

Reasons of Judge Geoffrey Henderson

CONTENTS

REMARQUES PRÉLIMINAIRES.....	6
PRELIMINARY REMARKS.....	11
I. NATURE OF THE DECISION AND THE APPLICABLE STANDARD.....	15
A. 'NO CASE' STANDARD.....	15
1. <i>Legal basis and consequence</i>	18
B. SCOPE OF EVIDENTIARY REVIEW	22
C. FORMAL ADMISSIBILITY RULINGS	23
II. ASSESSMENT OF EVIDENCE.....	28
A. DOCUMENTARY AND OTHER NON-ORAL EVIDENCE	28
B. TESTIMONY	31
C. HEARSAY	33
D. CORROBORATION	34
E. CIRCUMSTANTIAL EVIDENCE	36
III. THE PROSECUTOR'S CASE.....	37
A. THE PROSECUTOR'S CASE THEORY	37
1. <i>The narrative</i>	37
2. <i>Problems with the Prosecutor's narrative</i>	42
B. THE PROSECUTOR'S EVIDENTIARY APPROACH	46
IV. COMMON PLAN AND POLICY	53
A. INNER CIRCLE (ORGANISATION - COMPOSITION)	54
1. <i>Simone Gbagbo</i>	56
2. <i>FDS members</i>	66
3. <i>Youth leaders</i>	68
4. <i>Ministers</i>	74
5. <i>Conclusion</i>	86
B. GENESIS AND CONCEPTION OF THE ALLEGED COMMON PLAN/POLICY	87
1. <i>Identification of 'Political Opponents'</i>	88
2. <i>Alleged obstruction of measures to restore peace and violent repression of political opposition prior to the post-election crisis</i>	95

3.	<i>Appointments made on the basis of ethnicity and personal loyalty</i>	103
4.	<i>Climate of Impunity</i>	105
5.	<i>The requisitioning of the FANCI</i>	145
6.	<i>Alleged early expressions of the Policy</i>	151
7.	<i>Pressure to vote for Mr Gbagbo and pledging allegiance by senior FDS officers</i>	156
8.	<i>Conclusion</i>	157
C.	MEETINGS AMONGST ALLEGED MEMBERS OF THE ‘INNER CIRCLE’	158
1.	<i>Visits to the Presidential Residence and Palace</i>	159
2.	<i>Specific meetings</i>	165
3.	<i>Regular meetings</i>	190
4.	<i>Conclusion</i>	194
D.	ALLEGED COMMAND AND CONTROL OVER THE SO-CALLED PRO-GBAGBO FORCES	196
1.	<i>Forces de Défense et de Sécurité (FDS)</i>	197
2.	<i>Irregular Forces</i>	235
E.	ARMING OF THE FDS	418
1.	<i>The stock of weapons and ammunition at the Presidential Palace</i>	421
2.	<i>Attempts to circumvent the UN embargo</i>	432
3.	<i>The additional supply of equipment to units of loyal commanders</i>	440
4.	<i>Mr Lafont supplied weapons and ammunition to the FDS</i>	451
5.	<i>Conclusion</i>	459
F.	PUBLIC EXPRESSIONS OF THE ALLEGED COMMON PLAN/POLICY	460
1.	<i>Public speeches and statements</i>	460
2.	<i>Individual speeches and statements</i>	465
3.	<i>Control of the RTI and the Media</i>	500
4.	<i>Youth leaders reiterating the calls</i>	507
5.	<i>Evaluation</i>	509
V.	IMPLEMENTATION AND ADAPTATION OF THE ALLEGED COMMON PLAN/POLICY IN LIGHT OF THE EVOLVING SITUATION	517
A.	BLOCKADE OF THE GOLF HOTEL	519
1.	<i>Reasons for setting up of checkpoints</i>	522
2.	<i>Links to the RTI march</i>	533
3.	<i>Conclusion</i>	538
B.	PROHIBITION OF THE RTI MARCH	540
1.	<i>Mr Gbagbo’s participation in concerted actions of the ‘inner circle’ before and after the RTI march</i> <i>540</i>	
2.	<i>The FDS operation</i>	562
3.	<i>Instructions given to irregular forces</i>	572
4.	<i>Conclusion</i>	580
C.	FDS ACTIVITIES IN ABOBO IN JANUARY AND FEBRUARY 2011	583
1.	<i>Overview of the Prosecutor’s case in relation to FDS operations in Abobo before March 2011</i> ...	585

2.	<i>General Mangou's Testimony on the Requisition of the Army</i>	587
3.	<i>The Police operation of 11 January 2011</i>	592
4.	<i>Escalation of military activities in Abobo after 11-12 January 2011</i>	607
5.	<i>FDS Activities in Abobo from Mid-January to 22 February 2011</i>	624
6.	<i>FDS activities in Abobo in late February</i>	630
7.	<i>The deliberate failure of Mr Gbagbo to declare Abobo a war zone</i>	646
8.	<i>Conclusion</i>	654

VI. EXISTENCE OF A PATTERN OF CRIMES COMMITTED AGAINST CIVILIANS BY PERSONS ACTING ON BEHALF OF OR LOYAL TO THE ACCUSED..... 657

A.	INTRODUCTION	657
B.	30 NOVEMBER 2010 – SOTREPIM NEIGHBOURHOOD	667
C.	1-2 DECEMBER 2010 – RDR OFFICE IN WASSAKARA	668
D.	3 DECEMBER 2010 – RHDP DEMONSTRATION IN TREICHVILLE	669
E.	4 DECEMBER 2010 – RHDP DEMONSTRATORS NEAR THE GREAT MOSQUE OF KOUMASSI	671
F.	4 DECEMBER 2010 – PORT-BOUËT	672
G.	6 DECEMBER 2010 – RHDP DEMONSTRATORS IN BORIBANA	673
H.	16-19 DECEMBER 2010 - RTI MARCH (1 ST CHARGED INCIDENT)	674
1.	<i>Abobo</i>	679
2.	<i>Adjamé</i>	709
3.	<i>Cocody</i>	724
4.	<i>Koumassi</i>	742
5.	<i>Pro-Gbagbo forces arrested and detained demonstrators</i>	743
6.	<i>FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries</i>	747
7.	<i>FDS injured demonstrators</i>	753
8.	<i>Unidentified Perpetrators</i>	757
9.	<i>Events following the march</i>	758
10.	<i>Conclusion</i>	761
I.	25 DECEMBER 2010 – PDCI HEADQUARTERS IN COCODY	764
J.	18 AND 19 JANUARY 2011 – RHDP DEMONSTRATIONS IN ADJAME AND ATTECOUBE	765
K.	19/20 FEBRUARY 2011 – ABOBO MAIRIE	767
L.	24 FEBRUARY 2011 – BURNING OF A PERSON IN YOPOUGON GESCO	768
M.	25-28 FEBRUARY 2011 – KILLING, RAPE AND INJURIES IN DOUKOURÉ (2 ND CHARGED INCIDENT - YOPOUGON I)	769
1.	<i>The trigger of the violence</i>	770
2.	<i>The clashes on the Boulevard Principal (25 February 2011)</i>	776
3.	<i>The Attack at the Mosque (25 February 2011)</i>	791
4.	<i>Roadblocks in Yopougon (25-28 February 2011)</i>	797
5.	<i>The victims</i>	815
6.	<i>Conclusion</i>	830
N.	26 AND 27 FEBRUARY 2011 – SHELLING IN ABOBO	833

O.	3 MARCH 2011 – KILLING OF FEMALE PROTESTERS IN ABOBO (3 RD CHARGED INCIDENT – ABOBO I)	834
1.	<i>Who shot the thirteen victims?</i>	835
2.	<i>Why did the convoy open fire?</i>	837
3.	<i>Conclusion</i>	841
P.	3-4 MARCH 2011 – BURNING OF DISABLED PERSON PORT-BOUËT	841
Q.	11 MARCH 2011 – KILLING OF AN INDIVIDUAL IN YOPOUGON.....	843
R.	11-12 MARCH 2011 – SHELLING IN ABOBO	844
S.	15 MARCH 2011 – GREAT MOSQUE OF PORT-BOUËT II IN YOPOUGON	845
T.	17 MARCH 2011 – SHELLING IN ABOBO (4 TH CHARGED INCIDENT – ABOBO II)	848
1.	<i>What caused the explosions?</i>	850
2.	<i>When were the shells allegedly fired and by whom?</i>	854
3.	<i>What was the target of the shelling?</i>	859
4.	<i>Who ordered/authorised the firing of the mortars?</i>	863
5.	<i>Conclusion</i>	867
U.	19 MARCH 2011 – KILLING OF RELIGIOUS PERSONNEL IN WILLIAMSVILLE.....	868
V.	22 MARCH 2011 – SHELLING IN DERRIÈRE RAILS	869
W.	2 AND 8 APRIL 2011 – KILLINGS IN SIKASSO VILLAGE	870
X.	11 APRIL 2011 – SHELLING OF A BAKERY IN TREICHVILLE	871
Y.	12 APRIL 2011 – KILLINGS AND RAPES IN YOPOUGON (5 TH CHARGED INCIDENT – YOPOUGON II).....	872
Z.	ALLEGATIONS CONCERNING ‘OTHER EVIDENCE OF ARTICLE 7(1) ACTS’	877
1.	<i>Pillaging</i>	878
2.	<i>Burning</i>	879
3.	<i>Killing of Burkinabé</i>	882
AA.	CONCLUSION ON THE EXISTENCE OF THE FOUR ‘EVIDENTIARY FACTORS’ OF THE ALLEGED PATTERN... 883	
1.	<i>Incidents in the context of political demonstrations or in and around political parties’ premises..</i> 884	
2.	<i>Incidents concerning attacks on pro-Ouattara neighbourhoods including those on religious personnel</i> 885	
3.	<i>Incidents following identification checks particularly at roadblocks</i>	886
4.	<i>Incidents concerning shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters</i> 889	
BB.	CONCLUSION ON THE EXISTENCE OF THE ALLEGED OVERALL PATTERN/ATTACK AGAINST THE CIVILIAN POPULATION	890
VII.	OVERALL CONCLUSIONS ON THE ALLEGED COMMON PLAN/POLICY.....	895
VIII.	CRIMINAL RESPONSIBILITY	899
A.	MR GBAGBO AND MR BLÉ GOUDÉ’S RESPONSIBILITY UNDER ARTICLE 25(3)(A).....	899
1.	<i>Common plan – critical element of criminality</i>	899
2.	<i>Control over persons/organisation</i>	904
B.	MR GBAGBO AND MR BLÉ GOUDÉ’S CRIMINAL RESPONSIBILITY UNDER ARTICLE 25(3)(D)	911
1.	<i>Was there a group acting with a common purpose?</i>	912

2.	<i>Contributions to the crimes committed by members of the group of persons acting with a common purpose</i>	914
C.	MR GBAGBO’S RESPONSIBILITY UNDER ARTICLE 25(3)(B).....	920
1.	<i>Did Mr Gbagbo exercise authority over the physical perpetrators?</i>	921
2.	<i>Did Mr Gbagbo issue criminal orders?</i>	922
3.	<i>Did Mr Gbagbo induce the commission of crimes?</i>	925
D.	MR BLÉ GOUDÉ’S RESPONSIBILITY UNDER ARTICLE 25(3)(B).....	928
1.	<i>RTI</i>	928
2.	<i>Yopougon I</i>	929
3.	<i>Yopougon II</i>	938
E.	MR BLÉ GOUDÉ’S RESPONSIBILITY UNDER ARTICLE 25(3)(C).....	941
1.	<i>RTI march</i>	942
2.	<i>Yopougon I</i>	943
3.	<i>Yopougon II</i>	944
F.	MR GBAGBO’S RESPONSIBILITY UNDER ARTICLE 28	944
IX.	POSSIBLE APPLICATION OF REGULATION 55	948
X.	CLOSING REMARKS	949
XI.	ABBREVIATIONS AND ACRONYMS	951
A.	ABBREVIATION OF MAIN FILINGS IN THESE PROCEEDINGS	951
B.	ACRONYMS	952

REMARQUES PRÉLIMINAIRES¹

1. *Le texte qui suit comporte l'exposé écrit des motifs pour lesquels je me suis joint au juge Tarfusser pour décider de mettre fin à l'affaire concernant MM. Laurent Gbagbo et Charles Blé Goudé, et de les acquitter de tous les chefs de crimes contre l'humanité portés à leur encontre. Je n'ai pas pris cette décision à la légère. Bien que les éléments versés au dossier ne puissent manifestement pas étayer une condamnation sur la base des charges portées contre les accusés, ils apportent indéniablement la preuve de nombreux traumatismes et d'une grande souffrance humaine. Toutefois, la question dont nous avons été saisis n'était pas celle de déterminer si des actes de violence ont été perpétrés lors de la crise postélectorale ou si des personnes en ont souffert. La question était de savoir si ces actes et les souffrances qu'ils ont entraînées pouvaient légalement être qualifiés de crimes contre l'humanité tels que définit dans le Statut de Rome et, dans l'affirmative, si les accusés en portaient une quelconque responsabilité. La majorité a répondu à cette question par la négative mais notre collègue, la juge Herrera Carbuccion, est d'un autre avis.*

2. *Pour synthétiser notre position, la majorité a acquitté MM. Laurent Gbagbo et Charles Blé Goudé car la manière dont le Procureur a dépeint leurs actions et leurs omissions d'un point de vue juridique ne pouvait être étayée par les éléments de preuve présentés. Cela n'équivaut pas à dire qu'ils ont toujours fait preuve d'un niveau approprié de préoccupation et d'attention pour la population*

¹ En raison de la longueur de ces motifs, ainsi que du temps et des ressources limités dont disposaient les inestimables services de traduction de la Cour, il n'était malheureusement pas possible de fournir une traduction en français au moment du dépôt. Une traduction sera disponible en temps voulu. Cependant, afin de donner aux personnes qui sont sans doute les plus touchées par notre décision un aperçu quant au fondement des raisons qui la motivent, j'ai inclus ici une version française de mes remarques préliminaires.

Due to the length of these reasons and the limited time and resources available to the Court's inestimable translation services, it was unfortunately not possible to provide a French translation at the time of filing. A translation will be made available in due course. However, in order to provide those who are arguably most affected by our decision with at least a minimal idea of the reasons for it, I have included a French version of my introductory remarks here.

ivoirienne, ni qu'ils ont fait passer la sécurité et le bien être de cette population avant la survie politique du régime de M. Laurent Gbagbo. Quoiqu'il en soit, ce n'est pas à nous qu'il revient d'en décider. La seule question que nous étions appelés à trancher était celle de savoir si les preuves pouvaient démontrer que MM. Laurent Gbagbo et Charles Blé Goudé étaient impliqués dans la conception et/ou l'exécution d'un plan ou d'une politique visant à commettre des crimes violents contre la population civile d'Abidjan. De cela, nous avons jugé les preuves insuffisantes, et la loi nous dicte donc de prononcer l'acquittement.

3. *La Chambre ne s'étant pas prononcée à l'unanimité, il m'a semblé nécessaire d'expliquer ma décision de manière assez précise dans le jugement qui suit. En effet, il m'aurait été bien plus facile de me contenter de dire que les preuves étaient insuffisantes et de donner quelques exemples à titre d'illustration. Cela pourrait convenir dans d'autres contextes mais je suis d'avis que ce n'est pas le cas en l'espèce. Les parties, les victimes, le grand public et d'autres parties concernées ont le droit de savoir non seulement ce que nous pensons des preuves – à savoir qu'elles sont insuffisantes – mais aussi pourquoi nous le pensons.*
4. *La complexité de la cause plaidée par le Procureur et la grande quantité de preuves font que mon opinion est inévitablement longue et détaillée. Malheureusement, le prix à payer est que ce texte n'est pas facilement compréhensible et ne se prête pas à une lecture agréable. Toutefois, dans une époque où le débat public est dominé par des informations fallacieuses et des petites phrases, souvent en faisant abstraction d'importantes nuances et de raisonnement cohérent, il est important que les juges respectent et promeuvent certaines normes minimales en matière de rationalité et de transparence. Lorsque les parties nous présentent des arguments complexes et détaillés, il est bien souvent impossible de les analyser comme il se doit si l'on se contente de quelques remarques lapidaires. Procéder ainsi serait encore moins souhaitable car cela donne l'impression erronée que les choses sont simples et claires alors qu'elles ne le sont pas.*

5. *Cela étant, il est indéniable que cette affaire a souffert d'un excès de complexité. Le Procureur, dans un effort herculéen, a tenté de couvrir dans ce seul procès plusieurs années de l'Histoire ivoirienne. L'exercice s'est révélé bien trop ambitieux. Comme j'observe à plusieurs reprises dans mon opinion, en dépit de la grande quantité d'éléments de preuve présentés, beaucoup d'informations essentielles font encore défaut. Il ne m'appartient pas de déterminer si c'est parce que le Procureur ne disposait simplement pas de ces informations ou parce qu'il n'a pas (ou pas suffisamment) cherché à les obtenir. Toutefois, en donnant aux charges une si large portée factuelle, le Procureur a sans doute entrepris une tâche de trop grande envergure considérant les ressources dont il disposait. Cela a entraîné une description partielle, déséquilibrée et, en fin de compte, peu convaincante de ce qui se serait passé avant et pendant ces mois fatidiques de 2010 et de 2011, qui se sont soldés par la capture de M. Laurent Gbagbo.*

6. *Il est compréhensible que de nombreuses personnes soient déçues par ce que certains estimeront être un « échec » du Procureur. En particulier, les individus qui ont subi les violences à l'origine des charges ne devaient certainement pas s'attendre à ce qu'il soit mis fin prématurément à cette affaire sans que personne ne soit tenu responsable. Il est toutefois essentiel d'examiner les choses du bon point de vue.*

7. *Premièrement, l'acquittement des accusés ne doit en aucun cas être interprété comme un déni des souffrances éprouvées par les victimes lors de la crise postélectorale. Comme je le dis clairement tout au long de mon opinion, bien que les éléments de preuve n'aient pas toujours été à la hauteur de mes attentes, je ne mets pas en doute les souffrances injustes dont ont souffert la plupart, sinon l'ensemble, de ceux qui sont venus témoigner devant nous des épreuves qu'eux et leurs proches ont vécu. Personne ne devrait vivre ce qu'ils ont dû endurer et ils méritent davantage de reconnaissance et de compassion que ce que nous avons pu leur offrir.*

8. *Deuxièmement, dans sa décision, la majorité se contente de tirer une conclusion juridique qui se limite aux charges telles que confirmées par la Chambre préliminaire. Elle ne se prononce pas sur la responsabilité morale ou politique des accusés. Ces déterminations dépassent le rôle de la Chambre.*
9. *Troisièmement, si cette opinion critique parfois le Procureur, il est crucial de comprendre que ces critiques visent la thèse plaidée par le Procureur et non les personnes qui représentaient le Bureau du Procureur. Cette affaire s'est soldée par un acquittement parce que le Procureur ne nous a pas présenté suffisamment de preuves pour nous convaincre qu'une chambre de première instance raisonnable pourrait déclarer les accusés coupables sur la base de ces charges spécifiques. Il se peut que certains d'entre nous soient d'avis qu'il aurait été préférable de procéder autrement, mais cela ne remet absolument pas en cause l'intégrité, la bonne foi et l'engagement des femmes et des hommes qui ont représenté le Procureur dans cette affaire et dont le travail sans relâche et les efforts considérables ne devraient pas être dénigrés au prétexte qu'ils n'ont pas conduit à une déclaration de culpabilité.*
10. *S'il y a des leçons à tirer de cette affaire, elles sont de nature institutionnelle et stratégique. Si je puisse me permettre d'en proposer une, ce serait que l'on ne saurait attendre du Procureur qu'il plaide des affaires d'un tel niveau de complexité dans un délai raisonnable et avec les ressources limitées dont il dispose actuellement. Il est certes important que le Procureur soit ambitieux dans sa manière d'envisager son mandat, mais il doit aussi être réaliste sur ce qu'il est possible d'accomplir. Cela n'a rien à voir avec le rang des accusés mais tient plutôt à la difficulté même de recueillir et de traiter l'énorme quantité d'informations nécessaires pour développer une compréhension approfondie du contexte politique, social, culturel et militaire des situations donnant lieu aux types de crimes qui appellent l'attention de la Cour. Continuer de prétendre pouvoir examiner autant de situations et d'affaires différentes avec si peu de ressources et d'une coopération de la part des États parfois limitée pousserait clairement l'institution à revoir à la baisse les normes mêmes de justice et*

d'équité qui ont incité les États à créer la Cour. Il se peut qu'être moins exigeants et rendre des jugements fondés sur des « systèmes de preuves » de qualité contestable donne lieu à davantage de condamnations, et même à une vaine impression de contribuer à « mettre fin à l'impunité ». Toutefois, la loi est faite pour être respectée dans toute sa rigueur, et non pour servir d'excuse en vue de satisfaire des buts politiques ou même humanitaires. Si nous cessons d'observer ce principe, la CPI deviendra uniquement une « cour » en vertu de son nom et ne sera plus en mesure de rendre justice pour quiconque.

PRELIMINARY REMARKS

1. What follows are my written reasons for joining Judge Tarfusser in deciding to end the case against Mr Laurent Gbagbo and Mr Charles Blé Goudé and to acquit them of all charges of crimes against humanity. This is not a decision that I have reached lightly. Although the evidence on the record is manifestly incapable of supporting a conviction on the basis of the charges against the accused, there is undeniably proof of much trauma and human suffering. However, the question before us was not whether violence was perpetrated during the post-electoral crisis or whether people have suffered from it. The question was whether the violence and the suffering could be legally qualified as crimes against humanity as defined in the Rome Statute and, if so, whether the accused bore any criminal responsibility for them. The majority has answered this question negatively but our colleague, Judge Herrera Carbuccia, is of a different view.

2. In a nutshell, the majority acquitted Mr Gbagbo and Mr Blé Goudé because the way in which the Prosecutor depicted their actions and omissions from a legal point of view could not be sustained by the evidence. This does not mean that they always demonstrated an appropriate level of concern and care for the Ivorian population or that they prioritised the safety and wellbeing of the population over the political survival of Mr Gbagbo's regime. Whether or not they did is not for us to decide. The only thing we were called upon to determine is whether the evidence can prove that Mr Gbagbo and Mr Blé Goudé were involved in the creation and/or execution of a plan or policy to commit violent crimes against the civilian population of Abidjan. Of this we have found insufficient evidence and we are therefore bound by law to acquit.

3. Seeing that the Chamber was not unanimous, I felt it was necessary to explain my decision with some precision. Indeed, it would have been much easier for me to simply say that the evidence is insufficient and give a few illustrative examples. This may be appropriate in other contexts, but I am of the view that in this case it is not. The parties, the victims, the public and other stakeholders have

a right not just to know what we think of the evidence – namely that it is insufficient – they also have a right to know *why* we think this.

4. Given the complexity of the Prosecutor's case and the large volume of evidence, this has inevitably resulted in a long and detailed opinion. Unfortunately, this comes at a cost in terms of being easy to understand and enjoyable to read. However, in a time where soundbites and fake news dominate public discourse, often at the expense of nuance and sound reasoning, it is important for the judiciary to maintain and promote certain minimum standards of rationality and transparency. When the parties bring us complex and detailed submissions, it is often not possible to address them appropriately with a few pithy comments. Nor should we aspire to do so, because it gives the false impression that things are simple and straightforward when they are not.
5. Having said this, it is undeniably true that this case has suffered from being exceedingly complex. The Prosecutor, in a Herculean effort, has attempted to bring within the scope of this single litigation several years of Ivorian history. This has proved to be overly ambitious. As will be noted several times throughout this opinion, although the available evidence is voluminous, a lot of essential information is still missing. Whether this is due to the information being unavailable to the Prosecutor or to the fact that the Prosecutor did not look (hard enough) for it is not for me to say. However, in framing the factual scope of the charges so broadly, the Prosecutor may have bitten off more than she could possibly chew with the resources that were available to her. This has resulted in a partial, unbalanced, and ultimately unpersuasive portrayal of what allegedly occurred in the run-up as well as during those fateful months of 2010 and 2011 ending with Mr Gbagbo's capture.
6. It is understandable that a number of people will be disappointed by what will be seen by some as the Prosecutor's 'failure'. Especially those who suffered from the violence that provided the basis of the charges undoubtedly did not expect that this case would end prematurely without anyone being held to account. However, it is essential to keep everything in the right perspective.

7. First, the acquittal of the accused should in no way be construed as a denial of the suffering of the victims of the post-electoral crisis. As I have made clear throughout my opinion, although the evidence may not always have been to a standard that I would expect, I do not question that most, if not all, of those who came to testify before us about the ordeals they and their loved ones had to go through did suffer unduly. No one should experience what they had to endure and they deserve more recognition and compassion than we were able to give them.
8. Second, the majority's decision is limited to making a legal determination that is restricted to the charges as they were confirmed by the Pre-Trial Chamber. It takes no position on the accused's moral or political responsibility. That is not the Chamber's role.
9. Third, although this opinion is at times critical of the Prosecutor, it is crucial to understand that this criticism is aimed at the Prosecutor's case and not at the individuals who have represented the Office of the Prosecutor. The fact that this case has ended in an acquittal is due to the fact that the Prosecutor did not present us with sufficient evidence to persuade us that a reasonable trial chamber could convict the accused of these specific charges. It may well be that some of us may be of the view that they would have done things differently. However, this in no way impugns the integrity, good faith and commitment of the women and men who represented the Prosecutor in this case and whose incredibly hard work and great efforts should not be disparaged because it did not lead to a conviction.
10. If lessons are to be learned from this case, they are of an institutional and strategic nature. If I were to be so bold as to propose one such lesson, it would be that the Prosecutor cannot be expected to bring cases of this level of complexity and scope within a reasonable time frame with the limited resources that are currently available to her. While it is important for the Prosecutor to be ambitious in the way that she approaches her mandate, she ought also to be realistic about what is feasible. This has nothing to do with the level of the

defendants but with the sheer difficulty of collecting and processing the enormous amount of information that is necessary to develop a thorough understanding of the political, social, cultural, and military background of the situations that give rise to the sort of crimes that attract the Court's attention. The only way in which this institution can pretend to continue handling so many different situations and cases with so little resources and sometimes limited state cooperation, is by lowering the very standards of justice and fairness which motivated States to establish the Court. Being less demanding and rendering judgments based on 'systems of evidence' of questionable quality may lead to more convictions and even a vacuous sense that we are doing something to 'end impunity'. However, the law is there to be upheld in all its rigour, not to serve as an excuse to satisfy political or even humanitarian goals. If we cease abiding by this principle the ICC will become a court in name only and we will no longer be able to do justice for anyone.

I. NATURE OF THE DECISION AND THE APPLICABLE STANDARD

A. ‘No case’ standard

1. In the first case before the ICC dealing with a no case to answer motion, Trial Chamber V(A) held that

[T]he test to be applied in determining a ‘no case to answer’ motion [...] is whether there is evidence on which a reasonable Trial Chamber could convict. In conducting this analysis, each count [...] will be considered separately and, for each count, it is only necessary to satisfy the test in respect of one mode of liability, as pleaded or for which a Regulation 55 of the Regulations notice has been issued by the Chamber. The Chamber will not consider questions of reliability or credibility relating to evidence, save where the evidence in question is incapable of belief by any reasonable Trial Chamber.²

2. Thus the key question to be determined in these proceedings, with respect to each charge, is whether the Prosecutor has submitted sufficient evidence in support of that charge such that a reasonable chamber could convict. If the Chamber concludes, at this stage, that there is insufficient evidence to arrive at such a conviction in relation to a particular crime or on the basis of a particular form of criminal responsibility, it should halt the trial proceedings in respect of that charge and enter a formal acquittal. Conversely, if the Chamber concludes that the Prosecutor has submitted sufficient evidence in support of one or more charges such that a reasonable chamber could convict on that evidence, the trial must continue in relation to such evidentially supported charge or charges.
3. According to the traditional no case to answer standard, as initially adopted by Trial Chamber V(A), trial chambers should not assess reliability and credibility but should consider the Prosecutor’s evidence at its highest – relying on an assumption that the Prosecutor’s evidence is reliable and credible – unless the evidence is ‘incapable of belief’ on any reasonable view.³ However, as both

² Trial Chamber V(A), *Prosecutor v Ruto and Sang*, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions), 3 June 2014, ICC-01/09-01/11-1334, para. 32.

³ ICC-01/09-01/11-1334, para. 24.

Judge Eboe-Osuji and Judge Fremr have pointed out when they came to apply this standard, it makes little sense to completely prevent trial judges from assessing the quality of the evidence at the no case to answer stage.⁴ Indeed, such an artificial prohibition sits uncomfortably in the ICC's procedural framework. First, as the Appeals Chamber has pointed out, Pre-Trial Chambers "may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses."⁵ Given that the Pre-Trial Chamber may do so, despite the fact that the Prosecutor must not present all her evidence and may even present evidence in documentary and summary form at the confirmation hearing, it would be very strange indeed for the Trial Chamber to be constrained in this regard after having heard the presentation of the Prosecutor's evidence in full detail.

4. Secondly, contrary to the case against Messrs Ruto and Sang, this Trial Chamber did not make any admissibility rulings.⁶ This means that there has been absolutely no filter on what the parties were able to submit into the case record. This has resulted in the case record being flooded with documents of doubtful authenticity as well as documents containing significant anonymous hearsay. This sits uncomfortably with the traditional Adversarial/Common Law no-case to answer test, which instructs Chambers to consider the Prosecutor's evidence at its highest. Such an approach to no case to answer proceedings is premised on the assumption that the court will have filtered out evidence that was either irrelevant or lacked any probative value before the no case to answer test is applied. Indeed, a key reason for ruling on admissibility when the evidence is being submitted is to ensure that if called upon to assess the sufficiency of such

⁴ Trial Chamber V(A), *Prosecutor v. Ruto and Sang*, Decision on the Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027, Reasons of Judge Fremr, para. 144; Reasons of Judge Eboe-Osuji, paras 105-125.

⁵ Appeals Chamber, *Prosecutor v. Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges', 30 May 2012, ICC-01/04-01/10-514, para. 46.

⁶ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405.

evidence, all the evidence on the record is both relevant and has some minimal probative value. This was not done in this case.

5. It cannot be assumed, therefore, that all the evidence on the record has at least some minimal probative value. Indeed, it would be highly artificial to rely on an unauthenticated document or anonymous hearsay for the purposes of assessing whether there is a case to answer in the full awareness that the Chamber will not be able to give any probative value to such evidence when weighing the evidence at the end of the trial.
6. Related to this is this Chamber's practice of imposing almost no limitations on the method of questioning by the parties, with the Prosecutor – among other things – regularly asking highly leading questions and inviting opinions. Moreover, under the rubric of 'refreshing' their witness's memory, the Prosecutor frequently read into evidence excerpts from the witnesses' previous out of court statements into the transcript.⁷ Without appropriate context or clarity, it is not altogether clear whether the witness's memory was refreshed or whether a reluctant witness had been confronted with a prior statement. Depending on the context, it is difficult to attach much weight to such 'testimony' and it would unduly inflate its probative value if we now had to accept its content as a given, because we have to take it at its highest.
7. Third, this Chamber has, by majority, accepted the submission into evidence of a significant number of prior recorded statements on the basis of rule 68(2) of the Rules. Crucially, the Chamber has done so without making an appropriate effort to assess the reliability of the content of such statements.⁸ An uncritical reliance

⁷ See for example P-0483, T-99 dated 15 November 2016, pp. 89-91; P-0625, T-27 dated 9 March 2016, pp. 39-40; P-0226, T-166 dated 27 June 2017, pp. 17-19; P-0500, T-181 dated 28 August 2017, pp. 84-87; P-0009, T-196 dated 28 September 2017, p. 43-45.

⁸ Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Partially Dissenting Opinion of Judge Henderson, 13 June 2016, ICC-02/11-01/15-573-Conf-Anx at paras 24-28 annexed to 'Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 69(3)', 9 June 2016, ICC-02/11-01/15-573-Conf.

on such untested and unvetted evidence in order to determine whether or not we should continue these proceedings, with all the further delay and expense that this involves, is in my view inappropriate.

8. In sum the Chamber must engage in a full review of the evidence submitted and relied upon by the Prosecutor in order to determine whether such evidence is sufficient to support a conviction on the respective charge or charges.
9. The reference point for the no case to answer review is the Prosecutor's narrative as pleaded at the closing of her presentation of evidence⁹ and the evidence she relied upon in support of it. Although nothing prevents the Chamber from applying regulation 55 of the Regulations at the no case to answer stage, the Chamber does not have any responsibility to attempt to 'rescue' the Prosecutor's case against the accused by looking for an alternative legal characterisation of all or part of the facts and circumstances. Accordingly, if the Chamber finds that the Prosecutor's narrative of the case is not sufficiently supported by the evidence upon which she relies, it may discontinue the trial and enter an acquittal, without exploring whether the available evidence could theoretically support a different narrative of the same facts and circumstances.

1. Legal basis and consequence

10. Unlike the *ad hoc* tribunals, the ICC's legal framework does not contain any specific provisions regulating the current procedure. The Appeals Chamber has confirmed, however, that trial chambers may decide to conduct a 'no case to answer' procedure on the basis of their power to rule on relevant matters

⁹ In this case, the Prosecutor filed a Mid-Trial Brief in which she provided a detailed narrative of her case and indicated evidence in support of it. ICC-02/11-01/15-1136. She also filed a detailed response to the defence's motions for acquittal, which provides a lot of additional argumentation. ICC-02/11-01/15-1207.

pursuant to article 64(6)(f) of the Statute and rule 134(3) of the Rules.¹⁰ There is thus a legal basis for entertaining no case to answer motions. Nevertheless, this does not answer the question of what the legal basis is for a decision on such motions or indeed what the legal consequences are of a finding that there is no case to answer.

11. The accused have both made requests, upon invitation by the Trial Chamber, to dismiss the charges against them for failure of the Prosecutor to present evidence to the requisite standard. Specifically, Mr Gbagbo requests that the Chamber confirm that the Prosecutor's case does not prove the charges against him beyond reasonable doubt.¹¹ He also requests, *inter alia*, that, '[a]s a consequence' of said relief, the Chamber pronounce a 'non-lieu total' in his favour and render a judgment of acquittal for all charges and modes of responsibility.¹² Mr Blé Goudé requests that the Chamber find that there is no case for him to answer and that "accordingly" the charges be dismissed.¹³
12. Ordinarily, judgments on acquittals and convictions are rendered pursuant to article 74 and trigger the rights of the parties under article 81(1). However, trial chambers have ordinarily used article 74 of the Statute as a legal basis for

¹⁰ Appeals Chamber, *Prosecutor v. Bosco Ntaganda*, Judgment on the appeal of Mr Bosco Ntaganda against the 'Decision on Defence request for leave to file a no case to answer motion', 5 September 2017, ICC-01/04-02/06-2026, para. 44.

¹¹ Mr Gbagbo's Motion, p. 5.

¹² Mr Gbagbo's Motion, p. 5.

¹³ Mr Blé Goudé's Motion, para. 671.

rendering judgments of first instance on the criminal responsibility of an accused and not decisions on “no case to answer” motions.¹⁴

13. While the practical effect of a decision that there is no case to answer leads to an acquittal, it has not been settled in the Court’s jurisprudence, whether or not such a decision ought to be rendered pursuant to article 74 of the Statute. Article 74 titled “requirements for the decision” does not expressly indicate whether “the decision” refers to one necessarily rendered only at the conclusion of the trial after having received all the evidence from the parties. Notwithstanding this, given the issue to be determined in this procedure, article 74 does not appear to provide the appropriate basis to render such decisions on motions for ‘no case to answer’.
14. In the context of a trial conducted within an adversarial framework, a decision that there is ‘no case’ is made where a trial chamber concludes that the Prosecutor, having presented all her evidence, has not discharged her evidential burden by submitting sufficient evidence capable of supporting a conviction with respect to one or more of the charges. In essence, the issue to be decided is whether the Prosecutor has discharged that burden. It is possible for an accused to be convicted on the basis of evidence that was adduced by victims, by a co-accused, at the request of the Trial Chamber or even evidence that was submitted by the accused himself. However, given that the onus is on the Prosecutor to

¹⁴ Decision no. 5 in *Ruto and Sang* drew a distinction between the “no case to answer” stage and “the ultimate decision on the guilt of the accused to be made at the end of the case” (*see* ICC-01/09-01/11-1334, para. 23) but Trial Chamber V(A) did not state expressly under which articles the majority decision on “no case to answer” motions was being rendered. Trial Chamber V(A), *Prosecutor v. Ruto and Sang*, Decision on the Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027, p.1. The legal basis of Judge Fremr’s reasons was “Articles 64, 66 and 67 of the Rome Statute”. *See* Reasons of Judge Fremr, para. 1. Judge Eboe-Osuji did not specify the legal basis for his opinion in such words except elaborating on the authority to adjudge “no case to answer” motions arising from article 64 (2) of the Statute. Judge Carbuccia stated in her opinion that she would not “at this stage, analyse the totality of the evidence that could be taken into consideration in an eventual decision pursuant to Article 74”. *See* ICC-01/09-01/11-2027-AnXI, para. 3. She agreed that the “no case to answer” procedure was permitted under article 64 of the Statute. This distinction, however, was drawn in respect of the appropriate legal standard to be applied at the “no case to answer” stage and not to distinguish between the legal basis of the decision resulting from those respective stages. *See* ICC-01/09-01/11-1334, para. 22.

prove the guilt of the accused, in deciding whether to give a statement or to submit evidence in his defence, an accused may ask the Trial Chamber to determine whether the Prosecutor has submitted sufficient evidence capable of supporting a conviction, and as such justifying the continuation of the trial. If at this stage, there is insufficient evidence capable of supporting a conviction on a charge or charges, it is incompatible with the presumption of innocence to continue the trial with the hope that the only incriminating evidence capable of supporting a conviction would be supplied by the accused.

15. The legal basis for the decision that the accused has no case to answer is thus article 66(2) of the Statute, which places the onus of proving the guilt of the accused squarely on the Prosecutor. This burden never shifts.
16. The legal effect of the decision that the Prosecutor has submitted insufficient evidence to support a conviction on a charge, results in the discontinuation of the proceedings with respect to that charge and the acquittal of the accused on that or those evidentially unsupported charges. On the other hand, should the Trial Chamber find that the Prosecutor has submitted sufficient evidence capable of supporting a conviction, the trial continues on that or those charges, with the accused deciding whether he elects to make a statement and/or submit evidence in his own defence. After the accused presents his defence, the Trial Chamber acts in accordance with rules 141 and 142 of the Rules, deliberates on all of the evidence and at that stage, it issues its decision in accordance with article 74 of the Statute.
17. Accordingly, even though a decision that there is no case to answer is not a formal judgment of acquittal on the basis of the application of the beyond reasonable doubt standard in accordance with article 74 of the Statute, it has an equivalent legal effect in that the accused is formally cleared of all charges and

cannot be tried again for the same facts and circumstances.¹⁵ The only possible exception to this is when the Prosecutor has not been able to present her case fully due to significant interference *during* the trial proceedings.¹⁶

B. Scope of Evidentiary Review

18. As indicated previously, I now turn to the pieces of evidence that I have considered for the purposes of the present decision. To recall, the present proceedings are premised on the Prosecutor presenting her “detailed narrative”¹⁷ referring to the evidence in support of the charges, drawn from the larger pool of evidence “submitted” before the Chamber. For the purpose of the present opinion, the starting point in assessing sufficiency will be evidence relied upon by the Prosecutor in the Mid-Trial Brief and subsequent submissions. This is meant to include only the portions of such items of evidence that have been referenced in support of a particular proposition as part of her detailed narrative. The Prosecutor is not entitled, at this stage, to relegate sufficiency to a larger undefined group of evidence to the detriment of the parties and the participants.
19. Ordinarily a chamber may only consider the evidence discussed before it. In this case the Chamber has not confined itself to considering the material discussed before it. The Chamber has also considered other evidence submitted and where it has done so, this forms part of the reasoning. In particular, there may be on record pieces of evidence that the Prosecutor has not relied upon in support of the charges, but that may contextualise the evidence relied upon and, therefore,

¹⁵ It is assumed that the concept of ‘facts and circumstances’ in article 74(2) of the Statute encompasses the notion of ‘conduct’ contained in article 20 of the Statute.

¹⁶ Trial Chamber V(A) , *Prosecutor v. Ruto and Sang*, Decision on the Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027, p. 55-56. If there was significant interference before the start of the trial and the Prosecutor still decided to press ahead with the trial, then the Prosecutor must be assumed to have accepted the risk that the interference might undermine the strength of her case. Accordingly, interference before the start of the trial cannot be a ground for withholding a full acquittal in favour of the accused.

¹⁷ Order on the further conduct of the proceedings, 9 February 2018, ICC-02/11-01/15-1124, para. 10.

have a bearing on the sufficiency of the evidence supporting the Prosecutor's narrative. The Chamber may consider such evidence, regardless of whether or not the Defence or the Victims' Legal Representatives refer to it in their submissions on the sufficiency of the evidence.

C. Formal admissibility rulings

20. Turning now to the matter of the admissibility of evidence, the Chamber by majority decided that decisions on the admissibility and relevance of the evidence submitted by a party and, if applicable, the participants, "will be deferred to the final judgment, except when an intermediate ruling [was] required under the Statute or otherwise appropriate".¹⁸ The majority reasoned that it would only be at the "end of the trial, once the submission of the evidence will have been completed" that the Chamber will be in a position to meaningfully assess each item of evidence.¹⁹ It noted, in particular, that deferring this determination would "prevent multiple determinations on one and the same item of evidence [...] made at different stages of the trial".²⁰ It considered that such a deferral will ensure that "all the evidence will be subjected to a uniform treatment".²¹
21. I have expressed disagreement with the approach to the introduction of evidence adopted by the majority in the Chamber on several occasions.²² This approach has had implications on the scope and methodology adopted in forming the

¹⁸ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405, p. 10.

¹⁹ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405, para. 13.

²⁰ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405, para. 14.

²¹ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405, para. 15.

²² See e.g. Dissenting Opinion of Judge Henderson, 1 February 2016, ICC-02/11-01/15-405-Anx; Dissenting Opinion of Judge Henderson, 13 December 2016, ICC-02/11-01/15-773-AnxI; Dissenting Opinion of Judge Geoffrey Henderson, 1 June 2018, ICC-02/11-01/15-1172-Anx; Dissenting Opinion of Judge Geoffrey Henderson, 19 June 2018, ICC-02/11-01/15-1188-Anx.

current opinion on the evaluation of evidence and the merits of the submissions. Therefore, I consider it necessary to re-state my disagreement. The majority's approach does not strike the appropriate "balance"²³ between the Chamber's discretion to rule on admissibility and relevance as well as its obligation to ensure that the trial is conducted in a fair and expeditious manner.²⁴

22. Granted, there is no express obligation in the legal framework of the Court for a chamber to rule on a particular item of evidence to be "not irrelevant" and/or "not inadmissible" until a judgment pursuant to article 74 of the Statute. The Appeals Chamber has held that the Court's legal framework does not mandate a trial chamber to rule on relevance and admissibility of each item of evidence on the basis of a general admissibility test; it also considers permissible that a trial chamber instead recognises a piece(s) of evidence as 'submitted' – as opposed to 'admitted' – and take it into account for the purposes of a decision pursuant to article 74 of the Statute.²⁵ At present, however, the matter does not concern permissibility or the existence of such discretion. It concerns the exercise of that discretion in the current circumstances. What may be permissible is not, solely by virtue of it so being, necessarily appropriate. In that respect, it is also noted

²³ See Appeals Chamber, *Prosecutor vs. Jean-Pierre Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled 'Decision on the admission into evidence of materials contained in the prosecution's list of evidence', 3 May 2011, ICC-01/05-01/08-1386, para. 37.

²⁴ Decision on the submission and admission of evidence, 29 January 2016, ICC-02/11-01/15-405, para. 12.

²⁵ See Appeals Chamber, *Prosecutor v. Bemba et al.*, Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled 'Judgment pursuant to Article 74 of the Statute', 8 March 2018, ICC-01/05-01/13-2275-Red, paras 598-601; Appeals Chamber, *Prosecutor vs. Jean-Pierre Bemba Gombo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled 'Decision on the admission into evidence of materials contained in the prosecution's list of evidence', 3 May 2011, ICC-01/05-01/08-1386, para. 43. See, in contrast, Appeals Chamber, *Prosecutor vs. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against Trial Chamber I's decision on the submission of documentary evidence', 24 July 2017, ICC-02/11-01/15-995, para. 46 where the question before the Appeals Chamber concerned the Trial Chamber's approach to introduction of evidence but where the Appeals Chamber did not rule on the correctness or otherwise of the Trial Chamber's general approach in this case to defer rulings on the relevance or admissibility of the evidence submitted until the final judgment.

that the Appeals Chamber has considered that the duty of a trial chamber under article 64 (2)

in certain specific circumstances of each individual case, may warrant that a trial chamber, consistently with the boundaries of its statutory competence and, in the final instance, the object and purpose of the trial, exercise its discretion under article 69 (4) of the Statute, and render separate rulings on the relevance and/or admissibility of individual items of evidence.²⁶

23. In my view, as explained below, the present stage of the proceedings, if not those preceding, constitute specific circumstances where the Chamber should have exercised this discretion and rendered rulings on the items of evidence that it considers “not-irrelevant” and/or “not-inadmissible”.
24. At the current stage of the proceedings, sufficiency of evidence is at issue. In its First Order, the Chamber invited the Prosecutor to provide a “detailed narrative of her case in light of the testimonies heard and the documentary evidence submitted at trial” including “in which ways she thinks the evidence supports each of the elements of the different crimes and forms of responsibility charged”.²⁷ In its Second Order, the Chamber authorised the defence to make “concise and focused submissions on the specific factual issue for which, in their view, the evidence presented is insufficient to sustain a conviction”.²⁸
25. Sufficiency of evidence is predicated, *inter alia*, upon its relevance. In this regard, it is emphasised that evidence does not exist in a vacuum; it exists to prove and/or disprove a fact relevant to an issue before the Court. What separates a piece of documentary evidence from a document is its claimed ability to be linked to the facts needed to be proved or disproved within the broader factual framework of the confirmed charges. Such a link may be demonstrated as a

²⁶ See Appeals Chamber, *Prosecutor v. Bemba et al.*, Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled ‘Judgment pursuant to Article 74 of the Statute’, 8 March 2018, ICC-01/05-01/13-2275-Red, para. 603.

²⁷ Order on the further conduct of the proceedings, 9 February 2018, ICC-02/11-01/15-1124, para. 10.

²⁸ Second Order on the further conduct of the proceedings, 4 June 2018, ICC-02/11-01/15-1174, para. 10.

criterion for admissibility, in which case relevance forms a part of that determination.

26. In my opinion, authorising the defence to argue insufficiency in the face of large quantities of evidence that the Chamber itself has not yet determined to be ‘not irrelevant’ and/or ‘not inadmissible’ at the close of the case for the Prosecutor does not further the fairness or expeditiousness of a trial. To reiterate:

[a]t the close of the case for the Prosecution, the accused must make an informed decision on how he elects to proceed; options which include whether to stay silent or to give evidence and if so, to what he would wish to respond. In the context of adversarial proceedings, this requires a proper assessment of the evidence led and admitted, not what may be admitted.²⁹

27. The Appeals Chamber has held that, in the absence of rulings as to inadmissibility or irrelevance, the evidence considered ‘submitted’ must be presumed to be ‘not [...] inadmissible’.³⁰ Whilst this may not seem prejudicial to the accused if a chamber eventually finds that the evidence was indeed insufficient, this may not always be the case otherwise.
28. For these reasons, rulings on admissibility and relevance before this stage of the proceedings were necessary and should have been made by the Chamber in the exercise of its discretion.
29. I note my disagreement for the purposes of the present opinion because, as explained below, it affects how I have proceeded with my analysis. In this regard, I note that I do not have, at my disposal, the resources that a chamber could have in order to make these determinations in an expeditious manner, on a rolling basis or otherwise, so as to render a complete opinion on the submissions at this stage within a reasonable time. In addition, even if I did have the means to

²⁹ Dissenting Opinion of Judge Henderson, 1 February 2016, ICC-02/11-01/15-405-Anx, para. 9.

³⁰ Appeals Chamber, *Prosecutor v. Bemba et al.*, Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled ‘Judgment pursuant to Article 74 of the Statute’, 8 March 2018, ICC-01/05-01/13-2275-Red, para. 598.

make reasoned rulings on the admissibility of all pieces of evidence relied upon, the present opinion would not amount to excluding any piece of evidence as ‘ruled irrelevant or inadmissible’ within the meaning of rule 64(3). I am therefore required to evaluate the evidence considered “submitted” before the Trial Chamber, regardless of how I would have actually proceeded with respect to admissibility. This leaves me with little choice but to carry on without making admissibility rulings that I consider necessary.

30. The approach described above is a compromise that, in the present circumstances, risks the least in terms of maintaining a fair balance between the rights of the parties and participants. While the present opinion proceeds from a theoretical assumption as to admissibility that is rather artificial, this approach is compatible with considering the Prosecutor’s case at its highest/most compelling. However, it comes at a cost, in terms of the length of the analysis. For example, had we been able to simply exclude all anonymous hearsay, this draft would have been several hundreds of pages shorter.

II. ASSESSMENT OF EVIDENCE

31. In this section I will briefly outline how I have approached the evidence. The Prosecutor has invited the Chamber to conduct a holistic evaluation of the evidence submitted where all the relevant items of evidence are to be considered together as an entire body of evidence and not merely on their own.³¹ While I agree that this is appropriate, such an approach is not incompatible with the need for careful scrutiny and rigorous analysis of the individual bits and pieces of evidence and the inferences that the Chamber has been invited to draw therefrom. Accordingly, while I have conducted a careful review of the evidence submitted in this trial, I have not lost sight of the Prosecutor's narrative and theory of the case and the evidence needed to support a conviction on the charges. While it is obviously not possible to be inflexible in their application, on the whole I have been guided by the following principles.

A. Documentary and other non-oral evidence

32. In these proceedings, over 4,610 items of documentary and other non-oral items of evidence were submitted. The first requirement in treating with any of these exhibits is that their relevance and authenticity must be duly established. If it cannot be demonstrated that an item actually is what it purports to be, it would not be appropriate to rely on it for the making of any findings. In relation to documentary evidence, this means that, unless its origin and genuineness are apparent from the document itself, the tendering party must offer evidence to prove authorship and integrity of the document.³² In principle, the best way to prove authenticity is to have the author confirm it under penalty of perjury.

³¹ Response, paras 55-56.

³² Trial Chamber II, *Prosecutor v. Katanga & Ngudjolo*, Decision on the Prosecutor's Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, paras 22-23.

However, this is not an absolute precondition and the Chamber may accept any form of evidence that can establish authenticity.

33. Unfortunately, although the Prosecutor provided arguments in support of the authenticity of the evidence she submitted, she has not systematically made a sustained effort to substantiate her claims with supporting evidence, even when authenticity was far from apparent. For example, the Prosecutor collected a large number of documents from several archives of the *Gendarmerie* in Abidjan. The investigator's report that accompanied the request for submission of the *Gendarmerie* documents explains that one of the criteria in the selection of documents was "high degree of authenticity of the document (i.e. existence of handwritten signature; a common format for the document)".³³ Whereas these are sensible indicators of authenticity, the record does not show that the signatures were genuine or belonged to the person in whose name the document was signed. As became apparent during the trial, the authenticity of signatures is not something that can be taken for granted.³⁴
34. Another problematic example concerns the documents that were allegedly found at the Presidential Palace in Abidjan. As the investigator's report explains, the Prosecutor was given access to a large number of documents that were allegedly transported from the Presidential Palace to an annex of Hôtel d'Ivoire, where prosecution investigators reviewed the documents.³⁵ The report indicates that an Ivorian official informed them that the documents had been moved a number of

³³ Investigator's report on document collection at the *Gendarmerie Nationale* / 16-24 May 2013, 7 October 2013, CIV-OTP-0049-2986 (confidential), at 2999.

³⁴ For example, during his testimony, P-0010 refused to confirm that he had signed a document that seemingly bore his signature. T-137 dated 27 March 2017, pp. 53-55. The Prosecutor requested permission to have the signature examined by a graphologist, but the Chamber never received the results of this examination.

³⁵ CIV Situation/ Review of Documents from the Presidential Palace, Abidjan at the Annex of the Hôtel d'Ivoire, 25 May - 10 June 2012, 4 July 2012, CIV-OTP-0023-0401 (confidential) and Investigator's Report / Addendum to Report at CIV-OTP-0023-0401 concerning the Review of Documents from the Presidential Palace, Abidjan, 12 April 2017, CIV-OTP-0097-0219 (confidential). It is worth noting that the initial report is not signed and does not identify its author.

times, but provides no further information about how this official could certify the origin of the documents, let alone their authenticity.

35. Similar concerns exist in relation to the documents that were collected at the Presidential Residence. A team of prosecution investigators went to the Presidential Residence in mid-February 2012, where they collected several hundred documents with the help of UNOCI workers. According to the investigator's report, the Ivorian authorities had informed the Prosecutor in January 2012 that the Presidential Palace "had been left untouched since the arrest of Laurent and Simone Gbagbo".³⁶ However, no evidence has been presented by the Prosecutor showing that no one entered the Presidential Residence in the period between Mr Gbagbo's arrest and the Prosecution's site visit. It is thus far from certain that the documents that were found there ten months later were also present on the day of the arrest and that they were not tampered with. Moreover, the Prosecutor identified the former occupants of the different rooms in the Presidential Residence on the basis of statements by an Ivorian magistrate³⁷ as well as the former *aide de camp* of Ms Gbagbo.³⁸ However, these statements were not submitted into evidence.
36. As these examples show, in this case, there are pervasive problems affecting a considerable number of documents that make their authenticity questionable. It is probably fair to say that a majority of documentary exhibits that were submitted by the Prosecutor in this case would not pass even the most rudimentary admissibility test in many domestic systems. This does not mean, of course, that they should, therefore, automatically be excluded before this Court as well, but it

³⁶ Document Search at the Presidential Residence, Abidjan, 14 February - 1 March 2012, 27 June 2012, CIV-OTP-0024-0641 (confidential) (and Addendum to CIV-OTP-0024-0641, Document Search at the Presidential Residence, Abidjan, 14 February – 1 March 2012, 26 April 2017, CIV-OTP-0098-0005 (confidential)). As with the report concerning the documents of the Presidential Palace, the report is not signed and does not identify the author.

³⁷ Affidavit / No 386/CF/PR-AP/TPI, 23 April 2012, CIV-OTP-0021-0912 (confidential).

³⁸ Statement of Anselme Yapo, CIV-OTP-0021-0312.

would equally be a mistake to pretend that these problems do not exist. This is especially true in a case like the present one, where much of the evidence was essentially provided by the current government, which is headed by political opponents of the accused. Indeed, under these circumstances, the Chamber would have expected the Prosecutor to take further steps to ensure that important documentary evidence was properly and demonstrably authenticated before being submitted for the Chamber's consideration.

37. It makes little difference whether one considers authenticity for the purpose of assessing admissibility or whether it is considered at the end of the trial when the weight of the evidence is assessed. If a document cannot be authenticated for the purpose of admissibility, it can also not be authenticated for the purpose of assessing evidentiary weight. The Chamber cannot rely upon unauthenticated documentary evidence for the simple reason that it cannot be sure that the evidence is what it purports to be.
38. As was explained previously, the approach in this opinion is to evaluate the evidence as if it had been admitted, even though under normal circumstances it would have been excluded. Given this approach and considering the extent of the scale of the problems with authentication, I will not systematically discuss these in relation to each piece of documentary evidence. Nevertheless, I may highlight specific problems with authenticity in relation to particularly important documents.

B. Testimony

39. The Chamber received the testimony of 96 witnesses. While 57 of them testified in person before the Chamber,³⁹ 25 only did so in part⁴⁰ and 14 not at all.⁴¹ This

³⁹ In total, 57 witnesses appeared before the Chamber, either in person or via video link, and testified under oath.

⁴⁰ In total, the Chamber admitted the prior recorded testimony of 25 witnesses on the basis of rule 68(3).

has implications for how their evidence can be evaluated and, accordingly, the strength of the Prosecutor's case. I have grave concerns about the practice of admitting prior recorded testimony, especially if no effort is made to filter out statements that do not provide minimum indicia of trustworthiness. There is thus no presumption of reliability and credibility of prior recorded testimony that was admitted under rule 68(2) or (3) of the Rules. Despite the fact that witnesses were systematically asked to confirm their statements at the start of their testimony, on a number of occasions witnesses changed their evidence more or less significantly when examined by the Defence. This illustrates how careful one must be when relying on prior recorded testimony.

40. In relation to prior recorded testimony admitted under rule 68(2) of the Rules, one aspect which should receive particular attention is the extent to which the examiner probed the witness's account and his or her interest in the case. Another important factor is whether or not the examiner made a genuine effort to ensure that the witness provided all relevant information and not only the facts that may have been supportive of the examining party's case. Where the evidence relates to contested facts, if certain critical questions that might have cast the testimony in a different light were not asked, this should be taken into account by the Chamber when considering whether to rely on prior recorded testimony that was admitted under rule 68(2)(b). The Chamber should obviously also bear in mind that the witnesses' evidence was not tested by the examination of the non-calling party and that it therefore has not had the opportunity to see how the witness would have stood up. The Chamber also acknowledges that it was denied the opportunity of assessing the demeanour of this category of witnesses. While these are all points of genuine concern in this case, they have not been given consideration for the purposes of this decision.

⁴¹ In total, the Chamber admitted the prior recorded testimony of 14 witnesses on the basis of rule 68(2)(b).

41. More generally, although I did take into consideration the quality of the evidence (i.e. whether the testimony was based on first-hand observation or (anonymous) hearsay), no evidence has been excluded or disregarded on the basis of the lack of trustworthiness of the witness *per se*.⁴² This is not out of a sense of impropriety – on the contrary, I believe that it is possible to assess credibility and reliability for the purpose of ‘no case to answer’ proceedings. However, there was no need for assessing trustworthiness of witnesses in order to reach the conclusion that the Prosecutor’s evidence cannot support a conviction. This implies that, had I systematically assessed the credibility and reliability of the Prosecutor’s testimonial evidence, there would be even less of a basis to continue the proceedings in this case.

C. Hearsay

42. An extraordinary amount of evidence in this case rests upon hearsay, which the Prosecutor submitted on a prodigious scale. The Prosecutor’s relaxed approach to its use raises serious questions about her methodology. Indeed, it appears as if the fact that certain evidence may have been largely based on hearsay without the evidential basis to properly evaluate its probative value was not a significant factor in the Prosecutor’s selection of evidence submitted for the Chamber’s consideration.
43. I accept that, in appropriate cases, hearsay evidence may have considerable probative value. However for this to be the case, at the very least it requires the Chamber to be provided with adequate information regarding the reliability and credibility of the original source. Unfortunately, such information is frequently lacking in relation to the Prosecutor’s evidence. In fact, a considerable

⁴² To be sure, this does not imply that I consider all the witnesses in this case to be trustworthy. On the contrary, there are good reasons to doubt the trustworthiness of a number of witnesses in relation to certain parts of their testimony, such as, for example, P-0009, P-0011, P-0046, P-0047, P-0164, P-0184, P-0435, P-0483.

proportion of the evidence submitted by the Prosecutor is anonymous hearsay. No probative value can be ascribed to such evidence, in my view. This is because no responsible adjudicator can base factual findings on evidence without having good reasons to accept that the source of the information is sufficiently trustworthy. In the case of anonymous hearsay, this is simply impossible because the source of the information is unknown and can therefore, by definition, not be evaluated.

44. It is important to emphasise that simply knowing the identity of the source is not sufficient. Just as in the case of in-court testimony, in order to determine what weight should be given, it is necessary to have reliable information about how the source of the information came to know it, if there are any concerns about his or her memory and whether or not there may be reasons to think that the source may have deliberately given information which he or she did not believe to be correct.
45. Accordingly, when the only evidence in relation to a particular proposition is based primarily on anonymous hearsay or hearsay without adequate information about the reliability and credibility of the source, the Chamber must conclude that such a proposition is unsupported.

D. Corroboration

46. While there is no requirement for corroboration, it makes good sense that evidence should never be assessed in isolation. Corroboration or corroborative evidence is evidence which tends to confirm the truth or accuracy of certain other evidence by supporting it in some material particular. To fulfil this function, it must itself be relevant and credible, and it must come from a source independent of any evidence which is to be supported by it.
47. When evaluating the strength of the evidence for a particular proposition, the Chamber must determine the overall weight of the combined relevant evidence.

However in doing so, it is important not to be distracted by the large amounts of evidence that have been submitted and to focus the analysis on evidence that is relevant to the fact and the issues under consideration. Corroboration only occurs when two pieces of evidence independently confirm the same fact. When exhibits relate to similar but different facts; for example, a number of killings that took place at different times and locations, even at close proximity, such evidence does not necessarily provide corroboration. It is equally not possible to argue in such a scenario that there is necessarily corroboration for a pattern of events, because the patterns do not exist independently from the individual instances that constitute it. This point is particularly relevant in relation to the contextual elements in this case.

48. Contrary to what has been suggested by my colleagues,⁴³ I do not believe that all the evidence of the case as a whole is somehow linked together in a mutually reinforcing ‘system of evidence’.⁴⁴ Corroboration, like relevance, is proposition-specific. What connects different items of evidence is that they are relevant to the same fact. Furthermore, the fact that a witness’s testimony may have been corroborated in relation to one particular aspect of their evidence does not necessarily mean that other parts are therefore also more reliable or credible.
49. As noted, corroboration presupposes that the different items of evidence are independent of each other, but it also requires the respective items of evidence to have some intrinsic probative value in their own right. For example, if two items of evidence assert the same fact based on anonymous hearsay, the combined

⁴³ Decision concerning the Prosecutor’s submission of documentary evidence on 13 June, 14 July, 7 September and 19 September 2016, 9 December 2016, ICC-02/11-01/15-773, para. 33; Decision concerning the Prosecutor’s submission of documentary evidence on 28 April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018, 1 June 2018, ICC-02/11-01/15-1172, para. 58. *See also* Pre-Trial Chamber II, *Prosecutor v. Muthaura, Kenyatta and Ali*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382, para. 100.

⁴⁴ *See also* Partially dissenting opinion of Judge Kuniko Ozaki, 16 December 2016, ICC-02/11-01/15-744-Anx, para. 12, who points out that an assessment based on the notion of “system of evidence” “is not only vulnerable to unprincipled application, but is also not amenable to meaningful interlocutory review.”

evidentiary weight remains negligible, even if there are grounds to believe that the respective anonymous sources are independent of each other.

50. Several examples should serve to illustrate this point. On certain occasions, the Prosecutor uses the term corroboration where it would not be possible to do so. For example, the Prosecutor claims that the UNOCI Human Rights Division Call Centre daily Reports, UNOCI Suivi du cas Reports and UNOCI Daily Situation Reports ‘are consistent with and corroborate the evidence of the five charged incidents which further attests to their reliability’,⁴⁵ whereas the discussion of these incidents demonstrates that often the information contained in these reports did not match the concerned contemporaneous documents.⁴⁶ Similarly, the Prosecutor claims that ‘Receipts collected at the Presidential Palace corroborate the evidence of Witness P-0625’,⁴⁷ whereas the conclusions reached in respect of those receipts demonstrates that such an assertion would be an oversimplification.

E. Circumstantial evidence

51. Proof of the charges against the accused in this trial, depends in part on circumstantial evidence and it has been settled in the Court’s jurisprudence that this is permissible.⁴⁸ It is also well accepted that circumstantial evidence can be as strong as direct evidence. However, the potential weakness of this type of evidence is that wrong inferences may be drawn from a set of entirely true circumstantial facts or from facts which may have been mischaracterized. It is

⁴⁵ Response, para. 99. *See also* para. 98.

⁴⁶ *See for example* VI.J – 18 and 19 January 2011 – RHDP demonstrations in Adjame and Attecoube; VI.Q – 11 March 2011 – Killing of an individual in Yopougon.

⁴⁷ Mid-Trial Brief, para. 270.

⁴⁸ Trial Chamber I, *Prosecutor v. Lubanga*, Judgment pursuant to article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842, para. 111.

for this reason that the Chamber is required to narrowly evaluate the evidence for the underlying primary facts submitted to ensure not only that they are accurately portrayed but also before drawing the inferences invited by the prosecutor, to be sure that there are no other co-existing circumstances which would weaken or destroy that inference. In order to convict, the beyond a reasonable doubt standard requires that the inference must be the only reasonable inference that can be drawn from the primary fact.⁴⁹

III. THE PROSECUTOR'S CASE

A. The Prosecutor's case theory

1. The narrative

52. According to the Prosecutor, the charged crimes are the culmination of a decade-long effort by Mr Gbagbo to maintain his grip on power in Côte d'Ivoire. After winning the (partially boycotted) presidential elections in October 2000, Mr Gbagbo is alleged to have resolved never to relinquish the presidency and to use any means, including violent repression of political opponents, to that end. Mr Gbagbo is also accused of having exploited and exacerbated existing ethnic and national tensions among the citizens of Côte d'Ivoire. Furthermore, Mr Gbagbo is claimed to have systematically thwarted efforts to create peace and reconciliation in Côte d'Ivoire, including by obstructing the implementation of the *Linas Marcoussis* agreement of 23 January 2003 (which included the creation of a government of all major political groups) and the *audiences foraines* (public hearings to register large parts of the population whose status in the country was unclear).

⁴⁹ Trial Chamber III, *Prosecutor v. Bemba*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343, para. 239.

53. The Prosecutor also alleges that during Mr Gbagbo's ten-year tenure in office, there were several instances of violence and lethal force being used against political opponents, including peaceful demonstrators. According to the Prosecutor, none of these incidents were seriously investigated and no one was ever held to account. On the contrary, the Prosecutor claims that Mr Gbagbo deliberately cultivated a culture of impunity that primed public and irregular forces alike to engage in further violent acts.
54. By the time of the 2010 elections, the Prosecutor accuses Mr Gbagbo, together with Mr Blé Goudé, Mrs Simone Gbagbo and several other political, military and civil society leaders, of having adopted a policy to engage in an attack against the part of Côte d'Ivoire's civilian population that supported his main political rival, Mr Ouattara. This attack was intended to be widespread and systematic and was aimed at consolidating power in Mr Gbagbo's hands, regardless of the result of the elections.
55. In anticipation of the implementation of the alleged policy, the Prosecutor claims that Mr Gbagbo and/or other individuals acting on his behalf created, trained, equipped, and financed irregular armed groups. He is also accused of having made sure that the commanders of certain well-equipped units were loyal to him. Furthermore, Mr Gbagbo is alleged to have requisitioned the Ivorian armed forces, the *Forces Nationales Armées de Côte d'Ivoire* (FANCI), on 14 November 2010 in anticipation of their deployment against civilians, to have imposed several curfews, and to have mobilised the abovementioned irregular forces.
56. The final results of the 2010 elections were scheduled to have been announced by the *Commission Electorale Indépendante* (CEI) on 1 December 2010. However, the CEI was unable to reach a consensus. This impasse led to both Mr Gbagbo and Mr Ouattara being proclaimed winners of the elections; the first by the Constitutional Council, the latter by the president of the CEI. This created a standoff between the two politicians, who both took the oath of office and formed their respective governments. It is in the context of the ensuing power

struggle that the alleged attack against the civilian population supportive of Mr Ouattara is said to have been committed.

57. In fact, the Prosecutor alleges that the attack began a few days before it was clear that the CEI would not be proclaiming the official results and before Youssouf Bakayoko, president of the CEI, unilaterally declared Mr Ouattara as the new president.⁵⁰ In the days following the dual proclamation, the violence against *Rassemblement des houphouëtistes pour la démocratie et la paix* (RHDP) supporters continued in several parts of Abidjan⁵¹, culminating in the violent repression of what the Prosecutor characterised as a peaceful demonstration designed to install the new director of the *Radiodiffusion Télévision Ivoirienne* (RTI) appointed by Mr Ouattara.⁵²
58. From then on, the situation in Abidjan quickly deteriorated and became ever more violent, evolving into an all-out military assault by troops supporting Mr Ouattara that culminated in a siege of the Presidential Residence, which ended with the arrest of Mr Gbagbo on 11 April 2011.
59. In terms of what happened in the intervening period, the Prosecutor has focused on two *communes* of Abidjan, Abobo and Yopougon, which were, in some respects, mirror images of each other.

⁵⁰ See VI.B – 30 November 2010 – Sotrepim neighbourhood; and

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1-2 December 2010 – RDR Office in Wassakara.

⁵¹ See VI.D – 3 December 2010 – RHDP demonstration in Treichville;

VI.E – 4 December 2010 – RHDP demonstrators near the Great Mosque of Koumassi;

VI.F – 4 December 2010 – Port-Bouët; and

VI.G – 6 December 2010 – RHDP demonstrators in Boribana.

⁵² VI.H – 16-19 December 2010 - RTI March (1st charged incident).

60. Abobo was allegedly heavily populated by supporters of Mr Ouattara. The Prosecutor claims that Mr Gbagbo deployed military means to Abobo with full awareness that this would indiscriminately harm the civilian population. In particular, Mr Gbagbo is accused of having treated Abobo like a war zone but without having given the local population a fair warning that would have allowed them to seek safety. Although the Prosecutor acknowledges that the *Forces de Défense et de Sécurité* (FDS) were engaged in urban warfare with a guerrilla force going by the name of *Commando Invisible*, she argues that the manner in which the FDS operated in Abobo shows that they were equally targeting the local population. Two examples of this are the alleged killing without provocation of female protesters in Abobo on 3 March 2011⁵³ and the shelling with heavy mortars of several locations in this *commune* on 17 March 2011.⁵⁴
61. Meanwhile, in Yopougon, another *commune* of Abidjan that was predominantly inhabited by supporters of Mr Gbagbo, Mr Blé Goudé is alleged to have held a ‘mobilisation tour’ from December 2010 to February 2011, asking his followers to support the FDS and to stay alert and wait for his *môt d’ordre*. According to the Prosecutor, it was understood that Mr Blé Goudé would not overtly call for violence, but that those willing to act would understand the message nonetheless.⁵⁵ Mr Blé Goudé’s rhetoric is also claimed to have created an environment that was conducive to the commission of violent crimes. This was allegedly achieved by instilling fear that Gbagbo supporters would be the victims of a genocide and by demonising perceived Ouattara supporters, who were equated with ‘rebels’.
62. The Prosecutor alleges that the use of violence against the civilian population was anticipated and that as of October 2010 parts of the pro-Gbagbo youth of

⁵³ VI.O – 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I).

⁵⁴ VI.T – 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II).

⁵⁵ Mid-Trial Brief, para. 525.

Yopougon were involved in military-style training by a militia called the *Groupement Patriotique pour la Paix* (GPP). This training included running, drill and the use of firearms. The Prosecutor claims that such training was conducted under the auspices of FDS members, who also provided some of the trainers. These militia and youth groups are alleged to have operated above the law and, in some cases, to have acted in concertation with official FDS forces.

63. Then, on 25 February 2011, Mr Blé Goudé is accused of having issued his *môt d'ordre* during a speech in the *Bar le Baron*, a venue in Yopougon. This allegedly led to a number of violent incidents on 25-28 February 2011 that resulted in a number of killings and other instances of (sexual) violence against civilians belonging to groups that were deemed to favour Mr Ouattara. The same speech is also claimed to have caused the large-scale erection of roadblocks throughout Yopougon and other parts of Abidjan. At those roadblocks, persons were checked for their identity and in some cases, after they were identified as belonging to a putative pro-Ouattara group, treated as rebels and killed on the spot.
64. The Prosecutor blames Mr Blé Goudé for doing nothing to calm down the situation after it had been brought to his attention that violence was being committed pursuant to his *môt d'ordre*. Instead, he is accused of continuing to encourage the youth and calling upon them to continue controlling their neighbourhoods. Subsequently, on 19 March 2011, Mr Blé Goudé is accused of having called upon the pro-Gbagbo youth to enlist with the FDS. Although this enlistment never took place, the Prosecutor alleges that the pro-Gbagbo youth were nevertheless provided with weapons and collaborated with militias, mercenaries and FDS units under Mr Gbagbo's control.
65. By the end of March 2011, a full-scale battle for Abidjan was underway. In this context, both Mr Gbagbo and Mr Blé Goudé made appeals to continue fighting. However, on 11 April 2011, the Presidential Residence, where Mr Gbagbo had been entrenched for several weeks, was attacked and he was arrested. The next day, the Prosecutor claims that pro-Gbagbo youths and militia members

operating under the control of loyalist FDS and militia members based at the Locodjoro Naval base, committed several murders and rapes in the Doukouré and Mami Fatai neighbourhoods of Yopougon.⁵⁶

2. *Problems with the Prosecutor's narrative*

66. The Prosecutor's narrative is largely internally coherent and prima facie plausible. Nevertheless, there are a number of points of serious concern. The main concern is that the Prosecutor seems to have presented a rather one-sided version of the situation in Côte d'Ivoire. There is a reason why we ask witnesses to undertake to tell the 'whole truth'.⁵⁷ This is because withholding part of the relevant information may be highly misleading. Although it would be unfair to suggest that the Prosecutor deliberately withheld important information, her narrative - wittingly or unwittingly - systematically omits or downplays significant elements of the political and military situation. This has resulted in a somewhat skewed version of events that may be inspired by reality but does not fully reflect it.
67. First, although the Prosecutor acknowledges the relevant historical events that led up to the 2010-11 post-electoral crisis, she seems unwilling to attach any significance to them. For example, the Prosecutor mentions the 2002 coup attempt and ensuing civil war that essentially divided the country in two.⁵⁸ This reality obviously had significant consequences for Mr Gbagbo's position as elected president of Côte d'Ivoire. Mr Gbagbo was never a 'normal' president in a 'normal' situation. Almost from the beginning, his presidency was embattled and from 2002 onwards he was never able to exercise his constitutional role in a regular manner. In fact, even though the available evidence is far from complete,

⁵⁶ See VI.Y – 12 April 2011 – Killings and rapes in Yopougon (5th charged incident – Yopougon II).

⁵⁷ Rule 66(1) of the Rules.

⁵⁸ See, for example, Mid-Trial Brief, para. 25.

one gets the impression that Mr Gbagbo's regime was under quite severe strain and pressure for most of the time he held office. Indeed, because of the rebellion, Mr Gbagbo lost control over half the country and a significant portion of the state's armed forces had defected – with their equipment – and was committed to overthrowing him. This must inevitably have informed a number of the choices and decisions he made during the post-electoral crisis.

68. Similarly, the situation in Abidjan during the post-electoral crisis was far from being under Mr Gbagbo's control. Especially in Abobo, Mr Gbagbo's forces faced one or more potent and violent opponent(s), who expelled the regular law enforcement units (Police and *Gendarmerie*) and waged urban guerrilla warfare against the FDS. FDS units came under frequent attack and a significant number of FDS members were killed or injured. At the same time, it appears that military forces loyal to Mr Ouattara were approaching Abidjan and were at the verge of starting an assault to conquer the city. Again, the Prosecutor does not deny the presence and activities of the *Commando Invisible* and other anti-Gbagbo forces in or near Abidjan, but appears to attach no significance to these elements in the formulation of her narrative.
69. The Prosecutor also does not really engage with the conduct of the UNOCI contingent in Abidjan and brushes over the role and influence of the French troops.⁵⁹ Although formally neutral, they were certainly not perceived in that way by Mr Gbagbo and his regime. It may well be that this perception was incorrect or disingenuous. However, it would be equally incorrect and disingenuous to pretend that the presence and role of the UNOCI and French military forces was irrelevant to how Mr Gbagbo and his supporters viewed the situation.

⁵⁹ In fact, apart from briefly acknowledging the French bombing of the Presidential Residence on 10 April 2011 (Mid-Trial Brief, para. 613), almost all references to France in the Mid-Trial Brief refer to (verbal) aggression by the Gbagbo regime.

70. More generally, the Prosecutor's narrative ignores the fact that the accused and many of their supporters seem to have considered the survival of Mr Gbagbo's regime as a precondition for the continued emancipation of Côte d'Ivoire from the economic and political influence of the former colonial power, France. Regardless of whether or not this view was justified, it undeniably existed and may have gone a long way to explaining a lot of the accused's choices, rhetoric, and conduct.
71. In any event, no narrative could be reflective of reality without acknowledging that at all relevant times Mr Gbagbo's regime was facing an existential threat. Moreover, Côte d'Ivoire's regular military forces appear to have been relatively weak and there seems to have been a steady and increasing flow of desertions and acts of sabotage. This combination of enduring insecurity and structural inability of the State forces to recover control over the situation seems to have played a significant role in the creation of the so-called self-defence groups/militias. Although some of these groups, especially the GPP, figure prominently in the Prosecutor's narrative, the way in which the relationship between these groups and the regime of Mr Gbagbo is portrayed seems artificial. If the Prosecutor's narrative were to be believed, these groups almost totally lacked any agency and acted merely as an extension of the regime. However, the reality seems to have been significantly more complex.
72. It is also important to stress that, at all times relevant to the charges in this case, there appears from the evidence to have been an ongoing armed conflict in Côte d'Ivoire. The fact that Côte d'Ivoire was the scene of a drawn-out civil war must have been at the forefront of everyone involved in the post-electoral crisis. In particular, the awareness that there was an armed and organised force that posed an active threat to the Gbagbo regime may well have informed a number of key decisions that were made by the accused. By ignoring or downplaying this reality, the Prosecutor casts a different light on many of the events. While this fits her narrative, it does not correspond with reality on the ground.

73. The Prosecutor's narrative is also built around a unidimensional conception of the role of nationality, ethnicity, and religion (in the broadest sense) in Côte d'Ivoire in general and during the post-electoral crisis in particular. Without a nuanced understanding of how the different national, ethnic and religious groups related to each other and how these relations had developed socio-historically, it is not possible to provide an accurate portrayal of what happened. Although nationality, ethnicity and religion are clearly significant in Ivorian society, the composition of civil society and political organisations was a lot more complex and multifaceted than the Prosecutor's narrative might lead one to believe. This is not to underestimate the feelings of disenfranchisement, mistrust and sometimes fear that may have existed and that may have been exploited by different sides in the conflict. However, it is also perilous to overstate such feelings, as if they were the dominant way in which the Ivorian people saw each other.
74. In this regard it is important to distinguish between certain sentiments of resentment or mistrust that may have existed because certain national, ethnic, or religious groups may generally have been associated with the opposite side of the civil war, and feelings of animosity that may have had their source in more deep-rooted prejudice, socio-economic disparities and/or individual relations. Without a more detailed and nuanced understanding of the reality in this regard, no narrative can hope to be more than a caricature.
75. The Prosecutor's case also sorely lacked reliable background information about some socio-anthropological aspects of life in Côte d'Ivoire that would have been useful to have a better understanding about some of the alleged facts. For example, a lot was made of the claim that persons carrying so-called *gris-gris* were singled out and deemed to be rebels. While the Prosecutor has presented some anecdotal evidence in this respect, she just seemed to assume that this confirmed her case theory, without making any effort to show what the wearing of *gris-gris* signified in Ivorian culture and why it was deemed to be so significant by some.

76. A similar concern exists in relation to the Prosecutor's narrative about the political situation in Côte d'Ivoire. In particular, someone reading the Prosecutor's narrative could be forgiven for thinking that the country's population was entirely divided into supporters of Mr Gbagbo and supporters of Mr Ouattara. Although this perception is understandable when looking at the situation in hindsight, it entirely glosses over the fact that there were over a dozen presidential candidates and that one of them, Konan Bédié, obtained a quarter of the votes in the first round of the election. Although Mr Bédié endorsed Mr Ouattara for the second round, this does not mean that everyone who had voted for him automatically supported Mr Ouattara as well. Unfortunately, the position and role of these individuals is unaccounted for in the Prosecutor's narrative.
77. In sum, the fundamental flaw of the Prosecutor's narrative is that she depicted the post-electoral crisis as a straightforward story about a leader who could not accept that he had come to the end of the line and was unwilling to hand over power to his natural successor. Whereas this may be a plausible way of looking at the situation with hindsight, at the time the events unfolded, they involved two adversaries who had been trying to outmanoeuvre each other for years and who ended up resolving their dispute by one side destroying the other militarily. Just like it is impossible to understand a game of chess when one is not familiar with all the rules and is only told about the moves of one player, so it is not possible to correctly assess a complex historical event like the post-electoral crisis in Abidjan without a correct understanding of the socio-historical context and by only being told about what one side of the conflict is alleged to have done.

B. The Prosecutor's evidentiary approach

78. The Prosecutor has presented a case that is both quite simple and straightforward and at the same time perplexingly complicated. The Prosecutor's narrative is readily understood. However, because the Prosecutor does not seem to have

almost any direct evidence for her version of events, she has advanced an elaborate and multi-faceted evidentiary argument that is built almost entirely upon circumstantial evidence. The Prosecutor relies on a wide range of factual allegations from different areas, ranging from events that predate the post-electoral crisis⁶⁰ by a decade to minute details about meetings and small-scale financial and other transactions. According to the Prosecutor, this amalgam of hundreds of individual facts together form a system of evidence that can only be fairly assessed as a whole.⁶¹ However, simply declaring that everything is connected and that it is only possible to understand the true significance of the individual constituent elements by viewing all aspects of the case in their totality, is one thing. Articulating what these myriad connections are and demonstrating that they actually exist and form a coherent whole, is quite something else.

79. In this case, the Prosecutor seems to have started from the premise that her case theory is correct and that this theory provides the necessary coherence to link the disparate evidentiary elements she relies upon. However, this is putting the cart in front of the horse. In order to prove her case, the Prosecutor must first *demonstrate* the aforesaid connections and coherence. This has not been done. Although the Prosecutor has made considerable efforts in advancing a wide range of factual claims, she has neglected to provide a clear and cogent explanation of how they all relate
80. It is incumbent upon the party with the burden of proof to ensure that the Chamber has all the information it needs to put the incriminating evidence into its right context and give it the appropriate amount of evidentiary weight. The Prosecutor also failed in this regard. Notably, the Prosecutor has claimed the

⁶⁰ In the present case, for ease of reference, the period ‘between 27 November 2010 and on or around 12 April 2011’ has been referred to as the ‘post-electoral crisis’.

⁶¹ Response, para. 55.

existence of a number of patterns and relied upon these as circumstantial proof of some key elements in this case, such as the alleged common plan/policy and attack against a civilian population. Whereas patterns can provide very potent proof, this is only the case when they are genuine. In order to establish the true nature and extent of a pattern, it is indispensable for the party alleging it to demonstrate that the examples provided as proof of the pattern are representative samples of the totality of relevant events and not simply chosen because they fit a preconceived conception.⁶²

81. While it is recognised that the Prosecutor does not have limitless resources, it is important to stress that the Prosecutor should not cherry-pick those (parts of) exhibits that support her narrative and ignore the rest. Unfortunately, the Prosecutor has, on occasion, been selective in the evidence she collected. For example, in relation to the oft-invoked receipts of payments to alleged leaders of youth groups, the Prosecutor states the following:

the Prosecution found these receipts among a massive collection of hundreds of boxes of documents that took a team of eight investigators over two weeks to review, and selected these receipts as relevant based on objective criteria.⁶³

82. Yet, it may have been relevant to understand how the alleged payments to leaders of youth groups compared to payments made to other persons/groups. By being selective, the Prosecutor has prevented the Chamber from understanding the broader practice of payments by the Presidential administration. Having such

⁶² To avoid any misunderstanding, it is not suggested that the Prosecutor must provide exact numbers; nor is she required to have identified every individual involved. However, it is not satisfactory to ignore numbers altogether. Moreover, although the Prosecutor can to some extent rely on incidents where she has been unable to identify the perpetrators and/or victims, it is not adequate to simply make generic references to “many other unidentified” instances of crimes. While it is not unreasonable for the Prosecutor to believe that there may have been many more instances of criminality about which she has no or insufficient evidence, this cannot be considered a valid factual claim for the purposes of criminal proceedings. First, it is impossible to prove or disprove generic and imprecise allegations, because it is impossible to know which evidence is relevant and which is not. Moreover, even if it were possible to prove generic and open-ended claims their indeterminate nature makes it impossible to assess the significance of the allegation. See, e.g. Response, paras 463 and 511. In other sections of the Response, the Prosecutor refers to parts of the evidence where mention is made of crimes, but where essential information is lacking.

⁶³ Response, para. 1698

a broader understanding may be crucial in giving the selected evidence its right significance and probative value.

83. It is understood, of course, that sometimes the necessary information will no longer be available or cannot be obtained by the Prosecutor. While this is unfortunate, this is not something for which the Prosecutor can be blamed. However, this does not change the fact she retains the burden of proof – which is much harder to comply with when relevant evidence is missing. This obvious point is made here, because the Prosecutor sometimes seems to want to shift the burden of proof onto the Defence for missing evidence. For example, in relation to Mr Blé Goudé’s speech at the *Bar le Baron* on 25 February 2011, the Prosecutor states the following:

The absence of a full and uninterrupted version of the Bar le Baron speech does not detract from the available evidence, including video evidence, about what Mr Blé Goudé said and what the immediate reaction was. Furthermore, Mr Blé Goudé is unable to point to any evidence about the content of any portions of the speech not captured in available video evidence. His mere speculation about whether any “very important parts” were missed has no evidential value.⁶⁴

84. This sort of argument is misconceived and suggests a fundamental lack of understanding of the Prosecutor’s responsibilities in relation to the burden of proof.⁶⁵

⁶⁴ Response, para. 1830

⁶⁵ Another poignant example of this unfortunate attitude relates to Mr Blé Goudé’s argument concerning when the clashes of 25 February 2011 in Yopougon started and what may have caused them. Mr Blé Goudé had pointed to evidence that may have indicated that the clashes could have been in response to a conflict between bus drivers and *gbaka* drivers that same morning. In her Response (para. 1813) the Prosecutor argued that

Mr Blé Goudé has not demonstrated how instances of apparently retaliatory gbaka-burning by some pro-Gbagbo youth, even if prior to Mr Blé Goudé’s speech at Bar le Baron, has any relevance to the ensuing commission of the crimes of murder and inhumane acts committed by the police and the same or other pro-Gbagbo youth and militias against the inhabitants of Doukouré.

Whilst this reaction may be deemed reasonable with regard to the claimed involvement of the Police (which occurred later), the same is not true in relation to the ‘youth and militias’. The Prosecutor’s position is all the more remarkable, since she acknowledges that there is ‘no direct evidence as to what group of persons burned the bus’ (para. 1814) and that P-0449’s testimony on the crucial issue of the sequence of events ‘is unclear on this point’ (para. 1815).

85. Another serious shortcoming in the Prosecutor's evidentiary approach has been the cat and mouse game with the content (and putative criminality) of the alleged Common Plan/policy. Upon the pretext that the Common Plan/policy must not be exclusively directed at a criminal activity and that the motive for the attack against a civilian population is irrelevant,⁶⁶ the Prosecutor has presented a lot of evidence which seems only capable of proving non-criminal aspects of Mr Gbagbo's alleged plan to stay in power, but has offered nothing that specifically proves the criminal aspect of that policy. Instead, the Prosecutor argues that the criminality of the common plan/policy must be inferred from the totality of the evidence on record.
86. The difficulty with the Prosecutor's approach is that none of the individual factual elements she relies upon⁶⁷ clearly point to the existence of a plan or policy to attack civilians. The Prosecutor acknowledges this but argues that when all the different strands of her argument are considered together, it becomes clear that the Common Plan and the policy were criminal in nature.
87. While it is true that the (criminal) content of the Common Plan can, in principle, be inferred from a combination of circumstantial evidence, this theoretical possibility does not relieve the Prosecutor from formulating a cogent argument in this regard. Ultimately, the Prosecutor bears the burden of demonstrating, for each factual allegation she makes, which evidence purportedly proves it. If it is a combination of evidence that allegedly proves a fact, then the Prosecutor must clearly identify all the pieces of the puzzle and, crucially, explain how they fit together. Simply listing a large number of individual factual claims and

⁶⁶ Response, paras 200, 348, 1089.

⁶⁷ Response, paras 128 and 1105–1113. It is noted that in part V.C.1. of her Response, the Prosecutor included a number of lists of elements which she argues prove the criminality of the common plan and that the accused and other 'inner circle' members acted pursuant to the policy. Other parts of the Response contain further similar lists (e.g. paras 325 and 330) pertaining to the policy. Given that the content of the lists overlaps to some extent, it is not possible to identify an exhaustive number of elements, which the Prosecutor relies upon to prove the common plan/policy.

corresponding evidence and arguing that everything must be assessed holistically is not sufficient. A holistic assessment of evidence should not become an evidentiary black box and Chambers should not have to guess about the particulars of the Prosecutor's evidentiary arguments.

88. This approach raises a number of serious concerns. First, since the Prosecutor does not articulate a clear evidentiary argument (beyond arguing that everything should be assessed together), it is not possible to assess it properly. In particular, on the crucial question of why the combined effect of all her evidence is greater than the sum of the individual (non-incriminating) parts, the Prosecutor remains largely silent. In principle, this in itself would be a sufficient ground to dismiss her case. Second, by failing to articulate a clear evidentiary argument, it will always be possible for the Prosecutor to argue that whatever problems the Chamber identifies with a particular aspect of the evidence, that this particular aspect is not decisive to the outcome of the case. There are so many unstated assumptions and uncertain connections that it is almost impossible to know when a particular factual argument is so flawed that it must be rejected. Third, by not clearly identifying the precise range of facts she is asking the Chamber to assess holistically, the Prosecutor has made it nearly impossible for the Chamber to know when it has fully reviewed and evaluated the Prosecutor's evidence.
89. This problem is exacerbated by the fact that the same evidence is relied upon again and again, but in different (poorly defined) configurations, to prove all the material facts. This 'multiple use' of the same evidence gives rise to much repetition. Indeed, one thing that immediately catches the eye when reading the Prosecutor's Mid-Trial Brief and Response is the great amount of repetition and cross-referencing between sections. However, every time the same item of evidence is invoked it is claimed to prove a (slightly) different proposition. This means that there are a number of different arguments in relation to the same item of evidence that are scattered throughout the Prosecutor's submissions. This phenomenon has made analysing the Prosecutor's evidence and, especially, articulating a fully reasoned decision, a cumbersome and time-consuming task. It

also made it difficult to structure the analysis in a manner that avoids repetitiveness but that fully addresses the entirety of the Prosecutor's argumentation. Doing so in a manner that is clear and easy to follow has proved nearly impossible.

90. It is not inconceivable that the Prosecutor will try to argue that the Chamber has failed to take into consideration certain evidence in reaching its conclusion. However, the Prosecutor should not be allowed to hide behind large volumes of submitted evidence and an indeterminate 'system of evidence' to avoid scrutiny of her case.
91. Unfortunately, because of the Prosecutor's 'everything-proves-everything' approach, it has proved impossible to conduct a linear analysis of the evidence. In an effort to provide an intelligible structure, the evidentiary analysis has been divided into four parts. Since the Prosecutor's case hinges to a large extent on the existence of an alleged common plan/policy, part 0 starts by discussing the core evidence in this regard. This is followed by an analysis in part 0 of the evidence about how this alleged common plan/policy was purportedly implemented and how the situation evolved over time. Part 0 then gives a chronological overview of all the incidents upon which the Prosecutor expressly relies to prove the alleged pattern(s) of criminality that are central to her case. This includes both the five charged incidents as well as the 19 uncharged ones. Finally, in part 0I conclusions are drawn in relation to the different forms of alleged criminal responsibility of the accused. As the Prosecutor relies upon largely the same evidence for this as for the existence of the common plan/policy, this section is built upon the discussion and analysis contained in parts 0 to 0I.

IV. COMMON PLAN AND POLICY

92. From the allegations in the Pre-Trial Brief, the Mid-Trial Brief, and the Response, the Chamber notes that the Common Plan is set to have begun as early as October 2000, when Mr Gbagbo became President ‘following the 22 October 2000 election’.⁶⁸ After this, Mr Gbagbo is alleged to have ‘sought to stay in power by all means.’⁶⁹ In the years that followed, the alleged Common Plan was conceived and implemented by the members of the alleged ‘inner circle’ in advance of the elections in November 2010.⁷⁰ By 27 November 2010, the *implementation* of the alleged Common Plan had ‘developed’ to include ‘a State or organisational policy’.⁷¹ The Prosecutor has alleged that the means to achieve that objective involved the commission of crimes and that, following the second round of the presidential election, the pro-Gbagbo forces carried out a ‘campaign or operation’ of killing, raping and injuring civilians perceived as Ouattara supporters by ‘employing a number of common means some of which evolved during the duration of this campaign or operation’.⁷² The Prosecutor claimed that the alleged Common Plan remained in force even beyond Mr Gbagbo’s arrest as ‘pro-Gbagbo forces continued fighting in the hope of reinstating Mr Gbagbo’s power’.⁷³ The Prosecutor also pointed to the continued use of violence by ‘pro-Gbagbo forces’ against the civilian population as evidence of the existence of the alleged Common Plan.⁷⁴
93. In the Mid-Trial Brief, the Prosecutor explained that, whilst Common Plan and Policy are ‘distinct legal concepts, in this case the same evidence is relevant to

⁶⁸ Mid-Trial Brief, paras 13-20; *see also* Pre-Trial Brief, paras 19-20.

⁶⁹ Pre-Trial Brief, para. 20. *See also* Mid-Trial Brief, para. 13; Response, para. 1113.

⁷⁰ Mid-Trial Brief, paras 13-150.

⁷¹ Mid-Trial Brief, para. 6; Pre-Trial Brief, paras 22, 77.

⁷² Response, para. 235.

⁷³ Mid-Trial Brief, paras 615, 622; Response, para. 1111.

⁷⁴ Response, para. 1112.

both'.⁷⁵ For this reason, the evidence examined in this section is relevant and has been considered also for the purposes of reaching conclusions in respect of the alleged Policy.⁷⁶

94. Before turning to the analysis of the alleged Common Plan, the allegations concerning the members of the 'inner circle' will be addressed.

A. Inner Circle (Organisation - Composition)

95. In the Mid-Trial Brief, the members of the alleged 'inner circle' included Simone Gbagbo, Mr Blé Goudé,⁷⁷ and 'trusted officers of the FDS leadership, loyal mid-level officers of the FDS, past ministers and ministers during the post-electoral crisis'.⁷⁸ In the Response, the Prosecutor explains that this term was used to 'describe the different members of the Common Plan, including by virtue of the relative closeness of their relationship to Mr Gbagbo'.⁷⁹ The Prosecutor argued that such membership to the 'inner circle' must be denoted by an agreement between two or more persons, including the accused.⁸⁰ The Prosecutor asserts that what is at issue is 'whether Mr Gbagbo and his associates took the decision

⁷⁵ Mid-Trial Brief, para. 172.

⁷⁶ It is noted that this section uses the term 'Common Plan'. However, because of the nature of the Prosecutor's case, a reference to the alleged Common Plan does not exclude a reference to the alleged Policy. For this reason, for the purposes of the language used, something forming 'part of the alleged Common Plan' may be read as 'pursuant to or in furtherance of the alleged Policy', as the case may be.

⁷⁷ Seeing as Mr Blé Goudé is also an accused in the present case, an assessment of the totality of his conduct and contributions is contained in several sections that follow, including those concerning his criminal responsibility. In the Mid-Trial Brief, the Prosecutor did not advance any arguments concerning Mr Blé Goudé's purported membership to the alleged 'inner circle' in addition to those concerning his criminal responsibility. Therefore, allegations concerning Mr Blé Goudé's membership of the alleged 'inner circle' have not been discussed in the present section.

⁷⁸ Mid-Trial Brief, para. 61.

⁷⁹ Response, para. 1354. It is noted that, for this reason, the Prosecutor has advanced several arguments inviting the Chamber to consider the closeness and/or brotherly relationship between Mr Gbagbo and the members of the alleged 'inner circle' members. *See* Mid-Trial Brief, para. 61.

⁸⁰ Response, para. 1355.

to keep Mr Gbagbo in power by using the full force of the State – along with non-State actors – against civilians who were perceived to be opposed to him’.⁸¹

96. As noted above, the Prosecutor’s alleged Common Plan is based on circumstantial evidence. The agreement underlying the alleged Common Plan between the members of the ‘inner circle’ is therefore also a matter of inference to be drawn from their alleged participation and contribution. Considering the circumstances of this case, this evaluation will vary between the charged incidents depending on the actors involved.
97. In light of these allegations, the conduct of the individual members of the alleged ‘inner circle’ has been examined with a view to determining whether they shared intent underlying the alleged Common Plan as well as to assess the level of alleged coordination between them.⁸² In this regard, it is noted that whilst there need not be a meeting of minds between the designers of the policy and those who implement it on the ground, there must be a minimal level of coordination within those who control the relevant state or organisation to demonstrate. In this regard, it is noted that the Prosecutor alleges that the actions of the members of the ‘inner circle’ members were coordinated and, together with the alleged pattern of crimes, constitute evidence of the existence of the Common Plan.⁸³ In particular, the Prosecutor argues that despite the ‘disagreements, rivalries or personality clashes between individual members of the Common Plan’ they were each pursuing the same goal.⁸⁴ The Prosecutor exemplifies this coordination in the Response.⁸⁵

⁸¹ Response, para. 1358.

⁸² It is noted that the examples of coordination between the members of the alleged ‘inner circle’ are also contained in other sections of this decision.

⁸³ Response, para. 1378.

⁸⁴ Response, para. 1378.

⁸⁵ Response, paras 1379-1381.

1. Simone Gbagbo

98. The Prosecutor alleges that as the First Lady and the Secretary-General of the National Resistance Congress for Democracy ('CNRD'), the 'avowed aim' of which was to secure Mr Gbagbo's re-election, Simone Gbagbo was a member of the 'inner circle'.⁸⁶ In support of her alleged membership of the 'inner circle', the Prosecutor also points to meetings that Simone Gbagbo allegedly had with various youth leaders of the *Galaxie Patriotique*.⁸⁷

a) CNRD Leadership

99. There are several pieces of documentary evidence of varying probative value that suggest that Simone Gbagbo was indeed the Secretary-General of the CNRD.⁸⁸ It is noted that these documents have very low evidentiary weight. The documents relied upon to list the CNRD members are undated. Whereas one containing the minutes of a CNRD meeting and the attendees is dated 8 March 2006. These documents have very low probative value. Nonetheless, taking the Prosecutor's case at its highest, it is granted that Simone Gbagbo was the Secretary-General of the CNRD.

100. As regards the purpose of the CNRD's, it is noted that an unsigned unstamped document dated 26 May 2007 contains the notes from an extraordinary meeting of the CNRD that took place on 24 May 2007.⁸⁹ It does not contain a reference to Simone Gbagbo.

⁸⁶ Mid-Trial Brief, para. 62.

⁸⁷ Mid-Trial Brief, paras 62-64.

⁸⁸ *Compte-Rendu de Reunion / Premiere Reunion des membres du secretariat du CNRD*, 8 March 2006, CIV-OTP-0022-1531 (confidential) at 1535; *Liste des membres*, undated, CIV-OTP-0018-0426 (confidential) at 0426; *Secretariat General CNRD*, undated, CIV-OTP-0018-0339 (confidential) at 0339.

⁸⁹ *La Plate Forme d'action unitaire*, 26 May 2007, CIV-OTP-0018-0326 (confidential) at 0326.

101. Having regard to the contents of these documents, it can be concluded that Simone Gbagbo was one of the leading members of the CNRD in 2006 and 2007. The purpose of the CNRD was to ensure Mr Gbagbo's re-election.

b) Meetings

102. The Prosecutor alleged that Simone Gbagbo convened meetings of the CNRD regularly between 4 November 2010 and 31 March 2011 that were attended by the youth leaders of the *Galaxie Patriotique*.⁹⁰ The evidence concerning these meetings has been assessed below.

103. There is evidence to suggest that Simone Gbagbo would routinely have meetings. General Mangou testified that Simone Gbagbo would have a meeting every evening at 19h30 at the Presidential Palace.⁹¹ Sam l'Africain testified that when meetings were convened by Madam Gbagbo, they were 'on behalf of the CNRD'; they took place 'at the residence of the president of the republic'.⁹² He recalled having been at 'two or three' of those meetings.⁹³ In addition to this Sam l'Africain testified that he received invitations from Simone Gbagbo to attend meetings with her but whether she was its 'president or not, [he] did not know';⁹⁴ he started receiving these invitations in 2010.⁹⁵ General Kassaraté confirmed meeting Simone Gbagbo at the Residence, however, when shown the Residence Logbook entry,⁹⁶ he did not remember the dates⁹⁷ and maintained never having

⁹⁰ Mid-Trial Brief, para. 62.

⁹¹ P-0009, T-194 dated 26 September 2017, p. 9.

⁹² P-0625, T-27 dated 9 March 2016, p. 72.

⁹³ P-0625, T-27 dated 9 March 2016, p. 72.

⁹⁴ P-0625, T-28 dated 10 March 2016, pp. 7-8.

⁹⁵ P-0625, T-28 dated 10 March 2016, p. 8.

⁹⁶ See Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0507, transcript at CIV-OTP-0088-0863 (confidential) at 1074.

⁹⁷ P-0011, T-134 dated 13 March 2017, pp. 38-39.

had a one-on-one meeting with her.⁹⁸ He described the purpose of the visit being to ‘express[...] concern about what had happened to her constituents’ in Abobo.⁹⁹

104. In support of the allegations concerning specific meetings, Simone Gbagbo’s agenda has also been considered as discussed below. Based on the format and nature of these notes and their ambiguity, it is not possible to know if the notes contain what she thought or if these are notes pertain to information that she received from someone else. It is also often not known whether these notes were being created for the purposes of establishing objectives in the future. Further, while certain portions of this evidence sometimes suggests that certain notes in the diary may have been tasks to be undertaken, from the content of the notes themselves it is not possible to assess how these were to be carried out or what this would have entailed in practice. It is also noted that there is a section in her agenda called ‘perspectives’ that presumably contains the opinions of the respective persons that she met with.
105. Bearing these concerns in mind, the content of the notes have been considered in the overall assessment of the Prosecutor’s allegations concerning Simone Gbagbo. It is noted that in respect of a meeting dated 4 November 2010, Simone Gbagbo’s agenda contains a list of statements, one of which is to send credible and serious information to ‘*parlements*’.¹⁰⁰ As regards the portion cited by the Prosecutor in respect of the meeting dated 5 November 2010,¹⁰¹ it is unclear from the notes whether these are the steps to be taken in the future or whether this is information that Simone Gbagbo is being informed of.¹⁰² Similarly, further in

⁹⁸ P-0011, T-134 dated 13 March 2017, pp. 40.

⁹⁹ P-0011, T-134 dated 13 March 2017, pp. 40.

¹⁰⁰ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0830.

¹⁰¹ It is noted that this meeting, as per the notes, appears to have taken place on 3 November 2010 and not on 5 November 2010. From the handwriting the date appears to look like 5 November however, the notes for this meeting appear in the agenda before the notes for the meeting dated 4 November 2010. *See* Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0830 *cf.* 0817.

¹⁰² Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0832.

respect of the meeting dated 5 November 2010, the fact that '*entraînement de Jeunes*' is noted next to '*Forêt du Banco*' does not demonstrate whether this is something that had happened, was happening, or should happen in the future.¹⁰³ In these meeting notes, as alleged, the agenda also states that the electoral lists of Savanes should be changed and old ones should be replaced by the new ones before another election.¹⁰⁴ In these same notes, Simone Gbagbo qualified the RDR as terrorists in her agenda and the agenda suggests that this was written together with the comment that terror has been established in the interior of the country.¹⁰⁵ In the same meeting notes, it is noted 'to wake up our self-defence groups: the GPP' which may be understood as a task to be undertaken.¹⁰⁶ Similarly, the notes dated 11 November 2010 simply state '*auto-défense à organiser*'¹⁰⁷ followed by '*rencontre du groupe parlementaire*';¹⁰⁸ these statements do not appear under 'propositions' and are separated from that portion of the notes.¹⁰⁹ The Prosecutor also pointed to the notes dated 7 December 2010.¹¹⁰ They mention '*réhabiliter les GPP et autres mouvements*', '*mobiliser le peuple pour la résistance*', as well as '*les rebelles – extirper ces gens d'Abidjan*'.¹¹¹ The notes also list the '[a]ctions' to be taken such as '*batailles diplomatiques*', '*recherche d'amis*', '*défense populaire*', '*initiatives de la presse*', '*initiatives militaires*', '*actions politique*'; as part of the initiatives for the press, the notes also state '*couper ONUCI FM*' and '*intensifier nos*

¹⁰³ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0834.

¹⁰⁴ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0833.

¹⁰⁵ Mid-Trial Brief, para. 63 referring to Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0833.

¹⁰⁶ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0834.

¹⁰⁷ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0838.

¹⁰⁸ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0839.

¹⁰⁹ See Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0838-0839.

¹¹⁰ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0836. In the diary these notes appear before the meeting notes dated 9 November 2010. The notes following the meeting of 9 November 2010 are dated 13 December 2010 so it is not clear if this is an error and, if yes, an error concerning which of the two dates.

¹¹¹ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0836.

actions'.¹¹² There is certainly no indication that the purported activation of self-defence groups or the reference to putting up a resistance was for the purpose of committing violence against civilians.

106. The RTI broadcast dated 19 December 2010 has also been considered as it contains footage relevant to a meeting purportedly called by Simone Gbagbo.¹¹³ It is noted that Sam l'Africain was not at this meeting but testified that it was 'an important meeting, a large meeting convened by the first lady during which she called on the mobilisation of the republic. It was an appeal made to everyone to mobilise themselves'.¹¹⁴
107. There is evidence to suggest that Simone Gbagbo met with some leaders of the *Galaxie Patriotique* in late December 2010 which the Prosecutor suggests was the second CNRD meeting.¹¹⁵ This is also the meeting that the Prosecutor put to Sam l'Africain,¹¹⁶ who confirmed that during this meeting he had referenced 'the name of God, in the name of Abraham',¹¹⁷ a comment that corresponds with the notes in the diary dated 27 December 2010.¹¹⁸ It is also noted that Moussa Zéguen Touré appears in Simone Gbagbo's agenda on the page titled 27 December 2010.¹¹⁹ Sam l'Africain testified that there were other leaders of the *Galaxie Patriotique* that were present at this meeting, including Anoi Castro, Youssouf Fofana, Zéguen Touré, Kone Largaton.¹²⁰ The minutes of the meeting

¹¹² Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0837.

¹¹³ RTI broadcast dated 19 December 2010, CIV-OTP-0064-0078, transcript at CIV-OTP-0089-1027.

¹¹⁴ P-0625, T-28 dated 10 March 2016, p. 15.

¹¹⁵ See Mid-Trial Brief, paras 29, 261.

¹¹⁶ P-0625, T-28 dated 10 March 2016, pp. 11-12; *see also* p. 13 where the witness stated that he did not remember the exact date of the meeting, only that it took place 'towards the end of December'.

¹¹⁷ P-0625, T-28 dated 10 March 2016, pp. 9-10.

¹¹⁸ See CIV-OTP-0018-0810 (confidential) at 0851 for P-0625's quote and at 0850 for the date.

¹¹⁹ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0850; transcript at CIV-OTP-0070-1536 at 1537.

¹²⁰ P-0625, T-28 dated 10 March 2016, p. 11.

in the agenda indicate topics of discussion.¹²¹ Sam l'Africain testified that it was larger than the first CNRD meeting and there were about 150 people and

Each person took the floor to ask questions of the leaders who were there; the first lady, the minister of interior, the minister responsible for security, the minister of transport, the deputy director, Mr Issa Malick. There were many personalities present and people gave their points of view regarding the situation prevailing in the country.¹²²

108. There is evidence to suggest that Simone Gbagbo also met with certain ministers on 11 and 12 January 2011. The Prosecutor alleged that on 11 and 12 January 2011, certain ministers met with Simone Gbagbo.¹²³ These meetings are reflected as visits in the Residence Logbook.¹²⁴ Ministers Dogou, Guiriéoulou, Djédjé, Kadet, Sangaré, N'Guessan are shown to have requested to meet '*l'ère Dame*' on 11 January 2011;¹²⁵ not all of them are recorded as arriving and leaving at the same time.¹²⁶ There are no specific allegations or evidence of what was discussed during this meeting. On 12 January 2011, Ministers Dogou, Guiriéoulou, Tagro, Bertin Kadet, Sangaré, N'Guessan and three other persons are shown to have requested to meet '*l'ère Dame*'.¹²⁷ There are no specific allegations as to what was discussed during this meeting either, except that it 'took place during the RTI broadcast of Guiriéoulou's speech[...] just before [Mr] Gbagbo's meeting' with Mr Blé Goudé and the FDS Generals.¹²⁸ Without any specific indication as to what may have been discussed during the meetings of 11 and 12 January 2011

¹²¹ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0850; transcript at CIV-OTP-0070-1537 at 1537.

¹²² P-0625, T-28 dated 10 March 2016, p. 9.

¹²³ Mid-Trial Brief, para. 430.

¹²⁴ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1085-1086 [11 January 2011]; CIV-OTP-0088-0863 (confidential) at 1087-1090 [12 January 2011].

¹²⁵ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1085-1086. It is noted that on this day, Tagro is shown to have requested to meet Mr Gbgbo, recorded as arriving and leaving within a span of 7 minutes.

¹²⁶ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1085-1086.

¹²⁷ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1087-1090.

¹²⁸ Mid-Trial Brief, para. 430.

with Simone Gbagbo, assessing from the surrounding circumstances, it can be inferred that the security situation in Abobo may have been discussed during this meeting. It is also noted that, in Simone Gbagbo's weekly agenda for 10 to 16 January 2011, the CNRD meeting is also shown to be scheduled for 12 January 2011¹²⁹ however, nothing further is known about this meeting.

109. There is evidence to suggest that Simone Gbagbo also met with certain leaders of the *Galaxie Patriotique* in January 2011. The Prosecutor alleged that Idriss Ouattara¹³⁰ met with Simone Gbagbo in January 2011.¹³¹ Simone Gbagbo's Weekly Agenda, the entry dated 13 January 2011 states 'Idriss Ouattara & *les Jeunes Patriotes*' and 'Idriss OUATTARA & Sam l'Af'.¹³² Sam l'Africain recalled having been at this meeting with Simone Gbagbo after the Prosecutor drew his attention to the entry dated 13 January 2011¹³³ in Simone Gbagbo's agenda.¹³⁴ However, when asked if any of the other leaders of the *Galaxie Patriotique* were in attendance at that meeting, Sam l'Africain recalled having met her 'alone with her daughter'.¹³⁵ Sam l'Africain testified that they had 'discussions about the mobilisation, how to mobilise people to be present at the

¹²⁹ (3) Programme Hebdomadaire du 10 au 16 janvier 2011, 10 January 2011, CIV-OTP-0018-0464 (confidential).

¹³⁰ As per the evidence on the record, Idriss Ouattara was the president of FENAAPCI which was a federation of such agoras and parlements with as its president. *See* Sollicitation pour l'exécution de projets, 26 November 2003, CIV-OTP-0018-1081 (confidential) at 1081. *See also* RTI Broadcast dated 18 December 2010, CIV-OTP-0074-0057 at 00:30:01-00:32:49, transcript at CIV-OTP-0087-0441 at 0442-0443 where he is referred to as the president of the agoras and parlements. *See further* P-0449, T-160 dated 23 May 2017, p. 43 cf. p. 13 where the witness testified that Idriss Ouattara's movement was called *Voix du Nord*. As per Sollicitation pour l'exécution de projets, 26 November 2003, CIV-OTP-0018-1081 (confidential), the FENAAPCI had informally existed seven months before that date. P-0449 testified that Idris Ouattara was from the north. P-0449, T-160 dated 23 May 2017, p. 13. According to P-0097's sources, Idriss Ouattara was responsible for the AJSN. P-0097, T-48 dated 8 June 2016, p. 28.

¹³¹ Mid-Trial Brief, para. 64.

¹³² (3) Programme Hebdomadaire du 10 au 16 janvier 2011, 10 January 2011, CIV-OTP-0018-0464 (confidential), under '*Jeudi 13 Janvier*'.

¹³³ P-0625, T-28 dated 10 March 2016, p. 43.

¹³⁴ P-0625, T-28 dated 10 March 2016, p. 33 showing (3) Programme Hebdomadaire du 10 au 16 janvier 2011, 10 January 2011, CIV-OTP-0018-0464 (confidential); *see also* p. 37.

¹³⁵ P-0625, T-28 dated 10 March 2016, p. 43.

[15 January] rally’.¹³⁶ Apart from the fact that they may have met, no role in respect of this meeting is ascribed to Idriss Ouattara.¹³⁷

110. In assessing her meeting with Idriss Ouattara, document CIV-OTP-0018-1081 dated 26 November 2003 has also been considered. It contains a letter addressed to Simone Gbagbo signed by Idriss Ouattara in his capacity as President of FENAAPCI, *Fédération nationale des agoras et parlements de Côte d’Ivoire*.¹³⁸ Whilst this document is marked ‘vu’,¹³⁹ there is no indication in this document whether or not this letter received a reply by Simone Gbagbo. Nonetheless, the projects described therein do not speak of violent means to be undertaken by the organisation or its members. It cannot be concluded that this solicitation for money from Simone Gbagbo, even if granted by her, was intended for the alleged Common Plan.
111. Lastly, turning to the allegations concerning the CNRD meeting dated 30 March 2011 alleged to be attended by leaders of the *Galaxie Patriotique*, including Mr Blé Goudé.¹⁴⁰ This document¹⁴¹ simply contains a list of names and the column

¹³⁶ P-0625, T-28 dated 10 March 2016, p. 43.

¹³⁷ In other allegedly related roles Idriss Ouattara is alleged by the Prosecutor to have been present during the speech at *Le Baron Bar* on 25 February 2011. See Mid-Trial Brief, para. 551. In the RTI broadcast dated 28 February 2011, the reporter speaks of a “vigilance committee” being installed by Idriss Ouattara, who is also shown to have expressed support for the FDS. Mid-Trial Brief, para. 566. The report presented in this broadcast, amounting to hearsay, further states that the mission of the vigilance committee was to “*veiller et dénoncer tout mouvement suspect dans le quartier, être les yeux et l’oreille des [FDS]. En un mot, défendre la République par sa collaboration avec les forces régulières. Premier à être investi, le comité de vigilance de GESCO fait suite au mot d’ordre lancé par Charles Ble Goudé*”. It is noted however that, in his expression of support for the FDS, Idriss Ouattara states they must accomplish their mission “*sereinement*” [serenely] in defence of the state institutions. See RTI broadcast dated 28 February 2011, CIV-OTP-0061-0557, transcript at CIV-OTP-0086-0796 at 0797. The Prosecutor also cited the RTI broadcast of 18 December 2010 [Mid-Trial Brief, footnote 741] in which, Idriss Ouattara is seen expressing support for Mr Gbagbo’s presidency and requesting the departure of the UN forces from Côte d’Ivoire. See RTI broadcast dated 18 December 2010, CIV-OTP-0074-0057, transcript at CIV-OTP-0087-0441 at 0442-0443. In the remainder of the broadcast, there is no mention or suggestion to resort to violence. The conclusions in respect of the 19 March rally at Place CP1 Yopougon and the CNRD Meeting on 30 March 2011 are also recalled to examine Idriss Ouattara’s alleged presence and role there.

¹³⁸ Sollicitation pour l’exécution de projets, 26 November 2003, CIV-OTP-0018-1081 (confidential) at 1082.

¹³⁹ Sollicitation pour l’exécution de projets, CIV-OTP-0018-1081 (confidential) at 1081.

¹⁴⁰ Mid-Trial Brief, para. 64.

where the attendees may have purportedly signed to register their presence is blank. Without any other information to guide the analysis, this document does not constitute sufficient proof that there was in fact a CNRD Meeting on 30 March 2011 where these individuals listed in the document were present.

112. Having regard to the evidence adduced in respect of the meetings attended by Simone Gbagbo, including those involving the CNRD, together with the comments in her diary allegedly corresponding to those meetings, it can be concluded that Simone Gbagbo shared the intent for Mr Gbagbo to be re-elected and stay at the post. However, from what can be gathered from the notes of the meetings that she attended and/or called, it is not possible to ascertain what and how much of what is written in her notes reflects her personal views or the suggestions of others attending the meetings. Moreover, there is little indication that the ideas expressed in the notes were approved by Mr Gbagbo. In any event, there is nothing in the evidence to suggest that violence against civilians was contemplated.

c) Statements and speeches

113. The Prosecutor alleged that as part of the preparatory activities in anticipation of use of violence, Simone Gbagbo's diary demonstrates that control over and the support of the FDS was key in order to maintain Mr Gbagbo in power.¹⁴² From her remark about the FDS dated 5 November 2010¹⁴³ together with referencing military initiatives¹⁴⁴ and her remarks dated 13 December 2010 stating '*mater la*

¹⁴¹ Liste de Presence du Mercredi 30 Mars 2011, 30 March 2011, CIV-OTP-0018-0406 (confidential). This document is also referred to as the CRND attendance list by the Prosecutor and has been cited in the response to re-assert that Simone Gbagbo was in fact the Secretary General of the CNRD. *See* Response, para. 1418. This is also cited in response to Mr Blé Goudé's argument that document Liste des Membres, undated, CIV-OTP-0018-0426 (confidential) is undated and unsigned.

¹⁴² Mid-Trial Brief, para. 659.

¹⁴³ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0832.

¹⁴⁴ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0837.

*rébellion – offensive militaire*¹⁴⁵ it appears that she considered the need for a (counter-) offensive against the rebels. To the extent that the armed rebellion posed an existential threat to the survival of Mr Gbagbo's regime, it is reasonable to conclude that the FDS played a crucial role in averting such threat. It does not follow that this also meant that the FDS would be key in achieving said goal through the commission of crimes against the civilian population.

114. Further allegations concerning the rallies and instructions issued by Simone Gbagbo, reflective of her control over the FDS as well as the youth groups, are addressed below.
115. In addition to the CNRD meetings, Sam l'Africain testified that Simone Gbagbo convened at least two CNRD rallies.¹⁴⁶ In respect of one of the CNRD rallies, taking place 15 January 2011, the Prosecutor adduced the speech that she gave in support of the allegations, *inter alia*, that she shared the intent underlying the Common Plan. The content of this speech is analysed below.¹⁴⁷ Excerpts of this speech were broadcast on the RTI.¹⁴⁸ In the Response, the Prosecutor relies on P-0625's testimony¹⁴⁹ that he received an invitation to this rally, to allege that this demonstrated 'the coordinated nature of the activities of the pro-Gbagbo youth'.¹⁵⁰
116. Simone Gbagbo's speech is also relevant to allegations concerning the rhetoric against the UNOCI and ECOWAS,¹⁵¹ demonisation of Mr Ouattara, as well as the means suggested to keep Mr Gbagbo in power. It is noted that Simone Gbagbo

¹⁴⁵ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0844, 0848.

¹⁴⁶ P-0625, T-28 dated 10 March 2016, pp. 16-17.

¹⁴⁷ See IV.F.2.z) – 15 January 2011 – Rally at Palais de la Culture – Treichville

¹⁴⁸ RTI broadcast dated 15 January 2011, CIV-OTP-0064-0111 transcript at CIV-OTP-0086-1021 at 1022-1024.

¹⁴⁹ P-0625, T-28 dated 10 March 2016, p. 18.

¹⁵⁰ Response, para. 1416.

¹⁵¹ Mid-Trial Brief, para. 648.

made personal attacks against Mr Ouattara in this speech. She also criticised the African Union for being cowardly. The speech was emotive and appeared to rouse a lot of reaction from the audience. Within the context of already existing ethnic animosity, the speech appears to acknowledge this situation but does not call for inter-ethnic violence. Further, assessing her remarks concerning those that wear *gris-gris* considered together with the context of the remaining speech, it cannot be concluded that this statement constituted a call for violence against those that wore them.

117. The Prosecutor alleged that, on 10 March 2011, Simone Gbagbo gave a statement in support of her husband saying that ‘we must fight and triumph’¹⁵² and that this, amongst other examples, demonstrates that the Common Plan was in existence during the post-electoral crisis.¹⁵³ This statement also appears in her diary¹⁵⁴ following the 10 March 2011 entries and is contained within the notes titled ‘*analyse de la situation*’.¹⁵⁵ However, the reference to ‘fighting’ appear to have been intended metaphorically and there is certainly nothing to indicate that Mrs Gbagbo had violent designs against the civilian population.

2. FDS members

118. The Prosecutor alleges that, within the alleged ‘inner circle’, certain ‘loyal FDS senior officers played a key role in maintaining’ Mr Gbagbo in power.¹⁵⁶ The Prosecutor alleged that this was demonstrated by FDS members encouraging their subordinates to vote for Mr Gbagbo,¹⁵⁷ by pledging allegiance following the

¹⁵² Mid-Trial Brief, para. 650.

¹⁵³ Response, para. 1110.

¹⁵⁴ CNRD 2011, 10 March 2011, CIV-OTP-0018-0881 (confidential) at 0888.

¹⁵⁵ CNRD 2011, 10 March 2011, CIV-OTP-0018-0881 (confidential) at 0887.

¹⁵⁶ Mid-Trial Brief, para. 65.

¹⁵⁷ Mid-Trial Brief, paras 66, 72.

‘competing announcements of the results of the second election’,¹⁵⁸ by regular meetings to discuss core aspects of the post-electoral crisis,¹⁵⁹ and by remaining by Mr Gbagbo’s side during the indictment period,¹⁶⁰ including remaining loyal in the face of defection of senior officers.¹⁶¹ In addition to this, the Prosecutor also alleged that certain senior FDS officers, part of both the formal and parallel structure of the FDS, shared ethnic ties with Mr Gbagbo.¹⁶²

119. Having regard to the conclusions reached in respect of the command and control over the FDS,¹⁶³ in particular the parallel structure¹⁶⁴ as well as the meetings between the members of the alleged ‘inner circle’¹⁶⁵ and the allegations concerning the pledging of allegiance¹⁶⁶ and alleged defections,¹⁶⁷ it cannot be concluded that the senior FDS officials shared the intent underlying the Common Plan. Whilst some of them did express personal political preference for Mr Gbagbo, this, in itself, is not evidence that they did or would have shared the intent to commit crimes against the civilian population in order to keep him in power.

¹⁵⁸ Mid-Trial Brief, para. 67.

¹⁵⁹ Mid-Trial Brief, para. 68.

¹⁶⁰ Mid-Trial Brief, para. 69.

¹⁶¹ Mid-Trial Brief, para. 71.

¹⁶² Mid-Trial Brief, para. 70.

¹⁶³ See IV.D.1 - Forces de Défense et de Sécurité (FDS).

¹⁶⁴ See IV.D.1.c) - The alleged parallel structure.

¹⁶⁵ See IV.C - Meetings amongst alleged members of the ‘inner circle’.

¹⁶⁶ See IV.B.7 - Pressure to vote for Mr Gbagbo and pledging allegiance by senior FDS officers.

¹⁶⁷ See IV.D.1.d) - Defections.

3. Youth leaders

120. The Prosecutor's case in relation to the role played by the youth leaders *vis-à-vis* the alleged Common Plan significantly reduced over the course of the trial. In the Pre-Trial Brief, the Prosecutor alleged that

Leaders of youth groups and militia that formed part of the *Galaxie Patriotique* were also members of the Inner Circle, such as: the President of the CONARECI and GBAGBO's representative on the CEI, Damana Adia Médard a.k.a. Pickass; the proclaimed leader of the GPP and CNRD member Moussa Zéguen Touré; the President of the UPLTCI, Eugène Kouadio Djué; the President of the JFPI, FPI Deputy Campaign Director for the Youth under BLÉ GOUDÉ and CNRD member, Navigué Konaté; and the President of the FENAAPCI and also CNRD member, Idriss Ouattara.¹⁶⁸

121. In the Mid-Trial Brief, however, the Prosecutor alleged that, instead of being members of the 'inner circle' themselves, certain youth leaders were simply linked to such members. She alleged that, apart from Damana Pickass, '[t]he remainder of the youth leaders, both civilian and militia members, were linked to members of the Inner Circle', depended on them for financing purposes, and received instructions from them.¹⁶⁹ The roles of the youth leaders specifically concerning the financing of their respective youth groups¹⁷⁰ and command and control thereof¹⁷¹ has been assessed separately in the sections that follow. As regards the links of said youth leaders to the alleged members of the 'inner circle', the attendance of certain youth leaders at the CNRD meetings¹⁷² and the

¹⁶⁸ Pre-Trial Brief, para. 28.

¹⁶⁹ Mid-Trial Brief, para. 75.

¹⁷⁰ See IV.D.2.b)(2) - Payments and financing. See, in particular, IV.D.2.b)(2)(a)(i) - Eugène Djué; IV.D.2.b)(2)(a)(ii) - Serge Koffi; IV.D.2.b)(2)(a)(iii) - Yousouf Fofana; and IV.D.2.b)(2)(a)(iv) - Moussa Zéguen Touré.

¹⁷¹ See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002.

¹⁷² See IV.A.1.b) - Meetings.

meeting called by Mr Blé Goudé on 14 December 2010 have been considered,¹⁷³ as well as calls for mobilisation specifically attributed to them.¹⁷⁴

122. The Prosecutor relied, *inter alia*, on P-0176's testimony to allege that Damana Pickass was a member of the 'inner circle'.¹⁷⁵ The Prosecutor alleged that, on national television, he tore the paper containing the results of the election as collated by the CEI and remained loyal to Mr Gbagbo throughout the post-election violence.¹⁷⁶ P-0176 testified that Guillaume Gbato, leader of the FPI Youth at the time in 2006,¹⁷⁷ told him that Damana Pickass was 'one of the respected collaborators of President Affi N'Guessan' and that he was one of the young people who was in contact with Mr Gbagbo.¹⁷⁸ It is also noted that P-0176 testified that

[Damana Pickass] was from the party of Mr Laurent Gbagbo. And most of those young people were members of the youth wing of the FPI, and they wanted to invite him to make the occasion even more solemn for the movement, even more credible, because Mr Damana Pickass was just not anybody [...]. He was someone of note.¹⁷⁹

123. The Prosecutor also alleges that Damana Pickass was at the meeting in 2002 where Mr Blé Goudé was selected as the person to lead the '*lutte patriotique*' against 'the rebellion'.¹⁸⁰ The conclusions in respect of this meeting are recalled.¹⁸¹ Damana Pickas appeared to have been present at this meeting that took place following the attempted *coup d'état* of 19 September 2002.¹⁸²

¹⁷³ See V.B.3.a) - Mr Blé Goudé's mobilisation of *jeunes patriotes* to protect the RTI.

¹⁷⁴ See IV.F.4 - Youth leaders reiterating the calls.

¹⁷⁵ Mid-Trial Brief, para. 74.

¹⁷⁶ Mid-Trial Brief, para. 74. See also Mid-Trial Brief, para. 120.

¹⁷⁷ P-0176, T-143 dated 4 April 2017, pp. 15-16.

¹⁷⁸ P-0176, T-143 dated 4 April 2017, p. 20.

¹⁷⁹ P-0176, T-143 dated 4 April 2017, p. 20.

¹⁸⁰ P-0449, T-159 dated 22 May 2017, pp. 24-30.

¹⁸¹ See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002.

¹⁸² P-0449, T-159 dated 22 May 2017, pp. 30-31.

124. The Prosecutor also relied on the RTI broadcasts of 1 and 2 December 2010 to allege that Damana Pickass' reactions following the announcement of the second round of elections demonstrated the implementation of the alleged Common Plan.¹⁸³ In this broadcast, the comments from Damana Pickass address the apparent '*violation flagrante du mode opératoire unanimement admis par la CEI*'.¹⁸⁴ These events were reported as a lack of consensus between the members of the CEI.¹⁸⁵ The Prosecutor relied on the excerpts of Damana Pickass' statement, which reads, in full part as follows

Nous avons conclu qu'ils veulent opérer un coup de force électoral. Il s'agit d'un véritable coup d'état électoral et nous ne pouvons pas accepter ça. Je voulais, donc aux termes de cet éclairage, demander aux Ivoiriens de rester calmes, de rester sereins, de rester imperturbables. Nous allons proclamer les résultats. Nous allons proclamer les résultats de l'élection présidentielle. Qu'ils ne fassent pas attention aux rumeurs, qu'ils ne fassent pas attention aux allégations, aux sms, ils n'ont qu'à rester sereins. La CEI ira jusqu'au bout du processus, et va publier les résultats crédibles, les résultats valables, les résultats où les élections se sont déroulées normalement. Et c'est ce qui sera fait, et c'est ce qui sera admis.¹⁸⁶

125. In this assessment, the conclusions in respect of visits by Paul Yao N'Dré, the President of the Constitutional Council to the Presidential Residence around this time are noted.¹⁸⁷

126. The Prosecutor cited an RTI broadcast allegedly demonstrating that Damana Pickass remained loyal to Mr Gbagbo 'well into the post-electoral crisis and reiterated calls for mobilisation in April 2011'.¹⁸⁸ This RTI broadcast dated 3 April 2011 concerns the calls made over the RTI to the population to gather at the Presidential Residence. Damana Pickass' address contains the term referring

¹⁸³ Mid-Trial Brief, para. 121; *see also* paras 97 *et seq.*

¹⁸⁴ RTI broadcast dated 1 December 2010, CIV-OTP-0075-0057, transcript at CIV-OTP-0087-0133 at 0134.

¹⁸⁵ RTI Broadcast dated 2 December 2010, CIV-OTP-0074-0049, transcript at CIV-OTP-0102-2095 at 2096.

¹⁸⁶ RTI Broadcast dated 1 December 2010, CIV-OTP-0075-0057, transcript at CIV-OTP-0087-0133 at 0134.

¹⁸⁷ *See* IV.C.2.e) - Meetings on 30 November and 3 December 2010.

¹⁸⁸ Mid-Trial Brief, paras 74, 606 referring to RTI Broadcast dated 3 April 2011, CIV-OTP-0064-0130, transcript at CIV-OTP-0091-0465.

to mobilisation but does not concern calls for violence and/or commission of crimes:

Nous sommes sur ce plateau pour apporter un message aux Ivoiriens. Je voudrais tout d'abord féliciter les Ivoiriens qui se sont mobilisés, hier, à la résidence du Chef de l'État, 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. En effet, ceux-ci ont voulu empêcher l'afflux massif des populations ivoiriennes chez le Chef de l'État en les agressant jusque dans leur domicile. En dépit de cela, vous avez bravé ces difficultés, vous avez bravé cette insécurité, et vous êtes venus chez le Chef de l'État, et je voudrais vous saluer pour cela. Ceux qui ne l'ont pas encore fait, c'est le moment de le faire. Je voudrais d'abord féliciter les FDS pour la lutte héroïque qu'ils mènent, depuis 72 heures, pour la libération totale de notre pays. Depuis 72 heures, ils se battent au front, mais vous savez que depuis 72 heures aussi, les circuits de distribution sont perturbés, les vivres ne sont plus correctement acheminés sur les marchés, et donc, il se pose quelques problèmes à ce niveau. C'est pourquoi je voudrais lancer cet appel aux amis de la CÔTE D'IVOIRE, aux Ivoiriens, afin qu'ils nous apportent des vivres et des non-vivres, pour ne pas que la chaîne de distribution, la chaîne d'alimentation soient perturbées, soient arrêtées, à un certain moment, au niveau des Forces de défense et de sécurité. Pour ceux qui ont du riz, pour ceux qui ont de l'igname, pour ceux qui ont du manioc, pour ceux qui ont de l'huile, en fait, ceux qui ont des vivres, du poisson, tout ce qu'il faut, il faut qu'ils nous apportent dans l'urgence à ces numéros suivants [...] Nous comptons sur le sens de générosité et de partage des Ivoiriens. L'Armée a plus que besoin de notre mobilisation autour d'elle. Haut les cœurs ! La situation est en passe de devenir normale.¹⁸⁹

127. Relying on P-0449, the Prosecutor made other specific allegations concerning Damana Pickass and calls for mobilisation alleging that the youth responded positively to calls for mobilisation made by Mr Blé Goudé and other youth leaders, including Damana Pickass.¹⁹⁰ P-0449's testimony cited in support concerns the meeting in 2002 where Mr Blé Goudé was designated to lead the '*lutte*' against the rebellion. This has been discussed elsewhere.¹⁹¹ Damana Pickass was present during this meeting.¹⁹² While this meeting in essence did concern mobilisation in 2002 and the youth did respond to the calls for mobilisation made then. The analysis of Mr Blé Goudé's speeches and statements also demonstrates that the youth would respond to Mr Blé Goudé's

¹⁸⁹ RTI Broadcast dated 3 April 2011, CIV-OTP-0064-0130, transcript at CIV-OTP-0091-0465 at 0468.

¹⁹⁰ See Mid-Trial Brief, paras 655, 788 referring to P-0449, T-159 dated 22 May 2017, pp. 24-28.

¹⁹¹ See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002.

¹⁹² P-0449, T-159 dated 22 May 2017, p. 25.

calls however, it has not been demonstrated that these calls were being made for commission of violence against civilians.

128. The Prosecutor also references Damana Pickass' attendance at the CNRD Meeting on 30 March 2011 along with Mr Blé Goudé and 'other youth group leaders/high level members of the *Galaxie Patriotique*'.¹⁹³ The conclusions in respect of this meeting are recalled.¹⁹⁴ No further conclusions as regards Damana Pickass' alleged presence at this meeting.
129. As part of his alleged role as a member of the 'inner circle', Damana Pickass is alleged by the Prosecutor to be the President of the CONARECI.¹⁹⁵ P-0097 testified that CONARECI was a coalition set up in 2005 with the aim of bringing together several movements that were in existence with a view to capitalising on the situation at the time in support for the incumbent president.¹⁹⁶ According to P-0097, the UPLTCI created by Eugène Djué¹⁹⁷ was part of the CONARECI because they were not part of the AJSN,¹⁹⁸ the alliance created by Mr Blé Goudé. According to P-0097, the President of the CONARECI 'gather[ed]' the various movements and formed the CONARECI; there were no 'new' means put in place for CONARECI as its constitutive groups already existed.¹⁹⁹ According to P-0097, the GPP was supposed to be part of the CONARECI along with UPLTCI and FENOPACI.²⁰⁰ In contrast, P-0435, a GPP member, testified that he had not heard of the CONARECI.²⁰¹

¹⁹³ Mid-Trial Brief, para. 64 referring to Liste de Presence du Mercredi 30 Mars 2011, 30 March 2011, CIV-OTP-0018-0406 (confidential).

¹⁹⁴ See IV.A.1.b) - Meetings.

¹⁹⁵ Mid-Trial Brief, para. 74.

¹⁹⁶ P-0097, T-48 dated 8 June 2016, pp. 42-43.

¹⁹⁷ See also IV.D.2.b)(2)(a)(i) - Eugène Djué.

¹⁹⁸ P-0097 T-48 dated 8 June 2016, p. 44.

¹⁹⁹ P-0097, T-48 dated 8 June 2016, p. 43.

²⁰⁰ P-0097, T-48 dated 8 June 2016, p. 43.

²⁰¹ P-0435, T-94 dated 31 October 2016, p. 4.

130. The Prosecutor suggested that there were links between the CONARECI and the GPP by alleging that Damana Pickass' bodyguard was a GPP member,²⁰² providing him protection '[i]n the same vein' as Mr Blé Goudé's residence was provided reinforced security by 'elements of the GPP'.²⁰³ This has no bearing on the conclusions in respect of the alleged Common Plan.
131. From the totality of evidence cited by the Prosecutor in support of her allegations concerning Damana Pickass and his alleged links with the accused, it cannot be concluded that Damana Pickass shared the intent to commit crimes in the implementation of the alleged Common Plan. Tearing up the preliminary results of the second round of the elections on national television does not change this conclusion. Having examined his role, it is similarly not possible to conclude that he was a member of the alleged 'inner circle'. Whilst he may have personally supported Mr Gbagbo as a presidential candidate and acted in furtherance of it,²⁰⁴ it cannot be concluded that this support included the commission of violence against the civilian population. In respect of the certain youth leaders depending on the members of the 'inner circle' members for financing, the findings hereinunder are recalled.²⁰⁵
132. Having regard to these conclusions, whilst different youth leaders have shown varying levels of contact with the alleged members of the 'inner circle' as well as varying levels of support for Mr Gbagbo, there is insufficient evidence to conclude that the accused relied on them for the commission of crimes pursuant to or in furtherance of the alleged Common Plan.

²⁰² Mid-Trial Brief, para. 293.

²⁰³ Mid-Trial Brief, para. 293.

²⁰⁴ See for example P-0176, T-143 dated 4 April 2017, p. 19.

²⁰⁵ See IV.D.2.b)(2) - Payments and financing.

4. *Ministers*

a) **Pascal Affi N'Guessan**

133. The Prosecutor alleges that Pascal Affi N'Guessan, as the former Prime Minister and FPI President at the time, was instrumental in keeping Mr Gbagbo in power by all means.²⁰⁶
134. The Prosecutor alleged that FPI President N'Guessan regularly visited the Presidential Residence during the post-electoral crisis from 12 November to 10 April 2011 and, given his position, was instrumental in keeping Mr Gbagbo in power by all means.²⁰⁷ P-0048 testified that according to the constitutional provisions of Côte d'Ivoire, an incumbent president cannot be a leader of a political party and Pascal Affi N'Guessan would represent the FPI.²⁰⁸ The conclusions reached in relation to the meetings evidenced by the Residence Logbook are recalled.²⁰⁹
135. Given his political position in Côte d'Ivoire at the time, it can be safely assumed that Pascal Affi N'Guessan shared the intent to have Mr Gbagbo elected, however, the Prosecutor has not pointed to any evidence to show that he agreed or otherwise intended to do so through use of violence and/or commission of crimes against the civilian population. The Prosecutor also cites to testimonies by General Mangou, P-0625, and P-0331 to demonstrate his contributions, but none of these testimonies speak of Pascal Affi N'Guessan as having agreed or otherwise intended to keep Mr Gbagbo in power at *all* costs. From General Mangou's testimony, it is clear that he called Mr Affi N'Guessan in his capacity as a senior member of the FPI to inform him of his intent to pledge allegiance to

²⁰⁶ Mid-Trial Brief, para. 83.

²⁰⁷ Mid-Trial Brief, para. 83.

²⁰⁸ P-0048, T-53 dated 27 June 2016, p. 54.

²⁰⁹ See IV.C.1 - Visits to the Presidential Residence and Palace; *see also* IV.C.3 - Regular meetings.

Mr Ouattara following Mr Gbagbo's arrest.²¹⁰ No inference about Pascal Affi N'Guessan's alleged intent underlying the alleged Common Plan or otherwise contribution to it can be drawn from 'Sam l'Africain's' testimony that Pascal Affi N'Guessan accompanied the delegation of Mr Gbagbo during the negotiations with the African Union during the post-election crisis.²¹¹ The Prosecutor also referred to P-0431's testimony about Pascal Affi N'Guessan's alleged comment to stop the mobile courts in 2006.²¹² This comment, whether made or not, does not demonstrate that he contributed to or otherwise had intent underlying the alleged Common Plan. In the Response, the Prosecutor references video CIV-OTP-0059-0025, stating that it shows an 'FPI militant' saying 'on behalf of his party, [that] it has been decided to boycott the mobile courts'.²¹³ The fact that the FPI may have opposed the mobile courts in 2006 does not demonstrate that Pascal Affi N'Guessan intended to keep Mr Gbagbo in power at all costs, including through commission of crimes against the civilian population.

b) Alain Dogou

136. The Prosecutor alleged that Alain Dogou, as the Minister of Defence was a member of the 'inner circle'.²¹⁴ In addition to his alleged presence at certain meetings,²¹⁵ the Prosecutor relies on P-0435 to link him to the GPP leadership.²¹⁶ Having regard to the conclusions reached in respect of these allegations,²¹⁷ it cannot be inferred that Alain Dogou agreed or otherwise intended to keep

²¹⁰ P-0009, T-194 dated 26 September 2017, p. 31.

²¹¹ See P-0625, T-31 dated 16 March 2016, pp. 11-12.

²¹² Mid-Trial Brief, para. 83 referring to P-0431, T-43 dated 24 May 2016, p. 50.

²¹³ Response, para. 1411.

²¹⁴ Mid-Trial Brief, para. 77.

²¹⁵ See V.B - Prohibition of the RTI March.

²¹⁶ Mid-Trial Brief, para. 77 referring to P-0435, T-87 dated 18 October 2016, T-88 dated 19 October 2016, T-89 dated 20 October 2016.

²¹⁷ See IV.D.2.b)(5)(d)(iii) - Ivorian Security Legion; see also IV.D.2.b)(4) - Training, IV.D.2.b)(1)(c) - Groupement des Patriotes pour la Paix - GPP.

Mr Gbagbo in power through use of violence and/or commission of crimes against the civilian population.

137. Noting that public show of support for Mr Gbagbo, in itself, is not proof of such intent, the Chamber is also not persuaded that Alain Dogou's statements during the RTI broadcasts dated 7, 8, and 10 December 2010²¹⁸ support this allegation.²¹⁹ In particular, his 8 December 2010 statement concerning hierarchy was made in relation to his comments about himself being approachable as a minister while urging those below to respect the hierarchy.²²⁰ In his statement broadcast on 10 December 2010, he urged that the officers 'accomplish their official missions with ever greater rigour and unwavering loyalty across the Republic and its institutions' [translation].²²¹ The fact that Mr Dogou called for loyalty may be indicative of his wish to keep Mr Gbagbo in as strong a position as possible; however, this statement, especially when seen in context, cannot be interpreted as evidence of intent to commit violence against civilians.

c) Émile Guiriéoulou

138. The Prosecutor alleges that Mr Guiriéoulou, Minister of the Interior, was an 'inner circle' member²²² and a trusted ally of Mr Gbagbo.²²³ The acts attributed to him include an address to the *préfets* and *sous-préfets*²²⁴ and his public show of

²¹⁸ See RTI Broadcast dated 7 December 2010, CIV-OTP-0061-0538, transcript at CIV-OTP-0104-0282 at 0283; RTI Broadcast dated 8 December 2010, CIV-OTP-0061-0540, transcript at CIV-OTP-0102-0512 at 0513; RTI Broadcast dated 10 December 2011, CIV-OTP-0061-0546, transcript at CIV-OTP-0087-0364 at 0366.

²¹⁹ Mid-Trial Brief, para. 142.

²²⁰ RTI Broadcast dated 8 December 2010, CIV-OTP-0061-0540, transcript at CIV-OTP-0102-0512 at 0513.

²²¹ RTI Broadcast dated 10 December 2011, CIV-OTP-0061-0546, transcript at CIV-OTP-0087-0364 at 0366:

²²² Mid-Trial Brief, para. 77.

²²³ Mid-Trial Brief, para. 142.

²²⁴ Mid-Trial Brief, para. 149.

support for Mr Gbagbo.²²⁵ The Prosecutor also alleges that he was instrumental in the coordination of the FDS during the post-electoral crisis.²²⁶

139. It is noted that Mr Guiriéoulou's address to the the *préfets* and *sous-préfets* dated 10 December 2010 does not demonstrate that he shared the intent for the alleged Common Plan; it calls for the *préfets* and *sous-préfets* to assume their duties with 'confidence, serenity, loyalty and commitment to the construction and peacebuilding and social cohesion' [translation];²²⁷ he recalls the principle that their authority is based, *inter alia*, on keeping equal distance from political and regional interests.²²⁸ The Prosecutor cites General Mangou as support that Mr Guiriéoulou was instrumental in the coordination of the FDS, but this testimony does not speak of what words and/or actions could personally be attributed to Mr Guiriéoulou.
140. The RTI broadcasts dated 14 and 15 December cited in support of allegations concerning Mr Guiriéoulou's public show of support for Mr Gbagbo only feature journalist reports about the first and second meetings of the newly formed cabinet. They do not contain any statement attributable to him.²²⁹ It is also noted that General Mangou testified that it was through 'memos from [Émile Guiriéoulou], prohibiting the march' that he came to be informed about there being a march on 16 December 2010.²³⁰ Having regard to the conclusions reached in respect of the prohibition of the march,²³¹ it cannot be concluded that Émile

²²⁵ Mid-Trial Brief, para. 142.

²²⁶ Mid-Trial Brief, para. 142.

²²⁷ RTI Broadcast dated 10 December 2010, CIV-OTP-0061-0546, transcript at CIV-OTP-0087-0367 at 0368.

²²⁸ RTI Broadcast dated 10 December 2010, CIV-OTP-0061-0546, transcript at CIV-OTP-0087-0367 at 0368.

²²⁹ See Mid-Trial Brief, footnote 418 referring to, *inter alia*, RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0568, transcript at CIV-OTP-0102-0833; RTI Broadcast dated 15 December 2010, CIV-OTP-0074-0054, transcript at CIV-OTP-0102-0469.

²³⁰ P-0009, T-196 dated 28 September 2017, pp. 2-3.

²³¹ See V.B - Prohibition of the RTI March.

Guiriéoulou, through circulation of memos prohibiting the march, intended for support to Mr Gbagbo to encompass commission of crimes against civilians.

141. Relying on P-0483's testimony, the Prosecutor alleges Mr Guiriéoulou provided funds to Liberian mercenaries. Yet this allegation is not reflected by P-0483's testimony. It is noted that P-0483 specifically testified that he did not know anything about the names of the people who had contributed money to the Liberian mercenaries, who were part of the fighting forces in 2002-2003.²³² In any event, even if it were true that Mr Guiriéoulou funded mercenaries in 2002-2003, who presumably operated in the West of the country, it is far from clear how this has any bearing on the existence of a plan to harm civilians in Abidjan in 2010.

d) Alcide Djédjé

142. The Prosecutor alleged that Alcide Djédjé, the Minister of Foreign Affairs, was an 'important member' of the alleged 'inner circle'.²³³ Mr Djédjé is alleged to have 'espoused' Mr Gbagbo's purported policy as evidenced by his stating that demonstrators should be referred to as rebels.²³⁴
143. Given his position as the Minister of Foreign Affairs during the post-electoral crisis, the frequency of his visits to the Presidential Residence²³⁵ is unsurprising. Similarly, the fact that in the context of events after 25 March 2011,²³⁶ P-0321

²³² See P-0483, T-100 dated 16 November 2016, p. 57.

²³³ Mid-Trial Brief, para. 78.

²³⁴ Mid-Trial Brief, para. 78.

²³⁵ See also IV.C.3- Regular meetings; *see in particular* IV.C.2.g) - Meetings on 3 December 2010, IV.C.2.i) - Meeting on 9 December 2010, IV.C.2.r) - Meeting on 14 March 2011.

²³⁶ P-0321, T-61 dated 8 July 2016, p. 41 (confidential).

referred to Alcide Djédjé as “*un homme de confiance*” of Mr Gbagbo²³⁷ is not necessarily indicative of any further alleged agreement or shared criminal intent.

144. It is true that the evidence suggests that in a meeting of the Council of Ministers dated 22 February 2011, Alcide Djédjé is reported as stating that ‘*s’agissant de Koumassi, il ne s’agit plus de manifestants mais de rebelles*’.²³⁸ However, too little is known about the context in which this statement was made – including about what occurred in Koumassi at the time – to make any adverse findings about the significance of Mr Djédjé’s alleged utterance.
145. Having further regard to the findings concerning the procurement of weapons by Lafont and Alcide Djédjé’s limited undefined role in this regard,²³⁹ it is not possible to conclude on the basis of the available evidence that Alcide Djédjé agreed to the purported Common Plan.

e) Désiré Tagro

146. The Prosecutor alleged that former minister Désiré Asségnini Tagro was, *inter alia*, a ‘trusted member of [Mr] Gbagbo’s “*carré décisionnel*”’; he is alleged to have attended several meetings with Mr Gbagbo in the presence of General Mangou; the Prosecutor also alleged that he attended Council of Ministers’ meetings and played a ‘significant role’ in the RTI march events, including through the issuance of instructions to the GPP.²⁴⁰

²³⁷ P-0321, T-61 dated 8 July 2016, p. 43 (p. 42 in French original) (confidential). This has been translated in English as ‘Alcide Djédjé, who was one of the president’s inner circle’.

²³⁸ Minutes du Conseil du Gouvernement du Mardi 22 Février 2011, 22 February 2011, CIV-OTP-0025-0082 at 0084.

²³⁹ See IV.E.3 - The additional supply of equipment to units of loyal commanders; *see also* IV.E.4 - Mr Lafont supplied weapons and ammunition to the FDS.

²⁴⁰ Mid-Trial Brief, para. 79.

147. Reference is made to the conclusions reached in respect of his role in the issuance of instructions to the GPP in the context of the RTI march,²⁴¹ the letter purportedly addressed to him in respect of the FLGO,²⁴² and the meetings dated 3 December 2010,²⁴³ 10 December 2010,²⁴⁴ and 11 January 2011.²⁴⁵ It is also noted that General Mangou referred to Désiré Tagro as the ‘secretary-general of the Presidency’²⁴⁶ in the context of a meeting that took place in connection with the requisition of the army during the post-election crisis. The conclusions reached in respect of that meeting are recalled.²⁴⁷
148. In the Response, the Prosecutor also points to the fact that in 2009 Mr Tagro signed certain documents concerning supplies of teargas grenades ordered by the government from Darkwood Logistics when he was still Minister of Interior.²⁴⁸ It is also noted that the Response alleged that Tagro denied the existence of the “escadrons de la mort” in video footage.²⁴⁹ It is noted that this video is dated 2002 and Tagro’s comments in this video do not have a significant bearing on this case.
149. Based on the limited evidence available, it can be concluded that Mr Tagro was close to Mr Gbagbo during the post-electoral crisis. However, it is difficult to discern his exact role during that time. Although there are indications that

²⁴¹ See V.B.3 - Instructions given to irregular forces.

²⁴² See IV.D.2.b)(1)(d) - Front pour la Libération du Grand Ouest – FLGO.

²⁴³ See IV.C.2.g) - Meetings on 3 December 2010.

²⁴⁴

See IV.C.2.j) - Meeting on 10 December 2010.

²⁴⁵ See IV.A.1.b) - Meetings.

²⁴⁶ P-0009, T-193 dated 25 September 2017, p. 23. It is noted that Liste du personnel concerné, 17 January 2011, CIV-OTP-0025-0882 is a document apparently signed by Mr Tagro with that title as well.

²⁴⁷ See V.C.2 - General Mangou’s Testimony on the Requisition of the Army.

²⁴⁸ Response, para. 1404 i. and iii.

²⁴⁹ Response, para. 1430 referring, inter alia, to UN MÉDIA PYROMANE / Chroniques de la télévision ivoirienne, 1 September 2002, CIV-OTP-0081-0338, transcript at CIV-OTP-0095-0011.

Mr Tagro was in contact with certain elements of the GPP, it is not clear to what extent he was acting in concert with the accused and/or other members of the alleged ‘inner circle’ in this regard.

f) Hubert Oulaï

150. The Prosecutor alleged that the Former Minister of Public Service, Hubert Oulaï [also spelled Oulay or Oulaye] was a key focal point between the Liberian mercenaries and Mr Gbagbo’s government and that he facilitated the presence, lodging and financing of these mercenaries; he is also alleged to have visited the Presidential Residence during the post-electoral crisis.²⁵⁰
151. Reference is made to the conclusions reached in respect of his involvement with Liberian mercenaries in 2002-2003²⁵¹ and up until and during the post-electoral crisis,²⁵² and the meeting dated 9 December 2010.²⁵³
152. In the Response, the Prosecutor also alleged that Hubert Oulaï was involved with the FLGO.²⁵⁴ Witness P-0500 testified that he was told that Hubert Oulaï was one of the ‘men in charge’ who were sending them to Guiglo in 2003 ‘to defend their families’; P-0500 later learned that Oulaï was a member of the FPI.²⁵⁵ With regard to the alleged link between Mr Gbagbo and the Liberian fighters, the Prosecutor additionally referred²⁵⁶ to the testimony of P-0483 that he saw Hubert Oulaï at the wake of Baygboe, alleged to be a LIMA/MODEL General.²⁵⁷ This aforementioned evidence is insufficient in demonstrating Mr Oulaï’s

²⁵⁰ Mid-Trial Brief, para. 80.

²⁵¹ See IV.D.2.c)(1) - Resort to mercenaries prior to the post-electoral crisis.

²⁵² See IV.D.2.c)(2) - Resort to mercenaries during the post-electoral crisis; IV.D.2.c)(3) - Conclusion.

²⁵³ See IV.C.2.i) - Meeting on 9 December 2010.

²⁵⁴ Response, para. 1462. See also Mid-Trial Brief, para. 80.

²⁵⁵ P-0500, T-181 dated 28 August 2017, pp. 14-15.

²⁵⁶ Response, para. 1464.

²⁵⁷ P-0483, T-101 dated 17 November 2016, pp. 17-19.

involvement and/or facilitation of links between Mr Gbagbo and the Liberian mercenaries during the post-election crisis.

g) Bertin Kadet

153. The Prosecutor alleged that former Minister of Defence Bertin Kadet was, *inter alia*, a ‘key member of [Mr] Gbagbo’s Inner Circle and *carré décisionnel*’; the Prosecutor additionally alleged that, during the post-electoral crisis, he was Mr Gbagbo’s ‘special adviser on defence matters’ and was ‘significantly involved’ in organising paramilitary groups and training youth militias, as well as securing Mr Gbagbo’s position of power until his arrest in April 2011.²⁵⁸
154. The conclusions are imported by reference in respect of Mr Kadet’s involvement in the financing of the FLGO in 2003 and 2006,²⁵⁹ his involvement with the Liberian mercenaries,²⁶⁰ the arming of the FDS,²⁶¹ the instructions given to the GPP regarding the RTI march,²⁶² and the meetings dated 24 November 2010,²⁶³ 3 December 2010,²⁶⁴ 9 December 2010,²⁶⁵ and 11 and 12 January 2011.²⁶⁶
155. In the Mid-Trial Brief, the Prosecutor alleged that Bertin Kadet was involved in the training of youth by the GPP and in arming them.²⁶⁷ Witness P-0435 testified that, in Gagnoa, Bertin Kadet asked Zagbayou to train 300 young people; according to P-0435, they needed to make sure there was adequate manpower

²⁵⁸ Mid-Trial Brief, para. 81.

²⁵⁹ See IV.D.2.b)(1)(d) - Front pour la Libération du Grand Ouest – FLGO.

²⁶⁰ See IV.D.2.c)(1) - Resort to mercenaries prior to the post-electoral crisis.

²⁶¹ See IV.E - Arming of the FDS.

²⁶² See V.B.1.a) - ‘Coordination meetings’; *see also* V.B Prohibition of the RTI March.

²⁶³ See IV.C.2.b) - Meeting on 24 November 2010.

²⁶⁴ See IV.C.2.g) - Meetings on 3 December 2010.

²⁶⁵ See IV.C.2.i) - Meeting on 9 December 2010.

²⁶⁶ See IV.A.1.b) - Meetings.

²⁶⁷ Mid-Trial Brief, para. 96.

who had been trained and who were ready to take up arms and fight as ‘there might be many unfortunate events to come’.²⁶⁸ They were not armed during the training, but were taught to assemble and dismantle weapons and to take certain shooting positions, as well as tactical manoeuvres and communication and transmission language.²⁶⁹ P-0435 additionally testified that these young people subsequently received weapons, about 100 Kalashnikovs were sent to Gagnoa by Zagbayou and, according to P-0435, it was Bertin Kadet who had ‘placed [these weapons] at their disposal’.²⁷⁰ P-0435 testified that he was informed when the training was complete and that ‘they now had combatants who were ready to reinforce the [FDS] in that town’.²⁷¹

156. In her Response, the Prosecutor submits that this should be ‘considered within the context of [...] evidence as to the training of young people by the GPP both in and outside Abidjan, in advance of the Presidential elections’ and submits that ‘the only reasonable inference is that this training was coordinated’.²⁷² In relation to Bertin Kadet, it is not known whether or not his request for training in Gagnoa is related to the purported request made by Ahoua Stallone to Bouazo to commence a similar training in Abidjan.²⁷³

157. In the Mid-Trial Brief,²⁷⁴ the Prosecutor referred to the testimony of P-0520 who was shown document CIV-OTP-0025-0792, a letter dated 19 June 2007 to Mr Gbagbo’s *Chef de Cabinet*, enclosing a complaint sent to the *Procureur de la République* formulated by MILOCI against their leader Pasteur Gammi.²⁷⁵ The

²⁶⁸ P-0435, T-89 dated 20 October 2016, pp. 18-19.

²⁶⁹ P-0435, T-89 dated 20 October 2016, p. 19.

²⁷⁰ P-0435, T-89 dated 20 October 2016, pp. 19-20.

²⁷¹ P-0435, T-89 dated 20 October 2016, p. 20.

²⁷² Response, para. 1410.

²⁷³ See IV.D.2.b)(4) – Training

²⁷⁴ Mid-Trial Brief, para. 59.

²⁷⁵ Analyse / Plainte contre le Chef de Miloci / No. 0211/2/PR/GSPR / Plainte Contre Monsieur Abdoulaye Diomande Gouesse dit Pasteur Gammi et Inconnus / No. 0211/2/PR/GSPR, CIV-OTP-0025-0792, at 0793.

complaint states that, as part of the national programme for demobilisation, disarmament and reinsertion ('DDR'), Bertin Kadet and General Jean Pierre Lorougnon had promised each of the 2 000 fighters a sum of 250 000 FCFA; however, the MILOCI members had not received their share, despite being informed that the money had been given to their leader, whom they had not seen since.²⁷⁶ P-0520 testified that MILOCI was one of the self-defence groups from the west that had been dissolved.²⁷⁷

158. The Prosecutor refers to the RTI broadcast dated 3 April 2011, as well as the testimony of witness General Mangou in support of her allegation that Bertin Kadet was involved in securing Mr Gbagbo's position of power until his arrest in April 2011.²⁷⁸ In this broadcast, is noted that Bertin Kadet stated that the population should stay calm and continue the fight.²⁷⁹ General Mangou testified that, after his meeting on 3 April 2011,²⁸⁰ Bertin Kadet told him to give a statement to the press that they intended to resume fighting.²⁸¹ General Mangou additionally testified that on 9 April 2011, in the process of requesting a possible ceasefire, General Mangou called, *inter alia*, Bertin Kadet to inform him that they were going to ask for a ceasefire, which Kadet agreed they should do.²⁸²
159. Having regard to the aforementioned conclusions, and noting that Bertin Kadet is alleged to have met Mr Gbagbo on five or six meetings during the post-electoral crisis, it may be concluded that Bertin Kadet supported Mr Gbagbo politically and may also have had certain links with GPP and the FLGO. However, having

²⁷⁶ Analyse / Plainte contre le Chef de Miloci / No. 0211/2/PR/GSPR / Plainte Contre Monsieur Abdoulaye Diomande Gouesse dit Pasteur Gammi et Inconnus / No. 0211/2/PR/GSPR, CIV-OTP-0025-0792, at 0793.

²⁷⁷ P-0520, T-50 dated 14 June 2016, p. 65.

²⁷⁸ Mid-Trial Brief, para. 81.

²⁷⁹ RTI broadcast dated 3 April 2011, CIV-OTP-0064-0128, transcript at CIV-OTP-0086-1142 at 1144.

²⁸⁰ See IV.C.2.t) - Meeting on 3 April 2011.

²⁸¹ P-0009, T-194 dated 26 September 2017, p. 19.

²⁸² P-0009, T-194 dated 26 September 2017, pp. 27-28.

examined these links based on the scarce available evidence, no reasonable trial chamber could conclude that Bertin Kadet shared the intent to commit crimes against the civilian population.

h) Aboudramane Sangaré

160. The Prosecutor alleged that Aboudramane Sangaré, State General Inspector and former Minister of Foreign Affairs, was the ‘number 2 of the FPI’; he is also alleged to be one of Mr Gbagbo’s ‘trusted advisors’ because of his presence at important meetings between Mr Gbagbo, Simone Gbagbo, and other FPI leaders during the post-election crisis.²⁸³ He was also noted to have been present at the Presidential Residence towards the end of the post-election violence during April 2011.²⁸⁴
161. In respect of his presence at important meetings, the conclusions reached in respect of the meetings dated 3²⁸⁵ and 9 December 2010²⁸⁶ are recalled. As regards the alleged frequency of meetings attended by him, having regard to the conclusions reached in respect of the Residence Logbook,²⁸⁷ no inference can be drawn as to the proximity with Mr Gbagbo or the level of trust Mr Gbagbo may have had in Aboudramane Sangaré.
162. The Prosecutor alleged that P-0048 saw Aboudramane Sangaré at the Presidential Palace on 8 April 2011. This allegation is related to an incident involving *Commandant Séka Yapo* and it is in this regard that the allegation concerning Aboudramane Sangaré will be assessed.²⁸⁸ As discussed below, from

²⁸³ Mid-Trial Brief, para. 82. *See also* paras 131-133.

²⁸⁴ Mid-Trial Brief, para. 82.

²⁸⁵ *See* IV.C.2.g) - Meetings on 3 December 2010.

²⁸⁶ *See* IV.C.2.i) - Meeting on 9 December 2010.

²⁸⁷ *See* IV.C.1 - Visits to the Presidential Residence and Palace; *see also* IV.C.3 - Regular meetings

²⁸⁸ IV.D.1.c)(9) *Commandant Séka Yapo*’s alleged role.

P-0048's testimony, Aboudramane Sangaré did not participate in the incident involving *Commandant Séka Yapo*.²⁸⁹

163. For these reasons, while it can be concluded that Aboudramane Sangaré shared the intent to keep Mr Gbagbo in power given his position within the FPI, there is very little evidence as to his involvement in the implementation of the alleged Common Plan.

5. Conclusion

164. Based on the evidence discussed above and in light of other relevant evidence on the record, it is clear that Mr Gbagbo was surrounded by a group of persons who supported his bid to retain the presidency and who were, up to a point, loyal to him. Given Mr Gbagbo's position, there is nothing surprising or extraordinary about the fact that a senior politician would have political backers, nor is it per se problematic that senior military officers stayed loyal to Mr Gbagbo pending the resolution of the question of who had won the presidential elections. That some of these individuals may have had a personal interest in the survival of the Gbagbo regime is equally unsurprising. To this extent, the Prosecutor's claim that there was a group of people who shared the goal of maintaining Mr Gbagbo in power is undoubtedly true.
165. However, the Prosecutor attributes more sinister motives to this group of people and this is where the evidence is much less persuasive. This is not to say that there are no instances of suspicious behaviour on the part of some of the individuals mentioned. Some may even have been involved in criminal affairs in some way. However, the evidence is mostly anecdotal and is altogether much too ambiguous to allow any reasonable trial chamber to conclude that there was a

²⁸⁹ P-0048, T-54 dated 28 June 2016, p. 81-82; *see also* pp 74-76.

group of individuals who shared intent to keep Mr Gbagbo in power at all costs, in particular by committing violent acts against civilians supporting Mr Ouattara.

B. Genesis and conception of the alleged common plan/policy

166. In the Mid-Trial Brief, the Prosecutor alleged that

[t]o stay in power, GBAGBO and members of the Inner Circle employed violent means to repress political opponents and BLÉ GOUDÉ contributed to the repression by involving the youth in these acts. These means included the use of the Army in urban settings, the recruitment and training of young Ivorians, and the use of militia groups and foreign mercenaries.²⁹⁰

167. In the Response, the Prosecutor emphasises that

whether or not Mr Gbagbo or Alassane Ouattara won the 2010 elections in Côte d'Ivoire is not an issue in this case. Rather, the issue on which the Common Plan turns is whether Mr Gbagbo and his associates took the decision to keep Mr Gbagbo in power by using the full force of the State – along with non-State actors – against civilians who were perceived to be opposed to him.²⁹¹

168. Seeking to stay in power simpliciter is not criminal. Therefore, in the present case, an assessment of the alleged Common Plan necessarily involves an assessment of the alleged crimes resulting from and/or used as means to stay in power.²⁹² According to the Prosecutor's case, the criminality of the alleged Common Plan centres on the employment by the accused of 'violent means to repress political opponents' and 'impunity for [the] perpetrators' of this repression.²⁹³ Both elements will be addressed in turn.

169. Before turning to that analysis, it is noted that the Prosecutor's case concerning the alleged Common Plan is based on circumstantial evidence. As part of this assessment, the Prosecutor invited the Chamber to draw inferences, *inter alia*,

²⁹⁰ Mid-Trial Brief, para. 13.

²⁹¹ Response, para. 1358.

²⁹² See also Response, para. 1110 where the Prosecutor uses the term "at any cost".

²⁹³ Mid-Trial Brief, para. 13.

from ‘subsequent concerted action of the co-perpetrators’.²⁹⁴ In that regard, it is noted that, often, the fact that these actions are concerted is also a matter of inference. Whilst it is conceivable, and often reasonable, for conclusions to be based on a series of inferences, caution must be exercised when reaching such conclusions.²⁹⁵

1. Identification of ‘Political Opponents’

170. As noted above, one of the elements of the alleged Common Plan is the Prosecutor’s use of the term ‘political opponents’. The Prosecutor has used this term to denote groups and individuals that, according to her, Mr Gbagbo considered being politically opposed to him. In other words, the criterion is not whether someone was actually opposed to Mr Gbagbo, but whether the latter believed they were opposed to him.
171. The Prosecutor also alleged that ‘the development of the situation on the ground’ demonstrated that ‘the repression of political opponents and their supporters was the pursued outcome’; and that the ‘repeated and multiple instances’ of violent acts against ‘political opponents’ confirmed that they were a consequence of the alleged Common Plan.²⁹⁶ Therefore, the assessment of this term also becomes important for the link between identification of victims of crimes and the alleged Common Plan. The assertion that Mr Gbagbo considered certain individuals and/or groups to be political opponents is also linked to demonstrating the discriminatory intent of the accused and that of the members of the alleged ‘inner circle’. It thus becomes necessary to ascertain which individuals and/or groups were considered political opponents.

²⁹⁴ Response, para. 1350.

²⁹⁵ See II.E - Circumstantial evidence.

²⁹⁶ Mid-Trial Brief, para. 698.

172. It is noted that the Prosecutor does not point to any uniformly applicable criterion that would qualify an individual and/or group as Mr Gbagbo's political opponent by definition.²⁹⁷ The nature of the alleged Policy and the attack is directed towards those civilians *perceived* to be Mr Ouattara's supporters.²⁹⁸
173. In the Response, however, the Prosecutor alleged that there are two categories of those perceived as Ouattara supporters, namely, (i) actual or perceived political activists or sympathisers and (ii) persons of Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire or other West African countries.²⁹⁹ In the Response, in respect of the latter category, the Prosecutor alleged that this is evidenced by a list of factors.³⁰⁰

(1) the basis (facial features, names and surnames) and (2) the criteria (Northern, Dioula, West African, Muslim) on which such people were identified; (3) the mistreatment that ensued (stealing, raping, killing such as by lynching and burning); and (4) the character of the individuals doing the identification. In particular, Young Patriots and the members of paramilitary organisations (militia) carrying out identifications at roadblocks were not career or legitimate law enforcement officials.³⁰¹

²⁹⁷ In the Document Containing the Charges, the Prosecutor identified the persons that were "perceived to be enemies or adversaries" as "RHDP supporters, persons from the north (*Nordistes*), immigrants from West African countries, Muslims, French nationals, *Forces Nouvelles* [New Forces] and forces presented as pro-Ouattara, such as UNOCI and the Licorne force". See Document Containing the Charges against Mr Gbagbo, para. 193. In the Pre-Trial Brief, the Prosecutor alleged that the accused and the members of the 'inner circle' grouped "all perceived Ouattara supporters together as the enemy". See Pre-Trial Brief, para. 28. She submitted that "[t]he propagation of such xenophobic rhetoric resulted in the pro-GBAGBO supporters translating the term "Ivoirian" as excluding Ouattara's supporters, since they were deemed synonymous with "rebels", "terrorists" or "bandits", and, more generally, "foreigners". The pro-GBAGBO forces hence came to believe that real Ivoirians did not include perceived Ouattara's supporters, and exacerbated the violence of their actions against the latter." See Pre-Trial Brief, para. 230. The Prosecutor does not provide any support for these assertions. They are not developed in the Mid-Trial Brief.

²⁹⁸ Mid-Trial Brief, para. 157.

²⁹⁹ Response, para. 337.

³⁰⁰ It is noted that the Prosecutor uses this list disjunctively.

³⁰¹ Response, para. 337.

174. The Prosecutor also referenced speeches from the accused where a reference to the ‘UN’ was understood to refer to Mr Gbagbo’s political opponents.³⁰²
175. Therefore, according to the allegations, a person perceived to be Mr Ouattara’s supporter could either be Dioula, Muslim, and or from the North or belong to none of these categories. Anyone who did not vote for Mr Gbagbo could very well be ‘perceived’ as Mr Ouattara’s supporter, despite not being one. This adds to the confusion to the Prosecutor’s narrative.
176. As regards the ‘basis’ (i.e. facial features, names and surnames) for determining whether someone belonged to a category of ‘perceived’ Ouattara supporters, the evidence suggests that the factors identified by the Prosecutor may not have been very clear or determinative. Inspector-General Bredou M’Bia’s testimony is informative in this regard; he testified on ethnic origins and whether they can be deduced from one’s name and stated that
- there are names that are not typically from a specific ethnic group. They can belong to two or three ethnic groups. We say then the big group. So if you say Touré, for example, Touré is not necessarily from Katiola. It can be from the south, can be from the north. If you don't know that person personally, you can't say that that person is from such and such an ethnic group.³⁰³
177. In the absence of any information about how the perpetrator knew or assumed their victim’s affiliation before committing the alleged crimes, the Chamber is often invited to infer the direct perpetrator’s perception of the victim from circumstantial evidence.
178. In assessing this perception and thereby ascertaining the object of the alleged Common Plan, it becomes imperative to examine the alleged cause for such

³⁰² Mid-Trial Brief, para. 393. It is noted that the allegations concerning the UNOCI forces are not determinative of the issues at hand. Indeed, there have been no victims in the charged events that are related to the military forces of these entities. To the extent that the rhetoric against the international forces and the French is relevant to determining the intent of the accused to commit crimes as part of the alleged Common Plan and/or Policy, these allegations have been considered.

³⁰³ P-0046, T-128 dated 22 February 2017, pp. 32-33.

division between the two opposing sides and to assess how determinative it is to the allegations.

179. The Prosecutor alleged that the concept of *Ivoirité* was one of the means that Mr Gbagbo ‘exploited [...] to eliminate [Mr] Ouattara from the presidential race based on ethnic grounds’ in 2000.³⁰⁴ The Prosecutor pointed to the conception and development of the concept of *Ivoirité* during former President Bedié’s term and its subsequent ‘adopt[ion]’ by Mr Gbagbo. It was also pointed out that such adoption ‘caus[ed] a rift which explain[ed] in large part the armed conflict which broke out in 2002 in Côte d’Ivoire’.³⁰⁵ The Prosecutor also linked it to the constitutional amendment adopted in October 2000 according to which it was required for a presidential candidate to be born of Ivorian parents.³⁰⁶ The Prosecutor alleged that the concept of *Ivoirité* ‘resulted in the exclusion of a large part of the population simply because its members belonged to one of the targeted ethnic groups’.³⁰⁷ The Prosecutor linked this concept to the existence of Mr Gbagbo’s alleged intent as early as 2000.³⁰⁸ She also asserted that Mr Blé Goudé’s reference to Mr Ouattara ‘inhabiting the “Ebrié lagoon” and the “Atchan country” link’ to the notion of *Ivoirité* and ‘reinforce the distinction between those apparently worthy of occupying the land and the Presidential office, and “others”, such as Alassane Ouattara’.³⁰⁹
180. P-0048, a member of the *Rassemblement des Républicaine de Côte d’Ivoire* (RDR), and who was Mr Ouattara’s spokesperson during the 2010 elections,³¹⁰

³⁰⁴ Mid-Trial Brief, para. 16.

³⁰⁵ See Mid-Trial Brief, para. 15.

³⁰⁶ See Mid-Trial Brief, para. 16.

³⁰⁷ Mid-Trial Brief, para. 15.

³⁰⁸ Mid-Trial Brief, paras 14-16.

³⁰⁹ Mid-Trial Brief, para. 526.

³¹⁰ P-0048, T-53 dated 27 June 2016, pp. 5-7.

was examined on the use of this term. He stated that the concept was an invention of sociologists and that Konan Bédié used it first.³¹¹ P-0048 said that

[s]ome would argue that it was an invention put forth by some sociologists and academics when Henri Konan Bédié was president. [...] Ivoirité refers to the state of being Ivorian and of upholding and taking ownership of Ivorian values and cultures. Subsequently, I'm mindful of the demographics of our country and its configuration. One notices that quite systematically those who did not have or bear names that sounded like Akan or Krou names were systematically considered as being non-Ivorians. Let me explain what I mean. Our country shares a common border with Mali, Burkina Faso, Ghana, which is an English-speaking country. The first two I mentioned are French-speaking countries. And we share borders also with Liberia, which is an English-speaking country, and Guinea, which is a French-speaking country. In that context, the French-speaking countries which I have just mentioned, namely, Mali, Burkina and Guinea, on both sides of the borders you can find people bearing exactly the same names. You have Koné in Côte d'Ivoire, and you have Koné as well in Burkina Faso, in Mali and in Guinea. So we have people bearing the name Camara, for example, in all four countries. So very, very quickly there was a confusion, a mix-up between names and belonging to any of these states, particularly Côte d'Ivoire. A short while ago, I said that some politicians wanted to avail themselves of this concept of Ivoirité, and that is how they transformed that concept to become one whereby a category of the population is rejected going by the reasoning that if one bears the name Camara, one is not a native Ivorian. And these are statements, these are some of the statements that were made by some politicians. That led to social disruptions, very deep social problems. And that, to a very large extent, explains the reasons for the crisis that we had in Côte d'Ivoire.³¹²

181. P-0048 further testified that the political leaders would use this concept as political capital, noting that 'all political movements or people who arrived in power had the tendency to categorise people from the north'.³¹³ This included Mr Gbagbo.³¹⁴ When asked specifically which political leaders used this concept, he responded, '[a]ll political leaders from all political affiliations, except the RDR'.³¹⁵ By recounting an event from 1998, P-0048 also testified on the impact that this concept had on the treatment of those considered 'foreigners'.³¹⁶

³¹¹ P-0048, T-53 dated 27 June 2016, p. 13.

³¹² P-0048, T-53 dated 27 June 2016, pp. 13-14.

³¹³ P-0048, T-54 dated 28 June 2016, pp. 4-5.

³¹⁴ P-0048, T-54 dated 28 June 2016, pp. 4-5.

³¹⁵ P-0048, T-54 dated 28 June 2016, pp. 5-6.

³¹⁶ P-0048, T-53 dated 27 June 2016, p. 19.

182. P-0048's testimony provided some explanation of the nature of ethnic antagonism prior to the post-election crisis.³¹⁷ When asked about the relations between different ethnicities in Côte d'Ivoire, P-0048 stated that

it's not possible to say that from 2000 to 2010 one could have talked of ethnic antagonism. It is true, however, that some politicians wanted to avail themselves of ethnic identity for their purposes, but, in reality, the socio-cultural overlap of our people did not generate a system of ethnic struggle. In any event, I must say that some ethnic groups were systematically being challenged or questioned by the various political parties that came to power. For example, after the coup d'état of 1999, it was not always easy to be someone bearing a name that sounded like a name from the north. That is how the idea of *Ivoirité* came about. During the crisis that we experienced, some ethnic groups were systematically being targeted, the Akan, for example, the people from the north. But if you looked at cohabitation in general, you would observe that in the same compound you could have people living together being people from the north, from the south, from the east and from the centre. Therefore, this did not have any impact on cohabitation within various neighbourhoods on a daily basis.³¹⁸

183. There is insufficient evidence before the Chamber to assess this concept with full respect to the historical and sociological context operating in Côte d'Ivoire. Nonetheless, on the basis of the evidence on the record, it can be concluded that it formed part of the context in which the crimes are alleged to have happened. The evidence demonstrates that the sentiment underlying this concept of *Ivoirité* was prevalent in part of Ivorian society and was part of the reason why ethnic antagonism persisted in Ivorian society at least prior to the post-election crisis. The concept originated in the context surrounding taking ownership of Ivorian values but did not envisage the commission of crimes against civilians. Nevertheless, the concept may have aided in classification, arbitrary or otherwise, of what an 'Ivorian' was *not* in the eyes of some. However, it does not assist the Chamber in determining with specificity what criteria the perpetrators were using in determining their perception of their victims, if at all. In fact, it further blurs the assessment of such perception.

³¹⁷ P-0048, T-53 dated 27 June 2016, p. 41.

³¹⁸ P-0048, T-53 dated 27 June 2016, p. 11.

184. It is noted, in this regard, that the concept of *Ivoirité* pre-dates the alleged Common Plan. There is no evidence on the record that Mr Gbagbo originated the concept or was the only political leader invoking it. Whilst Mr Gbagbo is alleged to have exploited this concept, its prevalence has not been linked exclusively or even mainly to him or his supporters. Consequently, when assessing an alleged crime committed by an individual against a ‘non-Ivorian’, in the absence of direct evidence as to motive, often it cannot be ruled out that it may have been motivated by personal motivations against a particular person or ethnic group and not on the basis that the perpetrator had identified the victim as a supporter of Mr Ouattara. For these reasons, the existence as well as the purported adopting and exploitation of the concept of *Ivoirité* itself is not proof of Mr Gbagbo’s intent underlying the alleged Common Plan.
185. Therefore, it is imperative for the Chamber to exercise caution in assessing allegations that the perpetrators of the alleged crimes identified their victims as supporters of Mr Ouattara based entirely on their actual or perceived ethnic, regional, linguistic or religious attributes.
186. Finally, it is worth noting that the Prosecutor puts all the emphasis on Mr Ouattara’s supporters among the local population as being the targets of the alleged Common Plan. However, as is clear from the available evidence, Mr Gbagbo and his regime seem to have been much more concerned about the role and influence of the UNOCI and the French government/military than the ordinary citizens of Côte d’Ivoire who supported Mr Ouattara. The Prosecutor has systematically ignored or de-emphasised this crucial element, resulting in a distorted view of the situation. This is not to say that ethnicity, regional origin, and religion were totally irrelevant factors in the crisis. However, the available evidence does not support the proposition that people falling in certain of these categories were deliberately violently targeted by the regime.

2. *Alleged obstruction of measures to restore peace and violent repression of political opposition prior to the post-election crisis*

187. The Prosecutor presented several elements to demonstrate that Mr Gbagbo and the alleged 'inner circle' violently repressed political opponents as part of the alleged Common Plan. The Prosecutor alleged that the intent underlying such Common Plan had begun as early as the 2000 elections.³¹⁹ The Prosecutor has also used these events prior to the post-electoral crisis to demonstrate that the members of the alleged 'inner circle' shared this intent.³²⁰ The Prosecutor further invited the Chamber to assess these events with a view to ascertaining a continuum of patterns of violence against the civilian population. The Prosecutor requested, in this regard, that parallels be drawn between incidents prior to and during the post election violence. This, she argued, demonstrated that Mr Gbagbo and the members of the 'inner circle' intended for the events to unfold a certain way, or, in the very least, had knowledge that they would. Some of the alleged incidents preceding the post-electoral crisis have been discussed hereinunder.
188. The Prosecutor pointed to the fact that Côte d'Ivoire's Constitution was modified before the October 2000 elections to require that a Presidential candidate be born of Ivorian parents.³²¹ She also pointed to Robert Guéi's attempts to declare himself the winner of the October 2000 elections and Mr Gbagbo having taken over power 'while the elections were contested'.³²²
189. In addition to this, she relied on to two incidents following the elections in October 2000 that allegedly reflect Mr Gbagbo's intent at the time – (i) the mass grave near the *Maison d'Arrêt et de Corrections* of Abidjan (MACA) discovered

³¹⁹ Mid-Trial Brief, paras 14 *et seq.*

³²⁰ See Mid-Trial Brief, paras 14-20.

³²¹ Mid-Trial Brief, para. 16.

³²² Mid-Trial Brief, para. 17.

in October 2000;³²³ and (ii) alleged repression of demonstrations by RDR protestors in December 2000.³²⁴ In support of both these allegations, the Prosecutor has solely relied on a HRW Report. The veracity of the claims made in the report cannot be assessed for reasons of being constituted of anonymous hearsay. The Prosecutor has not pointed to any other material on the record that can help evaluate these allegations.

190. It is noted that the Prosecutor has also pointed to the incident concerning the mass grave in October 2000 also to allege that '[t]he impunity in this case laid down the framework for the way authorities reacted to similar incidents' in the years that followed.³²⁵ Considering the political context in 1999-2000³²⁶ and noting that this incident may have involved RDR militia members themselves about which there is very little information on the record,³²⁷ it is not possible to determine whether it is relevant to establish a climate of impunity as alleged by the Prosecutor as early as 2000. Further, it is noted that P-0048, the Minister for Human Rights in Côte d'Ivoire from 2006 to 2007 and Mr Ouattara's Spokesperson during the 2010 presidential campaign,³²⁸ testified about the massacre in Yopougon in October 2000. He stated that 'apparently [the victims] were mostly from northern ethnicity' however 'no one has been able to establish exactly who killed all these people and who was responsible for the deaths'.³²⁹ These conclusions have been considered when assessing the allegations of

³²³ Mid-Trial Brief, para. 18.

³²⁴ Mid-Trial Brief, para. 20. The first incident relates to a mass grave discovered in Yopougon in 2000 where 52 men had been allegedly killed by members of the Abobo *Gendarmerie*.

³²⁵ Mid-Trial Brief, para. 18.

³²⁶ For example P-0048, T-53 dated 27 June 2016, pp. 16-28.

³²⁷ As regards the Yopougon massacre, the HRW report contains a detailed anonymous account of '*un militant RDR*' who survived this massacre and witnessed the beatings, torture, and arrests preceding it. See Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165 at 0196. For the incidents concerning the RDR demonstrations in December 2000, the report details an account of an RDR militia, CIV-OTP-0052-0165 at 0204.

³²⁸ P-0048, T-53 dated 27 June 2016, p. 8.

³²⁹ P-0048, T-53 dated 27 June 2016, p. 35.

climate of impunity concerning events during the post-electoral crisis discussed later.³³⁰

191. There are certain allegations that form part of the Prosecutor's alleged '[c]onception, development and early stages of implementation of the Common Plan' that require further analysis. These include the recruitment and use of youth, militia and mercenaries after the 2002 *coup d'état*,³³¹ the circumvention of the UN-imposed weapons embargo,³³² and Mr Blé Goudé's alleged objective to maintain Mr Gbagbo in power and his rise as a youth leader.³³³ They have been discussed in the sections that follow because of their alleged connection with allegations linked to events *during* the post-election crisis. However, there are two allegations concerning events predating the post-electoral crisis that will be discussed here. In reaching conclusions as regards the genesis and conception of the alleged Common Plan, the analysis in respect of the allegations discussed later has been considered together with what is discussed in the present sub-section.

a) Obstruction of efforts to establish peace in Côte d'Ivoire

192. Turning first to the allegations that members of the 'inner circle' obstructed the peace processes in Côte d'Ivoire, it is noted that the Prosecutor made these allegations essentially to demonstrate the intent underlying the alleged Common Plan. The Prosecutor alleged that Mr Gbagbo, 'leaders of the FPI and members of his Inner Circle took part in negotiations with rebel leaders and political opponents' but at the same time, took steps to delay or obstruct the peace

³³⁰ IV.B.4 - Climate of Impunity/

³³¹ See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002; IV.D.2.b)(5)(c) - Early recruitments; IV.D.2.e)(3) - Calls to enlist; IV.D.2.b)(4) - Training; IV.D.2.c)(1) - Resort to mercenaries prior to the post-electoral crisis.

³³² See IV.E.2 - Attempts to circumvent the UN embargo.

³³³ See IV.D.2.e)(1) - Role as a youth leader.

processes and the holding of new elections.³³⁴ The Prosecutor alleged – but did not substantiate – that, in response to Mr Blé Goudé’s calls for mobilisation, ‘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 [Mr] Gbagbo in power’.³³⁵ The Prosecutor alleged that Mr Gbagbo relied upon mobilisation of the youths from the moment he took office in 2000.³³⁶ In support of this allegation, she cited examples from events prior to the post-election crisis, asserting that the mobilisation of the youths took place to commit violent acts.³³⁷ However, the available is too sparse and one-sided to allow a reasonable trial chamber to draw any meaningful conclusions from it.

193. The Prosecutor also relied on alleged rallies against the so-called *audiences foraines* or mobile courts,³³⁸ culminating in the ‘shutdown’ of Abidjan on 19 July 2006, in support of her allegation that Mr Gbagbo and the members of the ‘inner circle’ delayed or obstructed peace processes.³³⁹ In support of her allegations, the Prosecutor cites P-0048’s testimony at length and P-0431’s testimony concerning the footage that he had taken of a meeting between youth leaders in June 2006.³⁴⁰ In the Response, the Prosecutor also cites the video footage to request an inference that ‘there was overlap between armed and unarmed groups and the role of prominent former FESCI members such Eugène Djué’.³⁴¹

³³⁴ Mid-Trial Brief, paras 35-42.

³³⁵ Mid-Trial Brief, para. 23.

³³⁶ Mid-Trial Brief, paras 23, 655.

³³⁷ It is restated that the allegations concerning the mobilisation of the youth prior to the post-election crisis have been discussed in later sections. The conclusions in respect of those allegations are imported here by reference. See IV.D.2.b)(1) - Emergence of ‘youth’ groups following the *coup d’état* of 2002.

³³⁸ To the extent that it has been possible to form a reliable view on the basis of the available evidence, the *audiences foraines* or mobile courts were quasi-judicial proceedings to register inhabitants of Côte d’Ivoire, who had not been officially registered at birth.

³³⁹ Mid-Trial Brief, para. 41.

³⁴⁰ Mid-Trial Brief, para. 41.

³⁴¹ Response, para. 137.

194. P-0048 testified that ‘the mobile hearings were disrupted’³⁴², in particular by *jeunes patriotes* who ‘set up [roadblocks] to prevent or protest against the activities of these mobile hearings’³⁴³. Considering the conclusions as to Mr Gbagbo’s command and control of youth groups 2002 and onwards,³⁴⁴ this evidence has no bearing on his alleged intent to obstruct peace efforts during this time.
195. As for Mr Blé Goudé, it is noted that P-0431, a foreign journalist, met Mr Blé Goudé on three occasions. He agreed that, at that time in 2006, Mr Blé Goudé’s stance was ‘to not use violence’;³⁴⁵ he further agreed that Mr Blé Goudé’s ‘ideology’ had been that the *audiences foraines* should be admissible for everyone, irrespective of ethnicity and religion.³⁴⁶ P-0431 filmed a meeting on 22 June 2006 in Yopougon³⁴⁷ and in this footage the youth leaders named by the Prosecutor in respect of this allegation do not demonstrate that they intended or called for use of violence against civilians.³⁴⁸ It is also noted that the pro-Gbagbo militia commander Maguy ‘le Tocard’³⁴⁹ was reportedly present in this meeting.

³⁴² P-0048, T-54 dated 28 June 2016, p. 22.

³⁴³ P-0048, T-53 dated 27 June 2016, pp. 80-81.

³⁴⁴ See IV.D.2.b)(1)(e) - Conclusion; IV.D.2.f) - Conclusion.

³⁴⁵ P-0431, T-44 dated 25 May 2016, p. 30.

³⁴⁶ P-0431, T-44 dated 25 May 2016, p. 31.

³⁴⁷ TR001, undated, CIV-OTP-0059-0003 (confidential), transcript at CIV-OTP-0086-0732 (confidential). P-0431 confirmed that TR001.doc / Tape 001, 22 June 2006, CIV-OTP-0058-0666 (confidential) contained the notes of this conference corresponding to the footage in tape 1 of the video. P-0431, T-43 dated 24 May 2016, pp. 35-36.

³⁴⁸ See transcript at CIV-OTP-0086-0732 (confidential) at 0740. Kedjebo uses the words “*c’est vrai, on s’en va à la paix*”, “*il faut qu’on soit moins fébriles. Soyons sereins*”, “*La paix ce n’est pas les mots. Le sage nous disait que ce n’est pas un vain mot, lui, mais c’est un véritable comportement*”. See also Eugène Djué’s speech at 0736-0740. Moussa Zéguen Touré references the “*la continuité du combat*” and states the following, from which despite his use of words that may depict violence, I cannot conclude that he is calling for use of violence against civilians; see CIV-OTP-0086-0732 (confidential) at 0740-0741.

³⁴⁹ Note that according to the evidence Maguy ‘le Tocard’ was one of the GPP commanders active in Abidjan during the post-electoral crisis. There is evidence of involvement of Maguy ‘le Tocard’ in training of militia in Yopougon, discussed in IV.D.2.b)(4) - Training; see the analysis of evidence connected to the militia group GPP in IV.D.2.b)(1)(c) - Groupement des Patriotes pour la Paix – GPP; see involvement of Maguy ‘le Tocard’ in alleged crimes against civilians in VI.M.3 - The Attack at the Mosque (25 February 2011).

However he did not intervene.³⁵⁰ Yousouf Fofana was also identified as being present.³⁵¹ This evidence does not suggest that these youth leaders shared the intent at the time to engage, support, and or coordinate the use of violence against civilians. Absent this, the Prosecutor's allegation that there was 'overlap' between armed and unarmed groups is of no consequence.

196. The Prosecutor also referenced Mr Blé Goudé's speech given at the speaker's corner in Yopougon on 12 July 2006.³⁵² P-0431 confirmed that the speeches were about 'the establishment of mobile courts and who was behind them, who was promoting them and what the Young Patriots planned to do about the process'.³⁵³ From Mr Blé Goudé's statement at the speaker's corner, there appears to be no calls for violence against the civilian population or otherwise reference to the commission of crimes.
197. Based on the above, a reasonable trial chamber might conclude that Mr Gbagbo and his supporters did not always fully cooperate with every aspect of the several peace plans that were implemented in Côte d'Ivoire. However, as noted, the available evidence does not allow a reasonable trial chamber to conclude that there was an intention to use violence in order to obstruct the peace process(es).

b) Killing of demonstrators in 2004

198. As an example of the use of lethal force against civilians by the regime of Mr Gbagbo before the charged period, the Prosecutor pointed to an incident that took place on 25 March 2004. The Prosecutor alleged that this incident involved 'indiscriminate killing of civilians', targeting of specific groups, in particular

³⁵⁰ See transcript at CIV-OTP-0086-0732 (confidential) at 0734.

³⁵¹ P-0431, T-43 dated 24 May 2016, p. 37. See also TR001.doc / Tape 001, 22 June 2006, CIV-OTP-0058-0666 (confidential) at 0669.

³⁵² Mid-Trial Brief, para. 41 referring to TR006, undated, CIV-OTP-0059-0007 (confidential).

³⁵³ P-0431, T-43 dated 24 May 2016, p. 45.

‘members of ethnic or national communities from Burkina Faso, Mali and Niger’.³⁵⁴

199. The UN Commission of Inquiry Report concerning the incident stated that the public demonstrations scheduled for 25 March 2004 had been banned by presidential decree on a temporary basis following the events of 9 March 2004, when a group of *Jeunes Patriotes* had assaulted magistrates and on another occasion attempted to dislodge ministers and members of the *Forces Nouvelles* staying at the Golf Hotel.³⁵⁵ The report noted that the march had been banned to ease tension and create an environment conducive to the imminent deployment of the UN peacekeeping troops.³⁵⁶ The Commission met with Mr Gbagbo as well as the ministers for Defence and Internal Security and was told that this decision had been taken to put down the demonstration and prevent it from taking place.³⁵⁷ The report makes mention of governmental and foreign intelligence services having warned about the possible risks in connection with the march.³⁵⁸ The report also notes that the political leaders who had asked for the march to take place did not participate in it.³⁵⁹
200. P-0172 claims he was shot on 25 March 2004 by people in fatigues³⁶⁰ during a march held ‘to tell President Gbagbo to organise elections in 2005’.³⁶¹ P-0184,

³⁵⁴ Mid-Trial Brief, para. 46.

³⁵⁵ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 17.

³⁵⁶ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 20.

³⁵⁷ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 25.

³⁵⁸ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 20.

³⁵⁹ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 36.

³⁶⁰ P-0172, T-174 dated 7 July 2017, p. 15.

³⁶¹ P-0172, T-174 dated 7 July 2017, p. 15.

one of the organisers of the 'protest' testified that this march was in support of the Linas Marcoussis agreements but that she was unable to get out of the neighbourhood of Abobo because 'they started to fire upon us' and people 'scattered'.³⁶² She testified that the FDS kept on firing³⁶³ and she also claims to have heard gunfire at the hospital where victims of this shooting were being taken.³⁶⁴ She testified that the hospital officials had 'received instructions not to provide care to the injured'.³⁶⁵ The witness maintained that the march was organised by the RHDP even upon suggestion that the RHDP had only been created in 2005.³⁶⁶ She also saw an 'aircraft fly over'³⁶⁷ but did not witness any actual shelling by this aircraft.³⁶⁸

201. P-0048 also described the incident and claimed that the FDS deployed helicopters against the population and that there were around 350 casualties.³⁶⁹ However, P-0048 was not an eye-witness and said that he obtained his information concerning the incident on 25 March 2004 from investigations conducted by the UN and by 'an effort using the system of neighbourhoods' by the 'G7'.³⁷⁰
202. From the totality of the available evidence adduced in this regard,³⁷¹ it appears that the incidents of 25 March 2004 may have taken place in the context of a law enforcement activity in which FDS forces fired on unarmed persons as they were about to begin demonstrating. The UN report mentioned earlier considered that

³⁶² P-0184, T-215 dated 4 December 2017, pp. 5-7.

³⁶³ P-0184, T-215 dated 4 December 2017, p. 7.

³⁶⁴ P-0184, T-215 dated 4 December 2017, p. 8.

³⁶⁵ P-0184, T-215 dated 4 December 2017, p. 8.

³⁶⁶ P-0184, T-216 dated 5 December 2017, p. 24.

³⁶⁷ P-0184, T-216 dated 5 December 2017, p. 25; *see also* T-215 dated 4 December 2017, p. 69.

³⁶⁸ P-0184, T-216 dated 5 December 2017, p. 25.

³⁶⁹ P-0048, T-53 dated 27 June 2016, pp. 83-87.

³⁷⁰ P-0048, T-53 dated 27 June 2016, p. 84-87.

³⁷¹ *See also* Section V.B.1.b)(i) - The 2000 and 2004 demonstrations.

this was a 'carefully planned and executed operation by the security forces'³⁷² where more than 100 civilians died³⁷³ and amounted to a mass human rights violation.³⁷⁴ However, the UN report inconsistently also determines that coordination between FDS forces was not based on clearly established directives which led to the 'incapacity of those who gave orders to maintain effective control of their subordinates'.³⁷⁵ On the face of such limited evidence, it might nevertheless seem that the authorities used extreme levels of force against innocent unarmed civilians. Nonetheless, given that the evidence is either anecdotal or almost entirely anonymous hearsay, it is difficult to see how a reasonable trial chamber could attach any significant evidentiary weight to it. Moreover, even if the available evidence were entirely reliable, so little is known about the circumstances in which violence was used and the manner in which orders were disseminated on 25 March 2004 that it would not be a sound factual basis for drawing any inferences.

3. *Appointments made on the basis of ethnicity and personal loyalty*

203. The Prosecutor also alleged that, upon becoming President of Côte d'Ivoire in 2000, Mr Gbagbo appointed and promoted senior officers of the FDS on the basis of ethnic or religious grounds.³⁷⁶ The Prosecutor specifically refers to the appointment in 2000 of Faussignaux Gagbei Vagba as commander of the Navy, the appointment in 2000 of Brunot Dogbo Blé as commander of the *Garde Républicaine*, the appointment in 2004 of Philippe Mangou as Chief of Staff, and

³⁷² Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 72.

³⁷³ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 77.

³⁷⁴ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 72.

³⁷⁵ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238, para. 59.

³⁷⁶ Mid-Trial Brief, paras 56-60.

the appointment of Rigobert Tohouiri Dadi as commander of BASA and BASS. The Prosecutor also refers to the appointment of Boniface Kouakou Konan as COMTHEATRE and of Jean-Noël Abéhi as commander of the GEB.

204. The evidence referred to by the Prosecutor in support of these allegations is manifestly incapable of supporting them. Not a single knowledgeable witness claimed that Mr Gbagbo appointed or promoted military officers on the basis of ethnic or religious considerations. Nor did the Prosecutor present evidence showing that, when the individuals mentioned were appointed or promoted, there were other more qualified candidates from different ethnic or religious backgrounds. Moreover, the Prosecutor has not presented a comprehensive overview of all appointments and promotions to senior military commands during the relevant period. It is thus impossible to know if the specific cases referred to, even if true, were exceptional or symptomatic of a wider phenomenon.
205. Significantly, there is also no evidence suggesting that the officers in question were appointed or promoted at Mr Gbagbo's or Mr Blé Goudé's insistence. Nor is there evidence of Mr Gbagbo or Mr Blé Goudé intervening to block the appointment or promotion of officers because of their ethnic or religious background. The fact that Mr Gbagbo signed the formal appointments or promotions does not prove that he was personally involved in the selection of the candidates, merely that he approved of the selected candidate.
206. In any event, even if it were true that Mr Gbagbo appointed and promoted officers on the basis of their perceived loyalty to him personally, the Prosecutor does not explain how this establishes that these officers would therefore have been more inclined to commit crimes against civilians or, indeed, that this was Mr Gbagbo's reason for choosing them. Few leaders deliberately surround themselves with senior aides whom they mistrust. This is especially true in situations of crisis where the leader fears for his or her political survival. Accordingly, regardless of the content and quality of the available evidence, it is

difficult to see how this allegation would support the Prosecutor's claim that there was a policy to attack a civilian population.

4. *Climate of Impunity*

207. In the Mid-Trial Brief, the Prosecutor alleged that Mr Gbagbo failed to sanction FDS violence and actively denied responsibility for it, creating a 'climate of impunity'. The Mid-Trial Brief alleged that

[t]he violent repression was coupled with impunity for its perpetrators throughout the decade of GBAGBO's tenure as President. This climate of impunity sent a clear signal to hierarchical superiors not to punish their subordinates for crimes committed against political opponents; it also gave their subordinates the understanding that they would not be punished for such crimes.³⁷⁷

208. In alleging the existence of a climate of impunity, the Prosecutor relies on public statements by the government through RTI broadcasts and press releases, and the alleged failure to prevent and punish crimes within the FDS generally, as well as the government's response to specific incidents. Before determining whether appropriate measures were taken and, if not, whether this constitutes a deliberate failure that can be linked to the alleged policy, it is necessary to briefly examine the evidence concerning the judicial and disciplinary system for the reporting, investigation and prosecution of crimes that was in place at the relevant time. Following this, the analysis will turn to the government's public acknowledgments, or lack thereof, of alleged crimes. Lastly, the specific incidents allegedly demonstrating the climate of impunity will be analysed.
209. Before turning to the assessment of evidence, a distinction must be made between impunity for crimes against the civilian population generally and crimes committed against civilians perceived as supporting Mr Ouattara. As per the allegations, the climate of impunity specifically concerned crimes against individuals who purportedly supported Mr Ouattara that were not sufficiently

³⁷⁷ Mid-Trial Brief, para. 13.

investigated and/or prosecuted.³⁷⁸ It also concerns the accused denying either the occurrence and/or responsibility for such crimes. For this reason, these allegations are understood to not refer to a general climate of impunity affecting the supporters of Mr Ouattara and Mr Gbagbo alike.

a) Available sanctions mechanism

210. The Prosecutor alleged that the judicial system under Mr Gbagbo was characterised by ‘denial, followed by a gradual recognition of certain aspects of the crime, combined with cover-ups and justification, illustrating a lack of willingness in punishing perpetrators’.³⁷⁹ The evidence on record indicates that during the period relevant to the charges, functioning reporting and sanctions systems existed within the FANCI, *Gendarmerie*, Police and CECOS. According to pieces of legislation submitted by the Prosecutor, there were rules governing issues of hierarchy, discipline and reporting within the Army,³⁸⁰ as well as disciplinary proceedings within the *Gendarmerie*³⁸¹ and Police.³⁸² With regard to

³⁷⁸ See for example Mid-Trial Brief, para. 641, 721: ‘[...] impunity and denial were the norm under GBAGBO’s regime. The atmosphere of laissez-faire of GBAGBO and his ‘inner circle’ made it clear in the mind of the pro-GBAGBO forces that they could *repress political opponents using lethal force* and would suffer no consequence for these acts.’ (emphasis added).

³⁷⁹ Mid-Trial Brief, para. 690.

³⁸⁰ See for example Journal Officiel de la Republique de Cote d’Ivoire / No. 41, 10 October 1996, CIV-OTP-0054-0119 at 0130-0140 containing Decret no 96-574 du 31 juillet 1996 portant règlement de service et de discipline générale dans les Forces Armées nationales; at 0130 the document contains the structure of the military hierarchy; at 0136 the document contains punishments that may be ordered. See further P-0011, T-131 dated 9 March 2017, p. 9 *et seq.* Journal Officiel de la Republique de Cote d’Ivoire / No. 33, 13 June 1961, CIV-OTP-0054-0002 at 0004. Journal Officiel de la Republique de Cote d’Ivoire / No. 51, 7 December 1995, CIV-OTP-0054-0095 at 0096-0097 containing *Loi no 95-695 du 7 septembre 1995 portant Code de la Fonction militaire*; see further at 0097 article 16 concerning « *Le militaire est soumis aux dispositions du Règlement de Service et de Discipline générale dans les Forces Armées* », article 17 concerning « *Les fautes commises par le militaire l’exposent à des sanctions disciplinaires, professionnelles ou statutaires. Ces sanctions ne font pas obstacle à d’éventuelles poursuites pénales* », article 19 stating that « *Lorsque les faits qui lui sont reprochés constituent une infraction pénale donnant lieu à des poursuites judiciaires, la procédure d’envoi de militaire devant le conseil d’Enquête ne peut être engagée qu’après l’achèvement de l’action publique* ».

³⁸¹ See for example Punition infligée au Maréchal Des Logis ABIYOU Jean Didier, Matricule 28.112, en service au Groupement d’Appui du Centre de Commandement des Opérations de Sécurité (CeCOS) pour manquement aux consignes, 18 January 2009, CIV-OTP-0048-1562 (confidential) referencing *Article 106 du décret No 61-361 du 13-11-1961 portant service intérieur de Gendarmerie Nationale*. P-0010, T-138 dated 28 March 2017, p. 23-24, commenting on CIV-OTP-0048-1562.

the FANCI, General Mangou testified that there was a general discipline manual which contained the duties and obligations of all soldiers.³⁸³ He also described the reporting mechanism for imposing disciplinary sanctions within the Army.³⁸⁴ According to General Mangou, there was a ‘military tribunal or military court’ within the ministry of defence ‘which[could] hear all matters pertaining to offences committed by soldiers’.³⁸⁵ He added that files could be forwarded to the President for assessment, ‘but generally, the disciplinary matters end[ed] at the desk of the minister of defence’.³⁸⁶

211. In respect of the *Gendarmerie*, General Kassaraté testified that ‘[i]n the event of a violation, the information goes all the way up to the senior command[er] who in turn reports to the Minister of Defence, and concomitantly to the military prosecutor who is called the government commissioner’.³⁸⁷ According to General Kassaraté, any citizen could go to the *Gendarmerie* brigade to report and initiate investigation with the public prosecution office in the area.³⁸⁸ He further testified that, upon receipt of information concerning an infraction from a subordinate, ‘we study it to find out whether the accusation is based or baseless’.³⁸⁹ In

³⁸² See for example Journal Officiel de la Republique de Cote d’Ivoire / No. 32, 5 July 1979, CIV-OTP-0054-0045 at 0075-0092 containing *Decret no 79-476 du 6 juin 1979, portant règlement sur la discipline générale et le service intérieur des corps de la Sûreté nationale*; at 0085 the document contains a list of punishments/disciplinary sanctions for the police.

³⁸³ P-0009, T-193 dated 25 September 2017, pp. 80-81. See also T-198 dated 3 October 2017, p. 14.

³⁸⁴ P-0009, T-198 dated 3 October 2017, pp. 13-14.

³⁸⁵ P-0009, T-193 dated 25 September 2017, p. 80.

³⁸⁶ P-0009, T-193 dated 25 September 2017, pp. 80-81:

whenever a soldier commits such an offence, it is his immediate boss who would punish the soldier accordingly. You see, at each level there is a superior. Let me take an example. The superior in the case at hand can maybe issue a punishment for two days and informs hierarchy accordingly. Maybe if the corporal forwards such a request to the captain, or to the commander, or to the chief of general staff, the sanction can be aggravated from one level to the other. And if the chief of general staff believes at his level that the sanction is appropriate, he can stop the process at that level, but if he thinks that more needs to be done, the file can be forwarded to the minister of defence and beyond that level to the president of the republic for assessment. Well, this has never really happened, but generally, the disciplinary matters end at the desk of the minister of defence.

³⁸⁷ P-0011, T-131 dated 9 March 2017, p. 12.

³⁸⁸ P-0011, T-131 dated 9 March 2017, p. 11.

³⁸⁹ P-0011, T-132 dated 10 March 2017, p. 90.

addition to the sanctions mechanism, it is noted that P-0330, the unit commander of the *Gendarmerie*'s Abobo squadron during the post-electoral crisis, testified that he would report incidents of injured civilians to his hierarchy and that this meant that 'on a number of occasions the head of the PC [command post] gathered us together and imposed a certain discipline as to when [...] we should open fire or not'.³⁹⁰

212. As regards mixed units, General Bi Poin testified that there was a reporting mechanism similar to that of the Army existing within the CECOS.³⁹¹ As per General Bi Poin, people within the population could also report 'shortcomings in the behaviour' of CECOS elements.³⁹² In respect of investigations into alleged misconduct on the part of CECOS elements, General Bi Poin testified that the officer responsible for the element who had committed the misconduct could be instructed to conduct the investigation.³⁹³ General Bi Poin also testified on the drawing-up of reports ordering sanctions³⁹⁴ and their movement up the hierarchy.³⁹⁵ As per the system in place, a senior officer could 'adjust, or cancel,

³⁹⁰ P-0330, T-68 dated 1 September 2016, p. 85.

³⁹¹ P-0010, T-138 dated 28 March 2017, p. 21 *cf.* P-0009, T-193 dated 25 September 2017, pp. 80-81.

³⁹² P-0010, T-138 dated 28 March 2017, p. 22: Now, some people within the population, because we had given out numbers, telephone numbers, throughout the population that we could be reached through, if the population saw that there were shortcomings in the behaviour of our elements, so the population could seize us of the matter and inform us of such and such a shortcoming at their level. Then we would lead investigations because we would not want to expose our men to hearsay and rumours that are unfounded. So we would then lead investigations, and if it is established that the alleged facts are true, then we would mete out sanctions that are deemed necessary. *See further* P-0011, T-131 dated 9 March 2017, p. 10 where, in respect of the *Gendarmerie*, he testified that the senior commander of the gendarmerie has no direct action over the armed forces, but if a civilian makes a complaint about a soldier's behaviour, then the gendarmerie begins an investigation.

³⁹³ P-0010, T-138 dated 28 March 2017, p. 22; not entirely reflected in English transcript, *cf.* T-138 (French), p. 22.

³⁹⁴ P-0010, T-138 dated 28 March 2017, p. 25.

³⁹⁵ P-0010, T-138 dated 28 March 2017, p. 26. *See further* Punition infligée au Maréchal Des Logis ABIYOU Jean Didier, Matricule 28.112, en service au Groupement d'Appui du Centre de Commandement des Opérations de Sécurité (CeCOS) pour manquement aux consignes, 18 January 2009, CIV-OTP-0048-1562 (confidential) that exemplifies sanctions being imposed within the CECOS.

or confirm or make the sanction more serious', including 're-examin[ing] the entire dossier'.³⁹⁶ General Bi Poin added that

In terms of a criminal offence, of course we call either upon a police station or the national gendarmerie. We place our men at the disposal of the gendarmerie brigade or the police station, and they work under the authority of the national prosecutor, because there are two prosecutors in Abidjan, whether it be Yopougon or the other communes of Abidjan.³⁹⁷

213. As concerns the Police, there are documents on the record containing information about disciplinary sanctions that were being meted out within the Police force during the relevant period. Document CIV-OTP-0045-1143 dated 23 November 2010, in particular, contains a directive from the *Directeur Général de la Police Nationale* (DGPN) to Police deputy directors general, central directors, Police prefects, Police district chiefs, unit commanders, and Police commissioners concerning reporting to senior officers. It states

Whatever its nature, a report must be made to the superior authority, either verbally at first and then in writing. When an incident occurs during a mission, the report must be automatic and immediate [...] Indeed, I have been given a recurring observation that this fundamental rule of general discipline is not respected in the chain of command. The report is an act of discipline; I therefore invite the various employees to schedule a report before – during – and after each mission. Failure to comply with this directive will expose the culprit to sanctions.³⁹⁸

214. Certain documents contain details of incidents where sanctions were being reported to superior officers.³⁹⁹ Documents CIV-OTP-0045-1289⁴⁰⁰ and CIV-

³⁹⁶ P-0010, T-138 dated 28 March 2017, p. 26.

³⁹⁷ P-0010, T-138 dated 28 March 2017, p. 27.

³⁹⁸ Note Circulaire / Compte rendu à la hiérarchie, 23 November 2010, CIV-OTP-0045-1143 (confidential) at 1143.

³⁹⁹ See for example L'arrêté No070/MI/DGPN/DPPN du 09 mars 2011, 28 March 2011, CIV-OTP-0045-1245 at 1246-1247. This contains an order by the Minister of Interior against a Police sergeant declared responsible for having lost his weapon for recovery of costs of said weapon.

⁴⁰⁰ Dossier disciplinaire du Commissaire de Police LOGBO Roger, 9 February 2011, CIV-OTP-0045-1289 at 1289-1294. This is a DGPN document that references offences against discipline and insubordination. See also Soit Transmis / No 0644/MI/DGPN/CAB, 28 March 2011, CIV-OTP-0045-0692 (confidential) that contains documents relevant to the same incident. On 2 February 2011, information was sent from the *Commissaire Principal de Police* to the *Préfet de Police d'Abidjan*. On 8 and 9 February 2011, relevant information was sent from the *Préfet de Police d'Abidjan* to the *Directeur Général Adjoint Chargé de la Sécurité Publique*. On 9 February 2011, information was sent from the *Directeur Général Adjoint, chargé des Services de Sécurité Publique* to the *Directeur Général de la Police Nationale*. On 28 March 2011, information was sent from the *Directeur Général de la Police Nationale* to the *Directeur du Personnel de la Police Nationale*.

OTP-0045-0647,⁴⁰¹ demonstrate the forwarding of information up the reporting hierarchy of the Police. There are also documents on the record from the years 2004 and 2007⁴⁰² that contain a list of individual cases of disciplinary actions taken against members of the Police force, including some who were seconded to CECOS.⁴⁰³

215. During his testimony, Inspector-General Bredou M'Bia confirmed that he had heard about incidents of sexual violence by law enforcement staff during the post-election crisis.⁴⁰⁴ The witness indicated that in such cases, '[he] would have taken the necessary measures because if a police officer raped somebody, that would be an offence for which he would receive punishment or an investigation would be conducted as the case may be'.⁴⁰⁵ Inspector-General Bredou M'Bia gave the example of an incident concerning a rape that took place at the Police *préfecture*: 'If I recall, mention was made of a young girl being raped and I asked for the police officer who did that, I called for him to be punished.'⁴⁰⁶

⁴⁰¹ Courrier No.55I/DGPN/DGA-CSP du 14 mars 2011, 23 March 2011, CIV-OTP-0045-0647 (confidential). This document shows that information was being relayed from the *Commissaire Principal* to le *Directeur Général Adjoint de la Police Nationale, Chargé des Services de la Sécurité Publique* (at 0649); further to the *Directeur Général de la Police Nationale* (at 0648); and further to the Minister of Interior (at 0647).

⁴⁰² See Mid-Trial Brief, para. 623 citing to Journal Officiel de la République de Côte d'Ivoire / No. 6, 5 February 2004, CIV-OTP-0054-0317 at 0319-0321; Journal Officiel de la République de Côte d'Ivoire / No.12, 22 March 2007, CIV-OTP-0054-0198 at 0199-0201.

⁴⁰³ Journal Officiel de la République de Côte d'Ivoire / No. 6, 5 February 2004, CIV-OTP-0054-0317 at 0319-0321; Journal Officiel de la République de Côte d'Ivoire / No.12, 22 March 2007, CIV-OTP-0054-0198 at 0199-0201.

⁴⁰⁴ P-0046, T-126 dated 20 February 2017, p. 48.

⁴⁰⁵ P-0046, T-126 dated 20 February 2017, p. 48.

⁴⁰⁶ P-0046, T-126 dated 20 February 2017, p. 49.

216. It is also noted that the record contains a number of Police reports and a *Gendarmerie* report which refer to civilian casualties and identify state actors as the perpetrators.⁴⁰⁷
217. In sum, it appears from the record that the different branches of the FDS had systems for the reporting, investigation and sanctioning of crimes. In spite of this, the Prosecutor suggests, crimes against perceived or actual Ouattara supporters were not accurately reported within the hierarchy.⁴⁰⁸
218. In this regard, witness P-0347, a commander in the *Garde Républicaine*, testified that between the first and second election rounds, his subordinates would mistreat RHDP supporters who had been arrested by them for causing destruction to property and similar behaviour,⁴⁰⁹ but he would ‘put a stop to that because [he] did not think that was part of [their] mission’.⁴¹⁰ The witness added that ‘each time these young people who had been troublemakers were brought to the

⁴⁰⁷ See for example Rapport de permanence centrale, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511: “Selon les renseignements recueillis c’est un équipage de la gendarmerie (BMO) qui de passage aurait fait feu sur un groupe de manifestants dont faisait partie les victimes”; see further Manifestations du RHDP et découverte de cadavres, 25 January 2011, CIV-OTP-0045-1413 at 1413: “Après ces constatations, il ressort que ces individus auraient été tués par balles par un équipage du CECOS qui, de passage aurait fait feu sur des manifestants dont faisait partie les victimes”. See also Marche des militants du rassemblement des houphouëtistes pour la démocratie et de paix (RHDP) sur la radiodiffusion télévision ivoirienne (RTI, 23 February 2011, CIV-OTP-0047-0485 at 0489 (replicated at Annexe 8 – Page 4 / Marche sur la RTI, organisée par les militants du RHDP / No. 1033/PPA/D-4, 16 December 2010, CIV-OTP-0076-1526 (confidential)): “Ils ont été dispersés par le Commissaire du 3ème Arrondissement qui était à la tête d’un Groupe d’Intervention, aidé par les éléments du CECOS, version BMO. A l’issue de cette opération on dénombre 01 mort et 03 blessés qui ont été évacués au CHU de Cocody” “Ils ont été dispersés par les éléments du CECOS, version BMO. On dénombre deux (02) manifestants interpellés et un décédé par balle”; BQI No.249 du Jeudi 17 Décembre 2010, 16 December 2010, CIV-OTP-0045-0735 (confidential) at 0736: “Conformément aux instructions de la hiérarchie, ils ont dispersé par des moyens conventionnels. Néanmoins on déplore 02 cas de décès”; Liste des victimes de la marche du RHDP des 16 et 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1163: “Abbatu par balle suite à l’intervention des FDS”. See further PC Etat Major DGPN: Tableau récapitulatif chronologique des événements : période du 22/11/2010 au 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0896-0897, 0901; Journée du : 16/12/2010 A 18 heures, 16 December 2010, CIV-OTP-0043-0334 (confidential): “Manifestations de rue à la Rue 38. 02 blessés par balles perdues, un jeune homme décédé par la suite et une dame suite intervention des Forces de l’ordre (Eléments GR et Police)”.

⁴⁰⁸ Mid-Trial Brief, para. 693. For a discussion of her allegations in the context of specific incidents, see paras 225-227 and 253-255.

⁴⁰⁹ P-0347, T-77 dated 22 September 2016, pp. 69-70, 72.

⁴¹⁰ P-0347, T-77 dated 22 September 2016, p. 70.

Treichville base, systematically [he] would send them on their way to the police station or to the search brigade, who would deal with them'.⁴¹¹ P-0347 further testified that he would 'exclude' (*mettais à l'écart*) his subordinates who had engaged in such mistreatment because 'this was a period of time when punishment didn't really have much of an effect'.⁴¹² P-0347 explained that

it was the environment that we were operating in, because when I took that attitude with regard to the young people who were brought to my base, the information went up the chain of command, up the ladder, so to speak, to my hierarchy, and then it was said that I was keeping the men from engaging in such mistreatment, so I wasn't on their side, so to speak. So that was the conclusion that they came to. So in that environment, a punishment was not going to be going anywhere because, really, my direct superior was saying that it should not be done during that period of time and, well, they didn't trust me already. I was no longer within the chain of command. I had been sidelined. So what authority did I have?⁴¹³

219. P-0347 was asked what he meant by not being 'on their side', to which he responded he was referring to not being on the side of General Dogbo Blé and his chief of staff Commander Kipré.⁴¹⁴ He further clarified that he decided not to formally sanction the subordinates who engaged in the mistreatment given that he had himself been the victim of certain behaviour on the part of General Dogbo Blé and knew what kind of commander he was, as well as the fact that General Dogbo Blé could have quashed any decisions P-0347 took.⁴¹⁵ According to P-0347, following this 'information spread amongst the men' and 'they started to challenge [his] authority' seeing as he was 'not aligned with [his] hierarchical leader'.⁴¹⁶

220. It must be noted that P-0347's superiors appear to have already mistrusted him prior to the issue of stopping the mistreatment of detainees. P-0347 testified that

⁴¹¹ P-0347, T-77 dated 22 September 2016, p. 70.

⁴¹² P-0347, T-77 dated 22 September 2016, pp. 70-71.

⁴¹³ P-0347, T-77 dated 22 September 2016, p. 71.

⁴¹⁴ P-0347, T-77 dated 22 September 2016, p. 72.

⁴¹⁵ P-0347, T-78 dated 23 September 2016, pp. 69-73.

⁴¹⁶ P-0347, T-77 dated 22 September 2016, p. 72.

any sanction risked being ineffectual because he considered that, already during this period, he was not trusted and was effectively no longer within the chain of command.⁴¹⁷ Nevertheless, on the basis of P-0347's testimony a reasonable trial chamber could conclude that within the *Garde Républicaine* there existed a certain attitude of permissiveness towards what P-0347 called 'mistreatment' of RHDP supporters.⁴¹⁸ However, P-0347 clarified that this 'mistreatment' meant his men 'would kick them, slap them around a bit'. It cannot be inferred that the same attitude would have applied to more serious mistreatment or crimes. Moreover, it is also worth recalling that the witness expressly linked his assessment that the imposition of sanctions would have been futile to his personal relationship with his immediate superiors rather than any generally held belief or FDS-wide policy. On its own, P-0347's testimony is thus insufficient to substantiate a finding of a climate of impunity applicable within the entire FDS.

221. Having regard to all of the above, the evidence does not indicate that there was a policy inherent in the judicial system or otherwise in the sanctions mechanisms that could suggest that the judicial system was being deliberately used to assist in the violent repression of political opponents. However, in light of the conclusion that an attitude of permissiveness for physical maltreatment existed within the *Garde Républicaine*, the below analysis will focus on determining whether there is other evidence of non- or misreporting that could point to the existence of a climate of impunity.

⁴¹⁷ P-0347, T-77 dated 22 September 2016, p. 71. *Note also* that in another context, P-0347's superiors outright told him that they did not trust him and that he heard from his men that this was due to his ethnicity (T-77 dated 22 September 2016, pp. 33-37).

⁴¹⁸ This conclusion is further strengthened by P-0347's position during the post-electoral crisis: as commander of the Abidjan *groupement* of the *Garde Républicaine*, he personally oversaw about 300 elements stationed at the Treichville base, the palace in Plateau and the residence in Cocody (P-0347, T-77 dated 22 September 2016, pp. 10-11).

b) Acknowledgment of crimes

222. Turning now to public acknowledgments of incidents involving civilian casualties, the Prosecutor alleges that Mr Gbagbo made ‘repeated and public denials of FDS involvement in any crimes’⁴¹⁹ and that any investigations that were initiated focused ‘overwhelmingly on FDS victims, to the exclusion of other groups’.⁴²⁰ In this regard, General Mangou was asked whether communiqués by FDS spokespersons were cross-checked by Mr Gbagbo before being released, to which the witness answered that he knew that Mr Gbagbo had approved press releases ‘once or twice only’ and added that most of the time, it was ‘the minister of defence who approve[d]’.⁴²¹ General Mangou further stated that he did not consult Mr Gbagbo on most of the communiqués and that such exchanges would take place with the minister.⁴²²
223. Witness P-0048, a former minister for human rights from 2006 to 2007,⁴²³ testified concerning what he generally considered a ‘situation of ongoing impunity’⁴²⁴ in Côte d’Ivoire. According to P-0048, there had ‘never been any official communications on these reports [on human rights violations] to draw the attention of the public to the various ideas contained in the reports’.⁴²⁵ In his opinion, ‘there was never any discussion, even in cabinet, of these reports, and the same can be said for almost all the other reports in that connection’.⁴²⁶ When asked why these reports were never disseminated within the council of ministers,

⁴¹⁹ Response, para. 1927.

⁴²⁰ Mid-Trial Brief, para. 693; Response, para. 1926.

⁴²¹ P-0009, T-193 dated 25 September 2017, p. 74.

⁴²² P-0009, T-193 dated 25 September 2017, p. 74.

⁴²³ P-0048, T-53 dated 27 June 2016, p. 8.

⁴²⁴ P-0048, T-54 dated 28 June 2016, pp. 14-15.

⁴²⁵ P-0048, T-54 dated 28 June 2016, p. 14.

⁴²⁶ P-0048, T-54 dated 28 June 2016, p. 14.

P-0048 stated that it depended on the planning of the secretary general.⁴²⁷ When asked if this was based on any particular policy, he replied

No, I cannot say much. Council of ministers is usually preceded by a cabinet meeting which addresses the various issues that will be dealt with at the council of ministers. But during the few months when I served as a minister, I never noticed that any such report was scheduled in the planning for discussions and analysis at a council of ministers meeting. Now, if you look at all the press releases from the council of ministers deliberations, over a period of 10 years, you would not find any mention of these reports in those releases.⁴²⁸

The remainder of the evidence adduced by the Prosecutor concerning the issue of public acknowledgments will be discussed below in the context of specific incidents.

c) Specific incidents

224. In addition to these general allegations, the Prosecutor also points to specific incidents to exemplify her allegations concerning climate of impunity. These incidents have been examined with a view to assessing whether they otherwise reflect a pattern of denial of crimes that could have a bearing on the allegations concerning the climate of impunity.

(1) Wassakara incident

225. The Prosecutor alleges that on 1 December 2010, members of the *Gendarmerie* raided the RDR headquarters in Wassakara, Yopougon, opened fire on the RDR supporters who were gathered there and that this resulted in deaths and injuries, alongside civilians being arrested and detained.⁴²⁹ Following this, the FDS is alleged to have issued a ‘false’ *communiqué* about this incident after consultation with the Chief of Staff, with Mr Gbagbo’s knowledge.⁴³⁰ The Prosecutor alleges

⁴²⁷ P-0048, T-54 dated 28 June 2016, p. 15.

⁴²⁸ P-0048, T-54 dated 28 June 2016, p. 15.

⁴²⁹ Mid-Trial Brief, para. 124; Response, para. 248.

⁴³⁰ Mid-Trial Brief, para. 128.

that this incident ‘illustrated a pattern of denial [that] the pro-GBAGBO groups would follow throughout the post-election crisis’.⁴³¹ The Mid-Trial Brief also describes this incident as proof of implementation of the alleged Common Plan following the second round of elections.⁴³²

226. In the construction of her narrative in this regard, the Prosecutor appears to rely solely on the evidence given by P-0440, the chief of service of the 16th *arrondissement* Police station in Yopougon during the post-election crisis. The witness transmitted a report on the Wassakara incident to the Abidjan Police *préfet* and the DGPN,⁴³³ which the Prosecutor submitted into evidence, and testified on its surrounding circumstances.⁴³⁴ According to P-0440, the RHDP militants were killed ‘in cold blood’,⁴³⁵ as his inspection of the scene revealed no evidence of weapons⁴³⁶ or an exchange of fire,⁴³⁷ and he took the statement of a witness who maintained that men in *Gendarmerie* uniforms had arrived and opened fire on them without provocation or warning.⁴³⁸ P-0440 reported this incident to the public prosecutor but did not believe the matter was investigated or prosecuted further,⁴³⁹ nor did he receive a response from the hierarchy⁴⁴⁰ even though the facts were ‘sufficiently serious’ to warrant one.⁴⁴¹

⁴³¹ Mid-Trial Brief, para. 691; Response, para. 1918.

⁴³² See Mid-Trial Brief, paras 124, 128.

⁴³³ Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential); see also P-0440, T-157 dated 11 May 2017, pp. 10-11.

⁴³⁴ P-0440, T-157 dated 11 May 2017, pp. 3-15; P-0440, T-158 dated 12 May 2017, pp. 11-40, 69-74. See also Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 at 0100 *et seq.*

⁴³⁵ P-0440, T-157 dated 11 May 2017, p. 10.

⁴³⁶ P-0440, T-157 dated 11 May 2017, p. 7.

⁴³⁷ P-0440, T-157 dated 11 May 2017, p. 10, 13.

⁴³⁸ P-0440, T-157 dated 11 May 2017, p. 5; Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential) at 0102.

⁴³⁹ P-0440, T-157 dated 11 May 2017, pp. 13-14.

⁴⁴⁰ P-0440, T-157 dated 11 May 2017, p. 10, 12.

⁴⁴¹ P-0440, T-158 dated 12 May 2017, p. 18.

227. In addition to the above evidence provided by P-0440, however, there are several competing pieces of evidence to which the Prosecutor appears to accord little weight. First, in his testimony P-0440 admitted having excluded details of his conversation with *Gendarmerie* Commander Koukougnon, whose squad was implicated in the incident, from his report to the hierarchy so as to ‘cover’ one of his ‘brothers in arms’.⁴⁴² According to P-0440, he called Commander Koukougnon from the scene to tell him about the massacre and to ask whether the commander was aware of his men conducting a mission at the RDR headquarters. In response,

[h]e said he didn't know who had sent them there. He said, "They're going to kill me." In other words, he meant that people were going to create problems for him.

Q: Did you know what he meant by that? Did you understand what he meant by that, "problems for him"? What did that mean to you?

A: He was saying that his men had committed a misdeed and that he might lose his job or create problems for him. And so that's what he was thinking when he said "I don't know who sent them there, and they're going to kill me."⁴⁴³

It was [REDACTED];⁴⁴⁴ nor did he report his findings that there was no evidence of an exchange of fire.⁴⁴⁵ *Gendarmerie* supreme commander General Kassaraté also testified about questioning Commander Koukougnon on this incident: ‘he said that armed individuals attacked his men and in the course of the cross-fire people died’.⁴⁴⁶

⁴⁴² P-0440, T-157 dated 11 May 2017, p. 13. *See also* T-158, p. 35.

⁴⁴³ P-0440, T-157 dated 11 May 2017, p. 6.

⁴⁴⁴ Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential) at 0101: ‘avons joint téléphonique le Commandant KOUKOUNGNON, Commandant de l’escadron de Yopougon, à l’effet de savoir s’il avait mené une opération à Yopougon Wassakara, précisément au siège du RDR. Il nous a répondu par l’affirmative en déclarant que ses éléments lui ont fait savoir qu’ils ont dû riposter après y avoir essayé des tirs.’ *See also* P-0440, T-157 dated 11 May 2017, p. 12.

⁴⁴⁵ P-0440, T-157 dated 11 May 2017, p. 13; T-158, p. 35.

⁴⁴⁶ P-0011, T-132 dated 10 March 2017, pp. 86-87.

228. Second, the record contains another report on the Wassakara incident, drafted by a BAE lieutenant who was also at the scene.⁴⁴⁷ According to the report's author, his BAE unit had been on patrol near the 16th *arrondissement* commissariat when they heard gunfire from automatic weapons and were ordered to investigate.⁴⁴⁸ Upon arriving at the location, they saw men in *Gendarmerie* uniform exiting the road that led to the RDR headquarters together with bare-chested individuals.⁴⁴⁹ After telling the BAE elements that the gunfire had come from the RDR headquarters, the *gendarmes* drove away to an unknown location with the individuals they had apprehended.⁴⁵⁰ It is noted that P-0440 doubted the veracity of the BAE lieutenant's report, maintaining instead that he and his fellow Police officers were the first to arrive at the scene and that they did not see any *gendarmes*.⁴⁵¹ This testimony, however, is in contradiction to his own report, which states that en route to the RDR headquarters P-0440 encountered a lieutenant from the BLCP⁴⁵² who reported having arrived at the location to find that a *Gendarmerie* unit was already there.⁴⁵³

229. It is noted that the following day, on 2 December 2010, the RTI broadcast a statement by FDS spokesperson Colonel Babri on the Wassakara incident:

Yesterday night, Wednesday, 1 December 2010, at 22 hours 15 minutes, following an anonymous call ... a mobile patrol of the FDS went on a verification mission to Wassakara, in Yopougon commune. Information from the call indicated that a suspicious parcel had been dropped in a courtyard. Once near the neighbourhood, the

⁴⁴⁷ A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066 at 0071-0074.

⁴⁴⁸ A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066 at 0072.

⁴⁴⁹ A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066 at 0072.

⁴⁵⁰ A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066 at 0072-0073.

⁴⁵¹ P-0440, T-158 dated 12 May 2017, pp. 10-13.

⁴⁵² Note that the same lieutenant is mentioned in the BAE lieutenant's report (A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066 at 0072).

⁴⁵³ Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential) at 0100.

patrol came under automatic gunfire. Firing back resulted in four persons being killed and 14 persons being injured. Furthermore, nine other persons were arrested on site who are currently at the headquarters of a political party. The chief of staff of the army, or the general staff of the army, while deploring loss of life and injury, has ordered an investigation to shed light on this situation.⁴⁵⁴

230. In alleging that the FDS released a false communiqué regarding this incident,⁴⁵⁵ the Prosecutor relied on P-0440's testimony that the FDS statement was a 'misrepresentation of the facts' because it referenced an exchange of fire when there was none.⁴⁵⁶ However, it must be recalled that both the reports circulated to FDS hierarchy which were submitted by the Prosecutor in this regard mentioned an exchange of fire. Moreover, while testimonial evidence indicates that Mr Gbagbo and Generals Mangou, Kassaraté and Bredou M'Bia were informed of the incident,⁴⁵⁷ it is not known what information had reached which persons in the hierarchy by the time the statement was broadcast.
231. Moreover, P-0440 stated that he deleted the photographs and video images he had taken at the crime scene after seeing the coverage of the incident on the RTI.⁴⁵⁸ According to him, 'clearly they wanted to give a misrepresentation of the facts and not say the truth. So [he] didn't want anyone to discover on [his] person in [his] possession a video or photographs that showed the actual facts.'⁴⁵⁹ However, there is no indication that this was done at the behest of the accused and/or any of the alleged 'inner circle' members.

⁴⁵⁴ RTI Broadcast dated 2 December 2010, CIV-OTP-0074-0049, transcript at CIV-OTP-0087-0349 at 0350. *Note also* the FDS statement broadcast on 11 December in response to a *Forces Nouvelles* communication criticising the passivity of the defence forces in the face of abuses committed against a certain category of persons, which recalls the 2 December communiqué (Le Journal / JT 20H du 10-12-2010 et JT 13H_20H du 11-12-2010, 11 December 2010, CIV-OTP-0061-0547, transcript at CIV-OTP-0094-0291. *See also* RTI broadcast dated 11 December, CIV-OTP-0064-0095, transcript at CIV-OTP-0101-0735).

⁴⁵⁵ Mid-Trial Brief, para. 128.

⁴⁵⁶ P-0440, T-157 dated 11 May 2017, pp. 8-10.

⁴⁵⁷ P-0009, T-195 dated 27 September 2017, pp. 76-78; P-0046, T-124 dated 16 February 2017, pp. 73-74 (confidential); P-0011, T-131 dated 9 March 2007, p. 84.

⁴⁵⁸ P-0440, T-157 dated 11 May 2017, pp. 7-9.

⁴⁵⁹ P-0440, T-157 dated 11 May 2017, p. 9.

232. Finally, it is not entirely clear who was in charge of investigating the incident nor to what stage the investigation progressed. Generals Mangou and Bredou M'Bia testified that the *Gendarmerie* was tasked with investigating the incident,⁴⁶⁰ whereas General Kassaraté maintained that the Police were conducting the investigation,⁴⁶¹ which 'would necessarily lead to a judgment or trial',⁴⁶² but that he never received its findings.⁴⁶³ According to P-0440,

Policemen do not carry out inquiries against gendarmes. And gendarmes also do not carry out inquiries against the police. If there are proceedings relating to facts incriminating gendarmes, we have a military tribunal, and that would deal with that issue. And that is the same case with the police. If the police commit crimes, they are prosecuted by the military tribunal. That is what happens. So in principle, when we forwarded the report to the prosecutor, quite often he would forward it to the military prosecutor, who would then initiate proceedings against the perpetrators.⁴⁶⁴

Whereas P-0440 testified that the case was not transmitted to the military prosecutor to his knowledge,⁴⁶⁵ General Kassaraté maintained that it was.⁴⁶⁶ Moreover, in the course of his testimony P-0440 clarified that the report he sent to the military prosecutor was not the same as the one sent to the hierarchy but did not provide further details.⁴⁶⁷ As such, the Chamber is left in the dark as to what information was transmitted to the military prosecutor, whether the case was forwarded to the military prosecutor and, if not, for what reason.

233. The foregoing discussion suggests that the incident at Wassakara was not prosecuted by the time Mr Gbagbo was arrested, but there is little evidence as to

⁴⁶⁰ P-0009, T-195 dated 27 September 2017, pp. 80-81; P-0046, T-124 dated 16 February 2017, p. 77, 80 (confidential).

⁴⁶¹ P-0011, T-132 dated 10 March 2017, p. 81; *see also* p. 87. *See further* P-0011, T-135 dated 14 March 2017, pp. 87-88.

⁴⁶² P-0011, T-132 dated 10 March 2017, p. 87.

⁴⁶³ P-0011, T-132 dated 10 March 2017, p. 81, 87. *Note* that Generals Mangou and Bredou M'Bia also testified never having been informed of the findings (P-0009, T-195 dated 27 September 2017, p. 78; P-0046, T-124 dated 16 February 2017, p. 77, 80 (confidential)).

⁴⁶⁴ P-0440, T-157 dated 11 May 2017, p. 15.

⁴⁶⁵ P-0440, T-157 dated 11 May 2017, p. 15.

⁴⁶⁶ P-0011, T-131 dated 9 March 2017, p. 84.

⁴⁶⁷ P-0440, T-158 dated 15 May 2017, pp. 37-40.

the underlying reasons. The FDS communiqué reflects information similar to that reported by P-0440, *Gendarmerie* Commander Koukougnon and the BAE lieutenant to their superiors, and, rather than constituting an outright denial of the crimes, indicated that an investigation had been opened. Moreover, Commander Koukougnon's fear of the consequences of his subordinates' causing civilian deaths is difficult to reconcile with the existence of a climate of impunity that supposedly 'made it clear in the mind of the pro-GBAGBO forces that they could repress political opponents using lethal force and would suffer no consequence for these acts'.⁴⁶⁸ Matters are further complicated by P-0440's failure to report Commander Koukougnon's initial reaction to hearing about the massacre and his decision to delete the crime scene photographs he had taken. Whilst these factors, in themselves, do not justify the lack of prosecution and may demonstrate impunity generally, in the absence of further information they do not suffice to establish a deliberate failure on the part of the judicial authorities to investigate and prosecute crimes against Ouattara supporters.

(2) RTI march

234. The Prosecutor alleges that instead of punishing the perpetrators of the crimes connected to the RTI march, it was the demonstrators who were arrested and prosecuted.⁴⁶⁹ She draws a parallel between the RTI march and the incident that took place on 25 March 2004 discussed above.⁴⁷⁰ The Prosecutor alleges that Mr Gbagbo 'did not acknowledge the civilian deaths from the 25 March 2004'⁴⁷¹ incident targeting perceived opposition supporters, but instead condemned the planned demonstration as an 'attempted uprising'.⁴⁷² She adds that the

⁴⁶⁸ See Mid-Trial Brief, para. 721.

⁴⁶⁹ Mid-Trial Brief, para. 340; *see also* Response, para. 2111, 2119.

⁴⁷⁰ See IV.B.2.b) - Killing of demonstrators in 2004.

⁴⁷¹ See IV.B.2.b) - Killing of demonstrators in 2004.

⁴⁷² Mid-Trial Brief, para. 50.

perpetrators of the crimes committed during this incident were not prosecuted⁴⁷³ and that this incident bears a 'striking resemblance' to the RTI march on 16 December 2010 and its aftermath.⁴⁷⁴

235. Following the March 2004 incident, Mr Gbagbo gave a speech on 26 March 2004 calling on everyone to be calm and stated that the 'events of 25 of March had nothing to do with a peaceful march'.⁴⁷⁵ In this speech, Mr Gbagbo makes reference to the 'cycle of violence' but did not mention the commission of crimes. P-0048 testified that this speech 'confirms'⁴⁷⁶ that Mr Gbagbo had not considered this march to be peaceful; in P-0048's opinion, 'the march itself never took place. It did not even have time to start.'⁴⁷⁷ He also testified that

What we realised is that this peaceful march was interpreted as, by the Gbagbo camp, as being an argument to make it possible for the Forces Nouvelles, at least the three movements, to take power in Abidjan. I do not know precisely the day or the place where he said that, but I can tell you that President Laurent Gbagbo considered that as a new attempt at a coup d'état.⁴⁷⁸

236. When asked why there were no trials after the investigation into the events of March 2004, P-0048 replied that

I'm not in a position to answer that question because it is up to the department of public prosecutions to initiate proceedings in such cases. But you will realise that in Côte d'Ivoire for several years there were many acts perpetrated and there were no trials, and even when there were trials no one was found guilty. I talked about the mass grave in Yopougon, the 2004 events, the events of March and November 2004, the acts of violence upon the civilian population. --There was no trial anywhere.⁴⁷⁹

237. Based on the limited information that is available to the Chamber, it appears that nobody was held to account for the alleged crimes that were committed on 25

⁴⁷³ Mid-Trial Brief, para. 50.

⁴⁷⁴ Mid-Trial Brief, para. 50.

⁴⁷⁵ Gbagbo– discours 2004, 26 March 2004, CIV-OTP-0052-0631, transcript at CIV-OTP-0054-0251 at 0252. For English translation see P-0048, T-53 dated 27 June 2016, pp. 87-88.

⁴⁷⁶ P-0048, T-53 dated 27 June 2016, p. 88.

⁴⁷⁷ P-0048, T-53 dated 27 June 2016, p. 88.

⁴⁷⁸ P-0048, T-53 dated 27 June 2016, p. 86.

⁴⁷⁹ P-0048, T-54 dated 28 June 2016, p. 41.

March 2004, but it is not clear why that was the case. It will now be assessed whether any parallels can be drawn between this incident and the events surrounding the RTI march.

238. Reference is made to the analysis of the evidence concerning the events during and subsequent to the RTI march.⁴⁸⁰ With regard to the reaction to the march, the Prosecutor alleges that, although Mr Gbagbo and his representatives acknowledged that civilians had died, their focus was on the FDS victims.⁴⁸¹ The evidence cited in support of this argument has also been cited to demonstrate that when investigations into the casualties were launched, their focus was on FDS victims ‘to the exclusion of other groups’.⁴⁸²
239. Turning first to the allegations regarding public acknowledgment of civilian deaths and FDS involvement therein, it is noted that General Mangou testified about reporting to Mr Gbagbo after the RTI march a second time, recounting the killings.⁴⁸³ He added that, in this instance, he ‘mentioned that there were civilians who had died without giving details. But [...] underscored soldiers who were dead [...] and] placed emphases on those’.⁴⁸⁴ Following the RTI march, Mr Gbagbo gave a speech on 21 December 2010 in which he mentioned 20 killings, including 10 FDS members⁴⁸⁵ and saluted ‘*la mémoire de toutes les personnes mortes au cours de ces journées de folie*’.⁴⁸⁶ He added that

Je demande aux jeunes de rester calmes. L’ONUCI et les Forces françaises partiront de Côte d’Ivoire, mais nous ne voulons pas de morts inutiles. Nous avons encore tous en mémoire les douloureux souvenirs des événements de novembre 2004. Aujourd’hui en 2010, comme hier en 2002, 2003, 2004, 2007, je tends la main du

⁴⁸⁰ See VI.H - 16-19 December 2010 - RTI March (1st charged incident).

⁴⁸¹ Mid-Trial Brief, para. 372; *see also* Response, para. 1130.

⁴⁸² *See* Mid-Trial Brief, para. 693.

⁴⁸³ P-0009, T-196 dated 28 September 2017, p. 28.

⁴⁸⁴ P-0009, T-196 dated 28 September 2017, p. 29.

⁴⁸⁵ Discours du Président de la République, 21 December 2010, CIV-OTP-0018-0590 (confidential) at 0593. *See also* RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016, transcript at CIV-OTP-0052-0653 at 0658.

⁴⁸⁶ RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016, transcript at CIV-OTP-0052-0653 at 0659.

dialogue. Je tends la main à l'opposition, à Monsieur Ouattara, comme à la rébellion armée qui le soutient.⁴⁸⁷

240. Similarly, in respect of the RTI broadcast dated 3 January 2011, it is noted that the Chief of Staff acknowledged that civilians had died but his focus was indeed on the FDS personnel. However, his statement was made in the context of his '*[v]isite de compassion aux soldats*' at the Abidjan Military Hospital in the aftermath of the RTI march.⁴⁸⁸ It would be inappropriate to infer from this that the focus on FDS victims in this instance was necessarily to the exclusion of civilian deaths. It is also noted that, in this broadcast, General Mangou stated that

Il faut respecter les civils aux mains nues. Il faut avoir un minimum d'égard pour ces civils. [...] Parce que nous discutons avec les deux généraux, ils nous disent que si leurs populations sont touchées, ils interviennent. Alors pourquoi veulent-ils faire des différentes populations ? Nous, notre mission, c'est de protéger toutes les populations sans exclusive. Que vous soyez Ivoiriens ou non Ivoirien, nous avons pour mission de protéger toutes ces populations.⁴⁸⁹

241. The Prosecutor further alleged that Mr Gbagbo and his associates never deplored the FDS' involvement in civilian deaths in the speeches made that month.⁴⁹⁰ Considering the content and selection of evidence cited in support, this argument is unpersuasive. It is noted that the RTI broadcast dated 18 December 2010 contains a government communiqué on the operation of the UN in Côte d'Ivoire⁴⁹¹ and mentions '20 morts, dont 10 éléments des forces de l'ordre' in the context of suspected involvement of the UN in acts that the government considered were not conducive to peace.⁴⁹² Mr Gbagbo's message on

⁴⁸⁷ Discours du Président de la République, 21 December 2010, CIV-OTP-0018-0590 (confidential) at 0594. RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016, transcript at CIV-OTP-0052-0653 at 0658-0659.

⁴⁸⁸ RTI Broadcast dated 3 January 2011, CIV-OTP-0075-0053, transcript at CIV-OTP-0087-0128 at 0129.

⁴⁸⁹ RTI Broadcast dated 3 January 2011, CIV-OTP-0075-0053, transcript at CIV-OTP-0087-0128 at 0131.

⁴⁹⁰ Mid-Trial Brief, para. 372, footnote 1151 citing to RTI Broadcast dated 18 December 2010, CIV-OTP-0074-0057, transcript at CIV-OTP-0087-0421; RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550; RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063, transcript at CIV-OTP-0087-0485.

⁴⁹¹ RTI Broadcast dated 18 December 2010, CIV-OTP-0074-0057, transcript at CIV-OTP-0087-0421 at 0422.

⁴⁹² RTI Broadcast dated 18 December 2010, CIV-OTP-0074-0057; transcript at CIV-OTP-0087-0421 at 0423.

31 December 2010 references civilian and non-civilian losses and the setting up of a commission of inquiry to investigate the crimes.⁴⁹³ The RTI broadcast dated 12 January 2011 contains a message from the Chief of Staff on behalf of the FDS and, in relation to the RTI march, references crimes against both civilian and non-civilian population.⁴⁹⁴ Lastly, the UNOCI Daily Situation Report dated 23 December 2010 referenced Mr Gbagbo's speech dated 21 December 2010, discussed above, and noted that

[Mr Gbagbo], *inter alia*, acknowledged the killings as well as burning and looting of property that occurred on 16 December during an attempted march by supporters of the [RHDP] in Abidjan. President Gbagbo limited the recent killings and other human rights violations to 16 December, despite the fact that, these have continued with increasing intensity since that date.⁴⁹⁵

242. While it is true that there is no mention of FDS responsibility in the communications issued between 16 December and 12 January which the Prosecutor adduced in this regard, this could only be considered a deliberate omission if it had already been established at that time that the FDS had committed crimes (as opposed to caused casualties in the course of legitimate law enforcement operations). It is noted, in this regard, that the government had had less than one month and it may not have been feasible⁴⁹⁶ to have concluded a full investigation into alleged FDS crimes in that period. Moreover, Mr Gbagbo did in fact announce the creation of a commission of inquiry on 31 December.⁴⁹⁷
243. Moreover, the Prosecutor suggests that Mr Gbagbo failed to have crimes connected to the RTI march investigated despite being put on notice of their occurrence *inter alia* through letters sent by the High Commissioner of Human

⁴⁹³ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0565-0566.

⁴⁹⁴ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063, transcript at CIV-OTP-0087-0485 at 0486.

⁴⁹⁵ Daily Situation Report, 23 December 2010, CIV-OTP-0044-0903 (confidential) at 0906.

⁴⁹⁶ It is noted, in this regard, that the Prosecutor argues that the Commission of inquiry established by Mr Gbagbo was only a figleaf, *inter alia* because it was only given one month to investigate and report its findings. *See* Response, para. 1778.

⁴⁹⁷ The Prosecutor's allegations with regard to the Commission are discussed below at paras 245-248, 257.

Rights to Mr Gbagbo and senior FDS officers on 31 December 2010.⁴⁹⁸ General Guiai Bi Poin testified that after receiving this letter, he informed the military prosecutor⁴⁹⁹ of the allegations by phone and sent a written request to one of his officers to investigate the facts alleged in the letter.⁵⁰⁰ General Guiai Bi Poin believed that he did not receive a written report in this regard as, according to him, they were in a very delicate period on account of the crisis having worsened by that time,⁵⁰¹ but he did receive a verbal report according to which 'the alleged facts contained [in the letter] [had] not been verified out on the ground'.⁵⁰² As such, General Guiai Bi Poin said, he informed the military prosecutor over the phone and did not take the investigation any further.⁵⁰³ The witness further testified that, following his response⁵⁰⁴ to the letter by the High Commissioner of Human Rights

[a] team of four or five human rights experts of ONUCI in Abidjan came to meet me at the school. We had exchanges and we left. We stayed in contact for a good part of the crisis. We informed them what was being done and so on. So they tried to follow us to see what we were doing during a good part of the crisis.⁵⁰⁵

244. It is noted that the responses of Mr Gbagbo and General Vagba to the High Commissioner's letter, if any, have not been submitted before this Chamber – however, unlike the letters addressed to Generals Guiai Bi Poin and Dogbo Blé, those sent to Mr Gbagbo and General Vagba did not make reference to the events surrounding the RTI march.⁵⁰⁶ For his part, General Dogbo Blé responded by

⁴⁹⁸ Mid-Trial Brief, para. 373 referring to Untitled, 31 December 2010, CIV-OTP-0094-0305. *See also* Response, paras 1925, 2090. *Note* in addition to Mr Gbagbo, the letter was sent to Generals Guiai Bi Poin, Vagba and Dogbo Blé.

⁴⁹⁹ *Note* that the Prosecutor has not adduced any evidence on the extent to which the military prosecutor investigated the allegations.

⁵⁰⁰ P-0010, T-139 dated 29 March 2017, p. 54; *see also* p. 57.

⁵⁰¹ P-0010, T-139 dated 29 March 2017, p. 54.

⁵⁰² P-0010, T-139 dated 29 March 2017, p. 58; *see also* p. 54.

⁵⁰³ P-0010, T-139 dated 29 March 2017, pp. 57-58.

⁵⁰⁴ *See* Untitled, 31 December 2010, CIV-OTP-0094-0305 at 0315-0317.

⁵⁰⁵ P-0010, T-139 dated 29 March 2017, p. 53.

⁵⁰⁶ Untitled, 31 December 2010, CIV-OTP-0094-0305 at 0305-0308.

questioning the impartiality of the High Commissioner and her representative in Abidjan and inviting her to present him with proof of any human rights violations committed by *Garde Républicaine* elements during the 16 December march.⁵⁰⁷

245. Turning to the evidence concerning the International Commission of Inquiry *sur les allegations de violation des Droits de l'Homme en Côte d'Ivoire*, Mr Gbagbo announced its creation in an RTI broadcast on 31 December 2010.⁵⁰⁸ As per the presidential decree of 7 January 2011 formally establishing the commission, its mission was, *inter alia*, to establish the facts and circumstances of the perpetration of grave human rights violations committed after 3 November 2010, identify the perpetrators, and formulate recommendations with a view to prevent and stop such violations.⁵⁰⁹ The RTI broadcast dated 14 January 2011 provided details of how all persons concerned, witnesses or victims, could report to this commission.⁵¹⁰ The RTI broadcast dated 16 February 2011 communicated that the commission sent correspondence to each of the groups implicated – FESCI, FDS, Police, *Gendarmerie*, Army, RHDP, LMP, FAFN, UNOCI – requesting their comments and observations on the allegations against them.⁵¹¹ The findings of the commission were accordingly transmitted to the Directeur Général Adjoint Chargé de la Sécurité Publique on 21 February 2011 for his comments and observations.⁵¹² This transmission contained a little over one page of violations

⁵⁰⁷ Untitled, 31 December 2010, CIV-OTP-0094-0305 at 0313-0314.

⁵⁰⁸ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0565-0566. The decree setting up the commission can be found at Untitled, 21 February 2011, CIV-OTP-0045-0379 (confidential) at 0383-0385. This was also reported in the UN Daily Situation Report. *See* Daily Situation Report, 13 January 2011, CIV-OTP-0044-0975 (confidential) at 0978, para. 9.

⁵⁰⁹ Untitled, 21 February 2011, CIV-OTP-0045-0379 (confidential) at 0384.

⁵¹⁰ RTI Broadcast dated 14 January 2011, CIV-OTP-0074-0064, transcript at CIV-OTP-0102-0983 at 0984.

⁵¹¹ RTI Broadcast dated 16 February 2011, CIV-OTP-0074-0078, transcript at CIV-OTP-0087-0626 at 0626.

⁵¹² Untitled, 21 February 2011, CIV-OTP-0045-0379 (confidential) at 0379.

attributable to the FDS.⁵¹³ The RTI broadcast on 9 March 2011 shows a speaker stating that

La commission internationale d'enquête sur les violences post-électorales a donc souhaité l'ouverture d'une enquête pour éviter que ces actes criminels restent impunis. La commission a par ailleurs recommandé la dissolution de la CEI.⁵¹⁴

246. The Prosecutor states in her Response that '[g]iven the total lack of punishment following the incident of 16 December 2010, the Prosecution argues that [the Commission of Inquiry] was not a genuine attempt at investigating or prosecuting the perpetrators of the crimes committed that day.'⁵¹⁵ She further argues that the Commission was 'powerless' and that its sole role was to 'delay matters and avoid prosecuting FDS members'.⁵¹⁶ In making this claim, the Prosecutor relies *inter alia* on the 'lack of specificity and the brevity' of the Commission's report as well as the fact that it was given a month to investigate and delivered its findings on 16 February 2011.⁵¹⁷ Moreover, while she acknowledges that the 9 March 2011 broadcast reporting the Commission's findings included a recommendation for the crimes to be investigated to avoid impunity for the perpetrators, according to the Prosecutor this means that 'the Commission did not consider itself as an investigative body, thereby confirming that Mr Gbagbo's regime created this commission to give the impression that investigations were being carried out'.⁵¹⁸ With regard to the RTI march incident, she further alleges that the commission's only conclusion was that protestors were victims of extortion during arrests, that no recommendations were made

⁵¹³ See Untitled, 21 February 2011, CIV-OTP-0045-0379 (confidential) at 0381-0382.

⁵¹⁴ RTI Broadcast dated 9 March 2011, CIV-OTP-0061-0598, transcript at CIV-OTP-0104-0193 at 0193.

⁵¹⁵ Response, para. 1778. See also Mid-Trial Brief, para. 763.

⁵¹⁶ Response, para. 2110.

⁵¹⁷ Response, para. 1778.

⁵¹⁸ Response, para. 1778.

with respect to the civilian victims of the 16 December march, and that no one was punished for the incident.⁵¹⁹

247. In addition to her allegations regarding the Commission's integrity, the Prosecutor alleged in the Mid-Trial Brief that General Kassaraté wrote a letter dated 23 February 2011 to the Ministry of Defence in which he claimed that the accusations against the FDS were baseless. She relied on this letter to allege that the findings of the Commission were 'met with contempt by the FDS leadership'.⁵²⁰ In addition to calling the allegations against the FDS very grave and without any foundation, the letter mentions, *inter alia*, FDS casualties, FDS concerns for minimising collateral damage, the existence of urban guerrilla on the ground that infiltrated the RTI march, and the desirability of victims bringing complaints before the competent judicial services accompanied by evidence supporting their allegations. In court, General Kassaraté denied that the letter bore his signature, contrary to what he had indicated in his prior recorded statement.⁵²¹ General Kassaraté testified that he recognised the substance of the letter but that it must have been prepared by his cabinet in response to a request from the ministry.⁵²²
248. It is noted that the Prosecutor's claim that the Commission was a sham intended to shield the FDS from genuine investigation and prosecution is difficult to reconcile with her contention that its findings were met with contempt by an FDS leader who, according to her, was part of the 'inner circle'⁵²³ and would thus presumably have been party to this scheme. Nevertheless, her allegations will be

⁵¹⁹ Response, para. 2110.

⁵²⁰ Mid-Trial Brief, para. 381.

⁵²¹ P-0011, T-134 dated 13 March 2017, p. 53; *see further* pp. 54-56 *cf.* Transcription de deposition / CIV-OTP-P-0011 / Interview Day 2/2 / CIV-OTP-0077-0182 – Track 1, 3 March 2015, CIV-OTP-0082-0245 (confidential) at 0251. *See also* P-0011, T-134 dated 13 March 2017, p. 60.

⁵²² P-0011, T-134 dated 13 March 2017, pp. 54-55.

⁵²³ Mid-Trial Brief, para. 65.

discussed following analysis of the evidence concerning the investigation of crimes connected to the RTI march. The same evidence is relevant to the claim that the FDS investigated casualties from within their own ranks 'to the exclusion of other groups'.

249. In this regard, General Guiai Bi Poin testified that, during the debriefing meeting on 16 December, the Director General of the Police (DGNP)

gave us an overview of the day's operation, an exhaustive report of the operation that had unfolded on the day. According to the locations, he gave us a list of various incidents that had occurred according to the various locations, the various communes, the various neighbourhoods; and he gave us a report as to the number of people who had been killed within law enforcement. There are approximately six or seven deaths recorded. Some were killed in their troop transportation vehicles, killed with anti-tanks rockets, and they were completely burnt alive and some in their vehicles in Abobo. And he also talked about civilian deaths. He mentioned the fact that with regard to civilian deaths we had to be very careful, because the individual that we deemed to be civilians are, generally speaking, armed. There are no distinctive signs, but they are armed according to the information that he had got back from people on the ground.⁵²⁴

250. General Guiai Bi Poin also testified that, in that meeting, the DGNP did not indicate whether or not the civilian casualties were going to be investigated by the Police.⁵²⁵ Upon further examination, General Guiai Bi Poin testified that he was not aware of the findings of any investigation relating to the deaths caused during the RTI march – neither of FDS nor of civilian casualties.⁵²⁶ Commenting on document CIV-OTP-0045-1413, a letter of 25 January 2011 transmitting a report about the discovery of two corpses that were allegedly killed by CECOS troops firing on demonstrators, General Guiai Bi Poin testified that

I would like to say that in this document, the reaction of the commissioner is a very good reaction, because the last sentence says an investigation was opened under OP that--which means normally there should be an investigation. Since they knew the presumed perpetrators, they would open an investigation. I should have been a recipient. They would have taken the measure so that the Prosecutor should contact me so that I would place those elements at his disposal. So I never received this document. I never had any contact from the Prosecutor regarding the incidents mentioned here. And during the debriefing, the director never talked about this

⁵²⁴ P-0010, T-139 dated 29 March 2017, p. 40; *see also* p. 43.

⁵²⁵ P-0010, T-139 dated 29 March 2017, p. 43.

⁵²⁶ P-0010, T-139 dated 29 March 2017, p. 44.

particular case to me. I was not informed, but the police, which reported this on the ground and opened an investigation, should normally have followed up to the very end.⁵²⁷

251. Apart from the investigation he ordered into the allegations contained in the letter from the High Commissioner for Human Rights,⁵²⁸ General Guiai Bi Poin said he did not initiate any other inquiries into the events of 16 December because

I was not responsible for all of the operations. I had no reason to do so. The police was responsible for those operations and the police has judicial police units. And the men that we place at the disposal of the police work under the authority of the police commissioners of those locations where they have gone to intervene.

252. For his part, Inspector-General Bredou M'Bia testified that he did not punish any commanders during the post-election crisis.⁵²⁹ He did not recall any disciplinary or legal measures taken against Police members for the killings that they may have committed during the RTI march, the incidents in Yopougon between 25 and 28 February 2011, as well as the incidents in Abobo on 3 and 17 March 2011.⁵³⁰ *Gendarmerie* supreme commander General Kassaraté similarly testified that during the post-electoral crisis he did not conduct any investigation into alleged FDS crimes – including alleged crimes connected to the RTI march.⁵³¹ General Mangou also testified that no FDS elements were sanctioned in relation to the 16 December incident.⁵³²
253. In addition, the Prosecutor relies on P-0330, commander of the *Gendarmerie*'s Abobo squadron at the relevant time, to allege that accurate reporting of civilian casualties by pro-Gbagbo officers would have been seen as 'discrediting (or even

⁵²⁷ P-0010, T-139 dated 29 March 2017, p. 48 (confidential).

⁵²⁸ Discussed above at paras 243-244.

⁵²⁹ P-0046, T-126 dated 20 February 2017, p. 50 (confidential).

⁵³⁰ P-0046, T-126 dated 20 February 2017, p. 51 (confidential).

⁵³¹ P-0011, T-134 dated 13 March 2017, pp. 60-61.

⁵³² P-0009, T-196 dated 28 September 2017, p. 33.

as traitorous to) the authorities'.⁵³³ P-0330 testified that on 16 December 2010, he saw around 50 young men in civilian clothing lying dead on the road in Abobo PK18.⁵³⁴ He further testified that he reported the situation including that there had been casualties, but that

I did not want to specify the number of people because I was not sure that this was a definitive number of individuals, but I did make mention of the fact that there was loss of life amongst those individuals whom--who were being stopped and stopped from moving forwards. And when I arrived there in the field, there were--they did not have any weapons on them; however, I do know that those individuals could not have been carrying weapons faced with soldiers because those soldiers would not have accepted to have armed civilians standing in front of them. So even if some people who were carrying weapons were shot at, then those people who did survive and who did flee took those weapons with them. We are sure, however, that those first gunshots were fired by civilians.⁵³⁵

254. Following this, his prior recorded statement was put to him by the Prosecutor in which he had stated that

Donc pour eux, de par mes origines, je ne pouvais pas faire leur affaire. [...] Donc si je m'amusais à lui dire j'ai vu une cinquantaine de corps, c'est un peu comme si j'avais exagéré. [...] Donc, ils ne vont même pas prendre ça au sérieux. [...] Et puis, si j'ai dit ça, c'est comme si j'ai fait l'effort pour discréditer les forces de l'ordre.⁵³⁶

255. P-0330 then confirmed his prior statement that he had not specified the number of dead civilians because of his 'origins'.⁵³⁷ Though the witness did not explain what he meant by 'origins' in this context, its meaning can be inferred from testimony he gave earlier that same day regarding the treatment he received from his colleagues in light of his hailing from the North.⁵³⁸ In this regard, P-0330 testified that people said he could not be trusted⁵³⁹ and that he was suspected of being on the side of Mr Ouattara.⁵⁴⁰ His immediate superior went so far as to

⁵³³ Mid-Trial Brief, para. 693 referring to P-0330, T-68 dated 1 September 2016, pp. 79-81.

⁵³⁴ P-0330, T-68 dated 1 September 2016, pp. 73-4.

⁵³⁵ P-0330, T-68 dated 1 September 2016, p. 77.

⁵³⁶ P-0330, T-68 dated 1 September 2016 (French), p. 79.

⁵³⁷ P-0330, T-68 dated 1 September 2016, p. 79.

⁵³⁸ P-0330, T-68 dated 1 September 2016, pp. 43-52.

⁵³⁹ P-0330, T-68 dated 1 September 2016, p. 45, 46, 49.

⁵⁴⁰ P-0330, T-68 dated 1 September 2016, p. 47, 48, 51.

advise another officer against deploying P-0330 on the ground, saying ‘that person you have sent, do you trust him? With that name, I am not sure that we can obtain any good results.’⁵⁴¹ Evidence of one instance involving one officer is not sufficient to substantiate a general finding that all accurate reporting of civilian casualties would have been perceived as ‘discrediting or even traitorous’ – particularly in light of the fact that P-0330 did report that there had been civilian casualties, as well as his testimony that he was himself unsure as to their number. However, P-0330’s evidence will be taken into account in the holistic analysis of the evidence as to the existence of a climate of impunity.

256. Finally, with regard to the Prosecutor’s allegation that the government had the civilian demonstrators arrested, tried and imprisoned rather than focusing on the alleged FDS perpetrators,⁵⁴² the record contains a number of reports on the detention, investigation and prosecution of arrested marchers. From the available evidence, it appears that of 273 persons arrested,⁵⁴³ 86 were released without charges on 21 December,⁵⁴⁴ 121 were referred to the Abidjan *Tribunal de Première Instance* for public order offences (*trouble à l’ordre public*) on 21 and 22 December,⁵⁴⁵ of which 45 were subsequently released on 30 December due to lack of evidence.⁵⁴⁶ Another report indicates that on 31 December, the prosecutor requested a one-month prison sentence for a further 28 accused and the release of

⁵⁴¹ P-0330, T-68 dated 1 September 2016, p. 49.

⁵⁴² Mid-Trial Brief, para. 340.

⁵⁴³ Situation des manifestants détenus a la Préfecture de Police d’Abidjan (PPA), 22 December 2010, CIV-OTP-0045-0999 (confidential) at 0999.

⁵⁴⁴ Situation des manifestants détenus a la Préfecture de Police d’Abidjan (PPA), 22 December 2010, CIV-OTP-0045-0999 (confidential) at 1002.

⁵⁴⁵ Situation des manifestants détenus a la Préfecture de Police d’Abidjan (PPA), 22 December 2010, CIV-OTP-0045-0999 (confidential) at 0999, 1002; Liste des manifestants déférés, le mercredi 22 Décembre 2010, devant Le Parquet du Tribunal de Première Instance d’Abidjan Plateau, 29 December 2010, CIV-OTP-0045-1238 at 1238.

⁵⁴⁶ Compte rendu du rapport du Commissaire de Police du 1er Arrondissement, suite à la deuxième journée du procès des marcheurs du RHDP, 10 January 2011, CIV-OTP-0045-1432 at 1432.

22 others.⁵⁴⁷ In her Response, the Prosecutor relies on this evidence to show that ‘Mr Gbagbo had the material capacity to take measures against the perpetrators’⁵⁴⁸ as the judicial system was ‘fully in operation’.⁵⁴⁹ In addition, she uses the fact that ‘the Gbagbo regime swiftly arrested, investigated, indicted and sentenced the protestors of the 16 December 2010 march’ to counter Defence arguments that investigations into, *inter alia*, the RTI march could not reasonably be expected to have concluded by the time of Mr Gbagbo’s arrest in April 2011, concluding ‘when Mr Gbagbo’s regime had the will to investigate and punish, it was capable of doing so’.⁵⁵⁰

257. Leaving aside the difference in investigating ‘public order’ offences as compared to investigating law enforcement agents for crimes allegedly committed in the line of duty, it is open to a reasonable trial chamber to conclude that Mr Gbagbo’s government could and should have done more to investigate allegations of crimes committed in connection with the RTI march. This is the case particularly because the authorities were put on notice of the allegations, including through the High Commissioner’s letters to Mr Gbagbo and senior commanders. However, there is limited information about the way in which the Commission of Inquiry conducted its investigation. Significantly, there is almost no evidence as to whether the Commission made genuine efforts to obtain information and whether or not they were hampered in this regard by the circumstances on the ground and/or lack of cooperation of the concerned authorities. On this basis, it is difficult to come to any firm conclusion about the alleged sham nature of the Commission’s investigation, even if it is true that the aforementioned report does not inspire much confidence.

⁵⁴⁷ Procès de cinquante (SO) présumés marcheurs du RHDP, 25 January 2011, CIV-OTP-0045-1450 at 1450. *Note* that the record contains no information as to the outcome of these proceedings.

⁵⁴⁸ Response, para. 2111.

⁵⁴⁹ Response, para. 2119.

⁵⁵⁰ Response, para. 1770.

(3) Abobo Women's March and Market Shelling

258. The Prosecutor alleges that despite Mr Gbagbo and the alleged 'inner circle' being informed of the FDS involvement in the two Abobo incidents,⁵⁵¹ spokespersons Don Mello and Babri denied FDS responsibility on the RTI.⁵⁵² According to her, the killings of 3 and 17 March 2011 were 'scarcely investigated in the immediate aftermath and thereafter their existence denied or simply covered-up'.⁵⁵³
259. Turning first to the reaction to the 3 March incident, it is noted that the FDS did not recognise the allegations leveled against them concerning the women's march. On 4 March 2011, in a communiqué transmitted through the RTI, FDS spokesperson Colonel Babri announced that the FDS '*déclarent purement et simplement ne pas se reconnaître dans cette accusation forcément mensongère et sans fondement*'.⁵⁵⁴ He further claimed that the FDS had not operated in Abobo that day but rather stayed confined to their barracks,⁵⁵⁵ and that similar RHDP marches which had taken place in Adjamé, Marcory and other locations in the preceeding days had been dispersed by the FDS using conventional means and without shootings or other incidents.⁵⁵⁶ According to a communiqué by government spokesperson Don Mello shown that same day during the 20h broadcast, the government considered these allegations to be a gross manipulation of the facts and denounced '*la recherche effrénée des charges contre le président*'.⁵⁵⁷ The government spokespersons further condemned '*la*

⁵⁵¹ See VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I)

VI.T - 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II)

⁵⁵² Mid-Trial Brief, para. 472; *see also* Response, para. 1132.

⁵⁵³ Response, para. 1131.

⁵⁵⁴ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0006, transcript at CIV-OTP-0051-2250, at 2256.

⁵⁵⁵ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0006, transcript at CIV-OTP-0051-2250 at 2256.

⁵⁵⁶ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0006, transcript at CIV-OTP-0051-2250.

⁵⁵⁷ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2226-2227.

*promptitude avec laquelle certaines chancelleries et la presse internationale relatent, avec légèreté, les accusations fantaisistes et sans fondements’.*⁵⁵⁸

Similar comments are also contained in the RTI broadcast dated 5 March 2011.⁵⁵⁹

In this broadcast, Minister of Interior Émile Guiriéoulou criticised what he considered to be a misreporting of the events by the international media:

il y a un acharnement médiatique et diplomatique contre les autorités ivoiriennes, sans investigation préalable, pour établir les preuves de ces allégations. Ce parti pris est symptomatique d'une complicité, du fait d'une déformation et d'un travestissement de l'information. Cette manipulation de l'information est l'expression d'une volonté manifeste d'intoxiquer l'opinion internationale.⁵⁶⁰

260. In addition, the Prosecutor relies on the RTI broadcast dated 6 March 2011 to allege that the Minister of Defence and the Interior Minister ‘both participated in an official denial of responsibility for the 3 March 2011 incident, claiming that reports that the FDS were responsible were an attempt by the international press to discredit the Gbagbo regime’.⁵⁶¹ This claim, however, misrepresents the evidence; in the excerpt shown in the broadcast, the ministers make no mention of the women’s march and instead decry the intervention of France and the European Union in the affairs of Côte d’Ivoire. The Prosecutor also cites Minister Guiriéoulou’s statements in the 5 and 6 March broadcasts as well as the government’s communiqué broadcast on 4 March to substantiate her claim that the Gbagbo regime characterised the incident as a ‘set-up’ by the international media.⁵⁶² Similarly to the above, the statements alluding to a set-up were made in the context of a general criticism of the perceived media bias and do not specifically mention, nor necessarily relate to, the women’s march.

⁵⁵⁸ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2226-2227.

⁵⁵⁹ RTI Broadcast dated 5 March 2011, CIV-OTP-0061-0594, transcript at CIV-OTP-0088-0768 at 0769.

⁵⁶⁰ RTI Broadcast dated 5 March 2011, CIV-OTP-0061-0594, transcript at CIV-OTP-0088-0768 at 0769.

⁵⁶¹ Response, para 1402.

⁵⁶² Response, paras 662, 739.

261. Finally, it is noted that, according to the Prosecutor, Mr Blé Goudé ‘provid[ed] *ex post facto* encouragement and moral support after the commission of the crime’ by stating on 23 March 2011 that the FDS could not have been responsible for the women’s deaths because Abobo was in rebel hands at the time.⁵⁶³ This again amounts to a misrepresentation as Mr Blé Goudé did not expressing support for or condoned the alleged crime; he merely pointed out the incongruence of contemporaneously reporting that the FDS must be responsible and that Abobo was controlled by rebels.⁵⁶⁴
262. Nevertheless, on the basis of the abovementioned evidence a reasonable trial chamber could conclude that Mr Gbagbo’s government and the FDS were unequivocal in their public statements that they considered the allegation of FDS responsibility for the women’s deaths to be false and without foundation. As regards the issue of investigations into the 3 March incident, the Prosecutor alleges that the inquiries outlined below do not amount to a ‘serious investigation’.⁵⁶⁵
263. In this regard, General Detoh Letho testified that after being informed of the incident via phone by General Mangou, he called the commander of Camp Commando in Abobo and was told that the troops had not supervised or monitored the march, let alone fired upon it.⁵⁶⁶ In fact, General Detoh Letho repeatedly insisted, ‘[their] men could not leave Camp Commando’.⁵⁶⁷ He further testified that later that day, during their daily meeting at the *état major*, General Mangou requested that an investigation be conducted but did not assign the task

⁵⁶³ Mid-Trial Brief, para. 895.

⁵⁶⁴ Untitled, 23 March 2011, CIV-OTP-0015-0530 (confidential), transcript at CIV-OTP-0063-2928 (confidential) at 2935.

⁵⁶⁵ Response, para. 2113.

⁵⁶⁶ P-0047, T-204 dated 8 November 2017, pp. 2-3; T-205 dated 9 November 2017, pp. 25-27.

⁵⁶⁷ P-0047, T-204 dated 8 November 2017, pp. 2-3, 8-9; T-205 dated 9 November 2017, pp. 27-28.

to anyone in particular.⁵⁶⁸ According to General Detoh Letho, the normal procedure in these cases was for the Army intelligence unit to send elements to the field to investigate and to gather information from witnesses.⁵⁶⁹ General Detoh Letho did not know whether any formal investigation was ever carried out.⁵⁷⁰ General Mangou confirmed this version of events, testifying that he called General Detoh Letho to tell him about the incident and asked him to report back on whether their elements were involved.⁵⁷¹ After being told by General Detoh Letho that the troops had remained in Camp Commando, he reported the results of this ‘brief investigation’ to the Minister of Defence.⁵⁷² General Mangou further testified that he called for an investigation, and if one had been conducted he would have been informed of its results – since he was not informed, presumably, no investigation was conducted.⁵⁷³ Major Toaly Bai, commanding officer of Camp Commando at the relevant time, testified that he was not asked to submit a written report but he ‘reported back to [his] hierarchy that [he] was not aware. And [he] certainly didn’t give any orders in this regard’, adding that he did not know whether any disciplinary measures or criminal charges were brought with respect to the 3 March incident.⁵⁷⁴ It is not possible to ascertain on the basis of the available evidence if there was misreporting from lower ranks that may have mislead the relevant authorities. In sum, based on the evidence on record, it appears that senior FDS officers did enquire about involvement of FDS units in the alleged killings at the women’s march, but did not ensure that a serious investigation into the matter was carried out.

⁵⁶⁸ P-0047, T-204 dated 8 November 2017, pp. 8-10.

⁵⁶⁹ P-0047, T-204 dated 8 November 2017, p. 10.

⁵⁷⁰ P-0047, T-204 dated 8 November 2017, p. 11.

⁵⁷¹ P-0009, T-196 dated 28 September 2017, pp. 46-47.

⁵⁷² P-0009, T-196 dated 28 September 2017, pp. 46-47; T-197 2 October 2017, pp. 4-5.

⁵⁷³ P-0009, T-196 dated 28 September 2017, p. 54.

⁵⁷⁴ P-0156, T-171 dated 4 July 2017, pp. 77-78.

264. Turning to the market shelling of 17 March, the Prosecutor alleges that the statement contained in an 18 March 2011 broadcast shows ‘Mr Gbagbo’s state of mind immediately after the FDS shelling on 17 March, in that he is rallying support for the FDS and calling for suspicious persons to be neutralised, despite media reports alleging the FDS just killed dozens of civilians in Abobo’.⁵⁷⁵ The excerpt the Prosecutor relies on to support her allegation, read in full, conveyed a more nuanced message:

Le Président de la République de CÔTE D'IVOIRE, son Excellence Monsieur Laurent GBAGBO, déplore ces nombreuses pertes en vies humaines et matériels. Il exprime sa profonde compassion à toutes les familles endeuillées. Le terrorisme, forme dégénérée de la rébellion, est le moyen choisi par celle-ci pour s'attaquer au pouvoir. Il s'empare malheureusement du quotidien des Ivoiriens. La bataille contre le terrorisme est donc l'affaire de tous. C'est la raison pour laquelle, le Président de la République de CÔTE D'IVOIRE, son Excellence Monsieur Laurent GBAGBO, appelle les Ivoiriens à une plus grande responsabilité et une plus grande collaboration entre les citoyens et les Forces de défense et de sécurité, afin que toutes les présences suspectes dans notre environnement soient neutralisées.⁵⁷⁶

265. It is noted that on 20 March 2011, the RTI broadcast a statement read by government spokesperson Don Mello according to which the government had ordered investigations⁵⁷⁷ into the market shelling to verify the materiality of the facts.⁵⁷⁸ The statement concluded that the alleged facts were materially inaccurate, since no mortar damage had been observed, no victims of a mortar attack had been registered in the Abobo and Anyama morgues and the Police had received no complaints related to FDS operations that day.⁵⁷⁹ Mr Don Mello also accused the media of voluntarily spreading false information and noted the ‘disturbing similarities’ (*la similitude troublante*) between the market shelling and the women’s march in this context.⁵⁸⁰

⁵⁷⁵ Mid-Trial Brief, para. 499; Response, para. 1764.

⁵⁷⁶ RTI broadcast dated 18 March 2011, CIV-OTP-0069-0374, transcript at CIV-OTP-0088-0047 at 0048.

⁵⁷⁷ Note the statement does not specify who conducted the investigation.

⁵⁷⁸ RTI Broadcast dated 20 March 2011, CIV-OTP-0075-0077, transcript at CIV-OTP-0087-0281.

⁵⁷⁹ RTI Broadcast dated 20 March 2011, CIV-OTP-0075-0077, transcript at CIV-OTP-0087-0281 at 0282.

⁵⁸⁰ RTI Broadcast dated 20 March 2011, CIV-OTP-0075-0077, transcript at CIV-OTP-0087-0281 at 0282.

266. The Prosecutor suggests that the investigation announced in the 20 March broadcast was not genuine, claiming instead that ‘no proper investigation was conducted and no one was punished’.⁵⁸¹
267. In this regard, it is noted that General Mangou testified that an internal investigation was conducted under the authority of General Detoh Letho. The outcome of this investigation was that the FDS had not fired the shells and that it would have been impossible to fire a 60mm, which has a range between 100 and 1000m, at the market 1500-2000m away and without a clear line of sight.⁵⁸² Instead, General Detoh Letho informed General Mangou that grenades had been used.⁵⁸³ General Mangou also asked the Minister of Defence to conduct a ‘general investigation’, but this did not occur.⁵⁸⁴ General Mangou testified that ‘if [a state-level] investigation were to be conducted, it would have been carried out by the *Gendarmerie*’, but he did not recall the *Gendarmerie* being asked to investigate the shelling.⁵⁸⁵ General Mangou further stated that no FDS member was sanctioned because the FDS was not involved in the shelling.⁵⁸⁶ For his part, General Detoh Letho testified that he asked his men whether they had fired on Abobo market and they told him they had not, but he did not ‘conduct an in-depth investigation as such’.⁵⁸⁷ General Detoh Letho also insisted that it would have been impossible to hit Abobo market from Camp Commando with a 60mm

⁵⁸¹ Mid-Trial Brief, para. 497; Response, para. 2114.

⁵⁸² P-0009, T-196 dated 28 September 2017, p. 55, T-197 dated 2 October 2017, p. 10.

⁵⁸³ P-0009, T-196 dated 28 September 2017, p. 56.

⁵⁸⁴ P-0009, T-196 dated 28 September 2017, p. 56. *Note* the witness did not clarify what a general investigation would have involved in this context.

⁵⁸⁵ P-0009, T-196 dated 28 September 2017, p. 60.

⁵⁸⁶ P-0009, T-196 dated 28 September 2017, pp. 59-60.

⁵⁸⁷ P-0047, T-204 dated 8 November 2017 (confidential), p. 18-20.

mortar.⁵⁸⁸ General Deto Letho said he did not know whether an investigation into the shelling of Abobo market was carried out.⁵⁸⁹

268. General Bi Poin testified that he was not aware of any order or instructions from Mr Gbagbo to conduct any specific investigation into civilian casualties of the post-electoral crisis.⁵⁹⁰ He was similarly unaware of instructions to that effect given by the Chief of Staff; however, he noted that ‘that kind of measure has to be initiated by another structure, for example the commissioner of the government’.⁵⁹¹ As regards the Chief of Staff denying FDS responsibility for the events of 3 March, General Bi Poin testified that ‘the CEMA was not able to have the means and the witnesses out on the ground to know who was involved and who wasn’t’.⁵⁹² When confronted with his previous statement, he clarified that in fact the Chief of Staff ‘had information from the ground that came to him, and on the basis of that information he was not certain that saying that his men were responsible was founded. So the statement that the spokesperson read over the television was to that effect’.⁵⁹³
269. Finally, the Prosecutor adduced ‘the sole piece of evidence showing a slight interest in the killing of the 3 and 17 March 2011 victims’,⁵⁹⁴ namely a requisition by the *Parquet du commissaire du gouvernement* of the *tribunal Militaire d’Abidjan* of 24 March 2011 which instructs the commander of the *Groupe de Documentation et de Recherche* (GDR) of the *Gendarmerie* to conduct a ‘complete investigation’ into, *inter alia*, the women’s march and the

⁵⁸⁸ P-0047, T-204 dated 8 November 2017, pp. 13-14.

⁵⁸⁹ P-0047, T-204 dated 8 November 2017 (confidential), p. 21.

⁵⁹⁰ P-0010, T-140 dated 30 March 2017, pp. 6-7.

⁵⁹¹ P-0010, T-140 dated 30 March 2017, p. 4.

⁵⁹² P-0010, T-140 dated 30 March 2017, p. 5.

⁵⁹³ P-0010, T-140 dated 30 March 2017, p. 6.

⁵⁹⁴ Response, para. 2115.

market shelling.⁵⁹⁵ General Kassaraté indicated that he was aware of the document at the time and that he was sure that the commander of the GDR opened an investigation, but he was not informed of its outcome.⁵⁹⁶

270. It is true that the available evidence does not show that a full and genuine investigation into the 17 March incident was carried out by the FDS. However, this does not necessarily prove that no steps to investigate were taken. In light of the limited information the Chamber has been provided with in this regard, it is also not possible to reach any conclusion as to whether the military prosecutor conducted actual investigations into the Abobo incidents after being formally requisitioned at the end of March 2011. Considering the evidence is so inconclusive, it would be possible for a reasonable trial chamber find that there was ‘a failure to investigate or punish’ but not that this failure was intentional, much less that it amounted to ‘a plan [by Mr Gbagbo and the ‘inner circle’] to cover up their crimes’.⁵⁹⁷

d) Conclusion

271. In conclusion, during the period 2002-2010, there were several instances, where the use of violence by FDS forces that may have been criminal were not sufficiently investigated or prosecuted. The evidence suggests that certain officers tolerated mistreatment and crimes against civilians, including those considered political opponents. In some instances, FDS members deliberately did not report potential crimes because they considered it to be futile or to protect their brothers in arms. Further, the evidence suggests that, on certain occasions, the occurrences of these alleged crimes were either denied or not acknowledged by the government in its public communications. However, it is unclear from the

⁵⁹⁵ Requisition aux fins d'enquete, 24 March 2011, CIV-OTP-0001-0285 (confidential).

⁵⁹⁶ P-0011, T-134 dated 13 March 2017, p. 75-76.

⁵⁹⁷ Mid-Trial Brief, para. 476, 498; Response, para. 2114.

available evidence whether the government's non-acknowledgement of crimes had to do with a concerted plan or agreement to suppress information or whether in some cases it may have been a result of misreporting, gaps in information, and/or a general situation of eruption of violence on all sides that made it difficult to gather enough reliable information. Moreover, it is important to keep in mind that the mere fact that (lethal) force was used by the authorities does not automatically imply that crimes were committed.

272. Nevertheless, it is clear that the authorities had an interest in denying allegations of criminality as much as possible and that the pro-Gbagbo media did not report facts in a neutral and objective fashion. It is also difficult to escape the impression that Mr Gbagbo and his government did not make a genuine and sincere effort to establish what had really happened as quickly as possible.
273. It has to be acknowledged, in this regard, that the allegation that not enough was done is difficult to prove. The mere fact that the Prosecutor's evidence does not contain information about meaningful steps being taken after particular incidents does not necessarily mean that nothing was in fact done. Indeed, there are a number of examples in the evidence where potential criminal behaviour was reported and instructions to investigate were given. The fact that the Prosecutor did not find evidence to confirm whether or not serious efforts were made by the relevant authorities to follow up on this information does not prove that they did not try. It should be borne in mind, in this regard, that the country was in turmoil and that the relevant period is relatively short. Even with the best of intentions, it would presumably have been difficult to complete a proper investigation on short notice. This finds some confirmation in the fact that the Prosecutor did not present any evidence of investigations or prosecutions against suspected perpetrators of the killings of FDS members. It is also worth pointing out that the authorities under Mr Ouattara tried to prosecute two individuals accused of

shelling the Abobo market on 17 March 2011 but that these efforts seem to have resulted in acquittals.⁵⁹⁸

274. Moreover, it is worth emphasising that, from the evidence adduced by the Prosecutor, it is difficult to discern whether or not the lack of investigation and prosecution was limited to crimes against perceived Ouattara supporters or whether it extended also to crimes committed against other persons. The fact that a number of demonstrators were arrested and a small proportion of them prosecuted for disturbance of public order is anecdotal and does not demonstrate that the legal system systematically went after one group but left another alone.
275. In sum, on the basis of the totality of the evidence, a reasonable trial chamber could conclude that there was indeed widespread impunity in the sense that no one seems to have been held to account for alleged violent crimes against civilians. Whether or not this proves there was a ‘climate of impunity’ is neither here nor there, as this is a vague concept that can only be substantiated by reference to how potential perpetrators of crimes interpreted the situation. In any event, a distinction must be made between the *existence* of such a climate and its deliberate *creation* for the purpose of inciting or encouraging further crimes. There is no evidence of concerted, deliberate (in)action to create a ‘climate of impunity’ by the accused or the alleged ‘inner circle’. In particular, there is no evidence of interference such as halting or obstructing ongoing investigations.⁵⁹⁹ For this reason, it cannot be inferred that the impunity of FDS forces for crimes allegedly committed against civilian supporters of Mr Ouattara was a product of a policy adopted by the alleged ‘inner circle’.

⁵⁹⁸ P-0164, T-165 dated 20 June 2017, pp. 42-44; P-0226, T-166 dated 27 June 2017, p. 88; P-0239, T-168 dated 29 June 2017, p. 27.

⁵⁹⁹ It is noted that the Prosecutor alleged that the FDS and the Police were ‘actively obstruct[ing] external investigation attempts by the UN into civilian deaths’ (Mid-Trial Brief, para. 692) but the documents she relied on in this regard constitute anonymous hearsay (*See* Daily Situation Report, 4 January 2011, CIV-OTP-0044-1323 (confidential) at 1330; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0536).

5. *The requisitioning of the FANCI*

276. It is undisputed as between the parties that the FANCI were requisitioned on 14 November 2010 in accordance with Presidential Decree No. 2010-306.⁶⁰⁰ However, the reason as to why the requisition was effected is contested. Although the objective stated in the Ivoirian government gazette was that of securing the second round of the presidential election,⁶⁰¹ the Prosecutor contends that the requisition was motivated by an intention to clamp down on civilians who supported Mr Ouattara.⁶⁰² Thus, according to her, the requisition was instrumental to the implementation of the common plan, constituting a pretext for the following mobilisation of the FDS during the 2010/11 crisis.⁶⁰³
277. To support her claim, the Prosecutor submits that the requisition was not necessary to effectuate its stated purpose; namely, to secure the second round of elections.⁶⁰⁴ She cites the testimony of General Bi Poin to this end, who testified that the first round encountered very few to no security issues and considered that, aside from there being the kind of ‘frictions’ to be expected during any electoral campaign, the security situation did not significantly deteriorate thereafter.⁶⁰⁵ Yet such a statement is not in and of itself determinative of whether the requisition was necessary or not. It should be noted in this regard, as Mr Gbagbo does, that General Bi Poin was at pains to qualify his testimony. For example, the witness emphasised that he, as a subordinate, was not involved in the decision-making process behind the issuance of the decree.⁶⁰⁶ Moreover, he

⁶⁰⁰ Mid-Trial Brief, para. 102; *Gbagbo* Motion, Annex 5, Part 3, Section 3 (3) (1), para. 272.

⁶⁰¹ Journal Officiel de la Republique De Cote d'Ivoire, 9 December 2010, CIV-OTP-0018-0047 at 0048-0049.

⁶⁰² Mid-Trial Brief, para. 102.

⁶⁰³ Mid-Trial Brief, para. 102; Response, para. 1113, vi.

⁶⁰⁴ Mid-Trial Brief, para. 102.

⁶⁰⁵ P-0010, T-138 dated 28 March 2017, pp. 48-49.

⁶⁰⁶ P-0010, T-138 dated 28 March 2017, pp. 47-48; *Gbagbo* Motion, Annex 5, Part 3, Section 3 (3) (1), para. 278.

clarified that the issuance of the decree did not affect his own operations.⁶⁰⁷ Thus, General Bi Poin's appraisal of the security situation on 14 November 2010 is mainly speculative. Moreover, his observations were limited to Abidjan,⁶⁰⁸ whereas the deployment of FDS elements pursuant to the requisition may well have pertained to the rest of the territory of Côte d'Ivoire as well.

278. The testimony of Witness Inspector-General Bredou M'Bia can similarly not be given much weight in this regard. The Prosecutor cited the testimony in her Response to corroborate her argument that the requisition was not necessary.⁶⁰⁹ However, Inspector-General Bredou M'Bia admitted that he did not remember the time period between the first and second rounds of the elections very well,⁶¹⁰ and his statement that there were 'no real issues' during that time is hedged with a disclaimer.⁶¹¹

279. Moreover, it is noted that the requisition itself specifically refers to the *Centre de Commandement Intégré* (CCI) and that there is no indication that this body or any of the other parties involved in it protested against it being used as a justification for the requisition. It can therefore not be excluded that there may have been some form of consultation between the CCI and the Gbagbo government in relation to the requisition of 14 November 2010.

⁶⁰⁷ P-0010, T-138 dated 28 March 2017, p. 46.

⁶⁰⁸ P-0010, T-138 dated 28 March 2017, p. 47.

⁶⁰⁹ Response, para. 68: Inspector-General Bredou M'Bia stated that the CCI used FAFN elements, accompanied by UNOCI, to provide security for the first round of elections, and that such measures continued to be in place for the second round (P-0046, T-124 dated 16 February 2017, pp. 47-49). The Prosecutor thereby argued that the requisition had no meaningful impact on the security measures for the election, because they had already been facilitated by the CCI under the Ouagadougou Accords.

⁶¹⁰ P-0046, T-124 dated 16 February 2017, p. 53 (the Chamber notes that the original French transcript is more precise; cf. P-0046, T-124 dated 16 February 2017, p. 49).

⁶¹¹ P-0046 employed the phrase '*à ma connaissance*': P-0046, T-124 dated 16 February 2017 (French), p. 53. The Chamber notes that the English translation of the transcript omits this phrase: P-0046, T-124 dated 16 February 2017, p. 49.

280. In any event, even assuming that Mr Gbagbo was the initiator of requisition, such a fact is not *per se* demonstrative of a nefarious motive on his part. As noted above, the Prosecutor's Response relies on the testimony of Inspector-General Bredou M'Bia to emphasise that security measures had already been implemented from the beginning of the electoral period, and remained the same for the second round of elections.⁶¹² Yet, given both General Bi Poin and Inspector-General Bredou M'Bia's equivocation concerning the security situation in the run-up to the second round of the elections, it is not possible to say whether or not requisitioning the armed forces was incommensurate compared to the size of the security threat.
281. The Prosecutor provides an example from which she alleges that the non-essential nature of the requisition can be inferred, namely that five days after the requisition was issued, there was an altercation at the RHDP headquarters in Cocody.⁶¹³ In support of her argument, the Prosecutor cites the lack of evidence of FDS involvement in the protection of the RHDP headquarters as demonstrative of the fact that the forces did not secure the headquarters of the opposition party, which would have been expected given the declared purpose of the requisition.⁶¹⁴ The fact that the National Director for Mr Ouattara's campaign (Maître Jeannot Ahoussou-Kouadio) requested security assistance from the Commander of the *Gendarmerie* on the same day as the altercation indeed indicates that the RHDP house had not been secured by the FDS hitherto.⁶¹⁵

⁶¹² Response, para. 68; P-0046, T-124 dated 16 February 2017, p. 49.

⁶¹³ P-0009, T-195 dated 27 September 2017, p. 6; Liste des blessés identifiés du RHDP au Chu de Cocody suite à l'affrontement avec la fesci, 20 November 2010, CIV-OTP-0045-1350 at 1350; Tableau recapitulatif chronologique des événements: période du 22/11/2010 au 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0794, entry No. 1; the RHDP house served to coordinate activities related to Ouattara's electoral campaign: Demande d'éléments de la Gendarmerie Nationale pour la sécurisation de la maison du RHDP, 19 November 2010, CIV-OTP-0044-0060 (confidential) at 0060.

⁶¹⁴ Prosecutor's Response, para. 1509.

⁶¹⁵ *Demande d'éléments de la Gendarmerie Nationale pour la sécurisation de la maison du RHDP*, 19 November 2010, CIV-OTP-0044-0060 (confidential) at 0060.

282. It should be noted, in this regard, that the requisition pertained to the deployment of the FANCI, whereas the task of providing protection for the premises of political parties was arguable primarily the task of the law enforcement forces, i.e. the Police and the Gendarmerie.
283. In fact, even though the Prosecutor offers evidence suggesting that the *Gendarmerie* declined to secure the property at least immediately,⁶¹⁶ General Kassaraté contended that he was ‘certain’ that the *Gendarmerie* had been deployed to reinforce the security already provided for by the Police at the RHDP house.⁶¹⁷ Owing to the fact that there are a multitude of possible reasons for the alleged lack of FANCI presence at the RHDP house on 19 November 2010, it is clear that their absence cannot constitute positive evidence of an intention on the part of Mr Gbagbo to clamp down on opposition supporters, much less that this episode somehow proves nefarious motives behind the requisition.
284. The Prosecutor further suggests that Mr Gbagbo’s ulterior motive concerning the FANCI requisition can be gleaned from the fact that ‘[t]he only other previous requisitions [(namely, those of 2000 and 2004)]⁶¹⁸ were followed by episodes of violence and repression of opposition supporters.’⁶¹⁹
285. It should be noted at the outset that the Prosecutor’s account of Presidential Decree No. 2000-849 relies solely on a 2001 report from Human Rights Watch,

⁶¹⁶ The letter instead stated that such a task came under the responsibility of the Police Nationale: Demande d'assistance sécuritaire, 22 November 2010, CIV-OTP-0044-0059 (confidential) at 0059.

⁶¹⁷ P-0011, T-132 dated 10 March 2017, p. 28.

⁶¹⁸ Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2000-849 du 04 décembre 2000 portant réquisition des forces armées nationales, 4 December 2000, CIV-OTP-0074-0244 (confidential) at 0245-0246; Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2004-236 du 22 mars 2004 portant réquisition des Forces Armées Nationales, 22 March 2004, CIV-OTP-0074-0238 (confidential) at 0239-0240.

⁶¹⁹ Mid-Trial Brief, para. 102.

the section of which she cites being largely based upon anonymous hearsay.⁶²⁰ Moreover, the UN report that the Prosecutor cites in relation to Presidential Decree No. 2004-236 is wholly based on anonymous hearsay. As explained above and elsewhere,⁶²¹ no meaningful evidentiary weight can be ascribed to such evidence.

286. In any case, even if the Prosecutor's sources were reliable, they do not support her argument. At the core of the Prosecutor's submission *vis-à-vis* the 14 November 2010 requisition is the notion that Mr Gbagbo's issuance thereof was motivated by objectives that were offensive, rather than defensive, in nature: the requisition, according to her, demonstrates an intention on the part of Gbagbo to employ forces 'before the occurrence of any violent incident which may have justified their intervention'.⁶²² It follows that if the previous requisitions of 2000 and 2004 are to be cited for the purpose of corroborating such an argument, they would have had to have been of the same nature. This has not been proven by the Prosecutor. Indeed, with respect to Presidential Decree No. 2000-849, she fails to mention that her own evidence describes opposition supporters as being armed with sophisticated weaponry on the day of the planned demonstration at the Houphouët-Boigny stadium.⁶²³ The report by Human Rights Watch cited by the Prosecutor goes so far as to characterise the clash on the same day between FPI supporters on the one hand, and RDR supporters on the other, as a '*guerrilla urbaine*' between political adversaries, *both* of whom caused a number of

⁶²⁰ Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165 at 0204-0208.

⁶²¹ Trial Chamber I, *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Separate Opinion of Judge Henderson, 21 March 2016, ICC-02/11-01/15-466-Conf-Anx annexed to 'Decision on the Prosecutor's Application to protect the confidentiality of the sources of P-0369'.

⁶²² Response, para. 68; *see also* para. 69 ("the engagement of the armed forces was already intended as of 14 November 2010 and is indicative of Mr Gbagbo's intent to use all means to stay in power").

⁶²³ Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165 at 0204-0208, 0199.

deaths.⁶²⁴ Such an account lends credence to the legitimacy of the decree's stated objective; namely, to maintain public order.⁶²⁵

287. Similarly, the evidence adduced by the Prosecutor regarding Presidential Decree No. 2004-236 has not proven the requisition to have been offensive in nature. On the contrary, the UN Commission of Inquiry report makes clear that the Government's response to the planned demonstration for 25 March 2004 was motivated by a will to ease political tensions in Côte d'Ivoire in light of violent altercations involving Gbagbo's own supporters that had taken place in the preceding weeks.⁶²⁶ The decrees were further 'justified' by a fear of armed opposition elements infiltrating the march and overthrowing the regime.⁶²⁷ Thus, the evidence suggests that the imposition of the requisition does not reflect a pre-meditated intention on the part of Mr Gbagbo to violently repress opposition supporters without provocation.
288. Furthermore, Witness P-0048 stated that the armed forces had been requisitioned in 2004 'to clamp down on the so called rebellion'.⁶²⁸ Although this claim is speculative⁶²⁹ it is worth noting that the rebellion involved armed groups which already controlled large parts of the territory. Moreover, the fact that no violence had occurred yet does not mean that the authorities did not have legitimate reasons to be concerned that it might occur in the foreseeable future. In light of

⁶²⁴ Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165 at 0199.

⁶²⁵ Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2000-849 du 04 décembre 2000 portant réquisition des forces armées nationales, 4 December 2000, CIV-OTP-0074-0244 (confidential) at 0246.

⁶²⁶ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0243-0244.

⁶²⁷ Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0244-0245.

⁶²⁸ P-0048, T-54 dated 28 June 2016, p. 4.

⁶²⁹ P-0048 would not have been in a position at the time to have known whether or not this was the case given that he did not hold any duties within the government of the Côte d'Ivoire until 2006. P-0048, T-53 dated 27 June 2016, p. 8.

the foregoing, the 2000 and 2004 requisitions referred to by the Prosecutor can hardly be said to foreshadow the existence of a policy to carry out an attack against the civilian population.

289. Given the dearth of information about the motives behind the requisition of 14 November 2010 and the equivocal nature of the available circumstantial evidence, it is not open to a reasonable trial chamber to conclude that the armed forces were requisitioned on 14 November 2010 with the aim of using armed force against the civilian supporters of Mr Ouattara.

6. *Alleged early expressions of the Policy*

290. The Prosecutor alleges that by 27 November 2010, the implementation of the Common Plan had developed to include a State or organisational policy aimed at a widespread and systematic attack against perceived Ouattara supporters.⁶³⁰ The period relevant for assessing whether the alleged Common Plan developed into the alleged Policy begins on 5 August 2010, when the holding of elections was announced, and goes on until the first round of elections that concluded on 27 November 2010. The Prosecutor has not pointed to any direct evidence of Mr Gbagbo's alleged Common Plan that culminated into an alleged Policy to attack the civilian population. Solely circumstantial evidence is relied upon.

a) **Mr Gbagbo told senior officers *si je tombe, vous tomb[er]ez***

291. The Prosecutor alleged that on 7 August 2010, Mr Gbagbo publicly told the FDS commanders that "*si je tombe, vous tombez*".⁶³¹ Document CIV-OTP-0045-0322, a *note de renseignement* on '*l'état d'esprit des populations*' contains some comments, *inter alia*, on how Mr Gbagbo's speech was received, including on

⁶³⁰ Mid-Trial Brief, para. 112.

⁶³¹ Response, paras 1123, 1618.

the use of the phrase ‘si je tombe, vous tomberez’.⁶³² The unauthenticated and undated report states that this phrase in particular was interpreted by the population and by the opposition as asking the military ranks to be prepared to be ready to get Mr Gbagbo out of any future unfavourable circumstances as opposed to acknowledging their merit.⁶³³ It does not comment on whether or not this was the intended meaning of this phrase. For this reason, it is imperative to examine how this phrase was interpreted by persons who heard these words themselves.

292. General Bi Poin, commenting on the abovementioned document, confirmed that this phrase had been spoken by Mr Gbagbo during the national celebration of 7 August 2010. General Bi Poin did not recall under which “specific circumstances” Mr Gbagbo had used this phrase; however, he testified that he understood the term to mean that ‘soldiers were being urged to continue being loyal soldiers to the authorities’ as ‘a soldier has a duty of loyalty to the authorities’.⁶³⁴ Witness P-0226 also made reference to this phrase in his prior recorded statement. When the relevant portion of his statement was read out, P-0226 recalled and confirmed that, at a meeting ‘several months’ before the campaign, Mr Gbagbo had summoned ‘all the armed forces to the office of the president’, including P-0226, and had said ‘You, the heads, if I fall, you fall too’.⁶³⁵ It is noted that it was only after his memory had been refreshed that P-0226 recalled the specifics of the meeting; prior to his statement being read out,

⁶³² Note de renseignement / A/S : L’état d’esprit des populations, Undated, CIV-OTP-0045-0322 (confidential) at 0322-0323. It is noted that P-0010 testified that he had not seen this document, which cannot be reliably dated, at the relevant time because it was a Police intelligence report and he was not a recipient. P-0010, T-138 dated 28 March 2017, p. 33.

⁶³³ Note de renseignement / A/S : L’état d’esprit des populations, Undated, CIV-OTP-0045-0322 at 0323.

⁶³⁴ P-0010, T-138 dated 28 March 2017, pp. 33-35.

⁶³⁵ P-0226, T-166 dated 27 June 2017, pp. 18-20.

he only remembered that Mr Gbagbo had called a meeting with FDS generals and not what was said during the meeting.⁶³⁶

293. In light of these testimonies, it is unclear how Mr Gbagbo intended for this phrase to be interpreted and/or perceived. One witness remembered this phrase being used and considered it to be referring to their duties as a soldier while the other did not recall what specifically was said during the meeting but confirmed that this phrase was used. This is not sufficient to demonstrate that Mr Gbagbo sent a clear message that ‘he was there to stay and that no other scenario was plausible’, as alleged.⁶³⁷ To the extent that Mr Gbagbo’s utterance may be seen as a not so subtle warning to senior FDS officers that their future careers depended on the survival of his regime, this could reasonably be interpreted as an indication that Mr Gbagbo did not intend to relinquish power. However, since he made the statement before the elections, it would be a large stretch to infer from this that he intended to stay in power at all costs, including by committing crimes against civilians on a large scale.

b) The Divo speech

294. The Prosecutor further alleged that Mr Gbagbo’s speech in Divo dated 27 August 2010 contained incendiary language referring to political opponents as “bandits” and “enemies”.⁶³⁸ The Prosecutor argues that Mr Gbagbo told his audience that in case of damages and casualties, the judges would settle the matters; and that this meant that he was inviting the members of this unit to act with impunity.⁶³⁹ The content of this speech is analysed below.⁶⁴⁰ Given its context and content, it is

⁶³⁶ P-0226, T-166 dated 27 June 2017, p. 17.

⁶³⁷ See Response, para. 1123.

⁶³⁸ Mid-Trial Brief, para. 717, 742; Response, para. 1611.

⁶³⁹ Response, para. 1611.

⁶⁴⁰ See IV.F.2.a) - 27 August 2010 – Divo speech.

only possible to argue that Mr Gbagbo used it to exhort FDS members to commit crimes against civilians - or that he intended to intimate that there would be no consequences for such crimes - by making a number of assumptions which the Prosecutor has not substantiated.

c) November 2010 campaign speech

295. The Prosecutor alleged that at a campaign rally for the second round of elections, Mr Gbagbo accused Mr Ouattara of being a violent person and responsible for the different *coups d'état* that the country had experienced.⁶⁴¹ At this rally, Mr Gbagbo stated that the 28 November elections represented the choice to 'end to violence in politics' and goes on to say that every human being has violence inside them but a civilised being is one who succeeds in overcoming that violence.⁶⁴² Mr Gbagbo referred to Mr Ouattara as one who had sowed violence in the country.⁶⁴³ Mr Gbagbo referred to the war and stated that the 'snake' was not dead yet and requested the audience not to drop their "*bâtons*".⁶⁴⁴ He concluded the speech with a statement that "*On ne peut pas livrer notre pays, notre pays, à des hommes violents*".⁶⁴⁵ Having assessed the Prosecutor's allegations in light of the full speech, it is true that Mr Gbagbo depicted Mr Ouattara as a cause of violence. However, it cannot be concluded from this that he thereby intended to stimulate or legitimise the use of violence against Mr Ouattara, let alone his civilian supporters. .

296. In the Response, the Prosecutor links this speech to an incident of violence against RHDP and RDR on 20 November 2010 as evidence of the existence of

⁶⁴¹ Mid-Trial Brief, para. 104.

⁶⁴² Koudou à ado, 21 November 2010, CIV-OTP-0063-2801, transcript at CIV-OTP-0063-3256 at 3257.

⁶⁴³ Koudou à ado, 21 November 2010, CIV-OTP-0063-2801, transcript at CIV-OTP-0063-3256 at 3257.

⁶⁴⁴ Koudou à ado, 21 November 2010, CIV-OTP-0063-2801, transcript at CIV-OTP-0063-3256 at 3258.

⁶⁴⁵ Koudou à ado, 21 November 2010, CIV-OTP-0063-2801, transcript at CIV-OTP-0063-3256 at 3258.

the alleged Common Plan and its development into the alleged Policy.⁶⁴⁶ General Mangou's testimony cited in support dates this incident to 19 November 2010, prior to Mr Gbagbo's rally discussed hereinabove.⁶⁴⁷ General Mangou described this incident as "young people close to the FPI" ransacked the RHDP headquarters, following which there was a street fight that caused 20 people to be injured.⁶⁴⁸ General Mangou noted that it was because of this incident that a curfew was imposed.⁶⁴⁹

d) General Kassaraté's speech of 6 December 2010

297. The Prosecutor also pointed to the RTI broadcast dated 6 December 2010 that depicts images of a meeting called by General Kassaraté.⁶⁵⁰ In this video, General Kassaraté is shown recalling that the *Gendarmerie* has always stayed true to the slogan *pro-patria pro-lege* and must respect the republican institutions.⁶⁵¹ When put to General Kassaraté during his examination in court, he testified that this meeting took place at the *Gendarmerie* headquarters and explained that gendarmes could feel tension mounting and were mindful of the previous conflict, in which the *Gendarmerie* lost many of their own as well as family members in Bouaké, and that it was his duty to remind his troops to be very careful to avoid a recurrence of these events.⁶⁵²

⁶⁴⁶ Response, para. 1113.

⁶⁴⁷ P-0009, T-195 dated 27 September 2017, p. 5. It is noted that this is based on the date of the speech as provided in the metadata by the Prosecutor.

⁶⁴⁸ P-0009, T-195 dated 27 September 2017, p. 5.

⁶⁴⁹ P-0009, T-195 dated 27 September 2017, p. 5.

⁶⁵⁰ Mid-Trial Brief, para. 144.

⁶⁵¹ RTI broadcast dated 6 December 2010, CIV-OTP-0075-0061, transcript at CIV-OTP-0094-0323 at 0324.

⁶⁵² P-0011, T-132 dated 10 March 2017, pp. 95-100.

7. Pressure to vote for Mr Gbagbo and pledging allegiance by senior FDS officers

298. The Prosecutor alleged that leading FDS members encouraged their subordinates to vote for Mr Gbagbo.⁶⁵³ P-0239 testified that during the gatherings of the FDS, Colonel Dadi would tell the troops that if ever Mr Ouattara 'were to come to power, he would dismiss all the soldiers, the FDS, and it was in our interest to fight'.⁶⁵⁴ P-0238 testified that before the second round of elections, he and other soldiers were called by General Mangou, who told them that they 'had to make the correct choice' and 'via the ballot box, show our allegiance to the president'.⁶⁵⁵ P-0238 also testified that[REDACTED] 'in order to keep hold of our posts we had to vote for the president'.⁶⁵⁶ P-0330 testified that between the two rounds of elections during a meeting at the HQ of the Gendarmerie, the supreme commander of the gendarmerie convened a meeting and reportedly asked the gendarmes to 'know how to vote and to vote appropriately' because he did not 'wish for the leadership of the country to come into the hands of a foreigner'.⁶⁵⁷ It has not been argued or otherwise demonstrated that these requests to vote for Mr Gbagbo were made at his behest or upon instructions from him. More importantly, other than showing that there was a wish for Mr Gbagbo to retain his position and that some officers may have abused their position of authority to pressure their subordinates, it is difficult to see how this can support an inference that there was a policy to use violence to achieve the desired outcome of the elections.

⁶⁵³ Mid-Trial Brief, para. 66, 72; Response, para. 1113 iii, 1214, 1227, 1472, 1657, 1911.

⁶⁵⁴ P-0239, T-167 dated 28 June 2017, p. 42.

⁶⁵⁵ P-0238, T-80 dated 27 September 2016, pp. 34-35.

⁶⁵⁶ P-0238, T-80 dated 27 September 2016, p. 35 (confidential).

⁶⁵⁷ P-0330, T-69 dated 2 September 2016, pp. 40-41 (confidential).

8. Conclusion

299. While it is true that the available evidence – which is far from comprehensive and which seems to have been selected because of its incriminating content – is suggestive of a man and his entourage who were determined to retain power, it would be difficult to conclude that there is sufficient evidence for the proposition that Mr Gbagbo intended to stay in power at all costs, including by committing widespread or systematic crimes against part of the civilian population. To the extent that it is relevant, the evidence can only be said to prove the non-criminal aspect of the alleged Common Plan.
300. A reasonable trial chamber might also infer from this evidence that it was understood by all parties, including the UN, that there was a risk that the electoral process and transition of power might lead to violence. However, the evidence does not support an inference that Mr Gbagbo was prepared to resort to violence against civilians in case he would legitimately lose the elections.
301. This last point is of some significance. Even though the Prosecutor is correct in stating that, legally, who won the elections is irrelevant to the outcome of this case, what is relevant (for his *mens rea* and the alleged Common Plan) is how Mr Gbagbo perceived the electoral process and whether or not he genuinely believed he had won the presidency. Indeed, his willingness to resist handing over power to Mr Ouattara and the means he was prepared to resort to for that purpose, may to a considerable extent have depended upon whether or not Mr Gbagbo believed that he was the genuine winner of the elections. Unfortunately, the available evidence sheds insufficient light upon this issue. The Prosecutor wants us to simply accept her assertion that Mr Gbagbo would have been unwilling to cede power under *any* circumstances. However, the available evidence does not lend support for such a conclusion.

C. Meetings amongst alleged members of the ‘inner circle’

302. The Prosecutor alleged that the members of the ‘inner circle’ shared Mr Gbagbo’s intent underlying the alleged Common Plan.⁶⁵⁸ According to the Prosecutor, the shared intent is evidenced by the actions of the ‘inner circle’ members of ‘directing, coordinating, encouraging, and supporting the use of the pro-Gbagbo forces to repress political opposition’, including in the years before 2010.⁶⁵⁹ She added that ‘frequent’ meetings were evidence of Mr Gbagbo and the alleged ‘inner circle’ members acting pursuant to the alleged policy.⁶⁶⁰ In such meetings, the alleged members purportedly ‘received information regarding the preparations for and conduct of the attack, and issued plans, instructions and incitements for its implementation’.⁶⁶¹ In the Response, these allegations are also used as one of the factors showing the existence of the alleged Common Plan.⁶⁶² The Prosecutor has also used the frequency of meetings to support the allegation that Mr Gbagbo had control over the ‘pro-Gbagbo youth’ through Mr Blé Goudé.⁶⁶³ In particular, she alleged that Mr Blé Goudé had access to Mr Gbagbo and met him frequently during the post-electoral crisis, and that members of the Galaxie Patriotique such as Damana Pickass, Richard Dakouri, Stallone Ahoua, Maho Glofiéhi, Navigué Konaté, and Sam l’Africain, also had access to Mr Gbagbo.⁶⁶⁴ She also references certain meetings between the members of the alleged ‘inner circle’ members and Mr Gbagbo as evidence of coordination between them as well as frequent communication.⁶⁶⁵ The allegations concerning

⁶⁵⁸ See Mid-Trial Brief, para. 61 *et seq.*

⁶⁵⁹ Pre-Trial Brief, para. 25.

⁶⁶⁰ Mid-Trial Brief, para. 178.

⁶⁶¹ Mid-Trial Brief, para. 178.

⁶⁶² Response, paras 1120-1122.

⁶⁶³ See Mid-Trial Brief, para. 237 *et seq.*

⁶⁶⁴ Mid-Trial Brief, para. 237.

⁶⁶⁵ Response, para. 1121.

the meetings will be assessed also in light of the allegations concerning coordination and the frequent communication.

1. Visits to the Presidential Residence and Palace

303. The Mid-Trial Brief alleged that Mr Gbagbo had meetings at his ‘Residence’ as well as his ‘Palace’.⁶⁶⁶ The Prosecutor alleged that, independently of the content of these meetings – which is often a matter of inference - the high frequency of visits by members of the alleged ‘inner circle’ to Mr Gbagbo and Simone Gbagbo is itself ‘indicative of their proximity to him’.⁶⁶⁷

304. For a significant number of the visits by alleged ‘inner circle’ members to the Presidential Residence, the *only* evidence available is the Residence Logbook.⁶⁶⁸ Before turning to the content of the Residence Logbook, it is imperative to assess P-0501’s testimony. P-0501 is an individual with first-hand knowledge about the security arrangements at the Presidential Residence at the relevant time.⁶⁶⁹ His observations are key in assessing the evidentiary weight to accord to the logbook.

305. P-0501 testified that the logbook was kept at the main entrance of the Presidential Residence;⁶⁷⁰ it was one of the three logbooks⁶⁷¹ used to record the

⁶⁶⁶ See for example Mid-Trial Brief, paras 68, 201, 673, 729. P-0011 noted the difference between the two. See P-0011, T-135 dated 14 March 2017, p. 91.

⁶⁶⁷ Mid-Trial Brief, para. 84; Response, para. 1556. It is noted that the Prosecutor stated in response that she has relied on the Residence Logbook ‘principally to corroborate witness testimony as to the occurrence of meetings, and to demonstrate the level of contact between Mr Gbagbo and members of the Inner Circle’.

⁶⁶⁸ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential). See also Mid-Trial Brief, para. 84 footnotes 259-260 where the allegation concerning the frequent visits by members of the alleged ‘inner circle’ to Mr Gbagbo and Simone Gbagbo are solely based on the Residence Logbook.

⁶⁶⁹ See P-0501, T-72 dated 7 September 2016, p. 8 *et seq.*, p. 53 (confidential), see also Annexe 1, 19 December 2014, CIV-OTP-0071-0919 (confidential).

⁶⁷⁰ P-0501, T-72 dated 7 September 2016, pp. 14, 16 (confidential). See also P-0501, DÉCLARATION DE TÉMOIN, 19 December 2014, CIV-OTP-0071-0906-R01 (confidential) at 0912. [REDACTED]

⁶⁷¹ P-0501, T-72 dated 7 September 2016, p. 11 (confidential). It is noted that there are also other registers recording the visits to the First Lady as well as departures. [REDACTED]

visitors who entered the Presidential Residence via this entrance.⁶⁷² According to P-0501, there was a daily programme of visitors published a day in advance and if a visitor was on the programme and was therefore expected by Mr Gbagbo, security was there to receive that individual; however, there were also visitors who were not on the programme.⁶⁷³ P-0501 also testified that if a group of visitors arrived, it was sometimes not possible to take down everyone's names for the Residence Logbook.⁶⁷⁴

306. The Prosecutor's invites the Chamber to infer that a visit recorded in the Residence Logbook meant that there was 'contact' with the person intended.⁶⁷⁵ The inference that visits recorded in the Residence Logbook mean that there was indeed contact between the visitor and the person intended to be visited cannot be drawn after having regard to P-0501's testimony. P-0501 testified that the abbreviation 'PD' in the logbook stood for '*personne demandée*', that is, the person *to be visited*.⁶⁷⁶ P-0501 confirmed that it was possible that people registered as intending to meet the president in the logbook might not actually be able to meet him.⁶⁷⁷ It was also possible that visitors registered to see Mr Gbagbo had to wait several hours in the waiting room and were not able to see him on account of his busy schedule and sometimes went home without meeting him.⁶⁷⁸ Since the reason(s) for a visitor's departure was not recorded in the logbook, an

⁶⁷² P-0501, T-72 dated 7 September 2016, p. 14 (confidential).

⁶⁷³ P-0501, T-72 dated 7 September 2016, p. 9 (confidential). The witness elaborates on visits that were in an official programme and those that were not. *See* p. 41

⁶⁷⁴ P-0501, DÉCLARATION DE TÉMOIN, 19 December 2014, CIV-OTP-0071-0906-R01 (confidential) at 0911, para. 22.

⁶⁷⁵ Mid-Trial Brief, para. 84. Response, para. 1556.

⁶⁷⁶ P-0501, T-72 dated 7 September 2016, p. 16 (confidential). It is noted that, in contrast, this column in the logbook has been represented in Annex D as the column called 'Visited'. It is also noted that, in certain places, the logbook uses the term '*réunion*' instead of 'PR' or '1ère Dame'. *See for example* Annex D, pp. 9 [entry 13], 12 [entry 2], 15 [entry 95]. P-0501 clarified that even this term did not necessarily mean that a meeting took place. [REDACTED] suggests that this term only meant that a meeting had been scheduled in advance. *See* P-0501, T-72 dated 7 September 2016, p. 20 (confidential).

⁶⁷⁷ P-0501, T-72 dated 7 September 2016, pp. 61-62 (confidential).

⁶⁷⁸ P-0501, T-72 dated 7 September 2016, p. 61 (confidential).

entry would not indicate if, for whatever reason, the meeting with Mr Gbagbo did not take place.⁶⁷⁹ Consequently, such entry would stay in the logbook, regardless of whether the meeting actually took place.

307. On certain occasions, the Prosecutor also invites the Chamber to draw inferences from the Residence Logbook as to the timing and duration of meetings.⁶⁸⁰ In that regard, it is noted that P-0501 testified that after an entry was made, the visitor would not go directly to Mr Gbagbo's office.⁶⁸¹ If Mr Gbagbo was not in the office, the visitor would be made to wait in the waiting room after recording their entry.⁶⁸² For these reasons, it is also not possible to assume that a visitor recorded as arriving and departing at a certain time was in a meeting for the entire duration. It also follows from this that it cannot be assumed that people arriving and departing at the same time were necessarily in the same meeting. The concurrent arrival of one or more persons also does not mean that Mr Gbagbo would have or intended to meet those individuals together. This is also confirmed by P-0501's testimony.⁶⁸³
308. P-0501 testified that when Mr Gbagbo would leave the Presidential Residence, this would also be recorded in the logbook.⁶⁸⁴ In Annex D or anywhere else in the briefs, the Prosecutor has not presented entries from the logbook to show that Mr Gbagbo was in fact present at the Presidential Residence at all during those instances when meetings are alleged to have taken place. However, for the purpose of this analysis, it will be assumed that Mr Gbagbo was present at all relevant times.

⁶⁷⁹ P-0501, T-72 dated 7 September 2016, pp. 61-62 (confidential).

⁶⁸⁰ *See for example* Mid-Trial Brief, para. 365 [meeting dated 16 December 2010 with Minister Dogou]; para. 366 [meetings dated 16 and 19 December 2010 with Mr Blé Goudé].

⁶⁸¹ P-0501, T-72 dated 7 September 2016, p. 42 (confidential).

⁶⁸² P-0501, T-72 dated 7 September 2016, p. 42 (confidential).

⁶⁸³ *See* P-0501, T-72 dated 7 September 2016, p. 45 (confidential). [REDACTED]

⁶⁸⁴ P-0501, T-72 dated 7 September 2016, p. 22 (confidential).

309. Turning to an overview of the Residence Logbook itself, it is noted that it indicates the date, timings, identity of the visitor, and the known details of the person intended to be visited.⁶⁸⁵ It is often illegible and has missing pages and entries. It contains no information as to the purpose or content of the meetings.
310. In Annex D to the Mid-Trial Brief, the Prosecutor has compiled the occurrence of visits in the Residence logbook in advancing her arguments as to frequency of contact and access to Mr Gbagbo. Having examined a sample of the entries in the Residence Logbook, including Annex D, there are some unexplained discrepancies. Their existence will be taken into account when assessing allegations concerning the frequency of visits to and contact with Mr Gbagbo.
311. For example, the Prosecutor alleges that Minister Djédjé frequently visited the Presidential Residence ‘no less than 105 times from November 2010 to April 2011’.⁶⁸⁶ Annex D mentions that Minister Djédjé visited the residence three times on 3 December 2010.⁶⁸⁷ Upon examination of the timings of these visits, it appears that there may have been duplicate entries or that the reported timings are inaccurate.⁶⁸⁸ Similarly, Annex D also mentions that Minister Djédjé visited the residence twice on 16 December 2010.⁶⁸⁹ Upon examination of the timings of these visits, it appears that there are two entries with timings that overlap.⁶⁹⁰ Annex D mentions that Minister Djédjé visited the residence three times on 14 March 2011.⁶⁹¹ Upon examination of the timings of these visits, it appears that the timings of the second and the third visit overlap, suggesting a duplicate entry

⁶⁸⁵ See for example Column 5 of Annex D mentioning either ‘PR’, ‘*Ière Dame*’, ‘Hall2’, ‘*Salle Comm*’. See P-0011, T-132 dated 10 March 2017, pp. 21-24 for comments on Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0929 – ‘PR’ stands for president of the republic.

⁶⁸⁶ Mid-Trial Brief, para. 78. See also para. 84, referring to Annex D.

⁶⁸⁷ Annex D, p. 13; Mid-Trial Brief, para. 84.

⁶⁸⁸ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0969-0974.

⁶⁸⁹ Annex D, p. 14; Mid-Trial Brief, para. 84.

⁶⁹⁰ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1011-1014.

⁶⁹¹ Annex D, p. 15; Mid-Trial Brief, para. 84.

or inaccurate timings.⁶⁹² P-0501 offered some explanation for discrepancies in noting down the departure time but it does not account for overlapping timings recorded in the entries.⁶⁹³ There are several other examples and other issues with the Residence Logbook that cannot all be discussed here.

312. In addition, there are certain discrepancies between the Residence Logbook and testimonial evidence. For example, the Prosecutor relies on Inspector-General Bredou M'Bia to allege that a meeting that took place on 14 March 2011 where Minister Dogou was present.⁶⁹⁴ The Prosecutor alleges that, although Inspector-General Bredou M'Bia could not remember the date, a video and the logbook show that this meeting took place on 14 March 2011.⁶⁹⁵ However, the Residence Logbook does not show this as far as Minister Dogou is concerned. On 14 March 2011, the logbook shows Minister Dogou arriving and leaving the residence before any of the other alleged attendees even arrived.⁶⁹⁶ According to the Residence Logbook, he could not have been present during the time of the alleged meeting. This suggests that either the entries in the Residence Logbook are unreliable, or that the Prosecutor is misguided in assuming that the date of the meeting about which Inspector-General Bredou M'Bia was talking about was 14 March 2011, or that Inspector-General Bredou M'Bia incorrectly remembers Minister Dogou being present.
313. In another example, the Prosecutor, relying on the Residence Logbook, alleges that on 12 January 2011, '[Mr] Gbagbo presided over a meeting at the Presidential Residence with [Mr] Blé Goudé, Ministers Dogou, Guiriéoulou, and

⁶⁹² See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1257-1260.

⁶⁹³ See P-0501, T-72 dated 7 September 2016, pp. 20-21 (confidential).

⁶⁹⁴ Mid-Trial Brief, paras 221, 481.

⁶⁹⁵ Mid-Trial Brief, paras 221, 481.

⁶⁹⁶ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1257-1260.

the high command of the FDS'.⁶⁹⁷ This is not reflected in the logbook. The relevant entries for Ministers Dogou and Guiriéoulou suggest that they did not meet Mr Gbagbo, but requested to see the '*lère Dame*'.⁶⁹⁸ The Prosecutor has also used this same evidence for the alternate purpose of showing their presence at the meetings that allegedly took place on 11 and 12 January 2011 with Simone Gbagbo.⁶⁹⁹

314. Having regard to the aforementioned considerations, specific meetings alleged by the Prosecutor in demonstrating sharing of intent between the 'inner circle' members are discussed hereinunder. These include those concerning the Prosecutor's specific allegations in the Response concerning the frequency of visits and meetings between the two accused.
315. There are other meetings that may be relevant to this section but the contents of which are discussed elsewhere in detail for reasons of being more relevant to other allegations. These include the meetings dated 14-16 December 2010 relevant to the RTI march,⁷⁰⁰ meeting dated 4 January 2011,⁷⁰¹ meeting dated 12 January 2011,⁷⁰² and meetings dated 23-24 February 2011.⁷⁰³ Certain sets of these

⁶⁹⁷ Mid-Trial Brief para. 429 footnote 1263 referring to Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1087-1090.

⁶⁹⁸ See Annex D, p. 9, entry 24 (Minister Dogou); p. 12, entry 10 (Minister Guiriéoulou).

⁶⁹⁹ See Mid-Trial Brief, para. 430 footnote 1267 referring to Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1083-1090.

⁷⁰⁰ See V.B - Prohibition of the RTI March.

⁷⁰¹ See V.C - FDS Activities in Abobo in January and February 2011. See in particular V.C.2 - General Mangou's Testimony on the Requisition of the Army.

⁷⁰² See V.C.3 - The Police operation of 11 January 2011; V.C.4 - Escalation of military activities in Abobo after 11-12 January 2011.

⁷⁰³ See Response, paras 1601, 1727-1728, 1790. For meetings dated 23-24 February 2011, there are allegations of two meetings involving Blé Goudé (23 and 24 February) and one meeting with only the FDS generals and Mr Gbagbo (for Abobo only). As regards meetings between FDS generals and Mr Gbagbo, see V.C.7 - The deliberate failure of Mr Gbagbo to declare Abobo a war zone. The Prosecutor also alleged that Mr Blé Goudé visited the Presidential residence on 23 and 24 February 2011 and prior to his *mot d'ordres* on the morning of 25 February 2011. This has been addressed below in IV.C.2.o) - Meetings on 23-24 February 2011. See also VI.M.4.a) - Mr Blé Goudé's *mot d'ordre* at the *Le Baron Bar* and the erection of roadblocks.

meetings involve the two accused meeting and have also been discussed in brief below.

2. *Specific meetings*

a) **Meeting on 19 November 2010**

316. First, the allegations concerning the meeting on 19 November 2010 will be considered.⁷⁰⁴ From the allegations themselves it is unclear what the Prosecutor suggests happened at this meeting. In court, General Mangou confirmed his presence at this meeting⁷⁰⁵ but General Bi Poin did not recall this meeting having taken place.⁷⁰⁶ The Residence Logbook shows Generals Mangou, Guiai Bi Poin, and Kassaraté arriving and leaving at similar times,⁷⁰⁷ which suggests that they may have been in the same meeting with Mr Gbagbo. However, the Prosecutor has not pointed to any evidence that may indicate the content of the meeting. In this regard, it is noted that General Bi Poin also did not recall if they had discussed the decree of 14 November 2010 requisitioning FANCI, as suggested by the Prosecutor.⁷⁰⁸

⁷⁰⁴ Mid-Trial Brief, para. 103.

⁷⁰⁵ P-0009, T-193 dated 25 September 2017, p. 29.

⁷⁰⁶ P-0010, T-138 dated 28 March 2017, pp. 50-51, 65. General Bi Poin was asked twice about the logbook entry corresponding to the visits recorded on 19 November 2010. The second time, General Bi Poin testified that '[f]irst of all, it is not a matter of course that whenever you go to the residence you have a meeting. Furthermore, I do not recall the exact purpose of that visit. Now, when you interviewed me some time ago, I was able to remember a number of meetings we had, once at the residence, twice at the presidency, at the presidential palace. But as for the other visits to the residence, I really do not have a full recollection of what we may have discussed or what I went to do there at any particular time.' (p. 65)

⁷⁰⁷ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0929-0930.

⁷⁰⁸ P-0010, T-138 dated 28 March 2017, pp. 50-51, 65.

b) Meeting on 24 November 2010

317. Turning now to the allegations concerning the meeting that took place on 24 November 2010,⁷⁰⁹ the Residence Logbook shows Generals Mangou, Guiai Bi Poin, and Kassaraté arriving and leaving at similar times and requesting a visit to Mr Gbagbo.⁷¹⁰ In court, General Bi Poin did not recall visiting the presidential residence on this date;⁷¹¹ he did not remember what was discussed in this meeting and specifically did not remember having talked about the curfew as alleged.⁷¹² It is also noted that the logbook shows Bertin Kadet having arrived later than Generals Mangou, Guiai Bi Poin, and Kassaraté and leaving at the same time as they did.⁷¹³ However, it is noted that General Kassaraté did not recall having been at the residence at that time along with Bertin Kadet and could not say if he stayed with Mr Gbagbo for the entire duration of the visit as noted in the logbook.⁷¹⁴ He testified that their discussions at the time concerned ensuring safety for the elections, protecting people and belongings, and recalled having no specific exchanges with Mr Gbagbo beyond those topics.⁷¹⁵ There is no other information pointed out by the Prosecutor as to the content of this meeting.

c) Meeting on 26 November 2010

318. In respect of the meeting alleged to have taken place on 26 November 2010,⁷¹⁶ General Mangou testified about a meeting with Mr Gbagbo and Prime Minister

⁷⁰⁹ Mid-Trial Brief, para. 105.

⁷¹⁰ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0943-0946.

⁷¹¹ See P-0010, T-138 dated 28 March 2017, p. 66 commenting on Large visitor register, 3 November 2010, CIV-OTP-0088-0863 at 0944.

⁷¹² P-0010, T-138 dated 28 March 2017, pp. 52-53. It is noted that P-0010 testified about a meeting discussing the curfew which has been covered in the paragraphs that follow.

⁷¹³ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0943-0946.

⁷¹⁴ P-0011, T-132 dated 10 March 2017, pp. 32-35.

⁷¹⁵ P-0011, T-132 dated 10 March 2017, pp. 32-35.

⁷¹⁶ Mid-Trial Brief, para. 107.

Guillaume Soro that took place ‘[b]efore signing the decree’ in which they discussed the imposition of the curfew.⁷¹⁷ The Residence Logbook suggests that the Prime Minister, Generals Mangou, Guiai Bi Poin, and Kassaraté arrived and left at similar times on 26 November 2011.⁷¹⁸ General Bi Poin did not recall this specific meeting, but he said that if the register shows that then he must have been there.⁷¹⁹ General Kassaraté did not recall such a meeting; he did not think he was present at any such meeting.⁷²⁰

d) Meeting on 27 November 2010

319. The Prosecutor referred to a meeting that took place on 27 November 2010 at the Presidential Palace attended by ‘FDS Generals’ and the President of Burkina Faso.⁷²¹ General Mangou recalled a meeting on 27 November 2010 where he discussed the curfew with Mr Gbagbo along with other officers in the presence of the President of Burkina Faso.⁷²² General Bi Poin did not recall the date of this meeting but remembers ‘everyone’ being present at a meeting discussing the curfew.⁷²³ He testified that

The only time that I remember discussing the curfew with the other commanders, the other generals, was at the presidential palace. And everyone was present there: All the political authorities, the other candidates, the president of Burkina Faso at the time, everyone met at the presidential palace. And those of us soldiers were asked to consult with each other and give our opinion on the curfew. And we discussed in a small corner in the office of the president, and the chief of staff went and said that the curfew would make it possible to avoid bad incidents before the elections,

⁷¹⁷ P-0009, T-195 dated 27 September 2017, p. 7. It is noted that P-0009 is not clear about when the meeting had taken place.

⁷¹⁸ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0950-0951.

⁷¹⁹ P-0010, T-138 dated 28 March 2017, pp. 59-64.

⁷²⁰ P-0011, T-132 dated 10 March 2017, pp. 45-54.

⁷²¹ Mid-Trial Brief, para. 108.

⁷²² P-0009, T-195 dated 27 September 2017, pp. 6-7. *See also* P-0009, T-195 dated 27 September 2017 (French), p.8.

⁷²³ P-0010, T-138 dated 28 March 2017, pp. 53-54.

because this was before the elections. So he was proposing that the curfew be maintained or be imposed.⁷²⁴

e) Meetings on 30 November and 3 December 2010

320. The Prosecutor alleged that, on 30 November 2010, Paul Yao N'Dré, the President of the Constitutional Council, visited Mr Gbagbo.⁷²⁵ The Prosecutor made this allegation in connection with Damana Pickass tearing the preliminary results of the second round of elections on national television.⁷²⁶ The Residence Logbook records this visit.⁷²⁷ Similar allegations are raised in respect of Yao N'Dré's visit to the Presidential Residence on 3 December 2010,⁷²⁸ which also appears to be recorded in the Residence Logbook.⁷²⁹ In relation to the latter meeting, the Prosecutor additionally pointed to an excerpt from the RTI broadcast of 3 December 2010 to allege that Yao N'Dré proclaimed Mr Gbagbo president after having visited him that day.⁷³⁰ There is no evidence demonstrating what was discussed between Paul Yao N'Dré and Mr Gbagbo over these two meetings, assuming they did indeed meet to discuss. Although the timing of these two alleged meetings is arguably suspicious in that the Residence Logbook shows Yao N'Dre to have visited the Presidential Residence on 30 November and 3 December 2010, in the absence of any further evidence, the Chamber can only speculate as to what may have been discussed. Assuming that the meeting did indeed take place, it can be inferred that Yao N'Dre and Mr Gbagbo may have discussed the events surrounding the proclamation of the results of the

⁷²⁴ P-0010, T-138 dated 28 March 2017, p. 53.

⁷²⁵ Mid-Trial Brief, para. 120.

⁷²⁶ Mid-Trial Brief, para. 120. *See also* IV.A.3 - Youth leaders for allegations concerning Damana Pickass.

⁷²⁷ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0959-0962.

⁷²⁸ Mid-Trial Brief, para. 129.

⁷²⁹ Large visitor brief, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0971-0972.

⁷³⁰ Mid-Trial Brief, para. 129. Response, para. 1113 (ix).

election in 2010 but, without more, no further inference can be drawn from Yao N'Dre's two visits to the Presidential Residence.

f) Meeting on 1 December 2010

321. The Prosecutor made two allegations in respect of the meetings that took place on 1 December 2010, first that there was a meeting to discuss the extension of the curfew, and second that there were a large number of visitors leaving shortly after midnight following the deadline for the CEI to proclaim the election results had expired.⁷³¹ As regards the first allegation, the logbook shows Generals Mangou, Guiai Bi Poin, Kassaraté, Bredou M'Bia, Dogbo Blé, and Detoh Letho having arrived at similar times and left the residence at the same time.⁷³² General Bi Poin did not recall the visit or its purpose.⁷³³ General Kassaraté testified that he was 'not in a position to remember exactly whether [he] went to the residence on that day or not' and that he did not recall Mr Blé Goudé's or General Detoh Letho's presence there.⁷³⁴ General Detoh Letho stated that they had meetings at the Residence on 1, 2 and 4 or 5 December, at which the Chief of Staff reported on the situation on the ground.⁷³⁵ In light of this, it is not possible to conclude what was discussed during this meeting. Similarly, in respect of the second allegation, the logbook shows a number of people leaving after midnight.⁷³⁶ However, in the absence of any evidence demonstrating the purpose of their visit and/or departure, no conclusions can be drawn from this.

⁷³¹ Mid-Trial Brief, paras 122-123.

⁷³² Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0963-0966.

⁷³³ P-0010, T-138 dated 28 March 2017, p. 67.

⁷³⁴ P-0011, T-132 dated 10 March 2017, pp. 73-75.

⁷³⁵ P-0047, T-203 dated 7 November 2017, pp. 50-51.

⁷³⁶ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0963-0966.

g) Meetings on 3 December 2010

322. It is noted that there are allegations concerning two sets of meeting that took place on 3 December 2010. The first concerns the meeting between ministers. The second concerns a meeting between the FDS generals wherein they are also alleged to have pledged their allegiance to Mr Gbagbo. These have been discussed in turn.
323. In support of her allegations concerning the implementation of the Common Plan,⁷³⁷ the Prosecutor relied on the purported minutes of a meeting that took place on 3 December 2010 where Minister Djédjé and Bertin Kadet are reported to have been in attendance. The Prosecutor suggests that Aboudramane Sangaré and Désiré Tagro also attended this meeting on the basis that they arrived around the same time.⁷³⁸ The Residence Logbook shows Ministers Bertin Kadet, Aboudramane Sangaré and Désiré Tagro arriving around the same time this day.⁷³⁹ Minister Djédjé is recorded as having visited three times during the same day with timings overlap.⁷⁴⁰
324. The Prosecutor pointed to document CIV-OTP-0018-0220 to make further allegations concerning the content of this purported meeting between the ministers.⁷⁴¹ The Prosecutor adds that these minutes are highly relevant as they demonstrate ‘coordinated and concerted efforts, contribution, intent and awareness of Mr Gbagbo and members of the ‘inner circle’ to keep Mr Gbagbo in power by all means’.⁷⁴²

⁷³⁷ Mid-Trial Brief, para. 131-133, 672.

⁷³⁸ Mid-Trial Brief, para. 132.

⁷³⁹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0971-0972.

⁷⁴⁰ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0971-0974.

⁷⁴¹ Mid-Trial Brief, paras 131-135.

⁷⁴² Response, para. 1573.

325. In respect of the document CIV-OTP-0018-0220, it is noted that it bears no letterhead, official markings, or signatures that could permit any assessment of its authenticity. Assuming that this document does indeed contain minutes of a meeting, it is noted that it does not contain the names of the author, attendees, time or duration of the said meeting. For this reason, it is not known whether Mr Gbagbo was in attendance at this purported meeting or not.⁷⁴³ It presents the portfolios and the names of the responsible minister together with a list of what appear to be tasks under each portfolio. It cannot be deduced whether the respective lists are composed of notes of tasks to be discussed with the relevant ministers. If it does not contain notes but rather a list of tasks, it is not known whether these are tasks suggested by the ministers themselves to each other or tasks assigned to them. It is further not known whether the listed tasks are a result of an agreement between the ministers or directives by Mr Gbagbo. If these are indeed tasks assigned to them, the document does not indicate who was assigning such tasks.
326. Disregarding the concerns regarding the authenticity and contents of this document, at best, this document appears to be listing routine governmental functions and allocation of portfolios.
327. The Prosecutor alleged that the content of this document is corroborated in particular by Minister Djédjé's appearance on the RTI broadcast on 3 December 2010 wherein he is introduced as 'special advisor to [Mr] Gbagbo for "diplomatic affairs"', echoing the characterisation found in this document.⁷⁴⁴ While the name of the '*cellule*' corresponds with the name of the minister listed to be '*responsable*', this is not sufficient corroboration for the proposition that

⁷⁴³ Réunion de concentration / Résidence du PR sale conseille ministres, 3 December 2010, CIV-OTP-0018-0220, transcript at CIV-OTP-0053-0335 (confidential).

⁷⁴⁴ Mid-Trial Brief, para.134. Response, para. 1574.

this document contains minutes of a meeting tasking ministers with the implementation of the Common Plan.

328. To the extent that those attending the purported meeting were planning to exercise governmental functions, this may indeed be evidence of Minister Djédjé's and Minister Bertin Kadet intention for Mr Gbagbo to stay in power. While the performance of these functions may have been necessary for Mr Gbagbo's government to continue working, and in that sense, 'stay in power', the Prosecutor has not demonstrated that these functions were meant to encompass the commission of crimes against civilians.
329. The Prosecutor alleged that another meeting took place on 3 December 2010 in which several senior FDS members pledged allegiance to Mr Gbagbo;⁷⁴⁵ she also alleged that several other members of the 'inner circle' met Mr Gbagbo that day.⁷⁴⁶ In respect of this meeting, General Kassaraté was asked whether following the 2 December 2011⁷⁴⁷ announcement by the Constitutional Council declaring Mr Gbagbo the winner of the elections, the major commanders gathered to discuss the decision, to which he responded in the negative.⁷⁴⁸ He added that he went to the Presidential Residence following the decision as is 'traditional' in the Ivorian army; he went along with the Chief of Staff, the CECOS commander, the DGNP and others to pay their respects and make themselves available to him for service.⁷⁴⁹ General Bi Poin confirmed his attendance at this meeting.⁷⁵⁰ The Residence Logbook shows Generals Mangou, Guiai Bi Poin, Kassaraté, Bredou

⁷⁴⁵ Mid-Trial Brief, paras 67, 644, 712.

⁷⁴⁶ Mid-Trial Brief, para. 674.

⁷⁴⁷ It is noted that according to the Mid-Trial Brief, the proclamation of Mr Gbagbo as the elected president took place on 3 December 2010. *See* Mid-Trial Brief, para. 129. The proclamation from the Golf Hotel declaring Mr Ouattara as president is alleged to have taken place on 2 December 2010. *See* Mid-Trial Brief, para. 126 referring to RTI Broadcast dated 3 December 2010, CIV-OTP-0075-0058, transcript at 0087-0143 at 0144.

⁷⁴⁸ P-0011, T-132 dated 10 March 2017, pp. 92-93.

⁷⁴⁹ P-0011, T-132 dated 10 March 2017, pp. 92-93.

⁷⁵⁰ P-0010, T-138 dated 28 March 2017, pp. 36, 71-71.

M'Bia, Detoh Letho and others arriving at similar times and leaving at the same time.⁷⁵¹

330. Additionally, General Bi Poin testified that Mr Gbagbo was congratulated; the attendees presented their respects to the head of state and their renewed availability to him.⁷⁵² General Kassaraté testified that such meetings formed part of tradition in the Ivorian army.⁷⁵³ Inspector-General Bredou M'Bia confirmed in court his statement that they were required to pledge allegiance.⁷⁵⁴
331. In this regard, it is also noted that document CIV-OTP-0018-0220, under Minister Bertin Kadet's name, lists '[i]nciter les chefs de l'armée de la gendarmerie et de la police à faire leur déclaration de soutien', '[a]mener l'état-major et les différents commandants des forces à venir dès ce soir saluer le PR élu', and '[v]eiller à ce que les forces prennent le contrôle de la zone de confiance'.⁷⁵⁵ It is further noted that, as discussed above, the FDS generals did pledge their allegiance to Mr Gbagbo on that day. Further General Bi Poin testified that it was General Mangou, who had been informed by Bertin Kadet, that called him for this meeting.⁷⁵⁶ To this limited extent, the document appears to have been reflecting events of that day. However, having regard to the totality of the concerns regarding this document, its contents, and the limited information available as regards the content of the actual purported meeting between the ministers on 3 December 2010, it cannot be concluded that this is evidence of the implementation of the alleged Common Plan.

⁷⁵¹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0969-0974, 3 December 2010.

⁷⁵² P-0010, T-138 dated 28 March 2017, pp. 71-74.

⁷⁵³ P-0011, T-132 dated 10 March 2017, pp. 91-92.

⁷⁵⁴ P-0046, T-125 dated 17 February 2017, p. 9.

⁷⁵⁵ Réunion de concentration / Résidence du PR sale conseille ministres, 3 December 2010, CIV-OTP-0018-0220, transcript at CIV-OTP-0053-0335 (confidential) at 0336.

⁷⁵⁶ P-0010, T-138 dated 28 March 2017, pp. 36, 71-74.

h) Meeting on 7 December 2010

332. The Prosecutor alleged that a first Council of Ministers meeting of the newly formed government took place on 7 December 2010.⁷⁵⁷ The Prosecutor cites the RTI broadcast dated 7 December 2010⁷⁵⁸ that shows Mr Blé Goudé with Richard Dakouri; the Prosecutor alleged that various newly appointed ministers, including Minister Dogou and Minister Guiriéoulou, made ‘several statements’ on national television but no further allegation is advanced either in the Mid-Trial Brief or the Response.⁷⁵⁹

i) Meeting on 9 December 2010

333. Generals Kassaraté and Bi Poin are shown to have been present at the Presidential Residence for a meeting that purportedly took place on 9 December 2010. The Residence Logbook shows that Generals Mangou, Guiai Bi Poin, Kassaraté, Detoh Letho and Vagba were present at the Presidential Residence on this day; arriving and leaving at the same time and requesting to visit Mr Gbagbo.⁷⁶⁰ On the same day, the Residence Logbook indicates that Minister Djédjé,⁷⁶¹ Hubert Oulaï,⁷⁶² Bertin Kadet,⁷⁶³ Abou Drahamane Sangaré⁷⁶⁴ and Pascal

⁷⁵⁷ Mid-Trial Brief, para. 145.

⁷⁵⁸ It is noted that the Prosecutor cites to RTI Broadcast dated 7 December 2010, CIV-OTP-0061-0537, retransmitted in RTI broadcast dated 7 December 2010, CIV-OTP-0061-0538, transcript at CIV-OTP-0104-0276. The portion of the broadcast containing the comments by Minister Dogou and Minister Guiriéoulou is not transcribed in cited transcript.

⁷⁵⁹ It is noted that this allegation appears verbatim at Response, para. 1563.

⁷⁶⁰ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0993-0994.

⁷⁶¹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863(confidential) at 0993-0994 arriving at 11.36. The hour of leaving is not indicated.

⁷⁶² Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0993-0994 arriving at 13.56 at leaving at 15.43.

⁷⁶³ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0995-0996 arriving at 19.12 and leaving at 21.40.

⁷⁶⁴ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0993-0994 arriving at 11.32 and leaving at 13.58.

Affi N'Guessan⁷⁶⁵ were at the Presidential Residence at different times. It also shows that Minister Dogou⁷⁶⁶ requested to see Simone Gbagbo. General Bi Poin indicated that, although he had often visited the Residence, he could not recall the date or the purpose of this particular visit.⁷⁶⁷ The Prosecutor pointed to the *communiqué* from the AU Peace and Security Council supporting Mr Ouattara that was also issued on 9 December to help the witness in situating this meeting.⁷⁶⁸ However, General Bi Poin replied that the visit was not necessarily linked to that and might have been for other purposes, particularly given that the president never really discussed politics with them.⁷⁶⁹ General Kassaraté did not recall if he was at the residence on 9 December 2010, but he did recall that it was a tradition for all generals to visit newly elected heads of state after the announcement of the results in order to congratulate them and indicate that they were available; he did not provide further information about the meeting on 9 December 2010. General Kassaraté maintained they did not discuss the communiqués by ECOWAS, AU, EU, to the effect that Mr Ouattara had won the elections, neither at this nor any other meeting.⁷⁷⁰

334. Apart from concluding that a meeting may have taken place on 9 December 2010 between the FDS officials and Mr Gbagbo, the evidence does not indicate its content and purpose. Neither Generals Kassaraté and Bi Poin recalled the date or the purpose of this specific meeting and testified generally as to their presence at the Presidential Residence around this time. Having regard to the general observations concerning the Residence Logbook, simply on the basis of the visits

⁷⁶⁵ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0995-0996 arriving at 14.20 and leaving at 15.15.

⁷⁶⁶ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0995-0996 arriving at 18.50 and leaving at 21.57.

⁷⁶⁷ P-0010, T-138 dated 28 March 2017, pp. 82-83.

⁷⁶⁸ P-0010, T-138 dated 28 March 2017, p. 83.

⁷⁶⁹ P-0010, T-138 dated 28 March 2017, pp. 82-83.

⁷⁷⁰ P-0011, T-134 dated 13 March 2017, pp. 6-9.

recorded for other FDS officials and ministers on this date noted above, it cannot be concluded that a meeting between them took place.

j) Meeting on 10 December 2010

335. General Mangou testified that on 10 December 2011, he met with Mr Gbagbo in his office ‘in the company of the late Minister Tagro’.⁷⁷¹ During the meeting, General Mangou was informed of a plan to start an operation to disorganise the ‘rebel forces’ in the east of the country, involving Koné Zakaria. However, according to General Mangou, the funds that were provided to Koné Zakaria to fight in the east were diverted to the *Commando Invisible* in Abobo.⁷⁷²

k) Meetings on 14-16 December 2010 of council of ministers

336. The Prosecutor alleged that following the first *Conseil du gouvernement* dated 14 December 2010, there was second working session on 15 December 2010.⁷⁷³ At that working session, the Ministers purportedly scheduled their next meeting of the Council of Ministers to take place with Mr Gbagbo at the Presidential Palace on 16 December 2010.⁷⁷⁴ It is noted that the Prosecutor discussed these meetings in the context of the allegations relevant to the control over the media. The Prosecutor does not indicate what inference she requires the Chamber to draw from the alleged occurrence and/or content of these meetings at the Presidential Palace. No meaningful inferences can be drawn simply from the fact that these meetings occurred. To the extent that the Prosecutor attempts to link them to the allegations concerning the control over the media, these have been discussed in that subsection.

⁷⁷¹ P-0009, T-193 dated 25 September 2017, p. 26.

⁷⁷² P-0009, T-197 dated 2 October 2017, p. 27; *see also* pp. 28-31.

⁷⁷³ *See* Mid-Trial Brief, para. 337; Response para. 1564.

⁷⁷⁴ Mid-Trial Brief, para. 337.

I) Meetings on 16-19 December 2010

337. The Prosecutor alleged that Mr Blé Goudé visited the Presidential Residence on 16 December 2010 late night ‘after the FDS and youth coordinated an attack on pro-Ouattara civilians’.⁷⁷⁵ She further requests that Mr Blé Goudé’s visits to the Presidential Residence between 16 and 19 December 2010 be assessed together with his addresses to the *jeunes patriotes* between 14 and 19 December 2010.⁷⁷⁶
338. The Residential Logbook records Mr Blé Goudé having visited the Presidential Residence on 16 December 2010 between 20h24 to 01h04 the next day.⁷⁷⁷ As per the Residence Logbook, this is Mr Blé Goudé’s first visit to the Presidential Residence after 6 December 2010.⁷⁷⁸ Having regard to the Residential Logbook, Mr Blé Goudé is not recorded having visited the Presidential Residence prior to the purported meeting with the youth leaders dated 14 December nor prior to the prohibition of the RTI March. As per the Residential Logbook, it appears that Mr Blé Goudé visits on the night of 16 December 2010 after events of the day had unfolded. The conclusions in respect of Mr Blé Goudé’s address dated 10 December 2010⁷⁷⁹ and his purported meeting with the youth leaders dated 14 December 2010⁷⁸⁰ are imported by reference.
339. Considering this evidence together, it cannot be concluded that Mr Blé Goudé’s visit to the Presidential Residence dated 16 December is linked to his meeting with the youth leaders dated 14 December 2010 or his address dated 10 December 2010. While his visit dated 16 December 2010 is sufficiently close in

⁷⁷⁵ Response, para. 1726.

⁷⁷⁶ Response, para. 1726.

⁷⁷⁷ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1011-1014 (16 December 2010).

⁷⁷⁸ See Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 0983-1010 (6-15 December 2010). See CIV-OTP-0088-0863 at 0983-0984 for visit dated 6 December 2010.

⁷⁷⁹ See IV.F.2.e) - 10 December – 2010 RTI broadcast – ‘100 % général et 100 %’.

⁷⁸⁰ See V.B.3.a) - Mr Blé Goudé’s mobilisation of *jeunes patriotes* to protect the RTI.

time to infer that during this visit, both the accused may have met to discuss the events of the day i.e. the RTI march. However, without them having met prior to 16 December 2010, it cannot be inferred that they would have met to discuss the alleged coordinated ‘attack’ by the FDS and the youth on pro-Ouattara civilians in the context of the RTI march.

340. As per the Residential Logbook, Mr Blé Goudé also visited the Presidential Residence again on 17⁷⁸¹ and 19 December 2010 until late at night.⁷⁸² The Prosecutor points to several documents asserting that, between 14 and 19 December 2010, Mr Blé Goudé addressed the *jeunes patriotes* ‘on several occasions and called on them to mobilise’.⁷⁸³ The Prosecutor also pointed to Mr Blé Goudé’s statements given on 21 Decmber 2011 during his rally in Koumassi.⁷⁸⁴

341. Assuming that the visits dated 17 and 19 December were in fact meetings that Mr Blé Goudé had with Mr Gbagbo, having regard to the conclusions reached in respect of Mr Blé Goudé’s addresses during this time⁷⁸⁵ as well as the alleged crimes following the RTI march,⁷⁸⁶ it can be inferred that they may have discussed the events of the RTI march. However, without more, it cannot be

⁷⁸¹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1015-1018 (17 December 2010).

⁷⁸² Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1021-1024 (19 December 2010).

⁷⁸³ Response, para. 1726.

⁷⁸⁴ Response, para. 1726.

⁷⁸⁵ See IV.F.2.i) - 18 December 2010 – Rally in Yopougon; IV.F.2.k) - 19 December 2010 – Rally in Port-; IV.F.2.l) - 19 December 2010 – Interview with Mr Blé Goudé on RTI; IV.F.2.m) - 21 December 2010 – Rally in Koumassi.

⁷⁸⁶ See 1602 - For 16 of the persons injured on the day of the march, the Prosecutor relies solely on the list of victims provided by P-0184 that does not indicate the perpetrators of the crimes with respect to these victims. The types of injuries listed include those from firearms, bullet wounds, and grenades; an additional individual was paralysed. However, there is no indication of the circumstances in which these injuries may have been sustained and attributed to the FDS and/or ‘pro-Gbagbo’ youth, militia, or mercenaries.

Events following the march.

inferred that the two would have met to discuss a coordinated ‘attack’ by the FDS and the youth in the context of the RTI march or otherwise.

342. It is reiterated that Mr Blé Goudé’s visit to the Presidential Residence dated 16 December 2010 is not prior to the alleged crimes that took place in the context of the RTI march. It does not fit within the Prosecutor’s allegation that ‘Mr Blé Goudé makes a call to mobilise pro-Gbagbo youth, then has a late-night meeting with Mr Gbagbo, after which the youth attacked perceived Ouattara supporters in the charged incidents’.⁷⁸⁷

m) Meetings on 24-26 December 2010

343. General Mangou also testified that on 24, 25 and 26 December 2010, he gave Mr Gbagbo a situation report on the situation in Abobo at the Presidential Palace.⁷⁸⁸

n) Meeting on 12 January 2011

344. In the Response, the Prosecutor alleged that a meeting took place between Mr Blé Goudé and Mr Gbagbo together with Generals Mangou, Kassaraté, and Bi Poin, Inspector-General Bredou M’Bia, the Prime Minister, and Alain Dogou.⁷⁸⁹ The Residential Logbook shows that the visitors indicated by the Prosecutor did visit the Presidential Residence that day. However, the timings of the visits indicate that these individuals may not have been in the same meeting. Further, it is noted that the Residential Logbook shows that Minister Alain Dogou requested to meet Simone Gbagbo and not Mr Gbagbo and left approximately around the time the FDS officials began arriving at the

⁷⁸⁷ See Response, para.1728.

⁷⁸⁸ P-0009, T-193 dated 25 September 2017, p. 26.

⁷⁸⁹ Response, para. 1788.

Presidential Residence.⁷⁹⁰ The FDS generals arrived around the same time and left at the same time.⁷⁹¹ Mr Blé Goudé is shown arriving more than half an hour after the FDS generals arrive and they all (including Mr Blé Goudé) left at the same time as them.⁷⁹²

345. The Prosecutor points to the RTI broadcast dated 13 January 2011 that contains a journalist report about the aforementioned meeting between FDS generals. It reports that the FDS generals have taken measures to secure the territory and to prevent attempts to make the situation in certain communes in Abidjan uncontrollable.⁷⁹³ In this broadcast, General Mangou is shown expressing his discontent with the UNOCI and accusing them of not being partial.⁷⁹⁴ While the journalist's report also mentions that Prime Minister Aké NGO was also present during this meeting,⁷⁹⁵ the Residential Logbook shows the minister having left in the afternoon before any of the other ministers or the FDS generals are reported arriving.⁷⁹⁶
346. Having regard to the context in which the aforementioned meeting took place,⁷⁹⁷ it can be inferred that Mr Gbagbo met the FDS generals to discuss the security situation, including that in Abobo. This meeting may have been attended by

⁷⁹⁰ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1087-1088 (12 January 2010).

⁷⁹¹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1089-1090 (12 January 2010).

⁷⁹² Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1089-1090 (12 January 2010).

⁷⁹³ RTI Broadcast dated 13 January 2011, CIV-OTP-0064-0110, transcript at CIV-OTP-0086-1013 at 1014.

⁷⁹⁴ RTI Broadcast dated 13 January 2011, CIV-OTP-0064-0110, transcript at CIV-OTP-0086-1013 at 1014-1015.

⁷⁹⁵ RTI Broadcast dated 13 January 2011, CIV-OTP-0064-0110, transcript at CIV-OTP-0086-1013 at 1014.

⁷⁹⁶ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1211-1212 (24 February 2011).

⁷⁹⁷ See V.C.1 - Overview of the Prosecutor's case in relation to FDS operations in Abobo before March 2011; V.C.3 - The Police operation of 11 January 2011; V.C.4 - Escalation of military activities in Abobo after 11-12 January 2011.

Mr Blé Goudé. However, absent any further information, no further inference as to Mr Blé Goudé's involvement can be drawn.

o) Meetings on 23-24 February 2011

347. The Prosecutor alleges that Mr Blé Goudé visited the Presidential Residence on 23 and 24 February 2011 prior to his *mot d'ordre* dated 25 February 2011.⁷⁹⁸ She further alleges that the visit dated 24 February 2011 'overlapped with a visit from Boniface Konan and CEMA' and that it was on the same night that Mr Gbagbo had ordered the FDS generals 'to liberate parts of Abobo and not to cede Abobo'.⁷⁹⁹
348. The Residential Logbook shows that Mr Blé Goudé visited the Presidential Residence on 23⁸⁰⁰ and 24 February 2011.⁸⁰¹ The Residential Logbook also shows General Mangou and Colonel Konan Boniface visiting the Presidential Residence on 24 February 2011⁸⁰² and not on 23 February 2011. Mr Blé Goudé is shown leaving on 24 February 2011 approximately 20-25 minutes after General Mangou and Colonel Konan Boniface arrive.⁸⁰³ Due to the limited time that the FDS generals are shown to have been present at the Presidential Residence at the same time as Mr Blé Goudé, it appears that Mr Blé Goudé's visit may have had little to do with the visit of these two FDS officials.

⁷⁹⁸ Response, para. 1727.

⁷⁹⁹ Response, para. 1727.

⁸⁰⁰ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1207-1210 (23 February 2011).

⁸⁰¹ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1211-1212 (24 February 2011).

⁸⁰² Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1211-1212 (24 February 2011).

⁸⁰³ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1211-1212 (24 February 2011).

349. In assessing whether Mr Blé Goudé's visit may have been linked to that of the FDS generals, the conclusions reached in respect of FDS activities in Abobo in February 2011⁸⁰⁴ are also imported by reference. To the limited extent that Mr Blé Goudé may have interacted with the FDS generals and Mr Gbagbo, it can be concluded that they may have touched upon the security situation in Abobo. However, without more, it cannot be inferred that they would have met to discuss the commission of crimes against civilians.
350. It also noted that this set of purported visits by Mr Blé Goudé take place prior to his speech on 25 February 2011. In assessing whether these visits may be linked to Yopougon I, the conclusions in respect of Mr Blé Goudé's speech given on 24 and 25 February 2011 are imported by reference.⁸⁰⁵ Assessing them together, it is not implausible that Mr Gbagbo and Mr Ble Goude may have met to discuss security situation in various neighbourhoods in Abidjan, including in Yopougon. However, it is not known whether they discussed Mr Ble Goude's speech and/or *mot d'ordre* to be given the following day, much less the planning of the commission of crimes against civilians.

p) Meeting on 3 March 2011

351. The minutes of a Cabinet meeting dated 3 March 2011 read that Mr Gbagbo recommended that a spokesperson convey Mr Gbagbo's compassion to all those who had been displaced or lost a loved one, especially the families of the FDS members; to deplore the inconvenience caused by the imposition of sanctions; to

⁸⁰⁴ See V.C.5 - FDS Activities in Abobo from Mid-January to 22 February 2011;

V.C.6 - FDS activities in Abobo in late February;

See also Section V.C.7 - The deliberate failure of Mr Gbagbo to declare Abobo a war zone.

⁸⁰⁵ See Section IV.F.2.jj) - 24 February 2011 - Government statement about Council of Ministers

IV.F.2.kk) - 24 February 2011 – Statement by Mr Blé Goudé on RTI;

Section IV.F.2.ll) - 25 February 2011 - Mr Blé Goudé's *mot d'ordre* at Bar le Baron in Yopougon;

VI.M.4.a) - Mr Blé Goudé's *mot d'ordre* at the *Le Baron Bar* and the erection of roadblocks.

congratulate the population for their patience, serenity, and endurance; and to affirm that Mr Gbagbo undertook to remain standing in the exercise of his duties and to continue to defend the sovereignty of the state.⁸⁰⁶

q) Meeting on 11 March 2011

352. The Prosecutor alleged that on 11 March 2011 General Mangou advised Mr Gbagbo to step down.⁸⁰⁷ General Mangou testified that he met with Mr Gbagbo on the afternoon of 11 March 2011 at the Small Palace of the Presidential Residence.⁸⁰⁸ During this meeting, Mr Gbagbo asked the witness for his opinion on whether he should resign. The witness agreed that this would be best. He was then asked by Mr Gbagbo to discuss the issue with Mr Blé Goudé and to come up with a joint view on the matter. General Mangou testified that he and Mr Blé Goudé met and agreed that Mr Gbagbo should step down. General Mangou informed Mr Gbagbo of this on the evening of 11 March 2011.⁸⁰⁹
353. General Mangou added that on 14 March 2011, his residence was attacked.⁸¹⁰ According to General Mangou, at 6h30, his wife told him that they were under attack; he called his bodyguards who confirmed that they were being attacked.⁸¹¹ General Mangou testified that those attacking were wearing red bands; they were in a taxi and firing with Kalashnikovs and RPGs.⁸¹² General Mangou was not able to name the individuals who attacked his residence, but he testified that he knew that they came from his own side, from Mr Gbagbo's side.⁸¹³ CECOS learned of

⁸⁰⁶ Minutes du Conseil des Ministres, 3 March 2011, CIV-OTP-0025-0100 at 0105.

⁸⁰⁷ Mid-Trial Brief, para. 480. Response, para. 1604.

⁸⁰⁸ P-0009, T-193 dated 25 September 2017, p. 26.

⁸⁰⁹ P-0009, T-194 dated 26 September 2017, pp. 4-7.

⁸¹⁰ P-0009, T-194 dated 26 September 2017, p. 7.

⁸¹¹ P-0009, T-194 dated 26 September 2017, p. 7.

⁸¹² P-0009, T-194 dated 26 September 2017, p. 7.

⁸¹³ P-0009, T-199 dated 4 October 2017, p. 59.

the attack and sent over a vehicle; one CECOS soldier was killed.⁸¹⁴ General Mangou testified that the shooting stopped at 12h30, and Konan Boniface the Com-Theatre, who had heard what had happened, came to see and support him.⁸¹⁵ As per his testimony, General Mangou went to see Mr Gbagbo that evening and told him that his residence had been attacked; General Mangou testified that Mr Gbagbo did not offer a single word of compassion and said 'I do have an idea about what's happened here', but General Mangou did not have the courage to ask Mr Gbagbo what he thought was going on.⁸¹⁶

354. The Prosecutor has used the attack on General Mangou's house as evidence that this was an attack on his life for 'merely asking Mr Gbagbo to step down'.⁸¹⁷ In this regard it is noted that General Mangou testified that Admiral Vagba came to see him the day following the attack and General Mangou told Vagba that he had encouraged Mr Gbagbo to resign; Vagba laughed and said '[y]ou think he's going to resign? It's to check whether you are frank and loyal'; General Mangou then realised that it had been a test.⁸¹⁸ General Mangou testified that Mr Gbagbo and Mr Blé Goudé wanted to find out whether he was honest and loyal, and when Mr Blé Goudé came to visit him 'it was, in a way, to give me the kiss of death, make sure that I [had] advised the president to resign'.⁸¹⁹ General Mangou testified that after the attack he did not receive any further threats.⁸²⁰

355. It is worth noting, that in his testimony about his exchange with Mr Gbagbo on 11 March 2011, General Mangou recounted a previous conversation he had had with Minister Dogou, Minister of Defence in February 2011; according to

⁸¹⁴ P-0009, T-194 dated 26 September 2017, p. 8.

⁸¹⁵ P-0009, T-194 dated 26 September 2017, p. 8.

⁸¹⁶ P-0009, T-194 dated 26 September 2017, p. 8.

⁸¹⁷ Response, para. 1604.

⁸¹⁸ P-0009, T-194 dated 26 September 2017, p. 9.

⁸¹⁹ P-0009, T-194 dated 26 September 2017, p. 10.

⁸²⁰ P-0009, T-200 dated 5 October 2017, pp. 38-39.

General Mangou, the Minister appeared to be 'in a very bad way because of the lack of ammunition, the lack of weapons' in response to which General Mangou had advised the minister to 'ask President Gbagbo to resign'.⁸²¹

356. From General Mangou's testimony and other available information, it can be inferred that, at least as of 11 March 2011, General Mangou did not share intent underlying the alleged Common Plan for Mr Gbagbo to stay in power at all costs.⁸²² Having also considered the evidence in its totality, it is noted that the inference that General Mangou faced retaliation for asking Mr Gbagbo to resign cannot be linked to either the accused or other members of the 'inner circle' with sufficient certainty. General Mangou's testimony in this regard is speculative. Under these circumstances, and considering the fact that General Mangou maintained his position as Chief of Staff of the FDS for more than a month after the alleged attempt at his life (when he defected), it is difficult to draw any firm conclusions concerning the existence of the alleged Common Plan from this incident.

r) Meeting on 14 March 2011

357. The Prosecutor alleged that Mr Gbagbo met with the FDS generals on 14 March 2011 to discuss the 'security problems in Abobo' and that this meeting was reported in an RTI broadcast later that day.⁸²³ The RTI broadcast indicates that there may have been a second meeting between Mr Gbagbo and the FDS generals that day.⁸²⁴ The Prosecutor also pointed to the journalist's statement in the RTI broadcast that the Generals reaffirmed their allegiance to Mr Gbagbo during this

⁸²¹ P-0009, T-194 dated 26 September 2017, p. 9.

⁸²² *See also* IV.D.1.d) - Defections; *see further* the discussion of this meeting in IV.D.2.a) - Relationship between Mr Gbagbo and Mr Blé Goudé.

⁸²³ Mid-Trial Brief, paras 221, 482, 895. Response, para. 1121.

⁸²⁴ RTI Broadcast dated 14 March 2011, CIV-OTP-0069-0371, transcript at CIV-OTP-0094-0270 at 0271.

meeting to quash any rumours of defections.⁸²⁵ The Residence Logbook records several FDS officials and ministers being present at the Presidential Residence on that day;⁸²⁶ however, based on the times of their arrival and departure from the Presidential Residence, it is not possible to make inferences about who may have attended the respective meetings with Mr Gbagbo.

358. Inspector-General Bredou M'Bia was asked about a meeting in January 2011, in response to which he testified about a meeting that is alleged to have taken place on 14 March 2011.⁸²⁷ Although Inspector-General Bredou M'Bia did not remember the date of the meeting, he recalled that in this meeting, 'the wish was expressed that [Mr Gbagbo] no longer continue to stay as head of state in order to avoid difficulties'.⁸²⁸ Inspector-General Bredou M'Bia testified that all senior FDS officers met Mr Gbagbo together with 'Mr Blé Goudé at the time, the minister of foreign affairs, the minister of the interior, the minister of defence and the major commanders'.⁸²⁹ He added that they made a 'proposal' to Mr Gbagbo 'if possible, to withdraw'.⁸³⁰
359. Inspector-General Bredou M'Bia testified that the 'all the major figures of [the FDS] command' had met at the general staff headquarters before they went to the Presidential Residence for this meeting; in this meeting a 'unanimous decision was reached' in respect of requesting Mr Gbagbo to step down.⁸³¹ Inspector-

⁸²⁵ Mid-Trial Brief, para. 482.

⁸²⁶ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1257-1260, entries 33 to 56. The logbook recorded the FDS generals as arriving around the same time and leaving at the same time. Mr Blé Goudé is recorded as being present between 19:05 and 20:42. There are a few discrepancies in the entries for this day that have been discussed in detail above. The ministers are reported as arriving and leaving at very different times. *See* IV.C.1 - Visits to the Presidential Residence and Palace for a discussion on discrepancies in the recording of the visits as exemplified, inter alia, by the visits on 14 March 2011 addressed in para 312.

⁸²⁷ It is noted that Inspector-General Bredou M'Bia was read back his statement that dates this meeting in March. *See* P-0046, T-128 dated 22 February 2017, p. 12.

⁸²⁸ P-0046, T-126 dated 20 February 2017, pp. 4-8.

⁸²⁹ P-0046, T-126 dated 20 February 2017, p. 4.

⁸³⁰ P-0046, T-126 dated 20 February 2017, p. 4.

⁸³¹ P-0046, T-126 dated 20 February 2017, pp. 5-6.

General Bredou M'Bia testified that this meeting was talked about in the media.⁸³² It is noted that the RTI broadcast dated 14 March 2011 shows the reporters stating that there had been a meeting between Mr Gbagbo and FDS generals in which they reaffirmed their loyalty to him.⁸³³

360. As noted, Inspector-General Bredou M'Bia could not recall whether this meeting took place in January or towards the end of the crisis.⁸³⁴ However, he is recorded as having been at the Presidential Residence on 14 March 2011 and recalled Ministers Dogou, Blé Goudé, Djédjé and Guiriéoulou also having been present as well.⁸³⁵ However, the Residence Logbook suggests that Minister Dogou was not at the Presidential Residence at the same time.⁸³⁶ It is noted that General Bi Poin testified that he was present at this meeting and that they discussed security problems in Abobo.⁸³⁷ This was confirmed by General Kassaraté, who, when asked what decision was taken at the meeting, testified that it was to guarantee the security of the people and property during that difficult period.⁸³⁸ General Detoh Letho testified about having 'many meetings' during that time.⁸³⁹ In respect of the meeting dated 14 March 2011, he testified that

After that meeting, as we had had that discussion, we began to lack resources quite substantially, and that's why we went to see, and the chief of general staff took stock of the situation and as regards the resources and equipment available. The vehicles had become quite old. Troop numbers had declined because, as I told you yesterday, we were beginning to see a quite a lot of defections. So on that day the president of the republic said that those various matters would be studied with the chief of general staff and that we would receive resources. But, in fact, we did not receive the resources until 11 April.⁸⁴⁰

⁸³² P-0046, T-126 dated 20 February 2017, p. 12.

⁸³³ RTI Broadcast dated 14 March 2011, CIV-OTP-0069-0371, transcript at CIV-OTP-0094-0270 at 0271.

⁸³⁴ P-0046, T-126 dated 20 February 2017, pp. 4-8; *see also* T-128 dated 22 February 2017, pp. 38-39.

⁸³⁵ P-0046, T-126 dated 20 February 2017, pp. 4-8.

⁸³⁶ *See* Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1257-1260.

⁸³⁷ P-0010, T-139 dated 29 March 2017, pp. 100-101.

⁸³⁸ P-0011, T-134 dated 13 March 2017, pp. 80-81.

⁸³⁹ P-0047, T-204 dated 8 November 2017, p. 26.

⁸⁴⁰ P-0047, T-204 dated 8 November 2017, p. 26.

361. In conclusion, during the meetings on 14 March 2011 with Mr Gbagbo, the FDS generals may have discussed their advice to Mr Gbagbo to resign as well as the security problems in Abobo.

s) Encounter on 2 April 2011

362. The Prosecutor alleged that on 2 April 2011, P-0435 met Mr Gbagbo with other GPP commanders and Mr Gbagbo told them that ‘they had already won the war because his fight was to show that France was supporting the rebellion’.⁸⁴¹ P-0435 testified that he went to the Presidential Residence on 2 April 2011 when the CRS elements ‘were due to go there’.⁸⁴² P-0435 noted that the members of the Republican Guard, who controlled access in the Presidential Residence, congratulated P-0435 stating that ‘they had heard a lot about the behaviour and reactions of the elements at CRS level’, particularly in relation to containing ‘combatants that tried to traverse Adjamé commune and reach Cocody’.⁸⁴³ When P-0435 arrived inside, ‘there was [*sic*] quite a lot of people’ there, including the GPP commander, Liberian mercenaries, and students from FESCI.⁸⁴⁴ Michel Gbagbo, Mr Gbagbo’s son, came to welcome P-0435 and his group.⁸⁴⁵ Soon after, Mr Gbagbo arrived and P-0435 testified that Mr Gbagbo said

that he was really very proud of the young Ivorians and said that we had already won the war because his fight was to show that France, which for a very long time had been supporting the rebels, and thanks to the opposition, we had mounted against the Forces Nouvelles and this lifted the veil off France. And it was his fight to show that since the destabilisation of 2002 all of this had been orchestrated by France.⁸⁴⁶

⁸⁴¹ Mid-Trial Brief, para. 60. In the Response, the Prosecutor also referenced this testimony to allege that Mr Gbagbo had stated that ‘the resistance that the GPP had led alongside the FDS forced France to reveal its plans’. Response, para. 1606.

⁸⁴² P-0435, T-90 dated 21 October 2016, p. 15.

⁸⁴³ P-0435, T-90 dated 21 October 2016, p. 15.

⁸⁴⁴ P-0435, T-90 dated 21 October 2016, p. 16.

⁸⁴⁵ P-0435, T-90 dated 21 October 2016, p. 16.

⁸⁴⁶ P-0435, T-90 dated 21 October 2016, pp. 16-17.

363. It is noted that P-0435 did not know, at the time, that he and his group would meet Mr Gbagbo.⁸⁴⁷ P-0435 also testified that Mr Gbagbo just congratulated them briefly and that he did not give them any specific instructions.⁸⁴⁸ P-0435 testified further that according to what Mr Gbagbo said the war had already been won since Mr Gbagbo's 'struggle was to show that France was really the sponsor of the rebels' and this is why 'we had put up resistance alongside the FDS and thus France had to reveal its plans'.⁸⁴⁹ It is noted that Mr Gbagbo was addressing a large and variegated group of persons, including GPP elements, Liberians and FESCI students. It is also significant to note that, according to P-0435, Mr Gbagbo 'spoke and encouraged us as young Ivorians who really had decided to defend the institutions of their country'.⁸⁵⁰ Given the context of this encounter, it is difficult to infer much from it in relation to alleged role of the GPP in the execution of the Common Plan. It is worth noting, in this regard, that P-0435 testified that elements of the GPP had been taking part in a security cordon that was placed around the perimeter of the Presidential Residence since February 2011.⁸⁵¹

t) Meeting on 3 April 2011

364. The Prosecutor alleged that a meeting took place on 3 April 2011 between Mr Gbagbo and Generals Mangou, Dogbo Blé and Konan Boniface, in which Mr Gbagbo is alleged to have requested the generals to resume fighting.⁸⁵² The Residence Logbook shows Generals Mangou, Kassaraté, Dogbo Blé, Vagba, and Konan Boniface having been at the Presidential Residence to visit Mr Gbagbo on

⁸⁴⁷ P-0435, T-90 dated 21 October 2016, p. 17.

⁸⁴⁸ P-0435, T-90 dated 21 October 2016, p. 19.

⁸⁴⁹ P-0435, T-90 dated 21 October 2016, p. 20.

⁸⁵⁰ P-0435, T-90 dated 21 October 2016, p. 17.

⁸⁵¹ P-0435, T-90 dated 21 October 2016, pp. 12-14.

⁸⁵² Mid-Trial Brief, paras 223, 605, 723, 756.

the evening of 3 April 2011.⁸⁵³ General Kassaraté did not recall a visit on 3 April; however, he did recall his last visit to the Residence before Gbagbo's arrest, sometime in April, but probably after the alleged meeting. General Kassaraté confirmed seeing soldiers there but could not tell if there were also militia members or mercenaries as everyone was in 'fatigues'.⁸⁵⁴ General Kassaraté had noticed that many generals were no longer at their posts and had decided to see Mr Gbagbo to suggest that he hand over power.⁸⁵⁵ General Mangou testified attempting to convince Mr Gbagbo to resign and failing.⁸⁵⁶ He additionally testified that Mr Gbagbo stated in the meeting that instead they needed to resume fighting; General Mangou made a statement to the press recounting this but subsequently requested that it not be released to the RTI.⁸⁵⁷ Nevertheless, there was a video report of this meeting that was broadcast on the RTI.⁸⁵⁸

3. *Regular meetings*

365. In addition to specific meetings discussed above, the Prosecutor referenced several other meetings in support of the allegation that Mr Gbagbo held regular meetings with top FDS commanders.⁸⁵⁹ This is also used as evidence of control over the FDS throughout the post-electoral crisis⁸⁶⁰ as well as showing loyalty of members of his government and FDS leadership.⁸⁶¹ It is noted that in respect of

⁸⁵³ Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1303-1306, entries 16 to 18.

⁸⁵⁴ P-0011, T-134 dated 13 March 2017, p. 84.

⁸⁵⁵ P-0011, T-134 dated 13 March 2017, pp. 83-86.

⁸⁵⁶ P-0009, T-194 dated 26 September 2017, pp. 17-19.

⁸⁵⁷ P-0009, T-194 dated 26 September 2017, p. 19.

⁸⁵⁸ Le Président Laurent Gbagbo reçoit les généraux qui lui sont restés fidèles dont le Général Phillipe Mangou, 4 April, 2011, CIV-OTP-0047-0817 – open source download of the RTI broadcast dated 4 April 2011. This shows a number of generals present: P-0009, P-0011, Dogbo Blé, Vagba, Konan, Gouanou. See P-0009, T-194 dated 26 September 2017, p. 21.

⁸⁵⁹ Mid-Trial Brief, para. 201.

⁸⁶⁰ Mid-Trial Brief, paras 201, 701, 726.

⁸⁶¹ Mid-Trial Brief, para. 749.

these meetings, the Prosecutor did not advance allegations about what was discussed therein, only that these meetings were frequent and demonstrated loyalty to Mr Gbagbo.

366. Having regard to the abovementioned general concerns as to the evidentiary weight of the Residence Logbook it is worth looking at the testimonies of the alleged ‘inner circle’ members on their visits to the Presidential Palace and Residence.
367. General Kassaraté testified generally about visits he paid to the Presidential Residence after having been summoned by Mr Gbagbo as well as by other officials, including the head of his cabinet, Mr Kuyo Téa Narcisse.⁸⁶² He stated that one could also go to the residence to ‘consult the doctor for health issues’ or to ‘greet friends’ working there.⁸⁶³ He stated that ‘[i]n all [the] guard posts, there [was] always a logbook’.⁸⁶⁴ General Kassaraté testified that the Chief of Staff led all the meetings that he had attended at the residence, including when all generals would report to Mr Gbagbo on the matters of the security situation.⁸⁶⁵ He confirms ‘daily contact meetings’ taking place with Mr Gbagbo.⁸⁶⁶
368. General Mangou testified that when he would go to the Presidential Residence, it was to meet Mr Gbagbo, including the times he went there ‘to report on the situation that was prevailing at the time’.⁸⁶⁷ It is noted that he recalled, however,

⁸⁶² P-0011, T-132 dated 10 March 2017, p. 18.

⁸⁶³ P-0011, T-132 dated 10 March 2017, p. 18. *See also* P-0011, T-135 dated 14 March 2017, p. 90.

⁸⁶⁴ P-0011, T-132 dated 10 March 2017, p. 22.

⁸⁶⁵ P-0011, T-132 dated 10 March 2017, pp. 21-24. General Detoh Letho also testified that all meetings at the Residence were essentially reports by Chief of Staff. *See* P-0047, T-203 dated 7 November 2017, pp. 50-51; *see also* P-0047, T-205 dated 9 November 2017, pp. 21-24.

⁸⁶⁶ P-0011, T-138 dated 28 March 2017, pp. 14-15.

⁸⁶⁷ P-0009, T-193 dated 25 September 2017, p. 29; P-0009, T-196 dated 28 September 2017, p. 9. *See also* P-0047, T-203 dated 7 November 2017, p. 53 who stated that they went to the residence to report on the situation prevailing in the field at any particular time.

that it was not necessary that an entry in the logbook corresponded with attendance at a meeting.⁸⁶⁸

369. General Bi Poin, on the other hand, indicated he made many visits to the Residence but he could not always recall the date or topic.⁸⁶⁹
370. Inspector-General Bredou M'Bia testified that the meetings depended on what the President wanted to tell them or if they were convened for a particular event; he agreed that, for him, a visit to the President was exceptional as he did not go there often.⁸⁷⁰
371. General Detoh Letho testified that Mr Gbagbo and top FDS commanders, including himself, had meetings at the Residence on 1, 2 and 4 or 5 December, at which the Chief of Staff [General Mangou] reported on the situation on the ground; each time there was an event, the Chief of Staff went to report to the President and the commanders were invited to these meetings; according to General Detoh Letho, all meetings at the Presidential Residence were essentially reports by the Chief of Staff.⁸⁷¹
372. In short, although the evidence on record does not provide an exhaustive and reliable overview of all the meetings that took place between Mr Gbagbo and senior FDS officers, there is no reason to doubt that such meetings did take place frequently.
373. Recalling that visits recorded in the Residential Logbook do not necessarily mean that meetings took place and having regard to the conclusions in respect of

⁸⁶⁸ P-0009, T-193 dated 25 September 2017, p. 31.

⁸⁶⁹ P-0010, T-138 dated 28 March 2017, pp. 82-83. General Guiai Bi Poin recalled a meeting with Gbagbo in early December at the residence and one in February and one probably in March at the palace, he recalls those three meetings with certainty, and no longer remembers the others. *See* P-0010, T-138 dated 28 March 2017, pp. 36-37.

⁸⁷⁰ P-0046, T-125 dated 17 February 2017, pp. 40-44 (confidential).

⁸⁷¹ P-0047, T-203 dated 7 November 2017, pp. 50-51.

the meetings of the council of ministers, it cannot be concluded Mr Gbagbo was meeting ministers alleged to be part of the ‘inner circle’. In this regard, it is noted that the alleged number of visits by Mr Gbagbo’s ministers alleged to be members of the ‘inner circle’ is higher than that alleged for the visits by senior FDS officials. However, while the Residence Logbook shows that ministers visited the Presidential Residence during the post-electoral crisis, the evidence demonstrating that these visits resulted in actual meetings is sparse. Further, there is little to no direct evidence concerning the purported content of these meetings, if they indeed took place. Furthermore, from the mere fact of their visits to the Presidential Residence, no general conclusions can be drawn as to their respective proximity with Mr Gbagbo or Simone Gabgbo.

374. Lastly, the Prosecutor alleged that Mr Blé Goudé had access to the Presidential Residence and met Mr Gbagbo frequently during the post-electoral crisis.⁸⁷² The Prosecutor further alleges that Mr Blé Goudé visited Mr Gbagbo ‘on at least 22 occasions’ during the post-electoral crisis and this was an indicator of their proximity.⁸⁷³ The Prosecutor also alleges that the visits peaked at certain times during the post-electoral crisis.⁸⁷⁴ A significant number of these meetings are based solely on the visits recorded in the Residence Logbook; for reasons outlined in detail above, their occurrence is a matter of inference to be drawn from the visits contained therein.⁸⁷⁵ On the basis of these meetings, it can be concluded that Mr Blé Goudé had access to Mr Gbagbo and could meet him in the Presidential Residence. However, having assessed the number of the meetings alleged to have taken place between Mr Gbagbo and Mr Blé Goudé during the post-electoral crisis and comparing them to other members of the

⁸⁷² Mid-Trial Brief, paras 237, 828.

⁸⁷³ Mid-Trial Brief, para. 84.

⁸⁷⁴ Mid-Trial Brief, para. 84.

⁸⁷⁵ See IV.C.1 - Visits to the Presidential Residence and Palace.

alleged 'inner circle', it is not possible to conclude that the number of such visits is so high that it demonstrates proximity between them.

4. *Conclusion*

375. The totality of evidence concerning meetings between the members of the alleged 'inner circle' and the accused discussed hereinabove shows that there were relatively frequent contacts between different members of Mr Gbagbo's government as well as senior FDS officers. This does indeed show that there was frequent communication and a certain level of coordination. However, there is nothing unexpected about this. No government can function without a minimum level of communication and coordination. Indeed, given the state of crisis Côte d'Ivoire was in at the time, it would have been surprising if Mr Gbagbo had not frequently met with the most senior officers in charge of trying to control the situation.
376. The real question is whether the evidence is capable of proving that the individuals involved were coordinating the use of violence against the civilian population. Considering that these meetings were taking place in the context of a crisis in the country, which could at any moment escalate into a full-blown armed conflict – as eventually came to pass –, there were many legitimate reasons why the individuals may have needed to meet and discuss. From the little that is known about what was actually discussed, it cannot be concluded that attacking civilians was ever a topic of discussion. In light of this, the fact that they may have been meeting relatively frequently does not have a bearing on this conclusion.
377. It is worth noting, in this regard, that the fact the senior FDS officers pledged allegiance to Mr Gbagbo is not sufficient to prove that there was agreement about how the situation should be handled. On the contrary, from the entirety of the available evidence it becomes quite clear that there were many different views and that some senior officers believed that it would be better for Mr Gbagbo to step aside. Most notably, it appears that the Minister of Defence

was of the view that Mr Gbagbo should give up power already in February 2011, that General Mangou actually advised him to do so on 11 March 2011 and that three days later all senior FDS officers agreed that this was the preferred course of action.

378. In the Response, the Prosecutor reiterates the above-mentioned allegations concerning the meetings between the accused and requests inferences to be drawn from the frequency of the alleged meetings *and* ‘the sequence of events, as to the topic of discussion during these meetings’.⁸⁷⁶ The Prosecutor suggests that inferences as to the topic of discussion can be drawn from specific meetings alleged to have taken place on 16-19 December 2010,⁸⁷⁷ 12 January 2011⁸⁷⁸ and 23-24 February 2011.⁸⁷⁹ The Prosecutor requests an inference that these meetings demonstrate Mr Blé Goudé’s participation in meetings instrumental to the alleged Policy.⁸⁸⁰ The Prosecutor argued that even though the substance of meetings between Mr Gbagbo and Mr Blé Goudé is ‘not always a matter of record’, ‘a reasonable inference [may] be drawn from these late-night meetings before and after key incidents’ between them.⁸⁸¹ According to her, the reasonable inference is that both the accused ‘discussed and coordinated their shared aim to keep Mr Gbagbo in power – even if this encompassed violence against perceived Ouattara supporters’.⁸⁸² It is noted that meetings with Mr Gbagbo and the other members of the ‘inner circle’ are also pleaded as part of Mr Blé Goudé’s contribution to the alleged Common Plan.⁸⁸³

⁸⁷⁶ Response, paras 1788; *see also* paras 1726-1729.

⁸⁷⁷ Response, para. 1582 cross-referencing paras 1786-1791.

⁸⁷⁸ Response, paras 1788-1789.

⁸⁷⁹ Response, para. 1790. *See also* Mid-Trial Brief, paras 454, 550, 828.

⁸⁸⁰ Response, para. 1790.

⁸⁸¹ Response, para. 1728.

⁸⁸² Response, para. 1728.

⁸⁸³ Mid-Trial Brief, para. 904.

379. Having regard to the conclusions reached in respect of these meetings and the events that followed,⁸⁸⁴ it can be inferred that Mr Blé Goudé and Mr Gbagbo may have discussed the events taking place. There is no further information about what the two accused may have discussed between each other.

D. Alleged command and control over the so-called pro-Gbagbo forces

380. According to the Prosecutor, the two accused, together with others, ‘used’ different armed entities to commit crimes in pursuit of their Common Plan to maintain Mr Gbagbo in power by all means.⁸⁸⁵ The Prosecutor claims that, besides the regular armed forces of the state – the *Forces de Défense et de Sécurité* (FDS) – Mr Gbagbo, Mr Blé Goudé, and others, also used several irregular groups to perpetrate crimes. Although it is alleged that there was a certain form of collaboration, and sometimes even integration, between those different groups, there is no allegation that they were all controlled via a single chain of command. It is thus necessary, for each of the groups involved, to determine how the accused purportedly exercised control over them.

381. As the charges in this case are all related to events that took place in Abidjan between 16 December 2010 and 12 April 2011, the analysis below will focus on the command and control structures that were in place for that area and that period. However, it is crucial to bear in mind that Mr Gbagbo and his government were involved in a much broader and long-lasting conflict involving the entirety of Côte d’Ivoire. It is also important to be alive to the fact that

⁸⁸⁴ See IV.C.2.l) - Meetings on 16-19 December 2010; IV.C.2.n) - Meeting on 12 January 2011; and IV.C.2.o) - Meetings on 23-24 February 2011.

⁸⁸⁵ Mid-Trial Brief, para. 184.

command and control structures are not necessarily static and may evolve significantly over time. Finally, although formal structures are an important element in understanding how command and control was organised, what matters most is how individual commanders and alleged subordinates actually behaved.

1. Forces de Défense et de Sécurité (FDS)

a) Command and Control over FDS troops operating in Abidjan

382. There appears to be no dispute that the FDS were comprised of several branches, which all had designated roles. Apart from the classic armed forces, i.e. Army (ground forces), Air Force and Navy, there were also two law enforcement forces: the National Police and the militarised *Gendarmerie*. In addition, there was the Republican Guard (*Garde Républicaine*), whose primary responsibility was to protect the president and state institutions⁸⁸⁶ and the *Centre de Commandement des Opérations de Sécurité* (CECOS), a unit that was established in 2005 to fight heavy criminality in Abidjan.

383. Each of these branches had its own chain of command, headed by a senior officer at the level of general or equivalent. Politically, all of the forces fell under the responsibility of the Minister of Defence, except the police force, which administratively falls under the Minister of the Interior. At the time relevant to the charges, the Minister of Defence was Alain Dogou whereas the Minister of the Interior was Émile Guiriéoulou.⁸⁸⁷ All knowledgeable witnesses are unanimous that, throughout the period relevant to the charges, all the above-mentioned forces operated under the authority of the Chief of Staff (CEMA) General Philippe Mangou, who was supported by the *Centre de Planification et de Coordination des Opérations* (CPCO) under the leadership of Colonel René

⁸⁸⁶ P-0347, T-77 dated 22 September 2016, p. 9.

⁸⁸⁷ P-0009, T-193 dated 25 September 2017, p. 14

Kokou Sako.⁸⁸⁸ The CPCO centralised all operational information coming from units in the field and briefed the Chief of Staff and the FDS force commanders. It was also responsible for planning all operations, assigning the relevant units, and coordinating operations on the ground in the entire territory of Côte d'Ivoire.⁸⁸⁹

384. Throughout the period relevant to the charges, the Chief of Staff would meet on a daily basis with all other senior FDS force commanders or their representatives. They discussed the latest developments, based on information received from the field, after which the Chief of Staff would issue orders. The Chief of Staff's orders were then transmitted via Colonel Sako and the CPCO, whose task it was to assign the relevant units and issue the necessary operational orders to implement them.
385. Operationally, the part of Côte d'Ivoire that was controlled by the FDS was divided into two theatres of operations. Abidjan, which fell under General Detoh Letho, who was also the commander of the ground forces, and the rest of the country, which fell under Captain Konan Boniface.⁸⁹⁰ Abidjan was further divided into operational zones.
386. According to the Prosecutor '[a]head of the 2010 elections, Abidjan was divided into five and subsequently six operational zones, each with an FDS command post'.⁸⁹¹ However, the Prosecutor does not offer more precise information about when exactly these zones were established and who was in charge of them at all the relevant times.
387. In support of the general proposition that Abidjan was divided into several zones, the Prosecutor relied on the testimony of General Detoh Letho and a number of

⁸⁸⁸ P-0009, T-193 dated 25 September 2017, p. 12, 52.

⁸⁸⁹ P-0156, T-171 dated 4 July 2017, pp. 15-20.

⁸⁹⁰ P-0009, T-193 dated 25 September 2017, pp. 12-14, 19.

⁸⁹¹ Mid-Trial Brief, para. 206.

documents, the most important of which are addressed below. Exhibit CIV-OTP-0071-0676, is a message from COMTER to *Chef PC Période Electorale* dated 18 December 2010 which mentions “zones 1, 3 and 5”, suggesting that at that time at least 5 zones were already established. Unfortunately, the Prosecutor did not show this document to the putative author, General Detoh Letho, or ask him to clarify its content. The Prosecutor also did not point the Chamber to similar documents that could have helped to authenticate it. Given this lack of authentication, this document would normally not have been admitted. However, even admitted, its evidentiary weight is limited due to this absence of authentication. Exhibit CIV-OTP-0044-0026, a *Gendarmerie* document dated 18 February 2011 and signed by the chief of staff of P-0011, who authenticated it, mentions five zones.

388. Exhibit CIV-OTP-0048-1181 is a message of 4 March 2011 from the Chief of Staff informing the superior FDS commanders about the creation of a 6th *zone de sécurisation* in Abidjan as of 5 March 2011. This exhibit was provided by witness P-0381, archivist in the general staff of the army, who did not comment on the content of the document.⁸⁹² Unfortunately, the Prosecutor did not show this document to its author, General Mangou, who might have been able to provide more information. Nevertheless, it can be accepted that a sixth security zone was created in Abidjan in early March 2011 and it can be inferred from this that there must have been five such zones before that time. Other exhibits seem to confirm the proposition that there were six security zones in the second half of March 2011,⁸⁹³ whereas still others appear to cast doubt on it.⁸⁹⁴ In any event, it

⁸⁹² P-0381, T-207 dated 13 November 2017, pp. 47-48.

⁸⁹³ See, for example, MESSAGE / RENFORCEMENT DISPOSITIF DE SECURITE, 16 March 2011, CIV-OTP-0045-0112, a message allegedly signed by General Mangou but never shown to him makes reference to 6 zones. Similarly, MESSAGE PORTE / RENFORCEMENT DISPOSITIF DE SECURITE / No. 30512/CSG/BOE, 17 March 2011, CIV-OTP-0044-0032 (confidential), a *Gendarmerie* document mentions 6 zones as well. Later documents, such as Exhibit 5 / EFFECTIFS REALISES DANS LES PC Zone, 25 March 2011, CIV-OTP-0005-0073 and Exhibit 6/ Effectif PC Zone, 29 March 2011, CIV-OTP-0005-0074 (confidential) also mention 6 zones.

seems beyond dispute that during the time relevant to the charges, there was a *zone de sécurisation* for Yopougon and one for Abobo-Anyama. What is less clear is what role the commanders of these zones played at different intervals during the 2010/11 crisis.

389. According to General Mangou, until 21 February 2011, the situation in Abobo was conceived of as law enforcement,⁸⁹⁵ even though elements of the armed forces participated in operations to restore order and stabilise the situation.⁸⁹⁶ The area remained under the auspices of the Police, which had an operational command unit, called PC MINOS.⁸⁹⁷ PC MINOS was located at the Ministry of the Interior and operated under the authority of the police. According to P-0011, PC MINOS was staffed by police officers, *Gendarmerie* officers, as well as soldiers.⁸⁹⁸ However, the Chief of Staff maintained that his office had no representative within PC MINOS.⁸⁹⁹ According to Inspector-General Bredou M'Bia, PC MINOS did not have a regular commander,⁹⁰⁰ whereas P-0011 identified 'Siéloufé' (phon.) as the commander during the post-electoral crisis.⁹⁰¹

⁸⁹⁴ See, for example, Niveau de collaboration de la Police Nationale avec les autres Point des effectifs du mercredi 16 Mars 2011, 16 March 2011, CIV-OTP-0045-1105 (confidential) and Niveau de collaboration de la Police Nationale avec les autres Forces, 30 March 2011, CIV-OTP-0045-1106 (confidential), two unauthenticated Police documents allegedly originating from the *Préfecture de Police d'Abidjan*, only mention five zones.

⁸⁹⁵ P-0009, T-195 dated 27 September 2017, p. 47. See V.C.5 FDS Activities in Abobo from Mid-January to 22 February 2011.

⁸⁹⁶ See, for example, MESSAGE / No. 0135/EMA/CPCO/COND / EXPLOITATION FRAGO 69, 18 January 2011, CIV-OTP-0071-0407, an operational plan to conduct patrols in Abobo with armoured vehicles to restore control over the area. RENFORCEMENT DISPOSITIF SECURITAIRE, 19 January 2011, CIV-OTP-0046-0507 (confidential) order from CEMA to organise nightly patrols in Abobo with armoured vehicles from 18 January 2011 until 1 February 2011.

⁸⁹⁷ P-0046, T-124 dated 16 February 2017, p. 27; P-0046, T-125 dated 17 February 2017, p. 61. P-0009, T-194 dated 26 September 2017, pp. 49-50.

⁸⁹⁸ P-0011, T-131 dated 9 March 2017, pp. 61, 82-84.

⁸⁹⁹ P-0009, T-195 dated 17 September 2017, p. 21.

⁹⁰⁰ P-0046, T-125 dated 17 February 2017, p. 61

⁹⁰¹ P-0011, T-131 dated 9 March 2017, p. 83.

390. As violence escalated – mainly in Abobo -, the day-to-day operational leadership in Abidjan was transferred to theatre commander General Firmin Detoh Letho, who was also the chief of staff of the Army.⁹⁰² As before, Detoh Letho carried out the operational orders he received from the CPCO on behalf of the Chief of Staff.⁹⁰³
391. As Abobo fell more and more into the hands of the *Commando Invisible* and several FDS units abandoned their positions, the Chief of Staff decided to set up an operational zone for Abobo/Anyama.⁹⁰⁴ The mission of the commander of the operational zone was to provide security in the Abobo area and to neutralise the *Commando Invisible*.⁹⁰⁵ The commander of the operational zone was stationed at Camp Commando and was replaced on a regular basis. All operational decisions for the Abobo operational zone were made by the CPCO and implemented by the zone commander.⁹⁰⁶ Troops and equipment for the operational zone came from different units. They included troops from Army units such as BASA and the *Bataillon Blindé* (BB), the *Garde Républicaine*, the Police anti-riot brigade (*Brigade Anti-Émeutes* - BAE), and from several *Gendarmerie* units, i.e. the Agban, Yopougon and Abobo squadrons of the 1st Mobile Legion as well as the *Groupe d'Escadron Blindé* (GEB).⁹⁰⁷ According to P-0321, the first commander of the Abobo operational zone was Colonel Gnekremetchin, followed by Colonel Doumbia and then Captain Nanga.⁹⁰⁸ General Detoh Letho stated that a new zone

⁹⁰² P-0047, T-203 dated 7 November 2017, pp. 14-17.

⁹⁰³ P-0047, T-203 dated 7 November 2017, p. 15.

⁹⁰⁴ P-0321, T-61 dated 8 July 2016, pp. 81-82; P-0321, T-63 dated 12 July 2016, pp. 34-36; T-64 dated 13 July 2016, pp. 74-76 (confidential). It appears that the operational zone mentioned by P-0321 coincided with the *zone de sécurisation* referred to earlier. It is not clear whether structurally anything changed in January 2011 or whether the contingent of the Abobo-Anyama *zone de sécurisation* was reinforced.

⁹⁰⁵ P-0321, T-59 dated 7 July 2016, pp. 26-39 (confidential); P-0321, T-61 dated 8 July 2016, pp. 81-82; T-64 dated 13 July 2016, pp. 5-6, 74-76 (confidential).

⁹⁰⁶ P-0321, T-62 dated 11 July 2016, pp. 47-49 (confidential).

⁹⁰⁷ P-0321, T-61 dated 8 July 2016, p. 85 (confidential). P-0156, T-172 dated 5 July 2017, pp. 31-32.

⁹⁰⁸ P-0321, T-61 dated 8 July 2016, pp. 81-82.

commander for Abobo was appointed by the CPCO on a weekly basis.⁹⁰⁹ Major Toaly Baï testified that initially the commanding officers of the different contributing units took turns commanding the Abobo/Anyama zone, but after the failed operation to reclaim the MACA-N'Dotre road it was decided that CPCO officers would be in charge of the Abobo/Anyama operational zone.⁹¹⁰ Major Toaly Baï was the first CPCO officer to be sent to take charge from 28 February until 4 March 2011, relieving Colonel Doumbia Lassina.⁹¹¹ Major Toaly Baï was replaced by Colonel Niamké.⁹¹²

392. Despite the fact that the Prosecutor had most of the senior FDS officers in the witness box and seems to have had access to what remains of the FDS's archives, the evidence on the record does not offer a sufficiently clear and precise picture of the evolution of the command and control structure of the FDS during the post-electoral crisis. Perhaps this lack of attention to detail in this regard can be explained by the fact that, according to the Prosecutor, the formal command and control structure of the FDS is not crucial, because the putative members of the alleged common plan relied on a parallel chain of command to carry out their criminal intentions. However, it is worth stressing that in order to correctly understand the evidence in relation to the Parallel Structure it is necessary to first understand (a) how the formal command structure was designed/supposed to work and (b) how it actually functioned in practice. This is essential as a parallel structure can only be shown to exist if it can be juxtaposed to a contrasting formal structure. Understanding the formal structure's functioning in practice is especially important, because it appears that there were quite a number of *ad hoc* arrangements, probably made in an effort to respond to an escalating security

⁹⁰⁹ P-0047, T-203 dated 7 November 2017, p. 26

⁹¹⁰ P-0156, T-171 dated 4 July 2017, pp. 67-68.

⁹¹¹ P-0156, T-171 dated 4 July 2017, p. 67. As noted above, P-0321 testified that it was Captain Nanga who replaced Colonel Doumbia. Given Major Toaly Baï's closer proximity to the events, his evidence is probably to be preferred.

⁹¹² P-0156, T-171 dated 4 July 2017, p. 67.

situation and to maximise the use of limited resources. Some units were composed of elements from different other units.⁹¹³ Several witnesses also spoke of desertion⁹¹⁴ and (suspicions) of FDS members who secretly sided with the Ouattara camp while remaining in their positions.

393. It is also not clear how strong discipline was throughout the relevant period. For example, [REDACTED] stated that, after [REDACTED].⁹¹⁵ These are all important factors in the evaluation of whether the Chief of Staff's efforts to maintain unity of command and exercise fairly direct control over operations in Abidjan were effective in practice.
394. What is clear is that the last FDS position in Abobo, Camp Commando, was abandoned around 4 or 5 April 2011.⁹¹⁶ By then the Chief of Staff and COMTER had already defected, after which a few lower ranking officers, such as Captain Konan Boniface and Lieutenant-Colonel Dadi took charge of a number of units on what seems to have been an *ad hoc* basis.⁹¹⁷ Accordingly, by the time of the last charged incident, the regular command and control structure of the FDS has ceased to exist.

⁹¹³ The main example is CECOS, but there were other examples, such as the *Sous-groupement tactique*; a mixed unit of around 100 men, based at Camp Akouédo, made up of soldiers from Brigade Blindé, infantry battalion, BASA and 1st Brigade de Commandos Parachutistes. Commander: Zadi Clément, reported to COMTER. P-0047, T-203 dated 7 November 2017, pp. 10-11; P-0156, T-171 dated 4 July 2017, p. 9. The *Détachement Mobile d'Intervention Rapide* (DMIR) was also a unit composed of elements from police (CRS and BAE), *gendarmerie*, and army. Structurally, it was attached directly to the general staff under the command of Konan Boniface. P-0046, T-124 dated 16 February 2017, pp. 36-37; P-0321, T-60 dated 7 July 2016, p. 51 (confidential). The *Garde Républicaine* (GR) also drew its members from other forces. P-0347, T-78 dated 23 September 2016, pp. 28-29.

⁹¹⁴ P-0010, T-142 dated 3 April 2017, p. 23; P-0321, T-64 dated 13 July 2016, p. 17 (confidential); P-0347, T-78 dated 23 September 2016, pp. 56-57; P-0330, T-68 dated 1 September 2016, pp. 14-18.

⁹¹⁵ [REDACTED].

⁹¹⁶ P-0321, T-65 dated 14 July 2016, p. 11.

⁹¹⁷ P-0238, T-81 dated 28 September 2016, pp. 37-39.

b) The accused's control over the FDS

395. As the putative president of Côte d'Ivoire, Mr Gbagbo was formally in charge of the armed forces. It is not disputed that in that capacity, Mr Gbagbo held a number of meetings with senior FDS commanders. What is disputed, however, is the extent to which Mr Gbagbo was involved at the operational level. The evidence of this involvement is discussed elsewhere in this opinion.⁹¹⁸
396. There is no allegation that Mr Blé Goudé had a role in the formal command and control structure of the FDS.

c) The alleged parallel structure

397. In her Pre-Trial Brief, the Prosecutor claimed that a parallel structure existed alongside the formal structure of the FDS during the post-electoral crisis, over which Mr Gbagbo and the Inner Circle exercised control.⁹¹⁹ The so-called parallel structure allegedly provided for direct links between Mr Gbagbo and the 'Inner Circle' on the one hand, and number of loyal commanders on the other, thereby enabling the official FDS chain of command to be bypassed in pursuit of the common plan.⁹²⁰
398. It should be pointed out, however, that the narrative put forward in the Prosecutor's Mid-Trial Brief differs considerably from that of the Pre-Trial Brief. Notably, her account of the 'parallel structure' has diminished in scope. For example, she no longer offers a comprehensive list of 'parallel structure units'.⁹²¹ Further, eight out of fourteen FDS officials identified in the Pre-Trial

⁹¹⁸ See, e.g., V.B - Prohibition of the RTI March;

V.C - FDS Activities in Abobo in January and February 2011.

⁹¹⁹ Pre-Trial Brief, paras 62, 66.

⁹²⁰ Pre-Trial Brief, paras 62, 64.

⁹²¹ Pre-Trial Brief, para. 66.

Brief as assuming ‘key’ roles in the ‘parallel structure’ have been omitted from the Mid-Trial Brief.⁹²²

399. The Prosecutor’s revised account detailed that the alleged parallel structure provided for a direct link between Mr Gbagbo on the one hand, and General Dogbo Blé and Colonel Dadi on the other.⁹²³ Moreover, she alleged that Mr Gbagbo and members of the so-called Inner Circle, including Dogbo Blé in particular, gave direct orders to certain ‘parallel structure commanders’; namely, Colonel Dadi, Captain Clément Zadi and Commander Emmanuel Patrice Loba Gnango.⁹²⁴ This position is maintained in the Response to the Defence no case to answer motion.⁹²⁵

(1) Paradoxical nature of the Prosecutor’s reasoning

400. It should be noted at the outset that the Prosecutor’s conception of the ‘parallel structure’ is contingent upon the existence of the alleged ‘inner circle’. In this regard, the conclusions on the ‘inner circle’ are recalled.⁹²⁶ Nonetheless, for the purposes of this section, it is assumed on a hypothetical basis that the ‘inner circle’, as defined by the Prosecutor in her Mid-Trial Brief,⁹²⁷ has been found to exist.

401. In any case, the Prosecutor’s reasoning concerning the co-existence of both the ‘inner circle’ and the ‘parallel structure’ is somewhat illogical. Although it is

⁹²² In the armed forces: General Faussignaux Vagba of the Navy; in the Gendarmerie Nationale: Guiai Bi of both the *Gendarmerie* academy and the CECOS and his subordinates Robe Gogo and Zoh Loua, Abéhi of the GEB, and Koukougnon of the Yopougon *Gendarmerie* squadron; in the Police: Bertin Djédjé Gbagro of the CRS1 and Marius Ouaty Touré of the CRS2; within mixed entities: Abéhi (*Gendarmerie*). See Pre-Trial Brief, paras 65-66.

⁹²³ Mid-Trial Brief, para. 212.

⁹²⁴ Mid-Trial Brief, para. 213.

⁹²⁵ Response, para. 1654.

⁹²⁶ See IV.A.5 - Conclusion.

⁹²⁷ Mid-Trial Brief, paras 61-84.

true that she does not allege that the purpose of the so-called parallel structure was to bypass the ‘inner circle’ and its members,⁹²⁸ it seems odd that, given that the so-called ‘inner circle’ is said to have ‘controlled the parallel structure’,⁹²⁹ the likes of General Philippe Mangou and General Detoh Letho must have consented to the creation of a structure whereby their authority *vis-à-vis* their own subordinates was compromised.⁹³⁰

402. Even if it is accepted that Generals Mangou and Detoh Letho were somehow complicit in the formation and operation of the so-called parallel structure, it follows that the Generals’ authority could not have been bypassed as a result of its implementation. Consequently, it is paradoxical for the Prosecutor to submit that the ‘direct links’ alleged to have existed between the so-called ‘inner circle’ and ‘parallel structure commanders’ gave rise to a circumvention of the official FDS command and control structure, at least insofar as General Dogbo Blé, Colonel Dadi and Captain Zadi are concerned: both of the FDS members whose authority Dogbo Blé, Dadi and Zadi are said to have bypassed are cited by the Prosecutor as having been members of the alleged Inner Circle.⁹³¹
403. Comparatively, the chain of command that Commander Loba was subordinate to included the Deputy Director for Public Security – Sami Bi Irie Dieudonné – who was not listed as having been a member of the ‘inner circle’.⁹³² It is thus

⁹²⁸ Response, para. 1627.

⁹²⁹ Mid-Trial Brief, para. 212.

⁹³⁰ See para. 214 of the Mid-Trial Brief, where the Prosecutor alleges that Colonel Dadi of BASA openly disregarded orders from higher ranked officers in favour of those of General Dogbo Blé and Mr Gbagbo. In other words, she claims that the orders of Generals Mangou and Letho (both of whom were superior to Dadi in the formal FDS structure) were bypassed pursuant to the ‘parallel structure’, even though they are also allegedly members of the ‘inner circle’, whose common plan and policy the so-called parallel structure purported to implement.

⁹³¹ Namely General Mangou (Dogbo Blé, Dadi and Zadi) and General Detoh Letho (Dadi and Zadi): see Mid-Trial Brief, para. 65.

⁹³² See P-0046, T-123 dated 15 February 2017, p. 33: ‘it was the director of public security who gave orders directly to the officers of the intervention units’ (Commander Loba being one of them).

only with respect to Loba that a circumvention of the official FDS hierarchy could logically be found.

404. Notwithstanding the paradoxical nature of the Prosecutor's argument, each of her submissions shall be addressed in turn, as well as in their totality. In particular, this section will analyse the alleged relations between Mr Gbagbo and General Dogbo Blé, between Mr Gbagbo/'inner circle' and Colonel Dadi, between Mr Gbagbo/'inner circle' and Captain Zadi, and between Mr Gbagbo/Mr Blé Goudé/'inner circle' and Commander Loba.

(2) Alleged direct link between Mr Gbagbo and General Dogbo Blé

405. The sources cited to support the existence of a direct link between Mr Gbagbo and Dogbo Blé fail to attribute such a connection to a 'parallel structure'. For example, the Prosecutor cites Witness P-0238's testimony, from which the Chamber is expected to infer that Dogbo Blé had links with Mr Gbagbo as a result of the 'joint presidential missions' conducted by the *Garde Républicaine* and BASA.⁹³³ These 'joint presidential' missions are described by P-0238 as relating to the protection of the President when he toured Côte d'Ivoire,⁹³⁴ which is a core function of the *Garde Républicaine*.⁹³⁵ None of the abovementioned evidence relied on by the Prosecution shows that the orders for these missions originated from Mr Gbagbo. There is thus insufficient evidence to indicate that direct orders were issued by Mr Gbagbo to Dogbo Blé such that the official FDS structure would be circumvented.

406. The Prosecutor also relied on a UN report, which states that the *Garde Républicaine* is directly subordinate to the cabinet of the President at the

⁹³³ Response, para. 1636; P-0238, T-80 dated 27 September 2016, p. 52.

⁹³⁴ P-0238, T-80 dated 27 September 2016 (French), p. 56.

⁹³⁵ See P-0009, T-193 dated 25 September 2017 (French), p. 21.

operational level.⁹³⁶ However, the document makes no mention of a ‘parallel structure’ and merely mentions that the *Garde Républicaine* had a special status. There is no indication that this status was irregular. Moreover, although the testimony of General Mangou cited by the Prosecutor references the close relationship between Mr Gbagbo and General Dogbo Blé,⁹³⁷ this may well have been an inevitable consequence of General Dogbo Blé’s dual role within the FDS: as General Mangou himself states, the General was not only the commander of the Republican Guard but also the military commander of the Presidential Palace. The latter therefore had ‘two chiefs’: ‘the president and the chief of army staff’.⁹³⁸

407. Moreover, General Mangou suggested in his testimony that the influence of the General Staff over Dogbo Blé was ‘a bit restricted’⁹³⁹ and that the latter rarely personally took part in meetings convened by Chief of Staff (even though he was represented).⁹⁴⁰ However, it is not possible to conclude from this that Dogbo Blé had extricated the *Garde Républicaine* from the regular chain of command and operated independently therefrom. In particular, there is certainly no evidentiary basis for the proposition that Dogbo Blé conducted military operations under Mr Gbagbo’s personal instructions.

⁹³⁶ Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire / A/HRC/17/48, 1 July 2011, CIV-OTP-0053-0835 at para. 15.

⁹³⁷ Response para. 1635.

⁹³⁸ P-0009, T-193 dated 25 September 2017, p. 15.

⁹³⁹ P-0009, T-193 dated 25 September 2017, p. 15. General Mangou explained that Dogbo Blé was not only the commander of the *Garde Républicaine*, but also the military commander of the presidential palace. Thus, the commander had ‘two chiefs’ (‘the president and the chief of army staff’), and the instructions that he received from Mr Gbagbo would take precedence over those of the Chief of Staff.

⁹⁴⁰ P-0009, T-193 dated 25 September 2017, p. 15.

(3) Alleged direct link between Mr Gbagbo and the Inner Circle on the one hand, and Colonel Dadi on the other

408. As far as Colonel Dadi is concerned, the evidence adduced by the Prosecutor also fails to demonstrate that Mr Gbagbo issued direct orders to Dadi as a result of the latter's position in the alleged parallel structure. The section of P-0164's testimony cited in support of the Prosecutor's account in her Mid-Trial Brief, for example, merely attests to Colonel Dadi's total control over BASA members and the members' fear of challenging him;⁹⁴¹ the witness did not speak of the Colonel's relationship with Mr Gbagbo. It is noted that P-0164 also claimed that 'patriots' were recruited into BASA in 2002 and 2003, the likes of whom Dadi appeared to favour over regular BASA members.⁹⁴² Indeed, attention was drawn to this by the Prosecutor in her Response.⁹⁴³ Yet evidence of Colonel Dadi's failure to discipline the 'patriots' is not, without more, demonstrative of his 'involvement in the parallel structure'.⁹⁴⁴ The Prosecutor has not provided any evidence to show that the Colonel's behaviour in this regard is a product of agreements with or instructions received from other members of the alleged 'inner circle'.

409. The Prosecutor referred to Witness P-0238's testimony to corroborate her allegation of a direct link between Colonel Dadi and Mr Gbagbo: P-0238 stated that the former tried to ensure that his subordinates would vote for Mr Gbagbo,⁹⁴⁵ and that he went into exile after the latter's arrest.⁹⁴⁶ Such observations are hardly

⁹⁴¹ P-0164, T-164 dated 19 June 2017, pp. 83-85: 'Dadi reigned over everybody and what he said was done. And if you did not do that, then you would never progress because he would sit on you forever. And if you were even lucky to be alive, then you would be thankful. He had total control over everyone in BASA, even the officers'. See also Gbagbo Motion, Annex 5, Part 3, Section 5 (4) (1), para. 456.

⁹⁴² P-0164, T-164 dated 19 June 2017, pp. 15-19 (as emphasised by the Prosecutor in her Response: Response, para. 1631).

⁹⁴³ Response, paras 1631-1632.

⁹⁴⁴ Response, para. 1628.

⁹⁴⁵ P-0238, T-80 dated 27 September 2016, pp. 37-38.

⁹⁴⁶ P-0238, T-80 dated 27 September 2016, pp. 26-28.

illustrative of a direct operational link between the two. In fact, P-0238 later clarified that when he spoke of direct contact between Colonel Dadi and ‘the presidency’, he referred to the close relationship between Colonel Dadi and General Dogbo Blé, *not* Colonel Dadi and Mr Gbagbo.⁹⁴⁷ In light of this clarification, and the corollary thereof (namely, that the witness only mentions orders received by Colonel Dadi from General Dogbo Blé, not Mr Gbagbo),⁹⁴⁸ P-0238’s reference to the joint presidential missions conducted by BASA and the *Garde Républicaine* (cited by the Prosecutor in support of a direct link between Mr Gbagbo and Colonel Dadi)⁹⁴⁹ at best attests to an *indirect* link between Colonel Dadi and Mr Gbagbo, arising only through General Dogbo Blé.

410. The third witness cited by the Prosecutor – Witness P-0239 – testified that Colonel Dadi claimed he had been receiving direct orders from Mr Gbagbo during the post-electoral crisis.⁹⁵⁰ The witness also thought that the two had met at the Presidential Residence during that period.⁹⁵¹ In this regard, Mr Gbagbo is mistaken in alleging that P-0239 does not talk of Mr Gbagbo’s relationship with Dadi.⁹⁵²
411. Nonetheless, it should be noted that the probative value of P-0239’s testimony is low: the witness did not observe Colonel Dadi receiving orders from Mr Gbagbo himself and only ‘thinks’ that Colonel Dadi visited Mr Gbagbo during the electoral crisis, being unable to give any specific examples of occasions when he did so.⁹⁵³ Moreover, even if P-0239’s testimony were reliable, it is conceivable that it merely attests to Colonel Dadi’s misrepresentation of his role within the

⁹⁴⁷ P-0238, T-80 dated 27 September 2016, pp. 54, 57.

⁹⁴⁸ P-0238, T-80 dated 27 September 2016, pp. 54-58.

⁹⁴⁹ P-0238, T-80 dated 27 September 2016, pp. 52; Response para. 1629.

⁹⁵⁰ P-0239, T-167 dated 28 June 2017, pp. 42-44.

⁹⁵¹ P-0239, T-167 dated 28 June 2017, p. 71.

⁹⁵² *Gbagbo* Motion, Annex 5, Part 3, Section 4 (5) (1), para. 464; Response, para. 1629.

⁹⁵³ P-0239, T-167 dated 28 June 2017, p. 71.

FDS: although the Colonel allegedly called himself the President's 'military advisor' and stated that he was entrusted with the security of Abidjan⁹⁵⁴, his self-proclaimed high status within the FDS has not been confirmed by any of the witnesses.⁹⁵⁵ It may well be that Colonel Dadi was embellishing in order to ensure deference from his subordinates: as noted above, P-0164 stated that Colonel Dadi sought to exercise total control over BASA members.⁹⁵⁶ Even though it cannot be concluded with certainty that Colonel Dadi was exaggerating when he (supposedly) said that he was receiving direct orders from Mr Gbagbo, the fact that such a possibility cannot be ruled out, coupled with the distinct lack of evidence corroborating the Colonel's claims, would make it difficult for a reasonable trial chamber to attach great importance to this evidence.

412. It is acknowledged, however, that the alleged parallel structure is said to have been controlled not only by Mr Gbagbo but also by the 'inner circle' Circle. Thus, the fact that Colonel Dadi was not working at the behest of Mr Gbagbo's direct orders does not refute the Prosecutor's argument in its entirety. Indeed, Colonel Dadi himself was supposedly a member of the 'inner circle' himself.⁹⁵⁷ Nevertheless, the Prosecutor has failed to adduce sufficient evidence to demonstrate that Colonel Dadi was operating in concert with other members of the alleged 'inner circle' in contravention of the formal FDS command and control structure: despite having claimed that Colonel Dadi received direct orders from General Dogbo Blé,⁹⁵⁸ P-0238 was not a direct witness of the orders given to Dadi by Dogbo Blé, only attesting to the fact that the latter claimed to have

⁹⁵⁴ P-0239, T-167 dated 28 June 2017, pp. 42-44.

⁹⁵⁵ *Blé Goudé* Motion, para. 178.

⁹⁵⁶ *See above* para. 408.

⁹⁵⁷ Mid-Trial Brief, paras 71-72. Yet it is noted that this argument of the Prosecutor relies at least in part on the same extract from Witness P-0239's testimony, the reliability of which is doubted for the reasons offered above.

⁹⁵⁸ P-0238, T-80 dated 27 September 2016, pp. 54-58.

been the recipient thereof.⁹⁵⁹ Moreover, the witness only speculated as to whether or not General Detoh Letho was informed of such orders.⁹⁶⁰

413. In light of the foregoing analysis, it is concluded that even if the testimonies of P-0164, P-0238 and P-0239 were fully credible and reliable,⁹⁶¹ and even if the witness' evidence was not solely constituted by hearsay,⁹⁶² the testimonies in question either do not support the specific allegations of the Prosecutor or lack probative value. Dadi therefore cannot be said to have been receiving direct instructions from Mr Gbagbo and/or members of the so-called 'inner circle' in contravention of the official FDS structure. It should be noted that it does not necessarily follow from such a conclusion that Colonel Dadi's allegedly incriminatory actions resulted from orders made through the *formal* chain of command either, given the lack of evidence adduced to that effect and the possibility that the Colonel's conduct could have been borne out of his own initiative.

(4) Alleged direct link between Mr Gbagbo and the Inner Circle on the one hand, and Captain Zadi on the other

414. The evidence cited by the Prosecutor in support of her argument that Zadi received direct orders from Mr Gbagbo and members of the Inner Circle is also weak. The testimony of P-0330 was cited by the Prosecutor to this end,⁹⁶³ wherein the witness claimed that he [REDACTED]received orders from the presidency to unload 120mm mortars at Camp Commando.⁹⁶⁴ However, the evidence is unpersuasive for two reasons: first, it constitutes hearsay, being

⁹⁵⁹ P-0238, T-80 dated 27 September 2016, pp. 57-58.

⁹⁶⁰ P-0238, T-80 dated 27 September 2016, pp. 58-60.

⁹⁶¹ Response, para. 1633.

⁹⁶² Response, para. 1630.

⁹⁶³ Mid-Trial Brief, para. 213.

⁹⁶⁴ P-0330, T-69 dated 2 September 2016, p. 6.

merely P-0330's account of what [REDACTED] alleged. In fact, irrespective of whether the witness overheard or participated in the conversation,⁹⁶⁵ he did not even perfectly hear what [REDACTED] had said, such that he had to rely on Colonel Doumbia's rendition of the events.⁹⁶⁶

415. Second, it should be noted that even though P-0330 independently heard [REDACTED] refer to 'the presidency',⁹⁶⁷ it is clear from P-0238's testimony (as referred to above) that such a term does not necessarily refer to the President himself.⁹⁶⁸ Thus, even if the order in question had been made, *who* at the presidency made such an order has not been established.

416. The Prosecutor also refers to the testimony of P-0483, who claimed that he saw Zadi at the Presidential Residence during the post-electoral crisis. Although Mr Gbagbo claims that the witness is referring to a different Zadi,⁹⁶⁹ P-0438's reference to 'Captain Zadi' suggests the contrary.⁹⁷⁰ However, P-0438's testimony is contradictory: after initially stating, with conviction, that he did not see Zadi during the former's time at the residence,⁹⁷¹ he later described the Captain as one of the persons he saw there.⁹⁷² The witness attempted to explain the inconsistency on the basis that initially he was referring to the *Garde Républicaine* and when he stated seeing him he was referring to the Residence. He specified that Captain Zadi did not join him in combat on the 'front line'; but rather stayed at the residence and surmised that he might have been 'responsible for writings'.⁹⁷³ P-0483's testimony in this regard is highly confusing and

⁹⁶⁵ *Gbagbo* Motion, Annex 5, Part 3, Section 4 (5) (1), para. 466; Response, para. 1638.

⁹⁶⁶ P-0330, T-73 dated 8 September 2016, pp. 29-30 (confidential).

⁹⁶⁷ Response, para. 1638.

⁹⁶⁸ See above para. 409.

⁹⁶⁹ *Gbagbo* Motion, Annex 5, Part 3, Section 4 (5) (1), para. 470.

⁹⁷⁰ P-0483, T-102 dated 21 November 2016, p. 50; Response, para. 1638.

⁹⁷¹ P-0483, T-101 dated 17 November 2016, p. 81.

⁹⁷² P-0483, T-102 dated 21 November 2016, p. 50.

⁹⁷³ P-0483, T-103 dated 22 November 2016, pp. 60-61.

unpersuasive. It is thus not possible to accept on this basis alone that Captain Zadi was present at the Presidential Residence. Moreover, even if he had been there, the testimony of P-0438 simply does not show what role Captain Zadi fulfilled there, much less that he received orders from Mr Gbagbo or other members of the alleged ‘inner circle’ in circumvention of the regular chain of command. In fact, the purpose behind Captain Zadi’s supposed stay at the Presidential Residence is unclear and may be explained on other grounds: indeed, it is possible that the Captain stayed at the Residence to seek safety, like many others.

417. Finally, the Prosecutor relied on Witness P-0316’s testimony to support her depiction of Captain Zadi as a so-called ‘parallel structure’ commander who took orders directly from Dogbo Blé in particular.⁹⁷⁴ Despite the Prosecutor citing P-0316 to this end, the witness provides no evidence linking Captain Zadi as receiving orders directly from Dogbo Blé. In the extracts cited by the Prosecutor, P-0316 rather stated that while Zadi no longer answered to Colonel Brice of the 1st BCP, he had opted instead to answer directly to General Detoh Letho.⁹⁷⁵ Mr Gbagbo is right to contend that this account appears to be congruent with the regular FDS command and control structure.⁹⁷⁶ Indeed, according to P-0316, Captain Zadi initially answered to Colonel Brice, when Captain Zadi was the commander of the CCAS (a sub-unit of the 1st BCP).⁹⁷⁷ Later, he was appointed commander of the *sous-groupement tactique*, which was ‘under the direct command of the ground forces unit’.⁹⁷⁸ Accordingly, it appears, from P-0316’s testimony, that the 1st BCP and the *sous-groupement tactique* were both independent components of the Ground Forces based at the old Camp Akouedo.

⁹⁷⁴ Mid-Trial Brief, para. 213.

⁹⁷⁵ P-0316, T-182 dated 29 August 2017, pp. 61-62.

⁹⁷⁶ *Gbagbo* Motion, Annex 5, Part 3, Section 4 (5) (1), para. 467.

⁹⁷⁷ P-0316, T-182 dated 29 August 2017, p. 61.

⁹⁷⁸ P-0316, T-182 dated 29 August 2017, p. 61.

This is further corroborated by General Detoh Letho's testimony that both the 1st BCP and the *sous-groupement tactique* reported directly to Detoh Letho during the crisis.⁹⁷⁹ Considering P-0316's testimony, it therefore cannot be established that Captain Zadi received orders from Dogbo Blé, nor that he was acting in 'parallel' to the formal FDS structure.

The Prosecutor also cited Witness P-0316's claim that Captain Zadi ordered arms to be given to the youth.⁹⁸⁰ Yet the pertinence of such a statement with respect to the Prosecutor's allegation fails to be seen, given that it simply does not attest to the existence of direct orders given to Captain Zadi from Mr Gbagbo or other members of the 'Inner Circle'.

(5) Alleged direct link between Mr Gbagbo and the 'inner circle' on the one hand, and Commander Loba on the other

418. As it has been noted above, Commander Loba is the only alleged 'parallel structure commander' who could conceivably bypass the authority of his superiors in the formal FDS chain of command, as his immediate superior was not stated as being a member of the alleged 'inner circle'. The Prosecutor relied on the testimony of Inspector-General Bredou M'Bia in support of her identification of Loba as a parallel structure commander, [REDACTED]⁹⁸¹[REDACTED].⁹⁸²
[REDACTED]⁹⁸³[REDACTED]⁹⁸⁴[REDACTED]⁹⁸⁵ but it certainly does not prove

⁹⁷⁹ P-0047, T-203 dated 7 November 2017, pp. 7-11.

⁹⁸⁰ P-0316, T-183 dated 30 August 2017, p. 22.

⁹⁸¹ Response, para. 2110(vii).

⁹⁸² Mid-Trial Brief, para. 228; Response, para. 1653; Transcription de deposition, 24 November 2011, CIV-OTP-0014-0233 (confidential) at 0246; P-0046, T-126 dated 20 February 2017, pp. 21-22 (confidential).

⁹⁸³ P-0046, T-126 dated 20 February 2017, p. 26 (confidential).

⁹⁸⁴ P-0046, T-126 dated 20 February 2017, pp. 24-26(confidential).

⁹⁸⁵ P-0046, T-126 dated 20 February 2017, pp. 29-31 (confidential).

the existence of direct orders from Mr Blé Goudé to Loba, nor indeed from Mr Gbagbo or other members of the alleged ‘inner circle’. It should also be noted that Inspector-General Bredou M’Bia’s testimony in this regard had to be prompted by the Prosecution on numerous occasions with quotes from his prior statement.⁹⁸⁶

(6) Alleged cash payment rewards

419. The Prosecutor relied on witness P-0321’s testimony to allege that Dadi, Zadi and Loba were rewarded for their allegiance with monthly cash payments from the Presidential Palace.⁹⁸⁷ However, she fails to demonstrate that such subsidies were related to the existence of a ‘parallel structure’. Indeed, P-0321 referred to the payments as ‘availability bonuses’, which were given to members of a support group – the predecessor of CECOS – created to secure Abidjan in the early 2000s.⁹⁸⁸ The payments were, according to the witness, sourced from a ‘sovereignty budget’ as remuneration for the recipients’ ability to be called upon to assist with security operations at any time.⁹⁸⁹ Although P-0321’s explanation does not refute the concept that these commanders formed part of a ‘parallel structure’ loyal to Mr Gbagbo,⁹⁹⁰ it also does little to advance this notion, given that P-0321 makes no allusion to the existence of an unofficial command and control framework as the basis for the subsidies. Indeed, it should be noted that Dadi, Zadi and Loba were not the only officers receiving such payments.⁹⁹¹ Thus, it is not clear and is never explained why only they are implicated as members of the alleged parallel structure on this basis.

⁹⁸⁶ P-0046, T-126 dated 20 February 2017, p. 15; P-0046, T-126 dated 20 February 2017 pp. 20-23, 26, 29-30 (confidential).

⁹⁸⁷ Mid-Trial Brief, para. 213.

⁹⁸⁸ P-0321, T-61 dated 8 July 2016, p. 73 (confidential).

⁹⁸⁹ P-0321, T-61 dated 8 July 2016, p. 73-74 (confidential); pp. 74-79.

⁹⁹⁰ Response, para. 1641.

⁹⁹¹ P-0321, T-61 dated 8 July 2016, pp. 74-75.

420. The Prosecutor also pointed to a video clip purporting to show Mr Blé Goudé giving an envelope to Loba to allege that ‘these commanders [referring to Dadi, Zadi, and Loba]’ received cash payments directly from him.⁹⁹² She submits it can reasonably be inferred from the video that the envelope contained the 2 million CFA francs that Witness Inspector-General Bredou M’Bia testified was given to Commander Loba by Mr Blé Goudé.⁹⁹³ It is noted that the video dated 22 January 2011 depicts a ceremony seeking to give homage to the FDS and ‘the workers of Côte d’Ivoire’ and their wives.⁹⁹⁴ In this video, an individual identified as Commander Loba (BAE Commander and CECOS Commander)⁹⁹⁵ is shown receiving a box and envelope that the reporters in the video consider to be ‘supplies to the intervention units of the national police’.⁹⁹⁶ The video further states that Mr Blé Goudé ‘thanked or encouraged’ them for their ‘patriotic determination in fighting this avant-garde fighting’.⁹⁹⁷

421. It is further noted that as per Inspector-General Bredou M’Bia’s hearsay account, Mr Blé Goudé paid 1 million FCFA to the Commander of the Riot Squad and 2 million to BAE Commander Loba, who was also the CECOS Commander for Yopougon.⁹⁹⁸ Inspector-General Bredou M’Bia testified that the Commander of the Riot Squad told him that he received a sum of 1 million CFA from Mr Blé Goudé.⁹⁹⁹ The witness was also put his statement in court wherein he had stated

⁹⁹² Mid-Trial Brief, para. 213; Response para. 1689.

⁹⁹³ Response, para. 1642.

⁹⁹⁴ Le Journal / 22 Jan 2011 JT 20H, 22 January 2011, CIV-OTP-0064-0113, transcript at CIV-OTP-0086-1028. In-court translation available at P-0046, T-126 dated 20 February 2017, p. 32 (confidential).

⁹⁹⁵ P-0046, T-126 dated 20 February 2017, pp. 32-33 (confidential).

⁹⁹⁶ P-0046, T-126 dated 20 February 2017, p. 32 (confidential).

⁹⁹⁷ Le Journal / 22 Jan 2011 JT 20H, 22 January 2011, CIV-OTP-0064-0113, transcript at CIV-OTP-0086-1028. In-court translation available at P-0046, T-126 dated 20 February 2017, p. 33 (confidential).

⁹⁹⁸ P-0046, T-126 dated 20 February 2017, pp. 29-31 (confidential). In the Response, the Prosecutor pointed to Inspector-General Bredou M’Bia’s testimony that he received a phone call from Commander Loba who informed him that Mr Blé Goudé gave him two million FCFA. *See* Response, para. 1689.

⁹⁹⁹ P-0046, T-126 dated 20 February 2017, p. 29 (confidential).

that Mr Blé Goudé gave 2 million to BAE Commander Loba during the crisis.¹⁰⁰⁰ It was only after the crisis that Inspector-General Bredou M'Bia concluded for himself that there was contact between Mr Blé Goudé and Commander Loba¹⁰⁰¹ and gathered that the purpose of the payment 'was because the BAE commander was in contact with the patriots'.¹⁰⁰² Inspector-General Bredou M'Bia, commenting on the video discussed above, testified that, in Côte d'Ivoire, it was 'exceptional' and 'rare' for a figure of authority to hand over money to law enforcement in broad daylight as part of a ceremony.¹⁰⁰³

422. It is not known what the box and the envelope contained. Yet, even assuming that the envelope in question did contain cash, it cannot be proven that the money rewarded Loba for his role in the 'parallel structure'. It is not known whether the payment that Commander Loba told Inspector-General Bredou M'Bia about was the same one as the one shown in the video. Even assuming that the payment Inspector-General Bredou M'Bia referred to was the same one as allegedly shown in the video, the only information that suggest its purpose is from Inspector-General Bredou M'Bia's hearsay evidence of what Commander Loba told him over the phone and his own conclusions reached after the crisis.
423. Indeed, the RTI commentary accompanying the clip speaks of a tribute to the FDS to be held the following day.¹⁰⁰⁴ For these reasons, it would be gratuitous conjecture on the Chamber's part to assume that the (supposed) money handed to Commander Loba by Mr Blé Goudé constituted a reward for the former's role as a 'parallel structure commander'.

¹⁰⁰⁰ P-0046, T-126 dated 20 February 2017, pp. 29-30 (confidential).

¹⁰⁰¹ P-0046, T-126 dated 20 February 2017, p. 30 (confidential).

¹⁰⁰² P-0046, T-126 dated 20 February 2017, pp. 30-31 (confidential).

¹⁰⁰³ P-0046, T-128 dated 22 February 2017, p. 27 (confidential).

¹⁰⁰⁴ *Blé Goudé* Motion, para. 233; *Le Journal* / 22 Jan 2011 JT 20H, 22 January 2011, CIV-OTP-0064-0113 at 00:44:38 to 00:45:50; transcript at CIV-OTP-0086-1028 at 1029.

(7) Alleged bypassing of the official FDS chain of command

424. Intimately linked to the Prosecutor's allegations of direct links existing between Mr Gbagbo and the Inner Circle on the one hand, and 'parallel structure commanders' on the other, is her claim that the latter bypassed the official command and control structure of the FDS.¹⁰⁰⁵ She cites the testimonies of both P-0238 and P-0330 to support her claim. As concluded above, however, the probative value of P-0238's testimony is low,¹⁰⁰⁶ and P-0330 is an indirect witness whose testimony suffers from a lack of precision.¹⁰⁰⁷
425. A further piece of evidence offered by the Prosecutor to suggest that the official chain of command was bypassed is a document attributing a lack of coordination within the FDS to, *inter alia*, the existence of 'parallel structures' of commandment.¹⁰⁰⁸ However, this piece of evidence too fails for want of precision: the document alludes to a parallel structure in the abstract but does not say anything to support the specific allegations of the Prosecutor. For example, it does not specify who belongs to the parallel structure. . Moreover, the presumed insight of the document's author into the *de facto* command and control structure of the FDS was disputed by the testimony of General Kassaraté. The witness contended that the author of the document was a subordinate who mistakenly conflated the respective roles of the CECOS and the *Gendarmerie*: although the creation of CECOS gave the illusion of parallelism because it was ostensibly endowed with a similar mandate as the *Gendarmerie*, General Kassaraté clarifies that the two actually had completely distinct functions.¹⁰⁰⁹

¹⁰⁰⁵ Mid-Trial Brief, paras 214-215.

¹⁰⁰⁶ See above para. 412.

¹⁰⁰⁷ See above para. 414.

¹⁰⁰⁸ Réflexion sur l'engagement des unités de Gendarmerie, 1 March 2011, CIV-OTP-0018-0240 (confidential) at 0241.

¹⁰⁰⁹ P-0011, T-136 dated 16 March 2017, pp. 6-8.

(8) Alleged increase in reliance on the so-called parallel structure subsequent to breakdown of the formal FDS structure

426. Finally, the Prosecutor argued that greater reliance was placed on the ‘parallel structure’ by Mr Gbagbo and the Inner Circle consequent to the weakening of the formal FDS command and control structure at the end of March 2011.¹⁰¹⁰ The evidence shows that a number of major senior commanders, who are not said to have belonged to the alleged parallel structure, relinquished their positions in the FDS by the end of March 2011, such as the Chief of Staff, General Deto Letho and General Guiai Bi Poin.¹⁰¹¹
427. Yet the fact that the regular FDS chain of command largely disintegrated towards the end of the crisis, and that only a handful of loyalist officers continued to engage in hostilities, does not warrant the conclusion that these officers must therefore have been involved in a parallel command structure prior to the disintegration. In fact, the structure that emerged in April 2011 appears to be characterised not by Mr Gbagbo and the inner circle’s control over it,¹⁰¹² but, rather, the distinct lack thereof. Although disagreements within militaries are indeed to some extent inevitable,¹⁰¹³ at least two witnesses spoke of operational dysfunction existing within the FDS during the post-electoral crisis: P-0347, for example, recounted an incident whereby he and another commander received divergent instructions from their respective superiors as to whether or not to continue hostilities.¹⁰¹⁴

¹⁰¹⁰ Mid-Trial Brief, paras 218-224.

¹⁰¹¹ P-0009, T-196 dated 28 September 2017, pp. 69; P-0010, T-138 dated 28 March 2017, pp. 8-12; P-0047, T-204 dated 8 November 2017, pp. 40-43.

¹⁰¹² *Note* in this regard that the Prosecutor claims that Gbagbo and the ‘inner circle’ ‘continued to control [the parallel structure] through the fully functional chain of command’: Mid-Trial Brief, para. 223.

¹⁰¹³ Response, para. 1677.

¹⁰¹⁴ P-0347, T-78 dated 26 September 2016, p. 12.

(9) Commandant Séka Yapo's alleged role

428. The Prosecutor alleged that Simone Gbagbo's aide, *Commandant* Seka Yapo Anselme, a.k.a. Séka Séka, a commander in the *Gendarmerie*, was one of the "loyal FDS officers who remained by Gbagbo's side" up to his arrest.¹⁰¹⁵
429. P-0321 testified that *Commandant* Séka Yapo's formal role as Simone Gbagbo's *aide de camp* was to ensure her safety;¹⁰¹⁶ he was under the GSPR commander, the security group responsible for the protection of the President.¹⁰¹⁷ According to P-0321, *Commandant* Séka Yapo had a detachment with *gendarmes* under this command.¹⁰¹⁸ P-0321 indicated that people who were detached to ensure security had the ability to take part in special missions¹⁰¹⁹ and also testified that *Commandant* Séka Yapo was part of the group that regained control over RTI,¹⁰²⁰ but that this "was not part of his duties".¹⁰²¹
430. General Bi Poin, the CECOS Commander, confirmed that *Commandant* Seka Yapo Anselme was a *gendarmerie* officer, a "chief of squadron",¹⁰²² who served under the President as Simone Gbagbo's aide.¹⁰²³ General Bi Poin spoke of one meeting, "[p]robably in February",¹⁰²⁴ between "all the general officers who are

¹⁰¹⁵ Mid-Trial Brief, para. 73.

¹⁰¹⁶ P-0321, T-61 dated 8 July 2016, p. 14.

¹⁰¹⁷ P-0321, T-61 dated 8 July 2016, p. 14.

¹⁰¹⁸ P-0321, T-61 dated 8 July 2016, pp. 14-15.

¹⁰¹⁹ P-0321, T-61 dated 8 July 2016, p. 18 (confidential).

¹⁰²⁰ P-0321, T-61 dated 8 July 2016, p. 13 (confidential).

¹⁰²¹ P-0321, T-61 dated 8 July 2016, p. 16.

¹⁰²² P-0010, T-138 dated 28 March 2017, p. 4. *See also* Mise à disposition de matériel, 2 December 2010, CIV-OTP-0044-0053 (confidential), which contains Séka Séka's designation "Le Chef d'Escadron [...] Aide de Camp, Commandant le groupe de sécurité de la Première Dame".

¹⁰²³ P-0010, T-137 dated 27 March 2017, p. 80.

¹⁰²⁴ P-0010, T-137 dated 27 March 2017, p. 83.

within the major command”¹⁰²⁵ attended by *Commandant Séka Yapo*; he described the meeting as follows

During a meeting at the état-major, the chief of the état-major informed us that Commander Séka wanted to be given five minutes to provide us with some information. A lot of generals and senior officers in the room were divided in opinion. Some didn't want it at all. And the chef d'état-major said, "No, we need to listen to what he has to say. Let's listen." And in the end we came to an agreement to give him a few moments to tell us what he wanted to tell us. So he was shown into the room and he came in and he told us how he perceived the crisis. We thought that he was suggesting us information and approaches that were a little bit different from those followed by the chief of general staff. He talked about a number of things and his viewpoint, his manner of viewing how operations were unfolding and how he thought we could go about making things more efficient. When he had finished holding forth, the chief of staff thanked him. He left the room and the generals and officers drew the attention of the chief of staff that at our meetings, we should not authorise all and sundry to come and make suggestions to us when he has not yet reached a level of knowledge, of requisite knowledge. So that is what happened when Séka Séka came to the état-major to request that he be able to address the meeting of generals and officers.¹⁰²⁶

431. General Bi Poin explained further why the FDS officials and *Commandant Séka Yapo* did not agree.

Generally speaking, well, I do not have all the details now, but in a nutshell, his approach to defeat the Commando Invisible in Abobo, he thought we could act in a more intensive manner by bringing in more troops. And yet our own analysis that we had done, and that is why his meeting with us did not last very long, based on our own analysis, we were facing an asymmetric type of warfare and we could not act systematically by sending more weapons and more men because there was no way of distinguishing between the Commando Invisible and the members of the population. They were fighting while wearing civilian clothing. They were hiding amongst the population. They were taking them hostage and using them as human shields. But we had obligations. We could not act like the Commando Invisible by shooting at the crowds, even though our troops were suffering quite a bit. But that was his own approach, and that is why when he left we did not deem it necessary to take into account the few suggestions that he made.¹⁰²⁷

432. As regards *Commandant Séka Yapo*'s involvement in military operations, General Bi Poin testified that the former would sometimes act outside the chain of command and that those interventions did not conform to the framework of

¹⁰²⁵ P-0010, T-138 dated 28 March 2017, p. 3. It is noted that in this meeting the “Commander of the Garde Republicaine was not present.

¹⁰²⁶ P-0010, T-137 dated 27 March 2017, pp. 81-82.

¹⁰²⁷ P-0010, T-137 dated 27 March 2017, p. 82.

the unified command.¹⁰²⁸ The witness also said that when General Mangou found out about this, he called *Commandant Séka Yapo* to order and reminded him at length and vigorously that that type of practice could not go on.¹⁰²⁹

433. General Bi Poin testified further that *Commandant Séka Yapo* had men under his command including “some *gendarmes*” and others who the witness did not know.¹⁰³⁰ They had plain unmarked vehicles and AK-47s.¹⁰³¹ General Bi Poin also recounted that, after he left the *école de la Gendarmerie* on 31 March 2011, *Commandant Séka Yapo* took the people who had remained at the school under his command.¹⁰³² General Bi Poin provided a hearsay account of *Commandant Séka Yapo* wanting to take control over the CECOS elements who had remained at the *école de la Gendarmerie*. When a more senior CECOS commander tried to prevent him from doing so, *Commandant Séka Yapo* threatened this senior commander, who then left.¹⁰³³ General Bi Poin explained that when he heard about this incident, he informed the General Kassaraté over the telephone, who was ‘not happy’; he added that even though *Commandant Séka Yapo* and his superiors “did not agree, there was not much that anyone could do, given the critical situation in Abidjan” between 1 and 2 April and the end of the crisis.¹⁰³⁴
434. In relation to the allegation that *Commandant Séka Yapo* obtained weapons from the *Gendarmerie* that were used to implement the Common Plan, General Kassaraté testified that *Commandant Séka Yapo* could not have made requests for weapons from him directly as such requests should have been made through

¹⁰²⁸ P-0010, T-138 dated 28 March 2017, p. 6.

¹⁰²⁹ P-0010, T-138 dated 28 March 2017, p. 6

¹⁰³⁰ P-0010, T-138 dated 28 March 2017, p. 8.

¹⁰³¹ P-0010, T-138 dated 28 March 2017, p. 8.

¹⁰³² P-0010, T-138 dated 28 March 2017, pp. 8-9.

¹⁰³³ P-0010, T-138 dated 28 March 2017, p. 12.

¹⁰³⁴ P-0010, T-138 dated 28 March 2017, p. 12.

the GSPR, to whom Séka Séka was answerable.¹⁰³⁵ He commented on document CIV-OTP-0044-0053¹⁰³⁶ which was a request for eight “*armes de type kalachnikov [...] en vue de sécuriser le couple présidentiel*”.¹⁰³⁷ The letter and General Kassaraté’s comments on the letter show that *Commandant* Séka Yapo’s request for arms for the purposes of the security for the “presidential couple” was approved. This single request is not representative of *Commandant* Séka Yapo’s ability or propensity to obtain arms from the *Gendarmerie* at the behest of the accused or Simone Gbagbo for the purposes of the alleged Common Plan and/or Policy.

435. P-0048 testified that around 7 or 8 April 2011 he came across a group of soldiers under *Commandant* Séka Yapo’s command. According to P-0048, four persons accompanying him, including his bodyguard and *aide de camp*, were executed by gunshot in *Commandant* Séka Yapo’s presence.¹⁰³⁸ When P-0048 introduced himself to *Commandant* Séka Yapo, he mentioned that he was related to Stéphane Kipré, Mr Gbagbo’s son-in-law.¹⁰³⁹ According to P-0048, *Commandant* Séka Yapo then checked with Stéphane Kipré whether this information was true.¹⁰⁴⁰ P-0048 assumed that *Commandant* Séka Yapo was given instructions not to hurt him by Stéphane Kipré; P-0048 testified that he “did not hear what they discussed, but [...] imagine[d] that he must have asked Commander Séka Séka to abstain from doing anything to [him]”.¹⁰⁴¹ Following this, *Commandant* Séka Yapo put P-0048 in the same car as Stéphane Kipré and took them to the

¹⁰³⁵ P-0011, T-132 dated 10 March 2017, p. 91.

¹⁰³⁶ See P-0011, T-132 dated 10 March 2017, pp. 91-92.

¹⁰³⁷ Mise à disposition de matériel, 2 December 2010, CIV-OTP-0044-0053 (confidential) at 0053.

¹⁰³⁸ P-0048, T-54 dated 28 June 2016, p. 76.

¹⁰³⁹ P-0048, T-54 dated 28 June 2016, p. 73.

¹⁰⁴⁰ P-0048, T-54 dated 28 June 2016, pp. 73-74.

¹⁰⁴¹ P-0048, T-54 dated 28 June 2016, p. 74. It is noted that later P-0048 also testified that he considered that Séka Séka spared his life that day ‘because of the request made by my nephew’ (p. 80).

presidential residence.¹⁰⁴² As P-0048 was entering the car, a civilian cinematographer in *Commandant Séka Yapo*'s group considered that since P-0048 had witnessed the shooting and that he should not be released; P-0048 testified that following this, Stéphane Kipré responded to that person that the "commander ha[d] asked you not to do anything to him. Please do not do anything to him."¹⁰⁴³ While he was later held at the presidential palace, P-0048 was informed by Stéphane Kipré that "the first lady had given instructions that [he] should be dropped off at a place of [his] choice".¹⁰⁴⁴ P-0048 confirmed in court that, during his stay, he saw Aboudramane Sangaré at the Presidential Palace.¹⁰⁴⁵

436. In the Response, the Prosecutor alleged that this event was "additional notice to Mr Gbagbo and his close associates of the violent and criminal proclivities of the troops under his control".¹⁰⁴⁶ Having regard to the discussion above, this conclusion cannot be drawn. Nonetheless, even if it could be demonstrated that Mr Gbagbo knew of this incident taking place, it cannot be concluded that this alleged notice of violent and criminal proclivities of certain individuals is sufficient to demonstrate intent underlying the alleged Common Plan.

437. Turning now to *Commandant Séka Yapo*'s alleged involvement with mercenaries, P-0483 testified that he went to "Commander KB" when things were "difficult for [him]" and since he had been fighting for the "president of Côte d'Ivoire", he thought he could not have left them to fight for another group; Commander KB told P-0483 that he could not give them arms to go and fight;

¹⁰⁴² P-0048, T-54 dated 28 June 2016, p. 74.

¹⁰⁴³ P-0048, T-54 dated 28 June 2016, pp. 76-77.

¹⁰⁴⁴ P-0048, T-54 dated 28 June 2016, pp. 81-82.

¹⁰⁴⁵ P-0048, T-54 dated 28 June 2016, p. 82. P-0048 testified that he also saw 'Dakouri', 'Madam Bro Grebe', 'Pastor Adje Nzi' and 'Madam Yeyeri' and that the last three people came to see him 'so that [they] could pray together'.

¹⁰⁴⁶ Response, para. 2096 (iv).

according to P-0483, Commander KB was taking care of the security controlling the riots and told P-0483 about *Commandant Séka Yapo*,¹⁰⁴⁷ who got back to P-0483 three to five days later.¹⁰⁴⁸ P-0483 testified that *Commandant Séka Yapo* met him and some others at Cité Rouge and first requested that P-0483 show him that he understood how to use weapons.¹⁰⁴⁹ P-0483 explained how they travelled to Camp Agban and how they demonstrated to *Commandant Séka Yapo* that they could use arms.¹⁰⁵⁰

438. When in Camp Agban, P-0483 testified that there was one night when firing took place in Adjamé and KB was supposed to pick them up but “did not come back” as they later learnt that he had fled.¹⁰⁵¹ P-0483 and his companions then went out and “collected” weapons from “some army people” that “were lying down in the street dead”.¹⁰⁵² P-0483 testified that they “never received guns from Séka”.¹⁰⁵³ Later, P-0483 and his group went to Cité Mermoz in Cocody to wait for *Commandant Séka Yapo*, but instead ended up engaging in a firefight with persons in military uniforms in a vehicle.¹⁰⁵⁴ They tried hard to push them back as

¹⁰⁴⁷ P-0483 also testified on how Commander KB knew of Séka Séka. P-0483 stated that he did not know exactly how they managed to get in touch with each other. He thought they knew each other because they were both security personnel and were therefore “supposed to know each other”. P-0483 thought they must have trained together. See P-0483, T-101 dated 17 November 2016, p. 59.

¹⁰⁴⁸ P-0483, T-100 dated 16 November 2016, p. 64.

¹⁰⁴⁹ P-0483, T-100 dated 16 November 2016, p. 65; see also T-101 dated 17 November 2016, p. 55. Séka Séka arrived on campus telling P-0483 that he wanted to help them but that the information that he got was that he did not know whether they were “trained guards” and “he did not want to give arms and ammunition to somebody who could not use them correctly, to kill someone unnecessarily”.

¹⁰⁵⁰ P-0483, T-101 dated 17 November 2016, p. 55.

¹⁰⁵¹ P-0483, T-101 dated 17 November 2016, p. 55. See also T-102 dated 21 November 2016, p. 43 where P-0483 testified that the firing took place between “some youths” and a “set of military people [who] came and opened fired against them”.

¹⁰⁵² P-0483, T-101 dated 17 November 2016, p. 56. See also T-102 dated 21 November 2016, p. 44-46 where P-0483 further elaborated on how they collected the arms.

¹⁰⁵³ P-0483, T-101 dated 17 November 2016, p. 61.

¹⁰⁵⁴ P-0483, T-101 dated 17 November 2016, pp. 56-57.

they tried to get in touch with *Commandant Séka Yapo* and eventually managed to make their way to the Presidential Residence.¹⁰⁵⁵

439. The Prosecutor also alleged that towards the end of the crisis, P-0500, a former FLGO member, stayed and defended the Presidential Residence, where he saw *Commandant Séka Yapo* “in charge”.¹⁰⁵⁶ He then allegedly went to fight the rebels alongside FDS and other youth.¹⁰⁵⁷ During the post-election crisis, P-0500 was working as a “mason’s helper” at a construction site.¹⁰⁵⁸ He testified that when the crisis broke out he tried to find “somewhere safe to stay” and that on 31 March 2010 he went to the Presidential Residence with friends from his construction work.¹⁰⁵⁹ It is noted that P-0500 did not go to the Presidential Residence with other FLGO members.¹⁰⁶⁰ P-0500 explained that he went to the Presidential Residence because he “wanted to have a means of defending” himself and wanted to be “side by side with those who were with [him] to defend” themselves.¹⁰⁶¹ At the Residence, he met someone he identified as “Commander Blé”.¹⁰⁶²
440. P-0500 testified how he went with a large group of people from the Presidential Residence to the *Gendarmerie* academy in Cocody in a military cargo vehicle.¹⁰⁶³ The group included FDS members and other “young men who were not soldiers”.¹⁰⁶⁴ At the *Gendarmerie* academy, he obtained an AK-47 from “a room”

¹⁰⁵⁵ P-0483, T-101 dated 17 November 2016, pp. 57-58.

¹⁰⁵⁶ Response, para. 1180.

¹⁰⁵⁷ Response, para. 1180.

¹⁰⁵⁸ P-0500, T-181 dated 28 August 2017, p. 10.

¹⁰⁵⁹ P-0500, T-181 dated 28 August 2017, pp. 74-75.

¹⁰⁶⁰ P-0500, T-181 dated 28 August 2017, pp. 74-75.

¹⁰⁶¹ P-0500, T-181 dated 28 August 2017, pp. 77-78.

¹⁰⁶² P-0500, T-181 dated 28 August 2017, p. 77.

¹⁰⁶³ P-0500, T-181 dated 28 August 2017, p. 81.

¹⁰⁶⁴ P-0500, T-181 dated 28 August 2017, p. 82.

and fought against “the rebels”.¹⁰⁶⁵ He further testified that the *Gendarmerie* academy had been attacked and that “those of us who were inside the perimeter, we defended the academy until the next morning”, when they returned to the Presidential Residence.¹⁰⁶⁶ It is noted, in this regard, that General Bi Poin testified that they had received intelligence that the *Gendarmerie* academy was a “target” and it was “shelled by helicopters on several occasions” sometime between 1 and 2 April and the end of the crisis.¹⁰⁶⁷

441. P-0500 testified that after they got back to the Presidential Residence, they spent the night there and the next morning, the residence was attacked.¹⁰⁶⁸ P-0500 testified that, for a period of three to four days, he “participated in fighting” the “rebels who had come into Abidjan”.¹⁰⁶⁹ P-0500 testified that someone named Tchang “took” him in his group and that he “answered” to Tchang.¹⁰⁷⁰ P-0500 did not know who Tchang received his orders from.¹⁰⁷¹
442. During his evidence, prosecuting attorney read out to P-500, and he confirmed, a part of his prior recorded statement where he had mentioned *Commandant Séka Yapo* being “in charge of the soldiers at the residence during the fighting” when the Presidential Residence was attacked.¹⁰⁷² P-0500 noticed that when the

¹⁰⁶⁵ P-0500, T-181 dated 28 August 2017, p. 83.

¹⁰⁶⁶ P-0500, T-181 dated 28 August 2017, p. 84.

¹⁰⁶⁷ P-0010, T-138 dated 28 March 2017, p. 12.

¹⁰⁶⁸ P-0500, T-181 dated 28 August 2017, p. 85.

¹⁰⁶⁹ P-0500, T-181 dated 28 August 2017, pp. 78-79. It is noted that the Prosecutor appears to suggest that P-0500 mentioned earlier that Commander Blé may have been the one giving orders to Tchang but the witness confirmed that he only saw Blé and he did not pay much attention to him.

¹⁰⁷⁰ P-0500, T-181 dated 28 August 2017, p. 79. The witness knew Tchang to be a security guard at the Adjamé black market and did not know if he was a member of a group. He considered that Tchang came to the residence at this time because ‘he was one of the young Ivorians, and if the country needs its young people, no one can turn their backs on that’. P-0500, T-181 dated 28 August 2017, pp. 79, 88. It is noted that a certain Commander Tchang has been identified by P-0435 as someone who led the GPP camp in Abobo Belleville in 2005-2007. *See* P-0435, T-87 dated 18 October 2016, p. 25.

¹⁰⁷¹ P-0500, T-181 dated 28 August 2017, pp. 79-80.

¹⁰⁷² P-0500, T-181 dated 28 August 2017, pp. 84-85.

Presidential Residence was attacked, the people participating in defending it were “soldiers”, as well as “young people”.¹⁰⁷³ As regard the FLGO being present at the Presidential Residence, the witness said ‘I didn't see any FLGO members there, apart from little Max Hero that I saw, I didn't see anybody else.’¹⁰⁷⁴

443. General Mangou testified having seen a group of “extremely well-armed” youths and mercenaries under *Commandant Séka Yapo*’s command at the Presidential Residence on 3 and 4 April 2011 on unmarked personnel carriers.¹⁰⁷⁵ From General Mangou’s testimony, it is not known where these personnel carriers were going to and for what. However, by that time the battle for Abidjan was already in full swing. Moreover, the Prosecutor did not point to any crimes committed against civilians by youths/mercenaries on those dates. There is thus no reason to think that *Commandant Séka Yapo Séka* and his men went on a mission to harm civilians.
444. Having regard to Seka’s position within the *Gendarmerie* and his interactions with P-0483 and P-0500, it cannot be concluded that *Commandant Séka Yapo* had command or control over mercenaries. The two witnesses were both former mercenaries, but there is no indication that they were acting in that capacity at the relevant time. *Commandant Séka Yapo* did not arm or equip them. To the extent that he appears to have assigned missions to P-0483 and his group, they did not involve the commission of crimes. To the extent that Liberian mercenaries have been identified as direct perpetrators, it is not known whether or not they consisted of P-0483 and his group. Furthermore, the evidence points towards this group considering themselves to be faithful to and responsible for Mr Gbagbo’s safety on account of their personal considerations of loyalty rather

¹⁰⁷³ P-0500, T-181 dated 28 August 2017, p. 85.

¹⁰⁷⁴ P-0500, T-181 dated 28 August 2017, p. 88.

¹⁰⁷⁵ P-0009, T-194 dated 26 September 2017, pp. 24-25.

than an effort on the part of the accused to employ them for commission of crimes.

445. Based on the available evidence, it is not possible to form a clear view of *Commandant Séka Yapo's* role during the post-electoral crisis or under whose instructions he was operating, if any. There is no reliable evidence that she knew of or approved *Commandant Séka Yapo's* actions. In particular, there is no evidence to show that Simone Gbagbo was informed that *Commandant Séka Yapo* had overseen the execution of the four individuals accompanying P-0048 towards the end of the post-electoral crisis. It is also noted that senior FDS officials had identified *Commandant Séka Yapo* as someone who was sometimes acting outside the chain of command. His zeal and assertiveness clearly troubled some senior FDS officers, but this apparently did not stop him. This may suggest that *Commandant Séka Yapo* at least had the tacit protection of some very senior individual(s). However, it is not possible to identify this/these individual(s) with any level of certainty. The fact that he was the *aide de camp* of Simone Gbagbo may seem suspicious, but is insufficient to draw any firm conclusions. In any event, since there is no evidence of *Commandant Séka Yapo* receiving instructions to commit violence against civilians, this does not demonstrate the existence of a parallel command and control structure.
446. The evidence on the record also cannot sustain a finding that *Commandant Séka Yapo* commanded mercenaries. Towards the end of the post-electoral crisis, the FDS seems to have been in total disarray and a number of individuals, some of whom were former Liberian mercenaries, seem to have spontaneously congregated at the Presidential Residence, either to protect Mr Gbagbo or to seek safety for themselves. The evidence indicates that *Commandant Séka Yapo* was in charge of at least a group of such individuals at some point and that they engaged in combat operations. However, little to nothing is known about these operations, so it would be entirely speculative to link this to the alleged Common Plan.

d) Defections

447. The Prosecutor alleged that, in mid-March 2011, “[a]s ethnic tensions rose within the FDS and defections increased near the end of the post-election violence, the formal chain of command and structure of the FDS weakened”.¹⁰⁷⁶ In this regard, the conclusions in respect of the command and control over the FDS are recalled.¹⁰⁷⁷ It is noted that these allegations are also relevant in assessing the sharing of intent between the members of the alleged Inner Circle. Since these allegations concern the period of mid-March, they are also relevant in assessing the accused’s intent following the Abobo II incident.¹⁰⁷⁸
448. As per General Mangou’s account, after his house was attacked on 14 March 2011, sometime between 30 March and 3 April, he had a phone conversation with Mr Ouattara concerning a possible “ceasefire”.¹⁰⁷⁹ Following this, he attended a meeting on 3 April 2011 with Mr Gbagbo that was purportedly also attended by General Kassaraté, Dogbo Blé, Vagba, and Konan Boniface.¹⁰⁸⁰ General Mangou testified that in this meeting he had intended to tell Mr Gbagbo what he had heard at the embassy¹⁰⁸¹ and to try once again to convince him to resign;¹⁰⁸² however, this conversation did not happen as intended. General Mangou testified that, during the meeting Mr Gbagbo stated that they “need to get back to fighting”.¹⁰⁸³ As to the events that followed, General Mangou testified that

¹⁰⁷⁶ Mid-Trial Brief, para. 477.

¹⁰⁷⁷ See IV.D.1 - Forces de Défense et de Sécurité (FDS).

¹⁰⁷⁸ See VI.T - 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II).

¹⁰⁷⁹ P-0009, T-194 dated 26 September 2017, p. 13.

¹⁰⁸⁰ See IV.C.2.t) - Meeting on 3 April 2011; Large visitor register, 3 November 2010, CIV-OTP-0088-0863 (confidential) at 1303 to 1306, entries 16 to 18.

¹⁰⁸¹ See P-0009, T-194 dated 26 September 2017, pp. 17.

¹⁰⁸² P-0009, T-194 dated 26 September 2017, p. 17.

¹⁰⁸³ P-0009, T-194 dated 26 September 2017, pp. 18-19.

So I got into the vehicle, we left. I arrived at my residence and the press was there, surrounded by Konan, Vagba, Dogbo and other officers, and I did then indeed make a statement. And I even told off those people and their behaviour, those people who were at the Golf. And so they really were sure that I'd made the correct statement. And, luckily, when I had finished, the press service that arrived--this was the press service of the army led up by Colonel Abina. Subsequent to which I called Abina to one side and I said to him, "Colonel, please, do not let that statement out, do not release it." And as God would have it, Abina followed my instructions and that statement was never released over the RTI.¹⁰⁸⁴

449. General Mangou testified that until the "heads of state issue[d] their decision", referring to the decision by the African Union, according to him "President Gbagbo was still president".¹⁰⁸⁵ General Mangou submitted his resignation shortly afterwards.

450. General Detoh Letho described the circumstances in which he came to disagree with Dogbo Blé following a meeting on 30 March 2011 at the general staff headquarters.¹⁰⁸⁶ General Detoh Letho testified that

Dogbo Blé said that he wanted to pursue the battle of Abidjan. That is on that day that I learned that there was the battle of Abidjan. So I took the floor at that moment and I asked Dogbo Blé which battle he was talking about, because from a military perspective we had had covered 600 kilometres to arrive Abidjan. We had people who were on the frontline. And for several days all the elements who had been at the frontline had retreated. [...] On that day I told them, "If you want to carry out the battle in Abidjan, how are you going to do that? Because we are not in control of Abobo. We are not in control of Koumassi or Adjamé." [...] I did not think that we could start a battle in Abidjan, that it was not possible. He got angry on that day. [...] He told me that I was one of those who were demoralising soldiers and that we did not want the battle of Abidjan to continue. I told him that he was a chief of corps. I was a commander in the army, and I did not have any direct relationship with him. When I wanted to talk to my troops, I would talk to the battalion commanders; and to my general staff at best. I do not talk to a soldier, a soldier with whom I do not even have any contact, to tell them not to take part in the battle of Abidjan.¹⁰⁸⁷

451. Following this exchange, the next day, 31 March 2011, General Detoh Letho 'went to the Golf [hotel]'.¹⁰⁸⁸ He explained the reason that he went was because

¹⁰⁸⁴ P-0009, T-194 dated 26 September 2017, p. 19.

¹⁰⁸⁵ P-0009, T-197 dated 2 October 2017, pp. 66-67; see also P-0009, T-200 dated 5 October 2017, p. 44.

¹⁰⁸⁶ P-0047, T-206 dated 10 November 2017, pp. 47-49.

¹⁰⁸⁷ P-0047, T-206 dated 10 November 2017, pp. 48-49.

¹⁰⁸⁸ P-0047, T-204 dated 8 November 2017, p. 40.

he ‘wanted the war to come to an end. [...] because [he] knew that [their] troops in the field no longer had sufficient resources and that Abidjan had been completely taken’.¹⁰⁸⁹ He testified that before leaving to the Golf Hotel, he could not meet General Mangou, who was already at the South African embassy at the time; he also could not meet ‘the superior commander of the gendarmerie, nor the head of the national police[...] [as] [a]ll of those who were on our side were incommunicado’.¹⁰⁹⁰

452. General Kassaraté testified that on or around 3 April 2011,¹⁰⁹¹ he realised that ‘many generals’ were no longer in their positions and so he decided to meet Mr Gbagbo for ‘a personal reason, to hand over power to Alassane Ouattara’.¹⁰⁹² General Kassaraté also testified about a ‘heated exchange between myself and the elements at the door’ however, from his account, it is not clear whether or not this was a result of his intended conversation with Mr Gbagbo.¹⁰⁹³ He testified that the elements at the door called him a traitor but he did not know why.¹⁰⁹⁴ It is also not known whether at the meeting P-0011 was in fact able to request Mr Gbagbo to hand over power to Mr Ouattara.
453. General Bi Poin testified that he left the *École de la Gendarmerie* on 31 March 2011.¹⁰⁹⁵ He testified that they had received information that he himself as well as these premises were a target;¹⁰⁹⁶ he added that

¹⁰⁸⁹ P-0047, T-204 dated 8 November 2017, p. 40.

¹⁰⁹⁰ P-0047, T-204 dated 8 November 2017, pp. 42-43.

¹⁰⁹¹ It is noted that the Prosecutor showed the witness the logbook entries for the 3 April 2011. The witness did not remember the exact date but this concerned his “last visit to the presidential residence” before Mr Gbagbo’s arrest. See P-0011, T-134 dated 13 March 2017, pp. 83-84.

¹⁰⁹² P-0011, T-134 dated 13 March 2017, p. 84.

¹⁰⁹³ P-0011, T-134 dated 13 March 2017, p. 84.

¹⁰⁹⁴ P-0011, T-134 dated 13 March 2017, p. 85.

¹⁰⁹⁵ P-0010, T-138 dated 28 March 2017, p. 8.

¹⁰⁹⁶ It is noted that from his testimony it appears that the information received by him concerning the threat may have been true. See P-0010, T-138 dated 28 March 2017, p. 12.

we sent most of them, the first and second year students and the officer students, we sent them away. We requested that a group of elements from CECOS, a very small group, remain at the barracks to provide security.¹⁰⁹⁷

e) Conclusion

454. In sum, based on the totality of the evidence, it is clear that Mr Gbagbo was the formal supreme commander of the FDS. It is also apparent that he was frequently briefed by the Chief of Staff and that on a number of occasions, he provided strategic instructions. However, it is not possible, on the basis of the available evidence, to form a clear view of Mr Gbagbo's involvement at the operational level.
455. As regards the parallel structure, even setting aside the paradoxical nature of the Prosecutor's argument, most of her individual submissions as to how the structure supposedly manifested itself have not been proven. At best, it might be concluded from the evidence cited that direct links may have existed between Mr Gbagbo and General Dogbo Blé, and that Captain Zadi received orders to unload mortars at Camp Commando from an unidentified member of the 'inner circle'. The evidence also suggests that towards the end of the post-electoral crisis the regular FDS chain of command had stopped functioning and that a number of individuals operated autonomously. This does not warrant the conclusion that Mr Gbagbo and the alleged 'inner circle' controlled a 'parallel structure' that provided for a circumvention of the formal FDS command and control structure. Indeed, there is no evidence on the basis of which a reasonable trial chamber could find the existence of even a single operational order originating from the accused or other 'inner circle' members that bypassed the existing chain of command.

¹⁰⁹⁷ See P-0010, T-138 dated 28 March 2017, p. 9.

2. *Irregular Forces*

456. In the Mid-Trial Brief, the Prosecutor alleged that pro-Gbagbo youth and militia comprised ‘a force loyal’ to Mr Gbagbo which he and the ‘inner circle’ had relied on since 2002 and which became crucial in implementing the Common Plan.¹⁰⁹⁸ The term ‘pro-Gbagbo forces’ also includes mercenaries, who are defined by the Prosecutor, for the purposes of this case, as ‘foreign fighters for hire’.¹⁰⁹⁹
457. The following subsections set out to examine the evidence for the financing, training and recruitment of pro-Gbagbo youth, militia and mercenaries and the extent to which any such measures can be credibly portrayed as vehicles for controlling the members of these groups. Certain allegations considered below as part of the alleged command and control are also relevant for the assessment of the Prosecutor’s case concerning the implementation of the alleged Common Plan as early as 2002. These include the allegations that the recruitment of pro-Gbagbo youth, militia and mercenaries in the aftermath of the 2002 *coup* was a manifestation of the alleged Common Plan in its early stages.¹¹⁰⁰

a) **Relationship between Mr Gbagbo and Mr Blé Goudé**

458. The Prosecutor alleged that Mr Gbagbo controlled the ‘pro-Gbagbo youth’ via Mr Blé Goudé,¹¹⁰¹ who played a ‘vital role’ in ensuring this control.¹¹⁰² The Prosecutor substantiated this by further alleging that Mr Blé Goudé was close to Mr Gbagbo¹¹⁰³ and acted as an intermediary between him and the *Jeunes*

¹⁰⁹⁸ Mid-Trial Brief, para. 236; Pre-Trial Brief, para. 139.

¹⁰⁹⁹ Mid-Trial Brief, footnote 83; *see also* para. 308.

¹¹⁰⁰ Mid-Trial Brief, paras 25-34.

¹¹⁰¹ Mid-Trial Brief, para. 237.

¹¹⁰² Mid-Trial Brief, para. 772.

¹¹⁰³ Mid-Trial Brief, para. 237.

Patriotes.¹¹⁰⁴ In support of this, she alleged that Mr Blé Goudé had ‘access’ to Mr Gbagbo and met him frequently during the post-electoral crisis.¹¹⁰⁵

459. It is noted that General Mangou considered that Mr Blé Goudé was very close to Mr Gbagbo on the basis that Mr Blé Goudé had founded the COJEP and that during his rallies, he would often meet with Mr Gbagbo.¹¹⁰⁶ According to General Mangou, Mr Blé Goudé also had a ‘very good relationship’ with Simone Gbagbo.¹¹⁰⁷ P-0176 testified that Mr Gbagbo’s ‘brothers and friends’ knew Mr Blé Goudé to be his ‘political son [...], who was well loved, and so they supported him’.¹¹⁰⁸ On 6 December 2010, Mr Gbagbo appointed Mr Blé Goudé as his Minister of Youth, Vocational Training and Employment.¹¹⁰⁹ On the basis of the evidence cited by the Prosecutor, it can be concluded that Mr Gbagbo and Mr Blé Goudé appeared to be close.
460. In the Response, the Prosecutor also cites to two additional statements made by Mr Blé Goudé that, according to her, contextualise this relationship.¹¹¹⁰ These statements are not indicative of any closer proximity between the accused.
461. The Prosecutor relied on General Mangou and P-0087’s testimony to demonstrate proximity between Mr Blé Goudé and Simone Gbagbo. According to General Mangou, they had a ‘very good relationship’¹¹¹¹ P-0087 testified that during a conversation with him, Mr Blé Goudé mentioned having dinner with Mr

¹¹⁰⁴ Mid-Trial Brief, paras 21, 237.

¹¹⁰⁵ Mid-Trial Brief, para. 237.

¹¹⁰⁶ P-0009, T-193 dated 25 September 2017, p. 37.

¹¹⁰⁷ P-0009, T-193 dated 25 September 2017, p. 37.

¹¹⁰⁸ P-0176, T-143 dated 4 April 2017, p. 63.

¹¹⁰⁹ Journal Officiel de la République de Côte d’Ivoire, 9 December 2010, CIV-OTP-0018-0047 at 0051.

¹¹¹⁰ Response, paras 1363 referring to RTI broadcast dated 7 January 2011, CIV-OTP-0074-0061, RTI broadcast dated 13 February 2011, CIV-OTP-0064-0121.

¹¹¹¹ P-0009, T-193 dated 25 September 2017, p. 37.

Gbagbo and his wife and, which gave the impression that they were close ‘personally and professionally’.¹¹¹²

462. The Prosecutor further alleged that Mr Blé Goudé shared the objective to maintain Mr Gbagbo in power by all means.¹¹¹³ In the Response, the Prosecutor alleged that Mr Blé Goudé made several speeches in support of Mr Gbagbo with the aim to keep him in power, including the references to suffer and to fight to the end.¹¹¹⁴ Having regard to the conclusions reached in respect of the totality of Mr Blé Goudé’s speeches made during the post-election crisis with a view to determining his intent underlying the alleged Common Plan,¹¹¹⁵ it can be concluded that Mr Blé Goudé was supporting Mr Gbagbo and his presidency politically and that he wanted him to stay in power.
463. As ‘[f]urther evidence of Mr Gbagbo’s trust of Mr Blé Goudé’, the Prosecutor alleged that Mr Gbagbo used Mr Blé Goudé ‘to test [General] Mangou’s loyalty around 11 March 2011’.¹¹¹⁶ She argues that, the fact that ‘a president trusted his Minister of Youth over the Chief of the Armed Forces says a lot about their strong relationship’.¹¹¹⁷ In assessing this allegations raised by the Prosecutor, conclusions are imported by reference in respect of General Mangou’s meeting with Mr Gbagbo about stepping down from the presidency.¹¹¹⁸ It is also noted that at this point in time, the presidents of South Africa and Angola had asked Mr Gbagbo to resign.¹¹¹⁹ This appears to have precipitated Mr Gbagbo consideration of the views concerning his resignation. According to General

¹¹¹² P-0087, T-177 dated 12 July 2017, p. 78.

¹¹¹³ Mid-Trial Brief, paras 21-24.

¹¹¹⁴ Response, para. 1113.

¹¹¹⁵ See IV.F - Public expressions of the alleged common plan/policy.

¹¹¹⁶ Response, para. 1729.

¹¹¹⁷ Response, para. 1729.

¹¹¹⁸ See IV.D.1.d) - Defections.

¹¹¹⁹ P-0009, T-194 dated 26 September 2017, p. 5.

Mangou, it was Mr Gbagbo that had suggested that General Mangou and Mr Blé Goudé meet in order to ‘harmonise’ their views concerning the resignation.¹¹²⁰

464. Having regard to the account provided by General Mangou, in the meeting that he had with Mr Blé Goudé, it appears that during his meeting Mr Blé Goudé himself was of the view that Mr Gbagbo should resign.¹¹²¹ There appears to have been an agreement in this regard between Mr Blé Goudé and General Mangou which was then conveyed as such by General Mangou to Mr Gbagbo.¹¹²²
465. General Mangou testified that four days after this meeting, his residence came under attack by unidentified individuals in a taxi firing Kalashnikovs and RPGs.¹¹²³ General Mangou testified that the CECOS had learnt of this attack and sent over a vehicle to assist General Mangou.¹¹²⁴ General Mangou added that, later in the day, when he informed Mr Gbagbo of this attack, he did not receive ‘even a single word of compassion’ from Mr Gbagbo.¹¹²⁵ According to General Mangou, Mr Gbagbo simply replied that he had an idea about what happened, following which General Mangou considered that he did not have the courage to ask Mr Gbagbo about what he thought was going on.¹¹²⁶ On the following day, when General Mangou shared with Admiral Vagba that he had asked Mr Gbagbo to resign, Admiral Vagba laughed.¹¹²⁷ According to General Mangou, it was then that he ‘realised that it had been a test’.¹¹²⁸

¹¹²⁰ P-0009, T-194 dated 26 September 2017, pp. 4-5.

¹¹²¹ P-0009, T-194 dated 26 September 2017, pp. 6-7.

¹¹²² P-0009, T-194 dated 26 September 2017, pp. 6-7.

¹¹²³ P-0009, T-194 dated 26 September 2017, pp. 7-8.

¹¹²⁴ P-0009, T-194 dated 26 September 2017, p. 8.

¹¹²⁵ P-0009, T-194 dated 26 September 2017, p. 8.

¹¹²⁶ P-0009, T-194 dated 26 September 2017, p. 8.

¹¹²⁷ P-0009, T-194 dated 26 September 2017, p. 9.

¹¹²⁸ P-0009, T-194 dated 26 September 2017, p. 9.

466. General Mangou's testimony suggests that the fact that these meetings with Mr Gbagbo and Mr Blé Goudé were a test of his loyalty is General Mangou's own belief about how the situation unfolded. He draws this belief from his own speculation and also from what he was told by Alain Dogou. Alain Dogou had told General Mangou that he (Alain Dogou) was put 'in quarantine' after he had suggested to the FPI that Mr Gbagbo should resign.¹¹²⁹ While General Mangou suggests that Mr Blé Goudé gave him 'the kiss of death',¹¹³⁰ there is no information about what was discussed between the two accused regarding General Mangou's opinion or the subsequent attack on his residence.
467. It is noted that before General Mangou met with Mr Blé Goudé, Mr Gbagbo had asked them to harmonise their views. This suggests that prior to his meeting with General Mangou, Mr Blé Goudé's view was that Mr Gbagbo should *not* resign. It is noted, however, that during the meeting between General Mangou and Mr Blé Goudé, General Mangou appeared to have the impression that Mr Blé Goudé was of the view that Mr Gbagbo should resign and that Mr Blé Goudé was similarly worried about the lack of weapons or ammunition at the time.¹¹³¹ There is no evidence about what Mr Blé Goudé's actual view was.
468. General Mangou testified that the attack on his residence came from Mr Gbagbo's side.¹¹³² During this testimony, General Mangou was able to explain the basis of his belief that the attack on his residence may have emanated from Mr Gbagbo's side and generally recalled that individuals who had suggested that Mr Gbagbo resign were met with retaliation.¹¹³³

¹¹²⁹ P-0009, T-194 dated 26 September 2017, p. 9.

¹¹³⁰ P-0009, T-194 dated 26 September 2017, p. 10.

¹¹³¹ P-0009, T-194 dated 26 September 2017, p. 6.

¹¹³² P-0009, T-199 dated 4 October 2017, p. 59.

¹¹³³ P-0009, T-199 dated 4 October 2017, pp. 59-60.

469. However, it remains unclear whether this entire incident was a case of Mr Gbagbo trusting Mr Blé Goudé's opinion *over* General Mangou's. In order to conclude that Mr Gbagbo did indeed trust Mr Blé Goudé over General Mangou, it must be assumed that Mr Blé Goudé was indeed in favour of Mr Gbagbo retaining the presidency and subsequently misinformed General Mangou about his own opinion in their meeting together, presumably, in order to obtain General Mangou's true opinion.
470. Assuming that this was indeed the case, and based on the totality of evidence submitted in respect of the proximity between the accused, a reasonable trial chamber could find that Mr Gbagbo and Mr Blé Goudé were close, if not on a personal level then at least politically. It can also be concluded that they were communicating with each other relatively frequently.¹¹³⁴ However, closeness and proximity between the accused, apparent or real, is immaterial if it cannot be otherwise demonstrated that they agreed to the alleged Common Plan and/or shared the underlying intent.

b) Command and control over 'pro-Gbagbo youth and militia'

471. The Prosecutor alleged that there existed both armed and unarmed youth organisations that supported Mr Gbagbo's government.¹¹³⁵ Mr Gbagbo's alleged command and control over youth groups is linked to Mr Blé Goudé, who is further alleged to be linked to the leaders of these youth groups.¹¹³⁶ In particular, the Prosecutor alleged that Mr Gbagbo controlled the 'pro-Gbagbo youth, militia and mercenaries' through the formal and parallel FDS chains of command and

¹¹³⁴ See also IV.C.3 - Regular meetings.

¹¹³⁵ Mid-Trial Brief, para. 24.

¹¹³⁶ See Mid-Trial Brief, paras 21-24.

through his relationship with Mr Blé Goudé and other alleged members of the ‘inner circle’.¹¹³⁷

472. For ease of reference, certain allegations concerning irregular groups have been addressed together, namely, those concerning the proliferation of youth groups following the *coup d’état* of 2002, including the *Galaxie Patriotique*, the *Congrès panafricain des Jeunes et Patriotes* (the ‘COJEP’), the *Groupe des Patriotes pour la Paix* (the ‘GPP’) and the *Front pour la Libération du Grand Ouest* (the ‘FLGO’). In the subsections that follow, the allegations concerning their alleged payments and financing,¹¹³⁸ training,¹¹³⁹ arming,¹¹⁴⁰ and integration into the FDS¹¹⁴¹ have been addressed. The Prosecutor also alleged that one of the indicia demonstrating the accused’s command and control was the fact that the members of these irregular groups complied with their instructions.¹¹⁴² For this reason, the allegations concerning the participation of ‘pro-Gbagbo youth, militia, and mercenaries’ in operations with the FDS and their collaboration have also been discussed in the sections that follow.¹¹⁴³

¹¹³⁷ Mid-Trial Brief, paras 4, 237.

¹¹³⁸ IV.D.2.b)(2) - Payments and financing.

¹¹³⁹ IV.D.2.b)(4) - Training.

¹¹⁴⁰ IV.D.2.b)(3) - Equipment.

¹¹⁴¹ IV.D.2.b)(5) - Integration into the FDS.

¹¹⁴² See for example Mid-Trial Brief, para. 774 where the Prosecutor alleged that the joint control by both accused over the GPP is demonstrated, *inter alia*, by the fact that the GPP complied with and followed orders from senior FDS officials and participated in operations with the FDS. See also para. 755 where the Prosecutor alleged that Mr Gbagbo had authority and control over ‘perpetrator groups’ as demonstrated by the fact, *inter alia*, that ‘the militia and mercenaries who were well-organised and trained, jointly conducted their operations with the FDS, under the FDS’ direction’. See further para. 775 where the Prosecutor alleged that ‘strength of th[e] control’ exercised by Mr Gbagbo over the mercenaries is evidenced by the numerous occasions they complied with orders and instructions.

¹¹⁴³ IV.D.2.d) - Collaboration and joint-operations.

(1) Emergence of ‘youth’ groups following the *coup d’état* of 2002

473. The Prosecutor alleged that, following the attempted *coup d’état* in September 2002, Mr Gbagbo received support from the youth; these youths mobilised to form the *jeunes patriotes*, who would ‘oppose the rebellion’.¹¹⁴⁴ The Prosecutor also alleged that, in addition to these youth groups, ‘self-defence groups’ emerged in Abidjan. One such group was the GPP, which allegedly was ‘an armed wing of the *Galaxie Patriotique*’¹¹⁴⁵ and ‘devoted to supporting’ Mr Gbagbo’s presidency.¹¹⁴⁶
474. P-0097 testified that, at the time of the *coup d’état* in 2002, the youth that were close to the *Front populaire ivoirien* (FPI), Mr Gbagbo’s political party, began mobilising beginning in Yopougon. According to him, when Mr Blé Goudé came back from the United Kingdom, there was already mass mobilisation happening in Abidjan.¹¹⁴⁷ As per his account, by that time, Mr Blé Goudé had had experience in mobilising the youth as he had led the *Fédération estudiantine et scolaire de Côte d’Ivoire* (FESCI),¹¹⁴⁸ until 2001.¹¹⁴⁹
475. P-0449, a former FESCI member, testified that the FESCI did not support any specific political party or personality, with the exception of the situation in 2002

¹¹⁴⁴ Mid-Trial Brief, paras 25-28.

¹¹⁴⁵ Mid-Trial Brief, paras 21, 773.

¹¹⁴⁶ Mid-Trial Brief, para. 27.

¹¹⁴⁷ P-0097, T-46 dated 6 June 2016, pp. 65-66.

¹¹⁴⁸ According to P-0435, the FESCI was a student movement that supported the FPI and its actions; P-0435 considered that being a member of the FESCI was ‘almost like going to a political school’ [P-0435, T-87 dated 18 October 2016, p. 34] and not all university students were its members [P-0435, T-87 dated 18 October 2016, p. 35]. P-0435’s testimony however, seemed to suggest that the FESCI had influence within the university sphere in respect of organisation of strikes and walk-outs and negotiation with the university authorities (pp. 35-36). It is noted that according to P-0435, sometimes there would be students who would refuse to follow the instructions to strike or walk-out organised by FESCI. In such cases, these students would get beaten up or there would be clashes. The main objective of FESCI when it was founded was the improvement of the situation of students in Côte d’Ivoire. P-0097, T-46 dated 6 June 2016, pp. 49-51; *see also* P-0449, T-160 dated 23 May 2017, pp. 42-44. P-0500 stated that in August 2010, FESCI’s activities included defending the rights of schools and revealing their problems to the government. *See* P-0500, T-182 dated 29 August 2017, pp. 44-45.

¹¹⁴⁹ P-0097, T-46 dated 6 June 2016, pp. 65-66 (confidential).

where a position had to be taken in respect of the defence of state institutions.¹¹⁵⁰

In clarification of his statement that ‘[a]ll members of the FESCI are also supporters of Laurent Gbagbo’,¹¹⁵¹ he mentioned that there were individuals within FESCI

mais qui sont membres d’autres... (inaudible) politiques pour dire qu’effectivement, nous défendons les institutions de l’État, mais l’institution de l’État en tant que présidence qui était incarnée par le Président Laurent Gbagbo en ce temps-là.¹¹⁵²

476. The Prosecutor pointed to a meeting that took place in 2002, where Mr Blé Goudé was purportedly selected as the person to lead the ‘*lutte patriotique*’ (patriotic fight) against ‘the rebellion’.¹¹⁵³ The Prosecutor relied on P-0449 to allege that prior to the year 2010 and during the post-electoral crisis, the youth responded ‘positively’ to the calls to mobilise in support of Mr Gbagbo made by Mr Blé Goudé and other youth leaders like ‘Dibopieu, Eugène Djué and Pickass’.¹¹⁵⁴

477. In the cited portion of P-0449’s testimony, there is reference to a meeting in 2002 at Cocody University campus which was attended by Kakou Brou, Damana Pickass, Maréchal Kabe, Richard Dakouri,¹¹⁵⁵ Jean-Yves Dibopieu and Serge Kassy.¹¹⁵⁶ P-0449 considered that this meeting in November 2002 was called by Mr Blé Goudé following the attempted *coup d’état* of 19 September 2002.¹¹⁵⁷ According to P-0449, it was at this meeting that Mr Blé Goudé was designated as the leader of the movement against the rebellion.¹¹⁵⁸ P-0449 also testified that

¹¹⁵⁰ P-0449, T-159 dated 22 May 2017, p. 17.

¹¹⁵¹ P-0449, T-159 dated 22 May 2017, p. 16.

¹¹⁵² P-0449, T-159 dated 22 May 2017 (French), pp. 16-17.

¹¹⁵³ Mid-Trial Brief, para. 242 referring to P-0449, T-159 dated 22 May 2017, pp. 24-28.

¹¹⁵⁴ Mid-Trial Brief, para. 655.

¹¹⁵⁵ See P-0449, T-159 dated 22 May 2017, pp. 24-30.

¹¹⁵⁶ See P-0449, T-159 dated 22 May 2017, p. 30.

¹¹⁵⁷ P-0449, T-159 dated 22 May 2017, pp. 30-31.

¹¹⁵⁸ P-0449, T-159 dated 22 May 2017, p. 26.

rallies would be organised by various youth groups to transmit messages to their supporters¹¹⁵⁹ and that there would be a ‘specific goal’ to each rally.¹¹⁶⁰ It is noted that the evidence cited in support does not indicate that these meetings and/or rallies were called and/or conducted with a view to commit violence.

478. P-0449 commented on video CIV-OTP-0081-0338¹¹⁶¹ stating that, in November 2002, there was a call to young people to turn out in massive numbers for the ‘*sursaut national* – the great step forward’.¹¹⁶² P-0449 explained that this was in response to a call on the ‘young people to come out, empty handed, and to protest any attempts to divide the republic’.¹¹⁶³
479. From P-0449’s testimony, it is not possible to ascertain whether or not these meetings took place at Mr Gbagbo’s initiative or insistence. From the evidence adduced, they appear to have been an attempt to arrive at a concerted response and/or reaction to the rebellion that was allegedly fomenting in the background. There is some evidence that these youth groups were also referred to as ‘self-defence groups’ which lends a further inference that the overall movement developed as a response and/or reaction to attempted *coup d’état*. In this regard, P-0048 testified about his perception of the ‘activities of the Young Patriots groups’ from the perspective of the opposition political parties and stated that these groups that began forming in 2002 were considered as ‘self-defence groups’.¹¹⁶⁴

¹¹⁵⁹ P-0449, T-159 dated 22 May 2017, p. 32.

¹¹⁶⁰ P-0449, T-159 dated 22 May 2017, p. 33.

¹¹⁶¹ UN MÉDIA PYROMANE / Chroniques de la télévision ivoirienne, 1 September 2002, CIV-OTP-0081-0338, transcript at CIV-OTP-0094-0072. It is noted that during the testimony the Prosecutor stated this is a video from November 2002. The witness also responded in the context of the November events.

¹¹⁶² P-0449, T-159 dated 22 May 2017, p. 30.

¹¹⁶³ P-0449, T-159 dated 22 May 2017, p. 30.

¹¹⁶⁴ P-0048, T-54 dated 28 June 2016, pp. 6-7.

480. The evidence suggests that, at the time, Mr Blé Goudé's authority over other youth leaders may not have been at the level as alleged by the Prosecutor. It is noted that P-0097 testified on the events during this time period and commented generally on comparative hierarchy between certain youth leaders at the time

subsequent to the 2nd of November [2002],¹¹⁶⁵ there was a mushrooming of other movements. There were a lot of coalitions that were born. And the FESCI, which is actually at the core of this movement, - well, we saw Blé Goudé on television saying he was president of everything put together. But I really saw that as a joke because I am familiar with FESCI. And within the FESCI it is difficult for someone who had been the general before you, that person cannot subsequently submit themselves to your authority or directives afterwards. [...] At the time when Blé Goudé was claiming to be the overall boss of those movements, there were certain leaders who presented themselves as marshals or maréchal. Those are - - it means that people who were not subservient to anyone else, who were not subordinate to anyone else.¹¹⁶⁶

481. It is noted that P-0097 also linked the mushrooming of these youth groups to possible mishandling of finances by Mr Blé Goudé. He testified that

when you speak to an official of a group, they always say that they fund themselves. For example, when you speak to an official from one of the agoras, that is what he will say; and that was the same for this coalition, the officials of the coalition said the same thing. However, what would justify the emergence of these many movements was that at one particular time a young person, young official, rightly or wrongly, well, it was thought that since there was a leader, they thought that money was being paid to Blé Goudé and he was not paying it back. So people thought they should have their own group, and that was the rationale that justified the emergence of all these new groups. They were popping up like mushrooms, so to speak. So all the various groups were organising themselves to survive.¹¹⁶⁷

482. P-0048, Mr Ouattara's spokesperson during the 2010 presidential campaign, explained how these individuals came to organise themselves following the Linas-Marcoussis agreement:

The youth were opposed to the involvement of the rebellion or the appearance of the rebellion. They began to organise themselves to say no to the rebellion. They would subsequently be called the patriots, but regardless of the name that they bore, what matters is that these youth were motivated by a genuine desire to defend the legal powers that be and to reject the rebellion. And that is how they organised themselves into a number of groups, several groups with several leaders. They played a decisive

¹¹⁶⁵ It is noted that the witness does not mention the year but is testifying about events that took place following Mr Blé Goudé's return to Côte d'Ivoire.

¹¹⁶⁶ P-0097, T-48 dated 8 June 2016, pp. 29-30.

¹¹⁶⁷ P-0097, T-48 dated 8 June 2016, p. 46.

role in ensuring that the legally elected authorities would remain in place and not be set aside, as one would have it.¹¹⁶⁸

483. The emergence of the youth groups during this time must also be assessed together with the use of the term '*jeunes patriotes*'. The Prosecutor alleged that the members of the 'militias and other pro-Gbagbo youth groups were often referred to by the generic expression '*jeunes patriotes*' or Young Patriots.¹¹⁶⁹ The Prosecutor also linked this term to the *Galaxie Patriotique*.¹¹⁷⁰
484. The evidence suggests that the term young patriot or *jeune patriote* does not itself reflect affiliation to any particular youth group. P-0097, an academic who conducted research on this topic, testified that this term was indeed a generic name given to the movement of young people who mobilised themselves in defence of the national institutions.¹¹⁷¹ P-0097 described it as a 'social movement'.¹¹⁷²
485. When asked about the relation between the *jeunes patriotes* and the government, P-0097 testified that
- [T]here was a president who was in power and then rebels attacked. Young people mobilised to maintain the national institutions. Now, according to the terms, and this is what was said at the time, the national institutions were embodied by a number of people such as members of the government. Thus, in other words, well, they, the young people, they were in favour of the government being preserved. So that is what was meant.¹¹⁷³
486. P-0097 further explained that protecting these national institutions was considered to be an act in upholding of the Constitution.¹¹⁷⁴ Documents CIV-

¹¹⁶⁸ P-0048, T-53 dated 27 June 2016, p. 41.

¹¹⁶⁹ Mid-Trial Brief, paras 242 *et seq.*

¹¹⁷⁰ Mid-Trial Brief, para. 246.

¹¹⁷¹ P-0097, T-48 dated 8 June 2016, p. 35.

¹¹⁷² P-0097, T-49 dated 9 June 2016, pp. 39-40 (confidential).

¹¹⁷³ P-0097, T-48 dated 8 June 2016, p. 45.

¹¹⁷⁴ P-0097, T-48 dated 8 June 2016, p. 46.

OTP-0026-0078-R01 and CIV-OTP-0018-0149¹¹⁷⁵ indicate that the *jeunes patriotes* was a mass movement and that some of those individuals organised themselves into several groups. ‘Sam l’Africain’ also used the term during his testimony:

Q. [...] What do you mean by "young attackers"? Who were they?

A. It's the youth, the young people, the Ivorians who lived in those neighbourhoods. Do you want me to use the word "Jeunes Patriotes"? Because at that time all young people had become Jeunes Patriotes. Is that the word you are looking for? If that's what you want, I can say Jeunes Patriotes. Yes, it's all the youth, all the patriots. If that is what you are alluding to. If you are pleased with that word, well, I can use it. But it was a matter of all youths and all the youths had become patriots because they were defending their fatherland.¹¹⁷⁶

487. It is noted that, in an interview, Mr Blé Goudé considered the *jeunes patriotes* to be a general label given to the youth who loved their nation.¹¹⁷⁷ P-0431 considered that ‘[s]ome’ would refer to the smaller youth organisations under the *Galaxie Patriotique* umbrella as Young Patriots too.¹¹⁷⁸ Inspector-General Bredou M’Bia considered that ‘at the time [during post-election crisis] we referred to militiamen when we were talking about the patriots’.¹¹⁷⁹
488. For these reasons, it can be accepted that a person who identified him- or herself as a *jeune patriote* could be inferred to be a supporter of Mr Gbagbo. However, the Prosecutor has not demonstrated that self-identification with a political cause in this case meant that that individual was affiliated to an organised group or acted under anyone’s instructions.

¹¹⁷⁵ It is noted that Organisation des mouvements de jeunesse, undated, CIV-OTP-0018-0149 (confidential), containing no indicia of authenticity, appears to outline the requirements for organisation of youth movements and the profile of a general coordinator between them.

¹¹⁷⁶ P-0625, T-27 dated 9 March 2016, p. 15.

¹¹⁷⁷ BIN ICC IVORY COAST CLIPS, 26 March 2011, CIV-OTP-0015-0547 (confidential), transcript at CIV-OTP-0044-2519 (confidential) at 2522.

¹¹⁷⁸ P-0431, T-44 dated 25 May 2016, p. 21.

¹¹⁷⁹ P-0046, T-127 dated 21 February 2017, p. 50.

489. In conclusion, the evidence suggests that emergence of youth groups towards the end of 2002 is linked to the youth responding to ‘the rebellion’. There is very limited information about the purported rebellion on the record. Based on the evidence cited by the Prosecutor it has been linked to the attempted *coup d’état* in September 2002, which was further seen as an attack on Ivorian state institutions and sovereignty. In that sense, the emergence of youth groups, which has also been termed as a ‘social movement’, was a reaction to certain circumstances as opposed to a stated goal devised by Mr Gbagbo. The evidence does not make it possible to ascertain to what extent this movement may have been created at the behest of Mr Gbagbo himself or whether it emerged spontaneously.
490. Nonetheless, this purported movement correlated to Mr Gbagbo, who, as the President at the time, was seen as the symbol associated with the maintenance and defence of sovereignty of the state institutions in Côte d’Ivoire. To that extent, it can be concluded that certain youth groups that emerged in this period were aimed at providing support to Mr Gbagbo’s presidency. Presumably, this support was provided with a view to maintaining Mr Gbagbo as President i.e. that Mr Gbagbo ‘stay in power’. However, the evidence discussed thusfar does not suggest that political support provided to Mr Gbagbo entailed willingness to commit crimes against the civilian population that supported Mr Ouattara.
491. As regards Mr Blé Goudé, the evidence suggests that he was one of the youth leaders that participated in stimulating this movement supporting Mr Gbagbo. Prior to this, Mr Blé Goudé had had experience leading student groups through his involvement with the FESCI. It can be concluded that following the events of September 2002, Mr Blé Goudé expressed political support for Mr Gbagbo’s presidency and became a prominent member of some of the youth movements.
492. The Prosecutor has also linked certain specific youth groups directly with the two accused. These have been discussed hereinunder.

(a) *Galaxie Patriotique*

493. One group in particular is central to the Prosecutor's case, namely the *Galaxie Patriotique*. In the Mid-Trial Brief, the Prosecutor alleged that

The *Galaxie* was an amalgamation of various youth groups and organisations which supported the actions of the GBAGBO government; these various groups were led by youth leaders who led their individual groups to conduct activities with the common goal of defending the FPI's political ideas.¹¹⁸⁰

494. The Prosecutor pointed to specific groups within the *Galaxie Patriotique* that she directly linked to the accused and these have been discussed below. These include COJEP, the GPP, and the FLGO.

495. P-0435, when asked which organisations made up the *Galaxie Patriotique*, recalled 'the FPI youth movement, the association of agoras and parlements', the FESCI, the GPP, and the COJEP.¹¹⁸¹ He drew an organisational chart depicting the various organisations.¹¹⁸² It is noted that apart from the GPP, when this chart was presented to him in court, P-0435 also recalled the *Front pour la Libération du Grand Ouest* (FLGO), being included as well.¹¹⁸³

496. The *Galaxie Patriotique* is alleged to be 'a hierarchical and effective structure'¹¹⁸⁴ with well-structured communication system.¹¹⁸⁵ The Prosecutor alleged that each group within the *Galaxie Patriotique* had its own leader, who was under Mr Blé Goudé's 'direct authority'.¹¹⁸⁶ In the Response, the Prosecutor asserts that Mr Blé Goudé was at 'the top of [the *Galaxie Patriotique*] hierarchy'

¹¹⁸⁰ Mid-Trial Brief, para. 24.

¹¹⁸¹ P-0435, T-94 dated 31 October 2016, p. 3.

¹¹⁸² See Annexe I / Croquis de l'organigramme de la machine politique du pouvoir FPI, 19 May 2014, CIV-OTP-0060-0011 (confidential).

¹¹⁸³ P-0435, T-94 dated 31 October 2016, p. 3.

¹¹⁸⁴ Mid-Trial Brief, para. 246.

¹¹⁸⁵ Mid-Trial Brief, para. 247.

¹¹⁸⁶ Mid-Trial Brief, para. 243. Response, para. 1170.

and directed the ‘*jeunes patriotes*’.¹¹⁸⁷ The Prosecutor points to P-0449’s testimony, who testified that Mr Blé Goudé was the leader of the *Galaxie Patriotique*.¹¹⁸⁸ She also points to two occasions where Mr Blé Goudé is referred to as a leader of the ‘*jeunes*’.¹¹⁸⁹

497. There is evidence to suggest that the *Galaxie Patriotique* was composed of groups with some shared pro-Gbagbo political orientation and different approaches to its expression. P-0097 testified that the *Galaxie Patriotique* was a term used to refer to ‘several groups of Young Patriots’.¹¹⁹⁰ According to P-0048, Mr Ouattara’s spokesperson during the 2010 presidential campaign, there were many groups within the *Galaxie Patriotique* and clarified that ‘when you say “*Galaxie*”, it means that there are many components’.¹¹⁹¹ P-0435 described the *Galaxie Patriotique* as a ‘group of young opinion leaders within the youth who supported the authorities and who supported the action of the government, the government that was in place at the time’.¹¹⁹² When asked if it was homogenous or an umbrella organisation of a number of different organisations, P-0435 responded that it was an organisation that

encompassed a number of different organisations, because within it there were leaders from the FPI youth movement, there were youth members who might not have been affiliated to any specific organisation but who, however, did have a certain degree of influence within the youth. So they were grouped together with a view to leading support activities. I don’t know whether I can refer to it as heterogenous organisation, but they had – the aim was to defend the politics and the ideals of the FPI.¹¹⁹³

498. The evidence does not suggest a clear picture of the functioning and organizational structure of the *Galaxie Patriotique*. Sam l’Africain’s testimony at

¹¹⁸⁷ Response, para. 1170.

¹¹⁸⁸ P-0449, T-159 dated 22 May 2017, p. 28.

¹¹⁸⁹ Response, para. 1368.

¹¹⁹⁰ P-0097, T-48 dated 8 June 2016, p. 44.

¹¹⁹¹ P-0048, T-54 dated 28 June 2016, p. 7.

¹¹⁹² P-0435, T-93 dated 27 October 2016, p. 35.

¹¹⁹³ P-0435, T-93 dated 27 October 2016, pp. 35-36.

one point gives the impression that the *Galaxie* was much organised¹¹⁹⁴ but he equally testified that it did not have a centralised structure.¹¹⁹⁵ Sam l'Africain suggested that the movements within the *Galaxie Patriotique* did not need to have the same goals since each structure had its own ideas.¹¹⁹⁶ Sam l'Africain stated that people were free to determine and be responsible for what they thought was ideal for them. He referred to Serge Koffi stating that he never attended the *Galaxie Patriotique* meetings but was active in the field.¹¹⁹⁷ 'Sam l'Africain' considered that there were many people within the *Galaxie Patriotique* whose conduct did not tally with Mr Gbagbo's ideas and these people were very independent and hoping to make a name for themselves or to stand out as being strong.¹¹⁹⁸

499. P-0449's testimony also suggests the same in that '[w]ithin the *Galaxie Patriotique* each person had his own particular movement and each person led his own movement as best he could'; he also noted that when there was a 'major organisation' or 'the struggle had to be organised', Mr Blé Goudé was in charge or responsible for 'that Galaxy while at the same time having his own movement which was the COJEP'.¹¹⁹⁹ P-0176, a youth movement leader, stated that according to him Mr Blé Goudé was at the 'forefront' of the *Galaxie Patriotique*, 'facilitated all the major meetings or rallies relating to ensuring success for [Mr] Gbagbo', and 'made the decisions'.¹²⁰⁰

¹¹⁹⁴ P-0625, T-26 dated 8 March 2016, pp. 57-61; P-0625, T-27 dated 9 March 2016, pp. 52-55; P-0625, T-32 dated 17 March 2016, pp. 25-26.

¹¹⁹⁵ See P-0625, T-32 dated 17 March 2016, pp. 2-11.

¹¹⁹⁶ P-0625, T-32 dated 17 March 2016, pp. 7-10.

¹¹⁹⁷ P-0625, T-32 dated 17 March 2016, pp. 7-10.

¹¹⁹⁸ P-0625, T-32 dated 17 March 2016, pp. 7-10.

¹¹⁹⁹ P-0449, T-160 dated 23 May 2017, p. 46.

¹²⁰⁰ P-0176, T-144 dated 5 April 2017, p. 5.

500. The evidence suggests that there was no uniform or common understanding between the youth groups forming part of the *Galaxie Patriotique* as regards the use of violence. When asked, ‘Sam l’Africain’ specifically mentioned COJEP and *Voix du Nord* as some of movements that stood for non-violence.¹²⁰¹ ‘Sam l’Africain’ stated that Mr Blé Goudé would hold meetings and talked about how they could mobilise the people; he confirmed that Mr Blé Goudé’s meetings were always based around the idea of peaceful mobilisation.¹²⁰²
501. There is evidence to suggest that there was some organisation within the *Galaxie Patriotique* as regards communication for rallies and meetings. ‘Sam l’Africain’ testified that Mr Blé Goudé would send a text about a meeting and they would have a meeting accordingly.¹²⁰³ Mr Blé Goudé’s communication services were in charge of sending out messages or mail always through mobile phones inviting the concerned individuals to meetings.¹²⁰⁴
502. It is noted that the Prosecutor alleged that ‘these various groups were led by youth leaders who led their individual groups to conduct activities with the common goal of defending the FPI’s political ideas’.¹²⁰⁵ However, a conclusion that a particular group supported Mr Gbagbo’s government and/or the FPI is not a conclusion that said group shares the intent to keep him in power at *all* costs including through crimes against the civilian population. The goal and/or motive of the actions taken by these groups may very well be to support a particular party or a particular person. In the context of democratic processes, this may also mean that the group in question shares the goal and/or motive that that particular person holds and retains political office through legally available means.

¹²⁰¹ P-0625, T-32 dated 17 March 2016, pp. 7-10.

¹²⁰² P-0625, T-32 dated 17 March 2016, pp. 7-11.

¹²⁰³ P-0625, T-26 dated 8 March 2016, pp. 58-59.

¹²⁰⁴ P-0625, T-26 dated 8 March 2016, pp. 58-60.

¹²⁰⁵ Mid-Trial Brief, para. 24.

503. Considering the evidence together, it appears that the term *Galaxie Patriotique* was used to refer to the amorphous set of youth groups that formed and developed as a result of the political movement that emerged following the 2002 *coup d'état*.
504. At least during the post-election crisis, Mr Blé Goudé was one of the leaders within the *Galaxie Patriotique*. The evidence suggests that he was able to effectively communicate generally with the youth groups forming part of the *Galaxie Patriotique* when something needed to be organised. However, from the evidence, it cannot be concluded that the *Galaxie Patriotique* was a hierarchical and/or pyramidal structure with Mr Blé Goudé as its leader. In this regard, recalling the issues with the term '*jeunes patriotes*', as well as the conclusions reached so far, these references cannot be understood to mean that Mr Blé Goudé was the leader in the strict sense of the *Galaxie Patriotique* as a structured entity. It therefore cannot be concluded that Mr Blé Goudé was at the top of this hierarchy in the sense that the leaders of its constitutive youth groups were under his command and control.

(b) *Congrès panafricain des Jeunes et Patriotes - COJEP*

505. The Prosecutor alleged that a group forming part of the *Galaxie Patriotique* called *Congrès panafricain des Jeunes et Patriotes* (COJEP) – was created and led by Mr Blé Goudé and was part of the *Alliance des Jeunes patriotes pour le Sursaut National* (AJSN).¹²⁰⁶ The COJEP is alleged to be a 'pro-Gbagbo youth

¹²⁰⁶ Mid-Trial Brief, paras 243-244. *See also* Pre-Trial Brief, para. 143, Response, para. 1171.

organisation'¹²⁰⁷ and the Prosecutor alleged that its headquarters were based in Yopougon.¹²⁰⁸

506. The evidence suggests that Mr Blé Goudé founded COJEP on 4 June 2001¹²⁰⁹ and that he was its President.¹²¹⁰ The COJEP's objectives, as described by Mr Blé Goudé in 2001, included defence of democratic values and regional and sub-regional political integration.¹²¹¹ P-0097 testified that, at the time of COJEP's creation, the JFPI and FESCI already existed and COJEP was the link in this chain.¹²¹²

507. P-0449, the national general secretary of an organisation called UE-COJEP,¹²¹³ explained that his organisation, along with COJEP, was

responsible for mobilising young people and getting them involved and having them rally to this cause, the Pan-African congress of young people and patriots. So we did all kinds of things to mobilise these young people and to establish various movements—or establish within the movement to encourage students to--well, have them understand patriotism. We were trying to have them understand the cause of Pan-Africanism, a cause defended by the COJEP.¹²¹⁴

¹²⁰⁷ Mid-Trial Brief, paras 22, 778.

¹²⁰⁸ Mid-Trial Brief, para. 506. In the Response, the Prosecutor has, *inter alia*, referenced the location of COJEP headquarters in Yopougon to assert that, in these circumstances, Mr Blé Goudé did not need to make explicit messages to take violent actions in relation to the events of 25-28 February 2011. On the evidence, the COJEP headquarters are indeed based in Yopougon but, cumulatively, or on its own, in the present circumstances, this fact has no bearing on the nature of Mr Blé Goudé's purported message.

¹²⁰⁹ Ma part de vérité, 1 January 2006, CIV-OTP-0057-1245 at 1304.

¹²¹⁰ TOME VI / LES INTERVENTIONS DES ORGANISATIONS PROFESSIONNELLES ET ASSOCIATIONS, 6 October 2001, CIV-OTP-0071-1016 at 1157.

¹²¹¹ TOME VI / LES INTERVENTIONS DES ORGANISATIONS PROFESSIONNELLES ET ASSOCIATIONS, 6 October 2001, CIV-OTP-0071-1016 at 1157.

¹²¹² P-0097, T-46 dated 6 June 2016, p. 66.

¹²¹³ P-0449, T-159 dated 22 May 2017, p. 17; *see* p. 20-22 where the witness explains the aim of UE-COJEP. The witness testified that EU-COJEP was part of a larger group for the elections of 2010 that called for Mr Gbagbo's re-election. This larger group (referred to by the witness as the major group) comprised of three movements, namely, UE-COJEP, COJEP, and JCD [Youth Conscious of Tomorrow]. The witness also testified that the suggestion that these movements combine and form the larger group had been suggested by Mr Blé Goudé. The witness testified that while UE-COJEP did not receive financing from COJEP and 'surviv[ed] on the basis of selling members' cards' and received donations and 'inheritance' (pp. 22-23). It is noted however, the witness stated that Mr Blé Goudé would donate to UE-COJEP because it was a movement 'that was close to him' (p. 23).

¹²¹⁴ P-0449, T-159 dated 22 May 2017, p. 18.

508. Certain witnesses testified about the liaison between COJEP and other groups considered to be ‘pro-Gbagbo’. P-0176, a youth movement leader, testified that COJEP was part of the *Galaxie Patriotique*.¹²¹⁵ P-0449, testified in relation to the *Galaxie Patriotique* and stated that whilst COJEP was Mr Blé Goudé’s ‘own movement’, it operated within the *Galaxie Patriotique*.¹²¹⁶ P-0625 identified COJEP as one of movements within the *Galaxie Patriotique* that stood for non-violence.¹²¹⁷ General Mangou stated that COJEP was ‘somewhat of an appendix, so to speak, of the pro-Gbagbos’ as well as that of the FPI.¹²¹⁸ He commented on the relationship between both accused but did not comment further on the political objectives of COJEP as a group.¹²¹⁹
509. The evidence concerning the COJEP and its links with the AJSN¹²²⁰ is inconclusive as to the resort to violence as means to further Mr Blé Goudé’s, or the group’s, purported objectives. P-0097 elaborated that

a choice had to be made, options had to be chosen as to the means for the struggle or the fight. The Alliance [i.e. AJSN] was in favour of demonstrations and protests, for example, sit-ins, rallies, meetings. And, ultimately, what I saw amongst them, the Alliance advocated the use of rhetoric, of words for the liberation of the country. They were in favour of the use of words, of rhetoric. Ultimately the Alliance indicated that they were within the prolongation of the fight led by Martin Luther King. And unlike the Alliance, on the other side, you see, people were saying when you are faced with an armed rebellion, what is the point of using words, of holding

¹²¹⁵ P-0176, T-144 dated 5 April 2017, p. 4.

¹²¹⁶ P-0449, T-160 dated 23 May 2017, pp. 46-48.

¹²¹⁷ P-0625, T-32 dated 17 March 2016, p. 8.

¹²¹⁸ P-0009, T-193 dated 25 September 2017, p. 37.

¹²¹⁹ In this regard, it is noted that P-0176 testified about the COJEP when speaking about his appointment at Mr Blé Goudé’s office but does not shed further light on the group’s objectives. See P-0176, T-143, p. 24.

¹²²⁰ As regards the AJSN, it is noted that P-0097 testified that it was a coalition set up in 2002 as part of the call for ‘national revival’. P-0097, T-48 dated 8 June 2016, p. 38. The use of the word ‘*sursaut*’ came from the interpretation of the speech given by Laurent Dona Fologo, the president of the Ivorian economic and social council (p. 39). P-0097 explained that in achieving the objectives of the AJSN, there existed an issue concerning the choice of options; the means being considered for the achieving of these objectives were demonstrations, protests, sit-ins, rallies, and meetings (p. 44). According to P-0097, the alliance only included ‘some groups that were in favour of using words and rhetoric’ as opposed to those that were military organisations (p. 45). P-0097 testified that ‘everybody was deemed to be a member of the group [AJSN] in theory’ but that may not have been the case in practice. P-0097, T-48 dated 8 June 2016, p. 38. P-0435 denied if he had heard of AJSN or CONARECI. See P-0435, T-94 dated 31 October 2016, p. 4.

demonstrations? We would rather take the approach of Malcolm X, namely, an armed struggle.¹²²¹

510. In conclusion, the creation and leadership of the COJEP is attributed to Mr Blé Goudé. The evidence also indicates that this group supported Mr Gbagbo politically prior to and during the post-election violence. The evidence does not suggest that this group, whether as part of the *Galaxie Patriotique* or the AJSN, considered resort to violence as one of the means contemplated to fulfil its objectives.
511. To the extent that the COJEP has been allegedly linked to the training activities conducted by the GPP¹²²² and the purported blockade of the Golf Hotel,¹²²³ these have been discussed later.¹²²⁴

(c) *Groupement des Patriotes pour la Paix – GPP*

512. The Prosecutor alleged that the GPP was the *Galaxie Patriotique*'s 'armed wing' and one of the self-defence groups that emerged in Abidjan following the attempted *coup d'état* of September 2002.¹²²⁵ In the Mid-Trial Brief, the GPP was alleged to be one of the two 'armed militias' - together with the FLGO - that was engaged in armed attacks on civilians.¹²²⁶ The Prosecutor characterised both the GPP and the FLGO as 'organised and hierarchical paramilitary groups'.¹²²⁷ It is also noted that the Prosecutor advanced allegations concerning certain youth groups, including the GPP, and their activities in the period leading up to the

¹²²¹ P-0097, T-49 dated 9 June 2016, p. 44.

¹²²² See for example Mid-Trial Brief, paras 91, 260.

¹²²³ See for example Mid-Trial Brief, para. 519 referring to OPERATION ETOUFFEMENT DU GOLF HOTEL, undated, CIV-OTP-0018-0070 (confidential) that mentions the COJEP.

¹²²⁴ See IV.D.2.b)(4)(b) - GPP training other youths and V.A - Blockade of the Golf Hotel for allegations concerning document OPERATION ETOUFFEMENT DU GOLF HOTEL, undated, CIV-OTP-0018-0070 that mentions COJEP. See also IV.D.2.d)(2)(c) - Other alleged instances of collaboration.

¹²²⁵ Mid-Trial Brief, para. 27.

¹²²⁶ Mid-Trial Brief, para. 257.

¹²²⁷ Mid-Trial Brief, para. 257.

post-election crisis.¹²²⁸ These allegations concern (i) financing by Simone Gbagbo,¹²²⁹ (ii) contacts between GPP leadership and Mr Blé Goudé,¹²³⁰ (iii) training activities by the GPP in October 2010 onwards,¹²³¹ and (iv) integration into the FDS following such training.¹²³² These have been addressed elsewhere in this opinion.¹²³³

513. As regards its emergence as a ‘self-defence group’ following the attempted *coup d’état* of September 2002, it is noted that the GPP’s name is alleged to have been decided in a meeting held on 23 March 2003 between ‘Eugène Djué, Dibopieu and the GPP’s first leader, Charles Groguhet’.¹²³⁴ The Prosecutor alleged that, in a meeting on 23 March 2003 between Mr Blé Goudé, Eugène Djué, Jean-Yves Dibopieu and Charles Groguhet, the GPP was labelled as such.¹²³⁵ P-0435 testified that what was earlier known as the Young Runners/*Jeunes Coureurs* became the GPP on 23 March 2003 after a meeting of the leaders of the *Galaxie Patriotique*, which included Mr Blé Goudé.¹²³⁶ According to P-0435, the GPP was ‘set up with a view to supporting the regime in place, or the FPI power in place, and also to face up to the rebellion that had come into force in 2002’;¹²³⁷ its

¹²²⁸ Mid-Trial Brief, paras 88-96. It is noted that these paragraphs also include the allegation concerning a brief period in the year 2007 concerning the dismantling of the GPP. This includes the alleged meeting with the Minister of Defence and the GPP leadership (paras 89-90). These allegations have been addressed in IV.D.2.b)(4) - Training.

¹²²⁹ Mid-Trial Brief, para. 89.

¹²³⁰ Mid-Trial Brief, paras 91-94.

¹²³¹ Mid-Trial Brief, paras 91, 94, 96.

¹²³² Mid-Trial Brief, paras 94-95.

¹²³³ See IV.D.2.b)(2)(g) - Payments linked to Simone Gbagbo; IV.D.2.b)(3)(a) - Arming of the GPP; IV.D.2.b)(4) - Training; IV.D.2.b)(5)(d)(ii) - Alleged recruitment in the FDS; IV.D.2.e)(2) - Role vis-à-vis the GPP; IV.D.2.b)(2)(d) - Payments as part of the demobilisation and disarmament process.

¹²³⁴ Mid-Trial Brief, para. 780.

¹²³⁵ Mid-Trial Brief, para. 28.

¹²³⁶ P-0435, T-88 dated 19 October 2016, p.10; P-0435, T-93 dated 27 October 2016, pp. 37-41.

¹²³⁷ P-0435, T-87 dated 18 October 2016, pp. 61-62. See also P-0435, T-87 dated 18 October 2016, p. 17.

creation was supported by ‘the government’.¹²³⁸ P-0097 also testified that the GPP was set up in 2003.¹²³⁹

514. It is noted that P-0435, when testifying about the GPP in the year 2003, stated that the GPP elements had ‘cards that were like passes and they also served as identity cards’ and they also ‘had authorisation to use public transit free of charge’. When those cards were issued, a list was provided to the FDS headquarters.¹²⁴⁰ However, it is noted that General Mangou testified that, later the GPP was a group that he ‘tried to dismantle’.¹²⁴¹ As soon as he became Chief of Staff, the GPP had emerged in Williamsville and ‘continued harassing the population. Sometimes they even attacked the [FDS]’.¹²⁴²
515. The Prosecutor alleged that the GPP ‘remained active from 2003’ up to 2010-2011.¹²⁴³ It is noted in this regard that there were many youth groups, including the GPP, which emerged following the conflict in 2002-2003 that took a position and/or aligned themselves with the interests of the government at the time. In 2007, following the Ouagadougou Agreements, this culminated in the dismantling and disarming of the pro-Gbagbo armed youth groups as well as those that supported the rebel forces.
516. However, the Prosecutor alleged that the GPP had not been ‘fully dismantled following the 2007 Ouagadougou agreement’.¹²⁴⁴ It is noted that the evidence suggests that the GPP was officially dissolved in 2007 but continued operating unofficially under another title. P-0435 elaborated on this aspect and explained that

¹²³⁸ P-0435, T-88 dated 19 October 2016, p.10; T-93 dated 27 October 2016, pp. 37-41.

¹²³⁹ P-0097, T-48 dated 8 June 2016, pp. 41-42.

¹²⁴⁰ P-0435, T-87 dated 18 October 2016, pp. 13-14.

¹²⁴¹ P-0009, T-196 dated 28 September 2017, p. 71.

¹²⁴² P-0009, T-196 dated 28 September 2017, p. 71. *See also* T-199 dated 4 October 2017, pp. 3-5 where General Mangou explained how he tried to get rid of GPP elements in 2005.

¹²⁴³ Mid-Trial Brief, para. 28.

¹²⁴⁴ Mid-Trial Brief, para. 89.

in 2008, there was an organisation created called UMAS that was a ‘union of self-defence movements of the south’.¹²⁴⁵ P-0435 recalled that the GPP had officially been dissolved in 2007 and had instructed its members to disarm; for this reason, the UMAS was created as ‘sort of like a smokescreen so that if our activities were reported in the media, those activities would be attributed to UMAS’.¹²⁴⁶ P-0435 explained further that

with the exception of the GPP there were annex units that were set up because either those units were not under the authority of Bouazo, because they were the former members of the GPP, and this was with a view to federating all of the movements of self-defence and also, because, officially speaking, all those self-defence units were dissolved in 2007 after the dismantlement of the former combatants. And also unofficially we were still in place in our various positions, so we needed another interface that would give a smokescreen.¹²⁴⁷

517. In the present case, however, it is noted that the Prosecutor has not attributed any crimes to the UMAS. The name of the organisation used for the purposes of the alleged crimes during the post-election crisis remains the GPP.
518. Following its formal dissolution in 2007, it appears that factions emerged within what remained of the GPP. The Prosecutor also alleged that the GPP had at least two factions led respectively by Moussa Zéguen Touré and Bernard Bouazo Yoko Yoko and allegedly receiving financial support from two different sources (Mr Gbagbo’s Chef de Cabinet and Mrs Simone Gbagbo, respectively).¹²⁴⁸ P-0435 testified that there were differences in approaches between Moussa Zéguen Touré and Bernard Bouazo Yoko Yoko in that the elements under Touré were ‘very much lacking in discipline’ whereas Bouazo ‘thought that that approach destroyed the credibility of our organisation and that it was necessary to take a more disciplined approach and [...] to be more low key’.¹²⁴⁹

¹²⁴⁵ P-0435, T-89 dated 20 October 2016, p. 9.

¹²⁴⁶ P-0435, T-89 dated 20 October 2016, p. 9.

¹²⁴⁷ P-0435, T-89 dated 20 October 2016, pp. 9-10.

¹²⁴⁸ Mid-Trial Brief, para. 75; *see also* para. 29.

¹²⁴⁹ P-0435, T-87 dated 18 October 2016, p. 15.

519. The Prosecutor alleged that one of the two GPP factions was headed by Bernard Bouazo Yoko Yoko, who became the GPP leader in 2009 and was its President during the post-electoral crisis.¹²⁵⁰ She submitted that Bouazo was also its acting Chief of Staff and that he could transmit orders down the GPP chain of command through P-0435 or directly himself.¹²⁵¹ P-0435 testified that Bouazo became the GPP president in 2009;¹²⁵² he remained at this position during the post-election crisis. P-0435 also testified that under Bouazo's leadership, the GPP officially 'did not exist' and would operate more discreetly but it involved the same duties.¹²⁵³ P-0435 further testified that Bouazo was a 'general'¹²⁵⁴ within the GPP as well as the president and 'head of general staff' but 'really wasn't handling military matters'; P-0435 was his deputy and was the 'interface between the various commands'.¹²⁵⁵ P-0435 testified that for both Touré and Bouazo, the role of being the President of the GPP was to be the 'link between the GPP soldiers and the politics'.¹²⁵⁶
520. Relying on P-0435, the Prosecutor alleged that there was a meeting in 2008 with then Minister of Defence Michel Amani N'Guessan, Bouazo, and a person called Djimmy Willy who headed the UMAS at the time.¹²⁵⁷ It is noted that P-0435 was not present at this meeting and the contents thereof were relayed to him by Bouazo.¹²⁵⁸ P-0435 described it as a 'decision taken by Jeff, and Zégouen Touré to

¹²⁵⁰ Mid-Trial Brief, paras 29, 261.

¹²⁵¹ Mid-Trial Brief, para. 262 relying on P-0435.

¹²⁵² P-0435, T-87 dated 18 October 2016, p. 75; *see also* pp. 55-56, 69. *See further* P-0435, T-93 dated 27 October 2016, p. 46.

¹²⁵³ P-0435, T-93 dated 27 October 2016, pp. 46-47.

¹²⁵⁴ *See also* P-0435, T-97 dated 3 November 2016, p. 6 where the witness states that Bouazo had the rank of a general before becoming the GPP president as he had been the commanding officer of one of the GPP units.

¹²⁵⁵ P-0435, T-93 dated 27 October 2016, pp. 47-48.

¹²⁵⁶ P-0435, T-87 dated 18 October 2016, p. 17.

¹²⁵⁷ Mid-Trial Brief, para. 90 referring to P-0435, T-89 dated 20 October 2016, pp. 8-11.

¹²⁵⁸ P-0435, T-87 dated 18 October 2016, pp. 55-56.

withdraw from the leadership of the GPP [...] in the presence of the minister'.¹²⁵⁹

This meeting is not relevant for consideration of allegations concerning the GPP's role during the post-electoral crisis and its links with either accused. To the extent that Bouazo and Touré were present at this meeting, this will be taken into account when assessing their purported links, if any, with the two accused.

521. It is further noted that P-0435 appeared to link the aforementioned meeting to a later meeting in 2010 between Bouazo and new Minister of Defence Alain Dogou where apparently, they were 'to determine how it would be possible to work more collaboratively with the GPP'.¹²⁶⁰ It is noted that the meeting with Alain Dogou concerns the creation of the new unit called Ivorian Security Légion and has been discussed as part of the allegations concerning the integration into the FDS and those conclusions are imported by reference.¹²⁶¹ To the extent that the link suggested by the witness implies the involvement of ministers in Mr Gbagbo's regime, it is noted that there is no information about the extent to which Mr Gbagbo knew of and/or authorised these meetings, if at all.
522. Turning to the allegation that the GPP was an 'armed' group, it is noted that the evidence suggests that while some members of the GPP may have possessed weapons, it is not the case that all GPP members as a rule, or by virtue of their membership with the GPP, could be considered armed. The Prosecutor relied on P-0435 to allege that, following the second round of elections, some of the GPP members possessed AK-47s, RPGs and machine guns.¹²⁶² P-0435 did in fact testify that the GPP had AK-47s, 'RPGs, without rockets', 'rocket launchers', 'automatic handguns, pistols as well as other weaponry' and 'some of the AK-

¹²⁵⁹ P-0435, T-87 dated 18 October 2016, pp. 56.

¹²⁶⁰ P-0435, T-87 dated 18 October 2016, pp. 55.

¹²⁶¹ See IV.D.2.b)(5)(d)(iii) - Ivorian Security Legion.

¹²⁶² Mid-Trial Brief, para. 264.

47s had grenade launchers mounted upon them'.¹²⁶³ He also testified that 'not all members had weapons' since there were some elements who did not have 'any particular mastery of weapons and were not used to using them'.¹²⁶⁴ He added that 'we [the GPP] would give the weapons out depending on the availability of weapons and also in light of the various responsibilities entrusted to the elements in question'.¹²⁶⁵ According to P-0097, the means announced by the GPP for the defence of the country were 'weapons'.¹²⁶⁶ In contrast, General Kassaraté testified that the GPP was not armed and did not have weapons at any period of time.¹²⁶⁷ P-0048 testified that, following their creation after the beginning of the rebellion, he never saw the members of the GPP armed even though they were being trained by 'soldiers [...] in broad daylight'.¹²⁶⁸

523. The evidence cited does not indicate how common it was for GPP members to be armed during the relevant time. For this reason, when GPP members are identified by witnesses and victims, they cannot be assumed to be armed simply by being identified as such. The fact of them being armed in the context of the alleged commission of crimes would need to be established separately.
524. In conclusion, having regard to the aforementioned discussion, it can be concluded that the GPP was a group established as early as 2003. Its leadership evolved over the years that followed. There were efforts made to dissolve the GPP and to disarm and demobilise its members in the years following 2007. However, it is unclear to what extent that was successfully carried out.

¹²⁶³ P-0435, T-89 dated 20 October 2016, p. 37.

¹²⁶⁴ P-0435, T-89 dated 20 October 2016, p. 37.

¹²⁶⁵ P-0435, T-89 dated 20 October 2016, p. 37.

¹²⁶⁶ P-0097, T-48 dated 8 June 2016, p. 42.

¹²⁶⁷ P-0011, T-132 dated 10 March 2017, p. 9.

¹²⁶⁸ P-0048, T-54 dated 28 June 2016, p. 7.

525. The Prosecutor alleged that '[a]s of September 2010, the GPP numbered more than 18,000 elements nation-wide of which 8,000 to 9,000 were stationed in Abidjan'.¹²⁶⁹ P-0435 testified that 'we had more than 18,000 members at the national level'¹²⁷⁰ and in Abidjan 'the number was approximately half, at least 8,000 to 9,000 militias'.¹²⁷¹ Relying on P-0435, she further alleged that the GPP was well-armed during the post-electoral crisis.¹²⁷² The allegations concerning the arming of the GPP during the post-electoral crisis have been addressed later.¹²⁷³

(d) *Front pour la Libération du Grand Ouest – FLGO*

526. In the Mid-Trial Brief, the Prosecutor alleged that Mr Gbagbo and the members of the alleged 'inner circle' controlled the FLGO through financing it.¹²⁷⁴ The Prosecutor also made allegations concerning the activities of the FLGO in 2003.¹²⁷⁵ In the Response, the Prosecutor submits that the allegations concerning the FLGO are relevant in relation to their 'recruitment into and participation in the alleged Common Plan'.¹²⁷⁶

527. P-0500 testified that in 2003 he went to Guiglo to join the FLGO, the *Front pour la Libération du Grand Ouest*, whose leader was Denis Maho Glofiéhi,¹²⁷⁷ who was an FPI supporter.¹²⁷⁸ P-0500 confirmed that the FLGO was a local self-

¹²⁶⁹ Mid-Trial Brief, para. 264.

¹²⁷⁰ P-0435, T-87 dated 18 October 2016, p. 69.

¹²⁷¹ P-0435, T-87 dated 18 October 2016, p. 71.

¹²⁷² Mid-Trial Brief, para. 264.

¹²⁷³ IV.D.2.b)(3)(a) - Arming of the GPP.

¹²⁷⁴ Mid-Trial Brief, para. 267.

¹²⁷⁵ Mid-Trial Brief, paras 267-268.

¹²⁷⁶ Response, para. 1177.

¹²⁷⁷ P-0500, T-181 dated 28 August 2017, p. 18. He was the third deputy to the mayor (but the first and second and the mayor were not there. *See also* P-0316, T-182 dated 29 August 2017, p. 36 where he is described as a traditional chief of the west, the region of Wê.

¹²⁷⁸ P-0500, T-181 dated 28 August 2017, p. 23. *See also* p. 16. It is noted that later on the testimony, he denied knowing whether Maho Glofiéhi had specific function within the FPI (p. 23).

defence group that had been set up in response to the rebel attack at the time.¹²⁷⁹ According to P-0097, the FLGO was a ‘military organisation’.¹²⁸⁰ P-0048 confirmed, on the basis of his reading of the relevant UN reports, that this group was armed.¹²⁸¹ When the FLGO first arrived in Guiglo, they went to the house of an FPI MP whose name P-0500 did not recall.¹²⁸² Some of them stayed in Guiglo from March until September 2003 and learnt how to assemble and disassemble weapons.¹²⁸³ However, P-0500 testified that they did not have any weapons during that time; instead the FDS were the ones that had weapons.¹²⁸⁴

528. According to P-0500, there were more than 500 people that made up the FLGO at that time, both Ivorians (from all ethnic groups) and Liberians.¹²⁸⁵ P-0500 testified that he did not take part in any fighting during that time in Guiglo.¹²⁸⁶ P-0500 elaborated that there were ‘at least about 50’ (sometimes only 40 or 30) Liberians who ‘went with Maho’ in Guiglo and would ‘come and go’.¹²⁸⁷ After they left Guiglo, P-0500 and his group forced Maho Glofiéhi to bring them to Abidjan because they ‘were getting bored’ as there was nothing to do.¹²⁸⁸ The 678 members of the FLGO were brought to the first battalion in Akouédo, where they were told to go home by a ‘high ranking officer’, General Bombet.¹²⁸⁹

¹²⁷⁹ P-0500, T-182 dated 29 August 2017, p. 21.

¹²⁸⁰ P-0097, T-49 dated 9 June 2016, p. 45.

¹²⁸¹ P-0048, T-53 dated 27 June 2016, pp. 72-73.

¹²⁸² P-0500, T-181 dated 28 August 2017, p. 17.

¹²⁸³ P-0500, T-181 dated 28 August 2017, p. 22.

¹²⁸⁴ P-0500, T-181 dated 28 August 2017, pp. 33-34.

¹²⁸⁵ P-0500, T-181 dated 28 August 2017, p. 24. It is noted that it was Maho Glofiéhi that told him that they were Liberian refugees who had fled when Samuel Doe was in power/fell from power; P-0500 did not talk to the Liberians himself. *See* P-0500, T-182 dated 29 August 2017 p. 22. P-0500 did not know what ethnic group they belonged to, but they certainly weren’t Yacouba from Liberia (p. 23). These Liberians could have ground to fear for their lives from the Liberian Yacouba from MPIGO (p. 23).

¹²⁸⁶ P-0500, T-181 dated 28 August 2017, p. 33.

¹²⁸⁷ P-0500, T-181 dated 28 August 2017, pp. 45-46.

¹²⁸⁸ P-0500, T-181 dated 28 August 2017, p. 38.

¹²⁸⁹ P-0500, T-181 dated 28 August 2017, pp. 47-48.

529. It is noted that, when asked in court if Maho Glofiéhi ever mentioned that Mr Blé Goudé had a role in the creation of the FLGO, P-0500 testified that Maho Glofiéhi ‘never said that’.¹²⁹⁰
530. As regards allegations concerning financing of the FLGO, the Prosecutor relied on P-0500’s testimony however, it is noted that the testimony in relevant part concerns events from the years 2003 and 2006. P-0500 recalled that, in 2003, 678 FLGO members were provided 10 million FCFA to share among themselves following which they returned to their families.¹²⁹¹ This took place following their meeting with Mr Gbagbo who asked them to ‘[t]ake the money and go home’ and give him 10 days to deal with the administration in the west.¹²⁹² It is unclear from P-0500’s testimony whether this was payment in order to engage in the conflict taking place at the time or to stop such purported engagement. According to P-0500, FLGO members gave Bertin Kadet a list concerning the disarmament of the 678 members who were there.¹²⁹³ These members then took the money, shared it amongst themselves and went back to their families.¹²⁹⁴
531. P-0500 also testified about receiving FCFA 500 000 in 2003 from a person called Alphonse Douati¹²⁹⁵ to be shared among more than 300 FLGO members.¹²⁹⁶
532. In 2006, P-0500 went to see Bertin Kadet; P-0500 testified that Bertin Kadet gave him and three other FLGO members FCFA 10 000 to cover the cost of their return transport.¹²⁹⁷ P-0500 also testified that, following this, he went with fellow

¹²⁹⁰ P-0500, T-182 dated 29 August 2017, p. 42.

¹²⁹¹ P-0500, T-181 dated 28 August 2017, pp 51-52. *See also* pp 48-50. Assuming that each person shared this total amount equally, the amount per person in this particular instance is approximately 14,749 FCFA.

¹²⁹² P-0500, T-181 dated 28 August 2017, pp. 50-52.

¹²⁹³ P-0500, T-181 dated 28 August 2017, pp. 50-52.

¹²⁹⁴ P-0500, T-181 dated 28 August 2017, pp. 50-52.

¹²⁹⁵ P-0500 later learned that Alphonse Douati was an FPI member. *See* P-0500, T-181 dated 28 August 2017, pp. 15-16.

¹²⁹⁶ P-0500, T-181 dated 28 August 2017, pp 55-56.

¹²⁹⁷ P-0500, T-181 dated 28 August 2017, pp. 56-57.

FLGO members to the prime minister's office to find Maho Glofiéhi; P-0500 did not go inside but was told by other FLGO members who had accompanied him and did go inside the office that they received some money.¹²⁹⁸

533. P-0500 did not know who had given them the money, nor how much was given; after having his statement read back, P-0500 testified that his friends went into the prime minister's office and saw Maho Glofiéhi receiving money, but that they did not tell P-0500 who had given Maho Glofiéhi the money.¹²⁹⁹ P-0500 confirmed that the purpose of contacting Maho Glofiéhi in 2006 had been to be put on a list of former combatants so that he would have been able to receive compensation.¹³⁰⁰ P-0500 additionally confirmed that this was the programme whereby 'former combatants were supposed to demobilise and disarm, and they would receive an amount of money'.¹³⁰¹ P-0500 testified that he thought that the money came from the United Nations, because they were the ones that organised the programme. P-0500 was put on a list, however, the process was interrupted and he waited until 2008 hoping to receive some money;¹³⁰² P-0500 confirmed that he was never able to get any money as a former combatant.¹³⁰³ It is noted that subsequently, P-0500 went to Lauriers to work as a bricklayer.¹³⁰⁴ When asked to comment on whether it would be fair to say that 'after 2008 [he] dropped the whole thing about demobilisation and compensation and [...] moved on to something else', P-0500 agreed.¹³⁰⁵

¹²⁹⁸ P-0500, T-181 dated 28 August 2017, pp 61-62.

¹²⁹⁹ P-0500, T-181 dated 28 August 2017, pp. 63-64.

¹³⁰⁰ P-0500, T-182 dated 29 August 2017, pp. 10-11.

¹³⁰¹ P-0500, T-181 dated 28 August 2017, p. 66.

¹³⁰² P-0500, T-182 dated 29 August 2017, pp. 38-39.

¹³⁰³ P-0500, T-182 dated 29 August 2017, pp. 12-13.

¹³⁰⁴ P-0500, T-181 dated 28 August 2017, pp. 47-48.

¹³⁰⁵ P-0500, T-182 dated 29 August 2017, p. 15.

534. As regards allegations of financing of the FLGO during the post-electoral crisis, the conclusions in this respect are imported by reference.¹³⁰⁶ In assessing whether members of the FLGO may have received other benefits besides purported financing, it is noted that P-0500 testified that they received a ‘card’ or a ‘pass’ to identify themselves as belonging to ‘a combatant from the west’¹³⁰⁷ and the person holding the card could try to receive medical care at the hospital on the basis of such card.¹³⁰⁸
535. Considering the evidence relevant to the allegations of Mr Gbagbo and the ‘inner circle’ financing the FLGO taken together, it cannot be concluded that the FLGO was being controlled by them through financing.
536. In the Response, the Prosecutor also alleges that Maho Glofiéhi was present at the 19 March 2011 rally at Place CP1 Yopougon with other *Galaxie Patriotique* members.¹³⁰⁹ Maho Glofiéhi’s mere presence at this rally is not sufficient to make any determination as to his purported participation in the alleged Common Plan. During this rally Mr Blé Goudé is alleged to have made the call for the youth to enlist in the FDS.¹³¹⁰
537. There is evidence on record to suggest that volunteers from the FLGO were listed for FDS recruitment in Guiglo in a document dated 9 March 2011.¹³¹¹ It is noted that this document is not signed or stamped. While the format of the list contained therein looks similar to that contained in document CIV-OTP-0071-0850 which was authenticated by General Deto Letho, there appears to be no

¹³⁰⁶ IV.D.2.b)(2)(h) - Payments concerning the FLGO.

¹³⁰⁷ P-0500, T-182 dated 29 August 2017, pp. 15-16.

¹³⁰⁸ P-0500, T-181 dated 28 August 2017, pp. 73-74.

¹³⁰⁹ Response, para. 1179.

¹³¹⁰ IV.F.2.vv) - 19 March 2011 - Rally Place CP1 Yopougon;

IV.D.2.e)(3) - Calls to enlist.

¹³¹¹ A L'ATTENTION DE MONSIEUR YAI OCTAVE, undated, CIV-OTP-0048-0203.

document reference number or otherwise any indication that this is official correspondence. It is also noted that this document contains two lists – one each for the third and the second wave of purported recruitment – without an indication as to when these happened or whether they were connected. Nonetheless, even if this document was authenticated, it alone would be incapable of proving the actual recruitment. Moreover, it is unclear how these purported recruitments of volunteers, including those from the FLGO in Guiglo, is evidence that demonstrates intent underlying the alleged Common Plan of either of the two accused for the crimes that took place in Abidjan.

538. It is noted that elements from the FLGO also appear in CIV-OTP-0071-0850. This document has been addressed as part of the allegations concerning the integration of militia elements into the FDS.¹³¹²
539. Finally, there is anecdotal evidence suggesting that (former) FLGO members were involved during the post-election crisis. This is based on P-0500's account concerning the events at the Presidential Residence towards the end of the crisis. In the Response, the Prosecutor pointed to P-0500's apparent involvement 'towards the end of the crisis' as evidence of FLGO being part of the pro-Gbagbo forces as an 'organised and hierarchical apparatus of power'.¹³¹³ Having regard to P-0500's testimony, it emerges that while he was a former FLGO member, he was not participating as one and testified that apart from one other person, he did not see any other FLGO members there.¹³¹⁴ This evidence is therefore too remote to show any actual link between the FLGO and the purported Common Plan. As for P-500's own apparent involvement towards the

¹³¹² IV.D.2.b)(5)(d)(ii) - Alleged recruitment in the FDS.

¹³¹³ Response, para. 1180; *see also* paras 1167.

¹³¹⁴ P-0500, T-181 dated 28 August 2017, pp. 74-75, 88.

end of the crisis, it has been discussed as part of the evaluation of Commanant Séka Yapo's alleged role.¹³¹⁵

(e) *Conclusion*

540. Considering the evidence regarding the emergence of the youth groups and militia, it is noted that Mr Gbagbo may have been at the centre of the political alignment of certain youth groups that were formed in the years 2002 and onwards.¹³¹⁶ This may have been due to the collective association by such youth groups between his person and the political office he held. However, this, in itself, is insufficient to conclude that Mr Gbagbo himself contributed to the creation of these groups. On the basis of the evidence on the record, it appears that these youth groups were formed as a reaction to the political climate in the years 2002-2003 and following. However, there is little to no evidence that these groups were created at Mr Gbagbo's behest.

541. Moreover, the analysis of the respective groups demonstrates that, although they may all have pursued largely similar goals, their ideology and methodology differed considerably. Further, there is little evidence regarding the membership of the different groups. In particular, it is not known to what extent the process of becoming a member was formalised and subject to criteria. Nor is it known whether and, if so, to what extent, membership of different groups overlapped.

(2) *Payments and financing*

542. The Prosecutor alleged that 'prior to and during the post-electoral crisis', Mr Gbagbo, Mr Blé Goudé and other members of the 'inner circle' 'financed

¹³¹⁵ IV.D.1.c)(9) - Commandant Séka Yapo's alleged role.

¹³¹⁶ *See further* IV.D.2.b)(2)(a)(i) - Eugène Djué;

IV.D.2.b)(2)(a)(ii) - Serge Koffi;

IV.D.2.b)(2)(a)(iii) - Yousouf Fofana.

pro-GBAGBO youth and milita leaders.¹³¹⁷ In the Mid-Trial Brief, the Prosecutor pointed to a sample of receipts collected at the Presidential Residence to demonstrate that leaders of *Galaxie Patriotique* such as ‘Serge Koffi (FESCI), Youssouf Fofana (*Voix du Nord*) and Eugene Djué (UPLTCI) were indeed receiving large sums of money, on a systematic basis, from the President’s Cabinet prior to and during the post-electoral crisis’.¹³¹⁸ She further adds that the frequency and large number of these receipts suggests that the payments were not only to fund meetings, ‘but also for the leaders and *Jeunes Patriotes* themselves’.¹³¹⁹ The Prosecutor also alleged that, from its creation, ‘the GPP’s activities were financed, supported and encouraged’ by Mr Gbagbo and members of the alleged ‘inner circle’, including Mr Blé Goudé.¹³²⁰ In particular, the Prosecutor alleged that Moussa Zéguen Touré ‘received payments from the Presidency prior to and during the post-election crisis.’¹³²¹ In the Response, the Prosecutor submits that the totality of receipt funds paid from the *Cabinet du Président de la République* to both armed and unarmed groups, along with other supporting evidence on the case record, are ‘indicative of a link between the presidency of Mr Gbagbo and the militia.’¹³²²

¹³¹⁷ Mid-Trial Brief, para. 269.

¹³¹⁸ Mid-Trial Brief, para. 270.

¹³¹⁹ Mid-Trial Brief, para. 270.

¹³²⁰ Mid-Trial Brief, para. 273.

¹³²¹ Mid-Trial Brief, para. 273. *See also* Response, para. 140.

¹³²² Response, para. 141.

(a) *General observations concerning the receipts used by the
Prosecutor*

543. At the outset, there are general concerns relating to authenticity of the receipts obtained from the Presidential Palace.¹³²³ Having compared the sample of the receipts cited by the Prosecutor against other receipts on the record, there are certain observations that inform the assessment of these allegations as a whole. Certain number of these receipts does not have a letterhead, nor do they bear any official stamps. None of the signatures on any of these receipts have been authenticated and/or identified by the Prosecutor. Their content offers little to no indication as to the purpose of these payments.
544. However, having regard to my approach generally towards assessment of evidence,¹³²⁴ they will nonetheless be assessed in light of the Prosecutor's allegations. In this regard, it is recalled that the Prosecutor invited the Chamber to examine the receipts together and against each other with a view to ascertaining a frequency of payment made by the President's cabinet. This analysis will proceed on the assumption that it is indeed appropriate to compare these receipts in the absence of the evidence identifying the signatures in question. It is noted that certain receipts do appear to have been made regularly. There are several receipts dated from July 2004 to March 2011 submitted by the Prosecutor in support of her allegations. A number of these receipts mention the names of the recipients: Eugène Djué,¹³²⁵ Serge Koffi,¹³²⁶ Moussa Zéguen

¹³²³ Dissenting Opinion of Judge Geoffrey Henderson, ICC-02/11-01/15-1172-Anx to 'Decision concerning the Prosecutor's submission of documentary evidence on 28 April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018', 1 June 2018, ICC-02/11-01/15-1172, para. 7. *See also* CIV Situation/ Review of Documents from the Presidential Palace, Abidjan at the Annex of the Hôtel d'Ivoire, 25 May - 10 June 2012, 4 July 2012, CIV-OTP-0023-0401 (confidential); INVESTIGATOR'S REPORT / Addendum to Report at CIV-OTP-0023-0401 concerning the Review of Documents from the Presidential Palace, Abidjan, 12 April 2017, CIV-OTP-0097-0219 (confidential).

¹³²⁴ *See* I.C - Formal admissibility rulings.

¹³²⁵ *See for example* RECU, 16 May 2009, CIV-OTP-0025-0453.

¹³²⁶ *See for example* RECU, 16 May 2009, CIV-OTP-0025-0456.

Touré,¹³²⁷ and Youssouf Fofana.¹³²⁸ A certain number of them state that the payments are being made from the President's Cabinet.¹³²⁹

545. The roles played by these aforementioned individuals in relation to their groups have also been examined to ascertain whether or not it can be inferred that, through these payments, the accused contributed to the alleged Common Plan. The composition and ideology of these groups have also been assessed to ascertain whether or not they saw resort to arms as a means of fulfilling their goals.

(i) *Eugène Djué*

546. Eugène Djué was the leader of a group known as UPLTCI that could fall within the term 'patriotic movement'. However, there are no specific allegations made in respect of this group. P-0097 testified that the UPLTCI was setup in 2003 by Eugène Djué and that '[i]n a different way from the [AJSN], the UPLTCI was of the mind that the country could not be liberated by rhetoric. One had to use weapons in order to be able to face those opposite with weapons'.¹³³⁰ It is also noted that P-0097's testimony further suggested that Eugène Djué was not subordinated to Mr Blé Goudé.¹³³¹

¹³²⁷ See for example RECU, 16 May 2009, CIV-OTP-0025-0452.

¹³²⁸ See for example RECU, 16 May 2009, CIV-OTP-0025-0450.

¹³²⁹ See for example RECU, 16 June 2009, CIV-OTP-0025-0459; RECU, 16 June 2009, CIV-OTP-0025-0460; RECU, 16 June 2009, CIV-OTP-0025-0461; RECU, 16 June 2009, CIV-OTP-0025-0462; RECU, 16 June 2009, CIV-OTP-0025-0463; RECU, 16 June 2009, CIV-OTP-0025-0465; RECU, 16 June 2009, CIV-OTP-0025-0466.

¹³³⁰ See P-0097, T-48 dated 8 June 2016, p. 41.

¹³³¹ See P-0097, T-49 dated 9 June 2016, pp. 44-45.

547. Having regard only to Eugène Djué's role in respect of UPLTCI and the post-election crisis,¹³³² one cannot infer that the purported payments made to him amounted to contribution to the alleged Common Plan. However, noting P-0097's testimony that UPLTCI considered the use of weapons, the receipts have been examined with a view to ascertaining whether or not there is any indication as to what these purported payments were being used for.

(ii) *Serge Koffi*

548. Serge Koffi led a group called CRAC¹³³³ and was also the former Secretary General of the FESCI.¹³³⁴ It is noted that Serge Koffi's statement in the excerpt from the RTI broadcast dated 28 February 2011 speaks of tracking movements of UNOCI and *Licorne* tanks.¹³³⁵ It is also noted that he stated an analogy that *'même si le père ne t'appelle pas à la rescousse de venir au-devant du combat, de le mener avec dextérité afin qu'il sache qu'il a eu des enfants dignes chez lui à*

¹³³² It is noted that there are other allegations that refer to Eugène Djué. However, from the limited information in the evidence cited in support, it is not possible to reach conclusions that could prove or disprove allegations against his role vis-à-vis the alleged Common Plan. These include allegations relating to reiterating the calls for mobilisation and presence at the CNRD Meeting dated 30 March 2011. *See* IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002 for discussion of P-0449's testimony concerning the meeting in 2002 at Cocody University. *See also* IV.A.1.b) - Meetings concerning the CNRD Meeting dated 30 March 2011. There are other pieces of evidence concerning Eugène Djué that also do not shed further light on his role during the post-election violence. As per a list on the case record, Eugène Djué appears as UPLTCI's national president and this group declares itself to be a patriotic association along with other groups, including the GPP. *See* Rencontre avec le chef de l'Etat Son Excellence LAURENT GBAGBO dans le cadre de la consultation nationale relative à la réponse à la lettre du médiateur Sud-Africain, 17 April 2005, CIV-OTP-0025-0233 at 0238. This list includes, *inter alia*, the GPP, CNLB, *Sorbonne Solidarité*. On 17 April 2005 'Le Maréchal Eugène Kouadio Djué', in his capacity as 'Président National de l'UPLTCI', issued a statement on a meeting with Mr Gbagbo as part of the national consultation in response to the letter containing the proposals by the South African President, expressing his views on said proposals. P-0500 testified seeing Djué in the courtyard of the then prime minister's office in 2006. *See* P-0500, T-181 dated 28 August 2017, pp. 61, 65-66. P-0009 testified that he saw Djué in the 'disarmament ceremony' that took place in April 2007. *See* P-0009, T-194 dated 26 September 2017, pp. 37-39; *see also* p. 34. The conclusions as to the press conference dated 22 June 2006 where Djué is seen to have been present are also recalled. *See* IV.B.2.a) - Obstruction of efforts to establish peace in Côte d'Ivoire concerning the meeting on 22 June 2006.

¹³³³ P-0625, T-25 dated 7 March 2016, p. 79.

¹³³⁴ P-0097, T-46 dated 6 June 2016, p. 51; P-0440, T-157 dated 11 May 2017, pp. 47-48.

¹³³⁵ RTI broadcast dated 28 February 2011, CIV-OTP-0074-0084, transcript at CIV-OTP-0087-0673 at 0674.

la maison'.¹³³⁶ When read together, this evidence is insufficient to demonstrate that Serge Koffi was acting pursuant to Mr Gbagbo's orders or instructions or that Mr Gbagbo otherwise had control over him or his group. Serge Koffi's analogy is informative as to the nature of his loyalty to Mr Gbagbo in that he was acting '*même si le père ne t'appelle pas*'. Having regard to the other allegations concerning Serge Koffi's role in respect of CRAC¹³³⁷ and in the post-election crisis,¹³³⁸ one can infer that he was a staunch supporter of Mr Gbagbo and that he was close to the regime. However, this is not sufficient to conclude that the purported payments made to him were related to the alleged Common Plan.

(iii) Yousouf Fofana

549. Yousouf Fofana was the leader of *Voix du Nord*.¹³³⁹ P-0625 considered *Voix du Nord* as one of the groups that had 'organised structures'.¹³⁴⁰ When asked whether

¹³³⁶ RTI broadcast dated 28 February 2011, CIV-OTP-0074-0084, transcript at CIV-OTP-0087-0673 at 0675.

¹³³⁷ In her Response, the Prosecutor makes new allegations concerning CRAC and its members. See Response, para. 261 alleging that CRAC members had looted the houses of opposition members relying on P-0440's testimony; para. 1162 alleging that Serge Koffi was at a massive gathering of youth at the President's residence and they were checking suspicious movement of UNOCI and *Licorne* vehicles, relying on RTI broadcast dated 28 February 2011, CIV-OTP-0074-0084, transcript at CIV-OTP-0087-0673 at 0674-0675. It is noted that P-0440 testified that Serge Koffi would bring together these young people from the FESCI and they would go off to the homes of high-level people from opposition parties such as the RHDP, who were often at the Golf. These people would engage in looting and would vandalise the homes.

¹³³⁸ It is recalled that his name also appears in the roll call for the CNRD Meeting dated 30 March 2011. See LISTE DE PRESENCE DU MERCREDI 30 MARS 2011, 30 March 2011, CIV-OTP-0018-0406 (confidential). See also IV.A.1.b) - Meetings, para. 111. In the Mid-Trial Brief, the Prosecutor alleges that Serge Koffi repeated the call made by Mr Blé Goudé during a press conference at Cocody on 23 March 2011; he called upon the patriots in Yopougon to remain vigilant and listen to the *mots d'ordre*; and he echoed Navigué Konaté's reiterated call dated 3 April. See Serge Koffi repeating this call: RTI Broadcast dated 25 March 2011, CIV-OTP-0069-0378, transcript at CIV-OTP-0087-0761 at 0762. See also IV.F.4 - Youth leaders reiterating the calls.

¹³³⁹ P-0625 testified that Yousouf Fofana was the President of the *Voix du Nord*. See P-0625, T-25 dated 7 March 2016, pp. 83-84. Fofana appeared to be one of the main leaders of the *Galaxie Patriotique*. See P-0625, T-25 dated 7 March 2016, p. 70. See further P-0097, T-46 dated 6 June 2016, p. 35 (confidential). P-0625 also stated that Yousouf Fofana was from the North. P-0625, T-30 dated 15 March 2016, p. 59. It is noted, however, that P-0431's notes refer to Yousouf Fofana as "leader, member of GPP" but this, in itself, cannot demonstrate that Yousouf Fofana was, in fact, a leader and member of the GPP. See -Tape 001, 22 June 2006, CIV-OTP-0058-0666-R01 (confidential); see also P-0431, T-43 dated 24 May 2016, pp. 38-39.

¹³⁴⁰ P-0625, T-32 dated 17 March 2016, p. 5. Further, although P-0625 did not remember which organisations belonged to CONARECI, he thought that the *Voix du Nord* was included. See P-0625, T-32 dated 17 March 2016, p. 6.

there was any other movement within the *Galaxie Patriotique* which had a policy of non-violence, P-0625 gave the Youssouf Fofana's *Voix du Nord* as an example.¹³⁴¹ The Prosecutor also relies on evidence showing that Youssouf Fofana attended the second CNRD meeting, as well as a 'meeting of youth leaders at the *Hôtel de Ville* of Cocody' called by Mr Blé Goudé on 14 December 2010.¹³⁴² In the Response, the Prosecutor refers to additional footage of the Speaker's Corner rally on 12 July 2006¹³⁴³ to allege that the video shows Youssouf Fofana¹³⁴⁴ 'explain[ing] that even Northerners like him and Zéguen [...] are against Mr Soro and the presence of foreigners in the North of the country.'¹³⁴⁵ Having regard to the conclusion reached in respect of the press conference on 22 June 2006¹³⁴⁶ and the rally in July 2006,¹³⁴⁷ there are no indications as regards *Voix du Nord*'s or Youssouf Fofana's role that suggest any involvement in the use of violence. Therefore, it cannot be concluded that the purported payments to him or his group was related to the alleged Common Plan.

¹³⁴¹ P-0625, T-32 dated 17 March 2016, p.8.

¹³⁴² Mid-Trial Brief, para. 345; Response, paras 565, 1118, 1143, 1370, 1405. Witness P-0625 stated that Youssouf Fofana was one of the leaders in attendance at the second meeting of the CNRD. *See* P-0625, T-28 dated 10 March 2016, p. 11. P-0625 also testified that Fofana was present at a meeting at the *Hôtel de Ville* in Cocody before the RTI march. P-0625, T-27 dated 9 March 2016, pp. 23-24. *See* para. 107 [concerning the second CNRD meeting]; V.B.3.a) - Mr Blé Goudé's mobilisation of *jeunes patriotes* to protect the RTI [concerning the meeting at the Cocody town hall].

¹³⁴³ Response, para. 1449.

¹³⁴⁴ Video, undated, CIV-OTP-0059-0004 (confidential) at 00.31.40 to 00.33.33. It is noted that the speaker identified as Youssouf Fofana [transcript at CIV-OTP-0090-5637 at 5639] has been referred to as an 'unknown speaker' by P-0431 in his notes. *See* Tape 002, 12 July 2006, CIV-OTP-0058-0673-R01 (confidential) at 0680 '0 33 19 unknown speaker'.

¹³⁴⁵ Response, para. 1449. *See* IV.B.2.a) - Obstruction of efforts to establish peace in Côte d'Ivoire, para. 196.

¹³⁴⁶ *See* IV.B.2.a) - Obstruction of efforts to establish peace in Côte d'Ivoire, para. 195.

¹³⁴⁷ *See* IV.B.2.a) - Obstruction of efforts to establish peace in Côte d'Ivoire, para. 196.

(iv) Moussa Zéguen Touré

550. Moussa Zéguen Touré was the former President of the GPP.¹³⁴⁸ P-0435 pointed to differences in loyalty of ‘elements’ within the GPP towards Touré and Bouazo.¹³⁴⁹ P-0435 also testified about a meeting that he himself did not attend; it was at this meeting that ‘it was officially confirmed that Bouazo was the [GPP] president and that there was no longer any more dissent within the GPP’.¹³⁵⁰ This meeting is placed in the period of ‘2009 and 2010’.¹³⁵¹ It is also noted that P-0097 testified that Zéguen Touré did not consider himself subordinated to Mr Blé Goudé in relation to the GPP.¹³⁵²
551. Despite the fact that Touré purportedly had no significant operational role to play vis-à-vis the GPP during the post-election violence,¹³⁵³ the Prosecutor cited to receipts that were signed by him before and during the post-election violence. The receipts signed by Touré are examined nonetheless with a view to ascertaining whether or not it can be inferred that the payments may have

¹³⁴⁸ P-0435, T-87 dated 18 October 2016, p. 11. P-0435 testified that Bouazo became the GPP president in 2009 and that he remained at this position during the post-election crisis. P-0435, T-87 dated 18 October 2016, p. 75; *see also* pp. 55-56, 69. *See further* P-0435, T-93 dated 27 October 2016, p. 46.

¹³⁴⁹ *See for example* P-0435, T-87 dated 18 October 2016, pp. 16-18.

A. [10:24:58] He [Touré] stayed within the GPP. Although, although Bouazo was the head of the GPP, all the same, there still were some soldiers who remained faithful and loyal and they did not have a lot--they were not--you see, they remained loyal to him, not to Bouazo.

¹³⁵⁰ P-0435, T-87 dated 18 October 2016, pp. 55-56.

¹³⁵¹ P-0435, T-87 dated 18 October 2016, p. 54. The witness appears to be referencing two meetings, one with Minister Amani N’Guessan (p. 54) and one with Minister Alain Dogou (p. 55). It is not known in which of the two meetings the decision to confirm Bouazo was taken. As per his testimony, the meeting with Minister Alain Dogou could have only taken place after he was appointed Minister following “a change of government” (p. 55). *See also* T-88 dated 19 October 2010, p. 9.

¹³⁵² P-0097, T-48 dated 8 June 2016, pp. 30-31. The conclusions concerning the meeting on 14 December 2010 at *Hotel de Ville Cocody* are also recalled, *see* V.B.3.a) - Mr Blé Goudé’s mobilisation of *jeunes patriotes* to protect the RTI.

¹³⁵³ It is noted that Touré appears in Simone Gbagbo’s diary that records a meeting in 2006 in which the security situation in the country appears to have been discussed. However, noting that he was no longer the GPP president from 2009 onwards, there are no meaningful inferences that can be drawn from this about his role during the post-election crisis. *See* *Présidence de la République 2006*, 1 January 2006, CIV-OTP-0018-0895 (confidential) at 0911.

secured the loyalty of certain GPP members to Mr Gbagbo prior and/or during the post-election crisis.¹³⁵⁴ It is noted, in this regard, that the Prosecutor alleged that Bouazo was able to obtain financing from Simone Gbagbo, Damana Pickass, and Mr Blé Goudé – this claim has been addressed elsewhere.¹³⁵⁵

(b) *Payments prior to the period of post-electoral crisis*

552. The receipts that are dated prior to the post-electoral crisis will be addressed first. The Prosecutor referred to P-0625's testimony wherein he made a general statement that he thought that 'there were bonuses for certain leaders and others received financing or financial support if they needed to go to attend a rally, or if they needed to go on a tour'.¹³⁵⁶ Relying on P-0625, the Prosecutor alleged that 'bonuses' were being received from the 'President's Cabinet' by certain leaders of the *Galaxie Patriotique*.¹³⁵⁷ She pointed to P-0625 who testified that 'on two or three occasions'¹³⁵⁸ he saw individuals from the *Galaxie Patriotique* picking up 'bonuses'¹³⁵⁹ in envelopes from the Secretariat of the Deputy Director of the President's Cabinet.¹³⁶⁰ To corroborate this allegation, she references several receipts,¹³⁶¹ discussed hereinunder.

¹³⁵⁴ See also IV.D.2.b)(2)(c) - Receipts signed on behalf of others.

¹³⁵⁵ See IV.D.2.b)(2)(f) - Payments linked to Mr Blé Goudé;

IV.D.2.b)(2)(g) - Payments linked to Simone Gbagbo.

¹³⁵⁶ P-0625, T-27 dated 9 March 2016, p. 63.

¹³⁵⁷ Mid-Trial Brief, para. 270. In respect of this portion of his testimony, it is noted that P-0625, *inter alia*, mentions Anõ Castro as having received these bonuses. This individual appears in the CNRD roll call LISTE DE PRESENCE DU MERCREDI 30 MARS 2011, 30 March 2011, CIV-OTP-0018-0406 (confidential). P-0625 additionally testified that Anõ Castro attended the 'second meeting' of the CNRD; see P-0625, T-28 dated 10 March 2016, p. 11.

¹³⁵⁸ P-0625, T-27 dated 9 March 2016, p. 65; see also p. 66 where he states that he saw three people.

¹³⁵⁹ P-0625, T-27 dated 9 March 2016, pp. 63-65.

¹³⁶⁰ Mid-Trial Brief, para. 270 referring to P-0625.

¹³⁶¹ See Mid-Trial Brief, para. 270.

553. It is noted, however, that P-0625 was not in the position, at the relevant time, to have read the contents of the receipts so cited.¹³⁶² He simply recalls having seen that ‘there were papers that were signed’.¹³⁶³ For these reasons, it cannot be concluded that this witness is speaking of the same receipts and that his testimony is in fact corroborated by their existence. In any event, the witness did not explain what the alleged bonuses were a reward for.

554. As regards the contents of the receipts, these purported payments appear to be addressed to Youssouf Fofana, as President of the *Voix du Nord*, for a sum of 200 000 FCFA;¹³⁶⁴ Serge Koffi, as Ex-Secretary General of FESCI, for a sum of 100 000 FCFA;¹³⁶⁵ Eugène Djué, as President of UPLTCI, for a sum of 300 000 FCFA;¹³⁶⁶ and Moussa Zéguen Touré, as President of the GPP, for a sum of 200

¹³⁶² The Chamber notes that during his examination he stated that he saw the receipts being collected by the individuals but clarified that he did not read the contents.

¹³⁶³ P-0625, T-27 dated 9 March 2016, pp. 64-65.

¹³⁶⁴ RECU, 16 May 2009, CIV-OTP-0025-0451; RECU, 16 June 2009, CIV-OTP-0025-0466; RECU, 20 August 2009, CIV-OTP-0025-0471; RECU, 3 September 2009, CIV-OTP-0025-0481; RECU, 21 September 2009, CIV-OTP-0025-0489; RECU, 21 October 2009, CIV-OTP-0025-0500; RECU, 21 November 2009, CIV-OTP-0025-0510; RECU, 24 December 2009, CIV-OTP-0025-0516; RECUS, 22 January 2010, CIV-OTP-0025-0523; RECUS, 22 February 2010, CIV-OTP-0025-0534; RECUS, 25 March 2010, CIV-OTP-0025-0545; RECUS, 26 April 2010, CIV-OTP-0025-0554; RECUS, 20 May 2010, CIV-OTP-0025-0563; RECUS, 22 June 2010, CIV-OTP-0025-0570; RECUS, 21 June 2010, CIV-OTP-0025-0579; RECUS, 19 August 2010, CIV-OTP-0025-0588; RECUS, 15 September 2010, CIV-OTP-0025-0597; RECUS, 21 October 2010, CIV-OTP-0025-0606; RECUS, 18 November 2010, CIV-OTP-0025-0618.

¹³⁶⁵ RECU, 16 May 2009, CIV-OTP-0025-0456; RECU, 16 June 2009, CIV-OTP-0025-0462; RECU, 20 August 2009, CIV-OTP-0025-0473; RECU, 3 September 2009, CIV-OTP-0025-0484; RECU, 21 September 2009, CIV-OTP-0025-0492; RECU, 21 October 2009, CIV-OTP-0025-0498; RECU, 21 November 2009, CIV-OTP-0025-0508; RECU, 24 December 2009, CIV-OTP-0025-0519; RECUS, 22 January 2010, CIV-OTP-0025-0528; RECUS, 22 February 2010, CIV-OTP-0025-0537; RECUS, 25 March 2010, CIV-OTP-0025-0548; RECUS, 26 April 2010, CIV-OTP-0025-0555; RECUS, 20 May 2010, CIV-OTP-0025-0566; RECUS, 22 June 2010, CIV-OTP-0025-0573; RECUS, 21 July 2010, CIV-OTP-0025-0582; RECUS, 19 August 2010, CIV-OTP-0025-0591; RECUS, 15 September 2010, CIV-OTP-0025-0600; RECUS, 21 October 2010, CIV-OTP-0025-0609; RECUS, 18 November 2010, CIV-OTP-0025-0615.

¹³⁶⁶ RECU, dated 16 May 2009, CIV-OTP-0025-0454; RECU, 16 June 2009, CIV-OTP-0025-0461; RECU, 20 August 2009, CIV-OTP-0025-0468; RECU, 3 September 2009, CIV-OTP-0025-0478; RECU, 21 September 2009, CIV-OTP-0025-0494; RECU, 21 October 2009, CIV-OTP-0025-0496; RECU, 26 November 2009, CIV-OTP-0025-0506; RECU, 24 December 2009, CIV-OTP-0025-0514; RECUS, 22 January 2010, CIV-OTP-0025-0526; RECUS, 22 February 2010, CIV-OTP-0025-0532; RECUS, 25 March 2010, CIV-OTP-0025-0542; RECUS, 26 April 2010, CIV-OTP-0025-0551; RECUS, 20 May 2010, CIV-OTP-0025-0559; RECUS, 22 June 2010, CIV-OTP-0025-0568; RECUS, 21 July 2010, CIV-OTP-0025-0577; RECUS, 19 August 2010, CIV-OTP-0025-0586; RECUS, 15 September 2010, CIV-OTP-0025-0595; RECUS, 21 October 2010, CIV-OTP-0025-0604; RECUS, 18 November 2010, CIV-OTP-0025-0614.

000 FCFA.¹³⁶⁷ Whilst these documents are all signed by someone as proof of having received the amount,¹³⁶⁸ as noted above, they do not contain any information as to their purpose. The Prosecutor has not adduced any other evidence that could otherwise suggest to what end these payments were being made. For this reason, even if these payments were indeed made as suggested, it is not possible to determine whether or not these purported payments are linked to the alleged Common Plan.

555. Turning to the second category of receipts that reference payments being made towards ‘patriotic movements’, it is noted that the allegations concerning these receipts only reference Youssouf Fofana and Eugène Djué.

556. The receipts concerning Youssouf Fofana appear to acknowledge that he received sums of 450 000 FCFA, in his capacity as President of the *Voix du Nord* (from either Madame Sarata Ottro Zirignon-Touré, Deputy Director of the Cabinet of the President of the Republic, or from her Secretariat) on behalf of

¹³⁶⁷ RECU, 16 May 2009, CIV-OTP-0025-0452; RECU, 16 June 2009, CIV-OTP-0025-0459; RECU, 20 August 2009, CIV-OTP-0025-0472; RECU, 3 September 2009, CIV-OTP-0025-0480; RECU, 21 September 2009, CIV-OTP-0025-0488; RECU, 21 October 2009, CIV-OTP-0025-0501; RECU, 21 November 2009, CIV-OTP-0025-0511; RECU, 24 December 2009, CIV-OTP-0025-0518; RECUS, 22 January 2010, CIV-OTP-0025-0527; RECUS, 22 February 2010, CIV-OTP-0025-0536; RECUS, 25 March 2010, CIV-OTP-0025-0544; RECUS, 26 April 2010, CIV-OTP-0025-0552; RECUS, 20 May 2010, CIV-OTP-0025-0561; RECUS, 22 June 2010, CIV-OTP-0025-0572; RECUS, 21 July 2010, CIV-OTP-0025-0581; RECUS, 19 August 2010, CIV-OTP-0025-0590; RECUS, 15 September 2010, CIV-OTP-0025-0599; RECUS, 21 October 2010, CIV-OTP-0025-0608; RECUS, 18 November 2010, CIV-OTP-0025-0616.

It is noted that there are additionally receipts of this kind on the record for Koné Largaton. *See for example* RECU, 16 May 2009, CIV-OTP-0025-0457 for a sum of 100 000 FCFA. P-0625 testified that this individual was a member of the *Galaxie Patriotique* and attended the ‘second meeting’ of the CNRD; *see* P-0625, T-28 dated 10 March 2016, p. 11.

¹³⁶⁸ *See* P-0625, T-27 dated 9 March 2016, pp. 64-65 where he explains generally how such receipts would have been ‘signed off’.

‘three patriotic movements’.¹³⁶⁹ The receipts in respect of Eugène Djué appear to acknowledge the receipt of sums of 1 300 000 FCFA, in his capacity as President of UPLTCI (from either Madame Sarata Ottro Zirignon-Touré, Deputy Director of the Cabinet of the President of the Republic, or from her Secretariat) on behalf of ‘twelve patriotic movements’.¹³⁷⁰

557. In other words, in total 15 ‘patriotic movements’ were supposedly receiving funds from the presidential administration, but it is not clear who they are. It is noted, in this regard, that the aforementioned receipts state that a list of the patriotic movements is attached. However, these attachments do not seem to have been submitted into evidence. Nonetheless, it is noted that the Mid-Trial Brief refers to a document listing 20 ‘*mouvements patriotiques*’ and corresponding amounts of money.¹³⁷¹ Other documents that make reference to this

¹³⁶⁹ RECU, 16 May 2009, CIV-OTP-0025-0450; RECU, 16 June 2009, CIV-OTP-0025-0465; RECU, 20 August 2009, CIV-OTP-0025-0470; RECU, 3 September 2009, CIV-OTP-0025-0482; RECU, 21 September 2009, CIV-OTP-0025-0490; RECU, 21 October 2009, CIV-OTP-0025-0499; RECU, 21 November 2009, CIV-OTP-0025-0509; RECU, 24 December 2009, CIV-OTP-0025-0517; RECUS, 22 January 2010, CIV-OTP-0025-0524; RECUS, 22 February 2010, CIV-OTP-0025-0535; RECUS, 25 March 2010, CIV-OTP-0025-0543; RECUS, 26 April 2010, CIV-OTP-0025-0553; RECUS, 20 May 2010, CIV-OTP-0025-0562; RECUS, 22 June 2010, CIV-OTP-0025-0571; RECUS, 21 July 2010, CIV-OTP-0025-0580; RECUS, 19 August 2010, CIV-OTP-0025-0589; RECUS, 15 September 2010, CIV-OTP-0025-0598; RECUS, 21 October 2010, CIV-OTP-0025-0607; RECUS, 18 November 2010, CIV-OTP-0025-0617.

¹³⁷⁰ RECU, 16 May 2009, CIV-OTP-0025-0453; RECU, 16 June 2009, CIV-OTP-0025-0460; RECU, 20 August 2009, CIV-OTP-0025-0469; RECU, 3 September 2009, CIV-OTP-0025-0479; RECU, 21 September 2009, CIV-OTP-0025-0487; RECU, 21 October 2009, CIV-OTP-0025-0497; RECU, 21 November 2009, CIV-OTP-0025-0505; RECU, 24 December 2009, CIV-OTP-0025-0515; RECUS, 22 January 2010, CIV-OTP-0025-0525; RECUS, 22 February 2010, CIV-OTP-0025-0533; RECUS, 25 March 2010, CIV-OTP-0025-0541; RECUS, 26 April 2010, CIV-OTP-0025-0550; RECUS, 20 May 2010, CIV-OTP-0025-0560; RECUS, 22 June 2010, CIV-OTP-0025-0569; RECUS, 21 July 2010, CIV-OTP-0025-0578; RECUS, 19 August 2010, CIV-OTP-0025-0587; RECUS, 15 September 2010, CIV-OTP-0025-0596; RECUS, 21 October 2010, CIV-OTP-0025-0605; RECUS, 18 November 2010, CIV-OTP-0025-0613.

¹³⁷¹ MOUVEMENTS PATRIOTIQUES, undated, CIV-OTP-0025-0657. See Mid-Trial Brief, footnote 868. In respect of this document, it is noted that this is an undated document and does not contain any signatures or any other indicia of authenticity. Nonetheless, it is noted that this document contains the names of, *inter alia*, Moussa Zéguen Touré, Youssouf Fofana, Eugène Djué, Serge Koffi. The document does not provide any details to suggest that these amounts were in fact paid to the individuals. The purpose of the suggested payments is also not known. This document does not appear to add further proof concerning the alleged payments. To the extent that this document may be proof of the aforementioned individuals or their groups being paid, reference is made to the conclusions concerning these individuals respectively.

term and contain a list have also been considered.¹³⁷² Taking the Prosecutor's case at its highest, one can assume that some of the patriotic movements referenced in these lists may have received funding through Mr. Fofana or Mr. Djué. However, examining all the evidence these together, it is not possible to ascertain which of these groups actually received funds and how much they received. Indeed, whilst the receipts state that these payments were being received 'on behalf of' the concerned patriotic movements, from the evidence adduced by the Prosecutor it is not known whether these amounts were in fact granted and distributed to those groups. It is also not known how these payments were being used within these groups. In light of this, it cannot be concluded whether these payments were being made or otherwise used pursuant to and/or furtherance of the alleged Common Plan.

558. In addition to the receipts discussed above, there are other receipts on the record for Eugène Djué¹³⁷³ and Moussa Zéguen Touré that predate the post-electoral crisis.¹³⁷⁴ These receipts are in the form of an 'attestation', acknowledging receipt of a certain sum from Narcisse Kuyo Tea, *Chef de Cabinet du Président de la République*, on letterheaded paper of the *Présidence de la République, Chef de Cabinet*.¹³⁷⁵ Whilst these documents are all signed by someone, they do not contain any information as to their purpose. The Prosecutor has not adduced any other evidence that could otherwise suggest that these payments were made pursuant to or in furtherance of the alleged Common Plan.

¹³⁷² For example Annexe 3 / MOUVEMENTS PATRIOTIQUES, undated, CIV-OTP-0043-0081 (confidential), PROCES-VERBAL DE LA RENCONTRE AVEC LES MOUVEMENTS PATRIOTIQUES ET LE COMITE D'ENCADREMENT DESIGNÉ PAR LE PRESIDENT DE LA REPUBLIQUE, 3 September 2005, CIV-OTP-0025-0344 at 0346; Rencontre avec le chef de l'Etat Son Excellence LAURENT GBAGBO dans le cadre de la consultation nationale relative à la réponse à la lettre du médiateur Sud-Africain, 17 April 2005, CIV-OTP-0025-0233 at 0238.

¹³⁷³ ATTESTATION, 24 November 2006, CIV-OTP-0025-0686 for a sum of 5 000 000; ATTESTATION, 18 November 2008, CIV-OTP-0025-0708 for a sum of 5 000 000 FCFA.

¹³⁷⁴ ATTESTATION, 23 July 2004, CIV-OTP-0025-0700 for a sum of 1 000 000 FCFA; ATTESTATION, 25 February 2005, CIV-OTP-0025-0694 for a sum of 2 500 000.

¹³⁷⁵ With the exception of ATTESTATION, 23 July 2004, CIV-OTP-0025-0700, which contains additional handwriting.

559. There are also documents on the record relating to Damana Pickass, in the style of a signed ‘attestation’, as above,¹³⁷⁶ as well as entirely handwritten acknowledgments of having received of certain sums,¹³⁷⁷ or in the form of letters, on letterheaded paper with a serial number, stamped and signed by Narcisse Kuyo Tea, the *Chef de Cabinet du Président de la République*, ordering, on behalf of the President, the Financial Director to make the sum of 5 000 000 FCFA available to Damana Pickass.¹³⁷⁸ It is noted that document CIV-OTP-0025-0704, one of the handwritten acknowledgments, contains some indication as to the purpose of the payment in that it states that the individual recognises having received the sum ‘*pour Mlle bukou Judith*’.¹³⁷⁹ However, there is no further indication as to who this individual is, or what the sum will be used for.
560. Noting the existence of these receipts and taking the Prosecutor’s case at its highest, the most this evidence demonstrates is that Mr Gbagbo’s administration was making payments to various groups and individuals prior to the post-electoral crisis, often for reasons that cannot be deduced from the documents.¹³⁸⁰ In the absence of any other information, it thus cannot be concluded that these

¹³⁷⁶ ATTESTATION, 15 July 2004, CIV-OTP-0025-0699 for a sum of 1 000 000 FCFA (no letterhead); ATTESTATION, 3 August 2004, CIV-OTP-0025-0702 for a sum of 3 000 000 FCFA (no letterhead); ATTESTATION, 18 August 2004, CIV-OTP-0025-0705 for a sum of 1 700 000.

¹³⁷⁷ Untitled, 10 August 2008, CIV-OTP-0025-0703 for a sum of 10 000 000 (It is noted that the metadata in eCourt indicates the document date is 10 August 2008, but the receipt appears to be signed 10 August 2004); Untitled, 11 August 2004, CIV-OTP-0025-0704 for a sum of 3 500 000; Untitled, 13 August 2004, CIV-OTP-0025-0707 for a sum of 300 000.

¹³⁷⁸ No. 0108, 24 March 2005, CIV-OTP-0025-0683; No. 600, 12 October 2006, CIV-OTP-0025-0786 and additionally stamped ‘*urgence signalée*’.

¹³⁷⁹ This phrase is handwritten: *Mlle bukou Judith*.

¹³⁸⁰ Some of the payments seem to have been made for purposes entirely unrelated to the alleged Common Plan. For instance, it is noted that there is a receipt on the record for an individual called Serges Kassy, a singer and an alleged member of the *Galaxie Patriotique* who appeared to be receiving funds ‘*en faveur de l’achat mensuel de maison*’. See ATTESTATION, 18 August 2004, CIV-OTP-0025-0706 for a sum of 500 000 FCFA. It is noted that Serges Kassy is shown to have been present at the meeting in 2002, where Mr Blé Goudé was purportedly selected as the person to lead the ‘*lutte patriotique*’ (patriotic fight) against ‘the rebellion’ as well as the 19 March 2011 rally at CP1 Yopougon. See IV.D.2.b)(1) - Emergence of ‘youth’ groups following the *coup d’état* of 2002, para. 477; IV.F.2.vv) - 19 March 2011 - Rally Place CP1 Yopougon. P-0625 identified him as one of the leaders of a *parlement* and the *Galaxie Patriotique* but that ‘[h]e had no group’. See P-0625, T-25 dated 7 March 2016, pp 76, 78-79.

payments were made to secure the loyalty of the aforementioned individuals or control over the groups they were a part of. It is also not possible to conclude anything from these receipts about the intent of the accused.

561. Even assuming that these payments were made for the purpose of keeping a number of individuals and organisations aligned with Mr Gbagbo's regime, having considered the amounts that these alleged payments concern, it cannot be concluded that these would have allowed Mr Gbagbo or the 'inner circle' to exercise a meaningful level of control over them. In response to an argument that these amounts being 'insignificant', the Prosecutor asserts that Eugène Djué himself, for example, would have received the equivalent of 'over 2,400 euros per month'.¹³⁸¹ However, noting that these amounts were purportedly being collected on behalf of '12 patriotic movements'¹³⁸² and assuming that they were being distributed to these movements equally, this amount is 200 euros per month. There is also no information about the respective size and composition of said 'patriotic movements'. For these reason, whether or not these amounts were indeed significant is a matter of speculation. It is thus not possible to determine whether the Prosecutor's allegation in fact does have any merit or not.

(c) *Receipts signed on behalf of others*

562. In the Response, the Prosecutor references receipts where she alleges that certain individuals, who were not the stated recipients, signed on behalf of others.¹³⁸³ These receipts appear to have been made prior to and during the post-electoral crisis. The Prosecutor specifically refers to receipts of 'payments to Moussa Zéguen Touré' in his capacity as President of the GPP.¹³⁸⁴ Some of these receipts

¹³⁸¹ See Response, para. 1414.

¹³⁸² RECUS, 18 November 2010, CIV-OTP-0025-0613.

¹³⁸³ See for example Response, para. 140.

¹³⁸⁴ See Response, p. 56 footnote 221.

have allegedly been signed by Youssouf Fofana instead of Mr Touré. According to the Prosecutor, the fact that Youssouf Fofana collected payments for *Voix du Nord* on the same day suggests that he was also collecting funds on behalf of the leader of the GPP, Moussa Zéguen Touré.¹³⁸⁵ The Prosecutor further alleges that Youssouf Fofana ‘also collected payments on behalf of other persons and armed groups affiliated to the *Galaxie Patriotique*, up to and including on 18 March 2011’¹³⁸⁶ for Eugène Djué¹³⁸⁷ and Serge Koffi.¹³⁸⁸ The Prosecutor also cites to three receipts signed by ‘another individual’ on behalf of Moussa Zéguen Touré.¹³⁸⁹ This individual is also alleged to have signed document ‘CIV-OTP-0025-0624 and other receipts’.¹³⁹⁰

563. These receipts having been signed by individuals other than the intended recipient suffer from the same deficiencies as those allegedly signed by the actual recipient. Moreover, these receipts do not bear Youssouf Fofana’s name, but are marked ‘p.o.’¹³⁹¹ followed by a signature, which the Prosecutor alleged is his. The general observations concerning signatures on these receipts are recalled;¹³⁹² like all other signatures on these receipts, Youssouf Fofana’s signatures have not been identified and/or authenticated. Examining the Prosecutor’s allegations therefore would require making a comparison of the two signatures, neither of which have been identified and/or authenticated. This would typically be something for which the Chamber would expect the

¹³⁸⁵ Response, paras 140, 1697.

¹³⁸⁶ Response, paras 140, 1697.

¹³⁸⁷ The Prosecutor cites one receipt on behalf of 12 ‘patriotic movements’ for Eugène Djué (President of UPLTCI) for a sum of 1 300 000 FCFA (RECUS, 18 March 2011, CIV-OTP-0025-0655) and one receipt for a bonus of 300 000 FCFA (RECUS, 18 March 2011, CIV-OTP-0025-0656).

¹³⁸⁸ The Prosecutor cites one receipt for Serge Koffi (Ex-Secretary General of FESCI) for a sum of 100 000 FCFA. See RECUS, 18 March 2011, CIV-OTP-0025-0651.

¹³⁸⁹ Response, footnote 221 referring to RECUS, 5 January 2011, CIV-OTP-0025-0626; RECUS, 21 January 2011, CIV-OTP-0025-0633; RECUS, 4 March 2011, CIV-OTP-0025-0644.

¹³⁹⁰ Response, footnote 221.

¹³⁹¹ With the exception of RECUS, 18 November 2010, CIV-OTP-0025-0616, which only bears a signature.

¹³⁹² See IV.D.2.b)(2)(a) - General observations concerning the receipts used by the Prosecutor.

Prosecutor to present expert evidence. In the absence thereof, it would be reckless for the Chamber itself to compare Yousseuf Fofana's alleged signatures when he signs for other individuals. Whilst the dates of these receipts do match as suggested by the Prosecutor, it cannot be concluded that Yousseuf Fofana was collecting payments on behalf of other youth leaders, much less that he actually transferred the funds to the intended persons.

564. Even if one were to assume that these signatures belong to Yousseuf Fofana, the proposition that other individuals were signing on behalf of certain youth groups does not shed further light on the purpose of these payments. It is noted that the contents of these receipts do not indicate how these amounts were being used by the concerned youth leaders, if at all. For the aforementioned reasons, it cannot be concluded whether these payments were made pursuant to or in furtherance of the alleged Common Plan.

(d) Payments as part of the demobilisation and disarmament process

565. The Prosecutor referenced a 'protest march' by the GPP and linked it with the 'integrat[ion] into the army' and 'receiving indemnities' from Mr Gbagbo's government.¹³⁹³ P-0435 testified that in September 2010, GPP elements had marched in Abidjan in order to inform Mr Gbagbo of their grievances at the time, including not having received 'any compensation in the demobilisation process and disarmament process'.¹³⁹⁴ This appears to have been linked to the compensation promised 'subsequent to the Ouagadougou Agreements, to dismantle and to demobilise former combatants [...], and return them to society'.¹³⁹⁵ P-0435 testified that the '*commandements*' of the GPP had asked for

¹³⁹³ Mid-Trial Brief, para. 91.

¹³⁹⁴ P-0435, T-87 dated 18 October 2016, p. 41.

¹³⁹⁵ P-0435, T-87 dated 18 October 2016, p. 16.

3000 francs as part of this programme as compensation for transportation of former combatants.¹³⁹⁶ P-0435 added that there were rumours that Bouazo had already received this compensation, and stated that, while these rumours were not true, the GPP elements conducted a peaceful march to the Presidential Palace to ensure that something was done ‘on an official basis to reassure the elements and also to make sure that the funds had not been embezzled’.¹³⁹⁷ P-0435 then mentioned that ‘there were police units who had intercepted us and dispersed our elements’.¹³⁹⁸ It is not known from his testimony, however, whether or not this compensation was actually paid in the end.¹³⁹⁹

566. As regards this march, it is noted that the Prosecutor alleged that Mr Blé Goudé sent a message through Stallone Ahoua to Bouazo asking the GPP elements to calm down as Mr Gbagbo was informed of their concerns; this message was then conveyed by Bouazo to P-0435.¹⁴⁰⁰ It is noted that P-0435’s testimony in this regard is a double hearsay account of what Bouazo was told by Stallone Ahoua. It is also noted that P-0435 did not know what Stallone Ahoua’s role was.¹⁴⁰¹ The message requesting the GPP elements to calm down during their protest for non-payment of dues by the government, in itself, cannot be understood as evidence of control over or otherwise financing of the GPP.¹⁴⁰²

¹³⁹⁶ See P-0435, T-87 dated 18 October 2016, p. 16.

¹³⁹⁷ P-0435, T-87 dated 18 October 2016, p. 41.

¹³⁹⁸ P-0435, T-87 dated 18 October 2016, p. 44.

¹³⁹⁹ It is noted that P-0435 testified that the rumours that Bouazo had received this compensation were not true. He had only received the minimum amount required for food provisions. See P-0435, T-87 dated 18 October 2016, p. 42. These payments of food provisions have been discussed in the following section on Payments linked to Mr Blé Goudé.

¹⁴⁰⁰ Mid-Trial Brief, para. 91.

¹⁴⁰¹ P-0435, T-87 dated 18 October 2016, p. 43.

¹⁴⁰² It is noted that this was also the meeting where Bouazo and Stallone Ahoua allegedly discussed the potential training and integration of GPP elements into the FDS. This meeting is discussed hereinafter. See IV.D.2.b)(4)(a) - GPP training activities.

(e) *Payments during the period of post-electoral crisis*

567. There are also receipts that appear to have been made during the period of post-electoral crisis. In total there are 24 receipts – six per month – that concern these allegations. Out of these six, there are two each per month allegedly for Youssouf Fofana¹⁴⁰³ and Eugène Djué,¹⁴⁰⁴ and one each per month for Moussa Zéguen Touré¹⁴⁰⁵ and Serge Koffi.¹⁴⁰⁶

568. The amount allegedly paid to Youssouf Fofana per month is 650 000 FCFA.¹⁴⁰⁷ The amount allegedly paid to Eugène Djué per month is 1 600 000 FCFA.¹⁴⁰⁸ The

¹⁴⁰³ RECUS, 5 January 2011, CIV-OTP-0025-0624; RECUS, 5 January 2011, CIV-OTP-0025-0625; RECUS, 21 January 2011, CIV-OTP-0025-0631; RECUS, 21 January 2011, CIV-OTP-0025-0632; RECUS, 4 March 2011, CIV-OTP-0025-0642; RECUS, 4 March 2011, CIV-OTP-0025-0643; RECUS, 18 March 2011, CIV-OTP-0025-0653; RECUS, 18 March 2011, CIV-OTP-0025-0654. It is noted that receipt RECUS, 4 March 2011, CIV-OTP-0025-0642 has ‘Watchard’ handwritten on it. It is also noted that a reference to Watchard may be understood to be a reference to Watchard Kedjebo, another name of Ferdinand Kouassi, the leader of the CNLB, the Comité National de Libération de Bouaké. P-0435 names him as one of the GPP commanders. *See* P-0435, T-87 dated 18 October 2016, p. 27. However, the evidence does not reflect any more of the role he may have played during the post-election violence and on this basis it cannot be inferred that this payment amounts to contribution to the alleged Common Plan. P-0176 described Watchard Kedjebo as a ‘leader from the region of Bouaké, and [...] also somebody who had espoused the ideals of’ Mr Gbagbo, ‘defending the cause and promoting’ his victory. P-0176, T-144 dated 5 April 2017, pp. 14-15. P-0176 considered that Kedjebo was ‘fighting in the negative sense of the word in a sense that I knew him as a leader who has really taken to the cause of Laurent Gbagbo’ (p. 15). As regards the links between Kedjebo and Mr Blé Goudé, P-0176 recalled that they knew each other but, from his account, the nature of this link is not known (p. 16). P-0625 remembered Kedjebo being a ‘leader with the Galaxie Patriotique’ based in Bouaké but did not know the name of his group. P-0625, T-25 dated 7 March 2016, p. 84. P-0347 testified that Watchard Kedjebo was ‘part of the group of opinion leaders [...] like Konaté Navigué, Ajoua Stallone and Mr Blé Goudé’. P-0347, T-78 dated 23 September 2016, p. 3. P-0483 and Watchard Kedjebo exchanged phone numbers at a youth meeting and P-0483’s testimony does not demonstrate anything relevant further than Watchard Kedjebo being a youth leader. P-0483, T-101 dated 17 November 2016, pp. 13-14.

¹⁴⁰⁴ RECUS, 5 January 2011, CIV-OTP-0025-0622; RECUS, 5 January 2011, CIV-OTP-0025-0623; RECUS, 21 January 2011, CIV-OTP-0025-0637; RECUS, 21 January 2011, CIV-OTP-0025-0638; RECUS, 4 March 2011, CIV-OTP-0025-0640; RECUS, 4 March 2011, CIV-OTP-0025-0641; RECUS, 18 March 2011, CIV-OTP-0025-0655; RECUS, 18 March 2011, CIV-OTP-0025-0656.

¹⁴⁰⁵ RECUS, 5 January 2011, CIV-OTP-0025-0626; RECUS, 21 January 2011, CIV-OTP-0025-0633; RECUS, 4 March 2011, CIV-OTP-0025-0644; RECUS, 18 March 2011, CIV-OTP-0025-0652.

¹⁴⁰⁶ RECUS, 5 January 2011, CIV-OTP-0025-0628; RECUS, 21 January 2011, CIV-OTP-0025-0634; RECUS, 4 March 2011, CIV-OTP-0025-0645; RECUS, 18 March 2011, CIV-OTP-0025-0651.

¹⁴⁰⁷ *See for example* the receipts allegedly made in January: RECUS, 5 January 2011, CIV-OTP-0025-0624 [amount of 450 000 FCFA on behalf of three patriotic movements]; RECUS, 5 January 2011, CIV-OTP-0025-0625 [amount of 200 000 FCFA].

¹⁴⁰⁸ *See for example* the receipts allegedly made in January: RECUS, 5 January 2011, CIV-OTP-0025-0622 [1 300 000 FCFA on behalf of 12 patriotic movements]; RECUS, 5 January 2011, CIV-OTP-0025-0623 [amount of 300 000 FCFA].

amount allegedly paid to Moussa Zéguen Touré is 200 000 FCFA.¹⁴⁰⁹ The amount allegedly paid to Serge Koffi is 100 000 FCFA.¹⁴¹⁰ These payments appear to be a continuation of payments for the same amount that were disbursed monthly going back to May 2009.

569. As noted above, the Prosecutor alleged that Youssouf Fofana signed on behalf of the aforementioned youth leaders. However, three out of four receipts made during the post-electoral crisis specifically in favour of Moussa Zéguen Touré appear to have been signed by ‘another individual’,¹⁴¹¹ who has not been identified. The Prosecutor has not explained who this individual might be and/or if there is a link between this person to either of the two accused. Having regard to the evidence that, during the post-electoral crisis, it was Bouazo and not Moussa Zéguen Touré that was leading the GPP, it is further unclear what the receipts purportedly in favour of Touré are intended to demonstrate.

570. The conclusions concerning the receipts made prior to the post-electoral crisis are recalled.¹⁴¹² In particular, it is noted that, even assuming that the signatures contained therein are authenticated and that the payments actually reached the intended recipients, the receipts do not mention the purpose of these payments. Under these circumstances, it would be impossible for a reasonable trial chamber to make a determination about the purpose of these payments.¹⁴¹³

¹⁴⁰⁹ See RECUS, 5 January 2011, CIV-OTP-0025-0626.

¹⁴¹⁰ See RECUS, 5 January 2011, CIV-OTP-0025-0628.

¹⁴¹¹ Response, para. 140, footnote 221.

¹⁴¹² See IV.D.2.b)(2)(b) - Payments prior to the period of post-electoral crisis.

¹⁴¹³ It is recalled, in this regard, that certain youth groups were unarmed and were based on the principle of using non-violent means to achieve their objectives.

(f) *Payments linked to Mr Blé Goudé*

571. The Prosecutor alleged that Mr Gbagbo and the Presidency ‘financed the leaders of the *Galaxie Patriotique*’ including Mr Blé Goudé, and that Mr Blé Goudé in turn ‘financed the different patriotic youth movements.’¹⁴¹⁴ Drawing upon on P-0625’s testimony regarding bonuses received by certain leaders of the *Galaxie Patriotique* from Mr Gbagbo’s cabinet, the Prosecutor alleged that Mr Blé Goudé was ‘financed by the Presidency even prior to his nomination as a Minister in the Gbagbo government – without apparent justification.’¹⁴¹⁵ Relying further on P-0435’s evidence, the Prosecutor alleged that ‘[a]ll “patriotic movements”, be it *agoras*, *parlements* or the GPP were under the political authority of [Mr] Blé Goudé’ and their financing was therefore also assumed by him’.¹⁴¹⁶
572. At the outset, the discussion of P-0625’s testimony in relation to ‘bonuses’ is recalled.¹⁴¹⁷ To the extent that P-0625 links this to Mr Blé Goudé, it is noted that this portion of his testimony concerned Mr Blé Goudé receiving ‘money from the presidency to support him in organising rallies’.¹⁴¹⁸ P-0625 testified that Mr Blé Goudé was financing the rallies of youth movements with the money he received ‘from the presidency and from elsewhere’ for that purpose.¹⁴¹⁹ As regards the frequency of such payments, P-0625 suggested that this would have depended on the size and frequency of the rallies; he testified that Mr Blé Goudé would organise a large rally ‘maybe once every two months’.¹⁴²⁰ He also testified that Mr Blé Goudé had a ‘private company that provided services to all and sundries,

¹⁴¹⁴ Mid-Trial Brief, para. 269. *See also* Response, para. 1187.

¹⁴¹⁵ Mid-Trial Brief, para. 270 citing also to Order to pay Charles Blé Goudé, Untitled, 7 September 2007, CIV-OTP-0025-0787; Order to pay Charles Blé Goudé, No. 094, 21 March 2005, CIV-OTP-0025-0682; Order to pay Charles Blé Goudé, No. 00344, 3 August 2004, CIV-OTP-0025-0709.

¹⁴¹⁶ Mid-Trial Brief, para. 271; *see also* paras 272-273.

¹⁴¹⁷ *See* IV.D.2.b)(2)(b) - Payments prior to the period of post-electoral crisis, paras 552-553.

¹⁴¹⁸ P-0625, T-27 dated 9 March 2016, p. 69.

¹⁴¹⁹ P-0625, T-27 dated 9 March 2016, p. 70; *see also* pp. 67-70.

¹⁴²⁰ P-0625, T-27 dated 9 March 2016, p. 70.

to various structures within the state. And I believe that is how he made his money'.¹⁴²¹ P-0625 also testified that some rallies might cost 10-15 million, others 50 million.¹⁴²²

573. In corroboration to P-0625's testimony, the Prosecutor also relied on a few pieces of documentary evidence dating prior to the post-electoral crisis. For example, a payment order dated 15 April 2004 signed by Narcisse Kuyo Tea (Chef de Cabinet of the President) was sent to the Financial Director of the Presidency¹⁴²³ stating that from 29 March 2004 onwards Mr Blé Goudé was to receive from Mr Gbagbo's administration a monthly payment of 5 million FCFA.¹⁴²⁴ Similar financial documents appear in the case record for one time payments of three million FCFA dated 3 August 2004,¹⁴²⁵ one million FCFA dated 21 March 2005,¹⁴²⁶ one and a half million FCFA dated 7 September 2007.¹⁴²⁷
574. In addition to these documents, there are three other exhibits on the record that may suggest that money was received by Mr Blé Goudé on 29 March 2004 (five million FCFA),¹⁴²⁸ 3 August 2004 (three million FCFA),¹⁴²⁹ and 15 December 2004 (six million FCFA).¹⁴³⁰ From this set of documents, only document CIV-OTP-0025-0692 dated 15 December 2004 contains a letterhead that indicates that

¹⁴²¹ P-0625, T-27 dated 9 March 2016, p. 62; *see also* p. 69.

¹⁴²² P-0625, T-27 dated 9 March 2016, pp. 62-67, 70-71.

¹⁴²³ It is noted that P-0625 was asked who Mr Gbagbo's chef de cabinet was in the year 2004 to which P-0625 recalled Narcisse [Kuyo Tea]. *See* P-0625, T-27 dated 9 March 2016, p. 64.

¹⁴²⁴ Payment Order signed by Narcisse Kuyo Tea (Chef de Cabinet of the President) sent to the Financial Director of the Presidency, Mr Jacques Anouma, Untitled, 15 April 2004, CIV-OTP-0025-0680.

¹⁴²⁵ No. 00344, 3 August 2004, CIV-OTP-0025-0709.

¹⁴²⁶ No. 094, 21 March 2005, CIV-OTP-0025-0682.

¹⁴²⁷ Untitled, 7 September 2007, CIV-OTP-0025-0787.

¹⁴²⁸ ATTESTATION, 29 March 2004, CIV-OTP-0025-0696.

¹⁴²⁹ Untitled, 3 August 2004, CIV-OTP-0025-0701.

¹⁴³⁰ ATTESTATION, 15 December 2004, CIV-OTP-0025-0692.

it originated from the President's '*Chef de Cabinet*'. The other two¹⁴³¹ do not contain a letterhead or a stamp.

575. There is also an attestation dated 23 December 2004 in Mr Blé Goudé's name that states that the funds of that particular disbursement were to be passed on to third parties; Mr Blé Goudé received an amount of 550 000 FCFA, of which 100 000 FCFA was destined to Ornon Leon and 450 000 FCFA was to be given to the University Board.¹⁴³² This handwritten document however, contains no letterheads, stamps, or other indications that reflect its source or could otherwise liken it to the other receipts or orders on the record. In the absence of any other information about this document, it cannot be relied upon to conclude that Mr Blé Goudé disbursed the amounts received by him to third parties. In any case, there is no suggestion that Ornon Leon or the University Board were implicated in the conception or execution of the Common Plan.
576. There are also two attestations on the record from October and December 2004¹⁴³³ that state that Richard Dakouri, President of the *La Sorbonne*, signed as having received respectively five million FCFA and 2.5 million FCFA '*en faveur de*' Mr Blé Goudé. The attestations do not indicate the purpose of the payment.
577. Having regard to P-0625's testimony as well as the documents discussed above, it can be concluded that Mr Blé Goudé was indeed receiving payments from Mr Gbagbo's cabinet prior to the post-election crisis. While the documents themselves do not indicate to what end these funds were to be used, having regard to P-0625's testimony, it can be inferred that this may have been to organise rallies.

¹⁴³¹ ATTESTATION, 29 March 2004, CIV-OTP-0025-0696; Untitled, 3 August 2004, CIV-OTP-0025-0701.

¹⁴³² Untitled, 23 December 2004, CIV-OTP-0025-0693.

¹⁴³³ ATTESTATION, 9 October 2004, CIV-OTP-0025-0687; ATTESTATION, 10 December 2004, CIV-OTP-0025-0690.

578. Recalling the conclusions reached in respect of the receipts concerning other leaders of the *Galaxie Patriotique* discussed above and taking the Prosecutor's case at its highest, it can be concluded that prior to the post-electoral crisis payments to Mr Blé Goudé and to other leaders of the *Galaxie Patriotique* may have been made to organise rallies and meetings. On the basis of this inference, it cannot be concluded whether or not these payments resulted in Mr Gbagbo exercising control over these groups and individuals during the post-electoral crisis.
579. The allegations specifically linking Mr Blé Goudé with financing the GPP will now be addressed. P-0435 testified he found out from 'some people within the protection service, the bodyguards' that when the GPP was set up in 2003, funds were received from Mr Blé Goudé.¹⁴³⁴ This is anonymous hearsay. P-0435 further testified that Mr Blé Goudé was not the only source of funding for Charles Groguhét, the GPP leader at the time.¹⁴³⁵ P-0435 also appeared to suggest that for Charles Groguhét to receive funds from the presidency, the GPP needed somebody who could receive these funds and had an influence over the youth and that Mr Blé Goudé was that person.¹⁴³⁶ P-0435 agreed that, at the time of these purported transactions, he himself was at the lowest ranks of the GPP.¹⁴³⁷ It is therefore not at all established that he would have been in a position to know how the GPP was funded or, indeed, what Mr Blé Goudé's role in this regard would have been. It therefore cannot be determined whether or not funds were made available to Charles Groguhét through Mr Blé Goudé and, if so, where the

¹⁴³⁴ P-0435, T-87 dated 18 October 2016, p. 47.

¹⁴³⁵ P-0435, T-87 dated 18 October 2016, pp. 47-48. For relation between Moussa Zéguen Touré and Charles Groguhét, *see* P-0097, T-48 dated 8 June 2016, p. 41.

¹⁴³⁶ P-0435, T-87 dated 18 October 2016, p. 63.

¹⁴³⁷ P-0435, T-93 dated 27 October 2016, p. 55.

funds originated from and how high the payments were. It is also noted that Charles Groguhét was replaced by Moussa Zéguen Touré in 2003.¹⁴³⁸

580. Dealing with 2006, P-0435 testified that about 800 GPP militia members, who were camping at the Marie-Thérèse institute in Abidjan, received food and a *per diem* of 40 000 FCFA; this money was ‘received by Zéguen and Fada who...had come from the general staff [of the armed forces] headquarters’.¹⁴³⁹ P-0435 testified that that was the money used for food and it was Moussa Zéguen Touré who received that money from Mr Blé Goudé.¹⁴⁴⁰ When asked to clarify further about receiving 40 000 FCFA from the general staff, P-0435 testified that it was the general staff of the armed forces and added that when they were at the base, they received ‘foodstuffs; bags of rice, oil, and other items’ from the general staff.¹⁴⁴¹ He also said that Zéguen Touré was responsible for the financial support and that he would contact Mr Blé Goudé or one his deputies in the *Galaxie Patriotique*, who would take care of the matter.¹⁴⁴²

581. It is noted that P-0435 testified that this financial relationship ‘went on up until 2006’ and from the year 2006 onwards, they had to keep a low profile.¹⁴⁴³ It is not known whether or not a reference to having to ‘keep a low profile’ implied that the payments also continued. Noting that Moussa Zéguen Touré was not the GPP President following 2009, it cannot be inferred from these purported transactions in 2006 that similar provisions would have been provided to the GPP during the post-election crisis too. This evidence will nonetheless be considered for an overall assessment of Mr Blé Goudé’s role in financing the GPP in the context of the Common Plan.

¹⁴³⁸ P-0435, T-87 dated 18 October 2016, p. 11.

¹⁴³⁹ P-0435, T-87 dated 18 October 2016, p. 19.

¹⁴⁴⁰ P-0435, T-87 dated 18 October 2016, p. 19.

¹⁴⁴¹ P-0435, T-87 dated 18 October 2016, pp. 19-20.

¹⁴⁴² P-0435, T-87 dated 18 October 2016, pp. 19-20.

¹⁴⁴³ P-0435, T-87 dated 18 October 2016, p. 21.

582. Turning now to the alleged payments during the post-electoral crisis, it is noted that there is no documentary evidence of payments to Mr Blé Goudé in the period immediately preceding and during the post-electoral crisis.
583. P-0435 testified that Bouazo could ‘pass through’ Jean-Yves Dibopieu or Damana Pickass ‘or directly contact Mr Charles Blé Goudé’ for assistance in ‘receiv[ing] resources’.¹⁴⁴⁴ The allegations concerning the three individuals named by P-0435 have been considered in turn.
584. As regards P-0435’s testimony that Bouazo could obtain financing directly from Mr Blé Goudé, it is noted that he based this on the assumption that ‘all patriotic movements were under the authority of Mr Charles Blé Goudé’ and that the ‘funding of those movements, whether it was the GPP, the *Agoras* and parliaments [...] were under the responsibility’ of Mr Blé Goudé.¹⁴⁴⁵ It is not entirely clear what ‘being under the responsibility’ means in this context. The proposition that ‘all patriotic movements were under the authority of Mr Charles Blé Goudé’, including their funding appears to be P-0435’s personal opinion based on what Bouazo or Jean-Marie Konin may have told him. When asked to explain why Mr Blé Goudé would have access to such channels, referring to the patriotic movements, P-0435 did not answer this question. Instead, he testified generally about the creation of the GPP as a political decision to defend the institutions of the republic and supported by ‘the government in power’.¹⁴⁴⁶ The Prosecutor did not solicit further details on this account.
585. As regards P-0435’s testimony regarding Bouazo being able to obtain financing through Jean-Yves Dibopieu and Damana Pickass, it suffices to note that there is no evidence of any actual transactions of funds from these two individuals to the

¹⁴⁴⁴ P-0435, T-88 dated 19 October 2016, pp. 9-10.

¹⁴⁴⁵ P-0435, T-88 dated 19 October 2016, pp. 9-10. He further goes on to say that all youth movements that supported the FPI government were managed or administered by Mr Blé Goudé.

¹⁴⁴⁶ P-0435, T-88 dated 19 October 2016, p. 10.

GPP. Moreover, even if there had been such transactions, there is no evidence that Mr Dibopieu or Mr Pickass received the funds from Mr Blé Goudé.

586. Having regard to the evidence concerning payments taken together, it can be concluded that Mr Blé Goudé' may have been the conduit for funding a number of 'patriotic youth movements' – especially *agoras* and the *parlements* - for the organisation of rallies. The available evidence does not permit even a rough estimation of the amount of such payments. As regards the GPP, it can be concluded that Bouazo felt he was in a position to contact Mr Blé Goudé directly for financial assistance, but there is no evidence on the record to indicate whether this actually happened during the post-electoral crisis and that such financial assistance was then actually provided to Bouazo for the GPP.

(g) *Payments linked to Simone Gbagbo*

587. The Prosecutor alleged that Bouazo, as President of the GPP, obtained financing from Simone Gbagbo.¹⁴⁴⁷ P-0435 testified that in '2009 and 2010', there were requests made by Bouazo 'two or three' times for assistance to the GPP from Simone Gbagbo.¹⁴⁴⁸ Out of these, the GPP received money once for 'rental arrears' from Simone Gbagbo to the tune of 500 000 FCFA.¹⁴⁴⁹ According to him, this money was intended for 'arrears for some premises' that were being used for 'offices and the like'¹⁴⁵⁰ in the first quarter of 2009.¹⁴⁵¹ This purported payment was made prior to the post-electoral crisis and it cannot be made the basis to conclude that similar payments followed during the post-election crisis.

¹⁴⁴⁷ Mid-Trial Brief, para. 273.

¹⁴⁴⁸ P-0435, T-87 dated 18 October 2016, p. 50.

¹⁴⁴⁹ P-0435, T-87 dated 18 October 2016, p. 50.

¹⁴⁵⁰ P-0435, T-87 dated 18 October 2016, p. 50.

¹⁴⁵¹ P-0435, T-87 dated 18 October 2016, p. 51.

588. P-0435 testified that Bouazo told him that he had written a letter to Simone Gbagbo and that this request for funds from Simone Gbagbo had received a favourable response; these funds constituted ‘the minimum amount in order to provide food to those [GPP] elements who were on duty at the base and for general costs’.¹⁴⁵² From the testimony, it appears that Bouazo was able to receive these funds as ‘he himself was already a known figure’ and member of the FPI.¹⁴⁵³ It is noted that the testimony concerning these payments is hearsay.
589. Despite the hearsay nature of this evidence, a reasonable trial chamber might conclude that the GPP and/or Bouazo were provided some financial resources by Simone Gbagbo prior to the post-electoral crisis that concerned provisions of food and rental arrears. There is no evidence that Simone Gbagbo provided financial resources during the post-electoral crisis.

(h) Payments concerning the FLGO

590. Turning to the evidence relevant to allegations of financing of the FLGO in the year 2010 and onwards, it is noted that document CIV-OTP-0025-0794 contains a letter dated 26 September 2010 requesting 8 million FCFA for the FLGO elements to “*rejoindre leur différente famille pour mieux préparer votre victoire aux élections présidentielles du 31 octobre*”.¹⁴⁵⁴ A receipt dated 12 October 2010, CIV-OTP-0025-0381, states that an amount of 100 000 FCFA was received by Paul Nonzi¹⁴⁵⁵ for the travel to the West¹⁴⁵⁶ however, it is not known if the request and the receipt are part of the same transaction. However, noting that this

¹⁴⁵² P-0435, T-87 dated 18 October 2016, p. 42.

¹⁴⁵³ P-0435, T-87 dated 18 October 2016, p. 42.

¹⁴⁵⁴ Untitled, 26 September 2010, CIV-OTP-0025-0794, at 0794-0795.

¹⁴⁵⁵ It is noted that P-0500 testified that Paul Nonzi was one of the leaders of the FLGO; Paul Nonzi was in Abidjan and P-0500 provided anonymous hearsay that Paul Nonzi recruited the first people to go to Guiglo. P-0500, T-181 dated 28 August 2017, p. 53.

¹⁴⁵⁶ Aide de 100.000F / Essence des chefs de guerre pour ouest, 12 October 2010, CIV-OTP-0025-0381 at 0382.

purported transaction took place prior to the post-electoral crisis and that the amount registered to have been received by Paul Nonzi is relatively insignificant, it cannot be concluded, on this basis, that the FLGO were being sponsored and controlled by Mr Gbagbo.

591. In the Response, the Prosecutor relies on this receipt to 'generally demonstrate the strong links between Mr Gbagbo's government and the FLGO in the months prior to the post-election violence – especially when the money requested was for welcoming Mr Gbagbo in the West.'¹⁴⁵⁷ She adds that the letter by Paul Nonzi dated 31 December 2010 confirms that financial links remained during the post-electoral crisis.¹⁴⁵⁸ The letter by Paul Nonzi to Désiré Tagro dated 31 December 2010 contains a request for 60 FLGO elements to travel and the letter is marked '*Inviter l'intéressé [illegible] rencontrer*'.¹⁴⁵⁹ It is not known whether or not this request was processed. The Prosecutor did not put this document to P-0500 and has not indicated whether or not the suggested meeting took place or whether this request was subsequently granted or not. In the Response, the Prosecutor alleges that this document confirms that the financial links between Mr Gbagbo and the FLGO remained during the post-election crisis.¹⁴⁶⁰ From this evidence, it cannot be inferred that that is the case.

(i) *Conclusion*

592. As regards the financing of 'pro-Gbagbo youth and militia', it cannot be concluded that Mr Gbagbo ensured the loyalty of the various youth leaders by financing them. There is some evidence concerning financing of certain leaders of youth groups that have been characterised by the Prosecutor as 'bonuses'.

¹⁴⁵⁷ Response, para. 1494.

¹⁴⁵⁸ Response, para. 1494. *See also* Mid-Trial Brief, para. 276 referring to Untitled, 31 December 2010, CIV-OTP-0025-0817 at 0818.

¹⁴⁵⁹ Untitled, 31 December 2010, CIV-OTP-0025-0817 at 0818.

¹⁴⁶⁰ Response, para. 1494.

There is also evidence of the President's Cabinet providing finances to certain youth leaders prior to and during the post-electoral crisis for certain unspecified 'patriotic movements'. However, the limited evidence available on the record does not permit a conclusion as to what this money was intended for and whether this money was in fact distributed within the members of the concerned 'patriotic movements'. The Prosecutor's argument that this was a significant amount of money cannot be entertained for reasons of being speculative. There is also evidence that the GPP obtained food provisions from the general staff of the armed forces prior to the post-electoral crisis. However, it is not known whether this continued during the post-electoral crisis.

593. The evidence underlying the alleged financing attributed to Mr Blé Goudé demonstrated that Mr Blé Goudé may have received money from the President's Cabinet prior to the post-electoral crisis for the financing of rallies. However, there is nothing to indicate that Mr Blé Goudé in turn was providing all or part of this money to 'pro-Gbagbo' youth leaders. The evidence concerning Bouazo's purported ability to request financing for the GPP from Mr Blé Goudé during the post-electoral crisis does not demonstrate that this money was actually provided. If so provided, there is no information as to how much this amount may have been. The money allegedly provided by Simone Gbagbo to the GPP concerns money for rental arrears prior to the post-electoral crisis and does not demonstrate a financial relationship having existed during the post-electoral crisis.

(3) Equipment

594. The Prosecutor alleged that there was distribution of weapons to the members of certain youth groups. The Prosecutor made specific allegations concerning the GPP, the COJEP, and the FESCI. These have been addressed in turn below. The

Prosecutor alleged that the GPP was ‘well armed during the post-election violence’.¹⁴⁶¹ In the Mid Trial Brief, the Prosecutor also alleged that members of certain youth groups had weapons in their possession during the post-election crisis.¹⁴⁶² It is noted however, that the allegations that certain individuals – as former members of these groups or otherwise – may have been armed following their integration into the FDS are outside the purview of the present discussion. These are subsumed in the allegations concerning the arming of the FDS. This includes P-0435’s testimony that GPP elements that went to the CRS ‘were given weapons directly from the CRS arsenal’.¹⁴⁶³

(a) *Arming of the GPP*

595. As regards the arming of the GPP, in the Response, the Prosecutor points to testimony provided by P-0435 and General Mangou to allege that there was an ‘initial supply of weapons to the GPP and other militia groups in late 2002’ and linked it to Mr Gbagbo managing to obtain weapons from abroad.¹⁴⁶⁴ P-0435’s relevant testimony does not speak of any *arming* as such; it refers to how the GPP came into existence in 2003 and was known as a group commonly called the *jeunes coureurs*, members of which were provided training and were trained in weapons handling with AK-47s.¹⁴⁶⁵ The Prosecutor attempts to link this to General Mangou’s testimony. She appears to be suggesting that the weapons used by the GPP elements may have been the ones that were purportedly

¹⁴⁶¹ Mid-Trial Brief, para. 264.

¹⁴⁶² *See for example* Mid-Trial Brief, para. 579: ‘[Mr Blé Goudé] called upon the pro-Gbagbo youth to enlist in the army, in order to legitimise arming them’; at para. 584 ‘[Mr] Blé Goudé’s appeal served two main purposes: to act as cover for past and present collaboration of the pro-Gbagbo youth with the FDS and to facilitate the arming of these youth’; at para. 559: ‘official enlistment did not materialise but pro-Gbagbo youth were provided with weapons’.

¹⁴⁶³ P-0435, T-89 dated 20 October 2016, p. 38.

¹⁴⁶⁴ Response, para. 136.

¹⁴⁶⁵ P-0435, T-87 dated 18 October 2016, pp. 5-6, 10-11. *See also* IV.D.2.b)(1)(c) - Groupement des Patriotes pour la Paix – GPP, para. 513.

imported from abroad in 2002.¹⁴⁶⁶ Whereas this is not implausible, it cannot be established with any degree of certainty.

596. General Mangou testified that in 2002, the FDS was short of ammunition and weapons to the extent that ‘all materials were almost finished’.¹⁴⁶⁷ According to General Mangou, for this reason, there was an effort made by Mr Gbagbo to obtain weapons from a major foreign power.¹⁴⁶⁸ He added, however, that when these weapons arrived at the airport, ‘the general staff at the time, given the emergency, did not find it necessary to send us weapons to the barracks because of the numbers’ and therefore, ‘distribution of the weapons was done at the Abidjan airport.’¹⁴⁶⁹ General Mangou described this as ‘some personalities’ taking weapons and giving them to civilians.¹⁴⁷⁰ It is possible that the GPP received some weapons on this occasion. From General Mangou’s testimony, this does not appear to have been done following a particular order, agreement and/or policy emanating from Mr Gbagbo. The manner of the purported distribution also suggests that it took place in an *ad hoc* manner.

597. In any event, on the basis of this evidence, it is not apparent that this past purported distribution of weapons could also be considered as evidence of the youth being armed in preparation for alleged crimes underlying the Common Plan. In this regard, it is recalled that a disarmament campaign of armed groups and individuals took place following the Ouagadougou Agreements. As there is no evidence to suggest that this disarming was not properly undertaken, it cannot be inferred that arms received by youth groups prior to the Ouagadougou

¹⁴⁶⁶ Response, para. 136.

¹⁴⁶⁷ P-0009, T-196 dated 28 September 2017, p. 72.

¹⁴⁶⁸ P-0009, T-196 dated 28 September 2017, p. 72.

¹⁴⁶⁹ P-0009, T-196 dated 28 September 2017, p. 72.

¹⁴⁷⁰ P-0009, T-196 dated 28 September 2017, p. 72.

Agreements would have still been in their possession during the post-election crisis.

598. The Prosecutor also relied¹⁴⁷¹ on P-0435, who testified that the GPP received ‘one crate of grenades, defensive grenades at the palace, the presidential palace at le Plateau’ and this was organised upon ‘instructions’ from Colonel Mody.¹⁴⁷² P-0435 went to the palace to get this crate on February 2011.¹⁴⁷³ It is noted that P-0435 testified that Colonel Mody was a high-ranking officer within the Republican Guard and the duty officer at the Presidential Palace.¹⁴⁷⁴ However, there is no evidence indicating whether he was acting on his own initiative or on instruction. It is thus not possible to link this instance to the accused or the alleged Common Plan.

599. The Prosecutor further alleges that during the post-electoral crisis the GPP obtained Kalashnikovs from Damana Pickass, the FPI’s representative at the electoral commission, and the ‘Commissaire du Commissariat de Bracodi’.¹⁴⁷⁵ It is noted that P-0435 testified that

we took part in a number of missions upon the instructions of Commander Kipré. And the deputy chief of staff from the first arrondissement in le Plateau, and we received some equipment, some vehicles, pick-ups and I think there were six men each that received weapons. What is more, we got four Kalashnikovs from the commissioner. I can't remember his name right now, the police commissioner from Bracodi, the police station there. We got some Kalashnikovs from him. And me myself, I was able to get three Kalashnikovs with from Damana Pickasss, from his residence. And I remember that that was in Yopougon.¹⁴⁷⁶

600. P-0435 elaborated that just after the election results were announced in ‘December or January’, the number of persons providing security to Damana

¹⁴⁷¹ Mid-Trial Brief, para. 264.

¹⁴⁷² P-0435, T-89 dated 20 October 2016, p. 39, 42-43.

¹⁴⁷³ P-0435, T-89 dated 20 October 2016, p. 39, 42-43.

¹⁴⁷⁴ P-0435, T-89 dated 20 October 2016, p. 43.

¹⁴⁷⁵ Mid-Trial Brief, para. 264; Response, para. 2079. It is noted that P-0435 mentioned the ‘*commissariat de Bracodi*’, and then specified *Adjamé-Bracodi*. See P-0435, T-90 dated 21 October 2016, p.26.

¹⁴⁷⁶ P-0435, T-89 dated 20 October 2016, p. 38-39.

Pickass had been increased and ‘he got some [...] additional weapons, and he asked Bouazo to send some people to come and fetch them.’¹⁴⁷⁷ P-0435 went with Bouazo to go and get those weapons.¹⁴⁷⁸ P-0435 testified that they went to Damana Pickass’ ‘official residence’ and that the latter received and greeted them.¹⁴⁷⁹ P-0435 testified that it was Bouazo who asked P-0435 to ‘[g]o and see to that with your elder brother. Go take care of that with your elder brother.’¹⁴⁸⁰ This presumably was understood by P-0435 as a cue to leave and go with Damana Pickass’ bodyguard to get the weapons.¹⁴⁸¹ P-0435 also testified that there was a room at Damana Pickass’ residence where the security guards rested and that this was where the weapons were stored.¹⁴⁸²

601. It is noted that the procurement of these weapons does not appear to have taken place at the instance of either accused nor as a result of their instructions or agreement. Instead, from P-0435’s account and the context, it seems more likely that these weapons were from the stock provided to Damana Pickas’ own security detail and that he made them available to members of the GPP on his own account. There is no indication in the evidence that these three rifles were provided to Damana Pickass for further distribution to the GPP.
602. Nonetheless, even assuming that there is a theoretical possibility that these three instances of purported arming of the GPP during the post-election crisis are relevant to the alleged Common Plan, it is noted that, in total, they concern the provision of one crate of defensive grenades and seven Kalashnikovs together with ‘some equipment, some vehicles, pick-ups’.¹⁴⁸³ This cannot be made the

¹⁴⁷⁷ P-0435, T-89 dated 20 October 2016, p. 40.

¹⁴⁷⁸ P-0435, T-89 dated 20 October 2016, p. 40.

¹⁴⁷⁹ P-0435, T-89 dated 20 October 2016, pp. 41-42.

¹⁴⁸⁰ P-0435, T-89 dated 20 October 2016, p. 42.

¹⁴⁸¹ P-0435, T-89 dated 20 October 2016, p. 42.

¹⁴⁸² P-0435, T-89 dated 20 October 2016, pp. 41-42.

¹⁴⁸³ P-0435, T-89 dated 20 October 2016, p. 38-39.

basis of concluding that the GPP was ‘well-armed’ during the post-election crisis, especially because there is no reliable information about the supply of ammunition.

603. Further, the alleged link to either of the accused is through Damana Pickass’ alleged membership of the ‘inner circle’. Recalling the conclusions concerning Damana Pickass’ membership in the alleged ‘inner circle’¹⁴⁸⁴ as well as his position vis-à-vis Mr Blé Goudé,¹⁴⁸⁵ it cannot be concluded that the provision of three Kalashnikovs by Damana Pickass from his residence was pursuant to the alleged Common Plan.

(b) Arming of FESCI

604. Relying on P-0347, the Prosecutor alleged that ‘arms were supplied to FESCI members’.¹⁴⁸⁶ The cited portion of P-0347’s testimony does not speak of arming of FESCI members. It is noted that earlier in this testimony, P-0347 did testify about presence of armed elements in his camp towards the end of March/early April; the witness seems to have identified them as Liberians and this part of his testimony has been discussed in the sub-section addressing the allegations concerning Liberian mercenaries. There is no indication that these were FESCI members who were armed or had been subsequently armed.

605. There is some evidence that suggests that the FESCI may have been armed in the context of the RTI March. P-0107 testified that the *‘jeunes patriotes de la FESCI’* were shooting at the crowd from the windows of the building from which he was running away; P-0107 was shot in the knee from behind.¹⁴⁸⁷ As per the

¹⁴⁸⁴ See IV.A.3 - Youth leaders, para. 131.

¹⁴⁸⁵ See IV.D.2.e)(2) - Role vis-à-vis the GPP.

¹⁴⁸⁶ Mid-Trial Brief, para. 88 referring to P-0347, T-77 dated 22 September 2016, p. 76.

¹⁴⁸⁷ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076-0077, paras 89-91.

statement, P-0107 assumed that it was members of FESCI shooting because the shots were fired from a building where FESCI members lived and he had seen them armed even before the crisis.¹⁴⁸⁸ P-0107 was not in a position to confirm that the persons shooting at him from the university building were indeed FESCI members. Even if P-0107's assumption that these individuals were FESCI members is accepted, it cannot form the basis of a conclusion that these individuals obtained those arms at the behest of the accused or the 'inner circle'.

606. In this regard, it is noted that P-0435 considered that the FESCI had 'been issued with weapons' because 'at our level the [FESCI] ... deputy secretary general in charge of social affairs Mr Gossé, had entered into contact with me'.¹⁴⁸⁹ There is no further indication of what this contact entailed and whether this contact or the purported arming was linked to either accused. Even if the members of the FESCI did indeed receive weapons, it is not known where these weapons came from or how this is linked to the actions of either accused.

607. Having regard to the conclusions reached in respect of the training and its purported link with the two accused, it cannot be concluded that the alleged arming of the FESCI members took place at the instance of either accused. Taking the Prosecutor's case on this account and P-0107's testimony at its highest, it can be concluded however, that certain FESCI members may have been armed prior to the post-election crisis. However, it cannot be inferred that the said FESCI members were allegedly armed as a result of the actions of either accused and/or the members of the alleged 'inner circle'.

¹⁴⁸⁸ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076-0077, para. 91. It is noted that the statement describes the buildings as residential (paras 89-90).

¹⁴⁸⁹ P-0435, T-97 dated 3 November 2016, pp. 68-69.

(c) *Arming of the youth at the end of the post-electoral crisis*

608. The Prosecutor further alleges in her Response that weapons were ‘distributed to the pro-Gbagbo youth from the base of the *Gendarmerie* squadron 2/1 at Toit Rouge in Yopougon’.¹⁴⁹⁰ The Prosecutor added that this was announced to the said youth by the ‘COJEP representative at the agora in Toit Rouge’.¹⁴⁹¹ The Prosecutor based this allegation on P-0238’s testimony. P-0238 testified having witnessed the purported ‘handing out of weapons’ but also testified that this took place after Mr Gbagbo’s arrest.¹⁴⁹² It is noted that the witness agreed that the ‘2/1 squadron in Toit Rouge’ was a position under ‘the command of Captain Koukougnon’.¹⁴⁹³ However, the witness did not suggest that it was Captain Koukougnon that authorised the purported distribution or that this was linked to either of the accused. It is further noted that, in a previous statement, P-0238 had linked the purported distribution of weapons to a call ‘made by people from the COJEP’ to the young people in Yopougon to pick up weapons; the statement places this call to have taken place ‘[a]fter Duékoué was taken by the rebels’, which, in court, he testified took place ‘before the president was arrested’.¹⁴⁹⁴ P-0238 also confirmed in court that his account concerning the call having been made by COJEP is based on anonymous hearsay.¹⁴⁹⁵
609. Considering P-0238’s account in full, it can be concluded that the purported handing out of weapons took place after Mr Gbagbo’s arrest. However, no

¹⁴⁹⁰ Response, para. 1056.

¹⁴⁹¹ Response, para. 1057.

¹⁴⁹² P-0238, T-82 dated 29 September 2016, pp. 32-33.

¹⁴⁹³ P-0238, T-82 dated 29 September 2016, p. 15 (confidential).

¹⁴⁹⁴ P-0238, T-82 dated 29 September 2016, pp. 34-35.

¹⁴⁹⁵ P-0238, T-82 dated 29 September 2016, p. 34. The witness confirmed his previous statement that ‘I was not at the Agora when they made this call but the young people from my neighbourhood told me this because they were all armed with Kalashnikovs’.

reasonable trial chamber could conclude that this constituted adequate evidence demonstrating that the 'FDS armed the pro-Gbagbo youth and militia towards the end of the crisis', as alleged.¹⁴⁹⁶

610. It is noted that, in the Response, the Prosecutor relied on P-0238 together with CIV-OTP-0071-0223¹⁴⁹⁷ dated 30 March 2011 to assert that this purported arming took place prior to Mr Gbagbo's arrest. The Prosecutor also alleged that considering this document, it is 'reasonable to infer that the AK-47s which were delivered with the authorisation of General Dogbo Blé from the GR to *Gendarmerie* squadron chief Koukougnon on 30 March were meant for the militia and pro-Gbagbo youth and that these were the Kalashnikovs which Witness P-0238 saw being distributed to youth from the 2/1 squadron at Yopougon Toit Rouge around the end of March'.¹⁴⁹⁸ In support of this inference, the Prosecutor further alleged that 'the GR acted as a focal point around which militia, pro-Gbagbo youth and Liberian mercenaries integrated unofficially into the FDS and collaborated in operations with FDS during the crisis'.¹⁴⁹⁹
611. Noting the concerns in respect of document CIV-OTP-0071-0223 discussed below,¹⁵⁰⁰ it also noted that the document states '*au profit de la Garde Républicaine*' and not the *Gendarmerie*. However, to the extent that this document may constitute a request by squadron chief Koukougnon to the *Garde Républicaine*, it is not known whether the delivery of the weapons contained therein materialised. The mere fact that both the document as well as the purported distribution at 2/1 squadron at Yopougon Toit Rouge involved AK-47s is insufficient to conclude that these were indeed the same consignment. Even if

¹⁴⁹⁶ Response, para. 1055.

¹⁴⁹⁷ See Response, paras 1058-1059.

¹⁴⁹⁸ Response, para. 1061.

¹⁴⁹⁹ Response, para. 1060.

¹⁵⁰⁰ See IV.E.1 - The stock of weapons and ammunition at the Presidential Palace. See, in particular, para. 879.

the delivery of the weapons had materialised, assessing this together with P-0238's testimony, demonstrates that this would have still taken place after Mr Gbagbo's arrest.

612. As regards the *Garde Républicaine* being the focal point, the evidence provided does not demonstrate that this was indeed the case. The evidence cited by the Prosecutor in this regard has been addressed in the sections below.¹⁵⁰¹
613. In the absence of additional information, it cannot be ascertained whether or not this purported arming is linked to the accused or to the implementation of the alleged Common Plan. Further, considering the timing of the purported arming of pro-Gbagbo youth from the base of the *Gendarmerie* squadron 2/1 at Toit Rouge in Yopougon, it cannot be concluded that this is evidence of the existence of the alleged Common Plan or purported control over these youths.

(d) *Conclusion*

614. Based on the available evidence, the most a reasonable trial chamber could conclude is that the irregular forces sporadically managed to obtain small quantities of weapons. There is no evidence to suggest that there was a concerted effort to arm the irregular forces. It is also noted that the Prosecutor has presented no reliable evidence that would allow making an assessment of how well the respective irregular forces were armed at different stages. Indeed, if the testimony of P-0435 that the GPP had 'at least 8,000 to 9,000 militias' in

¹⁵⁰¹ See IV.D.2.b)(5)(d)(i) - Alleged recruitment in the *Garde Républicaine*;

IV.D.2.b)(5)(e) - Conclusion;

IV.D.2.c)(2)(a) - Presence of Liberians in FDS bases/units;

IV.D.2.c)(3) - Conclusion;

IV.D.2.d)(4) - GPP participation in clandestine operations;

IV.D.2.d)(9) - Conclusion.

Abidjan during the post-electoral crisis¹⁵⁰² is to be believed, it is impossible to conclude on the basis of the available evidence, that they were well armed or, on the assumption that they did have weapons, where they obtained them from.

(4) Training

615. The Prosecutor alleged that ‘before the elections [in 2010]’, Mr Blé Goudé, through Stallone Ahoua requested that the GPP initiate training sessions for ‘*Jeunes Patriotes*, members of the COJEP and the FPI youth’.¹⁵⁰³ The Prosecutor also alleged that Mr Alain Dougou, the Minister of Defence, appointed on 6 December 2010, met with the ‘GPP leadership to assess how best to cooperate with this unit, and requested that the GPP train a special unit of elements in support of the FPI’.¹⁵⁰⁴ Relying on testimony from Witness P-0435, the Prosecutor further alleged that Mr Gbagbo’s [electoral] campaign in 2010 was based, *inter alia*, on training ‘FESCI and COJEP youths in Abidjan’.¹⁵⁰⁵ The GPP is alleged to have received ‘young people from various “patriotic movements”, whom they trained including in weapons handling’.¹⁵⁰⁶ The Prosecutor alleged that these trainings started in October 2010 in the GPP’s training centre at their Yopougon Sable camp.¹⁵⁰⁷ This training was alleged to be provided by the GPP to ‘600 youth members of the FESCI and the COJEP’ up until December 2010 ‘at which time the recruits integrated into FDS units’.¹⁵⁰⁸

¹⁵⁰² P-0435, T-87 dated 18 October 2016, p. 71.

¹⁵⁰³ Mid-Trial Brief, para. 91.

¹⁵⁰⁴ Mid-Trial Brief, para. 77. It is noted that this allegation concerns the Prosecutor’s case concerning the creation of the unit called the Ivorian Security Legion. To the extent that this allegation references training, it is noted that Alain Dogou’s request does not concern the training of the youth by GPP members which had already purportedly begun before his appointment as Minister for Defence in 2010. For this reason, Alain Dogou’s purported instruction has been discussed later in the subsection concerning the Ivorian Security Legion. *See* IV.D.2.b)(5)(d)(iii) - Ivorian Security Legion.

¹⁵⁰⁵ Mid-Trial Brief, para. 710 referring to P-0435, T-87 dated 18 October 2016, p. 45. Response, para. 1211.

¹⁵⁰⁶ Mid-Trial Brief, para. 94.

¹⁵⁰⁷ Mid-Trial Brief, para. 94; Response, para. 1118.

¹⁵⁰⁸ Mid-Trial Brief, para. 91.

(a) *GPP training activities*

616. The Prosecutor's allegations is focused mainly on the alleged training activities taking place shortly before and during the post-electoral crisis. However, there is also evidence on the record about GPP's own training activities, which started much earlier. It is noted that sometimes the evidence is unclear as to when it pertains to the GPP's general training practices and when it relates specifically to the GPP providing training to members from other youth groups.
617. As regards training prior to the post-election crisis, P-0435 testified that GPP elements used to train even before the GPP existed officially in 2003, as a civilian group under the leadership of Charles Groguhet.¹⁵⁰⁹ P-0435 testified that the GPP first started training in October 2002.¹⁵¹⁰ The person in charge of training was 'Zagbayou, who was a soldier in the regular army'¹⁵¹¹ holding the rank of a 'chief corporal'.¹⁵¹² This training involved physical exercises,¹⁵¹³ military discipline as they had to work 'alongside the regular defence and security forces', and they had to learn 'weapons handling and tactical manoeuvres';¹⁵¹⁴ they trained with AK-47s.¹⁵¹⁵ These trainings took place in *cité verte* and lasted a month.¹⁵¹⁶
618. P-0441, a civilian that lived in Yopougon, testified that GPP trainings also took the form of physical exercises such as running sessions informally called

¹⁵⁰⁹ P-0435, T-87 dated 18 October 2016, p. 6.

¹⁵¹⁰ P-0435, T-87 dated 18 October 2016, pp. 4-11.

¹⁵¹¹ P-0435, T-87 dated 18 October 2016, p. 4.

¹⁵¹² P-0435, T-87 dated 18 October 2016, p. 10. *See also* P-0449, T-159 dated 22 May 2017, pp. 61-64; P-0436, T-148 dated 1 May 2017, pp. 14-15.

¹⁵¹³ P-0435, T-87 dated 18 October 2016, p. 7.

¹⁵¹⁴ P-0435, T-87 dated 18 October 2016, p. 9.

¹⁵¹⁵ P-0435, T-87 dated 18 October 2016, p. 10.

¹⁵¹⁶ P-0435, T-87 dated 18 October 2016, p. 10.

‘footings’.¹⁵¹⁷ P-0435 explained ‘footings’ as running whilst singing ‘military songs’ and going through various communes, including those inhabited by RHDP supporters in order to ‘intimidate people’.¹⁵¹⁸ P-0435 explained that by intimidating people he meant that they would bear ‘Kalashnikovs’ as they ran.¹⁵¹⁹ P-0435 also added that when they would come to crossroads into neighbourhoods that were said to be inhabited by RHDP supporters, they would ‘fire into the air’; he added that ‘each had to behave properly, because if the need arose, we were armed and we were at the ready’.¹⁵²⁰

619. P-0108 testified having witnessed Maguy le Tocard’s GPP group running in groups, some in uniform and some running in their own clothing, including sports exercise clothes.¹⁵²¹ P-0108 testified having seen them bearing Kalashnikovs.¹⁵²² P-0108 also testified that he saw them with ‘rocket launchers’.¹⁵²³ When asked what he saw them doing when they were training, he testified that they were doing sports and working out.¹⁵²⁴ He also testified that there were about 400 youths in this group and that they were being trained by someone from the Presidential Guard whose name he did not know.¹⁵²⁵

(b) GPP training other youths

620. As regards the purported training activities in 2010 before the elections, the instructions preceding such training will be addressed first. These instructions

¹⁵¹⁷ P-0441, T-38 dated 12 May 2016, pp. 43-46.

¹⁵¹⁸ P-0435, T-88 dated 19 October 2016, p. 18.

¹⁵¹⁹ P-0435, T-88 dated 19 October 2016, p. 17.

¹⁵²⁰ P-0435, T-88 dated 19 October 2016, pp. 17-18.

¹⁵²¹ P-0108, T-145 dated 24 April 2017, p. 64.

¹⁵²² P-0108, T-145 dated 24 April 2017, p. 65.

¹⁵²³ P-0108, T-145 dated 24 April 2017, pp. 65-67.

¹⁵²⁴ P-0108, T-145 dated 24 April 2017, p. 65.

¹⁵²⁵ P-0108, T-145 dated 24 April 2017, p. 67-68.

are alleged to have emanated from Mr Blé Goudé during two meetings between him and the GPP leadership. The first meeting concerns an exchange between Stallone Ahoua and Bouazo in late September 2010 where Stallone Ahoua was purportedly delivering messages from Mr Blé Goudé.¹⁵²⁶ This meeting was relayed to P-0435 by Bouazo. The second meeting concerns P-0435 and Mr Blé Goudé in October 2010.¹⁵²⁷

621. It is noted that P-0435's testimony regarding the first meeting concerns events in late September 2010 during Stallone Ahoua's visit to the GPP base.¹⁵²⁸ During this time, there had been unrest among members of the GPP for non-payment of compensation that was assured to them as part of the demobilisation and disarmament process.¹⁵²⁹ P-0435 testified that Stallone Ahoua came to the base 'with a message which he said came from Mr Blé Goudé'¹⁵³⁰ and spoke of how the protesting GPP elements should stay calm as their message had been communicated to Mr Gbagbo. According to the Prosecutor, in this September 2010 meeting Mr Blé Goudé had requested - through Stallone Ahoua - that the GPP initiate training sessions for the youth before the elections in 2010.¹⁵³¹ P-0435 testified that the instructions from Stallone Ahoua, as relayed to him by Bouazo were

we should also be at the ready in order to follow military training and in order to dispense military training to those youths from the various movements such as the COJEP, the UN [sic], FPI;¹⁵³² and that we were going to train them before the elections, because there was going to be an official instruction, but those young

¹⁵²⁶ Mid-Trial Brief, para. 91.

¹⁵²⁷ Mid-Trial Brief, para. 92.

¹⁵²⁸ P-0435, T-87 dated 18 October 2016, p. 44.

¹⁵²⁹ See P-0435, T-87 dated 18 October 2016, p. 41.

¹⁵³⁰ P-0435, T-87 dated 18 October 2016, p. 41.

¹⁵³¹ Mid-Trial Brief, para. 91.

¹⁵³² It is noted that the English transcript does not reflect the French original. See P-0435, T-87 dated 18 October 2016 (French), p. 41. The quote in French reads as '*les jeunes aussi qui allaient venir des mouvements patriotiques, comme des jeunes du COJEP, ou aussi les jeunes du (inaudible), par exemple, qui allaient venir vers nous et qu'on allait former avant les élections.*'

people needed to be operational before that instruction was given. So they had to receive some form of training and be apt and ready to serve in the regular army.¹⁵³³

622. It is noted that P-0435's testimony about Mr Blé Goudé's message is a double hearsay account of what Bouazo may have been told by Stallone Ahoua on behalf of Mr Blé Goudé.¹⁵³⁴

623. P-0435 also testified that he met with Mr Blé Goudé' in October 2010. As per P-0435's account, Mr Blé Goudé made a reference to a visit by 'his emissary' that P-0435 understood to be referring to Stallone Ahoua's visit to Bouazo.¹⁵³⁵ P-0435 testified about the contents of his meeting with Mr Blé Goudé:

he [Mr Blé Goudé] wanted to reassure us, first and foremost, as to our insertion, as to those who are apt to go into the army, and those who weren't were going to be taken care of. But for them the priority was the elections, so we had to remain calm and we had to continue and go to those various suspect locations where the people from the RHDP were meeting in order to ascertain who the new individuals were whom they were harbouring. So that's what we talked about.¹⁵³⁶

624. At the outset, it is recalled that the two meetings that P-0435 mentioned concern instructions regarding initiating training of the youth by the GPP, allaying the concerns of GPP members that had been protesting by promising them integration into the FDS, and instructions concerning 'suspect locations where the people from the RHDP were meeting'.¹⁵³⁷ The purported instruction concerning initiating the training of the youth does not appear to have been discussed at the second meeting between P-0435 and Mr Blé Goudé. To that extent the evidence that Mr Blé Goudé instructed such a training to begin is double hearsay. As noted above, Mr Blé Goudé also provided reassurance to GPP elements in the context of their protest and referenced their possible insertion into the FDS. This is to be differentiated from the purported instruction which is

¹⁵³³ P-0435, T-87 dated 18 October 2016, p. 41.

¹⁵³⁴ P-0435, T-87 dated 18 October 2016, p. 43-45.

¹⁵³⁵ P-0435, T-97 dated 3 November 2016, p. 64; *see also* P-0435, T-94 dated 31 October 2016, p. 6.

¹⁵³⁶ P-0435, T-94 dated 31 October 2016, p. 6.

¹⁵³⁷ P-0435, T-94 dated 31 October 2016, p. 6.

a reference to the integration of the youth that were to be purportedly trained by the GPP elements.

625. In her allegations, it is noted that the Prosecutor discussed the two meetings together, presumably to infer a link between the two. While there appears to be some overlap between the topics of discussion between the two meetings, it also appears that the instructions concerning initiating training of the youth by the GPP elements was in fact not discussed at the meeting between P-0435 and Mr Blé Goudé in October 2010.
626. To the extent that evidentiary weight may be accorded to P-0435's double hearsay concerning the alleged September 2010 meeting between Bouazo and Stallone Ahoua, it is noted that very little is known about Stallone Ahoua's role and his relationship with Mr Blé Goudé. In that sense, it is not possible to know whether what he conveyed were actual instructions from Mr Blé Goudé. It is also unclear from P-0435's account of his alleged meeting with Mr Blé Goudé, whether the latter referred to the integration only of GPP members or also of other youths which the GPP had been asked to train. In any event, it is noted that P-0435's understanding was that those that were going to be integrated into the FDS would undergo basic military training courses.¹⁵³⁸
627. Regardless of whether it is possible to attribute the request for the GPP to train youths from other groups, P-0435 testified that subsequent to the meeting in September 2010, '[the GPP] received young people who came from various patriotic movements and these were young people whom [they] recruited within the GPP or the FPI youth movement or the COJEP or youths that belonged to patriotic movements that acknowledged the power in place, who recognised the

¹⁵³⁸ P-0435, T-87 dated 18 October 2016, p. 45.

FPI'.¹⁵³⁹ P-0435 also mentioned students of FESCI being part of this training.¹⁵⁴⁰
The GPP proceeded to provide these individuals with training.¹⁵⁴¹

628. P-0435 testified that the initial training was given until December 2010 and it was then that the people trained 'were integrated within the various [FDS] camps' in order to follow 'basic military training courses'.¹⁵⁴² P-0435 explained that 'those in power believed that after the elections the Forces Nouvelles would try and take over power forcibly like they did in 2002' and so they 'had to prepare them' as they would have limited time frame and they needed to teach them 'basic skills in order for them to be able to perform better in their various camps'.¹⁵⁴³
629. P-0435 testified that during the weapons handling training they had automatic pistols, AK-47s, and AA-52s at their disposal for the purposes of training.¹⁵⁴⁴ P-0435 added that they gave them physical training, as well as training concerning 'discipline, language to be used, coded language that was used in the army'.¹⁵⁴⁵

¹⁵³⁹ P-0435, T-87 dated 18 October 2016, p. 45.

¹⁵⁴⁰ P-0435, T-87 dated 18 October 2016, p. 39. In assessing the role of the FESCI vis-à-vis the GPP, it is noted that P-0435 testified that there was no 'special relationship' between the GPP and the FESCI. *See* P-0435, T-87 dated 18 October 2016, pp. 32-33. He also testified that one could be a member of the FESCI and GPP at the same time. P-0435, T-97 dated 3 November 2016, pp. 68-69. P-0435 testified that Charles Groguehet, the founder of the GPP, was a former member of the FESCI. P-0435, T-87 dated 18 October 2016, p. 5. P-0435 mentioned that there were former FESCI members within the GPP ranks but does not mention who they were. P-0435, T-87 dated 18 October 2016, p. 35.

¹⁵⁴¹ P-0435, T-87 dated 18 October 2016, p. 45.

¹⁵⁴² P-0435, T-87 dated 18 October 2016, p. 45.

¹⁵⁴³ P-0435, T-87 dated 18 October 2016, pp. 39-40.

¹⁵⁴⁴ P-0435, T-87 dated 18 October 2016, p. 46.

¹⁵⁴⁵ P-0435, T-87 dated 18 October 2016, p. 45.

630. There is evidence that the GPP had camps in several areas of Abidjan.¹⁵⁴⁶ P-0435 testified that the ‘base camp was the training camp’ in Yopougon-Sable.¹⁵⁴⁷ P-0435 testified that the training dispensed roughly between October to December 2010 trained 600 young people.¹⁵⁴⁸ There is an undated open-source video on the record in which the journalist narrated that Maguy ‘le Tocard’ had 900 *jeunes patriotes* training under his command in Yopougon.¹⁵⁴⁹ P-0108 stated that there were about ‘400 or more’ youth training every day under the supervision of Maguy ‘le Tocard’ and a *Garde Républicaine* uniformed man in Yopougon during the crisis.¹⁵⁵⁰
631. As regards training of members of the COJEP, it is noted that as per P-0435, Stallone Ahoua had informed Bouazo, *inter alia*, to be ready to ‘dispense military training’ to ‘youths from various movements such as the COJEP’.¹⁵⁵¹ P-0449’s testimony is informative in this regard. P-0449, a member of UE-COJEP, testified about trainings the UE-COJEP youth group conducted after the 19 March 2011 rally at CP1; he testified that he, together with other youths, went to see Mr Blé Goudé to negotiate with Mr Gbagbo to determine how they could get people to enlist; he also stated that they considered that the youth needed to continue training to stay in shape to be able to respond to the call of the republic,

¹⁵⁴⁶ See P-0435: the GPP had training camps in the following Abidjan communes: Port Bouet, Yopougon, Adjamé and Abobo. See P-0435, T-87 dated 18 October 2016, pp. 69-75; P-0435, T-88 dated 19 October 2016, p. 15-16. In addition to Yopougon Sable, the *footings* were also done in Adjamé, leaving 220 Logdements, via gare nord and passing by the market. See P-0435, T-88 dated 19 October 2016, pp. 18-19. See also: 21-28/01/2011: APPRECIATION DE SITUATION No. 15 / OPERATION LICORNE / SEM 1 : DU 22 AU 28 JANVIER 2011, 22 January 2011, CIV-OTP-0055-0223 (confidential):: On 22 January groups of pro-Gbagbo youth were seen jogging in the Akwaba – Grand Bassam route (at 0224); See Cote d’Ivoire Jeunes patriotes, les hommes de Laurent Gbagbo – France24, 23 January 2011, CIV-OTP-0002-0995 at 07:50: Young Patriots training in Treichville.

¹⁵⁴⁷ P-0435, T-88 dated 19 October 2016, p. 17.

¹⁵⁴⁸ P-0435, T-87 dated 18 October 2016, p. 45.

¹⁵⁴⁹ 1 open source video, undated, CIV-OTP-0028-0008, transcript at CIV-OTP-0027-0440. Note that P-0625 identified Maguy le Tocard in the video. See P-0625, T-28 dated 10 March 2016, pp. 83-86.

¹⁵⁵⁰ P-0108, T-145 dated 24 April 2017, pp. 63-70.

¹⁵⁵¹ P-0435, T-87 dated 18 October 2016, p. 41.

if they were ever to be called.¹⁵⁵² P-0449 identified Zagbayou as the one running the trainings in his neighbourhood, which consisted of athletic training, including exercises such as push-ups etc.¹⁵⁵³ Notably, P-0449 considered that Maguy ‘le Tocard’ was not involved in the trainings and could not belong to their movements [COJEP and UE-COJEP] because they believed in not bearing arms and only having one’s voice, hand and will to defend the country.¹⁵⁵⁴

632. It is noted that P-0449, testifying generally on the training involving the youth, mentioned that the trainings did not take place at a training centre but rather at a location where the youth would gather to exercise and they came voluntarily and deliberately.¹⁵⁵⁵ He confirmed his prior statement in court that ‘the trainers came spontaneously’; the witness considered that the trainers’ motivation in this regard may have been to move up the ranks within the regular army by providing such training.¹⁵⁵⁶

633. It is also noted that P-0436 testified that a person called Cobri was a FPI supporter in Yopougon who recruited young pro-Gbagbo people to be trained.¹⁵⁵⁷ P-0436 described that the young people ‘recruit[ed]’ by Cobri would run along the main road and train by the side of the lagoon.¹⁵⁵⁸ P-0436 began to see them ‘running in groups like soldiers’ after the date of voting was announced in 2010.¹⁵⁵⁹ The witness also testified that he saw General Mangou coming to

¹⁵⁵² P-0449, T-159 dated 22 May 2017, pp. 61-64.

¹⁵⁵³ P-0449, T-159 dated 22 May 2017, pp. 61-64.

¹⁵⁵⁴ P-0449, T-160 dated 23 May 2017, pp. 2-3.

¹⁵⁵⁵ P-0449, T-160 dated 23 May 2017, pp. 47-49.

¹⁵⁵⁶ P-0449, T-160 dated 23 May 2017, pp. 48-49.

¹⁵⁵⁷ P-0436, T-148 dated 1 May 2017, pp. 11-12.

¹⁵⁵⁸ P-0436, T-148 dated 1 May 2017, p. 12.

¹⁵⁵⁹ P-0436, T-148 dated 1 May 2017, p. 11.

Cobri's residence before and during the post-electoral crisis.¹⁵⁶⁰ However, it is not known why General Mangou visited Cobri's house.

(c) *Footings*

634. P-0435 testified that the footings 'started after the second round of elections, in the month of December [2010] after the second round of elections'.¹⁵⁶¹ The initiative for the footings had apparently been taken by Maguy 'le Tocard', after which Bouazo instructed them to continue with them.¹⁵⁶²
635. P-0435's testimony that Maguy 'le Tocard' carried out footings next to the police station (16th *arrondissement*) in open sight of everyone, including the police, was corroborated by witnesses who resided in the neighbourhood at the time and also by the Police commissioner himself.¹⁵⁶³ P-0435 testified that the 'footing' activities would be done whenever 'we felt that there was a certain level of tension within the commune [where supporters of the opposition resided] [...] we would go on such running activities in order to intimidate and make sure that those young people remained calm'.¹⁵⁶⁴
636. P-0435 testified that the FDS was informed that these footing activities were being conducted by the GPP elements.¹⁵⁶⁵ He added that when they would 'fire into the air in a dissuasive manner', the FDS would have come to 'make sure and ascertain what had happened' and that they 'wanted to make sure that there

¹⁵⁶⁰ P-0436, T-148 dated 1 May 2017, pp. 15-17.

¹⁵⁶¹ P-0435, T-88 dated 19 October 2016, p. 19. *See also* T-87 dated 18 October 2016, p. 40 where the witness stated that it was in November that the exercises really started in the earnest even though according to him the instructions had already arrived in October 2010.

¹⁵⁶² P-0435, T-88 dated 19 October 2016, p. 19.

¹⁵⁶³ P-0440, T-155 dated 10 May 2017, pp. 75-79.

¹⁵⁶⁴ P-0435, T-88 dated 19 October 2016, p. 19.

¹⁵⁶⁵ P-0435, T-88 dated 19 October 2016, pp. 19-20.

[wasn't] any lack of discipline' on the part of the GPP elements.¹⁵⁶⁶ P-0435 also testified that the FDS would 'accompany' them for this reason¹⁵⁶⁷ whilst they were running until they came back to their base.¹⁵⁶⁸ P-0435 testified that CECOS vehicles that 'were in charge of conducting or ensuring security' were informed at least 24 hours in advance of the running activities and would make sure that the GPP elements that were running 'did not offend in any manner because we were armed and they wanted to make sure that there [...] were no mishaps' and they would follow the GPP elements 'at a certain distance until we came back to our base'.¹⁵⁶⁹

637. When asked about military songs the GPP elements would sing during their running activities, P-0435 testified that they would sing in 'Dioula dialect' and stated that

[they would sing]"Men have risen to the occasion and men have got an erection and women are running away." So that means that we are the men and those rebels in front of us are the women who are going to be running away. And there were other lyrics that said that "assailants have killed my family and I'm going to seek revenge." So those were the lyrics of the songs. There were other songs that also said that the commando is not frightened of gunfire or bullets or frightened of anything at all or any danger that they might face, they won't be afraid. That was the kind of songs, you know, the motivating songs that were sung, also songs that were motivating and intimidating in nature.¹⁵⁷⁰

638. P-0442 testified that BAE units would also 'run' with the GPP; he described it as three BAE members 'in front and then three behind, then the Gbagbo supporters

¹⁵⁶⁶ P-0435, T-88 dated 19 October 2016, p. 20.

¹⁵⁶⁷ It is noted that in the French original transcript, P-0435 is unambiguous about the connection between the footings and the FDS being informed in advance. As per his testimony, P-0435 implies that once the GPP elements fired into the air, the FDS were alerted and then began accompanying the group in order to contain any 'mishaps'. In the French original transcript, the phrase used is '*ces footings-là n'allaient pas occasionner des débordements. Ils s'assuraient aussi puisque nous étions armés aussi, ils s'assuraient qu'il n'y ait pas de dérapage.*' See P-0435, T-88 dated 19 October 2016 (French), p. 23.

¹⁵⁶⁸ P-0435, T-88 dated 19 October 2016, p. 20.

¹⁵⁶⁹ P-0435, T-88 dated 19 October 2016, p. 20.

¹⁵⁷⁰ P-0435, T-88 dated 19 October 2016, p. 21.

would be in the middle, and they would run together each morning’;¹⁵⁷¹ according to P-0442, the BAE was a police unit that was identifiable because of the armbands with BAE written on them.¹⁵⁷² P-0442 also testified that when they ran they would say ‘You, the Moussi, you will see something, you will see something. Please go back to your homes’ that he understood to mean that ‘You foreigners, you are coming here to grab power from us’.¹⁵⁷³

(d) Conclusion

639. In conclusion, the evidence considered together suggests that the GPP trained both themselves and, as of October 2010, members of other ‘pro-Gbagbo’ youth groups. These training activities were being carried out to prepare them for rapid integration into FDS in anticipation of a rebel offensive. The purported instructions to start the training programme of members of youth groups were given prior to the post-election crisis. To the extent that these trainings were conducted with the purported aim of integration into the FDS, the allegations concerning their integration have been addressed in the following sub-section. It is not clear why GPP members and other youths were not simply recruited and trained by FDS.

640. Although the available evidence is insufficient to establish that Mr Blé Goudé was personally involved in initiating training of non GPP members, there is little question that the FDS and local authorities were aware of it. Also, given that

¹⁵⁷¹ P-0442, T-19 dated 9 February 2016, p. 79. It is noted that that in this excerpt of his testimony, the witness appears to refer to the term ‘pro-Gbagbo supporters’ to distinguish them from the members of the BAE that were wearing what he described as the BAE uniform. It is also noted that, on another occasion, the witness also considered the BAE to fall within the term ‘Gbagbo supporters’. See P-0442, T-20 dated 10 February 2016, p. 72.

¹⁵⁷² P-0442, T-19 dated 9 February 2016, pp. 78-79; see also P-0442, T-20 dated 10 February 2016, p. 77 (confidential), pp. 78-80.

¹⁵⁷³ P-0442, T-19 dated 9 February 2016, p. 79. It is noted that P-0442 also testified that ‘Laurent Gbagbo’s supporters’ would say they would kill and drive out the ‘Mossis’ (referring to Dioula and foreigners). T-19 dated 9 February 2016, p. 76. However, it is not clear from his testimony whether this also refers to the GPP (and the people they were training).

Mr Blé Goudé lived in Yopougon and that no effort was made to conceal the training activities (on the contrary), there can be little doubt that Mr Blé Goudé was aware of and at least tacitly approved the GPP's training activities. There is no evidence linking Mr Gbagbo to the purported training activities. In this regard, General Mangou's purported visit(s) to Cobri as discussed above is insufficient to establish this link.

641. Finally, the evidence shows that not long after the GPP started providing training to members of pro-Gbagbo youth groups, it also started so-called 'footings' in Yopougon and Adjamé, which were deliberately intended to intimidate the population of neighbourhoods where people lived who supported Mr Ouattara. Although the stated purpose was to 'make sure that those young people remained calm', there can be little doubt that the songs that were sung and the use of firearms would have added to the animosity between neighbourhoods. It is also likely that the repeated public intimidation of and verbal aggression towards groups of people associated with Mr Ouattara may have had an incendiary effect on the local pro-Gbagbo population of Yopougon. However, there is no evidence to suggest that this was the desired or anticipated effect of the GPP's training and footing activities.

(5) Integration into the FDS

642. The Prosecutor alleged that '[p]rior to and during the election' in 2010, Mr Gbagbo and the members of his 'inner circle' arranged for the recruitment of 'pro-Gbagbo youth and militia members into the FDS'.¹⁵⁷⁴ The Prosecutor alleged that there was recruitment of 'young people, from ethnic backgrounds loyal to Gbagbo', many of whom belonged to 'self-defence groups'.¹⁵⁷⁵ This is alleged to

¹⁵⁷⁴ Mid-Trial Brief, para. 88. *See also* Response, para. 1188.

¹⁵⁷⁵ Mid-Trial Brief, para. 30.

have happened in the aftermath of the 2002/03 crisis in the country and Mr Blé Goudé is alleged to have played a ‘key role’ in this recruitment.¹⁵⁷⁶

643. The Prosecutor also alleged that said integration was linked to Mr Blé Goudé’s purported calls to the youth to enlist in the army; the Prosecutor has further linked this to the allegations concerning Mr Blé Goudé’s command and control over the youth groups and, for this reason, these specific allegations have been addressed in that sub-section.¹⁵⁷⁷
644. At the outset, it is noted that, as part of her case concerning the joint control exercised by Mr Gbagbo and the members of the alleged ‘inner circle’, the Prosecutor has grouped allegations concerning integration and collaboration of ‘pro-Gbagbo youth and militia’ with the FDS together.¹⁵⁷⁸ In the discussion below, there has been a distinction drawn between allegations concerning the alleged integration, on the one hand, and collaboration, on the other. In her case, the Prosecutor has not distinguished between institutional integration and operational integration of individuals within the FDS. The former denotes formal recruitment into the FDS whereas the latter encompasses engagement for specific operations. The latter may also involve receiving orders and instructions from FDS officials and, to that extent, being integrated within the command structure. However, such integration is temporary and limited to the specific joint operations.
645. This distinction has a bearing on the allegations concerning arming and financing. Individuals institutionally integrated within the FDS would ordinarily be armed and receive salaries as part of their employment. This cannot be said with certainty for those only operationally integrated and the allegations concerning arming and financing of these individuals must be assessed on a case-

¹⁵⁷⁶ Mid-Trial Brief, paras 30-32.

¹⁵⁷⁷ See IV.D.2.e)(3) - Calls to enlist.

¹⁵⁷⁸ See Mid-Trial Brief, paras 277-306.

by-case basis. For this reason, the allegations involving institutional integration within the FDS have been considered separately from those involving operational integration. The present subsection addresses institutional integration. The subsection on collaboration and joint operations will address operational integration.

(a) Background and institutional framework

646. Before turning to the analysis of evidence concerning recruitment, as regards authorisations needed for recruitment into the FDS in years 2002-2010, it is noted that General Detoh Letho testified that it was the chief of the general staff who assessed staffing needs and requested the Minister of Defence to authorise recruitment into the FDS.¹⁵⁷⁹ General Detoh Letho mentioned that there had been reports submitted between 2002 and 2010 to the chief of staff who realised in light of this that the FDS was short-staffed.¹⁵⁸⁰ General Detoh Letho testified that the human resources division of the FDS oversaw the recruitment and that the recruits were allocated depending on the requirements within the forces.¹⁵⁸¹
647. As relevant contextual information, it is noted that when speaking of the year 2002, P-0097 testified that poverty was widespread during this period which prompted many to join the army, self-defence groups, as well as militia groups.¹⁵⁸² He explained that the people often conceived that being a member of a militia group or a self-defence movement would result in recruitment in the army later on when the country regained stability; and this was ‘enough to mobilise thousands [...] of young people’.¹⁵⁸³ According to him, ‘everyone was trying

¹⁵⁷⁹ P-0047, T-206 dated 10 November 2017, p. 10.

¹⁵⁸⁰ P-0047, T-206 dated 10 November 2017, p. 10.

¹⁵⁸¹ P-0047, T-206 dated 10 November 2017, p. 11.

¹⁵⁸² P-0097, T-48 dated 8 June 2016, p. 34.

¹⁵⁸³ P-0097, T-48 dated 8 June 2016, p. 34.

hard, struggling to join the army [...] everyone wanted to become a uniformed officer or a person. Just the fact that they believed they were going to wear the uniform, that was enough to mobilise them.’¹⁵⁸⁴ P-0097 added that ‘during that period, amongst those who were mobilising themselves, there were young people from almost all political, religious groups’.¹⁵⁸⁵

648. It emerges from this testimony that registration in militia groups and self-defence groups was considered by many in Côte d’Ivoire as a means to increase the likelihood of being recruited formally into the army. According to P-0449, the majority of the youth that he was training with towards the end of the crisis were unemployed and that they would nonetheless come to exercise every weekend voluntarily and deliberately.¹⁵⁸⁶ This also contextualises General Mangou’s evidence that suggested that people were being extorted with the promises of recruitment into the army.¹⁵⁸⁷ Therefore, while it may be less likely that persons supporting Mr Ouattara would join the FDS during a period where Mr Gbagbo was President, it is also not the case that those that joined the FDS at the time necessarily supported Mr Gbagbo and/or did so upon Mr Blé Goudé’s call.
649. Further, in such a context, it is noted that previous association with a youth group is not conclusive evidence of political affiliation following integration into the FDS. It is also noted that P-0316, member of the 1st BCP in Akouédo camp at the time considered that, as a soldier, one represented the country and one may serve an individual but if ‘at one particular point [...] the people is [*sic*] no longer in favour of the person, well, the soldier aligns himself with the will of the people’.¹⁵⁸⁸ The allegations that these individuals were and would have

¹⁵⁸⁴ P-0097, T-48 dated 8 June 2016, p. 34.

¹⁵⁸⁵ P-0097, T-48 dated 8 June 2016, p. 35.

¹⁵⁸⁶ P-0449, T-160 dated 23 May 2017, pp. 47-49.

¹⁵⁸⁷ P-0009, T-199 dated 4 October 2017, p. 34.

¹⁵⁸⁸ P-0316, T-182 dated 29 August 2017, p. 73.

remained ‘pro-Gbagbo’ prior to and following their recruitment must be assessed in this light.

(b) *Shortage of troops*

650. As relevant context to assessing the intent underlying the integration and recruitment in the FDS, it is also worth noting that there is evidence to suggest that, during the post-election crisis, the FDS may not have had the necessary resources to be operating in full capacity. As discussed below, senior FDS officials testified that there were issues concerning a lack of resources. P-0321 also indicated that, during the post-electoral crisis, banks had been closed and this made it problematic to pay public servants.¹⁵⁸⁹
651. General Kassaraté testified that he was ‘quite frequently and regularly’ unable to supply requested reinforcements because of understaffing issues; there had been a ‘staff strength’¹⁵⁹⁰ imposed on the *Gendarmerie* by the general staff but they never reached that level.¹⁵⁹¹ General Kassaraté agreed that the ratio of *gendarmes* to inhabitants in Abidjan was very low during the post-election crisis.¹⁵⁹² General Detoh Letho, commenting on CIV-OTP-0005-0073 dated 25 March 2011, testified that there was shortage of personnel and that only two-thirds of ‘soldiers [were] actually present at any given point in time’.¹⁵⁹³ As discussed below, during his testimony, General Mangou expressed several times the concerns he

¹⁵⁸⁹ P-0321, T-62 dated 11 July 2016, p. 22.

¹⁵⁹⁰ The witness used this term to describe generally ‘personnel, staff, the number of staff, manpower’. He used this term in relation to the term ‘*prise d’armes*’ used in SITUATION DE PRISE D’ARMES MOIS FEVRIER 2011, 24 March 2011, CIV-OTP-0043-0344 (confidential). See P-0011, T-131 dated 9 March 2017, p. 52.

¹⁵⁹¹ P-0011, T-131 dated 9 March 2017, pp. 91-95. It is noted that the witness also commented on TABLEAU GENERAL DES EFFECTIFS DE LA GENDARMERIE NATIONALE DU 20-10-2010 au 22-11-2010, 23 November 2010, CIV-OTP-0044-0057 (confidential). Upon being asked, the witness recalled that in October 2010, the *Gendarmerie* was composed of approximately 17,000 individuals in Côte d’Ivoire. The document reports this number being 15,332. See P-0011, T-131 dated 9 March 2017, p. 19. See also T-135 dated 14 March 2017, pp. 8-13.

¹⁵⁹² P-0011, T-135 dated 14 March 2017, pp. 12-13.

¹⁵⁹³ P-0047, T-205 dated 9 November 2017, p. 17.

had voiced to Mr Gbagbo concerning the lack of resources within the army. A report signed by the Commander of the 1st *Bataillon Blindé* on 21 January 2011 informed that the 1st BB was operating to only 14% of its capacity due to a lack of equipment and a decrease of the quality of workforce since many of its 472 soldiers were too old or ill to fight.¹⁵⁹⁴

(c) *Early recruitments*

652. Many witnesses testified that in the year 2003 there was an FDS recruitment of around 3000-4000 persons.¹⁵⁹⁵ P-0164 testified that most of them were from the South, West, Centre-West and South-West and rarely from the East and North.¹⁵⁹⁶ According to him, they were mostly Bété, Guéré, Kroumen, Alladian, Ebrié, some few Attié, Abé and others;¹⁵⁹⁷ they were recruited by the army headquarters and ‘dispatched here, there and everywhere within the army of Côte d’Ivoire’.¹⁵⁹⁸ According to him, this group of recruits became known as the ‘Blé Goudé Batch’ or ‘Blé Goudé generation’.¹⁵⁹⁹
653. The evidence does not suggest that these persons were recruited in the FDS at the behest of Mr Blé Goudé. There appears to be some correlation with Mr Blé Goudé reflected from term ‘Blé Goudé generation’. However, there is no indication that Mr Blé Goudé exercised a level of control or influence over the youth at this time to have effectuated this enlistment. Furthermore, the reference to Mr Blé Goudé in this context has been explained by witnesses’ slightly different accounts. General Mangou stated that the group received this title

¹⁵⁹⁴ RAPPORT SUR LE MORAL DE LA TROUPE DU 1. BATAILON BLINDE AU TITRE DE L'ANNEE 2011 / No. 0071/EM/1.BB, 21 January 2011, CIV-OTP-0071-0489.

¹⁵⁹⁵ General Mangou testified that there were 4000 recruits; *see* T-196 dated 28 September 2017, pp. 75-80.

¹⁵⁹⁶ P-0164, T-164 dated 19 June 2017, pp. 16, 19.

¹⁵⁹⁷ P-0164, T-164 dated 19 June 2017, p. 16.

¹⁵⁹⁸ P-0164, T-164 dated 19 June 2017, p. 16.

¹⁵⁹⁹ P-0164, T-164 dated 19 June 2017, pp. 19-23.

because the recruits were involved in Blé Goudé's rallies.¹⁶⁰⁰ P-0316 testified that it was due to the fact that these soldiers were under the 'protection' of Mr Blé Goudé¹⁶⁰¹ whereas P-0435 thought the recruits called themselves Mr Blé Goudé's generation because of his leadership position generally within the *Galaxie Patriotique*.¹⁶⁰² According to P-0435, one thousand elements of the 'Blé Goudé generation' had been previously trained by the GPP in preparation to their integration to the army.¹⁶⁰³ P-0435 referred to the purported 'Blé Goudé's batch' recruited in 2003 as the 'first wave'.¹⁶⁰⁴ Based on anonymous hearsay, he also testified that 'there was supposed to be a second and third wave in order to integrate everybody'.¹⁶⁰⁵

654. Other FDS recruitments took place in the period between 2003 and early 2010 (such as that of 2,000 individuals in the beginning of 2010),¹⁶⁰⁶ and nothing indicates that these recruitments took place as part of the alleged Common Plan. General Mangou testified that the FDS recruited 4,000 persons in 2003¹⁶⁰⁷ and 2,000 people in December 2009, who received training in January to March 2010.¹⁶⁰⁸ General Mangou testified that there was another recruitment after that which took place during the post-election crisis; in this recruitment, the conditions for admission had been reviewed and the age limit was increased to 27 years and the only requirement was the ability to read and an ability to handle

¹⁶⁰⁰ P-0009, T-196 dated 28 September 2017, pp. 77-78; T-199 dated 4 October 2017, p. 32.

¹⁶⁰¹ P-0316, T-182 dated 29 August 2017, pp. 69-71.

¹⁶⁰² P-0435, T-87 dated 18 October 2016, pp. 62-63.

¹⁶⁰³ P-0435, T-87 dated 18 October 2016, pp. 62-63.

¹⁶⁰⁴ P-0435, T-87 dated 18 October 2016, p. 62.

¹⁶⁰⁵ P-0435, T-87 dated 18 October 2016, p. 62.

¹⁶⁰⁶ P-0009, T-196 dated 28 September 2017, pp. 75-80. *Also note* evidence that recruitment happened fairly regularly: P-0316 stated that when he joined the army in 1989 there was recruitment every six months, youths stayed for 24 months, some continued, others left for civilian life. After munity in 1990, this stopped for a while. P-0316, T-184 dated 31 August 2017, pp. 10-15.

¹⁶⁰⁷ P-0009, T-196 dated 28 September 2017, p. 77.

¹⁶⁰⁸ P-0009, T-196 dated 28 September 2017, p. 78.

weapons.¹⁶⁰⁹ This recruitment during the post-electoral crisis has been discussed hereinunder.

(d) Recruitment connected to the post-electoral crisis

655. Turning now to the allegations concerning the alleged recruitment into the FDS in relation to the post-electoral crisis, it is noted that the Prosecutor's case concerns (i) recruitment of 'pro-Gbagbo youth' into the FDS¹⁶¹⁰ and (ii) integration of the members of the GPP and the FLGO into the FDS.¹⁶¹¹
656. In support of the recruitment of 'pro-Gbagbo youth' into the FDS, the Prosecutor references further elements that according to her demonstrate that such recruitment did indeed take place. These concern alleged joint collaboration between 'pro-Gbagbo youth' and the FDS,¹⁶¹² Mr Blé Goudé's alleged calls to enlist,¹⁶¹³ and the presence of 'GPP elements', 'FESCI students and Liberians' at the Presidential Residence on 2 April 2011.¹⁶¹⁴ Before turning to the evidence underlying the alleged recruitment of 'pro-Gbagbo youth into the FDS', it is noted that collaboration between them and the FDS does not show that such youth were in fact recruited into the FDS. To the extent that such collaboration demonstrates coordination, those allegations have been addressed hereinafter.
657. Similarly, in support of the allegations concerning the integration of the members of the GPP and the FLGO into the FDS, the Prosecutor references further elements that according to her demonstrate that such integration did in fact take place. These include alleged compliance by members of the GPP of orders and

¹⁶⁰⁹ P-0009, T-196 dated 28 September 2017, p. 78.

¹⁶¹⁰ Mid-Trial Brief, paras 279-288.

¹⁶¹¹ Mid-Trial Brief, paras 291, 296-297.

¹⁶¹² Mid-Trial Brief, paras 282, 285.

¹⁶¹³ Mid-Trial Brief, paras 283, 286.

¹⁶¹⁴ Mid-Trial Brief, para. 287.

instructions from ‘the network’, FDS officials and ministers,¹⁶¹⁵ alleged joint collaboration with the FDS during certain operations,¹⁶¹⁶ and alleged links of GPP members with Mr Blé Goudé.¹⁶¹⁷ Therefore, in examining the Prosecutor’s case, the conclusions reached in respect of the alleged parallel structure, instructions relevant to the RTI March, emergence and control over the GPP, and the CP1 rally on 19 March 2011 have also been considered. In the present sub-section, evidence relevant to recruitment activities during the post-electoral crisis has been examined. This has been further divided into specific allegations concerning firstly the *Garde Républicaine* since in the Response, the Prosecutor alleged that ‘the GR acted as a focal point around which militia, pro-Gbagbo youth and Liberian mercenaries integrated unofficially into the FDS’ and collaborated with them.¹⁶¹⁸ The allegations concerning the ‘waves’ of recruitment into the FDS have been discussed thereafter. The conclusions concerning the youth groups reached above have also been considered in evaluating these allegations. Lastly, the allegations concerning the purported creation of the Ivorian Security Legion have been discussed. These relate to Minister Alain Dogou’s purported instructions and are therefore, also relevant for allegations concerning alleged coordination between the members of the ‘inner circle’ and the GPP.

(i) *Alleged recruitment in the Garde Républicaine*

658. As part of her case concerning the integration of the youth in the FDS, the Prosecutor pointed to P-0347’s testimony concerning training and integration of ‘pro-Gbagbo’ youth in the *Garde Républicaine*.¹⁶¹⁹

¹⁶¹⁵ Mid-Trial Brief, paras 289-290, 292, 294-295, 298

¹⁶¹⁶ Mid-Trial Brief, paras 299-300, 303-304.

¹⁶¹⁷ Mid-Trial Brief, paras 293, 302, 305-307.

¹⁶¹⁸ Response, para. 1060.

¹⁶¹⁹ Mid-Trial Brief, paras 279-281.

659. P-0347 confirmed that there was a training centre of the *Garde Républicaine* called Akakro situated in the Bingerville region east of Abidjan.¹⁶²⁰ P-0347 testified that this was the first recruitment that he had witnessed since he took up service in 2004.¹⁶²¹ According to him, there were between 60-80 recruits.¹⁶²²
660. When prompted, P-0347 testified that a person called Blé Kouassi came to the training division in December 2010 but that he was not the person responsible for the training centre.¹⁶²³ P-0347 recalled that, instead, Blé Kouassi had been assigned to be responsible for training that was initiated in December 2010.¹⁶²⁴ P-0347 also testified that most of the new recruits came from the ‘Krou ethnic group’.¹⁶²⁵
661. In response to the question about who had the authority to order Blé Kouassi in relation to this training in Akakro, P-0347 testified that ‘[i]n principle for any training, this is conducted or directed by the general staff [of the Republican Guard under the responsibility of its training department]’.¹⁶²⁶ P-0347 also testified that all those recruits that were part of this training were assigned to the *Garde Républicaine*.¹⁶²⁷ According to P-0347, training would last for three months, in principle, but in this particular case, it was ‘expedited’ to ‘about two months’.¹⁶²⁸

¹⁶²⁰ P-0347, T-77 dated 22 September 2016, p. 14.

¹⁶²¹ P-0347, T-77 dated 22 September 2016, p. 33.

¹⁶²² P-0347, T-77 dated 22 September 2016, p. 39.

¹⁶²³ P-0347, T-77 dated 22 September 2016, pp. 14-15.

¹⁶²⁴ P-0347, T-77 dated 22 September 2016, p. 15. The witness places this training to have taken place on 22 and 23 December (p. 30).

¹⁶²⁵ P-0347, T-77 dated 22 September 2016, p. 39.

¹⁶²⁶ P-0347, T-77 dated 22 September 2016, p. 16.

¹⁶²⁷ P-0347, T-77 dated 22 September 2016, p. 30.

¹⁶²⁸ P-0347, T-77 dated 22 September 2016, p. 30.

662. There is evidence to suggest that this recruitment may not have been made following a public call. P-0347 testified that '[d]uring ordinary times there is usually an announcement that is made from the general staff, and it is the training division of the general staff that conducts the training. However, in this case the training was directed by or initiated by the commander of the corps so as to increase the strength of the corps'.¹⁶²⁹ P-0347 denied that there was any '*communiqué*' to the effect that this training in question would take place.¹⁶³⁰ P-0347 'supposed' that, as a commander, the commander of the Republican Guard Dogbo Blé¹⁶³¹ 'must have discussed this with the chief of general staff'.¹⁶³² P-0347 also testified that General Dogbo Blé told him that it was he who had asked Blé Kouassi to not inform P-0347 about this training.¹⁶³³ The witness was told by another commander that they ordered Blé Kouassi not to inform him because he 'was not to be trusted'.¹⁶³⁴
663. As regards what happened to the recruits following the training, P-0347 testified that they were 'shared out amongst the various companies of the *Garde Républicaine*, and others were assigned to the security detail as bodyguards for certain personalities or figures of authority'.¹⁶³⁵
664. P-0239's testimony is also considered in evaluating the Prosecutor's allegation since P-0239, a BASA member, was sent to Akakro in October 2010¹⁶³⁶ and

¹⁶²⁹ P-0347, T-77 dated 22 September 2016, pp. 31-32.

¹⁶³⁰ P-0347, T-77 dated 22 September 2016, p. 32.

¹⁶³¹ P-0347, T-77 dated 22 September 2016, p. 20.

¹⁶³² P-0347, T-77 dated 22 September 2016, p. 32.

¹⁶³³ P-0347, T-77 dated 22 September 2016, p. 15-16.

¹⁶³⁴ P-0347, T-77 dated 22 September 2016, pp. 29-30. It is noted that the witness speculates that the reason he may have not been trusted was because of his ethnicity, and that he heard this from people around him. *See* pp. 34-35. The Prosecutor suggested that the ethnicities of the recruits had a role to play in their affinity to Mr Gbagbo. *See* Response, para. 1687. As noted above in relation to the ethnic affiliations alleged by the Prosecutor, there is insufficient evidence before the Chamber to evaluate fairly how ethnic loyalties played a role in political support.

¹⁶³⁵ P-0347, T-77 dated 22 September 2016, p. 40.

¹⁶³⁶ P-0239, T-167 dated 28 June 2017, p. 28.

stayed there until 25 December 2010.¹⁶³⁷ During his time there, he noted the presence of recruits at Akakro who told him that they had been there for about three weeks and it appears from his testimony that these were recruits who had been promised recruitment during Mr Gbagbo's electoral campaign.¹⁶³⁸ P-0239 considered that these recruits were not trained and could not have been used and were at Akakro to continue training.¹⁶³⁹ P-0239 provided anonymous hearsay that these recruits had been directly recruited by the *Garde Républicaine* and he assumed that 'the president must have given a direct order for that recruitment'.¹⁶⁴⁰

665. P-0435 provided hearsay evidence that Colonel Mody of the *Garde Républicaine* told them that Mr Gbagbo had been 'informed of the efficiency of the elements that had been placed at his disposal and he had decided to integrate those elements on an official basis'.¹⁶⁴¹ The conclusions in respect of this encounter are imported by reference.¹⁶⁴² It is not known to what extent Mr Gbagbo was aware of the background and composition of the group that he was addressing, including the nature of their assignment prior to this recruitment. This evidence has been assessed together with testimony from General Mangou, who provided anonymous hearsay that there had been recruitment within the *Garde Républicaine* after 30 March 2011.¹⁶⁴³ General Mangou testified that this was not part of the last recruitment carried out by him during the post-election crisis and

¹⁶³⁷ P-0239, T-167 dated 28 June 2017, p. 29.

¹⁶³⁸ P-0239, T-167 dated 28 June 2017, p. 30.

¹⁶³⁹ P-0239, T-167 dated 28 June 2017, p. 30.

¹⁶⁴⁰ P-0239, T-167 dated 28 June 2017, p. 30.

¹⁶⁴¹ P-0435, T-90 dated 21 October 2016, p. 10. The decision also extended to the elements who were at the CRS and at the Residence at this time, and had the BEPC; those without it would be put into a corps (p. 11). P-0435 also explained that to get into the *Gendarmerie* or the police, one had to have the BEPC diploma. See P-0432, T-89 dated 20 October 2016, p.12.

¹⁶⁴² IV.C.2.s) - Encounter on 2 April 2011.

¹⁶⁴³ P-0009 testified that it was his security guard who told him about this purported recruitment. See P-0009, T-196 dated 28 September 2017, p. 75.

he found out about this after the post-electoral crisis.¹⁶⁴⁴ However, noting that the information is based on anonymous hearsay and does not provide any details that could be corroborated by other evidence on the record, there can be no conclusions drawn as to this purported recruitment.¹⁶⁴⁵ Based on these pieces of evidence comprised of different levels of hearsay, it cannot be concluded that there had been recruitment within the *Garde Républicaine* after 30 March 2011. There is no evidence that what appears to have been promised by Colonel Mody was ever carried out.

(ii) *Alleged recruitment in the FDS*

666. At the outset, as regards the link with the members of the purported self-defence groups being recruited into the FDS, General Mangou considered that during the time that he was the chief of staff of the armed forces, from 2004 to 30 March 2011, ‘there were no militias within the FDS’.¹⁶⁴⁶ General Mangou also testified that the FDS did not look to recruit youth from ‘self-defence groups’.¹⁶⁴⁷ This obviously does not exclude the possibility that some of the individuals that were recruited by the FDS at different stages may have been affiliated with certain groups or militias at a certain point. Indeed, based on the evidence on the record, it is quite likely that many militia members would have been particularly keen to enrol in the FDS. The evidence does not contain any suggestion that the FDS did not want to recruit (former) militia members.

667. Indeed, the evidence suggests that there may have been ‘waves’ of recruitment which included individuals affiliated to ‘pro-Gbagbo youth groups’ prior to and

¹⁶⁴⁴ P-0009, T-196 dated 28 September 2017, p. 74.

¹⁶⁴⁵ It is noted that the Prosecutor has pointed to this portion of General Mangou’s testimony as an example in response to the defence arguments that because of ‘high-level FDS defection on or about 31 March 2011, there is insufficient evidence of how Mr Gbagbo and the Inner Circle members were coordinating FDS joint operations with youth groups or militia members.’ See Response, paras 1707-1708.

¹⁶⁴⁶ P-0009, T-196 dated 28 September 2017, p. 69.

¹⁶⁴⁷ P-0009, T-199 dated 4 October 2017, p. 32.

during the post-electoral crisis. P-0435 testified that certain individuals being trained by the GPP joined the ‘first wave’ of recruitment in December 2010.¹⁶⁴⁸ According to P-0435 the ‘second wave’ took place in February 2011.¹⁶⁴⁹

668. In addition to this, there is documentary evidence that appears to suggest that there may have been four ‘waves’ of recruitment into the FANCI during the post-electoral crisis.¹⁶⁵⁰ However, these documents do not permit an assessment of the evidentiary weight of the extremely limited information contained therein. None of these documents contain any seals, stamps, signatures, letterheads, or markings that could indicate who the author and/or recipient may be. With the exception of document CIV-OTP-0048-1109, which was shown to P-0347, none of these documents were put to any witness in court. It is noted that P-0347, testified, as noted above, that document CIV-OTP-0048-1109 did not seem to be authentic.¹⁶⁵¹ Under these circumstances, it is not possible to ascribe any evidentiary weight to these documents.
669. There is also evidence to suggest that there may have been some money paid to the FANCI in connection with the purported enlistment of individuals trained by the GPP. However, no meaningful conclusion relevant to the Prosecutor’s case can be drawn from it. In this regard, it is noted that when asked about the financial resources needed for the purported training exercises conducted by the GPP, P-0435 testified that the GPP ‘asked for 30,000’ FCFA per individual from those that were being trained.¹⁶⁵² According to P-0435 this amount was asked of

¹⁶⁴⁸ P-0435, T-90 dated 21 October 2016, pp. 7-8.

¹⁶⁴⁹ P-0435, T-90 dated 21 October 2016, pp. 7-8.

¹⁶⁵⁰ *See* RECRUTEMENT FANCI (1ere VAGUE) DU 22 au 23.12.2010 AKAKRO, 22 December 2010, CIV-OTP-0048-1109; RECRUTEMENT FANCI (2e VAGUE) DU 03 AU 11.01.2011 A L'HMA, 3 January 2011, CIV-OTP-0048-1110 ; RECRUTEMENT FANCI (3e VAGUE) DU 25 AU 31.01.2011 au CMM d'AKOUEDEO, 25 January 2011, CIV-OTP-0048-1111; RECRUTEMENT FANCI (4e VAGUE) GUIGLO DU 05 au 11 février 2011, 5 February 2011, CIV-OTP-0048-1112. *See also* ETAT VOLONTAIRES POUR ETRE RECRUTES AU TITRE DE L'ANNEE 2010 TROISIEME VAGUE DU LUNDI 17 JANVIER 2011, 17 January 2011, CIV-OTP-0048-0279.

¹⁶⁵¹ P-0347, T-78 dated 23 September 2016, p. 54.

¹⁶⁵² P-0435, T-87 dated 18 October 2016, p. 46.

the trainees so that the GPP ‘could provide them with nourishment on location and for other further needs, requirements’.¹⁶⁵³ P-0435 testified that out of this amount, 10,000 FCFA was paid to the GPP and 20,000 was ‘handed over to the national army for the medical visit[s] and [...] other costs’.¹⁶⁵⁴ It is also noted that General Mangou considered this portion of P-0435’s testimony to be incorrect. General Mangou testified that this may have been a case of extortion by ‘some soldiers’ who took advantage of the situation and promised employment of certain individuals within the army in return for money.¹⁶⁵⁵

670. As discussed above, P-0435 stated that, in anticipation of the 2010 elections, the GPP trained 600 people, 100 of which were integrated into the FDS in a ‘first wave’ of recruitment in December; the remaining 500 youths either did not pass the medical exam or ‘had not had enough time to provide their certificate of primary education’ so they waited as further recruitment had been promised.¹⁶⁵⁶
671. As regards the allegations concerning recruitment in the army in December 2010, the Prosecutor relies on P-0316, who testified that *jeunes patriotes* were recruited in the army clandestinely in December 2010.¹⁶⁵⁷ It is noted that P-0316 was a member of the 1st BCP in Akouédo old camp during the post-electoral crisis.¹⁶⁵⁸ P-0316’s first hand experience as regards the alleged training in December 2010 concerns his interaction that month with ‘a young fellow called Zambi’ who came with eight people from P-0316’s village along with P-0316’s nephew.¹⁶⁵⁹ P-0316 noted that these eight people did not have any documents to show that they had been called by the state for recruitment and following an

¹⁶⁵³ P-0435, T-87 dated 18 October 2016, p. 46.

¹⁶⁵⁴ P-0435, T-87 dated 18 October 2016, p. 46.

¹⁶⁵⁵ P-0009, T-199 dated 4 October 2017, p. 34.

¹⁶⁵⁶ P-0435, T-90 dated 21 October 2016, pp. 7-8.

¹⁶⁵⁷ Response, paras 1683-1686.

¹⁶⁵⁸ P-0316, T-182 dated 29 August 2017, pp. 50-51.

¹⁶⁵⁹ P-0316, T-182 dated 29 August 2017, pp. 71-72.

exchange with P-0316 some of them went back to their village.¹⁶⁶⁰ P-0316 testified that, in the end, only two ultimately joined the army.¹⁶⁶¹ P-0316 testified that these two persons came to his house a few weeks later with a rank of a corporal, a uniform, and weapons.¹⁶⁶² P-0316 testified that he considered that these two persons had not been trained properly; he added that ‘maybe they were given some notion of how to pull a trigger on a weapon, and that was enough’.¹⁶⁶³ P-0316 assumed that they were ‘trained’ at Akakro.¹⁶⁶⁴

672. P-0316’s testimony is unclear on many accounts that would have been necessary in evaluating possible links between this purported recruitment and Mr Gbagbo or the ‘inner circle’. It is noted that according to P-0316, Zambi had weapons¹⁶⁶⁵ but P-0316 did not know where he had obtained them.¹⁶⁶⁶ P-0316’s testified that Zambi and the others had been held up for having a weapon in their car and then were subsequently released.¹⁶⁶⁷ P-0316 testified that he had witnessed Commander Brice stating that these individuals had been released on account of having called ‘the Presidency’.¹⁶⁶⁸
673. P-0316 considered that the aforementioned two people that were enlisted were part of the ‘new recruits at the time, who were called up by the Young Patriots to join the army’.¹⁶⁶⁹ P-0316 explained why he considered this recruitment to have been conducted clandestinely; according to him, there was no public call for recruitment that appeared to have been issued; he added that ‘in this particular

¹⁶⁶⁰ P-0316, T-182 dated 29 August 2017, pp. 73-74.

¹⁶⁶¹ P-0316, T-182 dated 29 August 2017, p. 74.

¹⁶⁶² P-0316, T-182 dated 29 August 2017, p. 74.

¹⁶⁶³ P-0316, T-183 dated 30 August 2017, p. 3.

¹⁶⁶⁴ P-0316, T-183 dated 30 August 2017, pp. 3-4.

¹⁶⁶⁵ *See also* P-0316, T-182 dated 29 August 2017, p. 75.

¹⁶⁶⁶ P-0316, T-182 dated 29 August 2017, p. 77.

¹⁶⁶⁷ P-0316, T-182 dated 29 August 2017, pp. 74-76.

¹⁶⁶⁸ P-0316, T-182 dated 29 August 2017, p. 76-77, 92-93.

¹⁶⁶⁹ P-0316, T-183 dated 30 August 2017, p. 4.

instance, there were young people who went into the regions and enlisted, local young people brought them back to Akakro where they were trained'.¹⁶⁷⁰

674. P-0316 agreed that he saw other new recruits apart from his relative and his friends.¹⁶⁷¹ According to P-0316, some of these new recruits were assigned to the 1st BCP and then later demobilised in April 2011.¹⁶⁷² P-0316 testified that, according to him there were '75 to 100' such individuals that were assigned to the 1st BCP.¹⁶⁷³

675. The Prosecutor relied on document CIV-OTP-0048-1109 to assert that '164 men were deemed fit during this recruitment' of the youth into the army.¹⁶⁷⁴ The Prosecutor also relied on this document in particular to allege that 'pro-Gbagbo youth and militia were recruited into the FDS' and that 'this embedded the youth in the recognised and formal structure of the armed forces'.¹⁶⁷⁵ It is noted that P-0347 was asked to comment on a document dated 22-23 December 2010 concerning the recruitment into the FANCI that states that out of 256 individuals who underwent medical examinations in the Akakro camp, 164 men were deemed fit for recruitment.¹⁶⁷⁶ It is noted that this document has little to no evidentiary weight. P-0347 commented that this document 'does not seem to be authentic' in that it has no seal and no stamps.¹⁶⁷⁷ The witness was asked to

¹⁶⁷⁰ P-0316, T-183 dated 30 August 2017, p. 5.

¹⁶⁷¹ P-0316, T-183 dated 30 August 2017, p. 5.

¹⁶⁷² P-0316, T-183 dated 30 August 2017, p. 5.

¹⁶⁷³ P-0316, T-183 dated 30 August 2017, p. 5.

¹⁶⁷⁴ Mid-Trial Brief, para. 279.

¹⁶⁷⁵ Mid-Trial Brief, para. 703. *See also* Response, para. 1683 where the Prosecutor claims that this document corroborates the fact that training of recruits took place in Akakro on 22 and 23 December 2010.

¹⁶⁷⁶ RECRUTEMENT FANCI (1ere VAGUE) DU 22 au 23.12.2010 AKAKRO, 22 December 2010, CIV-OTP-0048-1109. Out of 256 volunteers, 164 men were deemed fit for recruitment. *See also* LISTE COMPLEMENTAIRE DE RECRUES DU 22 DECEMBRE 2010, 22 December 2010, CIV-OTP-0048-0276: this complementary list of recruits shows 13 names. A handwritten comment on this document mentions this list to be passed onto the 'GR pour [illegible – procéder?] trois (03) éléments'. This document has been considered but it is noted that the Prosecutor does not cite this document or link this document to CIV-OTP-0048-1109. It is not known whether or not these two documents are indeed linked.

¹⁶⁷⁷ P-0347, T-78 dated 23 September 2016, p. 54.

confirm whether the dates of the document corresponded with the recruitment that he testified about and the witness agreed. Nonetheless, it is noted that the document does not contain any information as to whether these recruits that were found fit were subsequently recruited. In that respect, it does not further the assessment of the allegations that these individuals were indeed ‘embedded’ in the formal structure of the armed forces.

676. This document has also been considered together with P-0239’s testimony that before he left Akakro on 25 December 2010, he noted the presence of other recruits who came for their medical tests and testified that they were supposed to receive training. It is noted that he did not witness the training himself.¹⁶⁷⁸
677. In the Response, the Prosecutor requests a inference that certain documents suggest that medical examination of recruits in Akakro took place on 22 and 23 December 2010 and that this was followed by medical examinations of additional recruits in January 2011 as referred to by P-0435.¹⁶⁷⁹ Having regard to these documents as well as P-0347’s testimony discussed in relation to document CIV-OTP-0048-1109, it is not possible to assess whether or not these documents do in fact corroborate P-0435’s testimony concerning the recruitment in December 2010. Except for references to the term ‘*recrutement FANCI*’ and ‘*vague*’ [wave] alongside the tabulated presentation, there appears to be no connection between them. It is also not safe to assume that the individuals considered and counted for the purposes of these documents are the same or otherwise overlap in some discernible way.
678. There is evidence that there were recruitment activities in January 2011. General Mangou testified that recruitment into the army in January 2011 involved 3,184

¹⁶⁷⁸ P-0239, T-167 dated 28 June 2017, p. 31.

¹⁶⁷⁹ Response, para. 149 referring to RECRUTEMENT FANCI (1ere VAGUE) DU 22 au 23.12.2010 AKAKRO, 22 December 2010, CIV-OTP-0048-1109, RECRUTEMENT FANCI (2e VAGUE) DU 03 AU 11.01.2011 A L'HMA, 3 January 2011, CIV-OTP-0048-1110, RECRUTEMENT FANCI (3e VAGUE) DU 25 AU 31.01.2011 au CMM d'AKOUEDO, 25 January 2011, CIV-OTP-0048-1111.

enlisted youth that were distributed over 1st BCP, 1st Infantry battalion, BASA, 1st engineering battalion, Republican Guard, BVS and DMIR.¹⁶⁸⁰ General Mangou testified that the recruits from January 2011 were directly transferred to the units allocated for their training ‘in view of the urgency’.¹⁶⁸¹ According to General Mangou, the training in this case lasted a month or a month and a half.¹⁶⁸² It is not known whether this is the recruitment described by P-0435 and P-0316 in their testimony discussed above.

679. At the same time, there is an official report on the case record that references dissatisfaction by some individuals wanting to be recruited into the army. This report indicates that a demonstration of *jeunes patriotes* took place in front of the *État-Major* on 17 January 2011, in which they demanded their recruitment into the army and complained that General Mangou did not want to enlist them in the FDS, for he had a tendency to prefer ‘bureaucrats’ instead.¹⁶⁸³ It is noted that there is also a list compiled on 17 January 2011 with the name of 355 apt recruit volunteers to FANCI.¹⁶⁸⁴ This document has no seals, stamps, signatures, letterheads, or markings that could indicate who the author and/or recipient may be. Having regard to the limited information in document containing the list, it is not known whether the document dated 17 January 2011 contains a list of those

¹⁶⁸⁰ General Mangou testified that more than 3,184 persons were recruited at that time and were distributed the following: BCP1, 200; infantry battalion 1, 200; BASA, 200; engineering battalion 1, 200; Republican Guard, 300; BCS, 100; theatre of the operations at the centre-west groupement southwest, 321 persons; west groupement 301 persons; DMIR 250 persons; and southwest groupement, 301 persons. See P-0009, T-196 dated 28 September 2017, p. 79. There was not enough time to complete the 3 months training and those recruits were transferred to their units for urgent training See P-0009, T-196 dated 28 September 2017, p. 80; P-0009, T-200 dated 5 October 2017, p. 42.

¹⁶⁸¹ P-0009, T-196 dated 28 September 2017, p. 80.

¹⁶⁸² P-0009, T-200 dated 5 October 2017, p. 42.

¹⁶⁸³ Manifestation de protestation desjeunes Patriotes devant l'Etat Major des Armées au Plateau, 25 January 2011, CIV-OTP-0045-1409. On 17 January 2011 at around 6h, around 200 young patriots assembled at the Plateau, to demand their recruitment into the army.

¹⁶⁸⁴ ETAT VOLONTAIRES POUR ETRE RECRUTES AU TITRE DE L'ANNEE 2010 TROISIEME VAGUE DU LUNDI 17 JANVIER 2011, 17 January 2011, CIV-OTP-0048-0279.

‘jeunes patriotes’ that were reported to have been protesting in front of the *État-Major* on 17 January 2011.

680. It is noted that on 17 January 2011, GPP leader Bouazo, acting in the capacity of spokesperson of the ‘Self-defence Groups Association’, informed Mr Gbagbo’s representative that he could offer 20,000 men to fight alongside the army in the whole of Côte d’Ivoire.¹⁶⁸⁵ In this letter, Bouazo expressed intent to support Mr Gbagbo’s forces in view of the manpower shortage in the FDS and listed the expenses that he estimated would be incurred should his offer be accepted. As per the letter, the integration of 500 elements in the FDS would cost 28 million FCFA per month and 62 million for a group of 1,000 elements. It is not known if Mr Gbagbo responded to this letter and/or whether this offer was accepted.
681. There is a document dated 11 February 2011 on the record that suggests that a budget may have been allocated or planned for a possible recruitment of volunteers in February 2011.¹⁶⁸⁶ It is noted that this document does not contain any stamps, seals, letterhead, or other markings that could indicate the author or make it possible to assess its provenance. While the document refers to volunteers, it is not known to what end and for which force these volunteers were to be engaged. In any event, it is not known whether enegaement of volunteers referred to in this document was ever carried out.
682. The Prosecutor referenced document CIV-OTP-0071-0850 to allege that GPP elements were integrated into the FDS in February.¹⁶⁸⁷ This document dated 21 February 2011 contains a message from COMTER together with an annex

¹⁶⁸⁵ Information, 17 January 2011, CIV-OTP-0025-0850 (document found in the Presidential Palace).

¹⁶⁸⁶ Compte-rendu d’execution du budget de recrutement des engages volontaires (à la date du 7 février 2011), 7 February 2011, CIV-OTP-0048-1092: Expenditures related to recruitment of volunteers in Abidjan and Guiglo from 7-11 February was of 699 320 000 FCFA.

¹⁶⁸⁷ Mid-Trial Brief, para. 750. *See also* para. 753. To the extent that this document is also referenced to Mr Blé Goudé’s alleged role in the enlistment of the youth (*see* Mid-Trial Brief, paras 30, 782), this has been addressed in the subsequent subsection concerning his alleged command and control.

containing ‘*liste des volontaires au recrutement*’.¹⁶⁸⁸ In contrast to the title of the annex mentioned in the letter, the annex contained in this document is titled ‘*repartition GAD pour la formation militaire*’. It contains a tabulated list of the names of 398 recruits.¹⁶⁸⁹ In the column specifying ‘*groupe*’, the list contains the names, *inter alia*, of the GPP, LIMA, FLGO.

683. General Mangou testified that he had not seen this document and did not know what the term ‘GAD’, mentioned in the document, stood for.¹⁶⁹⁰ General Mangou added that this document was drafted by ‘Detoh’s deputy’.¹⁶⁹¹ General Detoh Letho confirmed the signatures on this document as those belonging to his deputy.¹⁶⁹² General Detoh Letho confirmed on the basis of this document that this recruitment did in fact take place.¹⁶⁹³ General Detoh Letho also did not know what the term ‘GAD’ contained in this document may have meant and commented that the recruits listed in this document were being allocated to the various battalions for ‘training, recruitment, second recruitment’ and that concerning their training, the chief of the general staff had sent messages to the land forces so that these recruits be trained.¹⁶⁹⁴ It is not known what the reference to the term ‘second recruitment’ may have meant or whether this was a reference to the aforementioned ‘waves’ of recruitment. General Detoh Letho confirmed in court that the GPP and LIMA were listed on this document and considered that ‘young people who were members of the youth groups[...] in the different

¹⁶⁸⁸ No. 563 /EM/FT/BEO/INS / 0203 / MISE A DISPOSITION DE RECRUES, 21 February 2011, CIV-OTP-0071-0850 at 0850-0851.

¹⁶⁸⁹ No. 563 /EM/FT/BEO/INS / 0203 / MISE A DISPOSITION DE RECRUES, 21 February 2011, CIV-OTP-0071-0850: it appears to be allocating 100 persons each to 1st Infantry Battalion in Akouedo, 1st BB Akouedo, and BASA with 98 persons to 1st BCP. P-0047 testified that these are land forces. P-0047, T-204 dated 8 November 2017, p. 38.

¹⁶⁹⁰ P-0009, T-196 dated 28 September 2017, pp. 75-76. The Prosecutor mentioned that this term was a reference to *groupe d’auto defense*.

¹⁶⁹¹ P-0009, T-196 dated 28 September 2017, p. 77.

¹⁶⁹² P-0047, T-204 dated 8 November 2017, pp. 35-36.

¹⁶⁹³ P-0047, T-206 dated 10 November 2017, p. 16.

¹⁶⁹⁴ P-0047, T-204 dated 8 November 2017, p. 38.

regions, they will have enlisted or offered to serve in the army, and [...] that information is retained in relation to that person'.¹⁶⁹⁵

684. P-0435 recognized some of the names in this document as GPP elements.¹⁶⁹⁶ It is noted that there is evidence to suggest that following this recruitment, 31 of the new recruits from self-defence groups were not present for effective recruitment.¹⁶⁹⁷
685. The Prosecutor further points to certain documents dated March 2011 to allege that large numbers of recruits continued to be integrated into the FDS during February and March 2011.¹⁶⁹⁸ All of these documents are unsigned and unstamped; they contain lists of volunteers assigned to 1^{er} BTON Akouedo due to undertake medical visit and there is no indication as to who prepared this list.¹⁶⁹⁹
686. Specifically, it is noted that document CIV-OTP-0048-1117 dated 10 March 2011 contains a header and this document was put to P-0381, the archivist at the general staff.¹⁷⁰⁰ P-0381 recalled that he found this list in 'the office of his former supervisor' in the 'pile of rubbish that was lying around' and that it had not been

¹⁶⁹⁵ P-0047, T-204 dated 8 November 2017, p. 39.

¹⁶⁹⁶ P-0435, T-97 dated 3 November 2016, pp. 57-62.

¹⁶⁹⁷ SITUATION EFFECTIF DES RECRUES, 28 February 2011, CIV-OTP-0048-1094. It is noted that the all of the names in this document have been mentioned in No. 563 /EM/FT/BEO/INS / 0203 / MISE A DISPOSITION DE RECRUES, 21 February 2011, CIV-OTP-0071-0850.

¹⁶⁹⁸ Response, para. 158.

¹⁶⁹⁹ See ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 10-03-2011, 10 March 2011, CIV-OTP-0048-1117; ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 11-03-2011, 11 March 2011, CIV-OTP-0048-1121; ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 14-03-2011, 14 March 2011, CIV-OTP-0048-1124; ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 15-03-2011, 15 March 2011, CIV-OTP-0048-1129; ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 17-03-2011, 17 March 2011, CIV-OTP-0048-1134; ETAT DES VOLONTAIRES DEVANT SUBIR LA VISITE MEDICALE AU 1 ER BTON AKOUEDO RDV DU 18-03-2011, 18 March 2011, CIV-OTP-0048-1138.

¹⁷⁰⁰ P-0381, T-208 dated 14 November 2017, p. 15.

filed in his archives.¹⁷⁰¹ The witness additionally noted that this document was not in the office of his superior and that it had no signatures.¹⁷⁰² P-0381 recalled that some lists had been issued by authorities where the origins of the young people were mentioned and he noted that in this list, there is no mention of the origins.¹⁷⁰³ Considering this evidence taken together, it cannot be concluded that these lists are evidence of further recruitment carried out in March 2011.

687. It is also noted that there is documentary evidence on the record that may suggest that recruitment was carried out in the ‘marine nationale’¹⁷⁰⁴ but they do not assist in evaluating the Prosecutor’s allegation concerning the continued recruitment in March 2011 because the Prosecutor has not advanced any allegations concerning the recruitment in the marine forces. Nonetheless, it is noted that this document contains no information as to the previous membership of said recruits that could permit an assessment of whether they belonged to ‘pro-Gbagbo’ youth, militia, or mercenary groups.
688. Lastly, when asked if P-0226 saw members of the militia in the BASA at the Akouédo Camp, P-0226 testified that he noted the presence of approximately 30 ‘elements’ that ‘had not been recruited in the normal manner’ and who had been ‘dispatched into various units’.¹⁷⁰⁵ P-0226 did not know when these individuals had been recruited, only that it was after the elections and that ‘they arrived at a moment in time when everybody was struggling [...] to find means to survive

¹⁷⁰¹ P-0381, T-208 dated 14 November 2017, p. 15.

¹⁷⁰² P-0381, T-208 dated 14 November 2017, p. 15.

¹⁷⁰³ P-0381, T-208 dated 14 November 2017, p. 15.

¹⁷⁰⁴ See COURRIER ARRIVEE / MARINE NATIONALE, 24 March 2011, CIV-OTP-0071-2471; Annexe 7 / NOTE DE SERVICE / No. 019/COMAR/BEO / Formation de recrues mises à la disposition de la Marine, 24 March 2011, CIV-OTP-0074-0029.

¹⁷⁰⁵ P-0226, T-166 dated 27 June 2017, pp. 19-20.

because the crisis had reached another level at that time'.¹⁷⁰⁶ From his testimony, the date of integration is not known.

(iii) Ivorian Security Legion

689. The Prosecutor alleged that in December 2010, Minister Alain Dogou asked Bouazo to choose 50 GPP elements for possible integration into 'a new unit to be called the Ivorian Security Legion'.¹⁷⁰⁷
690. P-0435 testified about a 'special unit' that was going to be a unit like the CECOS called the Ivorian Security Legion.¹⁷⁰⁸ P-0435 testified about this unit in the context of a question asked about the GPP's 'dealings with government ministers' during the period of '2009 and 2010'.¹⁷⁰⁹ As per P-0435's testimony, in December 2010, the then minister of defence, Alain Dogou, had requested Bouazo to 'designate' 50 GPP elements 'whose integrity could be guaranteed as well as their commitment to the cause of the authorities in power'.¹⁷¹⁰ According to P-0435, the minister had indicated that the creation of such a unit 'was because the authorities had been favourable to [its] creation'.¹⁷¹¹
691. It is noted that P-0435 testified that he was not at the alleged meeting between Bouazo and Alain Dogou where this was discussed.¹⁷¹² The content of the meeting was relayed to him by Bouazo.¹⁷¹³ It is not known to what extent

¹⁷⁰⁶ P-0226, T-166 dated 27 June 2017, p. 20.

¹⁷⁰⁷ Mid-Trial Brief, para. 143.

¹⁷⁰⁸ P-0435, T-87 dated 18 October 2016, pp. 54-55.

¹⁷⁰⁹ P-0435, T-87 dated 18 October 2016, p. 54.

¹⁷¹⁰ P-0435, T-87 dated 18 October 2016, pp. 54-55. P-0435, T-89 dated 20 October 2016, p. 17.

¹⁷¹¹ P-0435, T-88 dated 19 October 2016, p. 9. It is noted however, the French original transcript of the testimony states in full that '*pour être sûrs de pouvoir avoir une suite favorable auprès du Président lorsqu'il allait proposer la création d'une nouvelle unité qui devait être nommée Légion ivoirienne de sécurité.*' P-0435, T-88 dated 19 October 2016 (French), p. 10.

¹⁷¹² P-0435, T-87 dated 18 October 2016, pp. 54-55.

¹⁷¹³ P-0435, T-87 dated 18 October 2016, pp. 55-56.

Mr Gbagbo was aware of this meeting having taken place or of its contents. It is also not known whether or not he had authorised the conception of such a unit prior to Minister Alain Dogou's purported discussion about its creation.

692. According to P-0435, out of the 50 unidentified GPP elements that were selected early 2011 one was assigned to the CRS and sent to Williamsville in February 2011; others were later assigned to the Presidential Residence.¹⁷¹⁴ P-0435 referenced some level of integration having 'started' in the month of February 2011 to the Ivorian Security Legion¹⁷¹⁵ but nothing further is known about this integration or this unit.
693. In short, it is not known whether the Ivorian Security Legion ever saw the light of day. To the extent that there may have been plans to create such a unit, the evidence does not allow concluding anything beyond there having been an initiative from the minister of defence. On this basis, its purported links with the alleged Common Plan cannot be assessed.

(e) Conclusion

694. Based on the totality of the available evidence, a reasonable trial chamber could find that both prior and during the post-electoral crisis, there were a number of attempts to recruit fresh recruits into the FDS. There are also indications that among those recruits there were a number of individuals who had, until then,

¹⁷¹⁴ P-0435, T-88 dated 19 October 2016, p. 9.

¹⁷¹⁵ P-0435, T-89 dated 20 October 2016, p. 13.

been members of militia or self-defence groups. The available evidence does not allow making any reliable findings in terms of the relative numbers involved.¹⁷¹⁶

695. As noted in the previous sub-section, there are indications that the GPP may have been asked to prepare young Gbagbo loyalists for recruitment into the FDS by giving them basic military training.¹⁷¹⁷ However, the available evidence does not allow a reasonable trial chamber to determine how many of the individuals that allegedly received such training were actually recruited into the FDS. There is also no reliable evidence that they received preferential treatment during the selection process.
696. There is also anecdotal evidence of a small number of militia members being integrated into the FDS without going through formal recruitment. However, the available evidence is too sparse and lacking in evidentiary weight to allow any firm conclusions to be drawn in terms of scale, timing, and purpose.
697. It is also noted that there is some anecdotal evidence that some of the recruitments did not follow the regular procedure. However, apart from being suggestive that adopting an alternative procedure would have sped up the process and may have benefited recruits who favoured Mr Gbagbo, the evidence does not indicate the motives behind abandoning the normal recruitment procedure.
698. It is noted, in this regard, that the Prosecutor linked the proliferation of the various youth groups in the years 2002-2003 to the integration of the '[m]en – "patriots" (patriotes) – mostly from the south, west, centre west and south west of Côte d'Ivoire' into the FDS in 2002 and 2003.¹⁷¹⁸ Noting the observations

¹⁷¹⁶ For example, having regard to the totality of evidence, it appears that 398 recruits out of 3,184 persons recruited in January/February 2011 may have been members of the 'self-defence groups' prior to such recruitment; out of these 398, 31 recruits were not present for effective recruitment. Those that were present, being 367, constitute 11.5% of the 3,184 recruits in total (assuming that all of those 3,184 recruits were stationed in Abidjan). It is not possible to assess whether or not these are the same or different recruits as the '75 to 100' assigned to the 1st BCP that P-0316 testified about.

¹⁷¹⁷ See IV.D.2.b)(3)(d) – Conclusion.

¹⁷¹⁸ Mid-Trial Brief, para. 31.

hereinabove in respect of the term *jeunes patriotes*,¹⁷¹⁹ it can be argued that these ‘patriots’ may have had a strong interest in issues concerning defence of the country’s ideals and sovereignty, with a strong likelihood of assuming Mr Gbagbo as the figure head of that interest. However, it does not demonstrate that those that identified themselves as patriots and who enlisted into the FDS entertained or otherwise agreed to commit crimes against the civilian population.

699. In sum, the Prosecutor has presented evidence that could allow a reasonable trial chamber to conclude that the FDS continued recruiting fresh soldiers, many of whom were politically aligned with Mr Gbagbo and some of whom had received previous military training. However, considering the politico-military situation at the time, particularly the FDS’ chronic shortage of reliable troops and the (perceived) imminent threat posed by the opposing forces, there is nothing in the evidence that allows this recruitment to be linked to the alleged Common Plan.

c) Command and control over mercenaries

700. The Prosecutor alleged that Mr Gbagbo and Mr Blé Goudé and other members of the ‘inner circle’ hired, financed, equipped and armed mercenaries, primarily from Liberia, to participate in the implementation of the Common Plan.¹⁷²⁰ The Mid-Trial Brief used the term mercenaries to mean ‘foreign fighters for hire’¹⁷²¹ and it is not clear from this definition whether or not ‘foreign’ refers to nationality or origins of the individual.

701. At the outset, the Prosecutor’s case is unclear as to ‘hiring’. In describing the events prior to the post-election crisis, the Prosecutor alleged that Mr Gbagbo’s government ‘resorted’ to the use of Liberian mercenaries.¹⁷²² The Prosecutor

¹⁷¹⁹ See IV.D.2.b)(1) – Emergence of ‘youth’ groups following the *coup d’état* of 2002.

¹⁷²⁰ Mid-Trial Brief, para. 308.

¹⁷²¹ Mid-Trial Brief, footnote 83; *see also* para. 308.

¹⁷²² Mid-Trial Brief, para. 310.

alleged further that '[m]any of these mercenaries were once again employed by [Mr Gbagbo's] government through FDS officers'.¹⁷²³ The terms 'hired' and 'employed' convey the sense that the foreign individuals in question were institutionally integrated within the FDS and, therefore, would have been salaried public employees. The terms also similarly suggests that mercenaries may have been engaged informally or on an *ad hoc* basis for specific missions, and in that sense, only operationally integrated within the FDS. According to the Prosecutor, her case concerning the joint control over mercenaries involves 'their integration into formal and informal chain of command of the FDS, as well as through financial sponsorship and other benefits'.¹⁷²⁴

702. The vagueness of the Prosecutor's case in this respect has a bearing on how 'control' over such mercenaries is assessed. Institutional integration presupposes that the control is exercised through the already existing command structure in place. Mere operational integration of mercenaries necessarily requires an examination of the particular command structure in operation and financial relationship between the mercenaries and the two accused or members of the 'inner circle'. This is because, it is assumed that engagement of mercenaries, other than through formally employing them as salaried employees, would involve some financial link between the purported mission and the mercenaries in question.
703. At this juncture, as regards Liberian mercenaries, it is also noted that the Prosecutor makes a reference to possible ethnic loyalties between certain Liberian and Ivorian ethnic groups without developing a case about how determinative these may be in assessing the allegations of control exercised by the accused.¹⁷²⁵ In this regard, it is noted that these purported ethnic and/or

¹⁷²³ Mid-Trial Brief, para. 310.

¹⁷²⁴ Mid-Trial Brief, para. 328.

¹⁷²⁵ See Mid-Trial Brief, para. 33.

political affinities have not been properly addressed in the evidence. It is understood that there is evidence to indicate that there is a complex background between Liberia and Côte d'Ivoire, also involving ethnic conflicts, that has influenced the political and social standing of Liberian nationals in Côte d'Ivoire.¹⁷²⁶ It also is noted that Liberia and Côte d'Ivoire have a shared political, national, and cultural history, the full context of which is not part of the facts and circumstances of the present case. There is evidence to suggest that both the 'sides' to the conflict may have recruited Liberian fighters;¹⁷²⁷ however, this is not reflected in the allegations. Evidence on the record provides some details about the involvement of the Liberians in the West that were fighting Ivorian

¹⁷²⁶ See UNMIL JMAC/RRR LIBERIAN FIGHTERS THREAT ASSESSMENT, 31 March 2011, CIV-OTP-0044-0467 (confidential). P-0483's testimony also indicated that there was a complex background involving the civil war in Liberia and related ethnic conflicts that influenced the political and social standing of Liberian nationals in Côte d'Ivoire. See also Final Report of the Panel of Experts on Liberia submitted pursuant to paragraph 6 (f) of Security Council resolution 1961 (2010), 7 December 2011, CIV-OTP-0027-0304 at 0317-0318.

¹⁷²⁷ See Message No.161 / RENFORCEMENT DISPOSITIF, 19 January 2011, CIV-OTP-0045-0614 (confidential): Communication from CEMA to COMTHEATER stating that the FAFN recruited Liberian fighters to attack the FDS in Zouan Hounien and Bin-Houyé. See also UNMIL JMAC/RRR LIBERIAN FIGHTERS THREAT ASSESSMENT, 31 March 2011, CIV-OTP-0044-0467 (confidential): 'Liberians are currently in Cote d'Ivoire supporting both pro-Gbagbo and Pro-Ouattara forces' at 0468; 'Political and ethnic loyalty is particularly visible amongst the Krahn population [...], who are generally loyal to Laurent Gbagbo who supported them against Charles Taylor. Whilst the Gio and the Mandingo population [...] are behind Ouattara' at 0469. See also General Kassaraté's statement 'Côte d'Ivoire experienced its first crisis in 2002, and on each side there were mercenaries' P-0011, T-132 dated 10 March 2017, p. 6.

forces at in the years 2002-2004.¹⁷²⁸ General Kassaraté testified that there were mercenaries on both sides in 2002. He could not recall the name of Glofiéhi's group, but mentioned, *inter alia*, the MPIGO as being one of the groups he had heard about.¹⁷²⁹ In the absence of context and evidence pertaining to it, it is not possible to fairly engage with the allegations linking the accused and Liberian mercenaries solely on account of general claims as to their ethnic and political affiliations.

704. Turning now to the evidentiary analysis, the allegations concerning the resort to mercenaries prior to the post-election crisis have been addressed first.

(1) Resort to mercenaries prior to the post-electoral crisis

705. The Prosecutor alleged that 'as of 2002-2003', Liberian mercenaries fought alongside the FDS against the rebellion in Côte d'Ivoire.¹⁷³⁰ As discussed below, the Chamber noted that there is documentary and testimonial evidence concerning Mr Gbagbo's resort to mercenaries prior to the post-electoral crisis; however, there is also evidence that such engagement of mercenaries was marred

¹⁷²⁸ P-0330, the Chief of Camp Commando during the post-election crisis, testified that, in 2002-2004, they fought rebels, whom they would refer to as 'MPIGO', in the west. P-0330, T-68 dated 1 September 2016, p. 47. *See also* P-0330, T-70 dated 5 September 2016, p. 51. This rebel group was composed of Liberians, for the most part, and their leader was Doh Félix. P-0330, T-71 dated 6 September 2016, pp. 4, 6. P-0330 testified that the MPIGO committed many massacres and lootings (p.7). According to P-0330, the MPIGO were eventually defeated and their leader was killed (p. 14). P-0500 testified that the MPIGO was an armed rebel movement. P-0500, T-182 dated 29 August 2017, p. 17. He was told that the group was made up of Yacouba Liberians, and he also confirmed that their leader was Doh Félix. P-0500, T-182 dated 29 August 2017, p. 17. *See also* P-0500, T-181 dated 28 August 2017, p. 20. P-0500 testified that, in 2003, the MPIGO were killing people in the west; according to P-0500, the purpose of the MPIGO was to exterminate the entire population of the west. P-0500, T-182 dated 29 August 2017, p. 17; P-0500, T-181 dated 28 August 2017, p. 20. P-0500 heard that they had committed many crimes and thought that 'it was civilians that they were attacking the most'. P-0500, T-182 dated 29 August 2017, p. 21. P-0048 also testified that the MPIGO was a rebel movement. P-0048, T-53 dated 27 June 2016, p. 49; P-0048, T-54 dated 28 June 2016, p. 17. The MPIGO was part of a political alliance established in March or April 2003 called the 'G-7', along with two other rebel movements (the MJP and the MPC) and four political parties (the MFA, PDCL, UDPCI, and the RDR). P-0048, T-55 dated 29 June 2016, p. 23; P-0048, T-54 dated 28 June 2016, p. 17. P-0048 also testified that the MPIGO and the other rebel groups were represented at the Linas-Marcoussis conference in Paris, invited by France on the recommendation of Mr Gbagbo. P-0048, T-53 dated 27 June 2016, p. 49; P-0048, T-55 dated 29 June 2016, pp. 25-26, 78-79.

¹⁷²⁹ P-0011, T-132 dated 10 March 2017, p. 7.

¹⁷³⁰ Mid-Trial Brief, para. 33.

in the years that followed by non-payment by Mr Gbagbo's government and discontent on the side of the Liberian mercenaries.

706. General Mangou explained that the west, particularly the northwest region of Côte d'Ivoire, was held by the French army until 2003. When they left the area, 'the forces that were attacking us started infiltrating into that region' and it had not been planned for 'military personnel to be in the west to counter the actions of the infiltrators, so the populations of that region assumed their responsibilities in order to face up to the infiltrators'.¹⁷³¹ General Mangou identified the FLGO, led by Maho Glofiéhié, as one of these groups.¹⁷³² General Mangou added that these groups were 'frequently assisted by Liberians'.¹⁷³³
707. P-0483 testified that LIMA was a group formed in Guiglo by Maho Glofiéhi, an Ivorian.¹⁷³⁴ P-0483 testified that no one gave them money, nor asked them to come and fight for Mr Gbagbo.¹⁷³⁵ According to P-0483, they formed the group because they wanted to help Côte d'Ivoire, the country that they, the Liberians, were residing in.¹⁷³⁶ P-0483 testified that they always went to fight with the military, because they had the map of the country and knew the terrain better.¹⁷³⁷ Between 2002 and 2003, the group entered into Liberia; Mr Gbagbo had asked them to go to Liberia to have a peace meeting and train.¹⁷³⁸ P-0500 also testified that the members of LIMA were fighting with the FDS in the years 2002/2003.¹⁷³⁹

¹⁷³¹ P-0009, T-196 dated 28 September 2017, p. 70.

¹⁷³² P-0009, T-196 dated 28 September 2017, p. 70.

¹⁷³³ P-0009, T-196 dated 28 September 2017, p. 71.

¹⁷³⁴ P-0483, T-99 dated 15 November 2016, pp. 43-44, 53.

¹⁷³⁵ P-0483, T-99 dated 15 November 2016, p. 47.

¹⁷³⁶ P-0483, T-99 dated 15 November 2016, p. 55. It is noted that P-0483 also testified that their motivation was to 'save Krahn people' so that the Ivorians would understand that it was not that all Liberian tribes were attacking them. *See* P-0483, T-102 dated 21 November 2016, p. 27.

¹⁷³⁷ P-0483, T-102 dated 21 November 2016, p. 28.

¹⁷³⁸ P-0483, T-99 dated 15 November 2016, pp. 60, 62-63.

¹⁷³⁹ P-0500, T-181 dated 28 August 2017, p. 41.

P-0330 also testified that troops from LIMA were fighting with the FDS in early 2000s; those who were at the front line had the same weapons as the FDS.¹⁷⁴⁰ He clarified that he noticed that there were also Ivorians among them, despite their name.¹⁷⁴¹ P-0330 testified that he believed that some crimes were committed by LIMA; in the final town that they took in Zouan-Hounien, LIMA forces were looting; they also executed nine elderly civilians.¹⁷⁴² P-0330 testified that in 2006-2007, the members of LIMA were still active in the town of Toulepleu.¹⁷⁴³

708. The evidence indicates that the LIMA is linked to a group called MODEL as well as to the FLGO and UMAS, discussed earlier.¹⁷⁴⁴ P-0483 discussed the creation of MODEL at a meeting in Koumassi in 2002, attended by various individuals of Krahn ethnicity, including Paul Richard.¹⁷⁴⁵ The group, which P-0483 was a member of,¹⁷⁴⁶ was supposed to return to Liberia to remove Charles Taylor from power.¹⁷⁴⁷ P-0483 testified that MODEL later became LIMA when Mr Gbagbo came to power.¹⁷⁴⁸ P-0483 clarified that, although MODEL was formed in Côte d'Ivoire, the name MODEL was only for Liberia; when they were in Guiglo, they were called LIMA, but when they went to Liberia, they were called MODEL. The Ivorians who remained behind in Guiglo when the group went to Liberia, and who had been fighting alongside the Liberians, were named 'special forces' by Maho Glofiéhi.¹⁷⁴⁹ P-0483 did not go to Liberia with the group and instead

¹⁷⁴⁰ P-0330, T-69 dated 2 September 2016, pp. 49-51.

¹⁷⁴¹ P-0330, T-69 dated 2 September 2016, p. 50.

¹⁷⁴² P-0330, T-73 dated 8 September 2016, pp. 34-35. It is noted that he was not an eye-witness to this incident; he heard shooting and came back to find that the nine people had been executed and were in a well, and noted that the LIMA forces were nearby.

¹⁷⁴³ P-0330, T-71 dated 6 September 2016, p. 14.

¹⁷⁴⁴ See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002.

¹⁷⁴⁵ P-0483, T-99 dated 15 November 2016, pp. 24-36.

¹⁷⁴⁶ P-0483, T-99 dated 15 November 2016, pp. 51-52.

¹⁷⁴⁷ P-0483, T-99 dated 15 November 2016, pp. 27, 44, 87.

¹⁷⁴⁸ P-0483, T-99 dated 15 November 2016, pp. 37-38.

¹⁷⁴⁹ P-0483, T-99 dated 15 November 2016, pp. 87-88. See further P-0483, T-102 dated 21 November 2016, pp. 26-27.

remained in Côte d'Ivoire with a few others.¹⁷⁵⁰ All of the commanders went to Liberia and, after the war, most people remained in Liberia; none of the commanders returned.¹⁷⁵¹ P-0435 testified that LIMA was one of the self-defence groups and part of the UMAS; they were like the FLGO and originally came from the west.¹⁷⁵²

709. Witnesses have testified about the involvement of Liberian mercenaries in Côte d'Ivoire in the years 2002-2003. P-0483 testified that he fought with LIMA and FLGO in the battle for the liberation of Toulépleu in 2002; he stated that Maho Glofiéchie was in charge of the mission and they all worked alongside Ivorian soldiers on this occasion.¹⁷⁵³ P-0108 testified that his neighbour in Yopougon was a Liberian mercenary and that he confided in P-0108, telling him that from the time he came to Ivory Coast to fight in 2002, he was under the care of Minister Hubert Oulaï. Up until the crisis in 2010, P-0108 would sometimes see a FDS vehicle coming to collect his Liberian neighbour and four other individuals; he testified that he knew that they were taken to Guiglo.¹⁷⁵⁴ After around six months, the Liberian and their group would return to Abidjan.¹⁷⁵⁵
710. The Prosecutor also cites to P-0330 concerning the presence of 'white people' in Bloléquin 'whom the Prosecution say were mercenaries (foreign fighters for hire)'; she also referenced the establishment of a mixed unit by Bertin Kadet that she argued was trained by foreigners, 'some [of whom] were French speaking, and others, from South Africa, were English speaking'.¹⁷⁵⁶ The available evidence

¹⁷⁵⁰ P-0483, T-99 dated 15 November 2016, p. 89; P-0483, T-100 dated 16 November 2016, p. 13.

¹⁷⁵¹ P-0483, T-100 dated 16 November 2016, p. 13.

¹⁷⁵² P-0435, T-97 dated 3 November 2016, p. 58.

¹⁷⁵³ P-0438, T-99 dated 15 November 2016, pp. 58-63; *see also* P-0009, T-196 dated 28 September 2017, pp. 70-73, T-198 dated 3 October 2017, pp. 34-35.

¹⁷⁵⁴ P-0108, T-145 dated 24 April 2017, pp. 79-83.

¹⁷⁵⁵ P-0108, T-145 dated 24 April 2017, pp. 79-83.

¹⁷⁵⁶ Response, para. 1464.

is insufficient to support the conclusion that the presence of ‘white people’ at Bloléquin in 2002-2003 supports the Prosecutor’s allegation that Liberian mercenaries were linked to the alleged members of the ‘inner circle’.¹⁷⁵⁷ Similarly, from General Guiai Bi Poin’s testimony, it appears that these trainers were foreign ‘experts’ that had been hired to train a unit that was set up by Minister Bertin Kadet;¹⁷⁵⁸ General Guiai Bi Poin testified that these trainers did go to the field along with the mixed unit¹⁷⁵⁹ but it is not known what their role was, if any.

711. As regards financing of Liberian mercenaries during 2002-2003, in the Mid-Trial Brief, the Prosecutor alleged that in 2002-2003, the Liberian mercenaries received money through Paul Richard – ‘an Ivorian mediator of Krahn ethnicity’ – and from ‘rich Krahn people’ in Côte d’Ivoire like Hubert Oulaï.¹⁷⁶⁰ P-0483 confirmed that Poho Richard is the same person as Paul Richard; he was one of the founders of the MODEL group, which later became LIMA. Paul Richard had a relative called General Bombet, a general in the Ivorian army, from Akouédo Barracks.¹⁷⁶¹
712. There is some evidence of financing of the involvement of Liberian mercenaries during these years. The Prosecutor named individuals who she alleged provided funds to the Liberians¹⁷⁶² namely Émile Guiriélou,¹⁷⁶³ Marcel Gossio, Alphonse

¹⁷⁵⁷ It is noted that the Prosecutor additionally referred to a letter that, according to her, corroborated the witness evidence regarding the creation of a special force in 2002 and Bertin Kadet’s involvement. *See* Response, para. 1409. It is noted that Transmission d’un tract circulant au sein des éléments de la Force Spéciale de Zouan – Hounien, 30 April 2007, CIV-OTP-0025-0064 makes reference to mercenaries from countries other than Liberia. It is a letter addressed to the Minister of the Interior on April 2007 by the Prefect of Danané. It states that mercenaries recruited in 2002 to help Ivorian soldiers defend the territorial integrity of Côte d’Ivoire did not receive the allowance and benefits they to which they were entitled. These mercenaries of different nationalities (French, British, Czech, Russian, Australian, Argentinian, and South African) were recruited into the Abidjan School of *Gendarmerie* in 2002.

¹⁷⁵⁸ P-0010, T-137 dated 27 March 2017, pp. 15-17.

¹⁷⁵⁹ P-0010, T-137 dated 27 March 2017, p. 18.

¹⁷⁶⁰ Mid-Trial Brief, para. 33.

¹⁷⁶¹ P-0483, T-99 dated 15 November 2016, pp. 34-36.

¹⁷⁶² Mid-Trial Brief, para. 33.

Voho Sahi, who were all ministers in Mr Gbagbo's government in December 2010, and Hubert Oulaï.¹⁷⁶⁴ In support of these allegations, the Prosecutor relied on P-0483's testimony.

713. P-0483, who had been a mercenary himself, testified that a person called Oulaï Delafosse¹⁷⁶⁵ was a 'sergeant' and commander of the Liberian mercenaries. P-0483 provided anonymous hearsay that Oulaï Delafosse was given money by Mr Gbagbo's government to give to P-0483.¹⁷⁶⁶ However, as regards receiving money in return for or prior to fighting, P-0483 added that in actuality, he and his group 'did not get anything'. In that sense, P-0483 and his group considered that people had lied to them that they would receive money.¹⁷⁶⁷ P-0483's prior recorded statement was put to him in court wherein he had suggested that some money may have actually been paid.¹⁷⁶⁸ P-0483 testified that

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. Sometimes we had very rich grand people who were elites working in Côte d'Ivoire. So they mostly contributed and gave these moneys to Paul Richard. And Paul Richard will give these moneys. And they did not give us directly. But they will give it to Paul Richard and he will give us. So after the war, I did not have anything. [...] So these moneys that are coming later, that was when they realised actually that we are fighting very hard to capture, to capture grounds. So that was when they were giving the money. 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

¹⁷⁶³ See IV.A.4.c) – Émile Guiriéoulou.

¹⁷⁶⁴ See IV.A.4.f) – Hubert Oulaï.

¹⁷⁶⁵ P-0483 testified that Oulaï Delafosse was a 'military man in Ivory Coast' and that he was a sergeant in the armed forces. According to P-0483, Oulaï Delafosse was member of MODEL and provided interpretation at meetings and served as a 'mediator between us [Liberians] and government of Ivory Coast'. P-0483, T-99 dated 15 November 2016, pp. 34-36, 54. The witness also elaborated on Oulaï Delafosse's role during the conflict in the years 2002-2003.

¹⁷⁶⁶ P-0483, T-99 dated 15 November 2016, pp. 86, 89.

¹⁷⁶⁷ P-0483, T-99 dated 15 November 2016, pp. 86, 89.

¹⁷⁶⁸ P-0483, T-99 dated 15 November 2016, pp. 89-91.

Richard to give to us. Sometimes when they know that you are commander, you can be given 50,000.¹⁷⁶⁹

714. P-0483 clarified that sometimes they were given pocket money for daily allowances at the *État Major*, but that this was not money to go and fight.¹⁷⁷⁰ P-0483 testified that he was receiving 50,000 FCFA per month ‘after the war’ at the *État Major* and was able to obtain a *laissez-passer* from the military.¹⁷⁷¹ P-0483 mentioned meeting General Mangou at the *État Major* when he would go there to collect this money and added that ‘if [P-0483] went and the salaries were not yet ready, then [General Mangou] [would] give [P-0483] something from out of his own personal pocket’.¹⁷⁷² It is noted that in this instance, P-0483 used the term ‘salaries’ to describe the payment that he was receiving from the *État Major* but there is no indication that he may have received a salary in return for employment.

715. P-0483’s account in this respect cannot be taken to be reflective of the general payment of allowances to mercenaries. In this regard, it is noted that P-0483 clarified categorically that

I only know about myself[...] [and] not about any other person. I told you that from the beginning people said that they were being given money, but 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.¹⁷⁷³

716. P-0483 testified that he would go to the *État Major* or Akouédo with Oulaï Delafosse for food for the fighters before going back to Guiglo.¹⁷⁷⁴ P-0483 elaborated

¹⁷⁶⁹ P-0483, T-99 dated 15 November 2016, pp. 91-92.

¹⁷⁷⁰ P-0483, T-99 dated 15 November 2016, pp. 93-96 (confidential).

¹⁷⁷¹ P-0483, T-100 dated 16 November 2016, pp. 3-4.

¹⁷⁷² P-0483, T-100 dated 16 November 2016, p. 5.

¹⁷⁷³ P-0483, T-100 dated 16 November 2016, p. 6. *See also* P-0483, T-99 dated 15 November 2016, p. 71 where P-0483 stated ‘[w]e were not paid by anybody to fight for them. We wanted to fight for ourselves’; *see also* p. 84 where P-0483 stated ‘[i]f somebody told me that people received money from Gbagbo to go and fight, maybe I did not see it’.

¹⁷⁷⁴ P-0483, T-99 dated 15 November 2016, pp. 64-68, 71-72.

they had asked me this question, what--what did you go to get at État Major? I said our food. And then Delafosse will come along with us with the arms and ammunition. But we only had right to carry the food. But for the arms and ammunition, they were not given to us. They were through Delafosse. And now if you are talking about Paul Richard, Paul Richard was the only person that was connected with the issue of MODEL, but when it comes to military issues, it was Oulaï Delafosse who carried the arms and ammunition. So I would go with Oulaï Delafosse, and I would collect the food, Oulaï Delafosse will collect the arms and ammunition.¹⁷⁷⁵

717. As regards Hubert Oulaï, P-0483 testified that, when [the Liberians] came back as refugees, Hubert Oulaï used to donate food to them.¹⁷⁷⁶
718. As regards the engagement of Liberian mercenaries following 2003, it is noted that the Prosecutor submitted several documents concerning accommodation provided to members of the Liberian army in Abidjan in 2005. The invoice issued by a Hotel in Abidjan, named Village Krokrom, shows that an amount of 8,160,000 FCFA was to be paid for the stay of eight Liberian soldiers, from 21 May 2005 to 1 September 2005. The person responsible for the clients, as stated in the invoice, was General Bobby Johnson, the COMTER of Liberia.¹⁷⁷⁷ In connection to the Liberians' hotel bill, on 16 July 2010, the hotel director sent a letter to Simone Gbagbo, soliciting the settlement of the outstanding sum of 6,160,000 FCFA.¹⁷⁷⁸ The hotel director explained that, on 20 May 2005, Pouho Richard requested in the name of Laurent Gbagbo that accommodation be provided to these eight Liberian combatants. The letter mentioned that the guests stayed for 102 days until a FANCI officer, Captain Tony Oulaï (Capt TO), collected them; when it came to the payment of the bill, Capt TO told the hotel director to contact Minister Odette Sauyet.

¹⁷⁷⁵ P-0483, T-99 dated 15 November 2016, pp. 76-77.

¹⁷⁷⁶ P-0483, T-99 dated 15 November 2016, p. 92.

¹⁷⁷⁷ See FACTURE, 1 September 2005, CIV-OTP-0047-0164; FACTURE, 1 September 2005, CIV-OTP-0047-0161.

¹⁷⁷⁸ Information et demande d'aide, 16 July 2010, CIV-OTP-0047-0158. It is noted that the remaining amount of 6 160 000 FCFA after the sum of 2 million was paid by Yoro Benoit and Pouho Richard in the name of Hubert Oulaï.

719. The Prosecutor presented further documentary evidence showing that years before addressing Simone Gbagbo, the hotel director sent a payment request to Minister Odette Sauyet on the day the Liberians left his establishment,¹⁷⁷⁹ and around two months later he wrote to Minister Hubert Oulaï on the same matter.¹⁷⁸⁰ A second letter was sent to Hubert Oulaï on 31 January 2006 in which the hotel director complains that only two million had been paid by Yoro Benoit and Pouho Richard in response to his previous contact with Oulaï.¹⁷⁸¹ There are some inconsistencies in the accounts given by the hotel director on the three different occasions of correspondence submitted. From the documents cited, it is not known whether the individuals concerned were mercenaries or soldiers in the Liberian army or what the purpose of their presence in Côte d'Ivoire was.¹⁷⁸²
720. The Prosecutor submits that one of the names of the clients on the original hotel bills, 'Capitaine Junior Tally', 'bears a striking resemblance' to that of witness P-0483.¹⁷⁸³ However, P-0483 testified that he did not know of a hotel in Koumassi 05 called the Village Krokrom.¹⁷⁸⁴ P-0483 additionally testified that he did not know Odette Sauyet or Tony Oulaï.¹⁷⁸⁵
721. As regards Minister Hubert Oulaï, a document dated 1 April 2004 shows him acknowledging receipt of a sum of 5,000,000 FCFA from Narcisse Kuyo Tea, the Chef de Cabinet du Président.¹⁷⁸⁶ This document contains no indication why this

¹⁷⁷⁹ Règlements de facture et libération eds chambres, 1 September 2005, CIV-OTP-0047-0163.

¹⁷⁸⁰ Rélance de règlement de facture, 7 November 2005, CIV-OTP-0047-0160.

¹⁷⁸¹ Relance de règlement de facture, 31 January 2006, CIV-OTP-0047-0162 requesting settlement of the outstanding amount of the Liberian combatants' bill after only two million FCFA was paid.

¹⁷⁸² See Information et demande d'aide, 16 July 2010, CIV-OTP-0047-0158: the Hotel Bill shows the name of the 8 individuals: Général Bobby Johnson, Colonel Gbola Quiach (Director of Staff), Colonel Folly Jalemy (Commander General), Commandant Fuguerson Barwas (P. Marshal General), Capitaine Eric Baybol, Capitaine Victor Nouah, Capitaine Solo Dah, and Capitaine Junior Tally.

¹⁷⁸³ Response, para. 1406.

¹⁷⁸⁴ P-0483, T-100 dated 16 November 2016, pp. 25-27.

¹⁷⁸⁵ P-0483, T-100 dated 16 November 2016, pp. 27-28.

¹⁷⁸⁶ ATTESTATION. 1 April 2004, CIV-OTP-0025-0697 (no letterhead).

money was being provided to Hubert Oulaï. It is further not known what Hubert Oulaï did with this money.

722. Whilst Pouho Richard and Hubert Oulaï had links to mercenaries, from the evidence pointed out by the Prosecutor, their role in relation to the incident involving the hotel bills is not known.
723. A letter dated 30 April 2007 contains a leaflet containing information about the efforts of the Ivorian government to create a special force composed of about 60 mercenaries of different nationalities – French, British, South African, Czech, Russian, Yugoslav, Australian, Argentinian – under the leadership of Franco-South African Richard Sanders at the Abidjan School of Gendarmerie; this team was put under Commander Marquez and a daily bonus of CFA 7,000 was paid to the soldiers.¹⁷⁸⁷ This letter also raises issues that the said mercenaries had in respect of

le paiement intégral et immédiat de leur prime, la définition de leur statut réel, le paiement à temps des primes alimentaires, la relève des effectifs, les soins médicaux, l'octroi de stages, l'admission aux examens professionnels, le passage aux grades supérieurs, à l'instar de leurs amis des Forces Nouvelles. Ce délaissement est à l'origine de l'adhésion de certains de leurs éléments à la rébellion en vue de prolonger, sinon de continuer leur contrat, souligne le tract.¹⁷⁸⁸

724. A document dated 4 December 2008, indicates that certain members of the LIMA that had participated as combatants in the 2002-2003 conflict had not been remunerated by the Ivorian authorities; this was being seen as ingratitude on the part of the Ivorian government and according to various sources, these elements were ready to attack Côte d'Ivoire from the West.¹⁷⁸⁹

¹⁷⁸⁷ Transmission d'un tract circulant au sein des éléments de la Force Spéciale de Zouan – Hounien, 30 April 2007, CIV-OTP-0025-0064 at 0064. The document states that the mercenaries were under the command of South African officer Richard Sanders at the school of the Gendarmerie in Abidjan.

¹⁷⁸⁸ Transmission d'un tract circulant au sein des éléments de la Force Spéciale de Zouan – Hounien, 30 April 2007, CIV-OTP-0025-0064 at 0065.

¹⁷⁸⁹ NOTE DE RENSEIGNEMENT / A/S: DE LA SITUATION SÉCURITAIRE À LA FRONTIÈRE IVOIRO-LIBÉRIENNE / NR 019/PR/ANSI/DG/CC/TB, 4 December 2008, CIV-OTP-0025-0075 at 0075.

725. General Mangou appeared to think that mercenaries funded ‘themselves’ through looting; he testified that

A mercenary is a foreigner that--or a stranger that one can recruit from another country to come and fight and he's given some money. But those who were there, they took their payments themselves. They took the loot from the war. So when they came and fought, they would take roofs, they would take materials. So they would come and fight, and in the evening, they would gather all the items that they could gather and then leave.¹⁷⁹⁰

726. As regards arming of mercenaries, P-0483 stated that he was given an AK-47 and ammunition by the government prior to the post-election crisis.¹⁷⁹¹ However, when asked about the uniforms and weapons that P-0483 and Delafosse had obtained from *État Major*, P-483 testified that ‘[a]fter the war [2002-2003 they took everything back from us’.¹⁷⁹²

727. The documentary evidence, albeit of low evidentiary weight, suggests certain members of Mr Gbagbo’s government may have been in contact with Liberian mercenaries in the years 2002-2010. P-0483 indicates some financial links between him and Mr Gbagbo’s government following the engagement of Liberian mercenaries in the years 2002-2003. From P-0483’s testimony, it is unclear whether or not the purpose of such financial link was that he and his fellow mercenaries would be engaged in the future. It is suggested but not known whether the money received by P-0483 may have been compensation for services provided during the years 2002-2003 or compensation that he may be receiving as part of the DDR programme.

728. The engagement of Mr Gbagbo’s government with the Liberian mercenaries in 2002-2003 does not indicate the accused’s intent underlying the alleged Common Plan. Resort to Liberian mercenaries during 2002-2003 in the West of the country is not direct evidence of the intent to recruit them again seven years later

¹⁷⁹⁰ P-0009, T-196 dated 28 September 2017, p. 71.

¹⁷⁹¹ P-0483, T-99 dated 15 November 2016, p. 69; *see also* p. 81.

¹⁷⁹² P-0483, T-99 dated 15 November 2016, p. 70.

to fight in Abidjan. It also does not permit an inference that foreign mercenaries would necessarily have been engaged in a similar or comparable manner during the post-electoral crisis. Furthermore, the reasons for the purported engagement of Liberian mercenaries in 2002-2003 appear to have been to defend against the rebellion, particularly in the West of Côte d'Ivoire. The Prosecutor has not argued or otherwise alleged commonality between the reasons for their alleged engagement during the post-election crisis.

729. Nevertheless, when assessing the allegations concerning the engagement of mercenaries during the post-election crisis, the evidence concerning their prior involvement is relevant. These pieces of evidence will be assessed together in light of the allegations. However, for the aforementioned reasons, the assessment of the allegations concerning the post-electoral crisis cannot begin with the assumption that Mr Gbagbo would have resorted to mercenaries during the post-election crisis in his fulfilment of the alleged Common Plan.

(2) Resort to mercenaries during the post-electoral crisis

730. As part of her case concerning the resort to mercenaries during the post-electoral crisis, the Prosecutor alleged that mercenaries were (i) integrated within the FDS and (ii) participated in operations alongside FDS forces, pro-Gbagbo youth and militia members.¹⁷⁹³

731. Before turning to the evidentiary analysis, the allegation that the alleged mercenaries were 'pro-Gbagbo' or otherwise acting at the behest of Mr Gbagbo must be examined. Being Liberian and/or speaking English and/or having an accent, in the circumstances of the present case, is not proof that the individuals concerned were necessarily pro-Gbagbo. There is evidence to suggest that

¹⁷⁹³ Mid-Trial Brief, paras 308-324.

anglicised accents in the context of the present case need not necessarily indicate nationality or origins.¹⁷⁹⁴

732. For these reasons, when assessing the alleged crimes committed, when victims and/or witnesses identify individuals that may be mercenaries, it must also be assessed whether the surrounding circumstances could indicate not only nationality and/or origins, but also, plausible affiliation with the accused and/or other members of the ‘inner circle’.
733. As regards characterisation of an individual as a mercenary, it is noted that certain witnesses did not appear to apply the same criterion to determine their qualification of an individual as a mercenary. For example, P-0330 stated that LIMA was composed by Liberians but there were also Ivorians from the same ethnic group (Guéré) among them.¹⁷⁹⁵ While on the other hand, P-0238 did not see the distinction between ‘the word “mercenary”, a Liberian mercenary, and a militia member’.¹⁷⁹⁶

(a) *Presence of Liberians in FDS bases/units*

734. The evidence concerning the institutional integration of mercenaries during the post-electoral crisis has been discussed hereinunder. As part of her case concerning the mercenaries being ‘integrat[ed] into the FDS’, the Prosecutor points to testimony concerning P-0483’s engagement with Commander KB and Séka Yapo as well as P-0347’s account concerning the presence of Liberian mercenaries in Treichville.¹⁷⁹⁷ P-0483’s involvement with Commander KB and

¹⁷⁹⁴ P-0321 suggested that Ivoirians inhabiting the border area in the West of the country shared the language with nationals of neighbouring Liberia and as such could be English speakers. *See* P-0321, T-61 dated 8 July 2016, p. 59 (confidential). *See also* P-0226’s testimony that English speakers manning a roadblock with pro-Gbagbo youth were rumoured to be mercenaries and they could have been Sierra Leonais or Liberian. *See* P-0226, T-166 dated 27 June 2017, p. 42.

¹⁷⁹⁵ P-0330, T-69 dated 2 September 2016, p. 48-51.

¹⁷⁹⁶ P-0238, T-82 dated 29 September 2016, p. 3 (confidential).

¹⁷⁹⁷ Mid-Trial Brief, paras 311-312.

Séka Yapo has been discussed as part of the allegations concerning collaboration with the FDS¹⁷⁹⁸ since these allegations do not point to instances of institutional integration.

735. Having regard to the evidentiary discussion concerning the recruitment into the army above, it is noted that document CIV-OTP-0071-0850 dated 21 February 2011 shows that 20 LIMA individuals were recruited into the FDS in February 2011 and assigned to BASA (8), BTON Akouedo (3), BCP (04), in BB (5). Two of them were absent, which brings the total number to 18 LIMA recruits.¹⁷⁹⁹ In his own group, P-0483 mentioned that they were another 14 people but these individuals do not appear to be those mentioned in this document.¹⁸⁰⁰ Thus, assuming that the 18 recruits mentioned above stayed in their positions until the end of the crisis, there is evidence confirming that there would have been around 18 Liberians that may have been institutionally integrated into the FDS from February 2011 onwards. It is also noted that this document references a group called FSLIMA that gives the impression that it may have been linked to LIMA, but it is noted that P-0483 did not recognise the group named FSLIMA.¹⁸⁰¹
736. Further concerning allegations of mercenary integration into the *Garde Républicaine*, it is noted that P-0347, the Commander of the *Abidjan Groupement* of the *Garde Républicaine*, first noticed that there were certain individuals in the Treichville barracks ‘towards the end of March’¹⁸⁰² that he

¹⁷⁹⁸ See IV.D.2.d)(8) – Alleged events following 2 April 2011.

¹⁷⁹⁹ SITUATION EFFECTIF DES RECRUES, 28 February 2011, CIV-OTP-0048-1094.

¹⁸⁰⁰ P-0483 did not explicitly call himself and others as mercenaries, but he mentioned that the individuals operating with him were +/- 14 Liberian fighters from LIMA who would also receive money from Gbagbo’s government. P-0483, T-100 dated 16 November 2016, pp. 65-72. It is also noted that P-0483 said that to operate checkpoints under Commander KB’s supervision there were 5-8 Liberians. P-0483, T-101 dated 17 November 2016, pp. 37-40.

¹⁸⁰¹ P-0483, T-101 dated 17 November 2016, pp. 86-88.

¹⁸⁰² The Chamber notes that the witness does not remember the exact time that he saw these individuals. He references a period between the second half of March/end March to the beginning of April. See P-0347, T-77 dated 22 September 2016, p. 59, 62; T-78 dated 23 September 2016, p. 38.

considered to be ‘associated elements’,¹⁸⁰³ some in ‘civilian attire’ and some in military jackets.¹⁸⁰⁴ The witness stated that there were about 100 of the said individuals¹⁸⁰⁵ and they stayed there until ‘the end of March, beginning of April’ before there were strikes on the barracks.¹⁸⁰⁶

737. The witness did not inquire as to the reason of their presence and upon whose instructions and/or invitation they were present.¹⁸⁰⁷ However, the witness had not seen these individuals beforehand¹⁸⁰⁸ and was not informed of the reason for their presence.¹⁸⁰⁹ The witness did not speak to the individuals but deduced that they were Liberian by having heard and identified their ‘accent and their vernacular languages’ including the fact that they spoke English.¹⁸¹⁰ As per P-0347’s testimony, the Liberians in this camp could not have been those previously integrated into the FDS, as he did not recognise them and they did not all wear military uniforms.¹⁸¹¹ To his knowledge, these elements did not receive any training at the barracks and he was not able to confirm whether they had received training before arriving.¹⁸¹²

738. The witness stated that these elements accompanied Captain Blé Kouassi and Chief Warrant Officer Kobo, ‘to conduct operations’.¹⁸¹³ The witness elaborated that

¹⁸⁰³ P-0347, T-77 dated 22 September 2016, p. 41.

¹⁸⁰⁴ P-0347, T-77 dated 22 September 2016, p. 43.

¹⁸⁰⁵ P-0347, T-77 dated 22 September 2016, p. 43.

¹⁸⁰⁶ P-0347, T-77 dated 22 September 2016, p. 62.

¹⁸⁰⁷ P-0347, T-77 dated 22 September 2016, pp. 60-61.

¹⁸⁰⁸ P-0347, T-77 dated 22 September 2016, pp. 58-59.

¹⁸⁰⁹ P-0347, T-77 dated 22 September 2016, p. 43.

¹⁸¹⁰ P-0347, T-77 dated 22 September 2016, pp. 61, 65; T-79 dated 26 September 2016, pp. 41-43.

¹⁸¹¹ P-0347, T-77 dated 22 September 2016, p. 63.

¹⁸¹² P-0347, T-77 dated 22 September 2016, p. 64.

¹⁸¹³ P-0347, T-77 dated 22 September 2016, pp. 40-41.

their main activity was to go out with the captain and the chief warrant officer to conduct missions, either reconnaissance, or whenever they received information saying that there were rebels present in such and such a sector, they would go out and note or ascertain whether, yes or no, this information was correct.¹⁸¹⁴

739. P-0347, despite being the commander of the Treichville base, was not being reported to about these operations.¹⁸¹⁵ He testified that the official giving instructions as to these operations was General Dogbo Blé.¹⁸¹⁶ When P-0347 was asked whether he made a complaint or went about punishing Captain Blé Kouassi for going out on mission without informing him and not on his orders, the witness responded that he did nothing, as ‘the atmosphere that reigned in the camp meant that I immediately understood that I was not in a situation where I could request an explanation.’¹⁸¹⁷
740. For these reasons, a reasonable trial chamber could conclude that around a hundred Liberians were present in barracks in Treichville towards the end of March and/or beginning of April 2011. From P-0347’s point of view, it did not seem that these individuals were institutionally integrated within the FDS. However, it does seem that they were conducting missions under the operational control of certain FDS officers. The witness had information only about the type of operations that were being conducted by the purported Liberian mercenaries in his camp at the time but had no direct information on the specific operations and the instructions thereof.¹⁸¹⁸ From the evidence cited, it appears that they may have been participating in reconnaissance missions but, without more, it cannot be concluded that they were engaged in criminal activities.
741. P-0316, a member of 1st BCP in Akouédo, indicated the presence of Liberians in the 1st BCP’s old Akouédo Camp. P-0316 did not mention how many Liberian

¹⁸¹⁴ P-0347, T-77 dated 22 September 2016, p. 63.

¹⁸¹⁵ P-0347, T-77 dated 22 September 2016, p. 40.

¹⁸¹⁶ P-0347, T-77 dated 22 September 2016, p. 44.

¹⁸¹⁷ P-0347, T-77 dated 22 September 2016, pp. 55-56.

¹⁸¹⁸ P-0347, T-77 dated 22 September 2016, pp. 55-56, 63-65.

fighters there were in the camp but considered that the camp had been ‘invaded’ by them.¹⁸¹⁹ P-0316 also testified that some of the Liberians were armed,¹⁸²⁰ many with RPGs, Kalashnikovs.¹⁸²¹ He testified that Liberians were not fully in civilian or military attire, it was a mixture of uniform tops with jeans or a full uniform with the wrong shoes.¹⁸²²

742. As regards when this took place, P-0316 placed it in relation to the departure of Mel Brice, the battalion leader. P-0316 mentioned that after Mel Brice was replaced by Captain Akapia/Akapea Fulgence as commander of the 1st BCP, Liberians started to appear in the camp.¹⁸²³ At first, P-0316 recalled Mel Brice having left at some point in January 2011, however, when presented with a document signed by Brice as the Commandant of the 1st BCP dated 9 March 2011,¹⁸²⁴ P-0316 stated that it was in March that Brice was replaced by Capt Akapia.¹⁸²⁵ P-0316 agreed that he may not have remember the precise date but maintained that the Liberians began to appear after Mel Brice told the BCP soldiers to leave the camp and also left himself and this was in March 2011.¹⁸²⁶

¹⁸¹⁹ P-0316, T-183 dated 30 August 2017, pp. 18-24.

¹⁸²⁰ P-0316, T-184 dated 31 August 2017, pp. 27-30.

¹⁸²¹ P-0316, T-183 dated 30 August 2017, pp. 18-24.

¹⁸²² P-0316, T-183 dated 30 August 2017, pp. 18-22; *see also* pp. 24, 40-42; *see also* P-0316, T-184 dated 31 August 2017, pp. 27-30.

¹⁸²³ P-0316, T-183 dated 30 August 2017, pp. 14-15, 18-22, 24, 40-42; P-0316, T-184 dated 31 August 2017, pp. 27-30.

¹⁸²⁴ P-0316, T-183 dated 30 August 2017, pp. 29-30 and No. 0120/10/1^{er}BCP/EM / FICHE A L'ATTENTION DE MONSIEUR LE GENERAL DE BRIGADE, COMMANDANT LES FORCES TERRESTRES / Aménagement des services dévolus au 1^{er} BCP, 9 March 2011, CIV-OTP-0071-0579: document signed by Mel Brice as 1st BCP Commander on 9 March 2011 to the attention of the Land Forces Commander. The document reports on the difficulties the troops were facing in relation to the lack of fit personnel and the resulting impossibility of them to fulfil their missions. There were 177 men in total out of which 50 elements were in Tiebissou (Yamoussoukro). The rest of the troops were in Abidjan. *See also* NOTE DE SERVICE / REORGANISATION DES SERVICES DES CHEFS DE SECTIONS, 28 January 2011, CIV-OTP-0071-0846, signed by Gerard/Mel Brice, which shows that he was the commander of the 1st Bat on 28 January 2011.

¹⁸²⁵ P-0316, T-183 dated 30 August 2017, pp. 32-33. *Note* also that P-0316 stated that Brice had been replaced after having told soldiers to stay at home. P-0316, T-183 dated 30 August 2017, pp. 79-82.

¹⁸²⁶ P-0316, T-183 dated 30 August 2017, pp. 11-13, 29-30.

743. On the basis of this, it can be concluded that an unspecified number of armed Liberians were present in the 1st BCP's old Akouédo Camp in March 2011.
744. The Prosecutor has also submitted evidence relevant to Mr Gbagbo's intention to get military reinforcement from these elements during the crisis. Simone Gbagbo's CNRD calendar notes dated 22 November 2010¹⁸²⁷ that contains phrases concerning the need to provide armaments to Liberians and a decision that the LIMA and the Liberians should 'be put together'.¹⁸²⁸ From these notes, it cannot be ascertained if the aforementioned comments are part of decided measures taken during the meeting with the colonel (i.e. as minutes of the meeting).¹⁸²⁹ It is also not known whether these are Simone Gbagbo's own words or expressions of intent or whether this is something that a third person may have suggested and/or discussed in her presence. For this reason, it is not known to what extent these phrases can be ascribed to Simone Gbagbo.
745. An unsigned and unstamped document dated 1 March 2011 contains proposals for the reorganization of the FDS suggesting the recruitment of 50 experienced mercenaries to help the FDS restore security in Abidjan.¹⁸³⁰ The author and addressee of this document are unknown. For this reason, it is not known whether or not the suggestions contained therein were ever implemented. Another unsigned, unstamped, and unmarked document dated 9 March 2011 lists 41 LIMA elements apt for FDS recruitment in Guiglo in the west of Côte

¹⁸²⁷ See Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 859. In respect of these notes, I find that they were taken in the calendar page for 22 November 2010, but I also note that the presence of the date need not mean that Simone Gbagbo wrote them on that date specifically. Other pages of the notebook show that the date of the page and the date in which the notes were taken do not always coincide -there are records of meetings showing a date different than that of the calendar page in which they were written.

¹⁸²⁸ Untitled, 1 January 2010 CIV-OTP-0018-0810 (confidential) at 859.

¹⁸²⁹ The name of the person is shown as Colonel Garaxxx (illegible handwriting).

¹⁸³⁰ FICHE /Redynamisation et réorganisation des FDS pour la sécurisation totale de la ville d'Abidjan, 1 March 2011, CIV-OTP-0018-0067 (confidential).

d'Ivoire.¹⁸³¹ Having regard to the content of these documents, it remains unknown whether any of these plans were brought to fruition.

746. P-0321 testified that, at some point in 2011 during the post-election crisis, he met with a person called [REDACTED]¹⁸³² The purpose of this meeting was to discuss the recruitment of mercenaries to fight against the *Forces Nouvelles* but the witness said he did not get back to [REDACTED] after that.¹⁸³³ P-0321 also testified that he rejected 20-30 mercenaries made available to his troops by [REDACTED] as there were no armaments available to provide them with.¹⁸³⁴

747. Having regard to the totality of evidence, it can be concluded that 18 persons from LIMA may have been institutionally integrated into the FDS in February 2011. Liberians were present in the barracks of *Garde Républicaine* in Treichville towards the end of March and/or beginning of April 2011. Liberian mercenaries were also present in 1st BCP's old Akouédo Camp in March 2011 after Mel Brice ordered the soldiers to go home and leave the camp.

(b) 'financed'

748. The allegation that Mr Gbagbo and members of the alleged 'inner circle' provided financial sponsorship and other benefits to mercenaries during the post-electoral crisis has been discussed hereinunder.

749. P-0435 testified that he saw some Liberians, including Junior Gbagbo, at the Presidential Palace and the Presidential Residence, and that they had been in

¹⁸³¹ A L'ATTENTION DE MONSIEUR YAI OCTAVE, undated, CIV-OTP-0048-0203.

¹⁸³² P-0321, T-61 dated 8 July 2016, pp. 27-30 (confidential).

¹⁸³³ P-0321 stated that [REDACTED] organised the meeting at some point in 2011. P-0321 testified that he did not pursue any further contact with [REDACTED] after the meeting as he could not understand how [REDACTED] would be recruiting people or personnel. *Note* however that elsewhere in his testimony P-0321 said [REDACTED] had previously helped Gbagbo acquire military vehicles. P-0321, T-59 dated 6 July 2016, pp. 44-48 (confidential).

¹⁸³⁴ *See* P-0321, T-61 dated 6 July 2016, pp. 57-59 (confidential).

Abidjan since January 2011; they were fighters, some of whom were Charles Taylor's former soldiers.¹⁸³⁵ P-0435 explained that Guéi Charles, a chief warrant officer with the Republican Guard, had told P-0435 that he and some members of the Republican Guard had gone to the Ghanaian border in January 2011 to get these Liberians and bring them back to Abidjan.¹⁸³⁶ Guéi Charles told P-0435 that Mr Blé Goudé had given him money.¹⁸³⁷ P-0435 testified that Guéi Charles did not tell him how much money was provided by Mr Blé Goudé, but provided anonymous hearsay that the amount was 5 million FCFA for each fighter.¹⁸³⁸ According to P-0435, Guéi Charles was in charge of the expedition and expenses, but he did not transport the money that was due to be handed over to the fighters, because the Liberians had already received an advance.¹⁸³⁹

750. As regards Hubert Oulaï, P-0108 testified that he had a neighbour from Liberia who came during the 2002 crisis, who was one of Charles Taylor's former soldiers.¹⁸⁴⁰ The neighbour told P-0108 that they were 'being taken care of' by Hubert Oulaï.¹⁸⁴¹ P-0108 testified that an army 4x4 would come and fetch P-0108's neighbour and about four of them would go to Guiglo and, upon their return, the neighbour would be able to pay P-0108 back the money that he had lent him, suggesting that P-0108 was being paid.¹⁸⁴² According to P-0108 this happened until 2010 when, shortly after the crisis, they took up arms again and the neighbour was killed.¹⁸⁴³ P-0108 additionally testified that the Liberians held

¹⁸³⁵ P-0435, T-90 dated 21 October 2016, pp. 22-23.

¹⁸³⁶ P-0435, T-90 dated 21 October 2016, pp. 23-24.

¹⁸³⁷ P-0435, T-90 dated 21 October 2016, p. 24.

¹⁸³⁸ P-0435, T-90 dated 21 October 2016, p. 24; T-94 dated 31 October 2016, p. 29.

¹⁸³⁹ P-0435, T-90 dated 21 October 2016, pp. 25-26.

¹⁸⁴⁰ P-0108, T-145 dated 24 April 2017, pp. 79-81.

¹⁸⁴¹ P-0108, T-145 dated 24 April 2017, p. 80.

¹⁸⁴² P-0108, T-145 dated 24 April 2017, p. 80.

¹⁸⁴³ P-0108, T-145 dated 24 April 2017, p. 80.

Mr Gbagbo in very high esteem because they used to say ‘No Gbagbo, no peace’ in English.¹⁸⁴⁴

751. P-0483 testified that Hubert Oulaï gave P-0483 ‘50,000 for feeding’.¹⁸⁴⁵ According to P-0483 Hubert Oulaï said that he would be helping P-0483 with something like 50,000 FCFA and also said he would help P-0483 with transportation so that he could leave ‘if anything fishy was going to happen’.¹⁸⁴⁶ P-0483 testified that he was not going to work with Minister Oulaï directly; he was only going to stay with him in his house.¹⁸⁴⁷ P-0483 testified that he received 50,000 FCFA from Hubert Oulaï on the day of the RTI march of 16 December 2010;¹⁸⁴⁸ this money was supposedly for food.¹⁸⁴⁹ P-0483 confirmed that Hubert Oulaï helped him ‘as a fellow Krahn’ and testified that because Oulaï was in a ‘very good position’, a lot of Krahn people were getting help from him.¹⁸⁵⁰
752. The Prosecutor relied on P-0483, who stated that while he was with Commander KB, he and his group of Liberian mercenaries would receive some ‘pocket money’ and rations as they had no salary.¹⁸⁵¹ P-0483 testified that he received money from Commander KB, the marine commander.¹⁸⁵² P-0483 was senior and was receiving 30,000 FCFA weekly, whereas the junior elements were receiving 20,000 FCFA.¹⁸⁵³ Commander KB was giving them the money from his own pocket; any time that they went on assignment at the port, at the end of the week

¹⁸⁴⁴ P-0108, T-145 dated 24 April 2017, p. 81.

¹⁸⁴⁵ P-0483, T-100 dated 16 November 2016, p. 84.

¹⁸⁴⁶ P-0483, T-100 dated 16 November 2016, pp. 50-53.

¹⁸⁴⁷ P-0483, T-100 dated 16 November 2016, p. 53.

¹⁸⁴⁸ P-0483, T-100 dated 16 November 2016, pp. 53-55; T-101 dated 17 November 2016, p. 41.

¹⁸⁴⁹ P-0483, T-100 dated 16 November 2016, p. 84.

¹⁸⁵⁰ P-0483, T-102 dated 21 November 2016, p. 36.

¹⁸⁵¹ Mid-Trial Brief, para. 326.

¹⁸⁵² P-0483, T-100 dated 16 November 2016, p. 54.

¹⁸⁵³ P-0483, T-100 dated 16 November 2016, pp. 85-86.

he would give them the money, but this only lasted for two weeks.¹⁸⁵⁴ Having regard to the conclusions reached in respect of the operation at the port,¹⁸⁵⁵ it is noted that the evidence points to Commander KB having paid P-0483 from his own pocket without involvement of either Marcel Gossio or either of the two accused. It is noted nonetheless that P-0483's testified that it was Hubert Oulaï who

went to the minister for the port and the minister then asked us to go to the port, and he told us that if things go on nice, then he would find something to do for us. At that particular time, I was not actually looking out for money, I was only trying to secure my life.¹⁸⁵⁶

753. It is not known who Commander KB was receiving instructions from for the purposes of this operation. It is also not clear whether Mr Gossio decided to use the Liberians as a favour to Mr Oulaï on his own initiative, or whether there was any coordination behind this decision.

754. The Prosecutor also referenced P-0483's testimony that General Kassaraté 'gave him his card' and that General Mangou gave him money and that he dined with General Mangou.¹⁸⁵⁷ While this establishes that P-0483 may have had personal links with Generals Kassaraté and Mangou, it is not known whether the exchanges between P-0483 and the generals amounted to anything more than personal favours.

(3) Conclusion

755. Having analysed the available evidence for the presence and financing of alleged (Liberian) mercenaries, the main conclusion is that the evidence is anecdotal at best and much of it has very limited evidentiary weight. Nevertheless, a

¹⁸⁵⁴ P-0483, T-100 dated 16 November 2016, pp. 85-86, 88.

¹⁸⁵⁵ See IV.D.2.d)(5) - Alleged operation at Marcel Gossio's port.

¹⁸⁵⁶ P-0483, T-100 dated 16 November 2016, p. 84.

¹⁸⁵⁷ Response, para. 1464 (ii) (a).

reasonable trial chamber may conclude that foreign fighters were present in Côte d'Ivoire throughout the relevant period and that some of them were deployed in Abidjan during the post-electoral crisis. It is not possible, on the basis of the available evidence, to form a clear view as to how these foreign fighters were integrated in the FDS' operational planning or what exact role they played during the crisis.

756. It is also worth pointing out that it is not clear from the evidence which of the foreign fighters that were present in Abidjan were actually recruited from outside of Côte d'Ivoire and which ones were already present in the country for a long period before being engaged to operate alongside the FDS.

d) Collaboration and joint-operations

757. In the Mid-Trial Brief, the Prosecutor alleged that 'pro-Gbagbo youth and militia' collaborated with the FDS.¹⁸⁵⁸ In the Response, the Prosecutor alleged that 'pro-Gbagbo youth groups and militia units regularly collaborated with the FDS and were under the command of FDS officers'.¹⁸⁵⁹ The Prosecutor argued her case concerning collaboration together with that concerning the training and integration of 'pro-Gbagbo youth and militia' into the FDS. Having regard to the conclusions reached in respect of her allegations concerning the training and integration into the FDS, the allegations concerning the incidents of collaboration are addressed hereinunder. It is also noted that a significant number of the incidents concerning collaboration also concern the Prosecutor's case concerning the alleged 'parallel structure'.¹⁸⁶⁰ The conclusions in respect of the alleged 'parallel structure' are recalled.¹⁸⁶¹

¹⁸⁵⁸ Mid-Trial Brief, paras 170, 278.

¹⁸⁵⁹ Response, para. 1679.

¹⁸⁶⁰ Mid-Trial Brief, paras 284, 303.

¹⁸⁶¹ See IV.D.1.e) - Conclusion.

758. In addition to this, there are also allegations concerning Mr Gbagbo and the ‘inner circle’ achieving ‘joint control over mercenaries’ exemplified by ‘numerous instances [where] mercenaries complied with orders and instructions’.¹⁸⁶² Since these allegations also concern engagement with ‘pro-Gbagbo youth and militia’ these have also been addressed in this subsection.
759. At the outset, it is noted that the Prosecutor relied on a report by the UN Panel of Experts on Liberia from December 2011 to allege that FDS was being reinforced by mercenaries during the post-election crisis.¹⁸⁶³ The report ‘observed that mercenary command structures in the early 2011 Ivorian conflict were fluid and relied on an alliance of generals who often activated their own recruits, which were mainly drawn from unemployed Liberian ex-combatants’.¹⁸⁶⁴ For this reason, in assessing the participation of mercenaries together with FDS, the corresponding command structure will also be assessed, if known.
760. As regards specific incidents that go to show the alleged collaboration, the Prosecutor pointed to two that concern charged incidents, namely, (i) the RTI March¹⁸⁶⁵ and Yopougon I.¹⁸⁶⁶ Conclusions reached in respect of those charged incidents are imported by reference. In respect of these incidents, the Prosecutor specifically referred to such collaboration occurring at roadblocks. In addition to this, the Prosecutor pointed to the alleged setting up of GPP checkpoints to search vehicles and ID cards.¹⁸⁶⁷ Since these allegations concern occurrences at roadblocks, the section below addresses these allegations together with evidence concerning roadblocks generally.

¹⁸⁶² Mid-Trial Brief, para. 328.

¹⁸⁶³ See Response, paras 1206-1207.

¹⁸⁶⁴ Final Report of the Panel of Experts on Liberia submitted pursuant to paragraph 6 (f) of Security Council resolution 1961 (2010), 7 December 2011, CIV-OTP-0027-0304 at 0317.

¹⁸⁶⁵ Mid-Trial Brief, paras 282, 295.

¹⁸⁶⁶ Mid-Trial Brief, para. 285.

¹⁸⁶⁷ Mid-Trial Brief, para. 290.

761. In addition to this, the Prosecutor also pointed to operations allegedly conducted by Maguy 'le Tocard' and the BAE,¹⁸⁶⁸ and P-0435¹⁸⁶⁹ as well as the alleged events at the Presidential Residence on 2 April 2011¹⁸⁷⁰ and events following Mr Gbagbo's arrest.¹⁸⁷¹ The Prosecutor also pointed to GPP elements being called to provide security to certain individuals.¹⁸⁷² These have been addressed in turn.

(1) GPP checkpoints

762. The Prosecutor alleged that as of October 2010, the GPP established checkpoints to search vehicles and check ID cards at four GPP bases in Abidjan.¹⁸⁷³

763. P-0435 agreed to the proposition that the GPP was requested to the protect important locations in Abidjan other than police stations and added in his response that the GPP elements also 'manned checkpoints in the various communes in order to sort out the people who were moving about or circulating in the town'.¹⁸⁷⁴ P-0435 testified that these checkpoints were set up at or around the various GPP camps and bases as early as October 2010.¹⁸⁷⁵ As regards what was happening at these checkpoints, P-0435 testified that

vehicles were searched, the vehicles that were circulating, and then the identification of the passengers. And if there were pedestrians who looked suspicious, they could be stopped and their identities checked. Then they would be asked where they were going, we would ensure that they knew the area well, and also ensure that these were not members of the Forces Nouvelles who had infiltrated the area. And since we are talking about October, one of the elements of the Forces Nouvelles was also in Abidjan in order to provide security during elections and there were also defence and security personnel who were there to ensure protection for the elections, but there were rumours circulating that they were infiltrators, including even Burkinabé

¹⁸⁶⁸ Mid-Trial Brief, paras 292, 300

¹⁸⁶⁹ Mid-Trial Brief, para. 299.

¹⁸⁷⁰ Mid-Trial Brief, paras 287, 303.

¹⁸⁷¹ Mid-Trial Brief, paras 303-306.

¹⁸⁷² Mid-Trial Brief, para. 293.

¹⁸⁷³ Mid-Trial Brief, para. 290.

¹⁸⁷⁴ P-0435, T-89 dated 20 October 2016, p. 24.

¹⁸⁷⁵ P-0435, T-89 dated 20 October 2016, pp. 24-25.

soldiers in Abidjan, so people's identities were checked. There was also information to the effect that there were weapons circulating which were supposed to be distributed to supporters of the opposition.¹⁸⁷⁶

764. P-0435 testified that the GPP set up checkpoints in October 2010 ‘mainly around the various GPP camps’ and then, after the second round of elections, FESCI students set up roadblocks around ‘certain sensitive locations’.¹⁸⁷⁷ P-0435 testified that at these roadblocks, vehicles as well as certain pedestrians who were deemed to be suspicious would be searched.¹⁸⁷⁸
765. P-0435 testified that Bouazo received instructions from Commander Kipré and relayed to P-0435 and the GPP units the request to ‘mobilise the elements so that they could set up roadblocks as their various positions’.¹⁸⁷⁹
766. P-0435 recounted an incident that took place at one of the roadblocks set up by the GPP when P-0435 was pursuing an armed individual and there were soldiers that intercepted him.¹⁸⁸⁰ From this incident, whilst it appears that the objectives of P-0435 and the soldiers may have aligned, the testimony shows that this operation does not appear to have been coordinated or otherwise collaborative.¹⁸⁸¹ It is noted that the soldiers did not know what the aim of the GPP elements’ presence there was.
767. In conclusion, the evidence suggests that the GPP itself set up checkpoints to secure its bases and appeared to have been monitoring the movement of people

¹⁸⁷⁶ P-0435, T-89 dated 20 October 2016, p. 25. It is noted that P-0435 described two separate occasions where individuals were apprehended as being suspicious by GPP elements and handed over to the CECOS. *See* pp. 26-27, 32.

¹⁸⁷⁷ P-0435, T-94 dated 31 October 2016, pp. 15-16. T-89 dated 20 October 2016, p. 33.

¹⁸⁷⁸ P-0435, T-90 dated 21 October 2016, p. 38.

¹⁸⁷⁹ P-0435, T-90 dated 21 October 2016, p. 38.

¹⁸⁸⁰ P-0435, T-89 dated 20 October 2016, pp. 34-35 (confidential). P-0435 thought that these soldiers may have belonged to the ‘engineering corps’.

¹⁸⁸¹ P-0435, T-89 dated 20 October 2016, pp. 34-35 (confidential).

across neighbourhoods. However, these checkpoints are not shown to have been operated together with the FDS as part of the concerted collaboration.

(2) Collaboration at roadblocks

(a) *Alleged collaboration during the RTI March*

768. The Prosecutor alleged that, during the RTI March, the GPP effectively followed instructions from Desiré Tagro to support the FDS and to intercept marchers and hand them over to the authorities.¹⁸⁸² The allegations concerning Desiré Tagro's instructions have been addressed below,¹⁸⁸³ as are the allegations concerning the members of the GPP intercepting marchers and handing them over to the authorities.¹⁸⁸⁴

769. In addition to this, it is noted that, in the case concerning the RTI March, the Prosecutor has also pointed to other instances that concern the alleged collaboration between 'pro-Gbagbo youth and militia' with the FDS. In this regard, it is noted that the Prosecutor, relying on P-0625's testimony alleged that the *jeunes patriotes* participated with the FDS in the protection of the RTI during the RTI March by erecting roadblocks.¹⁸⁸⁵ P-0625 testified that 'there were a number of roadblocks, a series of roadblocks which were set up in order to stop Alassane's supporters from coming to the television station. So there were a number of civilian roadblocks before anyone could get to the radio station where the FDS was positioned'.¹⁸⁸⁶

¹⁸⁸² Mid-Trial Brief, para. 295.

¹⁸⁸³ See V.B.3.b) - Instructions to the GPP.

¹⁸⁸⁴ See VI.H.5 - Pro-Gbagbo forces arrested and detained demonstrators. See further VI.H.6 - FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries.

¹⁸⁸⁵ Mid-Trial Brief, para. 282.

¹⁸⁸⁶ P-0625, T-27 dated 9 March 2016, pp. 18-19.

770. It is also noted that P-0230 testified that on the day of the march, police officers warned that they risked being killed by non-FDS elements if they insisted on the attempt to liberate the RTI or if they advanced beyond a certain point.¹⁸⁸⁷ Importantly, P-0230 testified that [REDACTED] went out to tell RDR demonstrators that militia elements would attack them and there was nothing he could do to prevent that, as he had no power over the militia.¹⁸⁸⁸ This evidence, if assumed to be sufficiently reliable, at once suggests the presence of ‘militia’ during the RTI march as well as the lack of coordination/control on the part of the FDS over them.
771. Relying on P-0107’s account, the Prosecutor alleged that ‘pro-Gbagbo youth and CECOS personnel operating with English-speaking mercenaries attacked the fleeing demonstrators, killing at least four civilians’.¹⁸⁸⁹ P-0107, in his prior recorded testimony,¹⁸⁹⁰ stated that he was forcibly taken by CECOS personnel who arrived in CECOS 4x4 vehicles. P-0107 affirmed that ‘[m]ore than 10 members of the FDS arrived in the three 4x4s’ and that some of them were speaking English; they interrogated the witness at the ‘villa’ of ‘*leur Chef*’ and the witness denied being in the march and was subsequently taken to the hospital by the attackers.¹⁸⁹¹ P-0107’s statement also refers to individuals from Angola and Liberia being present at Camp Commando prior to 16 December¹⁸⁹² but he was not examined further in court on this aspect. It is also noted that the witness

¹⁸⁸⁷ See P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential), paras 60-64; DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential), paras 40-41.

¹⁸⁸⁸ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential), paras 40-41.

¹⁸⁸⁹ Mid-Trial Brief, para. 358.

¹⁸⁹⁰ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) paras 96-98.

¹⁸⁹¹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078-0079 paras 102-105.

¹⁸⁹² P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential), para. 167.

had also stated that the ‘*FDS, gendarmes et militaires*’ he came across had asked people, including him, to *return* from the march on account of the fact that there were Liberians and Angolans there who wanted to kill them.¹⁸⁹³

772. P-0117 recounts two encounters that took place during the RTI march relevant to these allegations concerning collaboration between the FDS and mercenaries. First, P-0117 was in Williamsville and she saw ‘other people among the police officers who weren’t police’, shooting at people.¹⁸⁹⁴ To P-0117, they were Liberians as they did not speak French but English.¹⁸⁹⁵ After P-0117 ran from that location, she was found in a hiding place and arrested by the police. Inside the police cargo truck, P-0117 was with seven other marchers that were being taken to the police academy; there she saw English speakers in ‘black uniforms’ that she identified as Liberian mercenaries.¹⁸⁹⁶

773. It is noted that as per his statement, it appears that P-0106 thought that “*Les BMO étaient des mercenaires*”.¹⁸⁹⁷ It is further noted that in his testimony, the witness did not appear to have a good knowledge of the nature and composition of the CECOS and did not provide any basis as to his understanding that the CECOS BMO were mercenaries.¹⁸⁹⁸ On the basis of his statement, it cannot be concluded that the CECOS BMO were acting together with mercenaries during the RTI march.

¹⁸⁹³ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential), para. 62.

¹⁸⁹⁴ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential), para. 60.

¹⁸⁹⁵ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential), paras 58-63.

¹⁸⁹⁶ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential), paras 73-80.

¹⁸⁹⁷ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential), para. 33.

¹⁸⁹⁸ P-0106, T-116 dated 6 February 2017, p. 79. It is noted that the BMO was commanded by Lieutenant Fofana who was from the north of the country and of Malinké ethnicity. See P-0321, T-62 dated 11 July 2016, pp. 85-90.

774. Relying on P-0555 and P-0435, the Prosecutor alleged that a FDS patrol conducted in Cocody in the context of the RTI march was supported by mercenaries and that ‘GPP elements were also present’.¹⁸⁹⁹ In his statement, P-0555 had stated that when he was stopped at the ‘Marie-Thérèse intersection’ in Cocody, he saw FDS members with militiamen in black clothing at the checkpoint.¹⁹⁰⁰ In court, P-0555 testified that he was stopped by a ‘mixture’ of FDS members and ‘other guys who were wearing balaclavas’.¹⁹⁰¹ The witness identified members of the FDS from the fact that, according to him, there was ‘FDS’ written on their fatigues.¹⁹⁰² The witness confirmed that some of individuals in this ‘mixture’ of a group were armed.¹⁹⁰³
775. P-0555 further testified that while running away from the first group that had stopped him, he was then stopped a second time by what he considered were ‘rebel militiamen’, two of whom spoke English and were with vehicles marked UNOCI.¹⁹⁰⁴ It is unclear why and how the witness determined that the militiamen he saw in this group were ‘rebel’.¹⁹⁰⁵
776. P-0555 testified that he thought that these individuals who stopped him were UNOCI officials but they were not.¹⁹⁰⁶ P-0555 clarified that, according to him, the persons were ‘badly dressed’, ‘dressed in black’ and ‘[s]ome of them had balaclavas on, some were wearing civilian’ clothes.¹⁹⁰⁷ According to the witness,

¹⁸⁹⁹ Mid-Trial Brief, para. 357.

¹⁹⁰⁰ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential), para. 34.

¹⁹⁰¹ P-0555, T-112 dated 6 December 2016, p. 14.

¹⁹⁰² P-0555, T-112 dated 6 December 2016, p. 14; P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential), paras 30-35.

¹⁹⁰³ P-0555, T-112 dated 6 December 2016, pp. 14-15.

¹⁹⁰⁴ P-0555, T-112 dated 6 December 2016, p. 25.

¹⁹⁰⁵ It is noted nonetheless when asked about ‘rebel combatants’, the witness did not appear to think that the term ‘rebel’ applied to those considered ‘pro-Gbagbo’. *See for example* P-0555, T-112 dated 6 December 2016, pp 30-32, 41.

¹⁹⁰⁶ P-0555, T-112 dated 6 December 2016, pp. 25-26.

¹⁹⁰⁷ P-0555, T-112 dated 6 December 2016, p. 26.

the second group ‘was trying to make [him] out to be a spy from the Golf [Hotel]’ and they had gris-gris that they put in front of him along with ‘some Kalash and some other stuff, they tied [him] up, [...] and then they took a photograph of [him]’.¹⁹⁰⁸ The witness was then detained in ‘a cargo vehicle’¹⁹⁰⁹ and was taken to ‘a gendarmerie in Cocody’ around 11h00 to 12h00 noon that day¹⁹¹⁰ following which, he was sent to the police prefecture at around 14h00.¹⁹¹¹

777. From P-0555’s account, a reasonable trial chamber could conclude that at least some of the individuals encountered by P-0555 were militia members at the ‘Marie-Thérèse intersection’ in Cocody, but, as noted above, the mere fact that some of them spoke English is insufficient to warrant an inference that they were mercenaries. It is not known whether the militia members that P-0555 were from the GPP. It is not possible to draw any firm conclusions about the nature of the collaboration between the FDS and the other individuals from P-0555’s limited account of their interaction. However, what can be inferred is that the FDS was aware of and tolerated their presence.

(b) Alleged collaboration in Yopougon I

778. To further substantiate the allegation of collaboration between the FDS and ‘pro-Gbagbo youth’, the Prosecutor pointed to the ‘roadblocks being erected in [...] Yopougon, following [Mr] Blé Goudé’s Baron Bar speech’ and manned by FDS and the youth.¹⁹¹² However, having regard to the conclusions reached in respect

¹⁹⁰⁸ P-0555, T-112 dated 6 December 2016, p. 30.

¹⁹⁰⁹ P-0555, T-112 dated 6 December 2016, p. 31.

¹⁹¹⁰ P-0555, T-112 dated 6 December 2016, p. 32.

¹⁹¹¹ P-0555, T-112 dated 6 December 2016, pp. 37-38.

¹⁹¹² Mid-Trial Brief, para. 285.

of the crimes committed in Yopougon I, there is no evidence suggesting that the youth or militia collaborated with the FDS in that context.¹⁹¹³

779. P-0435 recalled that it was in February 2011 that Mr Blé Goudé called for roadblocks to be set up.¹⁹¹⁴ P-0435 described that ‘young people would use sticks of wood, machetes, whatever they had at hand’ to build these roadblocks.¹⁹¹⁵ P-0435 confirmed that these roadblocks were set up to ensure the safety of the neighbourhood.¹⁹¹⁶
780. In the Response, the Prosecutor points to P-0449’s testimony, who suggested that there were ‘uniformed persons’ participating at roadblocks in Yopougon.¹⁹¹⁷ However, P-0449 was unable to identify who these uniformed persons were and responded instead that ‘these were people who used to live in various neighbourhoods’ and would come in to support the various youth groups.¹⁹¹⁸ P-0449 did not identify which FDS units were involved and responded that ‘[t]here was a bit of everyone’ and added again that ‘[a]s long as these people lived in the neighbourhoods, they came to support us’.¹⁹¹⁹ From his testimony, it can be inferred that these uniformed individuals supporting the persons manning the roadblocks may have done so in their private capacity in solidarity with the neighbourhood. In any event, P-0449’s testimony does not permit the Chamber to identify which FDS units the purported uniformed men belonged to. It is thus impossible to draw any meaningful conclusions from this evidence.

¹⁹¹³ See VI.M - 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I).

¹⁹¹⁴ P-0435, T-94 dated 31 October 2016, p. 16.

¹⁹¹⁵ P-0435, T-94 dated 31 October 2016, p. 16.

¹⁹¹⁶ P-0435, T-94 dated 31 October 2016, p. 17.

¹⁹¹⁷ Response, para. 1690.

¹⁹¹⁸ P-0449, T-159 dated 22 May 2017, pp. 44-45.

¹⁹¹⁹ P-0449, T-159 dated 22 May 2017, p. 45.

(c) *Other alleged instances of collaboration*

781. There is evidence on the record that may suggest some collaboration between the activities of the FDS and the persons manning civilian roadblocks in certain neighbourhoods.
782. In this regard, it is noted that as part of her case concerning the ‘blockade’ of the Golf Hotel, the Prosecutor relied on CIV-OTP-0018-0070 to demonstrate that there was a plan involving COJEP youth manning civilian roadblocks in coordination with the ‘police *en civil*’.¹⁹²⁰ Having regard to the concerns expressed in relation to this document discussed in detail later, on the basis of this document, it cannot be concluded that such coordination between the COJEP and the FDS was planned or that it took place.¹⁹²¹
783. There is also evidence that suggests that vehicles were being checked at roadblocks and may have been with a view to assisting the FDS. P-0435 testified that at some major roads, roadblocks had been erected after January 2011 to ‘obstruct the French, the UN tanks’.¹⁹²² P-0087’s testimony references there being a list containing registration numbers of cars that the persons manning the roadblocks were required to stop and check; according to the civilian person interviewed in the video, this list had come from ‘our army’.¹⁹²³ This list appears to have been referenced in the RTI broadcast dated 23 January 2011 that contained a declaration from a FDS spokesperson.¹⁹²⁴ According to the broadcast, the UNOCI forces had been using vehicles with civil registrations that were not stamped with the UN acronyms in order to circulate freely and not be controlled;

¹⁹²⁰ Mid-Trial Brief, para. 519.

¹⁹²¹ See V.A – Blockade of the Golf Hotel.

¹⁹²² P-0435, T-94 dated 31 October 2016, p. 17.

¹⁹²³ Untitled, 29 March 2011, CIV-OTP-0015-0594 (confidential), transcript at CIV-OTP-0021-0013 (confidential) at 0022; P-0087, T-177 dated 12 July 2017, p. 97.

¹⁹²⁴ RTI broadcast dated 23 January 2011, CIV-OTP-0064-0084, transcript CIV-OTP-0094-0233.

the army staff was in possession of a list of 41 vehicles. The spokesperson also mentioned that instructions had been issued to the *Gendarmerie* and the police to ‘immobilise’ these vehicles; the list of these vehicles had been published in the written press as well as in police stations and *Gendarmerie* brigades.¹⁹²⁵

784. In the video, P-0087 asked the person at a roadblock about who gave them the authority to man roadblocks to which the person responded that

Il n'y a pas une autorité en tant que telle. La population ... quand la population se sent menacée, elle est obligée, on est en légitime défense. Nous avons perdu des parents à ABOBO ici, ils sont venus nuitamment et ils ont tué, ils ont fait ce qu'ils voulaient parce qu'ils ont des armes. Nous on n'a pas les armes. On est obligés de s'organiser pour une certaine dissuasion. Parce qu'on n'y peut rien. L'État ... l'État ne peut pas nous donner des armes parce que ... pour avoir les armes, il faut que tu passes par l'armée. Donc l'État se tient à la légalité. [...] Nous, notre souhait c'est que la situation se normalise, que les leaders s'entendent et qu'ils se mettent sur une table de discussion, qu'ils s'entendent et que les tueries s'arrêtent. Il faut que les tueries s'arrêtent.¹⁹²⁶

785. P-0087's evidence also suggests that persons manning the roadblocks may have assessed suspicious behaviour on account of their own pre-conceived biases. Concerning what the persons manning the roadblocks would do, P-0087 testified that

[t]hey told us that they stopped vehicles which they believed to be suspicious, that they needed to search these vehicles, that they could sometimes tell from the number plates or from the faces of the occupants that there was something untoward about them. The impression--or also not even an impression, they also made it quite clear that the types of people they were looking for were northerners who would have northern features. And I believe they gave me some examples of the sorts of names that these people might have, Muslim sounding names.¹⁹²⁷

786. P-0087 testifying generally on the ‘relationship’ between the *jeunes patriotes* and the armed forces stated that, according to what he was told by ‘some Young Patriots on a checkpoint’, the checkpoints manned by these *jeunes patriotes* ‘bracketed’ a military checkpoint; meaning that there would be ‘a Young Patriots

¹⁹²⁵ RTI broadcast dated 23 January 2011, CIV-OTP-0064-0084, transcript CIV-OTP-0094-0233 at 0234.

¹⁹²⁶ Untitled, 29 March 2011, CIV-OTP-0015-0594 (confidential), transcript at CIV-OTP-0021-0013 (confidential) at 0023.

¹⁹²⁷ See P-0087, T-177 dated 12 July 2017, p. 93 *et seq*; see also Video, 29 March 2011, Untitled, 29 March 2011, CIV-OTP-0015-0594 (confidential), transcript at CIV-OTP-0021-0013 (confidential).

checkpoint at either side of [the military checkpoint]’ so that ‘whichever direction you approached the military checkpoint from’ one would ‘always pass the Young Patriot first, and they would have the opportunity to filter’ who gets through to the military.¹⁹²⁸

787. In assessing the allegations concerning the collaboration between the FDS and the youth, the Chamber also considered document CIV-OTP-0071-0154 concerning the FDS providing security for one of Mr Blé Goudé’s rallies. This document provides for security measures [‘*sécurisation*’]¹⁹²⁹ for a rally [‘*grand rassemblement*’]¹⁹³⁰ called by Mr Blé Goudé on account of the threat [‘*menace*’] to the safety of the participants.¹⁹³¹ It is noted that this document was not shown to General Mangou, who would have been in a position to comment on the nature of the document. It is not clear how providing security for a rally called by a government minister can amount to a relevant collaboration or otherwise an operation between the FDS and irregular actors. There are no inferences to be drawn from the purported tone of the document and the purported political bias that it may have reflected. It may arguably be evidence of ‘the political bias of the FDS leadership’ in favour of Mr Blé Goudé and COJEP. However, it cannot be inferred that this document or this ‘operation’, without more, constitutes evidence that demonstrates collaboration between the FDS and the COJEP or any other armed irregular group during the post-election crisis.

¹⁹²⁸ P-0087, T-177 dated 12 July 2017, p. 89.

¹⁹²⁹ MESSAGE / No. 4149/EMA/CPCO/COND / EXPLOITATION FRAGO 69 / 7/74, 28 December 2010, CIV-OTP-0071-0154 at 0155, 0156.

¹⁹³⁰ MESSAGE / No. 4149/EMA/CPCO/COND / EXPLOITATION FRAGO 69 / 7/74, 28 December 2010, CIV-OTP-0071-0154 at 0155, 0156.

¹⁹³¹ MESSAGE / No. 4149/EMA/CPCO/COND / EXPLOITATION FRAGO 69 / 7/74, 28 December 2010, CIV-OTP-0071-0154 at 0156.

(d) *Conclusion*

788. Having regard to the totality of evidence concerning the alleged collaboration between the FDS and irregular actors at roadblocks and/or checkpoints, it can be concluded that there was sporadic collaboration between the two. The evidence presented by the Prosecutor in connection with alleged acts of collaboration of the youth with the FDS does not indicate that any such collaboration was motivated by an organized overall strategy. Instead, there appear to have been a number of instances where ad hoc or last-minute arrangements were put in place. It cannot be excluded that the FDS may, in some instances, have benefited from the roadblocks setup by the youth. There was clearly also an intention on the part of the youth to assist the FDS by checking vehicles passing at roadblocks for weapons and keeping track of the movements of potentially suspicious individuals. However, it cannot be inferred from the circumstances of this case that this was a result of a concerted plan or agreement to implement the alleged Common Plan.

(3) Providing security to certain individuals and premises

789. The Prosecutor alleged that following the elections in 2010, GPP elements were called upon to reinforce the security at Mr Blé Goudé's residence and that Damana Pickass' bodyguard was also a GPP member.¹⁹³² P-0435 testified that Damana Pickass' bodyguard was a member of the GPP.¹⁹³³ Nothing further is known about the nature of his assignment. P-0435's description of a meeting between Bouazo and Damana Pickass that was relayed to P-0435 by Bouazo himself suggests that Damana Pickass may have known that this bodyguard was a member of the GPP.¹⁹³⁴

¹⁹³² Mid-Trial Brief, para. 293.

¹⁹³³ P0435, T-87 dated 18 October 2016, p. 54.

¹⁹³⁴ See IV.D.2.b)(3)(a) – Arming of the GPP, paras. 599-603.

790. P-0435 testified that when Mr Blé Goudé was appointed minister after the elections in 2010, three GPP elements went to ‘reinforce the guards at [his] residence’.¹⁹³⁵ According to P-0435’s testimony, these three individuals had been ‘seconded upon instruction of Bouazo’ and had been designated there until ‘the clashes truly commenced’.¹⁹³⁶ It is not known whether or not this reinforcement was upon Mr Blé Goudé’s request or whether anyone else ordered the GPP. It is also not known whether Mr Blé Goudé had knowledge of this.

791. As regards P-0435’s testimony generally that GPP elements would provide security to certain individuals and premises, it is noted that this does not appear to have taken place upon instruction or authorisation from senior FDS officials. P-0435 testified that GPP elements ‘had to guard certain buildings or premises, and specifically some police stations’ and that there were ‘other elements who were later seconded or assigned to the CRS’; he also added that ‘[s]ome authorities had requested to be given certain elements to reinforce their own security’.¹⁹³⁷ From P-0435’s testimony, it is not clear at whose command, if at all, these purported assignments or secondments by militia were taking place. From the testimony of the Director General of the *Police Nationale*, Inspector-General Bredou M’Bia, it is unclear whether the purported secondment or assignment to the CRS took place upon his instructions or authorisation. As regards militia acting in concert with the police between the ‘months of November [2010] and April [2011]’, Inspector-General Bredou M’Bia testified that there ‘there was no militia within the police’.¹⁹³⁸ However, Inspector-General Bredou M’Bia elaborated further that on one occasion he discovered two militiamen working with the commander of [REDACTED] he testified that he was surprised to come

¹⁹³⁵ P-0435, T-89 dated 20 October 2016, pp. 14, 16.

¹⁹³⁶ P-0435, T-89 dated 20 October 2016, pp. 16-17. The witness was asked to specify the time period ‘when [according to him] the clashes truly commenced’, and the witness appears to have placed this in March, drawing from the ‘clashes in Yopougon start[ing] in March’ (p. 17).

¹⁹³⁷ P-0435, T-89 dated 20 October 2016, p. 24.

¹⁹³⁸ P-0046, T-126 dated 20 February 2017, pp. 16-17.

across these two individuals in the police hospital in Adjamé, who were militiamen but had not been working with Inspector-General Bredou M'Bia or under his command.¹⁹³⁹

(4) GPP participation in clandestine operations

792. According to P-0435, during December 2010 to April 2011, the GPP had contact with General Dogbo Blé.¹⁹⁴⁰ P-0435 testified that, when he would take part in 'clandestine' operations with the FDS, they would move around in civilian attire in unmarked vehicles; he would carry a 'military card' identifying him as a member of the *Garde Républicaine* that he could present to pass roadblocks. The persons manning the roadblocks could call Commander Kipré or their own commanding officer to confirm the identity specified in the card and would subsequently let them pass.¹⁹⁴¹ It has not been demonstrated that these operations were being carried out with either the instruction or otherwise the knowledge of either of the two accused. To the extent that P-0435 participated in operations with the CECOS, this has been discussed below.¹⁹⁴²

(5) Alleged operation at Marcel Gossio's port

793. The Prosecutor alleged that P-0483 and 'members of his group of Liberian mercenaries participated in a joint operation with members of the marines to protect "*leur zone de Marcel Gossio*" at the Port of Abidjan'.¹⁹⁴³ This allegation makes reference to protecting the Port of Abidjan. According to P-0483, the assignment was to mount a checkpoint at the port and provide a 'security job'.¹⁹⁴⁴

¹⁹³⁹ P-0046, T-126 dated 20 February 2017, pp. 17-18 (confidential).

¹⁹⁴⁰ P-0435, T-90 dated 21 October 2016, p. 52.

¹⁹⁴¹ P-0435, T-90 dated 21 October 2016, pp. 52-55.

¹⁹⁴² See IV.D.2.d)(7) - Alleged operations involving P-0435 and CECOS.

¹⁹⁴³ Mid-Trial Brief, para. 313.

¹⁹⁴⁴ P-0483, T-100 dated 16 November 2016, pp. 86-87.

Commander KB, who P-0483 thought was ‘the commandant for the marines’, was giving them instructions.¹⁹⁴⁵ P-0483 testified that Commander KB had told them that ‘some people were going to Marcel Gossio for him to be arrested from the port’.¹⁹⁴⁶ It is not known who was going to arrest Marcel Gossio or whether the actual purpose of the assignment was to protect Mr Gossio from this. P-0483’s testimony recounts an incident with the French troops that came to encircle the port that, on the face of it, appears to be unrelated to Marcel Gossio’s arrest. P-0483 testified that

he [Marcel Gossio] was the port director and he had port security, but after the election results were out he never had security again. Marcel Gossio never had security. So he asked us to mount a checkpoint there, that sometimes when the French marines came that we will have to -- they will have to give them proper document before they enter the port [...].¹⁹⁴⁷

794. P-0483 testified further that

at that time all the activities in the country were undertaken by the French marines. And really, within four to five days, the convoy that the French troops came with to the port they encircled the port, and he [Marcel Gossio?] came to the French commander and told him that it is -- now it is marine that is taking care of the port and he did not want any Frenchman to come to the port, and he said if they wanted to do anything they should wait until they get command from État Major, from the commander, from État Major before they go ahead.¹⁹⁴⁸

795. As regards how P-0483 and Commander KB came into contact about this assignment, it is noted that prior to this assignment, P-0483 and his group had ‘asked for help to be with them’ until they could find a way for themselves.¹⁹⁴⁹ As regards financing of this assignment, P-0483 testified that Commander KB gave them money ‘from his own pocket’.¹⁹⁵⁰

¹⁹⁴⁵ P-0483, T-100 dated 16 November 2016, pp. 73, 86.

¹⁹⁴⁶ P-0483, T-100 dated 16 November 2016, p. 86.

¹⁹⁴⁷ P-0483, T-100 dated 16 November 2016, p. 87.

¹⁹⁴⁸ P-0483, T-100 dated 16 November 2016, p. 87.

¹⁹⁴⁹ P-0483, T-100 dated 16 November 2016, p. 76.

¹⁹⁵⁰ P-0483, T-100 dated 16 November 2016, p. 86.

796. As regards who was participating in this purported mission, P-0483 testified that it was him and ‘those of us who had been working with LIMA before, along with some of the marines from KB’s side’.¹⁹⁵¹ It is noted that P-0483 testified that Commander KB ‘had his own troops’ which he explained to be Commander KB’s ‘own marine’.¹⁹⁵² According to P-0483, Commander KB required P-0483 and his fellow Liberians to wear ‘the same military fatigue that he was wearing’.¹⁹⁵³ According to P-0483, this assignment was completed in two weeks.¹⁹⁵⁴

797. To the extent that it depicts Liberians working under the direction of Commander KB, it is not known from whom Commander KB received his instructions concerning this mission apart from a purported request by Marcel Gossio. It is also not known from whom Commander KB received his instructions concerning the engagement of Liberians for this mission. It is also not clear what the purpose of this mission was and how it was related to keeping Mr Gbagbo in power. There is no relation to crimes against the civilian population.

(6) Alleged operations by Maguy le Tocard and the BAE

798. The Prosecutor alleged that in ‘February or March 2011, Maguy ‘le Tocard’ participated in a joint operation with the BAE in Port Bouet II’ to ‘quell a demonstration’ in which they fired on demonstrators with RPGs and machine guns when the demonstrators did not let them enter the neighbourhood.¹⁹⁵⁵

799. According to P-0435, Maguy started to work ‘more closely with Colonel Loba, who was the head of the riot squad based in Yopougon, the BAE’, and conducted

¹⁹⁵¹ P-0483, T-100 dated 16 November 2016, p. 73. P-0483 testified that there were 13 Liberian mercenaries.

¹⁹⁵² P-0483, T-100 dated 16 November 2016, p. 76.

¹⁹⁵³ P-0483, T-100 dated 16 November 2016, p. 74.

¹⁹⁵⁴ P-0483, T-100 dated 16 November 2016, p. 88.

¹⁹⁵⁵ Mid-Trial Brief, para. 300.

joint operations with the colonel or upon direct instructions from him.¹⁹⁵⁶ P-0435 testified that he and Maguy 'le Tocard' conducted joint operations with BAE elements in December 2010 or January 2011 in Abobo after or on the occasion of a demonstration during which a BAE vehicle had been torched.¹⁹⁵⁷

800. P-0435 also mentioned another operation that was conducted by Maguy 'le Tocard' with elements of BAE in February/March 2011 in Port Bouet II, a neighbourhood that P-0435 considered was 'sensitive' as having already been targeted for being inhabited by RHDP supporters.¹⁹⁵⁸ As regards this incident, it is noted that P-0435 testified that it was through Maguy 'le Tocard' himself that he learnt about him working with the BAE on this occasion.¹⁹⁵⁹ He had contacted Maguy who had explained that 'they had gone with elements of Commander Loba to the Port Bouët II neighbourhood'.¹⁹⁶⁰ As per the information available to him, P-0435 described that a riot had taken place in the Port Bouët II neighbourhood of Yopougon and that Commander Loba and Maguy 'le Tocard' went there.¹⁹⁶¹ At the time the civilians had gathered and blocked access to the neighbourhood, the BAE had begun intervening, and Maguy 'le Tocard' and elements of Colonel Loba then went there and shot at the demonstrators.¹⁹⁶² From P-0435's testimony, it appears that the shooting occurred because the inhabitants 'wanted to stop [the BAE elements] from going into the neighbourhoods'.¹⁹⁶³ With regards to this operation, P-0435 testified that 'there were a lot of dead

¹⁹⁵⁶ P-0435, T-88 dated 19 October 2016, p. 17.

¹⁹⁵⁷ P-0435, T-97 dated 3 November 2016, pp. 36-37.

¹⁹⁵⁸ P-0435, T-90 dated 21 October 2016, pp. 47-48.

¹⁹⁵⁹ P-0435, T-90 dated 21 October 2016, p. 47.

¹⁹⁶⁰ P-0435, T-90 dated 21 October 2016, p. 47.

¹⁹⁶¹ P-0435, T-90 dated 21 October 2016, p. 48.

¹⁹⁶² P-0435, T-90 dated 21 October 2016, p. 48.

¹⁹⁶³ P-0435, T-90 dated 21 October 2016, p. 48.

people because [of] RPG gunfire or machine gunfire'.¹⁹⁶⁴ P-0435 did not know how many civilian deaths occurred as a result of this incident.¹⁹⁶⁵

801. As regards the BAE working with militia generally, it is noted that Inspector-General Bredou M'Bia testified that he was informed by 'the rebels' after the post-election crisis that 'there [had been] militiamen working with the BAE'¹⁹⁶⁶ but that 'no one [within the BAE] had contacted [him] to tell [him] that they had used militiamen'.¹⁹⁶⁷ Inspector-General Bredou M'Bia confirmed his previous statement in court that [REDACTED] had called him to ask if he was informed that militiamen were to go and work with the BAE, to which he had responded that it was 'out of the question' for them to work with militiamen.¹⁹⁶⁸ Inspector-General Bredou M'Bia also confirmed his previous statement that he 'imagined they [BAE commanders] must have been receiving orders from elsewhere' meaning from those 'in charge of the [REDACTED]'.¹⁹⁶⁹ Inspector-General Bredou M'Bia also confirmed that he did not know who from [REDACTED] would have given orders to officers like that.¹⁹⁷⁰ Inspector-General Bredou M'Bia further testified that to his knowledge there was 'one contact' between 'the commanders of the intervention units';¹⁹⁷¹ and the 'leaders of the patriots'.¹⁹⁷²

802. It is noted that P-0435 testified that the GPP would assist the FDS in 'certain investigations, because [the GPP] had very easy access to some circles, whereas

¹⁹⁶⁴ P-0435, T-90 dated 21 October 2016, p. 47.

¹⁹⁶⁵ P-0435, T-90 dated 21 October 2016, pp. 48-49.

¹⁹⁶⁶ P-0046, T-126 dated 20 February 2017, p. 19 (confidential).

¹⁹⁶⁷ P-0046, T-126 dated 20 February 2017, p. 20 (confidential).

¹⁹⁶⁸ P-0046, T-126 dated 20 February 2017, p. 20 (confidential).

¹⁹⁶⁹ P-0046, T-126 dated 20 February 2017, p. 21 (confidential).

¹⁹⁷⁰ P-0046, T-126 dated 20 February 2017, p. 22, 24-25 (confidential).

¹⁹⁷¹ The witness testified that the CRS (republican security company) and the BAE (the riot brigade) were two of the four intervention units. See P-0046, T-123 dated 15 February 2017, p. 14.

¹⁹⁷² P-0046, T-126 dated 20 February 2017, p. 29 (confidential). This contact concerns the purported payment by Mr Blé Goudé to the commander of the riot squad. This has been addressed in IV.D.2.b)(2)(f) - Payments linked to Mr Blé Goudé.

they for their part would be easily recognized as policemen or members of the security forces'.¹⁹⁷³ P-0435 added that Maguy 'le Tocard' would receive calls for assistance from the commissioner of the police authorities and his job would be to 'gather information that would assist either the police station or the gendarmerie commanders in their law and [order] assignments'.¹⁹⁷⁴ As regards P-0435's awareness of the nature of these operations generally, it is noted that P-0435 would transmit instructions from Bouazo to Maguy 'le Tocard' 'with regard to conduct to be followed within the Yopougon area'.¹⁹⁷⁵ From this evidence, it appears that Maguy 'le Tocard' may have been assisting the police in intelligence gathering activities.

803. As regards the incident in Port Bouët II neighbourhood of Yopougon in February/March 2011 as described by P-0435, it can be concluded that Maguy 'le Tocard' and Command Loba and their elements fired at civilians following a riot in that neighbourhood. However, having regard to Inspector-General Bredou M'Bia's testimony, it is not known whether or not this operation was ordered or otherwise authorised by senior FDS officials.

(7) Alleged operations involving P-0435 and CECOS

804. Relying on P-0435, the Prosecutor alleged that he [REDACTED].¹⁹⁷⁶ In support of this, the Prosecutor pointed to two instances where P-0435 took part in such operations.¹⁹⁷⁷ In support of the second incident, the Prosecutor also cites to the

¹⁹⁷³ P-0435, T-88 dated 19 October 2016, p. 16.

¹⁹⁷⁴ P-0435, T-88 dated 19 October 2016, p. 16.

¹⁹⁷⁵ P-0435, T-88 dated 19 October 2016, pp. 16-17.

¹⁹⁷⁶ Mid-Trial Brief, para. 299.

¹⁹⁷⁷ Mid-Trial Brief, para. 299.

UNOCI call centre report dated 18 March 2011 whereas P-0435 places this incident in February 2011.¹⁹⁷⁸

805. As regards the first incident, P-0435 testified that the operation was conducted upon orders of a certain [REDACTED].¹⁹⁷⁹ P-0435 described the operation as a search conducted in a mosque in Yopougon that had been suspected of being a weapons store.¹⁹⁸⁰ P-0435 testified that during this operation [REDACTED] with him, who were were reporting to [REDACTED].¹⁹⁸¹ As regards the second incident, P-0435 described an operation in February in Adjamé under a commander of [REDACTED].¹⁹⁸² P-0435 testified that this operation ‘did not last up to 10 minutes’ and that as soon as they finished, they ‘retreated’.¹⁹⁸³ In assessing these incidents together, it is noted that P-0435 also testified that he was working with the ‘director of military intelligence’ in the department of defence as well as two other ‘intelligence officers of the gendarmerie’.¹⁹⁸⁴
806. Both of these operations appear to have been conducted pursuant to intelligence gathering exercises and both of these operations led to deaths of civilians. The evidence indicates that they were conducted as part of CECOS activities; however, it is not known to what extent Mr Gbagbo knew or otherwise ordered such operations to be carried out.

¹⁹⁷⁸ Response, para. 288.

¹⁹⁷⁹ P-0435, T-90 dated 21 October 2016, pp. 41-42 (confidential).

¹⁹⁸⁰ P-0435, T-90 dated 21 October 2016, p. 41 (confidential).

¹⁹⁸¹ P-0435, T-90 dated 21 October 2016, p. 42 (confidential).

¹⁹⁸² P-0435, T-90 dated 21 October 2016, pp. 42-43 (confidential).

¹⁹⁸³ P-0435, T-90 dated 21 October 2016, pp. 42-43 (confidential).

¹⁹⁸⁴ P-0435, T-88 dated 19 October 2016, p. 8.

(8) Alleged events following 2 April 2011

807. The Prosecutor referenced several incidents towards the end of the crisis until after Mr Gbagbo's arrest that according to her demonstrate collaboration between the pro-Gbagbo youth, militia, and mercenaries.¹⁹⁸⁵ The Prosecutor alleged that GPP members were based at the Presidential Palace from March 2011 onward under Commander Kipré and they subsequently participated in retaking the Etat Major supported by BASA and *Garde Républicaine* elements.¹⁹⁸⁶
808. In assessing these allegations, the evidence discussed and the conclusions reached in respect of *Commandant Séka Yapo's* alleged role¹⁹⁸⁷ and the encounter dated 2 April 2011¹⁹⁸⁸ are recalled.
809. P-0435 testified that, in March 2011, 60 elements trained by the GPP were placed at the Presidential Palace, some with the *Garde Républicaine* and some with BASA.¹⁹⁸⁹ P-0435 testified that among these individuals, there were some who were in civilian attire and added that '[t]here were some officers there, but they weren't all soldiers necessarily'.¹⁹⁹⁰ The operations that these integrated elements were assigned to included providing security to certain personalities, going to Treichville to get food, and securing the perimeter around the Presidential Palace; they also participated in recapturing the general staff headquarters of the army in 'mid-March 2011' when it was occupied by the *Forces Nouvelles*.¹⁹⁹¹

¹⁹⁸⁵ Mid-Trial Brief, paras 303-306, 320-324.

¹⁹⁸⁶ Mid-Trial Brief, para. 303.

¹⁹⁸⁷ See IV.D.1.c)(9) - *Commandant Séka Yapo's* alleged role.

¹⁹⁸⁸ See IV.C.2.s) - Encounter on 2 April 2011.

¹⁹⁸⁹ P-0435, T-90 dated 21 October 2016, p. 8.

¹⁹⁹⁰ P-0435, T-90 dated 21 October 2016, p. 8.

¹⁹⁹¹ P-0435, T-90 dated 21 October 2016, p. 10.

810. As part of this narrative, the Prosecutor also alleged that Liberian mercenaries were present at the Presidential Residence around this time.¹⁹⁹² P-0435 testified that he saw some Liberians, including ‘Junior Gbagbo’, at the Presidential Residence.¹⁹⁹³ General Mangou testified that on or around 3 and 4 April 2011, he saw five vehicles with what he considered were armed mercenaries coming from the Presidential Residence; according to him, they had ammunition and Kalashnikovs, RPGs and handguns.¹⁹⁹⁴ It is not known how these mercenaries obtained these weapons. General Mangou testified that on his way to the Presidential Residence in April 2011 he saw five vehicles moving from the Residence to the town; the individuals inside carried their gun magazines in a different way that FDS soldiers did; General Mangou stated that he knew that they were mercenaries under the command of *Commandant Séka Yapo*.¹⁹⁹⁵ Liberian fighter P-0483 testified that after the firing became heavy in Abidjan, Commander KB stopped coming to collect them and so P-0483 and other Liberians went to the Presidential Residence under the command of *Commandant Séka Yapo* to provide security to Mr Gbagbo.¹⁹⁹⁶ P-0483 does not remember the dates but stated that he stayed at the Residence for several months.¹⁹⁹⁷
811. The Prosecutor alleged that following this Mr Gbagbo was informed of their efficiency and decided to integrate these elements in the *Garde Républicaine*.¹⁹⁹⁸

¹⁹⁹² Mid-Trial Brief, paras 321-322.

¹⁹⁹³ P-0435, T-90 dated 21 October 2016, pp. 22-23.

¹⁹⁹⁴ See P-0009, T-194 dated 26 September 2017, p. 25.

¹⁹⁹⁵ P-0009, T-196 dated 28 September 2017, p.70; T-197 dated 2 October 2017, pp.58-59; T-200 dated 5 October 2017, p.41. Séka Séka, *aide de camp* of the first lady, did not have troops. He had under his responsibility almost a company; these were mercenaries. P-0009, T-196 dated 28 September 2017, pp. 69-70. Also note the similar account given by P-0009 with a different date: On the night of the 3rd and 4th, P-0009 was in the Presidential Residence and on his way back he saw five personnel carries and they were not marked, they were full of mercenaries. They were under the command of Séka Séka. P-0009 knew they were mercenaries, because he knew his soldiers so he could identify when they were not. They were extremely well-armed. P-0009, T-194 dated 26 September 2017, pp. 24-25.

¹⁹⁹⁶ P-0483, T-100 dated 16 November 2016, pp. 65-72; T-101 dated 17 November 2016, pp. 54-59; T-102 dated 21 November 2016, p. 42.

¹⁹⁹⁷ P-0483, T-101 dated 17 November 2016, pp. 60-70.

¹⁹⁹⁸ Mid-Trial Brief, para. 303.

Recalling the conclusions reached in respect of the encounter with Mr Gbagbo dated 2 April 2011¹⁹⁹⁹ as well as the conclusions in respect of the recruitment in the *Garde Républicaine* in March 2011,²⁰⁰⁰ it cannot be concluded that the aforementioned elements that participated in assisting in the FDS in retaking the *Etat Major* were subsequently integrated into the FDS.

812. In conclusion, it is recalled that during the period under discussion, the battle for Abidjan was already taking place and the FDS seems to have been in total disarray. The evidence indicates that *Commandant Séka Yapo* was in charge of at least some of the individuals present at the Presidential Residence at some point and that they engaged in combat operations. However, little to nothing is known about these operations or whether *Commandant Séka Yapo* was receiving instructions from senior FDS officials. Therefore, while it has been demonstrated that ‘pro-Gbagbo’ youth, militia and mercenaries were present at the Presidential Residence following 2 April 2011, there is little to no indication that the FDS command and control structure still existed at the time.
813. The Prosecutor also pointed to P-0435’s testimony concerning a purported operation dated 4 April 2011 involving Liberian mercenaries and the *Garde Républicaine*.²⁰⁰¹ P-0435’s description of the events contains reference to the involvement of Liberian mercenaries and members of the *Garde Républicaine* but contains no information that could assist in assessing the level of integration of Liberian mercenaries within the FDS, operationally or otherwise.
814. Finally, the Prosecutor, again relying on P-0435’s testimony, advanced allegations concerning several FDS and irregular actors gathering at the Locodjoro Naval Base following Mr Gbagbo’s arrest.²⁰⁰² However, no conclusion

¹⁹⁹⁹ See IV.C.2.s) - Encounter on 2 April 2011.

²⁰⁰⁰ See IV.D.2.b)(5)(d)(i) - Alleged recruitment in the *Garde Républicaine*, para. 665.

²⁰⁰¹ Mid-Trial Brief, para. 323. Response, paras 301, 1399.

²⁰⁰² Mid-Trial Brief, para. 306.

relevant to the alleged command and control, much less the Common Plan can be drawn from this evidence.

(9) Conclusion

815. Based on the available information, which is overwhelmingly drawn from P-0435's evidence, there appears to have been sporadic collaboration between the FDS and certain irregular forces. The available evidence does not allow any conclusions in terms of the scale of this collaboration. There is equally no reliable evidence that could prove there was a central or generalised policy or structured approach towards using irregular forces. Instead, the picture that emerges from the evidence is that sometimes collaboration was *ad hoc* or even spontaneous, whereas in other occasions, it was the result of personal connections between the leaders of the units involved.
816. All this makes it difficult to make any determinations with regard to the accused's awareness of and/or involvement in some or all of these joint operations. It is unlikely that the accused would have been entirely unaware of FDS collaborating with irregular forces, but it has not been established what the extent of their knowledge was and when they acquired it. What is clear from the record is that neither accused ever expressed the slightest reservation about such collaborations. A reasonable trial chamber might conclude from this that they at least tacitly approved of the involvement of irregular forces in the efforts to protect Mr Gbagbo's regime. However, the evidence does not suggest that this approval also encompassed the commission of crimes against the civilian population.
817. There is evidence that some individual members of the irregular groups may have engaged in criminal conduct against civilians. However, the few examples of such criminal behaviour are highly specific and tied to a very limited number of individuals. This cannot be the basis to conclude that the general membership of the irregular forces was prone to committing violence against civilians. It therefore cannot be concluded that involvement of irregular forces in FDS

operations would necessarily have significantly increased the risk that violent crimes against the civilian population would be committed.

e) Blé Goudé's command and control over irregular forces

818. The Prosecutor alleged that Mr Blé Goudé exercised control over the 'pro-Gbagbo youth' by mobilising them to commit crimes, financing, training, arming, and playing an essential role in their recruitment and enlistment into the FDS.²⁰⁰³ This control also extended to militia like the GPP and the FLGO,²⁰⁰⁴ and mercenaries.²⁰⁰⁵

819. The examination of these allegations requires an assessment of Mr Blé Goudé's role as a youth leader, including his relations with other youth leaders as well as an assessment of his relationship with Mr Gbagbo. Having regard to the conclusions reached so far in respect of the

(1) Role as a youth leader

820. The Prosecutor alleged that Mr Blé Goudé had a role in ensuring joint control over the pro-Gbagbo youth, militia groups, and mercenaries.²⁰⁰⁶ Mr Blé Goudé is alleged to have been the leader or 'at minimum' regarded as such by the youth.²⁰⁰⁷ According to the Prosecutor, his alleged authority is demonstrated by his leadership of the *Galaxie Patriotique*,²⁰⁰⁸ including playing an important role in the creation of the armed wing called the GPP,²⁰⁰⁹ to help indoctrinate the

²⁰⁰³ Mid-Trial Brief, para. 772.

²⁰⁰⁴ Mid-Trial Brief, para. 773.

²⁰⁰⁵ Mid-Trial Brief, para. 775.

²⁰⁰⁶ Mid-Trial Brief, para. 770.

²⁰⁰⁷ Mid-Trial Brief, para. 771.

²⁰⁰⁸ Mid-Trial Brief, para. 21.

²⁰⁰⁹ Mid-Trial Brief, para. 773.

youth through its various affiliated groups, composed of youth groups referred to as *jeunes patriotes*.²⁰¹⁰ Out of these groups, Mr Blé Goudé is alleged to have created the COJEP.²⁰¹¹

821. In the allegations, Mr Blé Goudé's position as a youth leader is exemplified by several factors, including his meetings and relations with other youth leaders, as well as his public speeches addressing the youth. For this reason, in assessing Mr Blé Goudé's role as a youth leader, it is imperative to also assess it together with his speeches and statements²⁰¹² and allegations concerning financing the youth groups.²⁰¹³
822. As regards Mr Blé Goudé's alleged relations with Serge Koffi, it is noted that Serge Koffi is shown to have made certain statements that were broadcast on the RTI that may suggest some link with Mr Blé Goudé, including repeating calls for public uprising made by Mr Blé Goudé.²⁰¹⁴ It is noted that Youssouf Fofana played a role within the *Galaxie Patriotique* however very little is known about his relationship with Mr Blé Goudé to assess whether Mr Blé Goudé may have had any influence and/or control over him.²⁰¹⁵ Further, the conclusions reached in respect of Eugène Djué's role are imported by reference, noting in particular that the evidence suggests that Eugène Djué and Mr Blé Goudé did not agree on the means to be adopted in achieving the objectives of their respective groups.²⁰¹⁶

²⁰¹⁰ Mid-Trial Brief, para. 771.

²⁰¹¹ Mid-Trial Brief, para. 22.

²⁰¹² See IV.F - Public expressions of the alleged common plan/policy.

²⁰¹³ See IV.D.2.b)(2)(f) - Payments linked to Mr Blé Goudé.

²⁰¹⁴ See IV.D.2.b)(2)(a)(ii) - Serge Koffi.

²⁰¹⁵ See IV.D.2.b)(2)(a)(iii) - Yousouf Fofana.

²⁰¹⁶ See IV.D.2.b)(2)(a)(i) - Eugène Djué.

823. P-0097's testimony as regards Mr Blé Goudé's relative position vis-à-vis Moussa Zéguen Touré, Eugène Djué, and Damana Pickass is informative. P-0097 testified that

[Zéguen] was of the mind that [...] by virtue of the fact that he had set up the FESCI before Blé Goudé, and because he was part of a generation that had come before Blé Goudé, he thought in 2002 that he could not be part of this alliance. And the same applied for maréchal Djué. He too for the same question of succession and generation was of the opinion that he would need to take a pseudonym, that of marshal or maréchal, and this was because he had been a general. Just after IPO, he was general, and then Soro and Damana Pickass. And after Pickass, there was the generation of Blé Goudé. So in the country we say he's my petit, mon petit. So he's my younger brother, if you like. So he thought that Blé Goudé was his petit, his younger brother, so he thought that he could not in any way come under him or be his subordinate.²⁰¹⁷

824. Having regard to these conclusions together, it appears that Mr Blé Goudé did have a role as one of the youth leaders within Ivorian politics. He has been demonstrated to be one of the youth leaders forming part of the *Galaxie Patriotique*. However, it should be reiterated that it has not been demonstrated that he had command and control over all constitutive youth groups of the *Galaxie Patriotique*.

825. As discussed above, apart from COJEP, Mr Blé Goudé did not have a position of leadership or influence over the FPI, the UPLTCI,²⁰¹⁸ the CRAC,²⁰¹⁹ and the *Voix du Nord*²⁰²⁰ such that he could exercise command and control over its members or their respective leaders. Such control is also not shown to have been demonstrated through Mr Blé Goudé's alleged role in financing *agoras* and *parlements*.²⁰²¹

²⁰¹⁷ P-0097, T-48 dated 8 June 2016, pp. 38-39.

²⁰¹⁸ See IV.D.2.b)(2)(a)(i) - Eugène Djué.

²⁰¹⁹ See IV.D.2.b)(2)(a)(ii) - Serge Koffi.

²⁰²⁰ See IV.D.2.b)(2)(a)(iii) - Yousouf Fofana.

²⁰²¹ See IV.D.2.b)(2)(f) - Payments linked to Mr Blé Goudé.

826. As regards the FESCI,²⁰²² the evidence discussed in respect of the allegations concerning their arming,²⁰²³ training,²⁰²⁴ and their limited collaboration with the FDS during the RTI March are recalled.²⁰²⁵ To reiterate, the conclusions reached in respect of their arming and training do not demonstrate that their arming took place at the behest of either of the two accused. While certain members of the FESCI may have been trained by the GPP in October 2010 and some may have been arresting and detaining individuals in the context of the RTI march in December 2010 to be handed over to the FDS,²⁰²⁶ the evidence does not suggest that these members were doing so upon receiving instruction(s) from Mr Blé Goudé.²⁰²⁷ It is also noted that very little is known of the role played by FESCI leader Augustin Mian during the post-electoral crisis. He is shown to have attended the meeting of youth leaders on 14 December 2010 called by Mr Blé Goudé²⁰²⁸ and repeated Mr Gbagbo's request for the UN to leave Côte d'Ivoire.²⁰²⁹ For this reason, it cannot be concluded that Mr Blé Goudé directed the 'pro-Gbagbo youth groups'. Mr Blé Goudé's control over the GPP is discussed below.

(2) Role vis-à-vis the GPP

827. The Prosecutor alleged that Mr Blé Goudé' was 'fundamental for the exercise of control of the GPP' by the members of the alleged 'inner circle'.²⁰³⁰ The Prosecutor exemplified this by (i) his 'important role in its creation', (ii) his

²⁰²² See IV.D.2.b)(1) - Emergence of 'youth' groups following the *coup d'état* of 2002, footnote 1148.

²⁰²³ See IV.D.2.b)(3)(b) - Arming of FESCI.

²⁰²⁴ See IV.D.2.b)(4)(b) - GPP training other youths, para. 627.

²⁰²⁵ See IV.D.2.d)(1) - GPP checkpoints, para. 764.

²⁰²⁶ See VI.H.5 - Pro-Gbagbo forces arrested and detained demonstrators.

²⁰²⁷ See also V.B.3 - Instructions given to irregular forces.

²⁰²⁸ See V.B.3.a) - Mr Blé Goudé's mobilisation of *jeunes patriotes* to protect the RTI, para. 562.

²⁰²⁹ RTI broadcast dated 28 December 2011, CIV-OTP-0061-0586, transcript at CIV-OTP-0087-0191 at 0192-0193.

²⁰³⁰ Mid-Trial Brief, para. 260.

personal links with GPP members, (iii) provisions of financial support and food to the GPP, (iv) training of the youth belonging to COJEP and FESCI by GPP members, and (v) his role in deciding on the nomination and replacement of GPP Presidents.²⁰³¹

828. At the outset, the conclusions as regards the emergence of the GPP are recalled.²⁰³² Mr Blé Goudé is shown to have been present at the meeting where the GPP was named on 23 March 2003 following a meeting of the leaders of the *Galaxie Patriotique*, which included Mr Blé Goudé.²⁰³³ It is not established that Mr Blé Goudé meaningfully contributed to the GPP's creation simply by being present at the meeting in 2003. The conclusions reached thus far concerning Mr Blé Goudé's role in financing irregular groups²⁰³⁴ as well as his role in purportedly instructing the training activities by the GPP are recalled.²⁰³⁵ His personal links with GPP members together with his role in deciding on the nomination and replacement of GPP members is discussed below.

829. P-0435 testified that Charles Groguhet, the founder of the GPP, 'was the link between [the GPP] and Charles Blé Goudé'.²⁰³⁶ Charles Groguhet was replaced by Moussa Zéguen Touré in 2003.²⁰³⁷ P-0097 testified that both Moussa Zéguen Touré and Charles Groguhet considered themselves the GPP's founding father, possibly to the exclusion of the other. P-0097 concluded in the end however that 'at the very outset', Charles Groguhet was the President and Moussa Zéguen

²⁰³¹ Mid-Trial Brief, para. 260. Response, para. 1199.

²⁰³² See IV.D.2.b)(1)(c) - Groupement des Patriotes pour la Paix – GPP.

²⁰³³ P-0435, T-88 dated 19 October 2016, p.10; T-93 dated 27 October 2016, pp. 37-41.

²⁰³⁴ See IV.D.2.b)(2)(f) - Payments linked to Mr Blé Goudé.

²⁰³⁵ See IV.D.2.b)(4)(a) - GPP training activities; IV.D.2.b)(4)(b) - GPP training other youths.

²⁰³⁶ P-0435, T-87 dated 18 October 2016, p. 5.

²⁰³⁷ P-0435, T-87 dated 18 October 2016, p. 11.

Touré was just under him.²⁰³⁸ Mr Blé Goudé is not shown to have been involved in this decision to replace Charles Groguehet.

830. On the evidence, the link between Mr Blé Goudé and Moussa Zéguen Touré appears non-existent. The Prosecutor pointed to P-0625's testimony that Moussa Zéguen Touré was present at the meeting at *Hôtel de Ville Cocody* on 14 December 2010 called by Mr Blé Goudé and alleged that this demonstrated that he had personal links with Mr Blé Goudé.²⁰³⁹ Apart from Moussa Zéguen Touré's presence, P-0625's testimony does not provide more details about the nature of link between the two. It is also noted that Moussa Zéguen Touré was not the leader of the entire GPP at the time of this meeting in 2010, if at all. It has not been pointed out if he otherwise exercised influence over any GPP members in December 2010. Even if there had been a personal link between the two, it is unclear how this purported link operated in reality, in light of the factions that existed within the GPP.²⁰⁴⁰
831. Rather, as discussed below, there appears to have been some link between Mr Blé Goudé and Bernard Bouazo Yoko Yoko, the person who became the GPP leader in 2009 following divisions within the GPP led by Moussa Zéguen Touré.
832. As regards the relationship between Mr Bouazo, a leader of the GPP, and Mr Blé Goudé, it is noted that P-0435 testified about the affinities between Bouazo, Damana Pickass, and Touré and explained that

²⁰³⁸ See P-0097, T-48 dated 8 June 2016, p. 41.

²⁰³⁹ Mid-Trial Brief, para. 260.

²⁰⁴⁰ It is noted that, in the Response, the Prosecutor additionally pointed to [REDACTED] testimony about an operation in 2004 where Moussa Zéguen Touré had allegedly received instructions from Mr Blé Goudé. [REDACTED]. [REDACTED] The full facts of this incident are not part of the charges. There is no indication Moussa Zéguen Touré and Mr Blé Goudé had had links in 2004 that are relevant to discussing their relationship during the post-election crisis. [REDACTED]. It is unpersuasive that this is evidence of their personal links with each other. In the absence of the complete account of 2004 events, it cannot be concluded that Moussa Zéguen Touré was acting upon instruction from Mr Blé Goudé during these events. On this basis, it cannot be inferred that such connection in 2004 is also reflective of Moussa Zéguen Touré's links to Mr Blé Goudé or otherwise indicative of him taking Mr Blé Goudé's instruction during the post-election crisis.

Bouazo was a member of the FPI before he became responsible for the GPP. And you see, when there were rivalries between him and Mr Zéguen, and I'm talking about within or amongst the leadership of the Galaxie Patriotique,[...] within or amongst the leadership of the GalaxiePatriotique,it was Damana Pickass who gave him [Bouazo] the most support. [...] And Pickass had more influence on him [Bouazo] than Mr Blé Goudé had over him.²⁰⁴¹

833. There is evidence on the record that Mr Blé Goudé was personally in contact with P-0435, who was subordinated to Bouazo. For this reason, interactions between P-0435 with Mr Blé Goudé are discussed as part of this assessment. Certain instructions that relate to P-0435 and his communication with Mr Blé Goudé have also been addressed.
834. P-0435 testified that Mr Blé Goudé and he met in October 2010. The former had told P-0435 *inter alia*, that members of the GPP would be inserted into the army and that the GPP should make an inventory of the locations where the RHDP were holding meetings, and find out if they were hosting anyone in their homes.²⁰⁴² To the extent that Mr Blé Goudé appears to be referencing the integration of GPP elements into the FDS, reference is made to the conclusions above.²⁰⁴³ As regards the alleged instructions concerning gathering information about the RHDP activities, the Prosecutor has not developed the case as to what end the information about the RHDP activities was going to be used. Nonetheless, it is noted that all charged and uncharged crimes in the present case involving alleged attacks on RHDP personnel or premises took place in locations that were publicly associated with the RHDP or constituted unauthorised operations.²⁰⁴⁴ It is not alleged, nor has it been demonstrated that information

²⁰⁴¹ P-0435, T-94 dated 31 October 2016, pp. 10-11.

²⁰⁴² P-0435, T-94 dated 31 October 2016, p. 6.

²⁰⁴³ See IV.D.2.b)(3)(d) – Conclusion.

²⁰⁴⁴ In this regard, it is noted that alleged crimes at Wassakara on 1-2 December 2010 took place at RDR headquarters. See 0 -

gathered about RHDP members by P-0435 and then provided to the accused resulted in one or more of the alleged crimes.

835. This is also the case with the Prosecutor's allegation that Mr Dibopieu instructed P-0435 to 'follow the movements of RHDP leaders'.²⁰⁴⁵ P-0435 testified that in their meeting that took place prior to the first round of elections they established that they 'were supposed to monitor the movements of the RHDP leaders in the communes and to try and find out whether there were suspicious individuals in their houses who had just arrived to live in their residences.'²⁰⁴⁶ In the a second meeting that took place between P-0435 and Dibopieu the second time, P-0435 testified that he then mentioned to Mr Dibopieu 'the various locations where the

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1. 1-2 December 2010 – RDR Office in Wassakara. The alleged crimes on 25 December 2010 in Cocody took place at PDCI headquarters. *See* 1613 - Finally, it is relevant to point out that the available evidence is incapable of supporting a finding of the existence of a pattern of the use of firearms/grenades against political demonstrators. First, in relation to the identified witnesses, it is not possible, on the basis of the available evidence, to determine who caused their death/injuries in 63 out of 76 instances. Second, even if all the identified victims could be attributed to the FDS or pro-Gbagbo irregular forces, this would still be only anecdotal evidence when seen in light of the scale of the RTI march and the hundreds of confrontations between marchers and law enforcement elements there must have been. There is thus no scope for any argument that the intent to attack the civilian demonstrators can be inferred from what happened on the ground.

25 December 2010 – PDCI headquarters in Cocody. The alleged killing of religious personnel in Williamsville on 19 March 2011 took place at his home [REDACTED]. *See* VI.U - 19 March 2011 – Killing of religious personnel in Williamsville.

²⁰⁴⁵ Mid-Trial Brief, para. 93.

²⁰⁴⁶ P-0435, T-89 dated 20 October 2016, p. 22.

members of the RHDP met for official or unofficial meetings or rallies'.²⁰⁴⁷ P-0435 added that they talked about 'the houses that were suspected of hosting members of the Forces Nouvelles who had infiltrated Abidjan'.²⁰⁴⁸ It is also noted that according to P-0435 these measures were preventive.²⁰⁴⁹ P-0435 testified that Mr Dibopieu had told him to convey the information shared during this meeting to Mr Blé Goudé.²⁰⁵⁰

836. Having regard to the evidence concerning the meetings between P-0435 and Mr Blé Goudé, it cannot be concluded that the latter, by virtue of requesting information from P-0435, who also worked in providing intelligence,²⁰⁵¹ demonstrated command and control over the GPP. It is noted, in this regard, that P-0435 clarified about his alleged meeting with Mr Blé Goudé in October 2010 that 'when we talked to each other [...] there was no friendly relationship between us'²⁰⁵² and intimated that this was the only time they were in contact during the post-electoral crisis. Bouazo, being P-0435's superior, is also not demonstrated to have personal links with Mr Blé Goudé that could demonstrate any level of influence and/or control by Mr Blé Goudé over Bouazo's actions. On this basis, and having regard to the conclusions reached and considered above, it is difficult to see how a reasonable trial chamber could find that there is sufficient evidence to demonstrate that Mr Blé Goudé had command and control over the GPP and its members.

²⁰⁴⁷ P-0435, T-89 dated 20 October 2016, p. 21.

²⁰⁴⁸ P-0435, T-89 dated 20 October 2016, p. 21.

²⁰⁴⁹ P-0435, T-89 dated 20 October 2016, p. 22.

²⁰⁵⁰ P-0435, T-89 dated 20 October 2016, p. 22.

²⁰⁵¹ See P-0435, T-88 dated 19 October 2016, p. 4. P-0435 testified that he would transmit information to the state intelligence services on 'how the rebellion prepared itself, who – what areas might be taking in those members of the rebellion, and also, especially what the instructions were being given to the supporters in Abidjan'. P-0435 also testified that when he would receive instructions concerning gathering of information, he would then transmit that information to 'Bouazo and other people in charge of the intelligence department'.

²⁰⁵² P-0435, T-94 dated 31 October 2016, p. 10.

(3) Calls to enlist

837. Having regard to the conclusions reached so far, it is noted that the Prosecutor's allegations also extend to Mr Blé Goudé exercising control over 'pro-Gbagbo youth', regardless of whether they were members of particular youth groups. These allegations concern his calls to the youth to enlist in the FDS and his calls to mobilise them to commit crimes. These have been discussed in turn.
838. The Prosecutor alleged that in the 19 March rally at Yopougon, Mr Blé Goudé called for the youth to enrol in the army.²⁰⁵³ The Prosecutor also used this to demonstrate that Mr Blé Goudé maintained ties with youth leaders, conveying to them decisions taken by Mr Gbagbo and the 'inner circle'.²⁰⁵⁴ P-0625 was shown the RTI broadcast of this rally²⁰⁵⁵ and he identified Jean-Yves Dibopieu, Maho Glofiéhi, Richard Dakoury, Serges Kassy, Navigué Konaté,²⁰⁵⁶ Mian Augustin and Idriss Ouattara.²⁰⁵⁷ The Prosecution alleged that these events show that Mr Blé Goudé contributed to the implementation of the alleged Common Plan.²⁰⁵⁸
839. Before turning to the analysis concerning the calls to enlist during the post-electoral crisis, the conclusions reached in respect of the integration of the youth in the FDS in 2003 are recalled.²⁰⁵⁹
840. The Prosecutor pointed to Mr Blé Goudé's interview dated 20 March 2011²⁰⁶⁰ following the rally on 19 March 2011 explaining his call for enlistment.²⁰⁶¹ In this

²⁰⁵³ Mid-Trial Brief, paras 302, 844.

²⁰⁵⁴ Mid-Trial Brief, para. 837.

²⁰⁵⁵ P-0625, T-28 dated 10 March 2016, p. 67 showing of RTI Broadcast, undated, CIV-OTP-0043-0269, transcript at CIV-OTP-0047-0611.

²⁰⁵⁶ P-0625, T-28 dated 10 March 2016, p. 70.

²⁰⁵⁷ P-0625, T-28 dated 10 March 2016, p. 71.

²⁰⁵⁸ Mid-Trial Brief, para. 826.

²⁰⁵⁹ See IV.D.2.b)(5) - Integration into the FDS.

²⁰⁶⁰ See IV.F.2.ww) - 20 March 2011 - Blé Goudé interview on RTI.

interview, Mr Blé Goudé encourages the youth to enrol in the regular army and to participate in the ‘liberation’ of their country in a ‘legal’ manner; he specifies that Côte d’Ivoire should not be governed in a manner involving the distribution of weapons to civilians who will then slaughter other people.²⁰⁶² He further states that he does not want a civil war in the country because *‘qu'on ne trouvera pas un pays où il n'y a que des pro-OUATTARA en faisant disparaître les pro-GBAGBO. Tout comme on ne trouvera jamais un pays avec des pro-GBAGBO en faisant disparaître les pro-OUATTARA, cela n'existe pas’*.²⁰⁶³ Contrary to the Prosecutor’s assertion, these words of tolerance do not amount to ‘legitimising the arming of the youth’.²⁰⁶⁴

841. According to General Mangou, following Mr Blé Goudé’s rally of 19 March 2011 and the interview on 20 March 2011, Mr Blé Goudé came to visit General Mangou at his residence and explained the purpose of his call.²⁰⁶⁵ General Mangou testified about the exchange they had and it does not reflect from this that these actions were taken following an agreement or a decided plan. General Mangou testified that he considered that Mr Blé Goudé had made the call without informing him; Mr Blé Goudé explained to General Mangou that it was a ‘strategy’ since ‘he knew there were no ammunition and weapons, he called the young people and the numbers could influence the enemy and prevent them from attacking us’ after which General Mangou did not see the necessity to go on the radio station to say anything else.²⁰⁶⁶

²⁰⁶¹ Mid-Trial Brief, para. 589. This interview has also been referenced for the allegation that Mr Blé Goudé thanked the youth for setting up roadblocks in his interview dated 20 March 2011. *See also* IV.F.2.ww) - 20 March 2011 - Blé Goudé interview on RTI.

²⁰⁶² RTI Broadcast dated 20 March 2011, CIV-OTP-0064-0092 (confidential), transcript at CIV-OTP-0097-0161 at 0162-0163.

²⁰⁶³ RTI Broadcast dated 20 March 2011, CIV-OTP-0064-0092 (confidential), transcript at CIV-OTP-0097-0161 at 0162-0163.

²⁰⁶⁴ Response, para. 1379.

²⁰⁶⁵ P-0009, T-196 dated 28 September 2017, p. 68.

²⁰⁶⁶ P-0009, T-196 dated 28 September 2017, pp. 63-64.

842. There is also no evidence to demonstrate that the persons who responded to the call to enlist and appeared at the army staff headquarters on 21 March 2011 were subsequently enlisted and/or otherwise recruited or armed. The Prosecutor alleged that on 22 March 2011, the youth began to enrol at decentralised enrolment points ‘according to’ General Mangou’s and Mr Blé Goudé’s ‘instructions’.²⁰⁶⁷ Having regard to the video of the RTI broadcast cited in support, it is noted that Mr Blé Goudé made reference to a ‘decision’ to decentralise the enlistment so that the youth would not have to pay for transportation, presumably to the army staff headquarters, and could stay in their neighbourhoods, keeping watch and registering for the army at the same time.²⁰⁶⁸
843. Notwithstanding that the youth may have registered for the army in their neighbourhoods, this is not evidence of the fact that these persons were all actually recruited in the army. The Prosecutor has not pointed to any piece of evidence to suggest that these persons were enrolled in the army following this call.²⁰⁶⁹ Having regard to General Mangou’s testimony concerning lack of weapons and ammunition, it is also not possible to draw an inference from Mr Blé Goudé’s words in his RTI interview that the youth who registered in the neighbourhoods were subsequently recruited into the army.
844. It is noted that the Prosecutor conceded that following Mr Blé Goudé’s calls to enrol, the ‘official enlistment did not materialise’ but that ‘pro-Gbagbo youth were provided with weapons and openly collaborated with militias, mercenaries and the remaining FDS’.²⁰⁷⁰ The Prosecutor does not cite evidence in support of this assertion. Having regard to these conclusions as well as those reached in respect of the arming and collaboration with the FDS, especially after 19 March

²⁰⁶⁷ Mid-Trial Brief, para. 596.

²⁰⁶⁸ RTI Broadcast dated 22 March 2011, CIV-OTP-0069-0376, transcript at CIV-OTP-0087-0744 at 0746.

²⁰⁶⁹ See IV.D.2.b)(5) - Integration into the FDS.

²⁰⁷⁰ Mid-Trial Brief, para. 599.

2011, it cannot be concluded that the youth were recruited into the army following Mr Blé Goudé's call or that those who signed up for recruitment received weapons.

845. In addition to this, it is also noted that during this broadcast, Mr Blé Goudé used the following words which demonstrated his intent in respect of the recruitment

Le fait qu'un État recrute des jeunes gens pour former son armée, n'exclut pas le dialogue. C'est pourquoi je dis que dans les États modernes, voyez, on ne distribue pas des Kalachnikovs dans des quartiers, qu'on met sous les habits, on est en train de boire du thé et quand des gens passent on les fusille, et on se fait appeler commando invisible. Moi, je pense que la CÔTE D'IVOIRE que l'on veut diriger n'est pas celle-là. C'est pourquoi, j'en appelle, ici encore, à la conscience de nos leaders. Moi, je suis convaincu que, tôt ou tard, ils finiront par s'asseoir. Mais s'asseoir après la guerre, je pense qu'il est mieux qu'on s'asseye avant la guerre. Vous comprenez ? Moi, j'ai foi que tous ceux qui viennent ici, ils cherchent un nom à gagner sur le dos de la CÔTE D'IVOIRE. Un nom à gagner dans le sens de la CÔTE D'IVOIRE. Mais nous, Ivoiriens, que voulons nous ? C'est pourquoi j'en appelle tout de suite à la cessation des violences dans les quartiers: ethnies contre ethnies, RHDP contre LMP. Tout cela n'honore pas la CÔTE D'IVOIRE. Aujourd'hui quand on parle de la CÔTE D'IVOIRE, l'image c'est la guerre.²⁰⁷¹

846. To the extent that the abovementioned episode may show coordination between Mr Blé Goudé and General Mangou, it must be noted that General Mangou asked the youth who had responded to Mr Blé Goudé's call to return home. General Mangou was advised by his director of human resources to speak to the waiting youth who had presented themselves at the army staff headquarters on 21 March 2011 following the call. General Mangou testified that

I congratulated them for their commitment to try and defend the integrity of the territory, but that I would hand them weapons only if the last FDS soldier would have fallen. Blé Goudé approached me and he told me that we should pretend to be distributing weapons to the young people. And I told him, no, we cannot do that. We do not have weapons. We do not have ammunition. If my men see that I am carrying out distribution of weapons, they will not be happy that soldiers are not armed and weapons are being distributed to civilians. So I refused. I refused and I asked the young people to go back to their neighbourhoods for those who wanted to enrol, and that they should go to the town halls to register themselves. That is what I told the young people.²⁰⁷²

²⁰⁷¹ RTI Broadcast dated 22 March 2011, CIV-OTP-0069-0376, transcript at CIV-OTP-0087-0748 at 0749.

²⁰⁷² P-0009, T-196 dated 28 September 2017, p. 68.

847. P-0087 testified that he filmed ‘what happened as a result of [Mr Blé Goudé’s call]’ and saw a ‘huge crowd of young men, very similar to the ones who were at [his] rally’ and they were there to ‘join the army as requested’.²⁰⁷³ P-0087 explained that he was surprised that ordinary young men, including journalists like him, could walk into the army base; to him, it seemed like ‘the soldiers on the gate who would normally probably stop people like us from just wandering in and out were not doing so. They didn’t seem to have the authority, in fact, to be able to do so’.²⁰⁷⁴ P-0087 described that it was clear to him that ‘the problem was their army base was swarmed with young men, random people who were not trained, who were not disciplined[...] and they seemed very uncomfortable with it all’.²⁰⁷⁵

848. In sum, the evidence suggests that Mr Blé Goudé may have intended to contribute to the youth registering for the army and that some of those youths may have so registered following his calls. However, it is not clear to what extent this was a genuine attempt to encourage the youth to enrol into the FDS or whether it was primarily an exercise in demonstrating strength to the opposing forces. In any event, the Prosecutor has not pointed to any evidence to suggest that this call for enlistment was made with the understanding, expressly or impliedly, that these youths would or should commit crimes against civilian population as members of the FDS.

(4) Calls to erect roadblocks

849. The Prosecutor cited to the meeting that took place on 14 December 2010 between Mr Blé Goudé and the youth leaders concerning the RTI march.²⁰⁷⁶ P-

²⁰⁷³ P-0087, T-177 dated 12 July 2017, p. 54.

²⁰⁷⁴ P-0087, T-177 dated 12 July 2017, p. 56.

²⁰⁷⁵ P-0087, T-177 dated 12 July 2017, p. 58.

²⁰⁷⁶ See V.B.3.a) - Mr Blé Goudé’s mobilisation of *jeunes patriotes* to protect the RTI.

0625 testified that the FDS had the ‘first duty’ of protecting the RTI and that a series of roadblocks was setup in order to stop Mr Ouattara’s supporters from going to the RTI.²⁰⁷⁷ P-0625 considered that, by that time, things were at the level that ‘it was no longer necessary for any calls or any orders to be issued’ and that

[e]verybody had a role to play and each person knew exactly what they had to do; namely, protecting their country, protecting the regime which was in power. So it was no longer necessary for any calls or any announcements to be made. Everybody knew. The patriots were ready at all times to defend their fatherland. So once people knew that on a particular day Mr Ouattara--president, Mr Ouattara, had called for his supporters to go to the street, the Young Patriots would be mobilised automatically to respond to that. If they knew, for example, that people were going to march on the national television, they knew exactly that there was need to protect that television station, they knew exactly what needed to be done and that is why they set up those roadblocks in order to stop the demonstrators from getting there. And you know that these types of civilian roadblocks, when they are set up by civilians and other civilians are marching towards them, that is a recipe for confrontation, for clashes. So that's how people died. I don't know how many, I don't know who fired, but people died.²⁰⁷⁸

850. In the Response, the Prosecutor uses P-0625’s testimony to assert that, despite the fact that the FDS and the *jeunes patriotes* may have been managing ‘separate roadblocks’, it nonetheless demonstrated that the FDS and the *jeunes patriotes* shared ‘operational objectives’ that day.²⁰⁷⁹

851. The Prosecutor also alleged that the violence that broke out later in February in Yopougon was a direct result to Mr Blé Goudé’s call.²⁰⁸⁰ On 24 February 2011 Mr Blé Goudé instructed the youth, via RTI broadcast, to prevent UNOCI movement and to meet him at *Bar le Baron* the next day in order to receive the *mot d’ordre*.²⁰⁸¹ On that occasion, he asked the crowd to watch over their neighbourhoods²⁰⁸². The Prosecutor argues that these instructions sparked a wave

²⁰⁷⁷ P-0625, T-27 dated 9 March 2016, pp. 18-19.

²⁰⁷⁸ P-0625, T-27 dated 9 March 2016, p. 19.

²⁰⁷⁹ Response, para. 1692.

²⁰⁸⁰ See Mid-Trial Brief, para. 552 *et seq.*

²⁰⁸¹ Untitled, undated, CIV-OTP-0018-0006, at 02:45; *see also* RTI Broadcast dated 24 February 2011, CIV-OTP-0026-0020, at 39:41.

²⁰⁸² Audio / Video Material, undated, CIV-OTP-0043-0269; *see also* RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:05.

of roadblocks all around Yopougon and that it unleashed the violence of the second charged incident. The Prosecutor presents the events as causally linked. According to her narrative, the incident seems to have taken place in a context of social peace. That is why, according to the Prosecution, the correlation between the accused's *mot d'ordre* and the violence seems to equate to causation.

852. The ANSI report from March 2011 stated that some *Jeunes Patriotes* were profiting from extortions made at the roadblocks in Yopougon both from “*les populations ivoiriennes et étrangères*”.²⁰⁸³ It also states that the youth manning roadblocks in Yopougon considered the FDS personnel to be cowards and claimed to be ready to replace them to protect the population.²⁰⁸⁴
853. The Prosecutor alleged that on 4 March 2011, Mr Blé Goudé, rather than condemn the violence perpetrated at these roadblocks, actively encouraged their continued use.²⁰⁸⁵ Contrary to the allegation, in this interview, Mr Blé Goudé stated that

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 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 tout, moi je suis panafricaniste dans l'âme. Donc il faut éviter cela, parce qu'on veut nous pousser à la faute.²⁰⁸⁶

854. The Prosecutor cited Mr Blé Goudé's statement on 14 March 2011 to allege that he actively encouraged the continued use of the roadblocks.²⁰⁸⁷ From this

²⁰⁸³ Des exactions commises par les membres des groupes d'auto défense sur les populations de Yopougon, 14 March 2011 CIV-OTP-0045-0127 (confidential) at 0128.

²⁰⁸⁴ Des exactions commises par les membres des groupes d'auto défense sur les populations de Yopougon, 14 March 2011, CIV-OTP-0045-0127 (confidential). *Note* that the report suggests that the youth in the roadblocks should be organised and given the appropriate support. However, there is no evidence that governmental support has been provided to the youths operating these roadblocks as Yopougon.

²⁰⁸⁵ Mid-Trial Brief, paras 569-572; *see also* para. 615.

²⁰⁸⁶ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2224.

²⁰⁸⁷ Mid-Trial Brief, paras 253, 578, 809, 843, 848, 870; *see also* para. 615.

statement, it appears that whilst Mr Blé Goudé was congratulating those who erected roadblocks to protect their neighbourhoods, and stated that the result was that they had discouraged the rebels, he qualified this by saying, above all, be polite and avoid committing crimes.²⁰⁸⁸ The Prosecutor also pointed to the rally on 18 March 2011²⁰⁸⁹ where similarly Mr Blé Goudé reiterates to continue with the roadblocks but to do this with *'beaucoup de politesse, avec beaucoup de gentillesse, mais avec beaucoup de fermeté aussi'*.²⁰⁹⁰ The Prosecutor pointed to Mr Blé Goudé's interview dated 20 March 2011 following the rally on 19 March 2011 in which he congratulated and thanked the *Jeunes Patriotes* manning the roadblocks.²⁰⁹¹ Having regard to the interview, it is noted that whilst Mr Blé Goudé did thank and congratulate the youth manning the roadblocks, his words expressly referred to those persons who were doing this *'avec politesse et qui aujourd'hui sont en train de dissuader ceux qui veulent semer le désordre dans le pays'*.²⁰⁹²

855. The Prosecutor alleged that, in his interview on 21 March 2011, Mr Blé Goudé stated that since the youth had started to set up the roadblocks, the opponents had begun to be discouraged.²⁰⁹³ In this interview, Mr Blé Goudé did in fact say that the *"adversaires"* were starting to be discouraged but also requested for everyone to *"stay calm"* and to stay at home.²⁰⁹⁴

²⁰⁸⁸ RTI Broadcast dated 14 March 2011, CIV-OTP-0069-0371, transcript at CIV-OTP-0087-0724 at 0725-0726.

²⁰⁸⁹ Mid-Trial Brief, paras 581-582, 865.

²⁰⁹⁰ RTI Broadcast dated 18 March 2011, CIV-OTP-0069-0374, transcript at CIV-OTP-0087-0727 at 0728-0729.

²⁰⁹¹ Mid-Trial Brief, paras 589, 810, 849, 871.

²⁰⁹² RTI Broadcast dated 20 March 2011, CIV-OTP-0064-0092 (confidential), transcript at CIV-OTP-0097-0161 at 0162-0163.

²⁰⁹³ Mid-Trial Brief, para. 595.

²⁰⁹⁴ RTI Broadcast dated 21 March 2011, CIV-OTP-0069-0375, transcript CIV-OTP-0087-0741 at 0742.

856. The Prosecutor alleged that on 26 March 2011, during an interview with P-0087, Mr Blé Goudé apologised to P-0087 on behalf of the *jeunes patriotes* who had robbed him at a roadblock.²⁰⁹⁵ During this interview, Mr Blé Goudé is seen to be explaining that the roadblocks were a result of the entry of rebels into Abidjan and mixing with the population; he stated that the people ‘over and beyond just the Young Patriots’ resort to setting up roadblocks to ‘check who comes and who goes into their neighbourhood’.²⁰⁹⁶ From P-0087’s testimony, the roadblock appeared to have been manned by someone speaking English with a Liberian accent together with a less experienced Ivorian person, both armed; they attempted to rob P-0087 and his colleagues of their camera, money and phones when a person wearing a police uniform encouraged them to give the camera back, which they did.²⁰⁹⁷ Mr Blé Goudé reportedly apologised for this incident.²⁰⁹⁸ In another of P-0087’s videos, Mr Blé Goudé stated that in a revolution, there are always collateral effects.²⁰⁹⁹ From his words alone, it is not known whether Mr Blé Goudé appears to be talking about the violence that is taking place at the roadblocks or referring to the ‘potential damage to the country’ as P-0087 suggested during his testimony.²¹⁰⁰ From this interview, it cannot be inferred that Mr Blé Goudé was encouraging or endorsing violence at the roadblocks.

857. The Prosecutor points to Mr Blé Goudé’s ‘last major public appearance before leaving the country’ in further support of her argument that Mr Blé Goudé was encouraging and endorsing the actions of the ‘pro-Gbagbo forces’.²¹⁰¹ The

²⁰⁹⁵ Mid-Trial Brief, para. 834.

²⁰⁹⁶ BIN ICC IVORY COAST CLIPS, 26 March 2011, CIV-OTP-0015-0547 (confidential), transcript at CIV-OTP-0044-2519 (confidential) at 2523. English translation from P-0087, T-177 dated 12 July 2017, p. 79.

²⁰⁹⁷ P-0087, T-177 dated 12 July 2017, pp. 63-67; *see also* pp. 67-69. *See further* p. 81 where P-0087 testified that they were able to get the phones back by using their police contacts.

²⁰⁹⁸ BIN ICC IVORY COAST CLIPS, 26 March 2011, CIV-OTP-0015-0547 (confidential), transcript at CIV-OTP-0044-2519 (confidential) at 2523.

²⁰⁹⁹ Untitled, 26 March 2011, CIV-OTP-0015-0548 (confidential), transcript at CIV-OTP-0019-0128 (confidential) at 0129.

²¹⁰⁰ P-0087, T-177 dated 12 July 2017, p. 84.

²¹⁰¹ Mid-Trial Brief, para. 598.

Prosecutor points to the rally that took place on 26 March 2011 that was filmed by P-0087 to allege that Mr Blé Goudé stated that ‘those who have closed their shops and who have fled Abidjan, all they have to do is go, but when they return they will find Ivorians in those shops’.²¹⁰² It is noted that in the video Mr Blé Goudé is shown as having said ‘those who are closing their boutiques and who have fled Abidjan, they can just leave, but when they come back, they’ll find Ivorians in those boutiques.’²¹⁰³ These comments do not appear to be instructions to pillage and/or replace shops owned by Northerners by ‘Ivorians’. P-0087 testified that he did not hear about incidents of shops owned by Northerners being attacked;²¹⁰⁴ he considered that the presence of a large number of shops owned by Northerners was a stereotype that he had heard repeated a lot.²¹⁰⁵ Taken together, Mr Blé Goudé does not appear to be encouraging or endorsing the commission of crimes by ‘pro-Gbagbo forces’.

858. Finally, the Prosecutor also pointed to Mr Blé Goudé’s final address.²¹⁰⁶ Conclusions in respect of this address are recalled.²¹⁰⁷

(5) Conclusion

859. From the evidence taken together, it is clear that Mr Blé Goudé was a central figure among several pro-Gabgbo youth movements, with a large following. A reasonable trial chamber could perhaps find that Mr Blé Goudé was *primus inter pares* among the leaders of the different youth groups, but it cannot be concluded that he had formal, let alone effective, authority over all the groups and

²¹⁰² Mid-Trial Brief, para. 598.

²¹⁰³ Content BIN ICC Ivory Coast Clips, 26 March 2011, CIV-OTP-0015-0578 (confidential), transcript at CIV-OTP-0100-0602 at 0607.

²¹⁰⁴ *See in contrast* VI.Z.1 - Pillaging, para. 859.

²¹⁰⁵ P-0087, T-177 dated 12 July 2017, p. 92.

²¹⁰⁶ Mid-Trial Brief, paras. 610, 810, 814, 835, 850, 872, 876.

²¹⁰⁷ *See* IV.F.2.hhh) - 5 April 2011 - Final address of Mr Blé Goudé.

organisations that composed the *Galaxie Patriotique*. There is certainly not enough evidence to support a finding that he exercised command and control over the GPP, even though his political standing and influence would probably have caused the leaders of that organisation to pay attention to what he wanted.

860. In terms of Mr Blé Goudé's authority over the youth more generally, the evidence shows that he deliberately called upon the youth to establish roadblocks in Abidjan and that many heeded his call. It is also clear that he did not call for the roadblocks to be abolished, despite allegedly having been explicitly asked to do so by the Police²¹⁰⁸ and despite having some awareness that violence was perpetrated by at least some of the individuals manning the roadblocks. What the implications of this evidence are for Mr Blé Goudé's criminal responsibility is discussed below.²¹⁰⁹ For the present purposes, it follows from the evidence that Mr Blé Goudé had the ear of a large number of young Ivorians and that a fair number of them responded favourably to his instructions. Mr Blé Goudé was thus clearly a leadership figure and a very influential person for parts of the population. However, although this position gave Mr Blé Goudé a certain level of power to influence the behaviour of an undefined group of people, it does not follow that he was therefore in a position to exercise command and control over these individuals.

²¹⁰⁸ It is noted that P-0440 testified that he drafted a memorandum dated 28 February 2011 in which he explained to his superior that the Police were not able to convince the youth manning the roadblocks to abandon them and that only a televised appeal by the 'initiator' (i.e. Mr Blé Goudé) would be able to rein them in. *See COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE*, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0030. He further testified that his superior went to speak to Mr Blé Goudé on 3 March 2011, presumably to ask him to use his influence over the youth to put an end to the excesses at the roadblocks. P-0440, T-157 dated 11 May 2017, p. 27-29. According to the witness, Mr Blé Goudé did not respond favourably to the request. However, since the witness was not present during the meeting and his superior did not tell him what happened, it is not possible to establish whether the superior actually made the request and, if so, in what terms. It is also noted said meeting allegedly took place on 3 March 2011 and that on 4 March 2011 Mr Blé Goudé made a statement on the RTI in which he encouraged the youth to continue the roadblocks, but also called upon them to avoid racketeering and that they should not fall in the trap of attacking foreigners. *See IV.F.2.oo*) - 4 March 2011 – Mr Blé Goudé interview on youth to organise roadblocks.

²¹⁰⁹ *See VIII.D - Mr Blé Goudé's responsibility under article 25(3)(b).*

f) Conclusion

861. Having regard to the conclusions reached in respect of the different elements and considering the evidence as a whole, it can only be concluded that there is not enough evidence to prove that Mr Gbagbo exercised command and control over irregular forces, be they youth groups, militia or mercenaries. At best, he arguably bore moral responsibility towards some of them. However, simply on the basis that Mr Gbagbo received their support, it cannot be concluded that he had command and control over them.
862. Having regard to the totality of evidence specifically concerning the GPP, it cannot be concluded that Mr Gbagbo and the members of the alleged 'inner circle' had control over it. The creation of the GPP can be traced back to the attempted *coup d'état* in September 2002 and in that respect, like the various youth groups that emerged around that time, it is also linked to Mr Gbagbo being held as the figurehead for democratic process at the time. From 2003 until the post-electoral crisis, the GPP underwent changes in its leadership, purported dissolution, as well as the DDR programme. By the time of the post-electoral crisis, the evidence suggests that the GPP had been dissatisfied for a while with the way in which the Gbagbo regime had treated them, but realigned themselves after promises were made of integration into the FDS. At best, the available evidence permits the conclusion that the Gbagbo regime probably viewed the GPP as a useful ally, a conduit for fresh FDS recruits, and a potential backup to the regular state forces. There is also anecdotal evidence of small-scale operational collaboration between FDS and certain GPP members at the local level. However, the evidence does not contain clear indications of the GPP as such operating under the instructions – either directly or indirectly – of the accused.
863. The available evidence is also not capable of supporting a finding that Mr Gbagbo exercised command and control over the *jeunes patriotes* and/or other youth groups through Mr Blé Goudé. Although Mr Blé Goudé's influence over some of the individuals belonging to these groups was considerable and he

was clearly capable of mobilising large groups of young people, there is nothing to suggest that he issued specific operational instructions to particular (groups of) individuals and that those individuals felt compelled to comply with his instructions. Whatever sway Mr Blé Goudé may have held over the youth groups was not based on accepted chains of authority and reporting lines.

864. Having regard to the conclusions reached thus far, it therefore cannot be concluded that the ‘pro-Gbagbo forces’ constituted ‘an organised and hierarchical apparatus of power’.
865. The Chamber also noted an overall disconnect between Mr Gbagbo’s potential to use irregular forces in his favour, as narrated by the Prosecutor, and the course of action he actually adopted, as shown by the evidence. In light of this, no meaningful claim can be sustained to the effect that these elements were controlled and used by the accused to commit the crimes charged.

E. Arming of the FDS

866. The Prosecutor claimed that Mr Gbagbo actively sought to guarantee the availability of weapons to units that were loyal to him before and during the post-electoral crisis.²¹¹⁰ Mr Gbagbo supposedly pursued this goal ‘by tasking his subordinates with purchasing additional weapons, by providing the necessary funding and by ensuring that weapons and ammunition were supplied’ to the FDS and in particular to elements of the so-called ‘parallel structure’.²¹¹¹
867. In each of her Briefs, the Prosecutor emphasized different aspects of her theory. Whereas the Pre-Trial Brief narrative focused on the armaments available to the ‘parallel structure’ and on the acquisition of weapons by Mr Gbagbo’s allies, the

²¹¹⁰ Mid-Trial Brief, paras. 216-217; Response, para. 1217.

²¹¹¹ Mid-Trial Brief, para. 715.

Mid-Trial Brief highlighted mainly the purported distribution of equipment to units loyal to Mr Gbagbo. In contrast with the Pre-Trial Brief, the Prosecutor's more recent submissions do not contain explicit allegations concerning the acquisition of new weapons by the 'inner circle'; the Prosecutor's arguments along these lines are now couched in references to the arms embargo supposedly breached by the Gbagbo government.²¹¹² In the Response, the bulk of the Prosecutor's claims in relation to the arming of the FDS relates to military supplies allegedly obtained from arms dealer Mr Lafont, something that was mentioned only in passing in the two previous Briefs.

868. While the Prosecutor only changed the angle of her narrative in the Mid-Trial Brief, and not the narrative itself, some of the Pre-Trial Brief allegations were likely not maintained due to the lack of evidence in their support. For example, in the Mid-Trial Brief the Prosecutor does not elaborate on her previous claims that Mr Gbagbo had ordered and financed his subordinates' purchase of weapons, nor does she refer to evidence connected to these assertions as she had done in the Pre-Trial Brief.²¹¹³ Indeed, none of the previously cited occasions in

²¹¹² Note that the Prosecutor in the Mid-Trial Brief does not formulate her claim of 'acquisition of weapons' in the operative part of the brief dedicated to the arming of the FDS. Nevertheless, when summarising the elements of the Common Plan, the Prosecutor added a subsection titled 'acquisition of weapons' (*see* Mid-Trial Brief, paras. 660 - 664). The text pertaining to this subsection was a repetition of the arguments made in relation to breach of the embargo. It is important to note, however, that it is stated that '[e]vidence of the illicit acquisition of weapons and ammunitions during the post-electoral crisis is addressed in the course of the Brief' (Mid-Trial Brief para. 661). There are no footnotes to that assertion - the said evidence can only be those discussed in relation to attempts to breach the UN embargo. It is also noted that evidence and proposition that the Prosecutor had mentioned in the Pre-Trial Brief to support the 'acquisition of weapons' allegation have not been cited in the Mid-Trial Brief.

²¹¹³ Pre-Trial Brief, para. 215.

which Mr Gbagbo's allies allegedly acquired new weapons were confirmed by the evidence to have existed.²¹¹⁴

869. Notwithstanding the changing nature of her narrative, in all Briefs the central tenet of the Prosecutor's claim is that during the post-electoral crisis the 'parallel structure' had weapons and ammunition at their disposal to be used in the implementation of the common plan. In particular, it is noted that all allegations in this context were made against the same backdrop: to the Prosecutor, the strategies that allowed certain FDS units to have access to extra material through unofficial channels or illegal means were important elements of the Common Plan; their calculated consequence was that Mr Gbagbo had under his control well-armed loyal forces prepared to use violence if necessary to keep him in power.

870. Taking all submissions into account, the totality of the Prosecutor's case concerning the arming of the FDS is composed of the following assertions: *i*) an

²¹¹⁴ For example, with regard to military equipment, the Prosecutor claimed in her Pre-Trial Brief that 'during the post-electoral crisis, the FDS counted on Mi-24 combat helicopters to commit crimes against the civilian population' (Pre-Trial Brief, para. 213) and that 'between March and April 2011 [...] Anselme Séka Yapo took concrete steps [...] to supply, repair, operate or maintain the Mi-24 combat helicopter' (Pre-Trial Brief, para. 216). However, neither of these propositions are repeated in the Mid-Trial Brief and the Response, probably due to lack of evidence. The only relevant evidence quoted by the Prosecutor supports the presence of missiles for MI-24 or MI-35 helicopters and MI-24 spare parts and missiles at the Presidential Palace and at the GR in Yamassoukro on 28 April 2011 (OUTGOING CODE CABLE / CCN-247 / Embargo control report: April 2011, 9 May 2011, CIV-OTP-0073-0117 at 0120). This in no way demonstrates the presence of MI-24 helicopters, nor does it show that Mr Séka Yapo took concrete measures with regard to the alleged helicopters. With regard to the persons involved, the Prosecutor alleged in her Pre-Trial Brief, that 'Bertin Kadet, Pastor Moïse Koré or Anselme Séka Yapo (through Apex Holding SIA) purchased or attempted to purchase arms, on behalf of the Gbagbo's government, either directly or through Darkwood Logistics – a company part of RM Holdings group registered in Latvia and managed by Robert Montoya and Frédéric Lafont.' (Pre-Trial Brief, para. 214). There are no references to Apex Holding SIA, RM Holdings group, Pastor Moïse Koré and Robert Montoya in the Mid-Trial Brief and the Response. The evidence relied upon by the Prosecutor in her Pre-Trial Brief were either not formally submitted or insufficient to support that allegation. The only evidence submitted by the Prosecutor on this matter, a 350-page long report, is not particularly incriminating (S/2012/196 / Lettre datée du 11 avril 2012, adressée à la Présidente du Conseil de sécurité par le Président du Comité du Conseil [sic] de sécurité créé par la résolution 1572 (2004) concernant la Côte d'Ivoire, 14 April 2012, CIV-OTP-0021-0125). Another example of proposition that the Prosecutor did not include in the Mid-Trial Brief and Response is that 'before and during the post-electoral crisis, Mr Gbagbo instructed members of the Inner Circle to purchase weapons from abroad, in contravention of the arms embargo and provided them with funds' (Pre-Trial Brief, para. 215). The Prosecution dropped this proposition [REDACTED]. The evidence relied upon by the Prosecutor in the Pre-Trial Brief was either not formally submitted or irrelevant to establish that Mr Gbagbo gave instructions to violate the embargo.

armoury was kept in a basement of the Presidential Palace for the supply of loyal FDS units, *ii*) Mr Gbagbo and members of his ‘inner circle’ attempted to circumvent the arms embargo imposed on Côte d’Ivoire, *iii*) weapons were allocated to the so-called Parallel Structure units so that they were better armed than others, and *iv*) companies owned by arms dealer Mr Lafont²¹¹⁵ supplied the FDS both before and during the crisis.

871. The evidence connected to each of these four points will be discussed in turn.

1. The stock of weapons and ammunition at the Presidential Palace

872. In the Pre-Trial Brief the Prosecutor stated that Mr Gbagbo and the ‘inner circle’ ‘had access and controlled a considerable cache of weapons and ammunition in the basement of the Palace’, which was used to arm the FDS and particularly the ‘parallel structure’.²¹¹⁶ Access to this weaponry, according to the Prosecutor in the Pre-Trial Brief, was given ‘in particular’ to the *Garde Républicaine*.²¹¹⁷ In her subsequent submissions, the Prosecutor changed the particulars of her narrative. In the Mid-Trial Brief and in the Response, the Prosecutor alleges that units of the FDS were given access to the *Garde Républicaine* weaponry stored at the basement of the Presidential Palace.²¹¹⁸ While it is established on the evidence that the *Garde Républicaine* had an armoury within the Presidential Palace compound,²¹¹⁹ it is not clear whether or not there was another

²¹¹⁵ Note that there is controversy as to whether it would be more accurate to label Mr Lafont as arms dealer or trafficker (*see* Gbagbo Motion, Annex 5, p. 22, para. 69; Mid-Trial Brief, para. 78; Response, para. 1664). This discussion will not be entertained since the label to be attributed to Mr Lafont makes no difference to the overall analysis of the Prosecutor’s case in relation to the arming of the FDS.

²¹¹⁶ Pre-Trial Brief, para. 210.

²¹¹⁷ Pre-Trial Brief, para. 209.

²¹¹⁸ Mid-Trial Brief, para. 216; Response, paras 1218, 1650.

²¹¹⁹ According to P-0347 the *Garde Républicaine* weaponry was located in a basement. Yet it is unclear where, within the Presidential Palace compound, this is located. P-0347 stated that the weaponry was in the basement of the main building of the Palace (P-0347, T-78 dated 23 September 2016, pp. 20-21). Conversely, General Mangou asserted that weapons cache was not in the main building, but within the Palace [compound] to the north-west of the palace (*‘dans l’enceinte du Palais, au côté nord-ouest du palais’*). P-0009, T-194 dated 26 September 2017, pp. 45-47.

weapons/ammunition stock in a basement in the Palace itself, which may or may not have belonged to the *Garde Républicaine*.²¹²⁰

873. If there was a bunker full of armaments not officially belonging to the *Garde Républicaine* located in the Presidential Palace, one could arguably infer a connection between it and the President himself as this equipment would presumably only become available to the FDS if and when Mr Gbagbo decided it.
874. Before turning to the analysis of the evidence, it is noted that the presence of weapons and ammunitions belonging to the *Garde Républicaine* in the Palace compound is entirely unsurprising and a natural consequence of the fact that a major *Garde Républicaine* unit was stationed there.²¹²¹ There would be weapons and ammunition in the *Garde Républicaine* armoury irrespective of who the

²¹²⁰ Witnesses P-0347 and General Mangou confirmed that the video PLATEAU/ Visite Palais 2011, 1 January 2011, CIV-OTP-0048-1651 (confidential) showed boxes of ammunition in the basement of the Presidential Palace. However, the two of them disagreed as to whether or not this was the *Garde Républicaine* armoury. P-0347, T-79 dated 26 September 2016, p. 5 does not know when the storage was created, but P-0347, T-78 dated 23 September 2016, pp. 14-15, 20-21 stated the *Garde Républicaine* used to store weapons and ammunition in the basement shown in the video, that is, the Presidential Palace basement. This is consistent with P-0321's testimony that the stock of weapons in the basement of the Presidential Palace was created for the use of the *Garde Républicaine* (P-0321, T-61 dated 8 July 2016, pp. 32-34). Conversely to that, General Mangou, was certain that the Palace basement shown in the video was not the *Garde Républicaine* armoury, which is located in the gardens of the Palace outside the main building (P-0009, T-194 dated 26 September 2017, pp. 45-47). When it comes to the source of this information, General Mangou first said he knew the *Garde Républicaine* bunker very well but then stated he had never been there himself. Although P-0347 had his office at the Palace and therefore would be in theory in a better position to give evidence about the bunker, the witness was inconsistent in his testimony. Witness P-0347 confirmed that a cleaning-up operation of the Presidential Palace basement happened while he was acting commander. He saw the crates of ammunition only a long time afterwards. Yet, it is not clear whether P-0347 had ever been at the basement where the *Garde Républicaine* weaponry was. (P-0347, T-78 dated 23 September 2016, pp. 19-20 T-79 dated 26 September 2016, pp. 35-36). Note also that General Mangou, said he knew the *Garde Républicaine* bunker very well because he had been the Deputy Commander of the *Garde Républicaine* in the 90s. It may be that the equipment was moved from one place to the other during this period, but this would be only speculation. General Mangou, testified that the images showed ammunition which had been previously stored in the *Garde Républicaine* bunker (P-0009, T-194 dated 26 September 2017, pp. 45-46). In any case, this does raise questions as to the original location of this material before Mr Gbagbo's arrest.

²¹²¹ Note that the *Garde Républicaine* did not only have its armoury in the Palace. According to P-0347, T-77 dated 22 September 2016, pp. 16-18 there is evidence of at least one more *Garde Républicaine* armoury placed in another location, namely Treichville. The Prosecutor did not address the question as to whether it was only the armoury at the Palace that supposedly supplied ammunition to other units of the FDS.

President was. There is no reason to believe that having the *Garde Républicaine* based at the Palace was an innovation introduced by Mr Gbagbo.

875. The existence of an armoury at the Palace compound is thus not in issue and has been established by the evidence discussed below. The crucial element for the Prosecutor to prove her case is the correlation between the weaponry stored in the Palace and the alleged aim on the part of Mr Gbagbo to remain in power at all costs. At a minimum, it should be shown that the weapons and ammunition that were kept in the Palace were not kept there with a view to supplying the *Garde Républicaine* units that were responsible for providing security in Abidjan.²¹²² Moreover, as the Prosecutor in oral submissions acknowledged, Mr Gbagbo's mandate 'was marred by ethnic conflicts, attempted coups and the separation of the country in two'.²¹²³ Any President in such a position would naturally prepare to defend against an eventual attack.
876. The Prosecutor claims, however, that loyal FDS commanders systematically obtained extra supplies of equipment from the stock of the Palace. In support of this position, the Prosecutor mentioned P-0347's testimony to the effect that 'the President is the commander of the army and if there are any means at the Palace, then those means can be provided to other corps in order to fulfil the global mission of the country'.²¹²⁴ P-0347 clarified that Mr Gbagbo had the legitimacy to dispose of existing military resources as he wished, for he was the highest authority in the armed forces. This testimony merely alluded to the ability of the

²¹²² Note that the political context in which the country found itself in the period preceding the crisis of 2010-11 is a factor that cannot be ignored in this discussion. Mr Gbagbo's Presidency had suffered an attempted coup that unleashed a violent conflict in 2002-2003 and in 2010 Côte d'Ivoire was still afflicted by deep political divisions. See Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0242; See also P-0435, T-92 dated 25 October 2016, pp. 28-29, 41-49 (confidential).

²¹²³ Oral Hearing, T-221 dated 1 October 2018, p. 64.

²¹²⁴ P-0347, T-78 dated 23 September 2016, p. 19.

President to control and distribute the means available to the armed forces, which was a power guaranteed by the Ivorian constitution.

877. In terms of what actually happened, the evidence presented by the Prosecutor revealed only two instances of a unit other than the *Garde Républicaine* receiving weapons or ammunition which had been presumably stored in the Presidential Palace compound.
878. First, P-0321, [REDACTED] who, according to the Prosecutor, was a member of the alleged ‘parallel structure’, stated that in March 2011, he attempted to circumvent his regular hierarchy and unsuccessfully requested [REDACTED] for ammunition from the President’s stock several times.²¹²⁵ [REDACTED] then told him to contact [REDACTED].²¹²⁶ [REDACTED].²¹²⁷ P-0321 did not explain how he knew that he could contact [REDACTED] to get ammunition when confronted with difficulties to receive supplies through his regular hierarchy. It was also not clear from his testimony whether he used to ask [REDACTED] for ammunition before the post-electoral crisis.
879. Second, in addition to P-0321’s testimony detailed above, the Prosecutor submitted a document of 30 March 2010 that supposedly attests to the supply of 300 AK-47s and 300 boxes of 7.62 mm ammunition to the *Gendarmerie* by the

²¹²⁵ P-0321, T-61 dated 8 July 2016, pp. 32-36 (confidential).

²¹²⁶ P-0321, T-61 dated 8 July 2016, pp. 32-36 (confidential).

²¹²⁷ P-0321, T-62 dated 11 July 2016, pp. 90-93 (confidential).

Garde Républicaine.²¹²⁸ The document says that the materiel is for the benefit of the *Garde Républicaine*, bears the *Garde Républicaine* stamp, and was signed by General Dogbo Blé. However, according to the Prosecutor, certain elements on this document are so ‘illogical’ that they are evidence that the materiel was not for use of the *Garde Républicaine* but of the *Gendarmerie*. This is a remarkable claim and it is far from clear that the Prosecutor’s conclusion is more plausible

²¹²⁸ No. 622/G R/EM/CAB / BON POUR, 30 March 2011, CIV-OTP-0071-0223 at 0223. *Note* that this document raises numerous doubts, the most important being the type of transaction involved and the parties to this transaction. On the one hand, the document appears to be a request drafted on 30 March by the GR to obtain AK-47s and ammunition. This scenario is supported by P-0347, T-78 dated 23 September 2016, pp. 15-16 who stated that ‘this [is] the type of document that [the *Garde Républicaine*] would fill out when [they] needed ammunition’. It is also consistent with the fact that General Dogbo Blé’s name, stamp and signature appear. It is however unclear as to whom this request was addressed to, what answer it received, if and when the materiel were ever delivered and why Mr Koukougnon’s name appears on the left side of the paper. On the other hand, one could argue that the document is a request made by a squadron chief from the *Gendarmerie* and granted by General Dogbo Blé on 30 March 2011. This relies on P-0347, T-78 dated 23 September 2016, pp. 18-19 and would explain why the document bears Mr Koukougnon’s name. However, and as pointed out by the Prosecutor in her Response, pp. 493-494, para. 1059, the document also states that the materiel is for the benefit of (‘*au profit de*’) the *Garde Républicaine*. It appears implausible that the *Gendarmerie* would request materiel from the *Garde Républicaine* if this materiel is for the benefit for the *Garde Républicaine*. In any case, even if it were accepted that the *Garde Républicaine* agreed to supply materiel to the *Gendarmerie*, which P-0347, T-78 dated 23 September 2016, p. 19 confirmed was not abnormal given the context, the Prosecutor provides no information as to whether or not the delivery materialized and, if so, when.

than what the content of the document suggests.²¹²⁹ In any case, this document does not constitute evidence that the distribution of materiel from the basement of the Palace ever occurred.²¹³⁰ It is worth noting, in this regard, that the *Garde Républicaine* also kept its weaponry in Treichville.²¹³¹

880. Be that as it may, even if this document were treated as evidence that the *Gendarmerie* received equipment from General Dogbo Blé during the post-

²¹²⁹ See Response, paras 1059-1061. See Response, p. 493-494, paras 1059-1061. The Prosecution alleges that the fact that General Dogbo Blé agreed to provide materiel ‘for the benefit of the GR’ is so illogical that this shows that the materiel was in fact for the *Gendarmerie*, which then distributed it to the youth and militia. Yet, as mentioned before, the Prosecutor provides no information as to whether or not the equipment was effectively delivered and, if so, when. She just assumes that the delivery materialized (Response, pp. 493-494, para. 1059). The fact that the request concerns AK-47s and that youth and militia received the same type of weapons (see P-0238, T-82 dated 29 September 2016 (confidential), p. 12 (confidential)) does not prove that the weapons received by the youth and militia were the ones requested by the *Gendarmerie* in the aforementioned document. AK-47s were some of the most commonly used weapons during the post electoral crisis in Côte d’Ivoire and the militia and youth could have found another way to get AK-47s despite limited resource of weapons. The Prosecutor also claims that militia integrated within the *Garde Républicaine* and that the GR acted as a ‘focal point’ for recruiting and training the militia and pro-Gbagbo youth. It is true that the GR integrated militia members, but so did other FDS units (see IV.D.2.b)(5) - Integration into the FDS). Plus, despite some integration, the evidence provided does not sustain the allegation that the *Garde Républicaine* would have been a focal point for joint activities between militia, pro-Gbagbo youth, Liberian mercenaries and the FDS. Finally, the Prosecutor merges in a surprising manner the two previous propositions (that the *Garde Républicaine* provided the *Gendarmerie* with equipment and that the *Garde Républicaine* acted as a focal point for the militia and pro-Gbagbo youth) to conclude that the *Gendarmerie* acted as an intermediary to distribute equipment from the *Garde Républicaine* to the militia and the youth. However, the reasoning of the Prosecution cannot be followed for two main reasons. First, there is no apparent reason for the *Garde Républicaine* to use the *Gendarmerie* as intermediary to deliver weapons. Assuming that the *Garde Républicaine* had indeed integrated militia and was a focal point to recruit and train the militia and youth, they could have directly provided them with equipment. Second, the Prosecutor is vague as to when the *Garde Républicaine* would have distributed AK-47s to the militia and the youth. By doing so, she omits the testimony of P-0238 (T-82 dated 29 September 2016 (confidential), pp. 12-17 (confidential)) who clearly said that he saw militia going to the *Gendarmerie* in Toit Rouge to get AK-47s after Mr Gbagbo’s arrest on 11 April 2011. Yet to stay within the temporal scope of the case, the distribution must have occurred before the 12 April incident at the latest. This means that the *Gendarmerie* must have distributed the equipment between 11 and 12 April 2011, that is, within 24 hours. Although this is not impossible, there is, again, no evidence that the distribution occurred within the time frame of the present case.

²¹³⁰ See P-0347, T-77 dated 22 September 2016, pp. 16-18.

²¹³¹ The document is signed by General Dogbo Blé, who was in charge of the *Garde Républicaine* weaponry at the Presidential Palace (see P-0347, T-78 dated 23 September 2016, p. 14). Under his name the designation ‘*commandant militaire du Palais*’ appears in bold, contrary to ‘*commandant la Garde Républicaine*’. This could mean that acting as commander of the *Garde Républicaine* at the Presidential Palace, General Dogbo Blé provided the *Gendarmerie* with equipment from the *Garde Républicaine* armoury at the Palace. Yet General Dogbo Blé was also the Commander in Chief of the *Garde Républicaine*, so hierarchically superior to the warrant officer who was in charge of the *Garde Républicaine* weaponry in Treichville (P-0347, T-77 dated 22 September 2016, p. 16). In this capacity, General Dogbo Blé could have distributed ammunition from a *Garde Républicaine* weaponry other than the one at the Presidential Palace.

electoral crisis, the total available evidence would reveal no more than two isolated instances in which commanders of other units asked the *Garde Républicaine* for extra equipment. This is insufficient to show the existence of a system through which steady and substantial supplies of material were obtained by Parallel Structure commanders.

881. Apart from the alleged distribution of materiel, the sort and quantity of the equipment stocked in the Palace basement could also be an indicator of their intended purpose. Arguably, the type of weapons and the amount of ammunition necessary to protect the Palace would be different from the type and quantity of armaments appropriate to equip various FDS units with different specialisations.²¹³² With that in mind, the available information about the content of the armoury in the basement of the Palace will be assessed.²¹³³
882. The testimony of P-0321 suggests that at least small quantities of 14.5mm ammunition were stored at the Presidential Palace. However, since the *Garde Républicaine* disposed of weapons of such calibre, this was only to be expected.
883. Witness P-0347, who testified that he knew about an ammunition deposit in a basement of the Palace, described some of the equipment found there after Mr Gbagbo's arrest but was vague in relation to the quantity of this materiel.²¹³⁴ According to P-0347 the bunker stored ammunition for assault rifles, RPGs and mortars.²¹³⁵ Although P-0347's subordinates participated in the removal of the

²¹³² Organigram ICC-02/11-01/15-148-AnxC 16-07-2015. *Note* that the so-called Parallel Structure alone, according to the Prosecutor's organigram, was composed of 20 units.

²¹³³ *Note* that the analysis in the paragraphs below relate to evidence that relate to a weaponry at the Palace the control of which is unknown, as opposed to items of evidence which specifically relate to the *Garde Républicaine* weaponry at the Palace.

²¹³⁴ P-0347, T-78 dated 23 September 2016, p. 14.

²¹³⁵ *See* P-0347, T-78 dated 23 September 2016, pp. 21-22. P-0347 did not know how many crates were transported out of the basement. But he said that well after the transportation, he saw that they were crates of ammunition.

equipment from the Presidential Palace after the crisis, he admitted not having been present and that the operation was led by the General Staff.²¹³⁶

884. Ammunition supposedly found in the basement of the Presidential Palace is also shown in a video submitted by the Prosecutor.²¹³⁷ The video shows several piles of long slim boxes in a room that resembles a basement. On the boxes 9M22Y is printed, which suggests that they contained rockets for the BM-21 multiple rocket launcher. The video also shows other similar rooms where square shaped boxes are piled up. P-0347 identified the place displayed in the video as the basement of the Presidential Palace.²¹³⁸ General Mangou confirmed that the images of the video were of ammunition boxes but said he could not be sure that there was indeed ammunition inside them.²¹³⁹ In the video, one of the smaller boxes is opened by a soldier who then exhibits an ammunition belt he takes from inside the box. Based on the images and the labels on some of the boxes, the calibre appears to be 5.56mm. It is understood, but not certain, that the other boxes had a similar content. Overall, the images are relevant to confirm the existence of a basement with military supplies in the Palace. They do not enable a reliable assessment of the number and type(s) of supplies involved.

²¹³⁶ See P-0347, T-78 dated 23 September 2016, pp. 21-22 and T-79 dated 24 September 2016, p. 5. The witness testified that although the cleaning-up operation took place while he was acting commander at the Palace, the witness only saw the boxes of ammunition a long time afterwards. *Note* that P-0347 did not receive a report on the quantity of ammunition found in the Palace. It is also important to note that according to P-0347 there were no weapons in the basement, only ammunition. Indeed, although the Prosecutor claims there were weapons and ammunition in the basement, there is no direct evidence indicating the presence of weapons there. (P-0347 T-78 dated 23 September 2016, pp. 14-15).

²¹³⁷ PLATEAU / Visite Palais 2011, 1 January 2011, CIV-OTP-0048-1651 (confidential).

²¹³⁸ See P-0347, T-78 dated 23 September 2016, p. 21.

²¹³⁹ See P-0009, T-198 dated 3 October 2017, pp. 54-55. P-0009, T-194 dated 26 September 2017, p. 46 also recognised some of the equipment shown in the video as equipment that had been ordered for the *Garde Républicaine* and to his knowledge (until having become aware of the video) the materiel in question had not been delivered. Contrary to the allegation of the Prosecutor in her Mid-Trial Brief, para. 216, General Mangou did not say that it was abnormal for the *Garde Républicaine* to have a large stockpile of ammunition. What was abnormal according to General Mangou, was that this ammunition was stored in the basement of the Presidential Palace, which he considered as being both dangerous and absurd. See P-0009, T-198 dated 3 October 2010, pp. 53-58, 60.

885. In addition to the testimonies of P-0321, P-0347, P-0009 and the video, the Prosecutor referred to a UNOCI code cable report²¹⁴⁰ and a report produced by the French *Licorne* mission.²¹⁴¹ Neither of these documents, however, includes an inventory of the materiel found in the Palace basement. Moreover, given that little is known about the source(s) of the information contained in the reports, they have limited evidentiary weight.
886. The UNOCI code cable reports that on the days leading up to Mr Gbagbo's arrest, there had been intense fighting between pro-Gbagbo forces and the FRCI, an armed group of the pro-Ouattara forces. The document states that after Mr Gbagbo's arrest, a team of UNOCI investigators found weapons at different locations in the Presidential Palace, including in a basement. Whilst the UNOCI report lists the type of weapons found in adjacent areas to the main building, the document is vague in relation to those found in the basement, stating simply that in the basement there was a 'considerable quantity of heavy weapons and conventional arms stocked'.²¹⁴²
887. The *Licorne* document, produced by the French Ministry of Defence, reports that when their mission had access to the Presidential Palace, they found 140,346 kg of ammunition and 23,624 kg of explosives. The report includes six pictures of equipment found by *Licorne* investigators during the mission, but due to the low quality of the images it is impossible to discern with precision what the pictures show. The caption of four of these photos states that the images show ammunition of small calibre. Another picture showing three columns of five boxes has a subtitle explaining that these were 122mm BM-21 rockets. Like the UNOCI code cable, the *Licorne* report also fails to state which, if any, of the

²¹⁴⁰ OUTGOING CODE CABLE / CCN-247 / Embargo control report: April 2011, 9 May 2011, CIV-OTP-0073-0117 (confidential).

²¹⁴¹ Compte-rendu de la mission de dépollution de l'opération *Licorne* du 19 avril au 23 août 2011, 20 October 2011, CIV-OTP-0055-0296 (confidential).

²¹⁴² OUTGOING CODE CABLE / CCN-247 / Embargo control report: April 2011, 9 May 2011, CIV-OTP-0073-0117 (confidential) at 0118.

equipment found in the Palace was located in the basement.²¹⁴³ It is therefore impossible to know from this document either the type or the quantity of weapons and ammunition Mr Gbagbo had stored in the arms cache in the Palace basement.

888. In addition, a UN code cable lists quantities of ammunition found in the *Garde Républicaine* facilities at the Palace compound after Mr Gbagbo was arrested. The embargo control report mentioned 25 boxes (50 pieces) of flamethrowers of Russian origin, eight boxes of AK-47 ammunition, three night vision telescopes, 27 old and broken guns, one anti-tank rocket launcher, 372 boxes containing 1,200 cartridges of 7.62 mm ammunition, 24 boxes containing 1,200 cartridges of 12.7 mm ammunition and 24 boxes containing 1,200 cartridges of 5.45 mm ammunition.²¹⁴⁴

889. In light of this analysis, it is clear that a reasonable trial chamber could find that there was a stock of ammunition in the Palace compound. Most of this material was presumably used by the *Garde Républicaine*. The only exceptions are the rockets for the BM-21 rocket launcher and the flame throwers. As far as the Chamber is aware the only unit to have BM-21 rocket launchers was BASA and

²¹⁴³ A second point must be noted in relation to the reports. In both documents, it is clear that UNOCI and *Licorne* obtained access to the Palace days after Mr Gbagbo's opposing forces gained full control of the site. The *Licorne* report states that their mission visited the Palace on 19 April 2011, eight days after Mr Gbagbo had been "captured" by the FRCI, a pro-Ouattara armed group. The UNOCI code cable informs that following Mr Gbagbo's arrest on 11 April, their Embargo Monitoring Unit scheduled an inspection of arms left at the Palace; on 13 April they gained access to the site after obtaining authorization from the FRCI. This obviously raises doubts as to whether all the material reported in the two documents truly belonged to Mr Gbagbo. The UN code cable makes reference to the heavy fighting that preceded Mr Gbagbo's arrest and it is known that the pro-Ouattara forces were well armed. One cannot exclude the possibility that after having won the last battle the FRCI forces would take their own equipment to the Palace, raising doubts as to the extent to which all weaponry found in the site necessarily belonged to Mr Gbagbo.

²¹⁴⁴ OUTGOING CODE CABLE / CCN-317 / Embargo control report: June 2011, 6 July 2011, CIV-OTP-0073-0130 (confidential) at 0131. *Note* that the document states that the flamethrowers are of Russian origin and that the flamethrowers, AK-47 ammunition and night vision telescopes were manufactured in 2010. According to indication on the ammunition boxes, the cargo had been shipped from Russia to Angola. The inspection took place on 15 June 2011 and observed that this was the first time that flamethrowers were reported in an embargo inspection in Côte d'Ivoire since 2004. *Note also* that the document does not specify that the weapons/ammunition were found in a basement, but only at 'La Garde Républicaine of the Presidential Palace, Plateau'.

there is no apparent reason why the *Garde Républicaine* would stockpile this type of ammunition. However, since it is not established that the boxes actually contained rockets and considering the relatively small number of boxes, this evidence is inconclusive.

890. It is pertinent to note, in this regard, that it is not established that the *Garde Républicaine* had enough resources to arm its own forces well. According to P-0347, the *Garde Républicaine* did not receive new supplies of weapons and ammunition between 2004 and 2010.²¹⁴⁵ As such, there is no reason to believe that the *Garde Républicaine* equipment mentioned in the document was not primarily for the *Garde Républicaine* to use in the fulfilment of its duties.
891. Whatever the case may be, the fact that other units requested equipment from the *Garde Républicaine* does not in itself advance the Prosecutor's case. For example, although P-0347 indicated that it was not the formal procedure to have the *Gendarmerie* asking the *Garde Républicaine* for ammunition, he also said that this should not be considered abnormal either - if the *Garde Républicaine* had extra supplies these could potentially be allocated to other units.²¹⁴⁶ Also, P-0321 explained that because the FDS was fighting a war, the official formalities to request ammunition were overlooked by commanders.²¹⁴⁷
892. There is therefore not sufficient evidence that would allow a reasonable trial chamber to conclude that Mr Gbagbo and his 'inner circle' had in place a system of distribution of weapons and ammunition stored at the Presidential Palace that would have ensured that the Parallel Structure units were well-armed during the post-electoral crisis.

²¹⁴⁵ P-0347, T-79 dated 26 September 2016, pp. 5-6.

²¹⁴⁶ See P-0347, T-78 dated 23 September 2016, pp. 15-19.

²¹⁴⁷ See P-0321, T-61 dated 8 July 2016, pp. 39-40 (confidential); See also P-0321, T-62 dated 11 July 2016, p. 93 (confidential).

2. *Attempts to circumvent the UN embargo*

893. The Prosecutor claims that efforts made by the government and FDS officials to circumvent a UN arms embargo indicate an intention to facilitate the arming of their forces.²¹⁴⁸ The most prominent of such efforts was, according to the Prosecutor, the creation and arming of CECOS in the year following the imposition of the ban on arms exports to Côte d'Ivoire.

a) **Hiding of weapons from UN inspectors**

894. In the Trial Briefs, the testimonies of P-0238 and P-0239 are treated as evidence that attempts to circumvent the arms embargo were made pursuant to the plan to keep Mr Gbagbo in power at all costs. Witness P-0238 did state that he and other BASA members used to hide part of their equipment from UN inspectors during their visits to the BASA camp. However, the justification given by the witness was that because they were at war they would conceal their equipment during the inspectors' visits because it would be to their disadvantage to show their military power to the enemy.²¹⁴⁹ This statement by P-0238 fails to confirm the argument that the attempts to circumvent the embargo were connected to a common plan to attack civilians. When it comes to P-0239, the relevant part of his testimony does not even mention the embargo. Witness P-0239's account was simply that ammunition had been moved from one place to another and that his duty was to keep an eye on the equipment.²¹⁵⁰ Nothing in P-0239's testimony directly indicates that the relocation of material was aimed at the evasion of UN inspection.

²¹⁴⁸ Mid-Trial Brief, para. 217; Response, para. 1403. The Prosecutor does not consider necessary to clarify the temporal scope of the embargo. She relies only on S/RES/1572 (2004) (Resolution 1572 (2004), 15 November 2004, CIV-OTP-0042-0418) which provides an arms embargo on Côte d'Ivoire until 15 December 2005. However, I take note that due to several extensions by the UN Security Council, the embargo was in place both before and during the 2010-11 crisis (*see in particular* S/RES/1893 (2009) and S/RES/1946 (2010)).

²¹⁴⁹ *See* P-0238, T-81 dated 28 September 2016, pp. 6-8.

²¹⁵⁰ *See* P-0239, T-167 dated 28 June 2017, pp. 27-29 stating that the ammunition was moved in before 28 October and P-0239 was on duty from 28 October to 25 December 2010.

b) Attendance of arms fair in Ukraine

895. The Prosecutor also cited correspondence showing the records of internal Police communication to prove circumvention of the embargo. In one document Inspector-General Bredou M'Bia reports to the Minister of Interior that Lieutenant Kouamé went on a mission to Kiev in Ukraine, where she stayed from 30 September 2010 to 5 October 2010.²¹⁵¹ According to the report, Lieutenant Kouamé had visited an exposition of armaments (specifically pistols and *matériels d'intervention*) and on this occasion Ukrainian authorities proposed to facilitate the acquisition of *matériels d'intervention* to Côte d'Ivoire. The document did not include further details as to the type of equipment the Ukrainians were willing to export.
896. For several reasons, the capacity of this document to confirm the Prosecutor's assertions is extremely limited. First, there is no evidence in the record suggesting that Mr Gbagbo or members of his Inner Circle made contact with the Ukrainian authorities to arrange for the actual acquisition of weapons, either before or after the Lieutenant's visit to Kiev. Second, there is no reason to interpret *matériels d'intervention* as referring to lethal weaponry.²¹⁵² Third, there is room for disagreement with the Prosecutor's interpretation of the text of the document. The words 'despite the embargo' (*malgré l'embargo*) do not necessarily denote an intention to breach the embargo. The Ukrainian offer may have been made in relation to material not covered by embargo, in which case the words 'despite the embargo' would have meant that they could still export certain items to Côte d'Ivoire.²¹⁵³

²¹⁵¹ Rapport de mission du lieutenant de Police KOUAME Ahou Madeleineà[sic] Kiev en Ukraine, 17 October 2010, CIV-OTP-0045-0102 (confidential) at 0102.

²¹⁵² [REDACTED]. Note that according to P-0010, T-137 dated 27 March 2017, pp. 72-73, Mr Lafont was the owner of a security company who had provided armaments to Mr Gbagbo in the context of the 2002 crisis.

²¹⁵³ See also Gbagbo Motion, pp. 99-100, paras 343-346.

897. The Prosecutor referred to another piece of evidence which supposedly confirms the actual acquisition of new weapons from Ukraine,²¹⁵⁴ namely a document signed by Mr Sami Bi (*Commissaire divisionnaire*) which confirms the receipt of 46 Kalashnikovs, 73 chargers, 1,620 ammunition and 14 pistols *mitrailleurs* Gevars on 21 December 2010. It is noted that the document makes no reference to Ukraine, only indicating that the weapons in question were obtained from the armoury of the *Direction Générale de la Police Nationale*. The most relevant element concerning this evidence is that the person who received the armament was the same person who who attended the fair in Kiev, acting in the capacity of officer responsible for the armoury of the Police.²¹⁵⁵ However, given that the officer in question worked at the *Sous-direction des Equipements et du Matériel* of the Police, her involvement in the distribution of weapons cannot support an inference that the weapons in question were illegally imported from Ukraine simply because she attended an arms fair there. Moreover, the weapons in question were probably of a different type than the equipment she showed interest in at the Kiev fair.
898. On the whole, there is no apparent relation between the Kiev fair and the distribution of weapons to the Police. There is nothing to indicate that the weapons being distributed between police units had been obtained from Ukraine in contravention of the arms embargo.

c) The creation of CECOS

899. As noted, the Prosecutor argues that the creation of CECOS in 2005 was, at least partially, motivated by the imposition of the arms embargo that had been imposed on Côte d'Ivoire by the UN the year before. In essence, the Prosecutor's argument is that because CECOS was not officially part of the armed forces, it

²¹⁵⁴ Remise d'armes pour emploi au service de la voie publique, 31 January 2011, CIV-OTP-0045-1427 at 1427.

²¹⁵⁵ Remise d'armes pour emploi au service de la voie publique, 31 January 2011, CIV-OTP-0045-0371 at 0373.

would benefit from an exemption in the embargo for law enforcement bodies. In the Mid-Trial Brief the Prosecutor supports the claim that CECOS was created to circumvent the embargo with General Mangou's statement concerning CECOS' not having the word 'military' in its title.²¹⁵⁶ In the Response, the Prosecutor relied not on the name of the unit but on the character of its mission to argue that the purpose behind the establishment of CECOS was to evade the arms embargo.²¹⁵⁷

900. In order to determine the merits of this claim, it is useful to note that despite the prominence of the arms embargo in her case (the embargo has been mentioned 35 times in her written submissions),²¹⁵⁸ the Prosecutor has not made a serious effort to demonstrate the exact scope and legal framework of the embargo. The Prosecutor cites some of the provisions of the UN Security Council Resolution that imposed the arms embargo on Côte d'Ivoire in 2004 (hereafter Resolution 1572) for the first time in her Response.²¹⁵⁹ In one of the passages in which she reiterates that the creation of CECOS was motivated by an intention to evade the embargo,²¹⁶⁰ the Prosecutor quotes excerpts of Resolution 1572 in the following manner:

The relevant UN Resolution provided that the arms embargo related to "arms or any related materiel"(paragraph 7) but not "supplies of non-lethal military equipment intended solely for humanitarian or protective use" (paragraph 8 (b)) or "supplies of

²¹⁵⁶ See P-0009, T-198 dated 3 October 2017, pp. 39-41.

²¹⁵⁷ Response, paras 1652; 1647, 1662.

²¹⁵⁸ Note that there were four mentions of the embargo in the Pre-Trial Brief, 16 in the Mid-Trial Brief and 15 in the Response.

²¹⁵⁹ In addition to Resolution 1572, the Prosecutor submitted a Security Council Resolution renewing the embargo in 2005, the Linas-Marcousis agreement, and three other documents that post-date Mr Gbagbo's arrest and are thus irrelevant in this context. Paragraph 3 (f) of the Linas-Marcousis agreement is noteworthy: '[t]he Government of National Reconciliation will, immediately upon taking office, attend to rebuilding an army [...] restructure the defence and security forces'. However, there is no information on how, if at all, this has been implemented. The Ouadougou Political Agreement, signed in 2007, is also on the record of the case. Paragraph 6 (1) of this document states that the parties were to request the UN Security Council to lift the embargo and authorise importation of light weapons for law enforcement purposes. There is no evidence that such a request was ever made, but the Security Council Resolutions renewing the embargo after 2007 confirm that if it had, it was not granted.

²¹⁶⁰ Response, para. 1403.

protective military clothing, including flak jackets and military helmets” (paragraph 8 (c)) or “supplies of arms and related materiel and technical assistance intended solely for support of or use in the process of restructuring defence and security forces pursuant to paragraph 3, subparagraph (f) of the Linas-Marcoussis Agreement” (paragraph 8 (e)).²¹⁶¹

901. The quoted provisions of Resolution 1572 in themselves do not confirm that CECOS fell under a special regime of the arms embargo. Moreover, the Prosecutor omitted the final part of the provisions she quoted from Resolution 1572, excluding the part which made exemptions from the embargo conditional on authorisation by a Committee that was to be established by the UN. Given the complete absence of information relating to the said Committee, the Resolution cannot on its own support the proposition that CECOS could legally receive materiel which other units could not.
902. Even if the UN Resolution paragraphs cited by the Prosecutor provided blanket exemptions to certain units, it is difficult to contemplate a scenario in which the exception of paragraph 8 (e) would apply to CECOS and not to other branches of the FDS. For example, if CECOS can be assumed to have fallen within these exemptions, why would the same not apply to the National Police? Furthermore, out of the three exceptions provided in the Resolution, the most likely to apply to CECOS was that stated in paragraph 8 (b). However, the fact that CECOS may have had better access to non-lethal equipment does not mean that CECOS was better armed than the Ivorian Army, the *Gendarmerie* and the Police. Indeed, it is difficult to see the relationship between the hypothetical ability of CECOS to legally acquire non-lethal materiel under paragraph 8 (b) of the Resolution and CECOS’ possession of ‘heavy machine guns, RPGs and offensive as well as defensive grenades’.
903. In light of the above, it is difficult to find General Mangou’s testimony on this point²¹⁶² - which is somewhat ambiguous²¹⁶³ - very persuasive. It is also not clear

²¹⁶¹ Response, para. 1403.

²¹⁶² P-0009, T-193 dated 25 September 2017, p. 15-17; T-198 dated 3 October 2017, pp. 39-41.

from General Mangou's testimony how, according to him, CECOS was in fact able to evade the embargo.

904. There is nothing on the evidence that shows that law enforcement units would be outside of the scope of the embargo. Indeed, according to this reasoning the National Police would also not be covered by the embargo and yet the Prosecutor refers to evidence of weapons being allocated to the Police to substantiate her claims that Mr Gbagbo's government breached the embargo in pursuance to the Common Plan.²¹⁶⁴

905. It is noted also that it has not been established that CECOS was well-armed, and even less so that it was better armed than other FDS units.²¹⁶⁵ The evidence connected to CECOS' level of equipment is discussed in below. At this point, the key observation of the present analysis is that there is no evidence that CECOS did in fact have any advantage within the embargo legal regime, much less that this facilitated the acquisition of materiel of the type that was unavailable to other units.

²¹⁶³ At first, the witness clearly stated that Mr Gbagbo agreed to create CECOS to fight banditry following a suggestion he himself gave to the President. General Mangou also affirmed that CECOS allowed the President to circumvent the embargo and that with time the unit was able to obtain the weapons it needed. When General Mangou made these statements, there was no insinuation on his part of a causal relationship between the two propositions. This was followed by General Mangou's explanation that CECOS could acquire weapons which other units that carried the term 'military' in their title could not, since these would be covered by the embargo. General Mangou also went on to explain that CECOS' mission was to fight criminality and highway robbery, which concealed the notion of military. At this point during his testimony, the Prosecutor requested permission to address a technical issue in the transcript. The Presiding Judge then asked General Mangou to repeat what he had just said; this prompted the following statement by the witness: 'I said that it [CECOS] was created with a view to circumventing the embargo'. P-0009, T-198 dated 3 October 2017, pp. 39-41.

²¹⁶⁴ Note that the discussion above includes the Prosecutor's allegations of breaches of the embargo by the Police; see the analysis connected to the the Police officer who supposedly went to the arms fair in Kiev. The Prosecutor also mentions the invoices issued to the Police by Darwood Logistics (a company owned by arms dealer Mr Lafont) to claim that Mr Gbagbo's government breached the arms embargo.

²¹⁶⁵ Note that, albeit General Mangou affirmed that CECOS was 'very well armed', P-0010 said the exact opposite. See P-0009, T-193 dated 25 September 2017, p. 17; P-0009, T-198 dated 3 October 2017, pp. 39-42; P-0010, T-137 dated 27 March 2017, pp. 62-63. This evidence will be analysed in more detail in the next subsection.

906. Now turning to the allegation that CECOS breached the embargo, it is clear that the unit's possession of heavy weapons would not *per se* constitute a breach of the embargo according to the information provided by the Prosecutor. The equipment could have come from other FDS units or through any other means not involving importation from another country to Côte d'Ivoire post-2004. Indeed, CECOS commander General Bi Poin testified that his subordinates, who were seconded from other units, would bring their own weapons from their units of origin.²¹⁶⁶ According to General Mangou, after its creation CECOS at first received men and equipment from other units but later on this was no longer possible.²¹⁶⁷ He then added that, over time, CECOS was able to arm itself substantially.²¹⁶⁸ Although this implies that new armaments were acquired by CECOS, General Mangou did not state clearly how equipment was acquired and from whom, nor did he give any detail as to type or quantity of new supplies. It is noted, in this regard, that the embargo prohibited UN member states from exporting weaponry to Côte d'Ivoire. Little is known whether and, if so, to what extent private or other entities may have had stocks of weapons and ammunition that were already in Ivorian territory in 2004 when the arms embargo was imposed, to which the FDS, including CECOS, obtained access during the post-electoral crisis.

907. At best, the only evidence capable of indicating breach of the embargo by CECOS is the unauthenticated document listing lethal materiel delivered to CECOS up until 1 November 2010.²¹⁶⁹ For the present discussion it is relevant to note that the country of origin of the equipment is not stated in the evidence. It is

²¹⁶⁶ See P-0010, T-137 dated 27 March 2017, pp. 62-63.

²¹⁶⁷ See P-0009, T-198 dated 3 October 2017, pp. 40-42.

²¹⁶⁸ See P-0009, T-198 dated 3 October 2017, p. 42.

²¹⁶⁹ RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No. 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential) at 0073-0215.

therefore impossible to confirm that a breach of the prohibition imposed by Resolution 1572 occurred.

d) Other evidence

908. Lastly, the Prosecutor also cites [REDACTED], as a breach of the embargo.²¹⁷⁰ However, [REDACTED] this was materiel which had already been in the country since 2003,²¹⁷¹ his testimony cannot be considered evidence of breach of the embargo.

909. Nevertheless, there is evidence on the record, which the Prosecutor does not cite in this context, suggesting that Mr Gbagbo's government acquired some armaments in contravention of the ban imposed by Resolution 1572.²¹⁷² However, given that the inspection which discovered these items only took place approximately one month after the fall of Mr Gbagbo's regime, and that it constitutes anonymous hearsay, it is difficult to attribute great evidentiary weight to this single report.

e) Conclusion

910. Considering the totality of the available evidence, there are indications that there was at least a wish on the part of some senior FDS officers to circumvent the embargo. However, apart from minimal anecdotal evidence, there is no proof of meaningful quantities of weaponry having been imported into Côte d'Ivoire in breach of the embargo.

²¹⁷⁰ Response, pp. 585-586, para. 1218, pp. 671-674, para. 1403. *See* details of this transaction in the subsection below.

²¹⁷¹ [REDACTED]; Blé Goudé Motion, pp. 79-80, para. 190.

²¹⁷² *Note* that the UN Report discussed in the section above (OUTGOING CODE CABLE / CCN-317 / Embargo control report: June 2011, 6 July 2011, CIV-OTP-0073-0130 (confidential) at 0131), listing the equipment found in the *Garde Républicaine* bunker after Mr. Gbagbo's arrest, mentioned 50 flamethrowers and 8 boxes of AK47 ammunition that had been manufactured in 2010, i.e. after the imposition of the embargo in 2004. These could only have been acquired in breach of the embargo.

3. *The additional supply of equipment to units of loyal commanders*

911. An important element of the Prosecutor's case is the contention that Mr Gbagbo and the 'inner circle' ensured that units under the command of officers who were purportedly loyal to Mr Gbagbo were provided with extra weapons and ammunition, which was a privilege unavailable to non-Parallel Structure units. This subsection will first analyse the acquisition of materiel and subsequently the level of equipment of the so-called Parallel Structure units.

a) Acquisition of additional weapons

912. The most significant evidence regarding the acquisition of additional equipment by the 'parallel structure' is [REDACTED]. One of them relates to P-0321's acquisition of two boxes of ammunition from the Presidential Palace, which is cited also as evidence of informal distribution of weapons to 'parallel structure' units and has been discussed above in detail.²¹⁷³

913. The other instance concerns a supply of ammunition [REDACTED].²¹⁷⁴ [REDACTED].²¹⁷⁵ It appears that Mr Lafont had in his possession military equipment which he would be willing to supply [REDACTED]. [REDACTED] Mr Lafont, the latter confirmed that he still possessed part of the equipment that Mr Gbagbo had bought during the 2002-2003 war but never paid for. [REDACTED].²¹⁷⁶ Mr Seri then apprised Mr Djédjé, Minister of Government, who decided that a meeting with Mr Gbagbo should be scheduled.

914. [REDACTED], Mr Lafont released the materiel after Mr Djédjé promised that he would meet the President to discuss the issue and the debt would be settled

²¹⁷³ See IV.E.1- The stock of weapons and ammunition at the Presidential Palace.

²¹⁷⁴ [REDACTED].

²¹⁷⁵ [REDACTED].

²¹⁷⁶ [REDACTED].

thereafter.²¹⁷⁷ The ammunition provided by Mr Lafont [REDACTED] included 14.5 mm and 73 mm (both of which [REDACTED] considered heavy weaponry²¹⁷⁸ and were used by few FDS units only),²¹⁷⁹ in addition to hand grenades. As for the quantity, [REDACTED] there was enough ammunition to fill a transport vehicle. [REDACTED].²¹⁸⁰

915. The Prosecutor claims that the ammunition provided by Mr Lafont was distributed to GEB, BASA and CECOS, by virtue of these being ‘parallel structure’ units. The evidence relating to the supply to CECOS is based on anonymous hearsay. [REDACTED].²¹⁸¹ [REDACTED].²¹⁸² [REDACTED].²¹⁸³ [REDACTED].²¹⁸⁴

916. This evidence cannot sustain the conclusion that Mr Gbagbo’s trusted commanders were given preference in the access and allocation of military equipment to implement the common plan. Similarly to the point made above in relation to P-0321 receiving two boxes of ammunition from the Palace, [REDACTED]. [REDACTED] obtained ammunition through the use of his personal contacts. As such, [REDACTED] cannot be regarded as evidence that

²¹⁷⁷ [REDACTED].

²¹⁷⁸ [REDACTED].

²¹⁷⁹ [REDACTED].

²¹⁸⁰ [REDACTED].

²¹⁸¹ [REDACTED].

²¹⁸² [REDACTED].

²¹⁸³ [REDACTED].

²¹⁸⁴ [REDACTED].

‘parallel structure’ commanders were systematically given access to more and better materiel.²¹⁸⁵

917. In addition to [REDACTED], the Prosecutor submitted a significant body of documentary evidence showing the allocation of ammunition by the Supreme Command of the *Gendarmerie* to its sub-units. The title of these documents, ‘*bordereaux d’envois*’, was translated in the relevant transcripts of this trial as ‘transmittal slips’, which will be the term used to refer to this evidence hereinafter.²¹⁸⁶

918. The transmittal slips constitute internal correspondence concerning the authorisation of attribution of military resources to specific units in the *Gendarmerie*. In these documents the Supreme Command of the *Gendarmerie* addresses subordinate commanders and lists the equipment that is being attributed to their respective forces. Seemingly, this followed the formalities of the regular chain of command. P-0321 suggested in his testimony that the transmittal slip presented to him was a document showing the response of the Supreme Command of the *Gendarmerie* to requests for ammunition [REDACTED].²¹⁸⁷ Also according to P-0321, the formal procedure was that the Ministry of Defence would coordinate the distribution of materiel and allocate resources to each corps. It follows that, in the case of the *Gendarmerie*,

²¹⁸⁵ Note General Detoh Letho’s testimony to the effect that, after Mr Gbagbo’s arrest, General Detoh Letho was surprised to discover large quantities of twin barrel guns in the BASA camp P-0047, T-203 dated 7 November 2017, pp. 9-10. See also P-0047, T-206 dated 10 November 2017, pp. 39-41. The Prosecutor plausibly argued that because General Detoh Letho was Colonel Dadi’s superior, his unawareness of the existence of these weapons may indicate that they were obtained through unofficial means. Still, this would not in itself suggest that the materiel was distributed or acquired with the assistance of Mr Gbagbo and his ‘inner circle’. [REDACTED], the acquisition of equipment through the backdoor was not unheard of at the time.

²¹⁸⁶ Note that the authenticity of some of these documents has been the subject of challenges by General Kassaraté which claimed that his signature had been forged in some of them. This has been the subject of litigation. However, it is not maintained that General Kassaraté’s belief that the two slips with which he was presented had a fake signature automatically discredit the authenticity of all other transmittal slips.

²¹⁸⁷ See P-0321’s statement to the effect that the transmittal slip shown to him was ‘a document [REDACTED]’. P-0321, T-61 dated 8 July 2016, p. 38 (confidential).

General Kassaraté would receive the equipment from the Ministry of the Defence which he would then attribute to units under his command in the *Gendarmerie*.²¹⁸⁸

919. All the above evidence does is detail the formal procedure by which materiel could be distributed to various corps of the FDS, including the *Gendarmerie*. There is no evidence suggesting that Mr Dogou and General Kassaraté were even aware of the (purported) existence of the Parallel Structure or even that they distinguished between commanders that were actively pro-Gbagbo or not. There is also no evidence that Mr Dogou allocated materiel to General Kassaraté with the intention or knowledge that the latter would specifically attribute the resources to units of the so-called Parallel Structure in the *Gendarmerie*.
920. Lastly on this point, it is also relevant to note that some of these transmittal slips concerned the attribution of ammunition to non-Parallel Structure units of the *Gendarmerie*. To confirm, on the basis of the transmittal slips, the existence of any preferential treatment in the allocation of resources of the *Gendarmerie*, evidence would be needed to show that: a) the documents submitted were exhaustive of all attributions of ammunition in the *Gendarmerie* in a certain period, b) the said allocations were not justified by the size, operational needs or the mission of the relevant unit and c) that the proportion of ammunition given to Parallel Structure units was abnormal with respect to the overall resources of the *Gendarmerie*, which incidentally also remains unknown.

b) Equipment levels

921. The Prosecutor claims that there was a substantial disparity of resources among units of the FDS. To the Prosecutor, this was another indication that ‘parallel structure’ units enjoyed preferential treatment to the detriment of others and that

²¹⁸⁸ See P-0321, T-61 dated 8 July 2016, pp. 36-40 (confidential). Note that P-0321 also stated that in the context of war not all the paperwork and formalities were strictly observed. P-0321, T-61 dated 8 July 2016, pp. 38-39 (confidential).

individuals involved in the implementation of the common plan ensured that the Parallel Structure units would be well-armed during the post-electoral crisis.

922. Whether or not particular units were well-armed is of course relative and depends on a number of factors, such as their role and level of active combat. There is no universal standard that could be applied to all armed forces in the world to objectively estimate if they have a high or low level of military equipment. However, given that the Ivorian Air Force had, for all intents and purposes, been neutralised, it would certainly not be accurate to argue that the FDS as a whole was well-armed.
923. As regards the Prosecutor's claim that 'parallel structure' units were better equipped than other FDS units, this requires a comparison between the arsenal of all the FDS units. Unfortunately, the Prosecutor made no attempt to provide a reliable overview of the complete set of resources of the FDS, nor to show which part thereof was allocated to the so-called 'parallel structure' units. The Chamber is also in the dark as to the number of FDS units that according to the Prosecutor were non-parallel structure units, so the Chamber would be in any case unable to conduct a meaningful comparison between these two 'branches' of the FDS which the Prosecutor believes to have existed. In addition, the allocation of resources is also dependent on the tasks assigned to the units in question. It seems quite natural for units engaged in 'frontline' duty to receive more weapons, as they both need them more and will expend ammunition faster. In order to make a meaningful comparison of the relative levels of equipment, it would thus also be necessary to have some understanding of how the respective units were expected to be used. Apart from some anecdotal evidence, no such information is available. It is thus difficult to understand on what basis the Prosecutor invites the Chamber to assess the accuracy of an allegation which is based on a comparison of the level of military power between two groups without providing information about the resources available to them.

924. That being said, observing the multiple layers of the Prosecutor's arguments, a brief analysis of the evidence that is available in connection with the armament of a number of FDS units will be conducted.
925. With respect to the *Garde Républicaine*, it is noted that when General Mangou was asked about the resources available to the *Garde Républicaine* in comparison to other forces, the witness replied the following: '[i]n relation to other forces, they must have had a smaller quantity. However, I must confess that the *Garde Républicaine* had to have sufficient resources compared to other forces.'²¹⁸⁹ It is not entirely clear what General Mangou meant by this. One reading is that General Mangou meant that, despite the fact that the *Garde Républicaine* had a limited quantity of materiel in absolute terms, the ratio of arms per soldier was still greater than that of other FDS units. There is no way of verifying this since the Chamber has not been made aware of the size of *Garde*

²¹⁸⁹ See P-0009, T-194 dated 26 September 2017, p. 45.

Républicaine troops and its weaponry as a whole, nor was such information provided in relation to other FDS units.²¹⁹⁰

926. In relation to CECOS, General Mangou affirmed that, when it was created, CECOS was supposed to be armed with automatic pistols and AK-47s.²¹⁹¹ Yet, over time, he realised that CECOS had acquired 12.7 mm guns, RPGs and

²¹⁹⁰ General Mangou and P-0347 provided information as to the equipment resources of the GR. General Mangou testified that the *Garde Républicaine* had automatic pistols, 9 mm Uzis from Israel, AK-47s and RPGs. P-0009, T-194 dated 26 September 2017, pp. 44-45. *Note* that Uzis are small-calibre weapons which can fire up to about 1,200 metres (P-0009, T-194 dated 26 September 2017, p. 45). RPGs are anti-tanks weapons. (P-0009, T-194 dated 26 September 2017, p. 41; P-0010, T-140 dated 30 March 2017, p. 20). According to P-0347 there were individual weapons, AK-type weapons, semiautomatic weapons and mortars in the *Garde Républicaine* arms depot in Treichville. P-0347, T-77 dated 22 September 2016, pp. 63-64. The *Garde Républicaine* weaponry found by UN investigators at the Presidential Palace after Mr Gbagbo's arrest is obviously evidence of equipment that the *Garde Républicaine* had during the post-electoral crisis. The UN code cable report indicates that the *Garde Républicaine* had 25 boxes of flamethrowers, eight boxes of AK-47 ammunition, three night vision telescopes, 27 old and broken guns, one anti-tank rocket launcher, 372 boxes containing 1,200 cartridges of 7.62 mm ammunition. It is not clear from the available evidence whether the 372 boxes of 7.62 ammunition was also suitable for AK-47 or whether it was for another type of weapon (e.g. 7.62x51 NATO or 7.62x54). Since the same paragraph also mentions eight boxes of AK-47 ammunition, it is quite likely that the 372 boxes contained a different type of bullets. The evidence shows that the *Garde Républicaine* used BTR 80 APC, which were most probably equipped with 7.62x54 mm machine guns. The Report also notes 24 boxes containing 1,200 cartridges of 12.7 mm ammunition and 24 boxes containing 1,200 cartridges of 5.45 mm ammunition [OUTGOING CODE CABLE / CCN-317 / Embargo control report: June 2011, 6 July 2011, CIV-OTP-0073-0130 (confidential)]. *Note also* that the document does not specify that the weapons/ammunition were found in a basement, but only at 'La Garde Républicaine' of the Presidential Palace, Plateau. In addition to that, an unauthenticated document purportedly signed by General Dogbo Blé and bearing the stamp of the *Garde Républicaine*, seems to record the allocation of 30 boxes of ammunition 7.5 mm; one box of ammunition 9 mm, 100 rifle grenades, 100 offensive hand grenades, and 100 defensive hand grenades on 24 December 2010.. For more information on the *Garde Républicaine* weaponry at the Presidential Palace, *see* IV.E.1 - The stock of weapons and ammunition at the Presidential Palace. *Note also* that the document does not specify that the weapons/ammunition were found in a basement, but only at 'La Garde Républicaine' of the Presidential Palace, Plateau. (No. 2624/GR/EM/CAB / BON POUR, 24 December 2010, CIV-OTP-0071-0151 - allocation to the GR from C.P.C.O/CEMA). *Note* that it is not entirely clear who allocated the materiel listed in the document and to whom. The document bears General Dobo Blé's name, stamp and signature. It states that the weapons and ammunition are for the benefit of ('*au profit de*') the *Garde Républicaine*. This can be understood as meaning that the *Garde Républicaine* allocated materiel to the *Garde Républicaine*, which can appear illogical. In any case, it remains unclear why "*Le Général de Corps d'Armées, Chef d'Etat-major des Armées*" and "*C.P.C.O*" appear on the bottom of the document and what role they would have played in the transaction. *Note* however that the reference to CEMA and CPCO do not raise specific issues with regards to the process of requesting materiel, as they were hierarchically superior to the GR. The situation thus differs from the one of No. 622/G R/EM/CAB / BON POUR, 30 March 2011, CIV-OTP-0071-0223 albeit these were unrelated units, the *Garde Républicaine* and the Gendarmerie, appear to have been involved in a transaction.

²¹⁹¹ *See* P-0009, T-193 dated 25 September 2017, pp. 15-16.

grenades and was well armed.²¹⁹² In contrast, CECOS commander General Bi Poin testified that CECOS was ‘very, very poorly armed’.²¹⁹³

927. There is a greater amount of information about the BASA arsenal in comparison with that provided about the *Garde Républicaine* and CECOS.²¹⁹⁴ It is also noted that witness P-0164, who was a soldier based at the Akouédo Camp, confirmed there being a large quantity of ammunition at BASA during the post-electoral crisis.²¹⁹⁵ Another soldier who occupied a similar position stated that BASA did not receive new weapons during the crisis, but also noted that they had grenades and AK-47s that seemed new to him.²¹⁹⁶ Yet, even if it were assumed that there was ample ammunition at BASA, it would still be difficult to conclude from this that BASA was better armed than other FDS units. First, none of the witnesses stated that this was the case. Second, according to BASA soldier witness P-0238,

²¹⁹² See P-0009, T-193 dated 25 September 2017, p. 17; P-0009, T-198 dated 3 October 2017, pp. 39-42.

²¹⁹³ See P-0010, T-137 dated 27 March 2017, pp. 62-63. General Bi Poin also explained that his troops would come with their own weapons from their respective FDS unit. Regarding a document RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No. 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential) at 0073-0215, [REDACTED]. Note too that when General Mangou was presented with the document, he denied having seen it before. P-0009, T-198 dated 3 October 2017, p. 43.

²¹⁹⁴ Note that according to BASA soldiers witnesses P-0238 and P-0164, apart from a personal AK-47 given to each soldier, BASA had 20 mm cannons, 12.7 mm cannons mounted on four-by-four vehicles, 18.23 mm double-barrelled canons, Multiple Rocket Launchers and 120 mm mortars. P-0238, T-80 dated 27 September 2016, pp. 52-54, 68-69; P-0164, T-164 dated 19 June 2017, pp. 24-25. Note that according to General Mangou, 12.7 mm cannons are heavy machine guns that can fire up to a range of 1,200 metres (P-0009, T-193 dated 25 September 2017, p. 17). According to P-0164, they have to be mounted on a vehicle. (P-0164, T-164 dated 19 June 2017, p. 27). General Mangou explained that 120mm mortars are artillery weapons which can shoot up to 7,000 to 13,000 metres (P-0009, T-200 dated 5 October 2017, p. 48). General Mangou added that VLRAs with mounted 20 mm cannons were weapons ‘that [were] available to the BASA’ (in French: “[c]e sont des armes au niveau du BASA”), although it is unclear whether or not he meant that BASA was in actual possession of that kind of vehicle during the post-electoral crisis. P-0009, T-194 dated 26 September 2017, pp. 47-48. General Deto Letho testified that at Camp Commando in Abobo, BASA had 60 mm and 82 mm guns. P-0047, T-204 dated 8 November 2017, pp. 14-15.

²¹⁹⁵ P-0164, T-164 dated 19 June 2017, p. 27.

²¹⁹⁶ P-0226, T-166 dated 27 June 2017, p. 57; DÉCLARATION DE TÉMOIN, 23 January 2013, CIV-OTP-0039-0143-R03 (confidential) at 0150.

one should expect that BASA, being the main artillery unit, would have more (heavy) weapons and be better armed than the infantry.²¹⁹⁷

928. [REDACTED], which have been discussed above in section IV.E.3.a), were aimed to ensure that [REDACTED] had sufficient ammunition to hold out for a month, assuming that each soldier would use four chargers of Kalashnikov ammunition each day.²¹⁹⁸ [REDACTED].²¹⁹⁹

²¹⁹⁷ See P-0238, T-80 dated 27 September 2016, pp. 52-54, 68-69. *Note* that according to P-0238, BASA had many weapons. It was better armed, had more weapons (because it is the artillery) and had heavier weapons than other FDS units (because the artillery weapons are heavier).

²¹⁹⁸ [REDACTED]. *Note* that in March 2011 [REDACTED].

²¹⁹⁹ See P-0047, T-206 dated 10 November 2017, pp. 22-23, 47-48 and P-0009, T-194 dated 26 September 2017, pp. 6, 26 saying that at some point during the crisis they had no ammunition at all.

929. The Prosecutor also presented documentary evidence that shows the administrative attribution of ammunition to the GEB by the *Gendarmerie*.²²⁰⁰ Overall, these documents provide some information as to the kind of materiel available to GEB during the post-electoral crisis but by no means do they confirm that GEB was well armed, nor that it was better armed than others, nor that alleged Parallel Structure units had preference in the attribution of equipment within the *Gendarmerie*. In relation to the *Gendarmerie* as a whole, the only relevant information presented in this regard is that the *Gendarmerie* commander, witness General Kassaraté, considered his forces to be underequipped during the post-electoral crisis. In his testimony, General

²²⁰⁰ According to evidence from *Gendarmerie* archives, on 9 February 2011 the GEB commander made a request for ammunition to the Superior Commander of the *Gendarmerie*, General Kassaraté. In addition to the official stamp of the GEB with a signature, there are two other stamps in the document. One registers the arrival of this correspondence to the *Gendarmerie* Superior Command on 9 February 2011 and the other marks another arrival of mail on 21 February 2011; it is not clear who was responsible for the second stamp. The document shows the request of the following: 10 cases of 7.62 mm ordinary rounds and tracer/incendiary bullets (a handwritten annotation in the document shows that this was reduced to three boxes instead of 10), 20 packets of 9 mm ammunition of the ordinary and explosive kinds (another handwritten annotation shows that this was reduced to 10 packets) [Besoins en munitions, 9 February 2011, CIV-OTP-0044-0014 (confidential). *Note* that the document also showed the attribution of ammunition for training (the rest of ammunition was listed as “real ammunition”) These (probably non-lethal) were the following: two boxes of ammunition for training 7.62 mm x 39 (AK), 100 packets of “*cartouches à blanc*” 7.5 mm (semi-automatic rifles), 32 bands of 50 blank cartridge (AA-52 machine guns)]. Two transmittal slips dated 23 February 2011 and signed by General Kassaraté record the supply of the material requested by GEB on 9 February 2011. The two documents indicate that the three cases of 7.62 mm ammunition contained 3960 rounds (BORDEREAU D'ENVOI, 23 February 2011, CIV-OTP-0044-0015 (confidential)) and the 10 packets of 9 mm contained 500 rounds in total (BORDEREAU D'ENVOI, 23 February 2011, CIV-OTP-0044-0013 (confidential)). It is not clear whether the handwritten annotations in the 9 February 2011 document were entered when the request was being placed or upon receipt of the materiel, in which case there would be an indication that the delivery took place. Considering that the second stamp in the document registers ‘mail arrival’ on 23 February 2011, the same date of the transmittal slips allocating the materiel requested, it might be that the equipment was received by the GEB on that day. Two other transmittal slips, one dated 31 October 2010 and the other 22 March 2011, record further attribution of ammunition from the Supreme Command of the *Gendarmerie* to the GEB. These bear the *Gendarmerie* stamp and a signature which seemingly was that of General Kassaraté. Only the October document has been authenticated by a witness [REDACTED]. The transmittal slip of 31 October 2010 documented the allocation of the following materiel to the GEB: 4,500 rounds of ammunition 7.62 x 39 mm, 3,000 rounds of ammunition 7,62 x 54 mm, and 50 shells of 73 mm for BMP1 (BORDEREAU D'ENVOI, 31 October 2010, CIV-OTP-0044-0098 (confidential)). [REDACTED]. As such, it is not possible to ascertain whether the absence of signature in the other forms is explained by a general practice of failing to sign for the receipt of equipment. When it comes to the attribution of March 2011, the relevant transmittal slip determines that GEB was to receive 5,600 rounds of 7,62x39 ammunition, 5,040 rounds of 7,62x54, 50 shells of 82 mm and 12 rockets (BORDEREAU D'ENVOI, 22 March 2011, CIV-OTP-0044-0024 (confidential)). The document was not signed by a representative of GEB [REDACTED]. It is thus not possible to confirm that this equipment was effectively delivered to the GEB.

Kassaraté affirmed that he asked for new equipment and in response received material for the maintenance of law and order such as shields and batons.²²⁰¹

930. It is important to bear in mind that, had the Prosecutor managed to prove that certain units were well-armed and/or better armed than others, she would still need to provide evidence indicating that this was due to the Common Plan. Any military superiority of units which the Prosecutor labels Parallel Structure units

²²⁰¹ See P-0011, T-132 dated 10 March 2017, pp. 60-61. There is not much testimonial evidence concerning the armament of the *Gendarmerie* as such. According to General Kassaraté, there were two or three MAB15 pistols and ammunition per brigade of 20 to 50 people P-0011, T-135 dated 14 March 2017, pp. 19. The *Gendarmerie* squadrons had 10 to 15 AK-47s and ammunition for about 100 individuals [P-0011, T-135 dated 14 March 2017, pp. 19-20]. Other than information on GEB materiel, which was a *Gendarmerie* unit, most of the evidence on the record derives from the contents of the transmittal slips purportedly signed by General Kassaraté. Two slips dated 28 October 2010 register that the *Gendarmerie* allocated 60 hand grenades MP 7 and 60 *Bouchons allumeurs* to the squadron 3/1 of Abobo and 1000 rounds of 7.62 mm NATO ammunition plus 2700 rounds of 5.56 mm ammunition to the intervention unit. (BORDEREAU D'ENVOI, 01 October 2010, CIV-OTP-0044-0100 (confidential); BORDEREAU D'ENVOI, 28 October 2010, CIV-OTP-0044-0099 (confidential)). On 10 December 2010, the Supreme Command of the *Gendarmerie* responded to a request of the Squad for the Protection of High Authorities and allocated 1320 cartridges of 7.62 mm, 1600 cartridges of 5.56 mm and 100 cartridges of 9mm to the unit (BORDEREAU D'ENVOI, 10 December 2010, CIV-OTP-0044-0049 (confidential)). Three days later on 13 December 2010, 2700 rounds of 5.56 mm BO were attributed to squadron 3/1 (BORDEREAU D'ENVOI, 13 December 2010, CIV-OTP-0044-0048 (confidential)). Another transmittal slip shows that on 24 February 2011 the Supreme Command of the *Gendarmerie* allocated 3960 rounds of 7.62mm ammunition to squadron 3/1 [BORDEREAU D'ENVOI, 24 February 2011, CIV-OTP-0044-0012 (confidential)]. The last of these records, two transmittal slips dated 22 March 2011, register the attribution of 1,500 rounds of 7.62 mm ammunition to the First Mobile Battalion and another 5,280 rounds of the same equipment to the *Groupement de Commandement et des Services* (BORDEREAU D'ENVOI, 22 March 2011, CIV-OTP-0044-0021 (confidential); BORDEREAU D'ENVOI, 22 March 2011, CIV-OTP-0044-0022 (confidential)). Additional to that, a document with a different format than that of the transmittal slips, also apparently signed by General Kassaraté, shows that on 21 February 2011 military equipment was designated to the security of the Superior Commander of the *Gendarmerie*. These were the following: one box of 7.62 mm ammunition, three boxes of grenades H.G. 84 de M.O., one collective weapon PKM; two boxes of 7.62 x 54 mm, one RPG and five anti-personnel rockets (BON POUR, 21 February 2011, CIV-OTP-0044-0018 (confidential)). The transmittal slips addressed to General Kassaraté's *aide de camp* were not listed, in view of his comments regarding the authenticity of these documents. P-0011, T-131 dated 9 March 2017, pp. 40-42. With regard to the other transmittal slips, initially General Kassaraté confirmed being familiar with this type of documents he subsequently denied having seen any document of this nature 'at the time of the events'. P-0011, T-131 dated 9 March 2017, pp. 39; 42. Regardless of what may have been the case and ignoring the serious concerns regarding the authenticity of these transmittal slips, their probative value is in any event very limited, since they cannot confirm the delivery of the allocated materiel to the units. Thus, while these documents suggest that the *Gendarmerie* had the listed equipment at its disposal at the relevant time, they do not offer proof of the superior level of equipment being obtained by the so-called Parallel Structure units. Note that the Prosecutor expressed the intention to have an expert Report on P-0011's signature during the hearing on 9 March 2017 and made a formal request to the Chamber months later in 15 November 2017 (*Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Prosecution request to obtain documents in the Registry's possession for forensic Examination, 15 November 2017, ICC-02/11-01/15-1067-Conf). The Chamber gave authorisation to the Prosecutor in December 2017 but has not been informed of the outcome, if any (*Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on Prosecution request to obtain documents in the Registry's possession for forensic examination, 14 December 2017, ICC-02/11-01/15-1087).

could be justified by the specific character and purpose of these forces. It would be naive to expect that every division of national defence, security, and law enforcement forces invariably receive the same equipment.

931. Having regard to the foregoing analysis and considering the totality of the relevant evidence on this point, the overall conclusion is that the evidence presented is incapable of showing that Parallel Structure units benefited from special treatment in the allocation of FDS armaments or that FDS equipment was consistently distributed to BASA, GEB and CECOS in such a way that these units became well-equipped or better equipped than others. In fact, there is insufficient evidence even to confirm that the so-called Parallel Structure units were well-equipped or better equipped than others.

4. Mr Lafont supplied weapons and ammunition to the FDS

932. In the Response, the Prosecutor alleges that both before and during the post-electoral crisis, an arms trader of French nationality based in Abidjan, Mr Lafont, supplied weapons and ammunition to the FDS. These supplies were supposedly carried out through two companies of which Mr Lafont was the director, Darkwood Logistics and Protec-SA.
933. The Prosecutor submitted numerous documents recording transactions between Mr Gbagbo's government and Mr Lafont's companies from 2005 to 2010.²²⁰² The documentary evidence confirms that Mr Lafont was the director of both Darkwood Logistics and Protec-SA and that these companies were specialised in military materiel and law enforcement equipment, respectively. However, as shown below in the analysis of the evidence, the only FDS unit to which supplies

²²⁰² In addition to the documents showing invoices, payment orders and delivery forms, the Prosecutor submitted copies of the cheques of payment from the National Police to Darkwood Logistics. See ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0326 (dated 4 December 2009), 0327 (dated 8 February 2010) and 0330 (dated 4 December 2009).

were delivered several times in the years leading to the post-electoral crisis was the National Police.²²⁰³

934. Before discussing each of the documents in turn, an important consideration is in order. The Prosecutor, in her presentation of the evidence referred to in her Response, makes no distinction between the supplies of lethal and non-lethal equipment. By failing to address the specifics of the materiel listed in the invoices and delivery forms she adduces, the Prosecutor seems to attribute to the purchase of crowd control equipment²²⁰⁴ the same significance as to the supply of deadly weapons. This gives rise to a number of problems. First and foremost, it is incongruous that the Prosecutor aims to prove the arming of the FDS in preparation for an attack against civilians by showing evidence of the acquisition of non-lethal law enforcement equipment. This is not to underestimate the harm that the indiscriminate use of crowd control ammunition may cause,²²⁰⁵ but the arming of the FDS in this context presupposes arming state forces with firearms, not teargas.
935. Second, the fact that the Prosecutor's failed to make a distinction between different types of materiel that was allegedly delivered by Mr Lafont's companies puts the Chamber in the awkward position of having to establish which of these items were lethal and which were not. Whilst the lethal power of some of the equipment mentioned in the documents is arguably common knowledge, the same is not true for many items mentioned in the invoices and

²²⁰³ Note that there is evidence of several supplies to the Police before 2010 and only one during the crisis.

²²⁰⁴ Note that although these can relate to teargas grenades it also includes whistles and items of uniforms, as seen in a document showing the supply of these items to CECOS (Note explicative Au groupe d'Experts de l'ONU sur la Côte d'Ivoire / No. 232/MEF/DGTCP/PGA/BF / chèque no. 2563727 de 150 353 372 F CFA pour le paiement de deux mandats, 20 February 2012, CIV-OTP-0073-0201 (confidential) at 0203 and 0204 (dated 10 January 2010)). This document lists the purchase of bullet-proof vests, pairs of ranger shoes, shields, helmets, multi light cougar launchers and adaptors, plus tear gas grenades, and was authenticated by P-0010, T-137 dated 27 March 2017, pp. 73-74 (confidential).

²²⁰⁵ See P-0009, T-194 dated 26 September 2017, pp. 41-42. Note, in particular, General Mangou's remarks concerning the effect of tear gas grenades. The witness said that, although the purpose of a tear gas canister is to disperse a crowd, such a projectile can be dangerous if it hits someone and it can even 'suffocate human beings'.

delivery forms which have been submitted. Under these circumstances and without more detailed submissions from the parties in this regard, it is not possible for the Chamber to determine the nature of all the items that were delivered.

936. With these considerations in mind, the documentary evidence associated with Mr Lafont's supplies to the FDS will now be analysed.
937. A document supposedly produced by the National Police shows a spreadsheet with the orders and payments made to Darkwood Logistics and Protec-SA throughout a period of five years.²²⁰⁶ According to this document (hereafter the Police Spreadsheet), Mr Lafont's companies received two orders in 2005, one in 2006,²²⁰⁷ three in 2007, two in 2008, three in 2009 and one in 2010. With the exception of the order made in 2010, which is discussed in detail below, the data in the Spreadsheet specifies that all supplies therein registered related exclusively to non-lethal material. Although the document is stamped and signed, it is undated and its author unknown. As such, taken on its own, the Police Spreadsheet's evidential weight is severely limited.
938. However, some of the information in the Police Spreadsheet received corroboration from other documents and therefore can provide a basis for factual findings. The orders registered in the Police Spreadsheet that have been documented in invoices and letters submitted concern two supplies of teargas in 2009 and a purchase of grenades and pistols in 2010.
939. The most significant of these supplies involved the payment of 100,005,000 FCFA on account of a purchase of 1,500 teargas grenades MP7 with

²²⁰⁶ ETAT DES ORDRES DE PAIEMENT DES SOCIETES: DARWOOD LOGISTICS-PROTEC SA-PROTECTAS SECURITE PRIVEE-PROTEC ET PROTEC CI RAISON SOCIALE, 29 February 2012, CIV-OTP-0028-0317 (confidential).

²²⁰⁷ Note that the orders of 2006 were to Mr Lafont's company Protec-SA instead of Darkwood Logistics.

fuzes in the first semester of the year of 2009.²²⁰⁸ The other order, for which payment of 49,935,830 FCFA was made, related to the supply of 749 teargas grenades MP7 with fuzes in the second half of 2009.²²⁰⁹ It is possible that there were two, instead of one, orders of 749 teargas grenades for the Police, one in August and the other in October 2009.²²¹⁰ As it was specified in the Police Spreadsheet and confirmed by documents showing the orders and deliveries of equipment, all of the 2009 supplies consisted of non-lethal materiel.

940. When it comes to the 2010 supply, the Police Spreadsheet does not confirm the non-lethal nature of the equipment ordered from Darkwood Logistics.²²¹¹ The relevant entry in the document registers the purchase of pistols and grenades (*achat de pistolets et de grenades*). Yet, as shown below, other documents

²²⁰⁸ ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0331 (dated 17 June 2009); Commande de grenades lacrymogènes type MP7 et DPR (50mm), 18 May 2009, CIV-OTP-0023-0260 (confidential) at 0260 and 0261(dated 23 April 2009).

²²⁰⁹ ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0329 (dated 19 August 2009), 0321 (dated 9 October 2009), 0322 (dated 9 October 2009), 0323 (dated 29 October 2009). *Note* that although the date of the document ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0323 is difficult to read, it is very likely 29 October 2009.

²²¹⁰ *Note* that in the Police Spreadsheet (ETAT DES ORDRES DE PAIEMENT DES SOCIETES: DARWOOD LOGISTICS-PROTEC SA- PROTECTAS SECURITE PRIVEE-PROTEC ET PROTEC CI RAISON SOCIALE, 29 February 2012, CIV-OTP-0028-0317 (confidential)), there are two identical entries showing the purchase in 2009 of teargas grenade for which payment of 49 935 830 F CFA was made. Additional evidence suggests the possibility of there being two identical orders of teargas in 2009. There are two documents from 2009 quoting the same amount of 49 935 830 F CFA, each showing an order of payment to Darkwood Logistics. One of these orders of payment is dated 28 October 2009 (ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0320) and the other 19 August 2009 (ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0329). It is relevant to note that the August order did not have a reference number whereas the October order had as reference number the figure of 346. In addition to that, there are three cheques from the Police to Darkwood Logistics that seem to relate to these two orders. One cheque dated 4 December 2009 (ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0330) carries reference number 192 that cannot be found on other documents, but its amount does correspond to the first payment aforementioned. The two other cheques of 4 December 2009 and 8 February 2010 (ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0326 and 0327) both bear reference number 346 that was also found on the 28 October 2009 order. Added together, they correspond to the amount of the second order, that is 49 935 830 F CFA.

²²¹¹ *Note* that it was explicit in the entries of the Spreadsheet registering the 2009 orders (ETAT DES ORDRES DE PAIEMENT DES SOCIETES: DARWOOD LOGISTICS-PROTEC SA- PROTECTAS SECURITE PRIVEE-PROTEC ET PROTEC CI RAISON SOCIALE, 29 February 2012, CIV-OTP-0028-0317 (confidential)) that they related to non-lethal materiel. The same is not true for the data referring to the 2010 order which does not specify whether the grenades purchased were teargas or shrapnel.

relating to a supply received by the Police in 2010 suggest that this too may have consisted of non-lethal materiel only.

941. The Police Spreadsheet shows that the amount paid for grenades and pistols in the year of 2010 was of 47,990,600 FCFA.²²¹² An invoice from Darkwood Logistics quoting this same amount, issued on 9 August 2010,²²¹³ certifies the purchase of 50 pistols GC54, 200 MP7 teargas grenades, and 70 grenades HG 84, in addition to 100 packages of ammunition (with five cartridges in each) by the National Police.²²¹⁴ The invoice was followed by an order of payment made in October 2010 registered in a document with the logo and stamp of the Ministry of the Defence referring to the purchase of *'pistolets GC 54 et de grenades MP7 et HG 84.'*²²¹⁵ Although this provides some detail about the pistols and grenades that were registered in the 2010 entry of the Police Spreadsheet, none of the documents elucidate the nature and harm potential of this equipment.
942. Evidence relating to materiel acquired in the preceding years confirms the existence of teargas grenades of type MP7, so it is at least possible that the MP7 grenades bought in 2010 were also teargas instead of shrapnel grenades.²²¹⁶ A similar point can be made in relation to the HG 84 grenades. A document connected to the supply of weapons to another FDS unit (discussed below), shows the purchase of grenades type HG 84 *fulgurantes – effets sonores*

²²¹² ETAT DES ORDRES DE PAIEMENT DES SOCIETES: DARWOOD LOGISTICS-PROTEC SA-PROTECTAS SECURITE PRIVEE-PROTEC ET PROTEC CI RAISON SOCIALE, 29 February 2012, CIV-OTP-0028-0317 (confidential).

²²¹³ ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0328 (dated 9 August 2010) with a National Police logo, stamped and signed by Darkwood Logistics' Director and a Representative of the Ministry of Interior (also a stamp by the National Police).

²²¹⁴ ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0328 (dated 9 August 2010).

²²¹⁵ ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0318 (dated 9 August 2010).

²²¹⁶ See ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0321 (dated 9 October 2009), 0322 (dated 9 October 2010), 0323 (dated 29 October 2009) and 0324 (dated 9 October 2009). Note that although the date of the document ORDRE DE PAIEMENT, 20 October 2010, CIV-OTP-0028-0318 (confidential) at 0323 is difficult to read, it is very likely 29 October 2009.

150 dB.²²¹⁷ This description suggests that these were so-called ‘flash-bang’ grenades, producing a loud blast and intense flash of light, but not containing shrapnel.

943. In the absence of further information, the Chamber is unable to determine which sort of HG 84 the Police acquired. In a similar vein, the absence of information regarding the GC 54 pistols precludes the conclusion that the Police acquired lethal firearms in 2010. It is not self-evident that GC 54 pistols are not, for example, guns suitable for rubber bullets only. Based on this, it is not possible for a reasonable trial chamber to conclude that Mr Lafont’s companies supplied lethal weapons and ammunition to the National Police, both before and during the post-electoral crisis.
944. Although the bulk of the evidence presented in the context of acquisition of weapons from Darkwood Logistics and Protec-SA related to orders made by the Police, the Prosecutor also submitted documents supposedly showing supplies to the *Gendarmerie* and CECOS. One of these documents, which is also the only one that was authenticated by a witness, attests to the delivery in 2008 of equipment such as uniforms, shields, and teargas to CECOS.²²¹⁸ By contrast, the two documents discussed in detail below, one pertaining to CECOS and the other to the *Gendarmerie*, do cite lethal weapons amongst the list of supplies. However, neither of these has been authenticated, nor did they receive corroboration by other items of evidence.

²²¹⁷ RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No. 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential).

²²¹⁸ *Note explicative* Au groupe d’Experts de l’ONU sur la Côte d’Ivoire / No. 232/MEF/DGTCP/PGA/BF chèque no. 2563727 de 150 353 372 F CFA pour le paiement de deux mandats, 20 February 2012, CIV-OTP-0073-0201 (confidential) at 0203 (dated 10 January 2008) and 0204 (dated 10 January 2008). For the complete list of material, please refer to footnote 2204. *Note* that when it comes to CECOS, the Prosecutor submitted three documents but only this one has been authenticated. It confirms the supply in January 2008 of rangers, tear-gas grenades and other non-lethal material. *See* P-0010, T-137 dated 27 March 2017, pp. 73-74 (confidential) identifying the document.

945. To prove that Mr Lafont supplied the *Gendarmerie* with weapons and ammunition, the Prosecutor adduced a document containing an offer prepared by Darkwood Logistics to the *Gendarmerie* on 22 February 2010.²²¹⁹ The offer lists a number of materiel, including, amongst other things,²²²⁰ the following: 750 AK-47s and 100 boxes of ammunition (1,320 cartridges each), 300 Taurus 9 mm automatic pistols and 500 packages (each containing 50 cartridges) of 9 mm ammunition. This is equipment known to be of a lethal nature. However, this document, seemingly produced by Darkwood Logistics with the logo of *Gendarmerie*, bears the stamp of Darkwood Logistics only. In contrast with other similar documents submitted into evidence, this document does not have Mr Lafont's signature.²²²¹ It bears neither a stamp attributable to the government nor a signature from a government official. Moreover, this seems to be merely an offer from Darkwood Logistics. There is no evidence that the offer was taken up and, if so, whether the goods listed were ever supplied.

946. Another delivery form bearing the name CECOS²²²² was adduced by the Prosecution to prove the delivery of 50 Taurus 9 mm automatic pistols, 1,400 defensive grenades '*mortelles*', 50 mortars of 120 mm calibre, 450 defensive grenades 'M 26', among others. These appear to have been

²²¹⁹ Commande de grenades lacrymogènes type MP7 et DPR (50mm), 18 May 2009, CIV-OTP-0023-0260 (confidential) at 0262 (dated 22 February 2010).

²²²⁰ Note that in the list of materiel, non-lethal weaponry is also mentioned, such as rubber bullets and the aforementioned grenades HG 84 *fulgurantes* with *sonores* effects.

²²²¹ Note that all the documents bear Mr Lafont's signature except for two of them: the 22 February 2010 quotation document (Commande de grenades lacrymogènes type MP7 et DPR (50mm), 18 May 2009, CIV-OTP-0023-0260 (confidential) at 0262 (dated 22 February 2010)) and the CECOS delivery document (RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential)) which does not even bear Darkwood Logistic or Protec SA stamp.

²²²² RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential).

delivered up until 1 November 2010, although it appears that they pertain to an order made on 13 November 2009.²²²³ [REDACTED].²²²⁴

947. In any event, this document, could not be seen as evidence of supplies obtained from Mr Lafont.²²²⁵ The CECOS delivery form is presented by the Prosecutor as evidence that Mr Lafont's companies sold lethal equipment to CECOS in 2010 but, in contrast with all the other evidence cited in this context, neither Darkwood Logistics nor Protec-SA is mentioned in the document.²²²⁶ In the absence of any visible reference to these companies, the Prosecutor seems to argue that, to prove that the offer was produced by Darkwood Logistics, it is enough that this form has the use of the term 'Fact Pro' (which, as the Prosecutor points out, is short of *Facture pro forma*) in common with Darkwood Logistics invoices and a similar way of referring to the quotation document by using a number and a date. This hardly constitutes a sufficient basis for attributing the supply of the listed weapons to Mr Lafont or one of his companies.
948. All in all, only two documents refer to the sale of lethal material. Neither of these documents were authenticated and one of them cannot be attributed to Mr Lafont or his companies. Hence, the proposition that Mr Lafont's companies supplied lethal weapons cannot be confirmed. The only probative evidence available shows that Mr Lafont's companies supplied non-lethal law enforcement equipment. The available evidence would thus not allow a reasonable trial

²²²³ The heading of the list shows "Fact Pro N. 005 bis LK/13-11-2009"; this is the reference number of the quotation document pertaining to the list. After examining the other documents available, the last part of the reference number seems to correspond to the date when the quotation document was produced, namely 13 November 2009, or at the very least November 2009.

²²²⁴ [REDACTED].

²²²⁵ Note that aside from this document which bears no apparent relation to Mr Lafont, the Prosecutor relies on [REDACTED] to claim the delivery of supplies by Mr Lafont to CECOS. However, [REDACTED] was not sure that part of the ammunition [REDACTED] was given to CECOS; he also never talked [REDACTED] about the supply of arms or ammunition to other units such as the CECOS.

²²²⁶ All of the other documents have the name of either Darkwood logistics or Protec-SA in the header of the paper or in a stamp with Mr Lafont's signature. Most have both, the stamp and the logo with the name and address of the relevant company.

chamber to accept the Prosecutor's theory which places Mr Lafont's supplies to the FDS within the framework of the Common Plan.

5. *Conclusion*

949. Detailed analysis of the four main contentions concerning the acquisition and distribution of weaponry has revealed very little incriminating information. The available evidence is mostly of poor quality and anecdotal at best.
950. While it was possible to confirm that there was ammunition stored in a basement of the Presidential Palace during the post-electoral crisis, the evidence is unable to sustain the Prosecutor's allegation that the cache of weapons was used to ensure that certain units were better equipped than others.
951. More generally, the Prosecutor failed to submit sufficient evidence to prove that there was an arrangement in place through which FDS commanders loyal to Mr Gbagbo had preferential access to weaponry. On the contrary, the little anecdotal evidence there is suggests that individual commanders took the initiative to find supplies for their units through personal contacts. The same is true for the evidence concerning alleged attempts to circumvent the UN arms embargo. While the evidence contains some clues that certain individuals may have made attempts to acquire weapons or ammunition in contravention of the embargo, there is no evidence that this was part of a coordinated effort. Even if it were accepted that CECOS was in part created for the purpose of circumventing the UN embargo, the available evidence of actual acquisitions is very thin. When it comes to the supplies allegedly obtained from Mr Lafont's companies, the available evidence is simply not capable of supporting a finding that lethal weapons were provided.
952. Finally, the claim that the 'parallel structure' units were better armed than other units is not borne out by the available evidence. There is simply too little reliable evidence in the record to make a meaningful comparison. From the limited available evidence it is not possible to discern what the equipment level of the

respective FDS units was at any given time. There is also no reliable evidence about what their respective requirements were. Absent such information, it would be entirely irresponsible to draw any conclusions from the limited evidence concerning the armament of the pro-Gbagbo forces the Chamber was presented with.

F. Public expressions of the alleged common plan/policy

953. Throughout both the Pre-Trial and the Mid-Trial Briefs, the Prosecutor attempted to establish that the crimes were incited by inflammatory speeches, covered up by press releases after the events denying any responsibility of state forces and encouraged by rhetoric blurring the distinction between civilians and combatants. It is alleged that there was reinforced distinction between ‘those apparently worthy of occupying the land and the Presidential office, and “others”, such as Alassane Ouattara’.²²²⁷ The Prosecutor also relies on the content of public speeches and statements as indirect evidence for the existence and content of the alleged common plan/policy.

1. Public speeches and statements

a) The Prosecutor’s allegations

954. Public speeches and statements form a central part of the Prosecutor’s case theory. Hundreds of references to dozens of different speeches/statements by the accused and, to a lesser extent, other alleged ‘inner circle’ members are scattered throughout the Mid-Trial Brief and the Response. According to the Prosecutor, the speeches/statements provide proof for three main allegations. First, the Prosecutor alleges that the speeches/statements are evidence of the existence of

²²²⁷ Mid-Trial Brief, para. 526.

the alleged common plan/policy, i.e. Mr Gbagbo's intention to hold on to power at any cost, including by use of force against civilians. Second, the Prosecutor claims that, through their speeches, Mr Gbagbo and Mr Blé Goudé contributed to the realisation of the the common plan/policy. Third, the Prosecutor alleges that both Mr Gbagbo and Mr Blé Goudé incited their followers to commit crimes.

955. As the Prosecutor acknowledges, none of the speeches/statements contain any explicit and overt calls to commit violence against civilians. The speeches can thus, at best, be considered as circumstantial evidence. In this regard, the Prosecutor's main allegation is that '[the Inner Circle used] violent rhetoric and hate speech against Ouattara supporters, identifying them as the enemy and legitimate targets for attack'.²²²⁸ According to the Prosecutor, this rhetoric used by the accused and the members of the alleged Inner Circle created an environment conducive to the commission of the crimes.

956. More specifically, the Prosecutor argues that the speeches/statements had the following effects:

- i. Speeches indicated that Mr Gbagbo was there to stay and that no other scenario was plausible;²²²⁹
- ii. Speeches created a climate of fear, by stressing crimes committed by the rebels;²²³⁰
- iii. Speeches blurred the distinction between rebel fighters and innocent civilians who supported Mr Ouattara;²²³¹
- iv. Speeches demonised Mr Ouattara and those who supported him by referring to them as bandits, enemies and terrorists;²²³²
- v. Speeches indicated that there would be no legal or disciplinary consequences for those who committed crimes against civilians who supported Mr Ouattara (creation of 'climate of impunity');²²³³

²²²⁸ Mid-Trial Brief, para. 856; Response, para. 1321.

²²²⁹ Mid-Trial Brief, paras. 85, 635, 645.

²²³⁰ Mid-Trial Brief, para. 378.

²²³¹ Mid-Trial Brief, para. 165.

²²³² Mid-Trial Brief, paras. 104, 431-432, 654.

- vi. Speeches made unfounded claims that pro-Ouattara victims were not civilians but attackers or that events causing civilian deaths were pure fabrication;²²³⁴
- vii. Speeches called for the erection of roadblocks;²²³⁵
- viii. Speeches encouraged those who committed violence by (a) failing to condemn criminal behaviour, (b) denying the occurrence of criminal behaviour; (c) commending the persons responsible for criminal behaviour;²²³⁶
- ix. Speeches incited hatred against the international community and foreign civilians.²²³⁷

957. Specifically in relation to Mr Blé Goudé, the Prosecutor further alleges that, through his speeches, he:

- i. Galvanised the youth;²²³⁸
- ii. Played an essential role in the recruitment and enlistment of pro-Gbagbo youth into the FDS;²²³⁹
- iii. Supported and encouraged cooperation between the pro-Gbagbo youth, the militias and the FDS;²²⁴⁰
- iv. Maintained ties with the other pro-Gbagbo youth leaders and conveyed to them the decisions of Mr Gbagbo and the 'inner circle';²²⁴¹
- v. Mobilised the pro-Gbagbo youth and issued *mots d'ordres*;²²⁴²
- vi. Created an environment conducive to the commission of crimes;²²⁴³
- vii. Incited the pro-Gbagbo forces and the pro-Gbagbo youth in particular to commit crimes or otherwise facilitated their commission;²²⁴⁴

²²³³ Mid-Trial Brief, paras. 8, 253.

²²³⁴ Mid-Trial Brief, paras. 165, 333

²²³⁵ Mid-Trial Brief, para. 238.

²²³⁶ Mid-Trial Brief, paras. 372, 376-382, 502, 601, 610, 615, 814, 886.

²²³⁷ Mid-Trial Brief, para. 23.

²²³⁸ Mid-Trial Brief, paras. 238, 432.

²²³⁹ Mid-Trial Brief, para. 254.

²²⁴⁰ Mid-Trial Brief, paras. 285, 435-438.

²²⁴¹ Mid-Trial Brief, paras. 839-845.

²²⁴² Mid-Trial Brief, para. 238, 502, 797.

²²⁴³ Mid-Trial Brief, paras. 502, 853-854.

²²⁴⁴ Mid-Trial Brief, para. 238, 502.

- viii. Used violent rhetoric;²²⁴⁵
- ix. Laid responsibility for the violence during the post-election violence on the Ouattara camp;²²⁴⁶
- x. Accused Ouattara supporters and the international community of harbouring genocidal intentions against ‘Ivorians’;²²⁴⁷
- xi. Singled out civilians perceived as supporting pro-Ouattara as the targets for attacks by the perpetrators of the crimes;²²⁴⁸
- xii. Called on the youth to erect roadblocks, keep watch in their neighbourhood and identify and report any *étrangers* [strangers or foreigners] in their neighbourhoods;²²⁴⁹
- xiii. Commended pro-Gbagbo youth on their actions and asked them to continue fighting for Mr Gbagbo and defend the population against the ‘rebels’;²²⁵⁰
- xiv. Legitimated the actions of the pro-Gbagbo youth;²²⁵¹
- xv. Used the media and other channels of communication to propagate messages of hate;²²⁵²
- xvi. Mobilised the youth to commit violent acts.²²⁵³

b) Prosecutor’s methodology

958. The Prosecutor has submitted a large amount of videos containing dozens of speeches from the accused as well as other alleged Inner Circle members. As pointed out in the previous section, the Prosecutor relies heavily on this type of evidence in relation to a large number of different – albeit related – allegations. The same speeches/statements keep on reappearing in different contexts and in relation to different propositions. This has resulted in an almost impenetrable

²²⁴⁵ Mid-Trial Brief, para. 351.

²²⁴⁶ Mid-Trial Brief, para. 378.

²²⁴⁷ Mid-Trial Brief, para. 798, 800, 801, 862-865.

²²⁴⁸ Mid-Trial Brief, paras. 866-868.

²²⁴⁹ Mid-Trial Brief, para. 175, 869.

²²⁵⁰ Mid-Trial Brief, paras. 870-872

²²⁵¹ Mid-Trial Brief, paras. 848-850, 873-874.

²²⁵² Mid-Trial Brief, para. 238, 875.

²²⁵³ Mid-Trial Brief, paras. 238, 502, 797-814.

forest of references to and arguments about speeches/statements throughout the Mid-Trial Brief and the Response. Because it is so dispersed, it is exceedingly difficult to understand the full extent of the Prosecutor's reliance on speeches/statements.

959. More importantly, the Prosecutor violates the very fundamental precept of sound evidentiary analysis she exhorts the Chamber to follow: i.e. to analyse the relevant body of evidence as a whole and to place it in its proper context. On the contrary, the Prosecutor seems to have formulated a number of propositions and then searched for excerpts from the speeches that conform to them. Often, these excerpts are completely taken out of context, thereby misrepresenting what the speaker probably really intended to say. It is critical to note, in this regard, that for most of the speeches the Chamber does not have an integral version. This means that parts of what the speaker said are unknown.
960. Anticipating this criticism, the Prosecutor argues that the Chamber should simply ignore those parts of the speeches/statements in which the speakers appeal for peace and non-violence. She argues that these messages should not be seen to dilute the true meaning of the speeches.²²⁵⁴ In order to establish the 'true meaning' of the speeches – which never overtly call for violence – the Chamber is asked to take into consideration the fact that Mr Blé Goudé “adapted his public messages and used coded language when addressing the youth”.²²⁵⁵ However, the Prosecutor has not provided any evidence of the existence of a code, much less how the code worked and who was familiar with it.

²²⁵⁴ See, for example, Response, para. 1843.

²²⁵⁵ Mid-Trial Brief, para. 240 referring to Grande interview Charles BLE GOUDE / Dans mon combat, je suis prêt à aller, undated, CIV-OTP-0028-0103, transcript at CIV-OTP-0044-2590 at 2594.

c) Chamber's methodology

961. In order to establish the true relevance and probative value of the available evidence of speeches/statements, it was necessary to take a step back from the Prosecutor's submissions and to analyse the different speeches/statements in their entirety and in some detail. Moreover, in order to better understand the message of the different speakers, the speeches/statements are analysed in chronological order in an effort to detect possible changes/evolution in content and/or tone.
962. Having looked at all the videos submitted by the Prosecutor, the analysis below will focus on the ones that are expressly relied upon by the Prosecutor in support of her allegations.²²⁵⁶ Furthermore, in examining the Prosecutor's allegations in its totality, the Chamber will assess the evidence in light of these allegations taken together, as well as in respect of the individual proposition that it seeks to prove. In addition, to ensure an accurate evaluation of these speeches and statements, regard has been given to the surrounding context in which they were made.

2. Individual speeches and statements

a) 27 August 2010 – Divo speech

963. One of the key exhibits relied upon by the Prosecutor is Mr Gbagbo's speech at an inauguration ceremony for a unit of the *Compagnie Républicaine de Sécurité* (CRS) in Divo. According to the Prosecutor, Mr Gbagbo's speech in Divo dated 27 August 2010 contained incendiary language referring to political opponents as

²²⁵⁶ Certain arguments by the Prosecutor will not be entertained, because they obviously lack merit. For example, in paragraph 1614 of her Response, the Prosecutor makes a rather baffling distinction between the words '*on gagne ou on gagne*' (as allegedly used in the Gbagbo presidential campaign) and '*on gagne et on gagne*' (as sung in front Mr Ouattara's wife at a rally).

“bandits” and “enemies”.²²⁵⁷ The Prosecutor argues that Mr Gbagbo told his audience that in case of ‘*dégâts*’, the judges would settle the matters; and that this meant that he was inviting the members of this unit to act with impunity.²²⁵⁸

964. It is noted that his speech concerns the placement of a CRS unit in Divo to tackle public disorder resulting from petty criminality.²²⁵⁹ Mr Gbagbo began by giving the historical context of the creation of the CRS (in France) and explains that the unit’s role was to fight in cities against criminals and those who create disorder. He said that, thanks to the CRS, ordinary citizens should be able to go about their normal lives without fear. He also said that those who would want to rob honest persons would have to think twice. Mr Gbagbo then went on to say that the enemies of the CRS were those who were against peace in Côte d’Ivoire and who wanted to disturb the elections. He stated that the CRS’s task was simple, because they were on the side of peace and order and therefore had to fight against disorder and illegality. Because of this clear role, Mr Gbagbo said that CRS officers should not worry about attenuating circumstances and that if they were called to re-establish the republican order, they should do so without worrying about possible damage. Such matters will be settled before judges, Mr Gbagbo goes on to mention. He reminded them that they were not politicians or magistrates but the fists of the republic and that they had been sent to Divo because public order had been disturbed too often there. Mr Gbagbo then stated his view that the problems in Divo were unrelated to the war. Significantly, Mr Gbagbo also said that he did not know the cause of the problems in Divo and that this was why they had decided to deploy the CRS to bring to heel those who created disorder. Mr Gbagbo then gave an anecdote about his father to illustrate the point that soldiers and policemen do not need to think too much for

²²⁵⁷ Mid-Trial Brief, para. 717; Response, para. 1611.

²²⁵⁸ Response, para. 1611.

²²⁵⁹ See CRS - DIVO / Discours de Mr Gbagbo, 27 August 2010, CIV-OTP-0018-0005, transcript at CIV-OTP-0019-0007 at 0008.

themselves, because if they all started thinking for themselves, there would be no CRS in Divo anymore. Mr Gbagbo ended his speech by calling upon the population to abstain from helping bandits and to assist the police by providing them information.²²⁶⁰

965. Considering the timing, context, and content of this speech, it is very difficult to follow the Prosecutor's allegation that it was intended to convey the message the CRS officers were allowed to engage in criminal conduct with impunity. Indeed, Mr Gbagbo gave this speech several months before the election, in a location that is 150 kms removed from Abidjan, at a very specific occasion, which is all directly relevant to how his words should be interpreted. Moreover, there is nothing to suggest that the persons who were allegedly encouraged to commit crimes by Mr Gbagbo's words ever heard them, nor how they interpreted them.

b) 3 December 2010 – Mr Gbagbo's statement upon being elected

966. Mr Gbagbo's inauguration ceremony is reported in the *Rapport de Permanence Centrale to the Police Prefecture* in Abidjan dated 4 December 2010. This report, which was also circulated to the Ministry of Interior and the DGPN, summarised Mr Gbagbo's statement. It stated that Mr Gbagbo recalled that there is no democracy without rule of law; he reassured the population a return to peace.²²⁶¹

Quant à Monsieur le président de la république, il a déclaré que pour que la Cote d'Ivoire soit forte, il faut qu'elle soit assise sur le socle de la démocratie. Il n'y a pas selon lui de démocratie sans le respect du droit et donc des lois et des procédures que ces droits génèrent. Il a promis défendre la souveraineté de la Cote d'Ivoire jusqu'à la fin de son mandat. Pour terminer son propos, il a rassuré tout le peuple ivoirien par rapport au retour à la paix, ce qui en toute honnêteté n'est pas une chose facile. Il a pour finir, remercié tous les invités qui ont honoré de leur présence cette cérémonie et également tous les ivoiriens qui ont bien voulu porter leur choix sur sa personne pour être réélu à ce poste.

²²⁶⁰ See CRS - DIVO / Discours de Mr Gbagbo, 27 August 2010, CIV-OTP-0018-0005, transcript at CIV-OTP-0019-0007 at 0008.

²²⁶¹ RAPPORT DE PERMANENCE CENTRALE DU 04 AU 05 DECMEBRE [sic] 2010, 4 December 2011, CIV-OTP-0045-0527 (confidential) at 0531-0532.

c) 3 December – 2010 Interview with Alcide Djédjé on RTI

967. On 3 December 2010, the RTI broadcast an interview with Alcide Djédjé, then Côte d'Ivoire's ambassador to the United Nations and special adviser to Mr Gbagbo. The Prosecutor relies on this interview in support of her claim that Mr Gbagbo and the inner circle demonised their opponents, including the UNOCI.²²⁶² In the interview, Mr Djédjé stated that UN Special Representative Choi was acting outside of his mandate by declaring Mr Ouattara winner of the election. He also accused Mr Choi of discrimination (between African and other election observers) and claimed that the latter's intervention incited violence. Ambassador Djédjé warned Mr Choi that if he continued like this, Côte d'Ivoire would ask him to leave the country.²²⁶³

d) 5 December – 2010 RTI broadcast

968. In the RTI broadcast dated 5 December 2010, Mr Blé Goudé, in the presence of Dakouri and Dibopieu, is shown congratulating the success of their candidate – Mr Gbagbo.²²⁶⁴ In this speech, Mr Blé Goudé requested the audience to continue being peaceful and disciplined; he stated that for young Ivorians to be aggressive against each other was out of the question; he stated that he did not have the “force” to give an order to a young Ivorian to attack another; recalling what happened in Rwanda and Liberia, he stated that they must ensure that this does not happen in Côte d'Ivoire as they have suffered enough and learnt the lessons from this war.²²⁶⁵ Calling for respect for the republican institutions, he noted that there were a lot of troubling rumours and to counter them he and his “friends”

²²⁶² Mid-Trial Brief, para. 135, Response, para. 1890.

²²⁶³ RTI Broadcast dated 3 December 2010, CIV-OTP-0074-0050 at 00:26:15-00:32:36, transcript at CIV-OTP-0087-0361 at 0363.

²²⁶⁴ RTI Broadcast dated 5 December 2010, CIV-OTP-0075-0060, transcript at CIV-OTP-0087-0159 at 0160-0161.

²²⁶⁵ RTI broadcast dated 5 December 2010, CIV-OTP-0075-0060, transcript at CIV-OTP-0087-0159 at 0160-0161.

would send delegations into the neighbourhoods to provide accurate information.²²⁶⁶

e) 10 December – 2010 RTI broadcast – ‘100 % général et 100 % ministre’

969. In the RTI broadcast dated 10 December 2010, Mr Blé Goudé stated that giving birth to a new nation is painful and as a result ‘we’ must suffer; he requested the youth to remain confident; he added that he was ‘*100 % général et 100 % ministre*’ and wanted this to be clear since there were those who thought that because he had been named minister, they could take action in the streets without him (‘sans moi’).²²⁶⁷ The last statement is ambiguous. The Prosecutor alleged that this statement meant that he ‘reminded the youth that despite his new position, he remained 100% General and in control [of] what went on in the street’.²²⁶⁸ This is untenable as this is not the impression that this statement appears to be giving, especially considering that there is laughter following the statement; it appears more likely that Mr Blé Goudé intended to convey the message that him being a minister did not mean that the youth could act as they pleased and that he expected them to continue abiding by his instructions.

f) 14 December 2010 – Interview Mr Blé Goudé on RTI

970. Mr Blé Goudé announced the rally at the *Palais de la Culture* and stated he wanted to have a dialogue about the future of young Ivorians in terms of employment. He also repeated that he was 100 % minister and 100 % ‘general’ and that the moment when he felt that the country was in danger, he would take off his suit and tie and bring it back onto the right path. Mr Blé Goudé stated that

²²⁶⁶ RTI Broadcast of 5 December 2010, CIV-OTP-0075-0060, transcript at CIV-OTP-0087-0159 at 0160-0161.

²²⁶⁷ RTI Broadcast dated 10 December 2010, CIV-OTP-0061-0546, transcript at CIV-OTP-0102-0787 at 0789.

²²⁶⁸ Mid-Trial Brief, para. 785.

he was not in a belligerent mindset, because Côte d'Ivoire had suffered too much. He also stated that Ivorians should be calm and concentrate on getting to work, because they had God and their determination on their side. He also said that he was the one who had galvanised the youth and that he was also the one who would tell them to be calm. Mr Blé Goudé also stressed that he did not only call on the pro-Gbagbo youth to attend the meeting on employment, but all the youth of Côte d'Ivoire.²²⁶⁹

g) 15 December 2010 – Rally at the Palais de la Culture

971. The Prosecutor alleged that Mr Blé Goudé's words at the rally held at the *Palais de la Culture* 'delivered all themes' upon which Mr Gbagbo and the members of the alleged Inner Circle would rely on during the post-election crisis.²²⁷⁰ In this speech, Mr Blé Goudé commenced by addressing his role as minister of employment. At some point in the speech, Mr Blé Goudé took off his jacket and claimed that Mr Choi, the UN and France were preparing a genocide in Côte d'Ivoire. He accused the UN of helping the rebels by establishing a radio station, providing transport and vehicles, and giving the rebels blue helmet uniforms to transport arms to the Golf Hotel. Mr Blé Goudé declared that UNOCI was a belligerent and occupying force and that Mr Choi, who he accused of organising the rebellion, should thenceforth be considered as a rebel himself. He also called Mr Guillaume Soro a rebel for having asked the government employees to stay away from work. He then continued by stating that he had no weapons but that he could still dislodge Mr Ouattara from the Golf Hotel with his bare hands.

²²⁶⁹ RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0568 at 00:23:31 – 00:30:02.

²²⁷⁰ Mid-Trial Brief, para. 348; *see also* paras 636, 800, 841, 862, 884.

Mr Blé Goudé ended by calling on the crowd to stick together and claimed that they were prepared to die to see their country develop.²²⁷¹

h) 15 December 2011 – Statement by FDS spokesperson Col-Maj Babri Gouhourou on RTI

972. Before the RTI march, the FDS spokesperson read out a statement announcing that the RHDP, with the support of the Special Representative of the United Nations in Côte d'Ivoire, planned on organising two marches. One to install a new director of the RTI, the other to install a new prime minister appointed by Mr Ouattara. The spokesperson stated that these marches smelled like forcible actions, which would cause serious public order problems and had as their objective the pitting of innocent populations against regular law enforcement forces in the hope of forcing the latter to engage in a clash. He went on to appeal to all Ivorians and all those living in Côte d'Ivoire not to associate themselves with such dangerous endeavours and to continue their regular activities in a calm and serene atmosphere.²²⁷²

i) 18 December 2010 – Rally in Yopougon

973. On 18 December 2010, Mr Blé Goudé addressed a large crowd in Yopougon. He started by denying rumours that he had asked his followers to ransack anything. He described himself as a legalist who had the law on his side. He also repeated the accusation that France and the UNOCI were preparing a genocide in Côte d'Ivoire. Mr Blé Goudé stated that when the French army would come to kill

²²⁷¹RTI Broadcast dated 15 December 2010, CIV-OTP-0074-0054 at 00:25:10-00:31:21, transcript at CIV-OTP-0087-0387 at 0388-0390. This segment was re-broadcast on 16 December 2010: RTI Broadcast dated 16 December 2010, CIV-OTP-0026-0028 at 00:23:25, transcript at CIV-OTP-0063-2955, at 2963.

²²⁷²RTI Broadcast dated 15 December 2010, CIV-OTP-0074-0054 at 00:04:43; re-broadcast on 16 December 2010: RTI Broadcast dated 16 December 2010, CIV-OTP-0026-0028 at 00:14:58, transcript at CIV-OTP-0063-2955, at 2958-2959.

them, that they would go (confront) them without any weapons. He said that the Ivorians did not have any problems, but that it was Mr Sarkozy who had a problem. He warned the French not to touch Mr Gbagbo. He then stated that the patriots would protect the French living in Côte d'Ivoire. Mr Blé Goudé then proceeded to ask the UN to leave Côte d'Ivoire. The segment ends with Mr Blé Goudé asking the crowd to be ready, but without specifying for what.²²⁷³

974. There is no indication in the speech that these requests for the UN to leave would be realised by commission of crimes and/or through violence. This speech is not evidence that Mr Blé Goudé condoned and/or encouraged the use of violence against perceived Ouattara supporters.

j) 18 December 2010 – government communiqué

975. On 18 December 2010, a government spokesperson read a *communiqué* thanking the UN for its help in organising the election and trying to solve the crisis Côte d'Ivoire had been through.²²⁷⁴ Subsequently, the *communiqué* informed the UN forces that Mr Gbagbo was requesting them to leave the country because the government believed that the UN forces were acting outside of their mandate.
976. P-0087 testified that during his time in Abidjan during the post-electoral crisis, the RTI broadcasts 'seemed to be forced on journalists, on the presence of foreign journalists in the country' making it clear that they were 'undesirable' and 'spreading lies and sending lies back to our home countries and adversely affecting the country'.²²⁷⁵

²²⁷³ RTI Broadcast dated 19 December 2010, CIV-OTP-0064-0078 at 00:58:34-01:07:18, transcript at CIV-OTP-0102-1756 at 1757-1759.

²²⁷⁴ Le Journal / UNOCI EVIDENCE \ AUDIO MATERIAL \ Audio 1 - communiqué PP Gvt LG ONUCI 18 Dec 2010, 18 December 2010, CIV-OTP-0064-0135.

²²⁷⁵ P-0087, T-177 dated 12 July 2017, p. 63.

k) 19 December 2010 – Rally in Port-Bouët

977. On 19 December 2010 at a rally in Port-Bouët, Blé Goudé thanked the French residents of Côte d’Ivoire for the letter they had sent to the French President requesting him to handle the Ivoirian situation very carefully.²²⁷⁶ He claimed that “*la Françafrique*” was disoriented and that the French were trying to use Côte d’Ivoire to reorganise it by installing their agent, Mr Ouattara. Mr Blé Goudé also stated that they had agreed to give the prime minister post to the rebels on the condition that they would disarm but that they never did. He also claimed that ‘they’ wanted to destabilise Côte d’Ivoire and asked the crowd whether they would allow this. He ended by telling the crowd to expect to receive his *mot d’ordre*.²²⁷⁷

l) 19 December 2010 – Interview with Mr Blé Goudé on RTI

978. In the context of the abovementioned rally in Port-Bouët, Mr Blé Goudé gave an interview to the RTI, in which he stated that the events surrounding the RTI march were behind them and asked all Ivoirians to go back to work quietly and with discipline. He claimed that everything had been checked and that everything was calm now.²²⁷⁸

m) 21 December 2010 – Rally in Koumassi

979. In a speech at a rally in Koumassi, Mr Blé Goudé implied that Guillaume Soro was responsible for bringing in and placing the individuals who had committed shootings in Koumassi and Abobo. He said that they had had enough of

²²⁷⁶ RTI Broadcast dated 20 December 2010, CIV-OTP-0026-0022 at 00:24:26, transcript at CIV-OTP-0052-0813 at 0821.

²²⁷⁷ RTI Broadcast dated 20 December 2010, CIV-OTP-0026-0022 at 00:24:26, transcript at CIV-OTP-0052-0813 at 0821.

²²⁷⁸ RTI Broadcast dated 20 December 2010, CIV-OTP-0026-0022 at 00:05:58, transcript at CIV-OTP-0052-0813 at 0816.

policemen and gendarmes being killed with impunity. He rhetorically asked the crowd why they were looking for weapons when they had an ‘invisible army’ on their side²²⁷⁹ which could vanquish any army in the world. Later in his speech, Mr Blé Goudé claimed that they had demonstrated the power of non-violence. The crowd responded by showing their bare hands. He then announced that he would soon invite them to liberate Côte d’Ivoire and asked them to applaud the FDS.²²⁸⁰

n) 22 December 2010 - Mr Gbagbo and Mr Blé Goudé attend meeting with Forum de la Jeunesse Africaine

980. In his address, Mr Gbagbo explained his policy of freedom of movement of all Africans and that this was the reason why he had abolished the *cartes de séjour* in Côte d’Ivoire. He also said that Africa was rich and proposed the creation of a development fund leveraged by the natural wealth of the African continent. He said that it was this policy that had caused others to intervene in the Ivorian elections. He also insisted on the importance of the respect for the rule of law.²²⁸¹

o) 23 December 2010 – Press conference by Mr Blé Goudé

981. At a 23 December 2010 press conference broadcast on the RTI, Mr Blé Goudé repeated that France was preparing a genocide but stated that the youth of Côte d’Ivoire wanted peace. He called “all African democrats” to attend a rally at the *Place de la République* for a large demonstration for the dignity and respect of Africa. He said they would show with their bare hands that they wanted Ivorian laws and institutions to be respected. He also stated that the French residing in

²²⁷⁹ Mr Blé Goudé refers to this as ‘*L’Éternelle des armées*’ and seems to be using this term as a metaphor for God’s protection.

²²⁸⁰ RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016 at 00:45:15, transcript at CIV-OTP-0052-0653 at 0665.

²²⁸¹ RTI Broadcast dated 23 December 2010, CIV-OTP-0061-0581 at 00:06:25.

Côte d'Ivoire should not fear anything from the *jeunes patriotes*.²²⁸² Mr Blé Goudé claimed that they had no intention whatsoever to attack anyone. He specifically said that the pro-Gbagbo civilians would not attack pro-Ouattara civilians. He appealed to all Africans to avoid attacking each other.²²⁸³

p) 29 December 2010 – Laurent Gbagbo interview on Euronews

982. On 29 December 2010, Mr Gbagbo gave an interview to Euronews. He avoided answering the question whether he was willing to sacrifice Ivorian lives to stay in power, but stated that he would consider this position if ECOWAS forces intervened and clashed with young Ivorians. Mr Gbagbo said he wanted a recount of the votes and that he wanted to negotiate. He claimed that accusations of human rights violations were an attempt to detract attention from the real issue, i.e. who had really won the elections. Mr Gbagbo also claimed that he had told people not to attack the UNOCI. At the end of the interview, Mr Gbagbo said he was doing all he could to avoid a bloodbath and that he did not believe there would be civil war, but that if pressure continued clashes would be inevitable.²²⁸⁴

q) 29 December 2011 – Rally at Place CP1

983. After having postponed the rally at the *Place de la République* to give the AU and ECOWAS an opportunity to mediate, Mr Blé Goudé held a rally in Yopougon at Place CP1. He was interviewed at that location by the RTI. In this interview, Mr Blé Goudé complained that the *Forces Nouvelles* had weapons whereas they had empty hands. He said that at the beginning of January 2011 he

²²⁸² RTI Broadcast dated 23 December 2010, CIV-OTP-0064-0098 at 00:17:56.

²²⁸³ RTI Broadcast dated 23 December 2010, CIV-OTP-0061-0581 at 00:15:08; also RTI Broadcast dated 23 December 2010, CIV-OTP-0064-0098 at 00:17:56.

²²⁸⁴ OPEN SOURCE VIDEOS, 18 October 2012, CIV-OTP-0007-0167.

would call all Ivorians to gather in front of the Golf Hotel empty-handed to force those with weapons there to leave, because he wanted peace in Côte d'Ivoire.²²⁸⁵

984. During the rally, Mr Blé Goudé asked the crowd to be prepared to go to the Golf Hotel with bare hands to remove Mr Ouattara. He said that the UN would be allowed to accompany Mr Ouattara (out of the Golf Hotel/country), but that if they did not, he was no longer responsible for Mr Ouattara's security. It is noteworthy that the images also show the crowd holding up their empty hands.²²⁸⁶

r) 31 December 2010 – Gbagbo's end of year address

985. Mr Gbagbo gave an address to the nation on 31 December 2010 that the Prosecutor has referred to in support of the allegations that Mr Gbagbo intended to stay in power at all costs.²²⁸⁷ In this address, Mr Gbagbo commemorated the people who had fallen as a result of the events during the 'violences postélectorales' and extended the honour also to the family members of FDS elements.²²⁸⁸ He vowed that the State would do everything to ensure that crimes would not remain unpunished and announced his decision to establish a commission to take stock of the post-electoral violence. Mr Gbagbo also stated that despite the war and despite the context of the national economy made fragile by '*l'occupation d'une partie du territoire par la rebellion armée*' they had accepted to sacrifice all in order to '*réunir les conditions politiques et financières à l'organisation du scrutin*'.²²⁸⁹ He then went on to list the efforts that he had taken in this regard; he also noted the presence of the armed rebellion

²²⁸⁵ RTI Broadcast dated 29 December 2010, CIV-OTP-0064-0094 at 00:20:37 transcript at CIV-OTP-0102-1834.

²²⁸⁶ RTI Broadcast dated 30 December 2010, CIV-OTP-0064-0101 at 00:41:33 – 00:42:32.

²²⁸⁷ See Response, paras 1123, 1624-1625.

²²⁸⁸ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0565.

²²⁸⁹ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0565.

within Côte d'Ivoire and noted that they had not disarmed.²²⁹⁰ Mr Gbagbo also stated that

Car mon adversaire a été régulièrement battu à l'élection présidentielle du 28 novembre 2010. Je refuse la politique de la terre brûlée. Nul n'a le droit d'appeler les armées étrangères à envahir son pays. Notre premier devoir envers la patrie, c'est de la défendre contre les attaques extérieures et non de la livrer à ceux qui veulent la soumettre. Alors, comme hier, en 2002, je suis là où les Ivoiriens m'ont placé par leurs votes. Nous n'allons pas céder.²²⁹¹

986. It is noted that in another speech, apparently on 1 January 2011, Mr Gbagbo called for respect for the rule of law, and recalling that Henri Konan Bédié had created the Constitutional Council, also called for respecting its decisions.²²⁹² He added that he did not like the fact that Henri Konan Bédié was at the Golf Hotel as it gave the impression that someone had put them all in prison, which was not true; he suggested that those that were at the Golf Hotel go home.²²⁹³

s) 1 January 2011 – Mr Gbagbo's statement

987. On 1 January 2011, Mr Gbagbo stated that he had been requesting the UNOCI to leave Côte d'Ivoire through diplomatic channels; he called for respect for the rule of law and expressed willingness to enter discussions on the resolution of the "problem".²²⁹⁴ His statements do not appear to give the impression that there was no debate that he was the President of the republic; he acknowledged that there was a challenge to his presidency by Mr Ouattara. Considering the totality of the statement, Mr Gbagbo's words do indicate that he considered his presidency to be lawful and to that extent not open to questioning by external forces. Mr Gbagbo acknowledged that the situation the country was in was

²²⁹⁰ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0565-0566.

²²⁹¹ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0566.

²²⁹² RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0579.

²²⁹³ RTI Broadcast dated 31 December 2010, CIV-OTP-0026-0024, transcript at CIV-OTP-0052-0550 at 0579.

²²⁹⁴ RTI Broadcast dated 1 January 2011, CIV-OTP-0064-0103, transcript at CIV-OTP-0086-0984 at 0985.

problematic. However, the statement taken as a whole does not appear to be demonstrating that he intended to stay in power at all costs, including through the commission of crimes against the civilian population.²²⁹⁵

t) 4 January 2011 – Interview of Mr Blé Goudé on France 24

988. In an interview on 4 January 2011, Mr Blé Goudé commented on the mediation efforts of ECOWAS and the AU. He said that there had been too many casualties and that dialogue was necessary. When asked whether he maintained his threat to attack the Golf Hotel with bare hands, Mr Blé Goudé argued that one cannot attack something with bare hands. He also defended Mr Gbagbo's proposal to set up a committee to scrutinise the elections. At the end of the clip, Mr Blé Goudé claimed that the pro-Ouattara demonstrators had weapons and that the pro-Gbagbo government was facing an urban guerilla.²²⁹⁶

u) 5 January 2011 RTI broadcast

989. In the RTI broadcast dated 5 January 2011, Mr Blé Goudé stated that he believed in the diplomatic solution to the crisis (*"Je suis pour une solution de négociation"*); however, he also stated that although he was willing to negotiate, this did not mean negotiating Mr Gbagbo's departure but rather arriving at the truth (*"venir savoir la vérité"*).²²⁹⁷ The Prosecutor cited the portion of the broadcast that contains Minister Djédjé's briefing during a press conference in which he stated that 'it had been agreed that there would be no military solution to the crisis but that a peaceful solution would be found through dialogue'.²²⁹⁸ The Prosecutor counters this by citing a subsequent portion of his briefing which indicated that

²²⁹⁵ RTI Broadcast dated 1 January 2011, CIV-OTP-0064-0103, transcript at CIV-OTP-0086-0984 at 0986.

²²⁹⁶ Open source videos / YouTube, 13 March 2012, CIV-OTP-0019-0290.

²²⁹⁷ RTI Broadcast dated 5 January 2011, CIV-OTP-0064-0106, transcript at CIV-OTP-0086-0998 at 0999-1000.

²²⁹⁸ See Mid-Trial Brief, para. 401.

the blockade of the Golf Hotel would only be lifted if the FAFN *forces nouvelles* (i.e. the armed forces loyal to Mr Ouattara) at the hotel left for Bouaké. This statement does not demonstrate that there was intent for the blockade to otherwise lead to the commission of crimes against the civilian population.²²⁹⁹ Furthermore, Minister Djédjé reiterating Mr Gbagbo's call for the UN to leave Côte d'Ivoire on grounds that it was being partisan, while not necessarily conciliatory, is not indicative of shared intent or coordinated action to commit crimes against the civilian population in the circumstances.

v) 6 January 2011 – Government statement about Council of Ministers

990. On 6 January 2011, a spokesperson for the government, Mr Ahoua Don Mello, read a communiqué following a meeting of the Council of Ministers presided by Mr GBAGBO that day. He noted that Mr Gbagbo had rejected the position of the UEMOA (West African Economic and Monetary Union) and asserted that there was only one power in Côte d'Ivoire, which derived its authority from fundamental law.²³⁰⁰

w) 6 January 2011 – Rally at Koumassi

991. During a rally in Koumassi, Mr Blé Goudé commented on a visit by the AU and ECOWAS and stated that they had seen the true face of Mr Ouattara; that he was an impostor, a thief and a rapist. He also stated that diplomacy needed to be given a chance and asked the crowd to stay calm, not to respond to provocations, and to stay tuned for the 'general' (i.e. himself).²³⁰¹

²²⁹⁹ See also V.A - Blockade of the Golf Hotel.

²³⁰⁰ RTI Broadcast dated 7 January 2011, CIV-OTP-0075-0066 at 00:00:00–00:06:30, transcript at CIV-OTP-0087-0203 at 0204-0205. This communiqué was broadcast on the evening news of 7 January 2011.

²³⁰¹ RTI Broadcast dated 6 January 2011, CIV-OTP-0074-0060 at 00:34:07.

x) 7 January 2011 – Rally in Niangon

992. During a rally in Yopougon Niangon Nord, Mr Blé Goudé told the crowd not to fear Mr Ouattara and to go calmly to work and to school. He also said that those who had spoken about the use of force before were now seeing the need for negotiations and Mr Blé Goudé asked to give those negotiations a chance. The clip ends by Mr Blé Goudé telling the crowd to wait for his *mot d'ordre* and asking God to ensure that there would be no war and no clashes between ethnicities in Côte d'Ivoire.²³⁰²

y) 7 January 2011 rally Attécoubé

993. The Prosecutor cited the RTI broadcast of Mr Blé Goudé's speech on 7 January 2011 given at a rally in Attécoubé to allege that he called for subsequent rallies to prepare the youth for the incidents of 25-28 February 2011 (Yopougon I),²³⁰³ to allege his discriminatory intent underlying the alleged Policy, and his contributions to the alleged Common Plan.²³⁰⁴ In particular, the Prosecutor referred to this speech to demonstrate that Mr Blé Goudé had called upon the youth to await his "*mot d'ordre*".²³⁰⁵ In this speech, Mr Blé Goudé expressed strong support for Mr Gbagbo bringing stability to the country as well as the region. There are three aspects of the speech that are relevant to the allegations. First, the fact that, in his support for Mr Gbagbo, Mr Blé Goudé does not reference the commission of crimes against the civilian population.²³⁰⁶ Two, he expressly states that he does not want a situation where a "young Bété" comes up

²³⁰² RTI Broadcast dated 8 January 2011, CIV-OTP-0064-0107 at 00:08:50.

²³⁰³ See VI.M - 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I).

²³⁰⁴ Mid-Trial Brief, paras 524, 635, 793, 805. Mid-Trial Brief, para. 524 states that this rally took place on 8 January 2011.

²³⁰⁵ Mid-Trial Brief, para. 524; *see also* paras 793, 805.

²³⁰⁶ RTI Broadcast dated 7 January 2011, CIV-OTP-0074-0061, transcript at CIV-OTP-0087-0473 at 0474.

against a “young Dioula” resulting in a clash of ethnic groups; he states that this is what “they” (i.e. their adversaries) want.²³⁰⁷ Three, his statement about waiting for his *mot d’ordre*, that the Prosecutor alleged is evidence of him mobilising the youth, was made in the context of youth employment. In relevant part, the full quote reads as follows:

En même temps que je demande aux étudiants d'aller à l'école, en même temps que je demande aux élèves d'aller à l'école, que je demande à tous les travailleurs d'aller au travail, moi aussi je vais aller au travail. 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. [Applaudissements de la foule] 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. Est-ce qu'il y a une politique de jeunesse en CÔTE D'IVOIRE ? Est-ce qu'il y a une politique de l'emploi en COTE D'IVOIRE, pour que les jeunes [brève coupure de son, 00:12:58] boulot ? Je pense que c'est à cela que nous allons travailler. Et...[brève coupure de son, 00:13:03] faire cela au sein de l'équipe gouvernementale. Vous, payez vos[incompréhensible, 00:13:07] et attendez le mot d'ordre 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.²³⁰⁸

994. With no mention of pro-Ouattara civilians in the relevant excerpt, this cannot be considered evidence of Mr Blé Goudé calling for the youth to be ready to mobilise in order to commit crimes against the civilian population. To the extent that this speech may be foreshadowing Mr Blé Goudé’s call for the youth to block the movements of UNOCI, it nevertheless cannot be concluded that this was part of a broader instruction to commit crimes against the civilian population.

z) 15 January 2011 – Rally at Palais de la Culture – Treichville

995. On 15 January 2011, Mrs Simone Ehivet Gbagbo convened a political rally at the *Palais de la Culture* in Treichville to allow several political groups to express their support for the state’s institutions.

²³⁰⁷ RTI Broadcast dated 7 January 2011, CIV-OTP-0074-0061, transcript at CIV-OTP-0087-0473 at 0474.

²³⁰⁸ RTI Broadcast dated 7 January 2011, CIV-OTP-0074-0061, transcript at CIV-OTP-0087-0473 at 0475.

996. In her address, Mrs Gbagbo stated that she would refer to the chief of the rebellion (presumably Mr Ouattara) as the ‘chief of the bandits’. (“le chef bandit”). She accused Mr Ouattara of having allied himself with France and to have made a plan to come to Côte d’Ivoire to massacre and terrorise. She claimed that what characterised Mr Ouattara was his killing of civilians and children. She said that she had seen victims of the rebels in Djokué, Gitrozon and Lakota. Mrs Gbagbo shamed ECOWAS for siding with France, the US, the UN, and the EU. She also claimed that the population of the north of Côte d’Ivoire had been terrorised by the rebels but still voted for Mr Gbagbo. She said that these populations from the north did not support Mr Ouattara. She added that the Baoulé did not like Mr Gbagbo and that this was their right, but that they had not come out to vote in favour of Mr Ouattara in the second round of the election either. After proclaiming that Côte d’Ivoire was reborn as a free nation, Mrs Gbagbo told her audience that the time of fetishes had passed and that people should throw away their *gris-gris*. She then suggested that when someone wore *gris-gris* they allied themselves with the rebels. She concluded her speech by saying that everyone should remain calm and serene and that they should support the army to recover the entirety of the country. At the same time, she said the government should start improving their daily lives.²³⁰⁹

aa) 15 January 2011 – Rally in Anono

997. At a rally in Anono, Mr Blé Goudé said he could not longer accept the behaviour of those in the Golf Hotel and asked those present for their support in getting rid of them. He announced that he would soon give the *mot d’ordre*. Afterwards, the

²³⁰⁹Box 6 Copy-Relevant 7/5/12/ item No.6, undated, CIV-OTP-0022-0057, transcript at CIV-OTP-0053-0005. Brief excerpts of this speech were broadcast on the RTI Broadcast dated 15 January 2011, CIV-OTP-0064-0111 at 00:27:36, transcript at CIV-OTP-0086-1021.

commentator said that, given the need for discretion, the *mots d'ordres* would use protected channels.²³¹⁰

bb) 20 January 2011 – Announcement of Champroux rally

998. At a meeting at the Chief of Staff's office, Mr Blé Goudé paid homage to the FDS and stated that together they would defend the country, each in their own domain.
999. General Kassaraté recalled having a meeting with Mr Blé Goudé in January 2011²³¹¹ and agreed that the excerpt of the RTI broadcast dated 20 January 2011²³¹² concerned this meeting that he had had with Mr Blé Goudé.²³¹³ General Kassaraté testified that the purpose of this meeting was to pay tribute to the FDS.²³¹⁴ General Kassaraté testified that he did not attend the Champroux Rally 'since this meeting may seem to appear political' as advised by General Vagba.²³¹⁵ General Kassaraté approached General Mangou about this meeting and at the time General Mangou also accepted that they should not attend this rally.²³¹⁶ However, General Kassaraté later found out that General Mangou had in fact attended the Champroux rally.²³¹⁷
1000. General Guiai Bi Poin was asked if Mr Blé Goudé ever attended meetings of the general staff and, referring to the RTI broadcast dated 20 December 2011 above, he responded it had happened once.²³¹⁸ General Guiai Bi Poin added however,

²³¹⁰ Untitled, undated, CIV-OTP-0018-0006 at 00:06:20, transcript at CIV-OTP-0021-0048 at 0052.

²³¹¹ P-0011, T-134 dated 13 March 2017, pp. 46-47.

²³¹² RTI Broadcast dated 20 January 2011, CIV-OTP-0064-0083, transcript at CIV-OTP-0048-1670.

²³¹³ P-0011, T-134 dated 13 March 2017, pp. 47-48.

²³¹⁴ P-0011, T-134 dated 13 March 2017, p. 50.

²³¹⁵ P-0011, T-134 dated 13 March 2017, pp. 50-51.

²³¹⁶ P-0011, T-134 dated 13 March 2017, pp. 50-51.

²³¹⁷ P-0011, T-134 dated 13 March 2017, p. 51.

²³¹⁸ P-0010, T-142 dated 3 April 2017, p. 10.

that this meeting ‘was not a meeting of the general staff’ and that Mr Blé Goudé had never ‘asked to or attended a general staff meeting’.²³¹⁹ When asked whether he received any military instruction from Mr Blé Goudé during the post-electoral crisis, General Guiai Bi Poin responded that he had not and ‘in any event, [he] would not have executed it’.²³²⁰

1001. After the meeting, General Mangou made a statement to the press, in which he commented on statements made by Guillaume Soro and accused him of being responsible for the deaths of FDS members and for stoking war. He finished by saying that the FDS was ready and implied that they were prepared to die.²³²¹

cc) 22 January 2011 – Mr Blé Goudé addresses youth in Yopougon

1002. On 22 January 2011, Mr Blé Goudé addressed youths in front of his domicile in Yopougon, who had come to express a desire to enlist in the armed forces. Mr Blé Goudé said to the youths that he did not want war in his country and that the Chief of Staff of the armed forces could still handle the situation. He finished by saying that he was appointed minister for youth and employment and that it was his responsibility to find them jobs, not to drag them into war.²³²²

dd) 23 January 2011 - Rally at Stade Champroux

1003. The Prosecutor also relied upon a speech by General Mangou, the then-Chief of Staff of the FDS, during a rally organised by Mr Blé Goudé in honour of the FDS.²³²³ Mr Blé Goudé, who introduced General Mangou, publicly told the

²³¹⁹ P-0010, T-142 dated 3 April 2017, p. 10.

²³²⁰ P-0010, T-142 dated 3 April 2017, p. 11.

²³²¹ RTI Broadcast dated 20 January 2011, CIV-OTP-0064-0083 at 00:06:36, transcript CIV-OTP-0048-1670 at 1671.

²³²² RTI Broadcast dated 22 January 2011, CIV-OTP-0064-0113 at 00:44:20-00:49:37, transcript at CIV-OTP-0086-1028 at 1029-1031.

²³²³ Mid-Trial Brief, paras 230-231, 437-438, 547; Response, paras 154 vii, 1189, 1843 xi, 2120 v.

generals present at the rally that the young people of Côte d'Ivoire were at their disposal. However, General Mangou said to the crowd that the FDS preferred to die first and that only if the last FDS had fallen could the youth take over to liberate the country.²³²⁴

1004. In his speech, General Mangou expressed his desire to avoid war, because of its destructive effects, but stated that if it was forced upon them, the FDS would fight. He also gave several reasons why the FDS would not commit a coup d'état and why they were prepared to make the ultimate sacrifice. The video ends with General Mangou singing a song in honour of Mr Gbagbo.²³²⁵

1005. In an interview with French media during the Champroux rally, Mr Blé Goudé said that the audience was entirely on the side of the armed forces, but that this was not to make war but that it was a call for peace. At the same time, he stated, this show of support was a statement that if they were attacked, they would be obliged to defend themselves.²³²⁶

ee) 28 January 2011 RTI broadcast

1006. The Prosecutor refers to the RTI broadcast dated 29 January 2011 to demonstrate, *inter alia*, that Mr Blé Goudé called on the youth to resist and to be willing to suffer and die for a new nation.²³²⁷ In this speech, Mr Blé Goudé explained his employment policy and how it had to match the mentality, sociology, and the environment in which the working population evolved.²³²⁸ He

²³²⁴ Côte d'Ivoire Jeunes patriotes, les hommes de Laurent Gbagbo - France24, 23 January 2011, CIV-OTP-0002-0995 at 00:10:58-00:11:19, transcript at CIV-OTP-0007-0181 at 0191.

²³²⁵ Mangou: Je ne ferai jamais de coup d'Etat, 12 July 2012, CIV-OTP-0047-0670, transcript at CIV-OTP-0048-1660.

²³²⁶ Côte d'Ivoire Jeunes patriotes, les hommes de Laurent Gbagbo - France24, 23 January 2011, CIV-OTP-0002-0995 at 00:09:15-00:09:28, transcript at CIV-OTP-0007-0181 at 0189.

²³²⁷ Response, paras 1113, 1896; *see also* para. 1110 where it is cited to exemplify that the alleged Common Plan remained in existence through the post-electoral crisis; *see also* para. 1123.

²³²⁸ RTI Broadcast dated 29 January 2011, CIV-OTP-0074-0072, transcript at CIV-OTP-0102-1679 at 1680.

also stated that the President needed people around him who were willing to sacrifice themselves to give him results in light of the circumstances prevailing in Côte d'Ivoire and that 'they' would have to be brave to do it because 'they' were accountable to all the youth who expect a lot from 'them' ("*il va falloir être courageux pour le faire, parce qu'en face nous avons des comptes à rendre à toute cette jeunesse qui attend beaucoup de nous*").²³²⁹

1007. It is only by taking certain words entirely out of context that this speech could be interpreted as implying or foreshadowing the use of violence, let alone the commission of crimes.

ff) 5 February 2011 – Rally at Place de la République

1008. During a large rally at the *Place de la République*, Mr Blé Goudé expressed support for the establishment of a mediation panel by the African Union, but expressed reservations about the appointment of the President of Burkina Faso as its president. According to Mr Blé Goudé, this meant that Nicolas Sarkozy would be on the panel as well.²³³⁰

gg) 5 February 2011 – Interview of Mr Blé Goudé on RTI

1009. The Prosecutor also relies on an interview Mr Blé Goudé gave on RTI on 5 February 2011, following a large rally at the *Place de la République*.²³³¹ In it, he called upon the Ivorians to be ready to stand up against the foreign powers that wanted to install Mr Ouattara. He said that the 'fight' would be difficult, but that

²³²⁹ RTI Broadcast dated 29 January 2011, CIV-OTP-0074-0072, transcript at CIV-OTP-0102-1679 at 1680.

²³³⁰ RTI Broadcast dated 5 February 2011, CIV-OTP-0064-0117 at 00:00:18.

²³³¹ RTI Broadcast dated 5 February 2011, CIV-OTP-0064-0117 at 00:12:54-00:16:48, transcript at CIV-OTP-0086-1076 at 1077-1078.

it would be won with the help of God and by being disciplined, determined and, as always, with empty hands.²³³²

hh) 12 February 2011 – Rally at Agboville

1010. During a rally in Agboville on 12 February 2011, Mr Blé Goudé said that the totem of the Ivorian people was Laurent Gbagbo and that no one was allowed to touch him. He also called upon the crowd to ‘revolt’ in case someone tried to touch the constitution.²³³³

ii) 13 February 2011 - Speech by Mr Gbagbo during religious ceremony at Cocody

1011. During a religious ceremony in Cocody, Mr Gbagbo said that he was proud to be the person through which change would be brought to Côte d’Ivoire and that he was fighting for this change. He acknowledged there were problems, but expressed his confidence that they would win.²³³⁴

jj) 24 February 2011 - Government statement about Council of Ministers

1012. On 24 February 2011, a spokesperson for the government, Mr Ahoua Don Mello, read a communiqué on the RTI following a meeting of the Council of Ministers presided by Mr GBAGBO that day.²³³⁵ Mr Don Mello stated that the government had noticed a worsening of security situation of the country following after a call

²³³²RTI Broadcast dated 5 February 2011, CIV-OTP-0064-0117 at 00:12:54-00:16:48, transcript at CIV-OTP-0086-1076 at 1077-1078.

²³³³RTI Broadcast dated 13 February 2011, CIV-OTP-0064-0121 at 00:20:22-00:26:12, transcript at CIV-OTP-0086-1092.

²³³⁴RTI Broadcast dated 13 February 2011, CIV-OTP-0064-0121 at 00:12:54, transcript at CIV-OTP-0086-1088.

²³³⁵RTI Broadcast dated 24 February 2011, CIV-OTP-0064-0086 at 00:18:34, transcript at CIV-OTP-0044-2534 at 2549-2550.

for revolution by the armed rebellion. He reported that, during armed confrontation between FDS and rebels in Abobo, eight persons had been killed, including one FDS member. In Koumassi barricades had been erected and two civilians had been killed with bladed weapons by rebels. He also stated that in the West of the country a position had been attacked. The Council of Ministers expressed their concern about what they considered the complicity of the UNOCI in helping the rebels to infiltrate certain neighbourhoods, including Abobo, Anyama, Koumassi, and other places inside the country. The President took note of the advancement of the rebels and gave instruction to reinforce the security measures in order to ensure that the population of Abobo could live in peace and tranquillity.

kk) 24 February 2011 – Statement by Mr Blé Goudé on RTI

1013. In a televised video statement, Mr Blé Goudé congratulated the chief of Akouédo for having blocked UNOCI vehicles in front of Camp Agban and called upon the population to prevent UNOCI vehicles from moving around. He accused UNOCI of undermining the mediation efforts of the AU and of using its helicopters to transport rebels from the Golf Hotel to Abobo in order to destabilise Mr Gbagbo's regime. He also accused UNOCI of arming, training and transporting rebels and of fighting in place of the rebels. He then announced the convening of 'la grande assemblée générale' to give final instructions at 09:00 at the Bar le Baron in Yopougon. He ended by saying that he put UNOCI and the rebels on notice that, although they wanted to live, they were ready to die to turn a page in the history of Côte d'Ivoire.²³³⁶

²³³⁶ RTI Broadcast dated 24 February 2011, CIV-OTP-0064-0086 at 00:41:50.

ll) 25 February 2011 - Mr Blé Goudé's mot d'ordre at Bar le Baron in Yopougon

1014. On 25 February 2011, Mr Blé Goudé gave a speech at Bar le Baron in Yopougon. This speech forms a key element of the Prosecutor's case against the accused and is discussed in more detail elsewhere in this decision.²³³⁷

mm) 2 March 2011 – Speech by Mr Gbagbo to delegation of MDIR

1015. While addressing a delegation of Mouvement pour la Défense des Institutions Républicaines (MDIR) on 2 March 2011, Mr Gbagbo stated that he knew of no other example in world history where people took up arms to contest the results of an election. He also said that the dispute about the elections was a pretext to submit Côte d'Ivoire [to a foreign power] and that he would not stand for that. In the final part of the segment, Mr Gbagbo reassured his audience that he would hold on [to power].²³³⁸

nn) 3 March 2011 – Statement by Government spokesperson Ahoua Don Mello

1016. In a statement on 3 March 2011, a government spokesperson claimed that in Abidjan the rebels had mutated into terrorists and that they committed crimes and caused material damage, often with the help of UNOCI. Mr Don Mello stated that the government had decided to go on the offensive to secure Abobo, which was characterised as the main area, to be followed by Koumassi and Yopougon, which were characterised as fallback areas ('zones de repli'). Mr Don Mello also accused the international community of imposing a genocidal sanctions regime, which led to the south of Côte d'Ivoire being deprived of

²³³⁷ See VIII.D.2 - Yopougon I.

²³³⁸ RTI Broadcast dated 3 March 2011, CIV-OTP-0026-0006 at 00:13:15 – 00:20:18, transcript at CIV-OTP-0051-2250, at 2254.

weapons and medicine, all the while arming the rebels. The statement ends with a list of nominations of government officials being read out.²³³⁹

oo) 4 March 2011 – Mr Blé Goudé interview on youth to organise roadblocks

1017. The Prosecutor alleged that on 4 March 2011, Mr Blé Goudé, rather than condemn the violence perpetrated at roadblocks erected in Yopougon after 25 February,²³⁴⁰ actively encouraged their continued use.²³⁴¹ However, in this interview, Mr Blé Goudé stated that there was too much anarchy at the roadblocks and he called upon those manning them to avoid racketeering the people because they wanted to ensure security in a polite manner. He called upon them to avoid falling into the trap of attacking Senegalese and Togolese left and right, because, first and foremost, he was '*panafricaniste*'.²³⁴²

pp) 4 march 2011 – Statement by FDS spokesperson Col-Maj Babri Gouhourou

1018. In this press statement, a spokesperson of the FDS rejected allegations that FDS were responsible for the killing of women in Abobo on 3 March 2011 (Abobo I)²³⁴³ as false. He claimed that similar demonstrations by RHDP supporters took place in other locations in Abidjan and that these were dispersed by conventional

²³³⁹ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018 at 00:00:52 – 00:12:15, transcript at CIV-OTP-0051-2250, at 2253-4.

²³⁴⁰ See VI.M - 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I);

VIII.D.2 - Yopougon I.

²³⁴¹ Mid-Trial Brief, paras 569-572; *see also* para. 615.

²³⁴² RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2224.

²³⁴³ VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I).

means without any violence. He furthermore denied that the FDS was operating in Abobo on the day of the march.²³⁴⁴

qq) 4 and 5 March 2011 – Statements by Don Mello and Minister Guiriéoulou

1019. The Prosecutor invokes a press statement by government spokesperson Mr Don Mello to substantiate her allegation that the Gbagbo regime denied responsibility for the Abobo I incident and claimed it was a ‘set-up’. According to the Prosecutor, this was a deliberate attempt to misrepresent the situation²³⁴⁵ The Prosecutor is correct that Mr Don Mello denied the allegation. The government condemned certain ‘chancelleries’ and the international press for having uncritically accepted accusations without foundation. The spokesperson also threatened legal action against the ‘authors’ of the allegations.²³⁴⁶ Essentially the same message was given in the statement made by Minister Guiriéoulou on 5 March 2011²³⁴⁷

rr) 14 March 2011 – Mr Blé Goudé thanked youth for roadblocks

1020. The Prosecutor cited Mr Blé Goudé’s statement of 14 March 2011 to allege that he actively encouraged the continued use of the roadblocks while failing to instruct the youth to stop perpetrating violent crimes against civilians.²³⁴⁸ From

²³⁴⁴ RTI Broadcast dated 3 March 2011, CIV-OTP-0026-0006 at 00:22:33 – 00:25:39, transcript at CIV-OTP-0051-2250 at 2256.

²³⁴⁵ Mid-Trial Brief, para. 165; Response, paras 662, 736, 738, 999, 1132, 1738, 1740, 1753, 1756, 1774, 1919, 1930, 2092, 2112

²³⁴⁶ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018 at 00:10:53-00:13:05, transcript at CIV-OTP-0051-2220 at 2226-2227; see also CIV-OTP-0026-0018 at 00:52:20-55:30, where the RTI presenter argues that there were armed individuals among the demonstrators, transcript at CIV-OTP-0051-2220 at 2238.

²³⁴⁷ RTI Broadcast dated 5 March 2011, CIV-OTP-0061-0594, transcript at CIV-OTP-0088-0768 at 0769-0770. This excerpt is also relied upon repeatedly by the Prosecutor, see Response, paras 739, 1133, 1402, 1738, 1757-8, 1919, 2092.

²³⁴⁸ Mid-Trial Brief, paras 253, 577, 809, 843, 848, 870; *see also* para. 615.

this statement, it appears that whilst Mr Blé Goudé was congratulating those who erected roadblocks to protect their neighbourhoods, and stated that they had discouraged the rebels, he qualified this by telling those manning the roadblocks above all to be polite and to avoid committing crimes.²³⁴⁹

ss) 18 March 2011 – Statement by government spokesperson Ahoua Don Mello

1021. In a 18 March 2011 statement, Mr Don Mello claimed that, after having failed to conquer Abidjan, the rebels had decided to commit sporadic terrorist attacks in Abidjan. He then listed a number of incidents. After stating that the fight against terrorism was everybody's business, Mr Don Mello transmitted a message from Mr Gbagbo in which he called on Ivorians to be more responsible and to collaborate more with the FDS, in order to neutralise suspect elements in their environment. Mr Gbagbo also asked everyone to remain serene and that the FDS was deployed to block the advance of terrorism.²³⁵⁰

tt) 18 March 2011 - Mr Blé Goudé meets with family of killed persons

1022. On 18 March 2011, the RTI broadcast a visit by Mr Blé Goudé to the families of four persons who were allegedly killed by Ouattara supporters at a roadblock manned by *Jeunes Patriotes*. In addressing the families, Mr Blé Goudé said that it was unacceptable that people would hide Kalashnikovs under their civilian clothing and sow desolation in families. He asked rhetorically: "In whose name? When you will finish killing all the Ivorians, who will you govern in the end?"²³⁵¹

²³⁴⁹ RTI Broadcast dated 14 March 2011, CIV-OTP-0069-0371, transcript at CIV-OTP-0087-0724 at 0725-0726.

²³⁵⁰ RTI Broadcast dated 18 March 2011, CIV-OTP-0069-0374, at 00:03:58.

²³⁵¹ RTI Broadcast dated 18 March 2011, CIV-OTP-0069-0374 at 00:24:30-00:25:43, transcript at CIV-OTP-0087-0727 at 0728.

uu) 18 March 2011 – Mr Blé Goudé addresses individuals manning a roadblock

1023. The Prosecutor also pointed to a visit by Mr Blé Goudé to a roadblock, broadcast on RTI on 18 March 2011, where he addressed a crowd including the persons manning the roadblock.²³⁵² In his speech, Mr Blé Goudé said that there would be survivors of the war in Côte d'Ivoire and announced that he would make an historical appeal the next day at Place CP1 in Yopougon. He also reassured the audience and told them to remain serene. He asked them to reinforce the roadblocks and to check vehicles with politeness and kindness but also with firmness.²³⁵³

vv) 19 March 2011 - Rally Place CP1 Yopougon

1024. The Prosecutor refers to Mr Blé Goudé's speech at Place CP1 in Yopougon on 19 March 2011, in which he called on the youth to enlist in the armed forces, as evidence that he and Mr Gbagbo incited the youth to fight to protect the nation. This speech is also invoked as an example of Mr Blé Goudé using 'violent rhetoric'.²³⁵⁴ It is true that in this speech Mr Blé Goudé conjured an image of the pro-Gbagbo youth as the victims of attacks who were in constant danger. He also argued that those who slit the throats of others were not from Côte d'Ivoire because this was not part of their culture. Significantly, Mr Blé Goudé also said that he had come to the realisation that it was not Mr Ouattara who was waging the war, but that it was the UN. Finally, he stated that he felt obliged to take a position he did not want to take, and proceeded to emphatically ask the audience if they were willing to enter the armed forces to serve their country.²³⁵⁵ While it is

²³⁵² Mid-Trial Brief, paras 581-582, 865.

²³⁵³ RTI Broadcast dated 18 March 2011, CIV-OTP-0069-0374 at 00:26:39-00:27:36, transcript at CIV-OTP-0087-0727 at 0729.

²³⁵⁴ Mid-Trial Brief, paras 232, 241, 500, 583-588; Response, paras. 1219 v, 1297-8, 1324, 1804, 1844, 1897.

²³⁵⁵ Untitled, 19 March 2011, CIV-OTP-0015-0476 (confidential), transcript at CIV-OTP-0020-0500 (confidential).

true that this speech could reasonably be interpreted as a call to take up arms and that Mr Blé Goudé was stoking fear and resentment to some extent, it is not a call to commit violence against civilian supporters of Mr Ouattara.

ww) 20 March 2011 - Blé Goudé interview on RTI

1025. Following the rally on 19 March 2011 in which he congratulated and thanked the *jeunes patriotes* manning the roadblocks, Mr Blé Goudé gave an interview in which he again congratulated those who manned the roadblocks with politeness. With regard to his *mot d'ordre* for the youth to enrol in the FDS, Mr Blé Goudé said that this was because in a state where the rule of law applied, one should only have a weapon when one had a right to have it, i.e. by becoming a police officer, a gendarme or a soldier. He repeated that he did not want civil war in Côte d'Ivoire and stated that one would never find a country where there were only supporters for one side. Finally, Mr Blé Goudé claimed that they were organised and disciplined and expressed his conviction that the post-electoral crisis could be resolved by Ivorian politicians.²³⁵⁶

xx) 21 March 2011 - Blé Goudé interview on RTI

1026. The Prosecutor alleged that in his interview of 21 March 2011, Mr Blé Goudé stated that since the youth started to set up the roadblocks, their opponents had begun to be discouraged.²³⁵⁷ In the same interview, Mr Blé Goudé commented on the large number of people who had turned up to enrol in the FDS. According to him, this showed that the youth were determined and that they rejected the idea of being given rifles in their neighbourhoods like small-time criminals. Mr Blé Goudé repeated that the only legal way to have a weapon was through joining the

²³⁵⁶RTI Broadcast dated 20 March 2011, CIV-OTP-0064-0092 at 00:22:30, transcript at CIV-OTP-0097-0161 at 0162-0163.

²³⁵⁷Mid-Trial Brief, para. 594.

FDS and explained the manner in which the enrolment process would take place. He also stated that the fact that the FDS was recruiting did not exclude the possibility of dialogue and repeated his preference to negotiate before the war started. Notably, Mr Blé Goudé also called for an immediate end to violence in the neighbourhoods (“ethnie contre ethnie, RHDP contre LMP”).²³⁵⁸

yy) 22 March 2011 – Statement by government spokesperson Don Mello

1027. On 22 March 2011, the RTI broadcast a statement by the government, read by Mr Don Mello, concerning allegations in the media about the use of heavy weapons in Abobo (Abobo II).²³⁵⁹ According to Mr Don Mello, the government had ordered an investigation and claimed that no damage had been observed to any markets in Abobo and that no victims had been received in the morgues.²³⁶⁰

zz) 22 March 2011 – Speech by Mr Blé Goudé in Yopougon enrolment centre.

1028. During the same broadcast of 22 March 2011, the RTI showed parts of a speech by Mr Blé Goudé in the context of the enrolment into the FDS in Yopougon. In this speech, Mr Blé Goudé called upon everyone not to be afraid and to maintain serenity.²³⁶¹

²³⁵⁸ RTI Broadcast dated 21 March 2011, CIV-OTP-0069-0375 at 00:14:20, transcript at CIV-OTP-0087-0741 at 0742.

²³⁵⁹ See VI.T - 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II).

²³⁶⁰ RTI Broadcast dated 22 March 2011, CIV-OTP-0069-0376 at 00:06:30.

²³⁶¹ RTI-JT 20H, CIV-OTP-0069-0376 at 00:19:40.

aaa) 23 March 2011 – Speech by Mr Blé Goudé

1029. On 23 March 2011 the RTI broadcast a speech by Mr Blé Goudé. In this speech, Mr Blé Goudé repeated that there would be no civil war in Côte d'Ivoire. He mentioned that in Yopougon he was almost beaten by his own comrades because he refused to give them the *mot d'ordre* to exact vengeance on the militants of the RHDP. Mr Blé Goudé also denied allegations that the FDS was responsible for the death of women during the women's march on 3 March 2011 (Abobo I).²³⁶² He suggested that they should bring the bodies of those killed by the rebels to the entrance of the UNOCI headquarters and repeated his allegation that Mr Sarkozy and Mr Choi were preparing a genocide in Côte d'Ivoire. He claimed that they were fighting to avoid civil war and called upon the population to go to work calmly. Mr Blé Goudé also called for a popular uprising on 26 March 2011. He said that no one should stay at home and that they should bring their children and that they would take over Plateau. He also invited all the priests, preachers and Imams to come to glorify God in order to bring peace.²³⁶³

bbb) 25 March 2011 – Interview with Mr Blé Goudé at RTI

1030. On 25 March 2011, Mr Blé Goudé gave an interview on the RTI, in which he denounced violence as anti-democratic. He repeated his call for a massive manifestation for peace at the *Place de la République* and announced that it would have two parts: the first political and the second religious. He said it was time for Ivorians to start writing their own history and that the rally would be an historic moment.²³⁶⁴

²³⁶² See VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I).

²³⁶³ Untitled, 23 March 2011, CIV-OTP-0015-0530 (confidential) at 00:08:46, transcript at CIV-OTP-0063-2928 (confidential) at 2935.

²³⁶⁴ RTI Broadcast dated 25 March 2011, CIV-OTP-0069-0378 at 00:28:12.

ccc) 26 March 2011 – Rally at Place de la République

1031. In her Mid-Trial Brief, the Prosecutor pointed to the speech Mr Blé Goudé gave at the rally at the *Place de la République* on 26 March 2011 to demonstrate that he referred to civilian Ouattara supporters as rebels,²³⁶⁵ that they could not come and scare Ivorians “and that they wanted to make people believe that the *Jeunes Patriotes* were cowards but [Mr] Ouattara would never take Abidjan”.²³⁶⁶ As shown in a video of the rally, Mr Blé Goudé did not refer to civilian Ouattara supporters as rebels but did state that Mr Ouattara and his supporters had slit the throats of many of “our fellow citizens”.²³⁶⁷ He also stated that Côte d’Ivoire’s adversaries had failed and that a new generation of Ivorians would stand up, who did not think that political and ideological diversity should lead to the disappearance of Côte d’Ivoire.²³⁶⁸

1032. The Prosecutor also claims in the Response that Mr Blé Goudé stated that those who had closed their shops and had fled Abidjan would find Ivorians in those shops when they returned.²³⁶⁹ Although the quality of the audio is extremely poor, it does appear that Mr Blé Goudé indeed uttered these words.²³⁷⁰

ddd) 27 March 2011 RTI broadcast

1033. The Prosecutor relies upon an interview Mr Blé Goudé’s gave on the RTI the day after a large rally at the *Place de la République* in Abidjan. According to the

²³⁶⁵ Mid-Trial Brief, para. 868.

²³⁶⁶ Mid-Trial Brief, para. 812.

²³⁶⁷ Content BIN ICC Ivory Coast Clips, 26 March 2011, CIV-OTP-0015-0578 (confidential), transcript at CIV-OTP-0059-0042 (confidential) at 0044.

²³⁶⁸ Content BIN ICC Ivory Coast Clips, 26 March 2011, CIV-OTP-0015-0578 (confidential), transcript at CIV-OTP-0059-0042 (confidential) at 0046.

²³⁶⁹ Response, para. 1341.ii.d.

²³⁷⁰ Content BIN ICC Ivory Coast Clips, 26 March 2011 CIV-OTP-0015-0578 (confidential) at 00:12:28 – 00:12:41, transcript at CIV-OTP-0100-0602 at 0607.

Prosecutor, his words are an indication of the existence of the common plan.²³⁷¹ However, in this interview Mr Blé Goudé expressed his satisfaction about the large turnout and how disciplined the crowd was. While it is true that he spoke of the need to fight until the end, Mr Blé Goudé also said that there was a need for dialogue and that he was convinced that it was better to be strong among the living than to be strong among the dead.²³⁷² Given the context in which this interview was given, the most that could be derived from this interview is that on 27 March 2011, Mr Blé Goudé still believed that Mr Gbagbo should remain in power. But there is nothing to suggest that Mr Blé Goudé's words implied a desire for crimes to be committed against the pro-Ouattara civilian population.

eee) 3 April 2011 – Calls to come to Presidential Residence

1034. On 3 April 2011, the RTI aired several appeals to the population to gather at the Presidential Residence.²³⁷³ These appeals appeared to have been made, *inter alia*, by youth leader Serge Koffi and Damana Pickass.²³⁷⁴

fff) 3 or 4 April 2011 – rebels have sown terror

1035. The Prosecutor alleged that on 3 or 4 April 2011, Mr Blé Goudé appeared on the RTI stating that Mr Ouattara's rebels and mercenaries had sown terror in several Ivorian cities with the complicity of UNOCI and *Licorne* forces.²³⁷⁵ During the segment, Mr Blé Goudé claimed that the rebels and mercenaries of Mr Ouattara had entered several cities and were spreading terror by raping, stealing and slitting throats, and accused the *Licorne* forces of complicity. He also stated that

²³⁷¹ Response, para. 1123 xvii.

²³⁷² RTI Broadcast dated 26 March 2011, CIV-OTP-0069-0380 at 00:16:30-00:22:52, transcript at CIV-OTP-0087-0806.

²³⁷³ RTI Broadcast dated 3 April 2011, CIV-OTP-0064-0130 at 00:04:10.

²³⁷⁴ RTI Broadcast dated 3 April 2011, CIV-OTP-0064-0130, transcript at CIV-OTP-0091-0465 at 0466, 0468.

²³⁷⁵ Mid-Trial Brief, para. 607, 813.

the FDS was fighting well against the rebels, mercenaries, UNOCI and *Licorne* and asked the audience to support the FDS with information.²³⁷⁶

ggg) Early April 2011 - Gbagbo interview

1036. The Prosecutor also relies on an interview Mr Gbagbo gave in early April, after the French forces had started bombing the FDS positions in Abidjan, as evidence that Mr Gbagbo was unwilling to relinquish power.²³⁷⁷ Though it is true that Mr Gbagbo expressed the view that he was the legitimate president of Côte d'Ivoire, it must be noted that he also insisted on the need for dialogue and refused to engage in rhetoric on how far he was willing to go, preferring to state that they were at a post-electoral impasse that had to be mended.²³⁷⁸

hhh) 5 April 2011 - Final address of Mr Blé Goudé

1037. The Prosecutor alleged that on 5 April 2011, Mr Blé Goudé “address[ed] the ‘patriots’ and urg[ed] them to continue fighting to maintain [Mr] Gbagbo in power [...] and ordered them to reinforce the roadblocks”.²³⁷⁹ In the RTI broadcast dated 5 April 2011, Mr Blé Goudé requested the people in the audience to reinforce the roadblocks and to record suspicious movement in the neighbourhoods and send them to Ivorian television.²³⁸⁰ Mr Blé Goudé also congratulated the army for fighting well.²³⁸¹ Contrary to the Prosecutor’s assertion, Mr Blé Goudé appears to be calling for a cessation of violence in that

²³⁷⁶ RTI Broadcast dated 3 April 2011, CIV-OTP-0064-0131 at 00:08:05-00:11:17.

²³⁷⁷ Mid-Trial Brief, para. 611; Response, para. 1123 xix.

²³⁷⁸ Le Journal / UNOCI EVIDENCE \ AUDIO MATERIAL \ Audio 2 - FMRC011, undated, CIV-OTP-0064-0136 at 00:00:00-00:05:49, transcript at CIV-OTP-0098-0036 at 0037-0038.

²³⁷⁹ Mid-Trial Brief, paras 610, 810, 814, 835, 850, 872, 876.

²³⁸⁰ Dernier message de BLE GOUDE, 6 April 2011, CIV-OTP-0047-0604 (confidential), transcript at CIV-OTP-0051-1681 at 1682.

²³⁸¹ Dernier message de BLE GOUDE, 6 April 2011, CIV-OTP-0047-0604 (confidential), transcript at CIV-OTP-0051-1681 at 1682.

he asked “*pendant combien de temps allons-nous assister à ce que des gens assoiffés de sang, pillent, tuent, égorgent?*” and adds that “*la sagesse nécessaire pour que ce combat-là, on puisse le conclure*”; it is also noted that Mr Blé Goudé concludes the speech with congratulating the “comrades”, the “leaders” and stating that “*le combat continue*”.²³⁸² In light of this, Mr Blé Goudé does clearly request the people in the audience to continue securing the roadblocks; however, his words do not appear to stem from a desire to continue fighting, but rather the necessity. The references to violence in this speech otherwise do not appear to be approving it.

iii) 9 April 2011 – Government statement

1038. The Prosecutor claims that on 9 April 2011, Mr Gbagbo called upon the population to continue the fight for the liberation of Côte d’Ivoire.²³⁸³ However, the Prosecutor has only submitted the draft statement into evidence²³⁸⁴ and the Chamber has seen no evidence that this statement was ever actually broadcast. Under these circumstances, there is no point in analysing the content of the statement.

3. Control of the RTI and the Media

1039. In relation to how the Gbagbo regime used the state media and controlling bodies, the Prosecutor alleges that Mr Gbagbo and the ‘inner circle’ used the RTI to disseminate violent and xenophobic rhetoric against perceived Ouattara supporters.²³⁸⁵ This included transmission of propaganda.²³⁸⁶ The Chamber has

²³⁸² Dernier message de BLE GOUDE, 6 April 2011, CIV-OTP-0047-0604 (confidential), transcript at CIV-OTP-0051-1681 at 1682.

²³⁸³ Response, para. 612.

²³⁸⁴ Communiqué du gouvernement, 9 April 2011, CIV-OTP-0018-0564 (confidential).

²³⁸⁵ Mid-Trial Brief, para. 333.

²³⁸⁶ Mid-Trial Brief, para. 333.

addressed the allegations concerning the violent and xenophobic rhetoric in other sections.²³⁸⁷

1040. It is noted, however, that the Prosecutor has made other allegations concerning the media that may be relevant in assessing the *mens rea* of the accused, or otherwise the sharing of intent between the alleged members of the ‘inner circle’. They are alleged to have embarked on a media campaign to convince public opinion that Mr Ouattara had no public support.²³⁸⁸ The Prosecutor also alleges that Mr Gbagbo and the members of the alleged ‘inner circle’ sought control over the media coverage of the elections by, *inter alia*, blocking Ouattara supporters, UNOCI and international media outlets.²³⁸⁹ The Prosecutor further alleges that the efforts to control information included restrictions on the press, discrediting pro-Ouattara media outlets, and “instructions” by Mr Blé Goudé to “stay tuned to RTI”.²³⁹⁰ The Prosecutor alleges that Mr Blé Goudé also “instructed the pro-Gbagbo youth to only watch pro-Gbagbo channels such as RTI, listen to Radio Côte d’Ivoire and to the neighbourhood committees” and that this further amplified his means of communication through the media.²³⁹¹

1041. The Prosecutor, by reference to her previous filing requesting submission of evidence, points to evidence to support the allegation that restrictions on the press, particularly international press, were part of the larger strategy for control of information.²³⁹²

²³⁸⁷ See IV.F.1 - Public speeches and statements;

IV.B.1 - Identification of ‘Political Opponents’, paras 179-184.

²³⁸⁸ Mid-Trial Brief, para. 333.

²³⁸⁹ Mid-Trial Brief, para. 334.

²³⁹⁰ Mid-Trial Brief, para. 335.

²³⁹¹ Mid-Trial Brief, para. 795.

²³⁹² Mid-Trial Brief, para. 335 footnote 1021 referring to 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, paras 32-33.

1042. The Prosecutor attempts to link the meetings between the Council of Ministers dated 14-16 December 2010 to the comments by the newly appointed Minister of Communication by pointing to three RTI broadcast.²³⁹³ The Prosecutor pointed to a RTI broadcast dated 14 December 2010 that reports about a meeting held by the newly appointed Minister of Communication in which he discussed the socio-political situation in the country, condemning the interference of certain Western states; he reminded the media to do their work and defend the institutions of the republic; the minister also addressed the private press, requesting them to respect the constitution and not spread fake news.²³⁹⁴ The Prosecutor alleged that the minister's comments demonstrated an effort to control the media and she specifically referred to his comments that UNOCI FM was acting worse than *Radio des Milles Collines* because they had been calling for a rebellion.²³⁹⁵ The Prosecutor also alleged that, on 16 December 2010, the newly appointed Minister of Communication visited the RTI to congratulate the staff there to encourage them to continue to serve the state.²³⁹⁶ The Prosecutor also pointed to an RTI broadcast dated 1 January 2011 to allege that throughout the post-electoral crisis, the Minister would 'continue to congratulate the RTI for its support of the Republic'.²³⁹⁷

1043. In particular, the RTI broadcast dated 16 December 2010 referred to by the Prosecutor shows the minister stating that

Au nom du Président de la République, au nom du chef du gouvernement, le Premier ministre, et au nom de l'ensemble du gouvernement, saluer et encourager le personnel de la RTI. Vous savez, vous avez vécu aujourd'hui, une journée exceptionnelle, une journée de tension, du fait de l'appel à l'insurrection lancé par le RDR pour occuper violemment la radio télévision ivoirienne. Le Président de la République nous envoie pour vous dire qu'il vous soutient, qu'il vous encourage, que

²³⁹³ See Mid-Trial Brief, paras 337-339.

²³⁹⁴ RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0568, transcript at CIV-OTP-0102-0843 at 0844.

²³⁹⁵ Mid-Trial Brief, para. 338.

²³⁹⁶ Mid-Trial Brief, para. 339 referring to RTI Broadcast dated 16 December 2010, CIV-OTP-0074-0055, transcript at CIV-OTP-0087-0396.

²³⁹⁷ Mid-Trial Brief, para. 339.

vosre sécurité est assurée et que vous devez tenir bon. J'ajoute que ce que vous faites, vous défendez votre pays, vous défendez les institutions de votre pays et vous ne devez pas en avoir honte.²³⁹⁸

1044. It is unclear how these comments respectively or taken together demonstrate a control over the media in line with the alleged Common Plan. The Prosecutor referenced the minister's use of the phrase 'a day of tension' to describe 'the afternoon of 16 December 2010' but it is unclear what proposition could be inferred from this that would be relevant either to the allegations concerning the RTI March and/or the control over the media.
1045. Simone Gbagbo's agenda contains references to certain phrases that indicate actions with regard to the press, with one in particular stating that the rebellion had created its radio and that efforts to scramble ('brouillage') did not succeed.²³⁹⁹ The UNOCI daily situation report dated 18 December 2010 notes that on 17 December 2010 the printing of seven pro-opposition dailies was impeded by elements of the *Garde Républicaine*; it also reported that opposition press organs close to the RHDP Coalition were prevented from publishing their daily newspapers.²⁴⁰⁰ The UNOCI Daily Situation Report dated 21 December 2010 mentions two journalists being reportedly detained at Camp Commando at Koumassi (sic); it is not known for what reason these journalists were detained and for how long.²⁴⁰¹
1046. What is clear from the evidence is that Mr Gbagbo and his government were entangled in a struggle to control the media and, through this, the information that would reach the Ivorian population.²⁴⁰² To that end, efforts were made to

²³⁹⁸ RTI Broadcast dated 16 December 2010, CIV-OTP-0074-0055, transcript at CIV-OTP-0087-0396.

²³⁹⁹ Untitled, 1 January 2010, CIV-OTP-0018-0810 (confidential) at 0840-0847.

²⁴⁰⁰ DAILY SITUATION REPORT, 18 December 2010, CIV-OTP-0044-0860 (confidential) at 0861, at 0864.

²⁴⁰¹ DAILY SITUATION REPORT, 22 December 2010, CIV-OTP-0044-0895 (confidential) at 0898.

²⁴⁰² See for example RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0568, transcript at CIV-OTP-0102-0843.

prevent media controlled by Mr Ouattara and the UN (which was accused of providing the Ouattara government their media platform)²⁴⁰³ from being able to broadcast and even to scramble their signal.²⁴⁰⁴ There are also reports that the Gbagbo regime closed down newspapers that supported Mr Ouattara.²⁴⁰⁵

1047. With regard to the UNOCI radio station, the Gbagbo government seized equipment and removed the frequency on which it was broadcasting.²⁴⁰⁶ There are also allegations that private persons were threatened for receiving the TCI television station associated with Mr Ouattara.²⁴⁰⁷

1048. It is noted that P-0625 testified that “in the middle of the crisis after the results of the elections”, Mr Ouattara and his supporters did not have access to the RTI and they set up their own television station and they used “heavy weaponry to stop the RTI from broadcasting”.²⁴⁰⁸

1049. It is further noted that on 18 February 2011, Mr Gbagbo’s minister of communication, Mr Gnonzié Ouattara held a meeting with representatives of the international press corps in Côte d’Ivoire, during which he asked them to be respectful of the sovereignty of the Ivorian institutions. He also asked them to be impartial and to just report the facts in a balanced manner. On the same day, the Secretary General of the *Conseil National de la Communication Audiovisuelle*,

²⁴⁰³ Open source video, 20 January 2012 CIV-OTP-0012-0007, transcript at CIV-OTP-0062-0929 at 0931-0932; RTI Broadcast dated 18 December 2010, CIV-OTP-0074-0057, transcript at CIV-OTP-0087-0421 at 0422-0423.

²⁴⁰⁴ MINUTES DU CONSEIL DE GOUVERNEMENT DU 04 JANVIER 2011, 4 January 2011, CIV-OTP-0025-0887 at 0889; MINUTES DU CONSEIL DE GOUVERNEMENT DU 18 JANVIER 2011, 18 January 2011, CIV-OTP-0025-0902 at 0904.

²⁴⁰⁵ DAILY SITUATION REPORT, 25 January 2011, CIV-OTP-0044-1350 (confidential) at 1350.

²⁴⁰⁶ MINUTES DU CONSEIL DE GOUVERNEMENT DU 01 FEVRIER 2011, 1 February 2011, CIV-OTP-0025-0910 at 0911; DAILY SITUATION REPORT, 11 February 2011, CIV-OTP-0044-1059 (confidential) at 1060; RTI Broadcast dated 9 February 2011, CIV-OTP-0064-0118 at 00:22:50 – 00:27:42, transcript at CIV-OTP-0086-1079.

²⁴⁰⁷ Rapport quotidien du 17 février 2011 / (du 16 février 2011, 12h au 17 février 12h), 17 February 2011, CIV-OTP-0044-1488 (confidential) at 1488.

²⁴⁰⁸ P-0625, T-27 dated 9 March 2016, pp. 22-23.

Felix Nanihio, warned that the Council would clamp down on pirate radio and television stations, but at the same time invited them to apply for a licence. Following this, the President of the *Conseil National de la Presse*, Mr Deby Dally, alleged that certain media outlets had committed grave professional errors, in particular: calling for sedition and civil disobedience, instigating FDS members to insubordination and rebellion, violation of national security and defence secrets, apologism of war crimes and collaboration with the enemy, libel of the President of the Republic and other public officials, revelation of confidential judicial proceedings, incitement to ethnic or religious conflict, dissemination of official acts by entities without constitutional authority (i.e. the Ouattara government), and publication of offensive and demeaning images. The President of the CNP warned the relevant publications and authors of legal consequences.²⁴⁰⁹

1050. On 2 March 2011 the RTI broadcast a communiqué read by Cesar Etou, member of the *Conseil Nationale de la Presse*, in which the CNP rejected accusations by eight (presumably pro-Ouattara) newspapers, who decided to stop publication on the grounds that they were the subject of attacks and threats against them by the CNP. The speaker acknowledged that only one publication had been prohibited for publishing six editions as a sanction for ‘professional errors’ and that all journalists were experiencing danger.²⁴¹⁰

1051. Finally, during the RTI broadcast of 21 March 2011, Mr Blé Goudé requested everyone to stay tuned to the RTI and this was in response to the fact that he thought that the other television stations were spreading panic in the population.²⁴¹¹

²⁴⁰⁹ RTI Broadcast dated 18 February 2011, CIV-OTP-0074-0079 at 00:31:14 – 00:34:06, transcript at CIV-OTP-0087-0647; CIV-OTP-0074-0079 at 00:34:06 – 00:37:30, transcript at CIV-OTP-0087-0650; CIV-OTP-0074-0079 at 00:37:30 – 00:41:47, transcript at CIV-OTP-0087-0652.

²⁴¹⁰ RTI Broadcast dated 2 March 2011, CIV-OTP-0064-0125 at 00:07:54 – 00:13:42.

²⁴¹¹ RTI Broadcast dated 21 March 2011, CIV-OTP-0069-0375, transcript at CIV-OTP-0087-0741 at 0742.

1052. Based on an overall analysis of the available relevant evidence a reasonable trial chamber might conclude that Mr Gbagbo and his regime tried to retain control over the public debate in Côte d'Ivoire by restricting the ability of his opponent and his supporters to disseminate information and by otherwise blocking information that was considered unfavourable.
1053. Accordingly, the available evidence is suggestive of efforts aimed at curtailing freedom of expression and might be considered anti-democratic. The main difficulty in assessing the available evidence is that the Prosecutor has only presented the actions of a number of officials/entities but has not provided information about what the basis for these actions was. In particular, if there is one red thread running through the evidence, it is that the Gbagbo regime accused certain media outlets of spreading false information. However, without knowledge about what information these media outlets were disseminating, it is not possible to determine whether the (re)actions of the Gbagbo regime were exaggerated or perhaps disingenuous.
1054. In any case, even if it were accepted that Mr Gbagbo and his 'inner circle' actively controlled and manipulated the media, it is not apparent how this would advance the Prosecutor's case. A politician trying to determine which information reaches the population in an effort to promote himself and to disparage his opponent may be considered indicative of a wish to maintain power. However, it is far from clear how this would show that this politician intended to use violence against civilians.
1055. Insofar as the alleged control over the media may have served to prevent information about alleged crimes committed by forces loyal to Mr Gbagbo from circulating or even to spread disinformation in this regard,²⁴¹² this might be indicative of a plan or policy to commit such crimes if it were established that

²⁴¹² See IV.B.4 Climate of Impunity.

attempts to control the media were made with the purpose of denying criminal activity in mind. There is no evidence to suggest that this was the case and such intent cannot be inferred from the mere fact that allegations of crimes by forces loyal to Mr Gbagbo were being denied.

4. Youth leaders reiterating the calls

1056. The Prosecutor alleged that leaders of the *Galaxie Patriotique* also mobilised the youth through repetition and dissemination of Mr Blé Goudé's messages.²⁴¹³ These allegations are relevant to demonstrating the level of coordination between Mr Blé Goudé and the youth leaders therefore, other speeches have also been considered in assessing the alleged coordination holistically.
1057. The Prosecutor alleged that on 27 December 2010, the RTI reported on the mobilisation and sensitisation tour of Idriss Ouattara, president of the *parlements et agoras*, in Yopougon.²⁴¹⁴ The excerpt of the RTI report pointed out by the Prosecutor does speak of Idriss Ouattara's call to mobilise but, immediately after, also talks of the demands of the president of the *parlements et agoras* to stay calm [*sereine*] and not to attack the community of foreigners living in Côte d'Ivoire.²⁴¹⁵
1058. The Prosecutor alleged that a youth leader called Nicaise Douyou and the President of FENOPACI Jean-Marie Konin 'rehearsed' Mr Blé Goudé's *mot d'ordre* of 25 February 2011 and allegedly instructed all Ivoirians to participate and not to shelter rebels.²⁴¹⁶ It is true that the RTI news bulletin in which Mr Blé Goudé's *Bar le Baron* speech was broadcast was immediately followed by two short segments featuring two men (identified in the footage as Nicaise

²⁴¹³ Mid-Trial Brief, para. 238.

²⁴¹⁴ Mid-Trial Brief, para. 514.

²⁴¹⁵ See Transcript of excerpt from RTI Broadcast dated 27 December 2010, CIV-OTP-0086-0904 at 0905.

²⁴¹⁶ Mid-Trial Brief, para. 238.

Douyou and Jean-Marie Konin). Both men did indeed ask the public to denounce rebels and to check vehicles to prevent UNOCI from transporting rebels into Abidjan. The second speaker also made the remarkable statement that those who attacked the population in Abidjan were members of the regular forces of Burkina Faso transported by UNOCI into Abobo. It is also quite clear that Mr Konin identified the threat having emanated from UN, the French and the international community. No mention is made of Mr Ouattara or his supporters.²⁴¹⁷

1059. On 28 February 2011, following Mr Blé Goudé's speech at *Le Baron Bar*, the RTI broadcast a speech by Idriss Ouattara in which he said that the population was behind the FDS with bare hands and that they would be their eyes and ears in the neighbourhoods in order to provide them with information that would allow them to accomplish their mission to defend the institutions.²⁴¹⁸

1060. The Prosecutor alleged that, during the press conference on 23 March 2011 in Cocody, Mr Blé Goudé called for a public uprising to take place on 26 March and that Serge Koffi, Secretary General of the *Conseil Révolutionnaire d'Action Concrète* (CRAC), repeated this call. The RTI broadcast dated 25 March 2011 does show Mr Koffi repeating the calls made by Mr Blé Goudé. Also having regard to the conclusions in respect of Mr Blé Goudé's speech, it is noted that Mr Koffi's message does not appear to be calling for violence and/or condoning its use.²⁴¹⁹

1061. In a speech broadcast on the RTI on 26 March 2011, Serge Koffi called upon the patriots in Yopougon to remain vigilant and listen to the '*messages des leaders*

²⁴¹⁷ RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:16:00, transcript at CIV-OTP-0063-2998 at 3002.

²⁴¹⁸ RTI Broadcast dated 28 February 2011, CIV-OTP-0061-0557 at 00:07:15.

²⁴¹⁹ See Serge Koffi repeating this call on RTI Broadcast dated 25 March 2011, CIV-OTP-0069-0378 at 00:03:45-00:05:58, transcript at CIV-OTP-0087-0761 at 0762. See IV.F.2.aaa) - 23 March 2011 – Speech by Mr Blé Goudé.

de jeunesse'. He also stated that the population of the north of Côte d'Ivoire had done nothing to the population of the south. He claimed that the ones who were harming the population in Abobo were liberated prisoners from Burkina Faso trained by the Burkinabe military. Mr Koffi also gave the Minister of Transport 48 hours to reduce the price of transportation. He went on to warn that UNOCI and France were preparing war and that the Ivorian people did not want war because they did not want to destroy what they had built up over centuries.²⁴²⁰

1062. In light of the above, it can be concluded that certain youth leaders reiterated certain calls made by Mr Blé Goudé. However, the calls in question did not call for violence and/or crimes to be committed against civilians. Further, the reiteration of these calls, without more, is not reflective of coordination between these youth leaders and Mr Blé Goudé.

5. *Evaluation*

1063. Having considered the above speeches in light of the other evidence on the record (including additional speeches that are not discussed individually), the picture that emerges from the evidence differs substantially from the one painted by the Prosecutor. Most importantly, based on this evidence, it is exceedingly difficult to argue that the accused and their followers deliberately used their public appearances to foment hatred against civilians supporting Mr Ouattara, much less to stimulate the commission of violent crimes against them.

1064. It is true that some of the speeches can be considered as fear-mongering. In particular, the characterisation of Mr Ouattara and his supporters as rebels and bandits, the allegations that the French and the international community were preparing genocide in Côte d'Ivoire, and the insistence on crimes allegedly committed by the pro-Ouattara forces must have all instilled a certain level of

²⁴²⁰ RTI Broadcast dated 26 March 2011, CIV-OTP-0064-0127 at 00:07:20-00:11:22, transcript at CIV-OTP-0086-1128 at 1128-1130.

fear and resentment. However, read in context, it is possible to understand these utterances first and foremost as an effort to deligitimise political opponents and their international backers.²⁴²¹ To some extent, they may also be seen as a warning of a danger that needed to be avoided. Indeed, in several instances speakers stated that the UN and France had an interest in civil war and intra-community violence in Côte d'Ivoire and that this should be avoided at all costs because it would play into their hands by giving them a pretext to intervene. In any event, the fact that the pro-Gbagbo population was projected as being the potential victim of genocide does not imply an approval or encouragement to reciprocate. Even though the threat and actual instances of use of violence by the opponent's side was repeatedly emphasised, speakers systematically reassured their audiences that the situation was under control and that their side would prevail. This reinforces the impression that talk about atrocities was mainly designed to foster unity among Mr Gbagbo's supporters and loyalty to his regime.

1065. While it is not unreasonable to suggest that in some of the speeches the UN and the French government (although not French citizens as such) were 'demonised', the same cannot be said about the civilian population favouring Mr Ouattara. As regards Mr Ouattara and his forces, it is true that they were sometimes portrayed disparagingly. Sometimes Mr Ouattara and his supporters were depicted as tools in the hands of foreign powers, used to further their neo-colonialist agenda. Other times, Mr Ouattara was accused of being a foreigner himself, who coveted the natural riches of Côte d'Ivoire. In both cases, Mr Ouattara was portrayed as not being on the side of the Ivorian population. This may explain accusations of Mr Ouattara and his followers not being true Ivorians. Significantly, however, the speeches consistently called for dialogue with Mr Ouattara's camp. To the

²⁴²¹ It is also worth noting that in an interview, Mr Blé Goudé stated that a leader who does not have an adversary must create one. Grande interview Charles BLE GOUDE / Dans mon combat, je suis prêt à aller, undated, CIV-OTP-0028-0103, transcript at CIV-OTP-0044-2590 at 2592.

extent that Mr Ouattara and the rebels may have been ridiculed and vilified, they were never dehumanised in the speeches on the record.

1066. The continued insistence on dialogue is also significant in relation to the Prosecutor's claims that Mr Gbagbo declared that he would never cede power. While it is true that Mr Gbagbo and Mr Blé Goudé repeatedly insisted that the former was the legitimate president of Côte d'Ivoire and that he had no intention of stepping down, it was accepted that the election results were contested and that the best way to resolve the situation was through dialogue. Mr Gbagbo's request to have the votes recounted also implies that he must have been prepared to concede defeat if this was the result of the recount.

1067. The Prosecutor also alleges that Mr Blé Goudé's speeches blurred the distinction between rebel fighters and innocent civilians who supported Mr Ouattara and that he singled out civilians perceived as supporting pro-Ouattara as the targets for attacks by the perpetrators of the crimes. As the Prosecutor acknowledges, there is no direct evidence to support these allegations. To the contrary, there is evidence to suggest that the accused criticised the rebels supporting Mr Ouattara but there is no evidence that they ever blamed or reproached ordinary citizens for having voted or campaigned for Mr Ouattara. Mr Blé Goudé is seen multiple times on camera reminding his audience that democracy is important,²⁴²² and that there can be no country full of only Ouattara supporters or only Gbagbo supporters.²⁴²³

1068. It is significant to note, in this regard, that Mr Blé Goudé claimed to subscribe to pan-africanism; specifically when addressing the problems at the roadblocks in

²⁴²² See *Untitled*, 30 June 2006, CIV-OTP-0062-1041 (confidential) at 01:51; see Charles BLE GOUDE lance le défi des meilleurs rassembleurs 230311, 24 March 2011, CIV-OTP-0003-0017 at 05:40 where Blé Goudé tells the audience that democracy is not compatible with violence; Charles BLE GOUDE mobilise les Ivoiriens 260311, 26 March 2011, CIV-OTP-0003-0018 at 00:00.

²⁴²³ Charles BLE GOUDE mobilise les Ivoiriens 260311, 26 March 2011, CIV-OTP-0003-0018, at 09:40.

Yopougon in March 2011.²⁴²⁴ As noted, on 7 January 2011, Mr Blé Goudé is seen stating that he does not want the *dioulas* to be attacked by the *bétés*.²⁴²⁵ In a plethora of videos, either Mr Gbagbo or Mr Blé Goudé insists on unifying the country and overcoming past fractures.²⁴²⁶ Another video shows Richard Dakoury and other members of the *Galaxie Patriotique*²⁴²⁷ make it clear that there is no difference between the north of the country and the south or even an anonymous participant at the rallies telling a western journalist that Ouattara supporters are Ivorians.²⁴²⁸

1069. There are also several speeches on the record that express Mr Blé Goudé's call for peaceful yet massive mobilisations.²⁴²⁹ He frequently vowed that he and his followers would resolve the situation by mobilising with 'bare hands'. He also insisted that the only manner in which people should be able to obtain weapons was by enlisting in the armed forces.

1070. This last aspect may seem rather hypocritical, given the alleged links between Mr Blé Goudé and armed groups, such as the GPP. However, as explained above,²⁴³⁰ the available evidence does not establish that Mr Blé Goudé was particularly closely involved with these armed groups, much less that he had an operational role during the period relevant to the charges. In addition, to the

²⁴²⁴ See *Untitled*, 30 June 2006, CIV-OTP-0062-1041 (confidential) at 01:58; RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, at 01:11:00.

²⁴²⁵ RTI Broadcast dated 7 January 2011, CIV-OTP-0074-0061 at 08:26, transcript at CIV-OTP-0087-0473 at 0474.

²⁴²⁶ See Charles BLE GOUDE mobilise les Ivoiriens 260311, 26 March 2011 CIV-OTP-0003-0018 at 09:40; Entretien de France 24 avec Charles Blé Goudé, 8 April 2011, CIV-OTP-0081-0465 at 03:20.

²⁴²⁷ See Richard Dacoury à la Sorbonne ce vendredi 25 mars, 25 March 2011, CIV-OTP-0068-0075 at 01:00; see also RTI Broadcast dated 26 March 2011, CIV-OTP-0064-0127 at 08:31.

²⁴²⁸ See *Untitled*, 19 March 2011, CIV-OTP-0015-0460 (confidential) at 00:45; see also *Untitled*, undated, CIV-OTP-0078-0498, at 27:44.

²⁴²⁹ See RTI Broadcast dated 3 February 2011, CIV-OTP-0064-0115 at 00:33:24; RTI Broadcast dated 23 December 2010, CIV-OTP-0064-0098 at 00:20:56; BLE GOUDE PAVLEMT ABOBO (1) / 1a, 1 March 2010, CIV-OTP-0072-0004 at 45:00.

²⁴³⁰ See IV.D.2.e) - Blé Goudé's command and control over irregular forces.

extent that there is evidence to suggest that militia such as the GPP were training pro-Gbagbo youth, this seems to have been with the main purpose of integrating them into the armed forces. This is consistent with Mr Blé Goudé's rhetoric that the only legitimate way to obtain weapons was through becoming a member of the FDS. Nevertheless, given that the GPP did nothing to hide its activities in Yopougon, it is unlikely that Mr Blé Goudé was unaware that during the 'footings' of the GPP, the youth sang menacing lyrics and that their behaviour must have been intimidating for some parts of the population, especially foreigners and Ivorians from the north of the country. As the leader of the *Galaxie Patriotique*, to which the GPP ostensibly belonged, Mr Blé Goudé was at least symbolically answerable for such behaviour. It is recalled that the evidence does not show that Mr Blé Goudé had any real operational authority over the activities of armed groups such as the GPP. Nevertheless, the fact that Mr Ble Goude did not try to rein in their more aggressive tendencies may not have been inconsequential in the eyes of those who attended his rallies. The question is, however, to what extent Mr Blé Goudé's apparent tolerance of aggressive behaviour by associated armed groups altered the perception of what he said during his public appearances. This is difficult to ascertain on the basis of the available evidence.

1071. As discussed in more detail later,²⁴³¹ the Prosecutor suggests that in some instances there is a causal link between what Mr Gbagbo or Mr Blé Goudé said on a given occasion and what happened shortly thereafter on the ground. Here, however, the concern is with the overall message that emerges from the collection of public utterances of the accused and to what extent this supports the proposition that they were promoting violence against civilians who supported Mr Ouattara. Viewed like this, it is difficult to gauge the impact of Mr Gbagbo and Mr Blé Goudé's relative passivity in the face of aggressive or even violent

²⁴³¹ See VIII.D - Mr Blé Goudé's responsibility under article 25(3)(b).

behaviour by some of their supporters. It is possible that some of those supporters interpreted the strident tone and combative message of some of the speeches in light of what they knew was happening in their neighbourhoods. However, considering the size of the audience(s) as well as the high frequency of the speeches and comparing this to the number and scale of violent incidents, it certainly cannot be maintained that a majority of people who heard the speeches interpreted them as an invitation to commit violent acts against civilians.

1072. It is important, in this regard, to note that both accused regularly explicitly denounced violence. In addition to the speeches analysed above, in March 2010, Mr Blé Goudé gave a speech at the Abobo parliament; he told the crowd that the political fight Mr Gbagbo led was peaceful (bare hands), through marches and by using the force of their numbers.²⁴³² In December 2010, Mr Gbagbo himself at a rally in an unknown location told the audience that his political line was not one of violence.²⁴³³ On 21 December 2010, Mr Gbagbo addressed the nation and told the population that he did not want Ivoirian blood to be shed.²⁴³⁴ As noted, the same day, Mr Blé Goudé held a public rally and told his audience that their group has demonstrated the strength of non-violence.²⁴³⁵

1073. The Prosecutor alleges that, in order to avoid accusations of advocating violence, Mr Blé Goudé ‘adapted his public messages and used coded language when addressing the youth’.²⁴³⁶ As evidence of this claim, the Prosecutor refers to an interview with Mr Blé Goudé that she downloaded from open sources, but about which little is known in terms of how and when it was broadcast.²⁴³⁷ In this

²⁴³² BLE GOUDE PAVLEMT ABOBO (1) / 1a, 1 March 2010, CIV-OTP-0072-0004 at 00:40:20.

²⁴³³ KOUDOU à ADO, 21 November 2010, CIV-OTP-0063-2801 at 00:06:35 – 00:07:30, transcript at CIV-OTP-0063-3256.

²⁴³⁴ RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016 at 00:20:05.

²⁴³⁵ RTI Broadcast dated 21 December 2010, CIV-OTP-0026-0016 at 00:49:25.

²⁴³⁶ Mid-Trial Brief, para. 240

²⁴³⁷ Grande interview Charles BLE GOUDE / Dans mon combat, je suis prêt à aller, undated, CIV-OTP-0028-0103, transcript at CIV-OTP-0044-2590.

interview, Mr Blé Goudé was asked about the fact that he frequently sported a black cap with the visor turned up and he said that this was a precise language that each young patriot understood.²⁴³⁸ It is not possible to infer from Mr Blé Goudé's comments in the interview what code or language he is referring to and the Prosecutor has not made any effort to explain how the code worked. Under these circumstances, it would be entirely speculative to assume that there were hidden messages in Mr Blé Goudé's speeches and that those messages related to the commission of crimes.

1074. Finally, it is important to point out that the Prosecutor has presented virtually no evidence in relation to what others, including the Ouattara camp, were saying and doing at the time. Yet, this information would have been highly relevant to fully understand some of the speeches relied upon by the Prosecutor. Many of the speeches seem to contain passages where the speaker is reacting to recent events, but the Chamber has not been informed of such events. This makes it impossible to determine the true tenor of the speech; for example, whether the speaker was grossly exaggerating or misrepresenting the situation. It would also have been useful to have a better understanding of the rhetoric and tone used in public debate in Côte d'Ivoire more generally. Indeed, there is a risk that cultural outsiders, such as ourselves, attribute specific meaning or significance to use of certain language or the tone of the speaker, whereas to local listeners there would be nothing remarkable about this. Such information would have been highly relevant in a case like the present, where the Prosecutor claims that the speaker's utterances had a meaning that was not apparent from the literal meaning of the words.

1075. In sum, no reasonable trial chamber could conclude on the basis of the evidence that is on the record that Mr Gbagbo and/or Mr Blé Goudé used public

²⁴³⁸ Grande interview Charles BLE GOUDE / Dans mon combat, je suis prêt à aller, undated, CIV-OTP-0028-0103, transcript at CIV-OTP-0044-2590 at 2594.

statements and speeches to spread messages to incite the commission of violence against the civilian population that supported Mr Ouattara.

V. IMPLEMENTATION AND ADAPTATION OF THE ALLEGED COMMON PLAN/POLICY IN LIGHT OF THE EVOLVING SITUATION

1076. In advancing her case concerning the implementation of the alleged Common Plan, the Prosecutor made several allegations in the Mid-Trial Brief.

1077. As regards the period right ‘before and during the election campaign of 2010’,²⁴³⁹ the Prosecutor alleged that ‘speeches by [Mr] Gbagbo emphasised his intention to stay in power by all means’²⁴⁴⁰ and that Mr Gbagbo and the alleged ‘inner circle’ made further preparations to ensure that Mr Gbagbo stayed in power.²⁴⁴¹ In support of these allegations, the Prosecutor made further allegations concerning ensuring the loyalty of the FDS by promoting senior FDS officials²⁴⁴² as well as that of irregular groups.²⁴⁴³ These allegations have been addressed hereinabove.²⁴⁴⁴

1078. As regards the period between the first and second round of elections,²⁴⁴⁵ the Prosecutor alleged that Mr Gbagbo ‘adopted measures that served as a pretext for the pro-Gbagbo forces to commence their violence against the political opposition and civilians perceived to support it’ and that this violence culminated in the post-election crisis.²⁴⁴⁶ According to the Prosecutor, these measures included requisitioning the armed forces,²⁴⁴⁷ imposition of a curfew,²⁴⁴⁸ and the

²⁴³⁹ Mid-Trial Brief, para. 85.

²⁴⁴⁰ Mid-Trial Brief, paras 85, 86.

²⁴⁴¹ Mid-Trial Brief, para. 85.

²⁴⁴² Mid-Trial Brief, para. 86.

²⁴⁴³ Mid-Trial Brief, paras 88-96.

²⁴⁴⁴ See IV.B.3 – Appointments made on the basis of ethnicity and personal loyalty;

IV.F.2 – 27 August 2010 – Divo speech;

IV.D.2 – Irregular Forces.

²⁴⁴⁵ See Mid-Trial Brief, paras 97-111 [From 31 October to 27 November 2010]; paras 112-150 [From 28 November to 10 December 2010].

²⁴⁴⁶ Mid-Trial Brief, para. 98.

²⁴⁴⁷ Mid-Trial Brief, paras 102-104.

²⁴⁴⁸ Mid-Trial Brief, paras 105-108.

increase in violence against the ‘pro-Ouattara camp’;²⁴⁴⁹ following 28 November 2010, these measures further included, *inter alia*, statements made by Mr Gbagbo and the alleged ‘inner circle’;²⁴⁵⁰ controlling ‘information Ivorians could access’;²⁴⁵¹ as well as adopting an alleged strategy to appoint ministers, extending the curfew, and integration of militia into the FDS.²⁴⁵² Certain allegations have been addressed hereinabove.²⁴⁵³

1079. In her Response, the Prosecutor further advanced arguments to support her narrative of the aforementioned events.²⁴⁵⁴ She alleges that Mr Gbagbo coordinated the implementation of the alleged Common Plan by holding frequent

²⁴⁴⁹ Mid-Trial Brief, paras 109-110.

²⁴⁵⁰ Mid-Trial Brief, paras 113-126.

²⁴⁵¹ Mid-Trial Brief, paras 127-130.

²⁴⁵² Mid-Trial Brief, paras 131-150.

²⁴⁵³ See IV.B.5 – The requisitioning of the FANCI;

IV.B.6 – Alleged early expressions of the Policy;

IV.F.2.b) – 3 December 2010 – Mr Gbagbo’s statement upon being elected;

IV.F.2.c) – 3 December – 2010 Interview with Alcide Djédjé on RTI;

IV.F.2.d) – 5 December – 2010 RTI broadcast;

IV.F.2.e) – 10 December – 2010 RTI broadcast – ‘100 % général et 100 % ministre’;

IV.F.3 – Control of the RTI and the Media;

IV.B.7 – Pressure to vote for Mr Gbagbo and pledging allegiance by senior FDS officers;

IV.D.2.b)(5) – Integration into the FDS; and

IV.B.4.c)(1) – Wassakara incident.

See also VI.B – 30 November 2010 – Sotrepim neighbourhood;

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1-2 December 2010 – RDR Office in Wassakara;

VI.D – 3 December 2010 – RHDP demonstration in Treichville;

VI.E – 4 December 2010 – RHDP demonstrators near the Great Mosque of Koumassi;

VI.F – 4 December 2010 – Port-Bouët; and

VI.G – 6 December 2010 – RHDP demonstrators in Boribana.

²⁴⁵⁴ See Response, paras 1505-1531, 1537-1555.

meetings and regular dialogue with the alleged ‘inner circle’; she also alleges that Mr Gbagbo, directly or through other members of the alleged ‘inner circle’, tasked his subordinates with implementing or inciting them to implement.²⁴⁵⁵ The Prosecutor then cites examples that she alleges demonstrated such coordination. These include, *inter alia*, the blockade of the Golf Hotel, prohibition of the RTI March ‘[s]imilar to the repression in 2004’, and military operations in Abobo.²⁴⁵⁶

1080. Having regard to this, the following section discusses these purported examples where significant coordination allegedly took place between the accused and the purported ‘inner circle’ prior to the commission of the alleged crimes. The relevant orders and instructions have also been discussed with a view to ascertaining whether these instances further demonstrate the existence of the alleged Common Plan and/or intent underlying it.

A. Blockade of the Golf Hotel

1081. It is an accepted fact that in December 2010, following the elections, Mr Ouattara and his cabinet were based in the Golf Hotel, located in Cocody, Abidjan. The events forming part of the ordering of the ‘blockade of the Golf Hotel’ precede the RTI march on 16 December 2010.²⁴⁵⁷ In the Mid-Trial Brief, the Prosecutor discussed this incident as part of the ‘16 December Narrative’, involving, *inter alia*,²⁴⁵⁸ an armed confrontation in the area of the Golf Hotel between the FDS and the FAFN.²⁴⁵⁹ According to the Prosecutor, these events show that Mr Gbagbo had control over ‘pro-Gbagbo forces’ prior to the RTI

²⁴⁵⁵ Response, para. 1219.

²⁴⁵⁶ Response, para. 1219; the Prosecutor also references certain statements and speeches given by Mr Gbagbo and Mr Blé Goudé in support of these allegations. For conclusions concerning those speeches, *see* IV.F.2 – Individual speeches and statements.

²⁴⁵⁷ *See* VI.H – 16-19 December 2010 - RTI March (1st charged incident).

²⁴⁵⁸ Mid-Trial Brief, paras 330-331.

²⁴⁵⁹ Mid-Trial Brief, para. 362.

march²⁴⁶⁰ and was willing to rely on military force against Mr Ouattara and his supporters in order to assert his claim to power.²⁴⁶¹ The Prosecutor cited, *inter alia*, this incident as part of her allegation that Mr Gbagbo maintained *de facto* and *de jure* control over the FDS since it depicts that the FDS was executing Mr Gbagbo's orders before the post-electoral crisis.²⁴⁶² She asserted that the order to blockade, amongst others, indicated that Mr Gbagbo had effective control over both formal (FDS) and informal military structures (*Jeunes Patriotes*).²⁴⁶³ The Prosecutor further argued that the blockade also constituted circumstantial evidence from which the Common Plan can be inferred.²⁴⁶⁴ In the Response, the Prosecutor additionally alleges that these events also show coordination between various organs and institutions towards the same goal of preventing the march.²⁴⁶⁵

1082. The Prosecutor's narrative is best understood generally as employing the term blockade to connote the deployment of certain force(s) at the behest of Mr Gbagbo, accompanied by some restriction of movement in the vicinity of the Golf Hotel post-election but prior to the RTI march.²⁴⁶⁶ This definition is broader than the meaning generally attributed to the term 'blockade'. This is unfortunate.

²⁴⁶⁰ See Mid-Trial Brief, paras 203, 330, 727-728; *see also* paras 184, 200-211.

²⁴⁶¹ Mid-Trial Brief, paras 687-689.

²⁴⁶² Mid-Trial Brief, para. 203.

²⁴⁶³ Mid-Trial Brief, para. 728.

²⁴⁶⁴ Mid-Trial Brief, paras 642, 687-689.

²⁴⁶⁵ Response, para. 1141.

²⁴⁶⁶ While the evidence suggests that the movement around Golf Hotel was restricted and this restriction may have evolved as per the circumstances, not all such restriction could be termed a 'blockade'. For example, the Prosecutor examined General Mangou, who ordered the purported blockade, and used the term 'blockade' however, General Mangou responded that to their minds 'it never was a blockade'; there was a 'post' that was set up and this was a 'checkpoint' to 'ensure control, to oversee'. *See* P-0009, T-193 dated 25 September 2017, p. 66. There are also instances where the witness did use the term blockade. P-0046, T-125 dated 17 February 2017, p. 20. *See also* P-0226, T-166 dated 27 June 2017, pp. 23-24 who uses the term blockade to draw a distinction from a 'security mission' that he states was in place *prior* to said blockade. *See further* P-0156, T-171 dated 4 July 2017, p. 31 commenting on MESSAGE / No. 4028/EMA/CPCO/COND / REAJUSTEMENT DISPOSITIF DE SECURITE / 17/173, 11 December 2010, CIV-OTP-0071-0152 where the Prosecutor asks the witness a question about orders 'setting up a blockade of the Golf Hotel' in response to which the witness did not use the term blockade. For these reasons, the use of this term by the Prosecutor will be approached with caution.

Nonetheless, the Prosecutor's case depends not on the correctness of terminology *per se* but on how these set of circumstances collectively prove elements of the alleged Common Plan and/or Mr Gbagbo's responsibility. It is in this context that the evidence will be analysed.

1083. The Prosecutor has relied heavily on an undated and unsigned document CIV-OTP-0018-0070 for the allegations concerning the blockade of the Golf Hotel.²⁴⁶⁷ Further, in respect of certain allegations, this is the sole document that the Prosecutor relied on.²⁴⁶⁸ In this regard, it is relevant that the Prosecutor claims that this document offers evidence that Mr Blé Goudé's statements (referred to therein) were not made in isolation and formed part of a coordinated effort to keep Mr Gbagbo in power 'including, at this time, by means of a planned and coordinated attack on the Golf Hotel'.²⁴⁶⁹ However, she also acknowledged that such an 'attack did not materialise'.²⁴⁷⁰ As regards its relevance, it is worth noting that the title of the document '*Opération Étouffement du Golf Hôtel*' as well as its content seem to refer to an attempt to 'strangle' the political presence in the Golf Hotel and to put pressure on the UNOCI and the 'Ouattara camp'. Significantly, this proposal was portrayed as giving a different dimension to the project '*délogeons le Golf Hôtel*' (i.e. 'dislodge' those in the Golf Hotel) and that it would provide a better opportunity to mobilise a lot of people and attract good media coverage. The list of requirements for the 'operation' mentions whistles, megaphones, sound equipment, animation, etc²⁴⁷¹ that appear to have little to do with a military blockade.

²⁴⁶⁷ See Mid-Trial Brief, footnotes 599, 1491-1496, 1989.

²⁴⁶⁸ See Mid-Trial Brief, para. 519.

²⁴⁶⁹ Mid-Trial Brief, para. 519.

²⁴⁷⁰ Mid-Trial Brief, para. 519.

²⁴⁷¹ OPERATION ETOUFFEMENT DU GOLF HOTEL, undated, CIV-OTP-0018-0070 (confidential) at 0073.

1084. Before turning to the allegations, it is noted that this document was allegedly found in Mr Gbagbo's bedroom at the Presidential Residence.²⁴⁷² This document is undated and its author is unknown. The content and the limited information about this document do not permit one to assess its provenance and authenticity. The document does not bear any signatures, stamps, markings or nothing that otherwise could provide any indication as to its source, purpose or verifiability. It is also noted that the investigator's report does not make it clear that the chain of custody for the documents obtained from the Presidential Residence was undisturbed.²⁴⁷³ Furthermore, the document contains objectives, potential targets of the '*rebelles*', proposed actions, brief discussion on logistics, and a conclusion.²⁴⁷⁴ There is no indication as to what end this document was drafted or used. There is some suggestion that this document proposes a certain plan of action in the future but it does not state who made these proposals. It is also not known whether the purported plan of action was carried out as proposed or not. The unidentified author referred to a statement attributed to Mr Blé Goudé concerning an attack, which did not take place.

1085. For these reasons, it would not be appropriate to ascribe any evidentiary weight to this document in respect of the allegations concerning the purported blockade, except, potentially, to demonstrate that *someone* prepared this document suggesting to block supply of provisions to the Golf Hotel by land.

1. Reasons for setting up of checkpoints

1086. In the Mid-Trial Brief, the Prosecutor alleged that

²⁴⁷² See Mid-Trial Brief, para. 519 footnote 1490 referring to Document Search at the Presidential Residence, Abidjan 14 February - 1 March 2012, 27 June 2012, CIV-OTP-0024-0641 (confidential) at 0645.

²⁴⁷³ See Document Search at the Presidential Residence, Abidjan 14 February - 1 March 2012, 27 June 2012, CIV-OTP-0024-0641 (confidential).

²⁴⁷⁴ OPERATION ETOUFFEMENT DU GOLF HOTEL, undated, CIV-OTP-0018-0070 (confidential) at 0071-0074.

the positions of the FDS units controlling access to the Golf Hotel was a deliberate tactic to curtail and monitor the movements of the opposition,[footnote omitted] as well as other groups.²⁴⁷⁵

1087. There is evidence that the campaigning headquarters for Mr Ouattara were located in the Golf Hotel.²⁴⁷⁶ At least since after the proclamation of the results, UNOCI forces were securing the area around it.²⁴⁷⁷ In addition to this, there is evidence to suggest that members of the *Forces Nouvelles* were present in Abidjan in early December 2010 to provide security for the elections. An integrated command centre had been set up following the Ouagadougou accords and its structure included both the armed forces of Côte d'Ivoire and the *Forces Nouvelles*. General Kassaraté confirmed that the command centre was created with the government at the time and UNOCI combining the *Force Nouvelles* from the north and the FDS from the south to provide security for the elections.²⁴⁷⁸

1088. General Mangou explained that adjustments in the security system had to be made after the election because the 'republic forces of Côte d'Ivoire' had some men leave while others [had been] sent to the Golf [Hotel]'.²⁴⁷⁹ According to P-0226, testifying in the context of the presence of armed individuals at the Golf Hotel after the end of the post-election crisis, the republic forces of Côte d'Ivoire ('FRCI') was an assembly of the former FAFN, FDS, and militia.²⁴⁸⁰

²⁴⁷⁵ Mid-Trial Brief, para. 688 referring to OPERATION ETOUFFEMENT DU GOLF HOTEL, undated, CIV-OTP-0018-0070 (confidential); TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2010, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0909-0910; P-0009, T-193 dated 25 September 2017 pp. 66-67; DAILY SITUATION REPORT, 17 December 2010, CIV-OTP-0044-0852 (confidential).

²⁴⁷⁶ P-0625, T-26 dated 8 March 2016, pp. 36, 51. P-0625, T-29 dated 14 March 2016, p. 52.

²⁴⁷⁷ See DAILY SITUATION REPORT, 20 December 2010, CIV-OTP-0044-0882 (confidential); UN DAILY SITUATION REPORT, 22 December 2010, CIV-OTP-0044-0895 (confidential); UN DAILY SITUATION REPORT, 23 December 2010, CIV-OTP-0044-0903 (confidential). See also P-0625, T-29 dated 14 March 2016, p. 49; P-0048, T-55 dated 29 June 2016, pp. 38-39.

²⁴⁷⁸ P-0009, T-193 dated 25 September 2017, p. 65; P-0010, T-140 dated 30 March 2017, pp. 14-15. See P-0011, T-131 dated 9 March 2017, pp. 92-93; P-0011, T-132 dated 10 March 2017, p. 29.

²⁴⁷⁹ P-0009, T-193 dated 25 September 2017, p. 65.

²⁴⁸⁰ See P-0226, T-166 dated 27 June 2017, p. 71.

1089. Further, as explained by witness P-0625, who was not present at the Golf Hotel,²⁴⁸¹ the situation following the appointment of the ‘two presidents’ was strained. He testified that

even from that hotel, it was possible to set up an embargo against us because the borders were closed on the instruction of that republic, which was recognized by the international community. All the ports had been closed,*the airports were closed, boats could not arrive and all the banks. People could no longer withdraw money. All the French and European banks in Côte d'Ivoire had been closed because of a decision taken by that smallest republic of the world.²⁴⁸²

1090. General Guiai Bi Poin, the commander of CECOS at the time, stated that whilst it was known in ‘mid-December’ 2010 that there were ‘soldiers or detachments of the FRCI [at the Golf Hotel], [...] we had no idea of their strength or the number of troops’; but he claims to have been ‘certain’ that ‘Commander Wattao’ and ‘Commander Mourou’ were there.²⁴⁸³ General Kassaraté, the commander of the *Gendarmerie* at the time, testified that there were soldiers from the *Forces Nouvelles*, UNOCI, and at times, French soldiers present at the Golf Hotel.²⁴⁸⁴ Witness P-0625 also stated that as far as he knew from ‘what [he] heard’, there were ‘many’ soldiers at the Golf Hotel to ‘provide security for [Mr Ouattara]’.²⁴⁸⁵

1091. General Bi Poin testified that there was a police observation post close to the Golf Hotel when one came from Cocody, not far away from the Madame Thérèse Houphouët-Boigny residence.²⁴⁸⁶ General Mangou, commenting on document CIV-OTP-0071-0152, discussed later, explained that before this document was prepared (i.e. before 11 December 2010), ‘there was only one police officer

²⁴⁸¹ P-0625, T-29 dated 14 March 2016, p. 57.

²⁴⁸² P-0625, T-26 dated 8 March 2016, p. 68.

²⁴⁸³ P-0010, T-140 dated 30 March 2017, pp. 29-30. *See also* P-0011, T-135 dated 14 March 2017, p. 81.

²⁴⁸⁴ P-0011, T-135 dated 14 March 2017, p. 81.

²⁴⁸⁵ P-0625, T-26 dated 8 March 2016, p. 73. During examination by the defence, the witness confirm there being soldiers of the ‘republic force’ positioned at the Golf Hotel after having viewed a video excerpt of the RTI television news of 30 December 2010. *See* P-0625, T-29 dated 14 March 2016, pp. 49, 53.

²⁴⁸⁶ P-0010, T-140 dated 30 March 2017, pp. 30-31.

handling traffic at the intersection' close to the Golf Hotel.²⁴⁸⁷ General Bi Poin agreed that the Golf Hotel and the Presidential Residence were 'one and a half to two kilometres' away from each other, which, according to him, made 'the residence of the head of state [...] a very sensitive point'.²⁴⁸⁸ According to Inspector-General Bredou M'Bia, the 'observation post at the Thérèse [...] intersection' manned by the police was 'attacked' by 'rebel soldiers at the Golf [Hotel]' following which 'better equipped forces took over'.²⁴⁸⁹ General Bi Poin elaborated that

[t]he general director of the police reported to us at a meeting one day that his troops detached to that observation post had come under attack from a military detachment that had come from the Golf [Hotel]. They were attacked. Their weapons were taken away, and two or three persons were taken hostage, and all what they collected was taken back to the Golf Hotel. This report was made at the meeting of the generals. The chief of general staff said that he contacted the soldiers at the Golf [Hotel] requesting that one or all the police officers who had been taken hostage be released and that their weapons be returned. Shortly thereafter, the policeman or policemen were released, but the weapons collected were never returned.²⁴⁹⁰

1092. General Mangou's testimony suggests that there had been a machine gun placed 'to monitor the movements of our comrades in arms' following which '[t]hey came out, they removed the weapon, [...] and they left for the Golf Hotel with the equipment'.²⁴⁹¹ This is possibly referring to the same incident as described by General Bi Poin. General Mangou further testified that following this incident, he reported to Mr Gbagbo stating that '[o]ur brothers, rather than going up to the north, have gone to the Golf Hotel' to which Mr Gbagbo is said to have responded with '[s]ee to it that they not [*sic*] come out. The soldiers in there should not come back out'.²⁴⁹² General Mangou testified that he 'took that

²⁴⁸⁷ P-0009, T-193 dated 25 September 2017, p. 65.

²⁴⁸⁸ P-0010, T-140 dated 30 March 2017, pp. 31-32.

²⁴⁸⁹ P-0046, T-125 dated 17 February 2017, p. 21.

²⁴⁹⁰ P-0010, T-140 dated 30 March 2017, p. 31.

²⁴⁹¹ P-0009, T-193 dated 25 September 2017, p. 65.

²⁴⁹² P-0009, T-193 dated 25 September 2017, pp. 65-66.

instruction and [...] turned it into military commands'.²⁴⁹³ It is noted that Inspector-General Bredou M'Bia, the Director-General of National Police at the time, was not able to 'confirm or attest' that it was Mr Gbagbo that issued the instructions concerning the 'blockade'.²⁴⁹⁴ Further, he also did not remember the date of when he came to know about the blockade.²⁴⁹⁵ General Bi Poin testified that following the attack on the police observation post, 'the chief of general staff of the armies decided to replace the [...] policemen by soldiers'.²⁴⁹⁶ According to General Bi Poin, this took place 'shortly after the elections when things became a little tense' but he did not know the specific date when this happened.²⁴⁹⁷

1093. There is evidence to suggest that, following this incident, military checkpoints were put in place at the intersection. Document CIV-OTP-0071-0152 is a message by General Mangou communicating the positions of the checkpoints to the *Gendarmerie*, the DGPN, and COMTER, copying, *inter alia*, the UNOCI and the *Licorne*.²⁴⁹⁸ General Mangou, the author of this document, commented on the document as being a 'message' with the 'aim [...] to make some adjustments to the security provisions'.²⁴⁹⁹ Commenting on this document, P-0156 recalled there being 'several orders [...] issued by the general staff relating to the adjustment of the structures' but does not remember the discussion(s) related to the actual conduct of operations in this regard, if any.²⁵⁰⁰

²⁴⁹³ P-0009, T-193 dated 25 September 2017, p. 66.

²⁴⁹⁴ P-0046, T-125 dated 17 February 2017, pp. 26-28.

²⁴⁹⁵ P-0046, T-125 dated 17 February 2017, p. 21.

²⁴⁹⁶ P-0010, T-140 dated 30 March 2017, p. 32.

²⁴⁹⁷ P-0010, T-140 dated 30 March 2017, p. 31.

²⁴⁹⁸ MESSAGE / No. 4028/EMA/CPCO/COND / REAJUSTEMENT DISPOSITIF DE SECURITE / 17/173, 11 December 2010, CIV-OTP-0071-0152 at 0152.

²⁴⁹⁹ P-0009, T-193 dated 25 September 2017, p. 66.

²⁵⁰⁰ P-0156, T-171 dated 4 July 2017, p. 31.

1094. General Mangou testified that the locations of these ‘checkpoints’ had been decided at the behest of General Niang of the UNOCI.²⁵⁰¹ General Mangou testified that there were two ‘checkpoints’, one in the south and one in the north.²⁵⁰² The document mentions that these checkpoints were to be moved 20 metres respectively from ‘Carrefour Marie-Therese Houphouet Boigny’ and ‘Carrefour MPouto’.²⁵⁰³ General Mangou also provided details as to the military presence at these two intersections.²⁵⁰⁴ Inspector-General Bredou M’Bia confirmed the two locations where “there was a blockade at the hotel du Golf”²⁵⁰⁵ to be ‘[a]t the Thérèse intersection and at the [*M’Pouto*] intersection.’²⁵⁰⁶

1095. As per CIV-OTP-0071-0152, the nature of restriction of movement envisaged as of 11 December 2010 involved the identification of persons and control of vehicles in the direction of the Golf Hotel with the exception of diplomatic personnel and the impartial forces.²⁵⁰⁷ This document also confirms, as stated by General Mangou,²⁵⁰⁸ that the UNOCI and the *Licorne* were informed of these arrangements.²⁵⁰⁹

1096. General Mangou explained that

²⁵⁰¹ P-0009, T-193 dated 25 September 2017, p. 66. The witness maintained this version when examined by the defence. *See* P-0009, T-197 dated 2 October 2017, p. 79.

²⁵⁰² P-0009, T-193 dated 25 September 2017, pp. 65-66.

²⁵⁰³ MESSAGE / No. 4028/EMA/CPCO/COND / REAJUSTEMENT DISPOSITIF DE SECURITE / 17/173, 11 December 2010, CIV-OTP-0071-0152 at 0152.

²⁵⁰⁴ P-0009, T-196 dated 28 September 2017, p.15. The presence of the military in these two locations has been confirmed by a BASA corporal who was present there at the time as well as a BASA brigadier. *See* P-0226, T-166 dated 27 June 2017, p. 24; P-0239, T-168 dated 29 June 2017, pp. 21-22.

²⁵⁰⁵ It is noted that the question by the Prosecutor had been “[c]ould you tell us whether there was a blockade at the hôtel du golf?”

²⁵⁰⁶ P-0046, T-125 dated 17 February 2017, p. 20.

²⁵⁰⁷ MESSAGE / No. 4028/EMA/CPCO/COND / REAJUSTEMENT DISPOSITIF DE SECURITE / 17/173, 11 December 2010, CIV-OTP-0071-0152 at 0152.

²⁵⁰⁸ P-0009, T-193 dated 25 September 2017, p. 66.

²⁵⁰⁹ MESSAGE / No. 4028/EMA/CPCO/COND / REAJUSTEMENT DISPOSITIF DE SECURITE / 17/173, 11 December 2010, CIV-OTP-0071-0152 at 0152.

The observation post was re-adjusted and it became a checkpoint. [...] [T]here was this readjustment to the security system so that our brothers should not leave the Golf to carry out any crimes or anything else within the centre and blame it on the FDS.²⁵¹⁰ [...]

It never was a blockade. This post that was set up [...], this was a checkpoint, it was to ensure control, to oversee. First of all, to ask our men not to allow soldiers there to go into the city with their weapons and do anything, we did not want blame to be put on our shoulders. Secondly, they were to ensure that [...] people with weapons should not go into the Golf Hotel to commit any crimes, and we would not want to bear the responsibility for any such crimes.²⁵¹¹

1097. It also appears from General Mangou's testimony that these instructions were not meant as an absolute restriction on movement to and from the Golf Hotel. General Mangou testified that he permitted food trucks to go into the Golf Hotel as well as religious personnel who had requested permission to go in to celebrate the Christmas mass.²⁵¹² It is also noted that General Mangou testified that he had suggested to Mr Gbagbo to let persons inside the Golf Hotel to 'go back to their home' if they wanted as the FDS was ready to ensure their safety. However, according to General Mangou, that request 'was not looked upon favourably'.²⁵¹³
1098. The Prosecutor also relied on Mr Gbagbo's interview broadcast by Euronews on 29 December 2010 to demonstrate that the purpose of the blockade was to resolve the security issues in Abidjan and 'to urge potential defectors to go to the Presidency instead of the Golf [Hotel]'.²⁵¹⁴
1099. It is noted that witness P-0226, a corporal deployed to one of the checkpoints near the Golf Hotel, recalled there being a change in instruction during his time at the checkpoints.²⁵¹⁵ However, the witness did not provide further information on which date this happened and for what reason. P-0226 testified that their

²⁵¹⁰ P-0009, T-193 dated 25 September 2017, p. 66.

²⁵¹¹ P-0009, T-193 dated 25 September 2017, p. 66.

²⁵¹² P-0009, T-193 dated 25 September 2017, p. 67.

²⁵¹³ P-0009, T-193 dated 25 September 2017, p. 67.

²⁵¹⁴ Mid-Trial Brief, footnote 1988. The Prosecutor also cites this interview in Mid-Trial Brief, paras 393, 680, 688, 734.

²⁵¹⁵ P-0226, T-166 dated 27 June 2017, pp. 23-24.

instructions had been to stop ‘any individual seeking to gain access or to leave said location with a weapon’; later the instructions changed to stopping anyone from going in and coming out of the Golf Hotel.²⁵¹⁶ From witness P-0226’s testimony, it is unclear how much time elapsed between the start of the ‘security mission’ around the Golf Hotel and when it began to be a blockade but he estimated this period to be ‘approximately two weeks to one month’.²⁵¹⁷ P-0226 estimated that there were around ten persons at the checkpoint and there was a ‘dual tube and a 12.7 millimetres’.²⁵¹⁸ P-0226 and his unit was under Colonel Dadi at the time and he testified that it was Colonel Dadi who ordered the initial security mission.²⁵¹⁹ P-0226 also testified that when the mission became a ‘blockade’, they began receiving orders from ‘Captain Atsin Aké and Zadi’ from the BCP who, P-0226 assumed, were receiving their orders from the general staff.²⁵²⁰

1100. In essence, whilst there may have been some orders to the effect that all entry and exit from the Golf Hotel was barred, it is not known when this took place, if at all. Noting that P-0226, being a member of the BASA, would have been posted at the Golf Hotel approximately around 11 December 2010 when the police observation post was purportedly converted to a checkpoint, the actual date of the ‘blockade’ would then fall anywhere between two weeks to a month from 11 December 2010. Significantly, the witness did not appear to link these instructions to the prohibition of the RTI march.

1101. As regards the nature of the restriction of movement following 19 December 2010, it is noted that the UNOCI Daily Situation Reports mention movement

²⁵¹⁶ P-0226, T-166 dated 27 June 2017, pp. 23-24.

²⁵¹⁷ P-0226, T-166 dated 27 June 2017, p. 26.

²⁵¹⁸ P-0226, T-166 dated 27 June 2017, p. 24.

²⁵¹⁹ P-0226, T-166 dated 27 June 2017, p. 24.

²⁵²⁰ P-0226, T-166 dated 27 June 2017, pp. 25-26.

across the checkpoints as per the terms set out in the document CIV-OTP-0071-0152.²⁵²¹ P-0087, a journalist, recalled some movement taking place after December 2010 to the Golf Hotel as evidenced by presence of ‘numerous journalists there’.²⁵²²

1102. Further documents relied upon by the Prosecutor do not assist in assessing the case concerning the purpose of the ‘blockade’. The Prosecutor relied on a Daily Situation Report dated 17 December 2010, constituting anonymous hearsay,²⁵²³ that mentions ‘a Checkpoint mounted jointly by FDS/FANCI personnel and the Young Patriots’ close to the M’Pouto intersection but there is no indication, apart from the Prosecutor’s assertion, of the purpose of this checkpoint in this document.

1103. In conclusion, the evidence suggests that there was at least a perceived risk posed by the presence of armed soldiers at the Golf Hotel. There was a police observation post close to the Golf Hotel that came under attack and was then turned into a military checkpoint. If one were to accept the version provided by General Mangou, Mr Gbagbo’s statement that ‘[s]ee to it that they not come out’²⁵²⁴ appears to have been given at least prior to 12 December 2011. From the context, it can be inferred that this was a reference to the armed men stationed at the Golf Hotel not being allowed to leave.

²⁵²¹ See for example DAILY SITUATION REPORT, 20 December 2010, CIV-OTP-0044-0882 (confidential) at 0885, stating that ‘[t]he FDS/FANCI continued to maintain the two Checkpoints at the Traffic Light and Mpouto intersections’ and ‘[a]ll movements in/out of Golf Hotel continued to be blocked’; para. 7 stating that ‘1000 pieces of Meals Ready to Eat (MRE) were delivered to Golf Hotel by Heli flight on 19 December’. See also DAILY SITUATION REPORT, 22 December 2010, CIV-OTP-0044-0895 (confidential) at 0900 stating that ‘Restrictions on movements in/out of Golf Hotel continued with exception of a limited movement allowed through the Traffic Light intersection for ONUCI vehicles’ and stating that ‘[e]nquiries from both intersections indicate that no formal instruction has been received to lift restrictions on civilian movements in/out of Golf Hotel’. DAILY SITUATION REPORT, 23 December 2010, CIV-OTP-0044-0903 (confidential) stating that ‘ONUCI vehicles and civilians on foot continued to be allowed in/out of Golf Hotel. No civilian vehicle was however allowed in/out.’

²⁵²² See for example P-0087, T-179 dated 14 July 2017, pp. 62-63.

²⁵²³ DAILY SITUATION REPORT, 17 December 2010, CIV-OTP-0044-0852 (confidential).

²⁵²⁴ P-0009, T-193 dated 25 September 2017, p. 66.

1104. In this regard, it is recalled that the position of the checkpoints relevant to the purported blockade were decided together with the UNOCI. It is also noted that General Mangou's suggestion to Mr Gbagbo to let the occupants of the Golf Hotel to go home was ignored or otherwise not accepted.
1105. It is noted that the Prosecutor addresses the fact that Mr Gbagbo considered the blockade as a measure to 'resolve the security issues in Abidjan at the time, as well as to urge potential defectors to go to the Presidency instead of the Golf', referencing his interview in late December 2010.²⁵²⁵ To counter this proposition, the Prosecutor reasserted that '[i]n reality the positions of the FDS units controlling access to the Golf Hotel was a deliberate tactic to curtail and monitor the movements of the opposition, as well as other groups'.²⁵²⁶ In support of this, the Prosecutor referenced 'one occasion', when a UNOCI convoy carrying food for the Golf Hotel was stopped and searched in January 2011.²⁵²⁷ Searching a transportation vehicle is not necessarily an indication that the purpose was to stop food reaching the Golf Hotel. The Prosecutor also relies on document CIV-OTP-0045-0793, which is used to refer to an incident close to Cocody Riviera where a group of 'youths from the neighbourhood prevented UNOCI vehicles from going to the Golf Hotel'.²⁵²⁸ The Prosecutor omitted mentioning that this report also states, with regard to the same incident, that the FDS intervened and, despite that, the youth in question refused to leave the area.²⁵²⁹
1106. The Prosecutor references other documents in support of her claim that '[a]s the crisis progressed, those who tried to enter or leave the Golf [Hotel] came under

²⁵²⁵ Mid-Trial Brief, para. 688.

²⁵²⁶ Mid-Trial Brief, para. 688.

²⁵²⁷ See Mid-Trial Brief, footnote 1991 *citing* RTI Broadcast dated 10 January 2011, CIV-OTP-0064-0109 at 00:11:13-00:12:51, transcript at CIV-OTP-0086-1009.

²⁵²⁸ Mid-Trial Brief, footnote 1989.

²⁵²⁹ TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0910.

increasing attack by forces loyal to [Mr] Gbagbo'.²⁵³⁰ This, she argues, is 'another demonstration' of Mr Gbagbo being willing to rely on military force against his opponent in order to assert his claim to power.²⁵³¹ The evidence cited is not persuasive in this regard.²⁵³²

1107. There is, however, evidence of an exchange of firing between FDS and *Forces Nouvelles* soldiers at the Golf Hotel on 16 December 2010, the morning of the RTI march.²⁵³³ This incident demonstrates that the security threat at the intersection continued to exist until 16 December 2010. General Mangou referred to an 'exchange of firing' that took place in the relevant period.²⁵³⁴ He testified that it was reported to him that 'clashes broke out between the troops at the Golf [Hotel] and our troops'.²⁵³⁵ He described it as 'when they came out they started shooting at our men and our men fired back, and it then degenerated into combat, combat or fighting which lasted some 30 minutes or so.'²⁵³⁶ General Letho Detoh also testified that the FDS troops were 'attacked' by the FAFN 'supported by the [...] UNOCI forces'.²⁵³⁷ General Mangou testified having informed Mr Gbagbo of

²⁵³⁰ Mid-Trial Brief, para. 688.

²⁵³¹ Mid-Trial Brief, para. 688.

²⁵³² See Mid-Trial Brief, footnote 1993. It is noted that a reference to General Detoh Letho's testimony cited in footnote 1993 of the Mid-Trial Brief does not contain a reference to the events at the Golf Hotel at the relevant time. The document DAILY SITUATION REPORT, 14 March 2011, CIV-OTP-0044-1161 (confidential), contains reference to an incident where a retired colonel was kidnapped by unidentified individuals at the neighbourhood around the Golf Hotel. See CIV-OTP-0044-1161 (confidential) at 1165. There is no mention of the affiliation of the individuals that kidnapped the retired colonel. This cannot be understood to be a reference to 'increasing attack by forces loyal to 'Mr Gbagbo'. The Twenty-eighth report of the Secretary-General on the United Nations Operation in Cote d'Ivoire, 24 November 2011, CIV-OTP-0003-0123 contains reference to the escalation of the situation 'on 9 April when Mr Gbagbo's forces launched an attack on the Golf Hotel'. See CIV-OTP-0003-0123 at 0124. Simply on the basis of this report, which constitutes anonymous hearsay, it cannot be concluded that 'those who tried to enter or leave the Golf [Hotel] came under increasing attack by forces loyal to [Mr] Gbagbo'.

²⁵³³ See P-0009, T-196 dated 28 September 2017, p. 21 where General Mangou indicated that the exchange of fire may have taken place prior to his call to Mr Gbagbo at 11.00h that morning. He testified that 'it started around 9 AM' and that it lasted 30 minutes.

²⁵³⁴ P-0009, T-196 dated 28 September 2017, p. 13.

²⁵³⁵ P-0009, T-196 dated 28 September 2017, pp. 19-20.

²⁵³⁶ P-0009, T-196 dated 28 September 2017, p. 20.

²⁵³⁷ P-0047, T-206 dated 10 November 2017, p. 58.

said clashes as well as of the loss of men on the same day;²⁵³⁸ he stated that the military lost two men as a result of the clashes at the Golf Hotel.²⁵³⁹ This incident was recounted by General Guiai Bi Poin,²⁵⁴⁰ who placed it as having taken place at ‘Madame Houphouët-Boigny carrefour’ in the morning.²⁵⁴¹

1108. It is noted that ‘[a]fter the clashes at the Golf’, General Mangou first received a phone call from General Palasset approximately before 11h,²⁵⁴² Commander of the *Licorne* forces, who asked him to keep the men at their position.²⁵⁴³ General Palasset was also reported stating that ‘if ever you touch the Golf, take it that you have declared war on France’.²⁵⁴⁴ Subsequently, General Mangou reported this to Mr Gbagbo, who said ‘[d]on’t move, remain in your position’.²⁵⁴⁵ The Prosecutor has not pointed to any subsequent instruction(s) by Mr Gbagbo that would have altered this position.

2. *Links to the RTI march*

1109. The Prosecutor alleged that the setting up of the blockade took place in the ‘lead up to the [RTI march]’.²⁵⁴⁶ The Prosecutor also alleged that FDS elements took position around the Golf Hotel on the afternoon of 12 December 2010; and that Mr Gbagbo and the FDS high command knew that a march would take place on

²⁵³⁸ P-0009, T-196 dated 28 September 2017, p. 22.

²⁵³⁹ P-0009, T-196 dated 28 September 2017, pp. 22, 28. *See also* MESSAGE / No. 5354 / EM/FT/BEO/OPS / BULLETIN DE RENSEIGNEMENT QUOTIDIEN (BRQ), 18 December 2010, CIV-OTP-0071-0676 at 0677; COMPTE RENDU D'EVENEMENT / RELATIF A BILAN DES AFFRONTLEMENTS DU 16/12/2010, 22 December 2010, CIV-OTP-0045-0430 (confidential) at 0430.

²⁵⁴⁰ P-0010, T-140 dated 30 March 2017, p. 33.

²⁵⁴¹ P-0010, T-140 dated 30 March 2017, p. 32.

²⁵⁴² General Mangou testified that he received a phone call from General Palasset before his call to Mr Gbagbo that morning at 11h00. *See* P-0009, T-196 dated 28 September 2017, p. 21. *See also* V.B.2.c) – Instructions given to the FDS during the march, para. 1186.

²⁵⁴³ P-0009, T-196 dated 28 September 2017, p. 21.

²⁵⁴⁴ P-0009, T-196 dated 28 September 2017, p. 21.

²⁵⁴⁵ P-0009, T-196 dated 28 September 2017, p. 21.

²⁵⁴⁶ Mid-Trial Brief, para. 203.

the RTI.²⁵⁴⁷ The Prosecutor does not elaborate on how the alleged blockade of the Golf Hotel was linked to the alleged repression of the RTI march. The evidence demonstrates that the restriction of movement around Golf Hotel and the surrounding security adjustments were put in place prior to the RTI march chronologically.²⁵⁴⁸ There is also evidence that the armed forces may have taken positions at two locations in the vicinity of the Golf Hotel at least as of 12 December 2010.²⁵⁴⁹ However, as discussed below, it does not appear to be the case that the purported blockade had been ordered with a view to the allegedly repressing the RTI March. The evidence suggests that the military checkpoints had been reinforced to prevent armed elements based at the Golf Hotel from entering the city.

1110. The Prosecutor relied on Document CIV-OTP-0045-0748, a fax by the *préfet* of Abidjan dated 12 December 2010, to demonstrate that Mr Gbagbo and the FDS high command were aware of the planned RHDP demonstration prior to its public announcement by Mr Soro.²⁵⁵⁰ Inspector-General Bredou M'Bia, the Director General of National Police at the time who confirmed annotating this document himself,²⁵⁵¹ stated that this document constituted planning for 'observation posts'²⁵⁵² and preparation for measures 'if the march did take place'.²⁵⁵³ As per Inspector-General Bredou M'Bia, this was being done by the *préfet* of Abidjan in the ordinary course of his duties to maintain order in the town.²⁵⁵⁴ Whilst Inspector-General Bredou M'Bia noted that they did get 'wind of

²⁵⁴⁷ Mid-Trial Brief, para. 330.

²⁵⁴⁸ *See supra*.

²⁵⁴⁹ *See supra*.

²⁵⁵⁰ Mid-Trial Brief, footnote 1002.

²⁵⁵¹ P-0046, T-125 dated 17 February 2017, p. 31.

²⁵⁵² P-0046, T-125 dated 17 February 2017, pp. 35-36.

²⁵⁵³ P-0046, T-125 dated 17 February 2017, p. 35 (emphasis added).

²⁵⁵⁴ P-0046, T-125 dated 17 February 2017, p. 39 (confidential).

an event’,²⁵⁵⁵ he testified not receiving any particular instructions for the RTI march.²⁵⁵⁶ It is noted that General Mangou also distinguished between the RTI march and the events at the Golf Hotel. According to him, the ‘exchange of firing’ at the Golf Hotel fell ‘within the purview of the army’ and the march ‘was handled by the national police with the support of CECOS’.²⁵⁵⁷

1111. General Bi Poin, commander of CECOS, appeared to have attended a meeting on ‘15th or the 14th, but a day or two before the march’ concerning the reinforcement of sensitive locations.²⁵⁵⁸ General Bi Poin agreed that, following the setting up of the aforementioned military checkpoints, instructions had been given by ‘a military official at the Golf [Hotel], an official of the ex-rebels, to go and install the general director’ of the RTI’.²⁵⁵⁹ He added that, for this reason, the Chief of Staff had envisioned a need for the area around the roundabout to be reinforced as ‘those who were planning to come and install the general director were necessarily going to pass by that roundabout’.²⁵⁶⁰

1112. Witness P-0625, speaking without direct knowledge, understood that ‘the defence and security forces set up [a] perimeter [around the hotel] based on the decision of [Mr] Gbagbo, and those people inside were being asked to go home’ specifying that access was blocked ‘when the announcement was made that there would be a march’.²⁵⁶¹ However, he did not remember how many days prior to the march this took place.²⁵⁶² He later stated that, in his opinion, ‘the blockades were set up before the march, but not only because of the march. This was done with a

²⁵⁵⁵ P-0046, T-125 dated 17 February 2017, p. 35.

²⁵⁵⁶ P-0046, T-125 dated 17 February 2017, p. 36.

²⁵⁵⁷ P-0009, T-196 dated 28 September 2017, p. 13; *see also* p. 15.

²⁵⁵⁸ P-0010, T-139 dated 29 March 2017, p. 12. *See also* V.B.1.a) – ‘Coordination meetings’.

²⁵⁵⁹ P-0010, T-140 dated 30 March 2017, p. 33.

²⁵⁶⁰ P-0010, T-140 dated 30 March 2017, p. 32.

²⁵⁶¹ P-0625, T-26 dated 8 March 2016, p. 70.

²⁵⁶² P-0625, T-26 dated 8 March 2016, p. 70.

view to blocking off all the entry or the access and exit [...] points to the [Golf Hotel]', indicating that there was an expectation that armed persons present at the Golf Hotel were going to take part in march as well.²⁵⁶³ However, it is not known on which basis P-0625 expressed these opinions and little weight can be attached to them for that reason.

1113. The Prosecutor also relied on an excerpt from a speech given by General Mangou on 12 and 13 December 2010 whilst touring various army units in Abidjan. In particular, the Prosecutor pointed, *inter alia*, to his words that 'Ivoriens would react vigorously if attacked', and that the events of 2004 had not been forgotten.²⁵⁶⁴ The excerpts of General Mangou's speech, when assessed together, do not appear to be calling for the commission of violence or crimes against the civilian population. The use of the word vigorous or vigilant in the context of remaining excerpt does not lend the inference that he was calling for his audience to use violence as a means of attack. Further, he is shown to have called for the impartial forces to remain truly impartial; and as regards the events of the year 2004, it is noted that the Prosecutor selectively quoted him. The full excerpt of his speech, as reproduced below, is also not a reference to an attack or commission of crimes against civilians:

Nous avons connu des événements en 2004, des événements douloureux. Les Ivoiriens n'ont pas oublié. Ils ont pardonné. Nous avons décidé de fermer la page. Mais nous disons à chacun de bien lire ce qui est écrit sur cette page avant qu'on ne la referme. Nous conseillons, tout simplement, à nos frères des forces impartiales de ne plus jamais avoir sur leurs mains le sang des Ivoiriens innocents. Ils ne sont pas ici pour nous faire la guerre. Ils ne sont pas ici pour faire la guerre aux Ivoiriens. Ils sont ici pour aider les Ivoiriens à aller à la paix.²⁵⁶⁵

²⁵⁶³ P-0625, T-29 dated 14 March 2016, p. 60.

²⁵⁶⁴ Mid-Trial Brief, para. 331 referring to RTI Broadcast dated 12 December 2010, CIV-OTP-0061-0542, transcript at CIV-OTP-0087-0175 at 0176-0177; RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0569, transcript at CIV-OTP-0088-0765.

²⁵⁶⁵ RTI Broadcast dated 14 December 2010, CIV-OTP-0061-0569, transcript at CIV-OTP-0088-0765 at 0766. *See also* RTI Broadcast dated 12 December 2010, CIV-OTP-0061-0542, transcript at CIV-OTP-0087-0175 at 0176-0177 where General Mangou called for respect for rule of law and discipline within the army as well as their mission to defend and protect the institutions of the republic.

1114. The Prosecutor also relied on another video excerpt wherein the then Minister of Foreign Affairs, Alcide Djédjé, is interviewed by a journalist about the events in January 2011.²⁵⁶⁶ The RTI broadcast dated 6 January 2011 shows Minister Djédjé stating that

Au cours de ces entretiens avec les différentes parties à la crise en CÔTE D'IVOIRE, la mission conjointe a exclu d'emblée l'option d'une intervention militaire et a opté pour un dénouement pacifique du conflit par l'instauration d'un dialogue direct entre le Président Laurent GBAGBO et le Premier Ministre Alassane Dramane OUATTARA. Dialogue dont les modalités pratiques consisteraient en la mise sur pied de deux délégations pour des pourparlers préliminaires préparatoires à la rencontre des deux personnalités. À ce sujet, le Président Laurent GBAGBO a marqué son accord sur cette proposition et a indiqué qu'il a toujours été pour un dialogue entre les deux parties car, dans un conflit, lorsqu'il y a des affrontements militaires et quelle qu'en soit la durée, l'on finit toujours par s'asseoir pour négocier. L'idéal serait donc d'épargner des vies humaines et de chercher une solution politique à la crise post-électorale. Le président Laurent GBAGBO a également indiqué qu'avant l'arrivée de la mission conjointe, il y a eu des initiatives émanant des personnalités ivoiriennes visant à ... à instaurer un tel dialogue auquel il a donné son accord. Jusque-là ces initiatives n'ont toutefois pas reçu de suite de la part de Monsieur OUATTARA. La mission conjointe a fait savoir que Monsieur OUATTARA était d'accord pour le dialogue à condition qu'il soit reconnu comme le président élu. La délégation a également demandé la levée du blocus du GOLF Hôtel. Le Président Laurent GBAGBO a indiqué qu'il ne s'agissait pas d'un blocus mais de mesures sécuritaires. Cette situation, a-t-il ajouté, est intervenue du fait que c'est du GOLF Hôtel qu'est partie la manifestation du Rassemblement des Houphouëtistes pour la démocratie et la paix du 16 décembre 2010 et c'est dans ce même hôtel que résident plus de trois cents soldats des forces armées des forces nouvelles lourdement armées, ce qui constitue une menace pour tout le quartier de la RIVIÈRE. Le Président GBAGBO a enfin indiqué qu'il reste ouvert sur les conditions d'évacuation du GOLF Hôtel. En tout état de cause, les personnalités qui y sont retranchées doivent regagner leur domicile respectif. Il convient de noter que les rencontres se sont déroulées dans une ambiance détendue. La mission conjointe a promis revenir très bientôt pour poursuivre les négociations.²⁵⁶⁷

1115. The Prosecutor also relied upon a map collected from the Presidential Residence to demonstrate that the blockade took place 'in the lead up to the [RTI march]'.²⁵⁶⁸ This map appears to indicate the location of certain '*blocus*'. It is noted that the author of this map is not specified; it is undated and it is unclear to

²⁵⁶⁶ Mid-Trial Brief, para. 330 referring, *inter alia*, RTI Broadcast dated 6 January 2011, CIV-OTP-0074-0060, transcript at CIV-OTP-0102-1591 at 1592-1593. It is worth noting here that the Prosecutor uses this video in support of the assertion that Mr Ouattara and his cabinet along with 300 members of the FAFN were based in the Golf Hotel (*see* Mid-Trial Brief, para. 330; Response, para. 1142).

²⁵⁶⁷ RTI Broadcast dated 6 January 2011, CIV-OTP-0074-0060, transcript at CIV-OTP-0102-1591 at 1592-1593.

²⁵⁶⁸ *See for example* Mid-Trial Brief, footnotes 599, 1985.

which end this document was created. Titled '*plan général*', there is no express indication on the map as to its connection with the RTI march. Even assuming its authenticity, it is not known what additional information this map adds.

1116. Having regard to the evidence discussed in connection with the purported link between the 'blockade' and the RTI March, it cannot be concluded that there was a particular link between the two, other than that the Ivorian authorities were trying to control a volatile situation in the city of Abidjan. To the extent that the risks posed by the armed troops inside the Golf Hotel and the demonstrators participating in the RTI march were connected, it is reasonable to assume that the measures to counter these risks were also synchronised.
1117. Accordingly, the ordering of the 'blockade' and reinforcement of the checkpoints in advance of the RTI March may constitute evidence of coordination between the various FDS forces and of them acting upon Mr Gbagbo's instructions on these two occasions. However, this is insufficient to conclude that Mr Gbagbo intended to 'rely on military force against his opponent and his opponent's supporters, in order to assert his claim to power'.²⁵⁶⁹

3. Conclusion

1118. On the basis of the evidence discussed above, it can be concluded there was indeed some restriction of movement around the Golf Hotel. This included at least two checkpoints set up by the military, the location of which may have been decided in cooperation with the UNOCI. There is evidence that Mr Gbagbo was in communication with General Mangou in relation to the setting up of checkpoints to ensure that 'they [people situated in the Golf Hotel] not come out'. There is evidence that Mr Gbagbo gave an oral instruction to General Mangou, who turned it into a military order. From the evidence this appears to

²⁵⁶⁹ Mid-Trial Brief, para. 688.

have taken place on 11 December 2010. The UNOCI and the *Licorne* were communicated these positions, as well as the nature of the restriction of the movement across.

1119. Arguably, the restriction of movement imposed on Mr Ouattara and his supporters at the Golf Hotel may have been a tactic devised to mount pressure on them. Together with the prohibition of the march, it may also constitute an attempt to forestall the attempts of Mr Ouattara and his supporters to install a new director of the RTI. To that extent, the security measures around the Golf Hotel are indicative of an intent to stay in power and maintain control. However, taking into account the circumstances as a whole, and in particular General Mangou's speech dated 12 and 13 December 2010 to army units in Abidjan, it has not been demonstrated that the purported blockade was linked to the commission of crimes during the RTI march.

1120. Turning to the allegations against Mr Blé Goudé in respect of the blockade at the Golf Hotel, the Prosecutor alleged that Mr Blé Goudé 'echoed' Mr Gbagbo's purported reliance on military force against Mr Ouattara and his supporters.²⁵⁷⁰ The reference to Mr Blé Goudé's speech wherein he claims to be capable of removing Mr Ouattara from the Golf Hotel with 'bare hands' is not persuasive.²⁵⁷¹ The Prosecutor's assertion that Mr Blé Goudé made 'veiled references' to the safety of Mr Ouattara and his supporters and that this had to do with the setting up of the blockade and/or furtherance of the Common Plan is speculative.

1121. Notwithstanding the aforementioned conclusions, the nature of the Prosecutor's case requires a holistic assessment of the evidence. For this reason, the evidence

²⁵⁷⁰ Mid-Trial Brief, paras 688-689.

²⁵⁷¹ It is noted that the Prosecutor uses the quote « je suis capable de les déloger du Golf hôtel à mains nues » that appears in Mr Blé Goudé's speech from the RTI Broadcast dated 15 December 2010 and 30 December 2010 in Mid-Trial Brief, footnote 1995. *See further* Mid-Trial Brief, para. 348, footnote 1053.

concerning the purported blockade has also been assessed together with the remaining allegations forming part of the alleged Common Plan.

B. Prohibition of the RTI March

1122. The Prosecutor contended that Mr Gbagbo issued instructions that the march be prohibited and that FDS high commanders implemented Mr Gbagbo's orders to stop the RTI march. Accordingly, she claims that 'Gbagbo's instructions had a direct effect on the commission of crimes' against RHDP demonstrators on 16 December 2010.²⁵⁷² To the Prosecutor, this demonstrates the link between the Common Plan and the first charged incident of this case.

1123. To support her claims in relation to instructions and orders in this context, the Prosecutor points to the meetings that occurred in anticipation of the march, the coordination of the plan devised to repress it, and the instructions given in the course of the FDS operation on 16 December 2010. The evidence connected to these aspects of the Prosecutor's case will be analysed in this section.

1124. As the Prosecutor also alleges that the youth and militia received instructions to help the FDS repress the march, the last part of this section will discuss the evidence presented in relation to the orders given to irregular forces.

1. Mr Gbagbo's participation in concerted actions of the 'inner circle' before and after the RTI march

1125. The Prosecutor repeatedly emphasised in her briefs that Mr Gbagbo met with FDS high commanders to instruct the prohibition and repression of the march.²⁵⁷³

It is noted, however, that the Prosecutor does not claim that during the meetings

²⁵⁷² Mid-Trial Brief, para. 732. *See also* Mid-Trial Brief, para. 186.

²⁵⁷³ Pre-Trial Brief, paras. 81; 246; 249; Mid-Trial Brief, paras. 269-270; 673-674; Response, paras. 460, 553, 1121, 1553-1554.

Mr Gbagbo directed the FDS to commit crimes on 16 December 2010.²⁵⁷⁴ Nor does she imply in her submissions that it should be considered abnormal for a President to meet with the high commanders of the Army and the Police. The Prosecutor also acknowledges that the instruction that the march be prohibited was not criminal. In the Response, the Prosecutor states that ‘while the instruction itself is not criminal in nature, he [Mr Gbagbo] knew that its implementation, in the ordinary course of events, will bring about the commission of crimes’.²⁵⁷⁵ According to the Prosecutor, such knowledge derived from past experiences where Mr Gbagbo’s government violently responded to political demonstrations and ‘the fact that armed forces were deployed on the ground to face unarmed civilian demonstrators’.²⁵⁷⁶

a) ‘Coordination meetings’²⁵⁷⁷

1126. The Prosecutor claims that Mr Gbagbo met with the FDS high command and other members of the ‘inner circle’ to orchestrate the repression of the

²⁵⁷⁴ Note however the following proposition in the Response: ‘The 16 December 2010 march on the RTI was suppressed and crimes committed as a result of a direct order from Mr Gbagbo to do so.’ (Response, para. 1899.)

²⁵⁷⁵ Response, para. 1890. *See also* Mid-Trial Brief para. 726.

²⁵⁷⁶ Response, para. 1890. *See also* Response para. 1219(i). Note that as a third factor proving Mr Gbagbo’s knowledge that crimes would be committed in the ordinary course of events, the Prosecutor also alleges that Mr Gbagbo’s ‘speeches on 5 August 2010 and 27 August 2010, his demonising of his political opponent and the UNOCI incited to violence’ (Response, para. 1890). Note *too* that the Prosecutor’s reference to a speech on 5 August 2010 appears to refer rather to a speech given by Mr Gbagbo on 7 August 2010, as the evidence cited in this regard relates to the date of 7 August. For a discussion of these two speeches, *see* IV.B.6.a) – Mr Gbagbo told senior officers *si je tombe, vous tomb[er]ez*; and IV.F.2.a) – 27 August 2010 – Divo speech.

²⁵⁷⁷ Note that the term ‘coordination meetings’ was used by the Prosecutor. According to the Prosecutor, ‘[d]uring such meetings and discussions, GBAGBO and his Inner Circle discussed and coordinated the implementation of the Common Plan. GBAGBO was kept abreast of the situation on the ground by his subordinate commanders, issued operational instructions’. (Pre-Trial Brief, para 246).

demonstration which the RHDP was organising to install a new director of the RTI.²⁵⁷⁸

1127. In the Mid-Trial Brief and in the Response, the Prosecutor stated that two meetings were held in preparation for the RTI march, one Mr Gbagbo convened with members of his ‘inner circle’ and one amongst FDS high commanders only, at the *état-major*. The meeting at the *état-major* was the occasion in which the FDS operation was planned by FDS high commanders. Concerning the organisation of the security plan for the RTI march, General Guiai Bi Poin testified that a day or two before the march the high command of the FDS held a meeting at the *état-major* to organise the security operation.²⁵⁷⁹ According to General Guiai Bi Poin, the purpose of the meeting at the *état-major* was to have the Inspector-General of the Police outline the plan and inform the Chief of Staff

²⁵⁷⁸ Pre-Trial Brief, para. 311. *Note* that the propositions the Prosecutor put forward in connection to this claim changed considerably from the Pre-Trial Brief to the Mid-Trial Brief. In the Pre-Trial Brief, the Prosecutor alleged that three meetings were convened with this purpose. According to this earlier version of the Prosecutor’s narrative, Mr Gbagbo instructed General Mangou and others to repress the march during a meeting on 14 December 2010 at the Presidential Residence; a second meeting took place at the *état major* where General Mangou conveyed the orders that Mr Gbagbo had given, and a third meeting was held the night before the march at the Presidential Residence. This account of events, however, is not supported by evidence. In particular, there is no evidence indicating that Mr Gbagbo held two meetings in preparation for the RTI march, nor is there any suggestion that the meeting at the *état major* was connected with orders previously given by Mr Gbagbo. *Note* that the Prosecution also alleged in the Pre-Trial Brief that, in the first meeting, Mr Gbagbo ordered measures to prevent the march and authorised the deployment of FANCI (Pre-Trial Brief, para. 249), which is equally unsupported by evidence.

²⁵⁷⁹ P-0010, T-139 dated 29 March 2017, p. 10-11. *Note* that General Guiai Bi Poin testified that all the generals were present and there was also one representative from the *Garde Républicaine* among them. The witness clarified that the *Garde Républicaine* representative in question was not General Dogbo Blé. *Note* further that General Detoh Letho testified that General Dogbo Blé usually did not take part in these meetings (*see* P-0047, T-203 dated 7 November 2017, p. 26). *Note* that General Kassaraté, Supreme Commander of the *Gendarmerie*, provided evidence in respect of the *état-major* meeting.

about the resources needed to implement it.²⁵⁸⁰ Following this meeting, Inspector-General Bredou M'Bia scheduled subsequent meetings with his subordinates to give details of the security arrangements.²⁵⁸¹

1128. Mr Gbagbo was not present at the *état-major* and the evidence does not suggest that the commanders received orders or instructions from him before the meeting. Therefore, the only 'coordination meeting' of relevance to this discussion is the one allegedly convened by Mr Gbagbo in the Presidential Residence.

1129. In this regard, the Prosecutor states that

Mr Gbagbo directly ordered the repression of protest movements against him, including the instruction that the march on the RTI on 16 December be prohibited. Evidence of this is the meeting on 14-15 December 2010, before the march, where Mr Mangou, Kassaraté, Detho Letho, Dogbo Blé, Bredou M'Bia and General Marc aka Kadjo met with Mr Gbagbo and received instructions from Mr Gbagbo that the march was prohibited and should not take place.²⁵⁸²

1130. General Mangou is the only witness who provided evidence as to the subject of discussion of this meeting at the Presidential Residence. In this regard, General Mangou testified:

Q. Can you talk about this meeting and what was it about? Thank you.

A. Mr President, we were convened to that meeting to receive instructions to the effect that the march had been prohibited. So we took advantage of that to update on the prevailing situation and also to express the desire that the march should not take

²⁵⁸⁰ Note that General Guiai Bi Poin also testified that it was General Mangou who instructed Inspector-General Bredou M'Bia to conduct the operations to cover the march (P-0010, T-139 dated 29 March 2017, pp. 11-12). Note further that according to General Guiai Bi Poin, General Mangou was responsible for providing the necessary resources to the DGNP. General Guiai Bi Poin testified that the operations were under the exclusive responsibility of the DGNP and according to the principle of unified command, there was to be no interference (P-0010, T-139 dated 29 March 2017, pp. 15-18). The information provided by General Guiai Bi Poin was corroborated to some extent by General Kassaraté, who also testified that there was a meeting at the *état-major* in preparation for the march. Note that General Kassaraté first testified having taken part in a meeting in preparation for 16 December 2010, answering in general terms that such meetings always took place at the *état-major* in the presence of all the generals (P-0011, T-134 dated 13 March 2017, pp. 14, 18), but subsequently contradicted himself by testifying that he himself did not attend the meeting in preparation for the RTI march at the *état-major* (P-0011, T-135 dated 14 March 2017, p. 60).

²⁵⁸¹ P-0010, T-139 dated 29 March 2017, pp. 11-12.

²⁵⁸² Response, para. 1890.

place, because we could foresee that there would be disturbances. So we highlighted that point and even asked the president whether it was possible to ask Mr Choi to bring his influence to bear on the two big people to ensure that the march doesn't take place, because we had a premonition that there would be trouble.²⁵⁸³

1131. Other than that, General Mangou simply said that in the meeting they were told that the RTI march was forbidden.²⁵⁸⁴

Q. During that meeting, what was or did you receive instructions from the president?

A. Yes, we received instructions from the president to the effect that the march should not take place, that the march was prohibited.²⁵⁸⁵

1132. Having regard to the totality of the evidence connected to the FDS operation which will be discussed in the subsections below, this proposition is of limited significance. In particular, it is emphasised that security measures to block the RTI march had already been planned before this meeting took place. Mr Gbagbo's instruction that the march be forbidden, at that point in time, would be no more than a re-instatement of a publicly known fact.²⁵⁸⁶

1133. General Mangou's testimony with regard to the meeting continued as follows:

Q. [...] Following that meeting, were there any security arrangements made and set up?

A. Yes, indeed, following that meeting as some security arrangements were made.²⁵⁸⁷

1134. The Prosecutor then asked which arrangements he was referring to and General Mangou described, in general terms, the disposition of the FDS during the

²⁵⁸³ P-0009, T-196 dated 28 September 2017, p. 12.

²⁵⁸⁴ Note that according to General Mangou, the persons he remembers to have been present were himself, as well as 'Kassaraté, Gogbo Blé, Brindou, the director general of the police, Detoh, Aka' (P-0009, T-196 dated 28 September 2017, pp. 10-11).

²⁵⁸⁵ P-0009, T-196 dated 28 September 2017, p. 13.

²⁵⁸⁶ Note, for instance, that if Mr Gbagbo met with the 'inner circle' in the late hours of 15 December 2010 to declare that the march was prohibited (as the Prosecutor alleges was the case), then such an announcement was made after the population received the same information via RTI broadcast. RTI Broadcast dated 15 December 2010, CIV-OTP-0064-0089 at 00:03:02-00:06:28 and 00:30:27-00:33:41, retransmitted in RTI Broadcast dated 15 December 2010, CIV-OTP-0074-0054 at 00:04:07-00:07:38; transcript at CIV-OTP-0087-0385 at 0386.

²⁵⁸⁷ P-0009, T-196 dated 28 September 2017, p. 13.

operation.²⁵⁸⁸ From the entirety of General Mangou's testimony, it seems that these were most likely the operational arrangements set up during the meeting at the *état-major* which seemingly took place before the meeting with Mr Gbagbo.

1135. This portion of General Mangou's testimony cannot be regarded as evidence that Mr Gbagbo exerted influence over the operational arrangements of the FDS in the repression of the march.²⁵⁸⁹ In this respect, the conclusions reached from the analysis of the evidence connected to the operational instructions are also recalled.²⁵⁹⁰ As established below, there is no indication that Mr Gbagbo's meeting with the 'inner circle' had any impact on the way the operation was conducted.²⁵⁹¹

1136. Nevertheless, attention should be drawn to the fact that General Mangou indicated that Mr Gbagbo and the 'inner circle' discussed diplomatic solutions for preventing the march from taking place.²⁵⁹² If this is true, it is important to know when this meeting took place.

1137. According to General Mangou, the meeting at the Presidential Residence in which the RTI march was discussed with Mr Gbagbo took place on 14 December 2010.²⁵⁹³ The Prosecutor claims that General Mangou was mistaken in asserting that the meeting with Mr Gbagbo occurred on 14 December 2010, since according to her interpretation of the relevant pages of the logbook, the document shows that this event took place in the night of 15 December 2010.²⁵⁹⁴

²⁵⁸⁸ P-0009, T-196 dated 28 September 2017, p. 13. *See* V.B.2.b) - The nature and purpose of the FDS operation.

²⁵⁸⁹ *Note* that the operational arrangements in question are not considered to be incriminatory – *see* para. 1184.

²⁵⁹⁰ *See* V.B.2.c) - Instructions given to the FDS during the march.

²⁵⁹¹ *Note* that the evidence, although not conclusive on this point, indicates that the meeting at the Presidential Residence postdated the meeting at the *état major*. There is no suggestion that the arrangements decided in the *état-major* were later amended to reflect Mr Gbagbo's instructions. *See* below, footnote 2595.

²⁵⁹² P-0009, T-196 dated 28 September 2017, p. 12.

²⁵⁹³ P-0009, T-196 dated 28 September 2017, pp. 11-12.

²⁵⁹⁴ Response, para. 1145; Mid-Trial Brief, para. 344.

By asserting that the meeting took place in the night before the march – a point in time when it would have been too late for diplomatic solutions to be discussed – the Prosecutor implicitly discredits this possibility.²⁵⁹⁵

1138. It is, however, questionable to what extent the logbook can be seen as evidence that the meeting with Mr Gbagbo took place on 15 December 2010.

1139. First, it cannot be firmly established on the evidence available that the information in the Residence Logbook relates to the same meeting that General Mangou described. The entry in the logbook upon which the Prosecutor relies shows the arrival of ‘Kassarate + CMA’ at the Presidential Residence - seemingly presuming that ‘CMA’ is a shortened form of ‘CEMA’, the acronym designating General Mangou’s position of *chef d’état-major des armées* or Chief of Staff. Nevertheless, other logbook entries registering General Mangou’s visits to the Residence on different occasions refer to him either as ‘Général Mangou’ or ‘CEMA’. Only once, in addition to the entry being discussed, did ‘CMA’

²⁵⁹⁵ It is acknowledged that if the meeting with Mr Gbagbo at the Presidential Residence occurred on the evening of 14 December 2010, there might be a possibility that the FDS meeting at the *état-major* (which Mr Gbagbo did not attend) occurred after the Presidential Residence meeting convened by Mr Gbagbo. It is noted in this respect that General Guiai Bi Poin testified that the *état-major* meeting occurred one day or two before the march, in the afternoon. (P-0010, T-139 dated 29 March 2017, pp. 10-11). This leaves open the possibility that the *état-major* meeting occurred on the afternoon of 15 December 2010 and, if the meeting with Mr Gbagbo occurred on 14 December 2010, it would be in theory possible that when the FDS met in the *état-major* they would be implementing the instructions given by the President on the day before during the meeting at the Residence. However, even if there was conclusive evidence to the effect that meeting at the Presidential Residence took place before the FDS meeting at the *état-major*, the fact remains that the witnesses said to have attended the FDS meeting did not indicate that they received instruction from Mr Gbagbo and neither have they suggested that orders of the President influenced the planning of the operation when this was discussed at the *état-major*. To summarise the analysis made in regard of the dates of the two meetings: the totality of the evidence demonstrates that it is more probable that the meeting at the *état-major* occurred before the meeting at the Presidential Residence. This is not only because the latter might have occurred in the night before the march (15 December 2010) but also because the FDS meeting may have happened in the afternoon of 14 December 2010 – thus, even if the Presidential Residence meeting had taken place on 14 December 2010 at night, it would still have postdated the FDS meeting which had occurred in the afternoon of the same day. This undermines the Prosecutor’s case to the extent that she relies on these two meetings to support the contention that the instructions given by Mr Gbagbo in the meeting at the Residence were implemented by the FDS in the planning of the operation which occurred at the *état-major* meeting. Yet, even if it were true that the meeting with Mr Gbagbo preceded the FDS meeting, this would have very limited probative value in view of what is known about the content of the two meetings.

appear in the logbook.²⁵⁹⁶ It is also of relevance that General Kassaraté, when presented with this evidence during his testimony, did not confirm that the person referred to as ‘CMA’ in the logbook was General Mangou.²⁵⁹⁷ Furthermore, the information in the document is not entirely consistent with General Mangou’s description of the meeting with Mr Gbagbo. General Mangou stated that the persons present at the meeting on 14 December 2010 were Generals Kassaraté, Dogbo Blé, Bredou M’bia, Detoh Letho and Aka, and there might have been other people (civilians).²⁵⁹⁸ According to the logbook, in addition to Generals Kassaraté and Bredou M’bia, the attendees were the Minister of Defence, Alain Dogou, and the Minister of Foreign Affairs, Alcide Djédjé. Generals Detoh Letho, Dogbo Blé and Aka do not appear in the log.

1140. Second, even if the Prosecutor was correct that the meeting cited by General Mangou and the records of the logbook relate to the same event, her allegation that this meeting was held on 15 December 2010 relies upon a particular reading of this evidence. As briefly mentioned in the first sub-section above, the page of the logbook which the Prosecutor identifies as being the visitors’ register of 15 December 2010 is undated but placed between the pages showing the respective records of 14 December and 16 December. Whilst it is reasonable to assume from the position of the undated page that it shows the records of visitors of 15 December 2010, other plausible inferences could also be drawn. Since papers forming the logbook are bound to one another by a string, the pages could have been organised in a binder²⁵⁹⁹ instead of one physically indivisible book.²⁶⁰⁰ Thus,

²⁵⁹⁶ Large visitor register, 3 November 2010, CIV-OTP-0067-0402; *See* Annex D, Visitors at Presidential Residence ICC-02/11-01/15-1136-Conf-AnxD 19-03-2018.

²⁵⁹⁷ P-0011, T-134 dated 13 March 2017, pp. 15-16. *Note* that Generals Mangou and Kassaraté both commented on the low probative value of the document. *See* P-0009, T-196 dated 28 September 2017, pp. 10-11.

²⁵⁹⁸ P-0009, T-196 dated 28 September 2017, pp. 10-11.

²⁵⁹⁹ *See* by contrast, the picture of the logbook that according to P-0501 was designated for the entrance used by Simone Gbagbo’s visitors: ANNEXE 3 / SERVICE DE GARDE, 25 May 2010, CIV-OTP-0071-0962; P-0501, T-72 dated 7 September 2016, pp. 10-14.

although the logs contained on each page are organised in chronological order, each covering the hours of an entire day and showing different visits, the possibility cannot be excluded that the undated page showed the record of visitors entering from a different entrance on 14 December 2010, the date on which General Mangou stated his meeting with the President took place.²⁶⁰¹

1141. The above considerations cast doubt over two basic assumptions of the Prosecutor: *i*) that the log is evidence of the meeting to which General Mangou referred and *ii*) that the log is evidence of the meeting having taken place on 15 December 2010. Simply put, the existence of the log does not refute the possibility that Mr Gbagbo was trying to achieve a non-violent solution to the RTI march when he met with the ‘inner circle’.

1142. In any case, irrespective of the date of the meeting the fact remains that there is no evidence suggesting or implying that there was any discussion about using violence against civilians in preparation for the march. Aside from the potentially exonerating evidence provided by General Mangou, there is no further meaningful information about this meeting to be considered.

1143. This analysis now turns to the meetings that allegedly took place in the aftermath of the RTI march on 16 December 2010. According to Prosecutor, a meeting ‘happened at the end of operations on 16 December 2010’²⁶⁰² at the *état-major*, which was followed by another meeting with Mr Gbagbo at the Presidential Residence.²⁶⁰³ Regarding the former, the Prosecutor referred to testimonial

²⁶⁰⁰ Out of the logbooks presented, only ANNEXE 4 / REGISTRE 6 MAINS / FORMAT 26 X 40, 5 January 2010, CIV-OTP-0071-0965 is unquestionably one physical book. Witness P-0501 recognised it as the visitor’s book located at the entrance giving access to the President’s chambers. However, it has only five pages, all showing administrative notes; the relevant entries are contained in another book.

²⁶⁰¹ Witness P-0501 stated that there were two entrances to the main building: hall 1 (where visitors to the President would usually enter) and hall 2 (where visitors to the First Lady would enter); each had a logbook. There was another entrance in front of the lagoon, as the map drawn by P-0501 shows: Annexe 1, 19 December 2014, CIV-OTP-0071-0919 (confidential).

²⁶⁰² Response, para. 1581.

²⁶⁰³ Response, para. 1580.

evidence provided by General Guiai Bi Poin. However, there is nothing incriminating in the information he provided. The CECOS commander General Guiai Bi Poin confirmed that, after the end of the operation, the generals and their respective staff attended a debriefing at the Army staff headquarters where they received a report from the DGNP on the events that had transpired on the day.²⁶⁰⁴ In this respect, he testified that

[the DGNP] gave us a report as to the number of people who had been killed within law enforcement. There are approximately six or seven deaths recorded. Some were killed in their troop transportation vehicles, killed with anti-tanks rockets, and they were completely burnt alive and some in their vehicles in Abobo. And he also talked about civilian deaths. He mentioned the fact that with regard to civilian deaths we had to be very careful, because the individual that we deemed to be civilians are, generally speaking, armed.²⁶⁰⁵

1144. When it comes to the meeting at the Presidential Residence, which purportedly took place in the evening of 16 December 2010, the Prosecutor relies solely on the information contained in the visitor's logbook of the Residence.²⁶⁰⁶ Having regard to the considerations made with respect to the probative value and evidentiary weight of the logbook, it is noted that this piece of evidence alone cannot provide the basis for a conclusion that a meeting with Mr Gbagbo did take place.²⁶⁰⁷ Moreover, the relevant records mostly show the visits of civilian 'inner circle' members; according to the logbook, General Dogbo Blé was the only FDS officer who visited Mr Gbagbo after the RTI march.²⁶⁰⁸ This undermines the Prosecutor's claim that the content of the (purported) meeting

²⁶⁰⁴ P-0010, T-139 dated 29 March 2017, pp. 39-43.

²⁶⁰⁵ P-0010, T-139 dated 29 March 2017, p. 40.

²⁶⁰⁶ Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0477, transcript at CIV-OTP-0088-0863 (confidential) at 1014.

²⁶⁰⁷ See IV.C.1 - Visits to the Presidential Residence and Palace, paras 304-313.

²⁶⁰⁸ Note that the logbook registers visits of the following alleged 'inner circle' members: Ministers Bertin Kadet (19h57-00h55), Pascal Affi N'Guessan (19h59-00h45), Aboudramana Sangaré (20h05-00h05), Alcide Djédjé (20h24-01h04), Charles Blé Goudé (20h24-01h04), Alain Dougou (20h42-01h04) as well as former Minister Desiré Tagro (20h10-01h04) and General Dogbo Blé (23h38-00h48). See Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0477, transcript at CIV-OTP-0088-0863 (confidential) at 1014.

can be inferred from the fact that its attendees were the same FDS officers who had met a few hours earlier at the *état-major*.²⁶⁰⁹

1145. In further support of the content of the meeting at the Residence, the Prosecutor refers in her submissions to the testimony of General Mangou regarding a report he confirmed having given to Mr Gbagbo after the operation on 16 December 2010 had ended.²⁶¹⁰ General Mangou testified that

I reported to the president of the republic, but in that case, I mentioned that there were civilians who had died without giving details. But I underscored soldiers who were dead, the three in Abobo, those who were killed in the vicinity of Anonkoua-Kouté and Saint Joseph. I placed emphases on those.²⁶¹¹

1146. In addition to not being incriminating, this portion of General Mangou's testimony is not evidence of the content of a meeting with Mr Gbagbo at the Presidential Residence. Rather, according to General Mangou, this related to a report he gave Mr Gbagbo over the phone.²⁶¹²

1147. Lastly, it is noted that the Prosecutor claims that from the circumstances, it is possible to infer that the topic of discussion of the 'inner circle' with Mr Gbagbo in the evening of 16 December 2010 included a discussion of FDS and civilian casualties.²⁶¹³ While it is not an implausible inference, without having reliable information about what was actually said, it is of little interest, other than to suggest that Mr Gbagbo would have been aware of civilian casualties as of that moment. Given that General Mangou testified to having informed Mr Gbagbo of the existence of civilian casualties, there is no need for the Chamber to engage in

²⁶⁰⁹ Response, para. 1581.

²⁶¹⁰ Response, para. 1581.

²⁶¹¹ P-0009, T-196 dated 28 September 2017, p. 29.

²⁶¹² Note that in his previously recorded statement, General Mangou had described this as a report made over the phone to Mr Gbagbo; when this extract of the statement was read in court, General Mangou did not re-affirm nor changed this aspect of his account. P-0009, T-196 dated 28 September 2017, pp. 29-30.

²⁶¹³ Response, para. 1581.

speculation about what may or may not have been discussed on the evening of 16 December 2010.

b) Knowledge that instruction would result in crimes

1148. The Prosecutor linked the RTI march to the events that took place in the years of 2000 and 2004,²⁶¹⁴ claiming that the RTI march bore a ‘striking resemblance’ to it.²⁶¹⁵ To evaluate the Prosecutor’s theory in this regard, it is necessary to first ascertain whether or not Mr Gbagbo’s alleged knowledge that his instruction to prohibit the RTI march would result in crimes can be proven on the basis of the evidence mentioned by the Prosecutor.

1149. In this regard, the Prosecution refers to the ‘high number of casualties’ that, according to her, had been caused by FDS ‘implementation of similar past instructions’, and which had also been the result of the deployment of armed forces to face unarmed civilian demonstrators. It is noted that the Prosecutor also makes reference in this context to Mr Gbagbo’s speeches which purportedly ‘incited to violence’.²⁶¹⁶ While the speeches are addressed in a separate section above,²⁶¹⁷ the allegations concerning the ‘past instructions’ and deployment of armed forces are addressed here.

(i) The 2000 and 2004 demonstrations

1150. According to the Prosecutor, while Mr Gbagbo’s instruction to prohibit the RTI march in 2010 was not criminal in nature, he knew that its implementation would bring about the commission of crimes in light of the fact that, ‘the implementation of similar past instructions during the protest marches in

²⁶¹⁴ See IV.B.2.b) - Killing of demonstrators in 2004.

²⁶¹⁵ Mid-Trial Brief, para. 50.

²⁶¹⁶ Response, para. 1890.

²⁶¹⁷ See IV.F.2 - Individual speeches and statements.

December 2000 and March 2004 had resulted in high numbers of casualties'.²⁶¹⁸ The Prosecutor alleged that Mr Gbagbo and the members of the alleged 'inner circle' were aware of the incidents of 2000 and 2004 and for this reason, the instructions to carry out crimes against the civilian population did not need to be spelt out for the purposes of the RTI march.²⁶¹⁹

1151. In relation to the first alleged incident, the Prosecutor stated that 'demonstrations took place in December 2000 where 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'.²⁶²⁰ The only evidence the Prosecutor adduced in connection with this incident is a Human Rights Watch report, which constitutes anonymous hearsay.²⁶²¹ It is therefore difficult to attribute much evidentiary weight to this report. The evidence available is insufficient to allow a reasonable trial chamber to conclude that the incidents of December 2000 occurred in the manner the report described, let alone that these incidents were the result of Mr Gbagbo's instructions.

1152. Turning to the 2004 incident, the Prosecutor alleged that on 25 March 2004, opposition parties planned a march to protest against Mr Gbagbo and the FPI, but '[b]efore the demonstration march could even begin, armed helicopters and army units surrounded and attacked the neighbourhoods of Abobo and Anyama, killing between 120 and 350 G-7 militants'.²⁶²² In this respect, the Prosecutor relied on a report produced by the UN Commission of Inquiry (which constitutes anonymous hearsay), and on the testimonies of witnesses P-0184, P-0172 and P-

²⁶¹⁸ Response, para. 1890.

²⁶¹⁹ Mid-Trial Brief, para. 717; Response, para. 1219.

²⁶²⁰ Mid-Trial Brief, para. 20.

²⁶²¹ Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165 at 0204-0208.

²⁶²² Mid-Trial Brief, para. 45. *See also* IV.B.2.b) - Killing of demonstrators in 2004.

0048. Whereas P-0184 and P-0172 were amongst the RDR demonstrators when the events connected to the 2004 march took place,²⁶²³ the information provided by witness P-0048 is based on reports he received from G-7 activists. P-0048 was at the time an opposition leader connected to G-7.²⁶²⁴

1153. In relation to the 2004 march, it should first be noted that witness P-0048 confirmed that a coalition of opposition parties and ‘rebel movements’ named G-7, which would later be collectively known as the *Forces Nouvelles*,²⁶²⁵ had plans to march to Plateau on 25 March 2004 to demand a transfer of powers in accordance with the Linas-Marcoussis agreement.²⁶²⁶ According to witness P-0184, armed forces started using violence against civilians before the demonstration began and, as a consequence, the march did not take place.²⁶²⁷

1154. There is limited information and almost no direct evidence about FDS action during the alleged repression of the 2004 march. While the witnesses testified that on that occasion in 2004, Army helicopters shot live ammunition at demonstrators;²⁶²⁸ P-0048’s testimony was based on anonymous hearsay, P-0184 admitted not having seen the helicopters shoot at civilians,²⁶²⁹ and it is not clear

²⁶²³ P-0184, T-215 dated 4 December 2017, p. 5; P-0172, T-174 dated 7 July 2017, p. 16.

²⁶²⁴ P-0048, T-53 dated 27 June 2016, pp. 83-84. T-54 (public), p. 2; T-55 dated 29 June 2016, pp. 51-52. *Note* that his testimony in this regard was based on reports the G-7 received from its militants.

²⁶²⁵ According to witness P-0048, a G-7 member at the time, the coalition was made up of four recognised political parties, the RDR, PDCI, MFA and UDPCI, as well as the three ‘rebel movements’ MPIGO, MJP and MPCJ later known collectively as the *Forces Nouvelles* (P-0048, T-53 dated 27 June 2016, p. 49, 73; T-54 dated 28 June 2016, p. 17; T-55 dated 29 June 2016, pp. 23-24, 45-46).

²⁶²⁶ P-0048, T-53 dated 27 June 2016, p. 83; P-0184, T-215 dated 4 December 2017, pp. 5-6; P-0172, T-174 dated 7 July 2017, pp. 14-15; Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0243.

²⁶²⁷ P-0048, T-53 dated 27 June 2016, p. 84; T-54 dated 28 June 2016, p. 2; P-0184, T-215 dated 4 December 2017, p. 7.

²⁶²⁸ P-0184, T-215 dated 4 December 2017, p. 6, 69; P-0048, T-53 dated 27 June 2016, p. 84; P-0172, T-174 dated 7 July 2017, p. 15.

²⁶²⁹ P-0184, T-216 dated 5 December 2017, p. 25; P-0048, T-55 dated 29 June 2016, pp. 51-52.

whether P-0172 witnessed this personally.²⁶³⁰ Moreover, in their testimonies, the witnesses did not provide conclusive evidence with regards to the perpetrators of the alleged crimes committed against demonstrators in 2004. P-0172 testified that he was shot by ‘people wearing fatigues’.²⁶³¹ Witness P-0184 testified that FDS elements fired at marchers gathering in the streets and later came to a hospital, firing in the air and looking for injured persons.²⁶³² The witness did not recall what the individuals who fired at marchers on the street were wearing and it is not clear how she identified these individuals as FDS officials.²⁶³³ When it comes to the individuals firing at the hospital, P-0184 testified that she knew they were FDS because she saw their boots and heard what they were saying.²⁶³⁴

1155. With regard to the instructions purportedly issued by Mr Gbagbo on that occasion, the available information is again scarce. The Prosecutor submitted decree no. 2004-236, dated 22 March 2004, through which the President requisitioned the Army until 15 April 2004.²⁶³⁵ The document makes reference to an earlier decree no. 2004-210, purportedly published on 11 March 2004,

²⁶³⁰ The relevant part of his testimony merely reads: ‘There were helicopters [in Abobo] shooting at people.’ P-0172, T-174 dated 7 July 2017, p. 15. *Note* that The UN Commission of Inquiry report also states that helicopters were used on 25 March 2004, including on one occasion to fire at civilians, but this is based on anonymous hearsay. Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0249-0250.

²⁶³¹ P-0172, T-174 dated 7 July 2017, p. 15.

²⁶³² P-0184, T-215 dated 4 December 2017, pp. 7-9.

²⁶³³ P-0184, T-215 dated 4 December 2017, p. 8.

²⁶³⁴ P-0184, T-215 dated 4 December 2017, p. 9. *Note* that P-0172 did not specify what she heard the men say that could have identified them as FDS.

²⁶³⁵ Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2004-236 du 22 mars 2004 portant réquisition des Forces Armées Nationales, 22 March 2004, CIV-OTP-0074-0238 (confidential) at 0240.

prohibiting all marches and demonstrations in public roads and spaces.²⁶³⁶ On the basis of this evidence, it is possible to conclude that Mr Gbagbo had, at the relevant time in 2004, prohibited all public demonstrations, which included the G-7 march planned for 25 March 2004. However, it cannot be established on the evidence that the purported crimes against political demonstrators in 2004 were connected with instructions given by Mr Gbagbo.

1156. While it appears that civilians were killed or injured on 25 March 2004, there is no clarity as to what exactly happened on this occasion. Even if there were sufficient evidence that the perpetrators of these crimes were FDS officials, there is still no detailed information on record as to the way in which the FDS conducted the operation on that occasion and especially why they opened fire. No reasonable trial chamber could, on the basis of the abovementioned evidence, conclude that Mr Gbagbo instructed the violent repression of the March 2004 demonstration, nor that his prohibition thereof was intended to signal ‘to his commanders to deploy armed units against demonstrators opposed to his politics’.²⁶³⁷

1157. There is thus no sufficiently detailed and reliable evidence that in the years before the post-electoral crisis, the FDS used violence against demonstrators

²⁶³⁶ Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2004-236 du 22 mars 2004 portant réquisition des Forces Armées Nationales, 22 March 2004, CIV-OTP-0074-0238 (confidential) at 0239. *Note* that the remainder of the available information in this regard is provided by the UN Commission of Inquiry report, based on anonymous hearsay. According to the report, the planned G-7 march was announced on 17 March 2004 and on 18 March 2004, Mr Gbagbo adopted the decree prohibiting public demonstrations (Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0243, paras 16-17). *Note* it is not clear what this claim is based on, as both decree no. 2004-236 and the Commission of Inquiry report itself refer to decree no. 2004-210 as ‘*le décret du 11 mars*’ (Annex to the Request for Assistance OTP/CIV/OHCHR-2a-i/JCCD-afrr / Décret no. 2004-236 du 22 mars 2004 portant réquisition des Forces Armées Nationales, 22 March 2004, CIV-OTP-0074-0238 (confidential) at 0239; Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0243, para. 17. The report further maintains that Mr Gbagbo issued instructions in a meeting with the prime minister, the ministers of defence and internal security as well as the heads of the Police, *Gendarmerie* and FANCI to prepare a security dispositive ‘capable of handling any kind of threat as well as of preventing all forms of demonstration’ (Lettre datée du 12 mai 2004, adressée au Président du Conseil de Sécurité par le secrétaire général / S/2004/384, 13 May 2004, CIV-OTP-0052-0238 at 0244, para. 24).

²⁶³⁷ Response, para. 1219.

taking part in marches organised by Mr Gbagbo's opponents without cause. Therefore, no inference can be drawn that it would have been sufficiently foreseeable that the FDS would commit crimes as a result of the prohibition of the RTI march on 16 December 2010.

(ii) The deployment of armed personnel to face unarmed demonstrators

1158. The Prosecutor also suggests that Mr Gbagbo would have predicted that the prohibition of the RTI march would – in the ordinary course of events – bring about the commission of crimes, in light of the fact that ‘armed forces were deployed on the ground to face unarmed civilian demonstrators’.²⁶³⁸ This argument is unpersuasive. It is also premised on a misrepresentation of the evidence. According to the available evidence, the armed forces were not primarily deployed ‘to face’ the demonstrators, but to protect strategic positions. It is important to bear in mind, in this regard, that there were armed troops inside Abidjan that could have posed a threat.

1159. In addition, a point that the Prosecutor seems to ignore is that it can be noted at the very least the FDS had reasons to believe there would be armed opposition amongst the demonstrators. In this regard, reference is made to the FDS deaths that occurred on the day of the march (16 December 2010) and FDS intelligence pertaining to the march, the evidence of which will be set out below.

1160. General Guiai Bi Poin testified that during the debriefing at the *état-major* on 16 December 2010 after the operation, the DGPN informed that six or seven FDS individuals had died; some were killed in troop transport vehicles with anti-tank rockets in Abobo.²⁶³⁹ The testimony of P-0330, described in section VI.H.1.a),

²⁶³⁸ Response, paras 1890, 1900.

²⁶³⁹ P-0010, T-139 dated 29 March 2017, pp. 39-45.

also suggests that individuals dressed in civilian attire shot live ammunition at the FDS in PK18 close to the Anonkoua-Kouté primary school.²⁶⁴⁰

1161. A status report of the *Gendarmerie Départementale* regarding the events of the day until 18h00 lists six FDS individuals that were killed (three Police officers and three members of the Army) as a result of the street demonstrations called upon by the RHDP.²⁶⁴¹
1162. Several documents make reference to Police officers killed at PK18. A list of victims of the RHDP march issued by the Police noted that at 9h a Sergeant of FANCI Tagro Sery Raphaël was killed during clashes with demonstrators in Abobo PK18.²⁶⁴² It lists three further FDS casualties in the same location by bullets, namely Sergeants Touré Seniman, Yao Bi Houa, and Yada Blessi Jean-Baptiste. Regarding the latter two it is specified that the perpetrators were demonstrators.²⁶⁴³ A Police report signed by Inspector General Bredou M'Bia, also reports on the deaths of these three individuals in said location, and similarly states that they were shot by RHDP demonstrators.²⁶⁴⁴ Finally, a document issued by the *préfet*, Djehannin Bi Tra, notes that on 16 December 2010 at 10h at PK18, a clash with demonstrators caused the death of three Police

²⁶⁴⁰ P-0330, T-68 dated 1 September 2016, pp. 68, 72.

²⁶⁴¹ JOURNEE DU: 16/12/2010 A 18 HEURES, 16 December 2010, CIV-OTP-0043-0334 (confidential) at 0334-0335. *Note* that it is unclear how the report came to the number for the conclusion of the events of the day, since further up, it registers the killing of six FDS and, two CRS members, which amounts to eight. More specifically, it contains an entry that at 11.45h, three FDS members died in a building in Abobo Agripac because the building was put on fire by armed demonstrators. Regarding the members of the *Bataillon du Génie*, it specifies that they were killed at 14.50h in Cocody by unknown individuals inside a 4x4 vehicle. In addition, the report also contains an entry, stating that at 14.00h non-identified individuals inside a 4x4 vehicle in Abobo, Dépôt 9, opened fire, which resulted in the death of two CRS members.

²⁶⁴² LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1161. *See also* RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0514.

²⁶⁴³ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1157-1158.

²⁶⁴⁴ Policiers tués au cours des interventions de la gestion de la crise postélectorale à Abidjan et à l'intérieur du pays, undated, CIV-OTP-0045-0975 (confidential) at 0976. *See further* RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0514.

officers. Regarding this incident, the document further states that two other Police officers were abducted (*enlevés*) and three soldiers were abducted and burnt alive.²⁶⁴⁵

1163. A Police Report signed by *Commissaire Principal de Police* Claude Yoro dated 16 December 2010 notes that on that day in the 32^e *arrondissement* of the *district de Police d'Abobo*, a group of demonstrators armed with guns was intercepted and taken to the *Préfecture de Police d'Abidjan*. The report also states that at 9h25 CECOS fired on armed demonstrators at the Adjamé *mairie*.²⁶⁴⁶

1164. Further, the FDS had additional reasons to believe that there would be armed opposition amongst the demonstrators. In this respect, P-0330 elaborated on why he thought that the march was prohibited: 'According to intelligence, FAFN troops had infiltrated the area and there was fear that those demonstrations could be used by the FAFN to take over the RTI.'²⁶⁴⁷ A report from the Ministry of Interior to the DGPN dated 15 December 2010 indeed contains information that, according to 'well informed sources', three insurrectional marches were planned, for the 16, 17 and 20 December 2010, respectively, with the objectives to install a new General Director at the RTI, Mr Guillaume Soro as Prime Minister, and finally Mr Alassane Ouattara as President. With regard to the first two marches, it is specified that the strategy was going to consist in placing militia in the front of the march, supported by armed FAFN elements in civilian clothing, and in putting maximum pressure on the FDS so that they would use their weapons.²⁶⁴⁸

²⁶⁴⁵ BQI No. 249 DU JEUDI 17 DECEMBRE 2010, 17 December 2010, CIV-OTP-0045-0735 (confidential) at 0737.

²⁶⁴⁶ Bulletin quotidien d'information N028, 16 December 2010, CIV-OTP-0045-0729 (confidential) at 0729-0730.

²⁶⁴⁷ P-0330, T-68 dated 1 September 2016, p. 55.

²⁶⁴⁸ BULLETIN QUOTIDIEN D'INFORMATION No. 136 / De la situation à Tiebissou stop / A/S: Du départ des manifestants de Mars pour Abidjan stop, 15 December 2010, CIV-OTP-0045-0451 (confidential).

1165. This evidence thus points to the FDS having had reasons to believe there would be armed opposition amongst the demonstrators at the RTI march.

c) Dissemination of instructions through the FDS before the RTI march

1166. According to the Prosecutor, at some point before 16 December 2010, Mr Gbagbo decided that the RTI march should be repressed and instructed the FDS accordingly. In her narrative, the Prosecutor emphasises that Mr Gbagbo's orders to that effect were converted into operational instructions that went through the regular chain of command of FDS. In her Mid-Trial Brief the Prosecutor stated that:

As with any hierarchical structures, orders and instructions were disseminated by FDS leadership down the chain of command. Commanders issued orders and instructions to personnel in advance of patrols and operations. [...] Those involved in issuing instructions operated at the highest level of the FDS, including the CEMA and CECOS commander Bi Poin. Inevitably, those instructions were based on orders given by GBAGBO as President and supreme commander, such as instructions that the RTI march was to be prohibited and prevented [...].²⁶⁴⁹

1167. In the Response, the Prosecutor elaborates further on the claim that orders emanating from Mr Gbagbo circulated in the FDS and ultimately led to the operation to block the RTI march. Accordingly, the Prosecutor states that:

[t]his use of violence to maintain Mr Gbagbo in power was conveyed through the actions and words of Mr Gbagbo, and members of the Inner Circle [...] The FDS received instructions from Mr Gbagbo that the 16 December 2010 march was prohibited and should not take place. This instruction was disseminated by Mr Gbagbo's Minister of Interior and the Minister of Defence to prohibit the march, leading to an operation to block it.²⁶⁵⁰

1168. Taken as a whole, the Prosecutor therefore alleges that Mr Gbagbo gave orders to the Minister of Interior and Minister of Defence to prohibit the march and they subsequently disseminated these instructions through the ranks of the FDS.

²⁶⁴⁹ MTB page 270 paras- 674-675.

²⁶⁵⁰ Response para. 1109 (iv). *See also* Mid-Trial Brief, para. 343; Response, para. 1146.

1169. The evidence upon which the Prosecutor relies to allege that there was an instruction emanating from Mr Gbagbo to repress the RTI march has been cited above, that is, General Mangou's testimony and the Residence Logbook. General Mangou testified that during a meeting at the Presidential Residence on 14 December 2010 he and others received instructions from Mr Gbagbo that the march be forbidden.²⁶⁵¹ It is recalled that according to the Prosecutor, an undated page of the Residence Logbook corroborates General Mangou's evidence but indicates the meeting to which General Mangou alluded actually occurred in the night of 15 December 2010.²⁶⁵²

1170. When it comes to the second element of the abovequoted contention of the Prosecutor, concerning the dissemination of Mr Gbagbo's instruction, the only evidence available is from General Mangou's testimony. This relates to General Mangou's account that he was informed about the march by a *communiqué* from the Minister of Interior and that in a meeting with the Minister of Defence he was told that the march was prohibited by the government.²⁶⁵³ In his testimony, General Mangou said that it was through the *communiqué* from the Minister of Interior that he first became aware that a march was being planned by the opposition 'to install the director general of the RTI'.²⁶⁵⁴ Therefore, the

²⁶⁵¹ Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential); *See* Annex D, Visitors at Presidential Residence ICC-02/11-01/15-1136-Conf-AnxD 19-03-2018. There are inconsistencies between the information in the document and General Mangou's description of the meeting with Mr Gbagbo. General Mangou stated that the persons present at the meeting were Generals Kassaraté, Dogbo Blé, Bredou M'Bia, Detoh Letho and Aka, as well as other people (civilians). P-0009, T-196 dated 28 September 2017, pp. 10-11. According to the logbook, in addition to Generals Kassaraté and Bredou M'Bia, the attendees were the Minister of Defence Alain Dogou and the Minister of Foreign Affairs Alcide Djédjé. Generals Detoh Letho, Dogbo Blé and Aka do not appear in the log (Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0475-0476, transcript at CIV-OTP-0088-0863 (confidential) at 1009-1010. For a more detailed discussion, *see* V.B.1.a) - 'Coordination meetings', paras. IV.D.2.d)(1)-1142.

²⁶⁵² Mid-Trial Brief, para. 344; Response, paras. 1575, 1578.

²⁶⁵³ P-0009, T-196 dated 28 September 2017, pp. 3-5: 'Q: Can you tell me who told you personally that the march was prohibited? A: I said that it was a communiqué of the minister of the interior. And we ourselves, we had a meeting with the minister of defence, and he informed us that a march was prohibited by the government'. P-0009, T-196 dated 28 September 2017, p. 5. *Note* that in his testimony, General Mangou never said that instructions were included in the *communiqué* of the Minister of Interior or issued in the meeting with the Minister of Defence.

²⁶⁵⁴ P-0009, T-196 dated 28 September 2017, p. 3.

communiqué of the Minister of Interior presumably pre-dated the meeting General Mangou attended during which Mr Gbagbo purportedly issued the instruction that the march be prohibited.

1171. It is noted, however, that there are points of unclarity in General Mangou's testimony which allow for an alternative reading of this evidence. In this regard it is recalled that General Mangou mentioned three sources of information in relation to the march and its prohibition: the Minister of Interior and his *communiqué*, the Minister of Defence (who told him during a meeting that the march had been forbidden) and Mr Gbagbo (who held a meeting at the Presidential Residence in which General Mangou received instructions to the same effect). It is not entirely clear from General Mangou's testimony that he received the *communiqué* of the Minister of Interior in a different circumstance from that in which the Minister of the Defence told him that the march had been forbidden by the government.²⁶⁵⁵ General Mangou's testimony also does not exclude the possibility that the meeting with the Minister of the Defence he referred to is the same meeting at the Presidential Residence convened by Mr Gbagbo on 14 or 15 December 2010. Thus, it is possible that all three notifications or instructions were given to General Mangou on the same occasion.²⁶⁵⁶

1172. In any case, there is no evidence that the specific security arrangements in place on 16 December 2010 were based on orders given by Mr Gbagbo.²⁶⁵⁷ Although General Mangou confirmed that he received instructions from Mr Gbagbo during

²⁶⁵⁵ Note that General Mangou did not say who told the Minister of Defence that the march had been forbidden nor has he given details in relation to this meeting.

²⁶⁵⁶ Note that according to the logbook, the Minister of Defence was present in the meeting with Mr Gbagbo on 14/15 December 2010. See Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0476, transcript at CIV-OTP-0088-0863 (confidential) at 1012.

²⁶⁵⁷ See V.B.1.a) - 'Coordination meetings', paras. IV.D.2.d)(1)-1142.

the post-electoral crisis,²⁶⁵⁸ he did not mention any specific instruction from Mr Gbagbo in the context of the security plan for the RTI march.²⁶⁵⁹ The DGPN, Inspector-General Bredou M'Bia, did not mention having received specific instructions in preparation for the repression of the march either. The witness further testified that 'we didn't have any preparations. However, we did get a wind of an event and we couldn't remain there with our arms crossed. So we took measures that if the march did take place, we would be in a position to take measures.'²⁶⁶⁰ Also, whereas General Guiai Bi Poin testified that Inspector-General Bredou M'Bia and General Mangou would normally receive instructions from their superiors, he did not know the content and nature of the orders they supposedly received in connection with the security arrangements for 16 December 2010.²⁶⁶¹ General Kassaraté, for his part, testified that FDS commanders in the field received instructions from the staff headquarters through the CPCO to deploy elements to secure the RTI.²⁶⁶²

2. *The FDS operation*

1173. The Prosecutor seems to contend that a connection between the Common Plan and the FDS operation to block the RTI march can be inferred in light of the security arrangements that were put in place on 16 December 2010. This subsection analyses the relevant evidence connected with the FDS operation.

²⁶⁵⁸ P-0009, T-193 dated 56 September 2017, p. 24. This was expected since, according to the Ivorian Constitution, the President is the supreme commander of the armed forces and was thus General Mangou's direct superior. P-0009, T-193 dated 26 September 2017, pp. 24-25; P-0010, T-138 dated 28 March 2017, pp. 13-14.

²⁶⁵⁹ It is noted that General Mangou testified that the security arrangements were put in place very early in the morning of 16 December 2010 (by 06.00h the men were already at their positions) (P-0009, T-196 dated 28 September 2017, p. 18). However, he did not specify how these arrangements were made and it is unclear from his testimony whether that was the usual FDS procedure in such circumstances.

²⁶⁶⁰ P-0046, T-125 dated 17 February 2017, p. 35.

²⁶⁶¹ P-0010, T-139 dated 29 March 2017, pp. 15-18.

²⁶⁶² P-0011, T-135 dated 14 March 2017, pp. 59-60.

a) Command and control of the FDS operation

1174. A significant part of the Prosecutor's case in this regard relies on the alleged close connection that Mr Gbagbo had with FDS high commanders heading the operation in the field. To assess this aspect of the Prosecutor's theory, it is imperative to first establish who was in charge of this operation, and then examine the alleged connection with the accused.
1175. The evidence provided by the witnesses' testimonies fails to provide a clear picture of the operational command structure of the FDS operation on 16 December 2010. According to General Mangou, the Police was responsible for handling the crowd, 'those who were marching'.²⁶⁶³ General Mangou's testimony that the DGPN (*Directeur Général de la Police Nationale*), Inspector-General Bredou M'Bia, was in charge of operations received corroboration from General Guiai Bi Poin.²⁶⁶⁴ Inspector-General Bredou M'Bia, for his part, testified that the person in charge of operations on that day was Divisional Commissioner Benoît Djehanin Bi Tra, the *préfet* of the Abidjan Police, as was always the case for law enforcement operations in Abidjan.²⁶⁶⁵
1176. In some parts of his testimony, General Mangou emphasised that the missions of the Army and that of the Police were different and that their respective operations were entirely separate from one another.²⁶⁶⁶ In contrast, General Kassaraté did not distinguish between the Army operation and the Police operation in his testimony and stated that the chief of operations was General

²⁶⁶³ P-0009, T-196 dated 28 September 2017, pp. 16-17.

²⁶⁶⁴ P-0010, T-139 dated 29 March 2017, pp. 11-12.

²⁶⁶⁵ P-0046; T-125 dated 17 February 2017, pp. 55-56; P-0046, T-123 dated 15 February 2017, p. 33.

²⁶⁶⁶ P-0009, T-196 dated 28 September 2017, pp. 13-16.

Detoh Letho, who reported to General Mangou.²⁶⁶⁷ General Detoh Letho was not questioned on this point.

1177. Some aspects of the relevant testimonies seem inconsistent, incoherent or contradictory. For instance, while General Mangou maintained in his testimony that he was unfamiliar with the Police operation, General Guiai Bi Poin testified that General Mangou received an outline of the Police operational plan in which the DGNP 'expressed his needs in terms of resources, human resources, equipment, vehicles to the chief of general staff', General Mangou.²⁶⁶⁸ Even General Mangou seemingly contradicted himself when he said in his testimony that anything relating to the RTI fell under the authority of the army.²⁶⁶⁹ Furthermore, General Mangou testified that he did not have contact with the DGNP during the day of the RTI march²⁶⁷⁰ but according to General Guiai Bi Poin this is not true.²⁶⁷¹

1178. It is possible that there were numerous people in control of (different aspects of) the operation. Nevertheless, on the basis of the evidence available, it is not possible to ascertain who was heading the operation on the ground.

b) The nature and purpose of the FDS operation

1179. There can be little doubt that the significance of the RTI in Ivorian politics and the prevailing circumstances in Abidjan after the second round of elections in

²⁶⁶⁷ P-0011, T-136 dated 16 March 2017, pp. 49-50; *Note* that General Mangou also said that the Army section of the operation was under the command of General Detoh Letho who was based at the command post at the general staff with the strategic points of the operation were the RTI and the Golf (P-0009, T-196 dated 28 September 2017, pp. 16-17). The contradiction between the testimonies is that General Kassaraté described the operation as one, and not divided into two independent elements – the Army and the Police – as General Mangou did.

²⁶⁶⁸ P-0010, T-139 dated 29 March 2017, pp. 11-12.

²⁶⁶⁹ P-0009, T-196 dated 28 September 2017, pp. 13-15.

²⁶⁷⁰ P-0009, T-196 dated 28 September 2017, pp. 19, 22.

²⁶⁷¹ P-0010, T-139 dated 29 March 2017, p. 19.

2010 played a significant role in shaping the character and purpose of the FDS operation on 16 December 2010. It is important to note, in this regard, that General Mangou testified that the RTI constituted a ‘strategic point’ since it had been ‘a target during all attempted *coups d’état*, and once the RTI is taken, the messages can be conveyed through that channel. So it’s a very strategic point. And it is always under guard’.²⁶⁷² Moreover, General Mangou in his testimony mentioned that the RTI was attacked by the rebel forces in 2002 during the attempted *coup d’état*.²⁶⁷³ In this respect General Mangou also testified that ‘[w]hen they attacked the RTI, the Defence and Security Forces succeeded in pushing them back to central Côte d’Ivoire, and from that point on those forces took up position and started fighting against them.’²⁶⁷⁴ Also according to General Kassaraté, the RTI building has been guarded since 1960.²⁶⁷⁵

1180. Generals Mangou, Guiai Bi Poin, Kassaraté and Inspector-General Bredou M’Bia described the measures adopted to prevent RHDP demonstrators from reaching the RTI building. According to General Mangou, the Police was responsible for the crowd management and were the ones ‘in contact with those who were marching’, using ‘conventional measures’.²⁶⁷⁶ He further testified that in addition to the Police operation, ‘military arrangements’ were put in place. With regard to the military’s objective, he specified that they ‘did not have contact with those who were marching. We set up these arrangements at strategic locations for the

²⁶⁷² P-0009, T-200 dated 5 October 2017, p. 24.

²⁶⁷³ P-0009, T-198 dated 3 October 2017, p. 28.

²⁶⁷⁴ P-0009, T-198 dated 3 October 2017, p. 28.

²⁶⁷⁵ P-0011, T-134 dated 13 March 2017, p. 12. *Note* too that witness P-0625 in his testimony also mentioned the strategic importance of the RTI. According to P-0625, in Côte d’Ivoire ‘if you lead a *coup d’état* and you are able to take over the RTI, and you make your announcement, you become the president of the country, that’s what happens. So the RTI came under several incidents of attack’. P-0625, T-26 dated 8 March 2016, p.66.

²⁶⁷⁶ P-0009, T-196 dated 28 September 2017, pp. 16-17.

following purpose: One, to dissuade those who were marching; two, to ensure that people from outside Abidjan did not infiltrate the area.²⁶⁷⁷

1181. General Mangou gave a detailed description of the FDS arrangements surrounding the RTI headquarters.²⁶⁷⁸ General Kassaraté testified that the Chief of Staff, General Mangou, deployed troops in a concentric structure to secure the RTI and prevent marchers from reaching it. He further stated that the *Gendarmerie*, Police and army were deployed, with reserve elements stationed at the *Gendarmerie* academy which was located close to the RTI.²⁶⁷⁹

1182. According to General Guiai Bi Poin, during the meeting at the *état-major* which was held in preparation for the RTI march, Inspector-General Bredou M'Bia stated that the security forces had to prevent the occupation of public buildings, disperse gatherings of people in the streets, and ensure their barracks were secure.²⁶⁸⁰ He testified that they would reinforce sensitive locations to protect the RTI and have troops positioned there to isolate the RTI building from demonstrators.²⁶⁸¹ General Guiai Bi Poin also mentioned that in addition to the surroundings of the RTI, the Police and CECOS reinforced the Plateau as this was the main business area of Abidjan. Furthermore, there were other locations to be occupied by the FDS across Abidjan, such as Cocody, Abobo and Adjamé.²⁶⁸²

1183. Inspector-General Bredou M'Bia testified that the arrangements in preparation for the RTI march were made as part of the Police's regular law enforcement

²⁶⁷⁷ P-0009, T-196 dated 28 September 2017, p. 16.

²⁶⁷⁸ P-0009, T-196 dated 28 September 2017, pp. 13-15.

²⁶⁷⁹ P-0011, T-135 dated 14 March 2017, pp. 59-60.

²⁶⁸⁰ P-0010, T-139 dated 29 March 2017, pp. 12-13.

²⁶⁸¹ P-0010, T-139 dated 29 March 2017, pp. 15-16.

²⁶⁸² P-0010, T-139 dated 29 March 2017, pp. 10-15. *See also* Exhibit 3, Carrefour St Jean, Abidjan, undated, CIV-OTP-0007-0039 (confidential). This map was shown to General Guiai Bi Poin during his testimony. He identified the four intersections around the RTI as points where the DGPN had planned to station his troops in order to isolate the RTI from demonstrators.

missions.²⁶⁸³ Moreover, it is also of note that *Gendarmerie* Supreme Commander General Kassaraté testified that before the post-electoral crisis the security of the RTI building had been the responsibility of the *Gendarmerie* but during the events,²⁶⁸⁴ when violence erupted, the Police and the Army were also assigned to provide reinforcement.²⁶⁸⁵ In the specific occasion of the march, the Police was deployed with assistance of the *Gendarmerie*.²⁶⁸⁶ According to General Kassaraté, this was a normal reaction due to the sensitiveness of the location.²⁶⁸⁷ General Kassaraté confirmed that the involvement of CECOS was normal in such cases, as all security missions ordered by the general staff included CECOS.²⁶⁸⁸

1184. The evidence connected to the allocation of troops provides no indication that the purpose of these arrangements was the commission of crimes against RHDP demonstrators.²⁶⁸⁹ The foregoing also demonstrates that the FDS security plan for the RTI march on 16 December 2010 was devised by the competent authorities according to regular procedure.

²⁶⁸³ P-0046, T-125 dated 17 February 2017, pp. 45, 55.

²⁶⁸⁴ Note that according to the original French transcript, General Kassaraté used both wordings ‘during the crisis’ and ‘during the events’ in this context (P-0011, T-134 dated 13 March 2017 (French), p. 12). As such, it appears that the witness was referring to the post-electoral crisis generally rather than to the RTI march specifically.

²⁶⁸⁵ P-0011, T-134 dated 13 March 2017, pp. 14-19 .

²⁶⁸⁶ P-0011, T-134 dated 13 March 2017, p. 13.

²⁶⁸⁷ P-0011, T-134 dated 13 March 2017, pp. 12-13. Note that General Mangou also testified that the RTI was under guard even in normal times, given that it constitutes a strategic target (P-0009, T-200, p. 24).

²⁶⁸⁸ P-0011, T-134 dated 13 March 2017, pp. 26-27 Note that he specified that he did not know whether CECOS was on the ground during the march of the 16 December 2010, since he himself was not on the ground on that day. He however testified that he knows that they were at the very least on standby at the *Gendarmerie* Academy on that day. P-0011, T-136 dated 16 March 2017, pp. 5-6.

²⁶⁸⁹ It is noted that in the Mid-Trial Brief the Prosecutor asserts that ‘the FDS were to be deployed around the RTI and other Abidjan neighbourhoods and were to prevent access to the RTI’ (Mid-Trial Brief, para. 344). This general description of the manner in which the FDS was organised in the repression of the RTI march seems to reflect the evidence. However, it is not clear why the Prosecutor believes that this information and evidence could advance her case.

c) Instructions given to the FDS during the march

1185. The Prosecutor alleges that on 16 December 2010, Mr Gbagbo was kept abreast of the situation on the ground through communications with his subordinate commanders who reported to him during the operations. The Prosecutor bases her contention in this respect on evidence given by General Mangou.²⁶⁹⁰ Although the Prosecutor portrays this as a general practice, there is no evidence of other FDS officials regularly reporting to Mr Gbagbo during the march.²⁶⁹¹

1186. According to the evidence, General Mangou spoke to Mr Gbagbo during the operation once and this was in relation to the clashes at the Golf Hotel rather than the RTI march as such.²⁶⁹² On this occasion, General Mangou also reported to Mr Gbagbo on FDS deaths that had resulted from the clashes between troops at the Golf Hotel.²⁶⁹³ General Mangou testified that he did not report on civilian deaths among the demonstrators at that time, since he had not yet received information on the issue.²⁶⁹⁴ It was only when the operation had finished that

²⁶⁹⁰ Response, para. 590.

²⁶⁹¹ Mid-Trial Brief para. 674. *See* on this subject, General Guiai Bi Poin's statements that there was a debrief meeting at the Army staff headquarters at the end of the afternoon of 16 December 2010. According to General Guiai Bi Poin, the DGPN reported on the operation that had unfolded on the day. He gave them a list of various incidents that had occurred on various locations, the number of people who had been killed within law enforcement. There were approximately six or seven deaths recorded – some were killed in their troop transportation vehicles, killed with anti-tanks rockets, and they were completely burnt alive and some in their vehicles in Abobo. General Guiai Bi Poin said that the DGPN also talked about civilian deaths and about demonstrators being armed: '[the DGPN] mentioned the fact that with regard to civilian deaths we had to be very careful, because the individual that we deemed to be civilians are, generally speaking, armed. There are no distinctive signs, but they are armed according to the information that he had got back from people on the ground' (T-139 dated 29 March 2017, pp. 39-40).

²⁶⁹² *Note* that General Mangou testified that he contacted Mr Gbagbo on the day of the RTI march at around 11.00h and discussed the clashes at the Golf Hotel. It follows from General Mangou's account that his forces could have advanced towards the Golf Hotel but he received a call from General Palasset, commander of the *Licorne* forces, warning him that deployment of his men would amount to a declaration of war against France. General Mangou informed Mr Gbagbo of this and the President confirmed that the security forces should hold their positions and not advance (P-0009, T-196 dated 28 September 2017, pp. 20-22. *See also* V.A - Blockade of the Golf Hotel.

²⁶⁹³ P-0009, T-196 dated 28 September 2017, pp. 20-22.

²⁶⁹⁴ General Mangou testified that during the march he was not informed about the death of civilians because he had no contact with the DGPN. P-0009, T-196 dated 28 September 2017, pp. 19, 22. *Note*, however, that this contradicts P-0010's testimony to the effect that during the operation the DGPN informed General Mangou that some of his arrangements had been breached. P-0010, T-139 dated 29 March 2017, p. 19).

General Mangou reported to Mr Gbagbo that there had been civilian casualties.²⁶⁹⁵ Therefore, the Prosecutor's allegation that General Mangou had been reporting on FDS and civilian casualties to Mr Gbagbo throughout the day is unsupported.²⁶⁹⁶

1187. In the Response, the Prosecutor states that '[i]n regards to the march, Witness P-0009 [General Mangou] called Mr Gbagbo at about 12h00 to report the "déroulement de la marche", including the death of civilians and policemen'.²⁶⁹⁷ This proposition is based on General Mangou's previously recorded statement but during his testimony General Mangou clarified that he only made such a report after the march had ended.²⁶⁹⁸

1188. The Prosecutor also seems to contend that, while the march was unfolding, members of the 'inner circle' communicated amongst themselves to orchestrate the attack on civilians and, with this purpose, gave orders FDS units on the ground.²⁶⁹⁹ Yet, the evidence only shows communications characteristic of law enforcement authorities facing a situation of crisis.

1189. General Guiai Bi Poin provided an account in his testimony that illustrates the manner in which these exchanges happened both among 'inner circle'/high command and lower level officials on 16 December 2010. He testified that towards the end of the morning of 16 December 2010, Inspector-General Bredou M'Bia informed General Mangou that some of their security barriers had been breached at the Agban barracks roundabout and that the demonstrators were advancing towards the RTI.²⁷⁰⁰ In response, General Mangou 'looked around and

²⁶⁹⁵ P-0009, T-196 dated 28 September 2017, p. 24.

²⁶⁹⁶ Response, para. 1581.

²⁶⁹⁷ Response, para. 590.

²⁶⁹⁸ See V.B.1.a) - 'Coordination meetings', paras. 1144-1147.

²⁶⁹⁹ Response, paras 411, 1441.

²⁷⁰⁰ P-0010, T-139 dated 29 March 2017, pp. 19-20. *Note* that this contradicts General Mangou's testimony that he had no contact with the DGPN during the march. (P-0009, T-196 dated 28 September 2017, pp. 19, 22).

found that there was no unit at the *carrefour de la Vie* to stop the demonstrators if they got there'.²⁷⁰¹ General Mangou then called General Guiai Bi Poin and told him to 'promptly deploy people to block off the *carrefour de la Vie*, because apparently demonstrators were going to pass by', which was what General Guiai Bi Poin then did. General Guiai Bi Poin testified that he instructed a CECOS detachment from the *Gendarmerie* school to quickly move to that location and block the roundabout.²⁷⁰²

1190. The Prosecutor also submitted evidence of radio communications between FDS commanders on the field. This relates to the notes taken by [REDACTED].²⁷⁰³ According to this evidence, at 08h42 Principal Commissioner Yoro²⁷⁰⁴ received information that the Police had been fired upon²⁷⁰⁵ and in response, Principal Commissioner Yoro instructed them to '*rentrer dans la foule*' (translated as 'charge against the crowd').²⁷⁰⁶ Another entry in P-0045's notes shows that the

²⁷⁰¹ P-0010, T-139 dated 29 March 2017, p. 19.

²⁷⁰² P-0010, T-139 dated 29 March 2017, pp. 19-20.

²⁷⁰³ Annex 6 / AC-Base, 16 December 2010, CIV-OTP-0005-0031 (confidential). In the notes, which the Prosecutor submitted into evidence, P-0045 wrote down the information as he heard it, reproducing orders that had been given with code names. The code names identifying the persons sending and receiving the orders [REDACTED] are shown in a DGNP document dated 2 January 2012 (Execution de la requisition Judiciaire relative, undated, CIV-OTP-0012-0254 (confidential)) and a Ministry of Interior correspondence of 30 December 2011 (Requisition judiciaire relative, undated, CIV-OTP-0012-0256 (confidential)).

²⁷⁰⁴ Note that in accordance with the DGNP correspondence identifying the codenames and their respective individuals it is stated that the codename used to refer to Claude Yoro was 'Sandrak' (Execution de la requisition Judiciaire relative, undated, CIV-OTP-0012-0254 (confidential) at 0254). In the notes taken by P-0045, the relevant codename is written as 'Cendrac' (Annex 6 / AC-Base, 16 December 2010, CIV-OTP-0005-0031 (confidential) at 0031). The Prosecutor affirms that these both relate to the same codename and therefore referred to Yoro. See footnote 1070 Mid-Trial Brief: 'P-0045's spelling "Cendrac" is phonetic, whereas police document issued after the conflict spells it "Sandrak"'. As the radio network in which the message was sent was that used by the Police, and P-0045 took the notes while he was listening to the radio communication, it is indeed most likely that 'Cendrac' was 'Sandrak' as understood by him.

²⁷⁰⁵ The information came from the Police themselves.

²⁷⁰⁶ The relevant entry states that 'according to police, they had been fired upon. Cendrac gave the order to '*rentrer dans la foule*' (Annex 6 / AC-Base, 16 December 2010, CIV-OTP-0005-0031 (confidential) at 0031; P-0045, T-118 dated 8 February 2017, p. 49). Note that when P-0045 was asked about the meaning of *rentrer dans la foule*, P-0045 replied that it could mean many things, but in his view 'it did not mean "go and caress [someone]"'. P-0045, T-119 dated 9 February 2017, p. 56.

CRS I commander, Commissioner Djédjé Gbagro,²⁷⁰⁷ gave orders on the Police network to ‘push back all the pedestrians throughout the city, in particular at the PDCI building and any other sector’²⁷⁰⁸ and at 08.23h told his troops to ‘*rentrer énergiquement*’ into all groups moving forward.²⁷⁰⁹ P-0045 also took note of an order transmitted on the *Gendarmerie* network at 08.32h in which a person with the codename of ‘Faucon Vicky’²⁷¹⁰ ordered that only conventional means be used to disperse demonstrators and that the elements must not fire their Kalashnikovs in the air for that purpose.²⁷¹¹

1191. The communications discussed cannot be understood as orders to commit crimes against the civilian population. As mentioned in the subsection above, one of the aims of the FDS mission was to prevent and disperse gatherings of people in the areas surrounding the RTI; the orders transmitted through radio communications are consistent with the implementation of this plan. On the basis of these communications, it cannot be concluded that the FDS mission had the purpose of attacking demonstrators.

²⁷⁰⁷ The person using the codename ‘Nimbus’ in P-0045’s notes was Djédjé Gbagro in accordance with the DGNP document: Execution de la requisition Judiciaire relative, undated, CIV-OTP-0012-0254 (confidential) at 0254.

²⁷⁰⁸ The time at which this communication took place is not stated in the notes but P-0045 confirmed that it must have been between 07h45 and 07h50. P-0045, T-118 dated 8 February 2017, pp. 46-47.

²⁷⁰⁹ Annex 6 / AC–Base, 16 December 2010, CIV-OTP-0005-0031 (confidential) at 0031; P-0045; T-118 dated 8 February 2017, p. 46. *Note* another entry showing that CRSI commander Djédjé Gbagro gave orders to ‘clean’ the *Rue du Zoo* and again to ‘*rentrer franchement dans la foule*’ (Annex 6 / AC–Base, 16 December 2010, CIV-OTP-0005-0031 (confidential) at 0032). There is no time specified in the entry but P-0045 clarified in his testimony that it must have been between 09h15 and 09h34 in the morning (P-0045, T-118 dated 8 February 2017, p. 51). *Note also* that it is not known where the CRS I unit that received this order was deployed, but there is evidence of CRS I activity in Abobo PK18 (P-0330, T-68 dated 1 September 2016, pp. 60-61, 67) and at the Djéni Kobena intersection in Adjamé (Manifestations du RHDP et découverte de cadavres, 25 January 2011, CIV-OTP-0045-1413) during the 16 December operation.

²⁷¹⁰ This codename is not mentioned in the two documents which identify the codenames of Emmanuel Loba, Djédjé Gbagro and Claude Yoro. *Note* that according to P-0045 in the communications it was clear that call signs such as ‘Faucon’ were used by superior officers in the *Gendarmerie* (P-0045, T-118 dated 8 February 2017, pp. 39-40).

²⁷¹¹ Annex 6 / AC–Base, 16 December 2010, CIV-OTP-0005-0031 (confidential) at 0031; P-0045, T-118 dated 8 February 2017, pp. 48-49.

1192. It is worth adding that the evidence provided by P-0045 rebuts the presumption expressed in the Prosecutor's briefs that all actions of the FDS on the ground reflected orders given by superiors in the chain of command. In particular, P-0045 noticed that when authorities in the *Gendarmerie* advised their troops to only use conventional methods, such messages were not well received by subordinates who sometimes even responded with insults.²⁷¹² Overall, absent evidence to the contrary, crimes attributed to the FDS during the operation cannot be said to have been committed in the pursuance of orders issued by superiors in command.

3. *Instructions given to irregular forces*

1193. The Prosecutor alleges that the pro-Gbagbo youth and the GPP received directions to participate in the repression of the march, although she does not assert that they were part of the security operation allegedly devised by Mr Gbagbo and his 'inner circle'. The instructions to militia and youth in the Prosecutor's narrative connect the acts of these irregular groups to the broader Common Plan, rather than to Mr Gbagbo's instructions specific to the RTI march.²⁷¹³ The relevant evidence will be discussed below.

a) **Mr Blé Goudé's mobilisation of *jeunes patriotes* to protect the RTI**

1194. The Prosecutor states that on 14 December 2010, two days before the march, Mr Blé Goudé called a meeting of youth leaders to mobilise *jeunes patriotes* to protect the RTI from demonstrators.²⁷¹⁴ The Prosecutor went on to claim that

²⁷¹² P-0045, T-118 dated 8 February 2017, pp. 40-41. *Note* that in the specific case of the *Gendarmerie*, P-0045 said, superior orders were often contested by subordinates. In contrast, the witness testified, the *Garde Républicaine* hierarchy had complete control over their network and there was no sign of insubordination (P-0045, T-118 dated 8 February 2017, pp. 79-80).

²⁷¹³ Mid-Trial Brief, paras 345-346; Response, paras 1118, 1143-1144.

²⁷¹⁴ Mid-Trial Brief, para. 345; Response, paras 565, 1118, 1143, 1370, 1405, 1800, 1803, 1943-1944, 1965.

‘[w]hen called to mobilise, the *Jeunes Patriotes* knew what to do: that is, to set up roadblocks’.²⁷¹⁵ In support of these allegations, the Prosecutor refers to the testimony of a *Galaxie Patriotique* youth leader known as ‘Sam l’Africain’.²⁷¹⁶

1195. According to ‘Sam l’Africain’, in the period before the march, Mr Blé Goudé convened a meeting at the town hall of Cocody ‘to inform us of the situation prevailing in the country, including the march’.²⁷¹⁷ ‘Sam l’Africain’ testified that the meeting to which the Prosecutor makes reference in this context was part of series of meetings that the leaders of pro-Gbagbo youth used to organise regularly during the post-electoral crisis.²⁷¹⁸ Importantly, ‘Sam l’Africain’ clarified that it ‘was not a meeting during which each leader had to make proposals and a decision would be taken.’²⁷¹⁹ Instead, the witness said they discussed the general situation in the country, including the RTI march, and they also discussed the mobilisation of the youth to defend their country.²⁷²⁰ ‘Sam l’Africain’ stated that in addition to himself and Mr Blé Goudé, there were ‘Navigué, Mian Augustin, the secretary general of FESCI, and many other people [including] Youssof Fofana, Zéguen Touré’.²⁷²¹

1196. When questioned by the Prosecutor on the strategy that was discussed during the meeting, the witness took issue with the Prosecutor’s use of the word ‘strategy’. According to him, there was no real strategy to be implemented. He said that if the word strategy was to be used, then their ‘strategy had always been very simple, namely, to mobilise Ivorians, mobilise the patriots’, those Ivorians who

²⁷¹⁵ Mid-Trial Brief, para. 345; *see also* Response, paras 1118, 1143, 1405.

²⁷¹⁶ Note that the witness’ name is Sam Mohamed Jichi (P-0625, T-25 dated 7 March 2016, p. 11).

²⁷¹⁷ -P-0625, T-27 dated 9 March 2016, p. 24.

²⁷¹⁸ P-0625, T-26 dated 8 March 2016 (public), pp. 70-71.

²⁷¹⁹ P-0625, T-27 dated 9 March 2016 (public), pp. 24, lns. 12-13, 46; *see also* P-0625, T-26 dated 8 March 2016, p. 70.

²⁷²⁰ P-0625, T-27 dated 9 March 2016, pp. 24, 46; P-0625, T-26 dated 8 March 2016, p. 70.

²⁷²¹ P-0625, T-27 dated 9 March 2016, p. 24; *see also* T-27 dated 9 March 2016, p. 46.

believed that their country had become a victim of injustice, and who thus came voluntarily to protect the RTI.²⁷²²

1197. In his testimony, ‘Sam l’Africain’ did not seem to agree with the suggestion that in the meeting the youth had been asked to erect roadblocks in explicit terms.²⁷²³ According to him the youth simply knew what to do to protect their nation.²⁷²⁴ In this regard, he explained that

people are in the habit of doing such things to go into the streets and defend their nation and set up [roadblocks]. But as to whether it was specified that we had to set up these [roadblocks] yes or no at the meeting, well, you know, when you say that people are taking the country by force and you’re requesting that people mobilise, then it is entirely normal for people to set up [roadblocks] and protect themselves.²⁷²⁵

1198. In addition, to ‘Sam l’Africain’s testimony about a meeting at Cocody town hall, the Prosecutor also relies upon a speech of 15 December 2010 by Mr Blé Goudé in which he addressed a large crowd.²⁷²⁶ In the first part of the speech, Mr Blé Goudé spoke about his role as minister for youth and employment. In the second part, he claimed that the UN and France were preparing a genocide in Côte d’Ivoire and that the UNOCI had become an occupying force. Mr Blé Goudé also branded the UN Special Representative in Ivory Coast, Mr Choi, and Guillaume Soro as rebels. Moreover, despite proclaiming that he was empty-handed and did not have any weapons, he asked the public to remain confident in their strength and declared that, although they wanted to live to see their country develop, they were also ready to die for this purpose.

²⁷²² P-625, T-27 dated 9 March 2016, pp. 45-46.

²⁷²³ Note that what is referred to as roadblocks here, are ‘corridors’ in P-0625’s terms (see T-27 dated 9 March 2016, p. 47).

²⁷²⁴ P-0625, T-27 dated 9 March 2016, p. 47. Note that P-0625 confirmed that the mounting of roadblocks by *jeunes patriotes* was usual practice in such circumstances in Côte d’Ivoire (P-0625, T-27 dated 9 March 2016, p. 48).

²⁷²⁵ P-625, T-27 dated 9 March 2016, p. 47.

²⁷²⁶ See IV.F.2.g) - 15 December 2010 – Rally at the Palais de la Culture.

1199. Although some parts of Mr Blé Goudé's speech may be considered inflammatory, it is important to note this part of Mr Blé Goudé's message was primarily aimed at foreign forces. Moreover, in the available footage, Mr Blé Goudé makes no mention of the RTI march, much less of a need to mobilise the youth to prevent it.
1200. It is difficult to see on what basis the Prosecutor claims that this evidence supports the inference that Mr Blé Goudé induced killing, raping, and injuring of Ouattara supporters. In relation to 'Sam l'Africain's evidence, there is no information as to how the decision to mobilise the youth was put into practice. In particular, the Chamber has heard no evidence about how and by whom the decision to mobilise was communicated to the youth groups that allegedly committed the crimes. Moreover, it is hard to see why Mr Blé Goudé would have called upon the youth to mobilise during a meeting at the Cocody town hall on 14 December 2010 but failed to mention this when he was addressing the youth directly the next day.
1201. In any case, Mr Blé Goudé's speech falls far short of inducement. Even if it were accepted that the audience understood from his words that Mr Blé Goudé wanted them to help prevent the march and that some of them complied by setting up roadblocks – which is entirely speculative – it would still be a giant leap to conclude from this that Mr Blé Goudé's words had a direct effect on the commission of any of the charged crimes.
1202. The foregoing evidence cannot support an inference that the roadblocks manned by pro-Gbagbo youth in the context of the RTI march had been erected in pursuance to Mr Blé Goudé's orders or instigation.²⁷²⁷ There is no evidence that,

²⁷²⁷ It is noted that the witness' testimony that the erection of roadblocks were normal practice in the country is to some extent corroborated by the evidence that demonstrates that there were multiple roadblocks erected by RHDP demonstrators during the RTI march in the morning of 16 December 2010 confirms that the erection of roadblocks. (JOURNEE DU : 16/12/2010 A 10 HEURES, 16 December 2010, CIV-OTP-0043-0332 (confidential)).

at the meeting at Cocody town hall, Mr Blé Goudé was the one who gave orders to mobilise. Even if he had directly instructed the pro-Gbagbo youth to erect roadblocks to protect the RTI from demonstrators, this does not amount to an instruction to use violence.

1203. Similarly, nothing indicates that the meeting of the *jeunes patriotes* was part of a coordinated effort between the pro-Gbagbo youth and the FDS to repress the march. There is no evidence, for example, that Mr Blé Goudé discussed measures for the repression of the march with FDS officials or with Mr Gbagbo. In fact, it is noted that according to the visitors' logbook of the Presidential Residence, Mr Blé Goudé did not visit the Residence in the period between 6 and 16 December 2010. Indeed, the ten days that preceded the RTI march²⁷²⁸ was one of the longest periods in which Mr Blé Goudé was absent from the Presidential Residence during the post-electoral crisis.²⁷²⁹ There is no evidence of any other form of communication between the two accused or between Mr Blé Goudé and any of the FDS officers in this period.

b) Instructions to the GPP

1204. In her briefs, the Prosecutor points out that witness P-0435 testified that that Mr Tagro (former Minister of Interior who during the post-electoral crisis occupied the position of the *Secrétaire Général à la Présidence*) had a meeting with GPP leaders at which the militia was assigned the task of intercepting the

²⁷²⁸ See Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0463-0477. Note that his last visit before the march was on 6 December 2010. After that, in accordance with the logbook, Mr Blé Goudé returned to the Presidential Residence on the day of the march and the days after (17 December and 19 December). It is ironic that, when it comes to other members of the 'inner circle', the Prosecutor places so much emphasis on the visits registered in the logbook the days before the march, portraying it as evidence of instructions being given to those who went to the Residence. Under the same logic, the unusual absence of Blé Goudé should *prima facie* indicate that his actions did not have a connection with the orchestration of the operation on the RTI headquarters.

²⁷²⁹ The logbook shows records of visitors up until mid-march. The last registered visit of Mr Blé Goudé was on 14 March 2011 (Large visitor register, 3 November 2010, CIV-OTP-0067-0402 (confidential) at 0600).

demonstrators taking part in the RTI march and handing them over to the authorities.²⁷³⁰

1205. It is noted that witness P-0435, who was a GPP member at the time, also testified that he had received instructions regarding the march from GPP leader Bouazo.²⁷³¹ When asked whether he knew who Bouazo received the instructions from, P-0435 testified that

On the day of the march, when we were given the order to go out, he did not tell me directly the name of any authority who would have given him instructions, but he pointed out that before that, when the march was announced, he had received--after a meeting with the former Minister of the Interior, Mr Tagro, he had received instructions that in case the march was maintained, we would have certain instructions on the measures that we had to take to support the FDS. And so it was because the march was maintained that the instructions were also maintained. But it is true that he didn't come and tell me that such and such a person told him that we should do this. That was not the case.²⁷³²

1206. Hence, the day of the march, Bouazo did not specify to P-0435 which authority issued instructions for the mission. P-0435 only knew that Bouazo had already received instructions previously, at a meeting with Mr Tagro which took place about two days before the march.²⁷³³

1207. P-0435 himself did not attend the meeting with Mr Tagro in question, but was informed what had been said there afterwards. Regarding the attendees, he remembered that, in addition to Bouazo, Mémoire, General Ato Gbeli, Djimi Willy, and Maguy 'le Tocard' were amongst those present.²⁷³⁴

²⁷³⁰ Mid-Trial Brief, para. 346; *see also* Response, para. 564.

²⁷³¹ P-0435, T-89 dated 20 October 2016, p. 22.

²⁷³² P-0435, T-96 dated 2 November 2016, p. 22.

²⁷³³ P-0435, T-93 dated 27 October 2016, p. 3.

²⁷³⁴ P-0435, T-89 dated 20 October 2016, pp. 61-62. *Note* that P-0435 testified that he was not interested in 'political meetings' and did not have to be present because he would always be informed of what had been said on such occasions (P-0435, T-89 dated 20 October 2016, p. 62). He further specified that he used to avoid to take part in meetings where the press might be present because he 'frequently took part in clandestine operations', so he 'would avoid this kind of thing to the maximum' (P-0435, T-89 dated 20 October 2016, p.10).

1208. When asked what these purported instructions were, P-0435 mentioned that the GPP mission was to disperse the crowd and ‘intercept’ the marchers to hand them over to the authorities.²⁷³⁵ P-0435 explained that he personally took position in Adjamé, where he had dispatched a first batch of approximately 20 GPP elements. In order to execute their mission, the GPP had set up a security cordon from the Djeni Kobena intersection in Williamsville right up to the *Boulevard des Martyrs*. In that perimeter, at 220 *logements*, GPP members intercepted marchers who were returning from Cocody. According to P-0435, whereas these 20 GPP elements were equipped with *cordelettes*, they did not have any firearms at their immediate disposal. P-0435 testified that they were instructed not to use firearms unless the the marchers intercepted turned out to be armed. The witness clarified that they did not intercept any marchers who had weapons.²⁷³⁶ [REDACTED].²⁷³⁷

1209. P-0435 also testified that he dispatched about 30 GPP elements with two Kalashnikovs to Cocody.²⁷³⁸ He himself did not go to Cocody.²⁷³⁹ Notably, P-0435 said that ‘they’ could receive ‘messages of the FESCI who were in Cocody campus and who were giving feedback by telephone and explaining that the marchers were being dispersed and that the marchers could not reach the RTI.’²⁷⁴⁰ In any case, the totality of the evidence indicates that the GPP’s role in the repression of the RTI march seems to have been limited. Considering that there is documentary evidence attesting to the attendance of several thousand

²⁷³⁵ P-0435, T-89 dated 20 October 2016, p. 60; P-0435, T-96 dated 2 November 2016, pp. 56-57.

²⁷³⁶ P-0435, T-89 dated 20 October 2016, pp. 62, 72; P-0435, T-93 dated 27 October 2016, pp. 22-23; P-0435, T-96 dated 2 November 2016, pp. 24-25, 32-38.

²⁷³⁷ [REDACTED].

²⁷³⁸ P-0435, T-89 dated 20 October 2016, pp. 70-71; P-0435, T-96 dated 2 November 2016, pp. 24-25.

²⁷³⁹ P-0435, T-89 dated 20 October 2016, p. 66 .

²⁷⁴⁰ P-0435, T-89 dated 20 October 2016, p. 67

demonstrators in the RTI march,²⁷⁴¹ it does not appear that the presence of 50 mostly unarmed GPP elements would have made a significant contribution to the FDS operation.

1210. The Prosecutor contends that ‘[t]he use of pro-Gbagbo youth (FESCI) and the GPP to violently repress the 16 December 2010 march shows that the security operation for this march was not only a matter of law enforcement, but that Mr Gbagbo and his Inner Circle, including Mr Blé Goudé, intended to repress this march, using any available means’.²⁷⁴² It is noted, in this respect, that P-0435 testified that the positions the GPP elements in Cocody occupied were assigned by the ‘military authorities’²⁷⁴³ and that the GPP elements were wearing FDS arm bands in order to identify themselves vis-à-vis the FDS.²⁷⁴⁴ Moreover, when GPP elements would intercept marchers, they would hand them over to members of the FDS ‘with whom [they] were working’.²⁷⁴⁵ This clearly suggests that there was a fairly advanced level of coordination and cooperation between FDS and GPP at least at the operational level.

1211. Based on these considerations, it is difficult to see a convincing evidentiary basis for the Prosecutor’s claim that the GPP’s involvement reveals that the FDS operation was not just law enforcement but was aimed at violently repressing the march. P-0435’s evidence rather suggests that the GPP was playing a supporting role. And, although he testified that those who supported Mr Ouattara’s plan to

²⁷⁴¹ See for example the official reports in Annexe 8 / Marche sur la Radio Television Ivoirienne (RTI) des militants du Rassemblement des Houphouetistes pour la Democratie et la Paix (RHDP), undated, CIV-OTP-0010-0028 showing a letter from the Adjunct Director of Public Security to the Director of the National Police on 26 January 2011 reporting on the events of the RTI march on 16 December 2010, which describes the dispersion of a crowd of 1000 marchers around the *Mairie* d’Adjamé (at 0029) and another correspondence (at 0031) reporting, in addition to that, the dispersion of 200 people at Djeny Kobena. Note too the accounts of the witnesses who were present in the RTI march in VI.H - 16-19 December 2010 - RTI March (1st charged incident).

²⁷⁴² Response, para. 1109.

²⁷⁴³ P-0435, T-96 dated 2 November 2016, pp. 17-23.

²⁷⁴⁴ P-0435, T-89 dated 20 October 2016, p. 62, 70, T-93 dated 27 October 2016, pp. 31-32.

²⁷⁴⁵ P-0435, T-96 dated 2 November 2016, p. 20.

impose a new RTI director were considered as ‘assaillants, as rebels’,²⁷⁴⁶ there is no suggestion that this was considered to authorise the use of offensive lethal force against them. Crucially, whilst P-0435 testified that the GPP would beat demonstrators before handing them to the authorities,²⁷⁴⁷ the degree of violence this involved cannot be compared to that which would characterise a deliberate attack to commit murder and inhumane acts against RHDP demonstrators, as is evidenced by the fact the the Prosecutor did not include these facts in the charges.

4. *Conclusion*

1212. In essence, the Prosecutor’s argument is that by forbidding the RTI march and by allowing the deployment of armed forces and militia to enforce the prohibition, Mr Gbagbo could foresee that crimes would be committed against the civilian demonstrators. It is, of course, true that if Mr Gbagbo had not prohibited the march, there would not have been any confrontations and therefore no risk of civilian casualties. However, it cannot be argued – and indeed the Prosecutor does not seem to do so – that the only way for Mr Gbagbo to escape criminal responsibility would have been to allow Mr Ouattara and his supporters to take over the country. The question then is whether there is anything particular in the manner in which the prohibition of the march was implemented that needlessly increased the risk of civilian casualties. In other words, the question is whether Mr Gbagbo could have achieved his objective of thwarting the demonstrators’ stated goal of overthrowing the leadership of the RTI and the government by not deploying the armed forces and/or members of the GPP.

1213. To answer that question, it needs to be established whether or not the means and methods utilised by Mr Gbagbo were clearly disproportionate compared to the

²⁷⁴⁶ P-0435, T-96 dated 2 November 2016, p. 19.

²⁷⁴⁷ P-0435, T-93 dated 27 October 2016, pp. 24-25.

threat posed by the demonstrators. As noted, the demonstrators numbered in their thousands and there were expectations – which turned out to be at least partially justified – that there would be armed individuals amongst the marchers. Although the available information is limited and fragmented, it does not seem to support the conclusion that the decision to deploy the armed forces was exaggerated. Indeed, the fact that there were a number of incidents in the morning of the march where members of the FDS were killed or injured by armed individuals in civilian clothing is likely to have raised the level of concern among the units deployed throughout the city. The Prosecutor’s argument that the geographical location of these incidents indicates that they were unrelated to the march proper is unconvincing.

1214. Regarding the involvement of the GPP, although there is no direct evidence that Mr Gbagbo or Mr Blé Goudé were informed of their involvement, a reasonable trial chamber could find that, since Mr Tagro was ostensibly one of Mr Gbagbo’s closest collaborators, the former would not have acted without at least the implicit approval of the latter. However, as discussed, the number of GPP elements involved was relatively small, they were not equipped with firearms and their role in the overall plan to suppress the march seems to have been ancillary. It is therefore not convincing to argue that their involvement significantly increased the risk of violent crimes being committed against unarmed civilians.

1215. It is noted that there is also evidence to suggest that other youth groups and perhaps even mercenaries were involved in the repression of the RTI march.²⁷⁴⁸

²⁷⁴⁸ See IV.D.2.d)(2)(a) - Alleged collaboration during the RTI March; 1577 - The Prosecutor further refers to Sahanogo Sekouba who she alleges was ‘kidnapped by the *Garde Républicaine* and tortured’. The documentary evidence for this victim states: ‘*chef de sécurité à la maison RHDP tombé dans un embuscade dev la Garde Republicain torture et traité de rebelle partant prendre la RTI [sic]*’. Solely on the basis of this information, which has little evidentiary weight, it is not possible to determine that the perpetrators belonged to the *Garde Républicaine*.

FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries.

However, this evidence is mainly anecdotal and does not support the conclusion that they were included in the operational planning of the FDS. There is also no indication that the crimes that were allegedly committed by youths²⁷⁴⁹ were foreseeable to Mr Gbagbo or other members of the ‘inner circle’ who were involved in planning the operation to prevent the marchers from taking over the RTI.

1216. There is also no evidence suggesting that Mr Gbagbo would have been briefed in real-time about the developments during the day and the use of violence by FDS and others against civilians. It is thus difficult to see what he could have done to avoid the escalation in general and the use of violence in particular.

1217. Finally, it is noted that in relation to a number of the crimes that were committed there is no obvious connection with the operation to repress the RTI march. This applies, for example, to the instances of rape by FDS members and youths. The Chamber is aware that the Prosecutor cautioned that crimes of sexual violence should not be regarded as opportunistic acts and that rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara. However, the evidence she submitted is incapable of supporting this proposition and indeed the Prosecutor makes no serious effort to develop a cogent evidentiary argument in this regard.

1218. In sum, the available evidence does not allow a reasonable trial chamber to conclude that the measures that were put in place to enforce the prohibition of the RTI march were deliberately or obliquely intended to cause violent crimes to be committed against civilian supporters of Mr Ouattara.

²⁷⁴⁹ See VI.H - 16-19 December 2010 - RTI March (1st charged incident).

C. FDS Activities in Abobo in January and February 2011

1219. With respect to the Prosecutor's case in relation to FDS activities in Abobo in early 2011, some preliminary remarks are necessary before turning to the discussion of the evidence upon which she relies in this context.

1220. It should be noted that the analysis to be conducted in this section follows the structure of the Prosecutor's narrative; hence it is an analysis of an exceedingly one-sided account. The FDS operations that will be herein discussed took place in a context akin to civil war but there is only scarce information about the armed individuals fighting the FDS in Abobo during the post-electoral crisis.²⁷⁵⁰ The Prosecutor's blinkered treatment of the facts concerning the ongoing conflict in Abidjan poses particular difficulties to the analysis of the FDS activities in Abobo because the Prosecutor expects the Chamber to infer that the FDS targeted the civilian population on the basis of the means and measures used in their operations. However, because the available information is fundamentally incomplete, it is impossible for the Chamber to distinguish between actions of a defensive and offensive nature. This would impede any reasonable trial chamber from drawing definite conclusions concerning the motivations behind the acts of armed personnel engaged in military operations.

1221. It is thus appropriate at this juncture to set out the most relevant information concerning the main armed group operating in opposition to the FDS in Abobo, the *Commando Invisible*. There is evidence to suggest that the *Commando*

²⁷⁵⁰ Note that in her Mid-Trial Brief, the Prosecutor mentioned in passing that in early January 2011 the security situation in Abobo was deteriorating, but appeared to accord it little weight in the construction of her narrative (Mid-Trial Brief, paras 410-411). In the Response, the Prosecutor acknowledges that following the second election round, armed groups opposed to Mr Gbagbo's regime began to operate in Abobo (Response, para. 366). However, she goes on to argue that the presence of opposing armed groups 'does not negate that in the circumstances of this case the civilian population was the primary object of the [FDS] attack' (Response, para. 340).

Invisible was already engaged in hostilities by the end of 2010.²⁷⁵¹ The group presented a substantial threat to the FDS due to their tactics: the fighters wore civilian clothing, enabling them to hide amongst the civilian population,²⁷⁵² fired from hidden positions,²⁷⁵³ and erected roadblocks in order to ambush security forces.²⁷⁵⁴ The evidence on record indicates that the group had access to a range of weapons including Kalashnikovs and other automatic weapons,²⁷⁵⁵ grenades,²⁷⁵⁶ anti-tank weapons like RPGs,²⁷⁵⁷ and heavy weaponry.²⁷⁵⁸ FDS witnesses testified that these tactics made it virtually impossible to gather intelligence on the number and positions of the enemy²⁷⁵⁹ and prevented their elements from returning fire for fear of striking civilians.²⁷⁶⁰

1222. In the Prosecutor's case the existence of *Commando Invisible* is given some relevance only with respect to her claim that, due to the nature of the threat the FDS faced in Abobo, it can be inferred that the civilian population was the target

²⁷⁵¹ Note that according to witness P-0046, the Police learned about the group's presence before or during the elections (P-0046, T-127 dated 21 February 2017, p. 15). Other witnesses situate its establishment in early December or after the RTI march. See P-0010, T-140 dated 30 March 2017, p. 19; P-0047, T-203 dated 7 November 2017, pp. 50-51; P-0106, T-116 dated 6 February 2017, p. 28; P-0297, T-192 dated 14 September 2017, pp. 30-31.

²⁷⁵² P-0010, T-137 dated 27 March 2017, p. 82; P-0047, T-203 dated 7 November 2017, p. 36; P-0520, T-52 dated 16 June 2016, p. 34; P-0106, T-116 dated 6 February 2017, p. 37; P-0238, T-83 dated 30 September 2016, p. 55 (confidential); P-0607, T-170 dated 3 July 2017, p. 56 (confidential).

²⁷⁵³ P-0238, T-81 dated 28 September 2016, p. 53; T-82 dated 29 September 2016, pp. 90-91.

²⁷⁵⁴ P-0321, T-63 dated 12 July 2016, pp. 30-31; P-0297, T-192 dated 14 September 2017, p. 35; P-0238, T-83 dated 30 September 2016, pp. 57-58 (confidential).

²⁷⁵⁵ P-0321, T-62 dated 11 July 2016, p. 41, 52 (confidential); P-0607, T-170 dated 3 July 2017, p. 56 (confidential); P-0414, DÉCLARATION DE TÉMOIN, CIV-OTP-0054-0582 (confidential) at 0619, para. 251.

²⁷⁵⁶ P-0321, T-65 dated 14 July 2016, p. 3; P-0414, DÉCLARATION DE TÉMOIN, CIV-OTP-0054-0582 (confidential) at 0619, para. 251

²⁷⁵⁷ P-0010, T-140 dated 30 March 2017, p. 20; P-0011, T-135 dated 14 March 2017, p. 69; P-0321, T-61 dated 8 July 2016, p. 83 (confidential); T-62 dated 11 July 2016, p. 41, 44; P-0607, T-170 dated 3 July 2017, p. 56 (confidential).

²⁷⁵⁸ P-0321, T-62 dated 11 July 2016, p. 41; T-63 dated 12 July 2016, pp. 31-32.

²⁷⁵⁹ P-0009, T-199 dated 4 October 2017, pp. 52-53; P-0330, T-70 dated 5 September 2016, p. 12; P-0321, T-63 dated 12 July 2016, p. 32; P-0238, T-82 dated 29 September 2016, p. 94.

²⁷⁶⁰ P-0010, T-137 dated 27 March 2017, p. 82; P-0238, T-83 dated 30 September 2016, p. 55 (confidential).

of the FDS ‘attack’.²⁷⁶¹ Presumably, this is because the *Commando Invisible* blended in with the civilian population in Abobo. The Prosecutor’s position on this point is untenable. To the extent that there is information in this regard, it is quite clear that the targets of the use of lethal force by the FDS were the members of the *Commando Invisible*. The fact that civilians in Abobo were at risk of being confused with the enemy by the FDS does not make them the targets of the FDS as such.

1223. In what follows, the case of the Prosecutor in relation to FDS activities in Abobo in the period between the RTI march and the charged incidents that took place in March 2011 will be discussed and the evidentiary basis for each of her claims analysed in detail.

1. Overview of the Prosecutor’s case in relation to FDS operations in Abobo before March 2011

1224. In the Mid-Trial Brief, the Prosecutor presented a narrative describing a steady intensification of FDS violence in Abobo over the course of the post-electoral crisis, causing numerous civilian casualties during operations in the months before the two charged incidents in March.²⁷⁶² This escalation of the use of military force supposedly started after a major operation led by the Police on 11 January 2011 and evolved through the following weeks, ultimately leading to the commission of the charged crimes in Abobo in March 2011.²⁷⁶³

1225. According to the Prosecutor, the Police operation in Abobo had been planned by Mr Gbagbo and his ‘inner circle’ in the early days of January 2011 to secure control of the PK18 neighbourhood. The Prosecutor contends that on 4 January 2011, the President convened a meeting with members of his ‘inner circle’ at the

²⁷⁶¹ Response, para. 340.

²⁷⁶² Mid-Trial Brief, paras 407-408,

²⁷⁶³ Mid-Trial Brief, paras 417; 460-461.

Presidential Palace to transmit the relevant instructions and on 6 January 2011, General Mangou met other FDS Generals to discuss the FDS deployment on the ground. In the Mid-Trial Brief, it is stated that ‘the events that followed the 4 January meeting and the evidence on record demonstrate that Abobo went from a police law and order operation (*opération de maintien de l’ordre*) to a full military operation with the arsenal the army had at its disposal’.²⁷⁶⁴

1226. This proposition advanced by the Prosecutor is tied to the notion that after the failure of the Police operation in Abobo on 11 January 2011, strong reactions ensued from Mr Gbagbo’s government and FDS high command.²⁷⁶⁵ To buttress this position, the Prosecutor refers to statements broadcast on the RTI in the aftermath of the operation, a Presidential decree imposing a curfew in Abobo and Anyama, and a meeting at the Presidential Palace on 12 January 2011.²⁷⁶⁶ The Prosecutor claims that from that point onwards, there was a shift in the FDS mindset from law enforcement to military activities in Abobo.²⁷⁶⁷ It also follows from the Prosecutor’s argument that, as of 12 January 2011, the FDS started to treat Abobo as a war zone without informing the population.²⁷⁶⁸ To the Prosecutor, had the government told the population that Abobo was going to be treated as a zone of combat, the population would have left the area and civilian casualties would have been prevented.²⁷⁶⁹

1227. According to the Prosecutor, the FDS continuously killed civilians during its operations in Abobo throughout the second half of January and the month of February 2011.²⁷⁷⁰ She emphasises that on 23 and 25 February the FDS shelled

²⁷⁶⁴ Mid-Trial Brief, para. 412.

²⁷⁶⁵ Response, paras 295; 1588-1589.

²⁷⁶⁶ Mid-Trial Brief, paras 417-430.

²⁷⁶⁷ Response, para. 1588.

²⁷⁶⁸ Response, para. 295.

²⁷⁶⁹ Response, para. 719.

²⁷⁷⁰ Mid-Trial Brief, para. 407; Response, para. 721.

Abobo despite not having declared it a war zone, thereby once again denying the population a chance to flee the area. This, according to the Prosecutor, further demonstrates that the civilian population of Abobo was being targeted by the FDS.²⁷⁷¹ The Prosecutor also contends that the shelling was ordered or authorised by Mr Gbagbo acting in conjunction with his ‘inner circle’ in pursuance of the alleged Common Plan.²⁷⁷²

2. *General Mangou’s Testimony on the Requisition of the Army*

1228. The Prosecutor makes a general claim that Mr Gbagbo had control of the FDS and was directly involved in military decisions by virtue of his position as Supreme Commander of the Army.²⁷⁷³ The Prosecutor bases this contention on witnesses’ testimonies that simply confirm that Mr Gbagbo occupied this position in his presidential capacity, but did not provide insight into what the role entailed in practice.²⁷⁷⁴ The most relevant of these has been provided by General Mangou, the Chief of Staff, who said that:

I should point out that the deployment of all those units, in order to deploy those units we were requisitioned, so it was upon the requisition of the president of the republic that the units were deployed both in the theatre of operations and in Abidjan and Abobo. [...] I will not insult you by explaining that a requisition is a formal order of the public authority. It is an express order that cannot be refused. It has a peremptory character. So upon reception of an order, we have to comply with it, and we report to the initiator of the requisition, that is the president of the republic.²⁷⁷⁵

²⁷⁷¹ Response, para. 356.

²⁷⁷² Response, paras 371, 796-810; Mid-Trial Brief, para 441; 450-461; 683-684; 718; 203.

²⁷⁷³ Mid-Trial Brief, paras 200-201, 701; Response, paras 1182, 1538-1539, 2069.

²⁷⁷⁴ Witnesses confirmed that as President, Mr Gbagbo was supreme commander of the army (P-0009, T-193 dated 25 September 2017, pp. 24-25; P-0156, T-172 dated 5 July 2017, p. 55; P-0347, T-78 dated 23 September 2016, p. 19) and received regular reports about the security situation from the hierarchy (P-0010, T-138 dated 28 March 2017, pp. 13-15; P-0011, T-132 dated 10 March 2017, p. 24; P-0520, T-50 dated 14 June 2016, p. 50). *Note* that the Prosecutor further adduced legislative provisions, which also did not elaborate on the functions of the commander-in-chief (LOI N 2000-513 DU 1er AOUT 2000 PORTANT CONSTITUTION DE LA CÔTE D’IVOIRE, 1 August 2000, CIV-OTP-0003-0146 at 0151, 0154-0155; DECRET No. 2011-62 / Portant organisation et fonctionnement de la Présidence de la République, 24 February 2011, CIV-OTP-0025-0971 at 0979-0980).

²⁷⁷⁵ P-0009, T-193 dated 25 September 2017, p. 13.

1229. This testimony reveals little in terms of Mr Gbagbo's involvement in military decision-making. However, the issue of requisitioning the armed forces was a significant element in the Prosecutor's case. It is not clear what effects a requisition of the Army had: at some points of his testimony, General Mangou implied that the requisition meant more involvement by the President (as the quote reproduced above demonstrates), while at other points his evidence suggests that the Presidential requisition of the Army meant more autonomy in decision-making for himself as the Chief of Staff and consequently an increased detachment of the President in military matters.²⁷⁷⁶
1230. According to General Mangou, by January 2011 the security situation in Abobo was alarming, with civilian and military deaths occurring almost every day as a result of crimes perpetrated by the *Commando Invisible*.²⁷⁷⁷ Thus, on 5 January 2011, FDS generals and other members of the 'inner circle', such as Minister Guiriéoulou and former Minister Tagro, had a meeting with Mr Gbagbo at the Presidential Residence to discuss the security in Abobo. General Mangou stated that during this meeting, they decided to pass a decree requisitioning the Army to intervene in Abidjan and in Abobo in particular. The decree, General Mangou said, was signed by the President in the meeting and subsequently published in the media.²⁷⁷⁸
1231. If it were true that Mr Gbagbo issued a decree requisitioning the Army on 5 January 2011, this would undermine parts of the Prosecutor's theory regarding events in Abobo. In particular, the Prosecutor's claim that on 12 January 2011 the FDS changed the nature of their operations in Abobo to include military operations without giving notice to the population might be called into

²⁷⁷⁶ P-0009, T-193 dated 25 September 2017, pp. 71-72.

²⁷⁷⁷ P-0009, T-197 dated 2 October 2017, pp. 70-72.

²⁷⁷⁸ P-0009, T-193 dated 25 September 2017, pp. 23-24. *Note* that General Mangou specified that the meeting started at 21h30.

question.²⁷⁷⁹ In addition, according to General Mangou, the 5 January 2011 requisition provided him with the authority to order the use of artillery in Abidjan.²⁷⁸⁰ This goes against the Prosecutor's claim that Mr Gbagbo directly ordered or authorised the shelling of Abobo during military offensives in the first months of 2011.²⁷⁸¹

1232. The Prosecutor argues unpersuasively that the testimony of General Mangou was an 'attempt [of General Mangou] to distance himself from a plan to employ the armed forces, which was already in existence before the second round of the elections'.²⁷⁸² It is difficult to see how this could have been the case. As noted, General Mangou admitted having authorised the use of mortars without specific presidential authorisation because of the supposed Army requisition. In so doing, he effectively assumed sole responsibility for this decision.

1233. The Prosecutor further contends that General Mangou's testimony on this point should not to be believed and that there is no evidence that the FANCI was requisitioned on 5 January 2011.²⁷⁸³ This position of the Prosecutor disregards the fact that General Mangou's testimony is itself evidence that cannot be ignored. The absence of corroboration by other items of evidence does not justify an outright rejection of General Mangou's testimony that there was an Army requisition in January 2011. If this was the appropriate standard, many of the Prosecutor's claims would have to be rejected on this basis. Although the Prosecutor is correct in that none of the other FDS members heard during this trial have confirmed the existence of a requisition of the Army in January 2011,

²⁷⁷⁹ Mid-Trial Brief, para. 417.

²⁷⁸⁰ P-0009, T-195 dated 27 September 2017, p. 75; T-198 dated 3 October 2017, pp. 12-13.

²⁷⁸¹ Response, para 809. *Note* that the Prosecutor does not seem to acknowledge this. *See* Response, para 924. Although the Prosecutor alleges that this requisition did not exist, she paradoxically contends that as a result of the requisition mortars were used in Abobo. Response, para 1902.

²⁷⁸² Response, para. 1584.

²⁷⁸³ Response, paras 928; 1584; 1513; Mid-Trial Brief paras 409 – 412.

they have not testified to its inexistence either.²⁷⁸⁴ In fact, no other witness has been questioned on this specific point.²⁷⁸⁵

1234. The contention that General Mangou's testimony is insufficient evidence because there is no corroboration for the proposition that the Army had been requisitioned by decree is difficult to reconcile with the numerous propositions which the Prosecutor claims are proven solely on the basis of General Mangou's testimony. In fact, in the Response, the Prosecutor argues that the testimony of only one witness should be enough for her to prove a certain aspect of her case – she claims, in particular, that '[t]here is no reason why the Chamber cannot accept a sole piece of evidence, for lack of direct corroboration'.²⁷⁸⁶

1235. Leaving aside the inconsistency of the Prosecutor's treatment of General Mangou's testimony in this regard, attention will now turn to other claims made by the Prosecutor which implicitly contradict General Mangou's evidence regarding the requisition of the Army.

1236. As mentioned, General Mangou testified that the requisition was decided upon and authorised by presidential decree during a meeting on 5 January 2011. The Prosecutor, however, insists that the meeting in which the Abobo situation was discussed with Mr Gbagbo actually occurred on 4 January 2011.²⁷⁸⁷ The Prosecutor adduced as evidence in this context a media article published on the internet reporting on a meeting that had taken place at the Presidential Palace on 4 January 2011.²⁷⁸⁸ The article speculates about the subject of discussions

²⁷⁸⁴ Response, para. 928.

²⁷⁸⁵ Note that General Deto Letho mentioned a second requisition, but did not recall its date: 'The requisition [of 14 november 2010] which took place was initially intended to ensure security around the 2010 elections. Then there was another decree, the purpose of which was also to requisition the national armed forces of Côte d'Ivoire, FANCI. That second decree relates to the period after the president had been sworn in to April 2011. And the purpose of the second decree was also to protect the election process.' P-0047, T-203 dated 7 November 2017, pp. 12-13.

²⁷⁸⁶ Response, para. 647.

²⁷⁸⁷ Mid-Trial Brief, para. 409. See also Response, para. 1121(ii), 1550.

²⁷⁸⁸ Crise post-électorale - Rencontre Gbagbo-Fdsci à huis clos, 5 January 2011, CIV-OTP-0003-0598.

between the generals and Mr Gbagbo and states that journalists who had previously been invited to cover the meeting were told that the event was no longer open to them.²⁷⁸⁹ Presumably, the Prosecutor considers that this proves that the Abobo situation was actually discussed on 4 January and there was no public declaration concerning the requisitioning of the Army following the meeting.

1237. Regardless of the low evidentiary weight of the media article, the Prosecutor's position in this respect would in any case be undermined by General Mangou's testimony that there was a meeting on both 4 and 5 January 2011.²⁷⁹⁰ While General Mangou could not recall the subject discussed at the meeting on 4 January 2011, he was confident that the meeting in which they discussed the Abobo situation took place on 5 January 2011.²⁷⁹¹

1238. The Prosecutor also referred to other evidence in support of her claim that there was no 'inner circle' meeting on 5 January 2011. One of these was the calendar of official meetings with the President which shows a meeting with the Ministers of Security and Defence, the Chief of Staff, the DGPN and the *Gendarmerie* commander scheduled for 4 January 2011.²⁷⁹² In the calendar, there was no meeting planned with these individuals for the following day. This document was seemingly prepared by Mr Gbagbo's personal secretary, but it is neither signed nor stamped and received no authentication from a witness. Even if it had, it is clear from the first page of the document that this programme of meetings was prepared before the post-electoral crisis as it shows the programme of planned engagements for the period from 1 November 2010 to January 2011. It cannot be reasonably expected that Mr Gbagbo maintained his programme of events as

²⁷⁸⁹ Crise post-électorale - Rencontre Gbagbo-Fdsci à huis clos, 5 January 2011, CIV-OTP-0003-0598 at 0598.

²⁷⁹⁰ P-0009, T-195 dated 27 September 2017, pp. 19-20.

²⁷⁹¹ P-0009, T-195 dated 27 September 2017, p. 20; T-194 dated 26 September 2017, p. 49.

²⁷⁹² JOURNEE DU LUNDI 1er NOVEMBRE 2010, 1 November 2010, CIV-OTP-0035-1279 (confidential) at 1297; Mid-Trial Brief, para. 409.

previously planned during a civil war-like conflict. Furthermore, the document itself makes clear that the programme and the locations for the planned meetings were provisional. Moreover, if this calendar was seen as reliable evidence, it would clearly show that the post-electoral crisis had not been anticipated by the Presidency, which would sit uncomfortably with the Prosecutor's arguments about the alleged preparations for the Common Plan.

1239. The Prosecutor also claims that the absence of any mention of the arrival of General Mangou and other generals in the Presidential Residence logbook on 5 January 2011 is another indication that the meeting did not take place on that date.²⁷⁹³ However, this is not sufficient basis to conclude that no meeting occurred on that day, either at the Presidential Residence or in another venue.²⁷⁹⁴

1240. In light of the foregoing, it is concluded that the Prosecutor's contentions that the Chamber should disregard General Mangou's testimony on this point are not persuasive. As said, the evidence of an early January Army requisition to deal with the 'Abobo situation' weakens several aspects of the Prosecutor's narrative in relation to Abobo. However, considering the present stage of the proceedings, the analysis of the Prosecutor's case in this context will be conducted as if the Chamber had disregarded General Mangou's evidence to this effect.²⁷⁹⁵

3. The Police operation of 11 January 2011

1241. The Prosecutor alleged that when the 'inner circle' met with Mr Gbagbo in early January 2011, the Police operation in Abobo, which would eventually take place

²⁷⁹³ Mid-Trial Brief, para. 409.

²⁷⁹⁴ Note the observations made with regards to the probative value of the visitors' logbook. See IV.C.1 - Visits to the Presidential Residence and Palace.

²⁷⁹⁵ Note that in her briefs the Prosecutor invites the Chamber to ignore this evidence. After putting forward the above mentioned arguments that General Mangou's evidence on this matter should be disregarded, the Prosecutor then stated: 'independently of the existence of this early January requisition, the events that followed the 4 January meeting and the evidence on record demonstrate that Abobo went from police law and order operation to a full military operation with the arsenal the army had at its disposal'. Mid-Trial Brief, para. 412.

on 11 January 2011, was planned. Following that meeting, according to the Prosecutor, General Mangou ordered FDS generals on 6 January 2011 to attend a meeting on 7 January 2011 at the Army headquarters to disseminate instructions.²⁷⁹⁶

1242. There is no indication in General Mangou's testimony that the details of the 11 January 2011 operation were discussed with Mr Gbagbo before it took place. General Mangou testified that, after the meeting at the Presidential Palace on 5 January 2011, another meeting was held at the *état major* on 6 January 2011.²⁷⁹⁷ There, the Chief of Staff met Generals Bredou M'Bia, Kassaraté, Detoh Letho, Aka, Vagba, and Guiai Bi Poin.²⁷⁹⁸ The objective of the meeting, General Mangou said, was to analyse the situation and decide how they were going to deploy in Abobo.²⁷⁹⁹ It is clear from General Mangou's testimony that it was at the FDS meeting that the nature of the operation was decided. According to General Mangou, the DGPN argued during the meeting that the security of Abobo fell within his competence since it was a matter of law enforcement and they all agreed that the Police would be in charge.²⁸⁰⁰

1243. Indeed, the evidence suggests that the Chief of Staff [General Mangou] himself played only a marginal role in the direction of the operation. In his testimony, General Mangou stated that he asked the CPCO, Colonel Sako, to designate elements for the operation in Abobo. This is corroborated by Major Toaly Baï who was an officer of CPCO and confirmed having been the head of the

²⁷⁹⁶ Mid-Trial Brief, para 413.

²⁷⁹⁷ P-0009, T-193 dated 25 September 2017, p. 64; T-194 dated 26 September 2017, p. 49.

²⁷⁹⁸ P-0009, T-193 dated 25 September 2017, p. 64.

²⁷⁹⁹ P-0009, T-194 dated 26 September 2017, p. 49; T-195 dated 27 September 2017, p. 20. *Note* that the difference of dates would determine if the message *réunion de travail*, dated 06 Jan 2011, sent by the Chief of Staff related to the meeting in which they discussed Abobo but the document only lists the authorities whose presence was required; no major discrepancies that would affect the Prosecutor's case. *See* REUNION DE TRAVAIL, 6 January 2011, CIV-OTP-0045-0613 (confidential).

²⁸⁰⁰ P-0009, T-193 dated 25 September 2017, p. 64; T-194 dated 26 September 2017, pp. 49-50.

operation. The CPCO organised the operation, Major Toaly Baï testified, having first carried out reconnaissance missions which led him to decide to 'close down the area'.²⁸⁰¹ Major Toaly Baï also testified that the commanding officer of the operation was a *gendarme*, Lieutenant Colonel Goué Léopold – evidence showing internal FDS communications in the aftermath of the mission confirms this information.²⁸⁰²

1244. General Mangou acknowledged that the FANCI also had a role to play in the 11 January 2011 operation. He further explained that the FANCI would give cover to the Police, forming a security belt around the area where the Police would operate. In this regard, General Mangou said that 'these operations [...] are within the remit of the army [...] when the [Chief of Staff] receives information about an area he can ask for patrols to be carried out in order to make the area safe and secure.'²⁸⁰³ The witness further clarified that 'when the army comes to assist the police for searches, the operation is led by a judicial police officer who might be a policeman or a *gendarme*'.²⁸⁰⁴

1245. According to General Mangou, the DGPN conducted the operation from PC Minos.²⁸⁰⁵ Documentary evidence shows that Police intervention units working on the ground in Abobo during the 11 January mission reported to Principal Commissioner Yoro, who in turn was subordinated to the DGPN.²⁸⁰⁶ However, there is no evidence that Inspector-General Bredou M'Bia and Principal

²⁸⁰¹ P-0156, T-171 dated 4 July 2017, p. 36.

²⁸⁰² P-0156, T-171 dated 4 July 2017, pp. 39-40, 42; A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0326.

²⁸⁰³ P-0009, T-195 dated 27 September 2017, p. 25.

²⁸⁰⁴ P-0009, T-195 dated 27 September 2017, p. 25.

²⁸⁰⁵ P-0009, T-193 dated 25 September 2017, pp. 63-64; T-194 dated 26 September 2017, pp. 48-50. It is noted that very little is known about PC Minos.

²⁸⁰⁶ A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential). See paras 1251–1262 for the detailed discussion of these documents' content.

Commissioner Yoro themselves gave orders to subordinates in this context or directly participated in the operation. The reports of Police officers on the matter reached Principal Commissioner Yoro seven days after the operation occurred and his letter informing the DGNP of the content of these reports is dated 19 January 2011.²⁸⁰⁷

1246. Thus, the Prosecutor's claim that Mr Gbagbo through his actions and contributions 'in particular through his meetings with FDS Generals [...] planned and ordered law enforcement and military operations'²⁸⁰⁸ in Abobo is unsustainable in relation to the Police operation of 11 January 2011. There is no evidence of Mr Gbagbo's involvement in this operation.

1247. It should also be noted that the Prosecutor's narrative in relation to the activities of the FDS in Abobo in the first weeks of 2011 presupposes that the Police operation of 11 January 2011 had particular strategic importance to the high command of the FDS at the time. Yet, there is no conclusive evidence to support the assumption that this operation had greater relevance to the FDS' security strategy than other operations taking place in the same period throughout the country.²⁸⁰⁹

1248. Quite the opposite, there is evidence indicating that the Police operation in Abobo was neither the only nor the most important operation the FDS was conducting at the time. When General Mangou was questioned on the operation by the Prosecutor, he added a caveat before providing one of his answers, saying

²⁸⁰⁷ A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0316.

²⁸⁰⁸ Mid-Trial Brief, para. 403.

²⁸⁰⁹ Note that the Prosecutor did not present the Chamber with evidence demonstrating a complete picture of the FDS operations in early to mid-January which would have made it possible to conclude whether or not there was something distinctive about the 11 January Police operation in Abobo. Insofar as the Chamber was provided with only a glimpse of the overall factual background of the events forming the Abobo narrative, a determination that the 11 January 2011 Police operation was more important than others depends on the existence of evidence to this effect.

that ‘it was not only Abobo you see. Maybe you have the report for Abobo. But there was also [other Abidjan neighbourhoods].’²⁸¹⁰ General Mangou testified that it was not only in Abobo that things were not going well for the government and they were conducting patrols practically in all neighbourhoods.²⁸¹¹ Upon being asked whether or not he reported to Mr Gbagbo on the operation in Abobo, General Mangou replied that the Prosecutor should not concentrate too much on Abobo because at the time they were taking into account the whole territory in which they were operating and various patrols were taking place.²⁸¹² In addition to General Mangou, Major Toaly Baï also indicated that other operations were being conducted in Abobo around the same period. Accordingly, Major Toaly Baï testified that the Police operation had been planned for an earlier date but was postponed to 11 January 2011 because there was a military operation happening at the time.²⁸¹³

1249. Moreover, in the Mid-Trial Brief, the Prosecutor alleged that the ministers of the *Conseil du gouvernement* were informed of the Police operation of 11 January 2011.²⁸¹⁴ However, the evidence upon which she relied to support this claim does not give the impression that the operation received any kind of special attention in the *Conseil*. The unauthenticated document containing the minutes of the ministers’ meeting, which was supposedly held at mid-day on 11 January 2011, simply registers that the Minister of Interior had informed, among other things, that ‘this morning the Police lost two men in PK18 Abobo’.²⁸¹⁵ This brief mention is included in a three-page document that shows multiple topics of discussion raised by the ministers on this occasion, none of which are related to the Police

²⁸¹⁰ P-0009, T-195 dated 27 September 2017, p. 23.

²⁸¹¹ P-0009, T-195 dated 27 September 2017, p. 23.

²⁸¹² P-0009, T-195 dated 27 September 2017, p. 46.

²⁸¹³ P-0009, T-195 dated 27 September 2017, p. 46; P-0156, T-172 dated 5 July 2017, pp. 8-9.

²⁸¹⁴ Mid-Trial Brief, para. 414.

²⁸¹⁵ MINUTES DU CONSEIL DE GOUVERNEMENT DU 11 JANVIER 2011, 11 January 2011, CIV-OTP-0025-0897 at 0897.

operation. It is also noted that the then Minister of Youth, Mr Charles Blé Goudé, is not cited in the document as one of the attendees of the *Conseil*.

1250. Therefore, considering the evidence in its totality, it can be concluded that the Police operation of 11 January 2011 took place but no conclusions can be drawn as to its relevance to the Prosecutor's case. The Prosecutor alleges that Mr Gbagbo participated in the decision to deploy in Abobo in January, seemingly referring to this operation.²⁸¹⁶ Yet, not only there is no evidence of that having been the case, but there is also no indication that there was anything incriminatory about the Police operation. The information available on the way events unfolded in Abobo on 11 January 2011 will be discussed below.

a) The failure of the operation on 11 January 2011

1251. Turning to what happened during the operation, it is noted that the Prosecutor adduced mostly documentary evidence in connection with the events that took place during the Police operation in Abobo on 11 January 2011. These documents are organised in one bundle of internal FDS communications that were transmitted to the DGPN in the aftermath of the Police operation, all based on the same sources. The first page of the bundle pertains to a letter signed by Principal Commissioner Claude Yoro and addressed to the DGPN which summarises the information of reports from FDS officers who took part in the operation.²⁸¹⁷ The letter appears to have been stamped and signed by Principal Commissioner Yoro on 19 January 2011 and the CRS documents attached to the letter appear to have been received the day before. Inspector-General Bredou M'Bia confirmed having received the Principal Commissioner's report and the

²⁸¹⁶ Response, para. 1550.

²⁸¹⁷ A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0316-0317 ('Principal Commissioner's report').

documents attached to it.²⁸¹⁸ The CRS reports in question reflect a sequence of transmissions of information that follows the official chain of command. The CRSI and CRSII officers reported in writing to the commanders of their respective units. Both CRSI²⁸¹⁹ and CRSII²⁸²⁰ commanders then transmitted the information to the Director of Intervention Units, Principal Commissioner Yoro, who in turn was subordinated to the DGPN.

1252. When it comes to the purpose of the operation, the information in documentary evidence submitted by the Prosecutor is also consistent with Major Toaly Baï's statements that the FDS had received intelligence that there were weapons and armed enemy individuals hidden in the PK18 area.²⁸²¹ The reports clarify that the objective of the Police was to search for enemy combatants' weapons and ammunition purportedly hidden by 'rebels' in Abobo and ultimately to 'secure the area'.²⁸²² The internal reports of the FDS also note the participation of BAE,

²⁸¹⁸ P-0046, T-127 dated 21 February 2017, p. 73.

²⁸¹⁹ Note the evidence relating to the CRSI in the Principal Commissioner's report to the DGPN constitutes only one report, dated 13 January 2011: A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0329-0331 ('CRSI commander's report'). This document was purportedly signed by Commissioner Djédjé Gbagro Bertin, the CRSI commander. The signature is found beside a CRSI stamp at the bottom of the document page. On the first page, there is a stamp of the Directorate of Intervention Units indicating that the CRSI report was delivered on 18 January 2011.

²⁸²⁰ Note there are two CRSII documents attached to Principal Commissioner Yoro's report connected to the 11 January 2011 operation. One concerns a handwritten report signed by a Police lieutenant and sent to the CRSII commander, in which the lieutenant describes the incidents in which he was involved during the Abobo operation on 11 January 2011: A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0326-0328 ('CRSII lieutenant's report') dated 11 January 2011. The other document consists of a letter in which the CRSII commander addresses the Director of Intervention Units and narrates the same events but in less detail: A/s- Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0324 (CRSII commander's report) (dated 18 January 2011). Most probably, the CRSII commander (who appears to have been the officer who signed the document, Commissioner Ouoty Marius Touré) attached the Lieutenant's report to his letter and sent the documents to his superior. The Lieutenant's report is dated 11 January 2011 and seems to have been delivered to the CRSII command on 18 January 2011, the same date shown in the heading of the commander's report. Both CRSII documents bear the stamp of their respective recipients.

²⁸²¹ P-0156, T-171, dated 4 July 2017, p. 36.

²⁸²² CRSI commander's report (confidential) at 0330. See also a report from the commander of the 1st Legion of the departmental *Gendarmerie*, which states that the *opération ratissage* was the result of intelligence according to which caches of armes and *bandits* were hidden in PK18 (JOURNEE DU : DU 11 /01/2011 A 06 HEURES AU 12/01/2011 A 06 HEURES, 11 January 2011, CIV-OTP-0043-0330 (confidential) at 0030.

CRSI and CRSII, navy, *Gendarmerie*, in addition to elements from different Police districts of Abidjan.²⁸²³ According to these documents, the FANCI was charged with forming a protective ring around the area to isolate it and provide security to the operation.

1253. The reports state that the operation started at 06h00, after a meeting held at 03h00.²⁸²⁴ This is corroborated by Major Toaly Bai's testimony that the operation started at 03h00 with a meeting he organised with the troops. After the meeting, the Police started its activities in Abobo.²⁸²⁵

1254. CRSI commander Commissioner Djédjé Gbagro stated in his report that an attack by heavily armed rebels triggered immediate response of his forces and left two FDS elements dead. The report also states that after the troops came under attack, the CRSI's objective was to repel enemy combatants, help the men caught in the cross fire, and recover the bodies of their killed agents. According to the text of the CRSI commander's report, the exchange of fire lasted for four hours.²⁸²⁶

1255. It is clear that the reports do not provide a detailed overview of what happened in the operation. Although all documentary evidence connected to the 11 January 2011 operation relates to the CRSI and CRSII, the two units accounted for only part of the Police forces participating in the operation. According to the CSRI commander's report, 337 Police elements took part in the operation. Of these, 48 belonged to CRSI, 65 to CRSII, 50 to BAE, and 25 to CIPPA, with the remainder coming mainly from the Police districts.²⁸²⁷ The Chamber has been presented only with information concerning the activities of CRS units which represented a

²⁸²³ CRSII lieutenant's report (confidential) at 0326.

²⁸²⁴ CRSI commander's report (confidential) at 0329; CRSII lieutenant's report (confidential) at 0326.

²⁸²⁵ P-0156, T-171 dated 4 July 2017, pp. 39-40.

²⁸²⁶ CRSI commander's report (confidential) at 0330.

²⁸²⁷ CRSI commander's report (confidential) at 0329-0330.

fraction of the Police forces. Most of the facts involving this operation remain unknown.

1256. The report of the CSRI commander also informs the number of elements from other FDS units providing cover to the Police. Accordingly, the Police was supported by 271 *Gendarmerie* elements, 96 from the COMTER [i.e. ground forces], 77 navy elements and three from 'DOM', for a total of 774 FDS personnel including CRSI.²⁸²⁸ There is no information as to what these individuals did during the operation and in reaction to the attack suffered by the Police.
1257. It is also unclear how long the operation lasted. The Prosecutor stated that 'at around 19h the CEMA gave the order to end the operation'.²⁸²⁹ This is based on the text of Principal Commissioner Yoro's report. However, although Principal Commissioner Yoro stated in his report that at around 18h52 the Chief of Staff gave orders to end the operation and the officers involved in the operation met for a debriefing at the *état major*,²⁸³⁰ the CRSI commander's report states that the order to terminate the operation and the debrief by the Chief of Staff occurred at 13h52.²⁸³¹ Since it appears that the source of information of the Principal Commissioner's report was the CRSI commander's report, this discrepancy may have been due to a typographical error or an oversight. Still, in the absence of clarification in this respect, the time of termination/duration of the operation remains unknown.
1258. Moreover, the documents do not provide detailed information as to how the two FDS elements died, they only establish that their deaths were caused by the 'rebels'. The only account is provided by the CRSII lieutenant's report,

²⁸²⁸ CRSI commander's report (confidential) at 0329.

²⁸²⁹ Mid-Trial Brief, para. 415.

²⁸³⁰ Principal Commissioner's report (confidential) at 0317.

²⁸³¹ CRSI commander's report (confidential) at 0331.

according to which the troops retreated from Abobo PK18 when they encountered two armed individuals, and were later informed by *Gendarmerie* reinforcements that there were two dead bodies in the neighbourhood. Upon returning to retrieve the bodies, they found the two elements had been stripped of their belongings.²⁸³²

1259. The documents further note that ten FDS and one civilian were injured; all of whom were taken to the military hospital. The reports only show the name, age and occupation of the civilian and the names and respective units of the FDS elements.²⁸³³

1260. In his report, the CRSI commander notified his superior of the arrests of two individuals carrying *armes blanches* (bladed weapons).²⁸³⁴ The two individuals were residents of Abobo PK18; one was a driver of Guinéan nationality carrying a spear and the other, an unemployed Burkinabé, had three machetes in his possession. The arrests were recounted in Principal Commissioner Yoro's report to the DGP.²⁸³⁵

1261. The Prosecutor in the Mid-Trial Brief concluded her account of the failed Police operation of 11 January 2011 stating that 'later that evening of 11 leading to 12 January, members of the police positioned at the college St-Joseph south of the roundabout of the Mairie in Abobo engaged in fighting with "rebels"'.²⁸³⁶ This passage of the Prosecutor's brief insinuates the existence of a connection between events of the 12 January 2011 with those of the previous day. However, the Police operation in Abobo started and finished on the same day of 11 January 2011. Also, while on 11 January the FDS was conducting an operation, there is

²⁸³² CRSI lieutenant's report (confidential) at 0327-0328.

²⁸³³ Principal Commissioner's report (confidential) at 0317.

²⁸³⁴ CRSI commander's report (confidential) at 0330.

²⁸³⁵ Principal Commissioner's report (confidential) at 0316.

²⁸³⁶ Mid-Trial Brief, para. 416.

no evidence that the officers involved in the 12 January incident were acting in pursuance of a specific pre-planned mission.²⁸³⁷

1262. Moreover, the evidence demonstrates that the Police positioned at the *rondpoint de la mairie* in Abobo suffered an attack by armed combatants. Principal Commissioner Yoro's correspondence to the DGPN also contained reports relating to the events of 12 January 2011 in Abobo. According to the Principal Commissioner's report, on 12 January, Police forces were overpowered by heavily armed combatants who carried RPGs and 12.7mm guns, following which BAE elements arrived with tanks to provide reinforcement and rescue the Police.²⁸³⁸ The letter states that among the six FDS dead, three were BAE officers, one CRSII and one CIPPA. Moreover, three BAE officers were injured, and three FDS vehicles (one from BAE, one from CIPPA and one from CRSII) were destroyed by the fire following rocket attacks. General Mangou also confirmed that the Police was attacked on 12 January 2011, that six men died, and that UN forces passed by and did not help the injured Police officers.²⁸³⁹
1263. Thus, the Prosecutor's allegation that the Police 'engaged in fighting' with the rebels misrepresents the evidence. According to the evidence, it seems more likely that the Police were the targets of an attack during their operation in Abobo.

²⁸³⁷ P-0009, T-195 dated 27 September 2017, p. 44.

²⁸³⁸ Principal Commissioner's report (confidential) at 0316, 0320. The source of this information in Principal Commissioner Yoro's letter appears to have been a handwritten report from a BAE sub-lieutenant to the BAE commander, which was among the documents Principal Commissioner Yoro forwarded to the DGPN (A/s-Attaque des positions de la Police par des rebelles à Abobo PK 18 et au Rond Point de la Mairie les 11 et 12 janvier 2011, 19 January 2011, CIV-OTP-0046-0316 (confidential) at 0320-0321 ('BAE sub-lieutenant's report') (dated 12 January 2011)). According to the sub-lieutenant, the attackers left the location in UNOCI vehicles that came to pick them up.

²⁸³⁹ P-0009, T-195 dated 27 September 2017, pp. 39-47; T-197 dated 2 October 2017, p. 75.

b) The aftermath

1264. The evidence confirms that Mr Gbagbo imposed, through a presidential decree, a curfew in Abobo and Anyama on 12 January 2011.²⁸⁴⁰ The curfew was renewed on 15 January 2011,²⁸⁴¹ 21 January 2011,²⁸⁴² and again from 28 January to 4 February 2011.²⁸⁴³ General Mangou testified that the curfew was imposed to facilitate the work of the FDS in Abobo to ensure the security of the Police and the population.²⁸⁴⁴

1265. In the Response, the Prosecutor argues that the curfew gave the FDS a legal justification to conduct night patrols in Abobo.²⁸⁴⁵ Nevertheless, despite the evidence confirming that night patrols were indeed conducted in Abobo, it is not clear why such a legal justification would be needed and how the imposition of a curfew could have such an effect. The argument of the Prosecutor is entirely unconvincing.

1266. When it comes to public declarations on the RTI, the Prosecutor relies on General Mangou's appearance on the RTI on the evening of 12 January 2011, where he stated that since 16 December 2010 the FDS had constantly been attacked and had their members killed. He noted that on 11 January 2011 two FDS members were killed and nine injured by opposing forces armed with weapons of war. The Chief of Staff further said that the attacks were acts of war against the FDS and they would defend themselves. In view of the grave

²⁸⁴⁰ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063 at 00:02:55-00:11:38, transcript at CIV-OTP-0087-0485 at 0486.

²⁸⁴¹ RTI Broadcast dated 15 January 2011, CIV-OTP-0064-0111 at 00:03:24-00:04:35, transcript at CIV-OTP-0102-1910 at 1911.

²⁸⁴² RTI Broadcast dated 21 January 2011, CIV-OTP-0064-0112 at 00:49:20-00:50:17, transcript CIV-OTP-0102-1964 at 1965.

²⁸⁴³ RTI Broadcast dated 28 January 2011, CIV-OTP-0074-0071 at 00:15:14-00:16:01, transcript at CIV-OTP-0087-0577 at 0578.

²⁸⁴⁴ P-0009, T-198 dated 3 October 2017, pp. 9-10.

²⁸⁴⁵ Response, para. 720.

situation, General Mangou stated, a curfew was being imposed in Abobo-Gare and Anyama from 12 January 2011 to 15 January 2011, from 19h00 to 06h00.²⁸⁴⁶

1267. The Prosecutor points out that on the same evening, the RTI also broadcast an address by Mr Guiriéoulou, Minister of Interior, to the gathered *préfets* of Abidjan in which Minister Guiriéoulou informed the press that they were in a situation of war. Minister Guiriéoulou emphasised that special measures should be taken and that he had instructed the *préfets* that in their activities they must be mindful of the fact that they were operating in a state of war and act accordingly.²⁸⁴⁷

1268. In the Mid-Trial Brief, the Prosecutor made a point that ‘[l]ater in the evening of 12 January 2011, after that night’s RTI broadcast, Gbagbo presided over a meeting at the Presidential Residence with BLÉ GOUDÉ, Ministers Dogou, Guiriéoulou, and the high command of the FDS’.²⁸⁴⁸ In this context, the Prosecutor relied on footage broadcast on 13 January 2011 on the RTI, according to which the FDS high command had held a meeting at the *état major* and subsequently reported to Mr Gbagbo.²⁸⁴⁹ The logbook of the Presidential Residence registers the entries of Generals Mangou, Detoh Letho, Vagba, Bredou M’Bia and Kassaraté, as well as Mr Blé Goudé and Mr Aké N’Go on the evening of 12 January 2011.²⁸⁵⁰ According to the logbook, they stayed for a couple of hours and left before 01h00.

²⁸⁴⁶ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063 at 00:03:30-00:06:21, transcript at CIV-OTP-0087-0485 at 0486, Ins. 35-37.

²⁸⁴⁷ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063 at 00:16:10-00:17:56, transcript at CIV-OTP-0087-0491.

²⁸⁴⁸ Mid-Trial Brief, para 429.

²⁸⁴⁹ RTI Broadcast dated 13 January 2011, CIV-OTP-0064-0110 at 00:03:49–00:06:34, transcript at CIV-OTP-0086-1013.

²⁸⁵⁰ Large visitor register, 3 November 2010 (*Estimated*), CIV-OTP-0067-0402 (confidential) at 0514-0515; transcript CIV-OTP-0088-0863 (confidential) at 1087-1090. *Note* that during his testimony, General Mangou initially could not recall this meeting. The information he provided in this context was given by General Mangou after he was presented with the video (see fn above) and had his memory refreshed. P-0009, T-195 dated 27 September 2017, pp. 39-43.

1269. There is also testimonial evidence with respect to this meeting. General Mangou testified that the meeting with the President on that evening was the same as usual. Accordingly, General Mangou said that ‘every time we saw him, we would give him a situational report. We would tell him what the situation or prevailing situation was. And as I underscored, from the 11th to the 12th, there was the loss of six of our policemen with the destruction of their accompanying equipment’.²⁸⁵¹ General Mangou further testified that they also talked about the situation prevailing generally across the entire territory.²⁸⁵²

1270. Inspector-General Bredou M’Bia testified that the meeting with the President on 12 January 2011 was held because ‘the head of state wanted information and a report on attacks of the forces’.²⁸⁵³ According to Inspector-General Bredou M’Bia, FDS elements had been killed at Abobo Gare, and the President wanted to understand what had occurred, but no particular measures were taken.²⁸⁵⁴

1271. General Detoh Letho confirmed having attended a meeting in that period.²⁸⁵⁵ According to General Detoh Letho, he and others went to report to the President about the events taking place on the ground, in particular the incidents of 11 and 12 January 2011.²⁸⁵⁶ General Detoh Letho testified that Abobo and Anyama caused concern at that time since their elements had been killed and the population had been taken hostage by their opponents.²⁸⁵⁷ As for Mr Gbagbo’s reaction when he received the update, General Detoh Letho said he could not

²⁸⁵¹ P-0009, T-195 dated 27 September 2017, p. 46.

²⁸⁵² P-0009, T-195 dated 27 September 2017, p. 46.

²⁸⁵³ P-0046, T-126 dated 20 February 2017, p. 12.

²⁸⁵⁴ P-0046, T-126 dated 20 February 2017, pp. 9-12.

²⁸⁵⁵ P-0047, T-203 dated 7 November 2017, pp. 52-55.

²⁸⁵⁶ *Note* that General Detoh Letho did not recall the exact date and had his memory refreshed on this point, but from his reference to events that took place in Abobo ‘that day’ and the previous day, it can be inferred that the witness was referring to 11 and 12 January 2011. *Note also* General Detoh Letho’s testimony that the meeting was also attended by Generals Mangou, Kassaraté, Bredou M’Bia, Vagba, Aka Kadjo, and Guiai Bi Poin. P-0047, T-203 dated 7 November 2017, pp. 53-54.

²⁸⁵⁷ P-0047, T-203 dated 7 November 2017, pp. 54-55.

recall exactly but did not think that Mr Gbagbo had said anything specific or out of the ordinary.²⁸⁵⁸ General Detoh Letho also stated that in such circumstances Mr Gbagbo would repeat that their mission was to protect the population and put an end to the attacks.²⁸⁵⁹

1272. It is not clear to which extent, if any, the imposition of the curfew and the statements made by General Mangou and Minister Guiriéoulou on the RTI could be connected to the meeting with Mr Gbagbo. If the logbook was considered evidence that the meeting occurred after the RTI broadcast, this would be in contradiction to Inspector-General Bredou M'Bia's testimony that the announcement of the curfew was made after the meeting with the President.²⁸⁶⁰

1273. Regardless of any potential connection between Mr Gbagbo's meeting and the statements on the RTI, the important aspect of the Prosecutor's case in this context is the relationship between the measures adopted (and broadcast on the RTI) and the failure of the Police operation in Abobo on 11 January 2011.

1274. In this regard, it must be noted that the reaction of the pro-Gbagbo side was only manifested around 36 hours after the Police operation in Abobo. Crucially, it followed a second attack on the Police in Abobo which led to more FDS casualties than the failure of the Police operation on 11 January did. The human and material loss the FDS suffered on 12 January 2011 was considerably greater than that of the day before. In addition, the testimonies about the meetings also make direct mention to the FDS casualties and the attacks suffered in Abobo, as opposed to the failure of a mission *per se*.

1275. All of this suggests that it was the human and material losses suffered by the FDS on 11 and, mainly, 12 January 2011 that sparked a response from the

²⁸⁵⁸ P-0047, T-203 dated 7 November 2017, p. 55.

²⁸⁵⁹ P-0047, T-203 dated 7 November 2017, pp. 54-55.

²⁸⁶⁰ P-0046, T-128 dated 22 February 2017, pp. 46-47.

government. The deaths of two Police officers on 11 January 2011 certainly gained more relevance when seen in combination with the six casualties suffered the following day in the same location. There is nothing in the evidence to support a conclusion that the measures taken by the government discussed above were inappropriate or disproportionate to the threat the FDS was facing in Abobo.

4. Escalation of military activities in Abobo after 11-12 January 2011

1276. The Prosecutor alleges that after 12 January 2011 there was a change from law enforcement to a ‘military model entailing army involvement’.²⁸⁶¹ However, as seen below, the evidence presented in this respect does not reveal a clear picture of the security arrangement adopted by the FDS in Abobo at that time.

1277. According to Inspector-General Bredou M’Bia’s testimony, in January 2011 the Police lost many men in Abobo and the ‘army took over the leadership’ of operations in Abobo.²⁸⁶² General Detoh Letho testified that the Army took over operations at a time when ‘things were becoming complicated in Abobo.’²⁸⁶³ Even though General Detoh Letho did not specify the point in time this happened, it might be reasonable to infer that he was referring to the ‘rebel attacks’ of 11 and 12 January 2011. General Mangou similarly testified that, as the armed opposition to the FDS intensified in Abobo in January 2011, the military assumed a more important role in the area.²⁸⁶⁴ Yet, according to General Mangou, it was only around 21 February 2011 that the Army really stepped in, due to the fact that the Police was no longer able to fulfil its mission in

²⁸⁶¹ Mid-Trial Brief, para. 204.

²⁸⁶² P-0046, T-125 dated 17 February 2017, pp. 98-99.

²⁸⁶³ P-0047, T-203 dated 7 November 2017, p. 57.

²⁸⁶⁴ P-0009, T-194 dated 26 September 2017, p. 50.

Abobo.²⁸⁶⁵ General Mangou explained that the Army had to take over at that time because the *Commando Invisible* were using weapons of war and the Police could not do anything against them.²⁸⁶⁶

1278. In addition to these testimonies, documentary evidence also suggests the adoption of a more militarised approach by the FDS in Abobo after 12 January 2011.

1279. The Prosecutor submitted a handwritten daily information bulletin (*BQI, bulletin quotidien d'information*) of 12 January 2011 which states that FANCI was to take over operations in Abobo.²⁸⁶⁷ The BQI appears to have been produced by the chief of the Abobo Police district and addressed to the Abidjan Police *préfet*. The document consists of a report on a meeting apparently convened by the head of the CPCO, Colonel Sako, at the *état major* from 12h55 to 16h00. The name of the person who signed the BQI is illegible. Regarding authentication, General Mangou believed this to be a fake document²⁸⁶⁸ and General Detoh Letho said he had never seen this document before.²⁸⁶⁹ Inspector-General Bredou M'Bia, on the other hand, said he had seen this document before and explained that it was a report which had been produced by one of his collaborators who attended the meeting.²⁸⁷⁰

1280. According to the BQI, Colonel Sako announced in the meeting that Abobo had been declared a war zone²⁸⁷¹ and that henceforth the armed forces would take

²⁸⁶⁵ P-0009, T-194 dated 26 September 2017, pp. 50-51, 77; T-195 dated 27 September 2017, p. 47. *Note* that on one occasion, the witness testified that the Police handed over responsibility to the Army on 22 January 2011. P-0009, T-193 dated 25 September 2017, p. 63.

²⁸⁶⁶ P-0009, T-194 dated 26 September 2017, p. 50.

²⁸⁶⁷ COMPTE-RENDU DE REUNION A L'ETAT-MAJOR DES ARMEES, 12 January 2011, CIV-OTP-0045-0359 ('BQI').

²⁸⁶⁸ P-0009, T-194 dated 26 September 2017, pp. 76-78; T-195 dated 27 September 2017, pp. 26-29.

²⁸⁶⁹ P-0047, T-203 dated 7 November 2017, pp. 55-56.

²⁸⁷⁰ P-0046, T-125 dated 17 February 2017, pp. 99-100.

²⁸⁷¹ For the discussion of this aspect of the BQI, *see* V.C.4.b) - Treating Abobo as a war zone.

control over operations with the Police and *Gendarmerie* in a supporting role.²⁸⁷²

The document also states that an operation to retake the *rondpoint de la mairie* originally planned for 14h00 that day had to be postponed to the night due to the evolution of the situation on the ground, in particular the fact that the ‘rebels’ had retreated to their hiding places. The BQI further states that the task of the Abobo Police district was to acquire information about the nature, capacity, and attitude of the rebels and that BAE was to hold Macaci. The GEB, GIGN and DMIR were tasked with neutralising the enemy and the mission of the *Garde Républicaine*, 1st BCP and 1st Battalion was to occupy the surrounding areas.

1281. In addition to the BQI, the Prosecutor adduced a document with a message of the DGPN signed by Inspector-General Bredou M’Bia (hereafter the ‘DGPN message’).²⁸⁷³ Inspector-General Bredou M’Bia authenticated this document before the Chamber and confirmed that it was a message sent to all his collaborators immediately after the establishment of the curfew.²⁸⁷⁴ Indeed, the DGPN message notes that a curfew in Abobo and Anyama had been imposed on 12 January 2011. The document states that military operations were to be conducted by the Army and the *Gendarmerie*. The DGPN message required the Police hierarchy to take all appropriate measures to secure their departments and to abstain from conducting patrols during curfew hours.

1282. Inspector-General Bredou M’Bia and General Mangou were unclear with regards to the respective positions the Army and the Police held in operations in Abobo after 12 January 2011. General Mangou was presented with the DGPN message during his testimony and denied that the DGPN meant that the Police would have an ancillary role to that of the FANCI and the *Gendarmerie* in Abobo. According to him, the mention of the Army and Police simply reveals that both of these

²⁸⁷² Note that this aspect of the BQI is analysed in detail below at paras 1301-1306, in the subsection dedicated to the analysis of the allegation that the FDS treated Abobo as a war zone.

²⁸⁷³ MESSAGE DEPART, CIV-OTP-0045-1193 (confidential).

²⁸⁷⁴ P-0046, T-125 dated 17 February 2017, pp. 105-106.

forces were going to take part in patrols.²⁸⁷⁵ General Mangou testified that, in the order of combat, forces like the Police and the *Gendarmerie* occupied ‘the first position’ and the armed forces offered them support.²⁸⁷⁶ Yet, he said, the activities to which the DGPN message refers were patrol missions, not operations ‘led out in the field’.²⁸⁷⁷ It is not entirely clear what General Mangou meant by that.

1283. Inspector-General Bredou M’Bia, for his part, confirmed that there was coordination between the Army and other FDS branches. According to Inspector-General Bredou M’Bia, ‘the army was supported by the *Gendarmerie*, and in terms of the positions, the police were really behind’.²⁸⁷⁸ Inspector-General Bredou M’Bia further stated that whenever there was a coordination meeting, the three commands came together and the operation was conducted together.²⁸⁷⁹ However, the witness said, ‘in the field’ the Police did not occupy the same positions as the Army and the *Gendarmerie*, but rather remained in the background.²⁸⁸⁰ Following this, Inspector-General Bredou M’Bia testified that ‘in Abobo, the police were not in the field of operations’.²⁸⁸¹ This gives the impression that the witnesses replied to a question concerning the operations in Abobo by explaining how operations of a different type than those about which he was being questioned were conducted. Whatever the case may be, no reasonable trial chamber could reach conclusions on the basis of the contradictory evidence given by both witnesses.

²⁸⁷⁵ P-0009, T-195 dated 27 September 2017, pp. 38-39.

²⁸⁷⁶ P-0009, T-195 dated 27 September 2017, p. 38.

²⁸⁷⁷ P-0009, T-195 dated 27 September 2017, p. 38.

²⁸⁷⁸ P-0046, T-128 dated 22 February 2017, p. 32.

²⁸⁷⁹ P-0046, T-128 dated 22 February 2017, p. 32.

²⁸⁸⁰ P-0046, T-128 dated 22 February 2017, p. 32.

²⁸⁸¹ P-0046, T-128 dated 22 February 2017, p. 32.

1284. The Prosecutor also submitted a document titled *renforcement dispositif sécurité*, dated 19 January 2011 and purportedly signed by the General Mangou, showing that steps were taken for the implementation of new security measures in Abidjan for the period of 18 January to 1 February 2011.²⁸⁸² This document provides for the creation of a modular detachment of armoured units which would patrol Abobo between 19h00 and 08h00. According to the document, General Mangou in his capacity of Chief of Staff requested personnel and materiel from different FDS units – including one armoured BAE vehicle from the DPGN, two 12,7mm on vehicles from CECOS and four ‘engins canon’ from the COMTER.²⁸⁸³

1285. On the basis of the foregoing evidence, all that is known in terms of specific FDS operations is that on 12 January 2011, the CPCO had a plan to recover control of Abobo. Apart from that, the evidence reveals that the Army and the Police conducted patrols in Abobo, possibly equipped with heavy weapons similar to those used by the forces that attacked the Police on 11 and 12 January 2011.²⁸⁸⁴

²⁸⁸² RENFORCEMENT DISPOSITIF SECURITAIRE, 19 January 2011, CIV-OTP-0046-0507 (confidential); authenticated by P-0009 at T-195 dated 27 September 2017, pp. 49-50.

²⁸⁸³ RENFORCEMENT DISPOSITIF SECURITAIRE, 19 January 2011, CIV-OTP-0046-0507 (confidential) at 0507-0508. *Note* the document also includes a message from the commander of the 1st mobile legion of the *Gendarmerie*, also dated 19 January 2011, apparently transmitting the Chief of Staff’s message to the commander of *Gendarmerie* squadron 3/1, i.e. the Abobo squadron, and requesting that an officer be designated for the purposes of this modular detachment (CIV-OTP-0046-0507 at 0509).

²⁸⁸⁴ It should be noted that witness P-0321 mentioned the creation of an operational zone in Abobo; however, from his testimony, it is difficult to determine the time period in which it was established. It is also not clear from P-0321’s testimony what this operational zone was and what its creation meant in practical terms. P-0321, T-63 dated 12 July 2016, pp. 34-35. *See also* P-0330, T-68 dated 1 September 2016, p. 24. According to P-0321, Camp Commando, originally the barracks of *Gendarmerie* squadron 3/1, became the command post for the new operational zone. P-0321, T-61 dated 8 July 2016, p. 82.

1286. Taking the evidence in its entirety, it could be concluded that the Army ‘took over’ operations, but what this meant in practice remains unclear.²⁸⁸⁵ The above analysis demonstrates that the absence of evidence concerning the consequences of the Army assuming the leadership of Abobo operations in January 2011 is manifest. Without this kind of information, any argument that there was an escalation in the use of military force by the FDS is meaningless for the advancement of the Prosecutor’s case. Having said that, the remainder of this subsection will focus on the unarticulated assumptions that the Prosecutor seems to have espoused in her narrative which the evidence indicates are inaccurate or misguided.

1287. It is noted that in theory, a scenario in which Police forces were effectively evacuated from a particular neighbourhood and replaced by the Army insinuates that a zone of combat was being prepared. The Prosecutor implies that this was what happened in Abobo when she argues that Mr Gbagbo chose not to give the population a chance to flee the area even though he knew of the risks they would otherwise face. Yet, while it is true that the maintenance of law and order in Côte d’Ivoire was within the sphere of competence of Police forces, it would be

²⁸⁸⁵ Note, in addition to the evidence above-discussed, that Generals Detoh Letho and Mangou testified that General Detoh Letho, the COMTER, was tasked with coordinating operations in Abidjan as a result of the deteriorating security situation. However, the record is unclear as to the date when this occurred and as to what this meant in practice. While both Generals Mangou and Detoh Letho initially stated that the COMTER was put in charge on 22 January 2011 (P-0047, T-203 dated 7 November 2017, p. 5, 15; P-0009, T-193 dated 25 September 2017, p. 63), General Mangou later testified that the Police retained the leadership of Abobo operations until 21 February (P-0009, T-194 dated 26 September 2017, pp. 50-51, 77; T-195 dated 27 September 2017, p. 47). This appears to be contradicted by a *Gendarmerie* document dated 18 February according to which the COMTER was tasked with city-wide coordination as well as being in charge of the command post for the Abobo-Anyama zone (MESSAGE PORTE / RENFORCEMENT DISPOSITIF DE SECURITE /URGENT No. 30365/CSG/CAB, 18 February 2011, CIV-OTP-0044-0026 (confidential) at 0027). The two accounts also conflict with regard to the role General Detoh Letho played as commander of Abidjan operations: according to General Mangou, the COMTER was the ‘big boss’ of Abidjan as he had direct responsibility for all personnel and materiel deployed in the city (P-0009, T-194 dated 26 September 2017, p. 53) and was himself out on the field (P-0009, T-193 dated 25 September 2017, p. 20). In contrast, General Detoh Letho testified that he never went to the field and had no decision-making power, as he merely served as a mechanism for forwarding the Chief of Staff’s orders to the troops (P-0047, T-203 dated 7 November 2017, pp. 17, 21-22; T-206 dated 10 November 2017, pp. 37-39).

factually incorrect to presuppose that an increased presence of the Army in Abobo entailed the cessation of law enforcement activities

1288. In this regard, reference is made to the official decree n. 67-332 of 1 August 1967 which mentions the participation of the Ivorian Army in law enforcement operations, thereby clearly demonstrating that such operations were not the exclusive competence of the Police.²⁸⁸⁶ There is also testimonial evidence to the effect that law enforcement activities in Abobo continued to be conducted throughout the month of January and beyond. Notably, General Mangou indicated that the FDS continued to effectively operate within the framework of law enforcement in Abobo after the incidents of 11 and 12 January 2011.²⁸⁸⁷

1289. It should also be noted that the participation of military forces in Abobo operations does not necessarily entail the replacement of the Police by the Army. There is evidence that the Police remained in Abobo after the Army ‘took over’. The DPGN message discussed above²⁸⁸⁸ is one example of evidence that the Police remained active in Abobo in the second half of January. In addition to that, a report from a DPGN duty officer of 15-16 January indicates that Police vehicles were operational in Abobo during the day and at night.²⁸⁸⁹

1290. In the same vein, General Mangou’s testimony makes clear that the Police continued to operate in Abobo in the weeks after 12 January 2011.²⁸⁹⁰ This might be in contradiction to Inspector-General Bredou M’Bia, who testified that after the Army took the lead in operations, the Police was no longer actively involved

²⁸⁸⁶ T-195, 27 September 2017, pp.3; 73-74. *See* DECRET INSTITUANT LE COUVRE-FEU, 6 December 2010, CIV-OTP-0048-0493 at 0495. *See also* the Prosecutor’s position in relation to this decree at T-195 dated 27 September 2017, pp. 16-17 (confidential).

²⁸⁸⁸ P-0009, T-195 dated 27 September 2017, p. 47: ‘On the 12th of January, we were still in law enforcement mode. And I’m going to define the period from 11 January to 21 February, it was the police who were fulfilling that mission.’.

²⁸⁸⁸ MESSAGE DEPART, CIV-OTP-0045-1193. *See* discussion above at para 1281.

²⁸⁸⁹ RAPPORT DE PERMANENCE CENTRALE, 16 January 2011, CIV-OTP-0045-0544 at 0550.

²⁸⁹⁰ P-0009, T-195 dated 27 September 2017, p. 47.

in Abobo.²⁸⁹¹ However, it also appears from Inspector-General Bredou M'Bia's testimony that the withdrawal of the Police from Abobo occurred at a later point in time during the post-electoral crisis. Accordingly, Inspector-General Bredou M'Bia clarified in his testimony that the Police stopped operating in Abobo 'in the end' and this was because the Police was forced to leave as they had been pushed out by the rebels. He further explained that 'in the end the only force that could have been – that could have left was the army'.²⁸⁹² The evidence does not suggest that the Police were forced to leave Abobo entirely in the aftermath of the events of 12 January 2011. There is thus no basis for an inference that the Police ceased its activities in Abobo in mid-January 2011.

1291. Another assumption that the Prosecutor also seems to espouse is that, because the armed forces had assumed a more prominent role in operations, they would be constantly conducting offensive military missions in Abobo.²⁸⁹³ This notion is contradicted by the evidence. For instance, General Detoh Letho testified that the Army was only carrying out patrols in Abobo, not pursuing any specific military objective.²⁸⁹⁴ Likewise, Inspector-General Bredou M'Bia mentioned that the Army was conducting patrols at the request of the Chief of Staff.²⁸⁹⁵

1292. Lastly, it is worth pointing out that the narrative of the Prosecutor in this context is based on the unstated premise that the Army became involved in Abobo operations for illegitimate reasons. This ignores the fact that after 12 January

²⁸⁹¹ P-0046, T-128 dated 22 February 2017, pp. 31-32.

²⁸⁹² P-0046, T-128 dated 22 February 2017, pp. 31-32.

²⁸⁹³ *Note* that the Prosecution in the Response relies on the evidence discussed in the subsection above to argue that 'the FDS treated Abobo like a war zone [...] thereby obtaining the benefit of more robust FDS operations'. Response, para 719. *Note* that the Prosecutor in this passage of the Response states that the 'nature of FDS operations in Abobo had changed from a law enforcement to a military model by the last week of February 2011'. She further notes that the documentary evidence proves that the FDS treated Abobo like a war zone. These documents are the BQI described in paras 1279-1280], FRAGO 69 [described in paras 1303-1305], the 'DGPN message' [mentioned in para. 1281] and the evidence relating to the imposition of the curfew in January 2011 [discussed in para 1264].

²⁸⁹⁴ P-0047, T-203 dated 7 November 2017, pp. 55-60.

²⁸⁹⁵ P-0046, T-128 dated 22 February 2017, pp. 31-32.

2011 it was obvious to the FDS that its officers in Abobo faced a palpable risk of being attacked by heavily armed enemies. For instance, in a report of 25 January 2011 from the Deputy Director General for Public Security to the DGPN, it is stated that Police officers residing at the *cit  polici re d'Abobo* were subject to recurring rebel attacks which they were ill-equipped to handle.²⁸⁹⁶ It is also relevant to recall that General Detoh Letho testified that the normal practice in the FDS was to adopt a defensive position in such circumstances.²⁸⁹⁷ Most crucially, witnesses such as Inspector-General Bredou M'Bia have clearly stated that the purpose of the operations in Abobo was to provide security to the area.²⁸⁹⁸

1293. Nothing in the evidence suggests a deliberate and malevolent escalation in the use of military force by the FDS at the time. In light of the numerous Police officers killed in Abobo on 11 and 12 January 2011, it would have been careless of the FDS high command not to strengthen the security apparatus in Abobo.

a) Civilian Deaths

1294. The Prosecutor argues that civilians were killed as a result of the activities of the Army in Abobo after 12 January 2011. In this regard, it is noted that there is no direct evidence of civilians being killed by the FDS in Abobo in the remainder of the month of January 2011.

²⁸⁹⁶ Menaces d'attaque de cit  polici re d'Abobo par les rebelles, 25 January 2011 (*Estimated*), CIV-OTP-0045-1445 at 1445. *Note* that the report also identifies four areas within Abobo which were classified as 'dangerous zones': the triangular area between the PK18 roundabout, Unicaf  and the beginning of Banco forest; Zion neighbourhood located opposite the 32nd arrondissement; the Abobo roundabout and Marley neighbourhood; and the area from the second stop at Banco roundabout south to the *Ch teau d'eau*

²⁸⁹⁷ P-0047, T-203 dated 7 November 2017, pp. 55-60.

²⁸⁹⁸ P-0046, T-125 dated 17 February 2017, pp. 98-99; P-0009, T-195 dated 27 September 2017, p. 25, p. 34; T-198 dated 3 October 2017, pp. 9-10; P-0156, T-171 dated 4 July 2017, p. 58.

1295. The Prosecutor submitted minutes from a meeting of Mrs Simone Gbagbo's cabinet held on 13 January 2011 which mention eight dead in Abobo.²⁸⁹⁹ However, it is not established that the victims were civilians. The document provides no information on the identities of the victims or the circumstances of their deaths. It is plausible that the eight dead refer to the two and six FDS elements who died during the operations on 11 and 12 January, respectively.²⁹⁰⁰
1296. The Prosecutor also adduced a UNOCI Weekly Situation Report, dated 18 January 2011, in her attempt to show that civilians were murdered by the FDS in Abobo between 12 January 2011 and early February 2011.²⁹⁰¹ According to the report, in the neighbourhoods of PK18, Duekoué and Lakota (which according to the report is located 45 km west of Divo and thus more than 200 kilometers away from Abidjan) there had been violent clashes between FDS elements, militias, *jeunes patriotes* and RHDP supporters, resulting in at least 50 deaths. The information contained in the document, which purportedly reports on events that took place from 11 to 17 January 2011, is anonymous hearsay. There is also no information on the affiliation of the perpetrators, the identity of the victims, the circumstances of their deaths, nor the number of victims reportedly killed in the PK18 area.
1297. Thus, although the Prosecutor suggests that the escalation of military activities provoked a surge in civilian casualties in Abobo, she presented no solid evidence of civilian deaths resulting from FDS activities in the second half of January 2011.

²⁸⁹⁹ COMPTE RENDU DE U REUNION DE CABINET No 01 Du Jeudi 13 Janvier 2011, 13 January 2011, CIV-OTP-0018-0395 (confidential) at 0397. *Note* that the document appears to have been drafted on 14 January; see CIV-OTP-0018-0395 (confidential) at 0399.

²⁹⁰⁰ See Principal Commissioner's report (confidential) at 0316, 0317.

²⁹⁰¹ DAILY SITUATION REPORT, 18 January 2011, CIV-OTP-0044-1341 (confidential) at 1347. *Note* that, contrary to the title, the document is a Weekly Situation report, covering the period of 11 to 17 January 2011, as is evidenced by the first page.

b) Treating Abobo as a war zone

1298. The Prosecutor in the Reponse states that ‘[a]fter 12 January 2011, the FDS operated in Abobo, a densely populated area, as if it were a war zone, with military operations being carried out from 23 February 2011.’²⁹⁰² Thus, at the same time that the Prosecutor alleges that Abobo was being treated as a war zone by the FDS from 12 January 2011 onwards, she links this to military operations that only took place six weeks later. Similarly, the evidence on which the Prosecutor relies when it comes to the alleged internal declaration of war in Abobo is connected to the date of 12 January 2011 but its consequences, namely the FDS’s obtaining ‘the benefit of more robust FDS operations, including weapons of war’²⁹⁰³ all relate to incidents that took place in late February 2011.

1299. It is noted that on 24 February 2011 General Mangou advised Mr Gbagbo to declare Abobo a war zone and therefore it is possible to infer that at that point in time the high command of the FDS did consider Abobo as such. The supposed rejection of General Mangou’s suggestion by Mr Gbagbo and its significance in the Prosecutor’s case will be discussed in the last subsection below, following the analysis of the FDS operations in Abobo in 23 and 25 February 2011 in section V.C.6. The focus of the present discussion is the evidence pertaining to the claim that the FDS effectively considered Abobo a war zone between 12 January 2011 to 22 February 2011.²⁹⁰⁴

1300. In the context of his testimony concerning the Police deaths in Abobo in January 2011, Inspector-General Bredou M’Bia testified that General Mangou said in a meeting that Abobo would be treated as a war zone.²⁹⁰⁵ No further information

²⁹⁰² Response, para 295.

²⁹⁰³ Response, para 719.

²⁹⁰⁴ Note that the military operations which took place on 23 and 25 February 2011 were provoked by attacks the FDS suffered in the area. See V.C.6.b) - The First and the Second Military Offensives in Abobo.

²⁹⁰⁵ P-0046, T-125 dated 17 February 2017, pp. 102-103; Note that Major Toaly Baï mentioned in his testimony that Abobo was a ‘*zone de combat*’. P-0156, T-171 dated 4 July 2017, p. 42, 64;

was provided by the witness in this regard other than his reiteration that the ‘army took the lead’ in operations in Abobo.²⁹⁰⁶ It therefore appears that to the witness, this alleged ‘internal declaration of war’ in Abobo was about the Army taking control of operations, in which case the conclusions reached above should be recalled.²⁹⁰⁷

1301. The Prosecutor further relies on documentary evidence to ground the allegation that the FDS began operating in Abobo as if it were a war zone after the Police operation in Abobo on 11 January 2011. Two FDS documents seem to be crucial to the Prosecutor: the above-mentioned BQI of 12 January 2011²⁹⁰⁸ and a document titled FRAGO 69, which appears to contain operational orders circulated in the FDS in January 2011.²⁹⁰⁹

1302. As said, the BQI shows that the CPCO, Colonel Sako, told his subordinates in a meeting on 12 January 2011 that Abobo had been declared a war zone. There is no indication that the CPCO had received instructions or a notification from the FDS high command to that effect. Moreover, the BQI in itself does not provide grounds for a conclusion that the Army units operating in Abobo received the same information. Finally, it is noted that, according to Major Toaly Baï, a designation of an area as a war zone is a political act over which not even the Chief of Staff would have competence.²⁹¹⁰

²⁹⁰⁶ P-0046, T-125 dated 17 February 2017, pp. 102-103.

²⁹⁰⁷ See V.C.4 - Escalation of military activities in Abobo after 11-12 January 2011, paras 1286-1293.

²⁹⁰⁸ COMPTE-RENDU DE REUNION A L'ETAT-MAJOR DES ARMEES, 12 January 2011, CIV-OTP-0045-0359 ('BQI').

²⁹⁰⁹ MESSAGE / No. 0135/EMA/CPCO/COND / EXPLOITATION FRAGO 69, 18 January 2011, CIV-OTP-0071-0407 ('FRAGO 69').

²⁹¹⁰ P-0156, T-171 dated 4 July 2017, pp. 43-44. *Note* that this passage of Major Toaly Baï, in which he comments the content of the BQI, continues as follows: ‘the term [war zone] may have been used here or there, but we have to think about tactics and the like. Abobo was an area of combat, a combat zone. That means a zone where your troops, your regular troops are on mission. For example, a cordon operation or a sealing off, you may come under attack, you may sustain casualties. And when it happens repeatedly, yes, then the zone becomes an area of combat. But the statement to the effect that Abobo was a war zone, I really have nothing to say about such a statement’.

1303. The other document, FRAGO 69, was drafted under the authority of the Chief of Staff. According to testimonial evidence, ‘FRAGO’ was a type of document used by the FDS to circulate operational orders²⁹¹¹ As the Prosecutor points out, the penultimate page of FRAGO 69 lists the rules of engagement in ‘Annex DIH’.²⁹¹² The first heading of the annex describes the rules of engagement for law and order operations whereas under the second heading, rules of non-international armed conflict and international humanitarian law (IHL) are mentioned.²⁹¹³ Clearly, this in itself is not evidence of an internal declaration of war. The inclusion of rules of engagement for armed conflict in FRAGO 69 is indicative of an added operational and legal dimension to operations in Abobo; yet, the intention of the FDS to use armed force in Abobo should not be surprising given the situation they were facing on the ground. Moreover, the inclusion of a reference to international humanitarian law in the rules of engagement does not mean that Abobo was considered exclusively in terms of armed conflict. On the contrary, the fact that there were two sets of rules of engagement in FRAGO 69 (one for law enforcement and one for armed conflict) clearly demonstrates that the situation was a lot more nuanced than the Prosecutor would like us to

²⁹¹¹ P-0156, T-171 dated 4 July 2017, p. 34; P-0047, T-203 dated 7 November 2017, p. 58. Major Toaly Bai explained that according to FDS practice at the time, there could be many FRAGO documents for one operation, each ending in different numbers. Major Toaly Bai authenticated the FRAGO 69 document and confirmed having participated in its drafting. The witness also testified that FRAGO documents were drafted collectively based on guidelines given by the Chief of Staff. P-0156, T-171 dated 4 July 2017, p. 45. P-0156, T-171 dated 4 July 2017, p. 45; T-172 dated 5 July 2017, p. 73. *Note* that the notion of collective drafting is not properly captured by the English transcript; cf. the French transcript, T-171 dated 4 July 2017 at p. 47. General Mangou was not questioned on the authenticity of his signature but seemed to have recognised FRAGO 69 during his testimony. P-0009, T-195 dated 27 September 2017, pp. 47-48.

²⁹¹² FRAGO 69 at 0414. *See also* P-0156, T-172 dated 5 July 2017, p. 69.

²⁹¹³ In both cases, human rights law was applicable and it was also expressly stated that persons and their belongings should be respected.

believe. Indeed, the two sets of rules suggest that the FDS was contemplating two different kinds of operations in Abobo.²⁹¹⁴

1304. The Prosecutor tries to impart greater probative value to these two documents by establishing a connection between them.²⁹¹⁵ Presumably, the phrase in the BQI that the ‘military authorities had said that Abobo had become a war zone’ demonstrates that the inclusion of IHL in FRAGO 69 was understood to mean that Abobo had become a zone of war. In this respect it becomes relevant that FRAGO 69, differently from the BQI, was produced under the authority of the FDS Chief of Staff and circulated throughout different military units.
1305. A connection between these two documents could be established on the basis that the BQI states that an operation to re-establish control over the *rond point de la mairie*, scheduled to take place at 14h00 on that day, had to be postponed to the evening.²⁹¹⁶ This seems to be the same operation that is described in the FRAGO 69 document, which outlines a mission plan to establish order in Abobo with a view to normalising the security situation ‘from 12 January 2011’ onwards. FRAGO 69 states that this operation was planned to take place in the area surrounding the *rond point de la mairie* and the mission was to be conducted by the CPCO (Colonel Sako) - the same person who convened the meeting registered in the BQI. It is also stated in FRAGO 69 that the troops from various units would go to the briefing at 14h00 on 12 January 2011 at the *état major*.²⁹¹⁷

²⁹¹⁴ The phenomenon of issuing troops with multiple ROE is nothing extraordinary from a legal point of view and certainly not unique to the situation in Abobo. See, for example, Constantin von der Groeben, “The Conflict in Colombia and the Relationship between Humanitarian Law and Human Rights Law in Practice: Analysis of the New Operational Law of the Colombian Armed Forces”, in *Journal of Conflict and Security Law*, Vol. 16(1), 2011, pp. 141-164.

²⁹¹⁵ Mid-Trial Brief, paras 418-423.

²⁹¹⁶ BQI at 0359.

²⁹¹⁷ FRAGO 69 at 0412. *Note* that according to the document, the planned ‘combat units’ were the *Gendarmerie*, DMIR, Police, CECOS, GR, 1st BCP, 1st BTON and BASA. *Note* also that the total number of personnel was 309 (FRAGO 69 at 0415).

1306. The fact that the operation in the BQI refers to FRAGO 69 operation supposedly provides grounds for an inference that the CPCO Colonel Sako received the FRAGO 69 before the meeting and interpreted the information in Annex DIH as an internal declaration of war in Abobo.
1307. This reading of the evidence is not implausible, even though there are caveats which this analysis disregarded, due to the present stage of proceedings.²⁹¹⁸ Yet, even if it is accepted that the two documents demonstrate that the Army and the Police, from 12 January 2011, considered Abobo as a war zone, it would be still difficult to see what conclusion a reasonable trial chamber could draw from it.²⁹¹⁹ Similarly to the conclusions reached in relation to the proposition that the Army took the lead of operations in Abobo discussed above, it is not clear the significance (if any) which the supposed treatment of Abobo as a war zone had had in concrete terms. As demonstrated in the subsection below, there is no evidence that FDS operations were conducted for more than a month after the purported internal declaration of Abobo as a war zone. Reference is also made to

²⁹¹⁸ Note for instance that the date shown on the cover of the document and in the fax reference number of each page of FRAGO 69 is 18 January 2011. However, the text in the first page of FRAGO 69 refers to the events that had taken place on the 12 January 2011 as events of ‘this morning’. Witnesses confirmed that the document had a link with the events of 12 January, but it is not certain when the other pages of the document were drafted. Testimonial evidence of insider witnesses reveal that documents named FRAGO were of a specific type and consisted of ‘fragmented orders’ (hence, its name). It follows that FRAGOs were usually updated to reflect a specific incident or new development on the ground. P-0047, T-203 dated 7 November 2017, p. 58. Moreover it is questionable whether or not the CPCO received the FRAGO 69 communication before the meeting. It is recalled that the attack suffered by the Police was in the early hours of 12 January and the meeting with Colonel Sako was held 12h55 of the same day. FRAGO 69 included the planning of an operation involving both the Police and FANCI, with 309 FDS elements in total. An operation of this calibre would most probably not be one that could be planned, organised, and executed in a matter of hours. Indeed, the FRAGO 69 document itself shows that a substantive amount of coordination amongst the FDS was needed, or at very least, that operational orders would have to be disseminated to all units involved. In that respect, it is noted that FRAGO 69 has a stamp showing that the document was received by the *Garde Républicaine* on 18 January 2011.

²⁹¹⁹ Note that the FRAGO 69 operation stated outlined in the document does not resemble a war-type mission. In particular, the document expresses concern with the population in Abobo being subjected to ‘acts of terrorism and vandalism’ perpetrated by ‘assailants’. The document also indicates that the FDS expected the local population to be supportive of the operation since its aim was to allow civilians to perform daily activities safely. It is important to note, also, that there is no reliable evidence of any significant military operations in Abobo between 12 January 2011 and the latter half of February 2011.

the conclusions reached with respect to the evidence of civilian deaths in the above subsection V.C.4.a) and subsection V.C.5 below.

1308. Lastly, it is noted that the Prosecutor stated that ‘[t]he BQI and FRAGO 69 provide insight into the state of mind of the FDS. They demonstrate that at a minimum, as of 12 January 2011, the FDS were treating Abobo as a war zone, even though it was never formally declared as such’.²⁹²⁰ To illustrate this point, the Prosecutor makes reference to an interview Mr Gbagbo gave to CANAL+ in which he denied that Côte d’Ivoire was in a state of war.²⁹²¹ The Prosecutor stated that this interview took place on 12 January 2011 but there is no information confirming this to be true.²⁹²² The Prosecutor also relied on quotes from declarations of the Chief of Staff and the Minister of Interior broadcast on the RTI on 12 January 2011, described above.²⁹²³ It appears that the Prosecutor’s point in this context is that, although the FDS knew that the situation was one of war-like gravity (as shown in the RTI broadcast), Mr Gbagbo’s interview displays his determination to mislead the population by denying that the violence had reached such a scale. However, this argument is unsustainable for the reasons outlined below.

1309. First, on 12 January 2011, both Minister Guiriéoulou and General Mangou made clear references to the fact that they considered the situation to be one of war. Minister of Interior Émile Guiriéoulou stated that the situation was not normal and that they should adjust their actions to the fact that they were in a state of war.²⁹²⁴ General Mangou announced a curfew, which he said would give the FDS

²⁹²⁰ Mid-Trial Brief, para 423.

²⁹²¹ Video, 12 January 2011, CIV-OTP-0088-0029 at 19:58-20:28 (excerpt from CANAL+ interview, broadcast date unknown); transcript CIV-OTP-0093-0112 at 0124, lns. 41-405.

²⁹²² Mid-Trial Brief, para. 426.

²⁹²³ See paras 1266-1267.

²⁹²⁴ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063 at 00:16:10-00:17:56, transcript at CIV-OTP-0087-0491.

the opportunity to pursue individuals who had engaged in acts of war with weapons of war. He also stated that the FDS was in a position of legitimate self-defence.²⁹²⁵

1310. Second, in relation to Mr Gbagbo's interview on CANAL+, it has not been established that Mr Gbagbo was aware of the latest developments in Abobo at the time he gave the interview. In fact, the Prosecutor has not demonstrated that the CANAL+ interview was given by Mr Gbagbo on 12 January 2011. In addition, she has not established that the CANAL+ interview was broadcast in Côte d'Ivoire and, if it was, that this was a channel that was frequently watched by the population of Abobo. Indeed, if Mr Gbagbo's purpose was indeed to mislead the civilian population of Abobo, it would be difficult to explain why he chose an interview with a foreign broadcaster to achieve this goal.

1311. Also in this context, the Prosecutor points out that Mrs Simone Gbagbo met 'inner circle' members on 11 January 2011 and again the next day at the Presidential Residence. There is no evidence as to what was discussed during these meetings. In the Mid-Trial Brief, the Prosecutor suggested a link between FDS activities and the meeting attended by Mrs Gbagbo on 11 January 2011 by recalling that she was 'also a deputy who represented the commune of Abobo in the National Assembly'.²⁹²⁶ As to the second meeting, the Prosecutor pointed out that it happened at the same time as the RTI broadcast of Minister Guiriéoulou's declarations on 12 January 2011 mentioned above. Clearly, none of this is evidence that the purpose of Mrs Simone Gbagbo's meetings was to discuss the failure of the Police operation of 11 January 2011, much less that there was a plan to declare Abobo a war zone without informing the population.

²⁹²⁵ RTI Broadcast dated 12 January 2011, CIV-OTP-0074-0063 at 00:03:30-00:06:21, transcript at CIV-OTP-0087-0485 at 0486, Ins. 35-37.

²⁹²⁶ Mid-Trial Brief, para. 430.

1312. In light of the above, regardless of whether the FDS considered Abobo a war zone or not, there is nothing meaningful that a reasonable trial chamber could conclude from the available evidence.

5. *FDS Activities in Abobo from Mid-January to 22 February 2011*

1313. As far as the evidence is concerned, from 12 January 2011 up until the last week of February 2011, FDS activities in Abobo involved Army patrols being conducted during the curfew hours. There is no evidence of FDS missions with a specific offensive objective being conducted in Abobo in the period from 11 January 2011 to 22 February 2011. This *per se* undermines the Prosecutor's narrative that there was a continuum of violence inflicted by the FDS on civilians during pre-planned operations and missions in Abobo.

1314. When it comes to evidence of operational orders issued in this period, the Prosecutor in her submissions mentioned one document only. This relates to a message of the Superior Commander of the *Gendarmerie* to his subordinates, dated 18 February 2011, regarding the reinforcement of security in Abidjan.²⁹²⁷ The document shows that, for operational purposes, Abidjan had been divided into five zones. The Prosecutor seems to presume that this division was made on 18 February 2011 and thus was related to the violence in the post-electoral crisis. It is not clear why this would have been incriminating, had it been the case. Still, there is no suggestion in the document that the five zones were created at that time and General Mangou stated that the division into five zones existed since 2002.²⁹²⁸

²⁹²⁷ MESSAGE PORTE / RENFORCEMENT DISPOSITIF DE SECURITE /URGENT No. 30365/CSG/CAB, 18 February 2011, CIV-OTP-0044-0026 (confidential) at 0026; authenticated by P-0011 at T-131 dated 9 March 2017, pp. 35-36.

²⁹²⁸ P-0009, T-195 dated 27 September 2017, pp. 72-73. For the discussion of the evidence concerning the creation of a sixth security zone in Abidjan in March 2011, *see* IV.D.1.a) - Command and Control over FDS troops operating in Abidjan, paras 385-388.

1315. Turning to the allegation that on 7-8 February the FDS shot ten people in Abobo,²⁹²⁹ it is noted that it is grounded on anonymous hearsay from UNOCI Daily Situation Reports and Call Centre Daily Reports, in addition to notes in a diary that belonged to witness [REDACTED].²⁹³⁰

1316. The Daily Situation Report in question states in general terms that according to an unknown source ten people were killed in Abobo on 7 and 8 February 2011 when FDS elements fired indiscriminately during an operation. The Prosecutor also submitted two additional UN documents that simply reproduce the information found in the Daily Situation Report.²⁹³¹ The UNOCI Call Centre Daily Report of 8 February 2011 includes eleven entries concerning Abobo.²⁹³² Concerning these entries, the document states that in total twelve civilians were killed and seven were injured.²⁹³³ Five of the entries do not mention the alleged perpetrators and four others refer to armed individuals or '*les militaires*', or merely state that the population believed it was the FDS. One caller said that his neighbour had been killed by elements of the *Garde Républicaine*.²⁹³⁴ Other than this, one entry mentions that the *Gendarmerie* was chasing a man in Abobo on 7 February 2011.²⁹³⁵

²⁹²⁹ Mid-Trial Brief, para. 443.

²⁹³⁰ AGENDA 2011, 1 January 2011 (*Estimated*), CIV-OTP-0046-0411-R02 (confidential); authenticated by P-0330 at T-69 dated 2 September 2016, p. 43.

²⁹³¹ DAILY SITUATION REPORT, 9 February 2011, CIV-OTP-0044-1119 (confidential) at 1121; Monthly Report for February 2011, 1 February 2011 (*Estimated*), CIV-OTP-0044-0316 (confidential) at 0325; Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire / A/HRC/17/48, 1 July 2011, CIV-OTP-0053-0835 at 0848. *Note* that the source of all of these documents appears to have been the same.

²⁹³² Rapport quotidien du 8 février 2011 / (du 7 février 2011 12h au 8 février 12h), 8 February 2011, CIV-OTP-0044-1551 (confidential).

²⁹³³ Rapport quotidien du 8 février 2011 / (du 7 février 2011 12h au 8 février 12h), 8 February 2011, CIV-OTP-0044-1551 (confidential) at 1551-1553.

²⁹³⁴ Rapport quotidien du 8 février 2011 / (du 7 février 2011 12h au 8 février 12h), 8 February 2011, CIV-OTP-0044-1551 (confidential) at 1553.

²⁹³⁵ Rapport quotidien du 8 février 2011 / (du 7 février 2011 12h au 8 février 12h), 8 February 2011, CIV-OTP-0044-1551 (confidential) at 1552.

1317. The relevant entry in [REDACTED]diary simply states that on 7 February 2011 in a joint operation of the GSPR and *Gendarmerie* squadron 3/1, one person died and many were injured on the enemy side.²⁹³⁶
1318. It is likely that the abovementioned incident of 7 February 2011 is the same as the one described in a report which the Deputy Director General for Public Security sent to the DGPN.²⁹³⁷ If so, the notes in P-0330's diary refer not to an offensive operation but to a confrontation between the FDS and armed groups in Abobo. According to the report addressed to the DGPN, on 7 February 2011 the GSPR exchanged fire with rebels near the 21st *arrondissement commissariat* in Abobo at the same time as a fire broke out in a neighbouring courtyard.²⁹³⁸ In the ensuing chaos, unidentified armed individuals attacked the 14th *arrondissement commissariat*, causing injury to one officer and damage to materiel. The document states that the Abobo Nord hospital registered two deaths on that day and on 8 February 2011, a unit from the 21st *arrondissement* discovered five bodies riddled with bullets at an unknown location and three others at PK18 whose throats had been slit. Yet, there is no indication that the individuals who died were civilian nor is it established that the deaths were caused by the FDS. If anything, this document demonstrates that the FDS continued to face armed opposition in Abobo.
1319. The only testimonial evidence that makes reference to FDS crimes in this period is that provided by witness P-0184.

²⁹³⁶ AGENDA 2011, 1 January 2011 (*Estimated*), CIV-OTP-0046-0411-R02 (confidential) at 0433; P-0330, T-69 dated 2 September 2016, pp. 44-45. *Note* that it is not stated in P-0330's notes where this took place and whether the one dead was a civilian.

²⁹³⁷ Bilan des évènements à Abobo, le 07 février 2011, 17 February 2011 (*Estimated*), CIV-OTP-0045-1395 at 1395.

²⁹³⁸ Bilan des évènements à Abobo, le 07 février 2011, 17 February 2011 (*Estimated*), CIV-OTP-0045-1395 at 1395.

1320. According to P-0184, in February 2011, a rally was scheduled to take place near the Abobo *mairie* to demand Mr Gbagbo's resignation. P-0184 testified that the FDS shot at them, everyone fled, and the rally did not take place.²⁹³⁹ From her testimony, it does not appear that P-0184 saw the individuals who (she said) were firing. P-0184 testified having been at the relevant time at the reception gathering for the demonstration when she heard the gunshots and fled into Abobo *mairie*. According to the witness, this incident took place on 19 February 2011.²⁹⁴⁰ As to whether there were fatalities, P-0184 again needed to have her memory refreshed. She then clarified in her testimony that people called those who had sought refuge in the *mairie* and told them that two individuals had been killed.²⁹⁴¹ It is not possible to conclude on the basis of this testimony alone that on 19 February 2011, the FDS was conducting operations during which they indiscriminately fired at civilians in Abobo.

1321. In connection with the period of 19-22 February 2011, the Prosecutor adduced only UN reports.²⁹⁴² The UNOCI Human Rights Monthly Report for February 2011 states that during the period from 19 to 21 February at least ten people, including a 16-year old girl, a 17-year old boy, and one FDS element, were killed by gunshot and rocket-propelled grenades, while at least one person was reported missing and several others were injured by elements of the FDS, BAE, GR and CRS in the Abobo, Koumassi and Treichville neighbourhoods of Abidjan. These

²⁹³⁹ P-0184, T-215 dated 4 December 2017, p. 18.

²⁹⁴⁰ P-0184, T-215 dated 4 December 2017, p. 19. *Note* that the witness needed to have her memory refreshed by the Prosecutor on this point, having first said that the relevant date was 29 February and being reminded by the Prosecutor that there was no 29th of February that year.

²⁹⁴¹ P-0184, T-215 dated 4 December 2017, pp. 20-21. *Note* that there is anonymous hearsay evidence that the FDS used excessive force to disperse pro-Ouattara protestors on 19 February. In any case, since the source of information is unknown, this evidence should be disregarded. 27th Progress Report of the UN S-G to the UNSC on UNOCI, 30 March 2011, CIV-OTP-0002-0010 at 0020, para. 44.

²⁹⁴² Monthly Report for February 2011, 1 February 2011 (*Estimated*), CIV-OTP-0044-0316 (confidential) at 0328; Rapport quotidien du 21 février 2011 / (du 20 février 2011, 12h au 21 février, 12h), 21 February 2011, CIV-OTP-0044-1497 (confidential) at 1498-1500; Rapport quotidien du 22 février 2011 / (du 21 février 2011, 12h au 22 février, 12h), 22 February 2011, CIV-OTP-0044-1501 (confidential) at 1504; Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 30 March 2011, CIV-OTP-0002-0010 at 0020.

incidents allegedly took place during demonstrations staged by supporters of the RHDP. Having regard to the observations concerning UNOCI documents,²⁹⁴³ it is noted that this report barely has any evidentiary weight - the date, the author of the report and the source of information are unknown. In any case, it is not stated in the report which of the alleged crimes occurred in Abobo (as opposed to Koumassi and Treichville) and were committed by the FDS. It is also relevant to note that the report mentions the death of one FDS by either gunshot or rocket-propelled grenades, thus suggesting that the alleged deaths might have occurred as a result of armed confrontations between groups.²⁹⁴⁴ According to an entry in a UNOCI Call Centre Daily Report, on 21 February 2011, FDS elements in a CECOS vehicle 'were shooting at the population' in Abobo. Another entry states that there were three bodies at Abobo-Gare, allegedly 'killed by the FDS, more precisely by CECOS'.²⁹⁴⁵ This is also anonymous hearsay and even if it was not, it would be impossible to infer that the two individuals killed were civilians. Another UNOCI Call Centre Daily Report, dated 22 February, reports 'heavy fire in Abobo PK18 and N'Dotré by FDS elements towards the population' on 22 February.²⁹⁴⁶

1322. Assuming for the sake of the argument that the killings mentioned in the UNOCI reports did happen, these could have been committed in the context of armed confrontations. It should be recalled that combatants of the *Commando Invisible* were dressed as civilians and this must have made it difficult to differentiate between the victims who were in fact civilians and those who were fighters dressed as civilians.

²⁹⁴³ See VI.A - Introduction, paras 1400-1403.

²⁹⁴⁴ Monthly Report for February 2011, 1 February 2011 (*Estimated*), CIV-OTP-0044-0316 (confidential) at 0328.

²⁹⁴⁵ Rapport quotidien du 21 février 2011 / (du 20 février 2011, 12h au 21 février, 12h), 21 February 2011, CIV-OTP-0044-1497 (confidential) at 1498.

²⁹⁴⁶ Rapport quotidien du 22 février 2011 / (du 21 février 2011, 12h au 22 février, 12h), 22 February 2011, CIV-OTP-0044-1501 (confidential) at 1504.

1323. In short, even if the poor quality of the evidence relating to the FDS killings in Abobo during this period was disregarded, there would still be no evidence to connect the perpetrators of the alleged crimes and the FDS high command, let alone Mr Gbagbo himself.

1324. In the Mid-Trial Brief, the Prosecutor also mentioned three public speeches or appearances of Mr Gbagbo in this period in this context. One of these is the communiqué Mr Ahoua Don Mello read on the RTI on 11 February 2011, which stated that Mr Gbagbo had instructed the FDS to enhance their work to improve the security situation in Abobo and maintain the curfew.²⁹⁴⁷ The other public appearance cited by the Prosecutor is footage of Mr Gbagbo at a church on 13 February 2011 saying that he and his adversaries knew each other well.²⁹⁴⁸ Lastly, the Prosecutor makes reference to statements read on the RTI on 17 February 2011²⁹⁴⁹ according to which Mr Gbagbo had instructed the ministers in charge of FDS units to double efforts to find the authors of crimes. There is no apparent link between the content of these videos and FDS operations in Abobo or alleged FDS crimes. In short, no relevant conclusions can be drawn on the basis of this evidence.

1325. While there is no solid evidentiary basis to conclude that the degree of violence inflicted by the FDS increased significantly, it is worth noting that according to some of the evidence the security situation in Abobo further deteriorated following the Police operations of 11 and 12 January 2011. According to witness P-0330, towards the end of February a command post was set up in Camp Comando in Abobo. The forces that regrouped there were CRSI, CRSII, 1st infantry battalion, 1st BCP, BASA, BASS, GR, 1st BB, BAE, and the

²⁹⁴⁷ RTI Broadcast dated 11 February 2011, CIV-OTP-0074-0076 at 00:03:50-00:11:40, transcript at CIV-OTP-0087-0607 at 0608, Ins. 23-24.

²⁹⁴⁸ RTI Broadcast dated 13 February 2011, CIV-OTP-0064-0121 at 00:09:20-00:15:20, transcript at CIV-OTP-0086-1088 at 1091, Ins. 82-89.

²⁹⁴⁹ RTI Broadcast dated 17 February 2011, CIV-OTP-0064-0122 at 00:22:03-00:26:55, transcript at CIV-OTP-0102-1495 at 1496, Ins. 26-28.

Gendarmerie including GEB.²⁹⁵⁰ Witnesses testified that, following the establishment of the command post, patrols and supply convoys moving to and from the camp were frequently attacked, causing FDS casualties.²⁹⁵¹ Their vehicles were fired at by snipers hidden in surrounding buildings or ambushed at roadblocks manned by armed individuals.²⁹⁵² It appears that as a result of these attacks, Abobo continued to fall into the hands of opposing armed groups until Camp Commando was the only remaining FDS base in the neighbourhood.²⁹⁵³ Lastly, it is recalled that witness P-0321 testified that as a result of the constant attacks suffered by the FDS, they had to abandon several key positions and instead an operational zone was created in Abobo.²⁹⁵⁴ It is thus fairly safe to conclude that the situation in Abobo did indeed escalate in the weeks following 12 January 2011, but that this manifested itself mainly in the FDS losing terrain due to persistent violent attacks against them.

6. *FDS activities in Abobo in late February*

1326. The days of 22-25 February 2011 are the most important to the Prosecutor's case in the context of the FDS activities in Abobo during the post-electoral crisis before March 2011. The chain of events *as per* the Prosecutor's narrative is as follows. On 22 February, CECOS clashed with 'rebels' and the FDS lost men and vehicles. In response, the FDS went on a military offensive in Abobo on 23 February but was again unsuccessful and endured further casualties.²⁹⁵⁵ Mr Gbagbo met on 24 February 2011 with FDS high commanders where he

²⁹⁵⁰ P-0330, T-68 dated 1 September 2016, p. 24.

²⁹⁵¹ [REDACTED]; P-0238, T-82 dated 29 September 2016, p. 90; T-83 dated 30 September 2016, p. 27, 56 (confidential).

²⁹⁵² P-0330, T-68 dated 1 September 2016, pp. 82-84; T-71 dated 6 September 2016, p. 48; P-0321, T-62 dated 11 July 2016, pp. 36-37; T-65 dated 14 July 2016, p. 3; P-0238, T-82 dated 29 September 2016, pp. 90-91, 94.

²⁹⁵³ P-0321, T-63 dated 12 July 2016, p. 35.

²⁹⁵⁴ P-0321, T-63 dated 12 July 2016, pp. 34-35.

²⁹⁵⁵ Mid-Trial Brief paras 450-451.

rejected the idea of declaring Abobo a war zone and ordered that they should do whatever it takes not to lose Abobo. The date of 25 February 2011 marked the second military offensive on Abobo to retake the zone of N'Dotr  and its two strategic axes.²⁹⁵⁶

1327. According to the Prosecutor, the orders Mr Gbagbo gave on 24 February were pivotal in that he could foresee their execution would cause civilians casualties.²⁹⁵⁷ Moreover, she alleges that Mr Gbagbo and members of his so-called 'inner circle' allegedly instructed and authorised the shelling of populated areas of Abobo during both military offensives on 23 and 25 February 2011.²⁹⁵⁸ The Prosecutor attaches particular importance to the second offensive because it happened after a meeting with Mr Gbagbo. According to the Prosecutor, the actions of the Army on that occasion and, in particular, the alleged use of mortars, were pursuant to Mr Gbagbo's orders.²⁹⁵⁹ The Prosecutor's position as stated in the Response is that 'having permitted the army to deploy its units in an urban setting, having knowledge of past scenarios where such a deployment led to great numbers of casualties, Mr Gbagbo was aware of the consequences of his orders'.²⁹⁶⁰ The Prosecutor also connects the events of these three days at the end of February with Mr Gbagbo's liability for the charged crimes in Abobo on 3 and 17 March 2011.²⁹⁶¹

²⁹⁵⁶ Mid-Trial Brief, para. 455.

²⁹⁵⁷ Mid-Trial Brief, para. 725; Response, para. 1233, 1927.

²⁹⁵⁸ Response, paras, 924-925, 799-803,

²⁹⁵⁹ Response, para. 809.

²⁹⁶⁰ Response, para 1555.

²⁹⁶¹ Response, paras 809, 923-925, 1901-1903.

a) The clash between CECOS and the rebels on 22 February and its aftermath

1328. As discussed below, the evidence confirms that on 22 February 2011 a confrontation between the FDS and the ‘rebels’ took place in Abobo. As the Prosecutor points out, this resulted in casualties on both sides.²⁹⁶²

1329. The testimony of Major Toaly Baï provided information about this incident. During the hearing in which Major Toaly Baï gave his testimony, the Prosecutor showed a video purportedly broadcast by the RTI on 23 February 2011.²⁹⁶³ In the video, FDS spokesperson Colonel Babri stated that on 22 February 2011 a CECOS detachment at an observation post in N’Dotré intersection was approached by a person who told them that at the Agripac intersection two *gendarmes* had been taken hostage by the ‘rebels’. The CECOS elements in three vehicles went out in their support and were ambushed by around 50 ‘rebels’ with ‘heavy weapons of all kinds’. The fight lasted 30 minutes. One FDS element was confirmed dead and seven injured. Two other FDS members, who were in a vehicle that fell in a ravine while trying to escape enemy fire, were still missing. The vehicle fell into enemy hands. Colonel Babri also stated that seven ‘rebels’ were killed. During his testimony, Major Toaly Baï confirmed that he had been aware of this information at the time and so had the CPCO.²⁹⁶⁴

1330. The Prosecutor states, and the evidence confirms, that on 23 February 2011 a first military offensive was carried out along the axis MACA-N’Dotré and from the Abobo roundabout to the PK18 area.²⁹⁶⁵ The FDS was unsuccessful in this

²⁹⁶² Mid-Trial Brief, para. 450.

²⁹⁶³ RTI Broadcast dated 23 February 2011, CIV-OTP-0074-0082 at 00:13:29-00:17:54.

²⁹⁶⁴ P-0156, T-171 dated 4 July 2017, pp. 51-52. *Note* that on 25 February 2011, Colonel Babri clarified in another announcement at the RTI that the clashes of 22 February 2011 had left one FDS element dead and two were still missing. RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 01:01:24-01:05:40, transcript at CIV-OTP-0063-2998, Ins. 321-351.

²⁹⁶⁵ Mid-Trial Brief, para. 451; Response, para. 1160; P-0009, T-194 dated 26 September 2017, pp. 50-1.

operation and on 24 February 2011, FDS generals met with Mr Gbagbo to discuss the security of Abobo.²⁹⁶⁶ On the day following the meeting, 25 February 2011, a second military offensive was launched to retake the zone of MACA-N'Dotré and the Abengourou axis.²⁹⁶⁷

b) The First and the Second Military Offensives in Abobo

1331. Major Toaly Baï testified that after the CECOS patrol and two *gendarmes* were attacked in Abobo on 22 February 2011, the FDS were certain that the area was occupied by the enemy. Thus, Major Toaly Baï said, a sub-unit of the general staff went on a mission to recapture the intersection or ‘at least chas[e] away the enemy’.²⁹⁶⁸ This mission, which the Prosecutor labelled as ‘the first military offensive’, took place on 23 February 2011.²⁹⁶⁹

1332. It should be noted that Major Toaly Baï’s testimony does not entirely correspond with General Mangou’s account when it comes to the purpose of this operation. While Major Toaly Baï directly referred to the attack CECOS suffered the day before,²⁹⁷⁰ General Mangou spoke in general terms of the high level of threat that the heavily armed rebels continued to pose to the Police.²⁹⁷¹ Accordingly, General Mangou stated, he gave the order to General Detoh Letho to conduct a

²⁹⁶⁶ Mid-Trial Brief, para. 452; Response, para. 1160; P-0009, T-194 dated 26 September 2017, pp. 56-58; P-0010, T-139 dated 29 March 2017, pp. 77-80; P-0011, T-134 dated 13 March 2017, pp. 66-67; P-0047, T-203 dated 7 November 2017, pp. 32-34. *Note* that Generals Guiai Bi Poin, Kassaraté and Detoh Letho did not recall the exact date of the meeting, but General Guiai Bi Poin estimated that it took place on 24 or 26 February 2011 (P-0010, T-139 dated 29 March 2017, p. 78) and General Detoh Letho recalled the date of 22 or 23 February 2011 (P-0047, T-203 dated 7 November 2017, p. 33).

²⁹⁶⁷ Mid-Trial Brief, para. 455; Response, para. 1160.

²⁹⁶⁸ P-0156, T-171 dated 4 July 2017, p. 56. *Note* that while Major Toaly Baï did not specify the date, it is probable that he was referring to the first military offensive of 23 February 2011. This is because the witness, after mentioning this ‘third operation’ and its failure, stated that: ‘[i]n light of the experience of the previous major three operations which had failed, the general staff launched an offensive to recapture the N'Dotre area,’ clearly referring to the 25 February offensive. P-0156, T-171 dated 4 July 2017, p. 56; emphasis added.

²⁹⁶⁹ Mid-Trial Brief, para. 451.

²⁹⁷⁰ P-0156, T-171 dated 4 July 2017, pp. 51-52, 56.

²⁹⁷¹ P-0009, T-194 dated 26 September 2017, pp. 50-51.

reconnaissance mission on the MACA/PK18 road and the Abobo-N'Dotré road. The purpose of this preliminary mission was to acquire information about the nature, volume and attitude of the enemy.²⁹⁷²

1333. General Mangou testified that at nightfall on 23 February 2011, when FDS elements from Abobo arrived at PK18, he received a report from General Detoh Letho informing him of difficulties in the field.²⁹⁷³ According to General Mangou, his troops had come under attack 'from the high ground' by people in civilian clothing who were firing at them.²⁹⁷⁴ General Mangou was informed that the elements at PK18 could not return fire because the *Commando Invisible* were in civilian attire and mixing with the population, adding that they 'had virtually taken as hostage the population'.²⁹⁷⁵ General Mangou said that because of that, he ordered their withdrawal to initial positions.²⁹⁷⁶
1334. General Mangou gave the impression that he gave the order to withdraw right after General Detoh Letho reported to him from the field. General Mangou said that he requested the elements to withdraw because night was falling and he wanted to avoid them being surrounded and killed – as had happened to the policemen.²⁹⁷⁷ General Mangou explained that they needed to report to the Minister of Defence with regard to these difficulties, and that it was in this context that they were convened for a meeting at the presidency on 24 February at 16h30, where he reported to Mr Gbabgo.²⁹⁷⁸

²⁹⁷² P-0009, T-194 dated 26 September 2017, pp. 53-54.

²⁹⁷³ P-0009 T-194 dated 26 September 2017, pp. 55-56.

²⁹⁷⁴ P-0009 T-194 dated 26 September 2017, p. 55.

²⁹⁷⁵ P-0009, T-194 dated 26 September 2017, p. 56.

²⁹⁷⁶ P-0009, T-194 dated 26 September 2017, pp. 54-56.

²⁹⁷⁷ P-0009, T-194 dated 26 September 2017, p. 56.

²⁹⁷⁸ P-0009, T-194 dated 26 September 2017, pp. 56-57.

1335. Both General Mangou and Major Toaly Baï confirmed that the first military operation did not achieve its objective and resulted in more casualties within the ranks of the FDS.²⁹⁷⁹ This is confirmed by a radio transmission of the *Gendarmerie* squadron 4/1 to General Kassaraté, which reported that 19 elements had been deployed, one died and nine were injured by gunshot.²⁹⁸⁰
1336. The second military offensive in Abobo on 25 February 2011 followed Mr Gbagbo's decision to hold Abobo and not to declare it a war zone.²⁹⁸¹ Also, according to General Mangou, on 24 February 2011 Mr Gbagbo instructed the Chief of Staff and others to 'do everything' to liberate the MACA-Abengourou road.²⁹⁸² This evidence received corroboration from General Detoh Letho who testified that in the meeting of 24 February 2011 Mr Gbagbo asked them to use 'whatever means were necessary' to liberate the N'Dotr  intersection or at least to hold it.²⁹⁸³
1337. According to both Generals Mangou and Guiai Bi Poin, Mr Gbagbo did not give his commanders any specific instruction concerning the military strategy for the FDS to employ in the second military offensive. General Guiai Bi Poin

²⁹⁷⁹ P-0156, T-171 dated 4 July 2017, p. 56; T-172 dated 5 July 2017, p. 15; P-0009, T-194 dated 26 September 2017, p. 56.

²⁹⁸⁰ MESSAGE RADIO / MISSION DE RATISSAGE, 24 February 2011 (*Estimated*), CIV-OTP-0044-0047 (confidential). *Note* that the document has been authenticated by General Kassarat , but the witness said that although he remembered the message, he did not remember that one soldier was killed nor that nine were injured (P-0011, T-136 dated 16 March 2017, p. 34). General Kassarat  also authenticated other documents that reported on the same issue. *See* MESSAGE - RADIO / MISSION DE RATISSAGE, 24 February 2011, CIV-OTP-0043-0242 (confidential) and MESSAGE / DEMANDE RAPPORT CIRCONSTANCE, 24 February 2011 (*Estimated*), CIV-OTP-0044-0046 (confidential), both authenticated by P-0011 at T-136 dated 16 March 2017, pp. 34-35.

²⁹⁸¹ P-0009, T-194 dated 26 September 2017, pp. 60, 66-76, 74-76. *Note* that General Mangou said he spoke to the Minister of the Defence who called Mr Gbagbo and then informed General Mangou that the President had rejected his recommendation to declare Abobo a war zone. General Detoh Letho's testimony is slightly contradictory to that of General Mangou since General Detoh Letho stated that the Chief of Staff's suggestion and the rejection thereof by Mr Gbagbo occurred during the meeting on 24 February 2011. *See* P-0047, T-203 dated 7 November 2017, p. 35.

²⁹⁸² P-0009, T-194 dated 26 September 2017, pp. 56-58, 60; T-196 dated 28 September 2017, pp. 33-35.

²⁹⁸³ P-0047, T-203 dated 7 November 2017, pp. 44-45. *Note* General Detoh Letho remembered the date of the meeting as 22 or 23 February 2011; see T-203 dated 7 November 2017, p. 33.

confirmed that Mr Gbagbo told them to hold their positions in Abobo but the witness could not remember what else Mr Gbagbo may have said, since ‘in all the meetings we had with the head of state, he never went into the details concerning military operations.’²⁹⁸⁴ General Mangou clarified that sometimes in these meetings Mr Gbagbo would issue ‘operational instructions’, which General Mangou then turned into ‘operational orders’.²⁹⁸⁵ General Mangou stated this was what happened in the meeting of 24 February 2011: they received from Mr Gbagbo the general instruction to liberate the MACA-Abengourou road. According to General Mangou, the details of the operation were not discussed with Mr Gbagbo.²⁹⁸⁶

1338. Generals Mangou and Detoh Letho testified that Major Toaly Baï led the offensive in Abobo on 25 February 2011.²⁹⁸⁷ Major Toaly Baï confirmed that the Chief of Staff gave orders to carry out a major operation in Abobo on 25 February and designated him to lead the offensive on the MACA-N'Dotré road.²⁹⁸⁸

1339. According to Major Toaly Baï, there were approximately 50 elements from the BCP and the 1st battalion, at least five elements from BASA, plus a crew of five *Gendarmerie* elements in an armed vehicle. Thus, there were around 60 FDS elements taking part in the offensive along the MACA-N'Dotré Road.²⁹⁸⁹

1340. There is no precise information on the record as to how the second military operation unfolded or what happened on the ground. General Mangou testified

²⁹⁸⁴ P-0010, T-139 dated 29 March 2017, p. 83. *Note* General Guiai Bi Poin did not remember the precise date of the meeting, only that it was held in February 2011; see T-139 dated 29 March 2017, p. 92.

²⁹⁸⁵ P-0009, T-198 dated 3 October 2017, pp. 22-23.

²⁹⁸⁶ P-0009, T-198 dated 3 October 2017, pp. 21-25.

²⁹⁸⁷ P-0009, T-194 dated 26 September 2017, p. 73; P-0047, T-203 dated 7 November 2017, p. 46.

²⁹⁸⁸ P-0156, T-171 dated 4 July 2017, p. 60.

²⁹⁸⁹ P-0156, T-172 dated 5 July 2017, pp. 17-18. *Note* there is no evidence on the record as to the composition and strength of the FDS on the Abobo roundabout-PK18 side.

that the operation was initially successful and that considerable gains were made, but ultimately his troops had to withdraw as they were ill-equipped to maintain control of the areas they occupied.²⁹⁹⁰ General Mangou then instructed General Detoh Letho to order the elements to retreat from their positions. Accordingly, those who were in N'Dotr  went back to MACA, while ‘those who were at PK18, instead of going to Abobo roundabout, went back to Camp Commando.’²⁹⁹¹

c) The use of mortar shells in Abobo in late February

1341. There is evidence, chiefly in the testimonies of Generals Mangou and Detoh Letho, to the effect that mortar shells were used by the FDS in Abobo in late February 2011. However, the evidence the two witnesses provided on this matter is marred by contradictions.

1342. In what follows, General Mangou’s account of the shelling of Abobo during the 23 and 25 February military offensives will be put forward. This is followed by a discussion of the contradictions in the testimonies of both General Mangou and General Detoh Letho.²⁹⁹²

(1) General Mangou authorised the use of 60mm and 120mm mortars

1343. General Mangou testified that, whilst undertaking the mission on 23 February 2011, his troops had difficulties when they were moving on the MACA-N'Dotr 

²⁹⁹⁰ P-0009, T-194 dated 26 September 2017, pp. 67-68.

²⁹⁹¹ P-0009, T-194 dated 26 September 2017, pp. 72-73. *Note* that General Mangou gave conflicting accounts as to when the operation ended: according to one account, the FDS was forced to withdraw that same night of 25 February (P-0009, T-196 dated 28 September 2017, p. 40; T-194 dated 26 September 2017, p. 73), whereas according to the other, the FDS operation and their control of the recaptured positions lasted for more than one day (P-0009, T-196 dated 28 September 2017, p. 43).

²⁹⁹² It is noted that the Prosecutor alleges that there was another shelling incident in Abobo on 26 and 27 February 2011. Response, para. 298. These are discussed in the analysis of the 19 uncharged incidents. *See* VI.N - 26 and 27 February 2011 – Shelling in Abobo.

road, because of their proximity with the Banco forest.²⁹⁹³ General Mangou explained that since the forest is a vast expanse, people could hide there and lay in an ambush.²⁹⁹⁴ According to General Mangou's testimony, for this reason he authorised General Detoh Letho to fire a 60mm mortar shell: 'I personally authorised at the request of General Detoh the firing of two mortars. The first firing before the first advance from MACA, a 60 millimetre firing in the Banco forest'.²⁹⁹⁵

1344. The objective, General Mangou said, was to fire at the location where they thought the enemy could be hiding to force them to leave and reveal their positions.²⁹⁹⁶ General Mangou explained that this was referred to as 'harassment fire'.²⁹⁹⁷

1345. On this basis, it would be impossible to conclude that the FDS shelled densely populated areas or that its target was the civilian population. The 60mm mortar shell, according to the evidence available, fell in the Banco forest and not in an urban area. Moreover, nowhere in his testimony did General Mangou provide evidence of Mr Gbagbo's involvement in the decision to use of mortar shells during the first military offensive in Abobo.

1346. Turning now to the evidence concerning the use of the 120mm mortar, General Mangou testified that he authorised the firing of a 120mm mortar shell in Abobo

²⁹⁹³ P-0009, T-194 dated 26 September 2017, p. 54.

²⁹⁹⁴ P-0009, T-194 dated 26 September 2017, pp. 54-55.

²⁹⁹⁵ P-0009, T-196 dated 28 September 2017, p. 58.

²⁹⁹⁶ P-0009, T-194 dated 26 September 2017, pp. 54-55. *See also* T-196 dated 28 September 2017, pp. 58-59.

²⁹⁹⁷ P-0009, T-194 dated 26 September 2017, p. 55. In another part of his testimony, General Mangou explained that the FDS fired the 60mm mortar at the Banco forest and since there was no response from the enemy, his troops were able to move forward. P-0009, T-196 dated 28 September 2017, p. 58. *Note* that Major Toaly Baï testified that there was information of enemy forces hiding in the Banco forest: 'If I remember correctly, there was information or intelligence to that effect. But as an individual, I did not necessarily observe any activities of the enemy in the Banco forest. But I do remember that this was mentioned in the information bulletins that we received'. P-0156, T-172 dated 5 July 2017, p. 23.

in the context of the 25 February 2011 operation.²⁹⁹⁸ The firing, he said, had the purpose of showing military power to the enemy. General Mangou insisted that their objective was not to use the mortar against the civilian population.²⁹⁹⁹

1347. General Mangou confirmed having authorised the use of 120mm mortars in this operation at the behest of General Detoh Letho,³⁰⁰⁰ but did not provide details as to the circumstances in which this authorisation was given. The timing of the use of the 120mm mortar shell is not clearly established. This is partially because the duration of the operation that started on 25 February 2011 is unknown.³⁰⁰¹ General Mangou also did not say where the 120mm mortar shell fell and what impact it had on the ground or on enemy forces. There is no direct evidence of civilians being killed or injured either.

1348. General Mangou testified that when his troops started the offensive on 25 February 2011, they were at a distance of around one kilometre away from ‘the roundabout’.³⁰⁰² He further testified that they fired the 120mm mortar, ‘took the weapon back, and then the troops advanced during the second phase of the operation’.³⁰⁰³ It appears, but it is by no means clear, that the FDS gained control of the roundabout after having fired the mortar. Still, if this was indeed the case, the extent to which the use of the mortar helped the FDS succeed in this mission is unknown.

²⁹⁹⁸ P-0009, T-196 dated 28 September 2017, p. 35, 40, 58.

²⁹⁹⁹ P-0009, T-196 dated 28 September 2017, p. 58. *Note* that the witness stressed that Abobo ‘would certainly have looked very different’ if a 120mm shell had fallen in the area.

³⁰⁰⁰ *See* P-0009 at T-196 dated 28 September 2017, p. 35: ‘I authorised the firing of the 120, and I told you last time that it was a warm-up shot, then a final protective shot’. For the contradictions in General Detoh Letho’s testimony, *see* para. 1353 and T-203 dated 7 November 2017, pp. 47-48.

³⁰⁰¹ *See* para. 1340.

³⁰⁰² P-0009, T-196 dated 28 September 2017, p. 59. *Note* that the witness did not specify which roundabout he was referring to.

³⁰⁰³ P-0009, T-196 dated 28 September 2017, p. 59.

1349. General Mangou provided less information about the firing of the 120mm mortar on 25 February 2011 than he did in relation to the firing of the 60mm mortar in the first offensive. Thus, while it would be possible to construe a narrative from some parts of General Mangou's testimony regarding the use of 60mm mortars on 23 February 2011, the same cannot be said in relation to the mortar shelling in the context of the second offensive. All that is known in this context is that the FDS fired a 120mm shell but there is no precise information as to when it was fired, what it was aimed at, where the shell impacted or what it caused.

(2) Multiple contradictions

1350. The evidence concerning the 60mm mortar described above was provided by General Mangou during the second day of his testimony on 26 September 2017. The Prosecutor returned to the matter numerous times and questioned General Mangou further on the use of mortars in Abobo in February 2011. When answering these questions, General Mangou was unable to sustain a coherent account in relation to the use of the 60mm mortar.

1351. During a hearing on 28 September 2017, General Mangou, in contradiction to what he had testified two days before, stated that: 'I didn't authorise the use of 60 mm mortar – it belongs to the infantry. It is the unit commander who authorises its use. So I'm not in a position to know where it may have dropped'.³⁰⁰⁴ Less than one hour later on the same day of 28 September 2017, General Mangou again changed his account by saying 'I personally authorised at the request of General Detoh the firing of two mortars. The first firing before the first advance from MACA, a 60 millimetre firing in the Banco forest'.³⁰⁰⁵

³⁰⁰⁴ P-0009, T-196 dated 28 September 2017, p. 39.

³⁰⁰⁵ P-0009, T-196 dated 28 September 2017, p. 58.

1352. Confusing matters further, throughout the course of his testimony, General Mangou affirmed several times that he learnt from General Palasset, commander of the *Licorne* forces, about the use of mortars in Abobo by the FDS in late February.³⁰⁰⁶ However, General Mangou's testimony in relation to the information he received from General Palasset about the shelling of Abobo in February was inconsistent. It is difficult to see how General Mangou would have learned about the firing of mortars which he himself had previously authorised from another person. Moreover, General Mangou mentioned different dates each time he was required to clarify the date on which General Palasset informed him that mortars had been used by the FDS.³⁰⁰⁷
1353. Contradicting General Mangou's testimony, General Detoh Letho stated that he never requested the Chief of Staff [General Mangou] for authorisation for the use of mortars in Abobo.³⁰⁰⁸ According to General Detoh Letho, it was the Chief of Staff himself who during a meeting at the *état major* asked for mortar shells to be used to intimidate the enemy.³⁰⁰⁹
1354. General Detoh Letho further contradicted General Mangou by stating that the mortar had not been used for the advancement of a military offensive as such. According to General Detoh Letho, a 60mm mortar shell was fired at the Banco forest in a so-called '*tir de flambage*', adding that this was done 'to see if the weapons were working' as the mortars had not been in use.³⁰¹⁰ General Detoh Letho further said that the Chief of Staff asked for the use of 120mm mortars

³⁰⁰⁶ P-0009, T-196 dated 28 September 2017, p. 36, 38; T-198 dated 3 October 2017, p. 15.

³⁰⁰⁷ Note that in the testimony given before the Chamber on 28 September 2017, General Mangou said that he was told by the impartial forces that shells had been used in Abobo after the second military offensive of 25 February 2011. P-0009, T-196 dated 28 September 2017, pp. 35-36. On 3 October 2017, however, General Mangou testified that he was contacted by General Palasset on 24 February 2011, the day after the first operation. P-0009, T-198 dated 3 October 2017, pp. 14-15.

³⁰⁰⁸ P-0047, T-203 dated 7 November 2017, p. 47.

³⁰⁰⁹ P-0047, T-206 (public), pp. 45-46. Note that General Detoh Letho did not state who was present at this meeting and from whom authorisation was sought.

³⁰¹⁰ P-0047, T-203 dated 7 November 2017, p. 47.

because his own house, which was near the Banco forest, had been attacked.³⁰¹¹ In relation to the second offensive, General Detoh Letho denied mortars had been used at all.³⁰¹² According to parts of General Detoh Letho's testimony, it seems that only on one occasion were mortars fired in Abobo in the month of February 2011. Thus, it appears that according to him, the '*tir de flambage*' was both a warming-up shot and also a shot fired at the forest with the intention of intimidating the enemy.³⁰¹³ Based on this evidence, it would be impossible for a reasonable trial chamber to conclude that the FDS used mortars to shell the civilian population towards the end of February 2011.

(3) Mr Gbagbo's involvement in the shelling

1355. There is no evidence indicating that Mr Gbagbo was directly involved in the shelling of Abobo in late February. It is acknowledged that witness P-0239 testified in general terms that the use of a 120mm mortar had to be authorised by a written order from the President.³⁰¹⁴ However, this is not sufficient to establish that Mr Gbagbo personally authorised the use of mortars in the context of the two military offensives of 23 and 25 February 2011.

1356. According to General Mangou, the operations of 23 and 25 February were conducted pursuant to the requisition of the armed forces, which, General Mangou maintained, had been issued by Mr Gbagbo on 5 January 2011.³⁰¹⁵ General Mangou testified that for this reason he did not need, and indeed did not

³⁰¹¹ P-0047, T-206 dated 10 November 2017, p. 46.

³⁰¹² P-0047, T-203 dated 7 November 2017, pp. 47-48. *Note* that it is not clear whether General Detoh Letho maintained this position throughout his testimony. At a later stage, when confronted with General Mangou's claim that he himself had requested the use of mortars, General Detoh Letho testified that both the 60mm and the 120mm mortar were used and stated 'the two shots were fired on the same day', but did not clarify to which operation he was referring. P-0047, T-206 dated 10 November 2017, pp. 45-46.

³⁰¹³ P-0047, T-206 dated 10 November 2017, pp. 45-46.

³⁰¹⁴ P-0239, T-167 dated 28 June 2017, pp. 48-51; T-168 dated 29 June 2017, pp. 52-53.

³⁰¹⁵ P-0009, T-194 dated 26 September 2017, pp. 78-81.

receive, any instruction or express authorisation from the President to order the firing of the 120mm mortar.³⁰¹⁶ There is thus no evidence that could support a finding that Mr Gbagbo ordered or specifically authorised the use of mortars or other heavy weapons in Abobo during the operations of 23 and/or 25 February 2011.³⁰¹⁷

1357. It is not even clear whether or not Mr Gbagbo was made aware that 120mm shells had been used in the second offensive, as alleged by the Prosecutor.³⁰¹⁸ When General Mangou was questioned on his report to the President, supposedly made after the 25 February 2011 operation, General Mangou was once again unclear as to which operation he was referring to in his answers. General Mangou stated that he had reported to the Minister of Defence who certainly reported to the President of the Republic.³⁰¹⁹ The witness was then asked whether the Minister of Defence was informed that shells had been used. General Mangou responded the following: ‘Yes, but not in relation to the MACA-N’Dotré operation. He was informed in relation to the market.’³⁰²⁰ This suggests that Mr Gbagbo was not informed of the use of shells during the second military operation in Abobo.

1358. In an effort to make the witness repeat what he had previously stated during an interview with investigators of the Office of the Prosecutor, the Prosecutor read a previously recorded statement in which General Mangou had confirmed having reported to the President that the roundabout had been liberated and also that the President knew that shells had been used on that occasion.³⁰²¹ After the

³⁰¹⁶ P-0009, T-195 dated 27 September 2017, p. 75; T-198 dated 3 October 2017, pp. 12-13.

³⁰¹⁷ See VI.T.4 - Who ordered/authorised the firing of the mortars?

³⁰¹⁸ Mid-Trial Brief, para. 456; Response, para. 1160.

³⁰¹⁹ P-0009, T-196 dated 28 September 2017, p.43.

³⁰²⁰ P-0009, T-196 dated 28 September 2017, p. 41.

³⁰²¹ P-0009, T-196 dated 28 September 2017, pp. 43-44 citing Transcription de déposition, CIV-OTP-0051-1045 (confidential) at 1078-1079.

Prosecutor had read a long excerpt from his interview into the record, General Mangou confirmed that the answers he had given to the investigators in 2013 were correct.

1359. Although a reasonable trial chamber might conclude, on this basis, that Mr Gbagbo was indeed informed about the use of mortars during operations in Abobo in late February 2011, there is no reliable information about what exactly he was told. In particular, it is entirely unclear whether Mr Gbagbo was apprised of the purpose behind the use of these weapons and/or the effect they had on the ground, particularly on the civilian population.

(4) Victims of the two operations

1360. When it comes to civilian victims, all the evidence is based on anonymous hearsay from UNOCI call centre reports.³⁰²² According to the UNOCI Call Centre Daily Report of 24 February 2011, on 23 February 2011 between 16h03 and 17h17 the call center received ten calls reporting heavy weapons fire in Abobo PK18.³⁰²³ At 17h31, a caller reported that a shell had landed in front of his courtyard gate in Abobo PK18-N'Dotr .³⁰²⁴ At 19h33, a person called to report that '*jeunes patriotes* took a youth and delivered him to the FDS who killed him publicly'.³⁰²⁵ Between 20h05 and 20h15, the call centre received five calls reporting that FDS elements were shooting at the population in Abobo PK18.³⁰²⁶

³⁰²² See VI.A - Introduction, paras 1400 - 1403.

³⁰²³ Rapport quotidien du 24 f vrier 2011 (matin) / (du 23 f vrier 2011   16h au 24 f vrier, 9h), 24 February 2011, CIV-OTP-0044-1509 (confidential) at 1509-1510.

³⁰²⁴ Rapport quotidien du 24 f vrier 2011 (matin) / (du 23 f vrier 2011   16h au 24 f vrier, 9h), 24 February 2011, CIV-OTP-0044-1509 (confidential) at 1510.

³⁰²⁵ Rapport quotidien du 24 f vrier 2011 (matin) / (du 23 f vrier 2011   16h au 24 f vrier, 9h), 24 February 2011, CIV-OTP-0044-1509 (confidential) at 1510.

³⁰²⁶ Rapport quotidien du 24 f vrier 2011 (matin) / (du 23 f vrier 2011   16h au 24 f vrier, 9h), 24 February 2011, CIV-OTP-0044-1509 (confidential) at 1510-1511.

Importantly, none of these reports mention civilians being injured or killed by shelling in Abobo on 23 February 2011.

1361. When it comes to the second offensive on 25 February 2011, there is no evidence of civilians being killed or injured by this shelling other than an UNOCI Call Centre Daily Report of 25 February 2011 which registered the calls from 09h00 to 16h00.³⁰²⁷ As the evidence therein contained is all anonymous hearsay, it could not have probatory value to incriminate the accused. Yet, it is noted that the entries in the document that mention the use of mortars by the FDS actually indicate that the population had been informed about the imminent shelling and was thus evacuating the area.³⁰²⁸
1362. The Prosecutor referred to the UNOCI Call Centre Daily Reports of 26 and 27 February 2011.³⁰²⁹ These are all anonymous hearsay and, although some entries mention ‘heavy weapons fire’ in Abobo, they do not report an incident akin to what a 120mm shelling of an urban area would have caused.³⁰³⁰ The only exception to this is one entry which simply states that ‘the FDS were launching shells at Abobo and there were many injured’.³⁰³¹ However, due to the contradictions in General Mangou’s testimony in relation to the withdrawal of

³⁰²⁷ Rapport quotidien du 25 février 2011 (soir) / (du 25 février 2011 à 9h au 25 février, 16h), 25 February 2011, CIV-OTP-0044-1522 (confidential).

³⁰²⁸ See Entry 7: the caller reported hearing that ‘Anyama-PK18 was to be shelled’ and asked for UNOCI intervention; Entry 11: the caller reported ‘great displacement of the Abobo population who had been informed of the imminent bombardment of the neighbourhood by the FDS’ – *note* that it is not clear from the entry whether it was the FDS who informed the population (Rapport quotidien du 25 février 2011 (soir) / (du 25 février 2011 à 9h au 25 février, 16h), 25 February 2011, CIV-OTP-0044-1522 (confidential) at 1524).

³⁰²⁹ Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 0538-1541.

³⁰³⁰ *Note* entry 28 according to which a person called in the morning of 27 February to report that ‘during the previous night a *roquette* (missile) fell on a house behind the bridge’ in Abobo causing four deaths and multiple injuries (Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 1540).

³⁰³¹ Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 1539.

his troops, it is not even certain that the 25 February 2011 operation lasted for that long.³⁰³²

7. *The deliberate failure of Mr Gbagbo to declare Abobo a war zone*

1363. The Prosecutor attaches great significance to the fact that Abobo was never publicly declared a ‘war zone’. According to the Prosecutor, the FDS internally treated Abobo as a ‘war zone’ from mid-January 2011 but never made a declaration to that effect,³⁰³³ thereby failing to forewarn the civilian population of an impending military offensive such that they would be able to evacuate the area.³⁰³⁴ The Prosecutor alleges that this was a deliberate decision on the part of Mr Gbagbo, in that, during a meeting that allegedly took place on 24 February 2011 between him and his advisers, a proposal to declare Abobo a war zone was raised but not adopted.³⁰³⁵ Subsequent to that meeting, Mr Gbagbo is said to have actively dismissed a suggestion by the Chief of Staff to declare Abobo a war zone.³⁰³⁶ Such a response supposedly manifests Mr Gbagbo’s clear disregard for civilian life or, at a minimum, the absence of precautionary measures instituted by him to safeguard civilians in the face of mortar attacks.³⁰³⁷ The Prosecutor infers from this that the civilian population was the primary object of the attack.³⁰³⁸

³⁰³² On one occasion the witness stated that the troops were forced to withdraw the same night, while another time he testified that FDS control of the roundabout lasted several days. *See* para. 1340.

³⁰³³ Mid-Trial Brief, para. 417.

³⁰³⁴ Mid-Trial Brief, para. 452. It should be noted, however, that the testimony of Witness P-0164 suggests that such a forewarning was actually given: he claimed that the population of Abobo were requested to leave via a public RTI broadcast because the Army was due to attack the *Commando Invisible*. *See* P-0164, T-164 dated 19 June 2017, pp. 48-49.

³⁰³⁵ Mid-Trial Brief, para. 68.

³⁰³⁶ Mid-Trial Brief, para. 452 .

³⁰³⁷ Response, para. 356.

³⁰³⁸ Response, paras 329, 356.

1364. It should be noted that the Prosecutor refrains from articulating a cogent legal argument as to why Mr Gbagbo should have declared Abobo a war zone. However, it is understood that the reproach is, in essence, that his failure to declare Abobo a war zone was a violation of the international humanitarian law principle of precaution, which includes an obligation to give civilians advance warning of attacks that are expected to affect them.³⁰³⁹ Indeed, such an inference can reasonably be drawn from the fact that elsewhere the Prosecutor cites ‘the extent to which the attacking force complied with precautionary requirements of international humanitarian law’ as an evidentiary factor that may be relevant to determine whether the attack was directed against a civilian population.³⁰⁴⁰

1365. It should be noted that the foregoing interpretation of the Prosecutor’s argument presupposes the applicability of international humanitarian law. Yet three of the four witnesses cited in support of the Prosecutor’s account of 24 February 2011 do not seem to have subscribed to the same paradigmatic approach. On the contrary, Generals Detoh Letho, Kassaraté and Guiai Bi Poin each suggest that the FDS was hitherto operating *outside* of the context of an armed conflict situation, and that a declaration of a war zone would engender legal ramifications tantamount thereto. For example, when asked what the consequences of declaring a war zone would be, General Detoh Letho explained that

if an area is deemed to be a war zone, of course, that means a war is going to be conducted in that place, and thus you can use combat weapons. And that is not a good thing for the local population. If the population are there, they will be -- they will come under attack. That's the main consequence.³⁰⁴¹

³⁰³⁹ Article 57(2)(c) of the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 United Nations Treaty Series 17512. According to the ICRC’s study on customary IHL, this rule is also part on customary international law. *See*, in particular, Rule 20. Advance Warning, available at < https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule20>

³⁰⁴⁰ Response, para. 205.

³⁰⁴¹ P-0047, T-203 dated 7 November 2017, pp. 37-38.

1366. All three witnesses spoke of their concern that a declaration would allow for collateral damage, given the fact that the *Commando Invisible* had infiltrated the civilian population.³⁰⁴² As a consequence, they were not in favour of the war zone proposal on 24 February 2011 precisely because of the *harm* that they claimed it would give rise to *vis-à-vis* the civilian population. The Prosecutor's claim that Mr Gbagbo refused to declare Abobo a war zone despite FDS generals' recommendation is thus misleading, there being no evidence showing that anyone other than General Mangou supported the proposal.³⁰⁴³ Indeed, if the consequences of declaring Abobo a war zone cited by Generals Detoh Letho, Kassaraté and Guiai Bi Poin are to be believed, Mr Gbagbo's omission cannot possibly serve as evidence of intent to direct an attack against the civilian population.
1367. It should be noted at this juncture that the declaration of a war zone does not determine the applicability of international humanitarian law, it being well-established that this legal regime automatically comes into effect where an armed conflict exists.³⁰⁴⁴ Indeed, Major Toaly Bai stressed that a decision to declare a war zone is purely political, as opposed to military, in nature.³⁰⁴⁵ This begs the following question: how would the mere formal declaration of a 'war zone', a concept without specific legal content, have safeguarded the civilian population?
1368. It should be noted in this regard that the 'proper function of warnings' according to the Commentary to article 57 Protocol I is 'to give civilians the chance to

³⁰⁴² See P-0011, T-136 dated 16 March 2017, p. 49; P-0047, T-203 dated 7 November 2017, pp. 35-44; P-0010, T-139 dated 29 March 2017, pp. 87-88, 92.

³⁰⁴³ Mid-Trial Brief, para. 403.

³⁰⁴⁴ Common Article 2 of the *Geneva Convention relative to the treatment of prisoners of war*, 12 August 1949, 75 United Nations Treaty Series 972; Common Article 3 of the *Geneva Convention relative to the treatment of prisoners of war*, 12 August 1949, 75 United Nations Treaty Series 972; ICTY, Appeals Chamber, *Prosecutor v. Duško Tadić*, 'Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction', 2 October 1995, IT-94-1-AR72, para. 70.

³⁰⁴⁵ P-0156, T-171 dated 4 July 2017, pp. 42, 44.

protect themselves’.³⁰⁴⁶ It may be assumed, however, that the population was well aware of the fact that armed groups were operating in their midst and that armed clashes between the FDS and those groups were taking place. Indeed, the meeting of 24 February 2011 took place more than a month after the FDS is alleged to have started treating Abobo as an active combat zone, and there is nothing to indicate that the civilian population was prevented from leaving Abobo in the intermittent period.

1369. General Mangou (from whom the idea ostensibly originated)³⁰⁴⁷ offered a more specific conception of what the declaration would have entailed than that alluded to by the Prosecutor. He explained that the purpose of making the declaration would have been to secure one or two neighbourhoods south and/or east of the *rond point de la mairie*, including Abobo university buildings, within which the civilian population could have been temporarily accommodated for a period of 24 to 72 hours.³⁰⁴⁸ During that time, the FDS would have conducted its operations against the *Commando Invisible* in the ‘war zone’, which was considered to include the entire area north of the secured neighbourhoods in Abobo.³⁰⁴⁹ Such an interpretation is more in line with the aforementioned protective function of article 57(2)(c) Protocol I (thereby also presupposing the applicability of international humanitarian law), and thus with the Prosecutor’s reproach. Her submissions will therefore be assessed henceforth in accordance with General Mangou’s account of the events of late February 2011.

³⁰⁴⁶ Protocol I Commentary of 1987, p. 687, para. 2225.

³⁰⁴⁷ Mid-Trial Brief, para. 452; Prosecutor’s Response, para. 1599; P-0047, T-203 dated 7 November 2017, p. 35; P-0009, T-194 dated 26 September 2017, p. 75.

³⁰⁴⁸ P-0009, T-194 dated 26 September 2017, pp. 63-69 (it is noted that, due to a discrepancy between transcripts as to the number of hours for which the civilians would be temporarily accommodated, the original French transcript has been cited). The witness indicated the zone he had in mind on a map: CIV-REG-0001-0236.

³⁰⁴⁹ P-0009, T-194 dated 26 September 2017, pp. 61, 66. It is noted that the English transcript states that General Mangou identified ‘all what led to the north’ as constituting the war zone, which could be potentially misleading in that it could refer exclusively to routes leading north. The original French transcript, by comparison, reads as ‘tout ce qui était au Nord’: P-0009, T-194 dated 26 September 2017, p. 69.

1370. The first thing to note, in this regard, is that, even if there were an obligation on the part of the Ivorian government pursuant to article 57(2)(c) Protocol I, it does not follow *ipso facto* that Mr Gbagbo was in violation of international law upon failing to render an advance warning to the civilian population. Notably, the provision allows for derogation when ‘circumstances do not permit’.³⁰⁵⁰ The *Commando Invisible*’s military methodology is significant in this regard: it is clear from the evidence that the group was essentially comprised of guerrilla fighters who hid amongst the local population, making no effort to distinguish themselves.³⁰⁵¹ It would have thus been extremely difficult for the FDS to identify its military objectives, thereby impeding the authorities’ capacity to give an effective advance warning to the population such that the latter would be able to protect itself. It should be noted that, even though General Mangou’s proposal did not intend for the whole of Abobo to be declared a war zone, the witness still envisaged that part of the commune would be subject to the declaration.³⁰⁵² Given the nature of the planned military activity, it may well have been unrealistic to issue a more specific warning. However, one wonders about the effectiveness of such a broad and general warning. In any case, the Ivorian authorities may have also legitimately determined that the aim of the military operation would be jeopardised by the announcement of precautionary measures, given that an advance warning would negate the element of surprise.³⁰⁵³

1371. In any case, even if it were the case that the FDS ignored its precautionary obligations under international humanitarian law on account of Mr Gbagbo’s

³⁰⁵⁰ Protocol I Commentary of 1987, p. 686, para. 2223.

³⁰⁵¹ P-0010, T-139 dated 29 March 2017, pp. 87-88, 92; P-0009, T-193 dated 25 September 2017, pp. 82-83; P-0009, T-194 dated 26 September 2017, p. 56; P-0011, T-136 dated 16 March 2017, p. 49; P-0047, T-203 dated 7 November 2017, p. 36.

³⁰⁵² P-0009, T-194 dated 26 September 2017, p. 69, referring to the map that he had annotated: CIV-REG-0001-0236.

³⁰⁵³ The phrase ‘unless circumstances do not permit’ includes where the element of surprise is essential to the success of an operation: Protocol I Commentary of 1987, p. 686, para. 2223; ICRC study on customary IHL (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule20).

instructions, it is important to recall that the inquiry about compliance with article 57(2)(c) of Protocol I is merely instrumental in nature: it is only relevant insofar as it manifests a course of conduct directed against any civilian population.³⁰⁵⁴ Yet the Prosecutor has failed to adduce evidence in support of the notion that Mr Gbagbo's failure to declare Abobo a war zone resulted in unnecessary civilian casualties, despite implying as much in her submissions.³⁰⁵⁵ It should be reiterated that General Mangou's proposal conceived of the war zone declaration as serving a very specific and limited function; namely, to ensure that the civilian population be evacuated to secured areas such that the FDS could carry out their mission to liberate the MACA-Abengourou road, as discussed further below. It may be presumed on this basis that the declaration was only intended to apply for the duration of the mission, which was ultimately limited to the day of 25 February 2011.³⁰⁵⁶ This would suggest that any civilian casualties arising thereafter (for example, those alleged to have been occasioned on 26 February 2011)³⁰⁵⁷ cannot be attributed to Mr Gbagbo's failure to approve of General Mangou's proposal, given that the declaration would no longer have been in force at that time. In this regard, it is misleading for the Prosecutor to have presented the casualties recorded by the UNOCI Call Centre on 26 February 2011 after 18h00 as 'corroboration' of the fact that civilian casualties resulted from the 'second military offensive' in Abobo.³⁰⁵⁸ In any case, it is unclear

³⁰⁵⁴ Article 7(2)(a) of the Statute; Response, para. 325.

³⁰⁵⁵ The Prosecutor states that the failure to declare Abobo a war zone shows the absence of precautionary measures to minimise civilian casualties in the face of mortar attacks: Response, para. 356.

³⁰⁵⁶ General Mangou explained that the second offensive took place on 25 February 2011, with the FDS troops returning to the barracks that same evening: P-0009, T-194 dated 26 September 2017, pp. 72-73.

³⁰⁵⁷ See Mid-Trial Brief, para. 456.

³⁰⁵⁸ The Prosecutor stated that the 'UN call centre records corroborate that on 26 February 2011 and the days that followed, the FDS shelled PK 18 in Abobo, killing several civilians', the second military offensive in Abobo being considered to be still taking place on 26 February 2011 (Mid-Trial Brief, para. 456); the heading of the section in question reads '*25-26 February 2011: Second Military Offensive in Abobo*' (Mid-Trial Brief, p. 180).

whether the injuries and deaths documented in the UNOCI Call Centre report were suffered by civilians.³⁰⁵⁹

1372. In addition, although it is alleged that nine female pro-Ouattara campaigners were raped by members of the FDS in Abobo on 25 February 2011, such incidents have not been shown to be related to the military offensive conducted against the *Commando Invisible*, and thus to Mr Gbagbo's decision not to issue an advance warning of the impending military operation. Moreover, the Human Rights Watch report cited as evidence has low probative value, given that the allegations in question are based exclusively upon anonymous hearsay. It is further unclear from the report from which area in Abobo the women who were allegedly raped were taken.³⁰⁶⁰

1373. The foregoing observations cast doubt on the notion that Mr Gbagbo's omission was borne of a motive to direct an attack against the civilian population. Important to reiterate is the fact that there were considerably different interpretations as to what the proposed declaration of a war zone would entail, and that at least some of the senior FDS officers conceived such a move to be harmful to the civilian population. Thus, it cannot be concluded from the evidence on record what Mr Gbagbo said no to, much less that he refused to declare Abobo a war zone because he wanted to direct an attack against the civilian population.

1374. It is noted that Mr Gbagbo, after enquiring about the presence of civilians in the area where the planned military operation was to take place, instructed General Mangou to ensure that 'not too many people die'.³⁰⁶¹ The Prosecutor cites this to

³⁰⁵⁹ Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 1538-1541.

³⁰⁶⁰ They Killed Them Like It Was Nothing The Need for Justice for Cote d'Ivoire Post-Election Crimes, 1 October 2011, CIV-OTP-0004-0072 at 0127-0129.

³⁰⁶¹ P-0009, T-194 dated 26 September 2017, p. 57.

allege that Mr Gbagbo knew that civilians would be killed as a result of the operation of 25 February 2011.³⁰⁶² It is true that this utterance indicates that Mr Gbagbo would have been aware that there was a risk that civilians would be harmed as a result of the planned operation. It is also true that Mr Gbagbo's instruction, as reported by General Mangou, may come across as being rather laconic. However, it is not unreasonable to interpret this phrase as an appeal to the Chief of Staff to ensure that the number of civilian casualties not be excessive. There is no indication that General Mangou did not interpret it in this manner. In the context of a military operation, there is nothing inherently wrong or incriminating for a political leader to tell the armed forces to abide by the proportionality principle. It certainly does not prove an oblique aim to harm civilians.

1375. In any event, for the purposes of article 7, the civilian population must be the primary object of an attack.³⁰⁶³ This was certainly not the case here. On the contrary, the evidence shows that the objective of the military operation of 25 February 2011 was to reconquer the MACA-Abengourou road from the *Commando Invisible*.³⁰⁶⁴ The fact that Mr Gbagbo specifically asked his generals to minimise the number of casualties further indicates that the latter were not the primary targets of the ensuing military operation.

³⁰⁶² Mid-Trial Brief, para. 725; Response, para. 1233, 1927.

³⁰⁶³ Trial Chamber II, *Prosecutor v. Germain Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, para. 1104; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, paras 76, 97-98. *See also* ICTY, Appeals Chamber, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Judgement, 12 June 2002, IT-96-23 & IT-96-23/1-A, paras 91-92; ICTY, Trial Chamber II, *Prosecutor v. Milomir Stakić*, Judgement, 31 July 2003, IT-97-24-T, para. 624; ICTY, Trial Chamber II, *Prosecutor v. Mitar Vasiljevic*, Judgement, 29 November 2002, IT-98-32-T, para. 33.

³⁰⁶⁴ P-0009, T-194 dated 26 September 2017, pp. 58, 60.

8. *Conclusion*

1376. The Prosecutor has presented a narrative about how the situation in Abobo evolved from the beginning of January 2011 until the end of February 2011.³⁰⁶⁵ This narrative does not offer a full and balanced picture of the available evidence, which is itself far from complete. In particular, although the Prosecutor sporadically acknowledges the fact that the FDS suffered heavy losses and gradually lost control over Abobo, this is all but ignored in the way her narrative is constructed and presented. However, if there is one thing that emerges from the evidence, then it is that the FDS was permanently on the back foot in Abobo. The dynamic was one of reaction rather than action, trying to regain lost ground whilst preventing the loss of even more. Of equal importance is the fact that the FDS was engaged in asymmetrical warfare against elusive enemies who did not identify themselves and who appear to have blended in with the civilian population of Abobo.
1377. At the same time, the FDS was faced with the military presence and threat of the FAFN both inside and outside Abidjan. Again, the Prosecutor does not deny these realities but seems to have attached no significance to them. Yet, it is certain that the fact that there were heavily armed troops in the centre of Abidjan and many more in the north of the country, ready to launch an offensive (possibly with the support of French troops), would have been in the forefront of the minds of senior FDS officers.
1378. The allegation that from 12 January 2011 onwards there was a continuous increase in the use of violence by the FDS in its missions in Abobo is not supported by the available evidence. In the narrative that covers the period of 12 January to 18 February 2011, the Prosecutor does not allege or present evidence of significant operational instructions being issued by FDS high commanders in

³⁰⁶⁵ Mid-Trial Brief, Part VI, para. 403 et seq.

relation to Abobo. Little is known about the activities on the ground during this period. The purported escalation of military activities in Abobo is supported by evidence that the Army took a more prominent role in Abobo than it had before. Yet, there is no evidence to suggest that this transition was anything other than a response to the constatation that the Police and *Gendarmerie* were incapable of handling the security situation on their own.

1379. The argument that as of 12 January 2011, the FDS high command treated Abobo as a war zone and that Mr Gbagbo, by failing to declare Abobo as such on 24 February, made the civilian population the target of ensuing military operations is groundless. First, the evidence indicating that Abobo may have been referred to as a war zone, could have been a recognition of the fact that the *Commando Invisible* and/or other armed groups resorted to war-fighting methods. Second, there is no evidence of a collective understanding in the higher FDS ranks as to what it meant to have a geographic area deemed a warzone. Third, the fact that the use of military means and tactics made civilian casualties more likely does not mean that this was the desired result.
1380. When it comes to the alleged shelling of Abobo on 23 and 25 February 2011, the detailed analysis of the evidence upon which the Prosecutor relies has shown that no reasonable trial chamber could come to any definitive conclusions on the basis of multiple contradictions in the testimonies of the relevant witnesses. In particular, there is no support in the evidence for the contention that the FDS deliberately shelled urban areas of Abobo. Even if the contradictions were to be ignored, General Mangou said that on 23 February the FDS shelled the Banco forest and there is no information as to where the shell(s) fired on 25 February 2011 landed. There is also no reliable evidence of civilians being killed or harmed as a result of these shellings.
1381. Concerning the question of Mr Gbagbo's involvement, the evidence provided by General Mangou was that the President did not instruct or authorise the shelling of Abobo at any relevant time. General Mangou's testimony is confusing at best in relation to the reporting to Mr Gbagbo in the aftermath of these operations.

Thus, this evidence is not conclusive. Lastly, the suggestion that, after having met with Mr Gbagbo on 24 February 2011, the Chief of Staff authorised the firing of a much greater number of mortar shells in Abobo does not find support in the evidence. The analysis above demonstrates that these allegations stem from the equivocality of General Mangou's testimony on the use of mortars in Abobo during the military offensives of 23 and 25 February 2011.

1382. None of this is to suggest that there were no excesses or instances of criminal behaviour on the part of some FDS members in Abobo. However, there is a fundamental difference between recognising that there were excesses and claiming that there was a deliberate policy to target the civilian population. It is on this last point that the Prosecutor's case fails entirely.

VI. EXISTENCE OF A PATTERN OF CRIMES COMMITTED AGAINST CIVILIANS BY PERSONS ACTING ON BEHALF OF OR LOYAL TO THE ACCUSED

A. Introduction

1383. In support of the allegations that there was a course of conduct involving multiple commission of acts under article 7(1), that these acts were directed against a civilian population, that there was a policy/common plan to commit these acts, and that they were committed in a widespread or systematic manner, the Prosecutor has presented evidence concerning such acts through the five charged incidents as well as ‘20 other incidents’.³⁰⁶⁶

1384. In the Response, the Prosecutor alleges that between 27 November 2010 and 12 April 2010, article 7(1) acts were carried against at least ‘269 victims during the five charged incidents, and at least 259 victims during the at least 20 other incidents’.³⁰⁶⁷ The five charged incidents are alleged to be comprised of 142 murders, 17 rapes, and 110 inhumane acts (alternatively acts of attempted murder),³⁰⁶⁸ whereas in respect of the 20 uncharged incidents,³⁰⁶⁹ the Prosecutor alleged that there were at least 83 killed, 176 wounded and 37 detained.³⁰⁷⁰

³⁰⁶⁶ Mid-Trial Brief, para. 152; Response, para. 232. In respect of the ‘20 uncharged incidents’, it is noted that the Prosecutor stated that she no longer relies on the evidence specifically related to nine of the incidents mentioned in the Mid-Trial Brief, para. 155. *See* Response, para. 232. The Response discusses 19 incidents in relation to the alleged pattern concerning the commission of murders, rapes, and injuries. In respect of one of the 20 incidents, the Prosecutor only alleges crimes of pillaging as part of ‘Other evidence of article 7(1) acts’. *See* Response, paras 275-278. In respect of this incident, the Prosecutor does not advance allegations concerning the crimes of murders, rapes, and injuries. This incident has nonetheless been considered. *See* VI.Z.1 - Pillaging

³⁰⁶⁷ Response, para. 419.

³⁰⁶⁸ Response, para. 238.

1385. According to the Prosecutor, in all these 528 cases the perpetrators of the crimes were so-called ‘pro-Gbagbo forces’ and the victims of the crimes were civilians perceived as Ouattara supporters.³⁰⁷¹ Moreover, the Prosecutor argues that each of the 528 cases can be categorised on the basis of at least one of the following ‘evidentiary factors’:

- i. The crimes were committed in the context of political demonstrations or in and around political parties’ premises in Abidjan;
- ii. The crimes were committed during attacks on neighbourhoods where inhabitants were perceived as Ouattara supporters;
- iii. The crimes were committed following identification checks, particularly at roadblocks; and
- iv. The crimes were committed by shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters.³⁰⁷²

1386. The Prosecutor asserts that this shows that there was an ‘overall flow of events’, as opposed to a mere aggregation of un-associated acts. In addition to proving a ‘campaign or operation involving multiple article 7(1) acts’, the Prosecutor argues that the patterns of violence identified in the Response ‘are also relevant to establishing other material facts, such as that the attack was directed against a civilian population, the policy behind the course of conduct, and the nature of the attack’.³⁰⁷³

1387. Although the Prosecutor seems to argue that the crimes allegedly committed during the five charged incidents suffice to prove the existence of the alleged

³⁰⁶⁹ In the Mid-Trial Brief, the Prosecutor pleaded ‘common features’ and ‘regular pattern’ in respect of 34 incidents that she alleged constituted this course of conduct. See, Mid-Trial Brief, paras 152-155. However, in the Response, the Prosecutor informed the Chamber that she no longer relies on certain incidents. Response, para. 232. It is noted that in the Mid-Trial Brief, the Prosecutor had informed the Chamber that no longer sought to rely on evidence concerning four incidents that had been previously pleaded and considered one other incident to be subsumed within the alleged crimes committed during the RTI March. See Mid-Trial Brief, para. 153.

³⁰⁷⁰ Response, footnote 1039.

³⁰⁷¹ Response, para. 239

³⁰⁷² Response, para. 241

³⁰⁷³ Response, para. 243.

patterns, she also states that the uncharged incidents corroborate the existence of the course of conduct involving the multiple commission of acts referring to in article 7(1)³⁰⁷⁴ as well as the ‘existence of the other factors or evidentiary patterns’.³⁰⁷⁵

1388. It is not entirely clear how the evidence for the 20 uncharged incidents is capable of corroborating the evidence for the five charged incidents. They are all discrete events that took place at different times and places and involved different alleged perpetrators and victims. Nevertheless, seeing that the Prosecutor alleges the existence of certain patterns, the following analysis will look at all the evidence for the charged and uncharged incidents as a whole.

1389. In addition to the factors relied upon by the Prosecutor, the Chamber also analysed for each alleged crime whether there was any evidence about the motive or reasons of the alleged perpetrator for committing the crime. Although the Prosecutor is not required to prove a particular motive on the part of the physical perpetrators, such motive is still relevant to determine whether or not the alleged physical perpetrator acted pursuant to or in furtherance of the alleged policy.³⁰⁷⁶ The mere fact that an FDS member or a pro-Gbagbo militia member killed or raped a pro-Ouattara civilian does not *ipse facto* mean that the former was acting pursuant to a putative organisational policy. It is quite possible that the relevant individuals had different reasons for committing the crime. Regular criminality, personal reasons, self-defence, etc., are among many possible motives for why a person might engage in certain conduct regardless or even despite the existence of a policy. In some cases the violence may not have had a particular motive at

³⁰⁷⁴ Response, para. 244

³⁰⁷⁵ Response, para. 245

³⁰⁷⁶ The Prosecutor implicitly acknowledges this relevance of motive in paragraphs 583 and 1049 of her Response, where she argues that it is unlikely that rebel forces would have harmed pro-Ouattara demonstrators because they had no logical motive for doing so.

all, as in the case where a police officer uses excessive force in the execution of his or her duties.

1390. It is, of course, possible for a perpetrator to act for more than one reason. Accordingly, the fact that the evidence may indicate that a particular physical perpetrator may have had personal reasons for engaging in certain criminal conduct does not preclude the possibility that he or she was at the same time aware of the policy and that his or her actions were furthering it. However, this cannot be simply assumed to be the case, especially in a case like this, where there is no independent direct evidence showing the existence of the policy.

1391. In sum, in what follows, the evidence will be analysed with the purpose of ascertaining:

- i. whether the victim was a civilian who belonged to one of the groups that were generally considered – according to the Prosecutor – as favouring Mr Ouattara;
- ii. whether the alleged crime was committed by a person who belonged to the FDS or any of the irregular pro-Gbagbo forces;
- iii. what the reasons or motive of the alleged perpetrator may have been for committing the crime.

1392. For the purpose of this exercise, it will be assumed that the alleged facts about victimisation are established. This does not imply that the evidence for each alleged victim is sufficient to meet the relevant threshold. Accordingly, the fact that this decision does not question the accuracy of these allegations should not be interpreted as affirmation that they have been proved. As regards the assessment criteria for the identification of victims, having regard to the conclusions reached in respect of the term ‘perceived Ouattara supporter’,³⁰⁷⁷ the identities of the victims, including their affiliation will be taken at face value. However, their status as civilians will be assessed.

³⁰⁷⁷ See IV.B.1 - Identification of ‘Political Opponents’.

1393. In the assessment of the alleged pattern pleaded by the Prosecutor, it is noted that in many cases, the identity of the direct perpetrators is not apparent from the evidence cited in support of the allegation. It then becomes necessary to assess the identity through the known facts about the situation. There are also many instances where the perpetrator has been identified by the victims through generic terms. For instance, P-0440 was asked how one could distinguish between a *jeune patriote* and an ordinary citizen by looking at them and he testified that ‘there is no difference’.³⁰⁷⁸ Further, when asked about RHDP supporters and militants, he testified that ‘[t]aken individually, it is not possible to recognise them’.³⁰⁷⁹ As regards FESCI members, he testified that ‘when you take a student on an individual basis, you cannot say whether that person is a student of FESCI or not, and the operational word here is “individually”’.³⁰⁸⁰
1394. In the assessment of the affiliation, it is noted that the Prosecutor uses terms of reference – ‘pro-Gbagbo forces’, ‘pro-Gbagbo youth’ – to designate certain groups that did, as the name suggests, favour Mr Gbagbo. The Prosecutor’s narrative alleges that these ‘pro-Gbagbo forces’ constituted an amalgamated force i.e. ‘a force loyal to [Mr] GBAGBO’.³⁰⁸¹ It also suggests that the ‘pro-Gbagbo forces’ were an aggregation of State actors (for example the FDS, CECOS, *Gendarmerie*, BMO, etc) and non-State organisations (for example the *Galaxie Patriotique*, GPP, MODEL etc.) with some overlapping goals and constitution. The terminology ‘pro-Gbagbo force’ is used as a means of identifying an alleged affiliation which, in itself, is not problematic. However, the use of this terminology alone cannot replace actual proof of affiliation or identification with the relevant group.

³⁰⁷⁸ P-0440, T-158 dated 12 May 2017, p. 45.

³⁰⁷⁹ P-0440, T-158 dated 12 May 2017, p. 45.

³⁰⁸⁰ P-0440, T-158 dated 12 May 2017, p. 45.

³⁰⁸¹ Mid-Trial Brief, para. 236.

1395. It is acknowledged that the Prosecutor's seeming lack of rigour in the use of nomenclature may have been due to the circumstances of the case, such that it was not possible, or otherwise suitable, to establish definite criteria to identify irregular actors or groups constituting a force. Having considered the totality of the evidence, it is also noted that, in certain cases, overly strict definitions and compartmentalisation of groups is indeed artificial.³⁰⁸² This is the case for several reasons. Often, the membership of certain groups identified by the Prosecutor overlapped with others. In some cases, the nature and structure of certain groups continued to evolve over time, including during the period charged. Nonetheless, whilst the Prosecutor engages with some analysis of the constitution and membership of these groups separately, the narrative problematically continues to employ generic terms such as 'pro-Gbagbo forces' and 'pro-Gbagbo youth, militia and mercenaries' when only referring to one or more individuals/groups forming part thereof.

1396. From the plain reading of the charges, there are several groups alleged to be forming part of the 'pro-Gbagbo forces'. The alleged unifying factor among these groups is their loyalty to Mr Gbagbo, based on political and/or financial considerations. On certain occasions, the use of these terms takes place on the assumption that a hostile attitude towards individuals that the Prosecutor considers as perceived Ouattara supporters is evidence of being 'pro-Gbagbo'.³⁰⁸³ In certain instances, the Prosecutor does not identify the actors to whom she

³⁰⁸² For example, when questioned about 'mercenaries', P-0321 would answer in relation to 'militia'; the witness testified that he had 'difficulty distinguishing between militiamen and mercenaries because it is the same language that is spoken in the West' and that he really did not make 'much of a distinction between militiamen and mercenaries within the framework of this crisis'. See P-0321, T-61 dated 8 July 2016, p. 61.

³⁰⁸³ See for example Mid-Trial Brief, para. 618 ii: 'Witness P-0109 saw at least four friends being killed after pro-Gbagbo forces checked their identity cards'. However, according P-0109's testimony, he was sitting with friends when a group of strangers came, asked for their wallets, checked their IDs and fired. T-154 dated 9 May 2017, pp. 44-46. To the Prosecutor, the strangers were "pro-Gbagbo" because they fired on P-0109, who is a Muslim Malinké civilian.

refers to as such,³⁰⁸⁴ while in others, she uses these terms inconsistently.³⁰⁸⁵ At one instance, in particular, the evidence connected to one group was cited to support an assertion in relation to another group.³⁰⁸⁶

1397. The lack of sufficient accuracy and precision in determining the composition of the ‘pro-Gbagbo youth, militia and mercenaries’ also prevents the Chamber from assessing the accused’s respective contributions as well as the contributions of the alleged ‘inner circle’ members to whom the youth leaders are alleged to be linked. The use of generic terms, as the Prosecutor’s narrative does, with the apparent goal of obviating the need for identification of the individuals executing the Common Plan, runs the risk of misrepresenting the facts to the detriment of the accused. As a result, the generic references to irregular actors as members of the ‘pro-Gbagbo forces’ or ‘pro-Gbagbo youth, militia and mercenaries’ cannot be taken at face value, especially because the Prosecutor fails to advance clear criteria to delineate the different constituent groups.

³⁰⁸⁴ See for example Mid-Trial Brief, para. 357 concerning the RTI march. The Prosecutor asserts that ‘[i]n Cocody, in the area around the RTI, [the FDS] supported by mercenaries were deployed. [...] Pro-Gbagbo forces opened fire against a crowd of demonstrators [...]’. This is based on the testimony of witnesses P-0184 and P-0555. The Chamber notes that, when examined, P-0184 did not know who was responsible for the shooting. P-0555 had stated that he was beaten by FDS elements together with other individuals in civilian clothing. The Prosecutor also cites P-0547’s testimony in which he states that he was beaten in that same location by CRS personnel. T-13 dated 3 February 2016, pp. 19-20. Therefore, in this instance, the allegation that the FDS was ‘supported by mercenaries’ is based on P-0555’s testimony that he was beaten by ‘FDS elements together with other individuals in civilian clothing’. The Chamber is thus asked to assume that reference to ‘other individuals in civilian clothing’ must have been a reference to support by mercenaries.

³⁰⁸⁵ See for example Mid-Trial Brief, para. 622 where it is stated that the perpetrators of crimes committed on 12 April were ‘a mixture of militia members and Liberian mercenaries as well as local pro-Gbagbo youths’ relying on P-0435, T-90 dated 21 October 2016, p. 68. The Chamber notes that P-0435’s testimony in fact states that ‘it was difficult [...] by looking at someone, to determine what unit or what organisation an individual, an armed individual, belonged to at that time’. P-0435, T-90 dated 21 October 2016, pp. 68-71. The Prosecutor also mentions P-0407’s statements in relation to the militia which did not relate to the events of 12 April but that of 25 February. Also note that P-0407 said she knew that Mr Gbagbo recruited the militiamen in question solely because he was the one in power and therefore, she assumed that it was impossible for Mr Gbagbo to not know what was happening at the time (P-0407, DÉCLARATION DE TÉMOIN, 14 January 2015, CIV-OTP-0071-2215-R02 (confidential), para. 41).

³⁰⁸⁶ See for example in Mid-Trial Brief para. 701: “Blé Goudé ensured that youth were provided with weapons”; in the footnote, the evidence supporting this proposition is P-0435’s testimony that he himself as a GPP commander received weapons from Damana Pickass. Noting that GPP members may more appropriately be cast as militia members, this portion of his testimony does not mention ‘youth’ in the context of arming. See P-0435, T-87 dated 18 October 2016, pp. 51-54.

1398. For these reasons, in cases where the identity and/or allegiance of the perpetrator cannot be ascertained by direct evidence, the Chamber will assess his or her conduct to determine whether it can be inferred. Where an individual committed a crime and the only link to the accused is the Prosecutor's allegation that that individual was 'pro-Gbagbo', the proposition that an individual is 'pro' Mr Gbagbo must be treated as any other assertion to be proven based on the evidence on the record. Very often the claimed affiliation is a matter of inference. The concern with such inferences is the circularity of reasoning. Without additional information, the Chamber is unable to ascertain whether individual(s) were 'pro-Gbagbo' because they committed the crime charged or whether they committed the crime charged because they were 'pro-Gbagbo'. Given the surrounding circumstances of violence in the present case, the fact of the commission of crime alone cannot be a sufficient basis for presuming affiliation. Similarly, the assertion that an individual demonstrating an inimical attitude towards perceived Ouattara supporter(s) is by definition 'pro-Gbagbo' will also not be taken at face value but treated as an inference requested to be drawn by the Prosecutor. Depending on the surrounding circumstances particular to the alleged conduct, the Chamber may accept or refuse to draw such an inference.
1399. In order to arrive at a conclusion that an individual committed a crime pursuant to the Common Plan in this case, it is insufficient to only allege that said individual was 'pro-' Mr Gbagbo and *hence* formed part of the 'pro-Gbagbo youth' and/or 'pro-Gbagbo forces'. Affiliation to Mr Gbagbo is not criminal *per se*. Neither is loyalty. Additional facts and/or inferences would be needed to arrive at such a conclusion. It is noted, however, that certain witnesses and victims in relation to the commission of crimes have often simply referred to the perpetrators as 'pro-Gbagbo' without any further indications as to their motive. In those instances, additional surrounding circumstances from the facts have been assessed to determine said motive. Where there has been no additional information available in assessing their affiliation, the characterisation of the witness or victim in such circumstances has been taken at face value.

1400. Before turning to the discussion on the alleged patterns emerging from the charged and the uncharged incidents, it is imperative to discuss the probative value that can be accorded to the documents prepared by the UNOCI Human Rights Division. This is because the Prosecutor has referenced several such documents in support of her allegations concerning the crimes committed during the post-electoral crisis. This is especially the case with the uncharged incidents.
1401. In determining how to approach these documents, P-0414's testimony is important. P-0414, a rule 68(3) witness, provided information on how these documents were prepared. In response to the defence challenges to the reliability of these documents, the Prosecutor has claimed that P-0414's evidence demonstrates that these documents are indeed reliable.³⁰⁸⁷ The Prosecutor also alleges that as per the information provided by this witness, the 'information advanced by the UNOCI Human Rights Division was normally based on two independent sources'.³⁰⁸⁸
1402. It is noted that P-0414 worked as a Human Rights Officer in the UNOCI Human Rights Division as a UN Volunteer and was present there for parts of the post-electoral crisis.³⁰⁸⁹ P-0414 described the methodology adopted to prepare Daily Call Centre Reports based on the calls received at the call centre, some of which were then followed up on.³⁰⁹⁰ However, it is noted that P-0414 was not 'certain' that she drafted the daily situation reports during the period November 2010 to April 2011.³⁰⁹¹ P-0414 testified that for the call centre reports a follow up was

³⁰⁸⁷ See Response, paras 99-119.

³⁰⁸⁸ See Response, para. 252 footnote 522.

³⁰⁸⁹ P-0414, T-74 dated 19 September 2016, p. 26. P-0414 stated that she initially worked physically within the call centre as an operator and was thereafter assigned to analyse the information and prepare the Daily Call Centre Reports. P-0414 stated that, as of February 2011, she was no longer at the call centre as an operator and she would assess the situation on the basis of calls to the call centre. See P-0414, T-74 dated 19 September 2016, pp. 25-29, 35-36.

³⁰⁹⁰ P-0414, T-74 dated 19 September 2016, p. 28.

³⁰⁹¹ P-0414, T-74 dated 19 September 2016, p. 28.

conducted '[f]or the vast majority, but not all the calls'.³⁰⁹² P-0414 testified that she could not provide details on whether the person conducting the follow up did in fact 'call back each individual personally'.³⁰⁹³

1403. These factors must be borne in mind in approaching the UNOCI Call Centre Daily Reports, Follow-up Reports and Daily Situation Reports with caution. While it is possible that the incidents as reported at the call centre were followed up on, this was not done in every case as a rule. Based on the totality of P-0414's evidence, it appears that the three aforementioned categories of documents prepared by the UNOCI Human Rights Division are respectively of varying quality and may have been a result of a methodology that evolved as per the circumstances during the post-electoral crisis. For instance, P-0414 referenced rumours concerning 'certain national colleagues deal[ing] with the information in relation to their political affiliation', issues concerning 'stress' and understaffing.³⁰⁹⁴ This may have had a bearing on the quality of reporting or otherwise the willingness of the caller to volunteer information. As per P-0414's testimony and statement, it is not possible to determine which of these documents would have thus been affected by these issues. For this reason, there is insufficient information on the record to assess the provenance of the documents prepared by the UNOCI Human Rights Division. However, to the extent that certain reports relied upon by the Prosecutor were put to P-0414, her observations in respect of those reports have been noted when evaluating the evidence.

1404. In what follows, each of the incidents for which the Prosecutor has submitted specific evidence will be analysed in chronological order.

³⁰⁹² P-0414, T-74 dated 19 September 2016, p. 35.

³⁰⁹³ P-0414, T-74 dated 19 September 2016, p. 35.

³⁰⁹⁴ P-0414, T-76 dated 21 September 2016, pp 29-30.

B. 30 November 2010 – Sotrepim neighbourhood

1405. The Prosecutor alleged that on 30 November 2010, the FDS attacked the Sotrepim neighbourhood in Abidjan by opening firing on the population, killing one civilian from Burkina Faso and one civilian from Mali.³⁰⁹⁵ The UNOCI Daily Situation Report states that on 30 November, the FDS raided the Sotrepim neighbourhood and fired gunshots indiscriminately and created panic among the population who immediately sought refuge in a forest.³⁰⁹⁶ The report does state that these persons ‘were killed during the raid’ but it does not state whether these persons died as a result of the bullets fired by the FDS during this operation or due to the panic that ensued. The remaining documentary evidence adduced by the Prosecutor does not provide further information on the cause of death of the victims.³⁰⁹⁷ For this reason, it cannot be concluded that this incident constitutes evidence of the FDS opening fire on civilians as alleged. There is also insufficient evidence for the proposition that the FDS opened fire ‘indiscriminately’. In fact, nothing is known about why the FDS used their weapons, making it impossible to form any view as to the motive behind the operation and/or the individual instances of the use of force.

³⁰⁹⁵ Mid-Trial Brief, para. 155 (ii); Response, para. 265.

³⁰⁹⁶ DAILY SITUATION REPORT, 23 December 2010, CIV-OTP-0044-0903 (confidential) at 0907.

³⁰⁹⁷ LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 11, 16; Notebook, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3061; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3883; Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0295.

C. 1-2 December 2010 – RDR Office in Wassakara

1406. The Prosecutor alleged that on 1-2 December 2010, ‘a *Gendarmerie* unit from Yopougon raided RDR headquarters in Yopougon Wassakara and, opened fire on RHDP supporters who were gathered in the building, killing at least four and wounding at least seven’ with at least seven arrested and detained.³⁰⁹⁸ Recalling the conclusions relating to this incident *vis-à-vis* the allegations of the climate of impunity,³⁰⁹⁹ it is clear that not enough is known to come to any conclusions about how this incident unfolded. The evidence indicates that a *Gendarmerie* unit was involved in the incident; however, on the basis of the evidence adduced, it is not possible to determine who ordered the *gendarmes* to conduct this alleged operation or what the objective of the operation was. Moreover, there is evidence to suggest that there was an exchange of fire following a raid on suspicions of weapons being stored at the RDR office,³¹⁰⁰ though P-0440, a Police officer who was present at the scene soon after the incident, testified having found no evidence of weapons or an exchange of fire.³¹⁰¹ It is further noted that the superior of the *Gendarmerie* squad in question thought this action by his unit would get him into trouble.³¹⁰² There is thus a plausible inference that this incident was unauthorised by the chain of command. In light of the contradictory evidence in this regard, no reasonable trial chamber could determine what really occurred in this incident occurred.

³⁰⁹⁸ Mid-Trial Brief, para. 155 (iii); Response, paras 248-251.

³⁰⁹⁹ See IV.B.4.c)(1) - Wassakara incident.

³¹⁰⁰ Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099; A/S quatre (4) morts et (7) blessés suite à une attaque à main armée à Yopougon Wassakara, 1 December 2010, CIV-OTP-0045-0066; P-0011, T-132 dated 10 March 2017, pp. 86-87; P-0009, T-195 dated 27 September 2017, pp. 77-78.

³¹⁰¹ P-0440, T-157 dated 11 May 2017, pp. 7, 10, 13.

³¹⁰² P-0440, T-157 dated 11 May 2017, pp. 10-13; Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential).

D. 3 December 2010 – RHDP demonstration in Treichville

1407. The Prosecutor alleges that

on 3 December 2010, after an RHDP demonstration, members of the *Garde Républicaine*, accompanied by English-speaking individuals and armed with machetes, truncheons and knives, attacked the Biafra neighbourhood of Treichville, Abidjan, wounding at least 133 people. During the incident, at least 16 people were also arrested and taken to the Agban *Gendarmerie* camp.³¹⁰³

1408. The UNOCI Daily Situation Report reports an incident on 3 December 2010 in which elements of the *Garde Républicaine* raided the Biafra neighbourhood in the Treichville district of Abidjan, following a RHDP demonstration during which demonstrators burnt tyres on the street. During this raid, 133 people were injured, 30 were arrested and detained by the *Garde Républicaine*, who were accompanied by English-speaking individuals that are alleged to be Liberian mercenaries.³¹⁰⁴ It is noted that there are no deaths or rapes reported as having resulted from this alleged operation.

1409. The assertion that there were English-speaking individuals accompanying the *Garde Républicaine* is based solely on the Daily Situation Report, and as discussed below, not consistent with the evidence provided by P-0347. The Prosecutor also relies on P-0435's testimony in support³¹⁰⁵ but the cited portions of his testimony respectively refer to an incident in April 2011 allegedly involving Liberians³¹⁰⁶ and a Liberian combatant known as 'Junior Gbagbo'.³¹⁰⁷ It does not support the allegation that there may have been Liberian mercenaries working together with the *Garde Républicaine* during this alleged raid in Biafra neighbourhood in December 2010.

³¹⁰³ Mid-Trial Brief, para. 155 (iv); Response, paras 252.

³¹⁰⁴ DAILY SITUATION REPORT, 8 December 2010, CIV-OTP-0044-0955 (confidential) at 0959.

³¹⁰⁵ Response, footnote 527.

³¹⁰⁶ See P-0435, T-90 dated 21 October 2016, p. 28 (confidential).

³¹⁰⁷ P-0435, T-90 dated 21 October 2016, pp. 33-34.

1410. P-0347's testimony in this regard is not relevant in respect of the purported activities of English-speaking individuals in December 2010 since he only testified about noting the presence of Liberian mercenaries 'during the period before the battle of Abidjan',³¹⁰⁸ which, according to him, took place 'in the second half of the month of March'.³¹⁰⁹ P-0347 testified that these elements did not embark on any other missions³¹¹⁰ except the reconnaissance missions that he thought they were participating in that time.³¹¹¹

1411. The Prosecutor also attempts to link this incident to purported orders by General Dogbo Blé to 'to prevent demonstrations'.³¹¹² It is noted that P-0347 testified that they were conducting patrols to restore public order before the second round of elections – i.e. before 28 November 2010 – and in that time they had received orders to stop a demonstration from taking place and that this was done in association with the Police.³¹¹³ He testified that

It was not an easy thing to demonstrate freely because, you see, the demonstrations led to disturbances. And so there was a request to prohibit all demonstrations so as to restore public order. So unauthorised demonstrations were not allowed. [...] it was the police who had the authority to deal with this sort of thing. And we provided support or a backup to protect police officers in their primary mission.³¹¹⁴

1412. It is not known whether or not the *Garde Républicaine* was conducting regular patrols following the second round of elections. It cannot be ascertained whether the present incident was a result of an intervention by the *Garde Républicaine* following a patrol or not. However, P-0347's testimony is relevant in assessing whether, according to him, the mistreatment of those detained was part of their 'mission'. P-0347 testified generally that:

³¹⁰⁸ P-0347, T-77 dated 22 September 2016, p. 52.

³¹⁰⁹ P-0347, T-77 dated 22 September 2016, pp. 59-60.

³¹¹⁰ P-0347, T-77 dated 22 September 2016, p. 66.

³¹¹¹ See IV.D.2.c)(2)(a) – Presence of Liberians in FDS bases/units.

³¹¹² Response, para. 252.

³¹¹³ P-0347, T-77 dated 22 September 2016, p. 67.

³¹¹⁴ P-0347, T-77 dated 22 September 2016, p. 68.

Some of my men while patrolling would round up some of these young people who were burning tyres, causing destruction to property and bring them back to the barracks in Treichville. And once they were back at the barracks, some of my men inflicted certain treatment upon these young people. They mistreated them indeed. And I put a stop to that because I did not think that was part of our mission. Our mission was clear, if we detained any demonstrators or people causing disturbances, they were to be taken to the police, to the police station or to the search brigade. So each time these young people who had been troublemakers were brought to the Treichville base, systematically I would send them on their way to the police station or to the search brigade, who would deal with them.

1413. It is thus clear from the evidence that, at least in some instances, the FDS mistreated individuals for having caused disturbances. This does not chime well with the Prosecutor's case that individuals were targeted because they belonged to particular groups. Moreover, it is worth noting that the evidence provides little information about the severity of the injuries inflicted. It is thus not possible to form an opinion about the nature and character of the operation, much less about the motives of the individuals involved in it.

E. 4 December 2010 – RHDP demonstrators near the Great Mosque of Koumassi

1414. The Prosecutor alleges that on 4 December 2010, BMO officers fired live ammunition at RHDP demonstrators near the Great Mosque of Koumassi, Abidjan, wounding at least eight people.³¹¹⁵ The Police report cited in support states that the RHDP demonstrators had erected a roadblock near the concerned mosque blocking all the roads, as a result of which the Police used tear gas before firing live rounds at the group, resulting in the death of a young boy aged 11 years who was struck in the leg six times by bullets.³¹¹⁶ The HRW report adduced by the Prosecutor, however, claims that the young boy was 'killed by a

³¹¹⁵ Mid-Trial Brief, para. 155(v); Response, para. 253.

³¹¹⁶ RAPPORT DE PERMANENCE CENTRALE DU 04 AU 05 DECEMBRE 2010, 4 December 2010, CIV-OTP-0045-0527 (confidential) at 0532–0533. *See also* P-0046, T-125 dated 17 February 2017, pp. 16-17, where Inspector-General Bredou M'Bia believed that there was an investigation opened for this incident. The Prosecutor also cites to General Guiai Bi Poin's testimony but it is noted that General Guiai Bi Poin said he would not have received reports like this since he was working in CECOS and not the Police.

fragmentation grenade', based on a statement from the boy's father.³¹¹⁷ Due to the contradictory information contained in the Police report and the HRW report about the injuries suffered by the victim; it is possible that they are not referring to the same person.³¹¹⁸ Moreover, according to the Police report, the Police launched a tear gas grenade at the crowd before firing live ammunition,³¹¹⁹ indicating that this was an attempt to disperse the crowd.

F. 4 December 2010 – Port-Bouët

1415. The Prosecutor alleged that on 4 December 2010 at Port-Bouët, the FDS killed two civilians, one of whom was from Burkina Faso.³¹²⁰ In support of this allegation, the Prosecutor cites a Police report and a report by Amnesty International that contains an eye witness account of one of the killings.³¹²¹ Notwithstanding that the report by Amnesty International has a low evidentiary weight, it is noted that eye witness account presented therein states that the victim was killed when he went to buy cigarettes after the end of the curfew.³¹²² In contrast, the Police report cited in support merely states that two dead bodies were discovered in Abattoir, Port-Bouët and that the circumstances of the deaths were not known at the time.³¹²³ It further states that the deaths were caused by

³¹¹⁷ They Killed Them Like It Was Nothing The Need for Justice for Cote d'Ivoire Post-Election Crimes, 1 October 2011, CIV-OTP-0004-0072 at 0103-0105.

³¹¹⁸ It is noted that there is a difference in the age of the young boy between the two accounts but this is too slight.

³¹¹⁹ RAPPORT DE PERMANENCE CENTRALE DU 04 AU 05 DECEMBRE 2010, CIV-OTP-0045-0527 (confidential) at 0532–0533.

³¹²⁰ Mid-Trial Brief, para. 155(vi); Response, para. 266.

³¹²¹ Response, para. 266 referring to Ils ont regardé sa carte d'identité et l'ont abattu, retour sur six mois de violences post-électorales en Côte d'Ivoire, Amnesty International, 15 May 2011, CIV-D15-0001-3091. It is noted that this document was considered formally submitted on 11 May 2016, T-37.

³¹²² Ils ont regardé sa carte d'identité et l'ont abattu, retour sur six mois de violences post-électorales en Côte d'Ivoire, Amnesty International, 15 May 2011, CIV-D15-0001-3091 at 3107.

³¹²³ RAPPORT DE PERMANENCE CENTRALE DU 04 AU 05 DECEMBRE 2010, 4 December 2010, CIV-OTP-0045-0527 (confidential) at 0528-0529.

bullet injuries.³¹²⁴ The documents concerning their entry into the morgue do not further elucidate the cause or circumstances of their deaths except that the nature of injuries was '*Arme à feu*' (firearm).³¹²⁵

1416. For this reason, it is not possible to ascertain whether or not these two individuals were killed by the FDS as alleged. Even if the bullet injuries were caused by the FDS as indicated by the Amnesty International report, it is not known why these individuals were targeted, if at all. The Prosecutor's implied suggestion that they were killed because of their nationality is entirely speculative.

G. 6 December 2010 – RHDP demonstrators in Boribana

1417. The Prosecutor alleges that on 6 December 2010 in Adjamé-Boribana, Abidjan, a BMO officer opened fire on RHDP demonstrators, killing at least one person and wounding another.³¹²⁶ The cited UNOCI Daily Situation Report states that, following an RHDP demonstration, the 'crowd was quelled' by the Police and the CRS after which four BMO policemen arrived, one of whom 'executed the [victim] while he was walking towards a nearby house'.³¹²⁷ The two Police reports³¹²⁸ cited in support both state that FDS elements fired at demonstrators but they differ as to the perpetrators' unit. According to the first, those who fired

³¹²⁴ RAPPORT DE PERMANENCE CENTRALE DU 04 AU 05 DECEMBRE 2010, 4 December 2010, CIV-OTP-0045-0527 (confidential) at 0528.

³¹²⁵ See Evenement VGE <>, undated, CIV-OTP-0029-0476 at 0476; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 at IMLA 50,51.

³¹²⁶ Mid-Trial Brief, para. 155(vii); Response, para. 254.

³¹²⁷ DAILY SITUATION REPORT, 8 December 2010, CIV-OTP-0044-0955 (confidential) at 0958-0959.

³¹²⁸ COMPTE RENDU SIMPLIFIE, 6 December 2010, CIV-OTP-0045-0750 (confidential); COMPTE RENDU SIMPLIFIE, 6 December 2010, CIV-OTP-0045-0751 (confidential); TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0865-0866 contains the same information as these police reports. P-0560 confirmed that the stamp and the signature on CIV-OTP-0045-0750 belonged to him. He does not provide further information about this incident. P-0560, T-121 dated 13 February 2017, pp. 6-7.

belonged to the CRS³¹²⁹ whereas the second indicates they were CECOS elements in a 4x4 marked 'BMO'.³¹³⁰ Moreover, only the first report mentions an execution, albeit in different circumstances than alleged in the UNOCI report: accordingly, after firing at the crowd, the CRS elements stopped their vehicle next to one of the wounded and 'finished him' by firing additional shots.³¹³¹ The remaining documents cited in support do not provide any further information on this incident that could assist in inferring a motive behind the killing.³¹³² From the circumstances, it is not clear why the elements killed the victim – whether, as per the UNOCI report, as he was walking away or, as per the Police report, while he was on the ground injured. It is also untenable to infer from the killing that the elements intended to target RHDP supporters as such. If the motive of the perpetrators was indeed to target and kill RHDP supporters, it not clear why only one person from the crowd that had just been dispersed was targeted and killed. This rather suggests that the individual's specific identity may have been a relevant factor and that he was not targeted merely for being part of an RHDP demonstration. In any event, the quality of the evidence is so low and the information so limited that no reasonable trial chamber could come to any firm conclusions in this regard.

H. 16-19 December 2010 - RTI March (1st charged incident)

1418. The Prosecutor alleged that FDS units (including armed forces, Police, *Gendarmerie*, CECOS and the *Garde Républicaine*, aided by pro-Gbagbo youth, militiamembers and mercenaries) 'violently repressed' the RTI march on 16

³¹²⁹ COMPTE RENDU SIMPLIFIE, 6 December 2010, CIV-OTP-0045-0750 (confidential).

³¹³⁰ COMPTE RENDU SIMPLIFIE, 6 December 2010, CIV-OTP-0045-0751 (confidential).

³¹³¹ COMPTE RENDU SIMPLIFIE, 6 December 2010, CIV-OTP-0045-0750 (confidential).

³¹³² Investigation sules atteintes au droit aux droits de l'homme, undated, CIV-OTP-0044-1398 at 1433; LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1163; EVENEMENT CHU TREICHVILLE « IDENTIFIES », undated, CIV-OTP-0029-0462 (confidential) at 0462, entry 10.

December 2010.³¹³³ She further alleged that ‘pro-Gbagbo forces’ then continued to attack persons perceived to be Ouattara supporters in various neighbourhoods of Abidjan between 16 and 19 December 2010.³¹³⁴ The Prosecutor alleged that these crimes were ‘committed on political, national, ethnic or religious grounds’.³¹³⁵ More specifically, the victims of the 16 December 2010 march were allegedly targeted as perceived Ouattara supporters, on the basis that they were actual or perceived political activists or sympathisers, or civilians who were considered to be supporters of the opposition due to their Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d’Ivoire, or other West African countries.’³¹³⁶

1419. It is noted however that the Prosecutor’s allegations concerning the civilians who have been identified as victims in the context of the RTI march have been reduced.³¹³⁷ From the Document Containing the Charges to the Response, the Prosecutor has reduced the number of alleged killings from 45 to 24,³¹³⁸ alleged

³¹³³ Mid-Trial Brief, paras 342, 354; Response, para. 460.

³¹³⁴ Mid-Trial Brief, paras 342, 354; Response, para. 460.

³¹³⁵ Mid-Trial Brief, para. 340; Response, para. 460; Pre-Trial Brief, para. 308.

³¹³⁶ Response, para. 540.

³¹³⁷ In the Document Containing the Charges, the Prosecutor alleged that ‘[d]uring these four days, pro-Gbagbo forces killed at least 45, severely wounded at least 54 and raped at least 16 women and girls. All the victims were civilians.’ See Document Containing the Charges against Mr Gbagbo, para. 99; Document Containing the Charges against Mr Blé Goudé, para. 127. In the Pre-Trial Brief, the Prosecutor alleged that ‘[b]etween 16 and 19 December 2010, [...] pro-Gbagbo forces killed at least 33 civilians, raped at least 16 women and girls, and wounded over 54 civilians.’ See Pre-Trial Brief, para. 308. In the Mid-Trial Brief, the Prosecutor alleged that ‘[b]etween 16 and 19 December 2010, [...] pro-Gbagbo forces killed at least 28 civilians, raped at least 11 women and girls, and wounded over 54 civilians.’ See Mid-Trial Brief, para. 340. See also Annex E.1. In her Response, the Prosecutor alleged that ‘[b]etween 16 and 19 December 2010, [...] pro-Gbagbo forces killed 24 identified civilians and many other unidentified civilians, raped at least 11 women and girls and seriously wounded 52 identified civilians and many other unidentified civilians.’ See Response, para. 460.

³¹³⁸ It is noted, however, that the Response discusses one ‘unknown’ victim. See Response, para. 481 (ix) (a) for unknown victim filmed by P-0184. These allegations have also been addressed below. It is further noted that there are allegations advanced in respect of an unknown person referred to as ‘Chérif’ who was allegedly killed in the context of the march. See Response, p. 238 (g). The Prosecutor has not provided any further details concerning his identity in the Response. Nonetheless, these allegations have also been discussed below as part of the alleged killings of identified civilians.

rapes from 19 to 11, and alleged injuries from 54 to 52.³¹³⁹ Comparing the Response and the Mid-Trial Brief, it is noted that the Response does not contain allegations in respect of three identified civilians mentioned in the Mid-Trial Brief.³¹⁴⁰ Similarly, the Response does not contain allegations concerning two identified civilians who were injured in the context of the march.³¹⁴¹ In respect of the allegations concerning injuries, as with the killings, the Prosecutor has also argued that many more unidentified civilians were injured.³¹⁴²

1420. One of the challenges of analysing the evidence relating to the RTI march has been that the events are spread widely in time and space. Abidjan, with over 400 km² one of Africa's largest cities, was the scene of thousands of individuals moving from different locations towards the RTI headquarters in Cocody in the centre of town. Precious little is known about these movements, apart from the fact that they started at different times and took different routes. The Chamber also received only the most basic information about how the FDS and other forces were deployed throughout the city. Given this dearth of information and the complexity of the situation, it has proved impossible to reconstruct the context in which the individual incidents alleged by the Prosecutor took place.

1421. Even for the incidents about which the Prosecutor has provided some evidence, the information is usually extremely limited and always incomplete. This has made a proper analysis of even the individual incidents very difficult. Indeed, evaluating the Prosecutor's evidence for the RTI march is a lot like trying to reconstruct the shape of a vase that has broken into thousands of pieces on the

³¹³⁹ It is not known why the numbers have been reduced. It may be linked to the difficulties in identifying victims of the RTI March, or to the Prosecutor attempting to limit the crimes to those proximate to the events of 16 December. However, absent any such express indication from the Prosecutor, it cannot be ascertained whether or not this reduction in numbers constitutes a reduction in the scope of the Prosecutor's case.

³¹⁴⁰ See Mid-Trial Brief, Annex E.1 'Persons Killed', entries 24, 25, 26.

³¹⁴¹ See Mid-Trial Brief, Annex E.1 'Persons Injured', entries 10, 11.

³¹⁴² The allegations concerning the identified civilians killed (3) and injured (2) that appear in the Mid-Trial Brief but do not appear in the Response have also been addressed below to the extent that they appeared relevant for the assessment of the existence of the alleged pattern of crimes.

basis of only a handful of random shards. Contrary to the Abobo I and II and Yopougon I incidents, there simply is no coherent comprehensive account of what allegedly happened, which the Chamber could then assess on the basis of the available evidence. There only are a few – seemingly random – anecdotal and incomplete stories of what happened at a particular location at a particular moment. To make matters worse, these fragments are usually based on the testimony of a single witness, who was unable to give a complete account of what happened.

1422. The above considerations alone would be enough for a reasonable trial chamber to dismiss the Prosecutor’s allegations. This is because it would be utterly irresponsible to make any findings about what allegedly happened during the RTI march on the basis of such incomplete evidence.

1423. Nonetheless, because the evidence is on the record and because witnesses have come to tell their stories, the Chamber has still analysed the available information. Since that information is so fragmentary and incomplete, the following analysis will necessarily be patchy and lacks any narrative structure. Instead, the analysis is organised by location.

1424. It is noted that the Prosecutor points to a number of unidentified victims that she alleges were also killed by pro-Gbagbo forces, because she claims they fit into the alleged pattern of the commission of crimes against pro-Ouattara civilians in the context of political demonstrations.³¹⁴³ For this reason, it is imperative to first examine the allegations concerning the death of identified civilians, with a view to ascertaining whether or not they form a pattern of crimes against the civilian population.

³¹⁴³ The Prosecutor alleges that these crimes ‘committed by pro-Gbagbo forces were part of a pattern targeting actual or perceived pro-Ouattara supporters’; *see* Response, paras 488, 507, 538. The Prosecutor further submits that the ‘pro-Gbagbo forces knew that the victims were perceived pro-Ouattara supporters and in fact actual supporters because they were part of the demonstration or were intending to take part in it’; *see* Response, paras 488, 507, 538.

1425. The alleged killings and injuries of unidentified civilians will only be examined to the extent that they can be linked to said pattern. This would require, at a minimum, that it can be established that the victim was killed at a location about which the Chamber has information that there was a confrontation between the FDS and/or irregular forces, on the one hand, and pro-Ouattara demonstrators, on the other. The mere fact that a person belonging to a religious, ethnic, or national group associated with Mr Ouattara was killed in Abidjan between 16 and 19 December 2010 is not sufficient to infer that this person took part in the RTI march, much less that s/he was killed by a member of the FDS or a supporter of Mr Gbagbo for that reason. The Prosecutor's argument that someone's death can be attributed to the FDS if there is evidence that the person suffered gunshot wounds, because this 'fits in with its pattern of using live ammunition and/or fragmentation grenades against civilian demonstrators'³¹⁴⁴ must be rejected.

1426. As regards the alleged pattern concerning the FDS using live ammunition against civilians, the incidents cited in support of this allegation demonstrate that, prior to firing, the FDS often used tear gas in order to disperse the crowd in question or were otherwise engaged in law enforcement operations. The Prosecutor has alleged that the evidence citing the use of conventional means to disperse the crowd by the state authorities should not be taken into account because it is 'self-serving exculpatory evidence'.³¹⁴⁵ If there is anything 'self-serving' in this regard, it undoubtedly is the Prosecutor's attempt to wish away essential parts of the evidence. Accordingly, the incidents discussed below have been examined to assess the existence of the alleged pattern and whether such a pattern necessarily rules out the possibility of these incidents being law enforcement operations.

³¹⁴⁴ Response, paras 483, 484, 532.

³¹⁴⁵ Response, para. 481 (viii) (c). The Prosecution submits that this is self-serving exculpatory evidence that should not be relied upon in reference to certain police reports that state that conventional law enforcement means were used. In this respect, it is noted that in the present analysis, testimonial evidence has been assessed in respect of the means used by the FDS.

1. *Abobo*

1427. The events as they unfolded in Abobo have been described by P-0117, P-0184, P-0330, P-0363, [REDACTED], and P-0588. These accounts have been discussed in turn based on the locations where these witnesses were present on that day.

1428. The locations have been discussed as per the progression of the march i.e. from Carrefour Agripac/PK18 towards Abobo Avocatier and then Abobo Gare. After Abobo Gare, there is also evidence of incidents in and around Samaké roundabout. There is also evidence for the events around Dokui bus stop further south of Samaké. These have also been discussed below.

a) **PK18 and Carrefour Agripac**

1429. In respect of the incidents that took place in and around Carrefour Agripac, the Prosecutor relies on the account provided by P-0588,³¹⁴⁶ a civilian living in Abobo at the time. At the time of observing the march early in the morning, P-0588 was close to Carrefour Agripac in Abobo, the intersection where the roads Anyama, Abobo Gare, N'Dotré and Bois Sec cross.³¹⁴⁷ He saw demonstrators gathering at about 08h00.³¹⁴⁸ It is noted that, in addition to having observed the march himself, P-0588 provided a hearsay account of Lacina Bakayoko's death in Avocatier,³¹⁴⁹ discussed later.³¹⁵⁰

³¹⁴⁶ Response, paras 481 (x), 530.

³¹⁴⁷ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0084, para. 23.

³¹⁴⁸ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0084, para. 24. *See also* P-0588, T-113 dated 7 December 2016, pp. 51-53.

³¹⁴⁹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0084, para. 24.

³¹⁵⁰ VI.H.1.b)(1) - Killed – Lacina Bakayoko.

1430. According to P-0588, at around 10h00, many demonstrators had gathered and he saw two *Gendarmerie* cargo trucks arrive, they were blue with ‘*Commando Escadron*’ and the vehicle number written on the sides. Following this, other cargo trucks arrived; in total, P-0588 thought four *cargos* arrived carrying ‘*militaires*’.³¹⁵¹ P-0588 could not specify which group of state forces arrived first; however, he noted the presence of the *Gendarmerie* and *militaires*.³¹⁵²
1431. According to P-0588, the cargo trucks parked along the road to Abobo *Gare* that the demonstrators had decided to take to go to the RTI. P-0588 saw the *cargos* positioned on both sides of the road as well as across the road, blocking the passage, and the *militaires* left their trucks.³¹⁵³ P-0588 stated that about 30 minutes after their arrival, the ‘*militaires*’, who were wearing green and black fatigues with red berets and carrying Kalashnikovs and weapons with a tube to launch tear gas canisters, began throwing tear gas grenades by hand.³¹⁵⁴ According to P-0588, the demonstrators did not leave and at times threw the tear gas grenades back to the sides of the road. Later, tear gas was launched with the rifles and with each shot, the demonstrators retreated slightly but continued to advance afterwards.³¹⁵⁵ P-0588 thought that the relevant forces fired tear gas because they saw the demonstrators refusing to withdraw.³¹⁵⁶ P-0588 also confirmed that these forces prevented the demonstrators from advancing.³¹⁵⁷

³¹⁵¹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0085, paras 25-26. *See also* P-0588, T-114 dated 8 December 2016, pp. 22-24.

³¹⁵² P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0084, para. 25.

³¹⁵³ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0084, para. 26.

³¹⁵⁴ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0085, paras 26-27. *See also* P-0588, T-113 dated 7 December 2016, pp. 53-54.

³¹⁵⁵ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0085, para. 27. P-0588, T-113 dated 7 December 2016, pp. 58-61.

³¹⁵⁶ P-0588, T-114 dated 8 December 2016, pp. 36-38.

³¹⁵⁷ P-0588, T-114 dated 8 December 2016, p. 34.

1432. P-0588 stated that, at around 11h00, the *militaires* fired on the crowd with live rounds, which he could hear; P-0588 saw demonstrators being hit by bullets and falling.³¹⁵⁸ P-0588 stated that he was told by other demonstrators that someone had shot at them from a building; P-0588 and his friends went to the third floor of the building where the shots may have come from and found used shells and a Kalashnikov there.³¹⁵⁹ Upon leaving the building, they saw a body beaten and disfigured out in front, there was no uniform on the body but P-0588 later learned from the media that the person was a '*corps habillé*'.³¹⁶⁰

1433. In his statement, P-0588 further said that in front of the building he and his friends saw four bodies that the demonstrators had brought there. P-0588 also stated that at Carrefour Agripac, there were other bodies on the tarmac that the demonstrators could not take with them as these bodies were lying close to the soldiers.³¹⁶¹

1434. In addition to P-0588, the events in and around Carrefour PK18 have also been described by P-0330 commander of the *Gendarmerie* unit based at Camp Commando in Abobo.³¹⁶² P-0330 had sent out a patrol to PK18 'at approximately 11 or midday'³¹⁶³ and was receiving information from the ground from his subordinates. As per the information received by P-0330, his patrol came across a 'group of soldiers' that had set up a roadblock at Carrefour PK18, 'stopping a

³¹⁵⁸ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0085, para. 28. *See also* P-0588, T-113 dated 7 December 2016, p. 61.

³¹⁵⁹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0086, paras 29-30.

³¹⁶⁰ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0086, paras 29-30. *See* P-0588, T-113 dated 7 December 2016, p. 61. *See also* P-0588, T-113 dated 7 December 2016, pp. 4-6; P-0588, T-114 dated 8 December 2016, pp. 41-42. *See further* T-113 dated 7 December 2016, p. 75 commenting on RTI Broadcast dated 16 December 2010, CIV-OTP-0026-0028 at 52.05-53.23; T-114 dated 8 December 2016, p. 43.

³¹⁶¹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0086, para. 31.

³¹⁶² It is noted that P-0330 himself went on a patrol at about 8h00 earlier that day. He observed certain incidents in and around Samaké roundabout. These have been discussed later. *See* VI.H.1.c) - Abobo Gare and Samaké.

³¹⁶³ P-0330, T-68 dated 1 September 2016, p. 66.

group of demonstrators from Anyama and PK18 to proceed in their march, they wanted to pass and continue marching up to the RTI'.³¹⁶⁴

1435. P-0330 testified that he thought that the 'soldiers had received specific instructions' since they 'did not want any confrontations in that area'.³¹⁶⁵ P-0330 stated that at the time, any 'street activity' was considered 'subversive'; he added that, according to the intelligence, the 'FAFN troops had infiltrated the area and there was fear that those demonstrations could be used by the FAFN to take over the RTI'.³¹⁶⁶ However, it is noted that P-0330 recalled that he himself did not recall having received instructions concerning the security arrangements for the RTI march.³¹⁶⁷

1436. From P-0330's account, it appears that both the army and the police were present and had already taken up positions by the time the patrol sent by him arrived on the location. P-0330 testified that his officer reported to him that they had spoken to the army captain at the location and that the army had set up a 'human roadblock to keep the demonstrators from getting through' in the middle of PK18 junction;³¹⁶⁸ Police officers from CRS1 were also present and had taken up positions away from the soldiers.³¹⁶⁹

1437. P-0330 directed his officers to station themselves near the Anonkoua-Kouté school where his officers saw 'some young civilians bearing Kalashnikovs coming from PK18 or Anyama [...] going into the primary school'.³¹⁷⁰ According

³¹⁶⁴ P-0330, T-68 dated 1 September 2016, pp. 53-54.

³¹⁶⁵ P-0330, T-68 dated 1 September 2016, pp. 53-54.

³¹⁶⁶ P-0330, T-68 dated 1 September 2016, p. 55.

³¹⁶⁷ P-0330, T-68 dated 1 September 2016, p. 56.

³¹⁶⁸ P-0330, T-68 dated 1 September 2016, p. 67. P-0330 explained that 'in law enforcement we do not actually block the roads. When we are requested to set up a roadblock, it is with a view to stopping demonstrators and we do so with troops, people, with personnel. And that is what the soldiers did.' See T-71 dated 6 September 2016, p. 41.

³¹⁶⁹ P-0330, T-68 dated 1 September 2016, p. 67.

³¹⁷⁰ P-0330, T-68 dated 1 September 2016, p. 68.

to P-0330, who was receiving reports from his officers on location through mobile phones, these armed individuals scattered and hid in a classroom when they saw P-0330's officers present there.³¹⁷¹ P-0330 directed his officers to leave that position in order to avoid being fired upon by the armed individuals, who, P-0330 considered, were in a 'better position to see our men and to possibly shoot at them' and then 'we would have lost many men for no point'.³¹⁷²

1438. Upon receiving information about the armed individuals, P-0330 thought that there was a reason to be worried and that the demonstration might be a 'trap'.³¹⁷³ P-0330 was informed by one of his officers that he had 'come under fire from hidden snipers' and so P-0330 sent out another patrol in order to have more 'boots on the ground in the event of further attacks'.³¹⁷⁴

1439. Before the second patrol got to the location, there had been shots fired 'from the people who were faced – who were facing the soldiers', as a result of which two soldiers were shot dead and one policeman was hit.³¹⁷⁵ P-0330 testified that after the two soldiers had been shot, it was difficult for his officers to return fire since they were stationed behind other soldiers.³¹⁷⁶ According to the reports P-0330 received from his officers at the location, the army then 'responded to the gunfire directed towards them and quickly [...] moved away' with a vehicle.³¹⁷⁷ Then P-0330 also directed his officers to come back to Camp Commando since 'everything was confusing, people were running here, there and everywhere'.³¹⁷⁸

³¹⁷¹ P-0330, T-68 dated 1 September 2016, p. 69.

³¹⁷² P-0330, T-68 dated 1 September 2016, pp. 69-70.

³¹⁷³ P-0330, T-68 dated 1 September 2016, p. 70.

³¹⁷⁴ P-0330, T-68 dated 1 September 2016, pp. 70-71.

³¹⁷⁵ P-0330, T-68 dated 1 September 2016, p. 71. It is noted that the police officer that had been hit was not an 'official employee' and was Liberian (*see* pp. 71-72).

³¹⁷⁶ P-0330, T-68 dated 1 September 2016, p. 72.

³¹⁷⁷ P-0330, T-68 dated 1 September 2016, pp. 72-73.

³¹⁷⁸ P-0330, T-68 dated 1 September 2016, p. 73.

1440. P-0330 himself went to the location later at 16h00 and witnessed dead bodies of ‘men wearing civilian clothing’ on the streets.³¹⁷⁹ P-0330 provided anonymous hearsay account of a soldier who had fired at the demonstrators. P-0330 was told by the civilians he came across that

not very far from that crossroads, beyond the position held by the soldiers, that is to say behind the demonstrators who were being kept back, there was a building along the side of the road and a soldier lived there, and the soldier apparently was the one who opened fire. I don't know when, was it when the soldiers returned fire that he took up his weapon and shot at them? I don't know. I really wasn't in a position to situate all of this. But it is thought that perhaps he shot from his balcony at the troops or at the crossroads where both the soldiers and the demonstrators had taken up positions. So the people were very angry. They went to find him. They threw him off the balcony--well, he was already dead. But after throwing him over the balcony, after throwing this soldier over the balcony, they also brought out all his furniture, his kitchen equipment, anything that you could set on fire, they put it all in a pile and set it on fire. And I saw that, yes, there was a body in there. And the flames were quite tall and actually burnt part of the wall. So the soot from the fire was on the wall.³¹⁸⁰

1441. As regards who had fired the first shots during this exchange of fire, P-0330 testified that he thought it unlikely that the shots were being fired by people from among the group of demonstrators because he considered that ‘individuals could not have been carrying weapons faced with soldiers because those soldiers would not have accepted to have armed civilians standing in front of them’. Nevertheless, he testified that he was ‘sure’ that the ‘first gunshots were fired by civilians’.³¹⁸¹

(1) Killed – Ouattara Lamissa

1442. The Prosecutor refers to the death of Ouattara Lamissa³¹⁸² whose body, as per the post-mortem report, was discovered in ‘Abobo PK18 Agripac’ on the day of the

³¹⁷⁹ P-0330, T-68 dated 1 September 2016, pp. 73-74.

³¹⁸⁰ P-0330, T-68 dated 1 September 2016, pp. 74-75.

³¹⁸¹ P-0330, T-68 dated 1 September 2016, p. 77.

³¹⁸² Response, p. 236 (b).

march, having received stab wounds.³¹⁸³ There is no further information about the perpetrators in the documents cited in respect of this murder. Taking into account the nature of injuries, it cannot be concluded that this death was caused by the shots fired by the FDS.

1443. It is noted that there is evidence of the presence of armed non-FDS civilians present at Anonkoua-Kouté school. It is further noted that they were bearing Kalashnikovs. However, from P-0330's testimony, it appears that these individuals were opposing the FDS and are thus unlikely to have been pro-Gbagbo militia. There is thus no basis to infer that the victim died as a result of the actions of the FDS or 'pro-Gbagbo' militia.

(2) Killed – Alimany Diaby

1444. The Prosecutor alleged that Alimami Diaby,³¹⁸⁴ was killed by the FDS in Abobo PK18.³¹⁸⁵ As per the post-mortem report cited in support, Alimany Diaby is alleged to have been killed by a sharp shooter at PK18 Agripac.³¹⁸⁶ This is anonymous hearsay. Nevertheless, from the circumstances described by both P-0588 and P-0330 concerning a sniper situated in the building close to Carrefour Agripac, a reasonable trial chamber might infer that Alimany Diaby was shot by this sniper. However, little is known about the sniper in question and it cannot be

³¹⁸³ FICHE D'EXAMEN EXTERNE DE CORPS / Ouattara Lamissa / No. UML: 76/2011, 9 May 2011, CIV-OTP-0084-4075 (confidential).

³¹⁸⁴ See Annex E.1 persons killed, entry 11, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0009, entry 15; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 88; BLESSEES2 / DISPARUS 2 / DECÉDÉS / DISPARUS / BLESSEES2 / DECÉDÉS, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0104; Black register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3068, entry 2453; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2453; FICHE D'EXAMEN EXTERNE DE CORPS / Alimami Diaby / No. UML: 88/2011, 10 May 2011, CIV-OTP-0084-4019 (confidential).

³¹⁸⁵ See Response, para. 483.

³¹⁸⁶ FICHE D'EXAMEN EXTERNE DE CORPS / Alimami Diaby / No. UML: 88/2011, 10 May 2011, CIV-OTP-0084-4019.

assumed that he was working together with the FDS that morning. The fact that one witness provided hearsay evidence that he was ‘a ‘*corps habillé*’³¹⁸⁷ is inconclusive in this regard, because it appears that the sniper lived in the apartment from where he fired the shots. There is no indication as to why he opened fire.

(3) Killed – Kamara Moustapha

1445. The Prosecutor alleged that Kamara Moustapha³¹⁸⁸ was killed by the FDS in Abobo PK18.³¹⁸⁹ As per the post-mortem report cited in support, the victim died of ‘PAAF’ (*plaies par arme à feu*) i.e. bullet wounds.³¹⁹⁰ The other documents cited concerning the death of this individual do not provide any further information about the perpetrators.

³¹⁸⁷ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0086, paras 29-30. See P-0588, T-113 dated 7 December 2016, p. 61. See also P-0588, T-113 dated 7 December 2016, pp. 4-6; P-0588, T-114 dated 8 December 2016, pp. 41-42. See further T-113 dated 7 December 2016, p. 75 commenting on RTI Broadcast dated 16 December 2010, CIV-OTP-0026-0028 at 52.05-53.23; T-114 dated 8 December 2016, p. 43.

³¹⁸⁸ See Annex E.1 persons killed, entry 17, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D’IVOIRE, undated, CIV-OTP-0050-0003 at 0020, entry 535; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 40; Black Register, CIV-OTP-0084-3044 (confidential) at 3067, entry 2434; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2434; FICHE D’EXAMEN EXTERNE DE CORPS / Kamara Moustapha / No.40 UML: 40/2011, 9 May 2011, CIV-OTP-0084-4050 (confidential).

³¹⁸⁹ See Response, para. 483.

³¹⁹⁰ See FICHE D’EXAMEN EXTERNE DE CORPS / Kamara Moustapha / No.40 UML: 40/2011, 9 May 2011, CIV-OTP-0084-4050 (confidential).

(4) Killed – Ouedraogo Boubacar

1446. The Prosecutor alleged that Ouedraogo Boubacar³¹⁹¹ was killed by the FDS in Abobo PK18.³¹⁹² As per the post-mortem report cited in support, the victim died of ‘PAAF’ (*plaies par arme à feu*) i.e. bullet wounds.³¹⁹³ The other documents concerning the death of this individual do not provide any further information about the perpetrators.

(5) Killed – Sangaré Amidou

1447. The Prosecutor alleged that Sangaré Amidou³¹⁹⁴ was killed by the FDS on 16 December 2010.³¹⁹⁵ As per the post-mortem report, the victim died from bullet wounds in Abobo PK18 at around 11h45 on the day of the march.³¹⁹⁶ The other

³¹⁹¹ See Annex E.1 persons killed, entry 22, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0023, entry 673; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 78; BLESSEES2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0054; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2433; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2433; FICHE D'EXAMEN EXTERNE DE CORPS / Ouedraogo Boubakar / No. UML: 78, 9 May 2011, CIV-OTP-0084-4079 (confidential).

³¹⁹² See Response, para. 483.

³¹⁹³ See FICHE D'EXAMEN EXTERNE DE CORPS / Ouedraogo Boubakar / No. UML: 78, 9 May 2011, CIV-OTP-0084-4079 (confidential).

³¹⁹⁴ See Annex E.1 persons killed, entry 15, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0023, entry 691; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 49; BLESSEES2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0054 and 0106; Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0298; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2447; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2447; FICHE D'EXAMEN EXTERNE DE CORPS / Sangaré Amidou / No. UML: 49/2011, 9 May 2011, CIV-OTP-0084-4082 (confidential).

³¹⁹⁵ Response, p. 237 (c).

³¹⁹⁶ FICHE D'EXAMEN EXTERNE DE CORPS / Sangaré Amidou / No. UML: 49/2011, 9 May 2011, CIV-OTP-0084-4082 (confidential). The post mortem report cites to an unknown document ‘OP N° 6974/PU-32 du 17/12/10’, which the Prosecutor stated is a Police report, when discussing the circumstances of death. It is noted that the post-mortem report also stated that the victim was Malian.

documents concerning the death of this individual do not provide any further information about the perpetrators.

(6) Conclusion

1448. From the analysis of the situation, it appears that in Carrefour Agripac the FDS first fired tear gas into the crowd. According to P-0588, the tear gas had been fired because the crowd had refused to withdraw and continued advancing. There is also evidence that there was exchange of fire between the FDS and certain armed elements within the group of demonstrators. The accounts are unclear as to where the shots from the non-FDS armed elements came from and it is noted that P-0330 testified that he was certain that the ‘first gunshots were fired by civilians’.³¹⁹⁷
1449. There is also evidence that there was a sniper situated at a building close to Carrefour Agripac who may have also shot at the demonstrators. It is not known when the sniper fired. However, it is noted that the crowd that P-0588 was a part of were able to identify that there had been shooting by a sniper. According to P-0588’s and P-0330’s accounts considered together, it appears that the sniper may have died at the hands of the demonstrators. There is insufficient information to enter conclusions as to his affiliation, if any. It is further not known what the sniper would have been aiming at and why he fired the shots.
1450. Having regard to the deaths of the victims in and around PK18/Carrefour Agripac on the day of the march, it can be concluded that four deaths were caused as a result of bullet wounds fired that day. In addition to these four, there is evidence that one death in particular may have been caused by the sniper.
1451. The circumstances surrounding the respective deaths are not known except the general scenario provided by P-0588 and P-0330. As regards who may have fired

³¹⁹⁷ P-0330, T-68 dated 1 September 2016, p. 77.

the shots that resulted in the death of these victims, while there is evidence that the gunshots may have come from the demonstrators, there is also evidence that the army returned fire. As regards the involvement of the FDS in this scenario, it is noted that the FDS first fired tear gas into the crowd. It was only when there were gunshots fired (either from the armed civilian or the sniper for unknown reason) that the army returned fire and subsequently left the area.

1452. On this basis, it cannot be concluded that these deaths fit within the Prosecutor's alleged pattern. It is possible that the bullet wounds resulting in these victims deaths were those that were fired during the exchange of fire. However, without more, it cannot be concluded that it was the FDS that killed these victims.

1453. Moreover, even if these individuals all died as a result of the bullets fired by the FDS, in the circumstances of the events as they unfolded at PK18, it cannot be inferred that this was done with the intent to target the civilian population. There is sufficient evidence on the record to suggest that the presence and FDS activity in the context of the RTI march³¹⁹⁸ in PK18 was a law enforcement operation by the FDS and that the FDS may have been acting in self-defence.

b) Avocatier

1454. Turning now to the events at Abobo Avocatier, it is noted that this location is on the way from Abobo PK18 and Carrefour Agripac towards Abobo *Gare*. There are three witnesses discussed in detail below who describe the events of the day of the march in this area. P-0363 describes events from early morning. P-0588, who was at Carrefour Agripac, discussed above,³¹⁹⁹ provided a hearsay account of the events that took place around this area after 11h00. [REDACTED]

³¹⁹⁸ See V.B.2 - The FDS operation.

³¹⁹⁹ VI.H.1.a) - PK18 and Carrefour Agripac.

1455. The Prosecutor referred to P-0363's statement in support of her allegations concerning Abobo Avocatier.³²⁰⁰ According to P-0363, on the day of the march, he left his home around 09h00 or 10h00,³²⁰¹ walked to the tarmac road in Avocatier *Eau Glacier* and stopped by the side of the road to watch the demonstrators.³²⁰² P-0363 testified that his uncle, who was around Adjamé, called P-0363 and told him that he should go back home or remain in his house if he had not already left, because the Police were launching tear gas grenades at people.³²⁰³

1456. P-0363 testified that there were many people, some of whom were going to the *gare*, whereas others were standing.³²⁰⁴ Five to ten minutes later,³²⁰⁵ the Police arrived in a white 4x4 vehicle, with 'Police' written on it and a siren on top, and a Police officer got out, positioned his Kalashnikov³²⁰⁶ atop the vehicle, pointed it in the direction of P-0363 and opened fire on them.³²⁰⁷ P-0363 agreed in court that there was tear gas as well as its smell around him at this time and that they could already smell the tear gas before this vehicle arrived.³²⁰⁸

1457. According to P-0363, the Police officer fired several times and everyone in the neighbourhood started running; two men were struck by bullets.³²⁰⁹ P-0363

³²⁰⁰ Response, para. 529. *See also* Mid-Trial Brief, para. 355.

³²⁰¹ P-0363, T-191 dated 13 September 2017, p. 26.

³²⁰² P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 39. *See also*, P-0363, T-191 dated 13 September 2017, pp. 26-27.

³²⁰³ P-0363, T-191 dated 13 September 2017, p. 27.

³²⁰⁴ P-0363, T-191 dated 13 September 2017, pp. 29-30.

³²⁰⁵ P-0363, T-191 dated 13 September 2017, p. 31.

³²⁰⁶ It is noted that the witness explained how he was able to identify that the weapon was a Kalashnikov. The witness stated that he had often seen police officers with it on previous occasions. P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 40.

³²⁰⁷ P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, paras 39-40; P-0363, T-191 dated 13 September 2017, pp. 31-33.

³²⁰⁸ P-0363, T-191 dated 13 September 2017, pp. 32-33.

³²⁰⁹ P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 41. *See also*, P-0363, T-191 dated 13 September 2017, pp. 19, 33-36. It is noted that the witness testified that both of these victims were Malinké. P-0363, T-191 dated 13 September 2017, p. 19.

testified that the Police officers were wearing black uniforms; he did not notice whether they were wearing hats or whether they had any insignia on their attire.³²¹⁰ Following this firing, the witness ran back into the smaller streets in the neighbourhood in Avocatier.³²¹¹ In the process, the witness saw one person being injured, who was then taken to the hospital by the others.³²¹² It is noted that, in his statement, P-0363 provided that he saw two youths who had been injured in Avocatier by [REDACTED].³²¹³

1458. Turning to events a bit later that day, it is noted that P-0588 provided a hearsay account of the incidents as they unfolded in Abobo Avocatier based on a phone conversation with his nephew who was together with P-0588's brother in said location. P-0588 stated that at about 11h30, he went back to where he had been sitting before, and from where he had seen his brother, close to Carrefour Agripac. Because he could no longer see his brother; he phoned him. The latter told him that he and some other demonstrators, including P-0588's nephew, had bypassed the '*militaires*' blocking the road, and that they were now on the main road to Abobo *Gare* from where they would be able to continue to the RTI.³²¹⁴

1459. At around 12h30, P-0588 heard shooting in the vicinity of the marchers that included his brother. When P-0588 again phoned his brother, his nephew answered and explained that they had just been shot at by '*des corps habillés*' mixed with armed '*jeunes*' wearing civilian clothes and that the brother had been

³²¹⁰ P-0363, T-191 dated 13 September 2017, p. 32. *Note* that in his prior recorded statement, the witness stated that the Police officers were wearing CRS uniforms (P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 40). He was not asked and did not explain how he identified the uniforms as belonging to the CRS.

³²¹¹ P-0363, T-191 dated 13 September 2017, p. 34.

³²¹² P-0363, T-191 dated 13 September 2017, p. 34.

³²¹³ DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 42.

³²¹⁴ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0086, para. 32.

wounded; they were hiding in the *marché de nuit* in Avocatier.³²¹⁵ When P-0588 called back less than ten minutes later, a man whom P-0588 did not know answered, told him that his brother was dead and hung up.³²¹⁶ Several days later, P-0588 discovered that his nephew had been arrested and taken to the civilian prison. Upon visiting him there, P-0588 saw that he had sustained head injuries.³²¹⁷ P-0588's nephew told him that after their phone call, he and P-0588's brother were discovered in their hiding place by youths from the neighbourhood accompanied by *corps habillés*; they beat the nephew severely and took him to the 32nd *arrondissement* commissariat, leaving the brother on the spot.³²¹⁸ The body of P-0588's brother was later found at the Anyama morgue.³²¹⁹

1460. [REDACTED] was going to participate in the march and testified that since 'it had been announced that security measures would be taken', they 'did not know that there would be violence'.³²²⁰ [REDACTED] and her friend were en route between 9h00 to 10h00 to meet other groups on the Anyama-Adjamé highway in order to go to the march together.³²²¹ [REDACTED]³²²² [REDACTED]³²²³ [REDACTED] testified that some of these individuals at the roadblock had machetes while others had Kalashnikovs and 'big axes'. Some of them had used charcoal to blacken their faces while others were masked.³²²⁴ [REDACTED]

³²¹⁵ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0087-0088, 0090, paras 35, 48.

³²¹⁶ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090, paras 46-47.

³²¹⁷ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0088, para. 36.

³²¹⁸ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090, para. 49.

³²¹⁹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0089, paras 41-42.

³²²⁰ [REDACTED]

³²²¹ [REDACTED]

³²²² [REDACTED]

³²²³ [REDACTED]

³²²⁴ [REDACTED]

testified that, from the roadblock, one could see policemen in front of their post.³²²⁵ [REDACTED] believed that the ‘young people had more powers than the poliemen’ and that they were apprehending people and handing them over to the Police, who were wearing uniforms.³²²⁶

(1) Killed – Lacina Bakayoko

1461. The Prosecutor alleged that Lacina Bakayoko³²²⁷ was shot by uniformed individuals together with youths in civilian clothing.³²²⁸ The Prosecutor relied on the account provided by P-0588 which is based on the information provided by his nephew. From the description given to him by his nephew, the witness identified one of the shooters [REDACTED]who, according to P-0588, was known to be an active militia member.³²²⁹ It is noted that P-0588 provided in his statement that said shooter had been part of security for Mrs [REDACTED]for a meeting that was organised at ‘*le Parlement d’Avocatier*’.³²³⁰ It is further noted

³²²⁵ [REDACTED]

³²²⁶ [REDACTED]

³²²⁷ See Annex E.1 persons killed, entry 5, relying on P-0588, T-112 dated 6 December 2016 (French), pp.104-105; P-0588, T-113 dated 7 December 2016 (French), pp. 3-8; P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0085-0093; ANNEX 1 / croquis du carrefour Agripac, undated, CIV-OTP-0084-0096 (confidential); ANNEXE 2 / photo aérienne du carrefour Agripac, CIV-OTP-0084-0097 (confidential); ANNEXE 3a - 3b - 3c - 3d / PROCES VERBAL DE CONSTATATION DE DECES / No. 93/2011/IML, 11 May 2011, CIV-OTP-0084-0098 (confidential); ANNEXE 4 / Carte Nationales d'Identité / C 0026 8170 82, 21 June 2009, CIV-OTP-0084-0102-R01 (confidential); INTERFU / No. D'ORDRE 2435 / No. CASIER 46, 16 December 2010, CIV-OTP-0084-3487 (confidential); Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2435; CIV 1 PRF 151421 Black Register. 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2435; RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN COTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0022, entry 619; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 93; BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0043, 0105; FICHE D'EXAMEN EXTERNE DE CORPS / Lacina Bakayoko / No. UML: 93/2011, 10 May 2011, CIV-OTP-0084-4064 (confidential).

³²²⁸ See Response, para 481 (x) (a).

³²²⁹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090, para. 50. It is noted that the witness also stated that his brother was shot by uniformed personnel mixed with youth in civilian clothing (para. 48).

³²³⁰ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090, para. 50.

that the list of victims compiled by witness P-0184 states that the victim was shot by militia.³²³¹

1462. P-0588's statement indicates that the FDS were involved in a law enforcement operation and also fired into the crowd of demonstrators. The victim's death does not appear to have been caused by the FDS but rather a group of individuals, some of whom were in uniforms and others in civilian clothing. It appears from P-0588's statement that at least one of them was a 'pro-Gbagbo' militia member. There is however no indication as to the motive of the perpetrator.

1463. On the basis of the evidence cited, it can be concluded that Lacina Bakayoko was killed by members of a local militia in Avocatier.

(2) Killed – Lankouandé Daouda

1464. The Prosecutor alleged that Lankouandé Daouda³²³² was killed by the FDS.³²³³ As per the post-mortem report, the victim was killed at the *marché de nuit* in Abobo

³²³¹ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0105. P-0184 confirmed in court that the list of victims contained in document CIV-OTP-0032-0054-0001-R03 was the one drawn up by the *comité de survie des victimes*, which was set up in February 2011 to follow up or monitor victims. P-0184 testified that, after the post-election crisis, she and four others proceeded to identify all of the victims in Abobo, for various types of crimes including rape, destruction of property, gunshot injuries and deaths. With regards to methodology, P-0184 testified that, when an injury that was visible, they could see the injury, but they additionally required the victims to provide medical prescriptions, and from time to time P-0184 even asked to see the injury herself; once they were finished, they would hand over the information to another individual who would input this information into his computer. According to P-0184, there might have been errors in the computing. See P-0184, T-215 dated 4 December 2017, pp. 42-49 (confidential), 72.

³²³² See Annex E.1 persons killed, entry 16, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0022, entry 621; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 94; BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0052; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2435; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2436; FICHE D'EXAMEN EXTERNE DE CORPS / Lankonde Daouda / No. UML: 94/2011, 10 May 2011, CIV-OTP-0084-4066 (confidential).

³²³³ Response, para. 481 (xii) (b).

Avocatier.³²³⁴ The other evidence in relation to this individual's death does not provide any information about the perpetrators, except that the victim was killed by a bullet. Taking into account the circumstances of the FDS involvement in Avocatier, it is plausible that the victim died as a result of shots fired by the FDS or *jeunes*, but this cannot be concluded with sufficient certainty on the basis of the available evidence. There is also no reliable information that would allow a reasonable trial chamber to make a finding as to why the victim was shot.

(3) Raped – [REDACTED] and five others

1465. In support of her allegations concerning rapes that took place during the RTI march, the Prosecutor referred to the [REDACTED].³²³⁵ The Prosecutor also relies on this account to allege that 'pro-Gbagbo' youth were involved together with the FDS in the repression of the march.

1466. [REDACTED]³²³⁶ [REDACTED]³²³⁷ [REDACTED]³²³⁸ [REDACTED]³²³⁹
[REDACTED]³²⁴⁰ [REDACTED]³²⁴¹ [REDACTED]³²⁴²

1467. On this basis, it can be concluded that [REDACTED] was raped by the '*jeunes*' that were present at the roadblock setup next to the police station. As per [REDACTED], the five women with the victim had also been raped. The perpetrator of [REDACTED]'s rape had identified the victim as Mr Ouattara's

³²³⁴ FICHE D'EXAMEN EXTERNE DE CORPS / Lankonde Daouda / No. UML: 94/2011, 10 May 2011, CIV-OTP-0084-4066 (confidential) at 4066.

³²³⁵ Response, paras 489-496.

³²³⁶ [REDACTED]

³²³⁷ [REDACTED]

³²³⁸ [REDACTED].

³²³⁹ [REDACTED].

³²⁴⁰ [REDACTED].

³²⁴¹ [REDACTED].

³²⁴² [REDACTED].

supporter. There is no information about whether these rapes were committed pursuant to an instruction or otherwise agreement between the ‘*jeunes*’ and the FDS authorities. [REDACTED] Police station, there is no evidence that the commission of rape was part of the limited collaboration between them.

(4) Conclusion

1468. As per P-0363’s account, it appears that the FDS was engaged in law enforcement function and fired tear gas first before firing at the crowds. As per [REDACTED]. From [REDACTED] and P-0588’s account taken together, it appears that certain youth were engaged in arresting the marchers and handing them over to the Police. It is not known whether these youths were participating together with the forces that had used the tear gas or not. It is noted that as per the account provided by P-0588’s nephew, [REDACTED] the Police at the 32nd *arrondissement* Police station had shot some of the marchers that were at the station.

1469. From the three accounts taken together, it appears that at least some of the pro-Gbagbo youth were engaging in criminal activities. It is recalled that P-0363 saw two youths who had been injured in Avocatier by [REDACTED]³²⁴³ P-0588’s brother was killed by militia members from the neighbourhood. P-0588’s nephew was beaten by some neighbourhood ‘*jeunes*’ who were with ‘*corps habillés*’ and arrested and brought to the police station.³²⁴⁴ [REDACTED] Yet, it is only with regard to [REDACTED] that the perpetrators appeared to have identified the victim as taking part in the march and thus supporting Mr Ouattara.

³²⁴³ P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0284, para. 42.

³²⁴⁴ See VI.H.5 - Pro-Gbagbo forces arrested and detained demonstrators.

1470. On the basis of the evidence provided, it can be concluded that in Avocatier on 16 December 2010, Lacina Bakayoko was killed and [REDACTED] together with five women were raped by ‘*jeunes*’.

c) Abobo Gare and Samaké

1471. Turning now to the events in and around Abobo *Gare* and Samaké, it is noted that there are three witnesses that provide an account of the events in that area. P-0117 provides an account of the events of the early morning of the day of the march and of those around Dokui bus stop later that day. P-0117 crossed Samaké on the way. P-0814 witnessed a dead body near the Samaké roundabout. P-0330 was on a patrol early that morning after having heard gunshots around Abobo *Gare* and provided a hearsay account of the Police being ambushed around the Samaké roundabout. These accounts will be discussed in turn.

1472. In the Response, the Prosecutor referred to P-0117’s statement,³²⁴⁵ a civilian who present on the day of the march in Abobo.³²⁴⁶ P-0117 stated that groups of marchers were to meet up in the various neighbourhoods to then assemble at the RTI. In Abobo, it was announced that people should assemble at Abobo *Gare*.³²⁴⁷ P-0117 stated that on the morning of the march she left house at around 06h00 intending to meet up with other people at Abobo Gare and then march to the RTI in Cocody. She further stated that they could hear shooting everywhere in Abobo as early as 05h00; wherever people were assembling, the Police were shooting.³²⁴⁸

³²⁴⁵ Response, para. 482. *See also* Mid-Trial Brief, para. 355.

³²⁴⁶ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0038, para. 25.

³²⁴⁷ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0038, para. 25. *See also* P-0117, T-110 dated 2 December 2016, pp. 31-32 (confidential).

³²⁴⁸ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0038, paras 27, 29; P-0117, T-110 dated 2 December 2016, p. 33 (confidential).

1473. P-0117 stated that they were unable to reach Abobo *Gare* because Police officers were already surrounding the *rond point de la Mairie* and, according to her, they were shooting in every direction.³²⁴⁹ P-0117 could see, from a distance, that more than 50 Police officers wearing black uniforms were surrounding Abobo *Gare*; a lot of them were armed.³²⁵⁰ P-0117 stated that she also noticed that there were armed individuals wearing civilian clothing (blue short-sleeved shirts) among the Police officers.³²⁵¹ However, P-0117 testified that while she could hear the gunfire from Kalashnikovs,³²⁵² she had not seen the policemen firing³²⁵³ nor had she seen anyone being hit by bullets.³²⁵⁴ P-0117 explained that, when they were on their way, they had been receiving information by telephone³²⁵⁵ and word of mouth that policemen had occupied the location where they were supposed to gather, and so they had already been dissuaded from going to the meeting point whilst they were still on the way.³²⁵⁶ She detailed that she was told by other marchers that policemen were firing at people³²⁵⁷ and she heard that an activist was killed there that morning.³²⁵⁸

1474. P-0117 stated that hence, instead of assembling at Abobo *Gare*, her group had to make detours via the Abobo Kennedy neighbourhood where they met other

³²⁴⁹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0038-0039, paras 30, 33.

³²⁵⁰ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0038, para. 31.

³²⁵¹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 32.

³²⁵² P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 33.

³²⁵³ P-0117, T-110 dated 2 December 2016, pp. 39-40 (confidential).

³²⁵⁴ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 34.

³²⁵⁵ It is noted that P-0117 herself was not carrying a phone.

³²⁵⁶ P-0117, T-110 dated 2 December 2016, pp. 38-39 (confidential).

³²⁵⁷ P-0117, T-110 dated 2 December 2016, p. 40 (confidential).

³²⁵⁸ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 34.

groups to travel together to Cocody,³²⁵⁹ she confirmed that there were approximately 100 people in this group.³²⁶⁰ According to P-0117, there were Police officers at every *carrefour*.³²⁶¹

1475. P-0117 testified that, in Samaké, there were policemen but the crowd was very big and according to her, ‘when there are many of you they can’t fire at you, so you can get past them’.³²⁶² When asked again, P-0117 clarified that the Police did not stop them from going through Samaké.³²⁶³

1476. After having reached the Dokui bus stop at around 9h00, P-0117 encountered some Police officers there who had set up roadblocks and blocked the road with their *cargos*, but they were not shooting at people.³²⁶⁴ P-0117 thought that they were dressed in black, but possibly blue, some with short-sleeved shirts, others long, and a lot of them were wearing helmets.³²⁶⁵ It appears from P-0117’s testimony that the Police officers initially tried to disperse them using tear gas, but eventually gave up as the group grew bigger.³²⁶⁶ As per her statement, these Police officers were very polite, but they warned P-0117 and her group not to continue on their route because there was another group of Police officers ahead who were shooting and killing people.³²⁶⁷ P-0117 stated that she heard the

³²⁵⁹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 35.

³²⁶⁰ P-0117, T-110 dated 2 December 2016, p. 41 (confidential).

³²⁶¹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 39.

³²⁶² P-0117, T-110 dated 2 December 2016, pp. 39-40 (confidential).

³²⁶³ P-0117, T-110 dated 2 December 2016, p. 41 (confidential).

³²⁶⁴ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 40.

³²⁶⁵ P-0117, T-110 dated 2 December 2016, pp. 45-47 (confidential).

³²⁶⁶ P-0117, T-110 dated 2 December 2016, p. 44 (confidential).

³²⁶⁷ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 41. *See also* P-0117, T-110 dated 2 December 2016, pp. 44-45 (confidential).

officers say ‘*Vous des militants du RDR, vous n’écoutez pas. On vous tue mais vous n’arrêtez pas*’.³²⁶⁸

1477. As per her account, despite the warning, the group advanced and the Police officers let them circumvent the roadblock.³²⁶⁹ It is noted that in her statement, at around 13h00, P-0117 arrived close to the gas station in Williamsville, where the Police used tear gas to disperse the crowd.³²⁷⁰ P-0117 recalled that following this, there was shooting³²⁷¹ and people were running in all directions.³²⁷² It is noted that this portion of P-0117’s account concerns the events in Williamsville and, for this reason, has been discussed in further detail below.

1478. P-0330, commander of the *Gendarmerie* unit based at Camp Commando in Abobo, testified that he left Camp Commando at around 08h00 to patrol in Abobo.³²⁷³ He did not initially recall hearing any noise at this time, but having been read back his statement, P-0330 testified that he heard some noise around the *gare*.³²⁷⁴ After crossing the Abobo roundabout and advancing on the road towards Adjamé, P-0330 witnessed two CRS1 vehicles with their headlamps and warning lights on coming from Adjamé on their way to Abobo; these vehicles carried with them the conventional weapons used by law enforcement, including tear gas launchers, which the persons seated inside were firing; they also had Kalashnikovs with them.³²⁷⁵ There was a civilian vehicle following these vehicles

³²⁶⁸ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 41.

³²⁶⁹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 43; P-0117, T-110 dated 2 December 2016, p. 47 (confidential) (not entirely reflected in the English transcript; cf T-110 dated 2 December 2012 (French), p. 51 (confidential)).

³²⁷⁰ P-0117, T-110 dated 2 December 2016, pp. 47-50 (confidential).

³²⁷¹ P-0117, T-110 dated 2 December 2016, p. 50 (confidential).

³²⁷² P-0117, T-110 dated 2 December 2016, pp. 50-51 (confidential).

³²⁷³ P-0330, T-68 dated 1 September 2016, pp. 56-57.

³²⁷⁴ P-0330, T-68 dated 1 September 2016, pp. 59-60.

³²⁷⁵ P-0330, T-68 dated 1 September 2016, pp. 60-61.

at a close range with barrels of Kalashnikovs pointing out of its windows.³²⁷⁶ P-0330, who was on the other side of the road, heard gunfire from the Kalashnikovs as the vehicles passed.³²⁷⁷ When P-0330 crossed the road, he saw two individuals hit by bullets; one was an off-duty police officer in civilian attire hit in the hip and the other was an individual in a van who had been hit in the cuff and whom P-0330 took to the hospital.³²⁷⁸ It is noted that at the time that P-0330 witnessed this occurring on the road, he noted that there was no traffic circulating at the time.³²⁷⁹ This suggests that these shots were not fired at the crowd of marchers or demonstrators.

1479. As regards the events at Samaké roundabout, it is noted that P-0330 testified that he sent out a patrol led by his deputy who reported that there was an ambush around 11h00 to 12h00 and that they were coming under fire around the Samaké roundabout near the city hall by snipers.³²⁸⁰ It is also noted that as discussed above, P-0117 stated that, in Abobo Samaké, she and her group encountered some Police officers who let them pass.³²⁸¹ P-0117 testimony suggests that the Police may have been stationed in and around the area. However, having regard to P-0330's testimony, apart from the police vehicle having been ambushed, there is no other evidence cited to suggest that the police officers around that roundabout had been involved in violent incidents.

³²⁷⁶ P-0330, T-68 dated 1 September 2016, pp. 61-62.

³²⁷⁷ P-0330, T-68 dated 1 September 2016, p. 63. It is noted that the witness did not specify, and appears not to have known, which of the vehicles the gunfire emanated from.

³²⁷⁸ P-0330, T-68 dated 1 September 2016, pp. 62-64. It is noted that right after the vehicles had passed, a group of young people threw a stone at P-0330's vehicle, breaking its rear window, and they told him that 'those are the people who have been firing on us for some time now and it's all because of them'. See P-0330, T-68 dated 1 September 2016, p. 63.

³²⁷⁹ P-0330, T-68 dated 1 September 2016, pp. 61-62.

³²⁸⁰ P-0330, T-68 dated 1 September 2016, pp. 66-67.

³²⁸¹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0039, para. 37; P-0117, T-110 dated 2 December 2016, pp. 41-42 (confidential).

(1) Killed – unknown victim

1480. The Prosecutor alleges that an unknown person filmed by P-0184³²⁸² was killed by the FDS based on the circumstantial evidence that the FDS had been present and firing in the nearby areas.³²⁸³ P-0184 testified that whilst she was trying to return home from the Adama Sanogo building, close to Plateau Dokoui, ‘*corps habillés*’ were firing ‘*n’importe comment*’, so she had to go through the side streets where, in an alley towards Abobo Baoulé, she saw the body of a person who had been killed.³²⁸⁴ She testified that she saw ‘some holes’ in the body.³²⁸⁵ In the morning, around ‘*Sans-Manquer*’, she had seen armed *corps habillés* posted on buildings.³²⁸⁶ It is noted that the Prosecutor submitted that this took place ‘[n]ear the Samake roundabout’.³²⁸⁷

1481. On the basis of the evidence concerning the events at Samaké as discussed above, there is insufficient information surrounding this victim’s death to infer that it was the FDS that caused his death. It also cannot be inferred that this individual was killed by the armed individuals that P-0117 saw present together with the FDS since P-0117 noticed their presence from a distance around the Abobo Gare and not where the victim was found. It is further recalled that P-0117 herself did not witness the FDS shooting into the crowd around Abobo

³²⁸² See Annex E.1 persons killed, entry 27, relying on P-0184, T-215 dated 4 December 2017, pp. 15-18; Calendrier 2011 - Annex 3, undated, CIV-OTP-0032-0038-R01 (confidential).

³²⁸³ Response, para. 481 (ix). See also Mid-Trial Brief, para. 356 (i).

³²⁸⁴ P-0184, T-215 dated 4 December 2017, p. 15. See also P-0184, T-215 dated 4 December 2017, pp. 17-18, confirming that she filmed the body of the person with her mobile phone. Annex 4, 5 October 2012, CIV-OTP-0032-0039 (confidential), transcript at CIV-OTP-0037-0105.

³²⁸⁵ P-0184, T-215 dated 4 December 2017, p. 16.

³²⁸⁶ P-0184, T-215 dated 4 December 2017, p. 16.

³²⁸⁷ Response, para. 481 (ix). The statement of P-0172 cited in support of this submission deals with the firing of tear gas and live ammunition at Carrefour Macaci. It is not possible to discern whether this relates to the same course of events as those described by P-0184. P-0172, DÉCLARATION DE TÉMOIN, 11 September 2012, CIV-OTP-0028-0550-R04 (confidential) at 0556-0557, paras 46-50; Untitled, 1 January 2012, CIV-OTP-0028-0569 (confidential).

Gare and that she and her group were allowed to pass through Samaké without incident.

1482. There is also evidence that P-0330's deputy's patrol had been ambushed by a sniper firing at them close to the Samaké roundabout around 11h00 to 12h00. P-0330's deputy and his patrol car survived without getting shot. There is no further information about this incident that could help ascertain whether it was the shots fired during this scenario that may have caused the victim's death.

1483. The evidence when assessed together provides no indication about the perpetrators of the unknown victim. The circumstances of the incident when assessed with the evidence do not lend an inference that the victim's death was caused by the shots fired by the FDS.

(2) Conclusion

1484. As regards FDS activities generally in this area, it is noted that there is evidence to demonstrate that the FDS engaged in crowd control activities by the use of tear gas into the crowd. It is also noted that there was presence of several armed individuals in the vicinity. This included members of the FDS, armed individuals in the civilian vehicle seen by P-0330, the affiliation of whom is not know, as well as armed individuals wearing civilian clothing (blue short-sleeved shirts) among the Police officers as seen by P-0117. Some of these individuals may have had little to do with the alleged repression of the demonstrators. In this regard it is noted that the role of the armed individuals in the civilian vehicle is unclear. The armed individuals with civilian clothing as observed by P-0117 have not been attributed any specific role in P-0117's account. On this basis, it cannot be inferred that the individual that P-0184 filmed died as a result of shots fired by the FDS.

d) Other locations in Abobo

1485. In addition to the victims that were killed, raped, and injured in specific areas within Abobo, the Prosecutor also refers to other victims who died in Abobo.³²⁸⁸

It is noted that in respect of these victims, with the exception of Lanzeni Ballo, apart from the fact that they died in Abobo, the information available is limited to the cause of death.

1486. The Prosecutor alleges that in respect of Lanzeni Ballo³²⁸⁹ it is reasonable to infer that he was ‘yet another civilian victim of the pro-Gbagbo forces that violently repressed the march on the RTI’.³²⁹⁰ It is noted that the victim was killed in Anonkoua.³²⁹¹ The post-mortem report states that the victim was killed by ‘unknown’ people in a residential courtyard.³²⁹² P-0590, the brother of the victim, stated that, at his brother’s burial ceremony one of the victim’s friends, who was

³²⁸⁸ Response, para. 484.

³²⁸⁹ See Annex E.1 persons killed, entry 6, relying on P-0590, DÉCLARATION DE TÉMOIN, 2 June 2015, CIV-OTP-0084-0018-R02 (confidential) at 0023-0026; P- Annex II / Confidential / ATTESTATION DE LA PERSONNE AYANT FOURNI UN TÉMOIGNAGE PRÉALABLEMENT ENREGISTRÉ COMME PRÉVU À LA RÈGLE 68-2-b-iii DU RÈGLEMENT DE PROCÉDURE ET DE PREUVE, 24 August 2016, CIV-OTP-0104-0423 (confidential); ANNEXE 1 / FICHE D'ENTREE / No. 042783, 16 December 2010, CIV-OTP-0084-0032 (confidential); ANNEXE 2a - 2b - 2c / CERTIFICAT MEDICAL DE DECES CERTIFICAT DE NON CONTAGION / PROCESS VERBAL DE CONSTATATION DE DECES / 089/2011/IML, 17 May 2011, CIV-OTP-0084-0033 (confidential); ANNEXE 3a - 3b - 3c - 3d / REQUISITION AUX FINS D'AUTORISER L'ENLEVEMENT ET LE TRANSFERE D'UN CORPS / No. 641/CF, 28 July 2011, CIV-OTP-0084-0036-R02 (confidential); ANNEXE 4 / croquis du cimetière d'Abobo et du lieu de la cérémonie, undated, CIV-OTP-0084-0040 (confidential); Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2437; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2437; RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0010, entry 34; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 89; BLESSE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0043; INTERFU / No. D'ORDRE 2437 / No. CASIER 29, 16 December 2010, CIV-OTP-0084-3550 (confidential); FICHE D'EXAMEN EXTERNE DE CORPS / Ballo Lanzéni / No. UML: 89/2011, 10 May 2011, CIV-OTP-0084-4023 (confidential).

³²⁹⁰ Response, para. 481 (xi) (a).

³²⁹¹ P-0590, DÉCLARATION DE TÉMOIN, 2 June 2015, CIV-OTP-0084-0018-R02 (confidential) at 0023, para. 20. It is noted that the information regarding the place of death is a hearsay account provided to P-0590 by the victim’s father who had been told of the victim’s death by a friend of the victim who was present at the incident.

³²⁹² FICHE D'EXAMEN EXTERNE DE CORPS / Ballo Lanzéni / No. UML: 89/2011, 10 May 2011, CIV-OTP-0084-4023 (confidential).

with the victim on the day of the march and had seen how he was killed, told P-0590 that they had encountered Police mixed with the *Gendarmerie* elements who launched tear gas at them, so everyone scattered to find shelter. From where he was hiding, the friend saw the victim take shelter in an Ébiré courtyard, where the people who lived in the courtyard struck him with machetes and threw him into a gutter as he was dying, following which an ‘*agent de l’ordre*’ saw him and stabbed him in the chest with a knife.³²⁹³ It is further noted that documentary evidence in relation to the victim’s death indicates that he received stab wounds.³²⁹⁴

1487. Taking into account the evidence in respect of this victim, it cannot be concluded that he died as a result of pro-Gbagbo forces violently repressing the march on the RTI. As per the anonymous hearsay account, the victim appears to have died from injuries inflicted by certain people living in a residential courtyard followed by those inflicted by an unidentified ‘*agent de l’ordre*’. It is not known why the victim was killed at the hands of these individuals. It is noted that, as per this account, the FDS forces are shown having initially launched tear gas to disperse the crowd.

1488. In respect of certain other victims that died at unspecified locations in Abobo, the Prosecutor submits that ‘there is cogent evidence from which a Court could infer’ that they were killed ‘by pro-Gbagbo forces during the violent repression of the 16 December on the RTI’.³²⁹⁵ These include Traoré Inza,³²⁹⁶ Yeo

³²⁹³ P-0590, DÉCLARATION DE TÉMOIN, 2 June 2015, CIV-OTP-0084-0018-R02 (confidential) at 0029, paras 55, 57.

³²⁹⁴ FICHE D'EXAMEN EXTERNE DE CORPS / Ballo Lanzéni / No. UML: 89/2011, 10 May 2011, CIV-OTP-0084-4023 (confidential).

³²⁹⁵ Response, para. 484.

Souleymane,³²⁹⁷ and Yeo Katienninfoi.³²⁹⁸ Having regard to the documents submitted in respect of each of these victims considered together with the evidence concerning the incidents in Abobo on the day of the march, it cannot be inferred that these victims died as a result of actions of the ‘pro-Gbagbo forces’ acting with the intent to target civilians.

1489. The Prosecutor also alleges that Kanté Brahima³²⁹⁹ was killed by the FDS ‘since’ it fits the alleged pattern of the FDS using live ammunition and/or fragmentation grenades against civilian demonstrators.³³⁰⁰ As per the the post-mortem report the

³²⁹⁶ The documents demonstrate that this victim’s body had presence of ‘*PAAF*’ and ‘*balle*’. See Annex E.1 persons killed, entry 18, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D’IVOIRE, undated, CIV-OTP-0050-0003 at 0025, entry 760; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 73; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2425; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3887, entry 2425; FICHE D’EXAMEN EXTERNE DE CORPS / Traore Inza / No. UML: 73/2011, 9 May 2011, CIV-OTP-0084-4096 (confidential).

³²⁹⁷ The documents demonstrate that this victim’s body had presence of ‘*PAAF*’. See Annex E.1 persons killed, entry 19, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN COTE D’IVOIRE, undated, CIV-OTP-0050-0003 at 0025, entry 778; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 38; BLESSE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0058; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3069, entry 2485; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3890, entry 2485; FICHE D’EXAMEN EXTERNE DE CORPS / Yeo Souleymane / No. UML: 038/2011, 9 May 2011, CIV-OTP-0084-4102 (confidential).

³²⁹⁸ The documents demonstrate that this victim’s body had presence of ‘*plaies par arme blanche*’. See Annex E.1 persons killed, entry 21, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D’IVOIRE, undated, CIV-OTP-0050-0003 at 0025, entry 777; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA, 64; BLESSE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0058; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2427; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3887, entry 2427; FICHE D’EXAMEN EXTERNE DE CORPS / Yeo Katienninfoi / No. UML: 64, 9 May 2011, CIV-OTP-0084-4100 (confidential).

³²⁹⁹ See Annex E.1 persons killed, entry 23, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D’IVOIRE, undated, CIV-OTP-0050-0003 at 0020, entry 542; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 42; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3068, entry 2454; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2454; FICHE D’EXAMEN EXTERNE DE CORPS / Kante Brahima / No. UML: 42/2011, 9 May 2011, CIV-OTP-0084-4053 (confidential).

³³⁰⁰ Response, p. 238 (e).

victim died from firearm wounds on 17 December 2010 in Anonkoua Kouté in Abobo.³³⁰¹ It is not known who fired the shots that caused this victim's death. It is also not known whether the victim was shot on 16 or 17 December 2010. While it is possible that the victim may have been shot on 16 December and died subsequently on 17 December, considering the circumstances taken together, it cannot be inferred that the victim was killed by the FDS.

1490. The Prosecutor further alleges that Bamba Amadou³³⁰² was killed by the FDS 'since' it fits the alleged pattern of the FDS using live ammunition and/or fragmentation grenades against civilian demonstrators.³³⁰³ As per the post-mortem report, the victim died in Abobo from '*PAAF*'.³³⁰⁴ There is no information about the perpetrator in the other documents cited in support. Having regard to the circumstances in Abobo as discussed above, and noting that no such pattern can be found to exist, it cannot be inferred that the death of the victim was caused by the FDS.

³³⁰¹ FICHE D'EXAMEN EXTERNE DE CORPS / Kante Brahim / No. UML: 42/2011, 9 May 2011, CIV-OTP-0084-4053 (confidential). It is noted that the post-mortem cites 'OP N° 6974/PU-32 du 17/12/10' when discussing the circumstances of death, which the Prosecutor says is a police report.

³³⁰² See Annex E.1 persons killed, entry 20, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0010, entry 35; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 74; BLESSEES / DISPARUS 2 / DECÉDÉES / DISPARUS / BLESSEES2 / DECÉDÉES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0044; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3067, entry 2438; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3888, entry 2438; FICHE D'EXAMEN EXTERNE DE CORPS / Bamba Amadou / No. UML: 74, 9 May 2011, CIV-OTP-0084-4025 (confidential).

³³⁰³ Response, p. 237 (d).

³³⁰⁴ FICHE D'EXAMEN EXTERNE DE CORPS / Bamba Amadou / No. UML: 74, 9 May 2011, CIV-OTP-0084-4025 (confidential).

1491. Similarly, the Prosecutor alleges that Maiga Moussa's³³⁰⁵ death can be attributed to the FDS 'since' it fits the alleged pattern of the FDS using live ammunition and/or fragmentation grenades against civilian demonstrators.³³⁰⁶ As per the post-mortem report, the victim disappeared on the day of the march and was later discovered dead at the Anyama morgue; the report indicates that the victim died in Abobo on the day of the march from '*PAAF*'.³³⁰⁷ There is no information about the perpetrator in the other documents cited in support. Having regard to the circumstances in Abobo as discussed above, and noting that no such pattern was found to exist, it cannot be inferred that the death of the victim was caused by the FDS.

1492. In respect of the killing of Coulibaly Peleguedjo,³³⁰⁸ the Prosecutor simply alleges that he is mentioned in the list prepared by P-0184.³³⁰⁹ There is no further information about the perpetrators in the document cited in support.

e) Conclusion

1493. In conclusion, in respect of the Prosecutor's allegation concerning fifteen victims that were killed in Abobo on the day of the march, it can be concluded that one [Lacina Bakayoko] was killed by a militia member and one killed by residents of

³³⁰⁵ See Annex E.1 persons killed, entry 13, relying on RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST-ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0022, entry 630; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 98; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2429; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3887, entry 2429; FICHE D'EXAMEN EXTERNE DE CORPS / Maiga Moussa / No. UML: 98/2011, 10 May 2011, CIV-OTP-0084-4069 (confidential).

³³⁰⁶ Response, p. 236 (a).

³³⁰⁷ FICHE D'EXAMEN EXTERNE DE CORPS / Maiga Moussa / No. UML: 98/2011, 10 May 2011, CIV-OTP-0084-4069 (confidential).

³³⁰⁸ See Annex E.1 persons killed, entry 12, relying on EVENEMENT CHU TREICHVILLE « IDENTIFIES », undated, CIV-OTP-0029-0462 (confidential) at 0462, entry 19; CHU Treichville / Registre 2010, undated, CIV-OTP-0063-0818 (confidential) at 0848, entry 5536; BLESSE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0045 and 0104.

³³⁰⁹ Response, p. 238 (f), para. 534.

the neighbourhood followed by an unidentified '*agent de l'ordre*' [Lanzeni Ballo]. In respect of one other victim [Lankouandé Daouda], it is plausible that the victim died as a result of shots fired by the FDS or *jeunes*, but this cannot be concluded with sufficient certainty on the basis of the available evidence.

1494. In respect of six of those killed on the day of the march, it can be concluded that the deaths were caused as a result of shots fired during the demonstrations in Abobo. However, noting that in both PK18/Carrefour Agripac and Samaké roundabout, there is evidence of some exchange of fire, it is not possible to ascertain who fired the shots that resulted in the deaths of six victims.
1495. In respect of six victims who died on the day of the march in Abobo, it cannot be inferred that these victims died as a result of actions of the 'pro-Gbagbo forces' acting with the intent to target civilians. In respect of one of the victim, it is noted that he died on 17 December 2010, and to the extent that his fatal injuries may have been caused on the day of the march, it is noted that it is not known who fired the shots that killed the victim.
1496. In respect of the Prosecutor's allegation concerning the six victims that were raped on the day of the march in Abobo, it can be concluded that all six were raped by '*jeunes*'. These victims had been identified by the perpetrators [REDACTED]. The victims [REDACTED] were suspected by the perpetrators of being supporters of Mr Ouattara.

2. *Adjamé*

1497. The events as they unfolded in Adjamé have been described by P-0560, P-0172, P-0589, [REDACTED], P-0578, P-0109, and to a limited extent by P-0117. These accounts have been discussed in turn based on the locations where these witnesses were present on the day of the march. The locations have been discussed as per the progression of the march. This largely concerns three different areas within Adjamé, including the area around Macaci junction, Djeni Kobenan, Williamsville, and *Carrefour Liberté*.

1498. In respect of the crimes committed in Adjamé on the day of the march, it is noted that the Prosecutor alleges that there were three persons killed in Macaci junction³³¹⁰ and five women were raped in Williamsville.³³¹¹ The events in these locations have been discussed in detail.

1499. Before turning to the alleged crimes, P-0560's testimony is noted. P-0560, the Chief of Police of District Adjamé, at the time of the RTI March provided a detailed overview of the events that day. At the outset, it is noted that P-0560 denied receiving information about the march that day from his superiors.³³¹² P-0560 was informed by his police prefect via radio at around 9h00 to 10h00 that there would be people marching to the RTI.³³¹³ As per P-0560, the police prefect had called him to let him know that if this was indeed the case, to disperse the crowd with conventional means in order to prevent them from going to the RTI.³³¹⁴ P-0560 noted that dispersing the crowd with conventional means using tear gas.³³¹⁵ P-0560 proceeded to verify that there were indeed people marching towards the RTI and transmitted these instructions to the 'other commissioners who were under [his] jurisdiction'.³³¹⁶

1500. The various commissioners also reported to P-0560 about the events of the day. P-0560 testified that

[REDACTED]

³³¹⁰ Response, p. 226 (viii).

³³¹¹ Response, paras 497-510.

³³¹² P-0560, T-120 dated 10 February 2017, p. 26.

³³¹³ P-0560, T-120 dated 10 February 2017, p. 26.

³³¹⁴ P-0560, T-120 dated 10 February 2017, pp. 26-28.

³³¹⁵ P-0560, T-120 dated 10 February 2017, p. 26.

³³¹⁶ P-0560, T-120 dated 10 February 2017, p. 28.

1501. According to P-0560, this intervention caused one death and three injuries.³³¹⁷

1502. [REDACTED]³³¹⁸[REDACTED]³³¹⁹ P-0560 was also asked about the weapons with the CECOS forces and P-0560 testified that he was not in a position to know whether the members of the CECOS during the march ‘were armed or not’.³³²⁰

a) Carrefour Macaci³³²¹

1503. In the Response, the Prosecutor refers to P-0172’s statement,³³²² a civilian who was living in Abobo.³³²³ P-0172 stated that, in the morning, he and other young people from his neighbourhood marched from Banco to *Carrefour Macaci*, which is ‘*sur l’axe Abobo-Adjamé*’.³³²⁴

1504. When P-0172 and his group got to Macaci intersection, P-0172 saw ‘men wearing uniforms [...] throwing tear gas’; they were carrying arms.³³²⁵ P-0172 testified that as soon as the police saw the crowd approaching, they started throwing tear gas.³³²⁶ According to P-0172, the crowd stopped moving forward at

³³¹⁷ P-0560, T-120 dated 10 February 2017, p. 69, referring to Annexe 8 - Page 4 / Marche sur la RTI, organisée par les militants du RHDP / No. 1033/PPA/D-4, 16 December 2010, CIV-OTP-0076-1526 (confidential) at 1526.

³³¹⁸ P-0560, T-120 dated 10 February 2017, p. 40 (confidential).

³³¹⁹ P-0560, T-120 dated 10 February 2017, p. 41 (confidential).

³³²⁰ P-0560, T-120 dated 10 February 2017, p. 43.

³³²¹ It is noted that this location is on the border between Abobo and Adjamé.

³³²² Response, paras 480, 531. *See also* Mid-Trial Brief, para. 356.

³³²³ P-0172, T-174 dated 7 July 2017, p. 36.

³³²⁴ P-0172, DÉCLARATION DE TÉMOIN, 11 September 2012, CIV-OTP-0028-0550-R04 (confidential) at 0556, para. 41. *See also* P-0172, T-174 dated 7 July 2017, pp. 29-30.

³³²⁵ P-0172, T-174 dated 7 July 2017, pp. 32-33.

³³²⁶ P-0172, T-174 dated 7 July 2017, p. 33.

which point the police started shooting.³³²⁷ P-0172 heard the shooting and saw some people being injured.³³²⁸

1505. P-0172 knew it was live ammunition because two bullets landed among the demonstrators and he saw four people who had fallen (one of whom he was told afterwards had been hit by a grenade, and another was hit by a bullet, he did not know what caused the other two to fall); they were not dead but they were bleeding and crying.³³²⁹ P-0172 testified that he did not see any grenades, but he appears to have seen someone with injuries from shrapnel and was later told that these were caused by a grenade.³³³⁰ P-0172 stated that they could no longer continue the march because of the shooting.³³³¹

1506. As per P-0589's statement, he was close to Macaci junction when he was stopped by two CRS personnel on patrol in the area. According to P-0589, one of them was masked and asked what P-0589 was doing and where he was going, to which P-0589 replied that he was not a demonstrator and told him that his brother had died. As per P-0589's account, one of the two CRS personnel who was not wearing a mask let P-0589 pass.³³³²

1507. The Prosecutor refers to three persons killed at *Carrefour Macaci*.³³³³ It is noted that their bodies were recovered together as per the Police report cited in support.³³³⁴

³³²⁷ P-0172, T-174 dated 7 July 2017, p. 33.

³³²⁸ P-0172, T-174 dated 7 July 2017, p. 34.

³³²⁹ P-0172, DÉCLARATION DE TÉMOIN, 11 September 2012, CIV-OTP-0028-0550-R04 (confidential) at 0556-0557, paras 46-49. *See also* P-0172, T-174 dated 7 July 2017, pp. 34-35.

³³³⁰ P-0172, T-174 dated 7 July 2017, p. 35. *See also* P-0172, DÉCLARATION DE TÉMOIN, 11 September 2012, CIV-OTP-0028-0550-R04 (confidential) at 0556, para. 47.

³³³¹ P-0172, DÉCLARATION DE TÉMOIN, 11 September 2012, CIV-OTP-0028-0550-R04 (confidential) at 0557, para. 49.

³³³² P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0113, para. 37.

³³³³ Response, para. 481 (viii) (a) – (c).

(1) Killed – Aly Doukouré

1508. In relation to Aly Doukouré,³³³⁵ the Prosecutor additionally relies on P-0589's statement regarding the death of his brother.³³³⁶ It is noted that P-0589's statement constitutes hearsay with respect to the identity of the perpetrators. P-0589 was informed by a friend of the victim who identified the perpetrators as CRS that fired tear gas and then live ammunition.³³³⁷ When P-0589 arrived at the location where his brother's body was, he saw two other bodies alongside it; he was told they were the bodies of others who had participated in the march.³³³⁸

1509. As per the account contained in his statement, P-0589 had been told that, during the march, his brother was in the group that continued advancing after the Police

³³³⁴ RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511. *See also* Manifestations du RHDP et découverte de cadavres, 25 January 2011, CIV-OTP-0045-1413.

³³³⁵ *See* Annex E.1 persons killed, entry 2, relying on P-0589, T-114 dated 8 December 2016, pp. 67-69; P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0111-0119; ANNEXE 1a - 1b - 1c, 13 September 2008, CIV-OTP-0084-0123-R01 (confidential); ANNEXE 3 / croquis représentant le détail des chars vus par le témoin, undated, CIV-OTP-0084-0128 (confidential); ANNEXE 4 / croquis du carrefour Djeni Kobenan à Abidjan, où le témoin a vu des forces de l'ordre tirer sur des manifestants, undated, CIV-OTP-0084-0129 (confidential); ANNEXE 5 / croquis du carrefour Macaci, de la localisation du corps de Doukouré Aly, d'autres corps vus sur le carrefour, celles des manifestants après leur dispersion et des CRS au moment où ils ont tiré sur Doukouré, d'autres corps vus sur le carrefour, undated, CIV-OTP-0084-0130; ANNEXE 6 / FICHE D'ENTREE / No. 043794, 16 December 2010, CIV-OTP-0084-0131 (confidential); ANNEXE 7a - 7b - 7c / CERTIFICAT MEDICAL DE DECES / No. 29/2011/IML, 23 May 2011, CIV-OTP-0084-0132 (confidential); ANNEXE 8 / PERMIS D'INHUMER / No. 1520bis CA/EC, 4 October 2011, CIV-OTP-0084-0135 (confidential); RAPPORT DE PERMANENCE CENTRAL, 16 December 2010, CIV-OTP-0045-0510 at 0511; FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0974; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2420; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3887, entry 2420; RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0012, entry 140; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 29; INTERFU / No. D'ORDRE 2420 / No. CASIER 53, 16 December 2010, CIV-OTP-0084-3272 (confidential); P-0184, T-125 dated 17 February 2017 (French), pp. 45-48; BLESSEES / DISPARUS 2 / DECÉDEES / DISPARUS / BLESSEES2 / DECÉDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0048.

³³³⁶ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential).

³³³⁷ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0112-0113, para. 30, at 0114-0115, paras. 42-43.

³³³⁸ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0114, paras 38-39.

had launched the tear gas.³³³⁹ P-0589 was also told that between the launching of the tear gas and the firing of live ammunition, very little time had passed, mildly suggesting that the CRS would have fired live ammunition regardless of whether the crowd advanced.³³⁴⁰

1510. Taking the evidence together, it can be inferred that the victim died as a result of the shots fired by the CRS following their attempt to disperse the crowd with live ammunition.

(2) Killed – Alabi Ismailai Amidou and Soumahoro Mohamed

1511. The Prosecutor refers to Alabi Ismailai Amidou³³⁴¹ and Soumahoro Mohamed³³⁴² being killed at *Carrefour Macaci*.³³⁴³ It is noted that these bodies were recovered together as per the Police report cited in support.³³⁴⁴

³³³⁹ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0115, para. 43.

³³⁴⁰ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0115, para. 43.

³³⁴¹ See Annex E.1 persons killed, entry 3, relying on RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511; FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0974; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2422; CIV 1 PRF 151421 Black Register, CIV-OTP-0084-3866 (confidential) at 3887, entry 2422; RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN CÔTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0009, entry 13; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 72; BLESSE2 / DISPARUS 2 / DECÉDÉS / DISPARUS / BLESSEES2 / DECÉDÉS2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0043, 0056; INTERFU / No. D'ORDRE 2422 / No. CASIER 51, CIV-OTP-0084-3308 (confidential); FICHE D'EXAMEN EXTERNE DE CORPS / Alabi Ismailai Amidou / No. UML: 72, 9 May 2011, CIV-OTP-0084-4015 (confidential).

1512. A DGNP report further cited in support stated that the victims had been shot by ‘CECOS’, who reportedly fired on demonstrators whilst passing through them.³³⁴⁵

The other documents cited in support contain no further information about the perpetrators.

1513. However, it is noted that P-0560 confirmed that he forwarded a report, dated 16 December 2010, to the *Préfet de Police*, summarising what had been reported to him by the Police commissioners; this report mentions the involvement of CECOS BMO in the incident.³³⁴⁶ It is noted that this report states that eight people were injured, of which three were serious cases who later died from their

³³⁴² See Annex E.1 persons killed, entry 4, relying on RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511; FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0974; Black Register, 15 October 2010, CIV-OTP-0084-3044 (confidential) at 3066, entry 2421; CIV 1 PRF 151421 Black Register, 1 January 2010, CIV-OTP-0084-3866 (confidential) at 3887, entry 2421; RAPPORT CIRCONSTANCIÉ SUR LA PRISE EN CHARGE MÉDICO-LÉGALE DES VICTIMES DÉCÉDÉES AU COURS DES ÉVÈNEMENTS POST- ÉLECTORAUX SURVENUS EN COTE D'IVOIRE, undated, CIV-OTP-0050-0003 at 0024, entry 726; LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 92; BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0056; FICHE D'EXAMEN EXTERNE DE CORPS / Soumahoro Mohamed / No. UML: 92/2011, 10 May 2011, CIV-OTP-0084-4090 (confidential); INTERFU / No. D'ORDRE 2421 / No. CASIER 50, 16 December 2010, CIV-OTP-0084-3290 (confidential).

³³⁴³ Response, para. 481 (viii) (a) – (c).

³³⁴⁴ RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511. See also Manifestations du RHDP et découverte de cadavres, 25 January 2011, CIV-OTP-0045-1413.

³³⁴⁵ RAPPORT DE PERMANENCE CENTRALE, CIV-OTP-0045-0510 (confidential) at 0511. See also Manifestations du RHDP et découverte de cadavres, 25 January 2011, CIV-OTP-0045-1413.

³³⁴⁶ P-0560, T-120 dated 10 February 2017, pp. 57-58, 66, 70, commenting on Annexe 8 - Page 4 / Marche sur la RTI, organisée par les militants du RHDP / No. 1033/PPA/D-4, 16 December 2010, CIV-OTP-0076-1526 (confidential) (replicated at Annexe 8 / Marche sur la Radio Television Ivoirienne (RTI) des militants du Rassemblement des Houphouetistes pour la Démocratie et la Paix (RHDP), undated, CIV-OTP-0010-0028 (confidential) at 0031-0032). See also BQI No.249 DU JEUDI 17 DECEMBRE 2010, 17 December 2010, CIV-OTP-0045-0735 (confidential).

injuries during their evacuation to hospital, and two individuals died at the ‘*ASH, non loin du parc à bois, en face de MACACI*’.³³⁴⁷

1514. Taking the evidence together, it is plausible that the two victims died as a result of the shots fired by CECOS.

(3) Conclusion

1515. From the evidence taken together, in particular the account provided by P-0172, it appears that one of the victims was killed as part of an attempt by the CRS to disperse the crowd, since the evidence demonstrates that the concerned forces first fired tear gas into the crowd. As regards two other victims, it appears that they were killed by shots fired by members of the CECOS.

b) Williamsville

1516. In the Response, the Prosecutor refers to the statement of P-0589³³⁴⁸ who, on the way to *Carrefour Macaci* to see his brother’s body, encountered a group of CRS members who were blocking the road at *Carrefour Djéni Kobenan* (also spelt *Djeni Kobina*).³³⁴⁹

1517. P-0589 testified that he arrived at *Carrefour Djéni Kobenan* at around 09h00 or 10h00.³³⁵⁰ P-0589 stated that the CRS were all wearing black and carrying

³³⁴⁷ Annexe 8 - Page 4 / Marche sur la RTI, organisée par les militants du RHDP / No. 1033/PPA/D-4, 16 December 2010, CIV-OTP-0076-1526 (confidential). *See also* BQI No.249 DU JEUDI 17 DECEMBRE 2010, 17 December 2010, CIV-OTP-0045-0735 (confidential) at 0735-0736; TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0896-0897. It is noted however, some discrepancies between this report and other Police reports cited. In document CIV-OTP-0045-0510 at 0511, it is stated that *three* individuals were discovered at the ‘ASH’. *See Rapport de permanence centrale*, CIV-OTP-0045-0510 at 0511. *See also* FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0974.

³³⁴⁸ Response, paras 474, 519.

³³⁴⁹ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0112-0113, paras 31, 33-34. *See also* P-0589, T-115 dated 9 December 2016, pp. 5-6.

³³⁵⁰ P-0589, T-115 dated 9 December 2016, p. 4.

Kalashnikovs and tear gas launchers.³³⁵¹ He testified that they were wearing CRS badges.³³⁵² P-0589 stated that when the demonstrators kept advancing, the CRS fired tear gas.³³⁵³ As per the statement, when the demonstrators tried to get through, the CRS then started firing live ammunition.³³⁵⁴ P-0589 thought that it was live ammunition because they were firing with their Kalashnikovs; thereafter, the demonstrators dispersed.³³⁵⁵ It is noted that the witness did not mention any casualties.

1518. The Prosecutor additionally refers to the hearsay account provided to P-0578 by a young man who was living with him at the time.³³⁵⁶ As per the statement, the young man returned home wounded and told P-0578 that he and his friend, together with a group of demonstrators, arrived at a Police cordon at *Carrefour Djéni Kobenan* where they were told by a Police officer to go back home.³³⁵⁷ The young man told P-0578 that, as he and his friend were backing away from the cordon, a Police officer from the 11th *arrondissement* [REDACTED] threw a grenade at them, injuring them both.³³⁵⁸ According to the young man, it was a grenade and not tear gas.³³⁵⁹ When the friend fell to the ground, the same Police officer shot him in the head with his handgun at point-blank range, killing

³³⁵¹ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0112-0113, paras 34-36.

³³⁵² P-0589, T-115 dated 9 December 2016, p. 5.

³³⁵³ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0113, para. 36; P-0589, T-115 dated 9 December 2016, p. 6.

³³⁵⁴ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0112-0113, paras 34, 36.

³³⁵⁵ P-0589, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0105-R01 (confidential) at 0113, para. 36.

³³⁵⁶ Response, paras 474, 519.

³³⁵⁷ P-0578, DÉCLARATION DE TÉMOIN, 6 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0158, paras 111-112.

³³⁵⁸ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0158-0159, paras 111-113.

³³⁵⁹ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0158, para. 112.

him.³³⁶⁰ P-0578 stated that he had seen [REDACTED] and other Police officers from the 11th *arrondissement* patrolling with young pro-Gbagbo militia members from the neighbourhood.³³⁶¹

1519. P-0560, the Chief of the Police of Adjamé district at the relevant time, testified that the Police commissioner of the 11th *arrondissement* reported to him that he had dispersed some demonstrators at Djeni Kobenan intersection together with CECOS (BMO) members, who were already there when he arrived; as a result, 8 people were injured.³³⁶² P-0560 testified that two or three weeks later, he asked the Police commissioners from the 3rd and 11th *arrondissements* how these people had been killed and injured, to which they responded that it was the BMO intervention (which probably had already been concluded by the time the Police arrived) that had led to these injuries and the death. According to P-0560, the commissioners did not tell him this on the day of the operation because they had been in the presence of CECOS members and they were afraid.³³⁶³

1520. In the Response, the Prosecutor refers to the statement of P-0117³³⁶⁴ who stated that her group was receiving information by telephone from other people marching in different areas of Abidjan; some people were warning them not to continue because people were being killed, whereas others encouraged them to continue, saying that people had already arrived at the RTI.³³⁶⁵ P-0117 and most of her group continued towards Williamsville and Camp Agban.³³⁶⁶ P-0117

³³⁶⁰ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0158, para. 112.

³³⁶¹ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0158-0159, para. 113.

³³⁶² P-0560, T-120 dated 10 February 2017, pp. 44-45, 52, 55.

³³⁶³ P-0560, T-120 dated 10 February 2017, pp. 71-72.

³³⁶⁴ Response, paras 475-476, 520.

³³⁶⁵ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 44.

³³⁶⁶ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 44.

additionally stated that she later learned that the first people who had marched from Abobo to Camp Agban very early in the morning had been killed.³³⁶⁷

1521. P-0117 stated that there had been constant gunfire from Abobo to Williamsville, and it was becoming heavier.³³⁶⁸ They arrived at the Total petrol station in Williamsville at around 10h00 or 11h00,³³⁶⁹ but they were unable to continue because the Police were positioned there.³³⁷⁰ As per the statement, since Williamsville is on a hill, beyond them she could see Police officers ‘catching’ (*attraper*) people in the direction of Camp Agban.³³⁷¹

1522. P-0117 stated that the Police started by launching tear gas canisters and then fired on the crowd and launched ‘explosive grenades’.³³⁷² According to P-0117, everyone in her group panicked and they started running in all directions to escape.³³⁷³ P-0117 testified that these Police officers’ faces were covered with mesh, and they were in vehicles and had guns.³³⁷⁴ According to P-0117, the grenades killed some people and other people were visibly wounded; she saw five or six people on the ground and there was blood everywhere.³³⁷⁵ She additionally stated that she saw four people who had been wounded by bullets

³³⁶⁷ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0040, para. 45.

³³⁶⁸ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, para. 48.

³³⁶⁹ It is noted that the witness testified that this may have been around 13h00 in the afternoon. *See* P-0117, T-110, p. 49 (confidential).

³³⁷⁰ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, para. 47.

³³⁷¹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, para. 49.

³³⁷² P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, paras 50, 52. *See also* P-0117, T-110 dated 2 December 2016, pp. 50-51 (confidential).

³³⁷³ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, para. 50. *See also* P-0117, T-110 dated 2 December 2016, p. 51 (confidential).

³³⁷⁴ P-0117, T-110 dated 2 December 2016, pp. 50-51 (confidential).

³³⁷⁵ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041, para. 52.

and another shot and killed by a police officer at point-blank range with a handgun.³³⁷⁶ The police officers were also rounding people up and arresting them.³³⁷⁷ There were a lot of blue and black (but mostly blue) police *cargos*, with the word ‘Police’ written on them, and the police officers were armed with either Kalashnikovs or handguns.³³⁷⁸ P-0117 stated that there were Police everywhere in Williamsville.³³⁷⁹

1523. The Prosecutor additionally referred to P-0578’s statement and a number of videos filmed by him on the day of the march in Williamsville.³³⁸⁰ As per the statement, during the march shots were fired, so P-0578 began to film [REDACTED] from where he could see the main entrance of Camp Agban and the Yopougon highway, as well as the *Quartier Latin*;³³⁸¹ later he also filmed from [REDACTED].³³⁸² P-0578 stated that, in the morning, he had heard shots towards *Carrefour* Djéni Kobenan and saw a group of demonstrators who he believed had been prevented from going beyond the *carrefour* by ‘*les forces de l’ordre*’, and so were taking a detour.³³⁸³

1524. P-0578 commented on the videos he had filmed, stating that shots were fired towards the demonstrators from two CECOS vehicles (navy blue with the

³³⁷⁶ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0041-0042, paras 54-55. *See also* P-0117, T-110 dated 2 December 2016, p. 53 (confidential).

³³⁷⁷ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0042, para. 57.

³³⁷⁸ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0042, paras 58-59.

³³⁷⁹ P-0117, DÉCLARATION DE TÉMOIN, 30 March 2012, CIV-OTP-0020-0033-R04 (confidential) at 0042, para. 59.

³³⁸⁰ Response, paras 475, 520.

³³⁸¹ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0151, para. 43.

³³⁸² P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0148, para. 25.

³³⁸³ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0151, para. 44.

CECOS logo and vehicle number on the side, and sub-machine guns mounted on top) carrying Police³³⁸⁴ in combat gear;³³⁸⁵ shortly after, two white pickups slowly drove past whilst shooting,³³⁸⁶ and later some *forces de l'ordre*,³³⁸⁷ wearing green fatigues, got out of one of the pickups and walked towards the demonstrators, firing in their direction.³³⁸⁸ P-0578 additionally stated that shots were fired by *forces de l'ordre* passing by in a tank,³³⁸⁹ followed by two military vehicles.³³⁹⁰ It is noted that P-0578 additionally explained that the demonstrators had built barricades made from tyres.³³⁹¹ The witness did not mention seeing any casualties.

(1) Raped – [REDACTED] and four others

1525. The Prosecutor alleged that [REDACTED] were raped after being arrested and detained.³³⁹² In respect of the perpetrators, the Prosecutor alleged that it is 'reasonable to draw the inference that these hooded men were [...] elements of

³³⁸⁴ It is noted that later in para. 69, the witness appears to describe them as CECOS forces.

³³⁸⁵ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0152, paras 53-56, commenting on Tirs nourris, 17 December 2010, CIV-OTP-0084-0188-R01 (confidential). *See also* at 0154, para. 69, commenting on Tirs sur les civils aux mains nues, 17 December 2010, CIV-OTP-0084-0187-R01 (confidential).

³³⁸⁶ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0153-0154, paras 65, 71, commenting on Tirs sur les civils aux mains nues, 17 December 2010, CIV-OTP-0084-0187-R01 (confidential).

³³⁸⁷ It is noted that the witness believed that these were 'parallel forces' since their fatigues were unmarked. P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential), para. 78.

³³⁸⁸ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0154-0155, paras 77-78, 83, commenting on Journée du 16/12/10, 17 December 2010, CIV-OTP-0084-0184-R01 (confidential). *See also* at 0156, para. 93, commenting on Répressions manifestation RHDP, 17 December 2010, CIV-OTP-0084-0185-R01 (confidential).

³³⁸⁹ It is noted that the witness later described them as 'anti-riot tanks' that were used by CECOS. P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential), para. 91.

³³⁹⁰ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0156, paras 87, 91, commenting on Répression manifestation RHDP, CIV-OTP-0084-0185-R01 (confidential).

³³⁹¹ P-0578, DÉCLARATION DE TÉMOIN, 7 June 2015, CIV-OTP-0084-0142-R01 (confidential) at 0151-0152, para. 48.

³³⁹² Response, paras 497-501.

the *Gendarmerie* – or at the very least were elements of the pro-Gbagbo forces’.³³⁹³

1526. [REDACTED]³³⁹⁴ [REDACTED]³³⁹⁵ [REDACTED]³³⁹⁶

1527. [REDACTED]³³⁹⁷ [REDACTED]³³⁹⁸ [REDACTED]³³⁹⁹ [REDACTED]³⁴⁰⁰
[REDACTED]³⁴⁰¹

(2) Raped [REDACTED]

1528. [REDACTED] testified that, after the encounter with the Police in Williamsville, she started to run and then hid.³⁴⁰² [REDACTED].³⁴⁰³ [REDACTED]³⁴⁰⁴
[REDACTED].³⁴⁰⁵ [REDACTED]³⁴⁰⁶ [REDACTED]³⁴⁰⁷

1529. [REDACTED]³⁴⁰⁸ [REDACTED]³⁴⁰⁹ [REDACTED]³⁴¹⁰

³³⁹³ Response, para. 501.

³³⁹⁴ [REDACTED]

³³⁹⁵ [REDACTED]

³³⁹⁶ [REDACTED]

³³⁹⁷ [REDACTED]

³³⁹⁸ [REDACTED]

³³⁹⁹ [REDACTED]

³⁴⁰⁰ [REDACTED]

³⁴⁰¹ RAPPORT D'EXPERTISE MEDICO-LEGALE / Réf. 4006.13 (FB/ch) / Dossier no: P-350, 8 June 2014, CIV-OTP-0059-0094 (confidential) at 0097.

³⁴⁰² [REDACTED]

³⁴⁰³ [REDACTED]

³⁴⁰⁴ [REDACTED]

³⁴⁰⁵ [REDACTED].

³⁴⁰⁶ [REDACTED]

³⁴⁰⁷ [REDACTED]

³⁴⁰⁸ [REDACTED]

³⁴⁰⁹ [REDACTED].

³⁴¹⁰ [REDACTED]

c) Carrefour Liberté

1530. In the Response, the Prosecutor refers to the testimony of P-0109,³⁴¹¹ who testified that, on the day of the march he and his friend, together with other young people, came across some *gendarmes* who asked where they were going, to which they replied that they were going to the march.³⁴¹² The Prosecutor submits that the *Gendarmes* said ‘*[v]ous partez vous donner à la mort ou quoi?*’.³⁴¹³ However, from the testimony, this is unclear. P-0109 initially testified that it was one of the young people who said this;³⁴¹⁴ however, he later testified that it was one of the *gendarmes* who said something along these lines.³⁴¹⁵ P-0109 testified that after leaving the location where the *gendarmes* were, they reached *Carrefour Liberté* in Adjamé³⁴¹⁶ where there were gunshots and people running everywhere, so P-0109 went to hide.³⁴¹⁷ He asked someone what was going on and they replied that they were coming from the march where people were being fired at by ‘*agents*’ whose faces were covered.³⁴¹⁸

d) Conclusion

1531. From the analysis of the situation, it appears that in the locations in Adjamé discussed above, the FDS fired tear gas into the crowd. Taking into account the totality of the evidence, it can be inferred that Aly Doukoure died as a result of shots fired by the CRS. In respect of Alabi Ismailai Amidou and Soumahoro Mohamed, it can be inferred that their deaths were caused by the shots fired by

³⁴¹¹ Response, paras 477, 521.

³⁴¹² P-0109, T-154 dated 9 May 2017, p. 24.

³⁴¹³ Response para. 522. *See also* Response paras 477, 521.

³⁴¹⁴ P-0109, T-154 dated 9 May 2017 (French), pp. 26-27.

³⁴¹⁵ P-0109, T-154 dated 9 May 2017 (French), p. 30.

³⁴¹⁶ P-0109, T-154 dated 9 May 2017, p. 28.

³⁴¹⁷ P-0109, T-154 dated 9 May 2017 (French), p. 27.

³⁴¹⁸ P-0109, T-154 dated 9 May 2017, pp. 24-25.

members of the CECOS. In the circumstances surrounding these deaths, the FDS is shown to have been engaging in dispersing the crowd by having fired tear gas first, followed by live ammunition.

3. *Cocody*

1532. The Prosecutor alleges that in Cocody, in the area surrounding the RTI, the Police security presence was reinforced, and the *Garde Républicaine*, *Gendarmerie*, Army and CECOS, supported by mercenaries, were deployed and started patrolling there in the morning.³⁴¹⁹ The Prosecutor further alleges that the GPP elements were also present along with the ‘*Jeunes Patriotes*’ of the FESCI.³⁴²⁰ In the analysis below, the accounts provided by different witnesses who were present in the area have been assessed together depending on their specific location in Cocody.

a) **RDR headquarters**

1533. According to the evidence provided by P-0107 and P-0230, demonstrators gathered at the RDR headquarters in the morning of 16 December 2010. In the Response, the Prosecutor relies on the statement of witness P-0230 to allege that crimes were committed against these demonstrators as soon as they left the RDR headquarters and started to march towards the RTI.³⁴²¹

1534. According to P-0230, a group of thousands of marchers assembled at the RDR headquarters on *rue Lepic* in Cocody at 9h00 on 16 December 2010.³⁴²² Amongst this crowd was witness P-0107 who stated that he assembled at said location at

³⁴¹⁹ Response, para. 465 relying on P-0555, P-0435.

³⁴²⁰ Response, para. 465 relying on P-0107.

³⁴²¹ Response, para 467.

³⁴²² P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2639, para. 39. *See also* P-0230, T-106 dated 28 November 2016, pp. 33-34, 62.

10h with other demonstrators.³⁴²³ P-0107 stated that there were four armed FDS individuals in a green 4x4 CECOS vehicle at the intersection near the RDR headquarters.³⁴²⁴ According to him, the FDS said that the marchers should not go any further because the FDS were not there for fun.³⁴²⁵ P-0107 stated that one FDS element told the marchers that if they did not leave, he would throw his grenade at them.³⁴²⁶ P-0107 additionally stated that another FDS member said that if the marchers carried on, they would ‘*régler [leur] compte*’ on the way back, which P-0107 took to mean that they would massacre them.³⁴²⁷

1535. P-0230 stated that whilst people gathered at the RDR headquarters, they started to hear gunshots. Minutes after the crowd set off to the RTI in two groups, P-0230 started to hear the firing of Kalashnikovs, as well as the sound of ‘rockets or mounted guns’.³⁴²⁸ P-0230 saw a demonstrator running back to the headquarters being chased by a convoy of armoured *Gendarmerie* vehicles.³⁴²⁹ P-0230 started to run to get away and took refuge on the roof of a building close to

³⁴²³ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073, paras 60, 63-64.

³⁴²⁴ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073-0074, paras 65, 69-70. *Note* that these were a mix of *gendarmes* wearing blue uniform with blue berets, *militaires* wearing green and red camouflage uniform with red berets, and Police officers wearing green uniform, all carrying Kalashnikovs and tear gas, with the *gendarme* additionally carrying a grenade. *Note* too that the witness described in the vehicle a picture of what looked like a panther.

³⁴²⁵ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073, paras 65, 67-68. *See also* P-0107, T-108 dated 30 November 2016, pp. 25-26, 28-29.

³⁴²⁶ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073, para. 68. *See also* P-0107, T-108 dated 30 November 2016, pp. 25-26, 28-29.

³⁴²⁷ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073-0074, para. 68. *See also* P-0107, T-108 dated 30 November 2016, pp. 30-32.

³⁴²⁸ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2639-2640 para 43. *Note* that the witness explained that he was able to recognise the sound of the guns because they have ‘lived through a decade of war’.

³⁴²⁹ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640, paras 43-44.

the RDR headquarters. The witness stated that from there he could see ‘everything that was going on down below’.³⁴³⁰

1536. In his statement, P-0230 described how he observed the demonstrators being pursued by *gendarmes* and Gbagbo forces. According to P-0230’s statement, it was when they began pursuing that the *gendarmes* meted out the violence and as a result, people started climbing the walls and those that were unable to do so went up the gully at the end of rue Lepic as rue Lepic has dead end.³⁴³¹

1537. P-0230 stated that he saw, from his observation point, soldiers on the Cocody Danga bridge chasing marchers who had set off to the RTI but were trying to come back. According to his statement, this was a group of around a hundred female marchers heading from the RDR headquarters to the American cultural centre from where they would reach the *Boulevard de la Paix* at the gas station opposite RTI.³⁴³² According to the witness, the soldiers came behind the women with 4x4 vehicles and as their way was blocked in front of them, they had no way out. The soldiers got out of the vehicles and killed them. The women started to run but men in military uniforms chased them and fired at them with Kalashnikovs. P-0230 saw a lot of bodies.³⁴³³

1538. P-0230 stated that as a result of the events he narrated around 100 demonstrators died. However, the Prosecutor mentions only two identified victims of murder connected to this incident, Cissé Modi and P-230’s brother Diabaté Lacine.

³⁴³⁰ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640, para. 44.

³⁴³¹ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640, para. 44.

³⁴³² P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640, paras 42, 46.

³⁴³³ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640, paras 46.

(1) Killed - Cissé Modi

1539. In relation to Cissé Modi³⁴³⁴ it is noted that the documentary evidence indicates that the victim died ‘*Au siège du RDR à la Rue LEPIC*’ on 17 December 2010.³⁴³⁵ It is noted that while the documents indicate that the victim died on 17 December 2010, it is assumed that the injuries leading to the death were sustained on 16 December 2010 during the march. The documents submitted in relation to this individual’s death only state that it was caused by grenade fragments and do not contain any information about the perpetrators.³⁴³⁶

(2) Killed – Diabaté Lacina

1540. P-0230 provided a hearsay account of Diabaté Lacina’s death.³⁴³⁷ Diabaté Lacina was beaten by ‘*des militaires en tenue de gendarmes*’. The victim was together with their nephew, and the two were part of the group which had left the RDR headquarters towards the RTI in the morning of 16 December 2010. However, as the FDS had erected roadblocks in strategic locations and everything had been sealed off, the group of demonstrators of which Diabaté Lacina and their nephew were part could not reach RTI. According to the statement of P-0230, they encountered soldiers in *gendarme* uniform and were pursued as far as the gully near the RDR headquarters, where Diabaté Lacina fell. The victim’s nephew tried to come to his aid and lay on top of Diabaté Lacina. The *gendarmes* beat the

³⁴³⁴ See Annex E.1 persons killed, entry 9, relying on *Liste des victimes de la marche du RHDP des 16 et 17/12/2012*, CIV-OTP-0045-1157 at 1165; *Événement CHU Treichville “identifiés”*, CIV-OTP-0029-0462 at 0463, entry 26; CHU Treichville morgue register, CIV-OTP-0063-0818 at 0849, entry 5557.

³⁴³⁵ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1165.

³⁴³⁶ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1165.

³⁴³⁷ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 at 2645-2646, para. 51. See Response, para. 469 (a). Note that P-0230 indicated in his statement that he heard about the circumstances of his brother’s death from his nephew, who was at the march with the victim.

two of them with the butt of their guns.³⁴³⁸ Later, reinforcement troops came. From the account P-0230 received, it appears that these were CECOS troops. The troops took Diabaté Lacina and his nephew to the CECOS camp. At this point, Diabaté Lacina was motionless – according to the nephew, the victim had been suffocated by the *gendarmes*.³⁴³⁹

1541. The nephew told the soldiers that Diabaté Lacina was dead, but the soldiers did not believe and kept beating him. When it became clear that Diabaté Lacina was not moving, CECOS sent them to the CHU in Cocody. The nephew was taken to the police prefecture. According to what he told P-0230, he was tortured for two weeks until his release.³⁴⁴⁰

(3) Conclusion

1542. The scenario P-0230 described is different from the other incidents during the repression of the RTI march on 16 December 2010 about which the Chamber received evidence. P-0230's evidence depicts a scenario where the FDS was actively chasing demonstrators in a manner that would clearly be out of the remit of its mission to protect the RTI headquarters. Having said that, it is remarkable that there are only two identified victims who died as a result of the FDS action in the vicinity of RDR headquarters, Cissé Modi and Diabaté Lacina. The evidence connected to the former is based on anonymous hearsay and provides very little information. When it comes to the other victim, Diabaté Lacina, the evidence is based on the hearsay account provided by the victim's nephew to witness P-0230. It is also telling that the three victims about whom the Chamber

³⁴³⁸ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2643-2648.

³⁴³⁹ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2646-2647, para. 52.

³⁴⁴⁰ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2648-2649, paras 52-53.

has received somewhat specific information do not fit in P-0230's general account of random executions on the spot. It is relevant to also note that the FDS had ample opportunity to kill Diabaté Lacine's nephew but did not do so. Further, it is not clear why the elements of CECOS and the *Gendarmerie* who had been severely beating two victims for a prolonged period would take them to the hospital if their goal was to kill the victims.

1543. In addition, the evidence shows that not all FDS officials involved in the repression of the march intended to use violence against demonstrators. As seen, some would even try to protect them from being killed.

b) Carrefour de la vie and surrounding area

1544. According to the evidence, the FDS blocked the road of the *Carrefour de la vie* to prevent demonstrators from going through.³⁴⁴¹ The Prosecutor alleges that the FDS committed crimes against marchers at this location.³⁴⁴²

1545. With regards to FDS activity at this location, reference is made to section V.B.2.c) and the evidence discussed therein, which indicates that 'towards the end of the morning' CECOS reinforcements were sent to this location because demonstrators had breached other security barriers. It follows that a deployment to block the *Carrefour de la vie* was an emergency measure to stop demonstrators from advancing towards the RTI.³⁴⁴³

³⁴⁴¹ P-0230 stated that he knew that there was one group of marchers which had headed directly for *Carrefour de la Vie* and then to the RTI. P-0230 stated that he was told by one of the marchers, who had seen it from Saint Jean church, that there was also a roadblock of the pro-Gbagbo forces at *Carrefour de la Vie*. P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2640-2641, para. 43. See also P-0230, T-106 dated 28 November 2016, pp. 82-83. The Prosecutor also refers to the testimony of P-0107 in connection to this roadblock. It is noted that, in the Response, the Prosecutor seems to suggest that this where P-0107 was when he was 200 m from the RTI but P-0107 could not remember the name of the Carrefour and this was not clarified during his testimony.

³⁴⁴² Response, para. 471.

³⁴⁴³ P-0010, T-139 dated 29 March 2017, pp. 19-20.

1546. P-0107 stated that, as they were trying to reach the RTI between 10h00 and 11h00, they encountered more than ten FDS personnel at a major intersection about 200 metres from the RTI.³⁴⁴⁴ The demonstrators were warned by a member of the FDS not to pass the roadblocks and one uniformed member of the FDS told the others that the marchers refused to turn back.³⁴⁴⁵ The FDS started to fire into the air and then launched tear gas. P-0107 heard the sound of a Kalashnikov and noticed a lot of people had fallen around him. P-0107 testified that there were about 200 to 300 people in the crowd.³⁴⁴⁶

1547. According to P-0107, grenades were thrown when the shooting started. The witness then heard rockets being fired.³⁴⁴⁷ As P-0107 ran away, he saw groups of FDS at several intersections with long barrel weapons mounted on 4x4 vehicles³⁴⁴⁸ P-0107 stated that he also saw members of the FDS with sniper rifles on top of buildings firing at the marchers.³⁴⁴⁹ According to P-0107, this continued for what seemed like an hour.³⁴⁵⁰

³⁴⁴⁴ Note that according to P-0107 there were two long blue trucks and two green 4x4s, some of whom were wearing blue fatigues, two wearing green fatigues, two wearing red berets, and at least three or four wearing black balaclavas.

³⁴⁴⁵ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0073-0074, paras 72-73, 78-79. *See also* P-0107, T-108 dated 30 November 2016, pp. 33-36.

³⁴⁴⁶ P-0107, T-108 dated 30 November 2016, p. 45.

³⁴⁴⁷ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076, paras 83-84. *See also* P-0107, T-108 dated 30 November 2016, pp. 50-51 who stated that earlier that day he had seen the FDS with hand-held rocket launchers at roadblocks.

³⁴⁴⁸ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076, paras 85-86. *See also* P-0107, T-108 dated 30 November 2016, pp. 51-52.

³⁴⁴⁹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076, para. 87.

³⁴⁵⁰ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076, para. 88. *See also* P-0107, T-109 dated 1 December 2016, p. 60.

(1) Unidentified victims

1548. When the FDS started firing, P-0107 saw a lot of dead bodies. According to the witness, three men were hit by bullets and died.³⁴⁵¹ P-0107 saw another dead man and two women who had been shot and had died. In total, he saw about 20 people who had been hit by bullets and fallen to the ground; he believes that most of them were dead because they were no longer moving.³⁴⁵² P-0107 stated that he heard the explosions from two or three grenades and saw two children killed by the shrapnel.

(2) Killed - Koné Souleymane

1549. The Prosecutor adduced evidence of a victim that may have died in the incident narrated by P-0107. This relates to a Police document indicating that an individual was killed at Carrefour de la Vie in Cocody.³⁴⁵³ The Police list of victims states that a certain victim was killed by a '*grenade qu'il a tenté de renvoyer au FDS*'.³⁴⁵⁴ Commenting on this document, Inspector-General Bredou M'Bia testified that he did not think that this could be in reference to a tear gas grenade, but rather a 'defensive or offensive' grenade.³⁴⁵⁵ It is noted that the documentary evidence indicates that this individual was killed on 17 December 2010.³⁴⁵⁶ In the Response, the Prosecutor submitted that the 'circumstances' of

³⁴⁵¹ Note that according to P-0107, one was shot in the head, he saw the others lying down not moving.

³⁴⁵² P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 at 0074-0076, paras 74, 80-82. See also P-0107, T-108 dated 30 November 2016, pp. 37-38, 43, 49-50.

³⁴⁵³ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1166. Response, para. 473 (vi) (b).

³⁴⁵⁴ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1166.

³⁴⁵⁵ P-0046, T-125 dated 27 February 2017, pp. 79-80, commenting on LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1166.

³⁴⁵⁶ LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1166. However, it is noted that this has been considered in this document as one of the deaths linked to the RTI March. The link to the RTI March is not known. It is also noted that this document contains the names of victims from dates unrelated and prior to the RTI March.

this victim's death point to the fact that it was a fragmentation grenade that killed him.³⁴⁵⁷ It is also noted that P-0230 described what could have been a fragmentation grenade being used by the 'gendarmes and Gbagbo's forces' near *rue Lepic* in Cocody.³⁴⁵⁸ It is therefore possible that the victim's death was caused by a fragmentation grenade thrown by the FDS.

(3) Conclusion

1550. P-0107 mentions dozens of victims of the incident at the *Carrefour de la vie*, but none of them have been identified by evidence. From the account of P-0107, it appears that the FDS resorted to excessive violence to prevent the demonstrators from going through the roadblock and continue their march towards the RTI headquarters. That said, it cannot be ignored that the members of the FDS blocking the passage were largely outnumbered by the demonstrators – the witness mentioned ten FDS personnel facing hundreds of marchers. After the FDS failed to dissuade the marchers from continuing and tried to disperse them by firing in the air and using tear gas, it seems that, to block the passage of the *Carrefour de la vie*, they had little choice other than using lethal force against the demonstrators trying to go through. Although it is possible to consider – with the benefit of hindsight – that the use of violence may very well have been disproportionate, no reasonable trial chamber could conclude that the purpose of the FDS in the roadblock of the *Carrefour de la vie* was to commit crimes against political demonstrators.

³⁴⁵⁷ Response, para. 473 (vi) (b).

³⁴⁵⁸ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2641-2642, para. 44. P-0230 stated that the skin of the victims of this weapon looked as if it had been meticulously torn off – the black part of the skin could no longer be seen and the skin was red and full of little holes – it was different from rocket, grenade or Kalashnikov wounds that P-0230 had seen before.

c) Road to the PDCI headquarters

1551. The Prosecutor alleges that crimes were committed at a roadblock manned by the CRS, ‘with elements of the Garde Republicaine in vehicles behind them’.³⁴⁵⁹ In this respect, the Prosecutor relies on the testimony of P-0547, a civilian who took part in the RTI march.³⁴⁶⁰

1552. P-0547 was on his way with three other people to the RDR headquarters. According to him, there were a great many people who were going towards the PDCI headquarters and then the RTI.³⁴⁶¹ P-0547 testified that they then came across a roadblock at an intersection. There was a house where some *gendarmes commando* had set up a number of guns on sandbags. Further, they encountered CRS elements blocking the road which would have taken them to the PDCI headquarters and then to the RTI. According to the witness, *Garde Républicaine* elements with vehicles were behind the CRS.³⁴⁶² The CRS threw tear gas at the crowd and the crowd panicked. P-0547 ran, heard a gunshot, fell down, and noticed that his leg had been hit. Everyone in front of him also fell to the ground.³⁴⁶³ P-0547 clarified that the CRS launched tear gas but that it was the *gendarmes commando* who were shooting.³⁴⁶⁴

1553. After that, it seems from his testimony that P-0547 was beaten on two similar occasions. In one of these, a man wearing the uniform of the *Garde*

³⁴⁵⁹ Response, para. 470.

³⁴⁶⁰ Response, paras 470, 514. See P-0547, T-13 dated 3 February 2016, pp. 8, 17. P-0547 testified that, as he headed towards *Fraternité Matin* in Adjamé on his way to the RTI, he heard some loud noises and bangs, the sound of tear gas, and saw some Police in black uniforms that he identified as CRS, but he continued on his way until he arrived in Cocody. P-0547, T-13 dated 3 February 2016, pp. 16-17; P-0547, T-13 dated 3 February 2016 (French), p. 19.

³⁴⁶¹ P-0547 testified that on the way he also saw people wearing *Garde Républicaine* uniforms get out of a cargo truck, P-0547, T-13 dated 3 February 2016, p. 17; P-0547, T-13 dated 3 February 2016 (French), p. 19.

³⁴⁶² P-0547, T-13 dated 3 February 2016, pp. 17-19; P-0547, T-13 dated 3 February 2016 (French), p. 22.

³⁴⁶³ P-0547, T-13 dated 3 February 2016, pp. 19-20.

³⁴⁶⁴ P-0547, T-13 dated 3 February 2016, pp. 19-20, 39.

*Républicaine*³⁴⁶⁵ ordered his troops to search P-0547, telling them to kill P-0547 if they found a *gris-gris* or a knife on him.³⁴⁶⁶ P-0547 testified that he was asked his name and what he was doing, to which he replied ‘*[n]ous sommes des marcheurs. Nous avons voté et nous voulons avoir justice*’ and the leader ordered the men to beat P-0547 to death.³⁴⁶⁷ According to P-0547, the men began to beat him, but then P-0547 heard a gunshot and saw two individuals in civilian clothing running and shooting at the *Garde Républicaine* elements, causing the latter to chase after them, leaving P-0547 there.³⁴⁶⁸

1554. In a second similar incident, a pick-up of the same blue colour as the *Gendarmerie* vehicles arrived and four individuals wearing the uniform of the *gendarmes commando* surrounded P-0547. Their leader asked them to frisk P-0547 and said that if they found a *gris-gris* or a knife they would kill him. Again, they found nothing.³⁴⁶⁹ P-0547 testified that he was then asked his name, to which he replied, and the leader said that the witness had already given his name and he knew who he was and his ethnicity.³⁴⁷⁰ The leader then said ‘*[q]u’est-ce que Alassane Ouattara nous donne pour que nous décidions de nous sacrifier pour Alassane Ouattara?*’.³⁴⁷¹ When the witness replied that it was rather about the country, the men beat him before leaving.³⁴⁷²

1555. P-0547 testified that he was then picked up by the Red Cross and they came across a roadblock manned by armed civilians (some with rifles and some with machetes), with some wearing army fatigue trousers and others wearing dark

³⁴⁶⁵ P-0547, T-13 dated 3 February 2016, p. 34. *Note* the witness’ description of the individuals: camouflage clothing with dark stripes and red berets, carrying Kalashnikovs.

³⁴⁶⁶ P-0547, T-13 dated 3 February 2016, pp. 20, 40-42.

³⁴⁶⁷ P-0547, T-13 dated 3 February 2016, pp. 20, 22.

³⁴⁶⁸ P-0547, T-13 dated 3 February 2016, pp. 22, 42-43.

³⁴⁶⁹ P-0547, T-13 dated 3 February 2016, pp. 23, 34, 43-44.

³⁴⁷⁰ P-0547, T-13 dated 3 February 2016, p. 23.

³⁴⁷¹ P-0547, T-13 dated 3 February 2016, p. 26 (French).

³⁴⁷² P-0547, T-13 dated 3 February 2016, pp. 23-24.

coloured singlets. They asked the members of the Red Cross whether the people they were transporting were marchers, to which they replied yes; the armed civilians asked for the marchers to be offloaded, saying that they were going to kill them if they were Dioula, ‘because the Dioula wanted to take power’; but the members of the Red Cross spoke to those at the roadblock for some time and eventually they were allowed to pass.³⁴⁷³ P-0547 testified that he was then taken to Yopougon CHU where there were other people seriously injured with bullet wounds, many of whom died;³⁴⁷⁴ according to P-0547, these wounded people were marchers.³⁴⁷⁵

(1) Unidentified Victims

1556. P-0547 testified that, at the intersection, after the tear gas thrown by the CRS and P-0547 heard the noise of gunshots, a member of the *Garde Républicaine*³⁴⁷⁶ ordered others to pick up those on the ground (who were no longer moving) and put them in the cargo truck.³⁴⁷⁷ The Prosecutor submits that it is ‘reasonable to infer that at a minimum some of these civilians were dead or seriously injured and/or victims of attempted murder’.³⁴⁷⁸ Although it may indeed be reasonable to infer that at least some of the demonstrators in the crowd were killed by FDS, not much is known about this incident and the circumstances in which the CRS and the *Garde Républicaine* acted. It would be irresponsible for a reasonable trial chamber to make adverse findings of such gravity on the basis of so little evidence.

³⁴⁷³ P-0547, T-13 dated 3 February 2016, pp. 24-26, 45.

³⁴⁷⁴ P-0547, T-13 dated 3 February 2016, pp. 45, 49-50.

³⁴⁷⁵ P-0547, T-13 dated 3 February 2016, p. 51.

³⁴⁷⁶ The witness knows this because he used to drive tanker trucks and pass in front of the GR’s camp, so he knew their uniform. *See* P-0547, T-13 dated 3 February 2016, p. 33.

³⁴⁷⁷ P-0547, T-13 dated 3 February 2016, pp. 20, 40-41.

³⁴⁷⁸ Response, paras 470, 514.

1557. P-0547 testified that when he was at Yopougon CHU there were other people seriously injured with bullet wounds, many of whom died.³⁴⁷⁹ According to P-0547, these wounded people were marchers.³⁴⁸⁰ This assumption of P-0547, however, contradicts the evidence indicating that people not involved in the march could have been hit by stray bullets and that crimes were taking place in the midst of the chaos unrelated to the march or the operation to block access to the RTI.

d) Carrefour Madame Thérèse

1558. According to the Prosecutor, violence was used against civilians in a FDS roadblock at *Carrefour Madame Thérèse*.

1559. P-0555 indicated in his statement that he and his two friends were beaten by the FDS, who had stopped their ‘*woro woro*’ taxi at a roadblock at *Carrefour Madame Thérèse* in Cocody.³⁴⁸¹ He stated that the ‘FDS’, to him, meant ‘*les corps habillés*’; it is the name given to the Army.³⁴⁸² P-0555 testified that the perpetrators were wearing green military fatigues and he thought that ‘FDS’ was written on some of the fatigues; some were wearing balaclavas, and they were carrying Kalashnikovs.³⁴⁸³ In his statement, P-0555 identified the FDS as having additionally worn a beret and having clubs, batons and pistols on their belts; he further stated that they had a DCA mounted on the roof of a *cargo*; P-0555 also discussed the presence of other *cargos* with the letters ‘FDS’ written on them.³⁴⁸⁴

³⁴⁷⁹ P-0547, T-13 dated 3 February 2016, pp. 45, 49-50.

³⁴⁸⁰ P-0547, T-13 dated 3 February 2016, p. 51.

³⁴⁸¹ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0134-0137, paras 28-31, 43; *see also* Response, para. 518.

³⁴⁸² P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0135, para. 31.

³⁴⁸³ P-0555, T-112 dated 6 December 2016, pp. 14-15, 29; P-0555, Déclaration de témoin, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0135, para. 31.

³⁴⁸⁴ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0135, paras 31-32, 34.

However, in court, P-0555 testified that he did not notice anything written on the trucks.³⁴⁸⁵ P-0555 stated that the FDS at the roadblock were with militia members who wore black balaclavas and were in civilian clothing.³⁴⁸⁶

1560. According to P-0555, the FDS asked to see the victims' identification before beating them,³⁴⁸⁷ with one saying [REDACTED]³⁴⁸⁸ He testified that his friends managed to flee, but he was re-captured after being pursued by the FDS who were firing at him, and was forced to have his photograph taken with his hands and feet tied, and some pistols and a *gris-gris* in front of him.³⁴⁸⁹ The FDS did not explain why they took the photo, they just told P-0555 that, because he was a spy and a rebel from Bouaké, they would kill him as the rebels had killed their relatives.³⁴⁹⁰ As per his statement, P-0555 was then beaten until he passed out.³⁴⁹¹

1561. In the Response,³⁴⁹² the Prosecutor refers to P-0555's testimony that, after his encounter with the FDS where he was beaten,³⁴⁹³ at around 11h00 he was taken to 'la corniche',³⁴⁹⁴ 'a police brigade [or] a *gendarmerie*' in Cocody,³⁴⁹⁵ which he later described as a 'villa in Cocody belonging to the *gendarmerie* brigade

³⁴⁸⁵ P-0555, T-112 dated 6 December 2016, pp. 15-16.

³⁴⁸⁶ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0135, para. 34.

³⁴⁸⁷ P-0555, T-112 dated 6 December 2016, pp. 13-15; P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0135-0136, paras 36-37.

³⁴⁸⁸ P-0555, T-112 dated 6 December 2016, p. 23; P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0136, para. 42.

³⁴⁸⁹ P-0555, T-112 dated 6 December 2016, pp. 25, 30; P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0137, paras 45-46.

³⁴⁹⁰ P-0555, DECLARATION DE TEMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0137, para. 47.

³⁴⁹¹ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0137, paras 45, 47.

³⁴⁹² Response, para. 518.

³⁴⁹³ See VI.H.7 - FDS injured demonstrators.

³⁴⁹⁴ P -0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0138, para. 48.

³⁴⁹⁵ P-0555, T-112 dated 6 December 2016, p. 32.

allegedly'.³⁴⁹⁶ P-0555 confirmed that he was hit and some of those who had detained him, thinking he was a spy, wanted to execute him; however, a *gendarme* with a pink band around his arm explained that they had received an order to take all those arrested to the Police prefecture.³⁴⁹⁷ In his statement, P-0555 indicated that [REDACTED]³⁴⁹⁸[REDACTED]³⁴⁹⁹[REDACTED]³⁵⁰⁰[REDACTED].³⁵⁰¹ P-0555 stayed at the *Préfecture de Police* for around two weeks before being transferred to the MACA,³⁵⁰² where the Police officers threatened to kill him and he was beaten.³⁵⁰³

1562. Although P-0555's testimony confirms the mistreatment of civilians, it does not support the Prosecutor's case. On the contrary, the evidence that the orders received were to detain instead of kill the demonstrators contradicts the proposition that the FDS was deployed to commit violent crimes against demonstrators.

³⁴⁹⁶ P-0555, T-112 dated 6 December 2016, p. 36.

³⁴⁹⁷ P-0555, T-112 dated 6 December 2016, p. 37; *see also* P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0139, para. 52.

³⁴⁹⁸ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0138, paras 50-51.

³⁴⁹⁹ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0138-0139, paras 52, 57.

³⁵⁰⁰ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0139, para. 58.

³⁵⁰¹ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0141, para. 71; *see also* P-0555, T-112 dated 6 December 2016, p. 42.

³⁵⁰² P-0555, T-112 dated 6 December 2016, p. 43; P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0142, paras 77, 81-82.

³⁵⁰³ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0138-0139, paras 89, 93.

e) Cocody University Residences

1563. This analysis now turns to the incidents narrated by witness P-0107, which purportedly took place after the FDS operation had officially ended.

1564. According to P-0107, whilst he was fleeing from the shootings near the RTI detailed above, he was hit in the knee by a bullet near the Cocody University.³⁵⁰⁴ Two young men who had been among the marchers helped P-0107 move to a patch of grass beside the tarmac.³⁵⁰⁵ Subsequently, P-0107 stated, he saw FDS personnel kill, with a machine gun, the two young men who had helped him.³⁵⁰⁶ P-0107 saw more than ten members of the FDS arrive in three black, green, and grey 4x4s with 'CECOS' written on the doors; P-0107 heard them say that they were going to kill the wounded³⁵⁰⁷ and then saw them kill four wounded people with their Kalashnikovs.³⁵⁰⁸ According to P-0107 they were in blue-green camouflage *gendarmérie* uniforms. P-0107 further stated that 'they were with CECOS' and that he could hear people speaking English.³⁵⁰⁹

³⁵⁰⁴ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0077, paras 89-91. For the discussion of P-0107's evidence regarding the perpetrators, *see* 1577 - The Prosecutor further refers to Sahanogo Sekouba who she alleges was 'kidnapped by the *Garde Républicaine* and tortured'. The documentary evidence for this victim states: '*chef de sécurité à la maison RHDP tombé dans un embuscade dev la Garde Republicain torture et traité de rebelle partant prendre la RTI [sic]*'. Solely on the basis of this information, which has little evidentiary weight, it is not possible to determine that the perpetrators belonged to the *Garde Républicaine*.

FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries.

³⁵⁰⁵ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0077, para. 93.

³⁵⁰⁶ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0077, paras 94-95. *Note* that P-0107 did not see who shot the young men, but he knew that they were FDS because he heard them call each other 'Mono'. P-0107 knew that it was a word used to identify uniformed personnel. *Note* too that P-0107 stated further that he saw people who had been shot and who had fallen on the road.

³⁵⁰⁷ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0077-0078, paras 95-96, 98.

³⁵⁰⁸ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 98.

³⁵⁰⁹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0077-0078, paras 96-101.

1565. P-0107 stated that a member of the FDS told P-0107 that he was going to finish him off. The members of the FDS then asked P-0107 if he was one of the marchers, which P-0107 denied. The FDS member told him they would take him to their leader.³⁵¹⁰ The FDS member took P-0107 together with an asthmatic boy and his brother in a 4x4 vehicle to a big building where their leader was. The leader was wearing a green and red short-sleeved army jacket, with trousers the same colour as his shirt which had three stripes on it.³⁵¹¹ The leader told the men to get rid of P-0107 because he was bleeding a lot. P-0107 and the asthmatic boy and his brother were taken to Cocody CHU. The brother stayed in the car with the FDS members who were beating him and telling him that they were going to kill him. P-0107 thought that the asthmatic boy (who had been choked by the teargas)³⁵¹² was already dead before arriving at the hospital, and he was later told by a doctor that the boy had died.³⁵¹³

1566. From P-0107's account, it seems that the FDS members to whom he was referring were not acting within the framework of the FDS operation described in Section V.B.2. Although it is known that irregular groups took part in the repression of the RTI march, the information in this respect is scarce. In this regard, most of the evidence on record relate to the GPP.³⁵¹⁴ However, but what is known about the GPP participation in the RTI march, the description provided by P-0107 would not suggest that the individuals to whom he referred were GPP. There is also some evidence of mercenaries, described in more detail below in 6.c). Even less clear than the affiliation of these individuals, are their motives. It

³⁵¹⁰ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 100.

³⁵¹¹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078-0079, paras 101-102, 104.

³⁵¹² P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 101.

³⁵¹³ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0079, paras 105-107.

³⁵¹⁴ See VI.H.6 - FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries.

seems strange that they would ‘finish off’ the wounded but still take P-0107 and the asthmatic boy to receive treatment in the hospital. Lastly, it is noted that there is no indication that P-0107’s was shot in the leg by these ‘FDS individuals’ nor is it suggested that they were responsible for the teargas that provoked the death of the asthmatic boy.

f) Other incidents in Cocody (unknown locations)

1567. This analysis now turns to two other victims who, according to the Prosecutor, died in Cocody. There is almost no information concerning the circumstances of their death.

(1) Killed – ‘Chérif’

1568. With regard to this victim, the evidence available is P-0555’s hearsay account regarding an incident concerning an individual who arrived at the *Préfecture* two days after P-0555. This person told P-0555 how he had sustained burn wounds.³⁵¹⁵ P-0555 stated that the victim told him that the perpetrators were ‘*des pro-Gbagbo*’, who had stopped him to check his identity. As per the account provided to P-0555, the perpetrators thought that he was from the family of a uniformed officer and so they put a mattress around him and burned him.³⁵¹⁶ P-0555 testified that this victim later died at the *Préfecture*.³⁵¹⁷ On the basis of this information, no inferences can be drawn with respect to the death of this victim. In particular, it is not clear why ‘pro-Gbagbo individuals’ would burn ‘Chérif’ after realising he was a family member of ‘uniformed officer’ – someone who,

³⁵¹⁵ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0142, para. 81; *see also* Response, p. 238, para. 484 (g).

³⁵¹⁶ P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0142, para. 81.

³⁵¹⁷ P-0555, T-112 dated 6 December 2016, p. 53, p. 63-64 (confidential); *see also* P-0555, DÉCLARATION DE TÉMOIN, 2 March 2015, CIV-OTP-0077-0128-R02 (confidential) at 0142, para. 81.

according to the Prosecutor's categorisation, would be identified as being aligned with the pro-Gbagbo camp.

(2) Killed - Togola Seydou

1569. The Prosecutor also refers³⁵¹⁸ to a victim whose body was found at *Lycée Technique* in Cocody.³⁵¹⁹ The documents concerning the death of this individual do not indicate any information about the perpetrators, except that a Police report states that the body was found at around 19h00 on the day of the march, showing bullet wounds and that, from the information collected, it appeared that the individual was ejected from a Peugeot 205 car.³⁵²⁰ As such, it is not possible to conclude that this victim was killed by the FDS, let alone in an effort to violently repress the civilian population.

4. Koumassi

(1) Killed - Timité Kounadi

1570. Lastly, the Prosecutor refers to a person³⁵²¹ who, according to three Police reports, was killed in Koumassi by a tear gas grenade to the chest, fired by the *Gendarmerie* (according to certain accounts) and/or by the Police (according to others).³⁵²² A further DGNP report states that the tear gas was fired by

³⁵¹⁸ Response, para. 473 (vi) (a).

³⁵¹⁹ FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0973.

³⁵²⁰ RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0515.

³⁵²¹ Response, pp. 238-239 (i).

³⁵²² RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511; TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0898; BQI NO. 249 DU JEUDI 17 DECEMBRE 2010, 16 December 2010, CIV-OTP-0045-0735 (confidential) at 0736-0737.

‘CECOS/BMO’ elements.³⁵²³ It is noted that the documentary evidence indicates that, at around 09h30 on the day of the march, demonstrators from Adjoukrou in Koumassi deposited the body near the Djè Konan market, around 100m from the 6th *arrondissement* Police station.³⁵²⁴ One of the reports additionally indicates that these demonstrators had been dispersed by the CRS.³⁵²⁵ Nothing further has been submitted regarding the sources of this information or the basis on which the perpetrator was identified in each of these reports. There is no indication that the FDS used tear gas with intent to kill the victim.

5. *Pro-Gbagbo forces arrested and detained demonstrators*

1571. The evidence on the record suggests that certain members of the FESCI had been apprehending armed individuals and bringing them to the FDS for detention. As per a BQI dated 16 December 2010, certain members of the FESCI detained marchers and took them to Police stations where they would be questioned and investigated by the authorities.³⁵²⁶ Reports prepared by the *Préfecture de Police D’Abidjan* confirm the arrest of 257 people in total, although the evidence does

³⁵²³ FAITS SAILLANTS DE LA MARCHE DU RHDP DU JEUDI 16 DEC 2010, 16 December 2010, CIV-OTP-0045-0973 (confidential) at 0974.

³⁵²⁴ RAPPORT DE PERMANENCE CENTRALE, 16 December 2010, CIV-OTP-0045-0510 (confidential) at 0511; TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0898; BQI NO. 249 DU JEUDI 17 DECEMBRE 2010, 16 December 2010, CIV-OTP-0045-0735 (confidential) at 0736-0737.

³⁵²⁵ TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0898.

³⁵²⁶ See BULLETIN QUOTIDIEN D'INFORMATION, 16 December 2010, CIV-OTP-0046-0027 (confidential). For the purpose of determining whether this constituted part of an attack against the civilian population, it is important to note that many detainees were released within days for lack of proof whereas the rest were released at trial for the same reason in the end of December 2010. See Situation des manifestants détenus à la Préfecture de Police d'Abidjan (PPA), 22 December 2010, CIV-OTP-0045-0999 (confidential); Liste des manifestants déférés, le mercredi 22 Décembre 2010, devant Le Parquet du Tribunal de Première Instance d'Abidjan Plateau, 29 December 2010, CIV-OTP-0045-1238; Compte rendu du rapport du Commissaire de Police du 1er Arrondissement, suite à la deuxième journée du procès des marcheurs du RHDP, 10 January 2011, CIV-OTP-0045-1432.

not indicate how many of these detainees had been arrested by the youth at the roadblocks.³⁵²⁷

1572. It is noted, in this regard, that P-0435 testified that, on the day of the march, he dispatched two groups of GPP members, the first one of about 30 elements to Cocody,³⁵²⁸ and the second one of about 20 elements to Adjamé, where they set up a security cordon from *Carrefour Djeni Kobena* to *Boulevard des Martyrs*, to intercept the marchers who were fleeing from Cocody where there was gunfire; if those intercepted were marchers, they were beaten and detained temporarily; the military authorities were then informed to come and collect those detained.³⁵²⁹ The GPP had *cordelettes*, synthetic fabric ropes with a lead cord inside, which they used to hit people; many people were injured.³⁵³⁰ P-0435 additionally testified that a CECOS BMO vehicle would often come and apprehend marchers and take them back to the base in 4x4s; more than ten people were picked up by the BMO in this way.³⁵³¹ According to P-0435, the members of the GPP were

³⁵²⁷ See MARCHE DES MILITANTS DU RASSEMBLEMENT DES HOUPHOUETISTES POUR LA DEMOCRATIE ET DE PAIX (RHDP) SUR LA RADIODIFFUSION TELEVISION IVOIRIENNE (RTI), 23 February 2011, CIV-OTP-0047-0485: report notes that 257 people were arrested, out of which 89 were liberated because there were no evidence against them and 165 referred to courts. Also SITUATION DES MANIFESTANTS DETENUS A LA PERFECTURE DE POLICE D'BIDJAN, 24 February 2011, CIV-OTP-0047-0533: Letter from Police General Inspector on 22 December 2010 to the Minister of Interior. 58 demonstrators of the 16 December march were charged/deferred for causing trouble to the public order, 63 appeared for the same reason before the tribunal of first instance of Abidjan, and 44 detained for further questioning. POINT DES INTERPELLES DES EVENEMENTS DU JEUDI 16 DECEMBRE 2010 ET JOURS SUIVANTS, 24 December 2010, CIV-OTP-0045-0717 (confidential): Police Report on detained people from the RTI march (dated 24. December 2010). Number of people questioned: 257. Detainees in total: 248. Deferred to tribunal du Pleateau: 158. Deferred to tribunal of Yopougon: 07. Total number of people deferred: 165. People released for lack of proof of culpability: 89. The report also lists the nationality of the detainees: 206 were Ivorians, 22 Burkinabes, 21 Malians, 01 Congolese, 02 Nigerians, 04 Guineans, 01 Mauritian. There were 09 women and 248 men.

³⁵²⁸ P-0435, T-89 dated 20 October 2016, pp. 70-71; P-0435, T-96 dated 2 November 2016, pp. 24-25.

³⁵²⁹ P-0435, T-89 dated 20 October 2016, pp. 66-67 (confidential).

³⁵³⁰ P-0435, T-89 dated 20 October 2016, pp. 68-69 (confidential).

³⁵³¹ P-0435, T-89 dated 20 October 2016, p. 70.

dressed in civilian attire, with white FDS armbands by which they could be recognised.³⁵³²

1573. According to P-0435, those dispatched to Cocody had two Kalashnikovs with them.³⁵³³ Those in Adjamé on the other hand did not have any lethal weapons on them. P-0435 testified that whereas they were equipped with *cordelettes*, they were instructed not to use any fire arms, unless the marchers intercepted turned out to be armed.³⁵³⁴ P-0435 also testified that it was through Bouazo that they obtained the instructions as well as the *cordelettes*.³⁵³⁵

1574. There is some evidence to suggest that such purported collaboration may not have been a result of a uniform understanding and/or agreement between the FDS and the GPP. P-0435 testified that the Police commissioner of the 7th *arrondissement* arrived with some elements and wanted to forcibly gain access to the premises of the GPP because he did not accept that they were intercepting marchers, beating them and detaining them; he asked for the marchers to be released. Then, however, CECOS BMO vehicles arrived and the commissioner no longer had any authority.³⁵³⁶

1575. In the context of arrests and detention of marchers, the Prosecutor refers to the hearsay account provided to P-0588 by his nephew.³⁵³⁷ As per the account, his nephew was beaten badly and taken to the 32nd *arrondissement* Police station by some neighbourhood ‘*jeunes*’ who were with ‘*corps habillés*’. According to the nephew’s account, many people had been arrested and the Police at the station

³⁵³² Note that the FDS elements working in civilian attire also used the white arm band (P-0435, T-93 dated 27 October 2016, pp. 31-32).

³⁵³³ P-0435, T-89 dated 20 October 2016, pp. 70-71; P-0435, T-96 dated 2 November 2016, pp. 24-25.

³⁵³⁴ P-0435, T-89 dated 20 October 2016, pp. 62, 70; P-0435, T-93 dated 27 October 2016, pp. 22-23; P-0435, T-96 dated 2 November 2016, pp. 24-25, 32-38. For further discussion on the instructions to the GPP concerning the RTI march, see V.B.3.b) - Instructions to the GPP.

³⁵³⁵ P-0435, T-93 dated 27 October 2016, pp. 4-5.

³⁵³⁶ P-0435, T-89 dated 20 October 2016, pp. 71-72.

³⁵³⁷ Response, para. 481 (x) (b).

had executed some of them against a post.³⁵³⁸ P-0588 later found out that his nephew had been transferred to the *Maison d'arrêt et de correction d'Abidjan* (MACA).³⁵³⁹ The victim additionally told P-0588 that on the way to the public prosecutor's office, the Police had shot and killed anyone who was badly wounded.³⁵⁴⁰ It is noted that the victim had serious mental problems after his arrest.³⁵⁴¹ On this basis, it can be concluded that P-0588's nephew was arrested by the '*jeunes*' who were with uniformed individuals. It can also be concluded that P-0588's nephew was mistreated by the police following his arrest.

1576. P-0230's nephew was also was beaten along with P-0230's brother. P-0230 provided a hearsay account of his nephew's arrest and [REDACTED].³⁵⁴² P-0230 stated that his nephew was at [REDACTED] for two weeks and was tortured every morning.³⁵⁴³ The nephew told P-0230 that there were thousands of marchers detained there; the men were separated from the women and every morning Police officers made them strip naked and beat them; they were also, *inter alia*, forced to eat from the floor.³⁵⁴⁴ As per the statement, every morning they were told that they were being taken to be killed.³⁵⁴⁵

³⁵³⁸ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090-0091, para. 49.

³⁵³⁹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0089, para. 44.

³⁵⁴⁰ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0090-0091, para. 49.

³⁵⁴¹ P-0588, DÉCLARATION DE TÉMOIN, 4 June 2015, CIV-OTP-0084-0079-R01 (confidential) at 0091, paras 52-53.

³⁵⁴² P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2647, para. 54.

³⁵⁴³ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2646, para. 52.

³⁵⁴⁴ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2647, para. 54.

³⁵⁴⁵ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2647, para. 54.

1577. The Prosecutor further refers to Sahanogo Sekouba who she alleges was ‘kidnapped by the *Garde Républicaine* and tortured’.³⁵⁴⁶ The documentary evidence for this victim states: ‘*chef de sécurité à la maison RHDP tombé dans un embuscarde dev la Garde Republicain torture et traité de rebelle partant prendre la RTI [sic]*’.³⁵⁴⁷ Solely on the basis of this information, which has little evidentiary weight, it is not possible to determine that the perpetrators belonged to the *Garde Républicaine*.

6. *FDS was reinforced by pro-Gbagbo youth, militia, and mercenaries*

1578. Below, several instances where ‘pro-Gbagbo’ youth, militia, and mercenaries are alleged to have been acting or present together in connection with alleged crimes during the RTI march have been discussed with a view to ascertaining coordination between them and the alleged pattern of crimes. In assessing the involvement of the pro-Gbagbo youth, militia, and mercenaries in reinforcing the FDS, the evidence discussed in relation to the arrest and detention of marchers is also incorporated by reference.

a) Involvement of the GPP

1579. There is evidence that the GPP participated in the operation to block the RTI march on 16 December 2010. Details of this collaboration have been described in the subsection above.³⁵⁴⁸ In addition, section V.B.3.b). analysed the evidence connected to the instructions the GPP purportedly received from individuals of the pro-Gbagbo camp in the days preceding the RTI march.

³⁵⁴⁶ Response, para. 534.

³⁵⁴⁷ P-0184, BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0098.

³⁵⁴⁸ VI.H.5 - Pro-Gbagbo forces arrested and detained demonstrators.

b) Involvement of the FESCI

1580. The Prosecutor refers to P-0107's account to allege that the FESCI fired at the demonstrators.³⁵⁴⁹ For his part, P-0107 stated that after the shootings near the RTI, he continued running towards the University of Cocody; at the university residence buildings there were '*groupes de Blé Goudé*', '*jeunes patriotes de la FESCI*' shooting at the crowd from the windows of the building and P-0107 was shot in the knee from behind.³⁵⁵⁰ As per the statement, P-0107 knew that it was members of FESCI shooting because it was them who lived there and he had seen them armed even before the crisis.³⁵⁵¹ P-0107 did not know which type of weapon they were using, but he heard the sound of Kalashnikovs.³⁵⁵² It is noted that the witness's statement was admitted pursuant to rule 68(3) and that he was not examined in detail on the perpetrators in court. It is also noted that when asked by defence counsel if he knew FESCI, he stated generally that he knew the name and saw them on TV in the news and that *jeunes patriotes* and FESCI were the same groups.³⁵⁵³ Noting that the witness was not in a position to sufficiently identify the perpetrators, it cannot be concluded based on his account that the FESCI fired at demonstrators during the march.

1581. The Prosecutor references [REDACTED] to support the allegation that the FESCI beat demonstrators with clubs, chains and machetes during the RTI march.³⁵⁵⁴ This testimony is also relevant to the allegation that there was an

³⁵⁴⁹ Response, para. 246 referring to P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential).

³⁵⁵⁰ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076-0077, paras 89-91. *See also* P-0107, T-108 dated 30 November 2016, p. 54; P-0107, T-109 dated 1 December 2016, pp. 62-64.

³⁵⁵¹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076-0077, para. 91.

³⁵⁵² P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0076-0077, para. 91.

³⁵⁵³ P-0107, T-109 dated 1 December 2016, pp. 35-37.

³⁵⁵⁴ Response, para. 246 referring, *inter alia*, to P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential).

‘offensive by youth, mercenaries and CECOS BMO personnel’.³⁵⁵⁵ However, it appears that the BMO elements in question arrived as the fight between the group of marchers and the FESCI students was ongoing, and then proceeded to launch teargas, fire their Kalashnikovs and throw grenades. P-0106 indicated in his statement that on the day of the march, whilst heading towards the RTI, he and his group were attacked and beaten by ‘*jeunes gens de la FESCI*’ wearing red bandanas around their heads, with some wearing black t-shirts.³⁵⁵⁶ As per the statement, they were armed with clubs, chains, machetes, iron bars, and pieces of wood.³⁵⁵⁷

1582. According to P-0106, FESCI often carried firearms, however on the day of the march he did not see them with any firearms.³⁵⁵⁸ P-0106 stated that he knew it was FESCI because he recognised a young man in the group of whom he knew that he was a member of FESCI.³⁵⁵⁹ The witness testified as to how he identified the FESCI in general but his description is rather vague.³⁵⁶⁰ Subsequently, the BMO, who according to P-0106 were ‘mercenaries’, arrived in a white van with ‘BMO’ written on each side and a machine gun mounted on the back; they started to throw tear gas canisters, fire their Kalashnikovs and throw grenades at the marchers.³⁵⁶¹ P-0106 stated that whilst FESCI beat the marchers and the BMO

³⁵⁵⁵ Mid-Trial Brief, para. 356.

³⁵⁵⁶ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0217, para. 30. *See* Response, para. 523.

³⁵⁵⁷ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0217, para. 30.

³⁵⁵⁸ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0218, para. 34.

³⁵⁵⁹ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0217, para. 32. *See also* P-0106, T-117 dated 7 February 2017, pp. 48-49.

³⁵⁶⁰ P-0106, T-117 dated 7 February 2017, pp. 48-49.

³⁵⁶¹ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0218, paras 33-34. It is noted that the witness considered that the CECOS unit was involved in tracking ‘bandits’. When asked to clarify what bandits meant, P-0106 testified that they were ‘people who were holding people up, engaging in robbery’, he added that ‘[s]ometimes the people who would assault people with knives, [...] those were the bandits’. *See* P-0106, T-116 dated 6 February 2017, pp. 78-79.

shot at them, FESCI shouted ‘Kill them! Hit them! Kill them!’³⁵⁶² He stated that as people were fleeing in all directions some fell and got up again, but others remained on the ground; as per the statement, P-0106 did not know whether they were dead, but he saw some people with gunshot wounds and others with blood on their clothes.³⁵⁶³

1583. As noted above, there evidence that certain members of the FESCI detained marchers on 16 December 2010 and took them to Police stations where they would be questioned and investigated by the authorities.³⁵⁶⁴ From the two accounts discussed herein, it can be concluded that certain members of the FESCI may have been involved in beating the marchers however, to what extent they may have been collaborating or acting together is unknown. In the case of P-0106, the FDS appears to have intervened in the clashes that erupted between the members of the FESCI and the marchers. In the case of P-0107, the witness was unable to sufficiently identify the perpetrators as members of the FESCI.

c) Involvement of mercenaries

1584. As regards the involvement of the mercenaries, there are several witnesses who appeared to have noted their presence in the context of the march. The evidence discussed hereinabove in relation to the alleged collaboration between the ‘pro-

³⁵⁶² P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0218, para. 34.

³⁵⁶³ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0218, para. 36.

³⁵⁶⁴ See BULLETIN QUOTIDIEN D'INFORMATION, 16 December 2010, CIV-OTP-0046-0027 (confidential). For the purpose of determining whether this constituted part of an attack against the civilian population, it is important to note that many detainees were released within days for lack of proof whereas the rest were released at trial for the same reason in the end of December 2010. See Situation des manifestants détenus à la Préfecture de Police d'Abidjan (PPA), 22 December 2010, CIV-OTP-0045-0999 (confidential); Liste des manifestants déférés, le mercredi 22 Décembre 2010, devant Le Parquet du Tribunal de Première Instance d'Abidjan Plateau, 29 December 2010, CIV-OTP-0045-1238; Compte rendu du rapport du Commissaire de Police du 1er Arrondissement, suite à la deuxième journée du procès des marcheurs du RHDP, 10 January 2011, CIV-OTP-0045-1432.

Gbagbo' youth, militia, and mercenaries is also recalled.³⁵⁶⁵ Certain portions of these pieces of evidence are discussed again below with respect to the locations that the witness identified with respect to their presence.

1585. As regards presence of mercenaries in Cocody, it is noted that P-0107 stated that he heard people, who he identified as Angolan and Liberian mercenaries recruited by Mr Gbagbo, speaking English.³⁵⁶⁶ They were with members of the FDS who, according to P-0107, were killing wounded individuals;³⁵⁶⁷ they were wearing blue-green *gendarme* fatigues and had an interpreter; P-0107 stated that he heard the interpreter say that they should leave because there were more wounded ahead.³⁵⁶⁸

1586. As regards the presence of mercenaries in Cocody, it is noted that [REDACTED] stated that, as she tried to escape following her encounter with the Police in Williamsville,³⁵⁶⁹ she saw other people amongst the Police officers who were not Police and who, once the crowd had dispersed, were walking around and arresting or shooting at people.³⁵⁷⁰ Some of them were wearing yellow mesh balaclavas, others were wearing fabric over their faces.³⁵⁷¹ [REDACTED] stated that she knew that they were Liberians because when people spoke to them, they replied that they did not speak French; they spoke English.³⁵⁷²

³⁵⁶⁵ See IV.D.2.d)(2)(a) - Alleged collaboration during the RTI March.

³⁵⁶⁶ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 99.

³⁵⁶⁷ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 98.

³⁵⁶⁸ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0078, para. 99.

³⁵⁶⁹ See VI.H.2.b) - Williamsville.

³⁵⁷⁰ [REDACTED]

³⁵⁷¹ [REDACTED]

³⁵⁷² [REDACTED]

1587. P-0230 also testified about the events in Cocody and stated that prior to the march, the commissioner of 7th *arrondissement* warned them about ‘*des miliciens et des mercenaires de Gbagbo*’.³⁵⁷³ P-0230 also recalled having noted the presence of Portuguese-speaking individuals with ‘*tenues de la gendarmerie ivoirienne*’ at *rue Lepic*.³⁵⁷⁴
1588. According to P-0106’s account concerning the events around Adjamé and the presence of FESCI and BMO together, it is noted that he considered that the BMO *were* mercenaries.³⁵⁷⁵ It is noted that the witness did not explain why he had that impression and/or what his criteria was to determine the identification of the individuals in this unit. It is also not known whether the witness considered that certain individuals within this unit may have been mercenaries or that the entire unit was composed of them.
1589. For Coulibaly Amidou,³⁵⁷⁶ one of the persons injured referred to by the Prosecutor,³⁵⁷⁷ the list of victims provided by P-0184 states that ‘Gbagbo’s mercenaries’ threw a grenade at the victim on the day of the march.³⁵⁷⁸ There is no further indication as how the perpetrator was identified.

³⁵⁷³ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2635, para. 41.

³⁵⁷⁴ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628 (confidential) at 2641, para. 44.

³⁵⁷⁵ P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0218, paras 33-34. It is noted that the witness considered that the CECOS unit was involved in tracking ‘bandits’. When asked to clarify what bandits meant, P-0106 testified that they were ‘people who were holding people up, engaging in robbery’, he added that ‘[s]ometimes the people who would assault people with knives, [...] those were the bandits’. See P-0106, T-116 dated 6 February 2017, pp. 78-79.

³⁵⁷⁶ See Annex E.1 persons injured, entry 17, relying on P-0184 List of Victims, CIV-OTP-0032-0054-0001-R03 at 0097.

³⁵⁷⁷ Response, para. 534.

³⁵⁷⁸ P-0184, BLESSE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0097.

1590. In conclusion, taking into account the evidence concerning the involvement of mercenaries, it can be concluded that mercenaries were present in Cocody and to the extent observed by [REDACTED], in Williamsville on the day of the march.

7. *FDS injured demonstrators*

1591. The Prosecutor alleged that there were 52 victims of injuries caused during the alleged repression of the RTI march. In respect of some of these injuries, there is direct and indirect testimonial evidence. For the remainder, of the allegations concerning the injuries, the Prosecutor relied on the list prepared by P-0184. In assessing the allegations concerning the injuries caused during the RTI march, testimonial evidence will be assessed first to determine whether they constitute a pattern of crimes. Having regard to the injuries sustained by witness that testified, the accounts provided by P-0106,³⁵⁷⁹ [REDACTED],³⁵⁸⁰ P-0230, [REDACTED],³⁵⁸¹ P-0547,³⁵⁸² P-0555 and two of his friends,³⁵⁸³ and P-0588 in respect of his nephew³⁵⁸⁴ are recalled.

1592. In respect of P-0230, it is noted that he was injured by shots that, to him, appeared to have been fired by the FDS.³⁵⁸⁵ According to P-0230, when he was on his way home from the RDR headquarters on 16 December 2010, there was shooting everywhere. He was struck bullet when he was at the backseat of a car near the *Lycée Technique*.³⁵⁸⁶ As per the statement of the witness, there were

³⁵⁷⁹ VI.H.6.b) - Involvement of the FESCI.

³⁵⁸⁰ VI.H.3.e) - Cocody University Residences.

³⁵⁸¹ See VI.H.2.b) - Williamsville.

³⁵⁸² VI.H.3.c) - Road to the PDCI headquarters.

³⁵⁸³ VI.H.3.d) - Carrefour Madame Thérèse.

³⁵⁸⁴ VI.H.5 - Pro-Gbagbo forces arrested and detained demonstrators.

³⁵⁸⁵ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2641, para. 59.

³⁵⁸⁶ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2649, para. 59.

forces de l'ordre everywhere and there was shooting in every direction. P-0230 stated that '*gendarmes dans les pick-ups*' were the ones shooting.³⁵⁸⁷ However, from his account, it is not possible to conclude with sufficient certainty that the FDS intended to shoot P-0230.

1593. As regards P-0547,³⁵⁸⁸ it is noted that the documentary evidence cited in support of his injuries only indicates that he received medical treatment for them. P-0547's testimony discussed earlier does not suggest that the CRS manning the roadblock intended to kill civilians.³⁵⁸⁹ The fact that he was beaten by *armed* individuals who seemingly were members of the *Gendarmerie* also indicates that these forces were not operating with the intent to murder demonstrators as such.

1594. In respect of the victim named Ibrahim, the Prosecutor referred to the testimony of P-0513,³⁵⁹⁰ who provided an anonymous hearsay account. She recalled having met a 'young man who had been hit by a bullet' who lived in her neighbourhood.³⁵⁹¹ The Prosecutor attempts to link this to P-0172's testimony, who saw someone being struck by a bullet at Macaci junction during the march.³⁵⁹² There is no indication in her testimony that this young man had been at Macaci junction on the day of the march. On the basis of limited information, it cannot be inferred that this individual was injured at Macaci junction.

³⁵⁸⁷ P-0230, DÉCLARATION DE TÉMOIN, 9 July 2013, CIV-OTP-0044-2628-R03 (confidential) at 2649, para. 59.

³⁵⁸⁸ See Annex E.1 persons injured, entry 5, relying on P-0547, T-13 dated 3 February 2016 (French), pp.9-72; Medical receipt, CIV-OTP-0073-1053; Medical receipt, CIV-OTP-0073-1054; Medical receipt, CIV-OTP-0073-1055; Medical receipt, CIV-OTP-0073-1056; Medical prescription, CIV-OTP-0073-1057; Medical prescription, CIV-OTP-0073-1058; Medical invoice, CIV-OTP-0073-1059-R01; Medical invoice, CIV-OTP-0073-1060; Photograph, CIV-OTP-0073-1061; Photograph, CIV-OTP-0073-1062; Medical document, CIV-OTP-0073-1064; Photograph, CIV-OTP-0073-1069.

³⁵⁸⁹ VI.H.3.c) - Road to the PDCI headquarters.

³⁵⁹⁰ Response, para. 531 (i).

³⁵⁹¹ P-0513, T-104 dated 23 November 2016, pp. 30-31 (confidential).

³⁵⁹² Response, para. 531.

1595. For Kane Abdoul Bassitou,³⁵⁹³ the Prosecutor relies on the list of victims provided by P-0184 was stopped by ‘Gbagbo’s militia’ in Anonkoua where their hand was burned by hot liquid.³⁵⁹⁴ There is no further indication as to how the perpetrators were identified and whether this happened during the RTI march in an effort by said ‘Gbagbo’s militia’ to repress it.
1596. There is evidence on the record to suggest that certain victims during the RTI march were injured by the youth that were identified as ‘pro-Gbagbo’. P-0363 stated that, later during the day of the march, he saw two injured young people in his neighbourhood in Abobo. The people accompanying the injured identified the person who shot them to P-0363 as someone from a group of ‘*jeunes patriotes*’ in Avocatier.³⁵⁹⁵
1597. In addition to this, for Diomadé Drissa,³⁵⁹⁶ one of the persons injured, the Prosecutor relies on the list of victims provided by P-0184³⁵⁹⁷ which states that the victim was stopped after the march by ‘*CECOS 21 et 22*’ and handed over to the ‘*jeunes LMP*’ who injured him using a machete.³⁵⁹⁸ There is no indication on how the identities of the perpetrators and the victim were determined. It can be concluded that the injury may have been caused by the ‘*jeunes LMP*’.
1598. In addition to this, for 20 of the 52 alleged victims of injuries,³⁵⁹⁹ the Prosecutor relies solely on the list of victims provided by P-0184,³⁶⁰⁰ which identifies the

³⁵⁹³ See Annex E.1 persons injured, entry 24, relying on P-0184 List of Victims, CIV-OTP-0032-0054-0001-R03 at 0100.

³⁵⁹⁴ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0100.

³⁵⁹⁵ P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R03 (confidential) at 0283, paras 35, 42.

³⁵⁹⁶ See Annex E.1 persons injured, entry 31, relying on BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0102.

³⁵⁹⁷ Response, para. 534.

³⁵⁹⁸ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0102.

³⁵⁹⁹ Response, para. 534.

perpetrators for each of these crimes as ‘*des forces de défense et de sécurité (FDS)*’.³⁶⁰¹ This document contains no further information about the perpetrators of the crimes, including the basis on which they were identified as being ‘FDS’. The types of injuries listed include those from firearms, injuries from bullets, injuries from shells, injuries from grenades, injuries from burns, beatings, and individuals being held captive, beaten and/or tortured.³⁶⁰² This document does not contain information about the conduct of the perpetrators from which inferences can be drawn as to their alleged motive. It also contains little to no information about the identity of the victims other than their name, gender, and, dates of birth. This does not permit an assessment of whether these individuals were taking part in the march or intending to do so.

1599. In support of her allegations, in the Mid-Trial Brief, the Prosecutor also pointed to evidence concerning three individuals who were injured on 17 December 2010. In respect of Touré Lasso,³⁶⁰³ it is noted that this victim’s injuries resulted from an assault by students from Cité Universitaire d’Abobo II. In respect of Sangaré Soumaila,³⁶⁰⁴ the victim suffered injuries from burns inflicted by people of a village in Cocody on grounds that this individual was carrying a machete. In respect of Oumar Banou,³⁶⁰⁵ a Malian national, was injured by a grenade and the documents provide no further information about the perpetrators.

³⁶⁰⁰ Response, para. 534.

³⁶⁰¹ See Annex E.1 persons injured, entries 27, 35-54. See also BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0093; 0095; with the exception of the entry regarding Ouattara Lacina Siontionvohoua at 0100, which simply references ‘FDS’.

³⁶⁰² BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0093-0095, 0100.

³⁶⁰³ See Annex E.1 persons injured, entry 10, relying on LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1164.

³⁶⁰⁴ See Annex E.1 persons injured, entry 11, relying on LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1164.

³⁶⁰⁵ See Annex E.1 persons injured, entry 15, relying on Crise post-électorale en Côte d’Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0299.

1600. In the Response, the Prosecutor argues that ‘the nature of the injuries sustained by the[se] victims – and the circumstances of the injuries described – correlate with the pattern [of] evidence demonstrating that pro-Gbagbo forces used live ammunition, fragmentation grenades and physical violence – sometimes with other weapons – to block and violently repress the 16 December 2010 march’.³⁶⁰⁶ While this may seem like a reasonable inference, it is premised on the unsubstantiated assumptions that all the victims listed were taking part in the march and that there were no other violent incidents in Abidjan that day. The reality is that far too little is known about any of these individual incidents for a reasonable trial chamber to draw any conclusions from this evidence.

8. *Unidentified Perpetrators*

1601. For four of the persons injured, the Prosecutor relies solely on the report of the *Conseil des Maliens*, which does not provide information about the perpetrators.³⁶⁰⁷ According to the report, three of the individuals were injured by bullets³⁶⁰⁸ and the fourth by a grenade.³⁶⁰⁹ According to the report, they are all Malian but there is no indication as to who fired the shots; it cannot be inferred that these individuals were killed by the FDS.

1602. For 16 of the persons injured on the day of the march,³⁶¹⁰ the Prosecutor relies solely on the list of victims provided by P-0184 that does not indicate the perpetrators of the crimes with respect to these victims.³⁶¹¹ The types of injuries

³⁶⁰⁶ Response, para. 533; *see also* Response, para. 534.

³⁶⁰⁷ Response, para. 532.

³⁶⁰⁸ It is noted that the location is provided for two of the victims. One was killed in Yopougon by a bullet. The other was killed in Treichville by a bullet.

³⁶⁰⁹ Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0299. Note that the one who was wounded by a grenade, was injured on 17 December 2010 and the others on 16th.

³⁶¹⁰ *See* Annex E.1 persons injured, entries 12-14, 18-19, 21-26, 28-30, 32-33.

³⁶¹¹ Response, para. 533.

listed include those from firearms,³⁶¹² bullet wounds,³⁶¹³ and grenades,³⁶¹⁴ an additional individual was paralysed.³⁶¹⁵ However, there is no indication of the circumstances in which these injuries may have been sustained and attributed to the FDS and/or ‘pro-Gbagbo’ youth, militia, or mercenaries.

9. *Events following the march*

1603. In respect of three of the victims, the Prosecutor alleged that they were killed on 18 December 2010.³⁶¹⁶ It is noted that in respect of entry 24, the victim was found in Abobo Avocatier and died from ‘*AAF*’ and there is no information contained in the post-mortem report that could indicate the perpetrator(s).³⁶¹⁷ It is noted that in respect of entry 25, the victim was found in Abobo Avocatier and the post-mortem report states that the cause of death was not determined and posits that it may have been due to ‘*traumatisme*’.³⁶¹⁸ There is no information about the perpetrator. As regards in respect of entry 26, it is noted that this victim was found to have died as a result of ‘*PAAF*’ at an unspecified location in Abobo on 18 December 2010.³⁶¹⁹ Without more information, it cannot be concluded that

³⁶¹² BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0100, 0101.

³⁶¹³ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0090, 0091, 0097.

³⁶¹⁴ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0090, 0099, 0100, 0101. It is noted that some say ‘*traumatisme a la grenade*’.

³⁶¹⁵ BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0099.

³⁶¹⁶ See Mid-Trial Brief, Annex E.1 persons killed, entries 24, 25, 26.

³⁶¹⁷ FICHE D'EXAMEN EXTERNE DE CORPS / [REDACTED] / No. UML: 95/2011, 10 May 2011, CIV-OTP-0084-4094.

³⁶¹⁸ FICHE D'EXAMEN EXTERNE DE CORPS / [REDACTED] / No. UML: 068/2011/IML, 9 May 2011, CIV-OTP-0084-4071.

³⁶¹⁹ FICHE D'EXAMEN EXTERNE DE CORPS / [REDACTED] / No. UML: 67, 9 May 2011, CIV-OTP-0084-4061.

these deaths are attributable to the FDS or ‘pro-Gbagbo’ youth or militia in their alleged efforts to repress the RTI march.

1604. The evidence suggests that the movement around Cocody later on the day of the march continued to be restricted. One of P-0107’s brothers told him that the way from Abobo at that time was difficult because there had been CECOS roadblocks all around Cocody.³⁶²⁰ It is noted however, that P-0107 stated that his brother paid the hospital staff to obtain a pass to let them through the roadblocks. The pass stated that P-0107 was sick, but not wounded; and with it, they were allowed through the CECOS roadblocks. P-0107 stated that he knew that they were CECOS because they were wearing badges with the CECOS insignia. As they left Cocody, P-0107 saw FDS personnel in balaclavas.³⁶²¹ P-0107 stated that they arrived in Abobo at around 15h00 or 16h00.³⁶²² P-0107 provided anonymous hearsay that the doctor who had treated him had fled because he was in danger for having cared for wounded marchers. P-0107 was also told that Mr Gbagbo had said that the wounded must not be treated and should be finished off because if they were to recover they would be witnesses to what had happened.³⁶²³ P-0107 was further told that the hospital staff had heard CECOS members say this, and other CECOS groups had come to the hospital to identify the wounded.³⁶²⁴ However, there is no reliable evidence on the record showing that any patients were actually harmed at hospitals.

³⁶²⁰ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0079-0080, paras 111-112.

³⁶²¹ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0080, paras 112-113. *See also* P-0107, T-108 dated 1 December 2016, p. 66.

³⁶²² P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0080, para. 113. *See also* P-0107, T-108 dated 1 December 2016, pp. 66-67.

³⁶²³ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0079, paras 108-110.

³⁶²⁴ P-0107, DÉCLARATION DE TÉMOIN, 25 March 2012, CIV-OTP-0020-0064-R04 (confidential) at 0079, paras 108-110.

1605. As regards the alleged crimes that took place on 17 and 18 December 2010, the Prosecutor relies³⁶²⁵ on a UNOCI Daily Situation Report dated 19 December 2010 which states that, on 17 December 2010, FDS elements raided the Abobo neighbourhood, breaking into private homes, firing gunshots ‘all night long’, and arresting several young men.³⁶²⁶ This document states that ‘[a]t least 18 people were reportedly killed in this operation’.³⁶²⁷ The Prosecutor further adduced³⁶²⁸ a report of the UN High Commissioner for Human Rights to the Human Rights Council dated 25 February 2011 which states that, on 17 and 18 December 2010, FDS members stormed four mosques, killing one person and injuring at least 27 others in total.³⁶²⁹ According to the report, a group of Police, *Gendarmerie* and Navy officers stormed a mosque in Grand Bassam, throwing tear gas; in reaction, ‘worshippers set fire to a vehicle belonging to the local Police commissioner as well as to his home’.³⁶³⁰

1606. As per the report, local security forces, reinforced by CRS members, subsequently ‘broke into private homes and opened fire on civilians with live ammunition’, killing one person and injuring a dozen others.³⁶³¹ The report further states that on the same day, CRS members fired shots and tear gas at

³⁶²⁵ Mid-Trial Brief, para. 369. *See further* Response, para. 486.

³⁶²⁶ DAILY SITUATION REPORT, 19 December 2010, CIV-OTP-0044-0868 (confidential) at 0870.

³⁶²⁷ DAILY SITUATION REPORT, 19 December 2010, CIV-OTP-0044-0868 (confidential) at 0870.

³⁶²⁸ Mid-Trial Brief, para. 370. *See further* Response, paras 487, 536.

³⁶²⁹ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d'Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0536, para. 25.

³⁶³⁰ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d'Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0536, para. 25. *See also* DAILY SITUATION REPORT, 19 December 2010, CIV-OTP-0044-0868 (confidential) at 0870-0871.

³⁶³¹ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d'Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0536, para. 25. *See also* DAILY SITUATION REPORT, 19 December 2010, CIV-OTP-0044-0868 (confidential) at 0871.

another mosque, injuring 17 people. Similar incidents were reported at two additional mosques.³⁶³²

1607. It is not known to what extent the information contained in the report of the UN High Commissioner for Human Rights is based on the UNOCI Report of 19 December 2010.³⁶³³ It is thus not possible to determine whether and, if so, to what extent these two documents corroborate each other. Given that these documents are the main available source of evidence about what allegedly happened,³⁶³⁴ and are largely composed of (anonymous) hearsay, no reasonable trial chamber could consider this as a sufficient basis to make findings against the accused.

10. Conclusion

1608. Despite the questionable quality of much of the evidence relied upon by the Prosecutor in relation to the events of 16-19 December 2010, it is clear that a considerable number of marchers were severely harmed by FDS or irregular forces loyal to Mr Gbagbo. It appears that in some cases, there was no apparent justification for the level of force used and in some instances, such as the rapes and executions, the behaviour was outright criminal. Although the evidence does not permit the making of adverse findings in this regard, it is likely that the total

³⁶³² Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d'Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0536, para. 25.

³⁶³³ DAILY SITUATION REPORT, 19 December 2010, CIV-OTP-0044-0868 (confidential).

³⁶³⁴ There is other evidence on the record dealing with alleged killings in the days following the RTI march. However, it is not possible to determine how this evidence relates to the allegations contained in the UNOCI and UNHCHR reports. *See* FICHE D'EXAMEN EXTERNE DE CORPS / Sylla Mohamed Soumaïla / No. UML: 95/2011, 10 May 2011, CIV-OTP-0084-4094 (confidential): the victim died on 18 December at around 11h30 in Abobo-Avocatier, in front of the *Commissariat du 32^e Arrondissement*, as a result of wounds from a firearm. FICHE D'EXAMEN EXTERNE DE CORPS / Ouattara Amara / No. UML: 068/2011/IML, 9 May 2011, CIV-OTP-0084-4071 (confidential): the cause of death was undetermined and the report indicates 'traumatisme'. BLESSEE2 / DISPARUS 2 / DECEDEES / DISPARUS / BLESSEES2 / DECEDEES2, undated, CIV-OTP-0032-0054-0001-R03 (confidential) at 0105: the victim was killed by 'les jeunes ébirié d'anonkoua' on 18 December 2010. No further information has been submitted regarding the identity of the victim. *See also* LISTE DES VICTIMES DE LA MARCHE DU RHPDP DES 16 ET 17/12/2012, undated, CIV-OTP-0045-1157 (confidential) at 1164 relied upon in respect of two victims – the victim that received second degree burns from 'the population of the village' under the pretext that the victim had a machete; and the victim that sustained serious injuries to the head and back from 'les étudiants de la Cité U d'Abobo II'.

number of killings/injuries was greater than the 87 victims for which the Prosecutor presented evidence.³⁶³⁵

1609. As noted at the outset, a lot of the evidence is anecdotal and more often than not it is impossible to develop a clear enough understanding of the circumstances in which violence occurred. The Prosecutor seems to assume that those using force never had a legitimate reason for doing so. However, it is important to bear in mind that the FDS had been given a mission to prevent the demonstrators from achieving their stated objective: to forcibly install a new director of the RTI. It is important to note, in this regard, that the evidence shows that, in a significant number of instances, the FDS started by using teargas and firing in the air before resorting to aimed shots and grenades.

1610. It is also relevant to note that it is not at all clear from the evidence whether the demonstrators complied with the instructions given to them by the authorities. It is also not clear how many demonstrators there were compared to the FDS troops and how they behaved towards them. What does appear clearly from the evidence is that the FDS often started by using teargas to disperse demonstrators before resorting to gunfire. There is also anecdotal evidence that in some cases FDS troops on the scene warned marchers against proceeding because they would encounter irregular fighters who they said would harm them. It is further significant to note that the GPP's role was apparently limited to apprehending demonstrators and handing them over to the authorities. All this is difficult to reconcile with the Prosecutor's claim that the violence that occurred on 16-19 December 2010 was pursuant to or in furtherance of a policy to attack the pro-Ouattara civilian population.

1611. Moreover, although there is evidence to suggest that the FANCI armed forces were deployed in the operation to stop the RTI march,³⁶³⁶ with one exception,³⁶³⁷

³⁶³⁵ See Response, para. 460. The Prosecutor discussed evidence in relation to 24 identified civilians and many other unidentified civilians, raped at least 11 women and girls and seriously wounded 52 identified civilians.

the evidence suggests that most of the victims were harmed by either the regular law enforcement forces (i.e. Police, *Gendarmerie*, and CECOS) or by irregulars (i.e. youths or militia). This undermines any suggestion that the presence of the army was designed to attack the civilian population.

1612. At the same time, it cannot be denied that there is anecdotal but disturbing evidence of some FDS units and others using excessive/lethal force against individuals who were injured or otherwise posed no immediate threat to them. There are also suggestions that mercenaries were involved in some instances of violence against demonstrators. Moreover, there is some evidence concerning FDS operations involving the use of force after the marchers had dispersed. However, the quality of the evidence is too low and the available information too scant to allow a reasonable trial chamber to draw any firm conclusions from this. What can be concluded on the basis of the available evidence is that there were excesses. However, whether this was due to some units/individuals acting out of control or whether the accused and/or senior FDS officers planned for or condoned such behaviour cannot be reliably determined on the basis of the existing evidentiary record.

1613. Finally, it is relevant to point out that the available evidence is incapable of supporting a finding of the existence of a pattern of the use of firearms/grenades against political demonstrators. First, in relation to the identified witnesses, it is not possible, on the basis of the available evidence, to determine who caused

³⁶³⁶ See V.B.2 - The FDS operation.

³⁶³⁷ This relates to the armed confrontation in Abobo in the morning of 16 December 2010. See VI.H.1.a) - PK18 and Carrefour Agripac.

their death/injuries in 63 out of 76 instances.³⁶³⁸ Second, even if all the identified victims could be attributed to the FDS or pro-Gbagbo irregular forces, this would still be only anecdotal evidence when seen in light of the scale of the RTI march and the hundreds of confrontations between marchers and law enforcement elements there must have been. There is thus no scope for any argument that the intent to attack the civilian demonstrators can be inferred from what happened on the ground.

I. 25 December 2010 – PDCI headquarters in Cocody

1614. The Prosecutor alleges that on 25 December 2010, FESCI members, aided by FDS forces and militia members, attacked PDCI headquarters in Cocody, wounding 11 people, including three by gunfire.³⁶³⁹ The OHCHR report described the incident as a raid conducted ‘by members of the [FESCI] aided by the FDS and some militiamen’ against the PDCI headquarters.³⁶⁴⁰ The DGPN compilation describes this incident as a confrontation between RHDP supporters and students ‘*de la Cité MERMOZ*’.³⁶⁴¹ It further states that the Police and the *Gendarmerie* intervened and this resulted in injuries to 12 students and 11 RHDP supporters,

³⁶³⁸ In the allegations, there are 24 victims killed and 52 victims injured totalling at 76 crimes. In respect of the 24 identified civilians alleged to have been killed, the evidence concerning 18 victims has been insufficient to conclude that their death was caused by the FDS and/or ‘pro-Gbagbo’ youth, militia, or mercenaries. There is evidence that one identified civilian was killed in Avocatier at the hands of a local militia [Lacina Bakayoko]. As regards Macaci junction, three deaths of identified civilians can be attributed to the FDS [Aly Dououre, Alabi Ismailai Amidou and Soumahoro Mohamed]. As regards Cocody, two deaths can be attributed to the FDS [Diabate Lacina and Kone Soulemane]. As regards the alleged injuries, it is noted that out of the 52 alleged, nine can be attributed to the FDS based on the evidence cited. This includes P-0230, P-0107, P-0106, P-0350, P-0547, P-0588’s nephew, P-0555 and two of his friends. As noted earlier, in respect of 20 of the alleged injuries, the Prosecutor has only cited P-0184’s list of victims that contains a reference to the FDS but often without any indication as to what happened.

³⁶³⁹ Mid-Trial Brief, para. 155(ix); Response, para. 255.

³⁶⁴⁰ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Cote d’Ivoire, 25 February 2011, CIV-OTP-0003-0527 at 0533-0534.

³⁶⁴¹ TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0921.

including three by bullets.³⁶⁴² Having regard to the contradictory evidence, it cannot be concluded that on 25 December, FESCI members were aided by the FDS and militia in raiding the PDCI headquarters. It is also noted that there are no deaths or rapes that are alleged to have resulted from this incident. The Prosecutor alleges that none of the FESCI members suffered from bullet injuries as a result of this incident but has cited no evidence in support of this allegation.³⁶⁴³

J. 18 and 19 January 2011 – RHDP demonstrations in Adjame and Attecoubé

1615. The Prosecutor alleges that between 18 and 19 January 2011, FDS, including ‘marine elements’ and CECOS accompanied by at least one civilian armed with a machete killed five persons, including a child, and wounded 17 others by gunshot in connection with demonstrations calling for civil disobedience organised by the RHDP in Adjamé and Attécoubé.³⁶⁴⁴ The UNOCI Daily Situation Report describes this incident.³⁶⁴⁵ The UNOCI Weekly Situation Report summarises the same incident,³⁶⁴⁶ as does the UNOCI Human Rights Monthly Report for January 2011.³⁶⁴⁷ The weekly and the monthly reports contain an almost verbatim account of the UNOCI Daily Situation Report. There is nothing to indicate that between the issuance of these reports further inquiries were made by the UNOCI office to further confirm the allegations contained there. For this reasons, these reports do not corroborate each other as it appears likely that they

³⁶⁴² TABLEAU RECAPULATIF CHRONOLOGIQUE DES EVENEMENTS: PERIODE DU 22/11/2010 AU 07/02/2011, 22 November 2010, CIV-OTP-0045-0793 (confidential) at 0921.

³⁶⁴³ Response, para. 255.

³⁶⁴⁴ Mid-Trial Brief, para. 155(xii); Response, para. 256.

³⁶⁴⁵ DAILY SITUATION REPORT, 20 January 2011, CIV-OTP-0044-0996 (confidential) at 0999-1000.

³⁶⁴⁶ DAILY SITUATION REPORT, 25 January 2011, CIV-OTP-0044-1350 (confidential) at 1353-1354.

³⁶⁴⁷ Monthly Report for January 2011, 1 January 2011, CIV-OTP-0044-0337 (confidential) at 0346-0347.

are based on the same source of information. In this regard, P-0441's testimony in respect of the UN Daily Situation Reports is also recalled.³⁶⁴⁸

1616. The Prosecutor further adduces a letter to the DGPN dated 10 February 2010, arguing that it partially corroborates the above information concerning this incident.³⁶⁴⁹ The letter reports that a body was found on 19 January in Adjamé Saint Michel and states that the victim died of stab wounds and bullet injuries.³⁶⁵⁰ It also states that when the Police went to the location where the body had been found, people threw stones at them and some shots were heard, following which the policemen returned to their base. It further states that, according to the family of the victim, a CECOS team was alleged to be responsible for his death.³⁶⁵¹ It is also noted that the name and age of the victim in the UN reports does not match the letter to the DGPN.³⁶⁵²

1617. This incident has not been proven to have occurred as alleged. As noted above, there is contradictory information concerning the victims and it also cannot be concluded that the DGPN letter refers to the same incident as described in the UNOCI reports, let alone that it corroborates the information in the UNOCI documents that the perpetrators of the killing of at least one of the victims was a unit of CECOS.

³⁶⁴⁸ See VI.A - Introduction.

³⁶⁴⁹ Response, para. 256.

³⁶⁵⁰ Découverte du corps sans vie de BAMBA Mamadou à Adjamé Saint Michel, 10 February 2011, CIV-OTP-0045-1300 at 1300.

³⁶⁵¹ Découverte du corps sans vie de BAMBA Mamadou à Adjamé Saint Michel, 10 February 2011, CIV-OTP-0045-1300 at 1300.

³⁶⁵² The UN reports name a certain '32 year-old man, Souleymane Bamba, a soccer player of the Adjamé Athletic Club' (DAILY SITUATION REPORT, 20 January 2011, CIV-OTP-0044-0996 (confidential) at 0999-1000). The letter names the victim as 'BAMBA Mamadou, 21 ans' (Découverte du corps sans vie de BAMBA Mamadou à Adjamé Saint Michel, 10 February 2011, CIV-OTP-0045-1300 at 1300). The Prosecutor notes that the names are different (*see* Response, footnote 569) but does not explain how they could be the same person.

K. 19/20 February 2011 – Abobo Mairie

1618. The Prosecutor alleges that on 19 or 20 February 2011,³⁶⁵³ as RHDP members were preparing a rally at a roundabout near the Abobo *mairie*, FDS forces shot and killed two people.³⁶⁵⁴ The *Gendarmerie* report dated 20 February 2011 cited in support does not mention any deaths, and in fact reads that BAE fired shots into the air to disperse the crowd and that there were no incidents.³⁶⁵⁵ P-0184 testified that they were preparing an RHDP rally when ‘militants’ started shooting at the set-up;³⁶⁵⁶ following this, the witness and others fled into the *mairie*.³⁶⁵⁷ Recalling the discussion of this incident in the context of the FDS activities in Abobo,³⁶⁵⁸ it is clear from her testimony that P-0184 did not see the shooters but merely heard the shots,³⁶⁵⁹ and that she did not see the bodies of those allegedly killed during this incident: ‘we took refuge in the town hall, and people called us and let us know that some people had been killed’.³⁶⁶⁰ It is also noted that it was upon suggestion by the Prosecutor that the witness placed this incident on 19 February; the witness had previously been stating that it took place on 29 February.³⁶⁶¹ On this basis, a reasonable trial chamber could not conclude that this incident took place as alleged, particularly regarding the identity and/or affiliation of the perpetrators.

³⁶⁵³ It is noted that in the Mid-Trial Brief, the date on which this incident is alleged to have taken place is 19 February 2011; in the Response, it is 20 February 2011.

³⁶⁵⁴ Mid-Trial Brief, para. 155(xiv); Response, para. 257.

³⁶⁵⁵ JOURNEE DU : 19/02/2011 A18 HEURES AU 20/02/2011 A 16 HEURES, 19 February 2011, CIV-OTP-0043-0320 (confidential) at 0320.

³⁶⁵⁶ P-0184, T-215 dated 4 December 2017, pp. 18-19.

³⁶⁵⁷ P-0184, T-215 dated 4 December 2017, p. 20.

³⁶⁵⁸ See V.C.5 – FDS Activities in Abobo from Mid-January to 22 February 2011, paras. 1319-1320.

³⁶⁵⁹ P-0184, T-215 dated 4 December 2017, p. 21.

³⁶⁶⁰ P-0184, T-215 dated 4 December 2017, p. 21.

³⁶⁶¹ P-0184, T-215 dated 4 December 2017, pp. 19-20.

L. 24 February 2011 – Burning of a person in Yopougon Gesco

1619. The Prosecutor alleges that on 24 February 2011, a man suspected of being a ‘*Dozo*’ was stopped by a crowd and burned to death in Yopougon-Gesco.³⁶⁶² The daily Police bulletin reporting this incident indicates that the victim was lynched by the crowd for being suspected to be a ‘rebel’ and was burned alive before the Police arrived.³⁶⁶³ The report sent to the DGPN the same day similarly describes the incident as an individual suspected of being a ‘*dozo*’ being lynched by the population before being burned alive.³⁶⁶⁴ The relevant UNOCI Call Centre Daily Report demonstrates that there were two calls that day describing the incident as ‘*jeunes patriotes*’ having burned an individual who was considered to be an ‘assailant’.³⁶⁶⁵ The name of the victim from the daily Police report matches the name in the list of victims *CHU de Treichville*.³⁶⁶⁶ On this basis, a reasonable trial chamber could conclude that an individual suspected of being a ‘*dozo*’ or a ‘rebel’ was lynched by a crowd.

1620. It is noted that the Prosecutor alleged that the information from the call centre reports about this incident is ‘consistent’ with the evidence of the *jeunes patriotes* being identified as the perpetrators of the ‘killings and burnings at roadblocks’.³⁶⁶⁷ However, from the documents cited in support, there is no mention of this incident having taken place at a roadblock following an identity

³⁶⁶² Mid-Trial Brief, para. 155(xvi); Response, para. 282.

³⁶⁶³ BQI No. 38 DU JEUDI 24 FEVRIER 2011, 24 February 2011, CIV-OTP-0045-0391 (confidential) at 0393.

³⁶⁶⁴ BULLETIN QUOTIDIEN D'INFORMATION No. 0017, 24 February 2011, CIV-OTP-0045-0396 (confidential) at 0396.

³⁶⁶⁵ Rapport quotidien du 24 février 2011 (matin) / (du 24 février 2011 à 9h au 24 février, 16h), 24 February 2011, CIV-OTP-0044-1514 (confidential) at 1516, entries 18-19.

³⁶⁶⁶ EVENEMENT CHU TREICHVILLE « IDENTIFIES », undated, CIV-OTP-0029-0462 (confidential) at 0463, n. 55 cf. BQI No. 38 DU JEUDI 24 FEVRIER 2011, 24 February 2011, CIV-OTP-0045-0391 (confidential) at 0393.

³⁶⁶⁷ Response, para. 282.

check, as alleged by the Prosecutor. There is no other information pointed out by the Prosecutor that could lead one to draw this inference.

1621. Further, having regard to the methodology of how the call centre reports were prepared as well as the fact that they constitute anonymous hearsay, it is not possible to conclude solely on the basis of this report that this incident did in fact take place at the hands of the '*jeunes patriotes*' as alleged. In the circumstances, it is also not possible to exclude the possibility that this was a spontaneous killing at the hands of a crowd.

M. 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I)

1622. According to the Prosecutor, pro-Gbagbo forces, primarily incited by a speech given by Mr Blé Goudé during a rally on 25 February 2011, committed crimes against actual or perceived Ouattara supporters in Yopougon on 25-28 February 2011.³⁶⁶⁸ The Prosecutor submits that violence erupted after pro-Gbagbo youth from Yao Séhi neighbourhood left the rally and provoked an altercation with the residents of Doukouré,³⁶⁶⁹ a neighbourhood inhabited mainly by actual or perceived Ouattara sympathisers.³⁶⁷⁰ The Prosecutor alleges that the youth from Yao Séhi started throwing stones at the inhabitants of Doukouré and clashes between the two groups ensued on the *Boulevard Principal*, the main road that separates the neighbourhoods of Yao Séhi and Doukouré in Yopougon.³⁶⁷¹

1623. The Prosecutor claims that during the clashes, the Police of the 16th *arrondissement* police station located on *Boulevard Principal* collaborated with

³⁶⁶⁸ Mid-Trial Brief, paras 548, 866; Response, para. 620.

³⁶⁶⁹ Mid-Trial Brief, para. 552; Response, para. 637(ii).

³⁶⁷⁰ Mid-Trial Brief, para. 549; Response, para. 630.

³⁶⁷¹ Mid-Trial Brief, para. 549, 552; Response, para. 637(ii).

the Yao Séhi youth and joined them in the assault against Doukoré inhabitants.³⁶⁷²

In the course of their intervention in the clashes, the Police allegedly killed and injured civilians who, by reason of their ethnicity, nationality, or religion, were associated with the pro-Ouattara camp. The Prosecutor also alleges that on the same occasion the Lem Mosque located at the *Boulevard Principal* was invaded and burnt by pro-Gbagbo militia reinforced by members of the FDS and pro-Gbagbo youth.³⁶⁷³

1624. According to the Prosecutor's narrative, on 25 February 2011 and in the following days, the *jeunes patriotes* from Yopougon erected multiple roadblocks where they conducted identity checks and burned civilians alive.³⁶⁷⁴ Their targeted group, the Prosecutor alleges, 'was the population of Lem and Doukouré, and persons understood to be 'assailants' or 'rebels''.³⁶⁷⁵ The Prosecutor's contention is that in the period of 25-28 February 2011, civilians considered supporters of the opposition due to their Muslim faith, Dioula ethnicity, provenance of northern Côte d'Ivoire or other West African countries were systematically persecuted and killed by Mr Gbagbo's supporters in Yopougon.³⁶⁷⁶

1. The trigger of the violence

1625. The Prosecutor submits that on 25 February 2011, youths of Yao Séhi left a rally at the *Bar le Baron* in Yopougon after Mr Blé Goudé delivered a speech and went to the *Boulevard Principal* where they started throwing stones at the

³⁶⁷² Mid-Trial Brief, para. 553; Response, para. 400.

³⁶⁷³ Mid-Trial Brief, para. 554; Response, para. 400.

³⁶⁷⁴ Mid-Trial Brief, paras 557-560.

³⁶⁷⁵ Response, para 633.

³⁶⁷⁶ Response, para 630.

inhabitants of Doukouré.³⁶⁷⁷ The Doukouré people reacted by throwing stones back at the pro-Gbagbo youth from Yao Séhi - the resulting confrontation between these two groups will hereafter be referred to as ‘the clashes’.

1626. The evidence confirms that the clashes between the youth of Yao Séhi and Doukouré on the *Boulevard Principal* on 25 February 2011 were the start of a wave of violence that reverberated throughout Yopougon in the following days. However, as the Prosecutor alleges that the clashes happened because Mr Blé Goudé’s speech on that day incited animosity against pro-Ouattara civilians,³⁶⁷⁸ it is important to analyse the evidence that could reveal what triggered the start of the clashes. In what follows, the alleged causal link between the rally at the *Bar le Baron* and the clashes in the *Boulevard Principal* will be discussed.

1627. The content of the speech delivered by the accused at the *Bar le Baron* does not provide grounds for an inference that the clashes at the *Boulevard Principal* and the rally were related.³⁶⁷⁹ There is also no direct evidence to demonstrate such a connection. The relevant evidence on record pertains to the testimony of a member of the *Galaxie Patriotique* who attended the rally but did not go to the *Boulevard Principal* and witnesses who were at the *Boulevard Principal* when the clashes started but did not attend Mr Blé Goudé’s speech at the *Bar le Baron*. Accordingly, none of the witnesses called by the Prosecutor were present both at the rally when Mr Blé Goudé spoke and at the *Boulevard Principal* when the clashes took place. Their testimonies therefore do not constitute compelling evidence that the individuals present at the rally were the same as the ones throwing stones at the Doukouré residents that day.

³⁶⁷⁷ Mr Blé Goudé’s speech at the *Bar le Baron* is analysed in VIII.D.2 Mr Blé Goudé’s responsibility under article 25(3)(b) - Yopougon I.

³⁶⁷⁸ Mid-Trial Brief, para. 866; Response, para. 1254, 1271.

³⁶⁷⁹ The excerpt of his speech made available to the Chamber does not show Mr Blé Goudé using inflammatory language and/or inciting his supporters to violence (*see* RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:02 – 00:14:33). *See* IV.F.2.11) - 25 February 2011 - Mr Blé Goudé’s mot d’ordre at Bar le Baron in Yopougon.

1628. Some of the witnesses who saw the clashes at the *Boulevard Principal* said they knew that the pro-Gbagbo individuals who started the stone-throwing on that day had come from the *Bar le Baron*.³⁶⁸⁰ However, such evidence lacks probative value since it seems to have been based on speculation on the part of the witnesses and little useful information is provided as to the factual basis for these speculations. It should also be noted that witness P-0449, the only witness who was present at the *Bar le Baron*, stated that, to his knowledge, everyone went home after the rally.³⁶⁸¹

1629. In addition, it is possible that the clashes started before Mr Blé Goudé delivered his speech. P-0433 and P-0109 stated that the clashes started around 09h00.³⁶⁸² Yet, according to P-0449, the rally started sometime between 10h00-11h00, ended at around 13h00, and Mr Blé Goudé spoke for 20-30 minutes³⁶⁸³ - thus, the Prosecutor's assertion that the pro-Gbagbo youth left the *Bar le Baron* after Mr

³⁶⁸⁰ See for instance P-0442, T-19 dated 9 February 2016, pp. 80-81; P-0459, T-153 dated 8 May 2017, pp. 10-11.

³⁶⁸¹ P-0449, T-160 dated 23 May 2017, p.5. Note that the testimony of witness P-0449 according to which all attendees of the rally went home when it ended cannot be considered conclusive evidence to that effect either. This is so in particular because the rally was well attended (as the video demonstrates [RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:02 – 00:14:33] and P-0449 confirmed). Hence P-0449 would most likely not have known if *all* attendees in fact went home.

³⁶⁸² To be precise, P-0433 said the clashes started at around 09h00 and lasted until about 10h00 when the Police had to intervene to separate the two groups and P-0109 said that they started at 09h00-10h00 (P-0433, T-147 dated 26 April 2017, pp. 16-18; P-0109, T-154 dated 9 May 2017, p. 29). Two other witnesses according to whom the clashes took place in the morning could not provide evidence as to the time the disturbances started: P-0459 was [REDACTED], close to *Boulevard Principal*, and said that the disturbances began before noon, when the witness heard the noise of shots being fired (P-0459, T-152 dated 5 May 2017, pp. 68-71); P-0438 said that he arrived at the main road at around 11h00 and the stone-throwing was already ongoing (P-0438, T-150 dated 3 May 2017, pp. 7-8).

³⁶⁸³ P-0449, T-159 dated 22 May 2017, p. 37.

Blé Goudé's speech to start the confrontation on the *Boulevard Principal* would only be plausible if the clashes had begun at 10h30 at the very earliest.³⁶⁸⁴

1630. Witnesses P-0441 and P-0436 said that the disturbances on the *Boulevard Principal* took place in the afternoon of 25 February but the details in their accounts exclude the possibility that the pro-Gbagbo youth to which they referred had attended the rally at the *Bar le Baron* in the morning. According to P-0436, the youths who started to throw stones at the Doukouré residents at around 12h00 had been gathering in the main road from 09h00 at the latest.³⁶⁸⁵ It is apparent from P-0436's testimony that these individuals did not leave their positions on the *Boulevard Principal* that morning. Witness P-0441, for his part, said that the youths who threw stones [REDACTED] shortly after 12h00 were the same ones who had passed by [REDACTED] in the morning singing 'à chacun son Dioula'.³⁶⁸⁶ According to P-0441, these individuals did not come from the direction of the *Bar le Baron*.³⁶⁸⁷ The witness also testified that the youth passed by the [REDACTED] *Boulevard Principal* and returned when they were at the height of the bridge.³⁶⁸⁸

1631. It should be noted that there is evidence to suggest that the wave of violence in Yopougon might have been triggered by skirmishes involving the burning of buses by pro-Ouattara youth and the burning of mini-buses called *gbakas* by the

³⁶⁸⁴ This is a very conservative estimate as it assumes that Mr Blé Goudé was the first speaker of the rally and that the youths left the *Bar le Baron* immediately after his speech and went directly to the *Boulevard Principal*. Arguably, a more realistic estimate would be 11h00 at the earliest. This would account for a delay in the start of the speech (indeed, P-0449 said that the rally was scheduled for 10h00 but that it started between 10h00 and 11h00; see P-0449, T-159 dated 22 May 2017, p. 37) and would account for some time for the youth to leave the rally and walk to the 16th *arrondissement* Police station. Note further that a strict assessment would dismiss the suggestion by the Prosecutor altogether. That is, if the youth had attended the entire rally, and in the event that Mr Blé Goudé was the last speaker, the *jeunes patriotes* could have reached the *Boulevard Principal* only after 13h00.

³⁶⁸⁵ P-0436, T-148 dated 1 May 2017, pp. 17, 19.

³⁶⁸⁶ P-0441, T-35 dated 9 May 2016, pp. 44, 51.

³⁶⁸⁷ P-0441, T-38 dated 12 May 2016, pp. 40-41.

³⁶⁸⁸ P-0441, T-35 dated 9 May 2016, p. 44.

pro-Gbagbo youth in retaliation. According to the evidence, the buses were associated with the pro-Gbagbo camp, while *gbakas* were vehicles associated with Ouattara supporters.³⁶⁸⁹

1632. A report prepared by the Police commissioner Chief of the 16th *arrondissement* Police station, dated 28 February 2011, states that on 25 February at around 07h00 the Police was informed that a bus had been set on fire.³⁶⁹⁰ According to the report and the testimony of its author (witness P-0440), the Police officers who went to the relevant location were informed by local residents that young people with weapons had first shot in the air causing the bus driver to flee, and then set the bus on fire.³⁶⁹¹ The Police commissioner said that the Police conducted inquiries and were told by people at the Yopougon *parlement* (which was attended mostly by *jeunes patriotes*)³⁶⁹² that those who attacked the bus were RDR or RHDP youth and that in retaliation ‘they’ had to burn *gbakas*. According to the Police commissioner, eight *gbakas* were burned on 25 February, two of which were set on fire before 08h40.³⁶⁹³ The evidence produced by P-0440 further notes that shops owned by people from the north, who were assimilated to the RHDP, were also ransacked and pillaged.³⁶⁹⁴

1633. The information provided by the Police commissioner in his testimony and in his report received corroboration to some extent. Witness P-0436 confirmed having

³⁶⁸⁹ See VIII.D.2 – Yopougon I, para. 1998.

³⁶⁹⁰ COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029. *Note* that witness P-0440 confirmed the authenticity of the document in his testimony P-0440, T-157 dated 11 May 2017, pp. 17-18.

³⁶⁹¹ P-0440, T-157 dated 11 May 2017, pp. 16-19.

³⁶⁹² P-0440, T-158 dated 12 May 2017, pp. 50-51.

³⁶⁹³ P-0440, T-157 dated 11 May 2017 (French), p. 19; COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029.

³⁶⁹⁴ P-0440, T-157 dated 11 May 2017, pp. 18-19; P-0440, T-158 dated 12 May 2017, pp. 44-54; COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029.

heard that two buses had been burnt that morning in Yopougon. P-0436 also said that at around 09h00-10h00 he saw smoke which he was told originated from burning *gbakas*.³⁶⁹⁵ Similarly, P-0109 testified having heard buses were burnt; the witness also stated that he saw one *gbaka* on fire on 25 February 2011.³⁶⁹⁶ P-0438 too saw a *gbaka* being burnt around 10h00-10h30 on that day.³⁶⁹⁷

1634. Witness P-0449 suggested the existence of a connection between the burning of buses and *gbakas* and the event at the *Bar le Baron*. According to P-0449, some students arrived at the rally saying that their bus had been set on fire. P-0449 testified that some of these students came to seek advice from Mr Blé Goudé as to how to act in response; P-0449 was told that they subsequently attacked *gbakas*.³⁶⁹⁸ This is, however, insufficient evidence to lead to a conclusion that Mr Blé Goudé instructed the students in question to burn *gbakas*. P-0449's testimony with respect to the students burning *gbakas* is based on anonymous hearsay and is not established that these are the same incidents about which the Police commissioner testified and to which his report referred. It is noted, in this regard, that the evidence suggests that several *gbakas* were set on fire at different locations and at different times on 25 February 2011. There is therefore no conclusive evidence that the individuals in question burned *gbakas* after the rally, let alone that they did so after having sought advice from the accused. P-0449 also did not say whether or not the students to which he referred actually spoke to Mr Blé Goudé on that day. If anything, this portion of P-0449's testimony provides further confirmation that the skirmishes started before Mr Blé Goudé spoke at the *Bar le Baron* since, according to it, the students arrived at the *Bar le Baron* saying that earlier that morning their bus had been burned.

³⁶⁹⁵ P-0436, T-149 dated 2 May 2017, pp. 45-46.

³⁶⁹⁶ P-0109, T-155 dated 10 May 2017, pp. 46-48.

³⁶⁹⁷ P-0438, T-150 dated 3 May 2017, pp. 5-6.

³⁶⁹⁸ P-0449, T-160 dated 23 May 2017, pp. 3-8.

1635. There is no evidence to support the Prosecutor's claim that the rally at the *Bar le Baron* ignited the confrontations in Yopougon on 25 February 2011. The Prosecutor was also unable to demonstrate that the events of 25-28 February would not have happened in the same way had the rally not occurred. The evidence that a conflict between the pro-Gbagbo youth and the pro-Ouattara youth in Yopougon was already escalating before the *Bar le Baron* rally began, undermines the Prosecutor's theory that Mr Blé Goudé provoked the clashes on the *Boulevard Principal* and the ensuing violence against pro-Ouattara supporters in the following days. Having said that, the focus of this analysis now turns to what happened on the *Boulevard Principal* of Yopougon on 25 February 2011.

2. *The clashes on the Boulevard Principal (25 February 2011)*

1636. It appears from the evidence that the confrontation which started with two groups of youths throwing stones at each other escalated to the point of lethal force being used against civilians. However, it is difficult to construe a clear timeline of the events that supposedly took place on the *Boulevard Principal* on 25 February 2011.

1637. According to P-0109's testimony, the youth had been throwing stones for about two hours when, at around 12h00, militiamen intervened and started lobbing grenades and firing live bullets at the crowd.³⁶⁹⁹ P-0109 and others had to flee into the neighbourhood.³⁷⁰⁰ P-0109 said that the shooting calmed down at around 14h00.³⁷⁰¹ This is difficult to reconcile with P-0436's narrative according to

³⁶⁹⁹ Note P-0109 does not mention 12h00, yet says that when they were preparing for prayers at around 10h00, they heard noise on the main road and saw the youth throwing stones there which lasted for about two hours, after which the militia arrived (P-0109, T-154 dated 9 May 2017, pp. 35-36).

³⁷⁰⁰ P-0109, T-154 dated 9 May 2017, pp. 34-37.

³⁷⁰¹ P-0109, T-154 dated 9 May 2017, p. 42. Note that P-0109 thought that at around 17h00 it started again – P-0109 was at a football field right next to the Mosque when he and others fled into Doukouré again after they heard people shouting 'they're coming' (P-0109, T-155 dated 10 May 2017, p. 14).

which lethal weapons were used in the clashes on the *Boulevard Principal* only from around 16h00.³⁷⁰²

1638. Witness P-0433 also contradicted the other testimonial evidence with respect to the timing of events. P-0433 testified that at 09h00, when he was in front of the CNI-COCY office located next to the Lem Mosque, he saw the youth from Yao Séhi in the middle of the main road stopping vehicles and taking mobile phones.³⁷⁰³ He had to go home, because they started throwing stones at the roof. Shortly thereafter, the youth from Yao Séhi and Doukouré began throwing stones at each other.³⁷⁰⁴ According to P-0433, this lasted until about 10h00, when the Police intervened to separate them.³⁷⁰⁵ This portion of P-0433's testimony is at odds with the evidence P-0441 provided in relation to the clashes. Witness P-0441 observed the developments at the *Boulevard Principal* [REDACTED]. According to his testimony, a group of youths from the *parlement*, to which P-0441 also referred as militiamen, was singing '*à chacun son dioula*' from 09h00³⁷⁰⁶ but it was only around 12h00 that P-0441 noticed them throwing stones [REDACTED].³⁷⁰⁷

1639. The analysis of the evidence thus far demonstrates that the starting time and duration³⁷⁰⁸ of the clashes cannot be established with certainty.³⁷⁰⁹ At this point, it

³⁷⁰² P-0436, T-148 dated 1 May 2017, pp. 25-26.

³⁷⁰³ P-0433, T-147 dated 26 April 2017, p. 16.

³⁷⁰⁴ P-0433, T-147 dated 26 April 2017, p. 16.

³⁷⁰⁵ P-0433, T-147 dated 26 April 2017, pp. 18-21, 78-80.

³⁷⁰⁶ P-0441, T-35 dated 9 May 2016, pp. 44, 58.

³⁷⁰⁷ P-0441, T-35 dated 9 May 2016, p. 51; P-0441, T-36 dated 10 May 2016, pp. 47, 50, 52, 65-66.

³⁷⁰⁸ Note that several of these witnesses used the time of the call for prayers, which went out from the Mosques multiple times per day, as a reference to situate the events they narrated in their testimonies in a temporal framework. This arguably lends more credence to the time estimates they provided and therefore makes the discrepancies in relation to the timing of the events they narrated more problematic. See for example P-0436, T-148 dated 1 May 2017, p.19. See also P-0433, T-147 dated 26 April 2017, pp. 16-17; P-0109, T-154 dated 9 May 2017, p.35.

remains to be discussed in more detail what, according to the witnesses, happened during the confrontation between the inhabitants of Yao Séhi and Doukouré on the *Boulevard Principal*. Below, the account of the three witnesses who testified having been present during the clashes will be described in more detail. These are witnesses P-0436, P-0442 and P-0109.³⁷¹⁰ This will be followed by a discussion of the contradictions in their testimonies. Thereafter, the analysis will address the question of whether there is sufficient evidence that the Police attacked pro-Ouattara supporters if all contradictions in the evidence were to be ignored by the Chamber.

a) Witness P-0436's account

1640. P-0436 testified that on 25 February 2011 pro-Gbagbo youths started gathering at the 16th *arrondissement* Police station and at the Saguidiba intersection from 09h00. When the call for prayers went out at noon, he noticed the youths moving towards Doukouré. They crossed a bridge which was located between Doukouré and the Police station and started throwing stones at a billboard with Mr Ouattara's picture which was situated at the entrance of Doukouré neighbourhood. After the 'pro-Gbagbo youth' tore up the billboard, they began throwing stones at the 'Doukouré people'. The inhabitants of Doukouré reacted by throwing stones back at the 'pro-Gbagbo people'. P-0436 explained that when this first skirmish took place, the pro-Gbagbo youths were on the *Boulevard*

³⁷⁰⁹ Note also the testimony of P-0459, a further witness who gave some limited insight into the clashes. He testified that during the morning of 25 February 2011 he was [REDACTED] on a road parallel to the *Boulevard Principal*. Around noon, he heard shots of small calibre weapons, and maybe Kalashnikovs, and subsequently two, three louder sounds from a weapon he could not identify. He also testified seeing bare chested youths pass by carrying looted items. Some of his friends went towards the main road, which was about 50-60m away, to see what was going on. According to P-0459, the situation was 'getting pretty crazy, it was chaotic'. Yet, P-0459 did not see the main road from where he was, and thus did not directly observe any of the events. P-0459, T-152 dated 05 May 2017, pp. 70-72.

³⁷¹⁰ Note that P-0442 was not mentioned in the previous discussion regarding the timing of the clashes. This is because P-0442 does not provide any specification in this regard. As to P-0433, he only provided information in relation to the beginning of the clashes. He went to his house [REDACTED] and thus was not present at the scene(s) thereafter.

Principal trying to advance into Doukouré. The ‘Doukouré people’ pushed the ‘pro-Gbagbo youth’ back to their original positions, one group retreated to the Police station and another group to Saguidiba.³⁷¹¹

1641. According to P-0436, at this point, the Police tried to calm them down: ‘the police intervened and told us to remain calm which is what we did’.³⁷¹² Following this, the Doukouré inhabitants left the *Boulevard Principal* and went back into their neighbourhood.³⁷¹³

1642. However, P-0436 said that the ‘crowd’ of Gbagbo supporters then ‘began to go by’. As they entered Doukouré, they started throwing stones and looting shops. Once again, according to P-0436, the inhabitants of Doukouré came out to defend their neighbourhood and successfully drove them away. The Police then came out to disperse the crowd using teargas. The ‘Doukouré people’ thus retreated into the neighbourhood. Shortly afterwards, the ‘pro-Gbagbo people’ returned to Doukouré and kept breaking down shops to loot. P-0436 testified that when they finished ransacking the shops, they started to break into houses. For a third time, the Doukouré residents fought back with stones and managed to push them back to the Police station and the Saguidiba intersection.³⁷¹⁴

1643. P-0436 testified that he then saw, from a distance of 100-150m, a person being beaten and burnt by the pro-Gbagbo crowd in front of the Police station.³⁷¹⁵ A few moments later, while the corpse was still burning, P-0436 observed a column of 4x4 vehicles driving from behind the crowd towards the Police station. As the cars entered the courtyard of the Police station, a group of people running

³⁷¹¹ P-0436, T-148 dated 1 May 2017, pp. 18-22; P-0436, T-149 dated 2 May 2017, p. 2.

³⁷¹² P-0436, T-148 dated 1 May 2017, p. 20.

³⁷¹³ P-0436, T-148 dated 1 May 2017, p. 22.

³⁷¹⁴ P-0436, T-148 dated 1 May 2017, pp. 22-23.

³⁷¹⁵ P-0436, T-148 dated 1 May 2017, pp. 23-27, 32-34; P-0436, T-149 dated 2 May 2017, p. 56. *Note* that the name of the victim was Bakayoko Lassina. The circumstances of death are detailed in the subsection which deals with the victims of this incident below.

alongside the vehicles shouted ‘general, general, general’; for this reason, P-0436 believes that Mr Blé Goudé was inside one of the 4x4s vehicles.³⁷¹⁶

1644. Less than five minutes after the 4x4 vehicles left the Police station, the Police came out firing warning shots as they marched towards Doukouré neighbourhood. P-0436 testified that one policeman turned back to collect some offensive grenades, which he then lobbed at the crowd. One of the grenades fell in front of [REDACTED] Siaka Bakayoko, who was right next to them, was struck by grenade fragments and died some 15 minutes later.³⁷¹⁷

1645. P-0436 left the main road just after a third grenade was lobbed, at around 16h00. P-0436 indicated that, following the lobbing of grenades, the Police advanced into Doukouré and fired ‘real bullets’ at people running in the side streets. Although P-0436 did not see anyone being hit by the bullets, according to the witness, the incident resulted in the deaths of twelve people.³⁷¹⁸

b) Witness P-0442’s account

1646. It is clear from witness P-0442’s testimony that according to him, the post-electoral crisis polarised the population of Yopougon, splitting it into two groups. As such, P-0442 made constant references to ‘them’, who in his words were the ‘pro-Gbagbos’, and ‘us’, the ‘pro-Ouattaras’.³⁷¹⁹

1647. According to P-0442, on the 25 February 2011 when the ‘pro-Gbagbos’ began moving into Doukouré neighbourhood, they first burned *gbakas* in front of the

³⁷¹⁶ P-0436, T-148 dated 1 May 2017, pp. 23-24.

³⁷¹⁷ P-0436, T-148 dated 1 May 2017, p. 24.

³⁷¹⁸ P-0436, T-148 dated 1 May 2017, pp. 24-26.

³⁷¹⁹ See for example: ‘Q. Now, who do you mean by "they"? Who are you talking about? A. Laurent Gbagbo's supporters. Q. How did you know these people were Laurent Gbagbo's supporters? A. They were the ones who were saying that we had no right to anything. It was them’. P-0442, T-19 dated 9 February 2016, p. 76.

Police station.³⁷²⁰ The pro-Gbagbos then advanced to the limits of Doukouré and started throwing stones at the inhabitants of the neighbourhood. The Doukouré people responded by throwing stones back at them. At this point, P-0442 and the Doukouré youth were on the main road. P-0442 testified that the pro-Ouattara youth then managed to drive the pro-Gbagbo youth back to the Police station³⁷²¹ because, he said, ‘we were stronger than them’.³⁷²²

1648. P-0442 testified that ‘pro-Gbagbos’ then came back from the area outside the 16th *arrondissement* Police station towards Doukouré with about ten policemen in front of them. The policemen were in-between the two groups, the pro-Gbagbo youth behind them closer to the Police station and the pro-Ouattara youth in front of them, closer to the Lem Mosque.³⁷²³

1649. P-0442 said that as they advanced, the Police told the ‘Doukouré people’ to retreat.³⁷²⁴ The ‘pro-Gbagbos’ behind the Police kept throwing stones and the Doukouré people responded by throwing stones back at them. At this point, P-0442 said, the Police started launching teargas and shooting live ammunition: ‘[t]hey shot teargas, they shot live bullets, they shot grenades everywhere in the crowd’.³⁷²⁵ P-0442 was struck by a grenade, injuring one of his limbs.³⁷²⁶ P-0442 tried to go the hospital on 25 February 2011 but due to the roadblocks along the way he was advised not to go that day.³⁷²⁷ P-0442 also remembered that Siaka

³⁷²⁰ P-0442, T-19 dated 9 February 2016, pp. 74-81; P-0442, T-21 dated 11 February 2016, pp. 2-5; *see also*. P-0442, T-20 dated 10 February 2016, p. 4 (confidential).

³⁷²¹ P-0442, T-19 dated 9 February 2016, pp. 80-81; P-0442, T-20 dated 10 February 2016, p. 5.

³⁷²² P-0442, T-21 dated 11 February 2016, p. 21.

³⁷²³ P-0442, T-19 dated 9 February 2016, pp. 80-81; P-0442 T-20 dated 10 February 2016, p. 7; *see also* P-0442, T-21 dated 11 February, pp. 26-27.

³⁷²⁴ P-0442, T-20 dated 10 February 2016, p. 8.

³⁷²⁵ P-0442, T-19 dated 9 February 2016, p. 81.

³⁷²⁶ P-0442, T-21 dated 11 February 2016, pp. 29-31.

³⁷²⁷ P-0442, T-20 dated 10 February 2016, pp. 14-15, 21-22.

Bakayoko fell, was picked up and transported to the hospital where he succumbed to his injuries.³⁷²⁸

1650. P-0442 testified that the intervention of the Police in the clashes made the ‘Doukouré people’ flee into their neighbourhood, and ‘[t]hat is when the Gbagbo activists came to ransack all of the shops because in front of us they wouldn’t have been able to do that.’³⁷²⁹

1651. P-0442 further testified that whilst the Police was shooting, a BAE tank drove up the road and parked opposite the Lem Mosque. P-0442 saw the BAE fire a flame at the roof of the Mosque. At that point, P-0442 said, people fled because they knew the BAE wanted to burn down the Mosque.³⁷³⁰

c) Witness P-0109’s account

1652. Witness P-0109 testified that on 25 February 2011, between 09h00 and 11h00, he was told that the youth of Yao Séhi had come into Doukouré neighbourhood and were looting shops and assaulting people.³⁷³¹ P-0109 went to the main road to see what was happening. The Yao Séhi people threw stones at the ‘Doukouré people’ who threw stones back and forced the ‘Yao Séhi people’ to retreat.³⁷³²

1653. P-0109 testified that the clashes between the two groups went on for some two hours until militiamen armed with Kalashnikovs, pistols and grenades arrived at the main road.³⁷³³ P-0109 testified that he was injured by the ‘grains’ of a grenade thrown by militiamen at the height of the bridge. Another grenade, he said, was

³⁷²⁸ P-0442, T-20 dated 10 February 2016, pp. 12-13 (confidential).

³⁷²⁹ P-0442, T-21 dated 11 February 2016, p. 41 (confidential).

³⁷³⁰ P-0442, T-20 dated 10 February 2016, pp. 15-17.

³⁷³¹ P-0109, T-154 dated 9 May 2017, pp. 29, 35.

³⁷³² P-0109, T-154 dated 9 May 2017, pp. 29-30.

³⁷³³ P-0109, T-154 dated 9 May 2017, pp. 34-37.

thrown at the Mosque.³⁷³⁴ The militiamen then entered Doukouré and began to loot houses and injure people. According to P-0109, the Police did not intervene in the clashes at the *Boulevard Principal*.³⁷³⁵ P-0109 stated that during those events, he did not see any uniformed officer.³⁷³⁶

d) The contradictions between the accounts of the three witnesses

1654. The accounts described above differ significantly from one another. In her submissions, the Prosecutor ignored most of these differences, only addressing the fact that, contrary to the testimonies of P-0436 and P-0442, P-0109 was certain that it was the militia and not the Police who intervened in the clashes. According to the Prosecutor, this contradiction should be ignored on the basis that P-0109 could have erroneously taken the Police for militia. The Prosecutor further states that, in any case, this discrepancy is irrelevant because both the militia and the Police were part of the pro-Gbagbo forces.³⁷³⁷

1655. The claim that the contradiction was caused by P-0109's confusion of Police officers with militia members is unpersuasive in light of the dissimilar ways in which the witnesses described the individuals who they said opened fire and threw grenades at the inhabitants of Doukouré. P-0109 stated that some of the elements he identified as militia wore civilian clothing while others were partially dressed in military fatigues and their faces were 'masked somewhat'.³⁷³⁸ In contrast, P-0442 said that the Police who intervened in the clashes wore khaki-

³⁷³⁴ P-0109, T-154 dated 9 May 2017, pp. 29-30, 36-37, 39.

³⁷³⁵ P-0109, T-154 dated 9 May 2017, p. 37.

³⁷³⁶ P-0109, T-154 dated 9 May 2017, p. 44.

³⁷³⁷ See Response, paras 623 a, 641(ii).

³⁷³⁸ P-0109, T-154 dated 9 May 2017, pp. 34, 38.

coloured camouflaged uniforms and helmets.³⁷³⁹ P-0436 similarly testified that they were wearing ‘green uniform, the green uniform of the police’.³⁷⁴⁰

1656. Apparent conflicts in potentially incriminatory evidence against the accused merit careful attention.
1657. To assess potentially contradictory evidence, it is necessary to establish whether the two (or more) witnesses who provided seemingly contradictory evidence were indeed referring to the same events in their respective testimonies. In the context of the clashes on the *Boulevard Principal*, this determination is made difficult because the Chamber was presented with partly overlapping, partly contradicting accounts and the witnesses all provided a different timeline for how the clashes unfolded.
1658. It is recalled that the beginning of this section noted the differences in the witnesses’ testimonies with regard to the exact time when the clashes started, which is relevant for the the allegation that Mr Ble Goudé’s speech provoked the clashes in Yopougon. Here, the focus of the discussion is the witnesses’ contradictions as to *what* happened, as opposed to *when* it happened. For the purpose of this analysis, the noted discrepancies in chronology will be disregarded and the focus will be only on whether or not the witnesses were referring to the same events in their testimonies.
1659. In relation to the three witnesses presently discussed, it is apparent that P-0436 and P-0442 were referring to the same ‘clashes’ in their respective testimonies. This is because P-0436 in his testimony mentioned having seen [REDACTED]³⁷⁴¹ the same event was also mentioned in P-0442’s account.³⁷⁴² According to P-0436,

³⁷³⁹ P-0442, T-20 dated 10 February 2016, pp. 7-8.

³⁷⁴⁰ P-0436, T-148 dated 1 May 2017, p. 25.

³⁷⁴¹ P-0436, T-148 dated 1 May 2017, pp. 24, 26.

³⁷⁴² [REDACTED]

witness P-0442 was right next to him when that happened.³⁷⁴³ Moreover, both witnesses testified having seen Siaka Bakayoko being hit by a grenade, which caused the victim's death.³⁷⁴⁴

1660. Arguably, the same is not true in relation to the testimony of P-0109. As stated previously, according to P-0109 the clashes between the pro-Gbagbo youth and the inhabitants of Doukouré took place in the morning of 25 February 2011 on the *Boulevard Principal*. In P-0109's account, the intervention of armed individuals occurred at around noon. In contrast, the clashes on the *Boulevard Principal* about which P-0436 and P-0442 testified, started, according to P-0436, at noon and it was sometime before or around 16h00 when lethal force began to be used against civilians.³⁷⁴⁵ Yet, the possibility that the witnesses were referring to two different events is improbable given that both P-0109 and P-0436 named the same person as one of the victims of the incidents they described.³⁷⁴⁶

1661. Having regard to the totality of the evidence above discussed, it is possible to infer that all three witnesses were in the same area on 25 February 2011. That being the case, had the Police intervened in the clashes in the way in which either P-0442 or P-0436 described, it would have been highly unlikely for P-0109 not to have noticed their presence.³⁷⁴⁷ Likewise, the presence of hooded

³⁷⁴³ P-0436, T-148 dated 1 May 2017, p. 47.

³⁷⁴⁴ Note that P-0442 only remembered that the victim died, but not how, whereas P-0436 said to have observed that the victim [REDACTED] hit by the same grenade (P-0436, T-148 dated 1 May 2017, pp. 33-34; P-0442, T-20 dated 10 February 2016, p. 13).

³⁷⁴⁵ Note that P-0442 did not mention the time at which he believed the clashes took place. In this analysis it is assumed that P-0436 and P-0442 would not have contradicted each other on this point. On this basis, it can be said that according to P-0442 and P-0436, the clashes took place in the afternoon. P-0436 stated that he left the main road around 16h00 when the third grenade was launched. Hence, the use of lethal force started, according to him, some time before 16h00. P-0436, T-148 dated 1 May 2017, pp. 25-26.

³⁷⁴⁶ P-0109, T-154 dated 9 May 2017, p. 41; P-0436, T-148 dated 1 May 2017, pp. 46-47). See also below, para. 1759.

³⁷⁴⁷ Note that, as mentioned above in this subsection, it is also not the case that P-0109 could have confused militia with the Police. P-0109 said that the militia elements in question were partially in military clothing (P-0109, T-154 dated 9 May 2017, pp. 34, 38); in contrast, the Police, according to P-0442, wore camouflage uniforms — khaki-coloured clothes and helmets. P-0442, T-20 dated 10 February 2016, pp. 7-8.

militia throwing grenades and shooting live ammunition at the population is unlikely to have gone unnoticed by P-0442 and P-0436, who would have been amongst the group of potential victims.

1662. The events which P-0436 and P-0109 narrated could not have taken place concomitantly. It should be recalled that in P-0436's narrative, the pro-Gbagbo youth who were gathered on the *Boulevard Principal* crossed the bridge and started advancing towards Doukouré at mid-day.³⁷⁴⁸ At the same time and in the same place, P-0109 said the militia attacked the Doukouré youth with grenades and live bullets.³⁷⁴⁹

1663. The accounts provided by P-0436 and P-0442 also conflict with one another. As the above description of their testimonies shows, each mentioned facts that the other did not mention.³⁷⁵⁰ To some extent, this could be explained by the possibility that the two were not together at all times when the stone-throwing on the *Boulevard Principal* took place. Yet, for instance, the fact that P-0442 did not mention having seen a person being beaten and burned in front of the Police station nor the convoy of 4x4 cars entering the station courtyard is surprising, given the significance of these two events. Similarly, it is not very plausible that P-0436 would not have noticed the Mosque being set on fire by BAE elements (who P-0442 said arrived in a tank), particularly in view of P-0436's physical proximity to the Mosque according to his own testimony.³⁷⁵¹ Notably, P-0436, in his testimony does not mention the burning of the Mosque and gives the impression of having learnt about Maguy 'le Tocard's attack at the Lem Mosque only later through other people in the neighbourhood.³⁷⁵² Yet, there are potential

³⁷⁴⁸ P-0436, T-148 dated 1 May 2017, pp. 18-22.

³⁷⁴⁹ P-0109, T-154 dated 9 May 2017, pp. 29-30, 36-37, 83-84.

³⁷⁵⁰ P-0436, T-148 dated 1 May 2017, pp. 33-34.

³⁷⁵¹ P-0436, T-148 dated 1 May 2017, p. 47; P-0436, T-149 dated 2 May 2017, p. 56.

³⁷⁵² P-0436, T-148 dated 1 May 2017, pp. 76-77.

plausible explanations for these incongruencies, so the witnesses' trustworthiness is not necessarily affected by them.

1664. What is more troubling is that P-0436 and P-0442 gave substantially different accounts of how the clashes of 25 February 2011 unfolded.
1665. In particular, the formation of the two groups being physically separated, with the Police in the middle and firing at the inhabitants of Doukouré, as P-0442 described it, is hardly compatible with P-0436's narrative, according to which the pro-Gbagbo people had already infiltrated Doukouré and were looting, before the Police intervened and used lethal force. Moreover, if the inhabitants of Doukouré had had the Police in front of them and one of the two groups of pro-Gbagbo youth behind (as P-0436 described it), the Police shooting, which P-0442 claimed was directed at Doukouré inhabitants, would have been likely to hit the pro-Gbagbo youth behind them as well, as the latter would have found themselves in the same line of fire.
1666. Therefore, while the accounts of P-0436, P-0442 and P-0109 are plausible when seen in isolation, they are incompatible in relation to a number of significant aspects of the narratives they provide. Since their respective accounts cannot all be entirely true at the same time, this raises serious questions about their truthfulness altogether. Considering that only one of the three testimonies can be truthful in its entirety and there is no possibility to determine which one this is, it would be difficult for a reasonable trial chamber to reach any conclusion based on this evidence.

e) The evidence concerning the Police

1667. The contradictions amongst the witnesses hamper the ability of any reasonable trial chamber to reach conclusions with regard to the participation of the Police in the clashes of 25 February 2011. This effectively renders moot any discussion about the Prosecutor's contention that the Police acted with discriminatory intent against the inhabitants of Doukouré. However, in light of the importance that the

Prosecutor attaches to the role of the Police in this context, the discussion below disregards the contradictions revealed in the holistic analysis of the evidence abovemade, to determine whether or not there would have been evidence that the Police acted with discriminatory intent if solely the testimony of P-0442 or P-0436 were to be considered and P-0109's evidence completely disregarded.

1668. It is recalled that in the account of P-0442, the Police opened fire when their elements were positioned between the 'Doukouré people' and the 'Yao Séhi people' with the two rival groups facing one another. As the officers had come from the 16th *arrondissement* Police station where the Yao Séhi youth was gathered, the Police had the Yao Séhi youth behind them and the Doukouré inhabitants (who had been protecting the entrance of their neighbourhood) in front. As the stone throwing between the two groups resumed, it evidently exposed the Police to the risk of being hit by the stones the Doukouré inhabitants were throwing at the Yao Séhi youths behind them and vice versa.³⁷⁵³ The Police shooting was thus possibly aimed at averting a situation which endangered their own physical integrity rather than at attacking the civilians in front of them. It is also of note that witness P-0442 stated that the Police intervened to protect the Yao Séhi youth because the population of Doukouré had the upper hand.³⁷⁵⁴ Whatever the case may be, there is no compelling evidence in P-0442's account that the Police used violence against inhabitants from Doukouré because they were perceived to be Ouattara supporters.

³⁷⁵³ Note that P-0442 seems to contradict himself with regard to whether they threw stones at the Yao Séhi when the Police stood in front of them. First, the witness said the Doukouré people were unable to resist because they were being hit by stones, so they did throw stones back. P-0442, T-19 dated 9 February 2016, p. 81. Note that P-0442 is unclear as to whether they threw stones at the Yao Séhi youths when the Police stood in front of them. First, the witness said they were unable to resist because they were being hit by stones, so they did throw stones back. P-0442, T-19 dated 9 February 2016, p. 81. Later on he however testified that since the Police was in between them, it was an issue for the Doukouré people to defend themselves against the people of Yao Séhi who were throwing stones from behind the policemen, because 'if you throw stones, they're going to say: 'Oh, you're throwing stones at the policemen.' P-0442, T-20 dated 10 February 2016, p. 8; see also P-0442, T-20 dated 10 February 2016 (French), pp. 8-9.

³⁷⁵⁴ P-0442, T-21 dated 11 February 2016, p. 21.

1669. In P-0436's account, the inhabitants of Doukouré and the pro-Gbagbo youth were physically mixed amid a situation of chaos during the events described. The pro-Gbagbo youth had entered Doukouré neighbourhood and were breaking into houses and shops. When the Police intervened in the confrontation, the Doukouré residents were attempting to expel the pro-Gbagbo youths from their neighbourhood for a third time. In this scenario, the teargas and defensive grenades which P-0436 said the Police threw upon leaving the station could not have been specifically directed at individuals of one group and not the other.
1670. In relation to P-0436's testimony that the Police were shooting at people running in the sidestreets of Doukouré, it seems that the pro-Gbagbo looters would have been as exposed to the gunfire as the Doukouré inhabitants. Moreover, even if the pro-Gbagbo youth were not present inside Doukouré neighbourhood at that specific moment, it would not be possible to infer that the Police targeted individuals perceived to be Ouattara supporters. Indeed, there is evidence to the effect that people who would normally be perceived as pro-Gbagbo also resided in Doukouré.³⁷⁵⁵
1671. Thus, regardless of which of the two accounts could be considered the truthful version of events, the conclusion would be the same either way: There is no evidence to warrant an inference that the Police specifically targeted the part of the population that was perceived to be pro-Ouattara.
1672. Before moving to the next topic of this analysis, one aspect of P-0436's testimony involving the actions of the Police of the 16th *arrondissement* on 25 February merits further discussion. According to P-0436, during the clashes on the *Boulevard Principal*, Mr Blé Goudé supposedly arrived at the Police station. Minutes after his convoy left that location, the Police started shooting. This

³⁷⁵⁵ See for example, P-0436 who testifies that all of the roadblocks in his neighbourhood Doukouré were set up by people living in that same neighbourhood. Naming a few of them, he also mentioned two of which he said were of Bété ethnicity. P-0436, T-148 dated 1 May 2017, pp. 44-45.

portion of P-0436's testimony seems to imply that Mr Blé Goudé ordered the Police to take action and commit crimes against the inhabitants of Doukouré. The first thing to be noted in this respect is that P-0436 did not see Mr Blé Goudé entering the Police station. P-0436 saw only a convoy of 4x4 vehicles arriving, and inferred that the accused must have been inside because people were shouting 'general, general, general' when they saw the car.³⁷⁵⁶ There is no evidence confirming that P-0436 was correct in his assumption that Mr Blé Goudé was inside one of the cars he saw.

1673. Moreover, witness P-0440 who was the Chief of the 16th *arrondissement* Police station, stated that he did not see Mr Blé Goudé on that day, and that he would have been informed if he had come there.³⁷⁵⁷ The only other witness who testified having seen a 4x4 car in which Mr Blé Goudé appeared to be inside on 25 February was [REDACTED].³⁷⁵⁸ However,[REDACTED] said that he saw the convoy in question at around 17h00 arriving at the intersection of the Kouté pharmacy³⁷⁵⁹ which is located close to Terminus 40,³⁷⁶⁰ a little further down on the *Boulevard Principal* than the Saguidiba intersection, when coming from the direction of the Lem Mosque.³⁷⁶¹ Although the time [REDACTED] said he saw Mr Blé Goudé in the 4x4 car matches with the time P-0436 said he saw the car leaving the Police station, it does not follow from witness [REDACTED] testimony that the violence escalated due to Mr Blé Goudé's presence in the area where the clashes were taking place. In witness

³⁷⁵⁶ P-0436, T-148 dated 1 May 2017, pp. 23-25.

³⁷⁵⁷ P-0440, T-158 dated 12 May 2017, pp. 80-81.

³⁷⁵⁸ [REDACTED]

³⁷⁵⁹ [REDACTED]

³⁷⁶⁰ [REDACTED]

³⁷⁶¹ See Mid Trial Brief, Annex C for the location of the Lem Mosque and the Carrefour Saguidiba; See P-0440, T-157 dated 11 May 2017, p. 63 for the location of Kouté.

[REDACTED]account, Mr Blé Goudé's car was seen several hours after the gunshots had started.³⁷⁶²

1674. In light of so much uncertainty, no reasonable trial chamber could conclude that the Police targeted the inhabitants of Doukouré on 25 February 2011; nor would it be possible to infer that Mr Blé Goudé went to the 16th *arrondissement* Police station and instigated the Police officers to attack civilians.

3. *The Attack at the Mosque (25 February 2011)*

1675. The analysis of the evidence related to the Lem Mosque is divided in two parts. The first part is a factual analysis conducted with a view of ascertaining what, according to the evidence, happened at the Lem Mosque on 25 February 2011. The second part of this analysis focuses on the proposition that pro-Gbagbo forces attacked the Mosque because the Muslim faith was associated with Mr Ouattara's electorate.

a) **The events at Lem Mosque**

1676. The Lem Mosque is located in Doukouré, on the eastern side of the *Boulevard Principal*, approximately 150m from the 16th *arrondissement* Police station.³⁷⁶³ The Mosque was looted and partially burned on 25 February 2011, as demonstrated by the footage of the building in the aftermath of the incident.³⁷⁶⁴ It

³⁷⁶² [REDACTED]

³⁷⁶³ See the map of Yopougon at Mid-Trial Brief, Annex C.9. See also P-0436, T-148 dated 1 May 2017, pp. 26-27.

³⁷⁶⁴ Yopougon Quartier Doukouré : La population sans défense terrorisée à l'arme automatique deux jours durant : Neuf morts dont quatre calcinés, plusieurs blessés par balles, une mosquée incendiée, 27 February 2011, CIV-OTP-0028-0229 at 0234; RTI Broadcast dated 5 March 2011, CIV-OTP-0061-0594 at 00:22:27-00:26:27 (showing images of burned copies of the Quran); RAPPORT D'EXPERTISE / Examen de la scène de crime de la mosquée de Sicogi-Lem et des environ à Yopougon, Abidjan, République de Côte d'Ivoire / Examens scientifiques complémentaires, 30 March 2015, CIV-OTP-0076-1952 (confidential) (P-0583's crime scene report on the Lem Mosque); P-0407, DÉCLARATION DE TÉMOIN, 14 January 2015, CIV-OTP-0071-2215-R02 (confidential) at 2224, para. 40.

is possible to conclude from the evidence that the attack on the Lem Mosque started when the clashes on the *Boulevard Principal* were ongoing. However, in view of the inconsistency of the evidence relating to the clashes, it is not possible to know what was happening in the street when the Mosque was looted and set on fire.

1677. The Prosecutor relies on the testimonies [REDACTED] As seen below, the accounts provided by the [REDACTED] witnesses largely converge.

1678. Witness [REDACTED] was seated just opposite the CNI-COCY office in the morning, but had to go home because some of the stones the youth from Yao Séhi and Doukouré were throwing at each other were hitting the roof and the paving stones at the office.³⁷⁶⁵ Around 11h00³⁷⁶⁶ the Mosque watchman, Mr Cissé Moustapha (Mr Cissé), [REDACTED] said that the militia³⁷⁶⁷ had entered the Mosque and were setting the Mosque and the office on fire. According to witness [REDACTED], he could see the smoke from his location.³⁷⁶⁸ In the evening, after the militia had left, probably between 17h00 and 19h00, [REDACTED] the damage to the Mosque and [REDACTED] what had happened to Mr Cissé, since [REDACTED] he was killed.³⁷⁶⁹ [REDACTED] testified having seen Mr Cissé's burnt remains outside the Mosque.³⁷⁷⁰ According to [REDACTED], part of the Lem Mosque had been burnt down and everything from the CNI-COCY office, such as items of furniture, computers, chairs, and refrigerators, had been taken away.³⁷⁷¹

³⁷⁶⁵ [REDACTED]

³⁷⁶⁶ [REDACTED]

³⁷⁶⁷ [REDACTED]

³⁷⁶⁸ [REDACTED]

³⁷⁶⁹ [REDACTED]

³⁷⁷⁰ [REDACTED]

³⁷⁷¹ [REDACTED] Note [REDACTED] that the looting continued on the following day, the 26 February 2011.

1679. The account [REDACTED] provides details as to what happened inside the Mosque during the attack. [REDACTED]³⁷⁷² Witness [REDACTED] testified that at some point between 14h00 and 16h00 ‘the youth or young militia men’ started to throw stones and break the windows of the CNI-COCY office located adjacent to the Mosque and not far from the main road.³⁷⁷³ Witness [REDACTED] then saw people wearing uniforms arriving in two 4x4 CECOS vehicles.³⁷⁷⁴ According to the witness, two uniformed men came out of the vehicles and started pouring fuel over the hangars of the traders by the fence and set them on fire, while other uniformed people looted the CNI-COCY office.³⁷⁷⁵

1680. [REDACTED] Mr Cissé tried to put the fire down but when he threw water on the flames, one of the uniformed men threatened him with his gun.³⁷⁷⁶

1681. [REDACTED] at some point after the two 4x4 vehicles had parked at the Mosque, another vehicle, namely a Kia dump truck, arrived.³⁷⁷⁷ The vehicle was driven by uniformed men wearing red berets.³⁷⁷⁸ [REDACTED] because of its licence plate, he knew the vehicle belonged to the *Garde Républicaine*.³⁷⁷⁹ According to the witness, the people inside the vehicle had also come to loot the Mosque.³⁷⁸⁰

³⁷⁷² [REDACTED]

³⁷⁷³ [REDACTED]

³⁷⁷⁴ [REDACTED]

³⁷⁷⁵ [REDACTED]

³⁷⁷⁶ [REDACTED]

³⁷⁷⁷ Note [REDACTED] was unsure about the timing of the arrival of the vehicles, and repeatedly said that he does not want to get it wrong. He said that it must have been in the afternoon, maybe somewhere in between 14h-16h, when the two 4x4 vehicles arrived [REDACTED], and that ‘[a]fter that, at around 1600 hours, just before torching the mosque, the Kia vehicle arrived’. [REDACTED] Later on however, he said that the Kia vehicle arrived after the [REDACTED].

³⁷⁷⁸ [REDACTED]

³⁷⁷⁹ [REDACTED]

³⁷⁸⁰ [REDACTED]

1682. According to [REDACTED] testimony, [REDACTED] a man identified as Agbolo and Maguy ‘le Tocard’³⁷⁸¹ coming out of the CNI-COCY office. [REDACTED]³⁷⁸²[REDACTED] When Mr Cissé informed the attackers that he had a *gris-gris* in his pocket, Maguy ‘le Tocard’ severed his arm with an axe.³⁷⁸³
1683. Subsequently, the attackers took Mr Cissé to a manhole outside the Mosque compound and tried to put him in there. It is not clear from [REDACTED] testimony if Mr Cissé was still alive at this point. [REDACTED] as Mr Cissé did not fit inside the manhole, they took him to the main road opposite the CNI-COCY, cut him into pieces and, using wood from a table, set them on fire.³⁷⁸⁴
1684. [REDACTED] CECOS members who had parked their vehicles at the main entrance and had been pillaging the CNI-COCY office came to the terrace of the minaret and broke down the door in the women’s prayer area to enter the Mosque.³⁷⁸⁵
1685. Inside the Mosque, they continued the pillaging. They loaded everything onto the Kia pickup truck which [REDACTED] belonged to the *Garde Républicaine*. Maguy ‘le Tocard’ and ‘Agbolo’ [REDACTED]³⁷⁸⁶ [REDACTED]burnt the Qurans [REDACTED]³⁷⁸⁷ The looting continued until roughly 18h00 [REDACTED].³⁷⁸⁸

³⁷⁸¹ The Prosecutor alleged that during the post-election violence, Maguy ‘le Tocard’ was one of the commanders of the GPP in Yopougon (*see* Mid-Trial Brief, para. 531; Response, para. 1174); *see also* IV.D.2.b)(4) - GPP training activities.

³⁷⁸² [REDACTED]

³⁷⁸³ [REDACTED]

³⁷⁸⁴ [REDACTED]

³⁷⁸⁵ [REDACTED]

³⁷⁸⁶ [REDACTED]

³⁷⁸⁷ [REDACTED]

³⁷⁸⁸ [REDACTED]

1686. It is worth stressing that according to the evidence provided [REDACTED], the youth did not participate directly in the murder and sexual assault of [REDACTED] victims at the Lem Mosque. The role of the pro-Gbagbo youth in the incident was limited to throwing stones at windows of the CNI-COCY office, climbing the fence, and possibly taking part in the looting of the Mosque. Also, the Prosecutor suggests that the youth was under the militia's command but this is not confirmed by the evidence.

1687. Similarly, there is no indication that the FDS participated in the murder of Mr Cissé and crimes committed [REDACTED]. Indeed, according to [REDACTED], neither CECOS nor the Garde Républicaine elements were present at the scene where the sexual assault and mutilation of Mr Cissé took place.³⁷⁸⁹ Furthermore, it is not established that the looting and burning of the Mosque was a concerted and coordinated effort between the FDS and/or the militia. In light of [REDACTED] testimony, it appears that the Prosecutor's contention that the FDS provided reinforcement for the pro-Gbagbo youth and militia members headed by Maguy 'le Tocard' is based on little more than speculation.³⁷⁹⁰

b) Targeting of Religious Institutions

1688. The Prosecutor maintains that the crimes allegedly committed in the Lem Mosque on 25 February 2011 were part of a pattern of crimes being committed

³⁷⁸⁹ [REDACTED]

³⁷⁹⁰ Response, para. 1272. With respect to the participation of the FDS in this incident, it should be noted that P-0438 and P-0442 mentioned the participation of BAE elements in relation to the attack at the Mosque. Witness P-0438 testified that he saw the Mosque burning. He also said that BAE threw tear gas grenades, some of which landed in the Mosque's courtyard. It should be noted that P-0438's account in this regard seems to be anonymous hearsay. P-0438, T-150 dated 3 May 2017, pp. 43-46. Witness P-0442 testified having seen BAE elements during the clashes who arrived in a tank and fired at the roof of the Mosque with what seems to be a flame thrower. P-0442, T-20 dated 10 February 2016, pp. 15-17, 70. As mentioned in the subsections above, there is however contradiction between P-0442 and the testimonial evidence provided by other witnesses of the developments observed during the clashes on the *Boulevard Principal*.

by pro-Gbagbo forces attacking religious institutions.³⁷⁹¹ It is implicit in the Prosecutor's case that pro-Gbagbo elements assumed that all Muslims were politically aligned to Mr Ouattara and were targeted for this reason.

1689. The evidence demonstrates that there was an element of animosity towards the Muslims connected to the attack at the Lem Mosque. For one, it is noted that [REDACTED].³⁷⁹² [REDACTED].³⁷⁹³ [REDACTED].³⁷⁹⁴

1690. It is not unreasonable to infer from this that Maguy 'le Tocard' and Agbolo had an anti-Muslim bias and discriminated against certain ethnicities. This very likely influenced their behaviour and may have been a catalyst for the violence against the [REDACTED] civilians inside the Mosque and the way in which the attack was carried. However, this is an insufficient basis to infer that the motive of the attack the Mosque was discrimination against all Muslims. Indeed, contrary to what the Prosecutor contends, it is doubtful that the Lem Mosque was invaded, looted and burnt solely by reason of it being an Islamic institution or as a result of the perpetrators' intent to harm Muslims as such.

1691. [REDACTED].³⁷⁹⁵ [REDACTED] [REDACTED].³⁷⁹⁶

1692. Regarding the potential motive of the perpetrators, it should also be noted that according to the evidence, the pro-Gbagbo side harboured a suspicion that pro-Ouattara rebels had weapons hidden at the Lem Mosque. P-0436 testified having heard that the Mosque was attacked because allegedly weapons were being hidden there.³⁷⁹⁷ Witness [REDACTED] also testified that there were rumours

³⁷⁹¹ Response, para. 336, 631(ii).

³⁷⁹² [REDACTED]

³⁷⁹³ [REDACTED]

³⁷⁹⁴ [REDACTED]

³⁷⁹⁵ [REDACTED]

³⁷⁹⁶ [REDACTED]

³⁷⁹⁷ P-0436, T-148 dated 1 May 2017, pp. 76-77.

that Maguy ‘le Tocard’ had said in a meeting that there were mercenaries with weapons hidden at the Mosque.³⁷⁹⁸ Witness P-0440, a Police officer, confirmed that he knew about such suspicions at the time and said that before the 25 February 2011 he had repeatedly been instructed to conduct searches for weapons in Mosques in his zone of jurisdiction.³⁷⁹⁹

1693. A search for weapons would better explain why Maguy ‘le Tocard’ and ‘Agbolo’ spent several hours in the Lem Mosque on that day. [REDACTED]³⁸⁰⁰

1694. It is also relevant that, as far as the evidence is concerned,³⁸⁰¹ Maguy ‘le Tocard’ and ‘Agbolo’ did not attack other Mosques in the neighbourhood. [REDACTED].³⁸⁰² [REDACTED].

4. Roadblocks in Yopougon (25-28 February 2011)

1695. Witnesses P-0440, P-0442, and P-0449 confirmed that there were roadblocks manned by *jeunes patriotes* all over Yopougon in the period between 25-28 February 2011.³⁸⁰³

³⁷⁹⁸ [REDACTED]

³⁷⁹⁹ Note that there is no evidence suggesting that the said rumours were true. P-0440 said he never found weapons in a Mosque during his searches (T-157 dated 11 May 2017, pp. 54-56). [REDACTED]

³⁸⁰⁰ [REDACTED]

³⁸⁰¹ Note that the Police report prepared by P-0440 mentions in a single sentence the pillaging on 25 February 2011 of a further Mosque, namely the one of Yopougon Sidéci, by *jeunes patriotes*. However, not only is this information exceedingly vague but its source is also unclear. P-0440 did not provide any clarification in his testimony. Apart from the Police commissioner’s report, there is no further evidence of pillaging of the Sidéci Mosque. Moreover, the Police report depicts the attacks of the two Mosques Sidéci and Lem as the consequence of the clashes that were initiated by the burning of a bus mentioned above, a situation that vandals seized as an opportunity to loot. The report does not contain any suggestion that the attacks of the Mosques were directed against Muslims, and there is also no suggestion of attacks against religious personnel with regard to the Sidéci Mosque (COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029; P-0440, T-158 dated 12 May 2017, pp. 2-3).

³⁸⁰² [REDACTED]

³⁸⁰³ P-0440, T-157 dated 11 May 2017, p. 21; P-0442, T-20 dated 10 February 2016, p. 17; P-0449, T-159 dated 22 May 2017, pp. 36, 38-42 (confidential).

1696. Some witnesses provided the location of roadblocks.³⁸⁰⁴ P-0449 mentioned at least five roadblocks in Niangon.³⁸⁰⁵ Additionally, there was a roadblock in Sicogi,³⁸⁰⁶ and another one by the 16th *arrondissement* Police station.³⁸⁰⁷ Witness P-0449 further mentioned one roadblock at the Laurier 14 *cité academique*, two large roadblocks between Gandhi Square and Abobo Doumé and a large one in Koweït neighbourhood.³⁸⁰⁸ Witness P-0438 mentioned three roadblocks in his testimony; a first one at Saguidiba intersection,³⁸⁰⁹ a second one at Selmer roundabout, near the Yopougon town hall, and a third one in the direction of Sicogi.³⁸¹⁰

1697. It should be noted that individuals who would, in line with the Prosecutor's categorisation, be associated with the pro-Ouattara camp,³⁸¹¹ also erected roadblocks or barricades following the events of 25 February 2011 in Yopougon. Several witnesses testified that the Doukouré youth erected barricades in their neighbourhoods to safeguard against attacks. Witness P-0109 mentioned one at the entrance to Doukouré neighbourhood, 6-7m from the *Boulevard Principal*.³⁸¹² According to him, the inhabitants of Doukouré further closed off the entrance to the neighbourhood, nearby the Mosque.³⁸¹³ The witness explained that they used

³⁸⁰⁴ See also P-0442, T-20 dated 10 February 2016, p. 20-22.

³⁸⁰⁵ Note that P-0449 also mentioned roadblocks at the Niangon market intersection; at the Timhôtel intersection; by the traffic lights in Lubafrique; and in Niangon-Nord, close to Discount Stockey.

³⁸⁰⁶ Note that the other one was between the Saint André church and the Saint André pharmacy.

³⁸⁰⁷ P-0449, T-159 dated 22 May 2017, p. 44.

³⁸⁰⁸ P-0449, T-159 dated 22 May 2017, pp. 39-44 (confidential). Note that witness P-0459 also testified about a roadblock in Koweït neighbourhood. P-0459, T-153 dated 8 May 2017, pp. 17-18.

³⁸⁰⁹ P-0438, T-150 dated 3 May 2017, p. 36; P-0438, T-151 dated 4 May 2017, p. 2.

³⁸¹⁰ P-0438, T-150 dated 3 May 2017, pp. 38-42.

³⁸¹¹ Note that this category encompasses: (i) actual or perceived political activists or sympathisers, and (ii) persons of Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire or other West African countries. See Response, para. 337; see also IV.B.1 - Identification of 'Political Opponents'.

³⁸¹² P-0109, T-155 dated 10 May 2017, p. 15. Note that the witness mentioned the 'tarred road', which is assumed to refer to the *Boulevard Principal*.

³⁸¹³ Note that P-0109 said that the latter was not exactly a roadblock, in the sense that they did not ask 'people to say who they were or where they were going' (P-0109, T-155 dated 10 May 2017, p. 15).

iron sheets and logs to block the entrance of Doukouré neighbourhood. Witness P-0436 confirmed that there was a roadblock about 30 to 50m from the Mosque, at the entrance of Doukouré neighbourhood, when one comes from Lem neighbourhood.³⁸¹⁴ Witness P-0433 also testified that the young people from his neighbourhood Sicogi-Lem set up a roadblock by the Mosque, on the road that leads into Doukouré.³⁸¹⁵

1698. The analysis below will focus on the evidence connected to the roadblocks erected by pro-Gbagbo youth since only these are of relevance to the Prosecutor's case.

a) Mr Blé Goudé's *mot d'ordre* at the *Le Baron Bar* and the erection of roadblocks

1699. The Prosecutor claims that 'through his *mot d'ordre* on 25 February 2011, Mr Blé Goudé instigated pro-Gbagbo youth and militia to erect roadblocks and commit violent action'.³⁸¹⁶ The evidence related to the content of Mr Blé Goudé's speech is discussed elsewhere in this decision.³⁸¹⁷ For the purposes of the present analysis, reference is made to the fact that, at the *Le Baron Bar*, Mr Blé Goudé told his supporters to check the comings and goings in their neighbourhoods and report to the '*présidents de quartier*' any stranger or '*personne étrangère*' entering Yopougon.³⁸¹⁸

³⁸¹⁴ P-0436, T-149 dated 2 May 2017, p. 7.

³⁸¹⁵ P-0433, T-147 dated 26 April 2017, pp. 6, 50-52. *Note* that witness P-0440 testified that 'the young people from the RHDP could not build roadblocks, barricades, on the street'. Yet, they built roadblocks at the entrances to and in their own neighbourhoods. P-0440, T-157 dated 11 May 2017, pp. 20-21, 79. Witness P-0441 also testified that on 25 February 2011 youth from the neighbourhood set up a roadblock in Doukouré at the Mosque. However, P-0441 said that this roadblock was torn down on that same day. P-0441, T-38 dated 12 May 2016, pp. 41-42.

³⁸¹⁶ Response, para. 1732.

³⁸¹⁷ Yopougon I - VIII.D.2.

³⁸¹⁸ Video excerpt from RTI broadcast of 25 February 2011 at 20h, CIV-OTP-0064-0087 at 00:12:33-00:16:00, (transcript at CIV-OTP-0063-2998 at 3001); see also Response, para. 620.

1700. The evidence demonstrates that there is indeed a connection between Mr Blé Goudé's *mot d'ordre* and the proliferation of roadblocks in Yopougon in the relevant period. Witness P-0449 (who was a *jeune patriote*) confirmed that it was Mr Blé Goudé who told them to set up roadblocks. P-0449 further testified that, as soon as the rally at the *Le Baron Bar* finished, he and other *jeunes patriotes* started erecting roadblocks in the streets of Yopougon.³⁸¹⁹ According to the witness, Mr Blé Goudé requested 'people [to] stop [...] the UNOCI vehicles from moving around'.³⁸²⁰ P-0449 further testified that:

[Mr Blé Goudé] asked us to set up roadblocks in the various neighbourhoods to keep the ONUCI personnel who were providing fresh supplies at various points, who were providing fresh supplies to the Golf. And what is more, there was mention made of vehicles belonging to the Forces Nouvelles and they were disguised as UN vehicles and they were going through various neighbourhood. [We] were being encouraged to be more and more vigilant in our neighbourhoods, to keep a very close eye on traffic, on people entering the neighbourhood and people leaving the neighbourhood.³⁸²¹

1701. In addition, the Police commissioner of the 16th *arrondissement* testified that, on the smaller roads giving access to 'the various neighbourhoods of Yopougon', pro-Gbagbo youth refused to dismantle the roadblocks unless Mr Blé Goudé instructed them to do so. According to the Police commissioner:

[T]hey absolutely refused to remove the roadblocks, because they said that it was Mr Blé Goudé who asked them to monitor the neighbourhood, so they were doing their job monitoring the neighbourhoods, and only Mr Blé Goudé could ask them to remove the roadblocks, and otherwise they were going to continue to monitor the neighbourhoods. [...] Every time we asked them to remove roadblocks, they would say no. They were asked to monitor their neighbourhood because there were rebels infiltrated, assailants, and therefore they had to monitor the neighbourhoods. And only Blé Goudé could ask them, only Mr Blé Goudé could ask them to remove the roadblocks.³⁸²²

1702. In the report in which he informed the DGNP of the crimes being committed at roadblocks, the Police commissioner suggested that Mr Blé Goudé should make a

³⁸¹⁹ P-0449, T-159 (public) dated 22 May 2017 p.38

³⁸²⁰ P-0449, T-159 dated 22 May 2017, p. 92.

³⁸²¹ P-0449, T-159 (public) dated 22 May 2017, p. 37.

³⁸²² P-0440, T-157 dated 11 May 2017, (public), pp. 22-23.

public announcement asking the youth to stop with the roadblocks.³⁸²³ He also testified having persuaded his boss to speak to Mr Blé Goudé about the matter. According to the Police commissioner, none of these efforts were successful.³⁸²⁴

1703. Whilst there is no indication that Mr Blé Goudé promptly acted to put an end to the roadblocks in Yopougon, there is also no suggestion on the evidence that, when Mr Blé Goudé delivered his speech on 25 February 2011, he knew, foresaw, or intended that crimes were going to be committed at the roadblocks. In particular, it would be difficult to see how Mr Blé Goudé's speech encouraging his supporters to report suspicious people to the authorities was in fact intended to convince them to take matters on their own hands.

1704. A report signed by the *Préfet de Police* of Abidjan, dated 4 March 2011, notes the commission of crimes at roadblocks which, the document notes, had been erected for security purposes following Mr Blé Goudé's appeal. The report refers to the authors of these acts of violence as delinquents (*'des délinquants qui commettent des infractions'*) mingled with members of the public manning the roadblocks.³⁸²⁵

1705. Reference is also made to a report of the *Agence Nationale de la Strategie et de l'intelligence* (ANSI report) concerning the roadblocks in Yopougon.³⁸²⁶ According to the report, some members of the *'groupes d'auto défense'* were

³⁸²³ CIV-OTP-0046-0029; P-0440, T-157, pp. 24-30 *Note* that the report does not name Mr Blé Goudé, but refers to the *'initiateur des barrages'* (CIV-OTP-0046-0029 at 0030). In his testimony, the witness clarified that this was a reference to Mr Blé Goudé.

³⁸²⁴ The Police commissioner testified that after he sent the report, he obtained no response from the DGNP. The witness said that he then met his boss and proposed that they go see Mr Blé Goudé to ask him to put an end to the roadblocks. The Police commissioner and his boss went to the COJEP headquarters in Yopougon Toits Rouges to meet Mr Blé Goudé. According to the witness, his boss spoke to Mr Blé Goudé in private for 20 to 30 minutes. When his boss came back and returned with the Police commissioner to their base, he did not say anything. The Police commissioner testified that, at this point, he 'didn't ask [his boss] any questions because [he] understood that it had been a failure' According to P-0440 Mr Blé Goudé did not act following the meeting with his boss. (P-0440, T-157 11 May 2017 (public) pp. 27-30).

³⁸²⁵ *Préfet de Police Report*, 4 March 2011 CIV-OTP-0045-0135.

³⁸²⁶ Report, *Des exactions commises par les membres des groupes d'auto-défense sur les populations de Yopougon*, 14 March 2011. CIV-OTP-0045-0127 at 0128.

taking advantage of roadblocks to commit crimes against Ivorians and foreigners residing in Yopougon. The report further notes that the population was feeling unsafe in the face of abusive behaviour at the roadblocks and extra-judicial executions. According to the ANSI report, the roadblocks were a consequence of the ‘noble action’ of groups of self-defence acting in response to the appeal of Mr Blé Goudé to guard against the intrusion of rebel combatants in Yopougon. The ANSI report recommends that, to avoid the racketeering, a list with all roadblocks should be compiled and adequate supervision provided to them.³⁸²⁷

1706. These three documents suggest that even if the Prosecutor had demonstrated that Mr Blé Goudé intended the commission of crimes to result from his *mot d’ordre*, it would still be difficult to infer the existence of a state or organisational Policy with such a purpose.

1707. Finally, it must be noted that it does not seem to be the case that all roadblocks of pro-Gbagbo youth in Yopougon were erected solely because of Mr Blé Goudé’s speech on 25 February. Notably, P-0097 testified that:

[t]he press revealed or reported the Blé Goudé rally at the Baron Bar in Yopougon. And in addition, they said that the youth started to set up roadblocks. They started to ransack mini buses that are called gbakas.[REDACTED] There was the version provided by the press that said that on instructions of Blé Goudé, this destruction began; [REDACTED] 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

³⁸²⁷ It is noted that the Prosecutor considers both the ANSI and the Police of the 16th *arrondissement* to be part of (or aligned to) ‘pro-Gbagbo forces’. With regards to the Police, this is implicit in her allegations that the Police officers of 16th *arrondissement* targeted perceived pro-Ouattara civilians on 25 February 2011. When it comes to the ANSI, reference is made to the Prosecutor’s allegations in Response ‘[Mr Gbagbo] was constantly informed of the events on the ground including through his intelligence services such as ANSI’(Response, para 1882); ‘[...] ANSI, an intelligence agency he [Mr Gbagbo] created in 2005, whose director reported directly to him [...] the ANSI sent reports to Mr Gbagbo on a regular basis on matters relating the use of young patriots in the armed forces [...] acts of violence committed by self-defence groups in Yopougon [...]’ (Response, para 2088 iv). The Prosecutor also cites the creation of ANSI as part of Mr Gbagbo’s Common Plan to stay in power in the Mid-Trial Brief, para 673. Finally, it is noted that the Prosecutor mentions the ANSI report of 14 March 2011 to allege that the ‘information about the commission of crimes of pro-Gbagbo youth was available to GBAGBO during the relevant period of the charges’ (Mid-Trial Brief, para 673). While the Prosecutor may be correct with respect to her allegations concerning the information available to Mr Gbagbo, the fact remains that the content of the report undermines her contention that the commission of crimes at roadblocks in Yopougon was intended by the accused.

of transport, et cetera, etcetera. 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.³⁸²⁸

1708. In light of this, the evidence of *gbakas* and buses being burnt by pro-Gbagbo and pro-Ouattara civilians on 25 February 2011 in bilateral skirmishes unrelated to Mr Blé Goudé's speech is recalled.³⁸²⁹ Moreover, the evidence demonstrates that the practice of erecting roadblocks might also have served the financial interests of the individuals controlling them. The objectives and manner in which the *jeunes patriotes* in charge of roadblocks operated will be discussed below.

b) Identity checks and targeting

1709. According to the evidence, the *jeunes patriotes* at roadblocks used to ask for money and check the identity of people wanting to pass. There is no evidence that the collection of money at roadblocks had any purpose other than the enrichment of the individuals involved. As for the identity checks, witnesses P-0440, P-0449 and P-0459 explained that this had the purpose of identifying the 'rebels' or 'assailants'.³⁸³⁰

1710. As said, witness P-0449 testified having taken part in the mounting and manning of roadblocks in Yopougon in the period of 25-28 February 2011. Although the witness did not mention the checking of IDs, P-0449 confirmed that the *jeunes patriotes* erected the roadblocks to prevent 'rebels' from infiltrating. According to P-0449, the pro-Gbagbo youth of Yopougon thought there were infiltrations because *Commando Invisible* was active in Abobo; moreover, when the *Forces*

³⁸²⁸ P-0097, T-49 dated 9 June 2016 (private), pp. 11-12.

³⁸²⁹ See VI.M.1 - The trigger of the violence.

³⁸³⁰ P-0459, T-153 dated 8 May 2017 (public), pp. 48-49; P-0440, T-157 dated 11 May 2017 (public), pp. 33-36; P-0449, T-160 dated 23 May 2017 (public) p. 33.

Nouvelles were going to arrive, they would need locals to know their way around.³⁸³¹

1711. P-0449 testified that '[they] would check people going into the various neighbourhoods and leaving'.³⁸³² When asked who they were looking for, he testified '[w]e were looking for any person with a weapon, any person who was suspicious, who did not live in the neighbourhood and who wanted to enter the neighbourhood.'³⁸³³

1712. Witness P-0097 also testified on the general functioning of the roadblocks erected in Yopougon during the period of 25-28 February 2011. According to the witness:

On the first day the roadblocks represented a form of systematic checking, control. If you got there with your vehicle, they would look in the glove compartment, they would look everywhere to make sure that you had no weapons. They would also check your identity and they would ask you where you were going. That was the first day of the roadblocks. After that, the roadblocks became a form of extortion. They just wanted some money so they could have something to eat. They would hit you up for a hundred or 200 francs.³⁸³⁴

1713. Further evidence demonstrates that at least some of the roadblocks operated with the primary purpose of extorting money from the population. For instance, P-0436 — who testified that all 'the boys' coming into or leaving Doukouré neighbourhood had to pay to pass through — denied having ever seen anyone showing an identity card at roadblocks.³⁸³⁵ Witness P-0442, who is Dioula,³⁸³⁶ also testified that his identity was not checked when he went through several roadblocks on 25-26 February 2011. According to the witness, the 'Gbagbo supporters' manning the roadblocks 'wanted money. And when you are at a

³⁸³¹ P-0449, T-160 dated 23 May 2017 (public), pp. 25-35.

³⁸³² P-0449, T-159 dated 22 May 2017, p. 41.

³⁸³³ P-0449, T-159 dated 22 May 2017, p. 42.

³⁸³⁴ P-0097, T-49 dated 9 June 2016, p. 14.

³⁸³⁵ [REDACTED] stated that women did not have to pay and that he [REDACTED] did not have to pay either.

³⁸³⁶ [REDACTED]

roadblock, you just give some money. [...]. You don't say anything. 2,000. And then that's the way it is.'³⁸³⁷ P-0442 said that he paid mainly not to have his identity checked: 'if I had said, "Oh, I'm not paying anything," then they would have checked [my identity]'.³⁸³⁸ P-0442 seemed to confirm that the people at these roadblocks would not differentiate between those perceived to be Gbagbo and Ouattara supporters when asking for money: 'they wanted money, not just from me. They wanted it from everybody, not only me'.³⁸³⁹

1714. There was no apparent standard behaviour adopted by all the *jeunes patriotes* manning the roadblocks. According to P-0459, 'in some cases they were more organised, but at other roadblocks the behaviour was more chaotic';³⁸⁴⁰ some roadblocks would check identities, others would not. At the roadblocks where the identities were inspected, youths applied different levels of rigour in their checks. Witness P-0459 said that whilst he had to avoid roadblocks in his neighbourhood, some other roadblocks were less strict in their checks and a person with an Ivorian ID could automatically go through without having the place of birth checked.³⁸⁴¹

1715. Although evidence indicates that some people who were identified as 'rebels' at roadblocks were killed, that does not mean that every person killed at roadblocks was necessarily killed because he or she had been identified as a rebel by the youth. P-0442's testimony that the *jeunes patriotes* at roadblocks would request payment from everyone is also relevant in this respect. Having regard to the totality of testimonial evidence, it is clear that the youth in question was not collecting voluntary contributions from passersby. People felt compelled to pay

³⁸³⁷ P-0442, T-21 dated 11 February 2016 (public), p. 8; *see also* P-0442, T-20 dated 10 February 2016 (public), pp. 18-19.

³⁸³⁸ P-0442, T-21 dated 11 February 2016 (public), p. 8.

³⁸³⁹ P-0442, T-21 dated 11 February 2016 (private), p. 65.

³⁸⁴⁰ P-0459, T-153 dated 8 May 2017 (public), p. 18.

³⁸⁴¹ P-0459, T-153 dated 8 May 2017 (public), pp. 16-18.

to go through. The *jeunes patriotes*' demands for payment could only be enforced through the threat of violence. Indeed, according to P-0440, at the roadblocks, 'people who refused to pay [to pass] might be killed.'³⁸⁴²

1716. Given the non-uniform operation of roadblocks, it is also questionable whether the *jeunes patriotes* manning them were indeed only after individuals who would – in line with the Prosecutor's categorisation – normally be perceived as Ouattara supporters.³⁸⁴³ It can be inferred from the evidence provided by witnesses P-0449 and P-0440 that individuals who would normally be perceived as pro-Gbagbo might also be deemed 'rebels' by the *jeunes patriotes*. P-0449 testified that they stopped and checked every person entering and leaving the area, no matter what their origin might have been. According to him, they were looking for anyone with arms, anyone suspicious who did not live in the neighbourhood.³⁸⁴⁴

1717. The Police commissioner of the 16th *arrondissement*³⁸⁴⁵ provided corroborative evidence to the effect that everyone who passed through roadblocks was searched. The Police commissioner testified that when he was in civilian attire, he was himself stopped a few times and had the trunk of his car searched. The Police commissioner said that when he identified himself as police officer, he

³⁸⁴² P-0440, T-157 dated 11 May 2017 (public), p. 22. *Note* that P-0442 expressed his belief that only pro-Ouattara individuals would be at risk of being harmed if they did not pay the money which youth demanded at roadblocks (P-0442, T-21 dated 11 February 2016 (private), p. 65). According to P-0442, had he refused to pay the youths in the roadblocks, he would have had his ID inspected and consequently his Dioula ethnicity revealed, which would put him at risk of being killed. Assuming that P-0442 was correct in his belief that payment was a condition not to have his ID checked, one would wonder what would happen to civilians whose ethnic/national background was associated with the pro-Gbagbo camp and refused to pay to go through these roadblocks. Would the youth simply let the person pass after getting to know her or his affiliation, thus waiving the payment? In such a scenario, the act of payment would almost become equivalent to an implicit 'confession' of being Northerner or *dioula*. In any case, if the primary purpose of the youth was to check IDs in order to detect 'rebels' or 'assailants', it would have made more sense for the youth in the roadblocks to first to check the ID of each and every person they stopped, and if the extortion of money was a further purpose, ask for money only in a second step.

³⁸⁴³ *Note* that this category encompasses: (i) actual or perceived political activists or sympathisers, and (ii) persons of Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire or other West African countries. *See* Response, para. 337; *see also* IV.B.1 - Identification of 'Political Opponents'.

³⁸⁴⁴ P-0449, T-159 dated 22 May 2017 (private), pp. 41-43.

³⁸⁴⁵ P-0440, T-155 dated 10 May 2017 (public), p. 59.

was told by the youth conducting the search that they were only doing their jobs to monitor the neighbourhood.³⁸⁴⁶ The Police commissioner also believed that the youth could have accused him of being a ‘rebel’ if he insisted that they should dismantle the roadblocks.³⁸⁴⁷

1718. Nevertheless, it is clear from the evidence that individuals belonging to groups of people associated with the Ouattara camp were far more likely to be considered as ‘rebels’ or ‘assailants’ by the *jeunes patriotes* and some were killed at roadblocks for that reason. Notably, the Police commissioner said that Ivorians from the North would be referred to as ‘rebels’, along with ‘all of those [...] from Burkina Faso, Mali, Niger and other countries’.³⁸⁴⁸ With respect to the youth checking identity at roadblocks, the Police commissioner of the 16th *arrondissement* stated the following:

They would ask for your identity card, and when they realised that you came from the north or from the neighbouring countries that I have mentioned, you are a potential assailant. [...] For those who were lucky with northern sounding names, they would be asked for ransom. They would pay some money and they would pass. But those who were unlucky would be considered assailants and rebels. They would be lynched and burned.³⁸⁴⁹

1719. In the same vein, P-0442 testified that the Gbagbo supporters who were stopping people at the roadblocks called all Ouattara supporters ‘assailants’.³⁸⁵⁰ Witness P-0459, who is from the north of the country, also said that he tried to avoid the kind of roadblocks where identity cards would be carefully checked because he was afraid of being killed.³⁸⁵¹

³⁸⁴⁶ P-0440, T-157 dated 11 May 2017 (public), pp. 19-22.

³⁸⁴⁷ P-0440, T-157 dated 11 May 2017 (public), pp. 36-40.

³⁸⁴⁸ P-0440, T-157 dated 11 May 2017 (public), p. 30.

³⁸⁴⁹ P-0440, T-157 dated 11 May 2017 (public), p. 33.

³⁸⁵⁰ P-0442, T-20 dated 10 February 2016 (public), pp. 20-21.

³⁸⁵¹ P-0459, T-153 dated 8 May 2017 (public), pp. 16-18.

1720. It is thus undeniable that there was a degree of discrimination in the selection of the individuals which would be considered ‘rebels’ by *jeunes patriotes* at roadblocks. However, attention must be paid to the considerable amount of evidence relating to civilians who could be perceived as Ouattara supporters and passed through these roadblocks unharmed. These will be described below.
1721. In his testimony regarding the payment and identity checks at roadblocks, witness P-0442 only mentioned instances in which he passed through roadblocks unharmed despite being Dioula. Similarly, witness P-0097, whose name is, according to him, ‘a northern kind of name’, passed through roadblocks in Yopougon in the period of 25-28 February 2011. According to P-0097, on these occasions, he would pay 100 or 200 francs to pass.³⁸⁵²
1722. Witness P-0441 testified that he was stopped at a roadblock in Yao Séhi. The witness was going to visit someone in that neighbourhood but the youth of Yao Séhi did not let him go through. Importantly, P-0441 was not hurt or threatened by the youth at the roadblock. It is also relevant that when P-0441 was asked during his testimony why he thought he was not allowed to go through, P-0441 did not refer to his ethnicity or religion. Instead, P-0441 simply said he did not know the reason why he could not go through[REDACTED]³⁸⁵³ [REDACTED].
1723. Finally, witness P-0438 went through two roadblocks in the aftermath of the clashes on 25 February 2011. In one, which P-0438 explained was located towards the Selmer roundabout near the Yopougon *mairie*, people armed with machetes and knives asked P-0438 for a payment of 50 or 100 francs, without searching or questioning him any further.³⁸⁵⁴ The second roadblock was towards

³⁸⁵² P-0097, T-49 dated 9 June 2016 (public) p.18. *Note* that in another passage of his testimony P-0097 said that ‘sometimes I would give them [money]. On the other hand, other people were intimidated’. When asked by the Prosecutor how this intimidation occurred, P-0097 said that it was well known that ‘people were actually even burnt alive. People saw that’. (P-0097, T-49 dated 9 June 2016 (public) pp. 15-17).

³⁸⁵³ [REDACTED]

³⁸⁵⁴ P-0438, T-150 dated 3 May 2017 (public), pp. 38-42; P-0438, T-151 dated 4 May 2017 (public), pp. 10-11.

Sicogi. There, P-0438 was asked for his ID. P-0438 showed his foreigner's ID papers, which the youth took away and asked him to sit by the side. P-0438 testified that he sat there for a long time until an acquaintance of Bété ethnicity arrived and asked the witness what he was doing there. P-0438 explained him that the youth had kept his ID. P-0438's acquaintance then told the youth manning the roadblock that he knew P-0438. As a result, the youth returned P-0438's ID and allowed him to go through.³⁸⁵⁵

1724. The foregoing evidence demonstrates that many of the individuals checking identity cards at roadblocks were moved by a sentiment of vigilantism and a belief that they were acting to prevent infiltrations of 'rebels' into Yopougon. In the minds of the *jeunes patriotes* manning roadblocks in the post-electoral crisis, 'rebels' would necessarily be pro-Ouattara individuals and this effectively put the part of the population which could be perceived as supportive of Mr Ouattara at risk.³⁸⁵⁶ Yet, the evidence demonstrates that not all the *jeunes patriotes* believed that all pro-Ouattara individuals were 'rebels'. Indeed, in the record of the case, there is more evidence of persons fitting that description who passed through roadblocks unharmed than there is evidence of individuals who were killed at roadblocks. This conclusion is further reinforced by the analysis of the evidence concerning the alleged crimes committed at roadblocks, which will be conducted next.

³⁸⁵⁵ P-0438, T-150 dated 3 May 2017 (public), pp. 38-41; P-0438, T-151 dated 4 May 2017 (public), pp. 6-10; T-152 dated 5 May 2017 (public), pp. 47-52.

³⁸⁵⁶ Note that this is not inconsistent with the earlier point that not all of those considered 'rebels' necessarily belonged to the group of people who, by reason of ethnicity, origin or religion, were normally associated with pro-Ouattara supporters. It was perfectly possible for a person to be pro-Ouattara (civilian or fighter) even though her origins or ethnic background was one of those that were usually associated with the pro-Gbagbo camp. Thus, the assertion that in the minds of the youth in Yopougon all 'rebels' would be pro-Ouattara is not in conflict with the assertion that someone who was not of an ethnic/national/religious background that was associated with Mr Ouattara's electorate could have been considered a 'rebel' and killed by pro-Gbagbo youth for that reason.

c) Crimes committed at roadblocks

1725. In support of the contention that pro-Gbagbo youth at roadblocks targeted individuals they considered to be pro-Ouattara, the Prosecutor submitted evidence demonstrating that on 28 February 2011 two individuals, Konaté Abdoulaye and one unidentified person, were killed by youths and militia at a roadblock. The evidence connected to these two victims is as follows. An UNOCI Call Centre Daily Report registers a caller reporting, at 6h51 of 28 February 2011, the burning of five people by ‘*akié* youth’ who seemed to have been checking the identity of people. This allegedly took place in the Banco 2 neighbourhood in Yopougon.³⁸⁵⁷ Three further reports mention the burning of two men by *jeunes patriotes* in similar circumstances on that day.³⁸⁵⁸ According to the *ONUCI Rapport quotidien du 28 février 2011*, a crowd of 30 young patriots ‘attacked two young men (probably burkinabé nationals) at around 5h30’. After causing serious injuries to them with machetes and sticks, the young patriots ‘burnt them down’. The report further states that an eye witness recognised among the young patriots who led the action several young men from the Banco 2 district.³⁸⁵⁹ Another report states that the burning and beating of the two men occurred in Banco 2 at 6h30 after they had tried to escape a roadblock.³⁸⁶⁰ One of the victims, [Konate] Abdoulaye was, according to the report, a Malian national. The other victim remained unidentified.³⁸⁶¹ The report makes reference to a video which is also available in evidence. In the footage, it is possible to see two

³⁸⁵⁷ UNOCI Call Centre report of 28 February 2011, CIV-OTP-0044-1547 at 1549, entry 31.

³⁸⁵⁸ UNOCI Call Centre daily report of 28 February 2011, CIV-OTP-0044-1568 at 1568; UNOCI *Suivi du cas d’exécutions extrajudiciaire à Yopougon*, of 28 February 2011, CIV-OTP-0044-1743 at 1743; BQI n 122 of 28 February 2011, CIV-OTP-0045-0389 at 0389.

³⁸⁵⁹ UNOCI Call Centre daily report of 28 February 2011, CIV-OTP-0044-1568 at 1568.

³⁸⁶⁰ UNOCI *Suivi du cas d’exécutions extrajudiciaire à Yopougon*, of 28 February 2011, CIV-OTP-0044-1743.

³⁸⁶¹ UNOCI *Suivi du cas d’exécutions extrajudiciaire à Yopougon*, of 28 February 2011, CIV-OTP-0044-1743.

people being beaten and set on fire by a group of people.³⁸⁶² The Prosecutor adduced a media article published on 7 March 2011 describing the content of the incident and making reference to the said video.³⁸⁶³

1726. In addition to this incident, the Prosecutor referred to the report produced by the Police commissioner of 16th *arrondissement*, according to which eight individuals had been burnt in the period from 25 to 28 February 2011.³⁸⁶⁴ According to the Police commissioner, the information in the report is based on accounts the commissariat received from the public, for instance via phone calls, following which he would either go to the location or send someone to verify the information.³⁸⁶⁵ The Police commissioner did not specify which of these eight bodies he saw, nor did he provide any further details about the circumstances of the incidents.³⁸⁶⁶ The evidence connected to these victims would only be relevant for the Prosecutor's case if the individuals were perceived pro-Ouattara civilians accused of being 'rebels' by pro-Gbagbo youth, as opposed to individuals who were killed because they refused to pay to go through, for example. However, in the absence of reliable information on this point, it is impossible to know if the bodies mentioned in the Police report were of victims who died because the (unknown) perpetrator perceived them as Ouattara's supporters or accused them

³⁸⁶² Video 'Deux hommes brûlés vifs à Abidjan sous les yeux des forces de l'ordre', CIV-OTP-0003-0013. *Note* this video is potentially also a source of information for the UNOCI *suivi du cas d'exécutions extrajudiciaire à Yopougon*, of 28 February 2011, CIV-OTP-0044-1743. Notably, the *suivi du cas* makes reference to a video and the information in the report overlaps with the content of the video. *Note also* that this video shows a BAE vehicle next to the scene. The UNOCI *suivi du cas* (as just mentioned, potentially based on the same video) similarly reports about a BAE patrol that arrived on the scene but did not intervene to put out the fire.

³⁸⁶³ France24 article 'Deux hommes brûlés vifs à Abidjan sous les yeux des forces de l'ordre', 7 March 2011, CIV-OTP-0003-0418.

³⁸⁶⁴ P-0440, T-157 dated 11 May 2017 (public), pp. 24, 34; Police report regarding the manifestations between the 25-28 February in Yopougon, CIV-OTP-0046-0029 at 0030.

³⁸⁶⁵ P-0440, T-157 dated 11 May 2017 (public), pp. 33-34.

³⁸⁶⁶ *Note* that on the basis of the information provided by the report, it would be impossible to exclude the possibility that one of the victims listed in the Prosecutor's case and discussed in this section is among the eight unidentified victims noted in P-0440's report.

of being rebels after having ascertained their ethnicity, nationality, origin or religion.

1727. Therefore, the two men beaten and burnt in Banco 2 district on 28 February 2011 (Abdoulaye Konaté and the other unidentified person) are the only victims of whom the evidence confirms that they were killed after being stopped at a roadblock by *jeunes patriotes*. Although other incidents of victims being murdered after having had their identities checked by youth are also relevant in this context, it is notable that these are the only two individuals that are known to have died at roadblocks specifically in the period of 25-28 February. This conclusion is significant in light of the evidence that there were numerous roadblocks in Yopougon in the relevant period and that the group of people present in that area who could, according to the Prosecutor, be identified as pro-Ouattara, was fairly large.³⁸⁶⁷

1728. Turning to the evidence of individuals being killed in the streets of Yopougon after being approached by groups of pro-Gbagbo supporters in circumstances analogous to identity checks at roadblocks, the evidence that Mamadou Niakaté,³⁸⁶⁸ a Malian national, was beaten and burnt by Mr Gbagbo's supporters on 25 February 2011 close to the Saguidiba intersection is noted.³⁸⁶⁹ According to the hearsay evidence provided by P-0438,³⁸⁷⁰ whilst the clashes on the *Boulevard Principal* were ongoing on 25 February 2011, Mamadou Niakaté had gone to

³⁸⁶⁷ As the Prosecutor states '[f]rom 25 to 28 February 2011, pro-Gbagbo Forces [...] killed at least 19 persons and injured at least 13 others in the Lem and Doukouré areas, which are inhabited mainly by Dioula civilians from Northern Côte d'Ivoire and neighbouring West African countries, perceived as pro-Ouattara supporters.' (Response, para. 263).

³⁸⁶⁸ P-0459, T-153 dated 8 May 2017 (public), p. 6; *see also* P-0438, T-152 dated 5 May 2017 (public), pp. 16-17.

³⁸⁶⁹ Response, para. 623. *See also* UNOCI *suivi du cas* call center report of 1 March 2011, CIV-OTP-0044-1738; UN Report, 1 May 2011, CIV-OTP-0044-0392 at 0416 (*note* that this report mentions Niakaté Mamadou's death in relation to the attack on the Lem Mosque); Conseil des Maliens Report, CIV-OTP-0052-0292-R02 at 0304 and 0357.

³⁸⁷⁰ *See* P-0438, T-150 dated 3 May 2017 (public), p. 17. P-0438 said that it was a 'Baoulé woman' who was at the phone booth who told him about the circumstances that led to the victim's death.

make use of a phone booth when the booth owner accused him of being an assailant.³⁸⁷¹ Mamadou Niakaté was then approached by a group of people who asked to see his documents. As he did not have his identity papers on him, Mamadou Niakaté was beaten and burned alive.³⁸⁷² Witness P-0438 testified having seen the burned body of the victim at the Saguidiba roundabout next to two other bodies close to a roadblock. He said that he was able to identify the victim by his size or height.³⁸⁷³

1729. Witness P-0459 was with Mamadou Niakaté in a location close to the *Boulevard Principal* shortly before the incident. According to P-0459, the clashes between the youths of the two neighbourhoods were ongoing when Mamadou Niakaté decided to leave to take care of his pregnant wife. Shortly after he had left, P-0459 saw Mamadou Niakaté running back. P-0459 was told that he was running because a cellphone repairman and owner of a telephone booth³⁸⁷⁴ had grabbed Mamadou Niakaté and accused him of being a rebel.³⁸⁷⁵ P-0459 then observed about twenty youths chasing the victim and beating him until he fell to the ground.³⁸⁷⁶ While the surrounding crowd was shouting that Mamadou Niakaté was an ‘assailant’, P-0459 saw a man in ‘a light blue type of uniform, worn by soldiers, a short-sleeved shirt’³⁸⁷⁷ arriving, who fired at the victim with a Kalashnikov and then left.³⁸⁷⁸ According to the witness, when the surrounding crowd felt that he was dead they shouted that the body should be burned. The people from the neighbourhood told them not to burn him there, so the people

³⁸⁷¹ P-0438, T-150 dated 3 May 2017 (public), p. 35.

³⁸⁷² P-0438, T-150 dated 3 May 2017 (public), p. 17.

³⁸⁷³ P-0438, T-150 dated 3 May 2017, p. 36; P-0438, T- 151, pp. 2-3; P-0438, T-152 dated 5 May 2011 (public), pp. 18; 46. *See also* UNOCI *suivi du cas* call center report of 1 March 2011, CIV-OTP-0044-1738.

³⁸⁷⁴ P-0459, T-153 dated 8 May 2017 (public), p. 3.

³⁸⁷⁵ P-0459, T-153 dated 8 May 2017 (public), p. 51.

³⁸⁷⁶ P-0459, T-153 dated 8 May 2017 (public), p. 53; P -0459, T-152 dated 5 May 2017 (public), p. 78.

³⁸⁷⁷ P-0459, T-152 dated 5 May 2017 (public), p. 76.

³⁸⁷⁸ P-0459, T-152 dated 5 May 2017 (public), p. 76; P-0459, T-153 dated 8 May 2017 (public), p. 3.

who had lynched the victim dragged the body away from the witness' view towards the road. P-0459 later learned that they had in fact burned his body.³⁸⁷⁹

1730. In addition to Mamadou Niakaté, the Prosecutor submitted documentary evidence referring to another victim who supposedly died in similar circumstances on 27 February 2011. According to UN Call Centre Daily Reports adduced in this regard, a 17-18 year old man was killed after being stopped and questioned by a group of thirty *jeunes patriotes* on 27 February 2011.³⁸⁸⁰ One of the reports states that the victim was beaten and burned to death close to the Wakouboué pharmacy after failing to respond to an order to produce his identity card. Another UNOCI Call Centre Daily Report of the same day contains a similar entry but states that the perpetrators were '*Miliciens-BAE*'.³⁸⁸¹ Given that this account is based solely on UNOCI Call Centre Reports with low evidentiary weight, no reasonable trial chamber could come to any conclusions regarding this incident.

1731. Thus, in total, the Prosecutor only presented evidence of sufficient quality for two incidents in which pro-Gbagbo supporters murdered perceived pro-Ouattara civilians after having checked their identities. This is to be seen in conjunction with the evidence of two other victims killed at roadblocks in Yopougon in the relevant period. This is notwithstanding the fact that there is evidence to suggest that the individuals manning the roadblocks could act with impunity, even from

³⁸⁷⁹ P-0459, T-152 dated 5 May 2017 (public), pp. 76-77.

³⁸⁸⁰ UNOCI Call Centre daily report of 27 February 2011, CIV-OTP-0044-1480.

³⁸⁸¹ UNOCI Call Centre report of 27 February 2011 (evening), CIV-OTP-0044-1542 at 1546, entry 38.

the Police.³⁸⁸² There was thus little to prevent a group of *jeunes patriotes* from deciding that a particular person was a ‘rebel’ on the basis of the victim’s perceived ethnic, national, or religious background, and to attack them for this reason. The evidence demonstrates that this did indeed happen, although such incidents seem to have been more the exception than the rule.

1732. On this basis, it is not possible to conclude that roadblocks were erected in Yopougon with the purpose of systematically attacking pro-Ouattara civilians.

5. *The victims*

1733. The Prosecutor named 32 victims of the incidents that took place in Yopougon on or around the period of 25-28 February 2011.³⁸⁸³ The quantity and quality of evidence presented by the Prosecutor in relation to each of the individual crimes varies greatly.

1734. The crimes for which the discriminatory element was clearly ascertainable have already been mentioned previously. Following the Prosecutor’s line of reasoning (according to which a display of hostility towards a group on the part of the

³⁸⁸² Note the evidence that the *jeunes patriotes* in Yopougon acted with impunity at the time. It is noted, for instance, that P-0440 testified to the effect that on 28 February 2011 he received an order to patrol and ask the young people to remove the roadblocks. While some of them did, others refused to do so, particularly the youth that had erected roadblocks on the smaller roads (P-0440, T-157 dated 11 May 2017 (public), pp. 22-24). There is testimonial evidence that the pro-Gbagbo youth and militia benefited from impunity; the law enforcement officers in Yopougon were afraid and did not want to deal with them (P-440, T-157, 11 May 2017 (confidential), pp. 36-40). A report from ANSI (*Agence nationale de la strategie et de l’intelligence*) dated 14 March 2011 notes the robbery and extrajudicial killings at roadblocks erected by ‘groupes d’auto défense’ in Yopougon, suggesting that they were out of control. Also according to the report, the youths at roadblocks considered the FDS weak and incapable of protecting the population and for that reason thought that they were replacing the FDS (*Des exactions commises par les membres des groupes d’auto défense sur les populations de Yopougon* 14 March 2011, CIV-OTP-0045-0127). Note too the evidence that the BAE did not act to stop the burning of two victims at a roadblock: Video ‘Deux hommes brûlés vifs à Abidjan sous les yeux des forces de l’ordre’, CIV-OTP-0003-0013; UNOCI *suivi du cas d’exécutions extrajudiciaire à Yopougon*, of 28 February 2011, CIV-OTP-0044-1743.

³⁸⁸³ See Response, paras 280, 620.

perpetrator suffices for an inference of discriminatory motive),³⁸⁸⁴ the civilians who were at the Lem Mosque during the attack on 25 February 2011 and those killed after identity checks were all victims of crimes committed with discriminatory intent. However, of the 32 individuals who were allegedly killed or injured in the violence that commenced on 25 February 2011 and ensuing days in Yopougon,³⁸⁸⁵ the Prosecutor has presented evidence of discriminatory intent in relation to seven victims only: Cissé Moustapha, an unidentified beggar (*le mendiant*), [REDACTED], Mamadou Niakaté, an unidentified 17-18 year old man, Konaté Abdoulaye, and an unidentified person who died on the same occasion.³⁸⁸⁶

1735. In relation to the other 25 cases, the Prosecutor relied on tenuous inferential arguments.

1736. First, the Prosecutor seems to believe that when the evidence shows that a person who had characteristics associated with the pro-Ouattara camp³⁸⁸⁷ was murdered or injured by an individual whose pro-Gbagbo affiliation can also be assumed on the basis of the limited evidence, an inference can be drawn to the effect that the pro-Gbagbo individual attacked the victim because of the victim's assumed political affiliation. This is clearly overinclusive, because it ignores the high levels of 'regular' criminality in Yopougon at the time and because of the expansive and vague definitions of pro-Gbagbo forces as well as the pro-Ouattara population.

³⁸⁸⁴ Note that the discussion in section VI.M.3.b) casts doubt on the adequacy of this approach and demonstrates that discriminatory motive of the perpetrators of crimes at the Lem Mosque is not firmly established on the evidence. The Prosecutor's reasoning will be accepted for the purposes of this analysis nonetheless, in view of the stage of the proceedings.

³⁸⁸⁵ Response, para. 620.

³⁸⁸⁶ See paras 1679-1683, 1728-1729, 1730, and 1725-1727, respectively.

³⁸⁸⁷ Note that this category encompasses: (i) actual or perceived political activists or sympathisers, and (ii) persons of Muslim faith, Dioula ethnicity and/or their provenance from northern Côte d'Ivoire or other West African countries. See Response, para. 337; see also IV.B.1 - Identification of 'Political Opponents'.

1737. Second, in cases where the Prosecutor only had information about the characteristics of the victim but no evidence concerning the alleged perpetrator, the Prosecutor asks us to infer both that the perpetrator was pro-Gbagbo and that he or she acted with discriminatory *animus* on the sole basis of the victim being, for example, of Dioula ethnicity or a Malian national. Conversely, when the evidence does not confirm the origin or ethnicity of the victim but suggests that the perpetrator was pro-Gbagbo, the Prosecutor seems to believe that a discriminatory intent can be inferred on the sole basis of the perpetrator's presumed support for Mr Gbagbo.
1738. This line of reasoning implies that the Prosecutor believes that, in the period of 25-28 February 2011 in Yopougon, a pro-Gbagbo person would only kill or injure another person because the latter was an (actual or perceived) supporter of Mr Ouattara and that someone who might have been perceived as pro-Ouattara could have been attacked solely by a supporter of Mr Gbagbo acting with discriminatory intent. The Prosecutor has presented no evidence to support these assumptions.
1739. The Prosecutor went even further and presented cases for which there is no evidence about either the (perceived) affiliation of the perpetrator or that of the victim. The Prosecutor argues that in such cases the affiliation of the perpetrator can be inferred from the context. And once the affiliation of the perpetrator is inferred, this in turn provides the basis for a second inference, i.e. that the victim must have been perceived as pro-Ouattara, and a third inference, i.e. that the perpetrator must therefore have had discriminatory intent.
1740. The Prosecutor even invoked instances in which the affiliation of the perpetrator, the characteristics of the victim, and the context in which the crime occurred, are all unknown. In relation to these cases, the Prosecutor claims that the pro-Gbagbo disposition of the perpetrator can be inferred on the basis of the cause of

death of the victim.³⁸⁸⁸ And in cases where not even cause of death is known and only the name of the victim is in evidence, the Prosecutor expects the Chamber to draw the necessary inferences leading to a finding of discriminatory intent on the part of the perpetrator on the basis of the fact that the person died in Yopougon during the relevant period.

1741. Needless to say, no reasonable trial chamber could accept the proposed inferences as a basis to make findings against an accused. This in itself would be sufficient to reject the majority of the instances of alleged criminality upon which the Prosecutor relies.

1742. In view of the stage of proceedings, the evidence presented in relation to each one of the remaining 25 victims has nonetheless been taken into consideration. However, as the analysis in the remainder of this section demonstrates, in all cases the Prosecutor presented, the evidence was either too weak or insufficient to justify an inference of discriminatory intent against pro-Ouattara civilians on the part of the perpetrators.

1743. Before turning to the individual victims, it is first necessary to note the issues affecting the evidentiary weight of two documents to which the Prosecutor refers in this context. One is the UN Report on Human Rights violations in Abidjan³⁸⁸⁹ and the other is a list titled *Collectif Des Victimes Du Quartier Doukouré Yopougon* (hereafter the CVQDY list) which purportedly contains names of

³⁸⁸⁸ The Prosecutor relies *i.a.* ‘on the manner of killing (burning and shooting)’ (Response, para. 622.). However, it is not proven that these were manners of killing employed exclusively by pro-Gbagbo elements nor that it was a method only used against perceived pro-Ouattara individuals. The fact that some witnesses referred to a so-called ‘Article 125’ method, as being a method employed by *jeunes patriotes* to burn people considered as ‘rebels’ at roadblocks with petrol/kerosene and matches, does not preclude that a similar method could have been used by other groups (for witnesses mentioning said method, *see* P-0440, T-157 dated 11 May 2017 (public), pp. 33-35; P-0097, T-46 dated 6 June 2016 (private), pp. 44-45; P-0097, T-49 dated 9 June 2016 (public), pp. 18-19, 22, 96; P-0435, T-89 dated 20 October 2016 (private), pp. 77-78; P-0435, T-90 dated 21 October 2016 (public), pp. 1-3). It is noted, in this regard, that there is also evidence suggesting that persons presumed to belong to the pro-Ouattara camp also burned their victims. *See, e.g.* P-0330, T-68 dated 1 September 2016 (public), pp. 74-75.

³⁸⁸⁹ UN Report, 1 May 2011, CIV-OTP-0044-0392.

victims of the violence in Doukouré from 25 February 2011 until the end of the post-electoral crisis.³⁸⁹⁰ The UN Report succinctly addresses incidents that purportedly occurred in Yopougon on 25 February 2011 and lists the names of 11 victims.³⁸⁹¹ The information in the report is based on anonymous hearsay and has been contradicted by direct testimonial evidence.³⁸⁹² When it comes to the CVQDY list, the difficulty to assess the reliability of the information therein stated and its sources is noted.

a) Victims of Murder³⁸⁹³

1744. Siaka Bakayoko: According to the evidence, the victim died on 25 February 2011 as a consequence of the Police intervention in the clashes on the *Boulevard Principal*. This is the only death allegedly caused by the Police about which there is direct evidence, provided by P-0436 and P-0442. Witness P-0436 testified that Siaka Bakayoko was struck by fragments of an offensive grenade thrown by the Police. The victim died some 15 minutes later in the neighbourhood.³⁸⁹⁴ Witness P-0442 remembered that said victim fell, was picked

³⁸⁹⁰ CVQDY list, CIV-OTP-0058-0320-R02.

³⁸⁹¹ UN Report, 1 May 2011, CIV-OTP-0044-0392 at 0416.

³⁸⁹² Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416. *Note* that the relevant paragraph of the report refers to the attack at the Lem Mosque by a militia group headed by Maguy 'Le Tocard'. The report notes the murder of the Mosque watchman after the militia discovered the victim had a *gris-gris* on him. Although this was corroborated by evidence (*see* above at paras 1682-1683), the rest of the information cited in the report was not. Accordingly, the said paragraph states that Bakayoko Salimata was shot dead by members of the militia led by Maguy 'le Tocard' in the context of the attack at the Mosque. However, as seen in section VI.M.2 - The clashes on the Boulevard Principal (25 February 2011) and as discussed below, there is direct testimonial evidence that this victim died in different circumstances. Some of the other ten victims the UN report lists as having died in the attack on Lem Mosque have also been linked to different incidents by testimonial evidence. Moreover, the scenario narrated by the report (which pertains to the attack on the Lem Mosque) does not reflect P-0441's description of this incident. As seen in para. 1679, P-0441 testified that there were only two other persons left with him at the Lem Mosque when it was attacked by Maguy 'le Tocard' and others. P-0441, T-35 dated 9 May 2016, pp. 55-57.

³⁸⁹³ *Note* that to avoid repetition, this list does not include the crimes for which discriminatory intent has been already established. The evidence relating to murder victims Cissé Moustapha, Konaté Abdoulaye and an unidentified person, Mamadou Niakaté, and the 17-18 year old man have been discussed in paras 1678-1683, 1725-1727, 1728-1729, and 1730 respectively.

³⁸⁹⁴ P-0436, T-148 dated 1 May 2017, p. 24, *see also* para. 1644 above.

up and transported to the hospital where he succumbed to his injuries.³⁸⁹⁵ The Prosecutor does not explain on what basis the Chamber is expected to assume that the victim belonged to the category of persons perceived as pro-Ouattara. If there is some indication to this effect in the witnesses' accounts, it would be that Siaka Bakayoko seems to have been among the crowd of Doukouré inhabitants in the *Boulevard Principal* during the clashes.³⁸⁹⁶ In any case, the evidence could not support a conclusion that Siaka Bakayoko was murdered because of his perceived political affiliation. As the discussion of the evidence relating to the clashes made clear,³⁸⁹⁷ there is no convincing evidence to suggest that there was a discriminatory motive against actual or perceived Ouattara supporters underlying the crimes for which the Police are alleged to have been responsible.³⁸⁹⁸

³⁸⁹⁵ P-0442, T-20 dated 10 February 2016, pp. 12-13. *See also* para. 1649 above.

³⁸⁹⁶ *Note* that this assessment takes into consideration the evidence showing that in Côte d'Ivoire people of northern origin or foreigners could be identified as such by their names. However, the Prosecutor did not present concrete, reliable evidence to enable the Chamber to identify the names that were known to be typical of the north or other African countries, with the exception of the evidence produced by witnesses who incidentally commented on the typical names that people perceived to be pro-Ouattara may have. In this respect, reference is made to the testimony of witness P-0440 who mentioned some northern sounding names by way of example (Touré, Coulibaly, Koné, Camara). (P-0440 T-157 dated 11 May 2017, pp. 30-32). It is noted that the fact that there are recurrent names in the list of victims is also immaterial for such verification, as they could be names that were common in the country as a whole. There is no evidence that every individual from the north would always have a name typical of that region.

³⁸⁹⁷ *See* VI.M.2 - The clashes on the Boulevard Principal (25 February 2011).

³⁸⁹⁸ *Note* that in addition to P-0442 and P-0436, the Prosecutor relies on P-0109's testimony according to which a child named 'Chaka' was killed when the militia threw grenades during the clashes (P-0109, T-154 dated 9 May 2017, pp. 40-41 (confidential)). To the Prosecutor, 'Chaka' and 'Siaka Bakayoko' are the same person (Response, para. 623. *Note* that the Prosecutor points out that in the CVQDT list there is a similar name, 'Isiaka Bakayoko'. It is however not confirmed that these two names relate to the same person. C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0321). This assumption seems to be based on nothing other than perhaps a similarity of names and the cause of death. Any reasonable trial chamber would find this connection weak and insufficient to conclude that the evidence that mentions 'Chaka' can be understood to relate to a victim named 'Siaka Bakayoko'. Furthermore, as described above, P-0109's testimony as to what happened on the *Boulevard Principal* on 25 February 2011 directly contradicts those of the two other witnesses. Thus, it is questionable if a reasonable trial chamber could conclude that 'Chaka' was killed by pro-Gbagbo militia on the basis of this evidence. And even so, P-0109's description of the militia intervention in the clashes does not necessarily support an inference that these militia were pro-Gbagbo individuals acting with discriminatory intent against perceived Ouattara supporters. In this regard, it is recalled that according to P-0109, the pro-Gbagbo youth had been throwing stones at the Doukouré inhabitants for a while before the militia arrived and started to throw grenades. It is not clear from P-0109's account what the supposed intent or motive of the militia was. P-0109, T-154 dated 9 May 2017, p. 36.

1745. Bakayoko Lacina/Lassina: P-0436 testified having seen Bakayoko Lassina being lynched and burnt to death in front of the 16th *arrondissement* Police station on 25 February 2011 during the clashes at the *Boulevard Principal*. According to the witness, Bakayoko Lassina had been detained by ‘the crowd’ who had left the *parlement* where the *jeunes patriotes* used to gather.³⁸⁹⁹ The victim fled into the Police station but was pushed back outside by policemen. According to P-0436, ‘the crowd’ attacked Bakayoko Lassina with sticks and stones, put tyres on him and torched him.³⁹⁰⁰ While ‘the crowd’ in question was probably pro-Gbagbo, it cannot be inferred that the individuals who killed the victim did so solely because they thought Bakayoko Lassina was a supporter of Mr Ouattara. According to the factual scenario described by P-0436, there would have been a great number of individuals susceptible of being perceived as such in the vicinity of the Police station. It is not readily understood why only Bakayoko Lassina was targeted.³⁹⁰¹

1746. Bamba Souleymane and Zanga: Bamba Souleymane and Zanga were two of the victims who, according to P-0436, were killed when the Police opened fire in Doukouré on 25 February 2011 after they intervened in the clashes. However, P-0436 did not see Bamba Souleymane and Zanga being shot and appears to have learnt about these victims’ deaths only after the events.³⁹⁰² Without additional information, this is not a sufficient basis for an inference that it was the Police who killed the two victims. It is also noted that there is no indication in the evidence that Bamba Souleymane and Zanga could have been perceived as pro-

³⁸⁹⁹ P-0436, T-148 dated 1 May 2017, pp. 23-24, 26, 32-33. *Note* that according to the witness, the *parlement* in question was behind the Police station.

³⁹⁰⁰ P-0436, T-148 dated 1 May 2017, pp. 23-24; *Note* that the name of this victim is also included in C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 321.

³⁹⁰¹ P-0436, T-148 dated 1 May 2017, pp. 32-34. *Note* that the conclusion reached in relation to this victim is not affected by the anonymous hearsay evidence of another victim (Modibo Kamara) purportedly burnt alive in that area on 25 February 2011. Even if the low quality of the evidence connected to Modibo Kamara (described below) were to be ignored, there would still be no indication that he was killed in the context of the clashes.

³⁹⁰² P-0436, T-148 dated 1 May 2017, pp. 46-48.

Ouattara civilians. In any case, in view of the conclusions reached in the discussion of the evidence connected the clashes,³⁹⁰³ no reasonable trial chamber would conclude that the perpetrators of these crimes acted with discriminatory intent against actual or perceived Ouattara supporters.³⁹⁰⁴

1747. Ahmed: With respect to this victim, the only evidence on record is a passage of P-0442's testimony in which the witness mentioned 'a certain Ahmed' who also died on 25 February 2011 as a result of the events that unfolded in the *Boulevard Principal* according to P-0442.³⁹⁰⁵ Witness P-0442 did not provide further information in this regard and it is not clear if the witness saw Ahmed being killed. From his testimony, it seems that Ahmed's death was caused by the Police intervention in the 'clashes'. In this regard, it is recalled that the evidence connected with the clashes does not support an inference that the Police acted with discriminatory intent.³⁹⁰⁶

1748. Bakayoko Salimata: According to the evidence, Bakayoko Salimata's death is also connected with the clashes on the *Boulevard Principal* on 25 February 2011. The victim was mentioned by P-0436 in his testimony.³⁹⁰⁷ P-0436 clarified that he heard of the death of Bakayoko Salimata from a relative of the victim. According to the information P-0436 received, a projectile struck Bakayoko Salimata on the back, the victim fell, inhaled teargas and died on the spot. P-0436 also testified that the Police threw teargas grenades on that day and it is possible that Bakayoko Salimata was struck by one of these.³⁹⁰⁸ Even if the

³⁹⁰³ See VI.M.2 - The clashes on the Boulevard Principal (25 February 2011).

³⁹⁰⁴ Note that P-0436 testified that the Police was shooting indiscriminately at people running in the streets. It is recalled that according to P-0436, the pro-Gbagbo youth had invaded Doukouré to loot shops. In these circumstances, the Police would have had no reason to believe that only (actual or perceived) pro-Ouattara civilians could be running in the streets of Doukouré.

³⁹⁰⁵ P-0442, T-20 dated 10 February 2016, p. 14.

³⁹⁰⁶ See VI.M.2.e) - The evidence concerning the Police.

³⁹⁰⁷ Note that the victim's name is included in C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0321.

³⁹⁰⁸ P-0436, T-148 dated 1 May 2017, pp. 25, 33.

conclusions with respect to the Police action in the context of the clashes were to be ignored, there would be no grounds to infer that the Police intended to kill the victim - let alone that they did so because they identified Bakayoko Salimata as a supporter of Mr Ouattara.³⁹⁰⁹

1749. Modibo Kamara: The *Conseil des Maliens Report* registers the death of Modibo Kamara who, according to the anonymous hearsay document, was burnt alive on 25 February 2011 in the vicinity of the 16th *arrondissement* Police station.³⁹¹⁰ There is no information as to the circumstances in which Modibo Kamara was killed. It is also noted that P-0438 testified that he had heard about Modibo Kamara's death. In this regard, no further details were provided by P-0438 other than that, according to his sources, Modibo Kamara had not died 'in the neighbourhood'.³⁹¹¹ In view of the low quality of the evidence and the significant gaps in the available information, a reasonable trial chamber would not be able to draw the necessary inferences to conclude that Modibo Kamara was killed by pro-Gbagbo individuals who knew he was from Mali and, because of that, decided to burn him alive.

³⁹⁰⁹ Note that the UN Report (mentioned above in para. 1743) states that Bakayoko Salimata together with ten other young people were shot by militia during the attack headed by Maguy 'le Tocard' and his group on the Lem Mosque. It is recalled that not only does this contradict P-0436's evidence but it is also based on anonymous hearsay and as such the report has no probative value (Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416).

³⁹¹⁰ Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0304 and 0306. Note that the UN report previously mentioned (and disregarded for the same reasons), lists 'Modibo Camara' among ten young people that were shot by militia in relation to the attack by Maguy 'le Tocard' and his group on the Lem Mosque (Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416; see also para. 1743).

³⁹¹¹ P-0438, T-150 dated 3 May 2017, p. 21.

1750. Traoré: The evidence connected to this victim was provided by P-0433.³⁹¹² Witness P-0433 testified that while the clashes on the *Boulevard Principal* were ongoing, he watched from the window of his house a young man covered in blood agonise and die in his courtyard. P-0433 testified that on the following day, family members of the young man came and told P-0433 that the victim's name was Traoré and that he had fled from Abobo because of the security situation there.³⁹¹³ P-0433 believed that the perpetrators were pro-Gbagbo militia members³⁹¹⁴ because he had seen them shooting at people in the vicinity of his house in Doukouré and they had even knocked on his door on that afternoon.³⁹¹⁵ Yet, as P-0433 first saw Traoré when the victim had already sustained the wounds which caused his death, it is not possible to be certain that the victim had indeed been deliberately killed and, if so, by whom. Even if P-0433's assumption that the pro-Gbagbo militia shot Traoré was correct, nothing on the evidence suggests that: i) Traoré had one of the characteristics which could cause someone to assume he supported Mr Ouattara,³⁹¹⁶ ii) the militia who purportedly killed him knew of this characteristic and iii) decided to kill Traoré for this reason.

³⁹¹² Note that when P-0433 mentioned the death of Traoré, he also referred to another victim, named David, who according to P-0433 had been killed on the same occasion as Traoré and by the same perpetrators. P-0433 said that David was from Burkina Faso; David [REDACTED] owned a brothel. The Prosecutor did not include David in the list of victims of this incident. It is noteworthy that the Prosecutor did not consider this crime to be a part of the pattern that she tries to establish in relation to the other crimes, for no apparent reason. If anything, this shows the inconsistency of the distinction between crimes which, for the Prosecutor, were related to the Common Plan and those which she believes were not.

³⁹¹³ P-0433, T-147 dated 26 April 2017, p. 23-25, 81-82. Note that the Prosecutor relies here also on P-0436's testimony. The witness appears to have heard about the death on 25 February 2011 of a young man who had fled hostilities in Abobo. P-0436, T-148 dated 1 May 2017, p. 47.

³⁹¹⁴ P-0433 specified that 'all the people who were Gbagbo supporters, especially the young people who were doing those kinds of things, we referred to them as the militia, militiamen'. P-0433, T-147 dated 26 April 2017, p. 30.

³⁹¹⁵ P-0433, T-147 dated 26 April 2017, p. 28. Note that given that P-0433 is a Muslim, hence belonging to the category of 'perceived Ouattara supporters', the circumstance that the militia came to knock at this door but left without doing him any harm is yet another indication that they were not persecuting individuals they perceived to be pro-Ouattara supporters as such.

³⁹¹⁶ Note the considerations made in relation to identification by names, in footnote 3896 above. Moreover, even if there was evidence that 'Traoré' was indeed a northern or foreign name, there would have been no suggestion that the militia knew the victim's name.

1751. Cissé Yaya: The name ‘Cissé Yaya’ is mentioned only by the CVQDY list and the UN Report on Human Rights violations in Abidjan.³⁹¹⁷ Both are anonymous hearsay. The Prosecutor further relies on the testimony of P-0109 to support her case that Cissé Yaya was a victim of pro-Gbagbo forces and targeted because the perpetrators perceived him as a supporter of Mr Ouattara. According to P-0109, when the clashes calmed down on the main road on 25 February 2011, he went to the Lem Mosque and saw the burnt body of a person called Cissé outside the Mosque.³⁹¹⁸ Witness P-0109’s testimony did not offer any information as to the perpetrator of the crime or the motive. Moreover, it is questionable that the body P-0109 saw was indeed that of ‘Cissé Yaya’.³⁹¹⁹ The low quality of the evidence and the scarcity of the information connected to this victim would prevent any reasonable trial chamber from reaching conclusions with respect to this crime.
1752. Mamadou and Idrissa: The only available evidence connected to these two victims is the UNOCI Call Centre Daily Report of 27 February 2011. The document registers the report of an unidentified caller according to whom ‘Mamadou and Idrissa’ died as a result of FDS shootings at the *carrefour* CHU in Port Bouët 2.³⁹²⁰ There is no suggestion that the FDS individuals in question

³⁹¹⁷ C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0321; Rapport sur les violations des droits de l’homme commises dans le District d’Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416.

³⁹¹⁸ P-0109, T-154 dated 9 May 2017, pp. 42-43. *Note* that witness P-0109 did not specify how he recognised the corpse.

³⁹¹⁹ *Note* the possibility that the body to which P-0109 referred was Cissé Moustapha’s body - the Mosque watchman said to have been killed by Maguy ‘le Tocard’ and Agbolo in the circumstances described above in detail. The only indication that P-0109 was not referring to Cissé Moustapha in this passage of this testimony is that P-0109 did not say that the person whose burnt body he saw was the Mosque watchman. Yet, the witness did not appear to be certain of the victim’s occupation in his testimony. Accordingly, P-0109 referred to the victim in the following terms: ‘he was a watchman at – what do you – how can I say this now – at a pharmacy which was not far away from our neighbourhood’. P-0109, T-154 dated 9 May 2017, p. 43. Unless there were two persons with the same name who worked as watchmen in the same neighbourhood (one in a pharmacy and the other in the Mosque) and who were both killed and burned in the same location in the afternoon of 25 February, the corpse P-0109 saw was that of Cissé Moustapha. It is therefore questionable that P-0109 testimony is truly evidence of the death of ‘Cissé Yaya’.

³⁹²⁰ Rapport quotidien du 27 février 2011 (soir) / (du 27 février 2011 à 9h au 27 février, 18h), 27 February 2011, CIV-OTP-0044-1542 (confidential) at 1545 entry 35. *Note* that the Prosecutor included Mamadou and Idrissa among the injured as opposed to the death. *See* Response, para. 534.

perceived the victims to be Mr Ouattara's supporters and that their actions were motivated by such a perception.

1753. Binate Hamed: In connection with this victim, the Prosecutor adduced the UNOCI Call Centre Daily Report, dated 28 February 2011, which states that during the entire day of 27 February 2011 the area of Port Bouët II in Yopougon was under attack and at least ten people, including Binate Hamed, were killed. With regards to the perpetrators, the report only states that 'CECOS and militia' were responsible for the attack.³⁹²¹ No reasonable trial chamber could conclude on the basis of this information that the victim was killed because of his (actual or perceived) political affiliation.
1754. Bamba Abdoulaye and Tiené Yaya: These two names appear in the CVQDY list³⁹²² and the UN Report on Human Rights violations in Abidjan also lists him among 11 persons killed by militiamen during the attack at the Mosque of 25 February 2011.³⁹²³ In view of the scarcity of information and low quality of the evidence, no reasonable trial chamber could draw any conclusion with respect to the death of these victims.
1755. Dosso Lama: The name 'Dosso Lama' appears solely in the CVQDY list. According to the document, the victim was burnt to death.³⁹²⁴ No reasonable trial chamber could conclude on this basis that 'the perpetrators were pro-Gbagbo youth [...] and/or militia'.³⁹²⁵ Moreover, there is no evidence of discriminatory intent against pro-Ouattara civilians on the part of the perpetrators of this crime.

³⁹²¹ Rapport quotidien du 28 février 2011 (matin) / du 27 février 2011 à 18h au 28 février, 9h), 28 February 2011, CIV-OTP-0044-1547 (confidential) at 1548, entry 4.

³⁹²² C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0321.

³⁹²³ Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416.

³⁹²⁴ C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0321.

³⁹²⁵ Response, para. 623, d.

In this respect, the considerations made in relation to the inferences the Prosecutor expects the Chamber to draw on the basis of this sort of information are also recalled.

1756. Diomande Maetie: The only evidence adduced in relation to this victim is the CVQDY list which mentions the name ‘Diomande Maetie’ among the victims. Reference is made to the considerations made above.

b) Injured Victims

1757. Witness P-0442: It is recalled that witness P-0442 is one of the individuals injured by the Police on the *Boulevard Principal*. The analysis of the evidence connected to the clashes contains the description provided by both P-0442 and P-0436 [REDACTED]³⁹²⁶ It is noted that the Prosecutor submitted medical reports and photos of the injury P-0442 sustained on 25 February 2011.³⁹²⁷ According to the testimony of the victim himself, he was injured when ‘[t]he police officers were shooting and people were throwing stones still and then the police officers shot into the crowd’.³⁹²⁸ P-0442 did not see what hit him but people told him that he had been injured by a grenade.³⁹²⁹ According to [REDACTED] P-0442 was hit by fragments of a grenade thrown by the Police.³⁹³⁰ On the basis of this evidence and recalling the conclusions reached in the above examination of the Police intervention according to P-0442 and P-0436,³⁹³¹ no reasonable trial chamber

³⁹²⁶ See VI.M.2.a) - Witness P-0436’s account, para. 1644. VI.M.2.b) - Witness P-0442’s account, para. 1649.

³⁹²⁷ CERTIFICAT MEDICAL D’HOSPITALISATION, 1 March 2011, CIV-OTP-0062-0872 (confidential); Untitled, undated, CIV-OTP-0062-0880 (confidential); Untitled, undated, CIV-OTP-0062-0881 (confidential); Untitled, undated, CIV-OTP-0062-0876 (confidential); Untitled, undated, CIV-OTP-0062-0879 (confidential); Untitled, undated, CIV-OTP-0062-0878 (confidential); Untitled, undated, CIV-OTP-0062-0884 (confidential); Untitled, undated, CIV-OTP-0062-0877 (confidential).

³⁹²⁸ P-0442, T-20 dated 10 February 2016, p. 9, *see also* P-0042, T-19 dated 9 February 2016, p. 81.

³⁹²⁹ P-0442, T-20 dated 10 February 2016, pp. 9-10, 28.

³⁹³⁰ [REDACTED] *see also* C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0329.

³⁹³¹ See VI.M.2.e) - The evidence concerning the Police.

could infer that the injury of P-0442 was a result of discriminatory targeting by the Police.

1758. André: According to P-0442, a person called André, was injured on the arms and hands when Police officers intervened in the clashes shooting at people.³⁹³² The conclusions reached in section VI.M.2 are again recalled.
1759. Soumahoro Sékou: Soumahoro Sékou was also allegedly injured on his arm by a bullet on the *Boulevard Principal* on 25 February 2011. The evidence was provided by two witnesses who provided divergent accounts from one another. According to P-0436, it was the Police who shot at the victim.³⁹³³ P-0109, on the other hand, testified that it was the militia who injured Soumahoro Sékou.³⁹³⁴ Irrespective of which witness identified is most reliable, it would not be possible to conclude that the perpetrator – whether it was the Police or the militia – acted with discriminatory intent. Even if it were accepted that the militia did intervene in the clashes, P-0109’s account about what allegedly happened on the *Boulevard Principal* is insufficiently clear.
1760. Sanao Siata and Soumahoro Youssouf: According to P-0436, when the Police entered Doukouré during the clashes on 25 February 2011, Sanao Siata and Soumahoro Youssouf were injured.³⁹³⁵ The conclusions with respect to the Police intervention in the clashes are recalled.³⁹³⁶
1761. Chemokogoro: The evidence adduced in connection to this victim has been provided by P-0438’s testimony. According to the witness, Chemogokoro was

³⁹³² P-0442, T-20 dated 10 February 2016, p. 14.

³⁹³³ Note however that witness P-0436 confirmed not having seen the victim being struck. P-0436, T-148 dated 1 May 2017, pp. 46-47; *see also* C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0329.

³⁹³⁴ P-0109, T-154 dated 9 May 2017, pp. 38, 40-41. *See also* paras 1660-1662.

³⁹³⁵ P-0436, T-148 dated 1 May 2017, pp. 46-47; C.V.Q.D.Y. / COLLECTIF DES VICTIMES DU QUARTIER DOUKOURÉ YOPOUGON, undated, CIV-OTP-0058-0320-R02 (confidential) at 0329.

³⁹³⁶ *See* VI.M.2 - The clashes on the Boulevard Principal (25 February 2011).

allegedly injured in the Mosque area during the clashes of 25 February 2011. P-0438 testified that the victim was hit by a teargas grenade thrown by BAE. P-0438 did not see BAE throwing teargas on that occasion but found Chemokogoro with a leg injury at a parking lot.³⁹³⁷ There is no evidence concerning the victim's affiliation and there is no suggestion that the alleged use of teargas by BAE targeted (actual or perceived) pro-Ouattara individuals. Moreover, the fact that the witness was allegedly struck by a teargas grenade undermines any suggestion that he was targeted with intent to kill or injure.

1762. Bamba Falikou and Bamba Vassiriki: The UNOCI Call Centre Daily Report of 27 February 2011 provides the names of two other persons, Bamba Falikou and Bamba Vassiriki.³⁹³⁸ According to the report of one identified caller, policemen surrounded the area of Port Bouët 2 in Yopougon and threw grenades on the courtyards of houses, injuring Bamba Falikou.³⁹³⁹ The same caller also said that two people were injured by bullets, one of them being 'Bamba Vassiriki'.³⁹⁴⁰ There is no information in the document to suggest that the Police officers in question perceived the victims to be Ouattara supporters and that their actions were motivated by such a perception.
1763. Witness P-0109: P-0109 testified that he was injured by shrapnel of grenades lobbed by the militia on the *Boulevard Principal* during the clashes of 25 February 2011.³⁹⁴¹ As discussed above, P-0109's testimony to the effect that the militia intervened in the clashes contradicts the accounts provided by witnesses

³⁹³⁷ P-0438, T-150 dated 3 May 2017, pp. 10, 16, 44; P-0438, T-151 dated 4 May 2017, p. 72.

³⁹³⁸ Note that the Prosecutor included Mamadou and Idrissa amongst the injured as opposed to the victims of murder (Response, para. 534).

³⁹³⁹ Rapport quotidien du 27 février 2011 (soir) / (du 27 février 2011 à 9h au 27 février, 18h), 27 February 2011, CIV-OTP-0044-1542 (confidential) at 1543 entry 6.

³⁹⁴⁰ Rapport quotidien du 27 février 2011 (soir) / (du 27 février 2011 à 9h au 27 février, 18h), 27 February 2011 (evening), CIV-OTP-0044-1542 (confidential) at 1543 entry 6.

³⁹⁴¹ P-0109, T-154 dated 9 May 2017, pp. 30; P-0109, T-155 dated 10 May 2017, pp. 38-39.

P-0436 and P-0442 in their respective testimonies.³⁹⁴² Yet, even if these conflicts in the evidence were to be ignored, P-0109's testimony does not provide grounds for an inference that the militia in question acted with discriminatory motive. It is recalled that according to P-0109 the clashes between the pro-Gbagbo and pro-Ouattara youth were ongoing when, at some point, the militia showed up and started throwing grenades.³⁹⁴³ No reasonable trial chamber could conclude that the injury which P-0109 suffered was part of a pattern of pro-Gbagbo individuals using violence against civilians they perceived to be supporters of Mr Ouattara.

6. Conclusion

1764. The available evidence does not permit the Chamber to determine the precise cause(s) of the several incidents that took place in Yopougon on 25-28 February 2011; they were most likely a consequence of a confluence of different factors. One factor that undeniably played a significant role were the divisions within the population in Yopougon and reciprocal feelings of animosity harboured by politically opposed groups in that community. The incidents analysed above should also be understood in the broader context of developments in the conflict and the armed clashes that were taking place elsewhere in Abidjan. Recalling the facts discussed in section V.C.6, it is noted that on 22-24 February 2011 it became clear that the pro-Gbagbo side was completely losing control of Abobo. It must be assumed that the population of Yopougon was aware of these developments. Thus, while the Prosecutor argues that it was Mr Blé Goudé who instilled fear in his supporters,³⁹⁴⁴ it appears that it would hardly have been necessary under these circumstances to convince the population of Yopougon that the situation was precarious.

³⁹⁴² See VI.M.2.d) - The contradictions between the accounts of the three witnesses, paras 1659-1662.

³⁹⁴³ P-0109, T-154 dated 9 May 2017, pp. 36-37.

³⁹⁴⁴ Response, para 1254.

1765. Tellingly, the first signs of the wave of violence that engulfed Yopougon on 25-28 February occurred before Mr Blé Goudé's rally in the *Bar le Baron*.³⁹⁴⁵ As noted, the Police commissioner's report indicates that violence erupted around 07h00,³⁹⁴⁶ several hours before Mr Blé Goudé's speech. The immediate cause for this violence appears to have been an attack by suspected RHDP sympathisers, who set fire to a bus that apparently transported pro-Gbagbo students. It is noteworthy that the Police commissioner wrote the following in the report:

Du vendredi 25/02/2011 marquant le début des manifestations à Yopougon au lundi 28 février 2011, l'on a dénombré dans notre zone de compétence, quatorze (14) cas de décès liés auxdites *manifestations qui ont débuté par l'incendie* d'un bus de la compagnie SOTRA, par 04 individus dont l'un armé de Kalachnikov.³⁹⁴⁷

1766. In addition, as noted,³⁹⁴⁸ P-0097 testified that there were two versions of what had started the clashes: one in the press, which alleged that the clashes started as a result of Mr Blé Goudé's speech at the *Bar le Baron*, and one he discovered 'after [his] investigations' according to which 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.'³⁹⁴⁹

1767. This evidence is significant, not only because it points to a different cause for the clashes, but also because it suggests that the hostility between the pro-Gbagbo and pro-Ouattara residents of Yopougon was reciprocal and that the latter also resorted to violence. Under these circumstances, no reasonable trial chamber

³⁹⁴⁵ See VI.M.1 - The trigger of the violence.

³⁹⁴⁶ COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential).

³⁹⁴⁷ COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 [emphasis added].

³⁹⁴⁸ See para. 1707.

³⁹⁴⁹ P-0097, T-49 dated 9 June 2016, pp. 11-12.

could find that Mr Blé Goudé's speech at the *Bar le Baron* was the origin of the violence that engulfed Yopougon on 25-28 February 2011.

1768. This does not diminish the fact that Mr Blé Goudé could probably have reacted more swiftly and more forcefully once he became aware of the violence at roadblocks. It is noted, in this regard, that the evidence suggests that Mr Blé Goudé's convoy passed by a group of his supporters standing alongside burnt bodies at the Saguidiba intersection on 25 February 2011.³⁹⁵⁰ It is also likely that the fact that the GPP operated openly in Yopougon and intimidated the population in the presence of some FDS units/members emboldened Maguy 'le Tocard' to attack the Mosque.³⁹⁵¹

1769. The evidence also suggests that, after the initial confrontation at the *Boulevard Principal*, the situation became one where the pro-Gbagbo side attempted to control the entire neighbourhood and resorted to vigilantism. This exposed the pro-Ouattara residents and persons visiting the neighbourhood to harassment and, in some cases, extreme violence.

1770. However, this is insufficient evidence to show that the events of 25-28 February 2011 started by the pro-Gbagbo side simply targeting the pro-Ouattara side by virtue of their ethnic, national, or religious status or presumed political affiliation. Accordingly, no reasonable trial chamber could conclude from the evidence analysed in this section that the killing and injuring of civilians in Yopougon on 25-28 February 2011 happened pursuant to the alleged policy to keep Mr Gbagbo in power at all costs.

³⁹⁵⁰ [REDACTED] Note also the testimonial evidence to the effect that when the convoy – inside which Mr Blé Goudé supposedly was – entered the courtyard of the Police station on 25 February 2011, the body of the victim who had been attacked by 'the crowd' was still burning in front of the station. P-0436, T-148, dated 1 May 2017, pp. 23-24.

³⁹⁵¹ See IV.D.2.b)(4)(c) - Footings.

1771. This conclusion is confirmed by the (limited and lacunary) evidence of what actually transpired on the ground. In this regard, it is noted that the Prosecutor mentioned 32 victims but could only muster enough evidence in relation to seven of them to show that they were killed or injured by pro-Gbagbo individuals on discriminatory grounds. In all other instances, the Prosecutor failed to provide crucial information, without which no reasonable trial chamber could infer that these instances of violence were part of a pattern. Out of the remaining 25 victims, ten were allegedly killed or injured by the Police in the context of the clashes. These are the victims discussed in paragraphs 1744; 1746; 1747; 1748; 1757, 1758; 1759; and 1760. Other five victims, mentioned in paragraphs 1752, 1753 and 1762, were killed or injured in Port Bouët II on 27 February 2011 during ‘attacks’, the circumstances of which are unknown. In connection to the four victims mentioned in paragraphs 1754, 1755 and 1756 the evidence presented was one anonymous hearsay document which only informs that they died in Yopougon on 25-28 February 2011. Lastly, while testimonial evidence was available in relation to the six remaining victims, neither the perpetrators nor the motives of the crimes committed against the victims cited in paragraphs 1749, 1750, 1751 and 1761 are known, and although there could be grounds at this stage of proceedings to infer that the individuals in paragraphs 1745 and 1763 were victims of pro-Gbagbo individuals, it would not be possible to conclude that these were crimes committed with discriminatory intent against perceived Ouattara supporters.

N. 26 and 27 February 2011 – Shelling in Abobo

1772. The Prosecutor alleges that on 26 and 27 February 2011, the FDS shelled Abobo including PK18 killing several civilians.³⁹⁵² She bases this on a UNOCI Call

³⁹⁵² Mid-Trial Brief, para. 155(xix); Response, para. 298.

Centre Daily Report containing a call in the morning of 27 February 2011 stating that following the ‘*tirs d’hier*’ at night, one rocket fell on a ‘house behind the bridge’ killing four people and injuring others.³⁹⁵³ Further, one of the reported calls states that firing of heavy weapons continued at Abobo PK18.³⁹⁵⁴ The UN call centre report itself does not provide any indication of how the caller determined that this ‘rocket’ was a mortar shell and that it was fired by the FDS. Nothing is known about the identity of the alleged victims of the shelling, or whether they were civilians or combatants. There is also no indication of whether any crimes were committed as a result of the alleged firing of heavy weapons at PK18. The concerns relating to the reliance on UN call centre reports are recalled as discussed above and it is noted that this document has very low probative value.³⁹⁵⁵ Accordingly, the abovementioned evidence is insufficient to conclude that the FDS shelled Abobo on 26 and 27 February 2011.

O. 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I)

1773. The Prosecutor alleges that on 3 March 2011, an FDS convoy intentionally fired upon peaceful female anti-Ggagbo demonstrators and that it did so on political, national, ethnic, or religious grounds.³⁹⁵⁶ According to the Prosecutor, seven

³⁹⁵³ Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 1540, entry 28.

³⁹⁵⁴ Rapport quotidien du 27 février 2011 (Matin) / (du 26 février 2011 à 18h au 27 février, 9h), 27 February 2011, CIV-OTP-0044-1538 (confidential) at 1539, entry 6.

³⁹⁵⁵ It is noted that the Prosecutor further links this incident to P-0330’s evidence that ‘120 mm mortars were being put in battery’ also on 28 February 2011 in Camp Commando; Response, para. 298. From P-0330’s testimony, it is not known whether these mortars that were being put in a battery were in fact fired at any point. See P-0330, T-69 dated 2 September 2016, pp. 2-3, 6; P-0330, T-73 dated 8 September 2016, pp. 26-27.

³⁹⁵⁶ Response, para. 661, 717.

women were killed³⁹⁵⁷ and six other persons seriously wounded as a result of the shots fired by the FDS convoy.³⁹⁵⁸

1774. It is not necessary, for the purposes of this decision, to determine whether there is any merit in Mr Gbagbo's claim that the evidence for this incident is unreliable and that, in particular, the video footage has been doctored. Nor is it necessary to determine whether the march was organised by or at the behest of Mr Ouattara's supporters in the Golf Hotel. What matters is whether it is possible for a reasonable trial chamber to determine, on the basis of the available evidence, who fired the shots that killed and injured the victims and why they opened fire.

1. Who shot the thirteen victims?

1775. In relation to the first question, there is no direct evidence as to who fired the shots that hit the victims. Expert analysis of video footage of the incident (CIV-OTP-0077-0411)³⁹⁵⁹ has identified 27 shots being fired within less than 90 seconds (assuming the video shows one and the same sequence of events without interruption).³⁹⁶⁰ Ten of these shots are thought to be from heavy calibre weapon(s), the remaining 17 shots from a different/lighter calibre weapon.³⁹⁶¹ Of these 27 shots, only the first three can 'likely'³⁹⁶² be attributed to one of the two

³⁹⁵⁷ Response, para. 663 *et seq.*

³⁹⁵⁸ Response, para. 708 *et seq.*

³⁹⁵⁹ An enhanced version of this video: 15/04165/001, undated, CIV-OTP-0082-0357 (confidential), see also P-0606, T-163. It is acknowledged that the Defence for Mr Gbagbo challenges the authenticity of this video. One of the arguments raised, in this regard, is that the date of the video file does not correspond with the date of the alleged incident. However, for the purposes of this decision, it was decided to give the Prosecutor the advantage of the doubt and to analyse the video as if it were authentic and recorded on 3 March 2011. This position does not prejudice any future conclusions regarding the authenticity/date of this exhibit.

³⁹⁶⁰ FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1079.

³⁹⁶¹ FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1079.

³⁹⁶² FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1059, paras 59-61; P-0583, T-186 dated 5 September 2017, p. 42.

machine guns that are mounted on the turret of the BTR 80 that is visible in the video. Subsequently to these three shots, panic breaks out and the camera image swings around violently. It is thus impossible to establish the source of the following noises or blasts.³⁹⁶³

1776. A number of observations follow from this: first, unless it is established that the 13 victims were killed or injured by the first burst of three shots, it is not possible to know who is responsible for their deaths and injuries. The first show of bodies in the video comes at roughly one minute after the first burst of gunfire. By then 24 potential shots have already been heard. Significantly, none of the autopsy reports submitted by the Prosecutor indicate the calibre of the bullets that caused the deaths.³⁹⁶⁴ For the sake of completeness, it is worth mentioning that a 'large bullet [of] approximately 55mm in length and 12mm in diameter' was found in the bodybag containing the remains of one of the victims, Malon Sylla.³⁹⁶⁵ Assuming that the measurement of the diameter of the bullet was correct, there is nothing to link this projectile to the 14.5mm gun of the BTR 80. Moreover, the person who conducted the autopsy testified that nothing could be concluded from the fact that the bullet was found inside the body bag in relation to the wounds of Ms Sylla.³⁹⁶⁶ In short, it is not possible to link the first burst from the BTR 80 to any of the casualties.

1777. Although there is evidence that other shots were fired from within the BTR 80 and possibly from other vehicles in the convoy, there is no evidence to link any

³⁹⁶³ FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1059, para. 60.

³⁹⁶⁴ For example, the report of the autopsy of Moyamou Koné only mentions 'gunshots' as the cause of injury (AUTOPSY REPORT / DZF1C11, 8 May 2015, CIV-OTP-0081-0528 (confidential)); the same applies to the reports concerning Malon Sylla and Gnon Rokia Ouattara, although in these instances, the reports also indicate that the damage was caused by 'high velocity ammunition' (AUTOPSY REPORT / DZF1C5, 8 May 2015, CIV-OTP-0081-0518 (confidential); AUTOPSY REPORT / DZF1C6, 8 May 2015, CIV-OTP-0081-0523 (confidential)). No further information is provided as to calibre or type of weapon used. It is thus perfectly possible that the wounds in question were caused by regular assault rifles, such as Kalashnikovs.

³⁹⁶⁵ AUTOPSY REPORT / DZF1C5, 8 May 2015, CIV-OTP-0081-0518 (confidential), at 0520

³⁹⁶⁶ P-0585, T-189 dated 11 September 2017, p. 64.

of these shots to the deaths and injuries of the 13 victims. It is, of course, possible that at least some of the women were struck by some of the bullets that were fired from the convoy. However, even if this was the case, it would still have to be determined whether the injuries were caused by direct fire or whether they resulted from ricocheting bullets. Given that no information is available in this regard, no reasonable trial chamber could conclude that any of the women were killed or injured by direct shots fired by the FDS convoy.

2. *Why did the convoy open fire?*

1778. According to [REDACTED], the purpose of the initial bursts was to disperse the crowd, which was blocking the road, in order to allow the convoy to pass.³⁹⁶⁷ It appears that very quickly thereafter the convoy came under attack and that two soldiers inside the BTR 80 opened fire with their assault rifles in response.³⁹⁶⁸ From this evidence, it does not appear as if the men in the BTR 80 deliberately targeted the female demonstrators because they were supporters of Mr Ouattara.

1779. [REDACTED].³⁹⁶⁹ With regard to the argument that the 14.5mm canon was aimed directly at the crowd, it is true that from the video³⁹⁷⁰ it does not appear that the barrel is pointed towards the sky. However, considering that the view is from the front of the vehicle and given the poor quality of the footage, it is not possible to determine exactly what the gun was aimed at.³⁹⁷¹ Moreover, when the vehicle is shown again +/- 25 seconds later, the barrel is pointing up diagonally. It is thus difficult to draw any firm conclusions from the video images with regard to what the first shots were aimed at.

³⁹⁶⁷ [REDACTED].

³⁹⁶⁸ [REDACTED].

³⁹⁶⁹ [REDACTED].

³⁹⁷⁰ CIV-OTP-0077-0196, undated, CIV-OTP-0077-0411 (confidential), at 03:36-03:39.

³⁹⁷¹ It is noted that the guns on the BT-80 are mounted relatively high, which means that if the aim was to hit human beings that were close to the vehicle, the gun would have had to point downwards.

1780. The Prosecutor is right in saying that the video does not confirm [REDACTED] that the convoy was fired upon. However, nothing can be concluded from this, as the video shows only a very limited aspect of the entire incident and even so, the footage is of poor quality.

1781. The Prosecutor also claims that witnesses P-0184, P-0580, and P-0114, contradict [REDACTED].³⁹⁷² However, P-0184 testified that she did not know ‘where the fire was coming from’.³⁹⁷³ Moreover, she stated that she was with her back towards the oncoming convoy, that she fell twice and lost consciousness ‘for a few seconds or minutes’,³⁹⁷⁴ which hardly makes her a reliable witness to give an account of the events on 3 March 2011. P-0184 also testified that the demonstrators initially clapped when they saw the convoy approaching, because the ‘tank’ had a white flag on it.³⁹⁷⁵ However, the video footage shows no flag on the BTR 80.³⁹⁷⁶ The witness also said that the convoy opened fire *after* it passed by her,³⁹⁷⁷ which is also not in line with what can be seen on the video.

1782. The Prosecutor also relies on P-0580’s testimony to cast doubt on [REDACTED]. P-0580 allegedly witnessed the events of 3 March 2011 personally. However, when describing the convoy, he only mentioned two vehicles, rather than five.³⁹⁷⁸ The witness did not see the convoy firing but only heard shots. In particular, the witness stated that he first heard a ‘very loud noise,

³⁹⁷² Response, para. 667, note 1890. Although witness P-0114 is not identified as such, the reference to transcript T-161 is a clear indication.

³⁹⁷³ P-0184, T-215 dated 4 December 2017, p. 33.

³⁹⁷⁴ P-0184, T-215 dated 4 December 2017, p. 33.

³⁹⁷⁵ P-0184, T-215 dated 4 December 2017, p. 32.

³⁹⁷⁶ CIV-OTP-0077-0196, undated, CIV-OTP-0077-0411.

³⁹⁷⁷ P-0184, T-215 dated 4 December 2017, p. 32.

³⁹⁷⁸ P-0580, T-186 dated 5 September 2017, pp. 79-80.

and then I heard gunshots'.³⁹⁷⁹ According to the witness, the shooting lasted for 1-2 minutes,³⁹⁸⁰ which corresponds with what can be heard on the video.³⁹⁸¹ The witness also confirmed that the bodies of the victims were lying in relatively close proximity to each other.³⁹⁸² Apart from confirming some of what can be seen in the video (which was widely disseminated at the time, and is still available on the internet today), P-0580's account does not add much useful information, especially in light of the fact that the witness did not actually see the shots being fired. The testimony of P-0580 therefore cannot be said to contradict [REDACTED].

1783. The Prosecutor also relies on the testimony of P-0114 in order to cast doubt [REDACTED]. In his testimony, P-0114 said that he did not see any armed individuals among the demonstrators.³⁹⁸³ However, the fact that the witness did not personally see armed individuals in a mass of several hundreds or even thousands of people obviously does not mean that none were actually present. Moreover, it is noteworthy that, in his prior recorded statement, P-0114 stated that the 'tank' fired only once.³⁹⁸⁴ And during his testimony, he declined to answer a question as to how many vehicles he saw; simply repeating that he saw

³⁹⁷⁹ P-0580, T-186 dated 5 September 2017, p. 80. It is noted that other witnesses also mention having heard a big noise in addition to the gunshots. In particular, P-0582 states that when she arrived in Samaké, after having fled from the Banco roundabout, she heard a loud noise of weaponry, which made the ground shake (P-0582, DÉCLARATION DE TÉMOIN, 14 May 2015, CIV-OTP-0081-0468-R02 (confidential) at 0477 paras 38-39). P-0190 similarly testified that, when she was at the march, something fell down *before* she observed gunshots being fired. Although the witness testified that she did not know what it was, she did seem to suggest that it was a bomb or a shell that caused a big noise and huge damage, such that she and other women surrounding her fell to the ground and blood sprayed (P-190, T-21 dated 11 February 2016, pp. 58-61, 84-87; P-0190, T-22 dated 12 February 2016, p. 20). None of the parties have raised this issue so the Chamber is left to speculate about what actually happened. In any event, if it was to be believed that there was an explosion before the gunfire started this would, if anything, make the course of events even more confusing, and hence cast further doubt on the Prosecutor's version of events.

³⁹⁸⁰ P-0580, T-187 dated 6 September 2017, p. 36.

³⁹⁸¹ CIV-OTP-0077-0196, undated, CIV-OTP-0077-0411 (confidential) at 03:39-05:15.

³⁹⁸² P-0580, T-187 dated 6 September 2017, pp. 9-11.

³⁹⁸³ P-0114, T-161 dated 24 May 2017, p. 8 (confidential).

³⁹⁸⁴ P-0114, DÉCLARATION DE TÉMOIN, 20 February 2015, CIV-OTP-0076-0951 (confidential), para. 27.

‘the tanks’.³⁹⁸⁵ Finally, P-0114 stated that he had forgotten a lot about the events of 3 March 2011.³⁹⁸⁶ P-0114’s testimony is thus not a very instructive when it comes to the details about what happened on 3 March 2011.

1784. Another point worth mentioning is that when the camera first points in the direction of the BTR 80, most of the persons between the camera and the vehicle appear to be male.³⁹⁸⁷ This means that, from the perspective of the soldiers in the BTR 80, those closest to them (and therefore standing between the vehicle and the female demonstrators) were men. Some of the men that are visible in the video appear to be waving and clapping at the oncoming convoy just seconds before the BTR 80 opens fire.

1785. According to the experts’ analysis of the video, the first three bursts of gunfire (3x3 heavy calibre and 1x2 lighter calibre) are fired within a time span of 7 seconds.³⁹⁸⁸ Then there is a pause of around 40 seconds before the next series of gunshots begins.³⁹⁸⁹ However, by that time, the convoy seems to have already passed the location of where the demonstrators were gathered and is crossing a largely deserted intersection.³⁹⁹⁰ Significantly, there is no gunfire when the convoy is driving through the location where the demonstrators appear to have been concentrated. Two observations may be made in this regard. First, it is impossible to determine who fired the second series of shots. It is thus also impossible to determine whether they could have caused any of the injuries. Second, if it had really been the intention of the soldiers in the convoy to attack

³⁹⁸⁵ P-0114, T-161 dated 24 May 2017, p. 53 (confidential).

³⁹⁸⁶ P-0114, T-161 dated 24 May 2017, pp. 31, 34-35 (confidential).

³⁹⁸⁷ CIV-OTP-0077-0196, undated, CIV-OTP-0077-0411 (confidential) at 3:30-3:35.

³⁹⁸⁸ FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1079.

³⁹⁸⁹ FORENSIC EXPERT REPORT / Forensic Examination of a Video, 7 January 2016, CIV-OTP-0089-1030, at 1079.

³⁹⁹⁰ CIV-OTP-0077-0196, undated, CIV-OTP-0077-0411 (confidential) at 03:46-04:25.

the female demonstrators, it is difficult to understand why they held their fire when they were closest to the people they were supposedly targeting.

3. Conclusion

1786. From the above, no reasonable trial chamber could conclude that the convoy opened fire with the aim of killing or injuring unarmed female pro-Ouattara demonstrators. This conclusion is reinforced by the fact that there is no evidence of prior instructions to use violence against civilians,³⁹⁹¹ [REDACTED],³⁹⁹² and that the convoy did not know of the women's march and were taken by surprise when they encountered the demonstrators.³⁹⁹³

1787. In sum, although serious question marks may be placed by the use of a heavy machine gun in an environment with a very high concentration of civilians, it is not possible to determine on the basis of the available evidence that the soldiers in the BTR 80 or in any of the other vehicles in the convoy caused the deaths and injuries of the 13 victims of the women's march of 3 March 2011, much less that they did so because they intentionally targeted them because of political, racial, national, ethnic, religious, or other grounds. There is simply too much that remains unclear about this incident to allow a reasonable trial chamber to come to any firm conclusions.

P. 3-4 March 2011 – Burning of disabled person Port-Bouët

1788. The Prosecutor alleges that on 3 and 4 March 2011, a *jeune patriote* burned a physically disabled man from Burkina Faso to death at Port-Bouët, accusing him

³⁹⁹¹ [REDACTED].

³⁹⁹² [REDACTED].

³⁹⁹³ [REDACTED].

of harbouring rebels.³⁹⁹⁴ The daily Police bulletin dated 4 March 2011 states that the victim was a Burkinabé national and disabled who was reproached for harbouring rebels by unidentified *jeunes patriotes* who had erected a roadblock.³⁹⁹⁵ The victim was burnt alive inside an unfinished house in the Jean Folly neighbourhood of Port Bouët.³⁹⁹⁶ The daily Police bulletin dated 7 March 2011 refers to this incident and reports that one of the ‘self-defence groups’ suspected Burkinabé nationals of harbouring rebels as a result of which the victim was burnt alive.³⁹⁹⁷ This report also states that it took mediation by the Police Commissioner and the COJEP president to restore calm following the clashes that broke out.³⁹⁹⁸

1789. The relevant UN Call Centre Daily Report states that a member of the RHDP called to indicate that a Burkinabé national was burnt alive on 3 March 2011.³⁹⁹⁹ The Prosecutor also adduced a HRW report which references this incident and cites the source of information as a 29-year old witness.⁴⁰⁰⁰ It is noted that both documents have very low probative value.

1790. This evidence together suggests that a disabled Burkinabé national may have been burnt alive by members of one of the self-defence groups in the context of recurring confrontations between the self-defence groups and the Burkinabé community. From the circumstances, it can be inferred that the victim was burnt alive because of his nationality. However, it cannot be concluded that this killing

³⁹⁹⁴ Mid-Trial Brief, para. 155(xxii); Response, para. 283.

³⁹⁹⁵ BQI No. 44 du 04 Mars 2011, 4 March 2011, CIV-OTP-0045-0213 (confidential) at 0214-0215. This person appears on the LISTE VICTIMES EPE A JOUR.xls, undated, CIV-OTP-0073-1074 (confidential), IMLA 830.

³⁹⁹⁶ BQI No. 46 DU LUNDI 07 MARS 2011, 7 March 2011, CIV-OTP-0045-0180 (confidential) at 0181.

³⁹⁹⁷ BQI No. 46 DU LUNDI 07 MARS 2011, 7 March 2011, CIV-OTP-0045-0180 (confidential) at 0181.

³⁹⁹⁸ BQI No. 46 DU LUNDI 07 MARS 2011, 7 March 2011, CIV-OTP-0045-0180 (confidential) at 0181.

³⁹⁹⁹ Rapport quotidien du 4 mars 2011 / (du 3 février 2011 à 18h au 4 mars, 18h), 4 March 2011, CIV-OTP-0044-1709 (confidential) at 1715.

⁴⁰⁰⁰ They Killed Them Like It Was Nothing The Need for Justice for Cote d'Ivoire Post-Election Crimes, 1 October 2011, CIV-OTP-0004-0072 at 0121.

took place following an identification check at a roadblock, as alleged, as there is no information to that effect in the documents cited. It is noted that the documents do state that the perpetrators of this crime were members of the self-defence group who had erected roadblocks; however, the burning is alleged to have taken place in a house and not at a roadblock.

Q. 11 March 2011 – Killing of an individual in Yopougon

1791. The Prosecutor alleges that on 11 March 2011, the ‘youths of the Parliament’ killed a man from Burkina Faso in Yopougon suspecting him of being a rebel informant.⁴⁰⁰¹ P-0108 described a hearsay account of the victim’s death;⁴⁰⁰² he testified that the ‘youth of the *parlement*’ stoned Lalogo Moumouni, a person of Burkinabé origin, and hit him with sticks until he died because he was suspected of being a rebel.⁴⁰⁰³ After his memory was refreshed, P-0108 recalled giving the information in his statement about this incident⁴⁰⁰⁴ and as per the statement, the ‘*jeunes pro-Gbagbo*’ had caught the victim and taken him to the *parlement*.⁴⁰⁰⁵ The UNOCI Call Centre Daily Report dated 11 March 2011 contains an entry that corresponds to this incident except that it states that the victim was killed by machetes and not by stones; it also identifies the location as ‘*Yopougon Sicobois*,

⁴⁰⁰¹ Mid-Trial Brief, para. 155(xxiv); Response, para. 284.

⁴⁰⁰² It is also noted that the witness links this killing to the date when Maguy le Tocard took over the Police station at 16th *arrondissement*. [REDACTED] This is inconsistent with P-0440’s testimony that states that the Police station was abandoned around 31 March 2011 (P-0440, T-157 dated 11 May 2017, p. 54).

⁴⁰⁰³ P-0108, T-145 dated 24 April 2017, pp. 84-88.

⁴⁰⁰⁴ P-0108, T-145 dated 24 April 2017, p. 52 (confidential).

⁴⁰⁰⁵ P-0108, DÉCLARATION DE TÉMOIN, 23 January 2012, CIV-OTP-0013-0108-R03 (confidential) at 0122, para. 107.

vers le parlement'.⁴⁰⁰⁶ The victim's name is also found on the list of *CHU de Treichville*.⁴⁰⁰⁷

1792. The evidence submitted in support of this incident is composed of hearsay accounts, inconsistent as to the cause of death – stones or machetes. However, from the remaining information, it can be inferred that the victim was killed close to the *parlement* for being accused of being a rebel; however, it is not known whether or not this incident took place at a roadblock following an identity check. In fact, as per the information provided to the UNOCI call centre, the victim was an electrician and had been invited by the *jeunes patriotes* to fix something.⁴⁰⁰⁸

R. 11-12 March 2011 – Shelling in Abobo

1793. The Prosecutor alleges that on 11 to 12 March 2011, an FDS operation using heavy weapons including mortars killed three children in Abobo.⁴⁰⁰⁹ As per the UNOCI Daily Situation Report dated 15 March 2011, the UNOCI together with UNPOL conducted an inquiry into these events and found that the FDS had been

⁴⁰⁰⁶ Rapport quotidien du 11 mars 2011 / (du 10 mars 2011 à 18h au 11 mars, 18h), 11 March 2011, CIV-OTP-0044-1644 (confidential) at 1647. It is noted that P-0414 commented on this report in her statement and she stated that she did not think she was at the call centre. She also stated that she did not participate in the follow up missions connected with the alleged shelling reported in CIV-OTP-0044-1644 and Rapport quotidien du 12 mars 2011 / Rapport quotidien du 12 mars 2011, 12 March 2011, CIV-OTP-0044-1649 (confidential). See P-0414, DÉCLARATION DE TÉMOIN, 9 February 2014, CIV-OTP-0054-0582 (confidential), paras 272-274.

⁴⁰⁰⁷ EVENEMENT CHU TREICHVILLE « IDENTIFIES », undated, CIV-OTP-0029-0462 (confidential) at 0464, entry 72.

⁴⁰⁰⁸ Rapport quotidien du 11 mars 2011 / (du 10 mars 2011 à 18h au 11 mars, 18h), 11 March 2011, CIV-OTP-0044-1644 (confidential) at 1647.

⁴⁰⁰⁹ Mid-Trial Brief, para. 155(xxv); Response, para. 299.

using heavy weapons, including rockets and mortars to attack the *Commando Invisible* in Abobo, as a result of which three children died.⁴⁰¹⁰

1794. A UN report dated 30 March 2011 references this incident and does not add further details.⁴⁰¹¹ The Prosecutor also references an Amnesty International Report that contains a summary account of certain witnesses; however, it does not shed further light on facts that may be relevant to determining whether or not this incident took place pursuant to or in furtherance of the alleged Policy.⁴⁰¹²

1795. Having regard to the documents concerning this incident, it cannot be concluded that the FDS used heavy weapons with the intent to target the civilian population.

S. 15 March 2011 – Great Mosque of Port-Bouët II in Yopougon

1796. The Prosecutor alleged that on 15 March 2011, BAE and *Gendarmerie* officers, together with militia, attacked the Great Mosque of Port-Bouët II in Yopougon killing 35 people including the Imam.⁴⁰¹³

1797. An undated UN report on the violation of human rights provides more information about how the events allegedly unfolded. It states that the Imam was killed by a sniper and the witnesses that were interviewed noted the presence of

⁴⁰¹⁰ DAILY SITUATION REPORT, 15 March 2011, CIV-OTP-0044-1167 (confidential) at 1170. These are reflected in Rapport quotidien du 11 mars 2011 / (du 10 mars 2011 à 18h au 11 mars, 18h), 11 March 2011, CIV-OTP-0044-1644 (confidential) at 1645-1648 and Rapport quotidien du 12 mars 2011 / Rapport quotidien du 12 mars 2011, 12 March 2011, CIV-OTP-0044-1649 (confidential) at 1649-1653. In her statement, P-0414 discussed the Daily Call Centre report dated 12 March 2011 that has been cited by the Prosecutor in support of these allegations. She recalled having received calls about this incident but did not participate in the follow up mission. P-0414, DÉCLARATION DE TÉMOIN, 9 February 2014, CIV-OTP-0054-0582 (confidential), paras 272-274.

⁴⁰¹¹ Vingt-Septième rapport du Secrétaire général sur l'Opération des Nations Unies en Côte d'Ivoire / S/2011/211, 30 March 2011, CIV-OTP-0090-5521 at 5532, para. 49.

⁴⁰¹² Ils ont regardé sa carte d'identité et l'ont abattu, retour sur six mois de violences post-électorales en Côte d'Ivoire, Amnesty International, 15 May 2011, CIV-D15-0001-3091 at 3111.

⁴⁰¹³ Mid-Trial Brief, para. 155(xxvi); Response, para. 267.

BAE and *Gendarmerie* elements who allegedly conducted this operation in collaboration with militiamen. The militiamen were identified as those wearing red scarves tied on their heads. The report also states that during the operation, the militia, the BAE and the *Gendarmerie* set fire to the houses by ‘using grenades or Molotov cocktails’; the people that were fleeing their homes were fired upon; 35 persons were killed as a result.⁴⁰¹⁴ The UNOCI Call Centre Daily Report dated 17 March 2011 states that the Imam in question was killed by ‘*des miliciens pro-Gbagbo*’.⁴⁰¹⁵

1798. The Prosecutor also references a contemporary Police report that according to her ‘highlights that a sweeping operation took place in the entire commune’ based on the fact that the report mentions ‘*Ratissage sur l’ensemble de la commune*’ (combing through the entire commune).⁴⁰¹⁶ It is noted that this Police report, forwarded to the DGPN, states that a group of mixed units was deployed in Yopougon on 15 March 2011. It is also noted that under the column ‘activities’, it states ‘*Patrouilles portées*’ and the ‘*Ratissage sur l’ensemble de la commune*’ the Prosecutor relies on is listed under the column ‘difficulties’.⁴⁰¹⁷ It is not entirely clear what this means. Assessing the document as a whole, it does not indicate that a ‘sweeping operation took place in the entire commune’ as alleged by the Prosecutor. It rather demonstrates that patrols were being carried out by the Police in collaboration with other units. The listed difficulties show

⁴⁰¹⁴ Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416.

⁴⁰¹⁵ Rapport quotidien du 17 mars 2011 / (du 16 mars 2011 à 17h au 17 mars, 17h), 17 March 2011, CIV-OTP-0044-1654 (confidential) at 1657. It is noted that in her statement, P-0414 recalled not being at the call centre when this incident may have been reported. P-0414 recalled receiving calls concerning the incident on her duty phone and recalled hearing shots and commotion in the background over the phone call. See P-0414, DÉCLARATION DE TÉMOIN, 9 February 2014, CIV-OTP-0054-0582 (confidential), paras 82-83.

⁴⁰¹⁶ Response, para. 267.

⁴⁰¹⁷ Niveau de collaboration de la Police Nationale avec les autres forces, 16 March 2011, CIV-OTP-0045-1121 (confidential) at 1121.

that these units were missing means of communication as well as a '*véhicule de liaison*'.⁴⁰¹⁸

1799. A summary information report addressed to the minister of interior reports that the death of the Imam took place on 15 March 2011.⁴⁰¹⁹ Director-General Bredou M'Bia was shown this document in court and confirmed recalling the incident of an Imam found dead at the Mosque.⁴⁰²⁰ It was noted in court that this document was not signed, which the witness considered to mean that this report may have been drafted but he did not know whether it was sent to the minister.⁴⁰²¹

1800. P-0435 provided a hearsay account concerning the involvement of Maguy 'le Tocard' in this alleged operation that was conducted 'with elements of Commander Loba to the Port Bouet II neighbourhood'.⁴⁰²² P-0441 testified that Maguy 'le Tocard' introduced himself to the witness stating that he had killed the imam of the Port Bouët II Mosque.⁴⁰²³ P-0440 also provided a hearsay account that the BAE had conducted an operation in Port Bouët II and that an Imam was killed.⁴⁰²⁴ P-0547 testified that '[o]ne day, [the BAE] came at 6, they killed the Grand Imam of Port Bouet II and a woman';⁴⁰²⁵ he also testified that he himself had left Abidjan at the relevant time.

1801. Having regard to all of the above, while there is evidence of some involvement by the BAE, it is not known to what extent the BAE and other units were involved in this incident. The details of the so-called operation are derived from

⁴⁰¹⁸ See Niveau de collaboration de la Police Nationale avec les autres forces, 16 March 2011, CIV-OTP-0045-1121 (confidential) at 1121.

⁴⁰¹⁹ Synthèse des Bulletins Quotidiens d'Information pour la période du 16 au 21 mars 2011, undated, CIV-OTP-0048-1348 at 1349.

⁴⁰²⁰ P-0046, T-126 dated 20 February 2017, p. 45.

⁴⁰²¹ P-0046, T-126 dated 20 February 2017, pp. 43-44.

⁴⁰²² P-0435, T-90 dated 21 October 2016, pp. 46-49.

⁴⁰²³ P-0441, T-36 dated 10 May 2016, pp. 17-19.

⁴⁰²⁴ P-0440, T-157 dated 11 May 2017, pp. 55-56.

⁴⁰²⁵ P-0547, T-19 dated 9 February 2016, p. 13.

the undated UN report which constitutes anonymous hearsay. To the extent that other evidence on the record corroborates this report, it is only possible to conclude that the BAE was present at the relevant location together with other FDS units; militia may also have been present at the same time and the Imam may have been killed by Maguy ‘le Tocard’, but it is not known to what extent this happened in collaboration with the BAE or other FDS units. It is also not known who gave the orders or instructions for this alleged operation to be carried out, if at all.

T. 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II)

1802. In relation to the fourth charged incident, the Prosecutor alleges:

On 17 March 2011, in broad daylight, members of a BASA platoon at Abobo’s Camp Commando executed orders and launched 120mm mortars on locations including the Siaka Koné market, SOS Village, a mosque, a hospital, and homes – thereby killing at least 31 civilians and wounding at least 36 more. [...] the FDS targeted these civilians on political, national, ethnic, or religious grounds.⁴⁰²⁶

1803. There is little doubt that on 17 March 2011 a number of explosions caused severe bodily harm to several persons and damaged civilian property in Abobo. Several witnesses report to have seen, heard, or otherwise to have knowledge of explosions, including in places that were named by the Prosecutor. It is, however, difficult to fully understand what exactly happened with regard to the location, timing and number of explosions that took place on that date. Many of the witnesses have no clear recollection or knowledge as to where or when the explosions that they are speaking of took place, or how many of them there were. Nonetheless, the Prosecution presents a small number of witnesses with first-hand knowledge of explosions close to or at the Siaka Koné market and the SOS village neighbourhood. These witnesses were either personally injured by the

⁴⁰²⁶ Response, para. 796.

explosion(s) at one of these locations, were on site at the time of the explosion(s), or heard the sound of the explosion(s) and related it to one of those two areas. Even if their accounts as to timing or location might slightly differ, they overlap sufficiently to allow a reasonable trial chamber to conclude, that there were at least one⁴⁰²⁷ to two⁴⁰²⁸ explosions in the area of the Siaka Koné market in between 11h00⁴⁰²⁹ and 17h00,⁴⁰³⁰ and three⁴⁰³¹ to four⁴⁰³² explosions in the SOS village neighbourhood in the morning⁴⁰³³ or early afternoon.⁴⁰³⁴ This results in a minimum of four explosions total. The Prosecutor also lists additional locations, which would have been struck by mortar shells, in particular the Derrière Rails sector. She does, however, not present any witnesses that were in that area at the time of the explosion. The only available witnesses provide hearsay evidence and claim to have either lost family members there⁴⁰³⁵ or to have otherwise encountered or heard of victims that were from that place.⁴⁰³⁶

⁴⁰²⁷ P-0360, DÉCLARATION DE TÉMOIN, 16 July 2013, CIV-OTP-0046-1203-R02 (confidential), at 1208 para. 20.; P-0489, DÉCLARATION DE TÉMOIN, 21 January 2015, CIV-OTP-0071-2199-R02 (confidential) at 2203, para. 17.

⁴⁰²⁸ P-0105, T-213 dated 29 November 2017, pp. 36-38 and P-0105, DÉCLARATION DE TÉMOIN, 29 March 2012, CIV-OTP-0019-0245-R03 (confidential) at 0248, para. 19; P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential) at 0228, para. 89.

⁴⁰²⁹ P-0105, DÉCLARATION DE TÉMOIN, 29 March 2012, CIV-OTP-0019-0245-R03 (confidential) at 0248, para.18.

⁴⁰³⁰ P-0117, T-111 dated 5 December 2016, p. 29 (confidential).

⁴⁰³¹ P-0363, DÉCLARATION DE TÉMOIN, 18 July 2013, CIV-OTP-0046-0275-R04 (confidential) at 280, paras 20-21, and P-0489, DÉCLARATION DE TÉMOIN, 21 January 2015, CIV-OTP-0071-2199-R02 (confidential) at 2204, para. 25.

⁴⁰³² P-0364, T-190 dated 12 September 2017, p. 42; P-0364, DÉCLARATION DE TÉMOIN, 17 December 2014, CIV-OTP-0071-0437-R02 (confidential) at 0445-0446, paras 33-39 (note: [39] A fifth mortar fell while I was at the hospital – fell nearby in the 15th. She heard it and the doctors told her to hide in an office); P-0363, T-191 dated 13 September 2017, pp. 60-61; P-0360, DÉCLARATION DE TÉMOIN, 16 July 2013, CIV-OTP-0046-1203-R02 (confidential) at 1208, para. 20.

⁴⁰³³ P-0364, T-190 dated 12 September 2017, p. 36; P-0536, T-23 dated 15 February 2016, p. 8.

⁴⁰³⁴ P-0489, DÉCLARATION DE TÉMOIN, 21 January 2015, CIV-OTP-0071-2199-R02 (confidential), at 2203, paras 17-18.

⁴⁰³⁵ P-0297, DÉCLARATION DE TÉMOIN, 3 March 2013, CIV-OTP-0041-0412-R02 (confidential) at 0416-0417, paras 24-26; P-0297, T-192 dated 14 September 2017, pp. 5-12.

⁴⁰³⁶ See for instance P-105, DÉCLARATION DE TÉMOIN, 29 March 2012, CIV-OTP-0019-0245-R03 (confidential) at 0249-0250, para. 27.

Given the hearsay nature of this evidence and in the absence of any verifiable corroboration from other independent and reliable sources,⁴⁰³⁷ no reasonable trial chamber could make any confident findings in relation the existence of the alleged explosions at Derrière Rails and other locations. For the purposes of the following analysis, it will thus be assumed that on 17 March 2011 there were at least four and possibly more explosions in at least two different locations in Abobo.

1804. Having arrived at this conclusion, it is necessary to establish first who caused (any of) the abovementioned explosions and by which means. If this can be established to the relevant standard, further questions arise as to who is responsible for the explosions and, especially, what the motivation behind this was.

1. What caused the explosions?

1805. The Prosecutor alleges that the explosions were caused by several 120mm mortar shells. As evidence of this claim, the Prosecutor relies on a number of different witnesses and the evidence of an expert.

1806. The expert in question is a former British Ammunition Technical Officer and a member of the Institute of Explosive Engineers.⁴⁰³⁸ Although the expert was of the view that the damage was likely caused by heavy-cased 120mm mortar rounds, he admitted that it was also possible that other types of ordnance or an improvised explosive device might have done so.⁴⁰³⁹ The expert's evidence thus

⁴⁰³⁷ It is noted that in the UNOCI Call Centre Report (Rapport quotidien du 17 mars 2011 / (du 16 mars 2011 à 17h au 17 mars, 17h), 17 March 2011, CIV-OTP-0044-1654 (confidential) at 1664) one call at 15h26 « signale qu'au quartier derrière-rails d'Abobo, un obus est tombé, entraînant le décès d'une dame et 06 blessés » and that [REDACTED]. So it seems that the victims may have come from there, but this does not suggest that shells fell onto derrière rails. P-0414's statement on this point (P-0414, DÉCLARATION DE TÉMOIN, 9 February 2014, CIV-OTP-0054-0582 (confidential)) is based on anonymous hearsay.

⁴⁰³⁸ Annex B to: REPORT ON THE ALLEGED SHELLING SITES WITHIN ABIDJAN, THE IVORY COAST - MISSION DATE 8-12 JULY 2013, 8 July 2013, CIV-OTP-0049-0054 (confidential).

⁴⁰³⁹ P-0411, T-168 dated 29 June 2017, pp. 80-81.

shows that the available physical evidence is consistent with the Prosecutor's thesis that the injuries and damage were caused by Russian 120mm mortar shells, but it does not prove it.

1807. However, the expert's evidence must not be seen in isolation. Indeed, the conclusions may complement and/or converge with other information that is on the record. The first question that arises in this regard is whether the FDS had deployed 120mm mortars within firing distance at the relevant time. There is some testimonial evidence that BASA had deployed 120mm mortars in Camp Commando in February or March 2011. In particular, P-0226 testified that two 120mm mortars arrived at Camp Commando when he was deployed there before the women's march.⁴⁰⁴⁰ In terms of timing, this evidence corresponds with the testimony of P-0330, who testified that [REDACTED], an officer of the 1st BCP, tried to set up a battery of three 120mm mortars in Camp Commando on 28 February 2011, but that this was forbidden by the commander of the Camp, [REDACTED].⁴⁰⁴¹ However, given the fact that P-0226 stated that it was a BASA unit that brought two (rather than three) mortars and that they were effectively put in battery, there is considerable contradiction between these two testimonies. P-0330's evidence in this regard is also called into question by the fact that several witnesses have testified that BASA was the only FDS unit to dispose of 120mm mortars⁴⁰⁴² and that there is no suggestion that the 1st BCP was allowed to use BASA's equipment.

⁴⁰⁴⁰ P-0226, T-166 dated 27 June 2017, pp. 53-55. It is unclear from the record when exactly P-0226 was present at Camp Commando. The only temporal indication is that the mortars arrived "before the notorious killings at the Banco roundabout". P-0226, T-166 dated 27 June 2017, p. 54, which presumably refers to the women's march.

⁴⁰⁴¹ P-0330, T-69 dated 2 September 2016, pp. 2-7.

⁴⁰⁴² P-0164 and P-0238 both testified that only BASA had 120 mm mortars in the FDS; P-0164, T-164 dated 19 June 2017, p. 44; P-0238, T-82 dated 29 September 2016, pp. 17-18. RECAPITULATIF DES LIVRAISONS EFFECTUEES AU 1er NOVEMBRE 2010 / FACT PRO No. 005 bis LK/13-11-2009, 1 November 2010, CIV-OTP-0073-0215 (confidential) is an invoice dated 1 November 2010, suggesting that CECOS received 50 120 mm mortars on that day, but P-0010 questioned the authenticity of this document and testified that it was impossible for CECOS to have received these weapons. P-0010, T-139 dated 29 March 2017, pp. 4-6 (confidential).

1808. Another witness who testified that a BASA unit brought two mortars to Camp Commando is P-0239. Here too, his account at first sight seems to corroborate the one of P-0226, in that they both mentioned the same non-commissioned officer to have been in charge of the unit that brought the mortars.⁴⁰⁴³ However, P-0226 testified that, first, the elements who brought the mortars came directly from BASA, and second, that he was asked by said non-commissioned officer to help put the mortars into battery because the elements that came with them ‘were not sufficient in number, and they weren't really all up to scratch with shooting a gun’.⁴⁰⁴⁴ In contrast, P-0239 testified that he and his unit initially went from BASA to Camp Commando, but that they were then immediately deployed to Dépôt 9 with the 120mm mortars, where they put them in battery. Later that day, the mortars were brought back to Camp Commando, where they were left for the next shift.⁴⁰⁴⁵ Thus, even if P-0239’s unit did not fire the 120mm mortars at Dépôt 9, they did set them up in battery there. This is difficult to reconcile with P-0226’s account, especially in relation to P-0226’s claim that the unit he mentioned needed his assistance with putting the mortars in battery at Camp Commando. In addition, neither of the two witnesses recalled the exact date of the events that they described.⁴⁰⁴⁶ Hence, it is not possible to determine whether they referred to the same or different situation(s). Consequently, it is not possible to confirm P-0226 and P-0239 as corroborating each other when it comes to the arrival of 120mm mortars at the camp.

1809. Adding to the confusion, P-0226 testified that he helped set the mortars into battery immediately after they had been brought to Camp Commando from BASA, some days before the women’s march.⁴⁰⁴⁷ By contrast, witness P-0164

⁴⁰⁴³ P-0226, T-166 dated 27 June 2017, p. 55 (confidential); P-0239, T-167, dated 28 June 2017, pp. 48-49.

⁴⁰⁴⁴ P-0226, T-166 dated 27 June 2017, p. 55 (confidential).

⁴⁰⁴⁵ T-167, dated 28 June 2017, pp. 48-54.

⁴⁰⁴⁶ P-0226, T-166 dated 27 June 2017, p. 54; P-0239, T-167, dated 28 June 2017, p. 46.

⁴⁰⁴⁷ P-0226, T-166 dated 27 June 2017, pp. 53-55.

testified that when he arrived at Camp Commando in the afternoon/evening of 3 March 2011, two 120mm mortars were already present in Camp Commando, but that they were not yet set up in battery. He further testified that he then received the order to set them up, which he executed together with the squad leader, Guy-Dominique.⁴⁰⁴⁸ The presence of 120mm mortars at Camp Commando on 3 March 2011 is however denied altogether by P-0156 who was in charge of Camp Commando from 28 February until 4 March 2011. More specifically, he testified that the BASA unit that was stationed there at the time did not have 120mm mortars.⁴⁰⁴⁹

1810. Finally, it is worth mentioning, that P-0047, the commander of the ground forces and highest operational FDS officer in Abidjan, who could normally be expected to be informed of such matters, testified that by 17 March 2011 ‘the 120 millimetre guns had been withdrawn’⁴⁰⁵⁰ from Camp Commando.

1811. On the basis of the above evidence, it is difficult to make any determination about whether and, if so, when 120mm mortars arrived in Camp Commando. Although one trustworthy witness may suffice, in this case there are so many different accounts about the circumstances under which 120mm mortars were allegedly deployed at Camp Commando that it is impossible to decide which one is accurate. It is also possible that several of the testimonies are true. But in that case it would seem that mortars were brought back and forth to and from Camp Commando quite frequently, or at least that they were put in and out of battery by different persons on several occasions. Whatever the case may be, the main factor from the above analysis is that none of the evidence regarding the presence of 120mm mortars at Camp Commando specifically and unequivocally

⁴⁰⁴⁸ P-0164, T-164 dated 19 June 2017, pp. 55-58.

⁴⁰⁴⁹ P-0156, T-172 dated 5 July 2017, p. 33.

⁴⁰⁵⁰ P-0047, T-204 dated 8 November 2011, pp. 14-17 (witness was confronted with prior recorded statement in which he indicated that BASA did have 120 mm mortars, but testified that he ‘had omitted to tell you that the 120 millimetre guns had been withdrawn.’)

concerns the date of the incident in question, that is 17 March 2011 — with the exception of P-0047, who seems to deny their presence on the relevant date. It follows that on the basis of the abovementioned evidence, no reasonable trial chamber could affirm that 120mm mortars were present in Camp Commando on 17 March 2011. This does not establish that there were in fact no mortars in Camp Commando on that day. It only means that the evidence concerning the firing of 120mm mortar shells from Camp Commando on 17 March 2011, which will be discussed next, is not independently supported by any of the other evidence.

2. *When were the shells allegedly fired and by whom?*

1812. According to P-0239, he was present in Camp Commando sometime in March⁴⁰⁵¹ where he witnessed two 120mm mortar rounds being fired from the same mortar in short intervals.⁴⁰⁵² The Prosecutor claims that the shells that hit several locations in Abobo were of 120mm calibre and seems to suggest that P-0239's account proves that they originated from Camp Commando.⁴⁰⁵³ However, witness P-0239 did not know the precise date of when the firing took place.⁴⁰⁵⁴ This makes it difficult to affirm with any level of certainty that what P-0239 claims to have witnessed is effectively linked to the explosions on 17 March 2011.

1813. It is true that the fact that witness P-0239 does not remember the precise date does not exclude the possibility that the events he described did take place on 17 March 2011. However, there are further, more pressing, concerns about P-0239's testimony and how it relates to the other relevant evidence.

⁴⁰⁵¹ P-0239, T-167 dated 28 June 2017, p. 53.

⁴⁰⁵² P-0239, T-167 dated 28 June 2017, p. 60.

⁴⁰⁵³ Response, paras 812, 814, 891, 893.

⁴⁰⁵⁴ P-0239, T-167 dated 28 June 2017, pp. 53, 70.

1814. First, witness P-0239 testified that two shells were fired in short succession.⁴⁰⁵⁵

This is inconsistent with the other evidence about what happened on 17 March 2011. First, if only two shells were fired, there is a discrepancy between the number of shells fired and the number of explosions that have been reported, as discussed in the previous section. Second, P-0239 testified that the two shells he allegedly saw being fired were launched in quick succession from a single mortar. This suggests that those who fired did not adjust the aim in between the two shots. Yet, the explosions on the ground occurred at different locations, which were relatively far apart. It is thus unlikely that the two shots witnessed by P-0239 would have hit both Siaka Koné market and SOS village. It is, of course, possible that P-0239 witnessed only part of the shelling and that other shells were fired from a different location and/or at different times or that the remainder of the explosions were caused by other devices.⁴⁰⁵⁶ However, this scenario deviates considerably from the Prosecutor's allegations and raises more questions than it answers.

1815. Second, in relation to who ordered the shelling, P-0239 stated that on his second mission to Abobo, as mentioned above, his BASA unit was ordered to go to Dépôt 9 with their 120mm mortars and fire on an enemy position in the area of Anonkoua-Kouté. Once arrived there, Captain Zadi of the 1st BCP ordered the BASA unit to fire, but the senior warrant officer in charge of the BASA unit refused to do so without a written order.⁴⁰⁵⁷ P-0239 stated that 'before using the [...] artillery [...] the president must give an order in writing'.⁴⁰⁵⁸ However, when describing his third mission, during which he allegedly witnessed the firing of the 120mm mortars, P-0239 seemed to suggest that the order to fire was given by

⁴⁰⁵⁵ P-0239, T-167 dated 28 June 2017, p. 60; P-0239, T-168 dated 29 June 2017, p. 2.

⁴⁰⁵⁶ For example, regarding Siaka Koné, P-0105 testified that the two 'noises' came one after the other. P-0105, T-213 dated 29 November 2017, pp. 36-37. It is thus possible that P-0239 only witnesses the firing of the shells that hit Siaka Koné.

⁴⁰⁵⁷ P-0239, T-167 dated 28 June 2017, pp. 47-49

⁴⁰⁵⁸ P-0239, T-167 dated 28 June 2017, pp. 50-51, see also p. 81.

the then-commander of Camp Commando (whose identity, rank, and unit the witness purports to have forgotten),⁴⁰⁵⁹ in reaction to the fact that the convoy in which P-0239 had travelled to Camp Commando had come under attack.⁴⁰⁶⁰ No mention is made about a written order coming from the President on this occasion and the witness offered no explanation as to why a presidential order was necessary for one occasion but not on the other. Although it is not impossible that the commander in question had previously received the instruction to fire 120mm mortars from the President, this is entirely speculative and there is no evidence on the record to support this.⁴⁰⁶¹

1816. Third, although P-0239's memory appears to be selective when it comes to identifying all the individuals who were involved in firing the mortars, there is some potential corroboration regarding the identity of the two individuals he did identify.⁴⁰⁶² According to P-0239's account, the commanding officer of Camp Commando called MDL-Chef Brice Kamanan into his office. When the latter emerged from said office, he called MDL Pégard and together with a third unidentified brigadier they fired the shots.⁴⁰⁶³

1817. P-0226, who was not in Camp Commando when Abobo was shelled,⁴⁰⁶⁴ testified that MDL Pégard Egni was in charge of the 12.7mm machine gun platoon and that it was MDL-Chef Kamanan Brice who was in charge of the 120mm mortar at Camp Commando.⁴⁰⁶⁵ P-0226 further confirmed his statement in which he said that one or two days after the shelling, he heard from unidentified individuals

⁴⁰⁵⁹ P-0239, T-167 dated 28 June 2017, pp. 55-56.

⁴⁰⁶⁰ P-0239, T-167 dated 28 June 2017, pp. 54-59

⁴⁰⁶¹ See VI.T.4 – Who ordered/authorised the firing of the mortars?.

⁴⁰⁶² P-0239, T-167 dated 28 June 2017, pp. 59-61, 67, 68. The witness also did not recognise the name of Colonel Gnawa Dablé, which was suggested to him by the Defence; P-0239, T-168 dated 29 June 2017, p. 51.

⁴⁰⁶³ P-0239, T-167 dated 28 June 2017, pp. 55-60.

⁴⁰⁶⁴ P-0226, T-166 dated 27 June 2017, p. 30.

⁴⁰⁶⁵ P-0226, T-166 dated 27 June 2017, pp. 38-39.

who had been in contact with other unidentified individuals at Camp Commando that 120mm mortars had been fired from there and that they had targeted the market because the *Commando Invisible* was there.⁴⁰⁶⁶ When the BASA crew returned from Camp Commando, they were greeted as heroes by some. [REDACTED]however, challenged MDL-Chef Kamanan Brice, who commanded the mortar platoon, and there was an altercation between them.⁴⁰⁶⁷ At first glance, it may seem therefore that P-0226's hearsay account about who fired the 120mm shells coheres with P-0239's version of events. However, P-0226 stated that the mortars were fired one or two days after the women's march at around 17h00,⁴⁰⁶⁸ which would be on 4 or 5 March 2011, rather than on 17 March, as alleged by the Prosecutor. As P-0239 had no recollection of the precise date of the incident he allegedly witnessed, it remains possible that he and P-0226 testified about the same incident. In that case, however, they would both be referring to a different event from the one charged.

1818. Another witness who implicated MDL-Chef Kamanan Brice and MDL Pegard Egni is P-0164. This witness testified that he heard from his aunt, who lived in the area, that there was a bombing near SOS Abobo on 17 March 2011 at approximately 11h00.⁴⁰⁶⁹ He then allegedly called Pégard Egni, who was at Camp Commando at the time, and threatened to kill 'them' if one of his family members were to die.⁴⁰⁷⁰ According to P-0164, Pégard Egni did not deny that

⁴⁰⁶⁶ P-0226, T-166 dated 27 June 2017, pp. 32-33.

⁴⁰⁶⁷ P-0226, T-166 dated 27 June 2017, pp. 33-37 (confidential).

⁴⁰⁶⁸ P-0226, T-166 dated 27 June 2017, pp. 66-67.

⁴⁰⁶⁹ P-0164, T-164 dated 19 June 2017, p. 81. P-0164 testified he knew that Kamanan Brice and Pégard Egni were the squad artillery leaders on the day of the shelling by looking at the service roster in Camp Agban (P-0164, T-164 dated 19 June 2017, p. 84). He looked at the roster after the shelling when he spoke with his aunt (P-0164, T-164 dated 19 June 2017, p. 84). However, in his prior recorded statement, P-0164 had said that his aunt called him at night (P-0164, DÉCLARATION DE TÉMOIN, 9 September 2012, CIV-OTP-0048-0481 (confidential), para. 128). When confronted with this incongruity, P-0164 said that this was a mistake and that 'I believe they came in because people had knocked or – but SOS Abobo was bombed during the day in the morning at approximately 11 o'clock' (P-0164, T-165 dated 20 June 2017, p. 38). This is scarcely satisfactory to explain the inconsistency, which therefore remains.

⁴⁰⁷⁰ P-0164, T-164 dated 19 June 2017, pp. 82-83.

120mm mortars had been fired, but said that it was not him who fired, as he was the *chef de pièce* for the 12.7mm machine gun.⁴⁰⁷¹ P-0164 further claimed that, after the crisis, Staff Sergeant Kamanan Brice admitted to the witness in person that he had fired the mortar but that he had only done so in order to execute a mission.⁴⁰⁷² Yet, the Chamber must be cautious with this part of P-0164's testimony, as it constitutes hearsay. Given the centrality of this information, it would be inappropriate to rely on this hearsay for the truth of its content. Moreover, although the Chamber will not, without more, rely on the conclusions from the domestic criminal proceedings in Côte d'Ivoire, it is noteworthy that MDL-Chef Kamanan Brice seems to have admitted firing two mortar shells, but that these were aimed at Banco forest,⁴⁰⁷³ which is far removed from the locations where explosions occurred on 17 March 2011. It is thus possible that there was a misunderstanding between MDL-Chef Kamanan Brice and P-0164, which further reduces the probative value of the latter's testimony in this regard.

1819. Finally, it is worth mentioning that the UN Daily Situation Report of 18 March 2011 gives yet another version of events. It states that on 17 March 2011, a UNOCI joint patrol, including Military Information officers, investigated the explosions and concluded that six shells were fired and that they had found proof that the shells were 81mm mortars.⁴⁰⁷⁴ This corresponds better with the number of explosions that were reported by victims on the ground, but differs from the Prosecutor's version of events, who insists that the explosions were caused by 120mm shells fired from Camp Commando. In any case, and leaving aside the limited probative value of the UN report, it does not offer any information about from where or by whom the six shells were fired.

⁴⁰⁷¹ P-0164, T-164 dated 19 June 2017, p. 83.

⁴⁰⁷² P-0164, T-164 dated 19 June 2017, p. 83; P-0164, T-165 dated 20 June 2017, p. 38.

⁴⁰⁷³ Décision du tribunal militaire dans les poursuites relatives à la marche des femmes du 3/03/2011 et du bombardement du 17/03/2011, 16 March 2015, CIV-D15-0004-0097, at 0102.

⁴⁰⁷⁴ DAILY SITUATION REPORT, 16 March 2011, CIV-OTP-0044-1185 (confidential), at 1187.

1820. All this makes it impossible for a reasonable trial chamber to determine with sufficient confidence who caused the explosions that took place on 17 March 2011 in Abobo and by which means. Accordingly, this part of the Prosecutor's narrative does not withstand scrutiny. It follows that it is not possible to attribute responsibility for this incident.

3. *What was the target of the shelling?*

1821. Given the above conclusion, it is not strictly necessary to address the question as to what the target of the shelling was. However, assuming for the sake of argument that it had been established that it was a BASA (or other FDS) unit that had fired heavy mortars on 17 March 2011, there would still remain the question as to whom or what they were targeting.

1822. P-0239, the only witness with putative direct knowledge of the firing, thinks that the two 120mm shells he observed being fired were aimed at the *rond point de la Gendarmerie*, in order to clear the way for the convoy that was taking the replacement troops back.⁴⁰⁷⁵ Significantly, P-0239 also stated that the persons who fired the mortar made a calculation error and that he had heard that the shots ended up not going in the direction of the target as intended.⁴⁰⁷⁶

1823. This version of events does not accord with P-0226's testimony, who claimed that persons at Camp Commando called soldiers at Camp Agban and told them that the mortars had been fired because the *Commando Invisible* had been seen at the market.⁴⁰⁷⁷

1824. Although P-0239 and P-0226 give different accounts, they agree on one important point, namely that the mortars were targeting a military objective. The

⁴⁰⁷⁵ P-0239, T-168 dated 29 June 2017, pp. 6-9.

⁴⁰⁷⁶ P-0239, T-168 dated 29 June 2017, p. 10.

⁴⁰⁷⁷ P-0226, T-166 dated 27 June 2017, pp. 32-33.

Prosecutor does not appear to attach great importance to P-0239's or P-0226's evidence in this regard, but seems to argue instead that the precise target of the shelling is of secondary importance. What matters, according to the Prosecutor, is that insufficient care was shown for the civilian population. In particular, the Prosecutor argues that it could have been expected from the FDS leadership 'to take minimal steps such as a brief reconnaissance mission to determine the exact coordinates of the target location and to determine whether the enemy is still located there'⁴⁰⁷⁸ and that 'the record is clear, nobody in the FDS chain of command took such reasonable or necessary steps to minimise civilian deaths [...] the use of mortars in a densely populated urban area without such reasonable measures [...] demonstrates that the civilian population perceived to support Mr Ouattara was the primary rather than the incidental object of the attack'.⁴⁰⁷⁹

1825. In other words, the Prosecutor's main argument appears to be that those who fired the mortar shells had insufficient information about their purported target (presumably the *Commando Invisible* elements at the *rond point de la Gendarmerie*)⁴⁰⁸⁰ and that they could therefore not have made a reasonable determination as to whether the use of 120mm mortars would yield a military advantage, let alone that this advantage would outweigh any foreseeable incidental harm to the civilian population and civilian property. In short, the Prosecutor does not argue that the mortar shells were aimed directly at civilians, but that those who fired them failed to take adequate precautionary measures and

⁴⁰⁷⁸ Response, para. 882.

⁴⁰⁷⁹ Response, para. 884.

⁴⁰⁸⁰ As noted above, P-0226 testified that the target was *Commando Invisible* elements at the market. However, as this evidence is based on twice removed anonymous hearsay, the remainder of the analysis will focus on P-0239's version of events. That said, the same reasoning would largely apply to P-0226's version of events.

that this made the civilian population (who are presumed to be pro-Ouattara) the primary rather than the incidental object of the attack.⁴⁰⁸¹

1826. As noted above, it is not possible to determine who fired the shells. It is thus not possible to decide whether any of the requisite precautionary steps were complied with. However, if P-0239's version of events were to be accepted, it would appear that the decision to launch the shells was based on information about the position of the enemy at the *rond point de la Gendarmerie* obtained by the incoming convoy, which came under attack at that location. Other witnesses also testified that 'FRCI youth' or 'Môgôba' were present at this location.⁴⁰⁸² It was thus not entirely unreasonable for those in Camp Commando to assume that there was a legitimate military target at the *rond point de la Gendarmerie*. It also appears from the testimony of P-0239 that the convoy came under fire again at the same location after the firing of the shells,⁴⁰⁸³ which indicates that hostile elements remained present throughout the relevant time.

1827. However, it is not clear whether civilians were also present at this location and, if so, how many civilians there were in the vicinity compared to the number of

⁴⁰⁸¹ Response, para. 888: In particular, the Prosecutor posits six 'steps', which, according to her derive from state practice and common sense, that a reasonable commander would take in order to minimise the risk of civilian casualties when using mortars in an urban setting:

- i. Forward observation of the target
- ii. Recent (or real-time) targeting information;
- iii. Determination of effectiveness of mortar fire for certain targets;
- iv. Preparatory measures ("registration");
- v. After-action review; and
- vi. Specific rules of engagement regulating use of mortars.

By 'registration', the Prosecutor refers to the process whereby 'the weapon is fired in a safe area such as a landmark or empty field, and the fall of the shot is observed, so as to reduce 'error budget' and increase the probability of firing the weapon accurately' (para. 895).

⁴⁰⁸² P-0363 testified (confirmed prior statement) that 'FRCI youth' were 'all over Abobo' and that one group was based at the Gendarmerie (auoptic), another at Derrière-Rails and in the 14th and 21st commissariat (hearsay) (P-0363, T-191 dated 13 September 2017, p. 25); P-0364 also testified that the 'Môgôba' were 'living' at the Gendarmerie Brigade of Abobo (P-0364, T-190 dated 12 September 2017, p. 15).

⁴⁰⁸³ P-0239, T-167 dated 28 June 2017, p. 55; T-168 dated 29 June 2017, p. 9.

potential combatants. Moreover, it is also unclear how much information those who decided to fire the shells had in this regard.

1828. What is clear is that, in normal times, Abobo is a densely populated area. From the number of casualties caused by the explosions, it seems reasonable to infer that there were still a large number of civilians present in the area at the relevant time. This fact must have been known to those who presumably launched the mortars and should, therefore, have been a primary consideration in their decision to use this type of weapon – even assuming that there was a high-value military target at the *rond point de la Gendarmerie*. This is especially true in light of the devastation that could be expected to occur if the slightest targeting error were made, as is a real possibility with an indirect fire weapon like a mortar and as allegedly happened in this case.⁴⁰⁸⁴

1829. It would therefore seem that those who allegedly decided to fire a 120mm mortar in Abobo on 17 March 2011 may well have violated the cardinal humanitarian law principles of distinction and, especially, precaution.⁴⁰⁸⁵ However, the Prosecutor did not charge war crimes, but crimes against humanity. This raises the question whether the Prosecutor's argument is valid in the context of crimes against humanity. That is, does the use of a weapon whose effect could not be limited to legitimate military objectives or whose effect could be expected to be clearly excessive in relation to the expected military advantage, automatically qualify as being 'directed against' the civilian population?⁴⁰⁸⁶

⁴⁰⁸⁴ It is worth noting, in this regard, that P-0164's testimony according to which it was not possible to use the 'sighting gear' of a 120mm mortar in Abobo, because the area was full of buildings and the target could not be seen (P-0164, T-164 dated 19 June 2017, pp. 41-42) is roundly contradicted by P-0411, the Prosecutor's expert. The latter visited Camp Commando and did not detect any obstacles that would have limited the use of mortars (P-0411, T-169 dated 30 June 2017, p. 80).

⁴⁰⁸⁵ Articles 52 and 57 of Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of June 1977. *See also* Rules 15-22 of the ICRC Study on Customary International Humanitarian Law.

⁴⁰⁸⁶ Article 7 of the Statute.

1830. The key consideration, in this regard, is that the civilian population must be the primary target of the attack.⁴⁰⁸⁷ Even assuming that mortars were fired without regard to potential civilian casualties and that it was expected that the number of civilian casualties would be excessive, it still would not necessarily follow that the intention was *primarily* to harm civilians who supported Mr Ouattara. For this to be the case, it would at the very least have to be shown that those who decided to fire the shells believed that the civilian population in the area surrounding the *rond point de la Gendarmerie* consisted predominantly of supporters of Mr Ouattara. No convincing evidence has been brought to our attention on this regard. Indeed, little effort was made to show that the actual casualties belonged to any of the groups which the Prosecutor claims were the object of attack.

1831. Accordingly, even if all the Prosecutor's factual allegations in relation to the shelling of the 17 March 2017 were accepted at face value, this would not suffice to show that the shells were fired with the aim of attacking civilians deemed to belong to the political opposition or in the knowledge that such individuals would be disproportionately harmed in the ordinary course of events.

4. *Who ordered/authorised the firing of the mortars?*

1832. Given the conclusions reached above – i.e. that it is not possible to determine with any level of precision or certainty what caused the explosions and that, even if the Prosecutor's version was accepted, this would still not be evidence of an attack that was primarily aimed at a particular group of civilians – it is not necessary to examine the Prosecutor's arguments in relation to who allegedly ordered the firing of the shells. However, out of an abundance of caution, a few brief remarks will be made.

⁴⁰⁸⁷ Trial Chamber III, *Prosecutor v. Bemba*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343, para. 154; Trial Chamber II, *Prosecutor v. Katanga*, Judgment pursuant to Article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436, para. 1104.

1833. The Prosecutor argues that ‘the [...] order on 17 March 2011 must have come from Mr Gbagbo himself’.⁴⁰⁸⁸ Acknowledging that there is no direct evidence of such an order – which is explained on the basis that ‘this paper trail would have directly implicated Mr Gbagbo and his chain of command in criminal conduct’⁴⁰⁸⁹ – the Prosecutor claims that the existence of the order can nevertheless be inferred from ‘the totality of [the] circumstances’ and points specifically to the following four elements: First, that Mr Gbagbo authorised the use of 120mm mortars in Abidjan during the crisis; second, that General Mangou admitted having authorised the firing of two shells ‘in Abidjan’; third, that multiple witnesses indicated that ‘the order to fire 120mm mortars from Camp Commando’ came from the Presidency; and, fourth, that General Mangou pressured P-0164 to fire a 120mm mortar at another occasion. The first two elements have been discussed elsewhere in these reasons.⁴⁰⁹⁰ However, in relation to the third and fourth points, a few observations are in order.

1834. First, although it is true that a number of FDS witnesses have claimed that they were told during their training that orders for firing 120mm mortars and other heavy artillery had to come from the President, it is difficult to take this literally. Indeed, it is difficult to see how any armed force would be able to engage in sustained and complex military operations if every time there was a need to use heavy artillery there would be a need to first get prior approval from the head of state or government. There is little point in speculating about what the witnesses may have actually been told. It suffices to note that the Chamber has not been presented with evidence of an actual rule or procedure in the FDS that required the President to personally approve every single instance of the use of 120mm mortars. Moreover, General Mangou testified that, since the Army had been requisitioned, there was no need for a specific authorisation to use 120mm

⁴⁰⁸⁸ Response, para. 809.

⁴⁰⁸⁹ Response, para. 807.

⁴⁰⁹⁰ See V.C.6.c) – The use of mortar shells in Abobo in late February.

mortars.⁴⁰⁹¹ In addition, P-0226 testified that gunners would normally ask for a written confirmation of an order to fire a 120mm mortar in urban areas and that this written confirmation would come from their immediate superior.⁴⁰⁹² There is no indication that field commanders needed prior approval from the President, let alone an explanation of how this would work in practice.

1835. In relation to the fourth point, P-0164 claimed that on 5 March 2011 he was pressured by Major Niamké and General Mangou to fire 120mm mortars into Abobo.⁴⁰⁹³ Although P-0164 claimed that General Mangou told Major Niamké to ‘do everything to persuade’ P-0164 to execute the order,⁴⁰⁹⁴ he also testified, in relation to a question about who issued the order to fire the 120mm shells, that General Mangou was ‘not very happy’.⁴⁰⁹⁵ This part of P-0164’s testimony leaves much to be desired in terms of clarity, but one reasonable interpretation of it is that the Chief of Staff was not pleased with the idea of using 120mm mortars in that part of Abobo. It is worth noting, in this regard, that according to P-0164, Major Niamké had also called General Detoh Letho the highest operational commander in Abobo at the time and an alleged ‘inner circle’ member who stated that he was not involved in ‘their’ heavy weapons issue.⁴⁰⁹⁶ Although it is

⁴⁰⁹¹ P-0009, T-198 dated 3 October 2017, p. 13.

⁴⁰⁹² P-0226, T-166, dated 27 June 2017, pp. 15-16.

⁴⁰⁹³ P-0164 stated that on 3 March 2011 he was instructed to deploy to Camp Commando in the afternoon, after the news that women had been killed became known (P-0164, T-164 dated 19 June 2017, p. 50). Before leaving for Camp Commando, Colonel Dadi told P-0164 to shoot at Abobo Town Hall and N’Dotr . P-0164, T-164 dated 19 June 2017, p. 54. After he had arrived at Camp Commando, Major Niam   told P-0164 on 4 March 2011 that he had to set up the mortars in battery ‘in light of the presence of enemies at Abobo town hall intersection and at N’Dotr  (P-0164, T-164 dated 19 June 2017, p. 54; P-0164, T-165 dated 20 June 2017, p. 91). P-0164 testified that on 4 March 2011, he was ordered by Major Niam  , then heading Camp Commando, to shell the *Carrefour de la Mairie* and N’Dotr  (P-0164, T-164 dated 19 June 2017, p. 67).

⁴⁰⁹⁴ P-0164, T-164 dated 19 June 2017, p. 67

⁴⁰⁹⁵ P-0164, T-164 dated 19 June 2017, p. 70.

⁴⁰⁹⁶ P-0164, T-164 dated 19 June 2017, pp. 67-70. For the sake of completeness, it is pointed out that P-0164 also testified that Lt Adjoumani, a *Gendarmerie* officer who the witness described as ‘the highest ranking gendarme at Camp Commando’, warned the witness that he should not disobey orders (P-0164, T-164 dated 19 June 2017, pp. 67-68). However, since little is known about this junior officer’s role in the alleged execution of the Common Plan, this evidence is of limited relevance for the current discussion.

difficult to determine the significance of these alleged exchanges, they certainly do not convey the impression that the two most senior ‘inner circle’ members who were allegedly informed about Major Niamké’s intention to shell *Carrefour de la Mairie* and *Carrefour N’Dotr  *, were fully behind it.

1836. Significantly, both General Detoh Letho⁴⁰⁹⁷ and General Mangou⁴⁰⁹⁸ categorically denied that these telephone conversations ever took place. The Prosecutor asks us to ignore this evidence on the basis that it is not credible, but provides no support for this claim, apart from the notional arguments that both officers have an interest in denying involvement in criminal activity and that P-0164’s claim is plausible because ‘a subordinate has a lawful basis to refuse to follow manifestly unlawful orders – and that a commander’s call to the CEMA would be appropriate in that extraordinary instance’.⁴⁰⁹⁹ However, given that the Prosecutor has raised the issue of witness credibility, it is permissible to point out, at this stage, that P-0164’s own veracity is in doubt. In particular, witness P-0164 stated a number of remarkable things:

1837. First, P-0164 admitted to insubordination,⁴¹⁰⁰ sabotage,⁴¹⁰¹ espionage⁴¹⁰², and to having been in contact with officers at the Golf Hotel during the crisis when he was deployed by the FDS.⁴¹⁰³ These are all elements that indicate strong potential

⁴⁰⁹⁷ P-0047, T-206 dated 10 November 2017, p. 45.

⁴⁰⁹⁸ P-0009, T-200 dated 5 October 2017, pp. 50-51.

⁴⁰⁹⁹ Response, para. 806.

⁴¹⁰⁰ When given an order to take part in a mission in Anonkoua-Kout   in the night of 4-5 March 2011, the witness refused to go because ‘I didn’t want to be involved in that because I did not feel concerned by it’. P-0164, T-164 dated 19 June 2017, p. 69. This is an extraordinary thing to say for a professional soldier, which beggars incredulity.

⁴¹⁰¹ P-0164 admitted having sabotaged at least 4-5 BASA vehicles with 12.7 machine guns; P-0164, T-165 dated 20 June 2017, p. 10.

⁴¹⁰² P-0164 admitted having spied for the Golf Hotel about troop movements. P-0164, T-165 dated 20 June 2017, p. 50.

⁴¹⁰³ P-0164 testified that when he was deployed to Camp Abobo on 3 March 2011, he first called Col. Patrice at the Golf Hotel to ask him to find a way to make sure that P-0164’s convoy would not come under attack – in his statement he had said: ‘I don’t know whom he called, but I arrived in Abobo without encountering any incidents’. P-0164, T-165 dated 20 June 2017, pp. 15-16.

bias against the accused. Second, he made the incredulous claim that Colonel Dadi sent him on an unspecified mission to Port Bouët II all by himself in civilian clothing, where he ended up helping Ouattara supporters with setting up roadblocks against FDS units.⁴¹⁰⁴ Even more lacking in credulity is P-0164's claim that, after Colonel Dadi had tried to have him killed⁴¹⁰⁵ and after Colonel Dadi probably used a chemical substance to drug his family, he voluntarily returned to the BASA camp in Akouédo in order not to lose his salary⁴¹⁰⁶ and with the intention 'to give [Dadi] the kind of correction or beat him up so badly that he would never forget it'.⁴¹⁰⁷ There are several other areas of concern about P-0164's veracity. However, this is not the occasion to make a fully-fledged credibility assessment. It suffices to say that it is exceedingly hard to imagine any trial chamber attaching significant probative value to the testimony of this witness.

1838. Accordingly, it would not be possible for a reasonable trial chamber to rely on this evidence to conclude that, if 120mm mortar shells were fired from Camp Commando on 17 March 2011, this must have been pursuant to an order from or with the authorisation of Mr Gbagbo, either directly or indirectly.

5. Conclusion

1839. Based on the above analysis, it is clear that the available evidence is manifestly inadequate to support the Prosecutor's theory, both in relation to the contextual elements and in relation to who bears responsibility for the harm that was caused by the explosions that occurred in Abobo on 17 March 2011. This does not mean

⁴¹⁰⁴ P-0164, T-165 dated 20 June 2017, pp. 26-29.

⁴¹⁰⁵ P-0164, T-164 dated 19 June 2017, pp. 78-79.

⁴¹⁰⁶ P-0164, T-165 dated 20 June 2017, pp. 33-36.

⁴¹⁰⁷ P-0164, T-164 dated 19 June 2017, p. 81. This seems strange for a professional soldier and contradicts other parts of his testimony where the witness suggests to have been so afraid of Dadi that he followed his orders (e.g. P-0164, T-165 dated 20 June 2017, p. 27).

that nothing happened. Indeed, the Chamber has seen a lot of evidence of human and material devastation. However, the evidence would not allow a reasonable trial chamber to determine who was behind the explosions with a sufficient level of specificity or certainty.

U. 19 March 2011 – Killing of religious personnel in Williamsville

1840. The Prosecutor alleges that on 19 March 2011, in a joint operation in Williamsville, the CRS1 and militia raided the home of a Malian Imam, killing several persons including the Imam.⁴¹⁰⁸

1841. [REDACTED]⁴¹⁰⁹ These elements killed the Imam and other persons; [REDACTED]⁴¹¹⁰ [REDACTED]⁴¹¹¹ [REDACTED]⁴¹¹² However, when asked about Commissioner Kabila, ‘the highest ranked person within the CRS1 during the events’, [REDACTED]⁴¹¹³[REDACTED]⁴¹¹⁴[REDACTED]⁴¹¹⁵ [REDACTED]⁴¹¹⁶ Accordingly, ‘[i]t was only the third time when the minister of the interior called me again asking me the same question and I relayed that very same question to the CRS commander, and he was in charge of that neighbourhood, and he said indeed that an imam had been killed at his home’.⁴¹¹⁷

⁴¹⁰⁸ Mid-Trial Brief, para. 155(xxvi); Response, para. 268.

⁴¹⁰⁹ [REDACTED]

⁴¹¹⁰ [REDACTED]

⁴¹¹¹ [REDACTED]

⁴¹¹² [REDACTED]

⁴¹¹³ [REDACTED]

⁴¹¹⁴ [REDACTED]

⁴¹¹⁵ [REDACTED]

⁴¹¹⁶ [REDACTED]

⁴¹¹⁷ [REDACTED]

1842. [REDACTED]⁴¹¹⁸ [REDACTED]⁴¹¹⁹ Accordingly, '[i]t was only the third time when the minister of the interior called me again asking me the same question and I relayed that very same question to the CRS commander, and he was in charge of that neighbourhood, and he said indeed that an imam had been killed at his home'.⁴¹²⁰

1843. An undated UNOCI report identifies two groups of perpetrators. The first, who allegedly killed two 'disciples' of the Imam and gravely wounded two others, is said to have consisted of three Police officers supported by militiamen of the GPP along with three members of the FESCI.⁴¹²¹ The second group, which allegedly killed the Imam and his mother, is described as nine armed individuals, some of whom wore military uniforms. The report does not otherwise indicate where the orders for and/or planning of this incident came from. This incident is also reflected in the calls that were made to the UNOCI call centre.⁴¹²² The names of the victims have been registered.⁴¹²³

V. 22 March 2011 – Shelling in Derrière Rails

1844. The Prosecutor alleges that on 22 March 2011, FDS shells killed at least five persons, including three children at Derrière Rails in Abobo.⁴¹²⁴ The UNOCI Daily Situation Report dated 23 March 2011 reported that the centre received several calls in the evening of 22 March stating that the FDS was shelling

⁴¹¹⁸ [REDACTED]

⁴¹¹⁹ [REDACTED]

⁴¹²⁰ [REDACTED]

⁴¹²¹ Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0416-0417.

⁴¹²² T quotidien du 21 mars 2011 / (du 20 mars 2011 à 16h au 20 mars, 16h), 21 March 2011, CIV-OTP-0044-1681 (confidential) at 1683.

⁴¹²³ Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0308.

⁴¹²⁴ Mid-Trial Brief, para. 155(xxix); Response, para. 300.

Abobo; the report does not specify the number of casualties nor the total number of rounds fired.⁴¹²⁵ The UNOCI Daily Situation Report dated 25 March 2011 states that there was a ‘shelling attack in Abobo on 22 March kill[ing] at least five people including a woman and three children’.⁴¹²⁶ The information contained in the available UN documents is extremely limited and gives no indication as to who fired the shells or what was being targeted. It also worth mentioning that the UNOCI Human Rights Division Call Centre Report mentions that three to four shells exploded in Camp Commando on that same evening, which suggests that there was an exchange of fire.⁴¹²⁷

W. 2 and 8 April 2011 – Killings in Sikasso village

1845. The Prosecutor alleges that on 2 and 8 April 2011, a group of militia members armed with Kalashnikovs killed six people in Sikasso village because they had voted for Mr Ouattara.⁴¹²⁸ The Prosecutor has only cited a UNOCI report on the violation of human rights in support of this allegation. The report speaks of a group of militiamen, belonging to the group of chief militiaman ‘Andy’ and armed with Kalashnikovs, that killed six people in Sikasso, a village known to be pro-Ouattara, on 2 and 8 April 2011. According to the report, the militiamen left the following message on a door in the middle of the commune: ‘*[p]lus de Sikasso, Gbagbo ou rien !*’.⁴¹²⁹ The report identified the militiamen as being pro-

⁴¹²⁵ DAILY SITUATION REPORT, 23 March 2011, CIV-OTP-0044-1201 (confidential) at 1204. The number of calls is reflected in Rapport quotidien du 23 mars 2011 / (du 22 mars 2011 à 16h au 23 mars, 16h), 23 March 2011, CIV-OTP-0044-1692 (confidential) at 1694-1695. [REDACTED]

⁴¹²⁶ DAILY SITUATION REPORT, 25 March 2011, CIV-OTP-0044-1211 (confidential) at 1212.

⁴¹²⁷ Rapport quotidien du 23 mars 2011 / (du 22 mars 2011 à 16h au 23 mars, 16h), 23 March 2011, CIV-OTP-0044-1692 (confidential), at 1694.

⁴¹²⁸ Mid-Trial Brief, para. 155(xxxii); Response, para. 269.

⁴¹²⁹ Rapport sur les violations des droits de l’homme commises dans le District d’Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0415.

Gbagbo and in the circumstances the motive is alleged to be that the village and its inhabitants were known to be pro-Ouattara.

1846. There is no other evidence cited in support of this incident. However, the Prosecutor alleges that ‘marine officer and pro-Gbagbo militia member ‘Andy’ was a notorious perpetrator of crimes in the Koweit area of Yopougon’ and that the phrase ‘*Gbagbo ou rien*’ was frequently used during the crisis by Mr Gbagbo’s supporters.⁴¹³⁰ Witness P-0483 referred to a ‘military brother’ called Andy who was present at the marine base in Kowëit.⁴¹³¹ The UNOCI report, which is anonymous hearsay, suggests that the six individuals were killed because they voted for Mr Ouattara, but no source for this allegation is provided. Although the names of the victims are provided, no further information about them is available. However, given the age and gender of some of the victims, it may reasonably be assumed that at least some of them were civilians. It has not been otherwise demonstrated that the militiamen in question were under Mr Gbagbo’s command and control. From P-0483’s testimony and the HRW reports cited in support of Andy’s alleged role, it cannot be concluded that the incident at Sikasso village was undertaken at Mr Gbagbo’s behest.

X. 11 April 2011 – Shelling of a bakery in Treichville

1847. The Prosecutor alleges that on 11 April 2011, elements of the *Garde Républicaine* shelled a bakery in Treichville, killing at least four people.⁴¹³² The UNOCI Daily Situation Report dated 12 April 2011 suggests that this incident

⁴¹³⁰ Response, para. 269.

⁴¹³¹ P-0483, T-101 dated 17 November 2016, p. 82. The Prosecutor has additionally referred to two HRW reports that contain information about Andy.

⁴¹³² Mid-Trial Brief, para. 155 (xxxiii); Response, para. 301.

took place as alleged⁴¹³³ and it has also been referenced in the UNOCI report on the violation of human rights.⁴¹³⁴ It is not known who ordered this shelling. It is also not known how many shells were fired or what they were aimed at. No information is available as to how it was known that it was the *Garde Républicaine* that fired the mortar(s).

Y. 12 April 2011 – Killings and rapes in Yopougon (5th charged incident – Yopougon II)

1848. The Prosecutor alleges that after Mr Gbagbo's arrest on 11 April 2011, pro-Gbagbo forces killed at least 61 persons, raped at least six women and injured at least three individuals in the Yopougon neighbourhoods of Doukouré and Mami Fatai on or around 12 April 2011.⁴¹³⁵ During this incident, according to the Prosecutor, members of the pro-Gbagbo forces attacked people on the street or forced their way into homes.⁴¹³⁶

1849. The Prosecutor alleges that 35 people were killed in Doukouré and 26 individuals were killed in Mami Fatai; a large number of these victims were buried in mass graves.⁴¹³⁷ According to the evidence, 34 bodies were buried in a mass grave in Doukouré and 18 corpses were buried in Mami Fatai.

1850. Most of the victims of murder were identified by witnesses. In relation to victims buried in the mass grave of Doukouré, 20 were identified by name or

⁴¹³³ Daily Sitrep, 12 April 2011, 12 April 2011, CIV-OTP-0044-0356 (confidential) at 0357. The identities of the deceased are contained in Crise post-électorale en Côte d'Ivoire, le vécu de la communauté malienne, undated, CIV-OTP-0052-0292-R02 (confidential) at 0319-0320.

⁴¹³⁴ Rapport sur les violations des droits de l'homme commises dans le District d'Abidjan, 1 May 2011, CIV-OTP-0044-0392 (confidential) at 0414.

⁴¹³⁵ Response, para. 998; Mid-Trial Brief, para. 614.

⁴¹³⁶ Mid-Trial Brief, para. 618.

⁴¹³⁷ Response, para. 1019.

nickname⁴¹³⁸ and two were identified by witnesses who knew their family members. The only victim who died in Doukouré and was not buried in a mass grave was an unidentified taxi driver whose body was allegedly burned near the entrance of the neighbourhood. With regard to the individuals killed in Mami Fatai, witnesses identified 16 victims by their full names – eight of which were buried in the neighbourhood mass grave. The other ten victims buried in the mass grave of Mami Fatai were not identified.

1851. In a number of cases, direct testimonial evidence confirmed that pro-Gbagbo individuals killed, raped or injured the victims because their ethnicity was associated with the pro-Ouattara camp. The most significant of these will be discussed below.

1852. According to P-0567's testimony, the men who[REDACTED], injured [REDACTED] and killed [REDACTED]four brothers and their friend,⁴¹³⁹ shouted that they would kill all Dioula [REDACTED].⁴¹⁴⁰ Similarly, when the individuals, [REDACTED] and took [REDACTED]away, arrived [REDACTED]they first asked to see their identity cards.⁴¹⁴¹ Upon realising that [REDACTED] was Dioula, they said 'you the Dioula, you want our country and we're going to kill you'.⁴¹⁴²

1853. Witness P-0109 and his friends were approached by armed, masked men in black clothing who asked to see the identity card of two of them. After checking the IDs, they opened fire, injuring P-0109 and killing two of his friends.⁴¹⁴³ P-0109

⁴¹³⁸ Note that only four victims were identified by name and surname; 11 victims were identified by either the first name or the surname and five were identified by nicknames.

⁴¹³⁹ P-0567, T-209 dated 15 November 2017, pp. 6-12.

⁴¹⁴⁰ [REDACTED]

⁴¹⁴¹ P-0185, T-211 dated 27 November 2017, pp. 23-28, 56-75 (confidential).

⁴¹⁴² P-0185, T-211 dated 27 November 2017, p. 27 (confidential).

⁴¹⁴³ P-0109, T-154 dated 9 May 2017, pp. 44-47.

was lying on the floor, [REDACTED]⁴¹⁴⁴ when he heard one of them say in English ‘[n]o Gbagbo. No Côte d’Ivoire’.⁴¹⁴⁵

1854. There is indication that the same individuals responsible for the murders of P-0109’s friends were also the perpetrators of other crimes about which the Prosecutor presented testimonial evidence. The supposed killers of [REDACTED] also spoke English, were masked and wore dark clothing.⁴¹⁴⁶ Similarly, witness [REDACTED] described the individuals who raped [REDACTED] as being masked and wearing black.⁴¹⁴⁷

1855. Witnesses [REDACTED] were together [REDACTED] when [REDACTED] men came, forced their way into her house, and raped [REDACTED]. Two of them carried firearms. Witness [REDACTED] stated that she knew the men to be pro-Gbagbo youths because they all wore red bandanas which she said were characteristic of members of a group that the witness had seen training in Yopougon during the post-electoral crisis.⁴¹⁴⁸ Witness [REDACTED] similarly believed that the men were pro-Gbagbo because when they arrived, they had asked [REDACTED] what ethnicity they were. In that regard, she seems to have believed that if she had told the men that she was Guéré instead of Dioula, they would not have [REDACTED].⁴¹⁴⁹

1856. It is also of note that witness [REDACTED] that before she heard the first shots on 12 April 2011, the witness had seen people running and screaming in Dioula that ‘they’ would kill all the men and they all should run.⁴¹⁵⁰ In a similar vein,

⁴¹⁴⁴ P-0109, T-154 dated 9 May 2017, pp. 46-49.

⁴¹⁴⁵ P-0109, T-154 dated 9 May 2017, p. 49.

⁴¹⁴⁶ [REDACTED] P-0109, T-154 dated 9 May 2017, pp. 46-47.

⁴¹⁴⁷ [REDACTED]

⁴¹⁴⁸ [REDACTED] It should be noted at this juncture that according to witness P-0106, FESCI members wore red bandanas at the time of the post-election crisis (P-0106, DÉCLARATION DE TÉMOIN, 26 March 2012, CIV-OTP-0019-0211-R04 (confidential), para. 30).

⁴¹⁴⁹ [REDACTED]

⁴¹⁵⁰ [REDACTED]

witness [REDACTED] testified that they had told her father to flee because men were being killed. [REDACTED]⁴¹⁵¹

1857. Moreover, some of the attackers used the assistance of local individuals of Guéré⁴¹⁵² ethnicity to indicate the houses where they knew Dioula civilians resided. Witness [REDACTED] was of the belief that a young Guéré, who had responded to Mr Blé Goudé's call to enlist, had shown the perpetrators where in Mami Fatai [REDACTED] her family lived.⁴¹⁵³ Witness [REDACTED] recognised the voice of one of [REDACTED] the criminals; the witness testified that after they shot dead [REDACTED] heard the person she recognized saying that they were not done yet, after which they searched for [REDACTED] and killed him as well.⁴¹⁵⁴

1858. Although there is no information as to the precise circumstances of the deaths of all of those who were buried in Mami Fatai and Doukouré in the aftermath of Mr Gbagbo's arrest, the context in which crimes occurred during the charged incident of 11/12 April 2011 must not be overlooked. The evidence mentioned above shows systematic and deliberate targeting of individuals belonging to a specific ethnic group. It is thus possible to infer that many of the victims of murder about whom little or nothing is known met their fate in a similar way as the family members and friends of [REDACTED]. Indeed, as mentioned above, witness [REDACTED], who lived in Mami Fatai, heard pro-Gbagbo elements say on 11 April 2011 that they were going to kill all Dioulas.⁴¹⁵⁵ It would be implausible to argue that it was mere coincidence that on the following day 18

⁴¹⁵¹ [REDACTED]

⁴¹⁵² Note that Guéré is an ethnicity associated with the pro-Gbagbo camp.

⁴¹⁵³ [REDACTED]

⁴¹⁵⁴ [REDACTED]

⁴¹⁵⁵ [REDACTED]

individuals of Dioula ethnicity were buried in a mass grave in the same neighbourhood.⁴¹⁵⁶

1859. That said, one cannot exclude the possibility that in the midst of the violent commotion created by pro-Gbagbo elements on that day, some of the victims were harmed for reasons other than having been actual or perceived Ouattara supporters. In this regard, it is noted that in two cases the perpetrators were already leaving the house of the victims when they changed their minds and decided to rape⁴¹⁵⁷ or kill.⁴¹⁵⁸ This indicates that their primary objective was not to harm Ouattara supporters. Indeed, it is conceivable that some of the crimes committed in Yopougon on 12 April 2011 were opportunistic in nature, in the sense that the perpetrators took advantage of the general state of lawlessness and defenselessness of the victims.

1860. Without additional information, it is not possible to make a precise determination as to how many of the victims were killed because they were Dioula. However, for the purposes of this decision, it will be assumed that ethnicity was a factor in the victimisation of all 70 victims,⁴¹⁵⁹ whether as a driving influence or as a pretext for other motives. It should be stressed, however, that this assumption only concerns the *mens rea* of the physical perpetrators.

1861. There is no indication that perpetrators were acting pursuant to or in furtherance of any sort of policy. Indeed, it is telling that out of all crimes in the Prosecutor's narrative, those pertaining to the 12 April 2011 incident were the least likely to

⁴¹⁵⁶ Note that there is evidence to the effect that at least those buried in Mami Fatai were all Dioula. Witnesses [REDACTED] who respectively counted 18 and 17 bodies at the Mami Fatai mass grave, both testified that they recognised them from the neighbourhood and knew they were all of Dioula ethnicity (P-0567, T-208 dated 14 November 2017, pp. 34-35[REDACTED])

⁴¹⁵⁷ When the perpetrators came to witness [REDACTED] demanded money and mobile phones. After receiving the valuables, [REDACTED] two of them [REDACTED] raped [REDACTED] Witness [REDACTED] tried to come to [REDACTED] aid and was hit in the face with the butt of a rifle [REDACTED]

⁴¹⁵⁸ [REDACTED]

⁴¹⁵⁹ See Response, para. 998.

contribute to achieving the purpose of the alleged policy to keep Mr Gbagbo in power at all costs. At that point in time, Mr Gbagbo had already been arrested and the struggle for power was effectively over. To the extent that the available information allows any conclusions in this regard, it appears that the crimes committed in Yopougon on 12 April 2011 were mainly driven by vengeance.

1862. To the extent that it is possible to characterise the crimes committed on 12 April 2011 in Yopougon as displaying a (relatively small) pattern of criminality motivated by ethnic animosity, it stands in stark contrast to the absence of such a discernible pattern with respect to all other incidents. The circumstances that allow an inference to be drawn to the effect that the 70 crimes committed in Yopougon on 12 April 2011 were committed, at least in part, because the victims were Dioula were fundamentally different from the circumstances in which the other victims cited in the Prosecutor's case were killed or injured. Indeed, the crimes committed during the 12 April 2011 incident are distinguishable from the other charged and uncharged incidents precisely because it is possible in this context to observe the large-scale targeting of victims at least in part on the basis of their ethnicity.

Z. Allegations concerning 'other evidence of article 7(1) acts'

1863. In addition to the evidence concerning the charged and the uncharged incidents cited in support of the alleged patterns of crimes, the Prosecutor also points to 'other evidence of article 7(1) acts'.⁴¹⁶⁰ The Prosecutor alleges that the evidence of pro-Gbagbo forces looting and destroying property in perceived pro-Ouattara

⁴¹⁶⁰ See Response, paras 270-278 in reference to the alleged pattern concerning attacks on neighbourhoods where inhabitants were perceived as Ouattara supporters; paras 285-294 in reference to the alleged pattern concerning crimes following identification checks, particularly at roadblocks; paras 302-323 in reference to pattern concerning shelling and indiscriminate fire in areas densely populated by perceived Ouattara supporters.

neighbourhoods, and in Mosques, further demonstrates that the article 7(1) acts committed against their inhabitants constituted a course of conduct.

1. Pillaging

1864. The Prosecutor has also alleged acts of pillaging during 25 to 28 February 2011 charged incident. P-0459 testified that Doukouré has lots of shops.⁴¹⁶¹ P-0459 testified that ‘some young people coming towards Yaho Séhi’ pillaged and looted items as they crossed Doukouré.⁴¹⁶² P-0440 testified that ‘by the 28th, shops that belonged to ‘people from the north who were general assimilated to the RHDP’ were ‘looted and destroyed’.⁴¹⁶³ This is also reflected in the police report dated 28 February 2011 referring to ‘quartier Doukouré’.⁴¹⁶⁴ From the holistic assessment of the evidence cited in support of the incidents concerning pillaging, an inference that these acts of pillaging were incidental to the breakout of violence in Yaho Séhi and the clashes between the groups during and following the Yopougon I incident is more likely. The evidence also suggests a significant material loss having taken place as a result of this pillaging. However, the evidence does not suggest that these incidents took place pursuant to or otherwise in furtherance of the alleged Policy.

1865. The Prosecutor alleged that on 4 and 8 March 2011 in Yopougon Niangon, *jeunes patriotes* pillaged shops belonging to West African owners.⁴¹⁶⁵ The daily police bulletin dated 4 March 2011 states that armed *jeunes patriotes* attacked shops in Yopougon and then fled. The *jeunes patriotes* were allegedly protesting

⁴¹⁶¹ P-0459, T-152 dated 5 May 2017, p. 70.

⁴¹⁶² P-0459, T-152 dated 5 May 2017, p. 70.

⁴¹⁶³ P-0046, T-157 dated 11 May 2017, p. 19.

⁴¹⁶⁴ COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029.

⁴¹⁶⁵ Mid-Trial Brief, para. 155(xxiii); Response, paras 275-276.

against the ‘attitude of the Senegalese contingent of the UNOCI, who had beaten up women patriots at *Riviera*’.⁴¹⁶⁶ The UNOCI Call Centre Daily Report dated 4 March 2011 states that following Mr Blé Goudé’s message concerning the sit-in organised by female patriots at the UNOCI base, the *jeunes patriotes* went to the Couté market to beat foreigners and pillage their possessions.⁴¹⁶⁷ The report contains other instances of pillaging of shops belonging to foreigners.⁴¹⁶⁸ The UNOCI Call Centre Daily Reports dated 8, 9, and 11 March 2011 also mention instances of pillaging of foreign shops.⁴¹⁶⁹ The HRW Report states that several Nigerian and Malian traders described mobs of ‘an estimated 150 youths armed with machetes and axes’ that pillaged stores belonging to West African merchants.⁴¹⁷⁰

2. *Burning*

1866. The Prosecutor points to P-0108’s testimony that Maguy ‘le Tocard’’s groups set three people on fire near Nelson Mandela college and that this was a result of ‘ascertaining the victims’ identity’.⁴¹⁷¹ She also relies on his testimony about a man from Niger being attacked and burned by the same group at the beginning of the post-election crisis as well as a similar incident on 11 March 2011.⁴¹⁷² P-0108’s account is ambiguous with regard to how he determined that the

⁴¹⁶⁶ BQI, No. 44 du 04 Mars 2011, 4 March 2011, CIV-OTP-0045-0213 (confidential) at 0214.

⁴¹⁶⁷ Rapport quotidien du 4 mars 2011 / (du 3 février 2011 à 18h au 4 mars, 18h), 4 March 2011, CIV-OTP-0044-1709 (confidential) at 1712.

⁴¹⁶⁸ Rapport quotidien du 4 mars 2011 / (du 3 février 2011 à 18h au 4 mars, 18h), 4 March 2011, CIV-OTP-0044-1709 (confidential) at 1712-1713, 1715.

⁴¹⁶⁹ Rapport quotidien du 8 mars 2011 / du 7 mars 2011 à 18h au 8 mars, 18h), 8 March 2011, CIV-OTP-0044-1725 (confidential) at 1729; Rapport quotidien du 9 mars 2011 / (du 8 mars 2011 à 18h au 9 mars, 18h), 9 March 2011, CIV-OTP-0044-1733 (confidential) at 1734; Rapport quotidien du 11 mars 2011 / (du 10 mars 2011 à 18h au 11 mars, 18h), 11 March 2011, CIV-OTP-0044-1644 (confidential) at 1645.

⁴¹⁷⁰ HRW Report, CIV-OTP-0003-0028 at 0073.

⁴¹⁷¹ Response, para. 286.

⁴¹⁷² Response, para. 286.

perpetrators of these incidents were ‘Maguy’s youth’.⁴¹⁷³ It is noted that P-0108 testified that the clothing that Maguy’s group wore would vary⁴¹⁷⁴ and there were about 400 or more of them in number.⁴¹⁷⁵ It is also noted that the witness twice answered in the negative when asked whether he had witnessed any other occasions of Maguy’s group attacking people in the neighbourhood.⁴¹⁷⁶ Significantly, on both those occasions, the Prosecutor proceeded to read out incidents that the witness had described in his statement, following which the witness confirmed having seen them.⁴¹⁷⁷ In all instances, P-0108’s understanding was that the victims had been identified as ‘rebels’ by the group and then attacked.⁴¹⁷⁸

1867. Moreover, the Prosecutor relies on P-0435 to allege that there was a ‘procedure’ of burning people accused of being ‘rebels’ or ‘assailants’ which originated in Yopougon and was disseminated through *agoras* and *parlements*.⁴¹⁷⁹ P-0435 testified that ‘article 125’ referred to the minimum costs to buy gasoline and a box of matches⁴¹⁸⁰ and was a term used to describe the act of burning persons ‘who were deemed to be rebels or attackers’.⁴¹⁸¹ P-0435 also testified that ‘we had not received an order to burn anyone’.⁴¹⁸² He did testify that he had heard rumours that Mr Blé Goudé gave the orders to practice ‘article 125’ but that

⁴¹⁷³ P-0108, T-145 dated 24 April 2017, p. 86.

⁴¹⁷⁴ P-0108, T-145 dated 24 April 2017, p. 64.

⁴¹⁷⁵ P-0108, T-145 dated 24 April 2017, p. 68.

⁴¹⁷⁶ P-0108, T-145 dated 24 April 2017, pp. 86-88.

⁴¹⁷⁷ P-0108, T-145 dated 24 April 2017, pp. 87-88.

⁴¹⁷⁸ P-0108, T-145 dated 24 April 2017, pp. 86-88.

⁴¹⁷⁹ Response, para. 287.

⁴¹⁸⁰ See also P-0097, T-49 dated 9 June 2016, p. 18; P-0440, T-157 dated 11 March 2017, p. 33.

⁴¹⁸¹ P-0435, T-89 dated 20 October 2016, pp. 77-78.

⁴¹⁸² P-0435, T-89 dated 20 October 2016, p. 78.

nobody ‘came to tell [him] directly that Mr Blé Goudé had given the order to burn anybody’.⁴¹⁸³

1868. P-0435 further testified that he was not present when these incidents occurred but they were reported to him by GPP elements.⁴¹⁸⁴ He also heard this information from Maguy ‘le Tocard’ and ‘some other elements’.⁴¹⁸⁵ According to P-0435, several people shot video footage of these occurrences using their telephones.⁴¹⁸⁶ P-0435 stated that most of the victims of this act were ‘nationals of the north or people who had come from Mali or Burkina Faso’.⁴¹⁸⁷ Whether someone was targeted depended on the judgment of the people who had intercepted the individuals and these people ‘were supporters of the presidential majority’.⁴¹⁸⁸

1869. P-0097 testified about witnessing an ‘article 125’ act involving two children, although he did not observe the whole incident.⁴¹⁸⁹ [REDACTED].⁴¹⁹⁰ [REDACTED]⁴¹⁹¹

1870. In the Response, the Prosecutor points to an incident described by P-0185 as evidence ‘consistent with the evidence of other instances where pro-Gbagbo youths burned individuals suspected of being rebels upon identifying them at roadblocks’.⁴¹⁹² As per P-0185’s testimony, there was an incident ‘at the beginning of the crisis’ where a person was lynched and burned by a group of ‘people from the neighbourhood’ of Guéré ethnicity who were ‘dressed in a

⁴¹⁸³ P-0435, T-94 dated 31 October 2016, p. 22.

⁴¹⁸⁴ P-0435, T-90 dated 21 October 2016, p. 3.

⁴¹⁸⁵ P-0435, T-90 dated 21 October 2016, p. 5.

⁴¹⁸⁶ P-0435, T-90 dated 21 October 2016, p. 5.

⁴¹⁸⁷ P-0435, T-90 dated 21 October 2016, p. 2.

⁴¹⁸⁸ P-0435, T-90 dated 21 October 2016, p. 2.

⁴¹⁸⁹ P-0097, T-46 dated 6 June 2016, pp. 44-45.

⁴¹⁹⁰ P-0097, T-49 dated 9 June 2016, pp. 19-22.

⁴¹⁹¹ P-0097, T-49 dated 9 June 2016, p. 22.

⁴¹⁹² Response, para. 289.

normal way’ and were not armed except with stones, sticks and pieces of wood.⁴¹⁹³ From P-0185’s account, it cannot be demonstrated that this incidents fits the alleged pattern of crimes. The perpetrators are shown to be people residing in the neighbourhood, who seem to have lynched a person they suspected of being a ‘rebel’ in the beginning of the crisis. There is no indication as to their affiliation, if any. If anything, this incident lends further weight to the competing inference that these acts of violence may have been spontaneous acts of mob lynching. This is also the case with P-0440’s⁴¹⁹⁴ and P-0226’s testimony⁴¹⁹⁵ cited in support of this alleged pattern.

1871. Having regard to the nature and quality of the evidence concerning ‘article 125’, it cannot be concluded that this practice emerged as a result of Mr Blé Goudé’s instructions. To the extent that Maguy ‘le Tocard’ appears to have been involved in these incidents, it is not clear from P-0108’s testimony how the witness identified the perpetrators. Even assuming that these perpetrators did in fact belong to the group of Maguy ‘le Tocard’, the Prosecutor has not pointed to evidence that could demonstrate that this ‘procedure’ was being implemented at the behest of the accused. To the extent that the perpetrators of these acts supported Mr Gbagbo, it has not been established that either accused had command and control over them.

3. *Killing of Burkinabé*

1872. In further support of other article 7(1) acts, the Prosecutor pointed to an operation allegedly conducted by P-0435 with CECOS in February or March 2011.⁴¹⁹⁶ This operation has been discussed earlier.⁴¹⁹⁷ Having regard to the

⁴¹⁹³ P-0185, T-8 dated 27 November 2017, p. 8.

⁴¹⁹⁴ See Response, paras 290-291.

⁴¹⁹⁵ Response, para. 292.

⁴¹⁹⁶ Response, para. 288.

⁴¹⁹⁷ See IV.D.2.d)(7) - Alleged operations involving P-0435 and CECOS.

conclusions reached therein, it cannot be concluded that this operation was conducted pursuant to the alleged Policy.

AA. Conclusion on the existence of the four ‘evidentiary factors’ of the alleged pattern

1873. As noted above, the Prosecutor has divided the charged and uncharged incidents into four categories.⁴¹⁹⁸ It is worth pointing out, however, that these categories are not mutually exclusive. On the contrary, the category ‘crimes committed by shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters’⁴¹⁹⁹, seems to be encompassed entirely by the category of ‘crimes committed during attacks on neighbourhoods where inhabitants were perceived as Ouattara supporters’.⁴²⁰⁰ In addition, the latter also overlaps to some extent with the category of ‘crimes committed following identification checks, particularly at roadblocks’.⁴²⁰¹

1874. It is not clear whether the Prosecutor alleges that there were four different patterns that all shared the four ‘evidentiary factors’ outlined in paragraph 239 of the Response⁴²⁰² or, rather, whether there was a single pattern of incidents that can be divided into four sub-categories. As the Prosecutor claims that there was ‘a series or overall flow of events’,⁴²⁰³ it appears that the latter interpretation is

⁴¹⁹⁸ See VI.A – Introduction, para. 1385.

⁴¹⁹⁹ Response, para. 241 iv.

⁴²⁰⁰ Response, para. 241 ii.

⁴²⁰¹ Response, para. 241 iii.

⁴²⁰² These ‘evidentiary factors are:

- i. the acts amounted to murder, rape, other inhumane acts (alternatively attempted murder) or persecution;
- ii. the victims of those acts were civilians perceived as Ouattara supporters;
- iii. the perpetrators of the acts were pro-Gbagbo forces;
- iv. these acts were carried out in Abidjan between 27 November 2010 and on or around 12 April 2011.

⁴²⁰³ Response, para. 241.

the correct one. However, if the point is to show one overall pattern, there seems to be little added value in analysing the four sub-categories separately. In any event, since this is how the Prosecutor has presented her case, the evidence will also be analysed on this basis. After analysing the four alleged categories individually, there will be a global analysis of all incidents taken together.

1. Incidents in the context of political demonstrations or in and around political parties' premises

1875. The Prosecutor alleges that the events at the RTI march and the women's march in Abobo are reflective of a pattern that 'pro-Gbagbo forces killed, raped and injured actual or perceived Ouattara political activities and sympathisers primarily in the context of political demonstrations or in and around political parties' premises in Abidjan' during the post-electoral crisis.⁴²⁰⁴ In addition to this, the Prosecutor refers to seven uncharged incidents that allegedly demonstrate the existence of this pattern.⁴²⁰⁵

1876. Reference is made to the relevant sections where these incidents are discussed.⁴²⁰⁶ Even if all the evidentiary problems were disregarded and the Prosecutor's

⁴²⁰⁴ Response, paras 246-247.

⁴²⁰⁵ Response, paras 248-257.

⁴²⁰⁶ See VI.H - 16-19 December 2010 - RTI March (1st charged incident);

VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I);

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1-2 December 2010 – RDR Office in Wassakara;

VI.D - 3 December 2010 – RHDP demonstration in Treichville;

VI.E - 4 December 2010 – RHDP demonstrators near the Great Mosque of Koumassi;

VI.G - 6 December 2010 – RHDP demonstrators in Boribana;

version of events accepted entirely, these nine incidents could still not be considered as a meaningful pattern. It is true that the facts as described comply with the Prosecutor's 'evidentiary factors', but this is where the comparison largely ends. Indeed, the circumstances of these nine incidents are all so different that it would be highly artificial to maintain that they were part of the same pattern. In short, while it can be concluded that violence took place in the context of political demonstrations, having regard to the number, the nature of crimes as well as identification of direct perpetrators, it cannot be concluded that there is sufficient evidence to conclude that there was a pattern of crimes from which the alleged Policy can be inferred.

2. Incidents concerning attacks on pro-Ouattara neighbourhoods including those on religious personnel

1877. The Prosecutor alleged that the events of Abobo I and II, and Yopougon I and II incidents are reflective of a pattern whereby pro-Gbagbo forces killed, raped and injured civilians during attacks on neighbourhood where individuals were perceived as Ouattara supporters, including attacks on religious personnel, during the post-electoral crisis.⁴²⁰⁷ In addition to these charged incidents, the Prosecutor refers to five uncharged incidents and evidence of pillaging that allegedly demonstrate the existence of this pattern.⁴²⁰⁸ The Prosecutor further

1613 - Finally, it is relevant to point out that the available evidence is incapable of supporting a finding of the existence of a pattern of the use of firearms/grenades against political demonstrators. First, in relation to the identified witnesses, it is not possible, on the basis of the available evidence, to determine who caused their death/injuries in 63 out of 76 instances. Second, even if all the identified victims could be attributed to the FDS or pro-Gbagbo irregular forces, this would still be only anecdotal evidence when seen in light of the scale of the RTI march and the hundreds of confrontations between marchers and law enforcement elements there must have been. There is thus no scope for any argument that the intent to attack the civilian demonstrators can be inferred from what happened on the ground.

25 December 2010 – PDCI headquarters in Cocody;

VI.J - 18 and 19 January 2011 – RHDP demonstrations in Adjame and Attecoubé; and

VI.K - 19/20 February 2011 – Abobo Mairie.

⁴²⁰⁷ Response, paras 262-263.

⁴²⁰⁸ Response paras 265-278.

argues that this pattern shows that the attack was directed against the civilian population.⁴²⁰⁹

1878. Reference is made to the relevant sections where these incidents are discussed.⁴²¹⁰

Leaving aside the low quality and inconclusive nature of much of the evidence, the limited number and heterogenous nature of the different incidents makes it impossible to discern a meaningful pattern. The Prosecutor is correct in pointing out that these nine incidents comply with the ‘evidentiary factors’. She is also right that they took place in neighbourhoods predominantly inhabited by people who supported Mr Ouattara or in Mosques. However, it is difficult to understand the relevance of the allegation that nine out of 25 incidents can be grouped together on this basis. It certainly seems illogical to pretend that they form a ‘pattern’, much less that anything meaningful could be inferred from this.

3. Incidents following identification checks particularly at roadblocks

1879. The Prosecutor alleges that the killings, rapes, and injuries during the RTI march, Yopougon I, and Yopougon II following identification checks are reflective of a pattern.⁴²¹¹ In addition to these, the Prosecutor refers to three other uncharged

⁴²⁰⁹ Response, para. 334.

⁴²¹⁰ See VI.B - 30 November 2010 – Sotrepim neighbourhood;

VI.F - 4 December 2010 – Port-Bouët;

VI.M - 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I);

VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I);

VI.S - 15 March 2011 – Great Mosque of Port-Bouët II in Yopougon;

VI.T - 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II);

VI.U - 19 March 2011 – Killing of religious personnel in Williamsville;

VI.W - 2 and 8 April 2011 – Killings in Sikasso village;

VI.Y - 12 April 2011 – Killings and rapes in Yopougon (5th charged incident – Yopougon II); and

VI.Z.1 - Pillaging.

⁴²¹¹ Response, paras 279-281.

incidents to demonstrate the existence of said pattern.⁴²¹² The Prosecutor also alleges that ‘identification checks or their identification as such’ shows that the attack was directed against the civilian population.⁴²¹³

1880. Reference is made to the relevant sections where these incidents are discussed.⁴²¹⁴

Based on this analysis and that of other evidence on the record, the Prosecutor is correct in stating that there was a pattern whereby youths supporting Mr Gbagbo would check the identity of persons they did not know. There is also evidence that in some cases, some of these individuals would be killed, raped or injured. However, there is no evidence for the proposition that there was a pattern whereby persons of certain ethnic, national, or religious backgrounds would be automatically killed, raped, or injured upon being identified as such.

1881. To the contrary, there is considerable evidence on the record to suggest that, in a large majority of instances, persons would be allowed to continue after having been identified as belonging to one of the groups, albeit sometimes after having been extorted for money or other valuables. In the few instances of violence after identification where the Chamber has been presented with more or less detailed information about what happened, there always seems to have been an additional reason – other than being identified as belonging to a particular group - for why the victim(s) were targeted.⁴²¹⁵

⁴²¹² Response, paras 282-284.

⁴²¹³ Response, para. 337.

⁴²¹⁴ See VI.H - 16-19 December 2010 - RTI March (1st charged incident);

VI.L - 24 February 2011 – Burning of a person in Yopougon Gesco;

VI.M - 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I);

VI.P - 3-4 March 2011 – Burning of disabled person Port-Bouët;

VI.Q - 11 March 2011 – Killing of an individual in Yopougon;

VI.Y - 12 April 2011 – Killings and rapes in Yopougon (5th charged incident – Yopougon II).

⁴²¹⁵ For example, the person would be attempting to flee or was considered unable to justify their presence at a certain location and would therefore be considered as a rebel by the perpetrators.

1882. This is much less the case in the instances of rape that have been brought to our attention. Most cases of rape do appear to conform with the claimed pattern, in that the victims were violated after being identified as supporters of Mr Ouattara or as belonging to a particular ethnic, national, or religious group without more. However, the question in those instances is whether the identification was the reason for the perpetrators to rape their victims or whether this served merely as a pretext.
1883. In this context, it is necessary to discuss the allegation that Simone Gbagbo issued instructions to rape women taking part in the RTI march. The only evidence for this proposition is the prior recorded testimony of [REDACTED], who claims to have been told this twice by two separate policemen in approximately the same terms.⁴²¹⁶ As this constitutes anonymous hearsay and as there is no corroboration, no reasonable trial chamber could conclude solely on the basis of this evidence that there was an instruction, agreement and/or policy to rape female pro-Ouattara demonstrators.
1884. As noted above, the evidence for Yopougon II indicates to some extent that it is possible to characterise the crimes committed on 12 April 2011 in Yopougon as displaying a pattern of criminality motivated, at least in part, by ethnic animosity.⁴²¹⁷ However, given the timing and nature of these events, it is not possible to argue that the crimes committed on 12 April 2011 constitute a pattern from which anything significant in relation to the Common Plan or policy could be inferred.

⁴²¹⁶ [REDACTED]

⁴²¹⁷ See VI.Y - 12 April 2011 – Killings and rapes in Yopougon (5th charged incident – Yopougon II).

4. Incidents concerning shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters

1885. The Prosecutor alleges that the Abobo I and II incidents are reflective of a pattern that pro-Gbagbo forces killed and injured civilians by shelling or indiscriminate fire in areas densely populated by perceived Ouattara supporters in Abidjan during the post-electoral crisis.⁴²¹⁸ In addition to these, the Prosecutor refers to four uncharged incidents to demonstrate the existence of this pattern.⁴²¹⁹

1886. Reference is made to the relevant sections where these six incidents are discussed.⁴²²⁰ Considering the relatively low number of instances where heavy weapons were used and taking into consideration its low evidentiary weight and/or inconclusive nature of much of the evidence, it is not possible to find that there was a pattern to use heavy weaponry indiscriminately in densely populated areas.

1887. In sum, although the Prosecutor's listing of a number of incidents in four different categories is not per se inaccurate, this is not sufficient to prove the existence of meaningful patterns. Simply selecting one or more parameters and then identifying a few instances where these parameters are present does not show the existence of an actual pattern. For that to be the case, it is necessary to compare all relevant instances and to determine on that basis whether a sufficient proportion of them show similar characteristics in order to be able to speak of a pattern. In the present case, the relevant pool of instances to be compared would

⁴²¹⁸ Response, paras 295-297.

⁴²¹⁹ Response, paras 298-301.

⁴²²⁰ See VI.N - 26 and 27 February 2011 – Shelling in Abobo;

VI.O - 3 March 2011 – Killing of female protesters in Abobo (3rd charged incident – Abobo I);

VI.R - 11-12 March 2011 – Shelling in Abobo;

VI.T - 17 March 2011 – Shelling in Abobo (4th charged incident – Abobo II);

VI.V - 22 March 2011 – Shelling in Derrière Rails; and

VI.X - 11 April 2011 – Shelling of a bakery in Treichville.

be all the occasions where one or more members of the ‘pro-Gbagbo forces’ came into contact with the ‘pro-Ouattara population’. By limiting herself to looking only at instances that complied with the so-called ‘evidentiary factors’, the Prosecutor artificially reduced the scope of her inquiry. This made the finding of ‘patterns’ both a self-fulfilling prophecy and largely meaningless.

BB. Conclusion on the existence of the alleged overall pattern/attack against the civilian population

1888. In addition to the evidentiary considerations outlined above, it is important to underline another fundamental weakness of the Prosecutor’s arguments in relation to the existence of patterns of criminality. The main flaw in the Prosecutor’s argument is that no attempt has been made to demonstrate that the 24 incidents she relies upon to prove the existence of a pattern are representative of what happened in Abidjan during the post-election crisis. Anyone can claim the existence of a pattern by cherry-picking examples that fit preconceived characteristics and ignoring all other information that does not conform. The burden is upon the Prosecutor to show how and why she selected the incidents relied upon in her Response.

1889. Considering the duration of the post-election crisis and the size of Abidjan, it is impossible to assume that the incidents relied upon by the Prosecutor were the only occasions during which the different constituents from the so-called pro-Gbagbo forces came into contact with the civilian pro-Ouattara population. This is critical, because, in the absence of evidence about how the ‘pro-Gbagbo forces’ interacted with the pro-Ouattara population in general, it is impossible to determine whether the incidents constitute a representative sample of a wider pattern or whether they are really exceptions. For example, the Prosecutor alleges a pattern of targeting civilians belonging to a number of religious, national or ethnic groups at roadblocks manned by groups sympathetic to Mr Gbagbo. However, in total, the Prosecutor provides evidence only in relation

to a limited number of incidents where crimes were committed at roadblocks following identification. Even assuming that the evidence was of sufficient probative value to accept all the Prosecutor's allegations about what happened during these incidents, this would never be sufficient to find the existence of a pattern. This is because there must have been countless instances every day where civilians belonging to the relevant groups crossed the roadblocks. Without any information about how they fared, it is simply impossible to know whether the examples of the Prosecutor are representative of what happened in most or at least many cases, or whether they actually constituted the exception rather than the rule.

1890. Since the policy relates to an alleged attack against a civilian population in the sense of article 7(2)(a) of the Statute, only those instances where article 7(1) crimes were allegedly committed can be considered for the existence of the relevant pattern(s). Instances where other behaviour vis-à-vis pro-Ouattara civilians is evidenced, such as extortion, stealing, or less serious forms of physical ill-treatment, may be relevant for determining the existence of discriminatory intent and potentially persecution. However, the fact that sums of money may have been or were extorted from many people to cross roadblocks does not qualify as relevant evidence in support of the existence of a policy to kill, rape, and/or injure civilians.

1891. It should be noted also that, in order to establish the existence of a pattern covering a prolonged period and a large area, what matters is not so much the total number of victims as the number of incidents. For example, when during a singular attack on a particular location three people are killed and seven injured, however tragic this is, this would only count as one instance for the purposes of the existence of a pattern of physical violence. If, on the other hand, there are ten different incidents where a single individual is killed or injured, this counts as ten instances of a potential pattern.

1892. Based on these considerations, it is absolutely clear that, even if all of the Prosecutor's allegations concerning the charged and uncharged incidents were

accepted at face value, still no reasonable trial chamber could find that there existed a veritable pattern of criminal conduct that could support an inference that a policy to commit such crimes must have been in place. Indeed, according to the Prosecutor, the relevant period lasted 137 days and the relevant location was Abidjan. According to the Prosecutor, Abobo alone held 1.5 million inhabitants⁴²²¹ and the entire city's population probably totalled more than 4 million. The Prosecutor did not provide any information as to how many of these belonged to the relevant categories according to her case theory, but it is probably safe to assume that there were at least 1 million Muslims, northerners and foreigners combined. On the side of the alleged perpetrators, it is also not entirely clear how many members of the different regular and irregular forces were in Abidjan at the time, nor what their respective weaponry was. Nevertheless, it is beyond doubt that there were several thousand armed individuals in Abidjan during the relevant period. According to the Prosecutor, all these individuals belonged to organisations that were controlled by the accused. These thousands of so-called 'pro-Gbagbo forces' had ample opportunity to commit violent crimes against the relevant civilian population(s) of Abidjan. Yet, even if the Prosecutor's alleged total number of victims (528) was fully accepted and were all counted as single incidents, this would still only represent 0.052% of the relevant potential victim population.

1893. Although telling, this number is not necessarily determinative. What matters is how often the 'pro-Gbagbo' forces complied with the alleged policy when they had the chance to do so. Given the scarcity of the evidence in this regard, it is impossible to make any empirical findings on this point. Nevertheless, assuming that out of the thousands of pro-Gbagbo forces that were present in Abidjan during the post-electoral crisis, on any given day, 75 of them had an opportunity to harm at least one suspected Ouattara supporter, this would still mean that there

⁴²²¹ Response, para. 419.

were more than 10,000 such opportunities throughout the relevant time-period. If the Prosecutor's alleged total number of 528 victims was fully accepted and were all counted as single incidents,⁴²²² this would mean that in only slightly more than 5% of cases where a pro-Gbagbo force member had an opportunity to implement the policy, they actually did so. In reality, the percentage was probably much lower still.⁴²²³

1894. The point here is not that there is a minimum threshold in terms of the implementation rate of the alleged policy. Nor is there any issue of principle with the idea that a policy can be inferred from its alleged implementation. The point is purely an evidentiary one. In this case, the Prosecutor is asking us to infer the existence of the Common Plan/policy, inter alia, from the claimed pattern of crimes. This is not a viable inference when the 'pro-Gbagbo forces' ignored the alleged policy more than 90% of the time. This is especially the case when those forces were, as alleged by the Prosecutor, an 'organised and hierarchical apparatus of power'⁴²²⁴ that was characterised by automatic compliance with superior orders.

1895. Again, this is not a matter of reducing the legal definition of an attack against a civilian population to a specific ratio. This would clearly be inappropriate. However, it would equally be irresponsible to ignore basic realities. No reasonable trial chamber could conclude on the basis of these numbers that there was an attack against a civilian population in Abidjan during the post-election

⁴²²² But see para. 1891 for why this is not the correct way to count.

⁴²²³ It is fully recognised that the numbers used are based on educated guesswork and mere assumptions. However, this is due in the first place to the fact that the Prosecutor did not provide the Chamber with sufficient information. Moreover, the argument remains valid with other numbers as well. Indeed, the estimate that there were only 75 instances per day on average is very conservative. It is noted that this estimate is independent of the total number of the 'pro-Ouattara population' in Abidjan.

⁴²²⁴ Response, Section V. C. 2. (*Pro-Gbagbo forces were an organised and hierarchical apparatus of power*), paras 1167 *et seq.*

crisis. And it is even less possible to infer that there was a Common Plan, much less an actual policy, to commit killings and rapes on this basis.

1896. This conclusion in no way diminishes the scale of suffering that was endured by the civilian population. However, grave though the excesses of the ‘pro-Gbagbo forces’ may have been, based on the evidence that was presented to the Chamber, it is not possible to characterise them as a deliberate attack against a civilian population.

VII. OVERALL CONCLUSIONS ON THE ALLEGED COMMON PLAN/POLICY

1897. As noted at the outset of the evidentiary analysis, the Prosecutor alleges that Mr Gbagbo and Mr Blé Goudé shared intent for Mr Gbagbo to ‘stay in power as President of Côte d’Ivoire by all means’.⁴²²⁵ In the present case, the examination of the alleged Common Plan/Policy inherently required an analysis of the phrase ‘by all means’.⁴²²⁶ In particular, considering the manner in which the alleged Common Plan/Policy had been presented, it was imperative to examine whether or not these ‘means’ included the commission of crimes against the civilian population.

1898. The Prosecutor clearly argues that this was the case. Indeed, she alleges not only that the plan ‘to maintain Mr Gbagbo in power by all means, include[ed] committing the crimes charged’ but also that by 27 November 2010 this plan had ‘evolved to include [...] a policy to launch a widespread and systematic attack against civilians perceived to support Alassane Ouattara’.⁴²²⁷ The Prosecutor further argued that, following the second round of the presidential election, the pro-Gbagbo forces actually carried out a ‘campaign or operation’ of killing, raping and injuring civilians perceived as Ouattara supporters by ‘employing a number of common means, some of which evolved during the duration of this campaign or operation’.⁴²²⁸

1899. However, as she acknowledged, the Prosecutor did not present any direct evidence of the existence of the alleged Common Plan/Policy. In the place of direct evidence, the Prosecutor presented the Chamber with a plethora of

⁴²²⁵ It is noted that in other places, the phrase “at all costs” has also been used to refer to the alleged Common Plan/Policy. *See for example* Response, paras 1560, 1593, 1609, 1744, 1746, 1767, 1907.

⁴²²⁶ Mid-Trial Brief, para. 13.

⁴²²⁷ Response, paras 12, 1105.

⁴²²⁸ Response, para. 235.

circumstantial evidence and asked us to draw one giant inference from it. The previous sections have dealt with the different pieces of the Prosecutor's puzzle. In turn, this section explores which picture emerges from the different pieces of the puzzle (or what remains of them following the above analysis) put together.

1900. After having analysed all of the building blocks of the Prosecutor's case, separately and together, it has become amply clear that it is not possible for a reasonable trial chamber to infer that Mr Gbagbo, Mr Blé Goudé, and other members of the so-called 'inner circle' intended to attack the pro-Ouattara civilian population.
1901. It has not even been established that Mr Gbagbo never contemplated handing over power since being elected in 2000. What does appear from the record is that the Prosecutor is right in claiming that Mr Gbagbo was not prepared to cede power to his main political rival, Mr Ouattara, after the results of the second round of the election were not declared according to regular procedure. This decision, in which he was clearly supported by Mr Blé Goudé, inevitably put Mr Gbagbo on a collision course with Mr Ouattara and his supporters. Despite repeatedly calling for dialogue and asking for a re-count of the votes, Mr Gbagbo must have known that there was a real possibility that the conflict would turn violent. The Prosecutor is also right when she argues that Mr Gbagbo must have known that in such a scenario there was a risk that some civilians might be killed, injured, or otherwise harmed.
1902. One way of understanding the Prosecutor's central argument is that by choosing to rely on a number of groups and individuals, such as the GPP, or by agreeing to the use of certain tactics or methods, Mr Gbagbo was aware that he increased the risk that civilians might be harmed. On one level, this is undoubtedly true. However, it assumes that Mr Gbagbo had many other options, besides stepping down. Notwithstanding the Prosecutor's efforts to sidestep this issue, it does appear quite clearly from the evidence that, despite much clamouring to the contrary, Mr Gbagbo and his regime had their backs against the wall militarily speaking. Quite a bit of the evidence in this case is proof of - often desperate -

efforts to put together a force that could at least offer a pretence of being able to withstand an all-out armed confrontation with Mr Ouattara's forces, who would possibly have acted in tandem with French troops. Since access to weapons and ammunition was clearly very limited, the strategy seemed to have been to seek strength in numbers. As part of this process, certain persons and groups became involved, whose morals, discipline and training left much to be desired. The evidence does not allow us to determine how significant the number of individuals that fell into this category was compared to the overall troop strength. This makes it impossible for a reasonable trial chamber to know how much their presence increased the risk of violent or other criminal behaviour. It is also not clear from the evidence whether and, if so, to what extent, the accused were able to steer or control the different groups that 'complemented' the FDS. Indeed, the available evidence does not allow a reasonable trial chamber to determine whether the efforts to engage different groups for Mr Gbagbo's cause were centrally coordinated or the result of several *ad hoc* initiatives of individuals acting on their own authority. It is therefore altogether unclear to what extent Mr Gbagbo and Mr Blé Goudé were in a position to influence the risk that resulted from the involvement of certain individuals or groups.

1903. Of course, it can be argued that they should have done more to try and minimise the risk that civilians might be harmed. There is some evidence that suggests that avoiding civilian harm was not always their primary goal. While this was deplorable and perhaps, in some instances, violated certain international human rights obligations, it cannot be inferred from the fact that Mr Gbagbo ordered or authorised law enforcement or military operations knowing that they carried a certain risk that civilians might be harmed that he intended the violence that ultimately befell some of the inhabitants of Abidjan. Similarly, the fact that Mr Blé Goudé may (or should) have been aware that his appeals to set up roadblocks and monitor movements of foreigners (including UNOCI) within neighbourhoods might have been interpreted by some members of his audience as an implicit invitation to take matters into their own hands, it is insufficient to prove that he intended them to commit any crimes.

1904. Whilst it may be possible to debate how much risk a leader is allowed to accept in the course of planning otherwise legitimate law enforcement or military operations, the fact that such a debate is at all necessary clearly demonstrates that this situation is not one of crimes against humanity as defined in article 7 of the Statute and the Elements of Crimes.
1905. In sum, the Prosecutor has failed to provide sufficient evidence to show that the accused intended to maintain Mr Gbagbo in power by means involving the commission of crimes against the civilian population, much less a widespread and systematic attack targeting civilians perceived to support Alassane Ouattara. In light of this, it is simply not possible for a reasonable trial chamber to conclude that the accused committed the charged crimes against humanity.

VIII. CRIMINAL RESPONSIBILITY

1906. Given the conclusions in relation to the contextual elements, there is no imperative need to discuss the Prosecutor's allegations regarding criminal responsibility. Nevertheless, even if the contextual elements were not at issue, there would still not be sufficient grounds for a reasonable trial chamber to convict the accused.

A. Mr Gbagbo and Mr Blé Goudé's responsibility under article 25(3)(a)

1. Common plan – critical element of criminality

1907. The central element of joint perpetration is the existence of a common plan between two or more individuals. Although the common plan does not have to be aimed entirely or exclusively at the commission of crimes, the criminal aspect of the plan is all that matters for the purpose of article 25(3)(a) of the Statute. Accordingly, that Mr Gbagbo and Mr Blé Goudé may have shared the goal, together with other individuals, to maintain the former in power is immaterial. What matters is whether or not there was ever a plan – albeit an implicit one – to commit any of the charged crimes in order to achieve this goal.

1908. Since the Prosecutor argues that the evidence for the common plan and the policy is essentially the same, it suffices to refer to the above analysis of the evidence in relation to the latter. As the conclusion is that there is insufficient evidence for a reasonable trial chamber to find that there was a policy to commit crimes against civilians, it follows that there is also insufficient evidence for a common plan to commit such crimes. Consequently, no reasonable trial chamber could have found that there was enough evidence to support charges of joint perpetration.

1909. In addition, there are a number of points about the Prosecutor's case under article 25(3)(a) that deserve being mentioned. First, there appears to be an incongruity

in the fact that the Prosecutor charges both Mr Gbagbo and Mr Blé Goudé as indirect co-perpetrators on the basis of the same common plan, but that they are not charged for the same set of crimes. This seems incongruous with the very notion of joint perpetration as outlined in the jurisprudence. As the Prosecutor rightly points out, the existence of a common plan ‘ties the co-perpetrators together and justifies the reciprocal attribution of their respective acts’.⁴²²⁹ In other words, if someone is party to a common plan and makes the requisite level of contribution, he or she will normally be held responsible for *all* the crimes that are part of the plan.

1910. It is therefore difficult to escape the impression that, by confirming only part of the charges against Mr Blé Goudé under article 25(3)(a), the Pre-Trial Chamber implicitly found that the crimes committed during the incidents with which Mr Blé Goudé is not charged did not form part of the common plan.⁴²³⁰ However, if this is the case, then it is difficult to see how Mr Gbagbo can still be charged for these crimes under the same form of criminal responsibility.

1911. To be sure, the Prosecutor is not responsible for creating this inconsistency. However, by failing to acknowledge it she has done little to try to clear up the situation. Indeed, the Prosecutor did not seek leave to appeal this point, nor did she ask the Chamber to consider giving notice under regulation 55 of the Regulations.

1912. Another peculiar aspect of the Prosecutor’s case under article 25(3)(a) of the Statute relates to the last charged incident. According to the charges, the final incident took place on 12 April 2011. By this time, Mr Gbagbo had already been

⁴²²⁹ Response, para. 1089.

⁴²³⁰ An alternative explanation may be that, in order to be liable under article 25(3)(a) of the Statute, an accused must make a contribution to the actual crimes. Such an approach would be in line with a more textual interpretation of article 25(3)(a) and more in conformity with the requirement of strict interpretation contained in article 22(2) of the Statute. However, given the Pre-Trial Chamber’s silence in this regard, it is not possible to determine what caused it to decline to confirm the charges relating to the RTI march, women’s march and market shelling on the basis of article 25(3)(a) as regards Mr Blé Goudé.

detained by opposing forces, after spending several days under siege at the Presidential Residence. According to the Prosecutor, the common plan remained in existence ‘even beyond Mr Gbagbo’s arrest as pro-Gbagbo forces continued fighting in the hope of reinstating Mr Gbagbo’s power.’⁴²³¹ Moreover, the Prosecutor argues that, prior to his arrest, when requesting his forces to continue the fight, Mr Gbagbo “had all the information at his disposal to be on notice that by requesting the pro-Gbagbo forces to continue to fight, it would lead to the commission of further crimes.”⁴²³²

1913. While it may, theoretically, be possible for someone to exert control over the commission of crimes even after they have lost the reigns of power over the relevant organisation, these will be exceptional situations. *In casu*, it is difficult to see how Mr Gbagbo could have exercised any control over the individuals that committed the alleged crimes on 12 April 2011. Indeed, even if Mr Gbagbo had expressly called upon his forces to cease hostilities shortly before his capture, given the utterly chaotic circumstances at the time, there is nothing to suggest that the crimes in question would not have been committed.

1914. In relation to Mr Blé Goudé, who had already gone into hiding for several days,⁴²³³ the Prosecutor seems to rely mainly on Mr Blé Goudé’s “final address”, which was broadcast on 5 April 2011, i.e. one week before the alleged crimes took place in Yopougon. In this video message, Mr Blé Goudé comments on the situation, asks the viewers to pray to God, and encourages them to reinforce the roadblocks and to film suspicious movements in their neighbourhoods.⁴²³⁴ There is no mention of Yopougon or using violence. As will be discussed further

⁴²³¹ Response, para. 1111.

⁴²³² Response, para. 1129.

⁴²³³ P-0435, T-90 dated 21 October 2016, pp. 53-54; T-94 dated 31 October 2016, p. 40.

⁴²³⁴ Dernier message de BLE GOUDE, 6 April 2011, CIV-OTP-0047-0604.

below, it is not clear how the Prosecutor links Mr Blé Goudé's utterances to the crimes committed on 12 April 2011.⁴²³⁵

1915. Without anything specific to link the two accused to the crimes committed on 12 April 2011, the Prosecutor's argument, in essence, is that:

it does not [...] matter whether the Accused continued to espouse the Common Plan until the time when the relevant criminal conduct was committed, as long as they made an intentional essential contribution to the Common Plan prior to the commission of these acts, and the acts occurred within the framework of the Common Plan.⁴²³⁶

1916. Whether this proposition is legally correct depends to a large extent on what the Prosecutor means by something occurring "within the framework of the Common Plan." If the criminal conduct was indisputably part and parcel of the common plan, then it is indeed possible to attribute criminal responsibility to a member of such plan for making an essential contribution to it before the relevant conduct takes place. In such a scenario, the contributor would have known, when making his or her contribution, that he or she was contributing to a joint effort that included the relevant criminal conduct. However, in this case, there is no independent evidence indicating that the crimes that were committed on 12 April 2011 were envisaged to be part of the common plan. Indeed, the Prosecutor asks us to infer the existence and content of the common plan – in part – from the occurrence of the criminal conduct. Accordingly, in order to avoid circularity it is indispensable to show that when Mr Blé Goudé made his contribution, he was conscious that he was also contributing to the crimes committed on 12 April 2011. It is not sufficient that the members of the common plan were able to foresee the possibility that the execution of their plan *might* lead an undefined (group of) person(s) to commit certain crimes at an undefined time and location.

⁴²³⁵ See VIII.D - Mr Blé Goudé's responsibility under article 25(3)(b).

⁴²³⁶ Response, para. 1395.

1917. Even if the Prosecutor's version of the common plan is accepted, it is still hard to see how committing random violence against innocent civilians would in any way contribute to keeping Mr Gbagbo in power. Given that Mr Gbagbo was already in detention on 12 April 2011, what would have been needed for him to resume his reign was to be liberated and reinstated in power. There is absolutely nothing to indicate that the alleged killings and rapes that occurred in Yopougon on that day could have made even the slightest contribution to that aim.

1918. This relates to another problematic aspect of the Prosecutor's case under article 25(3)(a) and (d), which is the inclusion of rape charges. First, the Prosecutor asks the Chamber to infer the criminal content of the alleged common plan from the alleged crimes (both charged and uncharged). However, even if the Prosecutor's allegations, which are in considerable part based on anonymous hearsay, are accepted at face value, there would still only be a relatively small proportion of the alleged incidents that involved rape or other forms of sexual violence. Second, like many of the other crimes alleged in this case, it is not immediately obvious how committing rape and sexual violence could in any way contribute to the goal of keeping Mr Gbagbo in power. The Prosecutor has not proffered a convincing explanation in this regard. Instead, the Prosecutor repeatedly states that:

[T]he evidence shows that already prior to the 2010-2011 post-electoral crisis, pro Gbagbo forces committed politically motivated crimes against civilians that include the crime of rape, along with murder and other violent crimes. In this context, the Prosecution cautions that crimes of sexual violence should not be treated differently from other violent crimes charged in this case, for instance by regarding them as opportunistic acts unrelated to the prevailing context. Rape was a characteristic of the attack by pro-Gbagbo forces against civilians perceived to support Ouattara and it should be recognised as such.⁴²³⁷

1919. Seeing that the Prosecutor repeats this same argument six times throughout the Response, one would expect there to be a strong evidential foundation for it, but none is offered. In fact, the Prosecutor does not provide a single reference for the

⁴²³⁷ Response, paras 1236; 1928; 1950, 1970, 2006, 2017.

claim that rape was ‘characteristic’ of the attack by ‘pro-Gbagbo forces’. Instead, the Prosecutor seems to include the rape charges in the Common Plan on the basis of the alleged foreseeability that such crimes would be committed in the context of the (para-)military operations that were allegedly part of the plan.

1920. Whereas foreseeability is the correct parameter for this type of situation, it is important not to stretch this concept, lest it becomes meaningless. Indeed, at some level of scale and abstraction, almost everything becomes ‘foreseeable’ in the sense that there is a possibility that it may occur. Any project or plan involving large numbers of individuals who are operating relatively autonomously involves a certain risk that some of these individuals may engage in criminal behaviour. The larger the group of people involved and the longer the operation lasts, the greater the risk becomes that at least one individual may commit a crime. However, the mere awareness of the statistical possibility that one or more of their subordinates may engage in criminal activity at some undefined moment or place is not enough to impute criminal intent to persons in leadership position. For this to be the case, the scale of the foreseen criminal activity and the likelihood of its occurrence must be significantly greater. The foreseeability of the crime(s) must also be clearly linked to the execution of an identifiable aspect of the alleged plan. The mere abstract expectation that at least one out of hundreds or even thousands of individuals involved in a broadly defined plan or operation that is executed over several months in a large geographic area will probably commit a murder or rape clearly does not suffice in this regard.

2. Control over persons/organisation

1921. The second key element of indirect co-perpetration – according to the prevailing jurisprudence – is that the perpetrators must have exercised control over those who physically perpetrated the crime, either individually or through a so-called ‘organised apparatus of power’. Since the Prosecutor does not allege that any of

the physical perpetrators were individually controlled by the accused or any of the alleged 'inner circle' members, only the second is relevant in this case.

1922. In order to charge indirect perpetration under the control theory, the following elements need to be established:

- i. First, that the individuals who committed the alleged crimes belonged to a unit of an organisation;
- ii. Second, that the organisation was organised in such a manner that instructions from hierarchical superiors were automatically complied with;
- iii. Third, that at least one member of the common plan controlled the organisation, and,
- iv. Fourth, that this/these member(s) of the common plan instructed the organisation to engage in the conduct that led to the commission of the crime.

1923. If any of the four elements are not proved, it is not possible to invoke indirect perpetration. It is therefore not necessary to discuss all four if it is clear that the evidence for one element is insufficient. In what follows each of the five charged incidents will be analysed on this basis. However, before doing so, it is necessary to address a structural weakness of the Prosecutor's case.

a) FDS and the alleged parallel structure

1924. As discussed above, the FDS was a more or less regular command and control structure until things started to unravel towards the end of March 2011, at which point the alleged parallel structure allegedly took over. As explained above, there is no evidence that in the preceding period the alleged parallel structure played a significant operational role. All of the crimes charged that were allegedly committed by FDS units took place in the period before the disintegration of the regular command and control structure. More importantly, the Prosecutor has failed to demonstrate that the alleged parallel structure played a discernable role in any of the charged incidents.

1925. Moreover, there is something inherently paradoxical about the Prosecutor's argument concerning the alleged structure. If the FDS was an organised apparatus of power in which orders were always automatically complied with,

there cannot have been a need for a parallel structure. If, on the contrary, the parallel structure was necessary to ensure compliance with orders given by the ‘inner circle’, this would imply that the regular chain of command did not provide the commanders with control over the organisation. In that case non-parallel structure FDS units would be excluded from the organised apparatus of power. This means that it would no longer be possible to charge indirect (co-)perpetration under article 25(3)(a) of the Statute for crimes committed by FDS units that were not controlled by the parallel structure.

1926. The Prosecutor seems to be missing this point entirely when she argues that:

the Prosecution makes no suggestion that the purpose of the parallel structure was to circumvent (“contourner”) the Inner Circle and its members. The Prosecution does not say that the parallel structure was parallel to the Inner Circle, but rather to the regular chain of command.⁴²³⁸

1927. Moreover, this argument overlooks the fact that, according to the Prosecutor’s own case theory, the ‘inner circle’ comprised a number of senior FDS officers who are not alleged to have been part of the parallel structure. It seems rather illogical to argue that the ‘inner circle’ controlled the crimes through the parallel structure but that members of that same ‘inner circle’, who belonged to the same organisation, were not part of the parallel structure.

1928. Under these circumstances, no reasonable trial chamber could find that either the FDS or the alleged parallel structure complied with the criteria for organised apparatus of power.

b) The RTI march

1929. As discussed above, the Prosecutor has provided sufficient evidence that might allow a reasonable trial chamber to conclude that at least some of the crimes committed during or in the aftermath of the RTI march were attributable to a

⁴²³⁸ Response, para. 1627.

number of FDS units as well as to some irregular forces. However, for none of these instances has the Prosecutor provided sufficient evidence that would allow a reasonable trial chamber to conclude that one of the ‘inner circle’ members instructed the units/groups in question to engage in the commission of the charged crimes.

1930. The Prosecutor argues that the mere fact of prohibiting the march is sufficient, because it was foreseeable that doing so would lead to violence being used against civilians. However, this is not how indirect perpetration functions. Having control over an organisation means that the one(s) in control decide if and when crimes are committed by the organisation. Accordingly, if a member of the organisation commits a crime, he or she must be acting pursuant to an instruction from authority within that organisation. If a member of an organisation acts on his or her personal initiative, this conduct cannot be attributed to the organisation.
1931. The fact that it may have been foreseeable that some FDS members would use excessive violence against civilians in the course of preventing the march – either on their own initiative or pursuant to instructions of local commanders – does not necessarily mean that those who ordered the FDS to take measures to prevent the march wanted their subordinates to engage in unprovoked violent acts, much less that they controlled it. The idea that control over the crime can be established on the basis of foreseeability of risk of criminal behaviour is antithetical to the notion of control over an organisation. Organisations are controlled by way of orders and directives, not by telepathy or risk calculus.
1932. In the absence of direct evidence of orders or instructions that overtly or implicitly called for the commission of crimes, it falls upon the Prosecutor to show that the existence of such orders or instructions is the only reasonable explanation of the conduct of the relevant members of the organisation. In some instances, it may be possible to infer that instructions to commit crimes were given if the number of instances of criminal conduct was considerably higher than what might have been expected, under the prevailing circumstances, if no

such orders had been given. In this case, however, there simply is insufficient evidence to suggest that a reasonable trial chamber could conclude that, when Mr Gbagbo allegedly ordered the prohibition of the march, it was clear to him that this would result in excessive violence. No reasonable trial chamber could thus infer that when Mr Gbagbo decided to prohibit the RTI march, this implied an order to the FDS to kill, injure or rape the marchers.

1933. As regards the crimes committed by the irregular forces, there is equally insufficient evidence to allow a reasonable trial chamber to conclude that someone from the ‘inner circle’ instructed the relevant groups to commit crimes. Whereas there is some evidence that Mr Blé Goudé purportedly made a call for mobilisation and that such a call would, in the ordinary course of events, lead to the erection of roadblocks,⁴²³⁹ this falls short of constituting an instruction to commit violent crimes.

c) Yopougon I

1934. Although the Prosecutor has alleged that there were at least 32 victims of the events that took place in Yopougon from 25 until 28 February 2011, for the large majority thereof the available evidence does not allow a reasonable trial chamber to identify the allegiance of the alleged perpetrators.⁴²⁴⁰ The only exceptions are the three victims who were inside the Lem Mosque when it was attacked.⁴²⁴¹ The perpetrators of the killing of Cissé Moustapha were Maguy ‘le Tocard’ and probably other GPP members. The sexual assault on P-0441 and an unidentified individual was likely committed by Agbolo. Agbolo was a member of FESCI and a self-declared bodyguard of Mr Blé Goudé.⁴²⁴²

⁴²³⁹ See V.B.3.a) -- Mr Blé Goudé’s mobilisation of *jeunes patriotes* to protect the RTI.

⁴²⁴⁰ See VI.M.5 – The victims.

⁴²⁴¹ See VI.M.3.a) – The events at Lem Mosque.

⁴²⁴² P-0441, T-37 dated 11 May 2016, pp. 69-72.

1935. However, there is nothing on the record of any ‘inner circle’ member issuing instructions to the GPP or FESCI to commit crimes on 25 February 2011. Even the Prosecutor does not argue that Mr Blé Goudé’s speech at *Bar le Baron* constituted a direct instruction to either of these groups. Moreover, there is no evidence that any of the identified perpetrators was present for Mr Blé Goudé’s speech or even that they were aware of it. It is also noteworthy that the events at Lem mosque were of a different nature from the clashes between the Doukouré and Yao Séhi neighbourhoods and have no obvious connection with what allegedly happened subsequently in Yopougon on 25-28 February 2011.

1936. Accordingly, no reasonable trial chamber could enter a conviction based on article 25(3)(a) of the Statute (indirect perpetration as currently interpreted) on the basis of the available evidence.

d) Women’s march

1937. There is no evidence on the record that the individuals who fired from the vehicles in the FDS convoy on 3 March 2011 received any instructions to do so. The Prosecutor also does not advance any convincing argument as to whether any of the FDS units that were part of the convoy were under the direct or indirect control of a particular ‘inner circle’ member on that day.

1938. Accordingly, no reasonable trial chamber could find, on the basis of the available evidence, that the crimes committed on 3 March 2011 were controlled by either of the accused directly or indirectly.

e) Market shelling

1939. As it was concluded that the evidence does not allow a reasonable trial chamber to determine who or what caused the explosions that took place in Abobo on 17 March 2011, there is no further need to analyse whether either of the accused bear any responsibility for these alleged crimes. There is nothing in the evidentiary record that would allow a reasonable trial chamber to link the

explosions to the ‘inner circle’, much less that an ‘inner circle’ member ordered the shelling of Abobo with 120mm mortars.⁴²⁴³

f) Yopougon II

1940. Beyond stating that the perpetrators belonged to the ‘pro-Gbagbo forces’, the Prosecutor is not able to identify which group(s) committed the alleged crimes that were committed in Yopougon on 12 April 2011.⁴²⁴⁴ The only exception is the testimony of P-0441, who confirmed his prior recorded statement in which he said that he saw Maguy ‘le Tocard’ and Agbolo, who were accompanied by armed civilians, uniformed individuals, police officers and vagabonds.⁴²⁴⁵ However, P-0441’s evidence in this regard is far from clear. Moreover, there is no allegation that either Maguy ‘le Tocard’ or Agbolo was involved in the commission of any of the alleged crimes on that day.

1941. The Prosecutor attempts to overcome the absence of direct evidence about the identity and/or allegiance of the perpetrators by arguing that:

The evidence on record provides cogent indicia demonstrating that the perpetrators of the charged crimes committed on the 12 April 2011 were pro-Gbagbo forces. The killings, rapes and other inhumane acts committed in the Mami Fatai and Doukouré neighbourhoods of Yopougon bear significant commonalities with the crimes committed by pro-Gbagbo forces against perceived pro-Ouattara supporters in Abidjan during the post-election crisis. The perpetrators were specifically targeting Dioulas – who were perceived as being pro-Ouattara supporters; (in certain cases) the perpetrators asked about the ethnicity of the victims or looked at their identification before attacking them; Dioula men were killed while Dioula women were raped – just like some of the perceived pro-Ouattara supporters during the 16 December 2010 incident; and the commission of crimes by English speaking and or masked perpetrators. Last, there is evidence that Maguy le Tocard – who was one of the Commanders in Yopougon – was amongst the attackers.⁴²⁴⁶

⁴²⁴³ See VI.T.4 – Who ordered/authorised the firing of the mortars?.

⁴²⁴⁴ Response, para. 1000.

⁴²⁴⁵ P-0411, T-37 dated 11 May 2011, p. 49, referring to CIV-OTP-0070-0190, para. 125.

⁴²⁴⁶ Response, para. 1000.

1942. However, even if this inference were sufficiently strong – which is highly doubtful – it still only shows that the perpetrators belonged to one of the many groups that favoured Mr Gbagbo. This is insufficiently specific for the purpose of article 25(3)(a), because it does not allow the Chamber to assess the characteristics of the organisation(s) involved or who instructed them to commit the crimes in question. It should not be forgotten that the incidents of 12 April 2011 occurred at a moment of extreme turmoil and rapid change. Even if the Prosecutor had established the required level of control over the relevant group(s) at an earlier stage of the crisis, it cannot simply be assumed that the ‘inner circle’ members were still able to exert the same level of control on 12 April 2011. On the contrary, everything indicates that the situation was chaotic and there is no evidence suggesting that there was any level of coordination or even communication between members of the ‘inner circle’ and the leaders of the groups that allegedly committed the crimes.⁴²⁴⁷ Under these circumstances, no reasonable trial chamber could find sufficient evidence for the charge of indirect perpetration under article 25(3)(a) of the Statute.

B. Mr Gbagbo and Mr Blé Goudé’s criminal responsibility under article 25(3)(d)

1943. The Prosecutor also charges Mr Gbagbo and Mr Blé Goudé under article 25(3)(d) of the Statute. In the case of the former, for all crimes charged, in the case of the latter only in relation to the RTI march and Yopougon I and II.

⁴²⁴⁷ It is noted that in the Response, para. 1669, the Prosecutor argues that: “Th[e] weakening of the formal chain of command, however, presented an opportunity for Mr Gbagbo and the Inner Circle to rely even more on allegiances developed in the parallel structure which they continued to control through a fully functional chain of command.” However, the fact that the alleged parallel structure units may have had a more prominent role in the final days of the battle for Abidjan is of little relevance for the charges, as the only incident charged during that period does not involve the FDS.

1944. For this form of criminal responsibility to apply, the Prosecutor must prove the following elements:

- i. that the crime charged was committed or attempted by one or more individual who belonged to a group acting with a common purpose,
- ii. that the accused made a contribution to the (attempted) commission of the charged crime, and
- iii. that such contribution was intentional and made with the aim of furthering the criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime.

1. Was there a group acting with a common purpose?

1945. For the purposes of article 25(3)(d), it is necessary to have a ‘group of persons acting with a common purpose’. It is not entirely clear from the Prosecutor’s submissions who she alleges belonged to this group in this case. In the Mid-Trial Brief, the Prosecutor argued that:

Those acting with a common purpose may be understood to include GBAGBO, BLÉ GOUDÉ, and other members of the Inner Circle, including military members of the Pro-Gbagbo forces.⁴²⁴⁸

1946. In the Response, the Prosecutor alleges that the group acting with a common purpose was constituted by “the pro-Gbagbo forces and members of the Inner Circle, including Mr Gbagbo and Mr Blé Goudé.”⁴²⁴⁹ T

1947. The most recent pronouncement came during the hearing of 2 October 2018, when the Prosecutor, before restating the position contained in paragraph 1990 of the Response, claimed that:

for the purposes of this case, the inner circle under Article 25(3)(a) and the group of persons under Article 25(3)(d) are composed of the same individuals.⁴²⁵⁰

⁴²⁴⁸ Mid-Trial Brief, para. 737. It is noted that in paragraph 897 of the same document, the Prosecutor said that ‘the group of persons acting with a common purpose who committed crimes included GBAGBO, members of his Inner Circle and BLÉ GOUDÉ’.

⁴²⁴⁹ Response, paras 1190, 1995.

⁴²⁵⁰ T-222, dated 2 October 2018, p. 81.

1948. It is thus not at all clear whether the group of persons acting with a common purpose was composed of the same individuals who made up the so-called ‘inner circle’, only a sub-group thereof, or whether its membership was much broader and also included the physical perpetrators of the alleged crimes.

1949. The confusion is compounded by the Prosecutor’s legal arguments. In particular, in paragraph 1976 of her Response, the Prosecutor argues that

“[t]he group’s collective intent may be established without focusing on the intent of each individual member of the group and may be inferred, *inter alia*, from [...] the intention of the leaders of the group, provided that they played a major role in that group, such as being significantly involved in creating the group, leading the group, or organising its criminal activities.”⁴²⁵¹

1950. Moreover, in paragraph 1979 of her Response, the Prosecutor argues that:

The term “commission” in article 25(3)(d) should not be limited to those situations covered by article 25(3)(a) and should be interpreted in accordance with the use of the term in article 25(2), which encapsulates all forms of individual criminal responsibility under article 25. Accordingly, criminal liability under article 25(3)(d) will attach as long as the crime forms part of the common purpose and can be imputed — pursuant to any mode of liability under article 25 — to the group of persons.

1951. These are two controversial – and legally incorrect – propositions. Indeed, accepting this line of arguments would erode the central concept behind article 25(3)(d) of the Statute, which is, as the Prosecutor herself underlines, the *collective or shared intent* of a group of persons who engage in criminal activity.⁴²⁵²

1952. The Prosecutor’s confused conceptualization of article 25(3)(d) is further evidenced by her contradictory arguments about the legal consequences of applying this form of criminal responsibility. For example, in the Mid-Trial Brief, the Prosecutor argued that:

BLÉ GOUDÉ is responsible pursuant to article 25(3)(d) for all crimes that are attributable to at least one of these persons under any mode of liability, as long as

⁴²⁵¹ Response, para. 1976; T-222, dated 2 October 2018, p. 83.

⁴²⁵² Response, para. 1975.

these persons acted in accordance with the common purpose. GBAGBO is one of the persons acting with a common purpose to whom the crimes charged can be attributed. As a result, BLÉ GOUDÉ is also responsible for these same crimes, having provided an intentional contribution to the group of persons acting with a common purpose.⁴²⁵³

1953. However, in the Response, the message seems to be the complete opposite:

an accused is liable pursuant to article 25(3)(d) only for those crimes to whose commission he or she contributed, and not for all crimes committed by the group of persons acting with a common purpose.⁴²⁵⁴

1954. Given this level of conceptual confusion, it is not surprising that the reader looks in vain for a clearly articulated and coherent evidentiary argument in relation to article 25(3)(d). Indeed, it appears that the Prosecutor's case under article 25(3)(d) is all but identical to her case under article 25(3)(a).

1955. This means that the alleged common purpose of the group is the same as the common plan and the organisational policy. Since the evidence submitted for the latter is insufficient, it follows that the charges under article 25(3)(d) are equally unsupported.

2. Contributions to the crimes committed by members of the group of persons acting with a common purpose

1956. In the absence of sufficient evidence in relation to the existence of a group acting with a common purpose, it is not strictly necessary to discuss the question whether either of the accused made a relevant contribution to any of the charged crimes. Nevertheless, it may still be useful to point out that the Prosecutor has made little effort to articulate which contributions the two accused allegedly made in relation to each of the crimes with which they are charged under article 25(3)(d) of the Statute.

⁴²⁵³ Mid-Trial Brief, paras 900-901.

⁴²⁵⁴ Response, para. 1981.

a) Mr Gbagbo

1957. In relation to Mr Gbagbo's alleged contribution to the crimes committed by the group acting with a common purpose, the Prosecutor lists a few elements which do not have any obvious link to the alleged crimes. For example, it is totally unclear how ordering the FDS to lay siege to the Golf Hotel and its residents⁴²⁵⁵ contributed to the rapes committed by FDS soldiers or any of the crimes committed by irregular forces. Similarly, one fails to grasp how calling on the UNOCI to depart Côte d'Ivoire⁴²⁵⁶ or calling on all Ivorians to stay mobilised until the rebirth of Côte d'Ivoire⁴²⁵⁷ constituted material or moral support to those who allegedly killed, raped and persecuted pro-Ouattara civilians. While such contributions may have benefited the group's alleged overall objective of keeping Mr Gbagbo in power, it is not possible to construe them as contributions to the crimes charged, as is required by article 25(3)(d) of the Statute.

1958. In relation to the specific incidents, the Prosecutor also fails to convince. For example, regarding the RTI march, the Prosecutor argues that Mr Gbagbo's instruction to prohibit and prevent the march in itself meets the threshold of "any contribution" as required by article 25(3)(d).⁴²⁵⁸ This is so, according to the Prosecutor, because this instruction came after (a) Mr Gbagbo filed a request to the Constitutional Council to have part of the election results declared invalid, (b) Mr Gbagbo ordered the blockade of the Golf Hotel, and (c) the fact that the killing on 1 December 2010 of four RHDP militants at the HQ in Yopougon Wassakara was not investigated, which, according to the Prosecutor, "paved the way to what was to come."⁴²⁵⁹

⁴²⁵⁵ Response, para. 1998 v.

⁴²⁵⁶ Response, para. 1998 vii.

⁴²⁵⁷ Response, para. 1998 i (at page 984).

⁴²⁵⁸ Response, para. 2000.

⁴²⁵⁹ Response, para. 2000.

1959. Even assuming the validity of these three elements,⁴²⁶⁰ it still requires a large dose of imagination and exaggeration to conclude from this that, “by the time of his instruction to prohibit and prevent the march on the RTI, Mr Gbagbo’s and the FDS’s track record was one of repression, murder and deprivation of freedom of movement to his political opponent Mr Ouattara and his supporters.”⁴²⁶¹ And even if this were a reasonable conclusion, it would still not be clear how prohibiting a public demonstration in such circumstances would amount to a contribution to the killings, injuries and rapes that were allegedly perpetrated during the repression of said demonstration.
1960. The Prosecutor argues that “the threshold under article 25(3)(d) only excludes contributions that are ‘inconsequential’, ‘immaterial’, or ‘neutral’ to the commission of the crime.”⁴²⁶² Even if this were the correct interpretation of the contribution threshold for article 25(3)(d), it is still incumbent upon the Prosecutor to indicate, for each of the charged crimes, how it was influenced by one or more of the alleged generic contributions. It is important, in this regard, to distinguish between (a) having a hand in creating certain conditions or situations that form the backdrop against which crimes are perpetrated and (b) making an actual contribution to the perpetration of those crimes. Whilst the former may also have a causal effect on the commission of crimes, what matters is whether the creation of the relevant condition(s) was instrumental or merely coincidental. Indeed, few would probably argue that those who designed and built the Titanic made a meaningful contribution to Captain Smith’s steering it onto the iceberg that sunk it, even though the latter would not have been possible without the former. The same applies to all the alleged contributions listed in paragraph 1998 of the Response as well as to the argument that prohibiting a march constitutes a

⁴²⁶⁰ For a discussion of the alleged blockade, *see* V.A – Blockade of the Golf Hotel. For a discussion of the alleged killings at Wassakara, *see* IV.B.4.c)(1) – Wassakara incident; and VI.C - 1-2 December 2010 – RDR Office in Wassakara.

⁴²⁶¹ Response, para. 2000.

⁴²⁶² Response, para. 1980.

contribution to the crimes that are committed during the repression of that march. Whilst these actions gave rise to the circumstances in which the alleged crimes took place and whilst those circumstances were obviously relevant for the decision of the physical perpetrators to commit the crimes, it would be artificial to pretend that they actively contributed to the actual commission.

1961. Similar problems exist in relation to the alleged contributions for the other charged crimes. In particular, in relation to the incidents of 3 and 17 March 2011, the Prosecutor claims that Mr Gbagbo contributed by directing his forces to stand fast and not to lose Abobo.⁴²⁶³ According to the Prosecutor, this direction resulted in the daily convoys to and from Camp Commando as well as the deployment of heavy weapons, such as the 120 mm mortars that were allegedly used to shell Abobo. For the reasons explained above, setting a strategic objective and deploying the necessary assets of that purpose cannot, by itself, constitute a meaningful contribution under article 25(3)(d). In addition, the Prosecutor alleges that by failing to punish the FDS members who killed the seven women on 3 March 2011, Mr Gbagbo “provided further comfort to the FDS that their acts would go unpunished, thereby adding a further contribution to the next incident on 17 March 2011.”⁴²⁶⁴ Even assuming that it was incumbent upon Mr Gbagbo to personally ensure that the incident of 3 March 2011 was fully investigated and the culprits held responsible by 17 March 2011, which is an untenable suggestion seeing the circumstances at the time, this argument would still fail, because the Prosecutor has not proved that those who allegedly fired the shells on 17 March 2011 knew (a) that the FDS actually killed the women, (b) that these killings constituted crimes, (c) that Mr Gbagbo was aware of this, (d) that he deliberately refrained from ensuring that the facts were being investigated and the offenders prosecuted.

⁴²⁶³ Response, para. 2001.

⁴²⁶⁴ Response, para. 2001.

1962. The Prosecutor's argument in relation to the crimes committed in Yopougon on 12 April 2011 is similarly contrived. In essence, the Prosecutor reproaches Mr Gbagbo for having urged his troops and those loyal to him to continue fighting.⁴²⁶⁵ Even assuming that the perpetrators of the alleged crimes were aware of Mr Gbagbo's determination not to give up the fight, which is far from being established, it would still need to be explained why they would believe that such an order was still valid even after Mr Gbagbo's arrest. Moreover, it is entirely unclear why encouraging persons to continue fighting a clearly identifiable military opponent could be construed as constituting any sort of contribution to the alleged killing, injuring, and raping of innocent civilians.

b) Mr Blé Goudé

1963. In relation to Mr Blé Goudé, the Prosecutor does not even attempt to identify specific contributions for the different crimes charged, but essentially refers to her submission regarding 25(3)(b) and (c).⁴²⁶⁶ The Prosecutor makes no effort to differentiate between the three different incidents for which Mr Blé Goudé is charged. Instead, she makes general submissions with respect to all charged crimes. In total, the Prosecutor lists the same eleven broadly framed, generic, contributions that she also relies upon in relation to article 25(3)(a) and (c) of the Statute.⁴²⁶⁷ None of these contributions are alleged to be specifically linked to any

⁴²⁶⁵ Response, para. 2002.

⁴²⁶⁶ Response, para. 2011.

⁴²⁶⁷ Response, paras 1254-1291, 1964 and 2012:

- i. Securing the allegiance of the youth to him and their compliance with his instructions by galvanising them;
- ii. Ensuring through his leadership, that the pro-Gbagbo youth groups acted in unity;
- iii. Acting as a vital intermediary between Mr Gbagbo and the pro-Gbagbo youth;
- iv. Organising the dissemination of instructions through various channels of communication;
- v. Mobilising the youth to commit violent acts;
- vi. Contributing to the financing of the activities of pro-Gbagbo youth;
- vii. Playing an essential role in the recruitment and enlistment of pro-Gbagbo youth in the FDS;
- viii. Providing support for the military training and arming of pro-Gbagbo youth;

of the individual instances of criminal conduct. Instead, the Prosecutor argues that they contributed to “the establishment and organisation of a structure which allowed for the execution of the common plan and occasioned the commission of those crimes.”⁴²⁶⁸ The Prosecutor’s choice of words is somewhat misleading. Whereas it may be accurate to say that the listed contributions ‘allowed’ for the commission of the crimes, it goes too far to suggest that they ‘occasioned’ them.⁴²⁶⁹ To the extent that Mr Blé Goudé’s actions may have assisted in creating the material conditions and/or contributed to the creation of a partisan atmosphere among Mr Gbagbo’s youthful supporters, this is too general to be considered as culpable contributions in the sense of article 25(3)(d).

1964. The same is true for the Prosecutor’s additional argument that Mr Blé Goudé’s participation in meetings with Mr Gbagbo and other members of the ‘inner circle’ to discuss a strategy to implement the alleged common plan/purpose.⁴²⁷⁰ The Prosecutor argues this gives rise to criminal responsibility under article 25(3)(d):

Because the crimes charged were perpetrated by members of the pro-Gbagbo forces with a view to implementing the common purpose, by participating in its conception and by coordinating its implementation, Mr Blé Goudé played a significant role in contributing to the commission of these crimes.⁴²⁷¹

1965. While such an argument might have merit in a situation where the common purpose was expressly to commit crimes and the planning and implementation meetings were directly related to the commission of those crimes, this is not the case here. According to the Prosecutor’s own case theory, the main purpose was

ix. Contributing to the recruitment of pro-Gbagbo mercenaries; and

x. Supporting and encouraging co-operation between the pro-Gbagbo youth, the militias and the FDS.

⁴²⁶⁸ Response, para. 2012.

⁴²⁶⁹ There is one possible exception to this, namely the alleged mobilisation of the youth to commit violent acts (Response, para. 2012 v). However, this allegation is discussed in more detail in the section dealing with article 25(3)(b). *See* VIII.D – Mr Blé Goudé’s responsibility under article 25(3)(b).

⁴²⁷⁰ Response, para. 2013.

⁴²⁷¹ Response, para. 2014.

to keep Mr Gbagbo in power through all means, including, if necessary, the commission of crimes against civilians. This implies that there were many things that the group could have discussed and planned during the relevant meetings that had no immediate connection with criminal behaviour. Under these circumstances, it was incumbent upon the Prosecutor to present sufficient evidence demonstrating that what was discussed during the relevant meetings was related to the commission of crimes. Given that the Prosecutor has failed to do this, no reasonable trial chamber could find that Mr Blé Goudé made a contribution to the crimes in the sense of article 25(3)(d) of the Statute.

C. Mr Gbagbo's responsibility under article 25(3)(b)

1966. In addition to charging the accused for having contributed to crimes committed pursuant to the alleged common plan (article 25(3)(a) and (d)), the Prosecutor also charged them for having allegedly ordered and/or solicited or induced the commission of the same crimes. In the case of ordering, the Prosecutor must prove the following elements:

- i. the accused exercised authority over the physical perpetrator,
- ii. the accused intentionally ordered the physical perpetrator (either directly or indirectly) to engage in criminal conduct,
- iii. this order had a direct effect on the physical perpetrator's decision to engage in criminal conduct,
- iv. the accused was aware that his or her order would have a direct effect on the conduct of the physical perpetrator.

1967. For solicitation and inducement, the elements are:

- i. the accused intentionally solicited or induced the physical perpetrator (either expressly or by necessary implication) to engage in criminal conduct,
- ii. this solicitation or inducement had a direct effect on the physical perpetrator's decision to engage in criminal conduct,
- iii. the accused was aware that his or her acts of solicitation or inducement would have a direct effect on the conduct of the physical perpetrator.

1. *Did Mr Gbagbo exercise authority over the physical perpetrators?*

1968. Mr Gbagbo's authority over the FDS is not really in issue. His insistence on being the president of Côte d'Ivoire implied that he saw himself and wanted to be seen as the commander-in-chief. Until what point in time that authority was actually recognised by the relevant troops is not entirely clear, but there can be little doubt that on 17 March 2011, date of the last charged incident involving the FDS, it was still largely intact.

1969. As regards the irregular forces and the youth groups, there is no indication that Mr Gbagbo held a formal position of authority. Instead, the Prosecutor argues that:

Mr Gbagbo's authority over the youth, militia and mercenaries was established and maintained through intermediaries (including Mr Blé Goudé). As such, there was an informal superior-subordinate relationship between Mr Gbagbo and the youth, militia and mercenaries. Mr Blé Goudé, as the leader of the *Galaxie Patriotique*, made decisions and facilitated all the major meetings or rallies relating to ensuring Laurent Gbagbo hold on power. It can be inferred that Mr Blé Goudé's support for Mr Gbagbo, his vision as a politician and his position as President of Côte d'Ivoire, meant that Mr Gbagbo was considered as the main authority and that the youth, militia and mercenaries regarded him as such while complying with Mr Blé Goudé's orders and instructions.⁴²⁷²

1970. While it is probably true that most of the organisations that were part of the *Galaxie Patriotique* regarded Mr Gbagbo as the 'main authority', the real question is whether the members of these different organisations would comply with his orders regardless of the acceptance/approval thereof by their own commanders/leaders. However, given that the Prosecutor does not present evidence of orders issued by Mr Gbagbo that were specifically directed at the irregular forces or youth groups, the answer to this question is immaterial for this decision.

⁴²⁷² Response, para. 1884.

2. *Did Mr Gbagbo issue criminal orders?*

a) **RTI march**

1971. In relation to the Prosecutor's allegations concerning Mr Gbagbo's alleged ordering of the commission of crimes, it is worth stressing that the Prosecutor acknowledges (a) that there is no evidence that Mr Gbagbo ever issued orders that were criminal in nature, and (b) that there is no evidence that Mr Gbagbo's orders were communicated directly to the relevant subordinates who committed the charged crimes. This necessarily implies that there was always at least one intermediate superior between Mr Gbagbo and the physical perpetrators. It is not known how these intermediaries interpreted Mr Gbagbo's orders or, more importantly, what they actually told the physical perpetrators. Under these conditions, it would require a huge leap of faith for a reasonable trial chamber to conclude that Mr Gbagbo's non-criminal orders were interpreted by his subordinates as an instruction or licence to engage in criminal behaviour.

1972. In any event, the Prosecutor's argument seems to rely more on the claim that legal orders may also give rise to criminal responsibility if it was foreseeable – at the time of issuing the order – that the execution of the order would inevitably lead to the commission of crimes.⁴²⁷³ In order to substantiate the claim that the commission of crimes would be the near-inevitable result of Mr Gbagbo's legal orders, the Prosecutor points to previous instances of situations where the same forces were deployed when they engaged in violence against civilians.⁴²⁷⁴ In

⁴²⁷³ Response, para. 1887:

Mr Gbagbo ordered the pro-Gbagbo forces to carry out actions. While these orders were not criminal in nature, Mr Gbagbo's liability under article 25(3)(b) arises because the execution of these orders led to the commission of the charged crimes.

⁴²⁷⁴ Response, para. 1555:

particular, the Prosecutor refers to the alleged violence used against demonstrators on 4 December 2000 and on 25 March 2004.⁴²⁷⁵ It should be noted that the Chamber has received only minimal information about these two incidents, mostly of limited probative value. It is therefore not possible to have a sufficiently clear and precise picture of what exactly happened on those days. From the available evidence, it appears that the situation was not as straightforward as the Prosecutor would like us to believe.⁴²⁷⁶ Moreover, both these incidents occurred a long time before Mr Gbagbo's decision to prohibit the RTI march and to deploy the FDS to stop it. It is thus far from clear that the same persons were involved in all three instances. In fact, none of the senior FDS officers who were in charge of the different branches of the FDS were in place at the time of the December 2000 incident and only General Mangou had been appointed as Chief of Staff for less than one month by the time of the March 2004 incident.⁴²⁷⁷ Apart from the fact that the two previous incidents occurred a considerable time before the post-election crisis and under the auspices of different persons, it should also be noted that two incidents cannot be considered as constituting a pattern. This is especially true when there is no information about other instances where the FDS had been deployed to enforce public order

the Prosecution is not required to prove that Mr Gbagbo gave a direct order to target the civilian population. Instead, it is the Prosecution's position – in relation particularly to Abobo – that his orders to do whatever it takes to keep Abobo and not to cede it resulted, foreseeably, in civilian casualties. [...] Furthermore, having permitted the army to deploy its units in an urban setting, having knowledge of past scenarios where such a deployment led to great numbers of casualties, Mr Gbagbo was aware of the consequences of his orders.

⁴²⁷⁵ Response, para. 1890:

In this instance, while the instruction itself is not criminal in nature, he knew that its implementation, in the ordinary course of events, will bring about the commission of crimes, in light of the fact that (a) armed forces were deployed on the ground to face unarmed civilian demonstrators, (b) the implementation of similar past instructions during the protest marches in December 2000 and March 2004 had resulted in high numbers of casualties and (c) his speeches on 5 August 2010 and 27 August 2010, his demonising of his political opponent and the UNOCI incited to violence.

⁴²⁷⁶ See, for example, the Human Rights Watch report on the incident of 4 December 2000: Côte d'Ivoire: Le nouveau racisme / La manipulation politique de l'ethnicité en Côte d'Ivoire, 1 August 2001, CIV-OTP-0052-0165.

⁴²⁷⁷ P-0009, T-193 dated 25 September 2017, p. 4; P-0010, T-140 dated 30 March 2017, pp. 59-60; P-0011, T-130 dated 8 March 2017, p. 15; P-0046, T-123 dated, 15 February 2017, pp. 9-10.

at rallies of the pro-Ouattara camp. It is scarcely imaginable that between 2000 and 2010 there were only two occasions where FDS units were faced with demonstrations by pro-Ouattara supporters. In order to draw any conclusions about what Mr Gbagbo could have expected to happen when he ordered the FDS to enforce the prohibition of the RTI march, all these other instances should also be taken into consideration. In the absence of any useful information in this regard, no reasonable trial chamber could conclude that Mr Gbagbo knew that deploying the FDS and/or irregular forces would with virtual certainty lead to violent crimes being committed against civilians.

1973. This is not to suggest that these past experiences should not have caused Mr Gbagbo to exercise the necessary vigilance, however this is not the issue here.

b) Abobo I and II

1974. In relation to the two incidents in Abobo of 3 and 17 March 2011, the Prosecutor relies on the allegation that Mr Gbagbo ordered that the FDS should do everything possible to hold Abobo and neutralise the *Commando Invisible*, which resulted in the installation of heavy weaponry at Camp Commando, including the installation of the 120mm mortars. In particular, the Prosecutor attaches great significance to Mr Gbagbo's orders on 23 or 24 February 2011 to "stand firm and not to cede Abobo", to liberate the N'Dotré roundabout, and do everything it takes to retake control of the MACA-Abengourou axis.⁴²⁷⁸ According to the Prosecutor, the evidence shows a clear pattern of Mr Gbagbo issuing orders or instructions, followed by their implementation by his subordinates on the ground.

1975. The Prosecutor argues that the present case is analogous to the *Galić* case at the ICTY.⁴²⁷⁹ However, even a cursory reading of this case makes plain that the facts

⁴²⁷⁸ Response, para. 1891.

⁴²⁷⁹ Response, para. 1892.

of that case cannot reasonably be compared with the current case. Indeed, the *Galić* case was concerned with a 23 month-long campaign of nearly daily shelling and sniping, during which many hundreds of civilians were killed and thousands were injured.⁴²⁸⁰ In that case, the Trial Chamber was able to discern clear patterns involving hundreds of incidents.⁴²⁸¹ By contrast, as noted throughout the present decision, it is not possible to identify any significant patterns on the basis of the available evidence. To suggest that the present case is comparable to the situation in *Galić* is not serious and is deserving of rebuke.

3. *Did Mr Gbagbo induce the commission of crimes?*

1976. Like her case in relation to ordering, the Prosecutor argues that Mr Gbagbo induced the commission of crimes mainly through intermediaries.⁴²⁸² Yet, in the next paragraph, the Prosecutor lists a number of mainly public speeches by Mr Gbagbo, which emphasised his alleged determination to stay in power by all means.⁴²⁸³ No effort is made to show that the physical perpetrators had heard any of these speeches, much less how they interpreted them.

1977. The same is true for the two instances where Mr Gbagbo allegedly accepted the use of force. The first is Mr Gbagbo's speech of 27 August 2010 at Divo, a city more than 150 kilometers away from Abidjan, where the alleged crimes were committed. Again, there is no evidence that the perpetrators of the alleged crimes were aware of the content of Mr Gbagbo's speech, which was delivered more than 100 days before the first charged incident, or how they interpreted it. It is significant, in this regard, that the Divo speech was specifically addressed to a particular Police unit. It is therefore far from self-evident that irregular forces

⁴²⁸⁰ *Prosecutor v Stanislav Galić* (Trial Judgment), IT-98-29-T, ICTY, 5 December 2003, paras 579-581.

⁴²⁸¹ *Prosecutor v Stanislav Galić* (Trial Judgment), IT-98-29-T, ICTY, 5 December 2003, paras 733-736.

⁴²⁸² Response, para. 1893.

⁴²⁸³ Response, para. 1894.

believed that it applied to them. The relevance of the Prosecutor's argument that the occasion 'attracted dignitaries such as the Minister of Interior, the *Directeur Général de la Police Nationale*, as well as the mayor of Divo and the *conseil general*'⁴²⁸⁴ is not clear, especially since the only two individuals about whom anything is known were alleged 'inner circle' members.

1978. The second example given by the Prosecutor is Mr Gbagbo's alleged instruction of 23 or 24 February 2011 to the top FDS officers to regain control over Abobo and the MACA-Abengourou route.⁴²⁸⁵ During this meeting, Mr Gbagbo is claimed to have asked about the presence of civilians in the area and instructed the FDS officers to ensure that there would not be too many deaths. Apart from the fact that this instruction could reasonably be interpreted as an exhortation to limit the number of casualties as much as possible, there is simply no evidence showing that the physical perpetrators were aware of Mr Gbagbo's instructions to his generals. The fact that it is legally possible to commit inducement through intermediaries does not absolve the Prosecutor from the burden of proving how the words of the accused were communicated to the physical perpetrators.

1979. In relation to the irregular forces, the Prosecutor's case is even more out of focus, mixing allegations of utterances by Mr Gbagbo with speeches of Mr Blé Goudé, Mrs Simone Gbagbo, and even press releases.⁴²⁸⁶ There is no evidence that the words of these third persons, none of whom called for violence, can be attributed to Mr Gbagbo personally, so it is difficult to see how they could be considered as instances of inducement by him.

1980. Even if it were possible to attribute the words of third persons to Mr Gbagbo, it would still be far from clear how they could be considered as inducement to kill, injure, and rape civilians. The Prosecutor does not articulate a cogent argument

⁴²⁸⁴ Response, para. 1611.

⁴²⁸⁵ Response, para. 1895 ii.

⁴²⁸⁶ Response, paras 1896-1897, 1906.

in this regard but simply lists a lot of different elements and claims that all of Mr Gbagbo's actions, taken together, created a climate which endorsed the use of violence by forces under Mr Gbagbo's control.⁴²⁸⁷

1981. In essence, the Prosecutor's argument seems to be that Mr Gbagbo and his entourage gave his subordinates a reason to use violence (i.e. to keep him in power) and created a permissive atmosphere in which they felt at liberty to do so. The main difficulty with this argument is that the Prosecutor is unable to establish any form of causality between Mr Gbagbo's actions and/or omissions, either separately or taken together, and the actions of the individual perpetrators. At no point does the Prosecutor show that the physical perpetrators acted in a certain way because they believed that Mr Gbagbo wanted them to. It is insufficient for the Prosecutor to invoke a general climate or sentiment, as it is virtually impossible to determine if individual perpetrators were influenced by this and, if so, to what extent.
1982. The Prosecutor's argument also suffers from serious chronological unclarity. It is understood that the Prosecutor advances a 'holistic' argument. However, this does not mean that the chronology of events becomes irrelevant. For example, it is unclear how the allegation that Mr Gbagbo knew on 24 February 2011, when he asked the FDS to regain Abobo, that this might involve using 120 mm mortars has any bearing on what happened on 16 December 2010. Similarly, it is far from obvious how Mr Gbagbo's declaration that he had won the elections in December 2010 influenced the perpetrators of the crimes committed in Yopougon on 12 April 2011. Although there is no fixed level of spatio-temporal proximity between the act(s) of inducement and the induced act(s), there must be a clear connection between the two. Simply arguing that everything Mr Gbagbo said

⁴²⁸⁷ Response, para. 1898, referring to the Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656, para. 246.

during a particular time-period influenced all criminal conduct that occurred during the same period is unacceptably vague.

1983. Under these circumstances, no reasonable trial chamber could find Mr Gbagbo criminally responsible for the crimes charged under article 25(3)(b) of the Statute.

D. Mr Blé Goudé's responsibility under article 25(3)(b)

1984. The Prosecutor's against Mr Blé Goudé under article 25(3)(b) is also entirely based on circumstantial evidence. Indeed, the Prosecutor acknowledges that Mr Blé Goudé did not use explicit language in his speeches to call upon his audience(s) to commit violent acts. In the absence of clear exhortations to use violence, the Prosecutor invites the Chamber to infer that Mr Blé Goudé's speeches had an effect on his followers by pointing the Chamber to the cumulative impact of his repeated instructions, encouragement and – in particular – his alleged approval of violence at the roadblocks.⁴²⁸⁸ Although the Prosecutor is correct in emphasising the importance of evaluating all the evidence together and to take into consideration the combined effect of Mr Blé Goudé's actions and words, it is still important to make a determination for each of the charged incidents separately.

1. RTI

1985. In relation to the crimes that were allegedly committed during and in the aftermath of the RTI march, the Prosecutor relies on two elements. First, the Prosecutor refers to the testimony of 'Sam l'Africain', concerning a meeting at Cocody town hall attended by Mr Blé Goudé, Mian, the secretary general of

⁴²⁸⁸ Response, para. 1942.

FESCI, Youssouf, Touré Zeguen and the witness, during which it was agreed to ask the people to mobilise to prevent the marchers from reaching the RTI buildings.⁴²⁸⁹ The witness also clarified that it was clear that when the call to mobilise was made, those responding to the call would spontaneously set up roadblocks.⁴²⁹⁰ Second, the Prosecutor also relies on a speech of 15 December 2010 by Mr Blé Goudé at the Place de la Culture⁴²⁹¹ in which he addressed a large crowd.⁴²⁹² This evidence was discussed above⁴²⁹³ and the conclusions of that analysis are imported by reference. Based on the available evidence, a reasonable trial chamber could find that Mr Blé Goudé agreed to mobilising the youth to assist in preventing the demonstrators from reaching the RTI building. However, the evidence is not capable of supporting a finding that Mr Blé Goudé appealed to the youth to engage in violence or otherwise induced the killing, raping, and injuring of Ouattara supporters during the RTI march.

2. *Yopougon I*

1986. The Prosecutor's case in relation to the crimes committed in Yopougon on 25-28 February 2011 is premised on the creation of a climate of fear by Mr Blé Goudé. The Prosecutor argues that by vilifying the UN and France, and by referring to a genocidal threat, Mr Blé Goudé created "an atmosphere in which the pro-Gbagbo youth felt threatened."⁴²⁹⁴ According to the Prosecutor, Mr Blé Goudé's speeches prior to 25 February 2011 – while not overtly calling for violence – primed the youth to be ready for an expected 'mot d'ordre' to be issued by him in response to the (genocidal) threat presented by, variously, France, UNOCI and the

⁴²⁸⁹ P-0625, T-27 dated 9 March 2016, pp. 46-48.

⁴²⁹⁰ P-0625, T-27 dated 9 March 2016, pp. 19, 46-48.

⁴²⁹¹ Response, para. 1943 i, with reference to RTI Broadcast dated 15 December 2010, CIV-OTP-0074-0054.

⁴²⁹² See IV.F.2.g) - 15 December 2010 – Rally at the Palais de la Culture.

⁴²⁹³ See V.B.3.a) - Mr Blé Goudé's mobilisation of *jeunes patriotes* to protect the RTI.

⁴²⁹⁴ Mid-Trial Brief, para. 880, Response, para. 1940.

“rebels” (including Mr Ouattara).⁴²⁹⁵ Then, during a meeting at the *Bar Le Baron* of Yopougon in the morning of 25 February 2011, Mr Blé Goudé is accused of having issued the *mot d’ordre* that Mr Blé Goudé had primed the youth to receive.

1987. Unfortunately, the Prosecutor is not in possession of the full speech and instead relies on a number of clips showing excerpts.⁴²⁹⁶ Given the significance the Prosecutor attaches to this speech, it is worthwhile discussing the available parts of the speech in detail.

1988. The first point to notice is that in none of the available clips of the speech can Mr Blé Goudé be heard calling for violence or the erection of roadblocks. However, he does ‘order’ his audience to (a) prevent UNOCI from moving in the neighbourhoods, and (b) to coordinate with the ‘*présidents de quartier*’ in order to be aware of and verify the comings and goings in their neighbourhoods and to ‘denounce’ strangers entering their neighbourhoods.⁴²⁹⁷ Although this is definitely not a direct call to use violence, it is also not a neutral act. Asking people without any mandate or prior training to check on a vaguely defined category of persons who are presented as posing an existential threat carries a risk that some may take matters into their own hands and go beyond what was asked of them.

1989. It is important to point out that Mr Blé Goudé’s call seems to have been part of a broader strategy or plan to end the political stalemate by ousting Mr Ouattara

⁴²⁹⁵ Response, para. 1843.

⁴²⁹⁶ RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:02-00:14:33 and 00:14:45-00:15:15; Extrait Video de Djibiti TV - La Guerre civile, le piege a eviter selon Ble Goude, undated, CIV-D15-0001-0586 at 00:01:06-00:03:59; Elt CBG Baron, 25 February 2011, CIV-D25-0038-0001; RTI Broadcast dated 26 February 2011, CIV-OTP-0074-0083 at 00:13:31 to 00:16:42.

⁴²⁹⁷ RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:02-00:14:33: “Dès maintenant, l’ordre que je vous donne et qui doit être valable dans tous les quartiers, c’est que quand vous retournez dans vos quartiers, vous devez empêcher l’ONUCI decirculer. Un. Deuxièmement, en retournant dans vos quartiers, vous devez contacter les présidents de quartier, vous devez vous réunir pour savoir et vérifier les entrées et les sorties de vos quartiers et dénoncer toute personne étrangère qui vient dans votre quartier.”

from the Golf Hotel. In fact, the central part of Mr Blé Goudé's speech seems to have been the following:

Avant une semaine, avant une semaine, le temps qu'on s'organise réellement, dans les quartiers, véritablement, et que nos systèmes soient rôdés, et qu'on sait qu'à Yopougon, derrière nous, il n'y a pas d'affrontements, et qu'on sait qu'à Koumasi, derrière nous, il n'y a pas d'affrontements, et qu'on sait que tous les groupes ont été organisés, et qu'on sait qui peut faire quoi et qui doit faire quoi, avant une semaine, je vais vous appeler devant le Golf Hotel.⁴²⁹⁸

1990. Although this part of the speech is not entirely clear, it seems to suggest that Mr Blé Goudé's call to prevent UNOCI from moving and to check the neighbourhoods for suspicious foreign elements was intended as a short-term (less than a week) measure to stabilise the situation in the areas controlled by Mr Gbagbo's supporters. It is relevant, in this regard, that Mr Blé Goudé envisaged a situation in which there would be no clashes ('affrontements') in the neighbourhoods controlled by his supporters. Once this was achieved, the intention was apparently to gather a large crowd in front of the Golf Hotel, presumably to put pressure on Mr Ouattara to leave.

1991. There is no particular indication that Mr Blé Goudé envisaged using violence or even the threat thereof in order to achieve Mr Ouattara's departure. Indeed, Mr Blé Goudé's speech puts a lot of emphasis on the need to avoid a civil war in Côte d'Ivoire, which he describes as a trap sprung by the international community.⁴²⁹⁹ Mr Blé Goudé expressly rejects the suggestion that he should call his audience to go a given neighbourhood to attack people – and receives

⁴²⁹⁸ RTI Broadcast dated 25 February 2011, CIV-OTP-0064-0087 at 00:14:45-00:15:15.

⁴²⁹⁹ Extrait Video de Djibitv TV - La Guerre civile, le piege a eviter selon Ble Goude, CIV-D15-0001-0586 at 00:01:06-00:03:59.

applause for this.⁴³⁰⁰ On the contrary, he explicitly states that he does not want confrontations between civilians.⁴³⁰¹

1992. It is further noteworthy that the crowd that is visible in the clips is mixed male/female and is behaving relatively calmly. It is therefore difficult to see how the available evidence could be interpreted as a –veiled – call to use violence.

1993. The Prosecutor argues that, while Mr Blé Goudé did not use explicit language to call upon his audience to commit violent acts, the context was such that explicit language was not necessary for the message to be understood.⁴³⁰² The Prosecutor bases this argument on the context of pre-existing tension between the two neighbourhoods (Yao Séhi and Dookouré), which meant that it was foreseeable that inflammatory words stigmatising “foreigners” would lead to violence against the population of Doukouré.⁴³⁰³ The Prosecutor further invokes the fact that the speech was delivered in Yopougon. This is relevant, according to the Prosecutor, because Yopougon was a traditional pro-Gbagbo stronghold, with some areas – notably the Lem and Doukouré districts – which were inhabited mostly by Ivorians of Dioula ethnicity and Muslim faith. Yopougon was also home to at least three – up to as many as ten – pro-GBAGBO *parlements* and had, since as early as October 2010, been the location of GPP training of pro-Gbagbo youths. Moreover, the Prosecutor points out that Mr Blé Goudé lived in Yopougon at the time and that COJEP’s headquarters were also based there.⁴³⁰⁴

⁴³⁰⁰ Extrait Video de Djibitv TV - La Guerre civile, le piege a eviter selon Ble Goude, CIV-D15-0001-0586 at 00:02:32-00:02:46: « Vous savez, je peux tout de suite vous dire:«Allons dans tel quartier, on va attaquer les gens», et puisvous allez m’applaudir. Je n’ai pas besoin d’aplaudissement, j’ai besoin de vous orienter, etc’est mon devoir, et c’est ma responsabilité. »

⁴³⁰¹ Extrait Video de Djibitv TV - La Guerre civile, le piege a eviter selon Ble Goude, CIV-D15-0001-0586 at 00:03:39-00:03:47.

⁴³⁰² Response, para. 1944 ii.

⁴³⁰³ Response, para. 637 iv.

⁴³⁰⁴ Response, para. 1944 ii.

1994. It is unquestionably the case that it is essential to evaluate a speaker's words in light of the context in which they were uttered. However, this does not make the actual words used irrelevant. Whereas it can certainly be argued that Mr Blé Goudé's speech contained some potentially inflammatory passages, which, in a volatile context, may well have caused some individuals to act in a manner going beyond what Mr Blé Goudé actually called for, such an effect must be established through evidence and cannot simply be assumed.
1995. The best evidence in this regard would be examples of persons who attended Mr Blé Goudé's speech, who subsequently committed crimes and who were demonstrably influenced by Mr Blé Goudé's words. No such examples have been brought to our attention. On the contrary, there is no reliable evidence showing that any of the perpetrators of the alleged crimes attended Mr Blé Goudé's speech at *Bar le Baron*. The Prosecutor claims that it is immaterial whether the individual perpetrators of crimes were in attendance at Mr Blé Goudé's Bar Le Baron speech; arguing instead that it is the immediacy of the response – in geographic and temporal terms – to Mr Blé Goudé's words that demonstrates the effect of the speech on the perpetrators.⁴³⁰⁵ This is a weak argument. The fact that someone happens to find him or herself in the vicinity of the location where certain words are uttered cannot give rise to an assumption that this person was in any way influenced by those words. It is worth pointing out, in this regard, that the approximate distance between the Bar le Baron, where the speech was delivered, and the location where the crimes were committed was over one kilometre.
1996. It is, of course, possible that Mr Blé Goudé's words were transmitted very quickly by word-of-mouth. However, if that was the case, it would be essential for the Chamber to know how exactly the message was communicated and how literal/faithful such transmission was. Mr Blé Goudé cannot be held responsible

⁴³⁰⁵ Response, para. 1944 ii.

if others twisted his words, even if such third persons acted on the basis of their own good faith interpretation of Mr Blé Goudé's speech.

1997. Nevertheless, the Prosecutor invites us to infer that Mr Blé Goudé's speech was a call to violence from the fact that violent acts were committed soon after he had made the impugned utterances.⁴³⁰⁶ Although it is not impermissible, in theory, to draw inferences about causes from observing their effects, it is very important to avoid the snare of affirming the consequent. This is especially true in cases when there are other possible explanations for the observed conduct.
1998. In the case of the violence that erupted in parts of Yopougon on 25 February 2011, it is important to recall a number of incidents that happened that morning, which may also have had a significant influence on the perpetrators of the alleged crimes. In particular, the evidence suggests that, early on Friday 25 February 2011, a group of armed individuals, who were associated with the pro-Ouattara side, set fire to a bus. This allegedly gave rise to an angry reaction by pro-Gbagbo persons, who torched a number of '*gbaka's*', local mini-taxis, in retaliation.⁴³⁰⁷ This created a heated atmosphere in which the two groups came to a confrontation that escalated into violence. This, in turn, may have provided local groups or individuals with an opportunity to engage in criminal activity, including theft, robbery, vandalism, and even killing.⁴³⁰⁸
1999. The scenario outlined above gives rise to a number of questions. In particular, it is important to have clarity about the exact sequence of events, especially how

⁴³⁰⁶ Response, para. 1944 ii: "it is immaterial whether the individual perpetrators of crimes were in attendance at Mr Blé Goudé's Bar Le Baron speech; it is the immediacy of the response – both in geographic and temporal terms – to Mr Blé Goudé's words that demonstrates the effect of the speech on the perpetrator groups".

⁴³⁰⁷ P-0449, T-160 dated 23 May 2017, pp. 4-7; P-0436, T-149 dated 2 May 2017, pp. 45-46; P-0440, T-157, pp. 16-19; *see also* COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential) at 0029.

⁴³⁰⁸ COMPTE RENDU DES MANIFESTATIONS DU 25 AU 28 FEVRIER 2011 SURVENUS A YOPOUGOUN DANS NOTE ZONE DE COMPETENCE, 28 February 2011, CIV-OTP-0046-0029 (confidential).

the timing of Mr Blé Goudé's speech compares with the start of the violence. Second, it is important to determine whether or not Mr Blé Goudé was indeed physically present at the Commisariat of the 16th arrondissement and, if so, at what point in time and what he did there. Third, it is necessary to have a clear understanding about how Mr Blé Goudé's alleged links with local militia such as GPP may or may not have influenced the latter's behaviour.

2000. Unfortunately, the available evidence does not provide us with unambiguous information in relation to any of the abovementioned issues.⁴³⁰⁹ On this basis no reasonable trial chamber could accept the Prosecutor's proposed inferences.

2001. The Prosecutor also argues that any possible doubt about the meaning of Mr Blé Goudé's call of 25 February 2011 should be dispelled by his subsequent conduct in approving of the violence at the roadblocks⁴³¹⁰

2002. It is worth noting, in this regard, that parts of Mr Blé Goudé's speech were broadcast on the 20h00 edition of the RTI news on 25 February 2011, rebroadcast on the 13h00 edition of 26 February 2011, and re-broadcast with some differences in footage on the 20h00 edition of 26 February 2011. By then, the violence had already started, so it is unclear what effect these broadcasts had, if any. Presumably, the Prosecutor is of the view that the purpose behind re-broadcasting Mr Blé Goudé's speech was to amplify the *mot d'ordre* to a wider audience. Although this is a plausible explanation, it still raises the question as to which message the Ivorian authorities wanted to communicate. As noted above, Mr Blé Goudé's speech did not overtly call for violence, to the contrary. Instead, the main message seems to have been that Mr Blé Goudé intended to launch a strategy culminating in a mass rally in front of the Golf Hotel. It is thus

⁴³⁰⁹ See VI.M – 25-28 February 2011 – Killing, rape and injuries in Doukouré (2nd charged incident - Yopougon I).

⁴³¹⁰ Response, para. 1944 ii.

almost impossible to infer anything incriminating from the fact that Mr Blé Goudé's speech was re-broadcast a number of times.

2003. Potentially more telling is what Mr Blé Goudé said subsequent to the violence. Of particular interest is an interview Mr Blé Goudé gave on the RTI on 4 March 2011. During this interview, Mr Blé Goudé clearly indicated that he was aware of the violence that occurred in Yopougon as of 25 February 2011.⁴³¹¹ However, according to Mr Blé Goudé, he actually conducted a mediation effort which resulted in reconciling both sides. Significantly, Mr Blé Goudé also made the following comments as part of the interview:

[...] c'est notre devoir en tant que leaders d'opinion d'aller vers ceux avec qui nous vivons dans les quartiers pour leur parler. Et moi je voudrais dire aux Ivoires : faisons attention, faisons attention, regardez, l'être humain qu'on incendie comme un [inaudible] en Côte d'Ivoire, pour permettre quelqu'un au pouvoir. [...] Il faut éviter la guerre civile. Et j'ai décidé de m'y investir. J'ai fini de réconcilier ceux de 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 régler 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. Parcequ'avant tout, moi je suis panafricaniste dans l'âme. Donc il faut éviter cela, parce qu'on veut nous pousser dans la faute. [...] Il y n'y a pas de bonheur sans douleur. Les ivoiriens doivent accepter que le temps est arrivé pour qu'on libère notre pays mais cela dans, avec la pratique démocratique. Nous avons dit les mains nues, pour nous c'est ce qui compte. [...]⁴³¹²

2004. It is clear from these passages that Mr Blé Goudé was aware that there were problems with the manner in which his instructions for vigilance were implemented. Although he did not expressly acknowledge that violent crimes were committed, it is hard to imagine that he was completely oblivious of this. It could thus be argued that Mr Blé Goudé's denunciation of criminal behaviour was lukewarm. And it is not unreasonable to assume that some of the persons manning the roadblocks interpreted the absence of a more forceful rebuke as an implicit licence to continue engaging in violent behaviour. It is also significant to point out that Mr Blé Goudé only intervened several days after the violence had

⁴³¹¹ RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2240.

⁴³¹² RTI Broadcast dated 4 March 2011, CIV-OTP-0026-0018, transcript at CIV-OTP-0051-2220 at 2241-2.

started. Had he really been genuinely concerned about maintaining peace between the communities of Yopougon, he would undoubtedly have acted more swiftly and more forcefully.

2005. Nevertheless, it is significant to note that the record contains evidence of only one violent crime being committed in Yopougon between Mr Blé Goudé's interview of 4 March 2011 and the one of 14 March 2011.⁴³¹³ This seems to suggest either that the effect of Mr Blé Goudé's speech of 25 February 2011 had subsided by 4 March 2011 or that Mr Blé Goudé's efforts to calm the situation during the 4 March 2011 interview succeeded. In any event, on 14 March 2011, Mr Blé Goudé gave another interview on the RTI, in which he stated, *inter alia*, the following:

Nous avons des raisons de nous battre. Mais surtout ne pas nous tromper de combat. L'on veut nous pousser à l'erreur et à la faute de la guerre civile. [...] Il ne faut pas tomber dans cette erreur. Il ne faut pas tomber dans ce piège. [...] C'est le lieu de vous féliciter déjà, vous qui avez dressé des barrières et les barrages dans les quartiers, pour protéger vos quartiers. Nous avons les résultats de ces barrages : ces barrages ont découragé les rebelles. Continuez, mais surtout soyez polis. Soyez polis et évitez de racketter. Je sais que vous ne rackettez pas mais pour vous discréditer, l'on raconte n'importe quoi. [...] Pour l'instant, reprenez votre travail et allez au travail tranquillement. L'armée de Côte d'Ivoire jouera son rôle.⁴³¹⁴

2006. Again, this may not have been as vigorous a rejection of violence as might be expected from someone who was keen on avoiding crimes being committed against innocent civilians at all costs. However, it is also not convincing to argue that Mr Blé Goudé's interview of 14 March 2011 constituted a tacit endorsement of violent criminal behaviour against civilians. Not least because there is very little evidence of violent crimes being committed in the period between 4 and 14 March 2011, but also because it is not established that Mr Blé Goudé was aware of such crimes, as opposed to the extortion and theft that allegedly occurred at roadblocks.

⁴³¹³ The incident of 11 March 2011 referred to in Mid-Trial Brief, para. 155(xxiv); Response, para. 284. *See* VI.Q - 11 March 2011 – Killing of an individual in Yopougon.

⁴³¹⁴ RTI Broadcast dated 14 March 2011, CIV-OTP-0069-0371, transcript at CIV-OTP-0087-0742 at 0725-6.

2007. In any event, even if it were possible to characterise Mr Blé Goudé's interviews of 4 and 14 March 2011 as implicit endorsements of crimes committed in Yopougon following his speech of 25 February 2011, this would still not allow a reasonable trial chamber to infer from this that those crimes were actually induced by this speech.
2008. Moreover, even if it were accepted that Mr Blé Goudé's speech did influence some of the perpetrators of violent crimes, it would be necessary to determine who they were. The reason for this is that there were different types of perpetrators involved in the crimes committed on 25-28 February 2011. It is unlikely that Mr Blé Goudé's words had the same effect on the police officers of the 16th arrondissement, GPP members such as Maguy 'le Tocard', and the local youths. Without having adequate evidence to make the necessary conclusions in this regard, it would be irresponsible for a trial chamber to determine for which of the crimes that were committed during the Yopougon I incident Mr Blé Goudé bears criminal responsibility under article 25(3)(b), if any.

3. *Yopougon II*

2009. In relation to crimes that were committed in Yopougon on 12 April 2011, the Prosecutor argues that the violence

[...] occurred as part of a continuum of violence perpetrated against perceived Ouattara supporters, set in motion by Mr Blé Goudé's call of 25 February 2011, which led to the establishment of the roadblocks. Mr Blé Goudé, rather than condemning the violence perpetrated at these roadblocks, actively encouraged their continued use, for example on 4 March 2011, 14 March 2011, 18 March 2011 and 20 March 2011, and called upon the youth to enlist in the army on 19 March 2011. On April 5 2011, the RTI broadcast a video showing Mr Blé Goudé commending the "patriots" and urging them to continue fighting to maintain Mr Gbagbo in power, and ordering them to reinforce the roadblocks and support the operations of the armed forces.⁴³¹⁵

⁴³¹⁵ Response, para. 1943 iii and 1944 iii.

2010. Given the conclusions in relation to Mr Blé Goudé's speech of 25 February 2011, it seems hard to accept the Prosecutor's argument as formulated. However, regardless of the role of Mr Blé Goudé's *Bar le Baron* speech, it is important to assess the potential impact of Mr Blé Goudé's television address of 5 April 2011 in the context of the situation in Abidjan at that time.
2011. As regards Mr Blé Goudé's video message, it is important to stress that it did not contain any express call to use violence against civilians. However, he did encourage those manning roadblocks to reinforce them. He also asked inhabitants to film suspicious movements and to send the footage to the RTI. Finally, Mr Blé Goudé congratulated and encouraged those who had responded to an appeal (by third persons) to gather in front of Mr Gbagbo's residence.⁴³¹⁶ It is difficult to argue that this part of Mr Blé Goudé's message could be interpreted as an endorsement, much less inducement, of violence against civilians, especially in light of the remainder of the message.
2012. The Prosecutor argues that Mr Blé Goudé's video message of 5 April 2011 must be understood in light of a similar message that was broadcast one or two days previously.⁴³¹⁷ In particular, according to the Prosecutor, Mr Blé Goudé 'aligned' the 'valiant patriots' with the FDS in this message.⁴³¹⁸ In support of this claim, the Prosecutor refers to the following passage:

Pour l'heure, l'armée est en train de faire des ratissages, et nous vous demandons de les soutenir par vos informations, nous vous demandons de les soutenir en étant éveillés, en étant debout, dans vos quartiers, en étant debout là où vous êtes. Car personne d'autre que nous-mêmes ne viendra libérer la Côte d'Ivoire. [...] l'assaut final [...] viendra de l'Armée de Côte d'Ivoire et viendra des vaillants patriotes que vous êtes. Et ensemble, nous allons libérer définitivement notre pays.⁴³¹⁹

⁴³¹⁶ Dernier message de BLE GOUDE, 6 April 2011, CIV-OTP-0047-0604, at 00:02:45-00:03:29.

⁴³¹⁷ Le Journal / 03 Avril 2011 RTI / * Déclaration Emile Guiricoulou, Ministre de l'Intérieur pro-Gbagbo. * Déclaration Blé Goudé Charles, CIV-OTP-0064-0131.

⁴³¹⁸ Response, para. 1844.

⁴³¹⁹ Le Journal / 03 Avril 2011 RTI / * Déclaration Emile Guiricoulou, Ministre de l'Intérieur pro-Gbagbo. * Déclaration Blé Goudé Charles, CIV-OTP-0064-0131, at 00:10:24 – 00:11:16, emphasis added.

2013. In other words, the Prosecutor claims that, because on 3 or 4 April 2011 Mr Blé Goudé stated that the armed forces and those who were keeping watch over their neighbourhoods would ‘together’ liberate Côte d’Ivoire, it was clear that when on 5 April 2011 Mr Blé Goudé called on the armed forces to continue the fight, this call included those individuals as well. This argument is contrived and unconvincing. However, even if Mr Blé Goudé’s message could be interpreted as a call for continued armed resistance on the part of youth groups etc., it would still be a stretch to consider this as an invitation to kill and rape unarmed civilians.
2014. It is important to reiterate, in this regard, that the Prosecutor has not succeeded in showing the existence of a so-called ‘continuum of violence’ against perceived Ouattara supporters, starting on 25 February 2011 and running until 5 April 2011. In fact, of the 11 incidents (2 charged, 9 uncharged) relied upon by the Prosecutor, three involved exclusively FDS perpetrators. Less than ten incidents in 39 days in a city the size of Abidjan, which held thousands of *jeunes patriots* etc. can hardly be called a ‘continuum’.
2015. Equally importantly, the Prosecutor has not established that the perpetrators of the alleged crimes of 12 April 2011 heard Mr Blé Goudé’s speech of 25 February 2011, his video message of 5 April 2011, or any other of his public or private utterances, let alone how they interpreted it.
2016. No reasonable trial chamber could conclude from this that Mr Blé Goudé induced the crimes committed on 12 April 2011 in Yopougon.

E. Mr Blé Goudé's responsibility under article 25(3)(c)

2017. In relation to the charges under article 25(3)(c), the Prosecutor essentially relies on same evidence as for article 25(3)(a) and (b).⁴³²⁰ Specific submissions in relation to article 25(3)(c) are minimal.

2018. The Prosecutor's case in relation to Mr Blé Goudé's alleged acts of aiding and abetting seems to be made up of two parts: first, a list of general contributions that are not specifically linked to any specific crime(s), and, second, a limited number of more focused contribution for three of the charged incidents. In terms of general contributions, the Prosecutor lists the following:

- i. With respect to all charged crimes, Mr Blé Goudé contributed to the establishment and organisation of a structure which allowed the execution of the common plan and occasioned the commission of those crimes. [...] Mr Blé Goudé lent his assistance to the commission of the crimes charged by:
- ii. Securing the allegiance of the youth to him and their compliance with his instructions by galvanising them; [
- iii. Ensuring through his leadership, that the pro-Gbagbo youth groups acted in unity;
- iv. Acting as a vital intermediary between Mr Gbagbo and the pro-Gbagbo youth;
- v. Organising the dissemination of instructions through various channels of communication;
- vi. Mobilising the youth to commit violent acts;
- vii. Contributing to the financing of the activities of pro-Gbagbo youth;
- viii. Playing an essential role in the recruitment and enlistment of pro-Gbagbo youth in the FDS;
- ix. Providing support for the military training and arming of pro-Gbagbo youth;
- x. Contributing to the recruitment of pro-Gbagbo mercenaries; and
- xi. Supporting and encouraging co-operation between the pro-Gbagbo youth, the militias and the FDS.⁴³²¹

⁴³²⁰ Response, paras 1962, 1968.

⁴³²¹ Response, para. 1964.

2019. As indicated by the Prosecutor, these are the same contributions as those listed in relation to the claim that Mr Blé Goudé contributed to the establishment and organisation of a structure, which allowed the execution of the alleged common plan and occasioning the commission of crimes.⁴³²² Apart from stating that these contributions “had the effect of strengthening the capability of the pro-Gbagbo forces to commit the crimes charged”,⁴³²³ no explanation is offered by the Prosecutor as to how these generic contributions can be linked to the specific crimes.

2020. Leaving legal considerations aside, the main difficulty with the Prosecutor’s argument is that it is too abstract and generic. At this level of abstraction and generality, almost every act in support of an institution or organisation can be said to have made a contribution to the conduct of individual members of such institution or organisation. At some point, the causal link between the contribution and the specific criminal conduct, although theoretically present, becomes so tenuous that it becomes artificial to say that the physical perpetrator was genuinely assisted by the contribution. Indeed, it is difficult to imagine that any of the physical perpetrators was conscious of Mr Blé Goudé’s alleged generic contributions or that they felt actually supported by this.

2021. As regards the specific contributions listed by the Prosecutor in relation to the three different charged incidents, it suffices to state the following:

1. RTI march

2022. In relation to the RTI march, the Prosecutor relies on the alleged meeting of Galaxie Patriotique leaders, held on 14 December 2010, during which Mr Blé Goudé allegedly called for the mobilisation of the youth as well as on his

⁴³²² Response, section V.C.8.(a)(ii).

⁴³²³ Response, para. 1966.

speech of 15 December 2010, which was broadcast on the RTI.⁴³²⁴ According to the Prosecutor, these two elements provided ‘moral assistance towards the commission of the crimes’.

2023. Both elements were already discussed in the context of other aspects of this case. The question here is whether Mr Blé Goudé’s interventions on 14 and 15 December 2010 actually provided the claimed moral assistance for the perpetrators of the crimes. Although in his 15 December 2010 speech, Mr Blé Goudé did use combative language that may have stirred emotions against Mr Ouattara and his supporters, it is far from being a call to use violence, let alone to commit crimes against civilians. Moreover, the Prosecutor appears to assume that those who allegedly committed violent acts against civilians on 16-19 December 2010 in Abidjan were aware of Mr Blé Goudé’s speech. There is no evidence to support this, however, so it is difficult to see any basis for a reasonable trial chamber to conclude that the physical perpetrators of the crimes were abetted by Mr Blé Goudé’s words.

2. *Yopougon I*

2024. The Prosecutor’s argument in relation to the crimes committed in Yopougon on 25-28 February 2011 is equally thin. Relying on his announcement on the RTI of 24 February 2011 and speech at *Bar le Baron* of 25 February 2011, the Prosecutor claims that Mr Blé Goudé provided assistance in mobilising the youth and encouraging them in raising roadblocks, arresting, mistreating and killing ‘foreign’ persons or strangers’.⁴³²⁵ However, the Prosecutor makes no effort to formulate a cogent argument by the Prosecutor as to how Mr Blé Goudé’s two interventions ‘assisted in mobilising’ the youth. Moreover, even if this were

⁴³²⁴ Response, para. 1965 i.

⁴³²⁵ Response, para. 1965 ii. It is worth noting that footnote 5614 refers to a passage of the Mid-Trial Brief which essentially deals with an interview Mr Blé Goudé gave to the RTI on 20 March 2011.

established, it would still need to be explained how this assisted the crimes allegedly committed by members of the police force of the 16th arrondissement.

2025. Absent a serious and convincing argument by the Prosecutor, it is difficult to see how any reasonable trial chamber could ever convict Mr Blé Goudé as an aider or abettor for these crimes on the basis of the available evidence.

3. Yopougon II

2026. As regards the crimes committed in Yopougon on 12 April 2011, the Prosecutor relies on Mr Blé Goudé's two video messages from the beginning of April.⁴³²⁶ According to the Prosecutor, the two messages provided 'further encouragement to continue targeting perceived Ouattara supporters, which resulted in the killings and rapes on 12 April 2011.'

2027. The 3-4 and 5 April 2011 video messages have already been analysed previously. Apart from exaggerating their inflammatory content, the Prosecutor has failed to prove that the perpetrators of the crimes committed on 12 April 2011 were even aware of them. Even if it could be somehow assumed that they were, in light of the ambiguous nature of Mr Blé Goudé's messages, it would still be incumbent upon the Prosecutor to show how the physical perpetrators interpreted his words. In the total absence of any information in this regard, no reasonable trial chamber could ever find that Mr Blé Goudé's two video messages had any effect on the commission of the crimes that were committed on 12 April 2011.

F. Mr Gbagbo's responsibility under article 28

2028. Besides different forms of criminal responsibility under article 25(3) of the Statute, Mr Gbagbo is also charged for superior responsibility in accordance with

⁴³²⁶ Response, para. 1965 iii.

article 28 of the Statute. This form of responsibility was not originally confirmed by the Pre-Trial Chamber, on the grounds that doing so would require the Chamber to depart significantly from its understanding of how events unfolded in Côte d'Ivoire during the post-electoral crisis and Mr Gbagbo's involvement therein.⁴³²⁷ Nevertheless, the Pre-Trial Chamber did not rule out the possibility that the discussion of evidence at trial might lead to a different legal characterisation of the facts.⁴³²⁸

2029. At the request of the Prosecutor, the Trial Chamber (albeit in a different composition) found exceptional circumstances that justified giving notice of the possibility that it might recharacterise the facts and circumstances of the case in light of article 28(a) or (b) of the Statute.⁴³²⁹ Although this decision informed the parties of the fact that the Chamber would consider the possibility of applying article 28 of the Statute, it did not alter the scope of the charges. This means that rule 142(2) of the Rules does not apply and the Chamber is not under an obligation to make a finding in relation to the potential charges under article 28 of the Statute.

2030. Given the previous conclusions in relation to the contextual elements and the fact that the Prosecutor makes only a half-hearted effort to formulate a cogent and sufficiently detailed case on the basis of superior responsibility, the present decision will not provide a separate evidentiary analysis of the potential alternative charges under article 28 of the Statute.

⁴³²⁷ Pre-Trial Chamber I, *Decision on the confirmation of charges against Laurent Gbagbo*, 12 June 2014, ICC-02/11-01/11-656, para. 265.

⁴³²⁸ Pre-Trial Chamber I, *Decision on the confirmation of charges against Laurent Gbagbo*, 12 June 2014, ICC-02/11-01/11-656, para. 263. It is worth noting, in this regard, that the confirmation decision was made by majority and that the dissenting judge contemplated confirming some of the charges on the basis of article 28 of the Statute. Dissenting Opinion of Judge Christine Van den Wyngaert, ICC-02/11-01/11-656-Anx, para. 11.

⁴³²⁹ Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court, 19 August 2015, ICC-02/11-01/11-185.

2031. It bears mentioning, however, that the Prosecutor has failed to explain, for each of the charged crimes, precisely when Mr Gbagbo had knowledge or should have been aware of impending or completed criminal behaviour. With the exception of the alleged crimes committed on 12 April 2011, it is not clear whether Mr Gbagbo is charged with failure to prevent, repress, and/or refer to competent authorities. Moreover, the Prosecutor seems to equate awareness of civilian casualties with awareness of crimes committed against those civilians.⁴³³⁰ Whilst awareness that civilians were harmed may be relevant to establishing that a superior had an obligation to investigate whether or not crimes were committed, this is not always a foregone conclusion. Equally problematic is that the Prosecutor makes no serious effort to define what specifically she believes Mr Gbagbo should have done but failed to do in relation to each of the charged crimes.
2032. If the Prosecutor did not exert herself to formulate a clear and cogent case under article 28 of the Statute, she made even less of an effort to support such charges with evidence. It is therefore difficult to escape the impression that the Prosecutor asked the Chamber to give notice of a possible recharacterisation to article 28 more as a fall-back to secure a conviction at any cost than as a serious effort to give the correct legal expression to what happened in Côte d'Ivoire between November 2010 and April 2011. Some of the arguments made by the Prosecutor are even misleading to the point of being mendacious. For example, in paragraph 2088 vi of the Response, the Prosecutor makes the following claim:

Early in the post-election crisis, the killing of at least four RDR militants “in cold blood” in Yopougon Wassakara was widely known and reported twice on the RTI by the FDS spokesperson, on 2 and 11 December 2010. Mr Gbagbo himself was informed of the incident. Moreover, the head of the Gendarmerie, Édouard Kassaraté, who was responsible for investigating crimes committed by the FDS was also informed of the incident by his subordinates. Therefore, in the early stages of the crisis, Mr Gbagbo was aware of the killing of political opponents by his subordinates.

⁴³³⁰ See, for example, Mid-Trial Brief, para. 755: “GBAGBO’s knowledge of civilian casualties placed him on notice that crimes had happened.”; “GBAGBO was on notice that killings took place and that his armed forces were involved.”.

2033. What the Prosecutor fails to mention is that the official report of this incident is far from clear as to what actually happened.⁴³³¹ The notion that the killed individuals were murdered ‘in cold blood’ is something which the author of the report, P-0440 added during his testimony before this Court.⁴³³² There is nothing on the record to show that P-0440 communicated this view – which is based to an extent on speculation – to anyone in his formal hierarchy, let alone to the accused. The RTI broadcast to which the Prosecutor refers states that the FDS came under fire and responded, causing a number of deaths and injured.⁴³³³ The Prosecutor also refers to the testimony of General Mangou, who confirmed that Mr Gbagbo was informed of this incident. However, the witness also testified that he never obtained the results of a police investigation into this incident, except for the fact that bladed weapons and ammunitions were found.⁴³³⁴ Finally, the Prosecutor further states that the supreme commander of the Gendarmerie was informed of the incident. However, she omits to mention that this witness testified that he convened the local Gendarmerie commander, who confirmed that his troops had come under fire.⁴³³⁵ It therefore beggars belief that the Prosecutor makes the claim that Mr Gbagbo “was aware of the killing of political opponents by his subordinates” on this basis.

2034. Seeing this level of laconism and absence of rigour on the part of the Prosecutor, there is no appropriate basis for the Chamber to entertain this alternative form of criminal responsibility.

⁴³³¹ Quatre individus tués et sept autres blessés par balles à Yopougon wassakara, 10 December 2010, CIV-OTP-0046-0099 (confidential). *Note* the report contains two versions of what happened, including one by a *Gendarmerie* officer claiming that his elements came under fire from the RDR headquarters in Yopougon.

⁴³³² P-0440, T-157 dated 11 May 2017, p. 10.

⁴³³³ RTI Broadcast dated 2 December 2010, CIV-OTP-0074-0049 at 00:12:00-00:12:55.

⁴³³⁴ P-0009, T-195 dated 27 September 2017, p. 78.

⁴³³⁵ P-0011, T-132 dated 10 March 2017, pp. 86-87.

IX. POSSIBLE APPLICATION OF REGULATION 55

2035. One of the central conclusions of this decision is that the Prosecutor has failed to present sufficient evidence that would allow a reasonable trial chamber to find that crimes against humanity were perpetrated by Mr Gbagbo's forces during the relevant period. This does not imply that nothing happened. Indeed, the Chamber has seen evidence of highly disturbing acts of violence, often against seemingly innocent civilians. The fact that these acts cannot be qualified as crimes against humanity does not mean that they are not otherwise criminal. One question that might be asked in this regard is whether it would have been possible to recharacterise all or some of the charged facts and circumstances as war crimes under article 8 of the Statute.
2036. Since the beginning of the proceedings in this case, the question of whether there was an armed conflict in Ivory Coast at the relevant time has been on the agenda. During the confirmation hearing, the Defence for Mr Gbagbo asserted that "Côte d'Ivoire experienced an armed conflict through this period between 2003 and 2010".⁴³³⁶ There can thus be no doubt that, as far as the Defence is concerned, this armed conflict was still ongoing throughout the entire period of the charges. The Prosecutor herself initially claimed that there existed a non-international armed conflict in Ivory Coast from at least 25 February 2011.⁴³³⁷ However, this position was subsequently watered down. In her post-confirmation hearing submissions, the Prosecutor argued that the armed conflict started on 25 February 2011, but in the West of Côte d'Ivoire and that it only "reached Abidjan towards the end of March 2011".⁴³³⁸

⁴³³⁶ T-19, p. 53.

⁴³³⁷ ICC-02/11-01/11-357-Conf-AnxI, para. 14

⁴³³⁸ ICC-02/11-01/11-420-Conf, para. 32; ICC-02/11-02/11-124-Anx1-Corr, para. 70, which mentions 23 February as the starting date of the armed conflict in the West and 31 March 2011 as the day armed conflict arrived in Abidjan.

2037. Since the start of the trial proceedings, none of the parties or participants has made a serious effort to raise the question of the existence of an armed conflict during the period relevant to the charges. Significantly, neither the Mid-Trial Brief, nor the Response make any mention of a possible recharacterisation of some or all of the charges as war crimes. Under these circumstances, and considering that the Prosecutor did ask the Chamber to give notice of a possible recharacterisation with regard to criminal responsibility, the Chamber will not *proprio motu* evaluate whether or not it would have been possible to recharacterise some or all of the charges.

X. CLOSING REMARKS

2038. As is clear from the above analysis, this case has been stopped because the Prosecutor's evidence, although plentiful, was incapable of supporting several key allegations. Second, the Prosecutor's narrative suffered from a number of internal inconsistencies and portrayed the relevant events in an unbalanced, incomplete and ultimately unpersuasive manner.

2039. It is worth emphasising that, although the analysis of the evidence was relatively thorough and detailed, the scrutiny was lenient in its approach and not exclusionary with regard to the evidence. No evidence was excluded from consideration, be it because it did not meet minimum standards of admissibility or, in the case of testimony, because there were doubts about the trustworthiness of the witness. Had these factors been taken into consideration, there would have been considerably less left to discuss.

2040. Nevertheless, I wish to make it abundantly clear that I do not question in any way that the people of Côte d'Ivoire went through a period of great turmoil and agony. The Chamber has heard many deeply troubling accounts of loss and suffering and we reviewed evidence about distressing levels of brutality, cruelty, and callousness. We do not doubt the veracity of this. It would thus be a grave

mistake if the acquittal of Mr Gbagbo and Mr Blé Goudé were to be interpreted or portrayed as a denial of the unnecessary human loss and suffering. Nor should our decision be construed as accepting the inevitability thereof. Mistakes and decisions were made, including by Mr Gbagbo and Mr Blé Goudé, that played a significant role in the way that the post-electoral crisis unfolded and the violence it inflicted upon Côte d'Ivoire and its people.

2041. Nonetheless, the evidence submitted by the Prosecutor was insufficient to establish that there was a plan or policy to attack the pro-Ouattara civilian population on the part of the accused and their closest supporters. Under these circumstances and having considered all of the evidence submitted by the prosecutor in support of the charges before us, no reasonable trial chamber could have convicted the accused of the crimes charged and it is for this reason that they must be acquitted of these charges.

A handwritten signature in black ink, reading "G Henderson", with a long horizontal line extending to the right from the end of the signature.

Judge Geoffrey Henderson

Dated 16 July 2019

At The Hague, The Netherlands

XI. ABBREVIATIONS AND ACRONYMS

A. Abbreviation of main filings in these proceedings

Document Containing the Charges	Correction of correction of Annex 2 titled “Amended Document Containing the Charges with footnotes” to the “Prosecution’s Submission of Document amendé de notification des charges, l’Inventaire amendé des éléments de preuve à charge, and le Tableau amendé des éléments constitutifs des crimes, and Response to issues raised by Pre-Trial Chamber I”, 13 January 2014, ICC-02/11-01/11-592-Conf-Anx2-Corr2-tENG-Corr (second corrigendum registered on 13 June 2014)
Confirmation Decision against Mr Gbagbo	Public redacted version of Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-02/11-656-Red
Confirmation Decision against Mr Blé Goudé	Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-01/11-186
Pre-Trial Brief	Corrected version of the Annex 1 to The Prosecution’s Pre Trial Brief, 28 July 2015, ICC-02/11-01/15-148Anx1-Corr
First Order	Order on the further conduct of the proceedings, 9 February 2018, ICC-02/11-01/15-1124
Mid-Trial Brief	Third Corrected version to Annex 1 of Prosecution’s Mid Trial Brief, 13 June 2018,

Second Order	Second Order on the further conduct of the proceedings, 4 June 2018, ICC-02/11-01/15-1174
Blé Goudé Motion	Corrigendum to Blé Goudé Defence No Case to Answer Motion, 3 August 2018, ICC-02/11-01/15-1198-Conf-Corr
Gbagbo Motion	Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée, 23 July 2018, ICC-02/11-01/15-1199
Response	Prosecution's Consolidated Response to the Defence No Case to Answer, 10 September 2018, ICC-02/11-01/15-1207-Anx1

B. Acronyms

ANSI	Agence Nationale de la Stratégie et de l'Intelligence National Agency for Strategy and Intelligence
AJSN	Alliance de la Jeunesse pour le Sursaut National (aka Alliance des Jeunes Patriotes) Youth Alliance for National Awakening
AU	Union Africaine African Union
BAE	Brigade anti-émeute Anti-Riot Brigade

BASA	Bataillon d'artillerie sol-air Surface-to-Air Artillery Battalion
BASS	Bataillon d'artillerie sol-sol Surface-to-Surface Artillery Battalion
BB	Bataillon blindé Armoured Battalion
BCP	Bataillon de Commandos Parachutistes Para-Commando Battalion
BIMA	Bataillon d'Infanterie de Marine Marine Infantry Battalion
BMO	Brigade de Maintien de l'ordre Law Enforcement Brigade
BQI	Bulletin Quotidien d'Information Daily information bulletin
BSP	Brigade de Surveillance des Personnalités Dignitary Protection Brigade
CCI	Centre de Commandement Intégré Integrated Command Centre
CECOS	Centre de Commandement des Opérations de Sécurité Security Operations Command Center
CEDEAO / ECOWAS	Communauté Économique des États de l'Afrique de l'Ouest Economic Community of West African States

CEI	Commission Électorale Indépendante Independant Electoral Commission
CEMA	Chef d'État-Major des Armées Armed Forces Chief of Staff
CEMP	Chef d'État-Major particulier du Président Chief of Staff of the President
CHU	Centre Hospitalier Universitaire University Hospital Centre
CNCA	Conseil National de la Communication Audiovisuelle National Council for Audio-visual Communication
CNRD	Congrès National de la Résistance pour la Démocratie National Resistance Congress for Democracy
CO	Centres Opérationnels Operations Centres
COJEP	Congrès Panafricain des Jeunes et des Patriotes Pan-African Congress of Young People and Patriots
COMAIR	Commandant des Forces Aériennes Commander of the Air Force
COMAR	Commandant de la Marine Nationale Commander of the National Navy
COMTER	Commandant des Forces Terrestres Commander of ground Forces

COMTHEATRE	Commandant du Théâtre des Opérations Theater-of-Operations Commander
CONARECI	Coalition Nationale des Résistants de Côte d’Ivoire National Resistance Coalition of Côte d’Ivoire
CPCO	Centre de Planification et de Coordination des Opérations Operations Planning and Coordination Centre
CRAC	Cercle d’Actions Concrètes Concrete Action Circle
CRS	Compagnie Républicaine de Sécurité Republican Security Company
DGA-CSP	Directeur Général Adjoint Chargé de la Sécurité Publique Deputy Director-General for Public Security
DDR	Démobilisation, Désarmement, Réintégration Demobilisation, Disarmement, Reintegration
DGPN	Directeur Général/Direction Générale de la Police Nationale Director-General/National Police General Directorate
DMIR	Détachement Mobile d’Intervention Rapide Mobile Rapid Intervention Unit
DST	Direction de Surveillance du Territoire National Surveillance Directorate
DUI	Direction des Unités d’Intervention Directorate of Intervention Units

ENA	École Nationale d'Administration de Côte d'Ivoire National School of Administration of Ivory Coast
FAFN	Forces Armées des Forces Nouvelles Armed Forces of the New Forces
FANCI	Forces Armées Nationales de Côte d'Ivoire National Armed Forces of Ivory Coast
FCFA/CFA	(Franc)Communauté Financière d'Afrique Financial Community of Africa
FDS	Forces de Défense et de Sécurité Defence and Security Forces
FENAAPCI	Fédération Nationale des Agoras et Parlements de Côte d'Ivoire National Federation Agoras and Parliaments of Ivory Coast
FENOPACI	Fédération nationales des orateurs, des parlements et agoras de Côte d'Ivoire National Federation of orators, parliaments and agoras of Ivory Coast
FESCI	Fédération Estudiantine et Scolaire de Côte d'Ivoire Federation of Students and School Pupils of Ivory Coast
FIDH	Fédération Internationale des ligues des Droits de l'Homme International Federation for Human Rights
FN	Forces Nouvelles New Forces

FPI	Front Populaire Ivoirien Ivorian Popular Front
FLGO	Front pour la Libération du Grand Ouest Front for the Liberation of the Great West
FRCI	Forces Républicaines de Côte d’Ivoire Republic Forces of Ivory Coast
FUMACO	Fusiliers Commando Marine Navy Commandos
GEB	Groupe d’Escadron Blindé Armoured Squadron Unit
GPP	Groupement des Patriotes pour la Paix Group of Patriots for Peace
GR	Garde Républicaine Republican Guard
GSPR	Groupe de Sécurité du Président de la République Presidential Security Group
GTI	Groupe de Travail International International Working Group
HMA	Hôpital Militaire d’Abidjan Military Hospital of Abidjan
HRW	Human Rights Watch
JFPI	Jeunesse du Front Populaire Ivoirien

	Ivoirian Popular Front Youth
LIMA	Callsign for 'L', which stands for 'Liberians', a unit of Liberian fighters operating in Ivory Coast
LMP	La Majorité Présidentielle The Presidential Majority
MACA	Maison d'Arrêt et de Correction d'Abidjan House of Arrest and Correction of Abidjan
MFA	Mouvement des Forces de l'Avenir Movement of the Forces of the Future
MNC	Mouvement National Citoyen National Citizens' Movement
MODEL	Mouvement pour la Démocratie au Libéria Movement for Democracy in Liberia
MODESCI	Mouvement pour la défense de la souveraineté de la Côte d'Ivoire Movement for the Defence of the Sovereignty of Ivory Coast
NGO	Organisation Non Gouvernementale Non-Governmental Organisation
PC	Poste de Commandement Command Post
PDCI	Parti Démocratique de Côte d'Ivoire Democratic Party of Ivory Coast
PDCI-RDA	Parti Démocratique de Côte d'Ivoire – Rassemblement Démocratique Africain Democratic Party of Ivory Coast – African Democratic

	Rally
RDR	Rassemblement des Républicains de Côte d’Ivoire Republican Rally of Ivory Coast
RHDP	Rassemblement des Houphouëtistes pour la Démocratie et la Paix Rally of Houphouëtists for Democracy and Peace
RPG	Lance-roquettes Rocket-Propelled Grenade
RTI	Radio-Télévision Ivoirienne Ivoirian Radiobroadcasting and Television
SOAF	Solidarité Africaine African Solidarity
TCI	Télévision Côte d’Ivoire Ivoirian Television
UCS	L’unité de Commandement et de Soutien The Command and Support Unit
UDCI	Union des Démocrates de Côte d’Ivoire Union of Democrats of Ivory Coast
UDPCI	Union pour la Démocratie et la Paix en Côte d’Ivoire Union for Democracy and Peace in Ivory Coast
UEMOA	Union Économique et Monétaires Ouest-Africaine West African Economic and Monetary Union
UIGN	Unité d’Intervention de la Gendarmerie Nationale National Gendarmerie Intervention Unit

UMAS	L'Union des Mouvements D'auto-défense du Sud Union of Southern Self-Defence Movements
UN	Nations unies United Nations
UNOCI	Opération des Nations Unies en Côte d'Ivoire United Nations Operation in Ivory Coast
UNPOL	Police Civile des Nations Unies United Nations Police
UPLTCI	Union des Patriotes pour la Libération Totale de la Côte d'Ivoire Union of Patriots for the Total Liberation of Ivory Coast
Zone CNO	Zone Centre-Nord-Ouest Central North and Western Zone
mm	Millimetre
km	Kilometre