allegation relies on a purely subjective and unreasonable inference made by the Prosecution in an attempt to fit this interview in its narrative without any objective evidentiary corroboration, specifically when it concerns the alleged acts of violence of Charles Blé Goudé which the Prosecution attempts to attribute to the “*pro Gbagbo youth*” against alleged French interests in 2006, especially given the fact that it is not disputed that Charles Blé Goudé did not attend the alleged meeting.

403. The Prosecution alleges that on 15 December 2010, during a meeting held with his Ministers and members of the alleged inner circle, Laurent Gbagbo instructed that the march on RTI planned by RHDP for the next day be prohibited.<sup>1041</sup> The Prosecution alleges that Witness P-0011 attended the alleged meeting, whereas P-0011 testified that [REDACTED].<sup>1042</sup> Witness P-0046 testified that [REDACTED]<sup>1043</sup> and that [REDACTED].<sup>1044</sup> Witness P-0009 testified that he had no recollection of a meeting at the Presidential Residence on 15 December 2010. He remembered that a meeting where the march was discussed took place on 14 December 2010 instead. Therefore,

<sup>1039</sup> *Ibid.*, para. 134; Video, CIV-OTP-0074-0050 at 00:26:15-00:32:36 (excerpt from RTI broadcast of 3 December 2010 at 20h; transcript at CIV-OTP-0087-0361 at 0362, lns. 4-5).

<sup>1040</sup> Trial Brief, para. 135.

<sup>1041</sup> Trial Brief, para. 344.

<sup>1042</sup> P-0011, T-134-CONF-FRA CT, p. 20.

<sup>1043</sup> P-0046, T-125-CONF-ENG CT, pp. 45-49.

<sup>1044</sup> *Ibid.*

the Defence submits that the Prosecution has failed to prove that a meeting was held on 15 December 2010 at the Presidential Residence between Laurent Gbagbo, his Ministers and members of the alleged inner circle.

404. Assuming *arguendo* that the meeting took place, whether on 14 or 15 December 2010, contrary to the Prosecution's allegation that "[Laurent] GBAGBO instructed that the march was prohibited", Witness P-0010 did not mention who recommended prohibiting the march.<sup>1045</sup> Witness P-0009 explained that it was the Generals who attended the meeting, himself included, who recommended prohibiting the march because they were concerned with troubles that could occur during the march.<sup>1046</sup> He also testified that following this meeting, a security structure ("*un dispositif de sécurité*") was put in place.<sup>1047</sup> Therefore, Witness P-0009 testified as to the genuine context of the alleged meeting, mentioning that, by fear of incidents, the Generals recommended that Laurent Gbagbo prohibit the march. Finally, the Defence notes that the Prosecution does not allege that Charles Blé Goudé attended the alleged meeting.

405. As for the meeting that allegedly took place on 16 December 2010 between Laurent Gbagbo, several Ministers and members of the alleged inner circle,<sup>1048</sup> the Prosecution did not provide evidence on the content of the alleged meeting. For the meeting that allegedly took place between Charles Blé Goudé and Laurent Gbagbo in the night of 16 December and the alleged three visits of Charles Blé Goudé to Laurent Gbagbo between 16 and 19 December 2010,<sup>1049</sup> the Defence incorporates by reference the paragraphs of the Motion that are dedicated to this topic.<sup>1050</sup>

406. As for the meeting that allegedly took place on 4 January 2011 between Laurent Gbagbo,<sup>1051</sup> Witness P-0009, the Ministers of Interior and Defence and the Generals,

<sup>1045</sup> P-0010, T-139-CONF-FRA CT, pp. 9-12.

<sup>1046</sup> P-0009, T-196-CONF-FRA CT, p. 13, lns. 10-17.

<sup>1047</sup> P-0009, T-196-CONF-FRA CT, pp. 2-14; *See* particularly p. 13, lns. 10-17.

<sup>1048</sup> Trial Brief, para. 365.

<sup>1049</sup> Trial Brief, para. 366.

<sup>1050</sup> *See* Motion, Section VI.1.A.ii.(a) *The Prosecution failed to prove any participation in meetings instrumental to a policy.*

<sup>1051</sup> Trial Brief, para. 409.

the Defence incorporates by reference the paragraphs of the Motion that are dedicated to the Requisition.<sup>1052</sup>

407. As for the meeting that allegedly took place on 7 January 2011, between Witness P-0009 and the Generals at the Headquarters of the *État-Major*,<sup>1053</sup> the Defence submits that the Prosecution has failed to prove that the meeting did not fall within the ordinary and expected course of action between the Chief of Staff and his subordinated Generals during a period of crisis, especially after the Requisition of the army that was decided on 4 or 5 January 2011.<sup>1054</sup> The same conclusion can be drawn for the meeting that allegedly took place on 12 January 2011 at the *État-Major*.<sup>1055</sup>

408. As for the meeting that allegedly took place on 12 January 2011, at the Presidential Residence, between Laurent Gbagbo, Charles Blé Goudé, Ministers Dogou, Guiriéoulou, and the high command of the FDS,<sup>1056</sup> Witness P-0009 confirmed P-0046's testimony that no particular instructions were given by Laurent Gbagbo.<sup>1057</sup> Witness P-0009 also stated that these reported meetings – such as the 12 January 2011 meeting – typically involved an update on the security situation in the territory as a whole and not on Abobo specifically.<sup>1058</sup> Witness P-0010 also stated that Laurent Gbagbo would never address in detail any military operation.<sup>1059</sup>

409. As for the meeting that allegedly took place on 20 January 2011 between Charles Blé Goudé and other high-ranking FDS Generals at the FDS headquarters at the *État-Major*,<sup>1060</sup> the Defence incorporates by reference the paragraphs of the present Motion that are dedicated to this topic.<sup>1061</sup>

<sup>1052</sup> See Motion, Section III.2.B.i.(b) *Insufficient evidence that heavy weaponry was used to indiscriminately target civilians*.

<sup>1053</sup> Trial Brief, para. 413.

<sup>1054</sup> P-0009, T-193-FRA CT, pp. 13-14, 23-24, 67, 74-75; T-194-FRA CT, pp. 51-52, 83-87, T-195-CONF-FRA CT, pp. 22, 83-85; T-196-CONF-FRA CT, p. 2.

<sup>1055</sup> Trial Brief, para. 418.

<sup>1056</sup> Trial Brief, para. 429.

<sup>1057</sup> P-0009, T-195-CONF-FRA CT, pp. 50-51; P-0046, T-126-CONF-FRA CT, pp. 4-5.

<sup>1058</sup> P-0009, T-195-CONF-FRA CT, pp. 50-51.

<sup>1059</sup> P-0010, T-139-CONF-FRA CT, p. 83, lns. 25-28.

<sup>1060</sup> Trial Brief, para. 435.

<sup>1061</sup> See Motion, Section VI.1.A.ii.(a) *The Prosecution failed to prove any participation in meetings instrumental to a policy*.

410. As for the meeting that allegedly took place on 22 January between Charles Blé Goudé and Loba, the Defence incorporates by reference the paragraphs of the present Motion that are dedicated to this topic.<sup>1062</sup>

411. As for the meeting allegedly held on 24 February 2011, between Laurent Gbagbo and the Generals,<sup>1063</sup> the Prosecution does not portray the proper context of the meeting. Witness P-0009 testified that Laurent Gbagbo decided the operation to free the MACA-Abengourou axis in Abobo to allow the population from the South to circulate towards the East and the population coming from the East to reach Abidjan and the food supply to circulate.<sup>1064</sup> Therefore, the aim of the operation was to protect the civilian population. The operation was specifically aimed at the MACA-Abengourou axis.<sup>1065</sup> The Prosecution also alleges that Laurent Gbagbo ignored P-0009's advice to declare Abobo a war zone, but P-0009 said during his testimony that the issue of Abobo as a war zone was not discussed during the meeting.<sup>1066</sup> P-0047, on the contrary, reported that upon P-0009's suggestion to the President to declare Abobo a war zone during the meeting at the Presidential Palace,<sup>1067</sup> P-0047 intervened against it. His reasoning was that it would not be a good thing to declare Abobo a war zone since the FDS' main role was to protect the population and if ever Abobo was declared a war zone, war weapons would be allowed and used, and collateral damages would necessarily occur to the detriment of the population.<sup>1068</sup> Witness P-0011 confirmed this statement, testifying that although the topic of making Abobo a war zone had been discussed, some generals, himself included, were afraid that it would have resulted in collateral damages for the civilians, because the *Commando Invisible* were infiltrated amongst the population.<sup>1069</sup> According to P-0011, that was the reason why Abobo was not declared "zone de guerre".<sup>1070</sup> P-0010 confirmed the discussion, emphasizing that "*il n'y avait rien qui pouvait distinguer un combattant du*

<sup>1062</sup> See Motion, Section VI.1.A.ii.(b). The Prosecution failed to prove that the FDS leadership and Charles Blé Goudé cooperated to recruit pro-Gbagbo youth and militias into the FDS.

<sup>1063</sup> Trial Brief, para. 452.

<sup>1064</sup> P-0009, T-194-FRA CT, pp. 59-60, 62.

<sup>1065</sup> P-0009, T-194-FRA CT, p. 62, lns. 11-12.

<sup>1066</sup> P-0009, T-194-FRA CT, pp. 78-79.

<sup>1067</sup> P-0047, T-203-FRA CT, p.32, lns.4-9.

<sup>1068</sup> P-0047, T-203-FRA CT, p.37, lns. 5-9.

<sup>1069</sup> P-0011, T-136-CONF-FRA CT, pp.51-52, lns.27-28, 1-3; See also P-0010, T-139-CONF-FRA CT, p.88, lns.16-19.

<sup>1070</sup> P-0011, T-136-CONF-FRA CT, p.51, lns.14-23.

*Commando invisible de la population civile.*<sup>1071</sup> *Et donc, ils prenaient la population en otage, mieux, ils prenaient la population comme sorte de bouclier humain”.*<sup>1072</sup>

The President allegedly decided not to make such a decision at that time. P-0047 indicates that measures have been put in place to protect the population anyhow by encouraging the population to evacuate and by setting up a curfew.<sup>1073</sup>

412. As for the meeting that allegedly took place on 24 February 2011 between Charles Blé Goudé and Konan Boniface,<sup>1074</sup> the Defence incorporates by reference the relevant paragraphs of the present Motion.<sup>1075</sup>

413. As for the meeting that allegedly took place on 11 March 2011 between Laurent Gbagbo, Charles Blé Goudé and Witness P-0009,<sup>1076</sup> the Defence submits that the testimony of Witness P-0009, which serves as the sole evidentiary support for the allegation, amounts to opinion evidence as to the interpretation made by the witness of Charles Blé Goudé’s alleged attitude.<sup>1077</sup> The fact that the witness also linked the alleged attack of his house, a few days later, to the said meeting is nothing more than an inference made by the witness,<sup>1078</sup> which also amounts to opinion evidence.

414. As for the meeting that allegedly took place on 14 March 2011 between Laurent Gbagbo, Charles Blé Goudé, the Generals, Alcide Djédjé, Alain Dogou and Emile Guiriéoulou,<sup>1079</sup> the Defence incorporates by reference the relevant paragraphs of the present Motion.<sup>1080</sup>

415. As for the meeting that allegedly took place on 2 April 2011, between Laurent Gbagbo and Witness P-0435,<sup>1081</sup> the Defence submits that P-0435 cannot be considered as a credible and reliable witness and incorporates by reference the

<sup>1071</sup> P-0010, T-139-CONF-FRA CT, p.88, lns.11-12 ; *See also* P-0009, T-199-FRA CT, pp.61-62, lns.27-28, 1.

<sup>1072</sup> P-0010, T-139-CONF-FRA CT, p.88, lns.12-13 ; *See also* P-0009, T-199-FRA CT, p.61, lns. 25-27.

<sup>1073</sup> P-0047, T-203-FRA CT, p.35, lns.8-10; *See also*, P-0046, T-125-CONF-FRA CT, p. 110.

<sup>1074</sup> Trial Brief, para. 454.

<sup>1075</sup> *See Motion, Section VI.1.A.ii.(a) The Prosecution failed to prove any participation in meetings instrumental to a policy.*

<sup>1076</sup> Trial Brief, para. 480.

<sup>1077</sup> P-0009, T-194-CONF-FRA CT, pp. 4-10.

<sup>1078</sup> *Ibid.*, pp. 7-10.

<sup>1079</sup> Trial Brief, para. 481.

<sup>1080</sup> *See Motion, Section VI.1.A.ii.(a) The Prosecution failed to prove any participation in meetings instrumental to a policy.*

<sup>1081</sup> Trial Brief, para. 603.

relevant paragraphs of the Motion<sup>1082</sup> where the Defence further elaborates on the witness' absence of credibility and reliability.

416. As for the meeting that allegedly took place at the Presidential Residence on 3 April 2011, between Witness P-0009, Gouanou, and the FDS senior commanders,<sup>1083</sup> the Prosecution does not dispute that no decision was made during the meeting.

417. To conclude, no reasonable Trial Chamber could, based on a proper contextualization of the meetings, accept that an alleged common plan was "implemented" after 31 October 2010.

**E. The Prosecution failed to prove that the RTI was used to carry out an attack as part of a policy**

418. There is no question that the RTI was strategic to both Laurent Gbagbo and Alassane Ouattara. Several witnesses have testified to the important role that the national television plays in Ivoirian society.<sup>1084</sup> Installing a pro-Ouattara RTI director by force, in order to gain power, was actually the rationale behind the Ouattara side's call to the march of 16 December 2010. P-0625 testified that the reason why the TCI television was illegally installed at the Golf Hotel was because the pro-Ouattara international community had attempted and failed to take over the RTI by force, and found another method to control the information, *i.e.*, by creating the TCI.<sup>1085</sup> In light of the several attacks against the RTI building during the crisis to which different witnesses testified,<sup>1086</sup> it demonstrates a course of action, initiated by the Ouattara side, aiming at attacking the strategic institutions of the Republic for the sake of taking over power, despite the decision of the Constitutional Council. The suggestion made by the Prosecution that concerns over the "rebels" gaining control of the media, "*including*

<sup>1082</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness' P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible, Section III.3.B.ii.(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Section III.3.B.ii.(d) Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony, Section III.3.B.ii.(e) Witness P-0435 had every incentive to not tell the truth since [REDACTED]*.

<sup>1083</sup> Trial Brief, para. 605.

<sup>1084</sup> P-0625, T-29-CONF-FRA CT, p. 12; P-0009, T-200-CONF-FRA CT, p. 24, lns. 14-17.

<sup>1085</sup> P-0625, T-26-CONF-FRA CT, p. 76; T-29-CONF-FRA ET, pp. 70-75. P-0625 qualifies it as the rebels' television promoting a political cause and aimed at mobilizing the pro-Ouattara supporters.

<sup>1086</sup> See, for instance, P-0625, T-26-CONF-FRA CT, pp. 73-76; P-0011, T-135-CONF-FRA CT, p. 56. See also P-0625, T-29-CONF-FRA CT, pp. 74-75 in which P-0625 further confirms that the RTI had been bombed by a helicopter of the French Licorne which resulted in the death and the temporary interruption of the programs of the RTI followed later on by a definitive interruption (while the TCI was still transmitting).

*by establishing their own radio station”* could have played a role or had an impact on the alleged actions of the Gbagbo camp in the context of the 16 December 2010 march is not only unsubstantiated<sup>1087</sup> but also misleading in that it wrongly and unfoundedly suggests that the Gbagbo government might have been planning an offensive as opposed to only reacting to the attack and attempting to block it.

419. A reasonable chamber could not find that there is sufficient evidence to conclude that the measures taken against international media, the TCI or the UNOCI-FM stations were applied as part of a policy to carry out an attack. The interruption of the international channels intervened in a very chaotic election context where those international channels announced results although they were not yet proclaimed by the Constitutional Council. The international media played a key role in disrupting social peace in Côte d’Ivoire by relaying biased and unverified crucial information in relation to the election results. The evidence shows that the objective was not to prevent foreign channels to pronounce different results from those announced by the RTI<sup>1088</sup> but to avoid pronouncing results when there were not yet any results, as well as to prevent the exacerbation of tensions among the population.<sup>1089</sup> The evidence presented by the Prosecution to show the intention of Laurent Gbagbo and the alleged inner circle to control coverage of the post-election violence by blocking the distribution of pro-Ouattara newspapers exclusively includes press articles containing unsubstantiated information based on hearsay coming from unidentified sources,<sup>1090</sup> or [REDACTED].<sup>1091</sup> Also, if a decision was made to interrupt the UNOCI radio stations, this was on the basis that they were considered partial in a context where the ONUCI had just been asked to leave Côte d’Ivoire.

420. As previously explained by the Defence in its submissions dated 15 January 2018 which the Defence refers the Chamber to, the use by the Prosecution of the term “propaganda”, is misplaced, suggestive and based on a subjective interpretation on its part. In the Prosecution’s own allegations, the use of the RTI as an alleged

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<sup>1087</sup> Trial Brief, para. 332.

<sup>1088</sup> See Trial Brief, para. 334, second bullet point.

<sup>1089</sup> Video, CIV-OTP-0075-0058 at 00:05:37-00:11:20 (excerpt from RTI broadcast on 3 December 2010 at 20h; transcript at CIV-OTP-0087-0143 at 0144-0146, lns. 40-88).

<sup>1090</sup> See Trial Brief, footnote 1015.

<sup>1091</sup> Trial Brief, footnotes 1011 and 1017. See also Defence submissions in filing ICC-02/11-01/15-1028-Conf dated 15 September 2017 regarding [REDACTED].

mouthpiece for pro-Gbagbo interests is “apparent” from the content of the reporting as well as statements made by members of government about the responsibility of the press to defend the government and the institutions of the Republic.<sup>1092</sup> However, in order to prove “propaganda”, appearances do not amount to evidence, in particular when the Prosecution failed to show that the RTI broadcasts did not reflect the reality on the ground. The Prosecution must demonstrate the Accused’s intent to disseminate propaganda to implement the alleged common plan through the use of the RTI.<sup>1093</sup> The fact that a member of government made a few communications to the press about the respect of the institutions or that he congratulated the RTI staff on 16 December 2010 for the continued broadcast on that day despite the threat of violence within their premises, does not demonstrate such an intention.<sup>1094</sup> The record contains no objective evidence that Laurent Gbagbo and the alleged inner circle gave instructions to the RTI staff to implement any alleged common plan, including by “*disseminat[ing] violent and xenophobic rhetoric against perceived Ouattara supporters*”.<sup>1095</sup> The Prosecution fails to single out any video items or other objective evidence which could corroborate such an allegation (other than by referring in bulk to its 500 page analysis of its RTI video collection)<sup>1096</sup> and merely refers to the opinions of witnesses [REDACTED] or [REDACTED].<sup>1097</sup>

421. In almost every RTI broadcast for the post-electoral period, calls for peace or to cease violence are reported or conveyed from various associations, communities, or

<sup>1092</sup> Trial Brief, para. 335. The Defence notes the difference of terminology used by the Prosecution in the Trial Brief compared to its “*Prosecution’s application for the introduction of video evidence under paragraphs 43-44 of the directions on the conduct of the proceedings and notice that it will not call Witness P-0541 to testify*”, ICC-02/11-01/15-998, where the word “inferred”, rather than “apparent”, had been used. The change in terminology will not change the idea behind it, *i.e.*, that there is no direct objective evidence of such a propaganda and that it is subject to interpretation.

<sup>1093</sup> “*The key binding elements connecting different components and fields of activity of propaganda, however, reside firmly within a cognitive process initiated by intent, followed by action, if and only if it is, directly or indirectly, mentally caused by the state of intent, and, finally, the consequences, or results, of the course of action [...]*”, Dojcinovic, Predrag, Introduction to ‘Propaganda, War Crimes Trials and International Law: From Speakers’ Corner to War Crimes’ (January 1, 2012); “Propaganda, War Crimes Trials and International Law: From Speakers’ Corner to War Crimes” (Routledge 2012), p. 10; ICTY, Trial Chamber I, *Prosecutor v. Ratko Mladić*, “Judgment Volume IV of V”, 22 November 2017, paras 4480-4498 where certain evidence such as written reports demonstrated that the accused ordered the VRS Main Staff to disseminate propaganda to Serbs. See also ICTY, Trial Chamber, *Prlić et al*, Trial Judgement, Vol. 4, para. 209 & fn. 533.

<sup>1094</sup> Trial Brief, para. 335 referring to in its footnote 1022 to Prosecution submissions ICC-02/11-01/15-998, para. 31. See also Trial Brief, para. 339.

<sup>1095</sup> Trial Brief, para. 333.

<sup>1096</sup> See Trial Brief, footnote 1009.

<sup>1097</sup> The Defence notes that [REDACTED]. See P-0117, T-111-CONF-FRA CT, p. 18, Ins. 7-9.



political leaders.<sup>1098</sup> Charles Blé Goudé himself urged the population to seek out peace and dialogue on countless broadcasted occasions.<sup>1099</sup> In response to the international media's prediction of a civil war in Côte d'Ivoire following the 3 March 2011 incident, a RTI reporter made an interesting analysis, which the Prosecution omitted to mention, which analysis undermines the Prosecution's theory of a campaign of legitimization of attacks against perceived pro-Ouattara supporters.<sup>1100</sup>

422. Also, the Prosecution does indeed consider many RTI excerpts relevant for the truth of their content without seeing in those excerpts any “*propaganda*” or “*pro-Gbagbo bias*”.<sup>1101</sup> It shows that the Prosecution positively relies on the underlying facts as presented by the RTI, letting the propaganda criticism aside. The Prosecution should not be able to pick and choose, based on what fits its narrative, which RTI broadcasts are relevant because of their substance and which are merely alleged demonstrations of propaganda. At the very least, the Prosecution should have provided evidence to justify its favouring of the content of some excerpts over others, which it did not do.

423. Moreover, the Prosecution has not satisfactorily demonstrated based on the evidence at hand that the RTI relayed the alleged claim that the women's march would have been pure fabrication or that these alleged victims were attackers.<sup>1102</sup> The concern appeared to be about the fact that the information relayed by the international media that the FDS had repressed the women's march and killed women had not been verified.<sup>1103</sup> Moreover, the evidence in support of a “media campaign” to convince public opinion that Ouattara had no public support is either not relevant<sup>1104</sup> or even in

<sup>1098</sup> See, for instance, RTI broadcast dated 26 February 2011, CIV-OTP-0074-0083, at 00:21:08 - 00:23:01 or RTI broadcast dated 20 March 2011, CIV-OTP-0064-0092, at 00:08:02-00:09:52; 00:09:52-00:12:03.

<sup>1099</sup> See, for instance, RTI broadcast dated 4 March 2011, CIV-OTP-0026-0018, at 00:07:57-00:08:32; 00:12:00-00:12:20; or RTI broadcast dated 24 February 2011, CIV-OTP-0064-0086, at 00:34:14 - 00:37:29 where Charles Blé Goudé calls for a peaceful resolution of the conflict through employment.

<sup>1100</sup> “*A priori, les Ivoiriens n'auraient aucune raison de faire la guerre civile*”, “*rien n'oppose fondamentalement les hommes politiques ivoiriens qui ont quasiment le même projet de société pour leur pays ; cela a été révélé lors du face-à-face GBAGBO-OUATTARA. Depuis 10 ans, le pays est même co-gouverné par toutes les forces politiques qui ont ensemble surmonté des vertes et des pas mûrs pour leur pays. Chers confrères occidentaux, une guerre civile ne s'annonce pas comme un banal match de football et les Ivoiriens ne feront pas cette guerre civile*”, RTI broadcast dated 4 March 2011, CIV-OTP-0026-0018, 00:55:27-00:01:06.

<sup>1101</sup> See ICC-02/11-01/15-998-Conf-AnxB2-Corr.

<sup>1102</sup> Trial Brief, para. 333.

<sup>1103</sup> See Trial Brief, footnote 1010.

<sup>1104</sup> See Trial Brief, footnote 1012, referring to Simone Gbagbo's Agenda, CIV-OTP-0018-0810 at 0840-0847.

contradiction with that allegation.<sup>1105</sup> The Defence has also already elaborated on the limited probative value of Simone Gbagbo's alleged agendas.<sup>1106</sup>

424. Again, it is a misconstruction on the part of the Prosecution to allege that Charles Blé Goudé, in the RTI studio on 21 March 2011,<sup>1107</sup> "instructed" the Ivorian's to stay tuned to RTI. Charles Blé Goudé's point was to encourage the population to prefer information obtained locally, from local media such as the RTI and Radio Côte d'Ivoire or from the different neighbourhoods, compared to information spread by international media. The Prosecution fails to adduce any evidence that Radio Côte d'Ivoire and the neighbourhood committees would also have been spreading propaganda upon Laurent Gbagbo's instructions. Furthermore, the Prosecution leaves aside Charles Blé Goudé's attempt in this interview to respond to the population's concerns relating to the threats of an attack being relayed by ITélé and his attempts to calm it down.<sup>1108</sup>

425. The allegation that "[i]n the days leading up to the 16 December 2010 march, Gbagbo's government stepped up its control of the media" is a misinterpretation on the Prosecution's side.<sup>1109</sup> The date on which the Ouattara side took the decision to emit an illegal radio cannot be attributable to the Gbagbo government's anticipation of the 16 December march. The TCI was an actual pirate station financed by the European Union and installed with the assistance of the French intelligence services.<sup>1110</sup>

426. Therefore, the evidence advanced does not demonstrate to the requisite threshold that the RTI was part of a strategy of information control for the purpose of implementing an alleged policy. The most reasonable inference to be drawn from this

<sup>1105</sup> See Trial Brief, footnote 1012, referring to [REDACTED].

<sup>1106</sup> See Motion, Section III.3.A.ii.(c) *Simone Gbagbo*.

<sup>1107</sup> Trial Brief, para. 335.

<sup>1108</sup> See RTI broadcast of 21 March 2011 at 20h00, CIV-OTP-0069-0375 at 00:25:50 – 00:27:50 (citation at 00:27:33 – 00:27:37); Transcript CIV-OTP-0087-0741 at 0742, ln. 31-36: "*Ce n'est pas la peine de céder à la panique. Des gens qui appellent : « Oui, j'ai vu sur iTÉLÉ qu'ont dit attaquer la CÔTE D'IVOIRE ... ». [...] Mais toi-même, tu vas chercher quoi à ITÉLÉ ? Pourquoi vous allez vous empoisonner sur des télévisions qui ont pour mission de paniquer la population ? Vous regardez la RTI, vous écoutez Radio Côte d'Ivoire, et puis c'est terminé. Vous écoutez aussi les comités qui sont dans les quartiers, là où l'information vraie passe. Je voudrais donc demander aux Ivoiriens de rester sereins.*"

<sup>1109</sup> Trial Brief, para. 336.

<sup>1110</sup> The messages on that radio were extreme and went so far as to portray Laurent Gbagbo as Hitler by regularly projecting the movie "The Fall".

evidence is that the government was on a defensive course of action, attempting to prevent the enemy from taking over key institutions or from setting up illegal means of communication to propagate unverified, inaccurate, threatening or inflammatory messages.

**F. Insufficient evidence that Laurent Gbagbo and the alleged inner circle failed to prevent, repress or report the crimes committed and denied responsibility for them**

427. The Prosecution alleges that “*GBAGBO and the Inner Circle, including BLÉ GOUDÉ [...] failed to prevent, repress or report the crimes committed, and denied responsibility for them*”.<sup>1111</sup> At the outset, the Defence notes that, to support the allegation, the Prosecution mainly provides evidence related to Laurent Gbagbo and the FDS, notably for the incidents of 16 December 2010 and 3 March 2011.<sup>1112</sup> However, the Prosecution failed to prove and even to address any alleged authority that Charles Blé Goudé would have had over the FDS. The Prosecution even stated the contrary, recognizing that “*the CEMA had overall command*”.<sup>1113</sup> Besides, the Defence submits that the ability of a person to prevent, repress or report crimes is dependent on the context to which that person is obliged to act. In the instant case, heading towards the end of the crisis and the intensification of the fights in Abidjan that ultimately evolved into chaos, the protagonists had less and less leverage to act. Investigations and inquiries require time, human and material resources. The present case demonstrates that investigations on events may need years to be completed. In this regard, the Prosecution does not dispute the fact that, as the crisis evolved towards its end, human and material means became drastically limited. In terms of time, both Accused were prevented from any action as of April 2011. For the foregoing reasons, the Defence submits that any obligation to prevent, repress or report alleged crimes must be considered in the context of the post electoral crisis. More specifically, the events that allegedly happened in March and April 2011 were so close to the end of the crisis that they prevented the undertaking of any concrete investigation. It would be highly unreasonable to expect that a full investigation on events that allegedly happened as from December 2010 would be carried out in less

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<sup>1111</sup> Trial Brief, para. 178.

<sup>1112</sup> Trial Brief, V.C and VI.C.3.

<sup>1113</sup> Trial Brief, para. 400.

than four months. In this regard, the Defence submits that the necessary investigations were initiated.

i. Aftermath of the 16 December 2010 alleged incident

428. Regarding what the Prosecution names “*the aftermath of the 16 December 2010*”,<sup>1114</sup> the Defence notes that the Prosecution’s allegations and evidence focus merely on the reactions held by Laurent Gbagbo and his collaborators to the electoral conflict and the positions taken by the international community, the UNOCI and African regional organisations. The Prosecution invokes evidence consisting of “public statements”, “*communiqués*” and “interviews” from which it builds an interpretation that fits its narrative but still does not address the issue at stake. The Defence therefore submits that the evidence does not support the allegation.

429. The Defence notes that only two allegations specifically concern Charles Blé Goudé. First, the Prosecution submits that, in his own speeches, Charles Blé Goudé often exploited the theme of the price one has to pay to save the country.<sup>1115</sup> However, the Prosecution has failed to prove that the reference to “*a price to pay*” would entail a violent action. The expression itself is very often used in common language, containing a variety of different meanings. In this regard, the Defence emphasises the importance to set the proper context in which words are pronounced, referring to the questioning of Witness P-0009 by the Presiding Judge on the meanings of the words “combat”.<sup>1116</sup> The Prosecution has failed to prove that the meaning of the expression, in Charles Blé Goudé’s words, was of a violent nature. In the only speech mentioned by the Prosecution in support of the allegation,<sup>1117</sup> Charles Blé Goudé emphasises that he does not carry weapons and acts “*les mains nues*”, which is, once again, a call not

<sup>1114</sup> Trial Brief, paras 383-402.

<sup>1115</sup> Trial Brief, para. 388.

<sup>1116</sup> P-0009, T-200-CONF-FRA CT, pp. 70-71; See Motion, Section VI.4.A.i. *The context of Charles Blé Goudé’s speeches.*

<sup>1117</sup> Video, CIV-OTP-0074-0054 at 00:29:30-00:29:58 (excerpt from RTI broadcast of 15 December 2010 at 20h; transcript CIV-OTP-0087-0387 at 0390, lns.85-87).

to use any kind of weapons, to resist peacefully and to condemn any form of violent actions.<sup>1118</sup>

430. Second, the Prosecution alleges that Charles Blé Goudé organized a meeting on 29 December 2010 that finally did not take place.<sup>1119</sup> In this context, it alleges that the CEMA signed an official message for the FDS to secure the planned meeting, stating that the tone of the FDS planning document would show bias of the FDS leadership in supporting Charles Blé Goudé and the COJEP.<sup>1120</sup> At the outset, the Defence notes that the document was not shown to Witness P-0009 during his testimony before the Court, although he is the alleged author. More importantly, the Defence submits that, contrary to the Prosecution's allegation, the document does not show any support to the youth attending the rally. Rather, it shows the will to guarantee the safety of the people attending the meeting, which is emphasised by the use of the verb "*sécuriser*", as well as the use of "*moyens conventionnels (conventional means) de maintien de l'ordre*". It relates to the "*sécurisation*" of the meeting, which is repeated several times in the document. The aim of the document was to instruct the FDS to guarantee that no incident would occur during the meeting. Therefore, contrary to the Prosecution's assertion, the language used in this document does not show that the FDS was not a neutral force. It actually shows that the FDS aimed at protecting the people attending public events by the use of conventional means, consistent with their missions. Moreover, the Prosecution does not prove that Charles Blé Goudé was at the initiative of such an operation. Finally, the Defence recalls that the meeting was cancelled to avoid any incidents that could have occurred. The cancellation actually proves that Charles Blé Goudé actively prevented the commission of crimes.

431. The Prosecution alleges that "[Laurent] GBAGBO was informed of civilian deaths on the same day of the march".<sup>1121</sup> Although Witness P-0009 told the Chamber that he informed Laurent Gbagbo on that day, he also acknowledged himself that he did not provide any features for the civilian deaths and put the emphasis on the military

<sup>1118</sup> CIV-OTP-0074-0054 at 00:25:10 – 00:31:21 (excerpt from RTI broadcast of 15 December 2010 at 20h; transcript CIV-OTP-0087-0387 at 0389, lns. 63-103, in particular lns. 85). See Motion, *Section III.3.A.ii.(b)(ii) The Prosecution failed to prove that Charles Blé Goudé would have called the youth to take over the streets*; See P-0625, T-28-CONF-FRA CT, pp. 4-5; P-0097, T-49-CONF-FRA CT, pp. 46-47, especially p. 47, lns. 11-22. See also, P-0449, T-160-CONF-FRA CT, p. 14.

<sup>1119</sup> Trial Brief, para. 390.

<sup>1120</sup> Message, [REDACTED], CIV-OTP-0071-0154.

<sup>1121</sup> Trial Brief, para. 372.

deaths.<sup>1122</sup> Therefore, Laurent Gbagbo only had a report from the CEMA on the situation that was quite restricted in terms of the nature of casualties.

432. Regarding the alleged actions taken against journalists who were covering the event and reporting attacks on the civilian population,<sup>1123</sup> the Defence notes that the Prosecution only relies upon documentary evidence and fails to reflect on the context of the documents. Reliance on press articles not submitted to witnesses in a court of law should have a very limited probative value.

433. The Prosecution does not dispute the fact that, on 31 December 2010, Laurent Gbagbo announced the creation of an international commission of inquiry to ensure that the crimes allegedly committed during the march would not go unpunished,<sup>1124</sup> that was created by Presidential decree on 7 January 2011.<sup>1125</sup> Although the Prosecution attempts to sequence the events of 31 December 2010 as to support that the creation of the commission was prompted by a letter sent by the High Commissioner of Human Rights, Navanethem Pillay to the FDS leadership officers,<sup>1126</sup> such a letter was sent on 31 December 2010 and could not reasonably have influenced the speech given by Laurent Gbagbo on that same day, as well as the decision to create the commission. The Defence hence submits that the creation of the commission of inquiry was a spontaneous decision from Laurent Gbagbo.

434. The commission was composed of seven members and its mandate was to investigate human right violations, identify perpetrators and make recommendations within a month.<sup>1127</sup> An announcement was read on the RTI on 14 January 2011 that the commission of inquiry was prepared to receive the accounts of eyewitnesses or victims of human rights violations which have taken place since 3 November, and an address in Deux Plateaux as well as telephone numbers were provided for this purpose.<sup>1128</sup>

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<sup>1122</sup> P-0009, T-196-CONF-FRA CT, p. 30.

<sup>1123</sup> Trial Brief, para. 372.

<sup>1124</sup> Video, CIV-OTP-0026-0024 at 31:07-35:51 (transcript at CIV-OTP-0052-0550 at 0565).

<sup>1125</sup> Correspondence (letter) CIV-OTP-0045-0379 at 0383-0385.

<sup>1126</sup> Trial Brief, paras. 373-374.

<sup>1127</sup> Correspondence (letter) CIV-OTP-0045-0379 at 0383-0385.

<sup>1128</sup> Video, CIV-OTP-0074-0064 from 26:14-27:31.

435. The Prosecution does not dispute the fact that the commission of inquiry carried out a substantial part of its mission, issued a report and sent letters to the parties accused of being involved in criminal acts, including the FESCI, the FDS, the RHDP, the LMP, the FAFN and the UNOCI. The Commission was required to provide recommendations to prevent such violations in the future.<sup>1129</sup> The Defence emphasises that all parties to the conflict were investigated by the Commission and received communication of the grievances against them.

436. The fact the Commission could not fulfil its entire mission is, as explained by the Defence, due to the deterioration of the life and work conditions in Abidjan, as from the end of February 2011. The Prosecution has failed to prove that the Commission deliberately failed to achieve its mission and intended to avoid prevention, repression or report of the crimes allegedly committed.

437. The fact that Witness P-0011 challenged the conclusions of the Commission as to the involvement of the FDS<sup>1130</sup> in the alleged crimes is irrelevant to the charges but shows that the Commission acted impartially.

ii. Aftermath of the 3 March 2011 alleged incident

438. As for the allegation that Laurent Gbagbo and the FDS failed to investigate or punish anyone for the attack of 3 March 2011, the Prosecution does not deny the fact that Charles Blé Goudé had no means to investigate or punish anyone in relation to events that occurred on 3 March 2011.

439. The Prosecution submits that, “[o]n 23 March 2011, Charles BLE GOUDE alleged that the FDS could not be responsible for the women’s death on 3 March 2011 because Abobo was in rebel hands at the time”.<sup>1131</sup> However, Charles Blé Goudé did not make such an allegation. He simply pointed out a contradiction between the different information that were received at that time, stating that one could not assert that Abobo was not anymore under the control of the FDS and, at the same time, allege that the FDS killed civilians in Abobo. The Prosecution does not dispute the

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<sup>1129</sup> Trial Brief, para. 380.

<sup>1130</sup> Trial Brief, para. 381.

<sup>1131</sup> Video, CIV-OTP-0015-0530 at 00:10:45-00:11:26 (transcript at CIV-OTP-0063-2928 at 2935, Ins. 209-216).

fact that Charles Blé Goudé did not witness the events of 3 March 2011 and was provided with the same level of information as anyone else in Côte d'Ivoire, receiving contradictory information and rumours. The fact that he expressed a personal point of view is irrelevant to the allegation as he indeed had no means to investigate the issue and gain a full knowledge of what happened on that day. Witness P-0009 himself, as CEMA, told the Chamber that he had a lot of questions on what happened on that day and confirmed that the FDS were not punished because they had not been involved.<sup>1132</sup>

440. The Prosecution relies on a *communiqué* drafted by P-0009 and approved by the Minister of Defence Dogou, stating that the military stationed in *Camp Commando* were not involved in the events that took place on 3 March 2011.<sup>1133</sup> However, Witness P-0009 said that he did not inform Laurent Gbagbo of the said communiqué and only “*assumed*” that the Minister of Defence informed him, which amounts to opinion evidence.<sup>1134</sup>

441. Several insider witnesses reported that an internal investigation was carried out before the communiqué was issued, which the Prosecution did not mention. Witness P-0010 told the Chamber that, on 6 March 2011, he met with P-0009, the Chief of Staff, at the *État-Major*, to discuss the consequences of the 3 March 2011 march. P-0010 reported that P-0009 said that “*he had not received specific information, but he was doing everything for investigations to be opened. However, it was a hostile zone, and no one could have easy access to it. That is why it was not easy to obtain reliable information on the events in relation to what the media was reporting.*”<sup>1135</sup> Therefore, the Defence submits that the Prosecution has failed to prove that it was physically possible for the FDS to properly investigate the events that took place on 3 March 2011 and, more specifically, to have access to the place where the events allegedly took place.

442. Besides, P-0010 testified that the only way for the FDS to gain access to the place where the events allegedly took place was through the assistance of the impartial

<sup>1132</sup> P-0009, T-200-CONF-FRA CT, pp. 61-63 ; T-196-CONF-FRA CT, pp. 62-63.

<sup>1133</sup> Trial Brief, para. 472.

<sup>1134</sup> P-0009, T-196-CONF-FRA CT, p.59.

<sup>1135</sup> P-0010, T-139-CONF-FRA CT, pp. 104-105 ; P-0047, T-204-CONF-FRA CT, p. 9.



forces. However, as repeated by the witness, such assistance was never received.<sup>1136</sup> Therefore, the Defence submits that the Prosecution has failed to take into account the fact that the impartial forces did not provide the necessary assistance to the FDS that would have allowed them to properly investigate the situation.

443. Finally, the Defence notes the Prosecution's blunt assertion that "[t]he overwhelming evidence on record demonstrates that the denials from [Laurent] GBAGBO and his [alleged] Inner Circle were not only a failure to investigate or punish, but a plan to cover up their crime".<sup>1137</sup> However, such a sweeping assertion is not supported by any referenced evidence, while, as a legal conclusion suggested to the Chamber, it should have been substantiated by strong evidence.

444. For the foregoing reasons, the Defence submits that the Prosecution has failed to prove that Laurent Gbagbo, Charles Blé Goudé and the alleged inner circle have failed to prevent, repress or report any alleged crimes committed.

iii. Aftermath of the 17 March 2011 alleged incident

445. As for the aftermath of the events that took place on 17 March 2011, the Defence notes that Charles Blé Goudé is not mentioned in the Trial Brief and that the evidence in support of the allegation of failure to prevent, repress and report any alleged crimes is not related to him.<sup>1138</sup>

446. Going further, the Defence notes that, to substantiate the attack that allegedly took place on that date, the Prosecution extensively relies on Expert Witness P-0411. The Defence has already addressed the flaws and bias affecting Witness P-0411's report and, as such, incorporates by reference the relevant sections of the Motion.<sup>1139</sup>

447. Besides, the Defence recalls that P-0009 testified that he asked General Detoh Letoh to conduct an internal investigation and the internal investigation was indeed conducted, in order to find out whether the FDS had fired and what was the nature of the weapon allegedly used.<sup>1140</sup> P-0009 reported that, from the undertaken

<sup>1136</sup> *Ibid.*, p. 105.

<sup>1137</sup> Trial Brief, para. 476.

<sup>1138</sup> Trial Brief, VI.E.4.

<sup>1139</sup> See Motion, Section III.2.B.i.(a) *Insufficient evidence that heavy weaponry was used.*

<sup>1140</sup> P-0009, T-196-CONF-FRA CT, pp. 57-59 ; T-196-CONF-FRA CT, pp. 62-63.

investigation, it became clear that not only were the FDS not involved but, most importantly, given the setting of the area and the nature of the weapon that was allegedly fired, the scenario of mortar shelling would have been materially impossible.<sup>1141</sup> P-0009 also testified that he did not know whether Laurent Gbagbo was informed of the ongoing investigation.<sup>1142</sup> P-0009's testimony in that regard has been given with great certainty, due to his high expertise in weaponry and military issues and his function as Chief of Staff. He specifically testified that his troops were not punished because they were not involved in the alleged incident.<sup>1143</sup>

448. The Defence also incorporates by reference the sections as to its theory related to the alleged events of 17 March 2011 and the alleged use of heavy weaponry during the post-electoral crisis.<sup>1144</sup>

449. For the foregoing reasons, the Defence submits that the Prosecution has not proved that Laurent Gbagbo, Charles Blé Goudé and the alleged inner circle failed to prevent, repress or report the alleged crimes committed, and denied responsibility for them.

#### **IV. ABSENCE OF NEXUS BETWEEN THE ALLEGED VICTIMS AND THE CHARGED INCIDENTS**

##### **IV.1. The requirement of a nexus**

450. This section arrives at another topic, which refutes the Prosecution's theory; it deals with the requirements of a nexus between the alleged victims of the crisis and the incidents charged. As mentioned by the Honourable Judge Henderson in his dissenting opinion of 19 June 2018 in paragraph 7, it is imperative that the evidence for each incident meets the requisite standard of proof.<sup>1145</sup>

451. Paragraph 7 of Judge Henderson's opinion reads as follows: "[...] *if, as in this case, the Prosecution attempts to prove the existence of an attack against a civilian*

<sup>1141</sup> *Ibid.*, p. 58; See also P-0047, T-204-CONF-FRA CT, p. 15.

<sup>1142</sup> *Ibid.*, p. 59.

<sup>1143</sup> *Ibid.*, pp. 62-63.

<sup>1144</sup> See Motion, Section III.2.B.i *Insufficient evidence that heavy weaponry was used or, in the alternative, that it was used to indiscriminately target civilians.*

<sup>1145</sup> ICC-02/11-01/15-1188-Anx.

*population on the basis of a limited number of small-scale incidents that took place at different locations over a relatively extended period of time, it is imperative that the evidence for each incident meets the requisite standard of proof”.*<sup>1146</sup>

452. These observations also encompass the theme of forensic evidence, such that the alleged victims of a certain crime or situation can be forensically connected to a certain crime or situation, to the extent that it meets the requisite standard of proof. This implies that, at the least, a clear and unequivocal causal relation has to be proven by the Prosecution between an alleged victim and the crimes charged.

453. As indicated by the Honourable Judge Henderson in his aforementioned dissenting opinion in paragraph 4 (issued in the context of the alleged 48 Nigerien victims): “Accordingly, it is far from clear how the alleged deaths of 48 Nigeriens relate to the charges as confirmed by the Pre-Trial Chamber and as detailed in the Prosecutor’s pre-trial and mid-trial briefs”.<sup>1147</sup>

454. In the instant case, the Trial Brief does not address this basic evidentiary requirement. The Prosecution simply assumes the forensic nexus between the alleged victims and the five incidents charged. Yet, this evidence is patently lacking and on this basis, no reasonable trier of fact could convict for the five incidents with respect to civilian casualties.

#### **IV.2. No forensically-based evidence for a nexus between the alleged victims and the five charged incidents**

455. In this section, it will be demonstrated that the Prosecution did not adduce evidence to sustain its theory that in the context of the alleged five incidents, civilian casualties were suffered, in particular the ones which were examined by the Prosecution’s experts. The Defence will illustrate this conclusion on the basis of these expert witness statements adduced at trial, which were left out of the Trial Brief.

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<sup>1146</sup> ICC-02/11-01/15-1188-Anx.

<sup>1147</sup> ICC-02/11-01/15-1188-Anx.

456. First, on 17 and 19 January 2018, P-0564 testified as a forensic expert. During the examination by the Defence, the witness confirmed that she had studied terminal ballistics, which she equated with wound ballistics.<sup>1148</sup>

457. When questioned about whether she could differentiate, in terms of wound ballistics, between a large calibre military rifle and a small calibre military rifle, in the context of her examination of 373 individuals that were linked to projectiles from firearms,<sup>1149</sup> the witness did not make this differentiation, saying that her team did not discuss the “type” or “nature” of the projectiles in their external examinations.<sup>1150</sup>

458. In her report,<sup>1151</sup> the witness concluded that 373 out of 590 victims would have had traumatic injuries from projectiles from firearms. When asked about the basis for these findings, P-0564 responded that it was founded on “*their observations*” and that “*wounds caused by firearms could be recognized by their specific characteristics, for example, the loss of substance within the skin*”.<sup>1152</sup> The witness confirmed that these observations were made without any ballistics reports.<sup>1153</sup>

459. P-0564 confirmed that she did not receive ballistics reports from the scientific police.<sup>1154</sup> When asked whether the number of 373 victims was based on her team’s own interpretation of the result of the autopsies (which themselves were not based on ballistics reports),<sup>1155</sup> the witness confirmed this. She explained her team based itself “*on [their] observations which correspond exactly to the wounds caused by a firearm a firearm projectile*”.<sup>1156</sup>

<sup>1148</sup> P-0564, T-220-CONF-FRA CT, p. 54, lns. 2-12.

<sup>1149</sup> P-0564, T-220-CONF-FRA CT, p. 57, lns. 24-27; P-0564 was shown the Beyrouth University surgeons’ report and the authors’ findings with respect to ballistics trauma sustained by bullets versus shell fragments (P-0564, T-220-CONF-FRA CT, p. 57, lns. 13-23.).

<sup>1150</sup> P-0564, T-220, -CONF-FRA CT p. 58, lns. 6-11: “*We didn’t talk about the type of projectiles because, you see, we were carrying out an external examination during which we merely described the impact that it can have on the body. A projectile that strikes the body perpendicular to the skin surface does not result in the same kind of wound as a projectile that ricochets and hits one of the sides of one of these surfaces*” (P-0564, T-220, CONF-ENG CT, p. 52, lns. 21 to p. 53, ln. 1).

<sup>1151</sup> CIV-OTP-0050-0003, *Rapport circonstancié sur la prise en charge médico-légale des victimes décédées au cours des événements post-électorales survenus en Côte d’Ivoire*.

<sup>1152</sup> P-0564, T-220-CONF-FRA CT, p. 60, lns. 2-4.

<sup>1153</sup> P-0564, T-220-CONF-FRA CT, p. 60, lns. 5-13.

<sup>1154</sup> P-0564, T-220-CONF-FRA CT, p. 60, lns. 7-8.

<sup>1155</sup> P-0564, T-220-CONF-FRA CT, p. 60, lns. 24-25: “*No, I did not carry out a ballistics report. I prepared a report, and it was based on my conclusions, my findings*”.

<sup>1156</sup> P-0564, T-220-CONF-FRA CT, p. 60, lns. 19-20.

460. When asked about whether in order to determine the nature of metallic fragments one needs a ballistic report, forensically speaking, she confirmed that this was indeed necessary to provide for the nature of the fragment itself.<sup>1157</sup> When asked how many from the 373 individuals whose wounds were attributed to projectiles from a firearm had metal fragments extracted from them, P-0564 responded “*I couldn’t answer that question because I did not carry out that study [...]*” but that “*wounds caused by firearms were found in the majority of cases.*”<sup>1158</sup>

461. P-0564 was questioned about her testimony in a hearing on 9 November 2016 in Abidjan.<sup>1159</sup> She was then asked whether she was able to determine if a certain injury or death was connected to a specific incident, to which she responded “*I was not in a position to say which incident a death was linked to. You need to look at the mission that we were entrusted with. We were asked to carry out an autopsy or a detailed examination of the victims of the post-election crisis. [...] There was no specific incident, other than the fact that, other — outside of the post-election crisis*”.<sup>1160</sup>

462. The Prosecution expert therefore acknowledged that no link could be made between a specific incident and a casualty.

463. With respect to the breakdown of deaths by commune, the witness testified that she and her team based themselves on the mortuary records and on information that had been given to them by family members when they came to collect the death certificates.<sup>1161</sup>

464. The witness was asked about the breakdown in terms of civilians /non-civilians and testified that this information came from the morgue records and the family members themselves, who would come with the ID cards showing the victims’ professions.<sup>1162</sup>

465. Thus, it is apparent that the Prosecution’s own expert witness was unable to establish any nexus between the examined bodies and any of the five incidents.

<sup>1157</sup> P-0564, T-220-CONF-FRA CT, p. 61, lns. 2-4.

<sup>1158</sup> P-0564, T-220-CONF-FRA CT, p. 61, lns. 9-11.

<sup>1159</sup> CIV-OTP-0094-0121. The witness was confronted with a part of her testimony where she said “*I did not say to the Prosecutor that all the deaths were stemming from the post-election crisis [...] My role was not to determine whether someone died subsequent to a robbery’ and confirmed that she had indeed said this*” P-0564, T-220-CONF-FRA CT, p. 61, lns. 24-27.

<sup>1160</sup> P-0564, T-220-CONF-FRA CT, p. 62, lns. 14-23.

<sup>1161</sup> P-0564, T-220-CONF-FRA CT, p. 63, lns. 21-23.

<sup>1162</sup> P-0564, T-220-CONF-FRA CT, p. 65, lns. 5-12.

466. Second, P-0585 testified on the issue of, *inter alia*, of wound ballistics, on 11 September 2017. There are many aspects of P-0585's testimony which cast significant doubt over the Prosecution's allegations. P-0585's testimony which relates to wound ballistics – namely with respect to his examination of three victims of the 3rd Incident allegedly killed by gunshot injury, cited in support of the Prosecution's theory that shots were fired during this incident – failed to establish a link between the alleged victims and the alleged perpetrators.

*Victim #1: CIV-OTP-0081-0518*

467. The information on the cause of death, gunshot injury of neck and left shoulder, was provided by the witness himself.<sup>1163</sup> The witness found black long shorts and white underpants on the body, as indicated in the report,<sup>1164</sup> but no clothing for the upper body.<sup>1165</sup> The witness was unaware of the origin of the label he found on the right wrist of the body.<sup>1166</sup> The witness also observed in his report that a large bullet was found in the body bag but he does not know how the bullet made it into the bag<sup>1167</sup> and there is no sign that the bullet belonged to the body examined by the witness.<sup>1168</sup> The bullet was merely photographed but was not examined for human tissue,<sup>1169</sup> as this was not common practice.<sup>1170</sup> The witness "felt confident" stating that this body was female, based on the shape of the skull and pelvis.<sup>1171</sup>

468. According to the witness, the shattering of the bones C4, C5 and C6 are typical of a gunshot injury.<sup>1172</sup> The conclusion that the shattering of the vertebrae is the result of a gunshot injury is based on the analysis of the bones only, as no tissue was preserved that could support the conclusion.<sup>1173</sup>

<sup>1163</sup> P-0585, T-189-ENG CT, p. 17, lns. 17-21.

<sup>1164</sup> P-0585, T-189-ENG CT, p. 18, lns. 9-12.

<sup>1165</sup> P-0585, T-189-ENG CT, p. 18, lns. 22-26.

<sup>1166</sup> P-0585, T-189-ENG CT, p. 18, lns. 16-20.

<sup>1167</sup> P-0585, T-189-ENG CT, p. 6, lns. 13-15.

<sup>1168</sup> P-0585, T-189-ENG CT, p. 64, lns. 16-20.

<sup>1169</sup> P-0585, T-189-ENG CT, p. 69, lns. 21-23.

<sup>1170</sup> P-0585, T-189-ENG CT, p. 70, lns. 1-4.

<sup>1171</sup> P-0585, T-189-ENG CT, p. 12, lns. 4-6.

<sup>1172</sup> P-0585, T-189-ENG CT, p. 20, lns. 19-22.

<sup>1173</sup> P-0585, T-189-ENG CT, p. 20, lns. 20 to p.21, lns. 3.

469. The section ‘Items retained’ in the report refers to the comparative DNA analysis between the bones and the different skulls found with the body.<sup>1174</sup> The witness did not do the DNA test himself, nor was he aware of the results.<sup>1175</sup> His report was written in the assumption that the first skull belonged to the body.<sup>1176</sup> The witness concluded that damage to surrounding vital structures in the neck were likely to have led rapidly to her death. He claimed that he could draw such a conclusion because as an experienced forensic pathologist,<sup>1177</sup> he was not only familiar with the skeleton but also the body structures surrounding the bones.<sup>1178</sup> In this case, the witness was convinced that major blood vessels around the neck and shoulder of the individual had been damaged severely,<sup>1179</sup> leading to the rapid death of the person.<sup>1180</sup> The witness further concluded that the nature of the damage was suggestive of the use of high velocity ammunition. Whereas low velocity ammunition (e.g. pistol or revolver) goes through the tissue causing a hole,<sup>1181</sup> high velocity ammunition (e.g. assault rifle) produces a cavitation effect when going through the tissue and causing the shattering of the bones.<sup>1182</sup>

470. If one assumes that the first skull belonged to the body examined, then the official death certificate, which attests ballistic trauma as cause of death, contradicts the findings of the witness.<sup>1183</sup> If one assumes that the second skull belongs to the body, then the cause of death in the death certificate could be correct according to the expert, thus presenting inconclusive evidence.<sup>1184</sup>

*Victim #2 CIV-OTP-0081-0523*

471. The body bag seal of this body bag was not intact.<sup>1185</sup> The witness did not know what had happened but he suspected that the bag had been opened to take samples and

<sup>1174</sup> P-0585, T-189-ENG CT, p. 22, lns. 3-8.

<sup>1175</sup> P-0585, T-189-ENG CT, p. 22, lns. 12-13.

<sup>1176</sup> P-0585, T-189-ENG CT, p. 63, lns. 22 to p. 64, lns. 2.

<sup>1177</sup> P-0585, T-189-ENG CT, p. 23, lns. 3-5.

<sup>1178</sup> P-0585, T-189-ENG CT, p. 22, lns. 22-23.

<sup>1179</sup> P-0585, T-189-ENG CT, p. 22, lns. 24 to p. 23, lns. 2.

<sup>1180</sup> P-0585, T-189-ENG CT, p. 23, lns. 9-10.

<sup>1181</sup> P-0585, T-189-ENG CT, p. 23, lns. 16-19.

<sup>1182</sup> P-0585, T-189-ENG CT, p. 23, lns. 20-24.

<sup>1183</sup> P-0585, T-189-ENG CT, p. 65, lns. 5-7.

<sup>1184</sup> P-0585, T-189-ENG CT, p. 65, lns. 7-8.

<sup>1185</sup> P-0585, T-189-ENG CT, p. 56, lns. 13-14.

then no new seal was placed contrary to the proper procedure.<sup>1186</sup> The witness clarified that the person was killed by at least two gunshots.<sup>1187</sup> One gunshot injury to the neck and one injury on the left shoulder could be identified,<sup>1188</sup> but the witness believed that the extent of damage to the body might have been caused by more than two gunshots.<sup>1189</sup> To the witness the injury on the body was strongly suggestive of high velocity ammunition but it could also have been a splinter of a shell that caused the injury.<sup>1190</sup> The witness could not rule out entirely that low velocity ammunition caused the injury but he deemed it not very likely.<sup>1191</sup> The death certificate of the person indicated the cause of death as gunshot trauma to the head. The witness disagreed with this, as he had not found any injuries to the skull.<sup>1192</sup>

472. The witness remarked that the body was well preserved considering that the person deceased four years before the autopsy,<sup>1193</sup> but he did not consider this a surprise as there were many unknown factors playing a role in the decomposition of bodies and he has experienced other cases of well-preserved bodies, for example on the Falklands.<sup>1194</sup>

*Victim #3 CIV-OTP-0081-0528*

473. The witness did not know who placed the identification seals or who broke them<sup>1195</sup> and could not confirm that the t-shirt found in the body bag was the t-shirt the person wore at the time of death.<sup>1196</sup>

474. The witness believed that this body has been preserved in Formalin, based on the smell, colouration and hardened feeling of the body.<sup>1197</sup> The witness was not sure of how the body was embalmed but he considered it likely that the body was doused in Formalin and that the Formalin was not injected in the body, as there were no obvious

<sup>1186</sup> P-0585, T-189-ENG CT, p. 56, lns. 15–25.

<sup>1187</sup> P-0585, T-189-ENG CT, p. 25, lns. 13–14 to p. 25, lns. 18–20.

<sup>1188</sup> P-0585, T-189-ENG CT, p. 25, lns. 14–17.

<sup>1189</sup> P-0585, T-189-ENG CT, p. 25, lns. 18–19.

<sup>1190</sup> P-0585, T-189-ENG CT, p. 58, lns. 12–15.

<sup>1191</sup> P-0585, T-189-ENG CT, p. 58, lns. 21–22.

<sup>1192</sup> P-0585, T-189-ENG CT, p. 59, lns. 7–12.

<sup>1193</sup> P-0585, T-189-ENG CT, p. 25, lns. 24 to p. 26, lns. 5–6.

<sup>1194</sup> P-0585, T-189-ENG CT, p. 26, ln. 1.

<sup>1195</sup> P-0585, T-189-ENG CT, p. 60, lns. 1–3.

<sup>1196</sup> P-0585, T-189-ENG CT, p. 60, lns. 7–10.

<sup>1197</sup> P-0585, T-189-ENG CT, p. 26, lns. 24–25.



injection wounds.<sup>1198</sup> In the witness' opinion, the fact that no internal organs were found in the body also indicated that the Formalin was only used superficially and had not been injected.<sup>1199</sup>

475. The witness did not know why this body had been preserved in Formalin and the others weren't but he guessed that it might have been because all the fridges in the mortuary were taken.<sup>1200</sup>

476. The witness explained that the shoulder blade of the body had vertical fractures, running from the point of impact of the gunshot.<sup>1201</sup> The witness remarked that based on the injuries, it was more difficult to ascertain a cause of death for this body.<sup>1202</sup> He explained that despite the fracture of the shoulder blade, other bones in the area were not fractured.<sup>1203</sup> But he still felt confident enough in his analysis to give a cause of death<sup>1204</sup> and reassured that he would not ascertain a cause of death lightly, making reference to several other cases in which he did not provide a cause of death.<sup>1205</sup> But he acknowledged that there was less evidence for the cause of death of this person than there was for the cause of death of the two other individuals.<sup>1206</sup> However, the witness admitted that his assertion of the cause of death was largely based on a gunshot hole in the T-shirt that was in the body bag and that without this t-shirt he would probably not have ascertained a cause of death.<sup>1207</sup>

477. For this autopsy the witness only concluded that a gunshot injury occurred, without concluding that high velocity ammunition would have caused the wound. This is because the fracturing of the bone was only limited<sup>1208</sup> and "*there conceivably could be another weapon*".<sup>1209</sup> The report also stated that the face of the body showed blunt

<sup>1198</sup> P-0585, T-189-ENG CT, p. 27, lns. 1–8.

<sup>1199</sup> P-0585, T-189-ENG CT, p. 27, lns. 9–12.

<sup>1200</sup> P-0585, T-189-ENG CT, p. 61, lns. 15–16.

<sup>1201</sup> P-0585, T-189-ENG CT, p. 28, lns. 5–8.

<sup>1202</sup> P-0585, T-189-ENG CT, p. 28, lns. 14–15.

<sup>1203</sup> P-0585, T-189-ENG CT, p. 28, lns. 17–18.

<sup>1204</sup> P-0585, T-189-ENG CT, p. 28, lns. 18–19.

<sup>1205</sup> P-0585, T-189-ENG CT, p. 29, lns. 1–3.

<sup>1206</sup> P-0585, T-189-ENG CT, p. 29, lns. 6.

<sup>1207</sup> P-0585, T-189-ENG CT, p. 61, lns. 25 to p. 62, ln. 14.

<sup>1208</sup> P-0585, T-189-ENG CT, p. 31, lns. 22–24.

<sup>1209</sup> P-0585, T-189-ENG CT, p. 32, ln. 1.

force trauma, possibly from falling to the ground. The witness could not however exclude that the person was hit by an object rather than falling on an object.<sup>1210</sup>

478. There were other bones found in the body bag, but the witness did not undertake any steps to ascertain the origin of these bones.<sup>1211</sup> The Prosecution expert held that this was not his job to identify the material<sup>1212</sup> and he believed that the Prosecution also did not undertake any such steps,<sup>1213</sup> indicating that he did not know why this had not been done. This exemplifies the absence of a nexus between the victims examined and the alleged crimes.

#### *Similarities between the three autopsies*

479. The witness testified that the location of the injuries of all the three bodies autopsied were “*remarkably similar*”.<sup>1214</sup> “*All the injuries on all three bodies are at about the same level, the neck and the shoulder area. They all appear to be injuries with bullets coming from left to right. So there is a pattern within them*”.<sup>1215</sup>

480. Likewise, there was a similarity in the gunshot holes in the t-shirts found in the respective body bags. This led the witness to conclude that the three bodies examined had died of the same cause.<sup>1216</sup> According to the witness, it is not possible to establish the period around which a person died, after the body has started decomposing.<sup>1217</sup> The witness indicated that he would be able to tell if somebody had died a couple of hours or up to two to three weeks ago<sup>1218</sup> but not further back. Once the decomposition of the body starts, it is not possible to determine whether a person has died one or three years ago.<sup>1219</sup> He indicated that there were many different factors that influence the decomposition process and there is therefore no scientific method to determine the speed of decomposition.<sup>1220</sup> In this case, the witness assured that the

<sup>1210</sup> P-0585, T-189-ENG CT, p. 63, lns. 6–10.

<sup>1211</sup> P-0585, T-189-ENG CT, p. 60, lns. 11–15.

<sup>1212</sup> P-0585, T-189-ENG CT, p. 60, lns. 17–19.

<sup>1213</sup> P-0585, T-189-ENG CT, p. 60, lns. 20–24.

<sup>1214</sup> P-0585, T-189-ENG CT, p. 29, lns. 23.

<sup>1215</sup> P-0585, T-189-ENG CT, p. 29, lns. 23–25.

<sup>1216</sup> P-0585, T-189-ENG CT, p. 62, lns. 21–24.

<sup>1217</sup> P-0585, T-189-ENG CT, p. 45, lns. 22–23.

<sup>1218</sup> P-0585, T-189-ENG CT, p. 45, lns. 19–21.

<sup>1219</sup> P-0585, T-189-ENG CT, p. 45, lns. 22 – 23 and p. 46, lns. 2–3.

<sup>1220</sup> P-0585, T-189-ENG CT, p. 46, lns. 4–7.

bodies had been dead for more than a couple of weeks<sup>1221</sup> but he had to rely on the assumption that the bodies he analysed had in fact died in March 2011.<sup>1222</sup>

481. Without the medical determination of the time of death, it cannot be concluded that the bodies the witness analysed were actually victims of the post-electoral crisis, as they could have died some time before the crisis. In addition, it should be noted that P-0585 acknowledged at trial that he faced several limitations in his forensic examinations in Côte d'Ivoire, which reinforces the absence of such a nexus.

*The absence of X-ray technology prevented Witness P-0585 from finding small fragments of shrapnel*

482. The witness esteemed that portable x-ray scanners are the easiest and thus superior graphical methodology to use in forensic pathology.<sup>1223</sup> The witness acknowledged the hypothesis of Professor Thali<sup>1224</sup> that CT scanning offers higher accuracy than X-ray scanning and is thus the leading technology in the field.<sup>1225</sup> But the witness claimed that CT scanners are too expensive and impractical in their use.<sup>1226</sup>

483. The absence of modern graphical technology during the autopsies in Abidjan posed limits to the work of the witness and prevented him from finding small bullet fragments in the soft tissue of the bodies.<sup>1227</sup> However, the witness disputed that the absence of such technology “*doesn't go away from the fact that our main record or identification of bullet injuries, gunshot injuries, was on the skeleton and we could still see these even without x-rays*”.<sup>1228</sup>

*The absence of soft tissue does not allow for definitive conclusions*

484. Without the soft tissue it is not possible to draw definitive conclusions on a number of points. It cannot be said with certainty that the wounds were bullet wounds or from which distance the bullets were fired.<sup>1229</sup> But the witness insisted that it was possible

<sup>1221</sup> P-0585, T-189-ENG CT, p. 46, lns. 7–8.

<sup>1222</sup> P-0585, T-189-ENG CT, p. 46, lns. 8–10.

<sup>1223</sup> P-0585, T-189-ENG CT, p. 71, lns. 25 to p. 72, ln. 6.

<sup>1224</sup> Book chapter at CIV-D25-0049-0038.

<sup>1225</sup> P-0585, T-189-ENG CT, p. 73, lns. 22–25, p. 74, lns. 4–5.

<sup>1226</sup> P-0585, T-189-ENG CT, p. 73, lns. 25 to p. 74, ln. 3.

<sup>1227</sup> P-0585, T-189-ENG CT, p. 74, lns. 12–15.

<sup>1228</sup> P-0585, T-189-ENG CT, p. 74, lns. 16–19.

<sup>1229</sup> P-0585, T-189-ENG CT, p. 76, lns. 13–15.

to extrapolate from what he had seen that the injuries on the bodies were in fact caused by a bullet.<sup>1230</sup> The witness drew a comparison to his previous work in Bosnia, where he saw similar injuries that were caused by assault rifles.<sup>1231</sup>

485. In conclusion, when one takes into account the forensic-technical limitations for the underlying examination, the alleged linkage the Prosecution implicitly makes between the incidents charged and the bodies which were examined by its experts, is doubtful. The conclusion is justified based upon the Prosecution's own expert testimony. A nexus between the bodies examined by the Prosecution expert witnesses and any of the five incidents (or any other incident) cannot be deduced. Based on these witness testimonies, no reasonable trier of fact could determine that an evidentiary relation between the bodies examined by these Prosecution experts and the five incidents exists. As a result, the imperative requirement of a link between the alleged victims and the charged incidents based on credible forensic evidence does not meet the requisite standard and fails to support the Prosecution's theory.

#### **IV.3. Consequence of lack of requisite nexus between the alleged victims and the charged incidents**

486. Having established that the Prosecution's own evidence does not support the assumption that the five incidents resulted in civilian casualties, this paragraph further addresses the consequences of this evidentiary lacuna. In this realm, two dissenting opinions of the Honourable Judge Henderson of 1 June 2018 and 19 June 2018 merit specific attention, since they show the relevance of the lack of the mentioned nexus for the Defence Motion.

487. The first dissenting opinion of the 1<sup>st</sup> of June 2018 addressed the Prosecution's submission of an inspection sheet from an external autopsy conducted at the Anyama morgue.<sup>1232</sup> In his dissent, Judge Henderson highlights some of the "*very real challenges that arise from allowing the prosecutor to submit in this undisciplined manner lacking in rigour, whatever items of evidence that they wish, without applying any filter in terms of quality and/or relevance*".<sup>1233</sup> As an illustration, Judge

<sup>1230</sup> P-0585, T-189-ENG CT, p. 76, lns. 15–17.

<sup>1231</sup> P-0585, T-189-ENG CT, p. 76, lns. 1–3.

<sup>1232</sup> CIV-OTP-0084-4069.

<sup>1233</sup> ICC-02/11-01/15-1172-Anx, para. 3.

Henderson criticizes the Prosecution's submission of an inspection sheet from an external autopsy conduct at the Anyama morgue:<sup>1234</sup>

9. A third example is CIV-OTP-0084-4069, an inspection sheet from an external autopsy conducted at the Anyama morgue. The document does not appear to be dated and bears no signature. Although the document states that the person died on 16 December 2010 in Abobo, there is no indication as to the basis of this information. It is noted, in this regard, that the document states about the circumstances of the death that the person allegedly disappeared on 16 December 2010 and that his body was found in the Anyama morgue on 11 May 2011. The document does not provide an intelligible cause of death. The Prosecutor claims that this document corroborates the forensic report of P-0564 (CIV-OTP-00500003), however, it is rather likely that P-0564 relied on this inspection sheet for her report, in which case there is no corroboration at all. The Prosecutor further claims that the content of the inspection sheet is corroborated by the register of the Anyama morgue (CIV-OTP-0084-3044) and a list of "victims" provided by the Ivorian authorities of persons who were 'treated' by the Institut Medicine Légale (CIV-OTP-0073-1074). Yet, again, we are given no information about the source(s) of the information contained in these documents, making it hard to accept the claimed corroboration. In any event, none of the documents concerned provide any probative information about the circumstances under which the person in question met his end and who was responsible for his death. Nor does the Prosecutor point to other evidence in this regard in relation to this individual. In the absence of such information, it is questionable whether the document has any significant relevance.

[...]

As these four examples show, it is far from self-evident whether the exhibits contained in the bar table motions would all meet the admissibility criteria of article 69(4) of the Statute. In the absence of proper litigation on these issues, when the time comes it will also be difficult for me to either make a fully informed admissibility decision or to make a proper evaluation of the evidentiary weight of these exhibits. Indeed, one of the greatest drawbacks of the approach adopted by the majority, in particular their failure to insist on compliance with paragraph 44 of the Chamber's Directions on the Conduct of Proceedings, is that it essentially eliminates the assistance from the parties that is crucial to giving the Chamber all the necessary information that it needs in order to fully assess the relevance and evidentiary weight of the exhibits. The scant written submissions

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<sup>1234</sup> CIV-OTP-0084-4069.

contained in the annexes to the bar table motions hardly provide that information in this regard.”

488. Notwithstanding that this opinion was rendered in the context of a request pursuant to paragraphs 43 and 44 of Directions on the Conduct of the Proceedings, it is evident that the parameters as set forth in this opinion are also relevant to the question of whether a reasonable trier of fact could accept said nexus. The same counts for the parameters as promulgated by Judge Henderson in his dissenting opinion of 19 June 2018<sup>1235</sup> with respect to the Legal Representative of Victims’ request pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings (*i.e.*, the list of Nigeriens allegedly killed in Côte d’Ivoire during the Post-Electoral Crisis).

489. In paragraphs 4-7 of this opinion, one reads:

4. First, in terms of relevance, I cannot help but note that of the 48 alleged victims, none of them died on the same date and location in which the charged crimes or the 34 incidents allegedly forming the attack took place. The dates of death of two victims coincided with the dates of charged incidents but neither of them died on the location where the charged crimes were committed. Five others allegedly died on the same dates as some of the 34 incidents which the Prosecution relies upon to prove the contextual elements. However, in all five cases, they died in different locations than where the relevant incidents took place. For 25 other alleged victims, the date of death is even unknown. For six the location is not provided and eight died outside of Abidjan. In fact, out of 48 alleged victims, there is only one victim about whom information is provided about date, place and cause of death. Accordingly, it is far from clear how the alleged deaths of the 48 Nigeriens relate to the charges as confirmed by the Pre-Trial Chamber and as detailed in the Prosecutor’s pre-trial and trial briefs.

5. It would seem that by asking to submit this evidence into the record, the Victims’ Legal Representative aims to expand the Prosecutor’s list of 34 incidents that are said to prove the attack against a civilian population. However, given that no evidence is provided about the circumstances of the demise of these 48 Nigeriens, judicially allowing the introduction of this evidence for this purpose would require an impermissible intellectual leap based on assumptions that have neither been articulated, nor substantiated by the Victims’ Legal Representative.

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<sup>1235</sup> ICC-02/11-01/15-1188-Anx.

6. Of equal concern is the negligible probative value of this evidence. First, as pointed out previously, the information provided is minimal. Second, the list of names of alleged victims is based entirely on anonymous hearsay. As I have stated before, no reasonable chamber should ever rely on anonymous hearsay, for the simple reason that it is impossible to properly assess the credibility and reliability of its source.

7. It might be objected that one should not be too demanding in terms of the quality and precision of the evidence in relation to the contextual elements. However, if, as in this case, the Prosecution attempts to prove the existence of an attack against a civilian population on the basis of a limited number of small-scale incidents that took place at different locations over a relatively extended period of time, it is imperative that the evidence for each incident meets the requisite standard of proof.

490. Projected onto the Prosecution's two expert testimonies, one can conclude that as to the examined bodies in the instant case, it is far from clear how these bodies relate to the charges as confirmed by the Pre-Trial Chamber and as detailed in the Prosecution's Pre-Trial and Trial Brief.

491. It has been demonstrated that no reasonable Trial Chamber could find a forensically-founded nexus between the examined bodies by the Prosecution's own experts and any of the incidents.

492. In the alternative, the Defence submits that the alleged number of victims is such that it does not meet the requisite threshold to establish the "*existence of an attack against a civilian population*".<sup>1236</sup>

## **V. CHARLES BLÉ GOUDÉ IS NOT RESPONSIBLE FOR THE CRIMES CHARGED**

493. Beyond the lack of a nexus between the alleged victims of the post-electoral crisis and the incidents, the Prosecution has failed to establish a nexus between Charles Blé Goudé and the purported common plan or the alleged inner circle. If, *arguendo*, the Chamber would find that there is sufficient evidence to conclude that an attack upon civilians was committed in furtherance of a state or organisational policy, it is

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<sup>1236</sup> See ICC-02/11-01/15-1188-Anx, para. 7.

submitted that the Prosecution has failed to establish Charles Blé Goudé's individual criminal responsibility.

494. More specifically, the Prosecution has failed to adduce sufficient evidence to support the requisite *actus reus* and *mens rea* elements for each mode of liability charged to establish Charles Blé Goudé's alleged individual criminal responsibility under article 25(3) of the Rome Statute. On the basis of the evidence presented at trial, no reasonable trier of fact could rule that Charles Blé Goudé's alleged personal acts or omissions amounted to an "essential" contribution to (article 25(3)(a)), had a "direct" (article 25(3)(b)) or "substantial" (article 25(3)(c)) effect on, or constituted a "significant contribution" (article 25(3)(d)) to the commission of the alleged crimes.

495. First, in order to establish the mode of liability of indirect co-perpetration, this Court has held that the Prosecution must establish each of the cumulative five *actus reus* and three *mens rea* elements.<sup>1237</sup> With respect to article 25(3)(a), the Pre-Trial Chamber in the instant case and the chambers of the Court have consistently defined a co-perpetrator as one "*who makes, within the framework of a common plan, an essential contribution*"<sup>1238</sup> to the commission of the crime. The Defence thus agrees with the Prosecution that for the purposes of article 25(3)(a), an accused's contribution must have been "essential".<sup>1239</sup> Assessing whether a person "committed" a crime requires a normative assessment of the role of the accused person in the specific circumstances of a case, by evaluating "*whether the accused had control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission*".<sup>1240</sup>

496. The Prosecution has failed to adduce sufficient evidence to support each of the requisite *actus reus* elements for the purposes of establishing individual criminal

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<sup>1237</sup> Katanga Confirmation of charges decision, ICC-01/04-01/07-717, paras. 500-539; *Prosecutor v. Ntaganda*, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Bosco Ntaganda, 9 June 2014, ICC-01/04-02/06-309, para. 104 ("Ntaganda confirmation of charges decision"); *Prosecutor v. Ruto & Sang*, Decision on the confirmation of charges, 23 January 2012, ICC-01/09-01/11-373, paras 301-333; Bemba confirmation of charges decision, ICC-01/05-01/08-424, paras 350-1 ("Ruto and Sang confirmation decision"); *Prosecutor v. Al Bashir*, Decision on the Prosecution's application for a warrant of arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05-01/09-3, paras 209-13.

<sup>1238</sup> ICC-02/11-02/11-186, para. 135, citing Lubanga Appeals Judgment, ICC-01/04-01/06-3121-Red, para. 445.

<sup>1239</sup> Trial Brief, paras 739, 767.

<sup>1240</sup> ICC-02/11-02/11-186, para. 135, citing Lubanga Appeals Judgment, ICC-01/04-01/06-3121-Red, para. 473; *Prosecutor v. Ongwen*, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, ICC-02/04-01/15-422-Red, para. 38.



responsibility under article 25(3)(a). At the outset, the Prosecution has failed to establish the first objective element, that of the existence of a common plan which corresponds to “*an agreement between a plurality of persons to commit a crime*”.<sup>1241</sup> The jurisprudence of this Court requires that an agreement encompass an element of criminality, meaning that it must involve the commission of a crime with which the accused person is charged.<sup>1242</sup>

497. Significantly, the Prosecution has failed to establish that Charles Blé Goudé (i) made any contribution to an alleged common plan; (ii) that such purported contribution was *essential*, and (iii) that Charles Blé Goudé exercised control over the crimes, by virtue of his alleged contribution, to such an extent that he held the resulting power to frustrate their commission.<sup>1243</sup>

498. Further, as argued above, the Prosecution has failed to establish the *actus reus* for indirect co-perpetration elements of (i) the existence of an organization consisting of a hierarchical apparatus of power and (ii) that Charles Blé Goudé had control over any such organization.<sup>1244</sup>

499. With respect to the fifth objective element to be established under article 25(3)(a), this Court has held that “automatic compliance” occurs when a perpetrator “*secures automatic compliance through intensive, strict and violent training regimes*”, for example, through payment and punishment mechanisms.<sup>1245</sup> The Prosecution has failed to present sufficient evidence which could establish that such automatic compliance “*by interchangeable executors*”<sup>1246</sup> was secured by Charles Blé Goudé or any of the alleged co-perpetrators.

<sup>1241</sup> ICC-02/11-02/11-186, para. 134.

<sup>1242</sup> Kenyatta confirmation of charges decision, ICC-01/09-02/11-382-Red, para. 399; Katanga confirmation of charges decision, ICC-01/04-01/07-717, para. 523; Lubanga confirmation of charges decision, ICC-01/04-01/06-803-tEN, para. 344.

<sup>1243</sup> ICC-02/11-02/11-186, para. 135, citing Lubanga Appeals Judgment, ICC-01/04-01/06-3121-Red, para. 473; Ongwen confirmation of charges decision, para. 38; *See Motion, Section III.3. The Prosecution failed to prove that Laurent Gbagbo and an alleged inner circle acted pursuant to an organisational policy.*

<sup>1244</sup> *See Motion, Section III.3.B The Prosecution failed to demonstrate that the alleged inner circle constituted an organisation pursuant to article 7(2) of the Rome Statute.*

<sup>1245</sup> Ruto and Sang confirmation of charges decision, paras 323-336; Ntaganda confirmation of charges decision ICC-01/04-02/06-309, paras 102-107; Katanga confirmation of charges decision, paras 512-517.

<sup>1255</sup> Katanga confirmation of charges decision, paras 512-517; Ruto confirmation of charges decision, paras 320-336.

500. Moreover, the Prosecution's allegations and evidence adduced with respect to the *mens rea* elements are severely lacking.<sup>1247</sup> The very few *mens rea* elements put forward by the Prosecution are insufficient to meet the three requisite *mens rea* elements required by the Rome Statute and the jurisprudence of the Court, in particular with respect to (i) the existence of a mutual awareness between Charles Blé Goudé and the other alleged co-perpetrators (who remain undefined)<sup>1248</sup> that the implementation of the purported common plan will result in the material crimes, and (ii) that Charles Blé Goudé was aware of the factual circumstances enabling him to exercise joint control over the commission of the crimes through a third party. As previously mentioned, the conflict that ensued following the elections was entirely unforeseen and neither Charles Blé Goudé nor any of the members of the alleged inner circle could have been aware of such circumstances.<sup>1249</sup> More specifically, the Prosecution failed to demonstrate that Charles Blé Goudé knew that his alleged contribution to the common plan would result in the fulfilment of the crimes, meaning, that he was aware that, in the ordinary course of events, the occurrence of such crimes was a *virtually certain consequence* of the implementation of the common plan.<sup>1250</sup> This high threshold of "virtual certainty" was defined by this Court as an awareness that crimes will follow the perpetrators' contribution, barring an unforeseen or unexpected intervention that prevent their occurrence.<sup>1251</sup>

501. The evidence adduced by the Prosecution falls significantly short of meeting this high *mens rea* threshold.<sup>1252</sup> A common plan implies a "meeting of the minds" of a group of individuals whose intent and knowledge for each of the charged crimes fulfil

<sup>1247</sup> Illustratively, there are only 5 paragraphs devoted to the *mens rea* elements for co-perpetration in this respect, Trial Brief, paras 876-879.

<sup>1248</sup> See Motion, Section III.3. A *The Prosecution failed to prove the existence of an inner circle*; Section III.3.B *The Prosecution failed to demonstrate that the alleged inner circle constituted an organisation pursuant to article 7(2)(a) of the Rome Statute*.

<sup>1249</sup> See Motion, Section III.1. *The nature of the armed conflict that took hold of Abidjan during the post electoral crisis does not support a finding of a policy under article 7(2)(a) of the Rome Statute*.

<sup>1250</sup> Bemba confirmation of charges decision, ICC-01/05-01/08-424, 15 June 2009, para. 369.

<sup>1251</sup> The Pre-Trial Chamber found that this interpretation is not only based on the textual interpretation of the Rome Statute but also on the travaux préparatoires, Bemba confirmation of charges decision, paras 362-369.

<sup>1252</sup> The language "*will occur [...] in the ordinary course of events*" clearly indicates that the required standard of occurrence is close to certainty, amounting to "certainty about the future occurrence", Bemba confirmation of charges decision, ICC-01/05-01/08-424, para. 362; Lubanga appeals judgment, ICC-01/04-01/06-3121, para. 447.

the required *mens rea* requirements of article 30 of the Rome Statute.<sup>1253</sup> For the purposes of establishing joint commission under article 25(3)(a) of the Rome Statute, it is this agreement between a plurality of persons which justifies reciprocal attribution of the contributive acts of the joint perpetrators.<sup>1254</sup> The Prosecution has failed to establish, among others, the required subjective element that Charles Blé Goudé was aware of the character of the organization, of his position of authority within the organization, as well as the factual circumstances enabling automatic compliance with orders, three *mens rea* criteria required to establish liability under article 25(3)(a).<sup>1255</sup>

502. Second, with respect to the mode of “ordering” pursuant to article 25(3)(b), with which Charles Blé Goudé is charged with respect to Incidents 1, 2 and 5, the Pre-Trial Chamber found that, in addition the *actus reus* and *mens rea* requirements which the Prosecution must establish for “soliciting” and “inducing”,<sup>1256</sup> the Prosecution must establish that Charles Blé Goudé was in position of authority *vis-à-vis* the direct perpetrators of the crimes, which the evidence does not support.<sup>1257</sup>

503. With respect to the *actus reus* elements, the Prosecution has failed to establish that Charles Blé Goudé’s alleged actions<sup>1258</sup> had a *direct effect* on the commission of the crimes committed.<sup>1259</sup> The very tenuous link alleged by the Prosecution between Charles Blé Goudé’s actions and the purported crimes, for instance that the 12 April

<sup>1253</sup> Joint perpetration under Article 25(3)(a) requires three *mens rea* elements: (i) the accused must satisfy the subjective elements of the crimes, namely intent and knowledge within the meaning of Article 30 of the Rome Statute (and *dolus specialis*, where applicable); (ii) the accused and the other co-perpetrators must be mutually aware and accept that implementing the common plan will result in the fulfilment of the material elements of the crimes; and (iii) the accused must be aware of the factual circumstances enabling him or her to exercise joint control over the commission of the crimes through another person, that is, the character of the organization, his or her position of authority within the organization, and factual circumstances enabling automatic compliance with orders, see Katanga confirmation of charges decision, ICC-01/04-01/07-717, paras 519-520, 533-537; Ntaganda confirmation of charges decision, ICC-01/04-02/06-309, para. 104; Ruto and Sang confirmation of charges decision, ICC-01/09-01/11-373, paras 301-333.

<sup>1254</sup> ICC-02/11-02/11-186, para. 134; Lubanga Appeals Judgment, ICC-01/04-01/06-3121, paras 469, 473; Katanga confirmation of charges decision, ICC-01/04-01/07-717, paras 522-523.

<sup>1255</sup> Katanga confirmation of charges decision, ICC-01/04-01/07-717, 519-539; Ntaganda confirmation of charges decision, ICC-01/04-02/06-309, para. 104; Ruto and Sang confirmation of charges decision, ICC-01/09-01/11-373, paras 301-333; Bemba confirmation of charges decision, ICC-01/05-01/08-424, paras 350-351; paras 500-18, 527-39.

<sup>1256</sup> Ntaganda confirmation of charges decision, ICC-01/04-02/06-309, paras 145, 153; *Prosecutor v. Mudacumura*, Decision on the Prosecutor’s Application under Article 58, 13 July 2012, ICC-01/04-01/12-1-Red, para. 63 (“Mudacumura Article 58 decision”).

<sup>1257</sup> ICC-02/11-02/11-186, para. 159.

<sup>1258</sup> Trial Brief, para. 882-888.

<sup>1259</sup> Trial Brief, para. 877.

incident occurred “*as part of a continuum of violence by the same mot d’ordre [Baron Bar], culminating in Blé Goudé’s instructions of 5 April 2011 to pro-Gbagbo forces to continue fighting and reinforce roadblocks*”<sup>1260</sup> is clearly unsubstantiated by the evidence and most significantly, falls considerably short of demonstrating that Blé Goudé’s actions would have had a *direct effect* on the commission of crimes.<sup>1261</sup> With respect to the *mens rea* requirement, the Prosecution has failed to establish that Charles Blé Goudé would have been aware that there would be a substantial likelihood that crimes would be committed as a result of the realization of his alleged “*mots d’ordres*” or speeches.<sup>1262</sup>

504. Third, with regard to “aiding” and “abetting”, charged under article 25(3)(c) the Pre-trial Chamber held that “*in essence, what is required for this form of responsibility is that the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime*”.<sup>1263</sup>

505. Not only has the Prosecution failed to establish the objective elements of this mode of responsibility that Charles Blé Goudé provided assistance to the commission of a crime, but most significantly, has failed to demonstrate that any purported “assistance” was made *for the purpose* of facilitating a crime. The formulation “*for the purpose of*” departs from the ICTY and ICTR Statutes, in that it requires a significantly higher *mens rea* threshold;<sup>1264</sup> mere knowledge is not enough to meet the requisite *mens rea* criteria under this provision.<sup>1265</sup>

506. Fourth, the Prosecution has failed to adduce sufficient evidence to prove the *actus reus* and *mens rea* elements required under article 25(3)(d) of the Statute. This Court has found that the Prosecution must establish beyond a reasonable doubt, four cumulative objective and subjective elements, in order to establish individual criminal

<sup>1260</sup> Trial Brief, para. 890.

<sup>1261</sup> See Motion, Section VI.4.A No nexus between “*mots d’ordres*” and alleged crimes.

<sup>1262</sup> For instance, See Motion, Section VI.4. The Prosecution failed to prove that Charles Blé Goudé “*mobilis[ed] the youth to commit crimes/violent acts*”; Ntaganda confirmation of charges decision, paras 145,153; Mudacumura Article 58 decision, ICC-01/04-01/12-1-Red, para. 63.

<sup>1263</sup> ICC-02/11-02/11-186, para. 167.

<sup>1264</sup> Article 25(3)(b); Mbarushimana confirmation of charges decision, ICC-01/04-01/10-465-Red, para. 274.

<sup>1265</sup> Mbarushimana confirmation of charges decision, ICC-01/04-01/10-465-Red, paras 274, 281. Triffterer notes that ‘specific direction’ serves an important qualified in establishing a culpable link between the assistance provided by the accomplice and the crimes of the principal perpetrators, O. Triffterer and K. Ambos, *The Rome Statute of the International Criminal Court: A Commentary* (2016), p. 526.

responsibility under this provision.<sup>1266</sup> This Court has held that the contribution must “reach a certain threshold of significance in order to be within the Court’s ambit”.<sup>1267</sup> A contribution is considered as “significant” when it influences either (i) the occurrence of the crime; (ii) the way it is committed; (iii) or both.<sup>1268</sup>

507. Yet, the Prosecution has failed to establish that (i) Charles Blé Goudé made a significant<sup>1269</sup> or any contribution to the commission of the alleged crimes, (ii) that the co-participants in the alleged common plan shared the same intent or that they had knowledge that crimes would be committed as a result of their actions; and (iii) that Charles Blé Goudé was aware that the intention of the group existed when engaging in the conduct which constituted his alleged contribution.<sup>1270</sup> As emphasized by the Trial Chamber in *Katanga*, knowledge of such circumstance must be established for *each specific crime* and knowledge of a general criminal intention will not suffice to prove, as article 25(3)(d)(ii) mandates that the accused knew of the group’s intention to commit each of the specific crimes forming part of the common purpose.<sup>1271</sup>

508. The Prosecution attempts to substantiate its claim of indirect co-perpetration under article 25(3)(d) by referring to “*the same facts and circumstances referred to*” with respect to articles 25(a), (b) and (c).<sup>1272</sup> However, a group that adopts a criminal policy, a requirement of article 25(3)(a), does not necessarily mean that it is a group acting with a common purpose under article 25(3)(d)<sup>1273</sup> and the Prosecution impermissibly conflates these distinct modes of liability. In a minority opinion, Judge Van den Wyngaert noted that even if proven, an organizational policy to attack the

<sup>1266</sup> (i) The crime be committed (in its material elements) by a group of persons acting with a common purpose; (ii) that the person charged provides a contribution to the commission of such crime; (iii) the person meant to contribute to the commission of the crimes; and (iv) he or she carried out his or her contribution either with the aim of furthering the purpose or the activity of the group, or in the knowledge of the intention of the group to commit the crimes, ICC-02/11-02/11-186, paras 172-3; Mbarushimana confirmation of charges decision, ICC-01/04-01/10-465-Red, para. 269; Ntaganda confirmation of charges decision, ICC-01/04-02/06-309, para. 158; Ruto and Sang confirmation of charges decision, ICC-01/09-01/11-373, para. 351.

<sup>1267</sup> Mbarushimana confirmation of charges decision, ICC-01/04-01/10-465-Red, paras 276-7.

<sup>1268</sup> *Prosecutor v. Katanga*, Judgment pursuant to article 74 of the Statute, ICC-01/04-01/07-3436, para. 1635 (“*Katanga trial judgment*”).

<sup>1269</sup> Mbarushimana confirmation of charges decision, ICC-01/04-01/10-465-Red, paras 280-2, 292.

<sup>1270</sup> *Katanga trial judgment*, ICC-01/04-01/07-3436 para. 1627.

<sup>1271</sup> *Katanga trial judgment*, ICC-01/04-01/07-3436, para. 1642.

<sup>1272</sup> Trial Brief, paras 902-907.

<sup>1273</sup> *Katanga trial judgment*, minority opinion of Judge Van den Wyngaert, ICC-01/04-01/07-3436-AnxI, paras 192-193.

Hema population under article 25(3)(a) does not automatically prove the existence of a group acting with a common purpose for the purposes of article 25(3)(d):

192. It matters, in this regard, to distinguish the concept of “organisational policy” in the sense of article 7 from a “group acting with a common purpose” in the sense of article 25(3)(d). Whereas article 25(3)(d) defines the group in function of its members’ shared criminal purpose, article 7 does not.

193. It is therefore not possible to equate an organisation that adopts a criminal policy (article 7) with a group acting with a common purpose (article 25(3)(d)), unless the evidence shows that the policy was unanimously adopted or endorsed by all members of the organisation. This last point is important, because, even if there were evidence of an organisational policy to attack the Hema civilian population, this would not automatically prove the existence of a group acting with a common purpose.<sup>1274</sup>

509. The incriminating evidence put forward by the prosecution with respect to article 25(a) (for incidents 2 and 5), 25(3)(b) (for incidents 1, 2 and 5) and 25(3)(c) and 25(3)(d) (for incidents 1-5) does not pass muster; the evidence put forward does not demonstrate that each of the distinct objective and subjective elements for each of the four modes of liability charged would satisfy a reasonable trier of fact.

510. Accordingly, Charles Blé Goudé has no case to answer with respect to his alleged liability under articles 25(a), (b), (c) and (d) of the Statute. As will be demonstrated below, the Prosecution has also demonstrably failed to establish a factual causal link or nexus between Charles Blé Goudé’s alleged acts and the commission of the crimes.

## **VI. ABSENCE OF NEXUS BETWEEN CHARLES BLE GOUDE AND THE ALLEGED CRIMES**

### **VI.1. The Prosecution failed to prove any nexus between Charles Blé Goudé and the alleged common plan**

#### **A. The Prosecution failed to prove that Charles Blé Goudé was part of the alleged common plan**

- i. No proof of contribution to the conception and early development of a common plan

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<sup>1274</sup> *Ibid.*

511. The Prosecution has failed to show the existence of a nexus between Charles Blé Goudé and the conception or development of an alleged common plan prior to 2010.<sup>1275</sup>

512. As substantiated in the aforementioned sections, the Prosecution failed to demonstrate to the requisite threshold that Charles Blé Goudé participated in the establishment and organisation of a structure<sup>1276</sup> and the shared aim to keep Laurent Gbagbo in power at all costs.<sup>1277</sup>

513. The Prosecution contends that the early developments of a common plan from 2000 onwards can be inferred from the following three elements: (i) Laurent Gbagbo and the alleged inner circle used violence as a means to further political objectives of keeping Laurent Gbagbo in power; (ii) they exercised joint control over the pro-Gbagbo forces by appointing loyal individuals to key positions including the parallel structure; (iii) they recruited, armed and financed the pro-Gbagbo forces before and during the attack.<sup>1278</sup>

514. As developed above, a review of the Prosecution's allegations reveals that Charles Blé Goudé is entirely absent from the Prosecution's narrative and evidence presented with respect to the two first elements.<sup>1279</sup> The Prosecution's allegations concerning Charles Blé Goudé's contribution is limited to the third element – that of his alleged role in the 2003 FDS recruitment and purported involvement in the creation of the GPP after the 2002 *coup d'état*.<sup>1280</sup> However, the evidence adduced by the Prosecution to support these claims falls considerably short of demonstrating any contribution made by Charles Blé Goudé at any stage of the elaboration of a common plan.

515. The evidence adduced by the Prosecution to support its theory of a conception of an alleged common plan prior to 2010 is insufficient to establish a nexus between

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<sup>1275</sup> See Motion, Section III.3.C *The Prosecution failed to prove the early development and implementation of a common plan from 2000 onwards.*

<sup>1276</sup> See Motion, Section III.3.A.i. *The Prosecution failed to prove the constitution of a structure.*

<sup>1277</sup> See Motion, Section III.3.A.ii. *The Prosecution failed to prove the existence of an alleged inner circle which shared the aim to keep Laurent Gbagbo in power by all means.*

<sup>1278</sup> Trial Brief, para. 178.

<sup>1279</sup> See Motion, Section, III.3.C *The Prosecution failed to prove the early development and implementation of a common plan from 2000 onwards.*

<sup>1280</sup> Trial Brief, paras 25-34.

Charles Blé Goudé and the development of an alleged common plan. First, it is entirely based on circumstantial evidence. Second, the vast majority of the Prosecution's allegations with respect to Charles Blé Goudé's purported contribution to an alleged common plan are based on the sole witness testimony of P-0435, whose lack of credibility has been discussed at length.<sup>1281</sup> As demonstrated by the evidence and contrary to the Prosecution's assertions, Charles Blé Goudé played no role in the 2003 recruitment into the FDS and played no part in the creation of the purported activities of the GPP.<sup>1282</sup>

516. First, with respect to Charles Blé Goudé's alleged "key role" in the recruitment of youth into the FDS shortly after the attempted *coup d'état* in 2002,<sup>1283</sup> key Prosecution witnesses such as P-0009 have made it clear that Charles Blé Goudé was not involved in this recruitment.<sup>1284</sup> Although the Prosecution relies on expressions which had been used at the time to describe these new recruits, such as the expression *génération Blé Goudé*, P-0009 explained that this was not because Charles Blé Goudé had any role to play in the recruitment, but rather, because the new recruits at that time were young Ivorians, who were to a large extent highly educated, and who demonstrated and held meetings.<sup>1285</sup> P-0009 explained that this name was attributed to the recruits by the local population out of "humour".<sup>1286</sup> With respect to the purported ethnic origin of the recruits, which the Prosecution claims is indicative of the existence of an alleged common plan, the Prosecution cites P-0164, who did not have any direct knowledge of the recruitment process and only made observations based on what he saw and heard within his own unit, the BASA.<sup>1287</sup> The alleged favouritism among the recruits, is based solely on the testimony of P-0316, who explained that within his unit, he noticed that some of the new recruits were boasting about being

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<sup>1281</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>1282</sup> See Motion, Section, III.3.C *The Prosecution failed to prove the early development and implementation of a common plan from 2000 onwards.*

<sup>1283</sup> Trial Brief, para. 30.

<sup>1284</sup> See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitment after the 2002 coup d'état was part of a common plan.*

<sup>1285</sup> *Ibid.*

<sup>1286</sup> P-0009, T-199-FRA CT, p. 38, lns. 4-17.

<sup>1287</sup> See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitment after the 2002 coup d'état was part of a common plan.*



“*untouchable*” and protected by Charles Blé Goudé;<sup>1288</sup> however, this was clearly what the recruits were saying about themselves, which constitutes uncorroborated hearsay evidence, and falls considerably short of demonstrating that Charles Blé Goudé had any actual influence over the recruits.<sup>1289</sup> No example was, for instance, provided by any witness whereby Charles Blé Goudé would have intervened or protected any of the recruits.

517. The Prosecution has failed to demonstrate any nexus between Charles Blé Goudé and the lawful recruitment into the FDS in 2003, of 3000-4000 recruits to respond to a shortage in the armed forces at the time, and that this recruitment would have formed part of the early developments of a common plan.<sup>1290</sup>

518. Second, with respect to Charles Blé Goudé’s alleged role in the creation of the GPP, the Prosecution solely relies on P-0435’s testimony, which for reasons addressed above, lacks any credibility.<sup>1291</sup> But even taken at face value, P-0435’s testimony does not support a finding that Charles Blé Goudé participated in a meeting where, together with Eugène Djué, Jean Yves Dipopieu and Charles Groguhet, the GPP would have been officially created. As P-0435 did not participate in this meeting, did not know where this meeting would have taken place, and only knowledge of the purported date of this meeting is based on a speculative document which was never adduced in Court, P-0435’s testimony is entirely speculative and cannot be relied upon.<sup>1292</sup>

519. Finally, with respect to Charles Blé Goudé’s purported involvement with other *groupes d’auto-défense* such as the FLGO, as demonstrated above, this claim is equally unsupported by the evidence, which contradicts the Prosecution’s claims. For instance P-0500 clearly indicated that Charles Blé Goudé played no part in the creation of the FLGO.<sup>1293</sup>

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<sup>1288</sup> P-0316-T-182-CONF-FRA ET, p. 75; See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitment after the 2002 coup d’état was part of a common plan.*

<sup>1289</sup> *Ibid.*

<sup>1290</sup> *Ibid.*

<sup>1291</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>1292</sup> See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitment after the 2002 coup d’état was part of a common plan.*

<sup>1293</sup> P-0500, T-182-CONF-FRA CT, p. 46. ln. 11 to p. 47. ln. 6; See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

520. The evidence brought forward by the Prosecution fails to support a finding of any nexus between Charles Blé Goudé and the conception and development of a common plan, which would have been conceived from 2002 onwards. No reasonable trier of fact could therefore convict Charles Blé Goudé.

ii. No proof of contribution to the implementation of the common plan / policy

(a) The Prosecution failed to prove any participation in meetings instrumental to a policy

521. The evidence is not sufficient to demonstrate that Charles Blé Goudé was part of an alleged inner circle and that as such he participated in the planning and implementation of the crimes charged. One of the Prosecution's key elements linking Charles Blé Goudé to the so-called inner circle is his alleged participation to meetings which would have been instrumental to the common plan and/or the policy.<sup>1294</sup>

522. First of all, the Prosecution does not adduce any evidence, whether documentary or testimonial, regarding the presence and involvement of Charles Blé Goudé at any meetings which allegedly would have constituted one or several preparatory meetings to "activate" the alleged inner circle. In the same vein, no piece of evidence or testimony reveals the participation of Charles Blé Goudé in any meeting which would have been instrumental to the development of the common plan in the years 2002-2010. While the Prosecution alleges that as early as 2000, the alleged inner circle started conceiving the common plan,<sup>1295</sup> the Prosecution fails to produce the main logbook to the Presidential Residence starting from October 2000 to April 2011, which could have been potentially relevant to point to the existence or non-existence of such an alleged inner circle.

523. Secondly, to support its allegation that Charles Blé Goudé (i) shared with Laurent Gbagbo the intent to maintain his power by all means and (ii) contributed to the implementation of the common plan, the Prosecution mainly relies on the entries of the logbook of the Presidential Residence between 17 November 2010 and 14 March

<sup>1294</sup> Trial Brief, paras 84, 827-828, 366, 454, 549.

<sup>1295</sup> See, for instance, Trial Brief, paras 5, 6, 13, 14.

2011.<sup>1296</sup> Based on this logbook, Charles Blé Goudé would have “met” with Laurent Gbagbo 22 times. First of all, in light of [REDACTED], the Prosecution is well aware of the fact that if the logbook merely indicates that 22 times during the crisis, [REDACTED];<sup>1297</sup> it certainly does not indicate [REDACTED].<sup>1298</sup> The fact that Charles Blé Goudé potentially “had access to” Laurent Gbagbo does not meaningfully advance the Prosecution’s theory of Charles Blé Goudé’s inclusion in an inner circle or contribution to the common plan.

524. For the vast majority of the 22 visits of Charles Blé Goudé at the Residence, the Prosecution has not gathered any concrete elements (either through witnesses or RTI video items) to contextualise Charles Blé Goudé’s presence there or to link him to any meetings having potentially occurred on the day in question, therefore ending up speculating or, most of the time, having no choice but to refrain itself from making any allegations at all in relation to the purpose or the concretization of the relevant visit. Indeed, out of the 22 visits, the Prosecution does attempt to provide a justification for 7 of those visits. The Defence will show in the following paragraphs that all the allegations made with respect to those 7 visits are unfounded and speculative.

525. First the Prosecution alleges that between 16 and 19 December, including the night of the 16<sup>th</sup>, Charles Blé Goudé “*was received three times at the Presidential Residence where he met Gbagbo and spent many hours*”.<sup>1299</sup> Again, as the Prosecution is perfectly aware, [REDACTED]. Therefore, the allegation of the Prosecution is misconstrued. Second, assuming *arguendo* that Charles Blé Goudé would have spent the exact time as indicated in the logbook with the President, it would still be inaccurate to allege that Charles Blé Goudé “*spent many hours*” with him. Indeed on 16 December 2010, [REDACTED].<sup>1300</sup> [REDACTED]. Therefore, the allegation that Charles Blé Goudé spent many hours with the President on these three days is simply inaccurate and misleading. Furthermore, none of the witnesses heard were able to give any information about those alleged meetings, including whether the

<sup>1296</sup> CIV-OTP-0067-0402.

<sup>1297</sup> See visit of 23 February 2011, CIV-OTP-0088-0863, at 1209-1210.

<sup>1298</sup> Trial Brief, para. 827, second sentence.

<sup>1299</sup> Trial Brief, para. 366.

<sup>1300</sup> See for a comparison CIV-OTP-0067-0477/CIV-OTP-0067-1013 and related transcription CIV-OTP-0088-1014.

two men met and whether the topic was related to the first incident or not. Therefore, no conclusive evidence is provided by the Prosecution in order to allow any inference in this respect.

526. Similarly, the Prosecution does not adduce any evidence as to why Charles Blé Goudé was at the Residence on the evenings of 23 and 24 February 2011. The mere suggestion that these visits would be linked to (i) his upcoming message to the youth on 24 February and (ii) the upcoming Baron Bar meeting on 25 February is pure speculation on its part.<sup>1301</sup> On 23 February, it is indicated that [REDACTED]. [REDACTED]<sup>1302</sup> [REDACTED]. The possibility that Charles Blé Goudé would have met the President [REDACTED] in the context of his upcoming ONU speech to the youth is clearly not the most reasonable and certainly not the only inference to be drawn. With respect to the 24 February visit, the Prosecution also suggests that Charles Blé Goudé, together with P-0009 and Boniface Konan, could have met the President together that night in the context of the FAFN's offensive in the West.<sup>1303</sup> Again, [REDACTED].<sup>1304</sup> No evidence thereto was provided by the Prosecution. No witness has contextualised these visits to clarify whether these three individuals were at the same meeting and/or that the agenda of such a meeting was the FAFN offensive. P-0009 actually refutes having had any meetings with Charles Blé Goudé at the Residence during the crisis.<sup>1305</sup> The fact that the Prosecution, for the same potential visit, provides two very different and irreconcilable reasons for which Charles Blé Goudé would have met the President (the Baron Bar meeting on the one hand and the FAFN offensive on the other hand), assuming he did, which is not confirmed, says a lot about how speculative and unsubstantiated the propositions of the Prosecution are.

527. Furthermore, none of the twenty-one FDS witnesses heard at trial provided evidence towards Charles Blé Goudé's direct or indirect involvement in any of the alleged strategic military meetings held either between Laurent Gbagbo and the high

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<sup>1301</sup> Trial Brief, para. 828.

<sup>1302</sup> CIV-OTP-0067-0575.

<sup>1303</sup> Trial Brief, para. 454.

<sup>1304</sup> [REDACTED].

<sup>1305</sup> P-0009, T-193-FRA CT2, pp. 38-39.

commanders or between the high commanders themselves.<sup>1306</sup> P-0009, who, in his capacity as CEMA, took part in every strategic military meeting during the crisis, clearly stated that he never attended any meetings, whether at the presidential residence or palace, in the presence of Charles Blé Goudé.<sup>1307</sup> P-0009 further testified that he met Charles Blé Goudé only five times, which meetings did not take place at the Presidential residence, and had no connection to the alleged crisis staff meetings, which were meant to reflect on military operations in Abidjan.<sup>1308</sup> It also illustrates that P-0009 never participated in meetings with Charles Blé Goudé in the presence of the President during the post-electoral crisis at the Presidential Palace or Residence. P-0047 confirmed that he was not aware of any FDS meetings at the Presidential residence which Charles Blé Goudé attended (he seemed to have been present to most of these meetings).<sup>1309</sup> Furthermore, P-0011, when questioned at trial, testified that he did not recall having been at the Presidential Residence in the company of Mr Blé Goudé, or having had a meeting with Charles Blé Goudé there.<sup>1310</sup>

528. These conclusions are also supported by P-0226, who testified about an alleged meeting before the post-electoral crisis, where President Gbagbo allegedly invited all the FDS commanders at the Presidential Palace. The Prosecution read a part of the witness statement<sup>1311</sup> (because he did not remember) related to this point: *“One day several months before the campaign President Gbagbo summoned all the armed forces to the office of the President. I was also present. And during the official meeting he said the following, ‘You, the heads, if I fall, you fall too.’ All the generals were present. Present was the armed forces chief of staff, Mangou (P-0009); the Commander of the Gendarmerie, Kassaraté (P-11); the Director General of the National Police, General Brindou M’bia (P-0046); General Dogbo Blé, who was the Palace Commander and head of GR; General Detoh Letho (P-0047), Commander of the Ground Forces; the Navy General Faussignaux; and the Commander of the Air*

<sup>1306</sup> For instance, no proof was adduced at trial of the presence of Charles Blé Goudé at the meetings of 5 and 6 January at the Residence allegedly regarding, respectively, the requisition of the army and the request to deploy forces to the field and take actions in Abobo (*see* P-0009, T-193-FRA CT2, pp. 23-24; T-19-FRA CT2, p. 67) and on 24 February at the Palace following the second operation in Abobo (*see* P-0009, T-194-FRA CT, p. 3).

<sup>1307</sup> P-0009, T-193-FRA CT, pp. 38-39.

<sup>1308</sup> For details as to the five meetings P-0009 referred to that took place on 20 and 23 January, and on 11, 20 and 21 March 2011, *see* P-0009, T-193-FRA CT2, p. 38.

<sup>1309</sup> P-0047, T-204-CONF-FRA CT, pp. 29-30.

<sup>1310</sup> P-0011, T-132-FRA CT, p. 74, Ins. 1-8; P-0011, T-134-CONF-FRA ET, p. 74, Ins. 1-8; P-0011, T-134-CONF-FRA ET, p. 45.

<sup>1311</sup> CIV-OTP-0039-0143, para. 37.

force, whose name he could not remember during his testimony. They were all there with members of their staff. Each corps had also appointed representatives to attend this meeting, and he was one of those people who were appointed for the BASA.” After reading this to the witness, the witness confirmed that the statement was correct.<sup>1312</sup> Charles Blé Goudé is not mentioned amongst those people.

529. In particular, none [REDACTED] confirmed Charles Blé Goudé’s attendance to the 12 January meeting at the residence where military questions in relation to Abobo were presumably discussed.<sup>1313</sup> In any event, none [REDACTED] suggested that this meeting was held to further any alleged common plan as asserted by the Prosecution. On the contrary, P-0046 clarified that the reason for this meeting was for the chief of staff to better understand the circumstances surrounding the recent killings of FDS in Abobo Gare but that no particular measures regarding Abobo had been taken during that meeting.<sup>1314</sup> P-0047 did not recall any particular reaction from Laurent Gbagbo on that particular meeting but testified that every time the FDS officers had a meeting with him, they would report on the security situation and Laurent Gbagbo would appeal to the commanders to do everything they could to put an end to the attacks from the *Commando Invisible* and to protect the population from these attacks.<sup>1315</sup>

530. Similarly, there is no sufficient evidence to demonstrate the presence of Charles Blé Goudé at the meeting between the high commanders and Laurent Gbagbo held at the presidential residence on 14 March 2011.<sup>1316</sup> P-0046 is the only witness referring to a meeting, of which he cannot remember the date, between the generals, Laurent Gbagbo, Charles Blé Goudé and certain other ministers where the generals would have asked Laurent Gbagbo to resign.<sup>1317</sup> P-0011 and P-0010’s statements refer only to a meeting among the generals where the CEMA was asked to convey to Laurent

<sup>1312</sup> P-0226, T-166-CONF-FRA CT pp. 19-20.

<sup>1313</sup> For instance, P-0047 testified that the following individuals were present at the 12 January meeting: the Chief of Staff General Mangou (P-0009), the Superior Commander of the *Gendarmerie* General Kassaraté (P-11), Director General of the Police General Bredou M’Bia (P-0046), General Aka Kadjo, Major General Guiai Bi Poin (P-0010) and the witness. Charles Blé Goudé is not mentioned amongst these people. See P-0047, T-203-FRA CT, pp. 51-54.

<sup>1314</sup> P-0046, T-126-CONF-FRA CT, pp. 11-12.

<sup>1315</sup> P-0047, T-203-FRA CT, pp. 53-54.

<sup>1316</sup> P-0046 states that Charles Blé Goudé attended one single FDS meeting, that during which the generals asked Laurent Gbagbo to step down. However, assuming this request to step down was made during a collective meeting as described by P-0046 (which is highly uncertain considering that this scenario is not corroborated by either P-0009, P-0010 or P-0047), the Prosecution failed to demonstrate that this alleged collective request to step down would have been made during the meeting of 14 March 2011.

<sup>1317</sup> P-0046, T-126-CONF-FRA CT, pp. 4-5.

Gbagbo their message to find a political solution.<sup>1318</sup> P-0010 was shown the video footage of a meeting between the generals and Laurent Gbagbo on 14 March 2011 and did not confirm that it was at this meeting that the generals asked Laurent Gbagbo to resign. According to him, this meeting was about the security situation.<sup>1319</sup> P-0009 stated he visited the President that evening to report on an attack of his home on the same day but did not mention any request to step down having been discussed that night.<sup>1320</sup> The video footage does not comment on the request of resignation either. It is reported that allegiance is reiterated and that the security situation was discussed.<sup>1321</sup> Charles Blé Goudé does not appear on the video and [REDACTED].<sup>1322</sup> Therefore, the evidence presented does not demonstrate that Charles Blé Goudé was at the meeting between the generals and Laurent Gbagbo on 14 March 2011.

531. Regarding the specific general staff meetings, P-0010 stated that Charles Blé Goudé had never asked to attend nor actually attended any general staff meeting.<sup>1323</sup> Furthermore, no witness or piece of evidence ever confirmed Charles Blé Goudé's presence to any of the CPCO meetings. P-0381 was questioned at trial as to which ministers were present at these CPCO meetings, and he only referred to the Minister of Defence.<sup>1324</sup> Therefore, the Prosecution's own insider witnesses do not support its theory that Charles Blé Goudé was part of alleged "crisis staff meetings" or "strategic meetings". The same conclusion can be drawn in relation to strategic military meetings having taking place at the Presidential Palace. [REDACTED].<sup>1325</sup>

532. Based upon the Prosecution's own evidence, no reasonable Trial Chamber could accept a nexus between Charles Blé Goudé and the alleged crimes based upon the Prosecution's assumption that Charles Blé Goudé was present during the meetings at which the military operations by the FDS were reflected upon. Moreover, and contrary to paragraphs 836 and 837 of the Trial Brief, the mere assertion that Charles Blé Goudé "*had access to senior FDS officers, including the CEMA and the members*

<sup>1318</sup> P-0011, T-134-CONF-FRA ET, pp. 84-86; P-0010, T-139-CONF-FRA CT, p. 102.

<sup>1319</sup> P-0010, T-139-CONF-FRA CT, pp. 101-102.

<sup>1320</sup> P-0009, T-194-FRA CT, p. 9.

<sup>1321</sup> Video, CIV-OTP-0069-0371 at 00:12:22-00:13:28 (excerpt from RTI broadcast of 14 March 2011 at 20h; transcript at CIV-OTP-0094-0270 at 0271, Ins. 1-15).

<sup>1322</sup> Presidential Residence Logbook, CIV-OTP-0088-0863 at 1257 to 1260, entries 33 to 56. *See also* P-0046, T-126-CONF-FRA CT, p. 4.

<sup>1323</sup> P-0010, T-142-CONF-FRA CT, p. 11.

<sup>1324</sup> P-0381, T-207-CONF-FRA CT, p. 43.

<sup>1325</sup> [REDACTED].

*of the État-Major*” is insufficient to accept such a nexus. The same counts for the Prosecution’s assertion in paragraph 837 of its Trial Brief that Charles Blé Goudé met on 20 January 2011 with “*other high-ranking FDS Generals at the FDS headquarters at the État-Major*”. As shown above, the meeting of the 20th of January 2011 had no relationship with such a crisis staff meeting and only related to receiving support for the ceremony to pay tribute to the Forces for Defence and Security. On 23 January 2011 the ceremony was indeed effectuated at Stade Champroux, during which the army was honoured for protecting the civilians.

533. With respect to key meetings between Laurent Gbagbo and civil officers, the *reunion de concertation* allegedly held on 3 December 2010 and presented by the Prosecution as being a key demonstration of the “*coordinated and concerted efforts, contribution, intent and awareness of Laurent Gbagbo and members of the Inner Circle to keep Laurent Gbagbo in power by all means*”<sup>1326</sup> did not involve Charles Blé Goudé in any way. Assuming, *arguendo*, the minutes’ authenticity and probative value were to be demonstrated,<sup>1327</sup> Charles Blé Goudé is not allocated any *cellule* and his name does not appear in the logbook for that particular day. The mere assertion that he was seen outside the residence on the day of the announcement of the results by the President of the Constitutional Council is far from sufficient to infer that he took part in this alleged concertation meeting, which the Prosecution is not even alleging.

534. In view of the foregoing, there is no evidence showing that Charles Blé Goudé worked with Laurent Gbagbo as well as other members of the alleged inner circle to the effect of conceiving and implementing a common plan or the policy.

*(b) The Prosecution failed to prove that the FDS leadership and Charles Blé Goudé cooperated to recruit pro-Gbagbo youth and militias into the FDS*

535. Regarding the 2010/2011 recruitment, contrary to the Prosecution’s allegation, it cannot be inferred that Charles Blé Goudé relayed the instructions of Laurent Gbagbo and the Inner Circle to the youth and militia members. As substantiated by the Defence above, the Prosecution was unable to adduce sufficient evidence with respect

<sup>1326</sup> Trial Brief, para. 131.

<sup>1327</sup> See Motion, Section III.3.D.iii. *Insufficient evidence that the meetings between Laurent Gbagbo and the alleged inner circle related to the planning and implementation of the policy.*



to the collaboration and integration of pro-Gbagbo youth and militia into the FDS.<sup>1328</sup> With respect to an alleged collaboration or integration before the Battle of Abidjan, the Prosecution either relies on the patently incredible testimony of P-0435, or irrelevant, insufficient and contradictory evidence with regard to youth groups and militias integrating and collaborating with the FDS.<sup>1329</sup> Further, since the Prosecution failed to adduce evidence to the requisite standard of a parallel structure, it has not been able show that the alleged inner circle and Laurent Gbagbo exercised control over the operations that certain FDS members could have led with militia and youth after 30 March 2011.<sup>1330</sup>

536. Moreover, the evidence of the alleged instructions that Witness P-0435 received from Charles Blé Goudé specifically regarding the training of COJEP and FESCI youth is incapable of belief for three reasons. First, the uncorroborated testimony of Witness P-0435 should not be taken into account by the Chamber because he proved to be an incredible and unreliable witness.<sup>1331</sup> Second, Witness P-0435 did not mention in his previous statements to Prosecution investigators that either Mr Ahoua Stallone or Mr Blé Goudé would have requested this training. In reference to the very same training, Witness P-0435 referred to “people” coming to see the GPP so they would train FESCI youth.<sup>1332</sup> Thirdly, Witness P-0435’s account of how he met Charles Blé Goudé at the DeLorvie Pharmacy proved to be utterly false. Witness P-0435 testified that when he met Charles Blé Goudé in October 2010 to discuss whether he had received Mr Ahou Stallone that he was accompanied by Sergeant Blédé.<sup>1333</sup> He even added that Mr Blédé had called him just minutes before the alleged

<sup>1328</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>1329</sup> See Motion, Section III.3.B.ii.(a) *Irrelevant, insufficient, or contradictory evidence with regard to youth groups collaborating with and integrating the FDS prior to 31 March 2011; See Motion, Section III.3.B.ii.(b) The Prosecution’s theory is based almost exclusively on Witness’ P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.*

<sup>1330</sup> See Motion, Section III.3.B.ii.(g) *The Prosecution failed to prove that Laurent Gbagbo and the alleged inner circle had control over the so-called parallel structure as from 31 March 2011.*

<sup>1331</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution’s theory is based almost exclusively on Witness’ P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible, Section III.3.B.ii.(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Section III.3.B.ii.(d) Witness P-0435 testified that [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony, Section III.3.B.ii.(e) Witness p-0435 had every incentive to not tell the truth since [REDACTED]*

<sup>1332</sup> This is the evidence to which the Pre-Trial Chamber referred to in its Confirmation of charges decision against Charles Blé Goudé, See ICC-02/11-02/11-186, para. 70.

<sup>1333</sup> P-0435, T-94-CONF-FRA CT pp.4-6.

meeting.<sup>1334</sup> However, P-0435 also testified that the first time he met Mr Blédé was in January 2011, thereby making any alleged meeting with him in October 2010 impossible.<sup>1335</sup>

537. Contrary to the Prosecution's suggestion,<sup>1336</sup> the only large rally organised by Charles Blé Goudé with the FDS commanders' cooperation was the rally at Stade Champroux on 23 January 2011. This is not surprising that Mangou and the FDS cooperated since the purpose of this rally was to pay tribute to the FDS. As already developed above, [REDACTED].<sup>1337</sup> Similarly, it is not apparent from the video of the rally that took place in Anono on 15 January 2011 that Charles Blé Goudé and the FDS officials coordinated that rally. The FDS are not even mentioned. The comment of Mambo Abbé at the end of the broadcast that "*mots d'ordre will go through protected channels*" can certainly not be attributed to Charles Blé Goudé and do not allow the Prosecution to conclude that an upcoming unofficial recruitment would have been announced by Charles Blé Goudé.<sup>1338</sup>

538. P-0010 testified that the visit of Charles Blé Goudé at the FDS headquarters on 20 January 2011 was made upon Charles Blé Goudé's own request and initiative. P-0010 emphasized that it was the only visit of Charles Blé Goudé at the headquarters and that Charles Blé Goudé never asked to participate and did not actually participate in any FDS officials' meeting at the FDS headquarters.<sup>1339</sup> During this visit, Charles Blé Goudé paid tribute to the army of Côte d'Ivoire which had remained strong and brave despite being at the forefront of the crisis and losing men. He expressed the solidarity of the population towards the army while reminding that "*c'est ensemble que nous défendons notre pays, chacun dans son domaine*".<sup>1340</sup> The Prosecution fails to substantiate how this expression of support to an army continuing to defend the institutions of the Republic despite a recent large loss of men, in Abobo in particular,

<sup>1334</sup> P-0435, T-94-CONF-FRA CT p.5.

<sup>1335</sup> P-435, T-89-CONF-FRA CT, p. 62 ("*Dans la période...janvier... janvier 2011, janvier. En tout cas, dans... la période à partir de janvier 2011. C'est là qu'il y a eu... on s'est croisés pour la première fois*").

<sup>1336</sup> Trial Brief, para. 226.

<sup>1337</sup> See Motion, III.3.A.iii. The Prosecution failed to prove any coordination of activities among members of an alleged inner circle.

<sup>1338</sup> See Trial Brief, footnote 682, referring to Video, Rally of Young Patriots at Abobo, 15 January 2011, CIVOTP-0018-0006 at 00:06:20-00:08:32 (transcript at CIV-OTP-0021-0048 at 0051-0052, Ins. 83-143).

<sup>1339</sup> P-0010, T-142-CONF-FRA CT, pp. 8-11.

<sup>1340</sup> Video, CIV-OTP-0064-0083 at 00:06:36-00:15:07 (excerpt from RTI broadcast of 20 January 2011 at 20h; transcript at CIV-OTP-0048-1670, at 1671-1673, Ins. 1-119).

is relevant to the alleged cooperation of Charles Blé Goudé and Mangou to recruit pro-Gbagbo youth and militia into the FDS.

539. As already elaborated above, the allegation that [REDACTED] the envelope given by Charles Blé Goudé to the BAE commander, Loba,<sup>1341</sup> and [REDACTED] and not corroborated by any objective elements.<sup>1342</sup> A reasonable Chamber could not find that [REDACTED]. Another conclusion could also be that in the context of the tribute to be paid to the FDS a few days later, Charles Blé Goudé decided to congratulate the BAE by giving food and money, assuming *arguendo* that the envelope seen on the video contained the money [REDACTED].

540. In response to Guy Gbéri's speech expressing the youth's exasperation of being attacked for no purpose and readiness to join the army, Charles Blé Goudé reiterated his unwillingness to see a war in Côte d'Ivoire. He diplomatically assured the youth that he would pass on their message to the CEMA, as his duty dictates, but that the Head of State and the army were in control of the situation. He added that he had heard their message, but that his role as Minister of the Youth and Employment was not to bring the youth to war but rather find them a job.<sup>1343</sup> This excerpt demonstrates that at the time, there was a real feeling of exasperation coming from the youth and that, confronted with this surge, Charles Blé Goudé attempted to calm the youth down while very clearly discouraging them to enlist.<sup>1344</sup> When interviewed later in the RTI studio and asked to comment on the above youth's surge, he responded that this surge was exactly what he wanted to avoid. He explained that he was fine with the youth's mobilization, which should continue, but stressed that "*chacun son créneau*". He added that the CEMA was the one who would decide when the time had come to recruit the youth. More generally, he insisted on the purpose of the rally at Stade Champroux which was not only to pay tribute to the FDS but to all the Ivoirian workers who had continued to go to work despite the different calls made by the

<sup>1341</sup> The qualification given to him of "parallel structure commander" is unsubstantiated. See Trial Brief, para. 228.

<sup>1342</sup> See, for instance, Motion, Section III.3.A.iii. *The Prosecution failed to prove any coordination of activities among members of an alleged inner circle* and Section III.3.D.iii. *Insufficient evidence that the meetings between Laurent Gbagbo and the alleged inner circle related to the planning and implementation of the policy.*

<sup>1343</sup> Video, CIV-OTP-0064-0113 at 00:44:20-00:49:37 (excerpt from RTI broadcast of 22 January 2011 at 20h; transcript at CIV-OTP-0086-1028 at 1029-1031, lns. 1-103).

<sup>1344</sup> [REDACTED]. See also [REDACTED].

Ouattara side to stop working (“*ville morte*”, “*desobéissance civile*”, etc).<sup>1345</sup> Therefore, this piece of evidence cannot be used to support the allegation – as it contradicts it – that Charles Blé Goudé cooperated with the FDS to recruit pro-Gbagbo youth and militia in the FDS in furtherance of a common plan or policy.

541. Charles Blé Goudé’s call was not “repeatedly” broadcasted on the RTI as alleged by the Prosecution but only twice as seen above, once during the visit at the *État-Major* and once at the RTI studio. While Philippe Mangou and certain FDS officers were present, not all FDS senior officers were. For instance, P-0011 and Vagba preferred not to attend such a political event.<sup>1346</sup> Second, P-0009 confirmed that his presence at this rally was the result of an invitation made by Charles Blé Goudé.<sup>1347</sup> This suggests that this rally had not been the result of a decision made by the FDS senior commanders and points to a spontaneous act from Charles Blé Goudé.

542. The Prosecution takes a few sentences from Phillippe Mangou’s very long speech to suggest that he would have incited the youth to join the army. It is clear from the context that the last sentence of his speech, “[a]nd we know that you, too, have resolved to wage the battle”, as quoted by the Prosecution, is not to be understood literally.<sup>1348</sup> Earlier in his speech, he mentions how the Ivorian population had, in 2000, stood by the FDS, fighting empty handed, by giving a bowl of rice, or a little bit of money, or with prayers and that “with them”, the FDS had won the first step of the battle. Phillippe Mangou also later addressed the youth in the audience and states that the FDS work so that the youth can go to school, can freely come and go and so the institutions of the Republic stay still.<sup>1349</sup> He therefore makes a clear distinction between the work of the army on the one hand and the support of the youth through small gesture on the other. The Prosecution’s interpretation of this speech is thus inaccurate.

<sup>1345</sup> Video, CIV-OTP-0064-0113 at 00:49:37-00:56:25 (excerpt from RTI broadcast of 22 January 2011 at 20h; transcript at CIV-OTP-0086-1032 at 1033-1035, lns. 1-116).

<sup>1346</sup> P-0011, T-134-CONF-FRA, pp. 54-55.

<sup>1347</sup> P-0009, T-195-CONF-FRA, p. 55.

<sup>1348</sup> Trial Brief, para. 231 referring to Video, Rally at Stade Champroux, CIV-OTP-0047-0670 at 00:10:44-00:11:30 (transcript at CIV-OTP-0048-1660 at 1665, lns. 171-175).

<sup>1349</sup> Video, CIV-OTP-0047-0670 at 00:00:00-00:12:52 (transcript at CIV-OTP-0048-1660 at 1661, lns. 10-15 and 1666, lns. 227-228).

543. In the Confirmation of Charges Decision, Pre-Trial Chamber I found that there was a *prima facie* case to confirm that Charles Blé Goudé undertook activities aimed at the mobilisation of the youth for the struggle to preserve power and that these activities were coordinated with Laurent Gbagbo and an alleged inner circle. As an example of such an activity, Pre-Trial Chamber I cited the call to the youth to enrol into the army.<sup>1350</sup> Yet, the Pre-Trial Chamber could not have foreseen that at the close of the Prosecution case, this was not confirmed by the Prosecution's witnesses at trial. The Prosecution has failed to adduce sufficient evidence upon which a reasonable Trial Chamber would conclude that the FDS senior commanders and Charles Blé Goudé worked together to recruit youth into the FDS. Regarding Charles Blé Goudé's call on 19 and 20 March 2011, as already elaborated above, [REDACTED].<sup>1351</sup> [REDACTED]. Yet, the Prosecution refers to this call for enlistment made by Charles Blé Goudé to support its theory that "*FDS leadership worked with BLÉ GOUDÉ to recruit pro-GBAGBO youth and militias into the FDS*", which is contradicted by the Prosecution's own evidence.<sup>1352</sup>

544. More importantly, neither the support of Charles Blé Goudé to the FDS at Champroux Stadium<sup>1353</sup> nor his call on 19 and 20 March 2011 led to the effective recruitment of any of the youth in the army. P-0009 confirmed that following the call to enlistment made by Mr Charles Blé Goudé on 19 March 2011, there had been no recruitment in the army. On 21 March 2011, at the *État-Major*, [REDACTED].

545. Thus, the evidence analysed above fails to demonstrate that the FDS and Charles Blé Goudé coordinated to help "*mobilize youth [...] to integrate them into the FDS in furtherance of the common plan to keep Gbagbo in power by all means*".<sup>1354</sup>

**B. No proof that Charles Blé Goudé acted as an intermediary between Laurent Gbagbo and the pro-Gbagbo youth**

<sup>1350</sup> Confirmation of Charges Decision, ICC-02/11-02/11-186, paras 112-113.

<sup>1351</sup> [REDACTED].

<sup>1352</sup> Trial Brief, Section f at the top of page 99; paras 232-233.

<sup>1353</sup> P-0009 confirms that Charles Blé Goudé's speech at Champroux Stadium did not have any effect on Ivoirians when it comes to enrolling in the army. P-0009, T-195-CONF-FRA CT, p. 72.

<sup>1354</sup> Trial Brief, para. 235.

546. The Defence refers the Chamber to its development in *Section III.3.B.iii. The Prosecution failed to prove that Laurent Gbagbo controlled the pro-Gbagbo youth via Charles Blé Goudé* above.

## **VI.2. No proof of Laurent Gbagbo controlling the GPP or the FLGO through Charles Blé Goudé**

547. The Prosecution alleges that Charles Blé Goudé was fundamental in exercises control of the GPP.<sup>1355</sup> It is also the position of the Prosecution that Charles Blé Goudé had contact with Mr Glofiéhi during the post electoral crisis, and therefore he was somehow connected to the FLGO's activities.<sup>1356</sup> The Defence submits that the alleged "contact" Charles Blé Goudé had with Mr Glofiéhi was unrelated to his activities as the head of the FLGO. Regarding the GPP, the Prosecution has not led sufficient evidence to show: (1) that Charles Blé Goudé had an important role in the GPP's creation, (2) that he maintained personal links with GPP members such as Witness P-0435, Zéguen Touré, Guy Gbéri, and Zagbayou, (3) that he provided financial support and food to the GPP, and (4) that he ordered that the GPP train COJEP and FESCI youth.<sup>1357</sup> The Defence has already substantiated that P-0435's evidence on the issue of this fourth allegation regarding the training of COJEP and FESCI youth was incapable of belief.<sup>1358</sup> The Defence will provide its arguments with respect to the third allegation, namely Charles Blé Goudé's alleged financing of the GPP in the section related to Charles Blé Goudé's financing of different patriotic movements.<sup>1359</sup>

### **i. Insufficient evidence demonstrating that Charles Blé Goudé played any role in the creation of the GPP**

548. The only evidence the Prosecution was able to adduce regarding Charles Blé Goudé role in creating the GPP was the testimony of Witness P-0435.<sup>1360</sup> The Defence reiterates its submissions regarding Witness P-0435's patent unreliability and

<sup>1355</sup> Trial Brief, para. 260.

<sup>1356</sup> Trial Brief, para. 267.

<sup>1357</sup> *Ibid.*

<sup>1358</sup> See Motion, Section VI.4.C.ii. *The Prosecution failed to prove that Charles Blé Goudé played an essential role in the recruitment and enlistment of the youth into the FDS.*

<sup>1359</sup> See Motion, Section VI.3. *Insufficient evidence of Charles Blé Goudé financing different patriotic movements in order to commit crimes.*

<sup>1360</sup> Trial Brief, paras 260, 773.

impugned credibility.<sup>1361</sup> The unreliable and incredible nature of his testimony is also apparent with respect to the specific allegation that Charles Blé Goudé would have played a role in creating the GPP.

549. In response to the Prosecution asking whether there was some official event related to the creation of the GPP, Witness P-0435 answered that there was a “conclave” between different leaders of the *Galaxie Patriotique*, namely Charles Blé Goudé, Mr Eugène Djué, Mr Dibopieu and Mr Charles Groguehet.<sup>1362</sup> This uncorroborated evidence is incapable of belief for the following reasons. First, the evidence consists of anonymous hearsay, evidence which no reasonable trial chamber would believe given that it is impossible to assess its credibility and reliability. The witness clearly testified that he was not present at this “conclave,”<sup>1363</sup> and it is not clear from whom he had learned that there was such a conclave. The only evidence he provided was that he obtained the information from his superiors who informed him that his group “*les jeunes coureurs*”<sup>1364</sup> had acquired the name GPP.<sup>1365</sup> The evidence is far from conclusive as to whether the superiors informed him about how the name GPP was acquired, and therefore the source is anonymous hearsay. Second, the witness provided very little detail regarding the conclave, such as its location or the date.<sup>1366</sup> When asked by the Presiding Judge why he used the word conclave, the Witness answered that he used the term for no particular reason, since he was not present, thereby underscoring further his lack of knowledge regarding this alleged event. Third, there is no other evidence on the record of this conclave, though it was an official event for which, if true, there would have been a trace of such a meeting either through documentary evidence or the media. The Prosecution has not been able to produce either because in the Defence’s submission such a conclave never occurred

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<sup>1361</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution’s theory is based almost exclusively on Witness’ P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible, Section III.3.B.ii.(c) Witness P-0435 is often the only evidence on the record of facts that either should have been corroborated by other witnesses or by documentary evidence, Section III.3.B.ii.(d) Witness P-0435 testified that he [REDACTED] when his statement was taken – [REDACTED] that also became apparent during his testimony, Section III.3.B.ii.(e) Witness P-0435 had every incentive to not tell the truth since [REDACTED].*

<sup>1362</sup> P-0435, T-87-CONF-FRA CT, p. 8.

<sup>1363</sup> P-0435, T-87-CONF-FRA CT, p. 63.

<sup>1364</sup> P-0435, T-93-CONF-FRA CT, p. 38.

<sup>1365</sup> P-0435, T-87-CONF-FRA CT, p. 62.

<sup>1366</sup> P-0435, T-93-FRA CT, p. 39. While the witness stated that the date of the conclave was 23 March 2003, it is clear that the witness was purely speculating about the date. 23 March 2003 is the date the GPP was created according to the witness, which he stated was in the GPP’s archives. However, the witness did not answer the question regarding the date of the conclave because he did not know.

ii. Insufficient evidence to conclude that Charles Blé Goudé maintained personal links with GPP members

550. The Prosecution asserts that Witness P-0435 maintained personal links with members of the GPP such as Witness P-0435, Zéguen Touré, Guy Gbéri and Zagbayou.<sup>1367</sup> According to Witness P-0435's testimony, Charles Blé Goudé would have interacted with the witness on two occasions, once in front of the Delorvie pharmacy prior to the elections, and secondly when the witness allegedly assisted Charles Blé Goudé in his departure from Côte d'Ivoire. The Defence refers the Chamber to its previous submissions on the implausibility of the witness' account regarding his meeting at the Delorvie pharmacy.<sup>1368</sup>

551. The witness' account of how he assisted Charles Blé Goudé out of Côte d'Ivoire is so implausible that no reasonable chamber would believe it occurred. First, it should be noted that there is nothing in the evidentiary record that indicates that Charles Blé Goudé was still in Côte d'Ivoire after 30 March 2011 other than the sole uncorroborated testimony of Witness P-0435. Second, Witness P-0435's testimony is unclear as to key details of Charles Blé Goudé's exit from Côte d'Ivoire. He did not recall the date, even though in April the chronology of events is easier to situate because of certain key events which took place in the crisis, such as the bombing of different military bases and the Presidential Residence and Palace.<sup>1369</sup> Additionally, P-0435 was also unclear as to the location from which he picked up Charles Blé Goudé.<sup>1370</sup> Third, the ability of Witness P-0435 to drive and accompany Charles Blé Goudé from or nearby the Residence is highly implausible given that the UN sanctioned bombings against targets such as the Presidential Residence and Palace had already begun by 4 April 2011, which made it difficult for anyone to move about, especially near the Residence and the Palace. This is corroborated by Witness P-0009's testimony in which P-0009 stated that he was supposed to see the President on 4 April 2011, but was unable due to the bombings that had begun.<sup>1371</sup> Given that the

<sup>1367</sup> Trial Brief, paras, 260, 773.

<sup>1368</sup> See Motion, Section.VI.4.C.ii. *The Prosecution failed to prove that Charles Blé Goudé played an essential role in the recruitment and enlistment of the youth into the FDS.*

<sup>1369</sup> P-0435, T-94-FRA CT, p. 40-42. Various witnesses confirm the bombing of different military bases in addition to the bombing of the Presidential Residence, See P-0347, T-78-CONF-FRA ET; P-0321, T-63-CONF-FRA CT, p. 19; P-0009, T-197-CONF-FRA ET p. 63

<sup>1370</sup> Compare P-0435, T-94-FRA CT, p. 41 with T-90-CONF-FRA CT, p. 58.

<sup>1371</sup> P-0009, T-197-CONF-FRA ET, p. 63.



two supposed encounters Witness P-0435 had with Charles Blé Goudé are incapable of belief, the Prosecution has failed to establish any personal link between Charles Blé Goudé and Witness P-0435.

552. The Prosecution's evidence regarding Charles Blé Goudé's personal links with Mr Zéguen is equally weak.<sup>1372</sup> The evidence the Prosecution cites to prove this alleged fact relates to one meeting, which P-0625 attended with Charles Blé Goudé and other leaders such as Navigué Konaté, Augustin Mian, and Youssef Fofana. However, the witness also added that "*on était presque tous là*,"<sup>1373</sup> thereby indicating that his list of individuals listed at the meeting was not exhaustive. Further, though the exact purpose of the meeting was not clear from P-0625's testimony<sup>1374</sup> it is clear that the GPP as an organization was not discussed, neither was Mr Zéguen's relationship with Charles Blé Goudé. Mr Zéguen was present, just as the other several leaders. Therefore, the Prosecution has failed to adduce any relevant evidence as to the personal links between Charles Blé Goudé and Mr Touré Zéguen.

553. With respect to Mr Guy Gbéri's personal links to Charles Blé Goudé, the Prosecution cites an inadmissible video as the only evidence of personal relationship between the two men.<sup>1375</sup> The Defence reiterates the objections it submitted to the video in its previous submissions.<sup>1376</sup> The evidence consists of a France 24 news segment, in which various videos have been spliced together to fit the reporter's commentary. The Defence notes that nowhere in the video is Charles Blé Goudé seen with Mr Guy Gbéri, and thus it cannot be said he is interacting with him. Moreover, none of the individuals interviewed in the segment mention Charles Blé Goudé. It is the reporter's commentary that makes this connection. No reasonable trial chamber would find that the opinion evidence of a reporter could constitute evidence to prove a material fact. Thus, the Prosecution has also failed to prove the alleged links between Charles Blé Goudé and Mr Guy Gbéri.

<sup>1372</sup> Trial Brief, para. 260, footnote 796; para. 773, footnote 2296.

<sup>1373</sup> P-0625, T-27-FRA CT, p. 47.

<sup>1374</sup> P-0625 testified that the march planned for 16 December 2010 was one topic that was discussed, but it was not for this sole purpose that the leaders assembled. The Prosecution confronted the witness with his previous statement, in which the witness discussed setting up roadblocks. The witness reaffirmed however, that this was not discussed as a strategy, P-0625, T-27-FRA CT, pp. 26-27, 40-47.

<sup>1375</sup> Trial Brief, para. 260, footnote 797 and para. 773, footnote 2297.

<sup>1376</sup> See Defence objections to Video CIV-OTP-0002-0995. ICC-02/11-01/15-1099-Conf-Anx4.

554. The allegations that Charles Blé Goudé maintained personal links with Mr Zagbayou are just as speculative as for Mr Guy Gbéri.<sup>1377</sup> The Prosecution's reliance on Witness P-0435's testimony is misplaced since neither in the pages cited nor in his testimony does Witness P-0435 mention Charles Blé Goudé's specific relationship with Mr Zagbayou.<sup>1378</sup> Therefore, his testimony is irrelevant on this issue. The video cited by the Prosecution also does not make more or less probable that Mr Zagbayou had any personal links to Charles Blé Goudé because the only fact that can be established through this video is that Mr Zagbayou was present in front of Charles Blé Goudé's house on the morning that the segment was filmed. The video does not show any interaction between Mr Zagbayou and Charles Blé Goudé, and therefore does not show any personal link they would have shared.

555. The evidence on the record rather shows that Charles Blé Goudé's links with militia leaders was limited. For example, during the filming of his documentary about Charles Blé Goudé, *Shadow Work*, Witness P-0431 filmed a meeting in Yopougon hosted [REDACTED].<sup>1379</sup> In that meeting, the consequences of [REDACTED].<sup>1380</sup> Neither Charles Blé Goudé nor any representative from his organization was present at the meeting.<sup>1381</sup> His absence is explained by the most obvious inference, namely that Charles Blé Goudé never was involved with any armed group.

iii. No evidence that Charles Blé Goudé's contact with Mr Glofiéhi during the crisis was related to the FLGO

556. It is the position of the Prosecution that Laurent Gbagbo and the inner circle controlled the FLGO through financing it.<sup>1382</sup> Further, it submits that Charles Blé Goudé had contact with Maho Glofiéhi during the crisis, and thus attempts to create a link between Charles Blé Goudé and the FLGO's activities.<sup>1383</sup> In support of this allegation the Prosecution cites an extract from the RTI journal showing Charles Blé

<sup>1377</sup> Trial Brief, para. 260 and footnote 799 and para. 773 at footnote 2299.

<sup>1378</sup> The Prosecution cites P-0435, T-89-CONF-FRA-ET, pp. 16 and 62. *See* Trial Brief, para. 773.

<sup>1379</sup> CIV-OTP-0059-0003 34:32 to 45:46, transcript, CIV-OTP-0086-0732 at 0739 to 0741.

<sup>1380</sup> *Ibid.*

<sup>1381</sup> P-431, T-44-CONF-ENG CT, p.55.

<sup>1382</sup> Trial Brief, para. 267.

<sup>1383</sup> Trial Brief, para. 267.

Goudé hosting a rally, in which Mr Glofiéhi took part.<sup>1384</sup> During the Defence's examination of Witness P-0500, the Defence successfully led evidence showing that Mr Glofiéhi's presence at this meeting was completely unrelated to his activities as the head of the FLGO.<sup>1385</sup>

557. P-0500 testified that Mr Glofiéhi was the traditional chief of the Moyen Cavally region and in that role he would perform various public activities that were unrelated to his role as the head of the FLGO.<sup>1386</sup> Mr Glofiéhi's statements during the rally are consistent with his role as a traditional chief and not as the head of the FLGO for the following reasons. First, Mr Glofiéhi does not mention the FLGO in the video segment. Second, the content of his statement relates to Northerners supporting Laurent Gbagbo, and how Côte d'Ivoire cannot be divided upon ethnic lines. This statement is completely unrelated to the activities of an armed militia. Therefore, this video cannot be used as evidence to show that Charles Blé Goudé was somehow involved with the FLGO. Moreover, P-0500 himself confirmed at trial that Mr Glofiéhi never spoke about any relationship Charles Blé Goudé would have had with the FLGO.

### **VI.3. Insufficient evidence of Charles Blé Goudé financing different patriotic movements in order to commit crimes**

558. The Prosecution claims that the evidence adduced thus far at trial shows that all "patriotic movements" were under the political authority of Charles Blé Goudé and thus their financing was assumed by him.<sup>1387</sup> The Defence submits that the Prosecution's evidence on financing does not allow for the Chamber to draw the conclusion that Charles Blé Goudé and the alleged inner circle provided funds to different movements, which resulted in the commission of crimes. The conclusion cannot be reached because it is based on uncorroborated hearsay, speculation, or irrelevant evidence.

<sup>1384</sup> *Ibid* citing Video, CIV-OTP-0064-0101 at 00:40:02-00:41:16 (excerpt from RTI broadcast of 30 December 2010 at 20h); transcript at CIV-OTP-0086-0980 at 0981, Ins. 25-36.

<sup>1385</sup> See P-0500, T-182-FRA CT, pp. 39-41.

<sup>1386</sup> *Ibid.* p.40

<sup>1387</sup> Trial Brief, para. 271.

559. This sweeping allegation that Charles Blé Goudé was the “political authority” of all patriotic movements and thus in charge of their funding is made on the sole basis of Witness P-0435’s testimony, who has proved to be a patently unreliable witness.<sup>1388</sup> His testimony on the matter amounts to pure speculation and is contradicted by other evidence on the record. P-0435 submitted on the record that Mr Bouazo could pass through other channels besides Simone Gbagbo to receive funding, such as Charles Blé Goudé.<sup>1389</sup> When asked how he knew that he had access to these “channels,” the witness responded that the *Galaxie Patriotique* was created by the Ivoirian political authorities; and thus according to the witness sustained by it.<sup>1390</sup> He further generalized that Charles Blé Goudé was the source of funding because he was the head of the *Galaxie Patriotique*.<sup>1391</sup> This is clearly speculation on behalf of the Witness; he avoided answering the question by submitting broad generalizations to the Chamber that are not founded in any event he observed or heard.

560. Moreover, as previously submitted, Witness P-0435 proved to have a paucity of knowledge regarding youth groups and movements.<sup>1392</sup> The fact that Witness P-0435 testified that he had never heard of the AJSN is the most illustrative example.<sup>1393</sup> Further, the evidence of witnesses [REDACTED] shows that the groups were independent and did not receive funding from Charles Blé Goudé. P-0097 testified that several movements were created because many leaders assumed rightly or wrongly that Charles Blé Goudé was receiving an excess of funds.<sup>1394</sup> The most reasonable inference to be drawn is that the leaders splintered into different groups because Charles Blé Goudé was not funding them. P-0097 [REDACTED] there was a rivalry between the different leaders and Charles Blé Goudé.<sup>1395</sup> His testimony makes clear Charles Blé Goudé was not the *de facto* authority over the groups that came to be called the *Galaxie Patriotique*.<sup>1396</sup> Witness P-0625’s testimony also clearly implied

<sup>1388</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution’s theory is based almost exclusively on Witness’ P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible*

<sup>1389</sup> P-0435, T-88-CONF-FRA CT, p. 10.

<sup>1390</sup> P-0435, T-88-CONF-FRA CT, p.11.

<sup>1391</sup> *Ibid.*

<sup>1392</sup> See Motion, Section III.3.D.i. *Insufficient evidence of recruitment, arming and financing of pro-Gbagbo youth, militia, and mercenaries before and during the alleged attack.*

<sup>1393</sup> P-0435, T-94-CONF-FRA CT pp. 2-4.

<sup>1394</sup> P-0097, T-48-CONF-FRA CT, pp. 47-49.

<sup>1395</sup> *Ibid*; P-0097, T-48-CONF-FRA CT, pp. 47-53.

<sup>1396</sup> P-0097, T-48-CONF-FRA CT, pp. 30-31.

that the different groups making up the *Galaxie Patriotique* were autonomous.<sup>1397</sup> Witness P-0176 also described the discontent of certain youth leaders such as Konaté Navigué regarding, the fact that Charles Blé Goudé was not distributing the funds he had as the director of electoral campaign.<sup>1398</sup> Further, P-0097, who [REDACTED] testified that the *agoras*' primary source of funds was self-generated.<sup>1399</sup> This evidence is clearer and more detailed than Witness P-0435's evidence on the *agoras*' funding, which consists of hearsay which he heard *after* the crisis, while he was in exile from one former *agora* President.<sup>1400</sup>

561. With respect to the allegation that Charles Blé Goudé specifically would have funded the GPP, Witness P-0435's uncorroborated hearsay evidence is incapable of satisfying a reasonable trial chamber.<sup>1401</sup> On the basis of this testimony, no trial chamber could find that Charles Blé Goudé controlled the GPP through providing it with financial support and food. The only evidence the Prosecution has been able to produce in this regard is Witness P-0435's speculations regarding the channels through which Mr Bouazo received funding,<sup>1402</sup> and uncorroborated anonymous hearsay.<sup>1403</sup> Witness P-0435 testified that Mr Touré Zégouen would receive money from Charles Blé Goudé, which was then used to fund the GPP. However, when asked how he knew this information, the witness answered that his superiors would report to them that they received these sums. When asked which superiors, the witness again evaded the answer and replied that at the gathering where he allegedly heard this Moussa and Zégouen were there next to General Jeff Fada.<sup>1404</sup> He did not answer the question. Therefore, the source of this information remains anonymous, and would not be considered by a reasonable Trial Chamber since it is impossible to assess this evidence's reliability and credibility.

562. The remainder of the Prosecution's evidence regarding financing of patriotic movements consists of unsupported and unverifiable receipts and money orders

<sup>1397</sup> P-0625, T-31-CONF-FRA CT, pp. 38-39; P-0625, T-32-CONF-FRA CT, pp. 2-4.

<sup>1398</sup> P-0176, T-143-FRA CT, p. 77.

<sup>1399</sup> P-0097, T-46-CONF-FRA CT, p. 81.

<sup>1400</sup> Trial Brief, para. 272 *citing* P-0435, T-88-CONF-FRA CT, p. 13.

<sup>1401</sup> *See* Trial Brief, paras 260, 273, 773.

<sup>1402</sup> *See* P-0435, T-88-CONF-FRA CT, p. 11.

<sup>1403</sup> P-0435, T-87-CONF-FRA CT, pp. 19-21.

<sup>1404</sup> P-0435, T-87-CONF-FRA CT, p. 21.

allegedly received by youth leaders, and the testimony of P-0625 regarding the funding of different patriotic movements activities by the Presidency. The Defence submits that P-0625's testimony and the receipts<sup>1405</sup> if true are irrelevant to the charges since they have no nexus to the alleged crimes. Thus, these financial transactions cannot be used as evidence to show that Charles Blé Goudé contributed to the crimes or that the inner circle had the means to carry out the attack.

563. In *The Prosecutor v. Ruto & Sang*, the Prosecution alleged that the organization in that case, namely "the Network" organized for the funding and transportation of those who committed the crimes charged.<sup>1406</sup> Judge Fremr with whom Judge Eboe-Osuij agreed with respect to evidentiary findings, reasoned that it was necessary that the Prosecution prove that transportation of youth "was planned and facilitated by the network for the purposes of carrying out the common plan."<sup>1407</sup> The Judge emphasized that the mere proof that the youth were transported to the locations was not sufficient since it could still be reasonably inferred that their transport was arranged by some other person or entity that was unconnected to the Network.<sup>1408</sup>

564. Here, like in *Ruto*, the Prosecution must prove that the financing provided by the alleged members of the inner circle was used to commit the alleged attack. With respect to Charles Blé Goudé, it must show that the financing he received had a nexus to the five incidents in order for the Chamber to hold him criminally responsible. The Prosecution has failed to adduce any concrete evidence to that effect and introduces wholly irrelevant evidence such as Witness P-0625's testimony regarding Charles Blé Goudé's bonus, which he received to hold meetings.<sup>1409</sup> Witness P-0625 evidence did not specify for which meetings nor their date, and thus their connection to the alleged crimes has not been established. The Prosecution also cites [REDACTED].<sup>1410</sup> However, the Prosecution fails to establish the relevance of this financing to the crimes charged.

<sup>1405</sup> The Defence maintains its objections as to Prosecution's inability to establish the authenticity of the receipts. ICC-02/11-01/15-1028-Conf-Anx.

<sup>1406</sup> *Prosecution v. Ruto & Sang*, Public redacted version of Decision on Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027-Red-Corr, para. 69.

<sup>1407</sup> *Ibid*, para. 70.

<sup>1408</sup> Trial Brief, para. 70.

<sup>1409</sup> Trial Brief, para. 270.

<sup>1410</sup> Trial Brief, para. 270 citing [REDACTED].

565. Additionally, the Prosecution requests the Chamber to draw the unsubstantiated inference that the funds indicated in the receipts collected at the Presidential Palace were used for other activities than for funding meetings, and that they were intended to fund the leaders and their members.<sup>1411</sup> However, this is not the most reasonable inference to draw. Since the Prosecution has not provided any evidence as to the size of the 12 groups subsumed by Eugène Djué’s *Union des patriotes pour la libération totale de la Côte d’Ivoire*, and the costs of holding their meetings, a reasonable chamber would not be able draw the inference that personal use by the leaders and members was the sole purpose of the funds.<sup>1412</sup> Depending on the size of the groups and whether both food and entertainment were provided for during the meetings, it is not unreasonable to infer that such funds could have been used for meetings. Since the Prosecution has not led any evidence on the use of this money, the alleged funding of the youth leaders has not been established to the requisite threshold, in that a reasonable chamber would accept this allegation as to the funding.

#### **VI.4. The Prosecution failed to prove that Charles Blé Goudé “mobilis[ed] the youth to commit crimes/violent acts”**

##### **A. No nexus between “mots d’ordres” and alleged crimes**

566. The Defence submits that the Prosecution has failed to prove that Charles Blé Goudé delivered a “*mot d’ordre*” to erect roadblocks, to encourage the youth to commit violence roadblocks and to attack the Doukouré neighbourhood.<sup>1413</sup> The Prosecution has indeed been unable to adduce evidence as to any alleged call coming from Charles Blé Goudé to the youth to commit violent acts. As elaborated upon in the following sections, the Prosecution has presented a selective and inaccurate amalgamation between the erection of roadblocks and any violent act committed at these roadblocks. Furthermore, the Defence notes that the Prosecution has failed to produce one single speech from Charles Blé Goudé calling the youth to erect roadblocks. The Defence hereby establishes that there is no evidence that alleged crimes committed in Abidjan during the post-electoral crisis derived from Charles Blé Goudé’s acts and conduct.

<sup>1411</sup> Trial Brief, para. 270. Again, it is the position of the Defence that these receipts are inadmissible, and therefore should not be taken into consideration by the Chamber. See ICC-02/11-01/15-1028-Conf-AnxA.

<sup>1412</sup> See Trial Brief, para. 270.

<sup>1413</sup> Trial Brief, paras 797-814.

i. The context of Charles Blé Goudé's speeches

567. The Prosecution alleges that “[Charles] BLE GOUDE’s public speeches [...] were designed to create an atmosphere in which the pro-GBAGBO youth felt threatened, by vilifying the UN and France, referring to the existence of a genocidal threat, the usage of xenophobic and inflammatory language and repeated references to the need to defend themselves”.<sup>1414</sup> The Defence submits that such a presentation of Charles Blé Goudé’s speeches is a misinterpretation made by the Prosecution in order to construe its subjective narrative. Therefore, the evidence does not support such an allegation.

568. The Defence first submits that the Prosecution has failed to prove the xenophobic and inflammatory language used by Charles Blé Goudé, simply stating that speeches were xenophobic but never substantiated the reasons why they would be.

569. Second, the Defence notes that the Prosecution does not dispute the fact that during the post-electoral crisis, the youth of Côte d’Ivoire that it identifies as the “*pro-GBAGBO youth*” did suffer from violence perpetrated by opposing youth groups. The mere fact that there is an ongoing investigation carried out by the Office of the Prosecutor of the International Criminal Court on a situation referred to as “CIV2”, of which some materials have been disclosed to the Defence in the present case, proves that the threats mentioned by Charles Blé Goudé in his speeches were real and actual, and not hypothetical.

570. Witnesses called by the Prosecution testified before the Chamber that Mongobas and the *Commando Invisible* were present in Abobo; they were armed, killed people, erected roadblocks and P-0364, herself, was arrested and threatened by Mongobas.<sup>1415</sup>

571. Third, considering the above-mentioned crimes committed against the people identifying themselves as Laurent Gbagbo’s supporters, the “*need to defend themselves*”<sup>1416</sup> mentioned in some of Charles Blé Goudé’s speeches was also genuine and proportionate.

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<sup>1414</sup> Trial Brief, para. 798.

<sup>1415</sup> P-0364, [REDACTED] ; T-190-FRA CT, pp. 14-15; P-0106, T-116-CONF-FRA CT, p. 34, lns 23-26.

<sup>1416</sup> Trial Brief, para. 798.



572. Regarding the subsequent speeches made by Charles Blé Goudé in December 2010 and January 2011,<sup>1417</sup> the Prosecution does not dispute the reality of the material facts exposed by Charles Blé Goudé. As for the interpretation given by the Prosecution to Charles Blé Goudé's words, the Defence would like to recall the questioning of P-0009 by the Chamber. While a video had been shown, representing P-0009 saying "*nous avons remporté le premier combat*",<sup>1418</sup> the Presiding Judge asked him what he meant by that sentence. P-0009 responded that what he had in mind was the victory to the election as proclaimed by the Constitutional Council. This example illustrates that the words need to be reintegrated in their context to reveal their full meaning. As for Charles Blé Goudé's speech on 15 December 2011,<sup>1419</sup> the Defence notes that the Prosecution did not restore the exact sentence of Charles Blé Goudé: "*Nous voulons vivre pour voir notre pays se développer, mais aussi nous sommes prêts à mourir pour que cette cause-là puisse se réaliser*".<sup>1420</sup> When restoring the full context of the "ready to die", used by Charles Blé Goudé, it appears that it referred to "*the development of Côte d'Ivoire*" and that it was only an exalted and imaged formula, instead of an intention. Hence, the Prosecution has failed to prove that his words conveyed a violent message or a call to violence. Prosecution witnesses P-0625 and P-0097 testified at trial that the expression "*les mains nues*", used by Charles Blé Goudé in the same excerpt, referred only to words and not to action through weapons.<sup>1421</sup>

ii. The Prosecution misinterprets Charles Blé Goudé's speech at the Baron Bar

573. At the outset, the Defence notes that the Prosecution did not provide a definition for the "*mot d'ordre*" although it founds its narrative of the events that occurred from 25 February 2011 onwards on this notion. "*Mot d'ordre*" is not a legal notion prescribed by the Statute and the Elements of the Crimes and, therefore, would have required a proper definition.

574. The Defence is aware that the Prosecution's narrative as to the sequencing of 25 February 2011, that allegedly triggered the events of that day, has changed. It is

<sup>1417</sup> Trial Brief, paras. 799-805.

<sup>1418</sup> P-0009, T-200-CONF-FRA CT, pp. 70-71.

<sup>1419</sup> Video, CIV-OTP-0074-0054 (excerpt from RTI broadcast of 15 December 2010 at 20h; transcript at CIV-OTP-0087-0387).

<sup>1420</sup> See more specifically CIV-OTP-0087-0387, at 390, lns. 101-103.

<sup>1421</sup> See Motion, Section III.3.A.ii.(b) Charles Blé Goudé.

symbolic of the weakness of the Prosecution case that it initially relied on Witness [REDACTED], who alleged that Charles Blé Goudé visited the 16<sup>th</sup> district police station on 25 February 2011, while someone was burnt alive. However, Witness P-0440, the *Commissaire* of the 16<sup>th</sup> district police station, testified at trial that not only Charles Blé Goudé never came to the 16<sup>th</sup> district police station, but no one was burnt either in the police station or outside the police station.<sup>1422</sup>

575. On 25 February 2011, Charles Blé Goudé gave a speech at the Baron Bar. The Prosecution submitted a video and a transcript of two short excerpts of this speech on 12 April 2017, accompanied by what is referred to in the Trial Brief as “*an analysis of the speech*”,<sup>1423</sup> but that actually constitutes a complete, unfounded and unsustainable interpretation of Charles Blé Goudé’s words, containing misinformation. The Prosecution substitutes information with its own speculations as to the “true” meaning of Charles Blé Goudé’s words.

576. To restore the genuine content of the two excerpts, the Defence would like to recall its response to the Prosecution’s request to submit the two excerpts to the case record pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings.<sup>1424</sup>

577. The Prosecution claimed that these two excerpts in addition to the excerpt that the Prosecution presented to Witness P-0369 form the fullest available reading of the Baron Bar speech. Further, the Prosecution submitted that the Baron Bar speech lasted no more than 8 to 10 minutes. The Prosecution’s assertions are simply unsubstantiated. Firstly, the Defence had in its possession another excerpt from Charles Blé Goudé’s speech that it disclosed and submitted to the Chamber,<sup>1425</sup> following a Chamber’s decision issued on 15 May 2017.<sup>1426</sup> The videos recorded during Charles Blé Goudé’s speech are, to date, limited to four excerpts.<sup>1427</sup>

<sup>1422</sup> P-0440, T-158-CONF-FRA ET, pp 86-88.

<sup>1423</sup> Trial Brief, para. 551; See Prosecution’s application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech, ICC-02/11-01/15-875, 12 April 2017.

<sup>1424</sup> Defence Consolidated Response to the Prosecution requests ICC-02/11-01/15-874 and ICC-02/11-01/15-875, ICC-02/11-01/15-882-Conf, 24 April 2017, paras 14-23.

<sup>1425</sup> Defence submissions pursuant to the Chamber’s order concerning the Baron Bar speech video (ICC-02/11-01/15-921), ICC-02/11-01/15-930-Conf, 24 May 2017.

<sup>1426</sup> Consolidated decision on three Prosecutor’s Applications for extension of time limits and submission of evidence (filings 869, 874 and 875), ICC-02/11-01/15-921, 15 May 2017.

<sup>1427</sup> CIV-D15-0001-0586, CIV-OTP-0064-0087, CIV-OTP-0043-0269 and CIV-D25-0038-0001.

Therefore, the Prosecution cannot at this juncture submit that the Chamber has before it the fullest reading available of the speech. Secondly, although the Prosecution admits that it does not have a recording of the speech in full, it nevertheless sustains that the speech lasted from 8 to 10 minutes.<sup>1428</sup> Since the Prosecution did not, as a diligent Prosecution would, save the recordings of the alleged full speech when it was supposedly available, neither the Defence nor the Chamber can verify whether the speech did in fact last only 8 to 10 minutes, and whether important portions of the speech are missing from the case record. The Defence submits that the speech did not last 10 minutes, but in fact was much longer given that the speech was conducted during a meeting that was held during the middle of the post-electoral crisis where large portions of the population were moving from Abobo to seek safety from the *Commando Invisible*.<sup>1429</sup>

578. Moreover, the Defence takes issue with the Prosecution's submissions regarding the relevance and the probative value of the two excerpts. It is clear that three excerpts the Prosecution submitted into evidence contain exculpatory material in that: (1) Charles Blé Goudé denounces the slitting of people's throat,<sup>1430</sup> (2) he urges the crowd to not fall into the trap of civil war,<sup>1431</sup> and (3) he insists that he does not want civilians to fight each other.<sup>1432</sup> These portions of the speech do not fit the Prosecution's theory about Charles Blé Goudé's Baron Bar speech, and thus the Prosecution used paragraph 43 to give an unfounded interpretation of it and to subjectively qualify Charles Blé Goudé's words, which was outside the scope of paragraph 43.

579. In seeking to introduce item CIV-D15-0001-0586, the Prosecution stated *inter alia* that the video is relevant because it shows "*how Mr Blé Goudé instilled the pro-Gbagbo youth with fear that Laurent Gbagbo's political opponents, with support from the international community, would perpetuate massacres, even genocide, if the pro-*

<sup>1428</sup> Prosecution's application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech, ICC-02/11-01/15-875, 12 April 2017, para. 12.

<sup>1429</sup> See P-0449, T-159-CONF-FRA CT, p. 37.

<sup>1430</sup> See ICC-02/11-01/15-875-AnxB, p. CIV-OTP-0094-0025, lns. 43-51; ICC-02/11-01/15-875-AnxC, p. CIV-OTP-0097-0216, lns. 96-101.

<sup>1431</sup> See ICC-02/11-01/15-875-AnxC, p. CIV-OTP-0097-0216, lns. 96-97.

<sup>1432</sup> See ICC-02/11-01/15-875-AnxC, p. CIV-OTP-0094-0025 lns. 53-54 (« *j'insiste là-dessus devant la presse, je ne veux pas d'affrontement entre civils en COTE D'IVOIRE* ») (emphasis added).

*Gbagbo youth did not follow Charles Blé Goudé's guidance.*"<sup>1433</sup> The Defence notes that in the excerpt Charles Blé Goudé never says that the youth must follow his instructions in order to avoid genocide or massacres. Thus, the video does not support this allegation. The Chamber only faces the Prosecution's mere interpretation of the said excerpt.

580. The Prosecution added that Charles Blé Goudé's words were not a call to peace because of the tenor of the rest of the speech. However, in none of the excerpts cited by the Prosecution does Charles Blé Goudé call on violence against civilians, on the contrary, as submitted above Charles Blé Goudé expressly states that he does not want civilians to fight one another. Thus, the submission of the two excerpts cannot assist the Chamber in determining whether it is less or more probable that Charles Blé Goudé gave instructions to commit violence against civilians or delivered a "*mot d'ordre*" to do so. He asks the crowd to report the presence of unknown individuals in their neighbourhoods, and to stop ONUCI vehicles. The Prosecution has not produced further evidence supporting this was a call to violence against a civilian population.

581. Similarly, instead of providing information as to the probative value of the two excerpts submitted by the Prosecution on 12 April 2017, the Prosecution provided the Chamber with its legal qualification of certain phrases taken from Charles Blé Goudé's speech. Thus, for excerpt CIV-D15-0001-0586 the Prosecution submitted that the excerpt shows "*Mr Blé Goudé's control, and his assertion of his control over the pro-Gbagbo youth, and his knowledge of their readiness to carry out...acts of violence.*"<sup>1434</sup> The alleged control that Charles Blé Goudé would have had on the youth is not a fact but is a legal conclusion to be made by the Chamber. In this regard, the Defence submits that a video clearly cannot show control and thus, does not support the allegation.

582. With respect to the second excerpt the Prosecution submitted, namely CIV-OTP-0064-0087, the Prosecution submitted that the video has probative value since it shows Charles Blé Goudé's ability to lead the youth in a coordinated fashion and

<sup>1433</sup> Prosecution's application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech, ICC-02/11-01/15-875, 12 April 2017, para. 19.

<sup>1434</sup> Prosecution's application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech, ICC-02/11-01/15-875, 12 April 2017, para. 19.

because it implies that there was a system of reporting through which Charles Blé Goudé was informed of the youths' activities.<sup>1435</sup> The Prosecution did not adduce information in support of these conclusions. It simply presents the Chamber with its own interpretation of Charles Blé Goudé's message at the Baron Bar. As the Prosecution is well aware, Charles Blé Goudé's did not call the youth to go to the Golf Hotel one week after giving his Baron Bar speech, and what's more the Prosecution does not allege that the youth attacked it. Therefore, the Prosecution submitting that there were reporting systems in place and that the youth were organized in a coordinated fashion is based on pure speculation and does not reflect the excerpts reliability or their importance in advancing the Chamber's inquiries with regard to Charles Blé Goudé's actions during the post electoral crisis.

583. On 15 May 2017, the Defence submitted into evidence the excerpt of the Baron Bar speech in its possession,<sup>1436</sup> pointing out some elements that did not appear in the excerpts submitted earlier by the Prosecution, in light of the written statement of Witness [REDACTED]. The Defence has pointed out that in the video CIV-OTP-0074-0083, the scene where the crowd is shouting "*on veut pas*", appears before the speech of Charles Blé Goudé at minute 16:34:14, while in the video CIV-D25-0038-0001, submitted by the Defence, it appears after Charles Blé Goudé's speech.<sup>1437</sup> Therefore, the Defence submits that the order of the events at the Baron Bar on that day is vital truth-seeking mission of the Chamber and that the excerpts submitted into evidence must be appreciated for what they are: excerpts that are limited in duration but that reflect the sequencing of part of the speech.

584. To conclude, the Prosecution failed to prove that the Baron Bar speech "*was the mot d'ordre that [Charles] BLE GOUDE had primed the youth and militias to receive*".<sup>1438</sup> Instead, the Prosecution has provided the Chamber with a complete and detailed misinterpretation of Charles Blé Goudé's words that fits its narrative of the events that unfolded in February and March 2011. The reality, embodied by the videos of the three excerpts of the speech, instead reveals that no actual "*mot d'ordre*"

<sup>1435</sup> Prosecution's application to submit video evidence related to the Bar le Baron speech, to present fullest possible reading of the speech, ICC-02/11-01/15-875, 12 April 2017, para. 25.

<sup>1436</sup> CIV-D25-0038-0001.

<sup>1437</sup> Defence submissions pursuant to the Chamber's order concerning the Baron Bar speech video (ICC-02/11-01/15-921), ICC-02/11-01/15-930-Conf, 24 May 2017, ICC-02/11-01/15-930-Conf, paras 10-12.

<sup>1438</sup> Trial Brief, para. 551

of violence against civilians has been delivered by Charles Blé Goudé on 25 February 2011 and after that date. The speech was, on the contrary a call to peaceful action.

- iii. The events of 25 February 2011 were not prompted by Charles Blé Goudé's alleged "mot d'ordre"

585. The Prosecution alleges that "[f]ollowing [Charles] BLE GOUDE's mot d'ordre at Le Baron Bar, many pro-GBAGBO youth attacked the Doukouré/Lem neighbourhood".<sup>1439</sup> Once again, the Defence notes that, for substantial parts of the developments related to this allegation, the Prosecution relies upon uncorroborated evidence, citing isolated excerpts of single witnesses.<sup>1440</sup> The Defence also submits that the Prosecution provides a biased narrative of the events that took place in Yopougon on 25 February 2011, ignoring substantial parts of the testimonies given by witnesses called by the Prosecution itself. For the foregoing reasons, the Defence hereby restores the crucial elements which were left out by the Prosecution.

586. On a temporal level, P-0449 provided a complete time line for Le Baron Bar speech as he effectively attended it.<sup>1441</sup> He arrived at Le Baron Bar at 9:00 am but the speech did not start before 11:00 am and ended around 1:00 pm.<sup>1442</sup> In this regard, P-0449 explained that in Côte d'Ivoire, meetings generally start with at least a one-hour time lag, in order for the audience to fill the room.<sup>1443</sup> Several witnesses testified that the violence in Yopougon Doukouré, on 25 February 2011, started before Charles Blé Goudé's speech at Le Baron Bar was terminated or even started.<sup>1444</sup>

587. On the nature of the events that took place in Yopougon on 25 February 2011, the Defence submits that there was a long-time pre-existing conflict between the neighbourhoods of Doukouré and Yao Sehi that has been confirmed by several witnesses.<sup>1445</sup> Several witnesses testified that the fights between the neighbourhoods of Doukouré and Yao Sehi predated the post-electoral crisis, so that contrary to the

<sup>1439</sup> Trial Brief, para. 552.

<sup>1440</sup> See, for instance, Trial Brief, para. 554, footnotes 1611-1616.

<sup>1441</sup> P-0449, T-159-CONF-FRA CT, p. 37 ; T-160-CONF-FRA CT, pp. 4-5.

<sup>1442</sup> P-0449, T-159-CONF-FRA CT, p. 37.

<sup>1443</sup> P-0449, T-160-CONF-FRA CT, pp. 4-5.

<sup>1444</sup> See P-0438, T-150-CONF-FRA CT, p. 8 ; P-0433, T-147-CONF-FRA CT, p. 20 ; P-0109, T-154-CONF-FRA CT, pp. 32-33, 47.

<sup>1445</sup> P-0442, T-20-CONF-FRA CT, pp.59-60, T-21-CONF-FRA CT, pp. 20-21, 28-29; P-0436, T-149-CONF-FRA ET, pp. 4-5, 17, 47-48; P-0433, T-147-CONF-FRA CT, pp. 17-22, 85; P-0109, T-54-CONF-FRA CT pp. 93-98.

Prosecution's assertion, the fights that happened between them were another clash between two conflictual neighbourhoods and not an aggression from one to another. In this regard, the Defence notes two determining elements. First, P-0449 confirmed that the fights started after people from Doukouré burnt down a bus in Yao Sehi, an event that happened before the start of Charles Blé Goudé's speech.<sup>1446</sup> Second, people from Doukouré strongly took part to the conflict, stoning people from Yao Sehi.<sup>1447</sup> Witness P-0109 identified the people who attacked the Doukouré neighbourhood as people from the Yao Sehi neighbourhood but did not identify them as being pro-Gbagbo youth.<sup>1448</sup>

588. Contrary to the Prosecution's allegation, Witness P-0442 did not describe the "*pro GBAGBOs*" who had attended Charles Blé Goudé's meeting at Le Baron Bar coming down the *Boulevard Principal* and throwing stones at the Doukouré residents. The witness actually said that after the meeting, people that he identified as pro-Gbagbo came to a place that is not identified in the quoted excerpt, and threw stones at people.<sup>1449</sup> First, he did not attend the meeting himself and, therefore, had no knowledge whether it was already finished or not. Second, he did not say that the people who threw stones had attended the meeting or not. Third, he did not explain how he identified the people who were throwing stones as pro-Gbagbo. Therefore, the evidence does not support the allegation.

589. The Prosecution alleges that "[t]he *pro-GBAGBO youth were supported by police officers from the 16<sup>th</sup> district police station, together with militia members*", relying upon P-0433, P-0436 and P-0442's testimony. However, P-0109 testified that there was no intervention from the police agents stationed at the police station of 16e arrondissement.<sup>1450</sup> Also, when the Prosecution alleges that "*Witness P-0109 identified those firing as youth militias*", it is only an inference from the witness who "thinks" they were militias.<sup>1451</sup>

<sup>1446</sup> P-0449, T-160-CONF-FRA CT, pp. 4-8 ; See also P-0436, T-149-CONF-FRA CT, pp. 47-48 ; P-0440, T-157-CONF-FRA CT, pp. 17-18.

<sup>1447</sup> P-0109, T-154-CONF-FRA CT, pp. 41-42 ; P-0433, T-147-CONF-FRA ET, pp. 85; P-0442, T-20-CONF-FRA CT, p. 59-60, T-21-CONF-FRA CT, pp. 20-21, 28-29.

<sup>1448</sup> P-0109, T-154-CONF-FRA CT, pp. 34-35.

<sup>1449</sup> P-0442, T-19-CONF-FRA CT, p.86.

<sup>1450</sup> P-0109, T-154-CONF-FRA CT, p. 42.

<sup>1451</sup> P-0109, T-154-CONF-FRA CT, pp. 39, lns. 4-8.

590. The Prosecution relies upon Witness P-0441 to support the allegation that an individual known as “Agbolo”, who, allegedly, was Charles Blé Goudé’s bodyguard, accompanied militiamen who arrived at the Lem Mosque of Yopougon. However, the witness did not mention how he knew that Agbolo was Charles Blé Goudé’s bodyguard and did not deliver the source of the information.<sup>1452</sup> As such, the evidence amounts to anonymous hearsay, which no reasonable chamber could accept.

iv. The alleged proliferation of roadblocks after 25 February 2011 cannot be attributed to Charles Blé Goudé’s speech

591. The Prosecution alleges that “[u]pon Charles BLE GOUDE’s mot d’ordre at Le Baron Bar on the morning of 25 February 2011, roadblocks began to proliferate in Yopougon”.<sup>1453</sup>

592. First, the Defence notes that the Prosecution does not dispute the fact that roadblocks pre-existed Charles Blé Goudé’s speech of 25 February 2011.<sup>1454</sup>

593. Second, contrary to the Prosecution’s allegation, Witness P-0449 confirmed that the erection of roadblocks was spontaneous, uncoordinated and that the only goal of roadblocks was to secure the neighbourhood and the *cité* to keep the area safe.<sup>1455</sup> He also testified that the people at roadblocks did not target specific categories of the population or specific ethnic groups.<sup>1456</sup> Finally, he told the Chamber that roadblocks were held by people coming from the same neighbourhood and all ethnic groups were represented.<sup>1457</sup>

594. A video recorded by Witness P-0088 and shown to Witness P-0087<sup>1458</sup> highlights the fact that roadblocks were used as self-defence and thus not based on any “order”. Indeed, in this clip,<sup>1459</sup> a young man interviewed at a roadblock explains that they have to defend themselves since they are being attacked and some of their relatives

<sup>1452</sup> P-0441, T-35-CONF-FRA CT, p.67.

<sup>1453</sup> Trial Brief, para. 557.

<sup>1454</sup> P-0625, T-32-FRA CT, p. 39-40.

<sup>1455</sup> P-0449, T-159-CONF-FRA CT, pp. 101-103; See also P-0087, T-177-ENG CT, p. 19.

<sup>1456</sup> P-0449, T-159-CONF-FRA CT, p. 100.

<sup>1457</sup> P-0449, T-159-CONF-FRA CT, p. 101.

<sup>1458</sup> Video, 29 March 2011, CIV-OTP-0015-0594 (transcript CIV-OTP-0021-0013; translation CIV-OTP-0021-0109); P-0087, T-178-ENG CT, pp. 87-91.

<sup>1459</sup> Video, 29 March 2011, CIV-OTP-0015-0594, 03:10 – 09:11 (transcript CIV-OTP-0021-0013; translation CIV-OTP-0021-0109); P-0087, T-178-ENG CT, pp. 87-91.



have been killed in Abobo and they feel they are in a position of legitimate defence. They say they organised themselves and there is no authority that told them to create the roadblocks, which once again, confirms the spontaneous character of the roadblocks.

595. Witness P-0087 also told the Chamber that while he was at a roadblock he did not see people being checked on the basis of ethnicity and that the people holding the roadblock were not armed.<sup>1460</sup>

596. Another video from Witness P-0088 shows young people at a roadblock telling P-0087 that nobody gave them weapons and that they found some machetes by themselves.<sup>1461</sup> It is not accurate to assert that the erection of roadblocks after 25 February 2011 derived from Charles Blé Goudé's speech at Le Baron Bar. Witness P-0097 provided another reasonable explanation to the alleged proliferation of roadblocks:

I know and I would add that the press revealed or reported the rallies at the Baron Bar in Yopougon. They reported them. And in addition, they said that the youth started to set up roadblocks. They started to ransack *ngbakas* or destroy *ngbakas*. But after my investigation I had two versions. There was the version provided by the press that said that on instructions of Blé Goudé, this destruction began; and I had a second version which was that some young people had rebelled against the transporters, who at that time were always respecting the instructions of Mr Alassane Ouattara, who was giving instructions for there to be a *ville morte*, a dead city, notably that life was to come to a halt, you know, in terms of transport, et cetera, et cetera. Now, as logic would have it in Côte d'Ivoire, transporters or transport companies are in the majority, and they are supporters of Mr Alassane Ouattara. And the Young Patriots held it against them that they always respected this or these instructions.<sup>1462</sup>

<sup>1460</sup> P-0087, T-178-ENG CT, p. 91; See also [REDACTED]; See also Motion, *Section III.2.B.iii Insufficient evidence of roadblocks being part of an alleged policy*.

<sup>1461</sup> CIV-OTP-0015-0595 at 00:01:45-00:02:20 (transcript CIV-OTP-0021-0026 at 0027-0028, lns. 32-37; translation CIV-OTP-0021-0078).

<sup>1462</sup> P-0097, T-49-CONF-FRA CT, p. 12.

597. Besides, several witnesses testified that, in Yopougon Doukouré, where according to the Prosecution's allegations, the youth was not favourable to Laurent Gbagbo, the youth erected their own roadblocks as from 25 February 2011.<sup>1463</sup>

598. Witness P-0097 also provided evidence that refutes the Prosecution theory. Before Charles Blé Goudé's speech at Le Baron Bar on 25 February 2011, the *Commando Invisible* had erected roadblocks in Abobo, to harass the governmental forces, to a point that it was almost impossible for these governmental forces to enter the neighbourhood. He personally witnessed these roadblocks held by the *Commando Invisible*.<sup>1464</sup> Witness P-0297 also provided extensive evidence on the roadblocks set up by the *Commando Invisible* in Abobo and PK 18, with the support of, at least, one policeman.<sup>1465</sup>

599. Therefore, the Prosecution has failed to prove that the proliferation of roadblocks after 25 February 2011 could be attributed to Charles Blé Goudé's speech at Le Baron Bar. The evidence shows that the erection of roadblocks was mostly spontaneous and that the *Commando Invisible* directed and managed several roadblocks in Abobo and PK18.

v. Charles Blé Goudé's alleged "mot d'ordre" was not disseminated

600. The Prosecution submits that alleged youth leaders such as Nicaise Douyou, Jean-Marie Konin and Idriss Ouattara disseminated Charles Blé Goudé's alleged "*mot d'ordre*".<sup>1466</sup> However, the Prosecution failed to prove that these individuals acted in furtherance of any alleged instructions coming from Charles Blé Goudé. As shown by the Prosecution, several speeches of Charles Blé Goudé were made in public and broadcast by the RTI. The fact that these individuals expressed themselves on television does not prove that they acted on behalf of Charles Blé Goudé. The Prosecution has failed to produce evidence on this essential element to its theory.

vi. The killings at roadblocks were not a result of Charles Blé Goudé's speech at Le Baron Bar

<sup>1463</sup> See P-0436, T-149-CONF-FRA, pp. 5-7; P-0433, T-147-CONF-FRA, pp. 51-52.

<sup>1464</sup> P-0097, T-49-CONF-FRA CT, p. 50 ; See also P-0106, T-116-CONF-FRA CT, p. 42 ; [REDACTED].

<sup>1465</sup> P-0297, T-192-CONF-FRA CT, pp. 34-35, 37, 39-40 ; See also P-0364, T-190-CONF-FRA CT, pp. 11-13, 20-21.

<sup>1466</sup> Trial Brief, paras 563-566.

601. After alleging that “[u]pon Charles BLE GOUDE’s *mot d’ordre* at Le Baron Bar on the morning of 25 February 2011, roadblocks began to proliferate in Yopougon”,<sup>1467</sup> the Prosecution describes several acts of violence that allegedly occurred at these roadblocks.<sup>1468</sup> In this regard, the Defence notes that, in the Trial Brief, the Prosecution achieved an inaccurate and misinforming amalgamation between the erection of roadblocks and the alleged violence that happened at these roadblocks, attributing it to Young Patriots following Charles Blé Goudé’s alleged *mot d’ordre*. It is not denied that acts of violence and racketeering happened at roadblocks in Abidjan during the post electoral crisis. However, these incidents shall be separated from the phenomenon of roadblocks erection. Generally speaking, acts of violence have been reported in the whole city of Abidjan, regardless of the existence of roadblocks. Contrary to the Prosecution’s allegations, victims of violence during the post electoral crisis are from various ethnic groups and not only the ethnic groups that the Prosecution identifies as being “pro-Ouattara”.<sup>1469</sup> The fact that acts of violence happened at roadblocks is hence insufficient to establish a nexus between Charles Blé Goudé and these acts of violence. Regarding this specific allegation, the Defence submits that the Prosecution has failed to prove a nexus between the “*mots d’ordres*”, allegedly given Charles Blé Goudé and the acts of violence that happened at roadblocks.

602. The Prosecution also relies upon UNOCI call centre reports to support the allegation. However, when those reports were tendered into evidence by the Prosecution, through a motion pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings,<sup>1470</sup> the Defence raised objections as to their lack of reliability.<sup>1471</sup> The Defence submits that these documents bear no signature, and their authors cannot be identified. During the cross-examination of P-0414, the Defence was able to reveal the lack of reliability of the call centre reports. First, the Prosecution acknowledged

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<sup>1467</sup> Trial Brief, para. 557.

<sup>1468</sup> Trial Brief, paras 557-562.

<sup>1469</sup> See, for instance, Special Report on Anonkoua-Kouté Attacks, CIV-OTP-0044-0309; Extrait video sur l'exode des populations a Abobo, CIV-D15-0001-0565 (transcript at CIV-D25-0037-0007; Video Découvertes macabres à Duékoué, CIV-D15-0001-3931 (transcript at CIV-D15-0004-1467).

<sup>1470</sup> Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings, ICC-02/11-01/15-895-Conf, 28 April 2017.

<sup>1471</sup> Defence Response to the “Prosecution’s application for the introduction of documentary evidence under paragraphs 43-44 of the directions on the conduct of the proceedings” (ICC-02/11-01/15-895-Conf), ICC-02/11-01/15-1028 Conf with Confidential Annex A, 15 September 2017.

that the witness was not in a position to authenticate the documents shown to her in court as she did not draft them all. As a consequence, the Prosecution announced that they would not ask her to authenticate the documents.<sup>1472</sup> Second, the witness acknowledged that during the post electoral crisis, the call centre may have been used as a tool of propaganda by the people who called it.<sup>1473</sup> Third, the witness said that the call centre did not have any way of verifying the identity of the callers or where the call came from.<sup>1474</sup> Fourth, the witness acknowledged that when a person was mentioned as the attacker, this person was automatically assumed to be the alleged perpetrator without any verification.<sup>1475</sup> Fifth, the witness said that the call centre did not have any way of locating the provenance of the calls.<sup>1476</sup> Sixth, the witness indicated that, to her knowledge, no step was taken to verify the source of the calls based upon the numbers which had been displayed.<sup>1477</sup> Seventh, according to the witness, the accounts of facts that appear on the call centre reports are only summaries. In their original electronic version, such summaries are clickable and lead to further information, including the source of information, i.e. whether the person who called reported direct events or hearsay. As the versions of the call centre reports disclosed by the Prosecution only contain the summaries and not the hyperlink leading the specific information, it is not possible for the Chamber, the parties and the participants to determine whether the events reported have been directly witnessed or come from hearsay, whether identified or anonymous.<sup>1478</sup> Eighth, the witness acknowledged that the information contained in the Daily situation reports and the call centre reports were “allegations”.<sup>1479</sup> For their general and serious lack of reliability, the reports from the UNOCI call centre could not be considered by a reasonable trial chamber in the assessment of the Motion. The Defence incorporates by reference its demonstration of the lack of reliability of all the reports that were made by UNOCI on the basis of those call centre reports.<sup>1480</sup>

<sup>1472</sup> P-0414, T-74-CONF-FRA CT, p. 32, lns. 12-16.

<sup>1473</sup> P-0414, T-74-CONF-FRA CT, pp. 75-76.

<sup>1474</sup> P-0414, T-74-CONF-FRA CT, p. 77, lns. 23-28.

<sup>1475</sup> P-0414, T-76-CONF-FRA CT, p.50, lns. 6-11.

<sup>1476</sup> P-0414, T-74-CONF-FRA CT, p. 78, lns. 1-5.

<sup>1477</sup> P-0414, T-74-CONF-FRA CT, p. 78, lns. 6-8.

<sup>1478</sup> P-0414, T-75-CONF-FRA CT, pp. 9-10; P-0414, T-76-CONF-FRA CT, pp. 47-48.

<sup>1479</sup> P-0414, T-75-CONF-FRA CT, p. 8, lns 14-27; T-76-CONF-FRA CT, pp. 44-45.

<sup>1480</sup> See Motion, Section III.2.B.iii. *Insufficient evidence of roadblocks being part of an alleged policy.*

603. The Defence notes that, to substantiate the allegation of continuous killings at roadblocks, the Prosecution relies upon a police report<sup>1481</sup> allegedly dated 4 March 2011. The Defence submits that the report is neither dated, nor signed and thus, cannot be authenticated. The Defence notes that the content of the document does not support a nexus between Charles Blé Goudé's speech on 25 February 2011 and the killings that happened at the roadblocks in February and March 2011. Notably, the document reads:

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.<sup>1482</sup>

604. The Defence therefore submits that the police report invoked by the Prosecution to prove that killings at roadblocks derived Charles Blé Goudé's speech that Le Baron Bar actually proves the contrary. Amongst the roadblocks were criminals who took advantage of the situation to commit crimes against the civilians who approached the roadblocks.

605. The Prosecution also relies upon an [REDACTED]<sup>1483</sup> to support the allegation, deliberately concealing its exculpatory content:

Tous ces abus ont pour conséquences de dévoyer la noble action de ces groupes d'autodéfense qui essayent de répondre à l'appel du ministre Charles Blé Goudé à l'intrusion des combattants rebelles dans le district d'Abidjan en général et dans la commune de Yopougon en particulier.

Suggestion: il serait souhaitable que ces jeunes soient répertoriés et rattachés à des barrages bien précis, soutenus par un encadrement adéquat, intéressés pour éviter le racket.<sup>1484</sup>

606. Witness P-0046 testified that, despite this [REDACTED], no measures were taken to identify the youth that committed extra-judicial killings and to quarantine them.<sup>1485</sup>

<sup>1481</sup> Préfet de Police Report, 4 March 2011, CIV-OTP-0045-0135.

<sup>1482</sup> Préfet de Police Report, 4 March 2011, CIV-OTP-0045-0135, at 135.

<sup>1483</sup> [REDACTED], CIV-OTP-0045-0127.

<sup>1484</sup> [REDACTED], CIV-OTP-0045-0127, at 128.

<sup>1485</sup> P-0046, T-126-CONF-FRA CT, pp.36-38.

However, the Prosecution has failed to produce any evidence that Charles Blé Goudé could be held responsible for this absence of measures. The Prosecution has indeed failed to prove that Charles Blé Goudé had any means to intervene before the police or to pressure their administration to take measures. Additionally, as shown by the Defence, Charles Blé Goudé took measures himself to stop the violence at roadblocks.<sup>1486</sup>

607. P-0097 also clarified that the people holding the roadblocks did not carry weapons. During his testimony, he explained that acts of racketeering could happen at roadblocks, but they were due to general poverty: *“After that, the roadblocks became a form of extortion. They just wanted some money so they could have something to eat.”*<sup>1487</sup>

608. Therefore, the Defence submits that the Prosecution has failed to prove that the racketeering, killings and other acts of violence that happened at roadblocks in Yopougon was a consequence of Charles Blé Goudé’s speech at Le Baron Bar.

609. Moreover, the Prosecution alleges that certain categories of the population and certain ethnic groups were targeted at roadblocks. However, Witness P-0449 testified that it was not the case. Taking into account the fact that roadblocks were organised by neighbours, Witness P-0449 was asked whether people from all ethnic groups were present at roadblocks, which he confirmed.<sup>1488</sup> Therefore, the Defence submits that the Prosecution has failed to prove that certain categories of the population and certain ethnic groups were targeted at roadblocks.

vii. The Prosecution failed to prove that Charles Blé Goudé was informed of the violence committed at roadblocks

610. The Prosecution alleges that Charles Blé Goudé was informed of the violence committed at roadblocks and did not take any measures to stop it.<sup>1489</sup> However, the Defence submits that it has failed to prove the allegation.

<sup>1486</sup> See Motion, VI.4.A.viii. *Charles Blé Goudé made several attempts to end the violence in Yopougon.*

<sup>1487</sup> P-0097, T-49-CONF-ENG CT, p. 14; P-0097, T-49-CONF-FRA CT, p. 16.

<sup>1488</sup> P-0449, T-159-CONF-FRA CT, pp. 100-103.

<sup>1489</sup> Trial Brief, paras. 568-569.

611. The Prosecution relies upon Witness P-0440 to allege that Charles Blé Goudé obtained knowledge of the violence at roadblocks through the Director General of the National Police. However, P-0440 only said that he informed the Director General of the National Police through a report he sent on 28 February 2011. He did not know what happened after and whether or not Charles Blé Goudé had been informed of the report.<sup>1490</sup> For the foregoing reasons, the Prosecution has failed to prove that Charles Blé Goudé acquired knowledge of the violence at roadblocks around 28 February 2011.

612. Witness P-0440 testified that around 3 March 2011, he and his immediate superior, Yopougon District Head Jean-Louis Tiagnéré, visited Charles Blé Goudé to ask him to put a stop to the roadblocks.<sup>1491</sup> According to the witness, they went to see Charles Blé Goudé at the COJEP headquarters in Toits Rouges. Although the witness accompanied Tiagnéré, he did not attend the meeting between him and Charles Blé Goudé. Therefore, Witness P-0440 has no direct knowledge of the content of their discussion.<sup>1492</sup> He also testified that “*he understood from Tiagnere’s silence on the way back that the conversation had been a failure*”,<sup>1493</sup> which amounts to opinion evidence. The personal and subjective interpretation of a silence cannot serve as evidence before the Chamber.

viii. Charles Blé Goudé made several attempts to end the violence in Yopougon and at roadblocks

613. Contrary to the Prosecution’s allegations, Charles Blé Goudé made several attempts to stop the violence at roadblocks. In an attempt to distort the evidence, the Prosecution uses an interview given by Charles Blé Goudé to the RTI on Friday 4 March 2011 to support that he did not react to the violence committed at roadblocks. However, the content of the interview reveals the contrary.<sup>1494</sup>

614. As quoted by the Prosecution in the Trial Brief, Charles Blé Goudé said:

<sup>1490</sup> P-0440, T-157-CONF-FRA CT, pp. 27-28.

<sup>1491</sup> *Ibid.*

<sup>1492</sup> *Ibid.*

<sup>1493</sup> *Ibid.*; See Trial Brief, para. 568.

<sup>1494</sup> Video, CIV-OTP-0026-0018 at 01:05:49-01:15:07 (excerpt from RTI broadcast of 4 March 2011 at 20h; transcript at CIV-OTP-0051-2220 at 2240-2242, lns. 758-872).

Des militants du RHDP ont incendié un autobus, ce qui a provoqué la réaction des jeunes de Yopougon qu'ont incendié [...] ce qu'on appelle communément les gbakas. Et depuis c'était une atmosphère de suspicion qui régnait à Yopougon et nous avons décidé de jouer notre rôle en approchant les deux camps qui finalement ont accepté de s'asseoir [sic] ce soir. Nous avons d'abord rencontré ... je veux dire ... nous approché chaque camp. Et aujourd'hui nous avons rencontré les deux camps et puis la réconciliation a été scellée dans un langage de franchise.

[...]

Ils se sont vraiment parlé franchement et les chauffeurs de baca [sic] ont donc demandé la sécurité pour rouler. Les Jeunes patriotes, main dans la main avec les chauffeurs de baca [sic] vont essayer de coordonner cette activité demain matin et puis... le transport va reprendre à Yopougon. Ce que nous leur avons dit, c'est que les problèmes politiques se règlent dans un cadre politique. Et il faut que les chauffeurs de baca [sic], les chauffeurs de taxi, puissent comprendre que leur gagne-pain, ce sont leurs instruments de travail. Il faut éviter de mélanger la politique avec tout cela.<sup>1495</sup>

615. Therefore, the Prosecution ignores the initiatives taken by Charles Blé Goudé to act as a mediator in Yopougon and the positive actions he undertook to stop the violence in the neighbourhood.

616. During the same interview, Charles Blé Goudé clearly said, with respect to the roadblocks:

J'ai fini de réconcilier ceux de YOPOUGON. Je vais maintenant prendre mon parti de [...] pour aller vers KOUMASSI parler aux uns et autres. Mais en conclusion, retenez que le transport reprend demain à YOPOUGON. J'en profite pour lancer un message à ceux qui dressent les barrages dans les quartiers, je leur ai dit de protéger leur quartier. Mais il y a trop d'anarchie là-dedans. Hein, à chaque 15 mètres, on trouve les barrages, il faut réguler ça, camarades, il faut réguler ça et il faut éviter de racketter les gens parce que nous, nous voulons assurer la sécurité des gens avec politesse, éviter de tomber dans le piège de vous attaquer aux Sénégalais, aux Togolais, par-ci, par-là. Parce qu'avant

<sup>1495</sup> Video, CIV-OTP-0026-0018 at 01:06:22-01:07:42 (excerpt from RTI broadcast of 4 March 2011 at 20h; transcript at CIV-OTP-0051-2220 at 2240, lns. 767-780). *Emphasis added*.



tout, moi je suis panafricaniste dans l'âme. Donc il faut éviter cela, parce qu'on veut nous pousser à la faute. On veut nous pousser [...]<sup>1496</sup>

617. First, the Defence notes that Charles Blé Goudé addresses “*ceux qui dressent des barrages*” (those who erect roadblocks) in the last part of his statement, immediately saying “*je leur ai dit de protéger les quartiers*” (I told them to protect the neighbourhoods), which reveals that the only message he transmitted was to protect the neighbourhoods. The fact that some people chose to erect roadblocks obliged him to address them specifically. However, the structure of the message, as quoted in the Trial Brief,<sup>1497</sup> reveals that he did not direct or instruct people to erect roadblocks.

618. Second, on 4 March 2011, simultaneously with the meeting he allegedly had with Tiagnéré, according to P-0440,<sup>1498</sup> Charles Blé Goudé directed the people holding the roadblocks to stop any act of violence and racket, even making it a personal issue: “*il faut éviter de racketer les gens parce que nous, nous voulons assurer la sécurité des gens avec politesse, éviter de tomber dans le piège de vous attaquer aux Sénégalais, aux Togolais, par-ci, par-là. Parce qu'avant tout, moi je suis panafricaniste dans l'âme.*”<sup>1499</sup>

619. On 18 March 2011, Charles Blé Goudé, once again, condemned the acts of violence and reiterated his call to act with kindness.<sup>1500</sup> The Prosecution failed to prove that when he condemned the actions of people hiding Kalashnikovs under civilian clothes, he did not refer to the persons holding roadblocks but the individuals who attacked these persons.<sup>1501</sup> However, his statement is more global than what the Prosecution submits and the distinction it draws is purely speculative. The statement made by Charles Blé Goudé on 18 March 2011 condemned all forms of violence against all individuals in Abidjan.

<sup>1496</sup> Video, CIV-OTP-0026-0018 at 01:05:49 - 01:15:07 (excerpt from RTI broadcast of 4 March 2011 at 20h; transcript at CIV-OTP-0051-2220, at 224, lns. 812-820). *Emphasis added.*

<sup>1497</sup> Trial Brief, paras 569 and 571.

<sup>1498</sup> See Motion, VI.4.A.vii. *The Prosecution failed to prove that Charles Blé Goudé was informed of the violence committed at roadblocks*

<sup>1499</sup> Video, CIV-OTP-0064-0131 at 00:08:05-00:11:17 (excerpt from RTI broadcast of 3 or 4 April 2011; transcript at CIV-OTP-0086-1168 at 1169-1171, lns. 1-80).

<sup>1500</sup> Video, CIV-OTP-0069-0374 at 00:25:42-00:27:34 (excerpt from RTI broadcast of 18 March 2011 at 20h; transcript at CIV-OTP-0087-0727 at 0728-0729).

<sup>1501</sup> Trial Brief, para. 581.

620. The next day, on 19 March 2011, he called for people to enrol in the regular army of Côte d'Ivoire, emphasizing that it was the only legal way to carry weapons, in a visible and repeated attempt to avoid militias and civilians carrying weapons. For this part related to the enrolment, the Defence incorporates by reference the relevant paragraphs of the Motion.<sup>1502</sup>

621. On 23 March 2011, Charles Blé Goudé gave a press conference at the Mayor's office in Cocody. Again, in the Trial Brief, the Prosecution only selected excerpts accompanied by a biased interpretation, detrimental to Charles Blé Goudé.<sup>1503</sup> The Defence submits, once again, that Charles Blé Goudé made another statement, firmly condemning the idea of a civil war in Côte d'Ivoire, calling people who voted for Laurent Gbagbo to go back to work and to take part to civic actions:

Nous allons aussi nous prononcer sur le climat politique en COTE D'IVOIRE, c'est-à-dire qu'il y a lieu de faire une précision, d'insister là-dessus : il n'y aura pas de guerre civile en COTE D'IVOIRE [...]. Il n'y aura pas de guerre civile en COTE D'IVOIRE [...] nous allons tout mettre en œuvre pour ne pas qu'il y ait de guerre civile en COTE D'IVOIRE [...]. Calme. Et j'insiste, et si vous voyez bien que j'insiste sur le fait qu'il n'y aura pas de guerre civile en COTE D'IVOIRE [...]. Parce que nous, nous ne voulons pas de cette guerre civile [...] allez-y, au travail, calmement. Calmement, allez-y, au travail. Nous voulons voir une, une ville d'ABIDJAN ... qui est embouteillée par les voitures, par vos mouvements pour aller au travail [...]. Et ce samedi-la, de 8 heures, jusqu'au dimanche à 8 heures, nous allons tous prendre nos nattes, nos balluchons [...] et nous allons camper devant le palais présidentiel, au PLATEAU [...]. En calme, allez-y, au travail. Que les commerces ouvrent, que les boutiques ouvrent ...<sup>1504</sup>

622. As to the meeting held by Charles Blé Goudé on 26 March 2011,<sup>1505</sup> the Prosecution bases its argumentation on partial excerpts, cited out of their original contexts and

<sup>1502</sup> See Motion, Section VI.4.C No nexus between Charles Blé Goudé's alleged recruitment activities and the alleged crimes.

<sup>1503</sup> P-0087 video, 23 March 2011, CIV-OTP-0015-0524 at 00:07:48-00:10:17 (transcript at CIV-OTP-0063-2914 at 2917, Ins. 99-123); See also Video 23 March 2011, CIV-OTP-0015-0526, at 00:00:00-00:00:26 (transcript at CIV-OTP-0063-2974, at 2975, Ins. 1-6) where Charles Blé Goudé calls for an "Inter-Ivorian dialogue".

<sup>1504</sup> P-0087 video, 23 March 2011, CIV-OTP-0015-0524 at 00:06:10-00:21:20 (transcript at CIV-OTP-0063-2914 at 2917-2921, Ins. 88-267).

<sup>1505</sup> P-0087 video, 26 March 2011, CIV-OTP-0015-0548 (transcript CIV-OTP-0019-0128).

deliberately forgetting significant statements made by Charles Blé Goudé. The Defence hereby intends to restore its genuine words:

[C]'est ce que je vous ai dit, je vous ai dit que ... en tant que leader, nous avons le devoir de désamorcer cette bombe. Vous comprenez? L'objectif d'un leader n'est pas seulement de vaincre, ce que nous devons gagner ici, la véritable victoire, c'est la victoire de la paix. Parce que ceux qui crient ainsi, qui nous acclament, ce qu'ils attendent de nous, c'est qu'ils vivent en paix. Et que chacun puisse avoir un travail décent qui puisse lui permettre de vivre dans un environnement de paix. C'est à ça que nous nous attelons.<sup>1506</sup>

On that occasion, regarding the fact that Charles Blé Goudé said on camera that in a revolution, there are always collateral effects was a response to a global question asked by Witness P-0087. The question was to know how long the situation could last, given the key element that the army would not necessarily be paid because of a lack of funding.<sup>1507</sup> Therefore, the Defence submits that the Prosecution tries to mislead the Chamber through a misinterpretation of Charles Blé Goudé's words.

623. Regarding the address allegedly made by Charles Blé Goudé on 3 or 4 April 2011,<sup>1508</sup> once again, the Defence notes that the Prosecution does not dispute the materiality of the dangers, killings and other exactions to which the individuals identified as supporters of Laurent Gbagbo were exposed during this period of time referred to as the "Battle for Abidjan".

624. The Prosecution alleges that, "[o]n 5 April 2011, [Charles] BLE GOUDE thanked and congratulated the patriots for their resistance and encouraged them to continue to resist and instructed the youth to reinforce roadblocks".<sup>1509</sup> The evidence used by the Prosecution to support the allegation actually proves the contrary. First, the Prosecution seems to allege that Charles Blé Goudé thanked and congratulated the people holding the roadblocks, which does not transpire from the video mentioned in support of the allegation. Second, Charles Blé Goudé emphasized the following

<sup>1506</sup> P-0087 video, 26 March 2011, CIV-OTP-0015-0548 at 00:00:40-00:02:40 (transcript CIV-OTP-0019-0128, at 129, lns. 11-16).

<sup>1507</sup> P-0087 video, 26 March 2011, CIV-OTP-0015-0548 at 00:02:04-00:03:38 (transcript CIV-OTP-0019-0128, at 129-130, lns. 23-42).

<sup>1508</sup> Trial Brief, paras 607-609.

<sup>1509</sup> Trial Brief, para. 610.

*“Dans vos quartiers, si vous voyez un mouvement suspect il faut le filmer et le faire parvenir à la télévision ivoirienne, il faut signaler tous ces mouvements suspects.”*<sup>1510</sup>

He only called upon people to use cameras and to send video footages to the RTI. By doing so, he emphasized a peaceful *modus operandi* aimed at informing the population through the media.

## **B. No nexus between Charles Blé Goudé’s speeches and the alleged crimes**

625. The Prosecution refers to a certain number of excerpts of Charles Blé Goudé’s speeches, always taken out of their context, to support its allegations that *“he mobilized the pro-Gbagbo youth to commit acts of violence in order to ensure the Gbagbo remained in power”*.<sup>1511</sup> This has not been demonstrated to the requisite threshold. Charles Blé Goudé never once called upon his audience to commit violent acts. This is corroborated by the testimony of P-0449, who attended many rallies organised by Charles Blé Goudé and who categorically indicated that he never heard him call upon his audience to attack people from the North of Côte d’Ivoire. He stated: *“Côte d’Ivoire is a hybrid nation and everyone has a link of some kind with someone from the North. So Mr Charles Blé Goudé had as president in Abou Bamba, president of the generation Blé Goudé, so he could not ask people to attack the people from the North; otherwise, he wouldn’t have been with those people. What is more, the idea of attacking, attacking foreigners -- well, you must realise, sir, that in Côte d’Ivoire nearly every family has a foreigner who is part of the family by marriage, so it would be asking people to attack a family member”*.<sup>1512</sup>

626. Charles Blé Goudé’s frequent use of the terminology *“Eternel des armées”* has been misconstrued by the Prosecution. Contrary to the Prosecution’s suggestions, this reference is completely unrelated to the actual army but is a biblical reference, best translated as *“Lord of Hosts”*. Yet, the Prosecution does not translate this term properly in its submissions so as to maintain some ambiguities as to Charles Blé Goudé’s statements.<sup>1513</sup>

<sup>1510</sup> Video, CIV-OTP-0047-0604 at 00:00:00-00:05:40 (transcript at CIV-OTP-0051-1681 at 1682, Ins.1-48).

<sup>1511</sup> Trial Brief, para. 797.

<sup>1512</sup> P-0449, T-160-CONF-FRA CT, p. 15, Ins. 14-26.

<sup>1513</sup> See, for instance, Charles Blé Goudé’s speeches of 14 and 18 December 2010 and 3 or 4 April 2011 as developed and referred to in the present section.

627. Contrary to the Prosecution's allegation, in every speech included in its own evidence, Charles Blé Goudé asks the youth to remain calm and expressly reiterates that violence is not an option or the solution to the conflict.

628. For instance, in his interview on 14 December 2010, Charles Blé Goudé insists that it is time to reassure the Ivoirians and to put them to work, that Côte d'Ivoire has sufficiently suffered. He wonders how much longer people are going to threaten each other and asks the youth to remain peaceful, that time has come to start working and let people talk, that Côte d'Ivoire is not in danger and the day it will be he will let them know. He is then calling all the youth, not only the LMP youth but all the young people of Côte d'Ivoire to meet with him the next day at the Palais de la Culture to discuss the future of Côte d'Ivoire and work together.<sup>1514</sup>

629. Charles Blé Goudé's speech in Yopougon on 18 December 2010 was made in the specific context of allegations made against him on the same day in the international media that he would have called the youth to pillage the ONUCI premises and to attack the Ouattara camp. Charles Blé Goudé clarifies that he has not made any calls to attack anyone. He further adds that the Patriots have no intention to attack the French residing in Côte d'Ivoire, that they have no intention to pillage French premises, that they will even protect the French in Côte d'Ivoire because French and Ivoirians live together in Côte d'Ivoire.<sup>1515</sup> On 23 December 2010, Charles Blé Goudé reiterates that the French are welcome and loved in Côte d'Ivoire and invites them to the gathering at the Place de la République on 29 December 2010.<sup>1516</sup>

630. During his speech at a rally in Koumassi on 21 December 2010, Charles Blé Goudé expressly praised non-violence. While he indeed stated that he would soon invite the youth to totally liberate Côte d'Ivoire, the only reasonable inference to be drawn therefrom, in the context of the entire speech, is that this invitation to liberate the country will be through peaceful means. During that speech, Charles Blé Goudé asks why young Ivoirians would want to find a Kalashnikov or a stone if they have the sun,

<sup>1514</sup> Video, CIV-OTP-0061-0568 at 00:23:31-00:30:02 (excerpt from RTI broadcast of 14 December 2010 at 20h; transcript at CIV-OTP-0086-0818 at 0819-0821, Ins. 1-104).

<sup>1515</sup> Video, CIV-OTP-0064-0078 at 00:58:34-01:07:18 (excerpt from RTI broadcast of 19 December 2010 at 20h; transcript at CIV-OTP-0102-1756 at 1757-1769, Ins. 1-118).

<sup>1516</sup> Video, CIV-OTP-0061-0581, at 00:21:55 - 00:23:53. *See also* Video CIV-OTP-0061-0586, 18:15-26:02, in which Charles Blé Goudé explains why he decided to postpone the gathering of 29 December 2010.

the moon and God with them. He states that he wants to demonstrate the force of non-violence, and he refers to the image of young people with their hands up while the other side gets tanks and helicopters. He refers to Laurent Gbagbo as the role model having “politely”, with a letter, asked the UN to leave Côte d’Ivoire and then encourages people to go back to their lives and to go to work.<sup>1517</sup>

631. On 29 December 2011, he explained the reasons why he postponed the big gathering that was initially scheduled that day at the Place de la République, namely that it was to give a chance to the mediation of the CEDEAO and the African Union. He added that they do not understand why, every day, they are threatened by Guillaume SORO and his army and why they heard the commander Wattao say he was going to repress (“mater”) them. He then stated: *“Alors nous....lui, il a des armes. Nous, nous n’avons pas d’armes. Nous avons les mains nues et, je le dis au monde entier, c’est les mains nues, que, avant que OUATTARA ne nous attaque, que, après le 1er janvier, je vais demander à tous les jeunes de Côte d’Ivoire, les mains nues, d’envahir le Golf Hôtel et de faire en sorte que ceux qui y sont et qui ont les fusils puissent quitter cet hôtel-là, parce que nous voulons la paix en Côte d’Ivoire. Voilà ce que je voulais dire. Je le dis: au-delà du 1er janvier, moi, Charles BLÉ GOUDÉ, et les jeunes de Côte d’Ivoire, les mains nues, nous allons libérer le Golf Hôtel”*. He further added that “[n]ous n’avons pas d’armes, mais les mains nues, comme nous avons toujours su le faire, nous allons nous défendre”.<sup>1518</sup> In this speech, Charles Blé Goudé was reacting to an attack threat initiated by Guillaume Soro and Commander Wattao, threats which had already been implemented a few days before through the attack of an FDS control post around the Golf Hotel and during the 16 December events. The crowd could not ignore that the idea of an invasion of the Golf Hotel by the pro-Gbagbo youth, bare hands, with lékés (which are cheap and popular sandals, made of rubber, used for hiking and street soccer)<sup>1519</sup> and facing heavily armed soldiers from the Golf Hotel would not have been realistic. Therefore, the determination of the Gbagbo government to remain in power at any cost, including by the use of force, cannot be

<sup>1517</sup> Video, CIV-OTP-0026-0016 at 00:45:16-00:51:09 (excerpt from RTI broadcast of 21 December 2010 at 20h; transcript at CIV-OTP-0052-0653 at 0665, lns. 425-485).

<sup>1518</sup> Video, CIV-OTP-0064-0101 at 00:41:34-00:42:13 (excerpt from RTI broadcast of 30 December 2010 at 20h; transcript at CIV-OTP-0086-0980 at 0982, lns. 47-55).

<sup>1519</sup> Video, CIV-OTP-0064-0101 at 00:41:34-00:42:13 (excerpt from RTI broadcast of 30 December 2010 at 20h; transcript at CIV-OTP-0086-0980 at 0982, lns. 47-55).

reasonably inferred from this speech. In any event, Charles Blé Goudé, in the weeks or months that followed, never actually instructed the youth to invade the Golf Hotel and never even organised any gathering around that area.

632. The context of the rally in Koumassi on 6 January 2011<sup>1520</sup> is that of the arrival of the ECOWAS facilitation mission, which saw Mr Alassane Ouattara advocate for the use of force. The words used by Charles Blé Goudé are to be seen in the context of the normal course of political and democratic expression, which can go so far as to scoff at one's political opponent, without this consisting of hate speech.<sup>1521</sup>

633. During a rally in Yopougon Niangon-Nord on 7 January 2011, Charles Blé Goudé said that people can sleep tight and go to work quietly because the promise of Alassane Ouattara to take out Laurent Gbagbo from power on 30 January will never happen. He adds that Alassane Ouattara is well aware that he does not have the majority because people with a majority do not need to use weapons. He asks people not to listen to Alassane Ouattara who asked people not to go to work and students not to go to school. He said: *“Allez tranquillement à l'école. Allez tranquillement au travail. Nous veillons au grain, et attendez le mot d'ordre du Général”*. Finally, he prayed there will not be any war in Côte d'Ivoire and any fight between ethnicities.<sup>1522</sup>

634. At a rally in Attécoubé on 7 January 2011, he says he does not want to learn that young Bétés are fighting young Dioulas. He evokes that this is what the other side wants and suggests he does not want to give them what they want. He reiterates that he does not want to learn that the ethnic groups in the Côte d'Ivoire are battling and that the only thing that is asked for is to leave Laurent Gbagbo do his work. He calls on students to go to school, workers to go to work and says : *“Je vais aller prendre ma place au sein de l'équipe gouvernementale de Côte d'Ivoire, pour que les jeunes de Côte d'Ivoire trouvent du travail. Apprêtez-vous donc ... apprêtez-vous donc à réfléchir, parce que bientôt, je vais appeler [brève coupure de son, 00:12:44] aux États généraux de la Jeunesse, pour poser le diagnostic. [...] attendez le mot d'ordre*

<sup>1520</sup> Trial Brief, para. 857.

<sup>1521</sup> Video, 6 January 2011, CIV-OTP-0074-0060 at 00:34:07-00:38:47 (transcript at CIV-OTP-0087-0470 at 04710472, lns. 1-68).

<sup>1522</sup> Video, CIV-OTP-0064-0107 at 00:12:57-00:13:10 (excerpt from RTI broadcast of 8 January 2011 at 20h; transcript at CIV-OTP-0086-1001 at 1003, lns. 70-72).

*du général. Vous devez veiller à ce que des forces étrangères ne viennent pas nous déranger. [Brève coupure de son, 00:13:15] pour que vous aussi demain, vous soyez des gens sur qui leur famille compte*".<sup>1523</sup> Here it can be inferred from this speech that the *mot d'ordre* merely relates to the *États généraux de la Jeunesse*, nothing else.

635. The rally at Champroux Stadium conveyed the message "no to war" as could be seen on the podium, which again demonstrates the peaceful intentions of the organisers of the rally.

636. His interview on 25 March 2011 is yet another example showing that Charles Blé Goudé did not mobilize the youth to commit violent acts. Charles Blé Goudé explains that the main objective of the upcoming gathering Place de la République on 26 March 2011 is to pray God. He clarifies that people will come and go "*in the discipline*". In light of the entire speech, it cannot be inferred from Charles Blé Goudé's reference to a "*mot d'ordre*" that he believes people will respond to during the upcoming gathering Place de la République to the effect of committing violence. Indeed, he refers immediately before that to a prior *mot d'ordre* to go to work peacefully that Ivoirians have respected and he congratulates them for it.<sup>1524</sup>

637. At the 26 March rally, Charles Blé Goudé tries to respond to the Ivoirians' concern regarding the threat from the Ouattara side to take Abidjan. He encourages them not to worry and that if Mr Ouattara had the means to take Abidjan, he would have already done so. He then calls for peace in saying: "*Ils viennent dans un quartier, ils disent, ils tirent et puis, ils s'en vont. La guerre n'a pas commencé parce que nous, on veut pas faire la guerre. Et GBAGBO Laurent nous a enseigné, il nous a enseigné ce que nous sommes en train de faire : il nous a enseigné la mobilisation, il nous a enseigné la démocratie. Il ne nous a pas enseigné la guerre civile. C'est pourquoi nous refusons la guerre civile. [...]. Parce que les Ivoiriens ne veulent pas de guerre civile. Ils veulent vivre décemment. Ils veulent vivre dans leur pays. Ils veulent être*

<sup>1523</sup> Video, CIV-OTP-0074-0061 at 00:13:08-00:13:15 (excerpt from RTI broadcast of 7 January 2011 at 20h; transcript at CIV-OTP-0087-0473 at 0475, lns. 61-62).

<sup>1524</sup> "*C'est pourquoi, demain, dans sa majorité, le peuple de CÔTE D'IVOIRE va répondre à notre mot d'ordre. Ce peuple-là, hier, a déjà répondu à notre mot d'ordre d'aller tranquillement au travail. Ce peuple là est allé tranquillement au travail. Vous l'avez vu, hier, là où les uns et les autres avaient annoncé l'apocalypse et ce qu'ils ont appelé l'assaut final. Aujourd'hui encore, ils se bouscuaient aux portes de leur bureau. Je voudrais les féliciter.*"



*tranquilles. Ils veulent choisir Laurent GBAGBO comme président. Ils veulent qu'on laisse GBAGBO président”*.<sup>1525</sup>

638. At a rally in Anono on 15 January 2011, in front of various communities living nearby the Golf Hotel,<sup>1526</sup> Charles Blé Goudé asked for the support of the older ones because soon he would be giving the *mot d'ordre*.<sup>1527</sup> Too little information is provided as to infer what this *mot d'ordre* will be. The past *mots d'ordre* were about work and attendance to various gatherings. A reasonable Chamber cannot find that there would be any objective reason for the audience to infer that this *mot d'ordre* may have been about engaging in violent acts.

639. Regarding Charles Blé Goudé's statements on 26 March 2011, the Prosecution's allegation that he would refer to perceived Ouattara supporters as rebels is a misconstruction on its part. The term “rebel”, which is not a creation of Charles Blé Goudé, exists since the beginning of the 2002 crisis and has been consecrated by all parties to this crisis, at the national and international levels. Guillaume Soro himself has appropriated this term and even wrote a book about it called ‘*Pourquoi je suis devenu un rebelle*’.<sup>1528</sup> The individuals designated with this term are not civilians but rather, irregular, armed and non-state groups, which led attacks against governmental forces. This designation, which has been also used since the beginning of the post-electoral crisis and used by Ouattara supporters themselves, cannot be used against Charles Blé Goudé. In this same video,<sup>1529</sup> Charles Blé Goudé gives an exculpatory speech with respect to the alleged stigmatization of people from the North. He rejects the hatred attributed to him and the idea of a religious conflict.

<sup>1525</sup> Video, CIV-OTP-0069-0379 at 00:06:25-00:08:12 (excerpt from RTI broadcast of 28 March 2011 at 20h; transcript at CIV-OTP-0087-0776).

<sup>1526</sup> The Defence notes that the Prosecution refers mistakenly to the audience as an audience of Young Patriots.

<sup>1527</sup> Contrary to the Prosecution's allegation, Charles Blé Goudé does not say that “*he needed their support as soon as he would be giving the mot d'ordre*”. He does not use the term “robbers” either but says that the “clique” at the Golf Hotel had been eating on the back of Côte d'Ivoire since 1960. This was mostly to raise the irregular incongruous nature of the association between the rebels, the RDR, the PDCI and other parties members of the RHDP. It is a fact that the PDCI had led the country since 1960 to 1999 and was associated with it until the end of the crisis. It views itself as an old party, and its management has been criticized on a regular basis because of its misappropriation of funds and corruption. With respect to Mr Ouattara, as a former leader of the country between 1991 and 1993, his actions have attracted some criticisms. These qualifications are within the permissible limits of a political speech towards opponents, and not within a context of hate speech or incitement of violence.

<sup>1528</sup> Guillaume Soro, “*Pourquoi je suis devenu un rebelle*”, 27 April 2005, Hachette Littératures.

<sup>1529</sup> Video, Interview of Charles Blé Goudé, 26 March 2011, CIV-OTP-0015-0547 at 00:10:15-00:11:55 (transcript at CIV-OTP-0044-2519 at 2525, lns. 164-179).

640. The Defence contests that Charles Blé Goudé addressed his audience on 3 or 4 April 2011 in inflammatory terms. At this point in time, what Charles Blé Goudé was describing, *i.e.*, the entry of the rebels in several cities of Côte d'Ivoire, was the reality on the ground, or at the least the Prosecution failed to objectively prove that the facts reported by Charles Blé Goudé did not reflect the reality on the ground. While acknowledging the fact that the country was under attack, Charles Blé Goudé does not call the audience to engage in violent acts, not even in a context of self-defence. To the contrary, he immediately has a thought for the army and refers to it as the solution to the attacks occurring. He also relies on God and on the young patriots but only to the extent that they should support the army in providing information, being awake and in standing up in their neighbourhoods.<sup>1530</sup> Charles Blé Goudé makes a clear distinction between the role of the army which is to fight, and the role of the citizens he addresses, namely to stay vigilant. A reasonable chamber could not find that the most reasonable inference to be drawn from the content of this speech is the mobilisation of the youth to commit violent acts. The content of the speech simply contradicts the Prosecution's allegation.

641. On 5 April 2011, Charles Blé Goudé never once "*urged the "patriots" to continue fighting to maintain Gbagbo in power*".<sup>1531</sup> This is again a dangerous misconstruction on the part of the Prosecution. Charles Blé Goudé actually reiterated several times that it is the regular army of Côte d'Ivoire that is fighting. He clearly makes the distinction between the army whose role is to fight and the patriots whose role should be to be supportive of one another, to bend their knees and pray and, in their neighbourhoods, to reinforce roadblocks and film any suspicious movements (*i.e.* a citizen act, so as to ensure collective security). He also congratulated those who called upon a mobilisation in front of the residence of the President and congratulated people who already had responded to such call. He finally asked his audience to "continue to resist" and stated that he believed this conflict needed to end since the Ivoirians deserved better. Contrary to the Prosecution's allegation, he did not tell his audience

<sup>1530</sup> Video, CIV-OTP-0064-0131 at 00:08:05-00:11:17 (excerpt from RTI broadcast of 3 or 4 April 2011; transcript at CIV-OTP-0086-1168 at 1169-1171, lns. 1-80).

<sup>1531</sup> Trial Brief, para. 814.

to await further instructions but merely let them know he would address them again.<sup>1532</sup>

642. In light of the foregoing, the analysis of the entire content of the different speeches as opposed to certain selective excerpts chosen by the Prosecution cannot reasonably lead to the Prosecution's conclusion that Charles Blé Goudé mobilized the youth to commit violent acts or crimes. The Prosecution failed to substantiate how Charles Blé Goudé created an atmosphere in which the youth felt threatened. On the contrary, the analysis of the speech chosen by the Prosecution to support this point shows that Charles Blé Goudé always tried to calm and reassure his audience. In addition, Charles Blé Goudé's alleged design to keep the youth in a state of alert by announcing upcoming *mots d'ordre* is not convincing as his actual *mots d'ordre* were as varied as including, to only cite a few, calls to go to work, calls to gather at such and such events, calls to alert authorities of anything suspicious or calls to enrol into the army. The announcement from Charles Blé Goudé that he would give a *mot d'ordre* about going to the Golf Hotel to remove with "bare hands" its residents was never actually made.<sup>1533</sup> Another conclusion which is at the least as reasonable as the Prosecution's allegation is that Charles Blé Goudé, by announcing imprecise *mots d'ordre*, was trying to canalize a youth that was exasperated and scared and prevent them from engaging in violence by making them hold on to the idea that they would be able to assist in the near future. The Defence refers to its present development in *Section IV.4.A No nexus between mots d'ordre and alleged crimes*.

643. The Prosecution alleges that "[t]o avoid accusations of advocating violence, BLÉ GOUDÉ adapted his public messages".<sup>1534</sup> While there is no evidence to disprove that this was the case, there is only clear evidence of calls to end violence. It has not satisfactorily been explained how the individuals that took part in the violence would have known that they should disregard the public statements made by Mr Charles Blé Goudé to remain calm. As regards to the supposed "code" of Charles Blé Goudé's baseball cap, the Prosecution has not led any further evidence as to whether the

<sup>1532</sup> Video, 6 April 2011, CIV-OTP-0047-0604 at 00:00:00-00:05:40 (transcript at CIV-OTP-0051-1681 at 1682, lns. 1- 48).

<sup>1533</sup> See P-0625, T-28-CONF-FRA CT, pp. 4-5; Video, CIV-OTP-0064-0094 at 00:21:30-00:22:07 (excerpt from RTI broadcast of 29 December 2010 at 20h; transcript at CIV-OTP-0086-0925 at 0926, lns.19-25).

<sup>1534</sup> Trial Brief, para. 240.

flipped-up cap was actually a code, whether any alleged “young patriots” knew its meaning and whether it was ever used to advocate violence.<sup>1535</sup>

644. In addition, not only did the Prosecution fail to substantiate how Charles Blé Goudé had mobilized the youth to commit crimes but it also failed to establish the required nexus between Charles Blé Goudé’s audience and the alleged perpetrators of the crimes committed during the five incidents.<sup>1536</sup>

645. Based on the above, the Defence submits that a reasonable chamber could not find that the requisite nexus has been establish between Charles Blé Goudé’s speeches and the alleged crimes committed during the five incidents.

**C. No nexus between Charles Blé Goudé’s alleged recruitment activities and the alleged crimes**

i. The Prosecution misinterprets Charles Blé Goudé’s call for enrolment

646. The allegation of the Prosecution that the two main purposes of the call for enlistment made by Charles Blé Goudé on 19 and 20 March 2011 were (i) “*to act as cover for the past and present collaboration of the pro-Gbagbo youth with the FDS*” and (ii) “*to facilitate the arming of those youth*” is unsubstantiated. No piece of evidence is actually used to support that allegation which is nevertheless reiterated throughout the Trial Brief.<sup>1537</sup>

647. With respect to the call itself, Charles Blé Goudé does not ask the youth to “*fight to keep Gbagbo in power*” as wrongly alleged by the Prosecution,<sup>1538</sup> but to “*enrol to serve the army*”.<sup>1539</sup> This inaccurate choice of translation is very relevant in showing the Prosecution’s overt attempt to tweak the terminology used to fit it in its theory of an alleged common plan.

648. Regarding the first main purpose of this call to enlist as alleged by the Prosecution, namely a cover for the past and present collaboration of the youth with the FDS, the

<sup>1535</sup> Trial Brief, footnote [REDACTED].

<sup>1536</sup> See the Defence’s developments in Motion, *Section III.2.A Insufficient evidence that the perpetrators of the alleged attack were pro-Gbagbo forces*.

<sup>1537</sup> Trial Brief, paras 831; 874.

<sup>1538</sup> Trial Brief, para. 232.

<sup>1539</sup> Video, 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 at CIV-OTP-0097-0180 at 0182-0183, Ins. 72-114 and 0184, Ins. 128-129).

Prosecution does not lead to one single piece of evidence to demonstrate that intention, let alone to support its allegation that the youth and the FDS would have been collaborating at the behest of an alleged inner circle. The link the Prosecution makes between the speeches of Charles Blé Goudé in relation to roadblocks and his subsequent call for enlistment, in order to show that intention, is not based on any objective element other than the Prosecution's own interpretation.<sup>1540</sup> Therefore, the Defence concludes that the Prosecution failed to prove this point and that the intention Charles Blé Goudé may or may not have had in relation thereto is pure speculation on the part of the Prosecution.

649. Regarding the second main purpose advanced, namely the facilitation of the arming of the pro-Gbagbo youth, it is through a series of misconstructions as well as erroneous translations of the speeches of Charles Blé Goudé that the Prosecution was able to make such an unreasonable conclusion.

650. For instance and as a first comment, Charles Blé Goudé never said at the rally in Port-Bouët on 20 March that the reason why he was asking the youth to enrol was that *"he did not want to distribute weapons in the neighborhoods"*.<sup>1541</sup> Charles Blé Goudé actually said: *"Je ne veux pas qu'on puisse distribuer des armes dans les quartiers"* which translates: *"I do not want that any weapon distribution becomes possible in the neighborhood"*. He is therefore not suggesting that he himself could have distributed weapons. Rather, he is saying that he refuses to see people starting to take up arms which would be the result of an illegal distribution in the neighbourhoods.

651. Charles Blé Goudé, when interviewed as to why he had called the youth to enlist, responded the following:

I would like to say that there is a difference between the methods of those opposite and our own methods. You see, in order to defend a nation, when you want to take up a weapon, you need to have the right to have the weapon. Either you are a policeman, a gendarme or a soldier. But in a country that you want to rule, you cannot distribute weapons to people who put it under their clothes and then they shoot everywhere in the country and they cut people's throats. That is what is happening. That is why the Young Patriots and the young people who want to

<sup>1540</sup> See, for instance, Trial Brief, para. 886.

<sup>1541</sup> Trial Brief, para. 589.

liberate their country and participate in the liberation of their country, they have a legal way of doing that, and that is why I am appealing that tomorrow they should go to the staff headquarters and the chief of staff, with his team, will find a way to register them and enrol them in the army of Côte d'Ivoire. That is normal. And we want to say I do not want war in this country. We do not want war in this country because you cannot find a country where they're only pro-Ouattaras or you cannot find countries where there are only pro-Gbagbos. And that is why we cannot destroy any one group. That is why I appealed to these young people to respond massively.<sup>1542</sup>

652. Based on the totality of the evidence analysed on this matter in this Motion, the reasons given by the Prosecution for Charles Blé Goudé's call as reproduced above are very far from being the most and only reasonable inference from the rationale behind the call for enlistment made by Charles Blé Goudé on 19 and 20 March 2011. Another conclusion and in the Defence's view the most reasonable one is that by this call, Blé Goudé was responding to the long-lasting exasperation of the population, which was sick of being attacked in their neighbourhood. This is corroborated by P-0449's testimony, who clarified that it was not Charles Blé Goudé who had called the people to the flag but it was the people who told him that they wanted to be called to the flag. The first time was at his house in Yopougon and they reiterated, at the CP1 square, on 19 March 2011, their desire to come under the flag to defend their nation against the rebels.<sup>1543</sup>

653. The most direct and objective interpretation of Charles Blé Goudé's speech is that he has been observing an unacceptable increase in violence from the *Commando Invisible* and other pro-Ouattara forces, that therefore he understands the population's feeling, while he disagrees with the idea that would consist in implementing the same methods as those used by the opposite side, namely distributing weapons to civilians so that they can shoot at the population or commit crimes. As the evidence showed, up until that point, Charles Blé Goudé had been consistent in refusing to invite the youth to enlist.<sup>1544</sup> However his speeches and statements made on 19 and 20 March

<sup>1542</sup> Video, CIV-OTP-0064-0092 at 00:22:29-00:28:35 (excerpt from RTI broadcast of 20 March 2011 at 20h; transcript at CIV-OTP-0097-0161 at 0162-0163, lns. 1-80).

<sup>1543</sup> P-0449, T-159-CONF-FRA CT, pp. 47-50.

<sup>1544</sup> Motion, Section IV.1.A.ii.(b) *The Prosecution failed to prove that the FDS leadership and Charles Blé Goudé cooperated to recruit pro-GBAGBO youth and militias into the FDS.*

2011 show that he feels he is now forced to change his position, “*and do what he did not want to do*”, i.e., by telling “*those who feel themselves capable, those who are determined, those who think that they can defend their country through military means, [that] there is a legal means to do so*”.<sup>1545</sup> By misleadingly summarising the statements of Charles Blé Goudé as follows: “[*he*] *said he had called the youth to enlist so that they could be armed, legally*”,<sup>1546</sup> the Prosecution could then as misleadingly conclude that one of the main purposes of this call was “*to facilitate the arming of those youth*”. As explained above, this is not at all what transpires from Charles Blé Goudé’s speeches or statements over the period of the charges, including his reaction to Guy Gbétiri’s statement on 20 January 2011.<sup>1547</sup> The evidence shows that his objective when making this call was not to facilitate the arming of those youth, but to canalise those who were ready to take up arms illegally to defend their country by referring them to a legal way to do so, through their regular enrolment in the national army as well as to trick the enemy as to the solidity of the national army.

654. Furthermore, this rationale allegedly being behind Charles Blé Goudé’s call would not be plausible given that P-0009 testified on different occasions that Charles Blé Goudé was perfectly aware of the fact that the army was lacking equipment and weapons.<sup>1548</sup>

ii. The Prosecution failed to prove that Charles Blé Goudé played an essential role in the recruitment and enlistment of the youth into the FDS

655. The Prosecution failed to prove that Charles Blé Goudé played an essential role in the recruitment and enlistment of the youth into the FDS or that he contributed to the reorganization of the pro-Gbagbo forces.<sup>1549</sup>

656. As demonstrated above, the Prosecution has failed to demonstrate any nexus between Charles Blé Goudé and the 2003 recruitment into the FDS, which, according to the Prosecution, would have formed part of the early developments of a common

<sup>1545</sup> Video, CIV-OTP-0064-0091 at 00:15:31-00:16:37 (excerpt from RTI broadcast of 19 March 2011 at 20h; transcript at CIV-OTP-0088-0041 at 0042, lns. 22-33).

<sup>1546</sup> Trial Brief, para. 589.

<sup>1547</sup> Motion, Section IV.I.A.ii.(b) *The Prosecution failed to prove that the FDS leadership and Charles Blé Goudé cooperated to recruit pro-GBAGBO youth and militias into the FDS.*

<sup>1548</sup> P-0009, T-194-FRA CT, pp. 6-7; T-196-CONF-FRA CT, pp. 71-72.

<sup>1549</sup> Trial Brief, paras 583-585; 772; 851-852.

plan.<sup>1550</sup> Rather, the evidence clearly shows that Charles Blé Goudé played no part in the recruitment of 3000-4000 individuals into the FDS and had no influence or role with respect to *groupes d'auto-défense* such as the FLGO.<sup>1551</sup>

657. As substantiated by the Defence above, the Prosecution was unable to adduce sufficient evidence with respect to the collaboration and integration of pro-Gbagbo youth and militia into the FDS.<sup>1552</sup> With respect to an alleged collaboration or integration before the Battle of Abidjan, the Prosecution either relies on the patently incredible testimony of P-0435, or irrelevant, insufficient and contradictory evidence with regard to youth groups and militias integrating and collaborating with the FDS.<sup>1553</sup> Further, since the Prosecution failed to adduce evidence to the requisite standard of a parallel structure, it has not been able show that the alleged inner circle and Laurent Gbagbo exercised control over the operations that certain FDS members could have led with militia and youth after 31 March 2011.<sup>1554</sup>

658. Moreover, the evidence of the instructions that Witness P-0435 received from Mr Blé Goudé specifically regarding the training of COJEP and FESCI youth is incapable of belief for three reasons. First, the uncorroborated testimony of Witness P-0435 should not be taken into account by the Chamber because he proved to be an incredible and unreliable witness.<sup>1555</sup> Second, Witness P-0435 did not mention in his previous statements to Prosecution investigators that either Mr Ahoua Stallone or Mr Blé Goudé would have requested this training. In reference to the very same training, Witness P-0435 referred to “people” coming to see the GPP so they would train FESCI youth.<sup>1556</sup> Thirdly, Witness P-0435’s account of how he met Charles Blé Goudé at the DeLorvie Pharmacy proved to be utterly false. Witness P-0435 testified that when he met Charles Blé Goudé in October 2010 to discuss whether he had

<sup>1550</sup> See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitments after the 2002 coup d'état was part of a common plan.*

<sup>1551</sup> *Ibid.*

<sup>1552</sup> See Motion, Section III.3.B.ii. *The Prosecution failed to prove that pro-Gbagbo youth and militia units collaborated with and were under the command of FDS parallel structure units.*

<sup>1553</sup> *Ibid.*

<sup>1554</sup> See Motion, Section III.3.B.ii.(g) *The Prosecution failed to prove the control that the alleged inner circle would have exercised over the militia and youth during FDS operations after 31 March 2011.*

<sup>1555</sup> See Motion, Section III.3.B.ii.(b) *The Prosecution's theory is based almost exclusively on Witness' P-0435 testimony, which proved to be uncorroborated, unreliable and patently incredible.*

<sup>1556</sup> This is the evidence to which the Pre-Trial Chamber referred to in its Confirmation of charges decision against Charles Blé Goudé. See ICC-02/11-02/11-186, para. 70.



received Mr Ahou Stallone that he was accompanied by Sergeant Blédé.<sup>1557</sup> He even added that Mr Blédé had called him just minutes before the alleged meeting.<sup>1558</sup> However, P-0435 also testified that the first time he met Mr Blédé was in January 2011, thereby making any alleged meeting with him in October 2010 impossible.<sup>1559</sup>

659. The Prosecution cannot use the visit Charles Blé Goudé made to the *État-Major* on 20 January 2011, the purpose of which was to invite the FDS commanders to a rally organised in honour of the FDS and the workers of Côte d'Ivoire, to support his allegation that Charles Blé Goudé played an essential role in the recruitment of the youth into the FDS.<sup>1560</sup> This visit is simply irrelevant to the allegation. The purpose of this rally was, *inter alia*, to pay tribute to an army which had been confronted to a recent large number of losses. The Prosecution suggests that the fact that on 21 January 2011, the youth gathered at the *État-Major* to ask the CEMA to enrol them in the army was the result of Charles Blé Goudé's announcement of that rally made the day before.<sup>1561</sup> This link being made by the Prosecution is unfounded and contradicted by the Prosecution's own evidence. [REDACTED].<sup>1562</sup> [REDACTED]. Secondly, Charles Blé Goudé, during his announcement, focused on the tribute to be paid to the FDS who were risking their lives at the time. He never suggested once that additional resources might be needed. On the contrary, he expressed the solidarity of the population towards the army while reminding that "*c'est ensemble que nous défendons notre pays, chacun dans son domaine*".<sup>1563</sup> Thirdly, the journalist explains the context in which this solicitation from the youth came about, namely the various war threats having been made from the Golf Hotel. The journalist indeed explains that: "[l]a guerre, appelée à corps et à cris par les anciens Premiers ministres réfugiés au GOLF, fait des effets d'annonce".<sup>1564</sup> As elaborated above, there was a real feeling of exasperation coming from the youth at the time, because of the various assaults occurring in the area. This was expressed by Guy Gbéri as the reason why

<sup>1557</sup> P-0435, T-94-CONF-FRA CT pp. 4-6.

<sup>1558</sup> P-0435, T-94-CONF-FRA CT p. 5.

<sup>1559</sup> P-0435, T-89-CONF-FRA CT, p. 62.

<sup>1560</sup> Trial Brief, para. 819.

<sup>1561</sup> Video, CIV-OTP-0064-0112 at 00:17:45-00:17:51 (excerpt from RTI broadcast of 21 January 2011 at 20h; transcript at CIV-OTP-0086-1025 at 1026, lns. 17-18).

<sup>1562</sup> CIV-OTP-0045-1409.

<sup>1563</sup> Video, CIV-OTP-0064-0083 at 00:06:36-00:15:07 (excerpt from RTI broadcast of 20 January 2011 at 20h; transcript at CIV-OTP-0048-1670, at 1671-1673, lns. 1-119).

<sup>1564</sup> The journalist indeed states: « *La guerre, appelée à corps et à cris par les anciens Premiers ministres réfugiés au GOLF, fait des effets d'annonce.* »

the youth was ready to join the army, as corroborated by [REDACTED].<sup>1565</sup> In response to Guy Gbétiri's statement, Charles Blé Goudé had actually discouraged the youth to enlist.<sup>1566</sup> Fourthly, the video shows that P-0009 did not encourage the youth to enlist but on the contrary, reassured them that the army was in control and would not let foreign forces attack the country.<sup>1567</sup> Therefore, the essential role played by Charles Blé Goudé in the recruitment of pro-Gbagbo youth in the FDS can in no event be inferred from the above facts.

660. The Prosecution does not adduce any evidence that Charles Blé Goudé would have “*prepared the ground*”, thereby suggesting an intentional act, in the lead up to his call for enlistment made on 19 and 20 March 2011 by vaunting the merits of the FDS and the pro-Gbagbo youth.<sup>1568</sup>

661. Finally, in the Prosecution's own admission, the enlistment of the youth following Charles Blé Goudé's call on 19 and 20 March 2011 did not materialize, which P-0009 testified to.<sup>1569</sup> The Defence submits that the submission of the two video excerpts dated 22 March 2011 used by the Prosecution in support of his allegations in relation to the decentralized enrolment points should not be allowed. These video items have not been used with any of the witnesses and in the Prosecution's own admission, were not included in the relevant motion pursuant to paragraphs 43 and 44 of the Directions on the Conduct of the Proceedings.<sup>1570</sup> In addition, there is no significant added value in allowing this late submission of evidence since, as set out above, the enlistment of the youth never materialize.

662. In light of the above, the evidence adduced by the Prosecution to support its theory of Charles Blé Goudé's essential role in the recruitment and enlistment of the youth into the FDS is simply not adequately substantiated as other more reasonable conclusions can be drawn from the alleged facts put forward by the Prosecution.

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<sup>1565</sup> Video, CIV-OTP-0064-0113 at 00:44:20-00:49:37 (excerpt from RTI broadcast of 22 January 2011 at 20h; transcript at CIV-OTP-0086-1028 at 1029-1031, lns. 1-103). *See also* [REDACTED].

<sup>1566</sup> Video, CIV-OTP-0064-0113 at 00:44:20-00:49:37 (excerpt from RTI broadcast of 22 January at 20h; transcript at CIV-OTP-0086-1028 at 1029-1031, lns. 1-103).

<sup>1567</sup> Video, CIV-OTP-0064-0112 at 00:17:45-00:17:51 (excerpt from RTI broadcast of 21 January 2011 at 20h; transcript at CIV-OTP-0086-1025 at 1026, lns. 17-18).

<sup>1568</sup> Trial Brief, para. 851.

<sup>1569</sup> Trial Brief, para. 600.

<sup>1570</sup> *See* [REDACTED].

- iii. The Prosecution failed to prove any nexus between Charles Blé Goudé's support to the FDS and the third and fourth charged incidents

663. In the very last alternative, assuming *arguendo* that the Chamber would reject all the foregoing arguments, there is at the least no case to answer as to the third and fourth incidents. As pointed out from the outset by Judge Christine Van den Wyngaert in her partly Dissenting Opinion to the Decision on the confirmation of charges against Charles Blé Goudé,<sup>1571</sup> Charles Blé Goudé's conduct cannot be linked to the crimes allegedly committed by the FDS. As a result, there is no sufficient evidence to attribute criminal responsibility to Charles Blé Goudé under articles 25(3)(c) and 25(3)(d) of the Statute for the crimes committed in the course of the third and fourth incidents, which are allegedly attributable to the FDS. At the close of the Prosecution's case, its allegations remain unsupported in light of the totality of the evidence presented at trial. None of the witnesses has ever mentioned Charles Blé Goudé when testifying about either incident. The rest of the evidence does not provide any information as to Charles Blé Goudé's involvement in relation to these two incidents. Regardless of the way in which Mr Blé Goudé's alleged contributions are legally characterized, the Prosecution has failed to establish the required nexus concerning Mr Blé Goudé's alleged contributions to the alleged commission of crimes on 3 and 17 March 2011.

664. It cannot be alleged that the fact that Charles Blé Goudé expressed his support to the FDS on 20 January, during his single visit to the *État-Major* during the post-electoral crisis<sup>1572</sup> and on 23 January at Champroux Stadium, in the specific context of an army being weakened due to a recent loss of men, and weeks before the March events, has had any impact on the FDS' ability to focus resources on the Abobo operations in March.<sup>1573</sup> He did not encourage the youth to enrol in the FDS prior to the events of March and no recruitment that could be attributable to the activities of Charles Blé Goudé was ever made.

<sup>1571</sup> Pre-Trial Chamber I, Annex to the "*Decision on the confirmation of charges against Charles Blé Goudé*", dated 11 December 2014, ICC-02/11-02/11-186-Anx.

<sup>1572</sup> P-0010, T-142-CONF-FRA CT, pp. 8-11.

<sup>1573</sup> Trial Brief, para. 892 (v).

665. No witness, including all major military insider witnesses, ever confirmed the attendance of Charles Blé Goudé to the 12 January meeting where military questions in relation to Abobo were presumably discussed. P-0011 testified that he did not remember having had a meeting at the residence with Charles Blé Goudé and the persons enumerated in the logbook on 12 January 2011.<sup>1574</sup> P-0009 stated that he never attended any meeting where Charles Blé Goudé was present at the Presidential Residence.<sup>1575</sup> P-0047 confirmed that he is not aware of any FDS meetings at the Presidential Residence which Charles Blé Goudé attended.<sup>1576</sup> The only evidence presented by the Prosecution is the Presidential Residence logbook which shows that Charles Blé Goudé arrived at least half an hour after the last high commander arrived.<sup>1577</sup> In light of P-0501 and P-0009's testimony (confirmed by P-0010 and P-0011),<sup>1578</sup> the Prosecution is well aware of the fact that if the logbook merely indicates that Charles Blé Goudé entered the residence with the intention to visit the President on 12 January 2011, it certainly does not indicate whether they actually met and if they did, whether it was at the meeting between Laurent Gbagbo and the FDS senior commanders.<sup>1579</sup> P-0011 also explained the following: *"So it could happen that people for different purposes can meet in the living room. There are four entries to the palace. And when you get in, you have three living areas, three main rooms and people can be sitting there waiting to be received one after the other for different purposes."*<sup>1580</sup> Therefore, the fact that Charles Blé Goudé might appear on video CIV-OTP-0064-0110, at 4:52 does not necessarily mean that he was attending that specific meeting. Another conclusion could be that he was just waiting in one of the living rooms. The Defence notes that the video never shows Charles Blé Goudé and the commanders and/or Laurent Gbagbo together on the same image.<sup>1581</sup> On another note, P-0046 clarified that the rationale behind this 12 January meeting was that following the recent killings of FDS in Abobo Gare, the chief of staff of the army wanted to understand what had occurred but that no particular measures regarding Abobo were

<sup>1574</sup> P-0011, T-132-FRA CT, p. 74, lns. 1-8; P-0011, T-134-CONF-FRA ET, pp. 44-45.

<sup>1575</sup> P-0009, T-193-FRA CT2, p. 38-39.

<sup>1576</sup> P-0047, T-204-CONF-FRA CT, pp. 29-30.

<sup>1577</sup> CIV-OTP-0088-0863, at 1089-1090.

<sup>1578</sup> P-0010, T-138-CONF-FRA CT, p. 59; P-0009, T-193-CONF-FRA CT2, pp. 32-33 ; P-0011, T-134-CONF-FRA ET, p. 45.

<sup>1579</sup> Trial Brief, para. 827, second sentence.

<sup>1580</sup> P-0011, T-135-CONF-FRA CT, p. 89, lns. 7-15.

<sup>1581</sup> Another explanation could be that all the relevant individuals gathered a few minutes at the request of the RTI journalists but that they then attended different meetings.

taken during that meeting.<sup>1582</sup> P-0047 does not recall any particular reaction from Laurent Gbagbo on that particular meeting.<sup>1583</sup> Therefore, there is no evidence that any planning of the 3<sup>rd</sup> and 4<sup>th</sup> incidents was ever made at that meeting nor that *a fortiori*, Charles Blé Goudé was made aware of that planning, if any. Finally, certainly no evidence shows that he intervened in any way on any military questions regarding Abobo at that meeting.

666. Similarly, there is no sufficient evidence to demonstrate the presence of Charles Blé Goudé at the meeting between the high commanders and Laurent Gbagbo held at the Presidential Residence on 14 March 2011. P-0046 states that Charles Blé Goudé attended one single FDS meeting, during which the generals asked Laurent Gbagbo to step down. However, assuming this request to step down was made during a collective meeting as described by P-0046 (which is highly uncertain considering that P-0046 is the only witness to refer to it and that this scenario is not corroborated by either P-0009, P-0010 or P-0047), the Prosecution failed to demonstrate that this alleged collective request to step down would have been made during the meeting of 14 March 2011. P-0046 cannot remember the date of this alleged meeting. P-0010 states that at the meeting of the 14th of March, the security situation was discussed indeed but he does not mention the presence of Charles Blé Goudé at that meeting and clearly places the request to have Laurent Gbagbo resign (conveyed through P-0009) at a different time.<sup>1584</sup> P-0047 states that what was requested at that meeting was to obtain more military equipment and that Laurent Gbagbo said it would be discussed with the CEMA to give them more resources.<sup>1585</sup> P-0047 makes no mention of a request to step down having been made at that meeting. [REDACTED] but as explained by P-0501, P-0009, P-0010, P-0011,<sup>1586</sup> it does not mean that Charles Blé Goudé attended the FDS meeting. The video footage does not indicate the presence of Charles Blé Goudé at this meeting either.<sup>1587</sup> Assuming *arguendo* that Charles Blé Goudé attended this meeting, which is not demonstrated, the Prosecution does not

<sup>1582</sup> P-0046, T-126-CONF-FRA CT, pp. 11-12.

<sup>1583</sup> P-0047, T-203-FRA CT, pp. 53-54.

<sup>1584</sup> P-0010, T-139-CONF-FRA CT, pp. 100-102.

<sup>1585</sup> P-0047, T-204-CONF-FRA CT, pp. 25-28.

<sup>1586</sup> P-0010, T-138-CONF-FRA CT, p. 59; P-0009, T-193-CONF-FRA CT2, pp. 32-33 ; P-011, T-134-CONF-FRA ET, p. 45. *See also* Motion, Section III.3.A.ii.(g)(iii) *Visits to the Presidential Residence*, for further development on this point.

<sup>1587</sup> Video, CIV-OTP-0069-0371 at 00:12:22-00:13:28 (excerpt from RTI broadcast of 14 March 2011 at 20h; transcript at CIV-OTP-0094-0270 at 0271, lns. 1-15).

adduce evidence that the shelling was discussed. Therefore, the proof that Charles Blé Goudé's acts were carried out 'for the purpose' of facilitating the commission of the alleged crimes in Abobo on 17 March 2011 or that he was even aware of the intention of the alleged group to commit such crimes is missing.

667. The Prosecution inaccurately concludes that on 23 March, during a press conference at the Mayor's office, Charles Blé Goudé alleged that "*the FDS could not be responsible for the women's death on 3 March 2011 because Abobo was in rebels hand at the time*".<sup>1588</sup> Charles Blé Goudé explained that leaders have responsibilities, including the responsibility that the information be verified before it is provided to the press. He added that since the rebels were in control of Abobo at the time of the incident, they are the ones who should account for what happened.<sup>1589</sup> Assuming *arguendo* that Charles Blé Goudé did suggest that the FDS could not be responsible for the third incident, which the evidence does not meaningfully demonstrate, it could not be considered as an *ex post facto* encouragement and moral support after the commission of the crime, as alleged by the Prosecution. Raising some personal doubts as to certain unverified statements made in relation to the circumstances surrounding the third incident, before an audience which is not the target of the alleged support, *i.e.*, the press as opposed to the FDS, does not meet the required threshold to be considered as moral support.

668. The various examples of activities towards supporting the army, adduced by the Prosecution, are either unsubstantiated or not in the relevant timeframe. And what might be seen as substantiated cannot be said to have assisted the FDS in committing the crimes or contributing to it in any other way.

669. Even if Charles Blé Goudé had been involved in any way in the 2003 recruitment, which has not been demonstrated,<sup>1590</sup> there is no sufficient evidence about the role of this alleged contingent during the 2010-2011 post-electoral crisis, and in particular as to the third and fourth incidents. Charles Blé Goudé's alleged involvement in the 2010-2011 recruitment of pro-Gbagbo youth and militia has not been demonstrated by

<sup>1588</sup> Trial Brief, para. 895 (v).

<sup>1589</sup> Video, CIV-OTP-0015-0530 at 00:10:45-00:11:26 (transcript at CIV-OTP-0063-2928 at 2935, Ins. 209-216).

<sup>1590</sup> See Motion, Section III.3.C.iii. *The Prosecution failed to prove that the recruitment after the 2002 coup d'état was part of the alleged common plan.*

sufficiently credible and reliable evidence and, therefore, the inference advanced by the Prosecution cannot be made.<sup>1591</sup> Regarding his call to the youth to enrol in the FDS, it occurred on 19 March, hence after the events. Most importantly, neither the support of Charles Blé Goudé to the FDS at Champroux Stadium or his call on 19 March 2011 led to the effective recruitment of any of the youth in the army. Therefore, the alleged causal link is too remote to accept that the speeches he made may have had any impact whatsoever on the resources of the FDS, allowing the FDS to commit the alleged crimes in Abobo.

670. Based on the review of the evidence, Charles Blé Goudé cannot be linked in any way to the crimes allegedly committed by the FDS in the course of the third and fourth incidents.

## **VII. RELIEF SOUGHT**


671. In view of the foregoing, the Defence respectfully requests the Chamber to:

- i. find that there is no case for the Defence to answer with respect to all the charges against Charles Blé Goudé and to dismiss the charges accordingly;
- ii. in the alternative, dismiss the charges against Charles Blé Goudé which relate to the third and fourth incidents.

Respectfully submitted,

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<sup>1591</sup> Trial Brief, para. 225.



A handwritten signature in dark ink, appearing to read 'N'Dry', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Mr Knoops, Lead Counsel and Mr N'Dry, Co-Counsel

Dated this

28 September 2018,

At The Hague, the Netherlands