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**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR V. LAURENT GBAGBO***

**Public Redacted**

**Decision on the confirmation of charges against Laurent Gbagbo**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for the Defence**

Emmanuel Altit  
Agathe Bahi Baroan

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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## LIST OF ACRONYMS

BAE	Anti-Riot Brigade / Brigade Anti-Émeute
BASA	Air Defence Artillery Battalion / Bataillon d'Artillerie Sol-Air
BMO	Law Enforcement Brigade / Brigade de Maintien de l'Ordre
CECOS	Security Operations Command Centre / Centre de Commandement des Opérations de Sécurité
CNRD	National Resistance Congress for Democracy / Congrès National de la Résistance pour la Démocratie
CRS	Republican Security Company / Compagnie Républicaine de Sécurité
FANCI	National Armed Forces of Côte d'Ivoire / Forces Armées Nationales de Côte d'Ivoire
FDS	Defence and Security Forces / Forces de Défense et de Sécurité
GEB	Armoured Squadron Group / Groupe d'Escadron Blindé
GPP	Group of Patriots for Peace / Groupement des Patriotes pour la Paix
GR	Republican Guard / Garde Républicaine
PDCI	Democratic Party of Côte d'Ivoire / Parti Démocratique de Côte d'Ivoire
RDR	Union of Côte d'Ivoire Republicans / Rassemblement Des Républicains de Côte d'Ivoire
RHDP	Union of Houphouetists for Democracy and Peace / Rassemblement des Houphouëtistes pour la Démocratie et la Paix
RTI	Ivorian Radio and Television / Radiodiffusion-Télévision Ivoirienne
UNOCI	United Nations Operation in Côte d'Ivoire
UNPOL	United Nations Police

**Pre-Trial Chamber I** (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues the decision pursuant to article 61(7) of the Rome Statute (the “Statute”) on the confirmation of charges against Laurent Gbagbo.

## SECTION 1. INTRODUCTION

### *I. Procedural history*

1. On 3 October 2011, Pre-Trial Chamber III authorised the commencement of an investigation in Côte d’Ivoire with respect to crimes within the jurisdiction of the Court committed since 28 November 2010.<sup>1</sup>
2. On 23 November 2011, Pre-Trial Chamber III issued the “Warrant Of Arrest for Laurent Koudou Gbagbo”.<sup>2</sup>
3. On 30 November 2011, Laurent Gbagbo was surrendered to the Court. Laurent Gbagbo made his first appearance before Pre-Trial Chamber III on 5 December 2011.<sup>3</sup>
4. On 15 March 2012, the situation in Côte d’Ivoire was reassigned to the present Chamber.<sup>4</sup>
5. On 4 June 2012, Judge Silvia Fernández de Gurmendi, responsible for carrying out the functions of the Chamber in relation to the situation in Côte

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<sup>1</sup> “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11-14-Corr, para. 212. On 22 February 2012 Pre-Trial Chamber III expanded its authorisation for the investigation in Côte d’Ivoire to include crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010, see “Decision on the ‘Prosecution’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010’”, ICC-02/11-36, para. 37.

<sup>2</sup> ICC-02/11-01/11-1. See also Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Conf. A public redacted version is also available, see ICC-02/11-01/11-9-Red.

<sup>3</sup> ICC-02/11-01/11-T-1-ENG.

<sup>4</sup> ICC-02/11-37.

d'Ivoire and the cases emanating therefrom,<sup>5</sup> issued the "Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings", wherein she, *inter alia*, admitted 199 victims to participate in the proceedings, appointed counsel from the OPCV as common legal representative and ruled on the set of procedural rights accorded to the participating victims in the present case.<sup>6</sup> On 6 February 2013, the Single Judge admitted a further 60 victims to participate in the proceedings, represented by the same common legal representative.<sup>7</sup>

6. On 15 August 2012, the Chamber issued the "Decision on the 'Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129)", wherein it rejected a Defence challenge to the jurisdiction of the Court.<sup>8</sup>

7. On 2 November 2012, the Chamber determined that Laurent Gbagbo was fit to take part in the proceedings before the Court.<sup>9</sup>

8. The oral sessions of the confirmation of charges hearing were held between 19 and 28 February 2013,<sup>10</sup> while final written submissions were filed

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<sup>5</sup> Pre-Trial Chamber I, "*Décision portant désignation d'un juge unique*", 16 March 2012, ICC-02/11-01/11-61.

<sup>6</sup> ICC-02/11-01/11-138, pp. 25-27.

<sup>7</sup> "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings", 6 February 2013, ICC-02/11-01/11-384-, pp. 22-23.

<sup>8</sup> ICC-02/11-01/11-212, p. 41. See also Appeals Chamber, "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings", 12 December 2012, ICC-02/11-01/11-321.

<sup>9</sup> "Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court", 2 November 2012, ICC-02/11-01/11-286-Conf. A public redacted version is also available, see ICC-02/11-01/11-286-Red.

<sup>10</sup> ICC-02/11-01/11-T-14-ENG; ICC-02/11-01/11-T-15-CONF-ENG; ICC-02/11-01/11-T-16-CONF-ENG; ICC-02/11-01/11-T-17-CONF-ENG; ICC-02/11-01/11-T-18-CONF-ENG; ICC-02/11-01/11-T-19-CONF-ENG; ICC-02/11-01/11-T-20-CONF-ENG; ICC-02/11-01/11-T-21-ENG.

by the Prosecutor<sup>11</sup> and the OPCV<sup>12</sup> on behalf of the participating victims on 14 March 2013, and by the Defence on 28 March 2013.<sup>13</sup>

9. On 3 June 2013, the Chamber issued, by majority, Judge Silvia Fernández de Gurmendi dissenting, the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, wherein it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges.<sup>14</sup>

10. On 11 June 2013, the Chamber issued the “Decision on the ‘Requête relative à la recevabilité de l’affaire en vertu des Articles 19 et 17 du Statut’”, wherein it rejected a Defence challenge to the admissibility of the case.<sup>15</sup>

11. On 13 January 2014, the Prosecutor filed, *inter alia*, the amended document containing the charges (the “Amended DCC”)<sup>16</sup> and the amended list of evidence.<sup>17</sup>

12. On 14 February 2014, the Chamber issued the “Decision on Defence requests related to the continuation of the confirmation proceedings”.<sup>18</sup>

13. On 17 March 2014, the Defence filed, *inter alia*, its observations on the Prosecutor’s evidence (the “Defence Submissions”)<sup>19</sup> and its list of evidence.<sup>20</sup>

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<sup>11</sup> ICC-02/11-01/11-420-Conf and Annex A. A public redacted version was also filed, see ICC-02/11-01/11-420-Red.

<sup>12</sup> ICC-02/11-01/11-419.

<sup>13</sup> ICC-02/11-01/11-429-Conf and Annex. A public redacted version was also filed, see ICC-02/11-01/11-429-Red.

<sup>14</sup> ICC-02/11-01/11-432, p. 22. See also Appeals Chamber, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”, 16 December 2013, ICC-02/11-01/11-572.

<sup>15</sup> ICC-02/11-01/11-436-Conf, p. 13. A public redacted version was also filed, see ICC-02/11-01/11-436-Red.

<sup>16</sup> ICC-02/11-01/11-592-Anx1, ICC-02/11-01/11-592-Conf-Anx2-Corr2-tENG.

<sup>17</sup> ICC-02/11-01/11-592-Conf-Anx3-Corr.

<sup>18</sup> ICC-02/11-01/11-619.



14. On 31 March 2014, the Prosecutor filed the “Prosecution’s final written submissions on the confirmation of charges proceedings” (the “Prosecutor’s Final Submissions”).<sup>21</sup>

15. On 4 April 2014, the OPCV filed, on behalf of the victims participating in the proceedings, the “Final written submissions of the Common Legal Representative of Victims in response to the Defence’s observations on the Prosecutor’s evidence” (the “OPCV Final Submissions”).<sup>22</sup>

16. On 14 April 2014, the Defence filed, *inter alia*, the “*Soumissions finales de la Défense*” (the “Defence Final Submissions”).<sup>23</sup>

## ***II. Preliminary remarks***

17. The Prosecutor alleges that Laurent Gbagbo is criminally responsible, in the alternative, under articles 25(3)(a), (b), (d) and 28(a) and (b) of the Statute, for crimes against humanity of murder under article 7(1)(a) of the Statute (Count 1), rape under article 7(1)(g) of the Statute (Count 2), other inhumane acts under article 7(1)(k) of the Statute or alternatively attempted murder under articles 7(1)(a) and 25(3)(f) of the Statute (Count 3), and persecution under article 7(1)(h) of the Statute (Count 4) committed during the course of four particular incidents in Abidjan:

- (i) the attacks on 16-19 December 2010 related to the demonstrations at the RTI building;

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<sup>19</sup> ICC-02/11-01/11-637-Conf-Anx2-Corr2. A public redacted version was also filed, see ICC-02/11-01/11-637-Conf-Anx2-Corr2-Red.

<sup>20</sup> ICC-02/11-01/11-637-Conf-Anx3.

<sup>21</sup> ICC-02/11-01/11-642-Conf and Annex 1. A public redacted version was also filed, see ICC-02/11-01/11-642-Red.

<sup>22</sup> ICC-02/11-01/11-646-Conf. A public redacted version was also filed, see ICC-02/11-01/11-646-Red.

<sup>23</sup> ICC-02/11-01/11-647-Conf-Anx1-Corr. A public redacted version was also filed, see ICC-02/11-01/11-647-Anx1-Corr-Red.

- (ii) the attack on a women's demonstration in Abobo on 3 March 2011;
- (iii) the shelling of Abobo market and the surrounding area on 17 March 2011; and
- (iv) the attack on Yopougon on or around 12 April 2011.<sup>24</sup>

18. Before addressing the merits of the charges, and in accordance with article 19 of the Statute, under which "[t]he Court shall satisfy itself that it has jurisdiction in any case brought before it", the Chamber observes that the crimes with which Laurent Gbagbo is charged by the Prosecutor fall within the jurisdiction of the Court, as the Prosecutor alleges the commission of crimes against humanity under article 7 of the Statute (jurisdiction *ratione materiae*) on the territory of Côte d'Ivoire (jurisdiction *ratione loci*) between 16 December 2010 and on or around 12 April 2011 (jurisdiction *ratione temporis*).<sup>25</sup>

19. In the present decision, the Chamber renders its determination under article 61(7) of the Statute on whether there is sufficient evidence to establish substantial grounds to believe that Laurent Gbagbo committed each of the crimes charged. According to the established jurisprudence of the Court, in order to meet this evidentiary threshold, the Prosecutor must "offer concrete and tangible proof demonstrating a clear line of reasoning underpinning [her] specific allegations".<sup>26</sup>

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<sup>24</sup> Amended DCC, paras 211-235.

<sup>25</sup> Republic of Côte d'Ivoire, Declaration dated 18 April 2003, ICC-02/11-01/11-129-Anx16; Pre-Trial Chamber III, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire", 3 October 2011, ICC-02/11-14. See also Pre-Trial Chamber I, "Decision on the 'Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129)", 15 August 2012, ICC-02/11-01/11-212.

<sup>26</sup> See Pre-Trial Chamber I, "Decision on the confirmation of charges", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 39; *id.*, "Decision on the confirmation of charges", 26 September 2008, ICC-01/04-01/07-717, para. 69; Pre-Trial Chamber II, "Decision Pursuant to Article

20. The Chamber's determination is based on an assessment of the evidence relied upon by the Prosecutor and the Defence – and included for this purpose in their respective lists of evidence pursuant to rule 121(3) and (6) of the Rules of Procedure and Evidence – taking into account the oral and written submissions advanced by the parties as well as the legal representative of the victims admitted to participate at the confirmation of charges hearing.

21. The Chamber has assessed the probative value of the relevant evidence, bearing in mind that due to the nature of the confirmation of charges proceedings, such assessment is limited, and, as recognised by the Appeals Chamber with respect to the evaluation of the credibility of witnesses at the confirmation of charges stage, “necessarily presumptive”.<sup>27</sup> Indeed, the Chamber is mindful of the guidance of the Appeals Chamber that while a Pre-Trial Chamber may evaluate the credibility of witnesses, “it should take great care in finding that a witness is or is not credible”.<sup>28</sup> The Chamber notes that the Defence disputes the reliability of a number of items of evidence, including witness statements.<sup>29</sup> Except for a few instances where the Chamber was in a position to dispose of the matter on the basis of all the evidence available, the Chamber has not taken a view with regard to all challenges, in particular with regard to the credibility of witnesses, as it considers they can only be properly addressed at trial.

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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, para. 29; Pre-Trial Chamber II, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, ICC-01/09-02/11-382-Red, para. 52; Pre-Trial Chamber I, “Decision on the confirmation of charges”, 16 December 2012, ICC-01/04-01/10-465-Red, para. 40; Pre-Trial Chamber II, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, ICC-01/04-02/06-309, para. 9.

<sup>27</sup> Appeals Chamber, “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. 48.

<sup>28</sup> *Id.*

<sup>29</sup> Defence Submissions, paras 60-164.

22. The conclusions of the Chamber are based on all the available evidence, considered as a whole, regardless of which party originally tendered the evidence in the record of the case. Nevertheless, in light of the limited scope and purpose of the confirmation of charges proceedings, and consistent with the established practice of the Pre-Trial Chambers,<sup>30</sup> the Chamber clarifies that the items of evidence referred to in the present decision are included for the sole purpose of providing the reasoning that underpins its determination. This is without prejudice to the relevance of other items of evidence than those referred to, which the Chamber has in any case considered thoroughly. A lack of explicit reference to an item of evidence may signify that the finding to which it relates is already sufficiently supported by other pieces of evidence, or, conversely, that a certain finding, satisfactorily established in light of the evidence taken as a whole, is not negated by one or more other discrete items of evidence.

23. The same applies to the arguments advanced by the parties and participants in their submissions, each of which has been carefully considered as part of the Chamber's determination. In light of the limited scope and purpose of the current proceedings and the large number of discrete factual and legal arguments placed before the Chamber, this decision does not explicitly address each and every submission of the parties and participants, but only those that are necessary to provide sufficient reasoning for the Chamber's determination under article 61(7) of the Statute.

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<sup>30</sup> Pre-Trial Chamber I, "Decision on the confirmation of charges", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 39; *id.*, "Decision on the confirmation of charges", 26 September 2008, ICC-01/04-01/07-717, para. 69; *id.*, "Decision on the Confirmation of Charges", 8 February 2010, ICC-02/05-02/09-243-Red, para. 45; *id.*, "Corrigendum of the 'Decision on the Confirmation of Charges'", 8 March 2011, ICC-02/05-03/09-121-Red-Corr, para. 39; Pre-Trial Chamber II, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 23 January 2012, ICC-01/09-02/11-382-Red, para. 60; Pre-Trial Chamber I, "Decision on the confirmation of charges", 16 December 2012, ICC-01/04-01/10-465-Red, para. 49.

## SECTION 2. ANALYSIS OF THE EVIDENCE

### I. *Acts of violence*

#### A. The four incidents

##### a) *Attacks related to the demonstrations at the RTI building (16-19 December 2010)*

24. The Prosecutor alleges that between 16 and 19 December 2010, in Abidjan, during and after a pro-Ouattara march on the RTI headquarters, the pro-Gbagbo forces killed at least 45 persons, raped at least 16 women and girls, and wounded at least 54 persons.<sup>31</sup>

25. The evidence before the Chamber shows that a demonstration leading to the RTI building in Cocody was planned by leaders of the Union of Houphouetists for Democracy and Peace (RHDP) several days in advance,<sup>32</sup> and was announced to supporters through various channels, including the media.<sup>33</sup> The RTI was seen to be of particular importance during the crisis,<sup>34</sup> and the objective of the demonstration was to install a new director of the RTI, thus ending Laurent Gbagbo's control over it.<sup>35</sup>

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<sup>31</sup> Amended DCC, paras 217-219.

<sup>32</sup> Witness P-189, CIV-OTP-0042-0508 at 0547, paras 138-139; Witness P-230, CIV-OTP-0044-2628 at 2638, paras 36, 38; Witness P-350, CIV-OTP-0048-1675 at 1280, para. 19; see also Witness P-11, CIV-OTP-0016-0390 at 0407.

<sup>33</sup> Witness P-106, CIV-OTP-0019-0211 at 0216, para. 27; Witness P-107, CIV-OTP-0020-0064 at 0072, para. 54; Witness P-109, CIV-OTP-0020-0335 at 0377, para. 170; at 0379, para. 176; Witness P-112, CIV-OTP-0019-0306 at 0311, para. 19; Witness P-117, CIV-OTP-0020-0033 at 0037, paras 19-20; Witness P-172, CIV-OTP-0028-0550 at 0556, para. 40; Witness P-184, CIV-OTP-0032-0011 at 0021, para. 56; Witness P-217, CIV-OTP-0040-0372 at 0384, paras 61-62; Witness P-230, CIV-OTP-0044-2628 at 2638, paras 36, 38; Witness P-344, CIV-OTP-0044-2614 at 2617, para. 13; Witness Alain Dogou, CIV-D15-0001-1273 at 1281-1282; Press articles, CIV-D15-0001-0253 at 0253; CIV-OTP-0051-2210 at 2210; CIV-OTP-0002-0366 at 0367.

<sup>34</sup> Witness P-9, CIV-OTP-0051-0907 at 0913; Witness P-47, CIV-OTP-0015-0164 at 0173; Witness P-369, CIV-OTP-0048-1396 at 1439, para. 154; Press article, CIV-OTP-0051-2210 at 2210; Diary, CIV-OTP-0018-0810 at 0847 ("*la bataille médiatique mérite d'être gagnée*").

<sup>35</sup> Witness P-106, CIV-OTP-0019-0211 at 0216, para. 27; Witness P-107, CIV-OTP-0020-0064 at 0072, paras 54-55; Witness P-117, CIV-OTP-0020-0033 at 0037, paras 19-20; Witness P-230, CIV-OTP-0044-2628 at 2638-2639, para. 38; Press article, CIV-OTP-0051-2210 at 2210.

26. According to the evidence, the intention to hold such a demonstration was known to the high commanders of the FDS.<sup>36</sup> A meeting took place on the evening of 14 December 2010 at the Presidential Residence in Cocody, during which Laurent Gbagbo prohibited the demonstration, and instructed the high commanders of the FDS to take any necessary measures to prevent it.<sup>37</sup>

27. According to several witnesses, the FDS then initiated, ahead of the demonstration, a well-coordinated and comprehensive operation on the ground, with the aim of preventing the demonstrators from reaching the RTI.<sup>38</sup> The operation was under the control of the Chief of Staff,<sup>39</sup> who delegated command of the units on the ground to the Director General of the National Police.<sup>40</sup> In addition to FANCI units which were regularly placed at the RTI,<sup>41</sup> this operation involved the systematic placing of FDS units, in particular Police, Gendarmerie and CECOS, at strategic locations across Abidjan, on routes leading to the RTI.<sup>42</sup> According to the evidence, the general order given to the units was to prevent all access to the RTI.<sup>43</sup>

28. Witnesses with knowledge of the preparations of the FDS do not confirm or deny that militia or mercenary elements were involved in the operation to

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<sup>36</sup> Witness P-9, CIV-OTP-0051-0871 at 0900; Witness P-10, CIV-OTP-0051-0335 at 0352, 0353.

<sup>37</sup> Witness P-9, CIV-OTP-0051-0935 at 0937, 0957, 0960-0962.

<sup>38</sup> Witness P-9, CIV-OTP-0051-0935 at 0956-0957, 0970; Witness P-10, CIV-OTP-0051-0335 at 0352, 0374-0375; Witness P-321, CIV-OTP-0046-1011 at 1023.

<sup>39</sup> Witness P-9, CIV-OTP-0051-0907 at 0927-0928.

<sup>40</sup> Witness P-10, CIV-OTP-0051-0335 at 0354. On the basis of this evidence, the Chamber is unable to discern any inconsistency in the Prosecutor's submissions on this point, contrary to the submissions of the Defence (Defence Submissions, paras 307-317).

<sup>41</sup> Witness P-9, CIV-OTP-0051-0907 at 0912, 0913; CIV-OTP-0051-0935 at 0953, 0954-0955; Witness P-47, CIV-OTP-0015-0164 at 0174-0177, 0181; CIV-OTP-0015-0270 at 0277-0282; Witness P-321, CIV-OTP-0046-1011 at 1021.

<sup>42</sup> Witness P-9, CIV-OTP-0011-0430 at 0443; Annex, CIV-OTP-0006-0169; Witness P-9, CIV-OTP-0051-0935 at 0938, 0939-0954; Annexes, CIV-OTP-0047-0961, CIV-OTP-0047-0962, CIV-OTP-0047-0963, CIV-OTP-0047-0964; Witness P-10, CIV-OTP-0051-0335 at 0354, 0355, 0358-0366, 0369, 0384; Witness P-46, CIV-OTP-0014-0233 at 0262-0263; Witness P-100, CIV-OTP-0020-0193 at 0210-0211; Witness P-321, CIV-OTP-0046-1011 at 1017, 1018.

<sup>43</sup> Witness P-9, CIV-OTP-0051-0935 at 0970.

prevent the demonstration from taking place.<sup>44</sup> However, several witnesses who took part in the demonstration refer to the presence of militia or mercenary elements and to their participation in the alleged attacks.<sup>45</sup> Taking their evidence into account as well as the evidence that militia and/or mercenary elements operated with or were integrated into FDS units,<sup>46</sup> the Chamber is satisfied that militia and mercenary elements took part in the repression of the demonstration on 16 December 2010.

29. Several witnesses describe the commencement of the march on the morning of 16 December 2010 from various directions, in particular from Abobo,<sup>47</sup> Yopougon/Adjamé,<sup>48</sup> and Treichville.<sup>49</sup> The witnesses consistently state the demonstrators were unarmed,<sup>50</sup> while one witness also explains how they were searched by elders to ensure they had no weapons.<sup>51</sup> Witnesses also describe the presence of FDS units at locations where the demonstrators were

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<sup>44</sup> Cf. Witness P-9, CIV-OTP-0051-0978 at 0981.

<sup>45</sup> Witness P-106, CIV-OTP-0019-0211 at 0217, para. 30; Witness P-107, CIV-OTP-0020-0064 at 0076, para. 91; at 0078, para. 99; Witness P-117, CIV-OTP-0020-0033 at 0042, paras 60-61; Witness P-344, CIV-OTP-0044-2614 at 2618-2619, para. 16; Witness P-169, CIV-OTP-0029-0323 at 0332, para. 55; see also Witness P-369, CIV-OTP-0048-1396 at 1430, para. 126; HRW press release, CIV-OTP-0002-0166 at 0168.

<sup>46</sup> See below, paras 103, 136, 138.

<sup>47</sup> Witness P-106, CIV-OTP-0019-0211 at 0216, para. 28; Witness P-112, CIV-OTP-0019-0306 at 0311, para. 21; Witness P-117, CIV-OTP-0020-0033 at 0038, para. 25; Witness P-172, CIV-OTP-0028-0550 at 0556, para. 41; Witness P-184, CIV-OTP-0032-0011 at 0021, paras 59-60; Witness P-189, CIV-OTP-0042-0508 at 0547, para. 142; Witness P-217, CIV-OTP-0040-0372 at 0384-0385, paras 63-65; Witness P-344, CIV-OTP-0044-2614 at 2618, para. 14.

<sup>48</sup> Witness P-107, CIV-OTP-0020-0064 at 0072, paras 56-57; Witness P-230, CIV-OTP-0044-2628 at 2639, para. 39; Witness P-109, CIV-OTP-0020-0335 at 0377, para. 170.

<sup>49</sup> Witness P-369, CIV-OTP-0048-1396 at 1430, para. 127.

<sup>50</sup> Witness P-106, CIV-OTP-0019-0211 at 0217, para. 29; Witness P-107, CIV-OTP-0020-0064 at 0075, para. 76; Witness P-109, CIV-OTP-0020-0335 at 0377, para. 170; at 0379, para. 178; Witness P-112, CIV-OTP-0019-0306 at 0317, para. 55; Witness P-117, CIV-OTP-0020-0033 at 0039, para. 39; Witness P-217, CIV-OTP-0040-0372 at 0385, para. 67; Witness P-230, CIV-OTP-0044-2628 at 2638, para. 37; at 2641, para. 44; at 2642, para. 45; Witness P-344, CIV-OTP-0044-2614 at 2618, para. 15; Witness P-350, CIV-OTP-0048-1675 at 1680, para. 21.

<sup>51</sup> Witness P-106, CIV-OTP-0019-0211 at 0217, para. 29.

gathering and along their initial routes,<sup>52</sup> and indicate that they were warned by certain FDS elements not to continue with the march, as they would be attacked if they persisted.<sup>53</sup>

30. The evidence shows that demonstrators who advanced towards the RTI were indeed attacked by FDS units, supported by militia and mercenary elements, including with gunfire and fragmentation grenades, which resulted in killings and injuries. In particular, several witnesses describe how demonstrators were attacked at locations on the *Route du Zoo* and on *Boulevard Latrille/Boulevard des Martyrs*.<sup>54</sup> Similarly, demonstrators were attacked on the Abobo-Adjamé highway,<sup>55</sup> where at least one person was also raped by the attackers.<sup>56</sup> Demonstrators moving towards the RTI were also attacked with firearms in Adjamé, including in Williamsville.<sup>57</sup>

31. The evidence further shows that the demonstrators who reached the premises of the Union of Côte d'Ivoire Republicans (RDR) on *Rue Lepic* in Cocody were attacked with particular brutality, including with rocket

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<sup>52</sup> Witness P-117, CIV-OTP-0020-0033 at 0040, paras 40-41; Witness P-172, CIV-OTP-0028-0550 at 0556, para. 41; Witness P-184, CIV-OTP-0032-0011 at 0021, para. 60; Witness P-217, CIV-OTP-0040-0372 at 0384-0385, paras 63-65; Witness P-344, CIV-OTP-0044-2614 at 2618, para. 15.

<sup>53</sup> Witness P-107, CIV-OTP-0020-0064 at 0073, paras 61-62; Witness P-112, CIV-OTP-0019-0306 at 0311, para. 21; Witness P-117, CIV-OTP-0020-0033 at 0040, paras 40-41.

<sup>54</sup> Witness P-106, CIV-OTP-0019-0211 at 0217, para. 30; at 0218, paras 33-36; Witness P-112, CIV-OTP-0019-0306 at 0311-0312, paras 23-24; Witness P-117, CIV-OTP-0020-0033 at 0041-0042, paras 50-59; Witness P-189, CIV-OTP-0042-0508 at 0548-0549, paras 146-151; Witness P-217, CIV-OTP-0040-0372 at 0385-0388, paras 68-85; Annex, CIV-OTP-0040-0419; see also Witness P-184, CIV-OTP-0032-0011 at 0023, para. 69; Witness P-369, CIV-OTP-0048-1396 at 1429, para. 124; [REDACTED], CIV-OTP-0044-2401 at 2402; OTP affidavit, CIV-OTP-0007-0231, para. 7.

<sup>55</sup> Witness P-172, CIV-OTP-0028-0550 at 0556-0557, paras 41-48; Witness P-344, CIV-OTP-0044-2614 at 2618, para. 16; Witness P-363, CIV-OTP-0046-0275 at 0284, paras 39-41; see also Witness P-330, CIV-OTP-0049-2570 at 2571-2596; Police report, CIV-OTP-0045-1413 at 1413; Amnesty International press release, CIV-OTP-0003-0745.

<sup>56</sup> Witness P-344, CIV-OTP-0044-2614 at 2619-2620, paras 18-21.

<sup>57</sup> Witness P-109, CIV-OTP-0020-0335 at 0378, para. 172; Witness P-350, CIV-OTP-0048-1675 at 1680-1681, para. 22; see also Witness P-46, CIV-OTP-0014-0289 at 0301; Witness P-106, CIV-OTP-0019-0211 at 0219, para. 38; Police reports, CIV-OTP-0010-0028 at 0031-0032; CIV-OTP-0045-0510 at 0511; CIV-OTP-0045-0735 at 0735; List/table, CIV-OTP-0045-1157 at 1163, 1165; [REDACTED], CIV-OTP-0044-2408 at 2410; [REDACTED], CIV-OTP-0044-2441 at 2444.



launchers, which resulted in deaths and grave injuries.<sup>58</sup> Similarly, the evidence shows that, at the seat of the Democratic Party of Côte d'Ivoire (PDCI) in Cocody, there were injuries caused by shots, apparently fired with the intention of preventing demonstrators gathered there from leaving the building.<sup>59</sup>

32. It appears that the violence against demonstrators was particularly intense at locations close to the RTI, such as the *Carrefour de la Vie* and the *Carrefour St Jean*, where people were killed and wounded by bullets and fragmentation grenades.<sup>60</sup> One witness indicates that there were FDS elements with sniper rifles positioned on top of several buildings, from where they shot downwards at fleeing demonstrators.<sup>61</sup>

33. The evidence also shows that lethal violence was used by the FDS against demonstrators in Treichville<sup>62</sup> and Marcory.<sup>63</sup>

34. According to the evidence, the use of violence by the FDS did not stop with the dispersal of the demonstrations as the FDS continued to actively search neighbourhoods close to the RTI, arresting and attacking

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<sup>58</sup> Witness P-230, CIV-OTP-0044-2628 at 2640-2643, paras 42-48; List/table, CIV-OTP-0045-1157 at 1165-1167.

<sup>59</sup> Witness P-169, CIV-OTP-0029-0323 at 0332-0333, para. 55; Witness P-184, CIV-OTP-0032-0011 at 0021, para. 58; Witness P-226, CIV-OTP-0039-0143 at 0173-0174, para. 101; see also Witness P-9, CIV-OTP-0051-0978 at 0992-0993, 0995-0996; Police report, CIV-OTP-0045-0510 at 0510; Ministry of Interior report, CIV-OTP-0045-0541 at 0541.

<sup>60</sup> Witness P-107, CIV-OTP-0020-0064 at 0074-0076, paras 71-87; Witness P-369, CIV-OTP-0048-1396 at 1429, paras 121-123; Witness P-189, CIV-OTP-0042-0508 at 0549, para. 152; Ministry of Interior report, CIV-OTP-0045-0541 at 0541; OTP affidavits, CIV-OTP-0007-0231 at 0232-0233, para. 9; CIV-OTP-0007-0235 at 0236, para. 6; [REDACTED], CIV-OTP-0044-2401 at 2402; CIV-OTP-0044-2393 at 2395; CIV-OTP-0044-2397 at 2399; see also Witness P-10, CIV-OTP-0051-0335 at 0371, 0384-0387 (confirming CECOS intervention against the demonstrators).

<sup>61</sup> Witness P-107, CIV-OTP-0020-0064 at 0076, para. 87.

<sup>62</sup> Witness P-369, CIV-OTP-0048-1396 at 1430, paras 126-127.

<sup>63</sup> Amnesty International report, CIV-OTP-0002-0647 at 0660.

demonstrators.<sup>64</sup> Two witnesses describe in detail how they were arrested in Williamsville, taken to the *École de police* and raped there by policemen before being let go the following morning.<sup>65</sup> Another witness states that she was taken in a group to the prefecture at Plateau where she and several other women were raped repeatedly during the course of the following days before the witness was eventually released on 19 December 2010.<sup>66</sup>

35. Furthermore, there is evidence that in the days following 16 December 2010, the FDS, including militia elements, raided civilian homes, in particular in Abobo, where they killed, raped and abducted residents.<sup>67</sup> According to the statements of several witnesses, FDS units also went to hospitals, searching for wounded participants of the demonstration.<sup>68</sup> Additionally, there is evidence that pro-Gbagbo militias killed people at a roadblock on 18 December 2010.<sup>69</sup> Further, FDS elements attacked mosques in Abobo and Williamsville, and in Grand Bassam outside Abidjan.<sup>70</sup>

36. With regard to the violence on the days after 16 December 2010, the Chamber notes the Defence submissions that this violence was not linked to

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<sup>64</sup> Witness P-107, CIV-OTP-0020-0064 at 0076-0079, paras 89-105; Witness P-109, CIV-OTP-0020-0335 at 0378-0379, paras 173-174; Witness P-230, CIV-OTP-0044-2628 at 2644-2647, paras 50-54; Police reports, CIV-OTP-0045-0717; CIV-OTP-0045-0735 at 0736; CIV-OTP-0045-0999.

<sup>65</sup> Witness P-112, CIV-OTP-0019-0306 at 0312-0316, paras 28-50; Witness P-117, CIV-OTP-0020-0033 at 0043-0049, paras 64-113.

<sup>66</sup> Witness P-350, CIV-OTP-0048-1675 at 1681-1684, paras 25-44; see also Amnesty International report, CIV-OTP-0002-0647 at 0675.

<sup>67</sup> HRW press release, CIV-OTP-0002-0166 at 0169-0170; Amnesty International report CIV-OTP-0002-0647 at 0675-0676; Amnesty International press release, CIV-OTP-0002-1019 at 1020; [REDACTED], CIV-OTP-0044-0868 at 0870-0871; UN HCHR report, CIV-OTP-0002-0046 at 0054; Witness P-369, CIV-OTP-0048-1396 at 1442, para. 165.

<sup>68</sup> Witness P-106, CIV-OTP-0019-0211 at 0218, para. 37; Witness P-107, CIV-OTP-0020-0064 at 0079, paras 108-109; Witness P-117, CIV-OTP-0020-0033 at 0049, para. 115; Witness P-169, CIV-OTP-0029-0323 at 0333, paras 58-59; Witness P-230, CIV-OTP-0044-2628 at 2644-2645, para. 50; Witness P-369, CIV-OTP-0048-1396 at 1432, para. 133.

<sup>69</sup> Amnesty International report, CIV-OTP-0002-0647 at 0677-0679.

<sup>70</sup> UN HCHR report, CIV-OTP-0002-0046 at 0056-0057, para. 25; [REDACTED], CIV-OTP-0044-0868 at 0870-0871, para. 5; Report, CIV-OTP-0052-0386 at 0404; Witness P-369, CIV-OTP-0048-1396 at 1445, para. 176.

the repression of the demonstrations on 16 December 2010.<sup>71</sup> However, in light of all the evidence related to the events of 16 to 19 December 2010, including the statement of Witness P-9, who confirms that FDS units remained on the ground after the demonstration and acknowledges that there were reports of killings,<sup>72</sup> the Chamber is of the view that the evidence sufficiently supports the Prosecutor's allegations with respect to these related events following the repression of the march.

37. The Chamber concludes that the violent repression of the demonstration of RHDP supporters on 16 December 2010 and the violence in the days that followed resulted in the killing of at least 45 persons,<sup>73</sup> the rape of at least 16 women and girls,<sup>74</sup> and the injury of at least 54 persons.<sup>75</sup>

38. The Chamber notes the argument of the Defence that the events referred to above did not occur in the context of a civilian demonstration, but were part of a planned attempt to take power by force.<sup>76</sup> This argument rests primarily on the fact that on 16 December 2010 fire was exchanged between armed men coming from the Golf Hotel and FDS elements positioned in the vicinity of the Golf Hotel, resulting in loss of life on the part of the FDS.<sup>77</sup> In addition, the Defence relies on the evidence that shots were fired at the FDS in

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<sup>71</sup> See also Defence Submissions, paras 369-374.

<sup>72</sup> Witness P-9, CIV-OTP-0051-0978 at 0987-0988, 1003, 1007.

<sup>73</sup> See above, paras 30-35.

<sup>74</sup> See above, paras 30, 34-35.

<sup>75</sup> See above, paras 30-35.

<sup>76</sup> Defence Submissions, para. 430.

<sup>77</sup> Witness P-9, CIV-OTP-0051-0978 at 0928, 0980; Witness P-10, CIV-OTP-0051-0335 at 0371-0373, 0381; Witness P-218, CIV-OTP-0040-0446 at 0458-0459, paras 68-71; Witness P-321, CIV-OTP-0046-0886 at 0891; Witness Alain Dogou, CIV-D15-0001-1273 at 1282; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1398; Witness P-47, CIV-OTP-0015-0042 at 0184-0185, 0201-0213 and 0288. See also Witness P-69, CIV-OTP-0017-0186 at 0196 (describing a similar incident nearby).

PK18, which equally resulted in FDS deaths.<sup>78</sup> The Chamber observes, however, that the facts of these events at the Golf Hotel and PK18, which are not contested by the Prosecutor,<sup>79</sup> occurred at other locations and outside the context of the civilian demonstration.

39. The Chamber also notes the Defence submission that pro-Ouattara armed forces intended to use the civilian demonstration as a cover to attack the RTI and take it over by force.<sup>80</sup> However, the Chamber is not persuaded that the evidence establishes the presence of pro-Ouattara armed forces at locations where the civilian demonstration, and its repression, took place.

40. The Chamber notes the evidence to the effect that the FDS units were instructed not to use force or to use force only in self-defence.<sup>81</sup> However, the Chamber is of the view that the repression of the demonstration was planned and coordinated, considering that the evidence analysed above demonstrates that: (i) Laurent Gbagbo gave instructions to prevent the march;<sup>82</sup> (ii) the FDS made preparations accordingly;<sup>83</sup> (iii) violence against demonstrators was used in a concerted manner on all routes leading to the RTI building;<sup>84</sup> (iv) in the early stages of the march, some FDS units warned demonstrators not to continue as they would be killed if they did;<sup>85</sup> (v) the violence increased in intensity as some demonstrators got closer to the RTI building;<sup>86</sup> and (vi)

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<sup>78</sup> Witness P-9, CIV-OTP-0051-0935 at 0974-0975; Witness P-297, CIV-OTP-0041-0412 at 0421, para. 55; Witness P-330, CIV-OTP-0049-2538 at 2567; Witness P-369, CIV-OTP-0048-1396 at 1435-1436, para. 143.

<sup>79</sup> Amended DCC, para. 117; Prosecutor's Final Submissions, paras 76-77.

<sup>80</sup> Defence Submissions, paras 281-283.

<sup>81</sup> Witness P-10, CIV-OTP-0051-0335 at 0375; Witness P-9, CIV-OTP-0011-0455 at 0456; CIV-OTP-0051-0935 at 0967; CIV-OTP-0051-0978 at 0982; Witness P-46, CIV-OTP-0014-0289 at 0308.

<sup>82</sup> See above, para. 26.

<sup>83</sup> See above, paras 26-27.

<sup>84</sup> See above, paras 30-33.

<sup>85</sup> See above, para. 29.

<sup>86</sup> See above, paras 31-32.

firearms and fragmentation grenades were used.<sup>87</sup> There is also evidence of radio communications to show that units on the ground were given orders, which in the context of other evidence, must be interpreted as orders to use force.<sup>88</sup> In these circumstances, the Chamber is of the view that the evidence sufficiently demonstrates that the mission of the FDS was conceived and executed in order to achieve the goal of preventing the demonstration from taking place, by using all means, including lethal violence against civilians.

41. According to the evidence, Laurent Gbagbo was kept informed of events on the ground by way of telephone calls from the Chief of Staff.<sup>89</sup> In the late afternoon or evening of 16 December 2010, there was also a meeting at the General Staff, attended by all the high commanders of the FDS, where reference was made to civilian deaths during the operation.<sup>90</sup>

*b) Attack on a women's demonstration in Abobo (3 March 2011)*

42. The Prosecutor alleges that on 3 March 2011, pro-Gbagbo forces killed seven women and wounded at least three persons who had participated in a pro-Ouattara women's demonstration in Abobo commune in Abidjan.<sup>91</sup>

43. The evidence before the Chamber indicates that on the morning of 3 March 2011, a large number of women gathered for a march starting at the

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<sup>87</sup> See above, paras 30-35.

<sup>88</sup> Witness P-45, CIV-OTP-0005-0002 at 0014, paras 83, 85, 87; Annex, CIV-OTP-0005-0031 at 0031-0032. The Chamber is of the view that this evidence is not negated by the fact that on other occasions on the day, instructions not to use lethal force were also given by radio to specific units.

<sup>89</sup> Witness P-9, CIV-OTP-0051-0935 at 0972-0974; CIV-OTP-0051-0978 at 1005.

<sup>90</sup> Witness P-9, CIV-OTP-0051-0935 at 0973; CIV-OTP-0051-0978 at 1000-1001; Witness P-10, CIV-OTP-0051-0335 at 0376-0377.

<sup>91</sup> Amended DCC, paras 217(ii) and 219(ii).

Banco Anador roundabout in Abobo to demand the resignation of Laurent Gbagbo,<sup>92</sup> and that the women participating in this march were unarmed.<sup>93</sup>

44. According to the evidence, while the demonstration was ongoing, an FDS convoy including an armoured vehicle, a pick-up truck mounted with a machine gun, a troop carrier, and a white vehicle appeared on the free side of the highway adjacent to the one used by the demonstrators, between the Banco Anador roundabout and the Abobo City Hall.<sup>94</sup> The convoy was coming from the direction of Camp Commando, where FDS units were stationed.<sup>95</sup>

45. The evidence indicates that the FDS troops in the convoy opened fire on the crowd, directing gunfire at unarmed demonstrators. Several witnesses, who either attended the march or were present nearby, report that they heard heavy weaponry and gun shots after the convoy had passed the demonstrators on the highway.<sup>96</sup>

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<sup>92</sup> Witness P-105, CIV-OTP-0019-0245 at 0250, para. 30; Witness P-106, CIV-OTP-0019-0211 at 0220, para. 47; Witness P-107, CIV-OTP-0020-0064 at 0082, paras 131-132 and at 0084, paras 145 and 147-148; Witness P-112, CIV-OTP-0019-0306 at 0320, para. 69; Witness P-117, CIV-OTP-0020-0033 at 0054, paras 152-156; Witness P-172, CIV-OTP-0028-0550 at 0557, paras 51-53; Witness P-184, CIV-OTP-0032-0011 at 0024-0025, paras 80-85; Witness P-217, CIV-OTP-0040-0372 at 0395, paras 112-113; Witness P-293, CIV-OTP-0041-0328 at 0340, para. 66.

<sup>93</sup> Witness P-106, CIV-OTP-0019-0211 at 0220, para. 47; Witness P-107, CIV-OTP-0020-0064 at 0084, para. 148; Witness P-184, CIV-OTP-0032-0011 at 0028, para. 101; Witness P-217, CIV-OTP-0040-0372 at 0395, para. 113; at 0401, paras 144-145; [REDACTED], CIV-OTP-0044-1619 at 1621.

<sup>94</sup> Witness P-105, CIV-OTP-0019-0245 at 0250, para. 31; Witness P-112, CIV-OTP-0019-0306 at 0320, para. 71; Witness P-117, CIV-OTP-0020-0033 at 0055, paras 157-158 and Witness P-184, CIV-OTP-0032-0011 at 0026, paras 87-88; Witness P-217, CIV-OTP-0040-0372 at 0395, para. 116; HRW report, CIV-OTP-0004-0072, p. 130; the vehicles in the convoy are identified, on the basis of videos, by Witness P-9 (CIV-OTP-0051-1086 at 1121, 1125-1129, 1134), Witness P-321 (CIV-OTP-0046-1033 at 1034-1038) and Witness P-330 (CIV-OTP-0049-2312 at 2321-2332; CIV-OTP-0049-2336 at 2353-2355).

<sup>95</sup> Witness P-117, CIV-OTP-0020-0033 at 0055, para. 157; Witness P-107, CIV-OTP-0020-0064 at 0083, para. 135 and Witness P-172, CIV-OTP-0028-0550 at 0557-0558, para. 58.

<sup>96</sup> Witness P-106, CIV-OTP-0019-0211 at 0220, para. 48; Witness P-107, CIV-OTP-0020-0064 at 0083, para. 133; Witness P-112, CIV-OTP-0019-0306 at 0321, para. 72 and Witness P-117, CIV-OTP-0020-0033 at 0055, para. 161; Witness P-172, CIV-OTP-0028-0550 at 0557, para. 56;

46. The Chamber notes that several witnesses provide precise descriptions of the type of wounds suffered by the victims, caused by heavy weapons and gun shots.<sup>97</sup> In addition, [REDACTED] a medical professional who treated some of the injured women and saw some of the corpses brought to the hospital, and who believed that the wounds were caused by ammunition originating from a heavy weapon, as they were not consistent with wounds caused by bullets fired from a regular gun.<sup>98</sup>

47. The Chamber also notes that three videos showing the events, available in the evidentiary record, are consistent with the statements of the witnesses who were present at the location of the march and observed the attack.<sup>99</sup> In light of this consistency, the Chamber is not persuaded by the argument of the Defence that the videos in question are not genuine,<sup>100</sup> or the related argument that the attack on the women's march was staged.<sup>101</sup>

48. The Chamber notes that several [REDACTED] provide further corroborating evidence. One witness states that he saw the convoy [REDACTED], and heard multiple shots approximately 15 to 20 minutes later, coming from the direction of the Abobo City Hall.<sup>102</sup> The witness states that [REDACTED].<sup>103</sup> Another witness confirms that shots were heard

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Witness P-184, CIV-OTP-0032-0011 at 0026, para. 89; Witness P-189, CIV-OTP-0042-0508 at 0520, para. 73; Witness P-217, CIV-OTP-0040-0372 at 0395-0396, paras 116, 117; Witness P-293, CIV-OTP-0041-0328 at 0340, para. 66.

<sup>97</sup> Witness P-105, CIV-OTP-0019-0245 at 0250, para. 32; Witness P-106, CIV-OTP-0019-0211 at 0220, para. 48; Witness P-107, CIV-OTP-0020-0064 at 0083, para. 137; Witness P-172, CIV-OTP-0028-0550 at 0562, paras 94, 96; at 0563, para. 99; Witness P-117, CIV-OTP-0020-0033 at 0056, paras 166-167; Witness P-217, CIV-OTP-0040-0372 at 0396, para. 120; Witness P-293, CIV-OTP-0041-0328 at 0340, para. 66.

<sup>98</sup> [REDACTED]. See also HRW report, CIV-OTP-0004-0072, p. 130.

<sup>99</sup> Videos, CIV-OTP-0003-0716; CIV-OTP-0044-0738; CIV-OTP-0042-0587.

<sup>100</sup> Defence Submissions, paras 597, 607-614.

<sup>101</sup> Defence Submissions, para. 588.

<sup>102</sup> [REDACTED].

<sup>103</sup> [REDACTED].

[REDACTED],<sup>104</sup> and describes [REDACTED].<sup>105</sup> In particular, this witness specifies that [REDACTED],<sup>106</sup> [REDACTED].<sup>107</sup>

49. Furthermore, Witnesses P-10 and P-46 refer to a meeting held at the General Staff shortly after the women's march, during which the incident was discussed.<sup>108</sup> Witness P-10 explains that no precise information was given regarding the force responsible for the attack, while Witness P-46 recounts that all units denied having sent men to the march.<sup>109</sup> However, Witness P-10 explains that the operations commander presented the incident as a clash between demonstrators and an FDS military detachment, and specifies that he was told by a captain of the Gendarmerie that a military detachment in armoured vehicles from Camp Commando in Abobo shot at the protesters as it was trying to disperse them.<sup>110</sup> Witness P-46 further explains that at the meeting, a commander from the Republican Guard recognised the armoured vehicle involved as belonging to this unit.<sup>111</sup> Statements of other witnesses corroborate this evidence.<sup>112</sup>

50. The Chamber further notes the denial by the government and FDS of any responsibility, as shown by the minutes of the government council session held on 8 March 2011<sup>113</sup> and the public announcement made by the FDS spokesperson the day after the march.<sup>114</sup> However, the Chamber observes

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<sup>104</sup> [REDACTED]

<sup>105</sup> [REDACTED]

<sup>106</sup> [REDACTED]

<sup>107</sup> [REDACTED]

<sup>108</sup> Witness P-10, CIV-OTP-0016-0084 at 0098; Witness P-46, CIV-OTP-0014-0326 at 0338-0340.

<sup>109</sup> Witness P-10, CIV-OTP-0016-0084 at 0098; Witness P-46, CIV-OTP-0014-0326 at 0343.

<sup>110</sup> Witness P-10, CIV-OTP-0016-0104 at 0105-0106, 0113-0115; CIV-OTP-0016-0084 at 0099.

<sup>111</sup> Witness P-46, CIV-OTP-0014-0326 at 0338-0341.

<sup>112</sup> Witness P-49, CIV-OTP-0019-0168 at 0172, paras 33-34; Witness P-239, CIV-OTP-0037-0425 at 0451, para. 190; Witness P-164, CIV-OTP-0028-0481 at 0496, paras 99-103.

<sup>113</sup> CIV-OTP-0025-0106 at 0107 and Video, CIV-OTP-0002-1065.

<sup>114</sup> Video, CIV-OTP-0002-1065.



that according to the evidence, this denial of responsibility was not issued following serious verification of the allegations surrounding the march.<sup>115</sup>

51. In light of the above, taking into account the totality of the evidence in relation to the event, the Chamber considers there is sufficient evidence to conclude that this attack is attributable to FDS units stationed in Camp Commando and that, as a result of the shooting, seven women who participated in the march were killed<sup>116</sup> and at least three others were injured.<sup>117</sup>

*c) Shelling of Abobo market and the surrounding area (17 March 2011)*

52. The Prosecutor alleges that on 17 March 2011, pro-Gbagbo forces killed at least 40 persons and injured at least 60 persons in or near Abobo market by shelling a densely populated area.<sup>118</sup>

53. The evidence demonstrates that, on 17 March 2011, a number of mortar shells landed on the centre of Abobo and resulted in several individuals being killed or injured, in particular at the Siaka Koné market, the SOS village neighbourhood and the Derrière Rails sector.<sup>119</sup>

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<sup>115</sup> Witness P-9, CIV-OTP-0051-1086 at 1111, 1131.

<sup>116</sup> Witness P-105, CIV-OTP-0019-0245 at 0250, para. 32; Witness P-106, CIV-OTP-0019-0211 at 0220, para. 48; Witness P-107, CIV-OTP-0020-0064 at 0083, paras 134, 137; Witness P-117, CIV-OTP-0020-0033 at 0055-0056, paras 165-171; Witness P-172, CIV-OTP-0028-0550 at 0558-0559, paras 68-70; at 0562-0563, paras 92-101; Witness P-189, CIV-OTP-0042-0508 at 0521, paras 76-77; Witness P-217, CIV-OTP-0040-0372 at 0396, para. 120; Witness P-293, CIV-OTP-0041-0328 at 0340-0341, para. 66.

<sup>117</sup> Witness P-105, CIV-OTP-0019-0245 at 0250, para. 32; Witness P-106, CIV-OTP-0019-0211 at 0220, para. 48; Witness P-172, CIV-OTP-0028-0550 at 0558, para. 67; Witness P-184, CIV-OTP-0032-0011 at 0026-0027, paras 90, 92; Annexes CIV-OTP-0032-0051, CIV-OTP-0032-0052; [REDACTED], CIV-OTP-0044-1740; CIV-OTP-0044-1745; UN SG report, CIV-OTP-0002-0010 at 0020, para. 48; UN HCHR report, CIV-OTP-0002-0598 at 0603-0604, para. 12.

<sup>118</sup> Amended DCC, paras 217(iii) and 219(iii).

<sup>119</sup> In particular, this is established by several witness statements collected by the Prosecutor (Witness P-105, CIV-OTP-0019-0245 at 0248-0249, paras 17-27; Witness P-293, CIV-OTP-0041-0328 at 0334-0336, paras 31-41; at 0339, paras 61-62; Annex 3, CIV-OTP-0041-0345; Witness P-362, CIV-OTP-0046-1271 at 1274-1277, paras 15-32; Annex 1, CIV-OTP-0046-1282; Witness P-360, CIV-OTP-0046-1203 at 1207-1209, paras 16-26; Witness P-363, CIV-OTP-0046-0275 at

54. Witnesses who were present at the scene when the shells struck Abobo or arrived immediately thereafter provide specific testimony, which is, however, necessarily limited to their personal experience and observation in particular locations.<sup>120</sup> Some of them were themselves severely injured by the shelling.<sup>121</sup> Other available evidence provides indications as to the aggregate number of victims of the shelling. In particular, some witnesses, on account of their activities, have knowledge of the overall consequences of the shelling.<sup>122</sup>

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0279-0282, paras 18-28; at 0283, paras 36-37; Annex 1, CIV-OTP-0046-0286; Annex 2, CIV-OTP-0046-0287; Annex 3, CIV-OTP-0046-0288; Witness P-131, CIV-OTP-0046-1244 at 1247-1248, paras 11, 14-20; Witness P-297, CIV-OTP-0041-0412 at 0416-0417, paras 24-30; at 0419-0420, paras 44-47; Witness P-294, CIV-OTP-0041-0388 at 0392-0393, paras 18-23; Witness P-189, CIV-OTP-0042-0508 at 0538-0539, paras 117-128; Witness P-106, CIV-OTP-0019-0211 at 0228, paras 89-91; Witness P-172, CIV-OTP-0028-0550 at 0565, paras 116-120; Witness P-217, CIV-OTP-0040-0372 at 0406-0408, paras 169-172 and 179-180; Witness P-369, CIV-OTP-0048-1396 at 1461-1463, paras 236-245), the UNOCI findings as communicated a few days after the events (see *e.g.* CIV-OTP-0002-0983 at 0991-0992), as well as [REDACTED] dated 17 March (CIV-OTP-0044-1654 at 1662-1665) and 18 March 2011 (CIV-OTP-0044-1666 at 1666-1679), a report presented by the UN High Commissioner for Human Rights to the UN Secretary General (CIV-OTP-0002-0598 at 0604, para. 16), a report by Human Rights Watch (CIV-OTP-0004-0072 at 0140-0141) and a report by Amnesty International (CIV-OTP-0002-0647 at 0673) both prepared on the basis of several interviews of multiple witnesses and victims of the events, summaries prepared by the Prosecutor of several statements given by victims to two local NGOs (CIV-OTP-0007-0231 at 0231-0233), as well as a number of other items of open-source material (see *e.g.* CIV-OTP-0003-0725 and CIV-OTP-0003-0425).

<sup>120</sup> See Witness P-105, CIV-OTP-0019-0245 at 0249-0250, paras 22-23, 25, 27; Witness P-293, CIV-OTP-0041-0328 at 0335, paras 34, 35, 39; Witness P-362, CIV-OTP-0046-1271 at 1276, paras 19-25; Witness P-360, CIV-OTP-0046-1203 at 1208, paras 20-23; Witness P-363, CIV-OTP-0046-0275 at 0280-0282, paras 21-28; Witness P-131, CIV-OTP-0046-1244 at 1248, paras 15-18; Witness P-294, CIV-OTP-0041-0388 at 0392, para. 18; Witness P-189, CIV-OTP-0042-0508 at 0538, paras 118-120 and at 0540-0541, paras 134-135; Witness P-297, CIV-OTP-0041-0412 at 0416-0417, para. 24.

<sup>121</sup> Witness P-105, CIV-OTP-0019-0245 at 0248, para. 19; at 0248-0249, para. 21; Witness P-131, CIV-OTP-0046-1244 at 1247-1248, para. 11; Witness P-364, CIV-OTP-0046-1254 at 1258, paras 14-18 and Annexes 4 and 5, CIV-OTP-0046-1264, CIV-OTP-0046-1265.

<sup>122</sup> This is the case, for example, for Witness P-184 who states that on the day after the shelling, the *Comité de Survie d'Abobo*, [REDACTED] (CIV-OTP-0032-0011 at 0023, para. 70), was convened in order to establish the number of deaths which, at that moment, appeared to total approximately 40 people (CIV-OTP-0032-0011 at 0030-0031, paras 117-119, 122); Witness P-169, Director of Abobo Sud hospital, who reports that about 40 bodies and about 50 wounded were received at the hospital on the day of the shelling (CIV-OTP-0029-0323 at 0334, para. 62); Witness P-189, [REDACTED] he learnt that at 18.00 hours [REDACTED], a total of 43 people had already died (CIV-OTP-0042-0508 at 0538-0539, paras 118-121 and 128); Witness P-106, who states that a total of 24 people died as a result of the shelling (CIV-OTP-0019-0211 at 0228, paras 89-91); and [REDACTED] several individuals with first-hand knowledge of the shelling,

Other documentary evidence also provides information about the aggregate number of victims.<sup>123</sup>

55. On this basis, the Chamber considers that the Prosecutor's allegation that on 17 March 2011 several mortar shells landed in or near Abobo market, killing at least 40 persons and injuring at least another 60 finds sufficient support in the evidence.

56. The available evidence also indicates that the shelling of Abobo on 17 March 2011 was carried out by elements from the Air Defence Artillery Battalion (BASA) posted at Camp Commando, which was a FANCI unit that specialised in the use of heavy artillery including mortars.<sup>124</sup> Elements of BASA were regularly sent on mission to Camp Commando during the post-electoral crisis, including on 17 March 2011, the day of the shelling.<sup>125</sup> FDS witnesses explain the context in which the shelling from Camp Commando

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who indicated [REDACTED] that at least 23 people were killed and many more injured ([REDACTED]).

<sup>123</sup> In particular, in the aftermath of the shelling, UNOCI reported that 13 people were killed as a result of the shelling of the Siaka Koné market (CIV-OTP-0044-1739 at 1739). One week after the shelling, UNOCI reported that the total number of victims killed by the shelling in Abobo on 17 March 2011 was between 25 and 30, claiming to be able to confirm that at least 25 of them were direct victims of the shelling, while for the other five, investigations were still ongoing (CIV-OTP-0002-0983 at 0991-0992). The Secretary-General of the United Nations and the UN High Commissioner for Human Rights subsequently reported the killing of more than 25 people and the wounding of more than 40 (CIV-OTP-0002-0010 at 0021, para. 49; and CIV-OTP-0002-0598 at 0604, para. 16, respectively). Human Rights Watch, on the basis of the interviews of different witnesses, concluded that at least six people were killed and 34 injured in the shelling of the SOS village d'enfants (HRW report, CIV-OTP-0004-0072 at 0140) and that at least 15 people were killed and some dozen more injured by the shells landing on the Siaka Koné market (HRW report, CIV-OTP-0004-0072 at 0140). Similarly, Amnesty International states that the shelling of the market killed at least 20 people and wounded 60 others (Amnesty International report, CIV-OTP-0002-0647 at 0673).

<sup>124</sup> Witness P-164, CIV-OTP-0028-0481 at 0484, para. 14, and at 0488-0489, paras 47-71; Witness P-218, CIV-OTP-0040-0446 at 0462, para. 95; Witness P-226, CIV-OTP-0039-0143 at 0148-0149, paras 23-30; Witness P-238, CIV-OTP-0048-1503 at 1510, para. 27; Witness P-239, CIV-OTP-0037-0425 at 0429, para. 22; at 0432, paras 35-40; at 0434, paras 50-69.

<sup>125</sup> Witness P-164, CIV-OTP-0028-0481 at 0486, paras 32-33; at 0495, paras 94-96; Witness P-239, CIV-OTP-0037-0425 at 0441-0445, paras 100-134.

took place, identifying two BASA officers as having fired the shells in accordance with orders received from their superiors.<sup>126</sup>

57. According to the evidence, mortars had already been set up in Camp Commando prior to the shelling of 17 March 2011. Witness P-330, [REDACTED], states that the chief of operations at Camp Commando was relieved of his post because he disagreed with the installation, upon orders from the Presidency, of mortars in Camp Commando at the end of February or the beginning of March 2011.<sup>127</sup> More precisely, several FDS witnesses report that two mortars were installed at Camp Commando prior to 17 March 2011 and that one was aimed towards PK18 – northwest from Camp Commando – and the other was directed towards the Abobo City Hall / Samanké to the south.<sup>128</sup> The witnesses confirm that it was the mortar aimed at the Abobo City Hall that was fired on 17 March 2011.<sup>129</sup>

58. [REDACTED],<sup>130</sup> [REDACTED].<sup>131</sup> [REDACTED].<sup>132</sup> In addition, Witness P-239 states that already before 17 March 2011, BASA elements in Abobo were ordered to fire 120 mm mortar shells and that given the nature of the weapon, they requested a written order to do so.<sup>133</sup>

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<sup>126</sup> Witness P-239, CIV-OTP-0037-0425 at 0443-0444, paras 122-129; Witness P-164, CIV-OTP-0028-0481 at 0502-0503, paras 135-142; Witness P-226, CIV-OTP-0039-0143 at 0177-0180, paras 111-118. See also Witness P-218 (CIV-OTP-0040-0446 at 0463, para. 97) and Witness P-234 (CIV-OTP-0041-0534 at 0574-0577, paras 151-161).

<sup>127</sup> Witness P-330, CIV-OTP-0049-2192 at 2223-2224; CIV-OTP-0049-2404 at 2416-2435.

<sup>128</sup> Witness P-164, CIV-OTP-0028-0481 at 0497, para. 112; at 0504, para. 153; Annexes 1, 7 and 11 attached to his statement; Witness P-239, CIV-OTP-0037-0425 at 0443-0444, paras 122 and 130; see image CIV-OTP-0037-0468 for the exact position; Witness P-330, CIV-OTP-0049-2404 at 2424-2425, 2435; see image CIV-OTP-0046-0398 for the exact position; see also CIV-OTP-0049-2404 at 2424-2426, 2445 *et seq.*

<sup>129</sup> Witness P-164, CIV-OTP-0028-0481 at 0504, para. 153; Witness P-239, CIV-OTP-0037-0425 at 0443-0444, paras 122 and 130.

<sup>130</sup> [REDACTED]

<sup>131</sup> [REDACTED]

<sup>132</sup> [REDACTED]

<sup>133</sup> Witness P-239, CIV-OTP-0037-0425 at 0442, paras 108-110.

59. Witness P-10 confirms that only the army unit based in Akouédo camp – namely BASA – had mortars in its arsenal, and that therefore only BASA elements could have been responsible for the shelling of the market.<sup>134</sup> The same information is given by Witness P-218.<sup>135</sup> The Chamber notes that the maximum range of the mortar shells in question is six to seven kilometres and that it is therefore impossible that they were launched from the BASA headquarters in Akouédo.<sup>136</sup> In this regard, it is worth recalling that according to several witnesses, members of BASA, while based in Akouédo, were on a mission in Camp Commando during the relevant time, with the purpose of operating heavy weapons.<sup>137</sup>

60. The UN High Commissioner for Human Rights reported that an investigation conducted by UNOCI, which included an analysis of the crater of the impact of the shells as well as concurring statements by witnesses, indicated that the shells were fired from Camp Commando.<sup>138</sup> Finally, the Chamber notes that Witnesses P-363,<sup>139</sup> several direct witnesses of the event [REDACTED],<sup>140</sup> at least two witnesses interviewed by Human Rights Watch,<sup>141</sup> and four victims who provided their statements to two local NGOs (as summarised by the Prosecutor)<sup>142</sup> also state that the mortar shells were fired from Camp Commando.

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<sup>134</sup> Witness P-10, CIV-OTP-0016-0084 at 0098, 0102; CIV-OTP-0016-0104 at 0117.

<sup>135</sup> Witness P-218, CIV-OTP-0040-0446 at 0462, para. 95.

<sup>136</sup> Witness P-164, CIV-OTP-0028-0481 at 0505, para. 160; Witness P-239, CIV-OTP-0037-0425 at 0434, para. 56.

<sup>137</sup> Witness P-164, CIV-OTP-0028-0481 at 0486, paras 32-33; at 0495, para. 96; Witness P-226, CIV-OTP-0039-0143 at 0167-0168, paras 79-81; Witness P-239, CIV-OTP-0037-0425 at 0436, para. 68 and at 0443, para. 116; Witness P-321, CIV-OTP-0046-1011 at 1012-1013.

<sup>138</sup> UN HCHR report, CIV-OTP-0002-0598 at 0604, para. 16.

<sup>139</sup> Witness P-363, CIV-OTP-0046-0275 at 0280, para. 19.

<sup>140</sup> [REDACTED]

<sup>141</sup> HRW report, CIV-OTP-0004-0072 at 0140.

<sup>142</sup> OTP affidavit, CIV-OTP-0007-0231 at 0231-0233, paras 3, 4, 8 and 12.

61. The Chamber is of the view that the evidence indicating that the shelling was carried out by the FDS forces stationed at Camp Commando is not undermined by the evidence relied on by the Defence in support of its hypothesis that it could have been the *Commando Invisible* which shelled Abobo on 17 March 2011.<sup>143</sup> The Defence relies on the statements of Witnesses P-10<sup>144</sup> and Alain Dogou,<sup>145</sup> and on the fact that Witnesses P-9 and P-47 state that the Chief of Staff did not authorise the use of mortars in Abobo.<sup>146</sup> The Chamber takes note of the argument of the Defence and the evidence relied on in its support, but is of the view that they are not sufficient to disturb the conclusion that the mortar shells were fired by FDS units based at Camp Commando. The same holds true with respect to the other alternative hypothesis proposed by the Defence that the shelling was the result of a “*règlement de comptes entre rebelles*”,<sup>147</sup> which lacks any foundation in the evidence.

62. The Defence also proposes that the shelling did not constitute an attack against the civilian population given the presence of combatants in Abobo.<sup>148</sup> As discussed elsewhere in the present decision,<sup>149</sup> the Chamber considers it established that on 17 March 2011 organised resistance groups were present in Abobo. Nevertheless, this fact does not deny either that the shelling took place or that it targeted the civilian population as alleged by the Prosecutor.

63. In this regard, the Chamber recalls the evidence indicating that the shells were fired from Camp Commando and that one mortar placed in Camp

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<sup>143</sup> Defence Submissions, paras 745-749.

<sup>144</sup> Witness P-10, CIV-OTP-0016-0130 at 0144 (stating that also the *Commando Invisible* had mortars in its arsenal).

<sup>145</sup> Witness Alain Dogou, CIV-D15-0001-1273 at 1289 (stating that on the day of the shelling the government spokesperson “*a dénoncé [...] une affaire montée de toutes pièces*”).

<sup>146</sup> Witness P-9, CIV-OTP-0011-0556 at 0559; Witness P-47, CIV-OTP-0015-0244 at 0267.

<sup>147</sup> Defence Submissions, paras 750-751.

<sup>148</sup> Defence Submissions, paras 734-744.

<sup>149</sup> See below, para. 172.

Commando was directed south, towards the Abobo City Hall / Samanké, approximately on the line Camp Commando – SOS Village d’Enfants – Siaka Koné market. The evidence shows that the area falling within the radius of action of this mortar, corresponding to central Abobo to the south of Camp Commando, is densely populated. Furthermore, the Chamber notes the evidence indicating that mortar shells have a highly destructive impact and are inherently inaccurate, as the exact distance (up to a maximum of six to seven kilometres) and the precise trajectory depend on a series of circumstances beyond human control.<sup>150</sup> In these circumstances, the Chamber is not persuaded that the presence of combatants in Abobo contradicts the civilian nature of the population targeted by the shells, as suggested by the Defence.

*d) The attack on Yopougon (on or around 12 April 2011)*

64. The Prosecutor alleges that on or around 12 April 2011 in Yopougon, pro-Gbagbo forces killed at least 75 persons hailing primarily from northern Côte d’Ivoire and neighbouring West African countries, raped at least 22 women and wounded at least two persons.<sup>151</sup>

65. The analysis of the evidence indicates that on or around 12 April 2011, pro-Gbagbo forces attacked the Yopougon neighbourhoods of Doukouré and Mami Fatai – areas with inhabitants mostly from the Dioula group, the north of Côte d’Ivoire and West-African countries.<sup>152</sup> The attackers, armed with guns and machetes, attacked people on the street and broke into homes,

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<sup>150</sup> Witness P-9, CIV-OTP-0051-1159 at 1161; Witness P-164, CIV-OTP-0028-0481 at 0504, paras 154-155; at 0505, paras 160, 162; Witness P-239, CIV-OTP-0037-0425 at 0434, para. 56; HRW report, CIV-OTP-0004-0072 at 0140.

<sup>151</sup> Amended DCC, paras 217-219.

<sup>152</sup> Witness P-118, CIV-OTP-0029-0267 at 0289; Witness P-185, CIV-OTP-0029-0656 at 0660, para. 21; Witness P-109, CIV-OTP-0020-0335 at 0352, para. 59; Witness P-229, CIV-OTP-0039-0196 at 0219, para. 68; Witness P-369, CIV-OTP-0048-1396 at 1467, para. 259; Video, CIV-OTP-0028-0008 with transcript CIV-OTP-0027-0440 at 0443.

killing,<sup>153</sup> raping<sup>154</sup> and injuring<sup>155</sup> residents. As the submissions of the Prosecutor and the evidence presented relate to a clearly defined event, the Chamber is not persuaded by the arguments of the Defence that the Prosecutor's allegations are not specific.<sup>156</sup>

66. The evidence further suggests that a number of mass graves discovered subsequently in Yopougon were associated with the acts of violence that occurred in Doukouré and Mami Faitai on or around 12 April 2011.<sup>157</sup> The fact

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<sup>153</sup> Witness P-109, CIV-OTP-0020-0335 at 0366-0370, paras 124-136; at 0370, para. 138; at 0371, para. 142; at 0372-0373, paras 147-149; Annex 9, CIV-OTP-0020-0393 at 0393; Annex, CIV-OTP-0020-0404 at 0404; Witness P-185, CIV-OTP-0029-0656 at 0670-0671, paras 66-69; Witness P-226, CIV-OTP-0039-0143 at 0182-0185, paras 123-127; Witness P-398, CIV-OTP-0049-2842 at 2860-2861, paras 69-71; Witness P-404, CIV-OTP-0051-0236 at 0249-0250, paras 51-55; [REDACTED], CIV-OTP-0044-0356 at 0356, para. 3; [REDACTED], CIV-OTP-0044-1270 at 1275, para. 20; [REDACTED], CIV-OTP-0044-0392 at 0415, para. 2; OTP affidavit, CIV-OTP-0007-0231 at 0233, para. 11; List of injured/disappeared/killed, CIV-OTP-0032-0054-0001 at 0104, 0106; Witness P-369, CIV-OTP-0048-1396 at 1465-1466, paras 254-258; HRW press release, CIV-OTP-0002-0631 at 0632-0633, at 0642-0645; HRW report, CIV-OTP-0004-0072 at 0147-0150.

<sup>154</sup> Witness P-185, CIV-OTP-0029-0656 at 0670, para. 65; at 0671-0673, paras 70-81; Witness P-398, CIV-OTP-0049-2842 at 2856-2589, paras 50-67; Witness P-404, CIV-OTP-0051-0236 at 0246-0249, paras 39-50; Report, CIV-OTP-0022-0042 at 0042-0047 (see also Report, CIV-OTP-0021-0955 at 0982, para. 63; at 0983, para. 65); CIV-OTP-0022-0002; CIV-OTP-0022-0003; CIV-OTP-0022-0004; CIV-OTP-0022-0005; CIV-OTP-0022-0006; CIV-OTP-0022-0008; CIV-OTP-0022-0009; CIV-OTP-0022-0010; CIV-OTP-0022-0011; CIV-OTP-0022-0013; CIV-OTP-0022-0017; CIV-OTP-0022-0018; CIV-OTP-0022-0020; CIV-OTP-0022-0022; CIV-OTP-0022-0023; CIV-OTP-0022-0029; CIV-OTP-0022-0030; CIV-OTP-0022-0037; CIV-OTP-0022-0038; CIV-OTP-0022-0039; CIV-OTP-0022-0040; CIV-OTP-0022-0041; Witness P-369, CIV-OTP-0048-1396 at 1466-1467, paras 259-260; HRW press release, CIV-OTP-0002-0631 at 0632-0633, 0642-0645; HRW report, CIV-OTP-0004-0072 at 0147-0150.

<sup>155</sup> Witness P-109, CIV-OTP-0020-0335 at 0367, para. 127. In the view of the Chamber, the evidence establishes only one injury related to the attack in Yopougon on or around 12 April 2011.

<sup>156</sup> Defence Submissions, paras 769-806.

<sup>157</sup> Witness P-108, CIV-OTP-0013-0108 at 0126, paras 143-148; Witness P-109, CIV-OTP-0020-0335 at 0369, paras 133-134; at 0374-0375, paras 156-165; Annex 5, CIV-OTP-0020-0387 at 0387; Annex 11, CIV-OTP-0020-0395; Annex 15, CIV-OTP-0020-0408; Witness P-398, CIV-OTP-0049-2842 at 2861, para. 71; Witness P-404, CIV-OTP-0051-0236 at 0249, paras 51-52; [REDACTED], CIV-OTP-0044-1270 at 1274, para. 17; Witness P-396, CIV-OTP-0048-1396 at 1466, para. 256; HRW report, CIV-OTP-0004-0072 at 0149; UN HCHR report, CIV-OTP-0002-0598 at 0605, para. 18; Press articles, CIV-OTP-0002-1006 at 1006; CIV-OTP-0002-1046 at 1046; CIV-OTP-0003-0603 at 0603; CIV-OTP-0004-0043 at 0043; CIV-OTP-0004-0222 at 0222-0223; CIV-OTP-0017-0040 at 0040-0041; Report, CIV-OTP-0037-0138 at 0144; Video, CIV-OTP-0004-0234 with transcript CIV-OTP-0021-0929 at 0930-0931 (translation CIV-OTP-0021-0837 at 0839-0840); Video, CIV-OTP-0012-0048 with transcript CIV-OTP-0053-0003 at 0004 (translation CIV-OTP-0053-0147 at 0149); Video, CIV-OTP-0017-0042 with transcript CIV-OTP-0021-1014 at 1015-



that victims were buried in these mass graves is also established by a witness who observed the killing of identified individuals and saw their bodies at the location of a mass grave the next morning.<sup>158</sup> The Chamber therefore considers it appropriate to take into account the evidence related to the mass graves when determining the total number of killings.

67. The evidence points to the acts of violence at issue having been committed by pro-Gbagbo youth, militia and mercenaries.<sup>159</sup> This conclusion is supported by the evidence of the statements made by the attackers to their victims, which also indicates that the violence was politically motivated and directed against real or perceived Ouattara supporters,<sup>160</sup> while one witness was able to identify a particular perpetrator whom he personally knew.<sup>161</sup>

68. The Chamber refers to the evidence that throughout the post-election crisis, a number of militia groups were active in Yopougon.<sup>162</sup> There is also

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1016 (translation CIV-OTP-0021-1008 at 1010-1011); List of injured/disappeared/killed, CIV-OTP-0032-0054-0001 at 0106.

<sup>158</sup> Witness P-109, CIV-OTP-0020-0335 at 0366, para. 125; at 0367, para. 128; at 0389, paras 133-134.

<sup>159</sup> Witness P-109, CIV-OTP-0020-0335 at 0366-0367, paras 125-127; at 0368, para. 129; at 0370-0371, paras 138, 141; at 0372-0373, paras 147-149; Witness P-185, CIV-OTP-0029-0656 at 0670, para. 65; at 0671, paras 68, 70; Witness P-398, CIV-OTP-0049-2842 at 2856, paras 50-51; Witness P-404, CIV-OTP-0051-0236 at 0246-0247, paras 39-44; at 0249-0250, paras 51-53; Witness P-369, CIV-OTP-0048-1396 at 1466, paras 255, 257-258; HRW press release, CIV-OTP-0002-0631 at 0642-0645; UN HCHR report, CIV-OTP-0002-0598 at 0602-0603, para. 7.

<sup>160</sup> Witness P-109, CIV-OTP-0020-0335 at 0367-0368, paras 128-130; at 0370-0371, paras 138, 141; Witness P-185, CIV-OTP-0029-0656 at 0670-0671, para. 67; at 0671-0672, paras 70-72; Video, CIV-OTP-0004-0234 at 00:01:20-00:01:30 with transcript CIV-OTP-0021-0929 at 0931 (translation CIV-OTP-0021-0837 at 0840); Witness P-226, CIV-OTP-0039-0143 at 0184-0185, para. 126; Witness P-398, CIV-OTP-0049-2842 at 2856, para. 50; at 2857, para. 53; at 2859, para. 63; at 2860-2861, paras 69-70; Witness P-404, CIV-OTP-0051-0236 at 0246, para. 41; at 0247, para. 44; Witness P-369, CIV-OTP-0048-1396 at 1465-1466, paras 254-255; HRW press release, CIV-OTP-0002-0631 at 0642-0644.

<sup>161</sup> Witness P-109, CIV-OTP-0020-0335 at 0366, para. 126.

<sup>162</sup> Witness P-109, CIV-OTP-0020-0335 at 0356-0357, paras 80-82; at 0358-0359, paras 92-97; at 0364, paras 115-117; at 0380, para. 182; Witness P-108, CIV-OTP-0013-0108 at 0114-0115, paras 36-50; Witness P-226, CIV-OTP-0039-0143 at 0153, para. 40; at 0182-0184, paras 123-126; at 0186-0187, paras 131-133; Annex 4, CIV-OTP-0039-0192 at 0192; Witness P-107, CIV-OTP-0020-0064 at 0086, paras 164-165; Witness P-330, CIV-OTP-0049-2634 at 2644-2650, 2662-2663; Witness P-238, CIV-OTP-0048-1503 at 1546-1547, paras 200-203; Witness P-229, CIV-OTP-

evidence pointing to the presence of mercenaries in Yopougon and their cooperation with militia groups.<sup>163</sup> As analysed below,<sup>164</sup> there is evidence that militia in Yopougon were trained before and during the crisis,<sup>165</sup> and received support from the FDS,<sup>166</sup> and from Laurent Gbagbo's Presidency.<sup>167</sup> Other information points to links between pro-Gbagbo militia groups and Charles Blé Goudé, and their support of Laurent Gbagbo.<sup>168</sup>

69. While there is information suggesting that the violence in Yopougon was motivated by anger and a wish for revenge in light of Laurent Gbagbo's arrest,<sup>169</sup> the evidence indicates that Gbagbo supporters in Yopougon

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0039-0196 at 0212, para. 50; at 0214, para. 54; at 0222, para. 80; at 0223, paras 82-85; Witness P-316, CIV-OTP-0043-0461 at 0483, para. 85; Witness P-324, CIV-OTP-0046-1545 at 1571-1572; CIV-OTP-0047-0036 at 0056-0057; Witness P-9, CIV-OTP-0051-0618 at 0652-0653; CIV-OTP-0051-1247 at 1278-1283; Witness P-118, CIV-OTP-0029-0244 at 0263-0265; Witness P-11, CIV-OTP-0016-0256 at 0263, 0271-0272; Witness P-369, CIV-OTP-0048-1396 at 1468, paras 265-267; at 1478, para. 294; Video, CIV-OTP-0028-0008 with transcript CIV-OTP-0027-0440.

<sup>163</sup> Witness P-234, CIV-OTP-0041-0534 at 0577, para. 162; at 0579, paras 171, 173; Witness P-321, CIV-OTP-0046-0790 at 0803; CIV-OTP-0046-0814 at 0835-0837; CIV-OTP-0046-1050 at 1063; Witness P-109, CIV-OTP-0020-0335 at 0380, paras 181-182; Witness P-330, CIV-OTP-0049-2634 at 2639-2641; Witness P-100, CIV-OTP-0020-0283 at 0294-0295; Witness P-398, CIV-OTP-0049-2842 at 2856, para. 51; Witness P-404, CIV-OTP-0051-0236 at 0245, para. 32; UN Expert Group report, CIV-OTP-0027-0304 at 0331, para. 62.

<sup>164</sup> See below, para. 139.

<sup>165</sup> Witness P-107, CIV-OTP-0020-0064 at 0068, paras 21-23; at 0069, paras 29-33; Witness P-108, CIV-OTP-0013-0108 at 0114, para. 40; at 0115, paras 44-48; Witness P-109, CIV-OTP-0020-0335 at 0356-0357, paras 80-84; Witness P-226, CIV-OTP-0039-0143 at 0153-0154, para. 40; Witness P-330, CIV-OTP-0049-2634 at 2653-2657; Witness P-369, CIV-OTP-0048-1396 at 1477, para. 291.

<sup>166</sup> Witness P-109, CIV-OTP-0020-0335 at 0357-0358, paras 85-91; Witness P-330, CIV-OTP-0049-2634 at 2653-2656; Witness P-108, CIV-OTP-0013-0108 at 0115, para. 45; Witness P-238, CIV-OTP-0048-1503 at 1538, para. 164; Witness P-107, CIV-OTP-0020-0064 at 0070, paras 41-43; at 0087, para. 169; Witness P-226, CIV-OTP-0039-0143 at 0153-0154, para. 40; at 0184, para. 126; Witness P-324, CIV-OTP-0047-0036 at 0049-0052.

<sup>167</sup> Witness P-330, CIV-OTP-0049-2634 at 2653-2656.

<sup>168</sup> Witness P-107, CIV-OTP-0020-0064 at 0068-0069, paras 21-28; at 0069, paras 32, 34-37; at 0070, paras 42-43; at 0086, para. 164; Witness P-109, CIV-OTP-0020-0335 at 0359, para. 94; Witness P-234, CIV-OTP-0041-0534 at 0579, para. 172; Witness P-369, CIV-OTP-0048-1396 at 1476-1478, paras 289-290. See also Witness P-324, CIV-OTP-0046-1345 at 1349, 1352, 1363.

<sup>169</sup> Witness P-109, CIV-OTP-0020-0335 at 0366, para. 124; at 0374, para. 154; HRW report, CIV-OTP-0004-0072 at 0147-0148. See also Press article, CIV-OTP-0004-0043 at 0043.

harboured aversion to those they considered “enemies” prior to, and independent of, Laurent Gbagbo’s arrest.<sup>170</sup>

70. In particular, inter-community tensions appear to have been fuelled by the activities of Laurent Gbagbo and his inner circle within the youth and militia groups in Yopougon. The evidence suggests that in October 2010, during the election campaign, Laurent Gbagbo spoke at a “*parlement*” in Yopougon, telling the participants to fight, not to give up and not to let the country fall into the hands of enemies.<sup>171</sup> Charles Blé Goudé visited “*parlements*” in Yopougon on several occasions,<sup>172</sup> apparently considering Yopougon to be Laurent Gbagbo’s community,<sup>173</sup> and called on the youth to erect roadblocks and watch their neighbourhood.<sup>174</sup> In addition, Charles Blé Goudé seems to have visited Yopougon on two occasions in January 2011, for a rally in Sel Mer at which he explained that Laurent Gbagbo had won the elections,<sup>175</sup> and for a press conference at the Baron Bar in Yopougon Selmer.<sup>176</sup> He also attended a major rally in March 2011, during which he called on the youth to enlist in the army to serve their country.<sup>177</sup>

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<sup>170</sup> Witness P-107, CIV-OTP-0020-0064 at 0068, paras 21, 23-25; at 0069, paras 35-36; at 0070, paras 42-43; Witness P-109, CIV-OTP-0020-0335 at 0374, paras 154-155; Witness P-185, CIV-OTP-0029-0656 at 0662, paras 29-30; Witness P-226, CIV-OTP-0039-0143 at 0183-0185, paras 125-127; Video, CIV-OTP-0028-0008 with transcript CIV-OTP-0027-0440.

<sup>171</sup> Witness P-109, CIV-OTP-0020-0335 at 0346, para. 34; at 0350, paras 50-52. See also Witness P-108, CIV-OTP-0013-0108 at 0113-0114, paras 31-32.

<sup>172</sup> Witness P-108, CIV-OTP-0013-0108 at 0114, para. 34; Witness P-109, CIV-OTP-0020-0335 at 0348, para. 41; at 0350, para. 50; Witness P-118, CIV-OTP-0029-0267 at 0268-0269; Witness P-234, CIV-OTP-0041-0534 at 0579, para. 172; Faits saillants, CIV-OTP-0045-0543 at 0543.

<sup>173</sup> Witness P-109, CIV-OTP-0020-0335 at 0352, para. 61.

<sup>174</sup> Witness P-109, CIV-OTP-0020-0335 at 0352, para. 61; at 0355, paras 73-75; Witness P-229, CIV-OTP-0039-0196 at 0209-0210, para. 42; Witness P-398, CIV-OTP-0049-2842 at 2850-2851, paras 30-32; Witness P-369, CIV-OTP-0048-1396 at 1471, paras 273-274; Amnesty International report, CIV-OTP-0002-0647 at 0677; Ministry of Interior report, CIV-OTP-0045-0144 at 0145-0146.

<sup>175</sup> Witness P-118, CIV-OTP-0029-0172 at 0182-0189.

<sup>176</sup> Witness P-118, CIV-OTP-0029-0193 at 0194-0199; CIV-OTP-0029-0267 at 0268; see also Video, CIV-OTP-0002-0351 with transcript CIV-OTP-0007-0177 at 0180.

<sup>177</sup> Witness P-87, CIV-OTP-0011-0201 at 0209-0210, paras 51-60; Video, CIV-OTP-0015-0476 with transcript CIV-OTP-0020-0500 at 0501-0505 (translation CIV-OTP-0020-0454 at 0456-0460)

71. The Defence submits that rebel groups had infiltrated Yopougon long before 12 April 2011, and that a part of Yopougon was controlled by rebel forces which committed crimes and clashed with the pro-Gbagbo forces that no longer controlled Yopougon.<sup>178</sup> There are indeed indications that in April 2011, parts of Yopougon, in particular in the north-west, were already controlled by pro-Ouattara elements, and that crimes may have been committed by those forces.<sup>179</sup> However, this has no bearing on the evidence and conclusions of the Chamber with respect to the attack at issue and its attribution to pro-Gbagbo forces, also in light of the evidence demonstrating that other areas of Yopougon, including Doukouré and Mami Fatai, were still under control of pro-Gbagbo forces.<sup>180</sup>

72. Based on this analysis, the evidence indicates that at least 22 women were raped and at least 68 individuals were killed, while one person was injured, by the pro-Gbagbo forces in the course of the attack on perceived Ouattara supporters in Yopougon.

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(see also CIV-OTP-0003-0670 at 00:02:25-00:04:15 with transcript CIV-OTP-0020-0531 at 0534-0536); Witness P-106, CIV-OTP-0019-0211 at 0221, paras 53-55; UN SG report, CIV-OTP-0002-0010 at 0021, para. 51; HRW report, CIV-OTP-0004-0072 at 0119; Press article, CIV-OTP-0003-0632 at 0632.

<sup>178</sup> Defence Submissions, paras 67, 830-852, 855.

<sup>179</sup> Witness P-109, CIV-OTP-0020-0335 at 0373, para. 152; Witness P-226, CIV-OTP-0039-0143 at 0182-0183, para. 123; Annex 4, CIV-OTP-0039-0192 at 0192; Witness D-14, CIV-D15-0001-5407 at 5407-5408; Witness D-23, CIV-D15-0001-5508 at 5508-5510; Screening notes of Witness P-179, CIV-OTP-0029-0601 at 0602, para. 2; Screening notes of Witness P-251, CIV-OTP-0038-0145 at 0146-0147; Witness P-11, CIV-OTP-0016-0256 at 0278; Witness P-44, CIV-D15-0001-3704 at 3715-3716; Witness P-218, CIV-OTP-0040-0446 at 0468-0469, paras 135-138; Witness P-229, CIV-OTP-0039-0196 at 0219-0220, paras 68-69; Amnesty International press release, CIV-D15-0001-2327 at 2343; Photographs, CIV-D15-0001-0717 at 0772; Press article, CIV-D15-0001-2419 at 2419-2420; [REDACTED], CIV-OTP-0044-0392 at 0394, 0417-0418; Report, CIV-D15-0001-0782 at 0816. See also [REDACTED], CIV-OTP-0044-1167 at 1168-1169, para. 4; Police report, CIV-OTP-0045-0216 at 0216-0217.

<sup>180</sup> Witness P-226, CIV-OTP-0039-0143 at 0182-0183, paras 123-124; Annex 4, CIV-OTP-0039-0192 at 0192; Witness P-316, CIV-OTP-0043-0461 at 0467, para. 23; Witness P-321, CIV-OTP-0046-0814 at 0837; Witness P-234, CIV-OTP-0041-0534 at 0578, para. 168; Witness P-10, CIV-OTP-0051-0392 at 0415; Witness P-11, CIV-OTP-0016-0347 at 0360; UN HCHR report, CIV-OTP-0002-0598 at 0602-0603, para. 7.

## B. Other acts

73. As submitted by the Prosecutor, numerous violent acts were committed against the civilian population within the context of a number of incidents which occurred in Abidjan during the post-election crisis. In accordance with the available evidence, the Chamber considers the following acts to be substantiated by evidence with a sufficient level of specificity.

74. First, as concerns the alleged acts of sexual violence, the evidence shows, in addition to the conclusions above with respect to rapes that were committed during the repression of the demonstration on 16 December 2010 and in the days that followed,<sup>181</sup> and the rapes that took place in Yopougon on or around 12 April 2011,<sup>182</sup> that on 25 February 2011 in Abobo, FDS including CECOS and police in black uniforms, as well as pro-Gbagbo youth, raped nine women.<sup>183</sup> In particular, two women were raped in their homes, and their husbands were abducted and probably killed, while seven women, abducted in two separate incidents, were brought to the same location and raped.<sup>184</sup> The evidence indicates that the victims were targeted because of their known political affiliation with the Ouattara camp.<sup>185</sup>

75. Further, there is evidence of a pattern of suppression of civilian demonstrations organised by Ouattara supporters. In addition to the repression of the demonstration on 16 December 2010<sup>186</sup> and the attack on the

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<sup>181</sup> See above, paras 30, 34-35.

<sup>182</sup> See above, para. 65.

<sup>183</sup> Witness P-369, CIV-OTP-0048-1396 at 1447-1449, paras 188-194; HRW press release, CIV-OTP-0002-0173 at 0176-0177 (same information in HRW report, CIV-OTP-0004-0072 at 0127-0129).

<sup>184</sup> Witness P-369, CIV-OTP-0048-1396 at 1447-1449, paras 188-194; HRW press release, CIV-OTP-0002-0173 at 0176-0177 (same information in HRW report, CIV-OTP-0004-0072 at 0127-0129).

<sup>185</sup> Witness P-369, CIV-OTP-0048-1396 at 1448, para. 189; at 1449, para. 191; HRW press release, CIV-OTP-0002-0173 at 0176-0177 (same information in HRW report, CIV-OTP-0004-0072 at 0127-0129).

<sup>186</sup> See above, paras 24-41.

demonstration on 3 March 2011 in Abobo,<sup>187</sup> the Chamber finds that the evidence sufficiently demonstrates that:

- (i) between 27 and 29 November 2010, the FDS forcefully repressed RHDP demonstrations against the curfew in Abobo, killing up to 12 individuals;<sup>188</sup>
- (ii) on 4 December 2010, RHDP youths had put up roadblocks at a mosque in Koumassi when seven BMO members fired at the demonstrators there, first with teargas grenades and then live rounds,<sup>189</sup> wounding eight people, including an 11-year old boy who later died from his injuries;<sup>190</sup>
- (iii) on 6 December 2010, the FDS, possibly BMO, opened fire on RHDP supporters demonstrating in Adjamé Boribana, killing one person and wounding another;<sup>191</sup>
- (iv) on 18 and 19 January 2011, the FDS, including CECOS, BAE, CRS, GR and marine, killed five and wounded 17 individuals in Adjamé and Attécoubé in the context of the RHDP campaign “*pays mort*”;<sup>192</sup>

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<sup>187</sup> See above, paras 42-51.

<sup>188</sup> UN Commission of Inquiry report, CIV-OTP-0053-0835 at 0847, para. 45; Report, CIV-OTP-0003-0565 at 0573; Police compilation report, CIV-OTP-0045-0793 at 0798-0799; Witness P-9, CIV-OTP-0051-0830 at 0844; Witness P-184, CIV-OTP-0032-0011 at 0019-0020, paras 41-49.

<sup>189</sup> Police report, CIV-OTP-0045-0527 at 0532-0533;

<sup>190</sup> Police report, CIV-OTP-0045-0527 at 0532-0533; see also HRW report, CIV-OTP-0004-0072 at 0103-0105; Witness P-369, CIV-OTP-0048-1396 at 1441, para. 164.

<sup>191</sup> [REDACTED], CIV-OTP-0044-0955 at 0958-0959, para. 10; Police report, CIV-OTP-0045-1535; Police report, CIV-OTP-0045-0751; Police compilation report, CIV-OTP-0045-0793 at 0865.

<sup>192</sup> [REDACTED], CIV-OTP-0044-0996 at 0999-1000, para. 10 (same information in [REDACTED], CIV-OTP-0044-0337 at 0346-0347, para. 25); [REDACTED], CIV-OTP-0044-2441 at 2446, 2461-2463; UN Commission of Inquiry report, CIV-OTP-0053-0835 at 0848, para. 49; UN HCHR report, CIV-OTP-0003-0527 at 0534, para. 16 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0054, para. 16); UN SG report, CIV-OTP-0002-0010 at 0019, para. 43; Press article, CIV-OTP-0003-0435 at 0435-0436. The Chamber notes that the Defence submits that there is evidence to the effect that demonstrators erected barricades, set tyres on

- (v) between 19 and 21 February 2011, the FDS, including CECOS, BAE, CRS and GR killed at least nine people and wounded several others in the context of the repression of RHDP demonstrations in Abobo, Koumassi and Treichville;<sup>193</sup> and
- (vi) on 19 February 2011, the FDS killed two persons and burnt the activists' material in Abobo when RHDP activists were preparing for a meeting.<sup>194</sup>

76. Similarly, the Chamber notes that, in addition to the events at the offices of the RDR and the PDCI during the repression of the demonstration on 16 December 2010,<sup>195</sup> there is evidence demonstrating a series of attacks on premises of parties which supported Alassane Ouattara. In particular:

- (i) on 1-2 December 2010, during a raid on the RDR headquarters in Yopougon Wassakara, FDS troops – gendarmerie or CECOS, with BAE – killed at least four and possibly up to eight individuals, injuring at least seven and possibly up to 14 others, while several persons were arrested;<sup>196</sup>

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fire and threw stones at vehicles (Defence Submissions, para. 888) but considers that these facts, even if established, have no bearing on the conclusions of the Chamber.

<sup>193</sup> [REDACTED], CIV-OTP-0044-0316 at 0328, para. 24; [REDACTED], CIV-OTP-0044-1606 at 1606-1608; Minutes of Conseil de gouvernement, CIV-OTP-0025-0082 at 0083-0084, 0087; Witness P-369, CIV-OTP-0048-1396 at 1449-1450, paras 195-198; HRW press release; CIV-OTP-0002-0173 at 0178; Email, CIV-OTP-0021-3713 at 3714. While there is some indication, as argued by the Defence (Defence Submissions, paras 944-946) that towards the end of February 2011, police and gendarmerie bases were attacked (Witness Alain Dogou, CIV-D15-0001-1273 at 1285; Witness P-10, CIV-OTP-0016-0104 at 0107-0108), there is no indication of a link between these attacks and the repression of the demonstrations.

<sup>194</sup> Witness P-184, CIV-OTP-0032-0011 at 0024, para. 75; UNOCI press review, CIV-OTP-0037-0482 at 0482; see also Gendarmerie report, CIV-OTP-0043-0320 at 0320 (mentioning that on the morning of 20 February 2011, BAE shot into the air to disperse groups of individuals blocking traffic).

<sup>195</sup> See above, para. 31.

<sup>196</sup> Police report, CIV-OTP-0046-0099 at 0100-0102; Police compilation report, CIV-OTP-0045-0793 at 0850; UN HCHR report, CIV-OTP-0003-0527 at 0533, para. 13 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0053, para. 13); UN SG report, CIV-OTP-0002-0010

- (ii) on 25 December 2010, pro-Gbagbo youth, followed by FDS elements, and possibly with militia, raided the PDCI seat in Cocody, leaving 11 wounded, three of them by gunshot,<sup>197</sup> and
- (iii) on 4 January 2011, the FDS, possibly police, raided the PDCI seat in Cocody, leaving at least one dead and four wounded, while 63 were arrested.<sup>198</sup>

77. Furthermore, the evidence shows that violence by the pro-Gbagbo forces was also directed more generally at parts of the population perceived to be Ouattara supporters, such as Muslims, or people from the north of Côte d'Ivoire or the neighbouring West African countries. In addition to the shelling of Abobo on 17 March 2011<sup>199</sup> and the attack in Yopougon on or

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at 0018-0019, para. 39; International Crisis Group report, CIV-OTP-0003-0173 at 0185; [REDACTED], CIV-OTP-0044-0392 at 0415, 0445, 0452; CIV-OTP-0044-1398 at 1401. While there is information that the FDS may have responded to an attack (Defence Submissions, para. 867; Police report, CIV-OTP-0046-0099 at 0101), the Chamber considers that the totality of the evidence nevertheless points to the conclusion that civilians were attacked.

<sup>197</sup> [REDACTED], CIV-OTP-0044-1323 at 1330, para. 16; UN HCHR report, CIV-OTP-0003-0527 at 0533, para. 14; Police compilation report, CIV-OTP-0045-0793 at 0921; Witness P-369, CIV-OTP-0048-1396 at 1483, para. 315(b); see also Witness P-46, CIV-OTP-0014-0170 at 0197-0200, CIV-OTP-0014-0204 at 0205-0206.

<sup>198</sup> [REDACTED], CIV-OTP-0044-1332 at 1339, para. 17; [REDACTED], CIV-OTP-0044-1341 at 1349, para. 20; [REDACTED], CIV-OTP-0044-0975 at 0980-0981, para. 15; [REDACTED], CIV-OTP-0044-0996 at 1000, para. 11; [REDACTED], CIV-OTP-0044-0337 at 0345-0346, para. 22; UN Commission of Inquiry report, CIV-OTP-0053-0835 at 0848, para. 47; UN HCHR report, CIV-OTP-0003-0527 at 0533-0534, para. 14 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0053, para. 14); [REDACTED], CIV-OTP-0044-0392 at 0421; UN SG report, CIV-OTP-0002-0010 at 0019, para. 43; Police compilation report, CIV-OTP-0045-0793 at 0933; Amnesty International report, CIV-OTP-0002-0647 at 0671; Witness P-369, CIV-OTP-0048-1396 at 1484, para. 315(c). The Chamber notes that it appears that the attempts of the UNOCI Human Rights Division to investigate the incident were blocked by the police ([REDACTED], CIV-OTP-0044-1332 at 1339, para. 17). The conclusion of the Chamber is not disturbed by the evidence presented by the Defence to the effect that during the FDS operation, several "*armes blanches*" were seized and that one individual resisted arrest and threatened the police with a dagger (see Defence Submissions, para. 878-880; Police report, CIV-OTP-0045-0363 at 0367-0370; Police compilation report, CIV-OTP-0045-0793 at 0933; Ministry of Interior document, CIV-OTP-0045-0444 at 0444-0446).

<sup>199</sup> See above, paras 52-63.



around 12 April 2011,<sup>200</sup> the Chamber takes note of the evidence establishing that the following events took place:

- (i) on 30 November 2010, the FDS attacked Abobo Sotrepim, firing at the population, killing one Malian and one Burkinabe;<sup>201</sup>
- (ii) on 4 December 2010, two individuals, including a Burkinabe, were killed in Port-Bouët by the FDS, possibly CECOS;<sup>202</sup>
- (iii) around 5 January 2011, seven Malians were abducted by military men in Adjamé and brought to a training camp from which six or seven managed to escape on 18 January 2011;<sup>203</sup>
- (iv) on 11 January 2011, the FDS attacked Abobo PK18 and clashes with armed individuals continued on 12 January 2011, leaving at least three and possibly up to five civilians dead, while two civilians were

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<sup>200</sup> See above, paras 64-72.

<sup>201</sup> [REDACTED], CIV-OTP-0044-0903 at 0907, para. 10; Report, CIV-OTP-0052-0292 at 0359, n. 138. While the Defence argues that the incident took place in PK18 and that this area had been under rebel control since the beginning of the crisis (Defence Submissions, para. 924), the information referenced (Witness P-9, CIV-OTP-0051-0907 at 0920-0921; Police report, CIV-OTP-0045-0723 at 0723; Intelligence note, CIV-OTP-0045-0728 at 0728; Press article, CIV-OTP-0048-1389 at 1389) does not appear to establish any specific link between the alleged rebel activities and this particular incident.

<sup>202</sup> Witness P-369, CIV-OTP-0048-1396 at 1483, para. 315(a); Gendarmerie report, CIV-OTP-0043-0380 at 0380-0384; Report, CIV-OTP-0001-0052 at 0053-0054; Police report, CIV-OTP-0045-0527 at 0528-0529; Amnesty International press release, CIV-OTP-0003-0723 at 0723. The Defence argues (Defence Submissions, para. 872) that CECOS was ambushed, referring to a document which provides details on the gendarmerie investigation (Gendarmerie report, CIV-OTP-0043-0380 at 0380-0384), including a witness account according to which one of the individuals was armed with a machete (Gendarmerie report, CIV-OTP-0043-0380 at 0383), although there is no indication in the same document that a machete was found with either of the two bodies *in situ* (Gendarmerie report, CIV-OTP-0043-0380 at 0380-0381).

<sup>203</sup> [REDACTED], CIV-OTP-0044-0310 at 0311, para. 10; Report, CIV-OTP-0052-0292 at 0300; see also UN HCHR report, CIV-OTP-0003-0527 at 0539, para. 34 (mentioning the abduction of 18 Malian nationals).

killed by pro-Gbagbo youth on 12 January 2011 in Abobo Avocatier;<sup>204</sup>

- (v) on 7 and 8 February 2011, during an operation apparently aimed at preventing an act of sabotage against the RTI, the FDS shot at local residents in Abobo, leaving at least ten persons dead and several others wounded;<sup>205</sup>
- (vi) on 24 February 2011, one individual suspected of being a “rebel” or “dozo” was lynched and burnt alive by the crowd in Yopougon;<sup>206</sup>
- (vii) on 25 February 2011, militiamen assisted by pro-Gbagbo youths attacked youths that had taken shelter in the Lem mosque in Yopougon after clashes between pro-Ouattara youths from Doukouré and pro-Gbagbo youths from Yaho Séhi, leaving at least ten and possibly up to 11 people dead, while the caretaker of the mosque was burnt alive;<sup>207</sup>

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<sup>204</sup> [REDACTED], CIV-OTP-0044-0975 at 0978, para. 8 (same information in [REDACTED], CIV-OTP-0044-0337 at 0346, para. 23); UN HCHR report, CIV-OTP-0003-0527 at 0534-0535, para. 18 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0054, para. 18); UN SG report, CIV-OTP-0002-0010 at 0019, para. 43; Police report, CIV-OTP-0045-0777 at 0777-0778; Reports, CIV-OTP-0046-0316 at 0316-0331; HRW press release, CIV-OTP-0002-0166 at 0169 (same information in HRW report, CIV-OTP-0003-0028 at 0100); Point de situation, CIV-OTP-0024-0759 at 0759-0778; Photographs, CIV-D15-0001-0717 at 0776.

<sup>205</sup> [REDACTED], CIV-OTP-0044-1119 at 1121, para. 8; UN Commission of Inquiry report, CIV-OTP-0053-0835 at 0848, para. 50. In light of this specific evidence, the Chamber does not attach any consequence to the speculative argument of the Defence that civilians may have been killed in the course of FDS clashes with rebels (see Defence Submissions, paras 941-942).

<sup>206</sup> Police report, CIV-OTP-0045-0391 at 0393; Police report, CIV-OTP-0045-0396 at 0396.

<sup>207</sup> Witness P-109, CIV-OTP-0020-0335 at 0359-0362, paras 99-107; Annex 7, CIV-OTP-0020-0391; Witness P-369, CIV-OTP-0048-1396 at 1445-1447, paras 181-187; [REDACTED], CIV-OTP-0044-0392 at 0416; Press article, CIV-OTP-0028-0229 at 0230-0234. In light of the evidence of Witness P-109 (CIV-OTP-0020-0335 at 0362, paras 108-109), who specifically states that the police were present during the incident without intervening, the Chamber is not persuaded by the Defence argument that on that day the police intervened in a clash between opposing youth groups (Defence Submissions, para. 896).

- (viii) on 26 February 2011, the FDS launched mortars against Abobo PK18, leaving several dead and wounded;<sup>208</sup>
- (ix) on 28 February 2011, pro-Gbagbo youths in Yopougon burnt alive two persons accused of being rebels, one of them Malian, in the presence of BAE;<sup>209</sup>
- (x) on 1 March 2011, pro-Gbagbo youths in Yopougon burnt alive two Nigerian nationals accused of being rebels, in the presence of CECOS;<sup>210</sup>
- (xi) in the night of 3-4 March 2011, pro-Gbagbo militiamen in Port-Bouët burnt alive a disabled Burkinabe whom they accused of accommodating rebels;<sup>211</sup>
- (xii) on 4 and 8 March 2011, armed pro-Gbagbo youths looted shops of West African nationals in Yopougon, chanting “kill, burn, kill, burn, you must all leave”, and killed several persons;<sup>212</sup>

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<sup>208</sup> Witness P-217, CIV-OTP-0040-0372 at 0405, paras 163-167; Annex 8, CIV-OTP-0040-0426; Annex 9, CIV-OTP-0040-0427 at 0427-0429; Witness P-9, CIV-OTP-0051-1045 at 1072-1081. In the view of the Chamber, the evidence pointing generally to rebel activities in PK18 at the time (see Defence Submissions, para. 950 and evidence cited) does not demonstrate a link between the alleged rebel attack and the launching of mortars by the FDS against an area inhabited by civilians.

<sup>209</sup> [REDACTED], CIV-OTP-0044-1743 at 1743; [REDACTED], CIV-OTP-0044-0310 at 0311, para. 5; Video, CIV-OTP-0003-0013 with transcript CIV-OTP-0008-0049 at 0050; Police report, CIV-OTP-0045-0389 at 0389; Press article, CIV-OTP-0003-0418 at 0419-0420.

<sup>210</sup> HRW press release, CIV-OTP-0002-0173 at 0176 (same information in HRW report, CIV-OTP-0004-0072 at 0122-0123); Witness P-369, CIV-OTP-0048-1396 at 1484, para. 315(d).

<sup>211</sup> [REDACTED], CIV-OTP-0044-1709 at 1715; Police report, CIV-OTP-0045-0180 at 0181; Witness P-369, CIV-OTP-0048-1396 at 1484-1485, para. 315(e); HRW report, CIV-OTP-0004-0072 at 0121 (same information in HRW press release, CIV-OTP-0002-0173 at 0175); Press articles, CIV-OTP-0003-0423 at 0423; CIV-OTP-0003-0416 at 0416.

<sup>212</sup> [REDACTED], CIV-OTP-0044-1709 at 1712-1713, 1715; [REDACTED], CIV-OTP-0044-1562 at 1562-1563 (see also different version CIV-OTP-0044-1733); [REDACTED], CIV-OTP-0044-0310 at 0312, para. 13; Ministry of Interior report, CIV-OTP-0045-0144 at 0146; HRW press release, CIV-OTP-0002-0173 at 0176; Witness P-369, CIV-OTP-0048-1396 at 1485, para. 315(f); [REDACTED], CIV-OTP-0044-0392 at 0433.

- (xiii) on 11 March 2011, pro-Gbagbo youths in Yopougon killed a Burkinabe whom they suspected of providing information to the rebels;<sup>213</sup>
- (xiv) on the night of 11-12 March 2011, three children were killed, and several persons wounded, when the FDS used heavy weapons including rockets and mortars to attack the *Commando Invisible* in Abobo;<sup>214</sup>
- (xv) on 15 March 2011, militia, BAE and gendarmerie attacked a mosque in Yopougon Port-Bouët 2 and the adjacent area with grenades, Molotov cocktails and gunfire, leaving a total of 35 persons dead, including the imam of the mosque;<sup>215</sup>
- (xvi) on 19 March 2011, in Williamsville, the FDS assisted by militiamen launched an operation and killed six individuals, including an imam (a Malian national) and his elderly mother;<sup>216</sup>
- (xvii) on 22 March 2011, shells were fired at Abobo Derrière Rails (Céleste), leaving at least four dead and several wounded;<sup>217</sup>

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<sup>213</sup> Witness P-108, CIV-OTP-0013-0108 at 0122, paras 107-110.

<sup>214</sup> [REDACTED], CIV-OTP-0044-1167 at 1170, para. 7; UN SG report, CIV-OTP-0002-0010 at 0021, para. 49; Amnesty International report, CIV-OTP-0002-0647 at 0673; Press article, CIV-D15-0001-0047 at 0047-0048. In light of the evidence, the Chamber considers, contrary to the submissions of the Defence (Defence Submissions, paras 952-953), that this event cannot be seen as a clash between combatants.

<sup>215</sup> [REDACTED], CIV-OTP-0044-0392 at 0416.

<sup>216</sup> [REDACTED], CIV-OTP-0044-1681 at 1683; UN HCHR report, CIV-OTP-0002-0598 at 0608, para. 32; [REDACTED], CIV-OTP-0044-0392 at 0416-0417; Report, CIV-OTP-0052-0292 at 0308; Witness P-46, CIV-OTP-0014-0170 at 0177-0179, CIV-OTP-0014-0479 at 0501-0502.

<sup>217</sup> [REDACTED], CIV-OTP-0044-1692 at 1694, 1703; [REDACTED], CIV-OTP-0044-1211 at 1212, para. 2; Witness P-189, CIV-OTP-0042-0508 at 0544-0546, paras 136-137; Annex 1, CIV-OTP-0042-0567 at 0579; Video, CIV-OTP-0042-0594 with transcript CIV-OTP-0053-0101 (translation CIV-OTP-0053-0189); Witness P-369, CIV-OTP-0048-1396 at 1464, para. 248; Witness P-117, CIV-OTP-0020-0033 at 0058, para. 183. See also [REDACTED], CIV-OTP-0044-1201 at 1204, para. 9.

- (xviii) on 29 March 2011 in Adjamé, nine persons of West African nationalities were stopped at a checkpoint by armed individuals in police uniforms and taken to a place close to the 11<sup>th</sup> police precinct in Adjamé/Williamsville where they were shot at, which left at least six dead and three seriously injured;<sup>218</sup>
- (xix) on 30 March 2011 in Adjamé, militiamen stopped a vehicle and after checking identity documents, killed one of the passengers;<sup>219</sup>
- (xx) on 2 April 2011 in Port-Bouët, a group of students armed with AK-47s and machetes stopped four Burkinabe nationals and, after searching them and checking their identity documents, shot at them;<sup>220</sup>
- (xxi) on 10 April 2011 in Yopougon, militiamen stopped a vehicle with five individuals to check their identity and after seeing that they were all Dioula, shot them and set the vehicle on fire;<sup>221</sup> and
- (xxii) on 11 April 2011 in Treichville Apollo, at least four<sup>222</sup> and possibly up to seven persons,<sup>223</sup> including a Malian national,<sup>224</sup> were killed

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<sup>218</sup> Witness P-369, CIV-OTP-0048-1396 at 1486, para. 315(h); HRW report, CIV-OTP-0004-0072 at 0144-0145 (same information in HRW press release, CIV-OTP-0002-0182 at 0184). In relation to this incident, the Defence points to the presence of rebel forces in Abidjan (Defence Submissions, paras 909-912), yet there is no indication of a link between rebel activities and the incident in question.

<sup>219</sup> Witness P-369, CIV-OTP-0048-1396 at 1486, para. 315(i); HRW press release, CIV-OTP-0002-0182 at 0185 (same information in HRW report, CIV-OTP-0004-0072 at 0144). While the Defence argues that at the time of this incident, rebels coming from the north had already advanced into Abidjan and engaged in arrests and killings with local support (Defence Submissions, para. 915), the information referenced ([REDACTED], CIV-OTP-0044-0392 at 0412) does not provide any link between this allegation and the incident in question.

<sup>220</sup> OTP affidavit, CIV-OTP-0007-0235 at 0235, para. 2.

<sup>221</sup> OTP affidavit, CIV-OTP-0007-0235 at 0235, para. 1.

<sup>222</sup> [REDACTED], CIV-OTP-0044-0356 at 0357, para. 5.

<sup>223</sup> [REDACTED], CIV-OTP-0044-0392 at 0414.

<sup>224</sup> Report, CIV-OTP-0052-0292 at 0319-0320.

when GR elements fired mortar shells, hitting people queuing for bread.

## *II. Links to Laurent Gbagbo*

### A. The inner circle and the pro-Gbagbo forces

78. According to the Prosecutor, Laurent Gbagbo committed the crimes charged jointly with a number of other people, referred to in the Amended DCC as the “inner circle”,<sup>225</sup> and through an organisation, collectively labelled by the Prosecutor as the “pro-Gbagbo forces”, comprising the FDS, militias, mercenaries and pro-Gbagbo youth.<sup>226</sup> In the following sections, the Chamber will outline its understanding of the evidence related, respectively, to the “inner circle” and the “pro-Gbagbo forces”, as well as their significance for the case.

#### *a) The inner circle*

79. In the view of the Chamber, the evidence shows that the effort to maintain Laurent Gbagbo in power at any cost, including by the use of force against civilians, was conceived and controlled by Laurent Gbagbo and a limited number of close associates who shared his objective of staying in power and who coordinated with him the means to achieve this goal.

80. According to the evidence, Simone Gbagbo was part of the inner circle. The evidence shows that she exerted considerable influence over State institutions, relying on her status as Laurent Gbagbo’s wife and on the political positions held in her own name.<sup>227</sup> There is specific evidence that Simone Gbagbo could directly access the high commanders of the FDS during

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<sup>225</sup> Amended DCC, paras 74-78.

<sup>226</sup> Amended DCC, paras 4, 132-157.

<sup>227</sup> Witness P-9, CIV-OTP-0011-0361 at 0370; Witness P-11, CIV-OTP-0016-0347 at 0349; CIV-OTP-0016-0372 at 0375; Witness P-44, CIV-OTP-0014-0622 at 0639, 0643; CIV-OTP-0014-0646 at 0647, 0653; Witness P-46, CIV-OTP-0014-0443 at 0453, 0457-0458; Witness P-69, CIV-OTP-0017-0056 at 0074; CIV-OTP-0017-0124 at 0139.

the crisis.<sup>228</sup> At the same time, the Chamber notes the evidence revealing that Simone Gbagbo coordinated her activities with Laurent Gbagbo.<sup>229</sup>

81. The evidence demonstrates that during the crisis, Simone Gbagbo performed an important coordinating role. According to several sources, she presided over regular crisis meetings, which were attended by persons tasked with specific activities intended to keep Laurent Gbagbo in power.<sup>230</sup>

82. The evidence also indicates the existence of a direct link between Simone Gbagbo and youth organisations and militias. In particular, documentary evidence seized from the Presidential Residence indicates that an organisation called the National Resistance Congress for Democracy (CNRD), of which she was Secretary-General,<sup>231</sup> included in its leadership certain youth and militia leaders involved in the crisis.<sup>232</sup> Several witnesses, as well as entries in Simone Gbagbo's diary seized from the Presidential Residence, suggest the existence of a direct relationship between Simone Gbagbo and youth and militia leaders.<sup>233</sup> As suggested by a document emanating from the CNRD, one of its goals was to ensure Laurent Gbagbo's re-election.<sup>234</sup>

83. Charles Blé Goudé, according to the evidence, was another prominent member of the inner circle. The evidence shows that Laurent Gbagbo and Charles Blé Goudé had a long-lasting relationship that predated the crisis,

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<sup>228</sup> Witness P-9, CIV-OTP-0011-0361 at 0370; Witness P-46, CIV-OTP-0014-0443 at 0454-0455; Witness P-69, CIV-OTP-0017-0056 at 0069-0070.

<sup>229</sup> Witness P-44, CIV-OTP-0014-0684 at 0701; Witness P-69, CIV-OTP-0017-0056 at 0069.

<sup>230</sup> Witness P-9, CIV-OTP-0051-1247 at 1276; Interview form, CIV-OTP-0016-0642 at 0643; Agenda, CIV-OTP-0018-0309 at 0309; Agenda, CIV-OTP-0018-0395 at 0396.

<sup>231</sup> Witness P-69, CIV-OTP-0017-0144 at 0160.

<sup>232</sup> Lists, CIV-OTP-0018-0339, CIV-OTP-0018-0426. See also the evidence cited below, para. 101.

<sup>233</sup> Witness P-69, CIV-OTP-0017-0392 at 0412; Witness P-118, CIV-OTP-0029-0172 at 0178; Diary, CIV-OTP-0018-0810 at 0834, 0836, 0850, 0851, 0852.

<sup>234</sup> Minutes, CIV-OTP-0018-0326 at 0326.

which involved Charles Blé Goudé rallying youth behind Laurent Gbagbo.<sup>235</sup> According to the evidence, Charles Blé Goudé maintained a very close relationship with Laurent Gbagbo and Simone Gbagbo throughout the period of events under consideration.<sup>236</sup> The Chamber is also attentive to the evidence that Charles Blé Goudé received payments from the Ivorian Presidency<sup>237</sup> and maintained close relations with the FDS leadership.<sup>238</sup>

84. As demonstrated by the evidence, Charles Blé Goudé's role in the inner circle was primarily related to activities of the pro-Gbagbo youth.<sup>239</sup> He was the undisputed leader of the pro-Gbagbo youth movements, holding several positions within various organisations, and being commonly referred to as the "*général de la rue*".<sup>240</sup> Several witnesses also state that Charles Blé Goudé possessed an extraordinary ability to influence the masses at political rallies.<sup>241</sup>

85. In December 2010, Laurent Gbagbo appointed Charles Blé Goudé as Minister for Youth, Vocational Training and Employment,<sup>242</sup> which, in the view of the Chamber, served as additional legitimisation for his activities. The appointment of Charles Blé Goudé also illustrates the importance which Laurent Gbagbo and the inner circle attached to him, and the extent to which

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<sup>235</sup> Witness P-9, CIV-OTP-0011-0482 at 0498-0499; Witness P-44, CIV-OTP-0014-0665 at 0676; CIV-OTP-0014-0684 at 0702; CIV-OTP-0014-0713 at 0715; Witness P-46, CIV-OTP-0014-0400 at 0440-0441.

<sup>236</sup> Witness P-44, CIV-OTP-0014-0665 at 0676; CIV-OTP-0014-0684 at 0699-0700; Witness P-46, CIV-OTP-0014-0400 at 0433; Witness P-69, CIV-OTP-0017-0392 at 0407, 0410-0411; Witness P-87, CIV-OTP-0011-0201 at 0221, para. 130; Witness P-118, CIV-OTP-0029-0172 at 0176; Witness P-324, CIV-OTP-0046-1368 at 1394 and CIV-OTP-0046-1461 at 1465.

<sup>237</sup> Payment receipts, CIV-OTP-0025-0680; CIV-OTP-0025-0687; CIV-OTP-0025-0690; CIV-OTP-0025-0692; CIV-OTP-0025-0696; CIV-OTP-0025-0701; CIV-OTP-0025-0787.

<sup>238</sup> Witness P-11, CIV-OTP-0016-0321 at 0336, 0342; CIV-OTP-0016-0390 at 0395-0397.

<sup>239</sup> See below, paras 106, 119, 165-166.

<sup>240</sup> Witness P-9, CIV-OTP-0051-0697 at 0699-0700; Witness P-46, CIV-OTP-0014-0400 at 0425; Witness P-69, CIV-OTP-0017-0392 at 0403; Witness P-87, CIV-OTP-0011-0201 at 0221, paras 131, 133-134; Witness P-324, CIV-OTP-0046-1345 at 1359 and 1360.

<sup>241</sup> Witness P-9, CIV-OTP-0051-0697 at 0700; Witness P-44, CIV-OTP-0014-0713 at 0715; Witness P-87, CIV-OTP-0011-0201 at 0221-0222, paras 129, 134; Witness P-330, CIV-OTP-0049-2359 at 2379.

<sup>242</sup> Decree, CIV-OTP-0018-0047 at 0050-0051; Witness P-9, CIV-OTP-0051-0663 at 0694-0695.



they considered it necessary to rely on loyal youth organisations to stay in power. The Chamber is also attentive to the fact that Laurent Gbagbo appointed Charles Blé Goudé as Minister in spite of the fact that the latter had been subject to sanctions for incitement of violence by the United Nations Security Council since 7 February 2006.<sup>243</sup>

86. In addition to Simone Gbagbo and Charles Blé Goudé, the evidence indicates that Laurent Gbagbo's inner circle comprised a limited number of trusted political associates, including government ministers,<sup>244</sup> certain other leaders of pro-Gbagbo youth movements,<sup>245</sup> high commanders of the FDS,<sup>246</sup> and other trusted military commanders.<sup>247</sup>

*b) The pro-Gbagbo forces*

87. In the view of the Chamber, the evidence demonstrates that Laurent Gbagbo and his inner circle controlled an organisation (the "pro-Gbagbo forces") composed of several identifiable components, namely FDS, militias, mercenaries and youth organisations.

*i. Defence and Security Forces*

88. The Chamber notes that "Defence and Security Forces" (FDS) is an unofficial yet generally used umbrella term which encompasses the National Armed Forces of Côte d'Ivoire (FANCI), the Gendarmerie, the Republican

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<sup>243</sup> Press article, CIV-OTP-0052-0613 at 0613; UN Expert Group report, CIV-OTP-0052-0681 at 0751-0752.

<sup>244</sup> Witness P-11, CIV-OTP-0016-0301 at 0318-0319; Witness P-44, CIV-OTP-0014-0646 at 0661; Witness P-46, CIV-OTP-0014-0443 at 0444-0448, 0463-0464; Witness P-321, CIV-OTP-0046-0932 at 0950-0951.

<sup>245</sup> Witness P-44, CIV-OTP-0014-0646 at 0661; Witness P-46, CIV-OTP-0014-0400 at 0441-0442; Witness P-321, CIV-OTP-0046-1102 at 1108; Witness P-324, CIV-OTP-0046-1574 at 1575-1576.

<sup>246</sup> Witness P-9, CIV-OTP-0051-0770 at 0782; Witness P-11, CIV-OTP-0016-0301 at 0318; Witness P-46, CIV-OTP-0014-0400 at 0441-0442; Witness P-44, CIV-OTP-0014-0646 at 0661.

<sup>247</sup> See below, para. 98.

Guard, the Security Operations Command Centre (CECOS), and the Police, as well as some other organisations irrelevant in the present context.<sup>248</sup>

89. According to the evidence, control of FANCI was centred in the Chief of Staff, a position that was held until late in the crisis by General Philippe Mangou,<sup>249</sup> and after his defection, was *de facto* in the hands of General Dogbo Blé.<sup>250</sup> The evidence indicates that FANCI was composed of the Ground Forces, Navy and the Air Force, each headed by a commander.<sup>251</sup> The military units of particular significance to the events under consideration are those which were based at the two camps at Akouédo, including the Air Defence Artillery Battalion (BASA).<sup>252</sup> According to the evidence, the Chief of Staff would generally report to the President through the Minister of Defence, but during the crisis, the Chief of Staff also frequently reported to Laurent Gbagbo directly.<sup>253</sup>

90. According to the evidence, the Gendarmerie, headed by the Superior Commander of the National Gendarmerie (CSGN), a post held by Édouard Tiapé Kassaraté,<sup>254</sup> was generally under the authority of the Minister of Defence.<sup>255</sup> The Gendarmerie units of significance within the context of the present case were based at Camp Agban, Camp Commando in Abobo, and in

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<sup>248</sup> See Witness P-11, CIV-OTP-0016-0204 at 0248-0249; CIV-OTP-0016-0347 at 0368-0369.

<sup>249</sup> Witness P-9, CIV-OTP-0011-0324 at 0331.

<sup>250</sup> Witness P-9, CIV-OTP-0051-0586 at 0591-0593; UN HCHR report, CIV-OTP-0002-0573 at 0577, para. 11.

<sup>251</sup> Witness P-9, CIV-OTP-0051-0556 at 0565-0566.

<sup>252</sup> Witness P-47, CIV-OTP-0015-0077 at 0090-0093; CIV-OTP-0015-0323 at 0332-0335; Witness P-164, CIV-OTP-0028-0481 at 0493, para. 84; Witness P-316, CIV-OTP-0043-0461 at 0466, para. 19.

<sup>253</sup> Witness P-47, CIV-OTP-0015-0077 at 0082-0084. See also below, para. 157.

<sup>254</sup> Witness P-10, CIV-OTP-0016-0046 at 0049-0050; Witness P-11, CIV-OTP-0016-0204 at 0211; Witness P-321, CIV-OTP-0046-0689 at 0711.

<sup>255</sup> Witness P-11, CIV-OTP-0016-0204 at 0215, 0222; UN HCHR report, CIV-OTP-0002-0573 at 0578, para. 16.

Yopougon Toit Rouge.<sup>256</sup> The Gendarmerie also included the Armoured Squadron Group (GEB), which was well-equipped with armoured vehicles.<sup>257</sup>

91. The Police, headed by the Director General of the National Police, General M'Bia Bredou,<sup>258</sup> was under the authority of the Minister of the Interior.<sup>259</sup> It included within its structure special intervention units, in particular two Republican Security Companies (CRS) and the Anti-Riot Brigade (BAE).<sup>260</sup>

92. The Republican Guard was a military unit nominally subordinated to the Chief of Staff but in fact directly under the control of Laurent Gbagbo, through its commander General Dogbo Blé.<sup>261</sup> The evidence demonstrates that the resources of the Republican Guard were provided directly by Laurent Gbagbo's Presidency and as a result this unit was exceptionally well equipped.<sup>262</sup>

93. Finally, CECOS was, according to the evidence, a unit created in 2005 by presidential decree, in order to fight organised crime and ensure security in Abidjan.<sup>263</sup> It was commanded by General Georges Guiai Bi Poin.<sup>264</sup> CECOS did not have personnel of its own, but was composed of elements who were

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<sup>256</sup> Witness P-11, CIV-OTP-0016-0204 at 0220-0221; Witness P-46, CIV-OTP-0014-0170 at 0193.

<sup>257</sup> Witness P-11, CIV-OTP-0016-0204 at 0220-0221; Witness P-321, CIV-OTP-0046-0712 at 0721-0725, 0730-0732.

<sup>258</sup> Witness P-46, CIV-OTP-0014-0135 at 0137-0138, 0140, 0147; Annexes, CIV-OTP-0010-0019; CIV-OTP-0010-0020.

<sup>259</sup> Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1397; Witness P-46, CIV-OTP-0014-0135 at 0149-0151.

<sup>260</sup> Witness P-46, CIV-OTP-0014-0170 at 0186-0190; CIV-OTP-0014-0204 at 0218-0220.

<sup>261</sup> Witness P-9, CIV-OTP-0051-0586 at 0602, 0605-0607; Witness P-321, CIV-OTP-0046-0932 at 0958.

<sup>262</sup> Witness P-9, CIV-OTP-0051-0586 at 0611-0617.

<sup>263</sup> Decree, CIV-D15-0001-6168 at 6168; Witness P-9, CIV-OTP-0051-0618 at 0621-0622; CIV-OTP-0011-0341 at 0347; Witness P-11, CIV-OTP-0016-0372 at 0384.

<sup>264</sup> Witness P-9, CIV-OTP-0011-0341 at 0348; CIV-OTP-0051-0556 at 0566; Witness P-11, CIV-OTP-0016-0372 at 0384.

otherwise members of FANCI, Gendarmerie or the Police.<sup>265</sup> It had two special units, “*Python*” and Law Enforcement Brigade (BMO), based at the *École de Gendarmerie* in Cocody.<sup>266</sup>

94. In the view of the Chamber, the FDS was a functioning apparatus of State power, under responsible command, and with considerable capacity. According to an estimate of the United Nations, the combined strength of the FDS during the crisis was 55,000 personnel.<sup>267</sup> The evidence also shows that the FDS hierarchy was effective, in the sense that execution of orders was ensured and disobedience repressed.<sup>268</sup> Moreover, the evidence shows that at the time of the events under consideration, the various components of the FDS were consolidated under the command of the Chief of Staff.<sup>269</sup> The Chamber is conscious of the fact that the capacity of the FDS to conduct operations diminished towards the end of the crisis, but considers that the FDS nevertheless remained effective, if only in part, until the end of the crisis, in particular due to a reorganisation and concentration of command in persons with particularly close ties to Laurent Gbagbo and the inner circle.<sup>270</sup>

95. There is sufficient evidence to demonstrate that Laurent Gbagbo and the inner circle exercised control over the FDS through the official State hierarchy, and through parallel lines of control and command, which depended on Laurent Gbagbo’s and the inner circle’s personal relationships with certain individuals within the FDS.

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<sup>265</sup> Witness P-10, CIV-OTP-0051-0266 at 0296.

<sup>266</sup> Witness P-10, CIV-OTP-0051-0300 at 0312-0313, 0315, 0322; Witness P-330, CIV-OTP-0049-2467 at 2471-2474, 2476; CIV-OTP-0049-2491 at 2501-2504.

<sup>267</sup> UN HCHR report, CIV-OTP-0002-0573 at 0577, para. 11.

<sup>268</sup> Witness P-9, CIV-OTP-0051-0586 at 0599-0600; Dossier, CIV-OTP-0043-0289; Dossier, CIV-OTP-0045-1289; Police report, CIV-OTP-0045-0692; see also CIV-OTP-0045-0692 at 0694-0695; Police note, CIV-OTP-0045-1143.

<sup>269</sup> Witness P-10, CIV-OTP-0051-0434 at 0450; Witness P-321, CIV-OTP-0046-0886 at 0888-0890; see also above, para. 27, and below, paras 171-173.

<sup>270</sup> See below, paras 177-181.

96. The Chamber finds that Laurent Gbagbo, on the basis of his claim of status as President of Côte d'Ivoire, was able to assert his *de jure* authority over the entirety of the FDS, meaning that all the high commanders of the FDS recognised his leadership, received instructions from him, and reported to him, directly or indirectly.<sup>271</sup>

97. In addition, the Prosecutor alleges the existence of a so-called “parallel structure” within the FDS, which gave Laurent Gbagbo and the inner circle the possibility of controlling the operations of the FDS outside of the official structure.<sup>272</sup> Indeed, as outlined below, the evidence confirms the existence of such a parallel structure.

98. The Chamber first notes the evidence showing the direct relationships between Laurent Gbagbo and certain officers of the FDS, including in particular General Dogbo Blé (Commander of the Republican Guard),<sup>273</sup> General Georges Guiai Bi Poin (Commander of CECOS),<sup>274</sup> Rigobert Dadi Touhouré (Commander of BASA),<sup>275</sup> and Jean-Noël Abéhi (Commander of GEB).<sup>276</sup> In addition, there is evidence that the leadership of the CRS and BAE was taking orders not only through the official command chain, but also from people close to Laurent Gbagbo.<sup>277</sup> The evidence demonstrates that these persons bypassed the official hierarchy where necessary and received

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<sup>271</sup> Witness P-9, CIV-OTP-0051-0586 at 0598; Witness P-11, CIV-OTP-0016-0426 at 0433. See also below, paras 126, 151-158.

<sup>272</sup> Amended DCC, para. 143.

<sup>273</sup> Witness P-9, CIV-OTP-0051-0618 at 0637; Witness P-239, CIV-OTP-0037-0425 at 0433, para. 46. See also below, para. 126.

<sup>274</sup> Witness P-11, CIV-OTP-0016-0390 at 0393-0395; Witness P-46, CIV-OTP-0014-0443 at 0444, 0448; Witness P-321, CIV-OTP-0046-0886 at 0904-0905.

<sup>275</sup> Witness P-226, CIV-OTP-0039-0143 at 0152, para. 36; Witness P-238, CIV-OTP-0048-1503 at 1510-1511, paras 27-30; at 1512, para. 36; Witness P-239, CIV-OTP-0037-0425 at 0432, paras 43, 45; Witness P-316, CIV-OTP-0043-0461 at 0471, para. 39.

<sup>276</sup> Witness P-46, CIV-OTP-0014-0443 at 0445-0448; Witness P-49, CIV-OTP-0019-0168 at 0173, para. 38.

<sup>277</sup> Witness P-46, CIV-OTP-0014-0233 at 0246; Witness P-226, CIV-OTP-0039-0143 at 0151, para. 36; Witness P-9, CIV-OTP-0051-0618 at 0636-0637; Witness P-11, CIV-OTP-0016-0390 at 0392.

instructions directly from Laurent Gbagbo and the inner circle, even without informing their formal superiors.<sup>278</sup>

99. The evidence also shows that the units that were led by individuals particularly close to Laurent Gbagbo were better equipped,<sup>279</sup> and were entrusted with operations deemed more important in the pursuit of preserving power.<sup>280</sup> These units were also the ones which worked alongside militias and to which new elements recruited outside of regular procedures were sent.<sup>281</sup>

## ii. Militia

100. The organisation controlled by Laurent Gbagbo and the inner circle also included a number of militia groups which were organised as paramilitary units under formalised and effective command.

101. The pro-Gbagbo militia groups operating in Abidjan at the relevant time included the Group of Patriotes for Peace (GPP),<sup>282</sup> as well as a number of other organised groups in Yopougon.<sup>283</sup> In addition, the evidence reveals that

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<sup>278</sup> Witness P-9, CIV-OTP-0051-0586 at 0594; Witness P-321, CIV-OTP-0046-0932 at 0957-0959; Witness P-49, CIV-OTP-0019-0168 at 0172, para. 30; Witness P-238, CIV-OTP-0048-1503 at 1519, para. 73. See also all other evidence cited in the present paragraph.

<sup>279</sup> Witness P-9, CIV-OTP-0051-0556 at 0566; CIV-OTP-0051-0618 at 0624, 0628-0630, 0635-0636; Witness P-238, CIV-OTP-0048-1503 at 1514, para. 43; at 1515, paras 49-53.

<sup>280</sup> Witness P-9, CIV-OTP-0051-0871 at 0888; CIV-OTP-0051-1086 at 1091; Witness P-226, CIV-OTP-0039-0143 at 0166, para. 77; Witness P-234, CIV-OTP-0041-0534 at 0565-0566, para. 117; See also below, para. 175.

<sup>281</sup> Witness P-9, CIV-OTP-0011-0572 at 0574, 0577; Witness P-46, CIV-OTP-0014-0233 at 0244-0246.

<sup>282</sup> Witness P-9, CIV-OTP-0051-0618 at 0652-0653, 0655; CIV-OTP-0051-0663 at 0670; CIV-OTP-0051-1195 at 1222-1223; Witness P-10, CIV-OTP-0051-0266 at 0281; CIV-OTP-0051-0392 at 0418; Witness P-11, CIV-OTP-0016-0256 at 0265-0266, 0268-0269; Witness P-46, CIV-OTP-0014-0400 at 0429-0430, 0432; Witness P-47, CIV-OTP-0015-0323 at 0339-0341; Witness P-100, CIV-OTP-0020-0283 at 0292.

<sup>283</sup> Witness P-9, CIV-OTP-0051-0618 at 0652-0653, 0655; CIV-OTP-0051-1247 at 1278-1283; Witness P-107, CIV-OTP-0020-0064 at 0086, para. 164; Witness P-109, CIV-OTP-0020-0335 at 0357, paras 81-82; at 0358, para. 92; at 0364, para. 116; Witness P-226, CIV-OTP-0039-0143 at 0183, para. 125; at 0186, para. 131; Witness P-229, CIV-OTP-0039-0196 at 0212, para. 50; at 0214, para. 54; at 0222, para. 80; at 0223, paras 83-85; Witness P-238, CIV-OTP-0048-1503 at 1535-

some youth campaign movements were in fact operating as militias.<sup>284</sup> Furthermore, the Chamber notes that according to the evidence, pro-Gbagbo militias composed of fighters from the west of Côte d'Ivoire were placed in Abidjan.<sup>285</sup>

102. According to the evidence, the militia groups were linked to Laurent Gbagbo and the inner circle through the leaders of the youth movements<sup>286</sup> and through some loyal FDS commanders.<sup>287</sup> The evidence also reveals that money, equipment and training were provided to militias by Laurent Gbagbo and the inner circle before and during the crisis.<sup>288</sup> Reliance on organised militia groups is confirmed by government documents,<sup>289</sup> as well as the diary of Simone Gbagbo seized from the Presidential Residence.<sup>290</sup>

103. The evidence also shows that on occasion, militias operated alongside the FDS, receiving their assistance.<sup>291</sup> According to the evidence, militia were

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1536, para. 152; at 1536, para. 154; at 1547, paras 201-203; Annex 2, CIV-OTP-0041-0678; Annex 5, CIV-OTP-0041-0681; Witness P-316, CIV-OTP-0043-0461 at 0483, para. 85; Witness P-324, CIV-OTP-0046-1545 at 1571-1572; Witness P-330, CIV-OTP-0049-2634 at 2644-2647, 2662; Witness P-369, CIV-OTP-0048-1396 at 1468, para. 265.

<sup>284</sup> Witness P-9, CIV-OTP-0051-1247 at 1278-1283.

<sup>285</sup> Witness P-11, CIV-OTP-0016-0347 at 0355; Witness P-118, CIV-OTP-0029-0244 at 0263-0264; Witness P-238, CIV-OTP-0048-1503 at 1540, para. 172; Witness P-369, CIV-OTP-0048-1396 at 1468, para. 266; Witness P-381, CIV-OTP-0049-2818 at 2830, para. 49.

<sup>286</sup> Witness P-46, CIV-OTP-0014-0400 at 0429-0430; Witness P-108, CIV-OTP-0013-0108 at 0114, para. 38; Witness P-324, CIV-OTP-0046-1545 at 1571-1572; UN HCHR report, CIV-OTP-0002-0573 at 0579, para. 23; Witness P-44, CIV-OTP-0014-0622 at 0634-0635.

<sup>287</sup> Witness P-226, CIV-OTP-0039-0143 at 0183, paras 124-125; at 0186, para. 131; Witness P-324, CIV-OTP-0047-0036 at 0056-0057.

<sup>288</sup> See below, paras 139-142.

<sup>289</sup> Report, CIV-OTP-0045-0127 at 0128; Ministry of Interior note, CIV-OTP-0045-0148 at 0151-0152.

<sup>290</sup> Diary, CIV-OTP-0018-0810 at 0834, 0850.

<sup>291</sup> Witness P-9, CIV-OTP-0051-0618 at 0657-0658; Witness P-10, CIV-OTP-0051-0266 at 0284-0285; Ministry of Interior note, CIV-OTP-0045-0148 at 0151.

particularly active in Abidjan late in the crisis,<sup>292</sup> and at some point operated from FDS bases.<sup>293</sup>

### iii. Mercenaries

104. The Chamber finds, on the basis of the evidence, that mercenaries formed part of the organisation under the control of Laurent Gbagbo and the inner circle. According to the evidence, they were recruited and integrated into certain FDS units, or operated as part of loyal militias.<sup>294</sup> Control over the mercenary component of the organisation was thus exercised through the FDS or through militias.

### iv. Youth organisations

105. Finally, the evidence demonstrates that Laurent Gbagbo and the inner circle mobilised large numbers of political supporters, primarily youths, who, albeit not organised in a formal hierarchy, were controlled by Laurent Gbagbo and the inner circle, and were used for acts of violence.

106. According to the evidence, a large number of organisations of political supporters of Laurent Gbagbo, which mostly branded themselves as youth organisations, existed in Côte d'Ivoire. All of these groups were assembled in one umbrella organisation, commonly referred to as the "Patriotic Galaxy",<sup>295</sup> of which Charles Blé Goudé was the undisputed leader.<sup>296</sup> In addition, a

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<sup>292</sup> Witness P-9, CIV-OTP-0051-1195 at 1223.

<sup>293</sup> Witness P-10, CIV-OTP-0051-0392 at 0415; Witness P-164, CIV-OTP-0028-0481 at 0487, para. 36; at 0508, paras 184-186; Witness P-226, CIV-OTP-0039-0143 at 0182, para. 123; Witness P-330, CIV-OTP-0049-2634 at 2645-2647, 2662.

<sup>294</sup> See below, paras 144-149.

<sup>295</sup> Witness P-44, CIV-OTP-0014-0622 at 0625, 0629-0630; CIV-OTP-0014-0684 at 0686; see also Witness P-46, CIV-OTP-0014-0135 at 0165-0167; CIV-OTP-0014-0170 at 0172; CIV-OTP-0014-0233 at 0248.

<sup>296</sup> Witness P-44, CIV-OTP-0014-0684 at 0687; Witness P-100, CIV-OTP-0020-0283 at 0291.



group of other prominent leaders of the Patriotic Galaxy had direct links to Laurent Gbagbo.<sup>297</sup>

107. The evidence also reveals that leaders of the Patriotic Galaxy were systematically financed by Laurent Gbagbo's Presidency.<sup>298</sup> Further, some leaders and groups specialised in the organisation of so-called "*parlements*" or "*agoras*", which were gatherings where political discussions took place and speeches were held.<sup>299</sup>

108. According to the evidence, influence over these groups was exercised primarily through speeches at mass gatherings, which did not cease with the end of the campaign period.<sup>300</sup> Violent and xenophobic rhetoric was used to incite the masses to violence.<sup>301</sup>

109. In this context, the Chamber also makes reference to large-scale recruitment into the FDS before and during the crisis, which was largely not conducted according to applicable procedures, and which drew mostly from the politically loyal youth.<sup>302</sup>

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<sup>297</sup> Witness P-118, CIV-OTP-0029-0172 at 0176, 0178; Witness P-321, CIV-OTP-0046-0759 at 0773-0774; CIV-OTP-0046-1102 at 1108; Witness P-11, CIV-OTP-0016-0256 at 0270; Witness P-44, CIV-OTP-0014-0622 at 0642; Witness P-46, CIV-OTP-0014-0400 at 0441-0442; Witness P-324, CIV-OTP-0046-1574 at 1575-1576; Letter, CIV-OTP-0018-0581 at 0581.

<sup>298</sup> Witness P-44, CIV-OTP-0014-0768 at 0778; Payment receipts, CIV-OTP-0025-0456; CIV-OTP-0025-0615; CIV-OTP-0025-0628; CIV-OTP-0025-0634; CIV-OTP-0025-0645; CIV-OTP-0025-0651; CIV-OTP-0025-0450; CIV-OTP-0025-0451; CIV-OTP-0025-0617; CIV-OTP-0025-0624; CIV-OTP-0025-0625; CIV-OTP-0025-0631; CIV-OTP-0025-0632; CIV-OTP-0025-0642; CIV-OTP-0025-0643; CIV-OTP-0025-0653; CIV-OTP-0025-0654; CIV-OTP-0025-0452; CIV-OTP-0025-0616; CIV-OTP-0025-0626; CIV-OTP-0025-0633; CIV-OTP-0025-0644; CIV-OTP-0025-0652; CIV-OTP-0025-0453; CIV-OTP-0025-0454; CIV-OTP-0025-0613; CIV-OTP-0025-0614; CIV-OTP-0025-0622; CIV-OTP-0025-0623; CIV-OTP-0025-0637; CIV-OTP-0025-0638; CIV-OTP-0025-0641; CIV-OTP-0025-0655; CIV-OTP-0025-0656; CIV-OTP-0025-0686; CIV-OTP-0025-0657; see also CIV-OTP-0025-0796; CIV-OTP-0025-0174; CIV-OTP-0025-0681.

<sup>299</sup> Witness P-44, CIV-OTP-0014-0622 at 0626; Witness P-109, CIV-OTP-0020-0335 at 0345, para. 30; at 0347, paras 38-39; Witness P-108, CIV-OTP-0013-0108 at 0113, paras 25-26; Witness P-9, CIV-OTP-0011-0482 at 0500.

<sup>300</sup> See below, paras 117-119.

<sup>301</sup> See below, paras 165, 167.

<sup>302</sup> See below, para. 136.

B. Expressions of intention to remain in power at any cost

110. The evidence establishes certain events prior to or during the early stages of the post-election crisis, which, together with other relevant evidence, indicate an intention on the part of Laurent Gbagbo and the inner circle to hold on to power at any cost, including by use of force against civilians.

a) *Public statements*

111. According to the evidence, Laurent Gbagbo gave a speech before members of the CRS at Divo on 27 August 2010, during which he stated, *inter alia*, the following:

Vous avez pour ennemis, je n'ai pas dit pour adversaires, j'ai dit pour ennemis, tous ceux qui sont contre le [sic] République. [...] Vous avez pour ennemis tous ceux qui sont contre la paix de la CÔTE D'IVOIRE. Vous avez pour ennemis tous ceux qui veulent troubler les élections en CÔTE D'IVOIRE. [...] Votre tâche, elle est simple ... votre tâche elle est simple, parce que la ligne de démarcation est nette. Entre la paix et le désordre, vous êtes pour la paix et vous vous battez contre ceux qui veulent semer le désordre. Entre la légalité et l'illégalité, vous êtes pour l'ill... la légalité et vous vous battez contre tous ceux qui sont pour l'illégalité. C'est ça votre rôle. Il y a une ligne de démarcation pour la CRS, il y a le blanc et il y a le noir. [...] La CRS n'est pas au milieu. Vous n'êtes pas des juges, ce sont les juges qui regardent pour voir s'il y a des circonstances atténuantes ou bien ... [...] ... s'il y a des ... ça c'est les juges, ça ! Vous, vous n'êtes pas les juges, hein ! Vous, vous êtes les combattants de la légalité républicaine, c'est tout. Quand on dit que la République est menacée, vous apparaissez pour rétablir l'ordre républicain. Si il y a des dégâts, les juges après, rétabliront. [...]. Je suis venu pour vous le dire, ce matin, vous le dire à vous mais le dire aussi à toute la CÔTE D'IVOIRE, dire à toute la CÔTE D'IVOIRE que la République, quand elle se construit, elle se construit aussi avec des forces de combat. Elle se construit aussi avec des forces de combat. Il y a des gens qui croient que quand l'homme politique que je suis fait des concessions, discute comme ça, c'est toute la République ... Non! J'ai aussi des bras! [Applaudissements et acclamations]. J'ai aussi des bras. Il y a des moments où je dis à ces bras-là: « Non, restez tranquilles, je vais négocier. » Mais quand le moment arrive, pour que ces bras se lancent, les bras se lancent. Donc je vous le dis, ce n'est pas pour rien qu'on vous a envoyés ici. Vous n'êtes ni des hommes politiques, ni des magistrats. [...] [V]otre rôle n'est pas un rôle d'analyse, chers amis ... votre rôle n'est pas un rôle d'analyse, de réflexion, votre rôle est un rôle pour mater tous ceux qui sont contre la République, tous ceux qui sèment le désordre. Toujours, en tout temps, nous vous donnerons les moyens qu'il faut, pour ça. [...] Les commissaires qui vous commandent, ils réfléchissent pour vous. [...] Si un soldat, un policier, veut se mettre à réfléchir comme son chef, il n'y a plus d'armée. Si un policier veut réfléchir à la place de ... où est YAPO là, il est là, non ? Voilà ... de YAPO ... mais il y a plus de CRS à DIVO ! S'il y a des erreurs

qui sont commises, nous on réglera ça avec YAPO. Mais il donne des ordres, vous exécutez. [...] Ne vous rendez pas complice du banditisme et des actes antirépublicains.<sup>303</sup>

112. The Chamber notes the Defence argument that the speech concerned the fight against banditry in the region and was unrelated to the upcoming presidential election,<sup>304</sup> but considers this interpretation untenable in light of Laurent Gbagbo's repeated references to the defence of the Republic, the reference to combat, and in particular the reference, superficially cloaked in metaphor, to his own readiness to use force, rather than negotiate, in certain circumstances. In addition, the Chamber considers particularly important Laurent Gbagbo's admonition to the FDS units not to question the legality of the orders given, and also pays attention to what plainly appears to be a blanket assurance that whatever the means applied to implement the orders, there would be no punishment.<sup>305</sup>

113. On 21 December 2010, Laurent Gbagbo gave a speech on the RTI during which he stated that "*Les troubles que l'on observe aujourd'hui en CÔTE D'IVOIRE sont nés du refus de mon adversaire de se soumettre aux lois*" and blamed the killings, fires and pillaging that occurred in the context of what he termed an "insurrectional march on the RTI" on individuals acting against Ivorian laws.<sup>306</sup> The speech also reveals that Laurent Gbagbo was aware at that time that there were non-FDS deaths during the march on the RTI.<sup>307</sup>

114. On 31 December 2010, Laurent Gbagbo gave an interview to Euronews during which he stated:

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<sup>303</sup> Video, CIV-OTP-0018-0005 with transcript CIV-OTP-0019-0007 at 0008-0010. See also Press article, CIV-OTP-0021-0906 at 0906.

<sup>304</sup> Defence Submissions, para. 1088.

<sup>305</sup> *A priori* justification of the use of force also appears in a judicial document dated 25 February 2011 in the context of the events in Abobo, see CIV-OTP-0001-0287 at 0294.

<sup>306</sup> Speech, CIV-OTP-0018-0590 at 0590-0591; Video, CIV-OTP-0026-0016 with transcript CIV-OTP-0052-0653 at 0658.

<sup>307</sup> Video, CIV-OTP-0026-0016 with transcript CIV-OTP-0052-0653 at 0659; [REDACTED], CIV-OTP-0044-0903 at 0906.

I told the Ivorian people at the start of my campaign that they would have the choice between a candidate for Ivory Coast and a candidate for foreigners. That appears to be something of a caricature, but it's the reality. [...] I don't believe at all that there will be a civil war. But obviously if these pressures continue, it will make confrontation more likely.<sup>308</sup>

115. The Chamber also notes that, according to evidence presented by the Defence, Laurent Gbagbo gave an interview to Al Jazeera at the end of December 2010. When asked about abductions and killings that were reported, Laurent Gbagbo stated:

[L]e vrai problème, c'est que les Ivoiriens ont voté au deuxième tour des élections présidentielles. Qui a gagné ? [...] Alors comme les hommes n'ont plus d'arguments sur le terrain, ils veulent faire glisser le débat sur les problèmes des droits humains. Nous ne sommes pas des assassins, donc nous allons faire front. Nous allons chercher toutes informations pour les donner à tous ceux qui le veulent.<sup>309</sup>

116. According to the evidence, similar statements were made publicly by Simone Gbagbo. On 15 January 2011, she attended a rally during which she stated:

En tout cas, moi, je vous dis que c'est Dieu qui mène notre combat, et que ce Dieu-là, il nous a déjà donné la victoire. C'est pour ça ... c'est pour ça qu'il faut que nous restions calmes et sereins. Mais, quand je dis calmes et sereins, je ne dis pas amorphes. Il faut que nous restions mobilisés dans nos maisons, dans nos villages, dans nos quartiers, dans nos villes. Il faut que nous restions vigilants dans nos départements, dans nos districts, dans nos régions, et il faut que nous recommencions à vivre, parce que la vie continue. Le temps des débats sur les élections de GBAGBO Laurent, des chefs bandits, ce temps-là est passé. Notre président est vigoureusement installé au pouvoir. [...] récupérer la totalité du territoire ivoirien, c'est notre travail à nous tous. C'est le travail bien sûr des forces de défense et de sécurité, mais c'est nous aussi notre travail. Il faut les appuyer. Je dis, délivrer le peuple du nord, délivrer le peuple du centre, délivrer le peuple de l'ouest de la rébellion. Je dis nettoyer nos forêts. Je dis nettoyer nos champs, récupérer nos champs de café et de cacao qui sont pillés.<sup>310</sup>

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<sup>308</sup> Press article, CIV-OTP-0007-0168 at 0170.

<sup>309</sup> Video, CIV-D15-0001-0590 with transcript CIV-D15-0001-0612 at 0613.

<sup>310</sup> Video, CIV-OTP-0012-0003 with transcript CIV-OTP-0019-0018 at 0019; [REDACTED], CIV-OTP-0044-1341 at 1342-1343.

b) *Campaign activities*

117. In the view of the Chamber, the conduct of campaign activities on behalf of Laurent Gbagbo, in particular among communities perceived as loyal to him, indicates that the mobilisation of supporters for the possible use of violence began well in advance of the violence at issue in the present case.

118. Large and well-organised rallies, including at *parlements*, formed a prominent part of Laurent Gbagbo's election campaign in 2010.<sup>311</sup> The evidence also indicates that violent rhetoric and hate speech was utilised at these rallies, and there is specific evidence of particularly strong and violent speeches at rallies in Yopougon.<sup>312</sup> According to the evidence, members of communities identified at the rallies as pro-Ouattara were openly threatened with death.<sup>313</sup> In addition, there is evidence of use of violence against perceived supporters of Alassane Ouattara on the side lines of large pro-Gbagbo gatherings already during the campaign period.<sup>314</sup>

119. The Chamber also notes the evidence that Laurent Gbagbo attended campaign rallies in Yopougon<sup>315</sup> and that Charles Blé Goudé<sup>316</sup> and Simone Gbagbo<sup>317</sup> were regular speakers at pro-Gbagbo rallies.

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<sup>311</sup> Witness P-44, CIV-OTP-0014-0622 at 0625, 0632; Witness P-324, CIV-OTP-0046-1345 at 1350; CIV-OTP-0046-1345 at 1352; Witness P-109, CIV-OTP-0020-0335 at 0348, para. 43.

<sup>312</sup> Witness P-109, CIV-OTP-0020-0335 at 0347, paras 36, 40; at 0348, para. 41; Witness P-108, CIV-OTP-0013-0108 at 0113, para. 30; Witness P-107, CIV-OTP-0020-0064 at 0068-0069, paras 21-32; Witness P-185, CIV-OTP-0029-0656 at 0668, para. 54; Witness P-189, CIV-OTP-0042-0508 at 0558, para. 211; Witness P-238, CIV-OTP-0048-1503 at 1538, para. 163; Witness P-229, CIV-OTP-0039-0196 at 0224, para. 86; UN HCHR report, CIV-OTP-0002-0046 at 0051, para. 7.

<sup>313</sup> Witness P-398, CIV-OTP-0049-2842 at 2848, para. 20.

<sup>314</sup> Witness P-398, CIV-OTP-0049-2842 at 2848, para. 20.

<sup>315</sup> Witness P-69, CIV-OTP-0017-0392 at 0400; Witness P-109, CIV-OTP-0020-0335 at 0346, para. 34. See also Witness P-109, CIV-OTP-0020-0335 at 0348, para. 41; at 0350, paras 50-51.

<sup>316</sup> Witness P-109, CIV-OTP-0020-0335 at 0348, para. 41; at 0349, para. 45; at 0350, para. 50; at 0352, para. 61; at 0353-0354, paras 66-67; Witness P-108, CIV-OTP-0013-0108 at 0114, para. 34; Witness P-229, CIV-OTP-0039-0196 at 0225, para. 90; Witness P-330, CIV-OTP-0049-2359 at 2379.

<sup>317</sup> Witness P-108, CIV-OTP-0013-0108 at 0116-0117, paras 59-60; Witness P-11, CIV-OTP-0016-0372 at 0375, 0378.

120. The mobilisation of the pro-Gbagbo youth for violence, in particular at large public gatherings, is further discussed at paragraphs 165 to 168 below.

*c) The blockade of the Golf Hotel*

121. A large amount of evidence before the Chamber demonstrates that there was an exchange of fire on 16 December 2010 between pro-Ouattara forces and FDS elements at a checkpoint in the vicinity of the Golf Hotel,<sup>318</sup> after which a blockade developed that was maintained virtually until the end of the crisis.<sup>319</sup> The evidence also demonstrates that the blockade was ordered by Laurent Gbagbo.<sup>320</sup>

122. The Chamber notes that the Defence submits that access to the Golf Hotel was nevertheless possible,<sup>321</sup> that the Golf Hotel was not occupied by civilians, but by Alassane Ouattara's combatants,<sup>322</sup> and that the FDS military positions were established in cooperation with UNOCI and the opposing side.<sup>323</sup> These facts referred to by the Defence are indeed supported by evidence, but, in the view of the Chamber, do not negate the fact that a blockade occurred, *i.e.* that FDS units were positioned in order to have control over access to the Golf Hotel. Indeed, the Chamber is of the view that the

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<sup>318</sup> See above, para. 38.

<sup>319</sup> Witness P-9, CIV-OTP-0051-0871 at 0887-0888; Witness P-10, CIV-OTP-0051-0335 at 0351; Witness P-46, CIV-OTP-0014-0271 at 0284; Witness P-238, CIV-OTP-0048-1503 at 1530-1531, paras 130-131; Annex 4, CIV-OTP-0041-0680; Witness P-239, CIV-OTP-0037-0425 at 0431, para. 32; Witness P-69, CIV-OTP-0017-0186 at 0197-0198; Witness P-100, CIV-OTP-0020-0193 at 0207; [REDACTED], CIV-OTP-0044-0852 at 0858; CIV-OTP-0044-0868 at 0872; CIV-OTP-0044-0882 at 0885; CIV-OTP-0044-0895 at 0900; CIV-OTP-0044-0903 at 0909; CIV-OTP-0044-0975 at 0982; CIV-OTP-0044-0996 at 1002-1003; CIV-OTP-0044-1119 at 1123; CIV-OTP-0044-1161 at 1164; CIV-OTP-0044-1167 at 1171; CIV-OTP-0044-1201 at 1203; CIV-OTP-0044-1211 at 1213; CIV-OTP-0044-1270 at 1273; UN SG report, CIV-OTP-0002-0010 at 0018-0019, para. 39; Press article, CIV-OTP-0007-0098 at 0098.

<sup>320</sup> Witness P-9, CIV-OTP-0051-0871 at 0889-0890, 0893, 0898; Witness P-44, CIV-OTP-0014-0768 at 0793; Witness P-46, CIV-OTP-0014-0271 at 0283; Video, CIV-D15-0001-0589 with transcript CIV-D15-0001-0617 at 0617.

<sup>321</sup> Defence Submissions, paras 200-206.

<sup>322</sup> Defence Submissions, paras 212-215.

<sup>323</sup> Defence Submissions, paras 221-226.

positioning of the FDS units in order to control access to the Golf Hotel must be given weight as part of the entirety of the evidence, in that it suggests that Laurent Gbagbo was willing to rely on military force against his opponent and his opponent's supporters in order to assert his claim to power.

C. Preparatory activities in anticipation of the use of violence

a) *Securing allegiance of the FDS*

123. The evidence shows that starting already before the outbreak of the post-election violence, Laurent Gbagbo and his inner circle took specific steps to secure the allegiance of members of the FDS.

124. The evidence demonstrates that in July and August 2010, a number of FDS officers – including high commanders – were promoted to higher ranks, by presidential decrees issued by Laurent Gbagbo.<sup>324</sup>

125. Some evidence indicates<sup>325</sup> that the promotions followed regular procedures, were not limited to officers of any particular ethnic origin,<sup>326</sup> and took place without prior consultation of Laurent Gbagbo,<sup>327</sup> despite such promotions in higher ranks falling within the competence of the Head of State.<sup>328</sup> According to other information, the officers were promoted with a view to reinforcing solidarity within the armed forces and reaffirming the authority of commanders, to call rebels to unity, and to end rumours and

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<sup>324</sup> Decrees CIV-OTP-0047-0770 at 0770-0771; CIV-OTP-0028-0004 at 0004-0005 (same in CIV-OTP-0047-0766 at 0766-0767); CIV-OTP-0047-0768 at 0768-0769; Witness P-9, CIV-OTP-0051-0770 at 0771-0779, 0784; Witness P-10, CIV-OTP-0051-0300 at 0324-0327; Witness Bertin Kadet, CIV-D15-0001-6309 at 6309-6314; Witness Alain Dogou, CIV-D15-0001-5357 at 5374; Witness Amani Michel N'Guessan, CIV-D15-0001-4499 at 4503-4504.

<sup>325</sup> See also Defence Submissions, paras 1168-1169; Defence Final Submissions, para. 115.

<sup>326</sup> Witness Bertin Kadet, CIV-D15-0001-6309 at 6310-6311; Witness Bertin Kadet, CIV-D15-0001-6316 at 6323-6326 (same as CIV-D15-0001-6347 at 6354-6357); Witness Alain Dogou, CIV-D15-0001-5357 at 5374; Witness Amani Michel N'Guessan, CIV-D15-0001-6118 at 6120-6121; Witness Émile Guiriéoulou, CIV-D15-0001-6412 at 6417-6418; Press article, CIV-OTP-0002-0390 at 0391; Witness P-10, CIV-OTP-0051-0300 at 0326-0327.

<sup>327</sup> Witness Amani Michel N'Guessan, CIV-D15-0001-4499 at 4503-4504.

<sup>328</sup> Witness P-9, CIV-OTP-0051-0770 at 0773-0774; Press article, CIV-OTP-0002-0390 at 0390.

speculations.<sup>329</sup> In this context, the evidence suggests that among those promoted were loyal officers, who were considered to be symbols of “resistance and hope”,<sup>330</sup> and that those promoted were key figures of Laurent Gbagbo’s security system.<sup>331</sup> Considering the totality of the evidence, the Chamber is of the view that the promotions were, at least in part, intended to secure the allegiance of the FDS.

126. Furthermore, the evidence shows that on 3 December 2010, the day on which the Constitutional Council declared Laurent Gbagbo winner of the presidential elections,<sup>332</sup> the high commanders of the FDS were asked to confirm their allegiance to Laurent Gbagbo, thereby sending a clear signal that he enjoyed the support of the armed forces.<sup>333</sup>

127. Moreover, the evidence indicates that the Gbagbo administration paid high-ranking military officials in addition to their regular income,<sup>334</sup> and provided financial means to other individuals in civilian and military positions, both as reward for particular efforts and to mark their loyalty in general.<sup>335</sup>

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<sup>329</sup> Witness Bertin Kadet, CIV-D15-0001-6309 at 6311-6314; Press article, CIV-OTP-0002-0390 at 0390-0391; Witness P-9, CIV-OTP-0051-0770 at 0774-0779.

<sup>330</sup> Witness Bertin Kadet, CIV-D15-0001-6309 at 6311-6312; Press article, CIV-OTP-0002-0390 at 0391. See also Press article, CIV-OTP-0002-1017 at 1017.

<sup>331</sup> Press article, CIV-OTP-0002-1011 at 1011-1013.

<sup>332</sup> Decision, CIV-OTP-0018-0039 at 0045.

<sup>333</sup> Witness P-9, CIV-OTP-0051-0830 at 0866-0869; Witness P-10, CIV-OTP-0051-0335 at 0346-0349; Witness P-46, CIV-OTP-0014-0204 at 0221, 0223-0227, 0231-0232; Witness P-49, CIV-OTP-0019-0168 at 0168-0169, paras 8-9; at 0170, para. 16; Witness P-47, CIV-OTP-0015-0134 at 0152; Minutes, CIV-OTP-0018-0220 at 0220; UN HCHR report, CIV-OTP-0003-0527 at 0532-0533, para. 9 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0052, para. 9); Press article, CIV-OTP-0002-0366 at 0367; Press article, CIV-OTP-0002-1001 at 1001; Press article, CIV-OTP-0002-1022 at 1022. See also Witness P-49, CIV-OTP-0019-0168 at 0169-0170, paras 10-11, 13-14, 17.

<sup>334</sup> Witness P-321, CIV-OTP-0046-0908 at 0917-0919, 0926-0930.

<sup>335</sup> Witness P-321, CIV-OTP-0046-0759 at 0773-0775; CIV-OTP-0046-0908 at 0916-0931; CIV-OTP-0046-0932 at 0942-0948; CIV-OTP-0046-0961 at 0985-0987.



128. There is also evidence that before the presidential election, Laurent Gbagbo sought to reinforce the allegiance of the FDS by tying their fates to his own. In particular, there is evidence that during a celebration on 7 August 2010, Laurent Gbagbo, addressing militaries and civilians in leading positions, stated “*Si je tombe, vous tombez aussi*”.<sup>336</sup> According to Witness P-10, this phrase was consistently used by Laurent Gbagbo and was understood as demanding unconditional loyalty.<sup>337</sup>

129. In addition, members of Laurent Gbagbo’s inner circle seem to have made clear to their subordinates even before the post-election crisis that they were to prevent others from taking power.<sup>338</sup> Further, there is some indication that elements in the armed forces felt intimidated, including by members of the inner circle questioning their loyalty.<sup>339</sup>

130. The diary of Simone Gbagbo seized from the Presidential Residence includes comments which point to considerations on the active recourse to and involvement of the FDS in the pursuit to stay in power.<sup>340</sup>

*b) Acquisition of weapons*

131. The evidence shows that Laurent Gbagbo and his inner circle engaged in efforts to acquire weapons, ammunition and other combat material before and

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<sup>336</sup> Witness P-9, CIV-OTP-0051-0770 at 0782-0785; Witness P-239, CIV-OTP-0037-0425 at 0433, para. 46; Witness P-321, CIV-OTP-0046-0839 at 0855-0858; Press article, CIV-OTP-0002-0366 at 0367. See also Witness P-10, CIV-OTP-0051-0300 at 0327-0329.

<sup>337</sup> Witness P-10, CIV-OTP-0051-0300 at 0327-0329.

<sup>338</sup> Witness P-238, CIV-OTP-0048-1503 at 1512, paras 34-35; Witness P-239, CIV-OTP-0037-0425 at 0432-0433, paras 42-47; Witness P-316, CIV-OTP-0043-0461 at 0467-0468, para. 24.

<sup>339</sup> Witness P-330, CIV-OTP-0049-2269 at 2302-2306; CIV-OTP-0049-2336 at 2340-2341; Witness P-321, CIV-OTP-0046-0790 at 0797-0799. See also Witness P-164, CIV-OTP-0028-0481 at 0493, para. 79.

<sup>340</sup> For 5 November 2010 the following remarks can be found: “*reprendre la sécurité en main: incitation à 1 réplique par les FDS à armes réelles*” (Diary, CIV-OTP-0018-0810 at 0832), while an entry for 7 December 2010 notes “*Actions de plusieurs directions: ... initiatives militaires*” (Diary, CIV-OTP-0018-0810 at 0837). For 13 December 2010, there is the following entry: “*dispositions prises pour que tt ce qui peut être fourni en complément de l’armée soit*”, and a note “*mater la rébellion – offensive militaire*” (Diary, CIV-OTP-0018-0810 at 0844, 0848).

during the post-election crisis, in spite of a UN arms embargo.<sup>341</sup> There is evidence that these activities also involved Simone Gbagbo and her aide-de-camp.<sup>342</sup> Further, there is evidence that weaponry was stored at the Presidential Palace<sup>343</sup> and that it was distributed outside the official structure and procedures.<sup>344</sup>

132. Additionally, the evidence demonstrates that significant financial means were assigned, including by Laurent Gbagbo directly, to the procurement of arms, ammunition and other equipment.<sup>345</sup>

*c) Recruitment into the FDS*

133. The evidence shows that efforts were made to mobilise new elements for the armed forces, both through official recruitment, as well as through irregular recruitment of youth and militia groups that were integrated into the FDS.

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<sup>341</sup> Witness P-9, CIV-OTP-0051-0663 at 0665-0666, 0668-0669; CIV-OTP-0051-0770 at 0788-0799; Witness P-44, CIV-OTP-0014-0646 at 0652; CIV-OTP-0014-0684 at 0704-0710; CIV-OTP-0014-0768 at 0783-0784; Witness P-69, CIV-OTP-0017-0246 at 0265-0267; CIV-OTP-0017-0270 at 0271-0272; Witness P-234, CIV-OTP-0041-0534 at 0554, para. 74; UN Expert Group report, CIV-OTP-0021-0125 at 0137, paras 33-34; at 0146-0147, paras 69-72; at 0148, para. 75; UN Expert Group report, CIV-OTP-0042-0686 at 0697, paras 42-43; at 0700, para. 60; at 0785-0789; Police report, CIV-OTP-0045-0102 at 0102-0104.

<sup>342</sup> Witness P-44, CIV-OTP-0014-0684 at 0709-0710; Witness P-321, CIV-OTP-0046-1150 at 1153-1156; Diary, CIV-OTP-0018-0810 at 0854; UN Expert Group report, CIV-OTP-0021-0125 at 0136-0137, para. 30; UN Expert Group report, CIV-OTP-0042-0686 at 0697, para. 43; Agenda, CIV-OTP-0021-7523 at 7523; Press article, CIV-OTP-0052-0283 at 0284; Press article, CIV-OTP-0052-0282 at 0282.

<sup>343</sup> Witness P-321, CIV-OTP-0046-1121 at 1123-1125; CIV-OTP-0046-1150 at 1159-1161; Witness P-9, CIV-OTP-0011-0423 at 0424-0427; Witness P-44, CIV-OTP-0014-0684 at 0705-0707; UN Expert Group report, CIV-OTP-0021-0125 at 0160, para. 142; UN Expert Group report, CIV-OTP-0042-0686 at 0700, para. 59.

<sup>344</sup> Witness P-9, CIV-OTP-0051-0712 at 0733; Witness P-321, CIV-OTP-0046-1150 at 1151-1152, 1159-1162.

<sup>345</sup> Witness P-9, CIV-OTP-0051-0556 at 0575-0576; CIV-OTP-0051-0663 at 0669; CIV-OTP-0051-0806 at 0809-0815; Witness P-321, CIV-OTP-0046-1121 at 1129-1146, 1148-1149; CIV-OTP-0046-1150 at 1152-1153, 1155-1157; Copy of cheque, CIV-OTP-0028-0303; Copies of documents, CIV-OTP-0028-0304 at 0304-0316; List of payments, CIV-OTP-0028-0317 at 0317; Copies of documents, CIV-OTP-0028-0318 at 0318-0332.

134. Witness P-9 provides details on the recruitment process of 2000 new elements into the FDS in January 2010.<sup>346</sup> Mobilisation seems to have continued throughout the post-election crisis, involving different FDS units.<sup>347</sup> There is also evidence that the FDS utilised elements who were still in training.<sup>348</sup>

135. In addition, the evidence indicates that the FDS conducted at least one round of official recruitment into the armed forces after the second election round.<sup>349</sup> For the purposes of such recruitment, entry requirements were lowered, people who had some prior experience with weapon handling were prioritised, and the training period for the new recruits was shortened.<sup>350</sup> According to the evidence, this recruitment was approved by Laurent Gbagbo.<sup>351</sup>

136. The evidence also indicates that, in addition to official recruitment activities, members of youth groups and militias were integrated into the FDS in an irregular manner. According to witness statements, already in 2003, members of youth groups were incorporated into the official FDS structure, forming what was informally called “*contingent Blé Goudé*”.<sup>352</sup> It appears that the majority of these recruits were from the west, south and east of the country,<sup>353</sup> and that some were recruited despite not fulfilling all physical

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<sup>346</sup> Witness P-9, CIV-OTP-0051-1195 at 1198-1204, 1213-1218.

<sup>347</sup> Letter, CIV-OTP-0048-1146 at 1146-1147; Tables, CIV-OTP-0048-1110; CIV-OTP-0048-1111; CIV-OTP-0048-1112; CIV-OTP-0048-1094; Lists, CIV-OTP-0048-1117 at 1117-1120; CIV-OTP-0048-1121 at 1121-1123; CIV-OTP-0048-1124 at 1124-1128; CIV-OTP-0048-1129 at 1129-1133; CIV-OTP-0048-1134 at 1134-1137; CIV-OTP-0048-1138 at 1138-1140; Report, CIV-OTP-0045-0341 at 0342-0346.

<sup>348</sup> Police report, CIV-OTP-0045-0084 at 0084-0085.

<sup>349</sup> Witness P-9, CIV-OTP-0051-1195 at 1196-1199.

<sup>350</sup> Witness P-9, CIV-OTP-0051-1195 at 1199-1207.

<sup>351</sup> Witness P-9, CIV-OTP-0051-0806 at 0807-0808, 0813, 0815.

<sup>352</sup> Witness P-164, CIV-OTP-0028-0481 at 0492, paras 72-76; at 0493, paras 80, 82-83; Witness P-316, CIV-OTP-0043-0461 at 0472, para. 44.

<sup>353</sup> Witness P-164, CIV-OTP-0028-0481 at 0492, para. 72.

requirements.<sup>354</sup> The recruits received an accelerated training at FDS units including BASA.<sup>355</sup> According to the evidence, elements of this contingent were given special treatment and acted with impunity, they implemented orders that a trained soldier would have to refuse because they involved infringement of the law,<sup>356</sup> and they were trained “*pour défendre la personne de Gbagbo*”.<sup>357</sup>

137. There is also evidence that additional recruitment of youths took place around the time of the elections and during the crisis, with the recruits being sent to different FDS units including GR and BASA after a brief training.<sup>358</sup> There is evidence suggesting that the recruitment into the GR was ordered by Laurent Gbagbo.<sup>359</sup> Some of the youths arrived after Charles Blé Goudé’s call for the youth to enrol in the army.<sup>360</sup> It seems that Charles Blé Goudé promised the youth they would be integrated into the army,<sup>361</sup> as did Laurent Gbagbo.<sup>362</sup> Further, the evidence suggests that some of the youths recruited in this way were given old matriculation numbers of former soldiers.<sup>363</sup>

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<sup>354</sup> Witness P-316, CIV-OTP-0043-0461 at 0472, para. 45.

<sup>355</sup> Witness P-164, CIV-OTP-0028-0481 at 0492, paras 73-76; Witness P-316, CIV-OTP-0043-0461 at 0483, para. 86.

<sup>356</sup> Witness P-164, CIV-OTP-0028-0481 at 0492, paras 74, 77.

<sup>357</sup> Witness P-164, CIV-OTP-0028-0481 at 0492, para. 77.

<sup>358</sup> Witness P-239, CIV-OTP-0037-0425 at 0437, paras 76-78, 80, 82; at 0439, paras 85, 87-88; Annex 4, CIV-OTP-0037-0464; Annex 5, CIV-OTP-0037-0465; Witness P-316, CIV-OTP-0043-0461 at 0484-0485, paras 89-93; at 0485-0486, paras 96-99; Witness P-238, CIV-OTP-0048-1503 at 1548, paras 209-210; Witness P-10, CIV-OTP-0016-0175 at 0179-0183; Witness P-54, CIV-OTP-0007-0283 at 0287, para. 24; Witness P-381, CIV-OTP-0049-2818 at 2825, paras 31-32; UN HCHR report, CIV-OTP-0003-0527 at 0538, para. 30; [REDACTED], CIV-OTP-0044-2421 at 2427; HRW press release, CIV-OTP-0002-0164 at 0165.

<sup>359</sup> Witness P-239, CIV-OTP-0037-0425 at 0437, para. 76; at 0438, para. 80.

<sup>360</sup> Witness P-239, CIV-OTP-0037-0425 at 0439, paras 89-90. See also Witness P-112, CIV-OTP-0019-0306 at 0317, paras 58-59; at 0318, para. 63; at 0319-0320, paras 67-68.

<sup>361</sup> Witness P-316, CIV-OTP-0043-0461 at 0500, para. 161.

<sup>362</sup> Witness P-239, CIV-OTP-0037-0425 at 0438, paras 79, 81.

<sup>363</sup> Witness P-239, CIV-OTP-0037-0425 at 0438-0439, paras 82-84; at 0440, paras 92-93.

138. While there is evidence suggesting that no militias were officially integrated into the FDS,<sup>364</sup> other information appears to indicate that militia were enrolled in the FDS,<sup>365</sup> and that members of the GPP and remobilised police were deployed in activities together with regular forces.<sup>366</sup> Some information further suggests that before the crisis, youths were integrated into the security detail of Laurent Gbagbo.<sup>367</sup>

*d) Recruitment into, training and supplying of loyal militias*

139. In addition to official recruitment into FDS ranks, other efforts focussed on building up and sustaining loyal militia groups. The evidence shows that different groups recruited and trained youths in various neighbourhoods of Abidjan, in particular in Yopougon, starting as early as 2004 and continuing during the post-election crisis.<sup>368</sup> It appears that the youths were promised that they would later be integrated into the regular forces.<sup>369</sup>

140. The evidence indicates links between such militia groups and FDS units, including through assistance in training, as well as the Gbagbo political

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<sup>364</sup> Witness P-9, CIV-OTP-0051-1195 at 1223-1224.

<sup>365</sup> Witness P-189, CIV-OTP-0042-0508 at 0558, para. 213; Witness P-112, CIV-OTP-0019-0306 at 0317, para. 59; Screening notes of Witness P-168, CIV-OTP-0029-0366 at 0370, para. 28.

<sup>366</sup> Ministry of Interior note, CIV-OTP-0045-0148 at 0151.

<sup>367</sup> Witness P-316, CIV-OTP-0043-0461 at 0487, para. 102.

<sup>368</sup> Witness P-44, CIV-OTP-0014-0684 at 0690; CIV-OTP-0014-0742 at 0757-0767; CIV-OTP-0014-0768 at 0769-0771; Witness P-107, CIV-OTP-0020-0064 at 0068, paras 21-23; at 0069, paras 29-31; Witness P-109, CIV-OTP-0020-0335 at 0345, para. 30; at 0356-0357, paras 80-84; at 0358, para. 92; at 0359, paras 92-93, 97; Witness P-108, CIV-OTP-0013-0108 at 0115, paras 44-50; Witness P-117, CIV-OTP-0020-0033 at 0051, para. 126; Witness P-226, CIV-OTP-0039-0143 at 0153-0154, para. 40; Witness P-369, CIV-OTP-0048-1396 at 1477, para. 291; [REDACTED], CIV-OTP-0044-1488 at 1488; [REDACTED], CIV-OTP-0044-1562 at 1563; Video, CIV-OTP-0002-0995 with transcript CIV-OTP-0007-0181 at 0186-0188, at 0192-0193; Video, CIV-OTP-0003-0713 with transcript CIV-OTP-0021-0009 at 0010-0012; UN HCHR report, CIV-OTP-0002-0046 at 0047, para. 3; at 0058, para. 30; at 0059, para. 33 (same information in UN HCHR report, CIV-OTP-0003-0527 at 0538, paras 30, 33); List, CIV-OTP-0048-0203 at 0203-0217; Video, CIV-OTP-0028-0008 with transcript CIV-OTP-0027-0440.

<sup>369</sup> Witness P-108, CIV-OTP-0013-0108 at 0114, para. 40; Witness P-109, CIV-OTP-0020-0335 at 0356-0357, para. 80; at 0358, para. 92.

camp.<sup>370</sup> Further, the evidence points to such recruitment and training of youth in militia groups at least being condoned, if not actively supported, by Laurent Gbagbo<sup>371</sup> and members of his inner circle such as Charles Blé Goudé,<sup>372</sup> Simone Gbagbo<sup>373</sup> and her aide-de-camp.<sup>374</sup>

141. This is further supported by the evidence showing that militia groups received weapons from the FDS and the Gbagbo political camp,<sup>375</sup> including through Simone Gbagbo,<sup>376</sup> although some information suggests that the Gbagbo government was also concerned about the risk associated with the presence of armed militia at the time.<sup>377</sup> There is indication that later in the crisis, militia took possession of weapons in FDS bases and at other locations.<sup>378</sup>

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<sup>370</sup> Witness P-109, CIV-OTP-0020-0335 at 0357-0358, paras 85-91; at 0359, paras 94-95; Witness P-108, CIV-OTP-0013-0108 at 0115, para. 45; Witness P-117, CIV-OTP-0020-0033 at 0051, paras 125-126; at 0053, paras 141-142; Witness P-226, CIV-OTP-0039-0143 at 0153-0154, para. 40; Witness P-234, CIV-OTP-0041-0534 at 0578, para. 169; UNOCI report, CIV-OTP-0002-0527 at 0565, para. 145.

<sup>371</sup> Witness P-44, CIV-OTP-0014-0742 at 0763-0764; Note, CIV-OTP-0018-0059 at 0059-0060.

<sup>372</sup> Witness P-44, CIV-OTP-0014-0684 at 0690; CIV-OTP-0014-0742 at 0757-0767.

<sup>373</sup> Diary, CIV-OTP-0018-0810 at 0834, 0836, 0838, 0850, 0854, 0857; Diary, CIV-OTP-0018-0881 at 0884-0891.

<sup>374</sup> Email, CIV-OTP-0028-0450 at 0457-0458.

<sup>375</sup> Witness P-107, CIV-OTP-0020-0064 at 0070, paras 41-43; at 0087, para. 169; Witness P-108, CIV-OTP-0013-0108 at 0120, paras 86-91; Witness P-238, CIV-OTP-0048-1503 at 1538, paras 162, 164; Witness P-234, CIV-OTP-0041-0534 at 0578, para. 170; Witness P-316, CIV-OTP-0043-0461 at 0496, paras 142-143; Witness P-330, CIV-OTP-0049-2634 at 2653-2656; Witness P-321, CIV-OTP-0046-1102 at 1111-1113; Witness P-324, CIV-OTP-0047-0036 at 0049-0052; Witness P-44, CIV-OTP-0014-0684 at 0690, 0708-0710; CIV-OTP-0014-0768 at 0781-0783; Witness P-48, CIV-OTP-0004-0002 at 0021, paras 120-121; Witness P-229, CIV-OTP-0039-0196 at 0209-0210, paras 42, 45; at 0222, para. 81; Witness P-87, CIV-OTP-0011-0201 at 0209, para. 48; at 0214, para. 85; Witness P-9, CIV-OTP-0051-0712 at 0760-0767; Ministry of Interior note, CIV-OTP-0045-0148 at 0152; UN SG report, CIV-OTP-0003-0123 at 0130, para. 34; UN HCHR report, CIV-OTP-0003-0527 at 0538, paras 32-33; Video, CIV-OTP-0003-0670 at 00:07:54-00:10:17 with transcript CIV-OTP-0020-0479 at 0538-0539; Tweet, CIV-OTP-0004-0238 at 0238.

<sup>376</sup> Witness P-44, CIV-OTP-0014-0684 at 0690, 0708-0710; CIV-OTP-0014-0768 at 0781-0783.

<sup>377</sup> Screening notes of Witness P-168, CIV-OTP-0029-0366 at 0369-0370, para. 28.

<sup>378</sup> Witness P-11, CIV-OTP-0016-0256 at 0274-0278; CIV-OTP-0016-0347 at 0359-0360; Witness P-46, CIV-OTP-0014-0443 at 0462-0463, 0476-0477; Screening notes of Witness P-68, CIV-OTP-0028-0023 at 0026, para. 19; UN SG report, CIV-OTP-0003-0123 at 0130, para. 34; Video, CIV-OTP-0015-0595 with transcript CIV-OTP-0021-0026 at 0027-0030 (translation CIV-OTP-0021-0078 at 0080-0083).

142. In addition to weaponry, the evidence indicates that militia groups were given financial support by the State, including at the Presidency,<sup>379</sup> and by members of Laurent Gbagbo's inner circle.<sup>380</sup>

143. The evidence suggests the presence of militia in camps of regular FDS<sup>381</sup> and their cooperation with the regular forces,<sup>382</sup> in some respects to an extent which indicates their *de facto* integration into the FDS chain of command.<sup>383</sup>

*e) Recruitment and financing of mercenaries*

144. The evidence shows that efforts were made to recruit and finance mercenaries who cooperated with and fought alongside regular armed forces during the post-election crisis.

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<sup>379</sup> Witness P-238, CIV-OTP-0048-1503 at 1539, para. 168; Witness P-226, CIV-OTP-0039-0143 at 0161-0162, para. 60; Witness P-49, CIV-OTP-0019-0168 at 0173-0174, para. 44; Witness P-321, CIV-OTP-0046-0759 at 0773-0775; Witness P-316, CIV-OTP-0043-0461 at 0487, para. 101.

<sup>380</sup> Witness P-46, CIV-OTP-0014-0233 at 0249-0250; CIV-OTP-0014-0326 at 0333-0334; CIV-OTP-0014-0400 at 0428-0429; Witness P-316, CIV-OTP-0043-0461 at 0487, para. 101; UN HCHR report, CIV-OTP-0002-0573 at 0580, para. 25.

<sup>381</sup> Witness P-218, CIV-OTP-0040-0446 at 0463-0464, paras 100-103; at 0467, para. 126; Witness P-316, CIV-OTP-0043-0461 at 0494-0496, paras 135-143; Witness P-107, CIV-OTP-0020-0064 at 0069, para. 31; Witness P-49, CIV-OTP-0019-0168 at 0174, paras 47-48; Witness P-234, CIV-OTP-0041-0534 at 0578, paras 169-170; Witness P-10, CIV-OTP-0051-0392 at 0415; Witness P-324, CIV-OTP-0047-0036 at 0056-0057; Witness P-330, CIV-OTP-0049-2634 at 2662-2663; CIV-OTP-0049-2760 at 2782-2784; Witness P-226, CIV-OTP-0039-0143 at 0186, para. 131. See also Witness P-46, CIV-OTP-0014-0233 at 0247; CIV-OTP-0014-0443 at 0471-0472.

<sup>382</sup> Witness P-109, CIV-OTP-0020-0335 at 0360-0361, paras 102-103; at 0362, paras 108-109; at 0363, para. 112; Witness P-87, CIV-OTP-0011-0201 at 0212-0213, paras 73-74; at 0217, paras 102, 104; Witness P-44, CIV-OTP-0014-0768 at 0800-0801; Witness P-46, CIV-OTP-0014-0233 at 0243-0246; Witness P-324, CIV-OTP-0047-0036 at 0056-0057; Witness P-239, CIV-OTP-0037-0425 at 0447-0448, paras 146-158; Video, CIV-OTP-0015-0595 with transcript CIV-OTP-0021-0026 at 0030-0031 (translation CIV-OTP-0021-0078 at 0083-0084); UN HCHR report, CIV-OTP-0003-0527 at 0538, para. 32 (same information in UN HCHR report, CIV-OTP-0002-0046 at 0058-0059, para. 32); Amnesty International report, CIV-OTP-0002-0647 at 0679-0680.

<sup>383</sup> Witness P-49, CIV-OTP-0019-0168 at 0174, para. 47; Witness P-108, CIV-OTP-0013-0108 at 0120-0121, paras 92-101; Witness P-164, CIV-OTP-0028-0481 at 0487, para. 36; Witness P-218, CIV-OTP-0040-0446 at 0464, paras 106-107; Witness P-316, CIV-OTP-0043-0461 at 0494-0496, paras 135-143; Witness P-11, CIV-OTP-0016-0347 at 0353-0354, 0361; CIV-OTP-0016-0449 at 0458-0460; Witness P-46, CIV-OTP-0014-0233 at 0243-0246; Witness P-45, CIV-OTP-0005-0002 at 0013, para. 80; Ministry of Interior note, CIV-OTP-0045-0148 at 0151-0152. See also Report, CIV-OTP-0045-0127 at 0128. See also Witness P-321, CIV-OTP-0046-0790 at 0804-0806; CIV-OTP-0046-0814 at 0816-0821, 0824.

145. The evidence indicates that already in 2002-2003, mercenaries were employed by regular armed forces for training purposes.<sup>384</sup> Active recruitment of mercenaries by the Gbagbo camp for use within Côte d'Ivoire seems to have commenced as early as 2002.<sup>385</sup> Additional recruitment and reinforcement of the existing mercenary groups with mercenaries, for example from Liberia and Angola, took place during the post-election crisis.<sup>386</sup> Individuals close to Laurent Gbagbo were involved in the recruitment, organisation and supervision of mercenaries,<sup>387</sup> as well as Simone Gbagbo's aide-de-camp,<sup>388</sup> and possibly Charles Blé Goudé<sup>389</sup> and Simone Gbagbo.<sup>390</sup>

146. According to the evidence, significant financial means were provided to the mercenaries for their services<sup>391</sup> by the Presidency and people close to

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<sup>384</sup> Witness P-9, CIV-OTP-0051-0663 at 0678-0684; Witness P-10, CIV-OTP-0051-0266 at 0275-0280.

<sup>385</sup> Witness P-44, CIV-OTP-0014-0768 at 0784-0785, 0792; Witness P-108, CIV-OTP-0013-0108 at 0117, paras 62-65; Witness P-369, CIV-OTP-0048-1396 at 1480, para. 304.

<sup>386</sup> Witness P-234, CIV-OTP-0041-0534 at 0577-0578, paras 163-168; at 0579, paras 171, 173; at 0580, paras 177-178; Witness P-108, CIV-OTP-0013-0108 at 0118, paras 68-69, 75-76; at 0119, paras 79, 81, 85; Witness P-109, CIV-OTP-0020-0335 at 0364-0365, paras 118-119, 121-122; Witness P-316, CIV-OTP-0043-0461 at 0497-0499, paras 150-154; Witness P-321, CIV-OTP-0046-0790 at 0800-0803; Witness P-44, CIV-OTP-0014-0768 at 0772, 0792; Witness P-46, CIV-OTP-0014-0443 at 0469; Witness P-239, CIV-OTP-0037-0425 at 0453, paras 200-202; Witness P-107, CIV-OTP-0020-0064 at 0086-0087, para. 167; Witness P-189, CIV-OTP-0042-0508 at 0558, para. 215; UN Expert Group report, CIV-OTP-0027-0304 at 0325, para. 42; at 0326, para. 47; at 0331, para. 63; UN SG report, CIV-OTP-0002-0010 at 0020, para. 46; Witness P-369, CIV-OTP-0048-1396 at 1479-1480, paras 301-303; at 1480-1481, para. 306; HRW press release, CIV-OTP-0002-0161 at 0162; Press article, CIV-OTP-0002-0295 at 0295. See also Witness P-398, CIV-OTP-0049-2842 at 2856, para. 51; Witness P-404, CIV-OTP-0051-0236 at 0245, para. 32.

<sup>387</sup> Witness P-44, CIV-OTP-0014-0646 at 0651-0652; CIV-OTP-0014-0684 at 0710; CIV-OTP-0014-0768 at 0784-0785, 0792; Witness P-321, CIV-OTP-0046-0790 at 0800-0805, 0811; CIV-OTP-0046-0862 at 0878-0880; Witness P-108, CIV-OTP-0013-0108 at 0117, paras 64-65; at 0118, paras 68-69; at 0119, para. 85; Witness P-109, CIV-OTP-0020-0335 at 0364-0365, para. 119; at 0365, paras 121-122; Witness P-10, CIV-OTP-0051-0392 at 0416; Witness P-226, CIV-OTP-0039-0143 at 0187, para. 132; Witness P-316, CIV-OTP-0043-0461 at 0499, para. 159; UN Expert Group report, CIV-OTP-0027-0304 at 0325-0326, para. 44.

<sup>388</sup> Emails, CIV-OTP-0021-1290 at 1290-1291.

<sup>389</sup> Witness P-108, CIV-OTP-0013-0108 at 0117, para. 66; Witness P-226, CIV-OTP-0039-0143 at 0163, para. 63.

<sup>390</sup> Diary, CIV-OTP-0018-0810 at 0859; Diary, CIV-OTP-0018-0881 at 0891.

<sup>391</sup> Witness P-108, CIV-OTP-0013-0108 at 0117, para. 67; at 0118, paras 70-73; Witness P-109, CIV-OTP-0020-0335 at 0380, para. 180; Witness P-189, CIV-OTP-0042-0508 at 0559, para. 217;



Laurent Gbagbo,<sup>392</sup> while some information suggests that Laurent Gbagbo himself initiated remuneration of mercenaries.<sup>393</sup> In addition to their payments, mercenaries appear to have been provided with weaponry and other equipment like uniforms.<sup>394</sup>

147. In contemporaneous interviews, Laurent Gbagbo denied the use of mercenaries,<sup>395</sup> although he confirmed that Russian helicopters had been purchased and people brought in to train FDS elements in their use.<sup>396</sup>

148. While there is some evidence to the contrary,<sup>397</sup> the totality of the evidence convincingly points to mercenaries being *de facto* integrated with FDS elements, at least towards the end of the crisis,<sup>398</sup> and being commanded and instructed by FDS officers or other members of the inner circle.<sup>399</sup> The

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Witness P-234, CIV-OTP-0041-0534 at 0578, para. 168; Witness P-369, CIV-OTP-0048-1396 at 1479, para. 301.

<sup>392</sup> Witness P-321, CIV-OTP-0046-0814 at 0821-0822; CIV-OTP-0046-0862 at 0878-0880; UN Expert Group report, CIV-OTP-0027-0304 at 0325-0327, paras 44-46, 48; Witness P-369, CIV-OTP-0048-1396 at 1480, para. 305; HRW report, CIV-OTP-0004-0072 at 0140 fn. 151.

<sup>393</sup> Witness P-321, CIV-OTP-0046-0862 at 0880-0882.

<sup>394</sup> Witness P-234, CIV-OTP-0041-0534 at 0579, para. 173; Witness P-321, CIV-OTP-0046-0814 at 0830-0831; Witness P-109, CIV-OTP-0020-0335 at 0365, para. 122; Witness P-226, CIV-OTP-0039-0143 at 0150, para. 33; UN SG report, CIV-OTP-0002-0010 at 0020, para. 46; UNOCI report, CIV-OTP-0002-0527 at 0546, para. 55; UN Expert Group report, CIV-OTP-0027-0304 at 0324, para. 39; at 0327, paras 49-50.

<sup>395</sup> Video, CIV-D15-0001-0589 with transcript CIV-D15-0001-0617 at 0618; Video, CIV-D15-0001-0590 with transcript CIV-D15-0001-0612 at 0614-0615.

<sup>396</sup> Video, CIV-D15-0001-0589 with transcript CIV-D15-0001-0617 at 0618.

<sup>397</sup> Witness Alain Dogou, CIV-D15-0001-1273 at 1293; Witness P-9, CIV-OTP-0051-1195 at 1223-1224. See also Witness P-100, CIV-OTP-0020-0283 at 0297-0299.

<sup>398</sup> Witness P-9, CIV-OTP-0011-0572 at 0574-0579; Witness P-44, CIV-OTP-0014-0768 at 0793-0801; CIV-OTP-0014-0802 at 0806; Witness P-164, CIV-OTP-0028-0481 at 0487, para. 36; at 0508, para. 184; at 0509, para. 186; Witness P-321, CIV-OTP-0046-0814 at 0816-0821, 0828-0829; CIV-OTP-0046-0862 at 0876; CIV-OTP-0046-1050 at 1066-1067; Witness P-330, CIV-OTP-0049-2538 at 2566-2569; CIV-OTP-0049-2616 at 2617-2620; Witness P-238, CIV-OTP-0048-1503 at 1541, paras 176-178; UN Expert Group report, CIV-OTP-0027-0304 at 0319, para. 26; at 0330-0331, para. 62; [REDACTED], CIV-OTP-0044-2421 at 2423; Interview form, CIV-OTP-0016-0642 at 0642; Analysis, CIV-OTP-0047-0113 at 0119.

<sup>399</sup> Witness P-9, CIV-OTP-0011-0572 at 0574-0583; Witness P-49, CIV-OTP-0019-0168 at 0174, paras 45-48; Witness P-316, CIV-OTP-0043-0461 at 0499, para. 159; Witness P-321, CIV-OTP-0046-0814 at 0816-0821; UN Expert Group report, CIV-OTP-0027-0304 at 0319, para. 26; at 0330-0331, para. 62.

evidence indicates that the mercenaries cooperated with the regular FDS units and other pro-Gbagbo elements as they were placed in their camps and engaged in activities and fighting together with and alongside other pro-Gbagbo forces.<sup>400</sup>

149. The Defence submits that mercenaries were used by the Ouattara camp in the conflict, whereas the information provided with regard to the alleged mercenaries engaged on the Gbagbo side is far less precise.<sup>401</sup> While some information suggests that mercenaries were also used by the Ouattara side, even as early as 2002,<sup>402</sup> the evidence does not negate that mercenaries fought with the pro-Gbagbo forces, nor does it suggest that any of the violence allegedly committed by mercenaries engaged by the Gbagbo side was in fact perpetrated by mercenaries working for the Ouattara camp.

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<sup>400</sup> Witness P-9, CIV-OTP-0011-0572 at 0574-0579; Witness P-10, CIV-OTP-0051-0392 at 0413-0414; Witness P-44, CIV-OTP-0014-0768 at 0793-0799; Witness P-46, CIV-OTP-0014-0289 at 0323-0325; CIV-OTP-0014-0326 at 0331-0332; CIV-OTP-0014-0400 at 0423-0425; CIV-OTP-0014-0443 at 0466-0471; Witness P-49, CIV-OTP-0019-0168 at 0174, paras 47-48; Witness P-234, CIV-OTP-0041-0534 at 0577, para. 165; at 0578, paras 167-168; at 0579, paras 171, 173; at 0580, paras 177-178; Witness P-316, CIV-OTP-0043-0461 at 0497-0499, paras 150-154; Witness P-321, CIV-OTP-0046-0790 at 0802-0806; CIV-OTP-0046-0814 at 0818-0821, 0824, 0829; CIV-OTP-0046-1050 at 1063; CIV-OTP-0046-1102 at 1109-1110; Witness P-239, CIV-OTP-0037-0425 at 0453, paras 200-204; Witness P-107, CIV-OTP-0020-0064 at 0086-0087, paras 166-168; Witness P-109, CIV-OTP-0020-0335 at 0365, paras 119-120, 122; at 0380, para. 181; Witness P-117, CIV-OTP-0020-0033 at 0053-0054, paras 143-149; Witness P-169, CIV-OTP-0029-0323 at 0332, para. 55; Witness P-100, CIV-OTP-0020-0283 at 0294-0295, 0301; Witness P-369, CIV-OTP-0048-1396 at 1480-1481, para. 306; UN Expert Group report, CIV-OTP-0027-0304 at 0317, para. 21; at 0330-0331, para. 62; UNOCI report, CIV-OTP-0002-0527 at 0546, para. 55.

<sup>401</sup> Defence Submissions, paras 1147-1150.

<sup>402</sup> Witness Alain Dogou, CIV-D15-0001-1273 at 1293-1294; Document, CIV-OTP-0045-0040 at 0040; Note, CIV-OTP-0045-0386 at 0386-0387; International Crisis Group report, CIV-OTP-0008-0569 at 0587-0588; Amnesty International report, CIV-OTP-0008-0268 at 0283; HRW press release, CIV-OTP-0002-0161 at 0162; Press article, CIV-OTP-0027-0190 at 0190; CIV-D15-0001-0687 at 0687-0688; CIV-D15-0001-0681 at 0681-0682; CIV-D15-0001-0696 at 0696-0697; CIV-D15-0001-4847 at 4847; Document, CIV-D15-0001-3597 at 3597-3598.

D. Coordination and planning of the use of violence

a) *Meetings*

150. The evidence before the Chamber suggests that Laurent Gbagbo was regularly informed of, and actively participated in, the developments on the ground through his contacts, including in meetings, with the high commanders of the FDS and other members of the inner circle.

151. The evidence indicates that throughout the crisis Laurent Gbagbo held meetings with varying participants. As discussed earlier, the evidence shows that on 3 December 2010, the high commanders of the armed forces met with Laurent Gbagbo to confirm their allegiance to him.<sup>403</sup>

152. Further, the evidence before the Chamber indicates that on the evening of 14 December 2010, Laurent Gbagbo convened a meeting attended by the high commanders of the FDS, the Minister of the Interior and the Secretary-General of the Presidency, during which he stated with regard to the planned RTI march: *“La marche est interdite. Prenez [...] Prenez les dispositions pour que cette marche n’ait pas lieu”*,<sup>404</sup> and authorised the deployment of FANCI.<sup>405</sup>

153. The evidence also suggests that a meeting was held in the second half of December 2010 at which problems of weapons, ammunition and recruitment were discussed and with regard to which Laurent Gbagbo inquired about financial means he had allocated to weapons purchases.<sup>406</sup> Laurent Gbagbo approved the recruitment of 3000 new elements, as suggested by the Chief of

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<sup>403</sup> See above, para. 126.

<sup>404</sup> Witness P-9, CIV-OTP-0051-0935 at 0937, 0957, 0960-0963.

<sup>405</sup> Witness P-9, CIV-OTP-0051-0935 at 0964.

<sup>406</sup> Witness P-9, CIV-OTP-0051-0806 at 0808-0815.

Staff.<sup>407</sup> Also at this meeting, the Chief of Staff briefed the participants about the RTI march on 16 December 2010.<sup>408</sup>

154. Some information indicates that a meeting was held by Laurent Gbagbo in mid-January 2011 with a view to discussing the situation in Abobo.<sup>409</sup> [REDACTED],<sup>410</sup> [REDACTED].<sup>411</sup>

155. The evidence further points to a meeting on 24 February 2011 with Laurent Gbagbo, during which the situation in Abobo was discussed, including the question whether it should be declared “*zone de guerre*”, and at which Laurent Gbagbo ordered that the axis Abengourou-MACA be liberated.<sup>412</sup> There is also evidence that at a meeting in February 2011, Laurent Gbagbo asked the FDS to do everything to reconquer Abobo and normalise the security situation.<sup>413</sup>

156. The evidence before the Chamber suggests that different high FDS commanders took part in official meetings with Laurent Gbagbo on two<sup>414</sup> or three<sup>415</sup> occasions during the post-election crisis. While the *Conseil supérieur de défense* appears to have convened twice, there is also evidence that the Minister of Defence received information from the Chief of Staff and the Gendarmerie commander which he would then pass on to Laurent Gbagbo.<sup>416</sup>

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<sup>407</sup> Witness P-9, CIV-OTP-0051-0806 at 0815.

<sup>408</sup> Witness P-9, CIV-OTP-0051-0806 at 0816.

<sup>409</sup> Witness P-321, CIV-OTP-0046-0886 at 0895-0901; Press article, CIV-OTP-0049-0036.

<sup>410</sup> [REDACTED]

<sup>411</sup> [REDACTED]

<sup>412</sup> Witness P-9, CIV-OTP-0011-0505 at 0526-0528; CIV-OTP-0011-0529 at 0530, 0538-0540; CIV-OTP-0051-1045 at 1047, 1064-1065, 1067, 1069-1071, 1081-1084; see also Witness P-47, CIV-OTP-0015-0134 at 0153-0160.

<sup>413</sup> Witness P-10, CIV-OTP-0051-0434 at 0449-0456; CIV-OTP-0051-0462 at 0471-0472; CIV-OTP-0051-0480 at 0500-0501.

<sup>414</sup> Witness P-10, CIV-OTP-0016-0084 at 0087; Witness P-11, CIV-OTP-0016-0426 at 0445.

<sup>415</sup> Witness P-9, CIV-OTP-0011-0361 at 0362-0364; CIV-OTP-0011-0505 at 0519.

<sup>416</sup> Witness Alain Dogou, CIV-D15-0001-1273 at 1297.

157. Furthermore, the evidence suggests that in addition to specific meetings, Laurent Gbagbo was kept abreast of developments on the ground on a regular basis, in particular through the Chief of Staff of the Armed Forces or his personal Chief of Staff,<sup>417</sup> and was also informed of discussions at meetings held at the General Staff.<sup>418</sup> There is evidence that Laurent Gbagbo gave direct instructions to the Chief of Staff<sup>419</sup> and other high commanders.<sup>420</sup>

158. Furthermore, the evidence points to meetings held by and with members of the inner circle. For example, one meeting was held at the beginning of March 2011 by Simone Gbagbo following the attack on Anonkoua-Kouté,<sup>421</sup> while other evidence suggests that Simone Gbagbo held two more major meetings in February and March 2011 where it was resolved to defend the country and “*rester debout*”.<sup>422</sup>

159. Similarly, the evidence demonstrates that members of the inner circle were involved in meetings throughout the crisis, for example in regular crisis meetings which seem to have been held at the Presidential Residence,<sup>423</sup> with a view to discussing the situation on the ground and coordinating actions to

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<sup>417</sup> Witness P-9, CIV-OTP-0011-0361 at 0369; CIV-OTP-0011-0395 at 0410-0418; CIV-OTP-0051-0556 at 0572-0574; Witness P-10, CIV-OTP-0016-0084 at 0087, 0101; CIV-OTP-0016-0175 at 0195; Witness P-11, CIV-OTP-0016-0204 at 0224-0225; CIV-OTP-0016-0301 at 0315-0319; CIV-OTP-0016-0426 at 0432-0435; Witness P-46, CIV-OTP-0014-0289 at 0309-0312, 0316-0321; Witness P-47, CIV-OTP-0015-0298 at 0312-0313; Witness P-321, CIV-OTP-0046-0886 at 0901-0904.

<sup>418</sup> Witness P-9, CIV-OTP-0051-0556 at 0572-0573; Witness P-10, CIV-OTP-0016-0065 at 0081-0083; CIV-OTP-0016-0084 at 0085-0087; Witness P-11, CIV-OTP-0016-0426 at 0438-0440.

<sup>419</sup> Witness P-9, CIV-OTP-0011-0395 at 0414-0416; Witness P-10, CIV-OTP-0016-0130 at 0138.

<sup>420</sup> Witness P-100, CIV-OTP-0020-0307 at 0308-0311. See also Witness P-46, CIV-OTP-0014-0135 at 0151-0152; CIV-OTP-0014-0170 at 0171-0172.

<sup>421</sup> Witness P-9, CIV-OTP-0051-1045 at 1062-1063; Witness P-11, CIV-OTP-0016-0301 at 0304-0310; CIV-OTP-0016-0321 at 0346; CIV-OTP-0016-0347 at 0348-0349; CIV-OTP-0016-0390 at 0411; CIV-OTP-0016-0449 at 0462-0467; Witness P-321, CIV-OTP-0046-0737 at 0747-0749; CIV-OTP-0046-0750 at 0751; CIV-OTP-0046-0908 at 0912-0915, 0930-0931; CIV-OTP-0046-0961 at 0985-0987; CIV-OTP-0046-0991 at 0992-0993; Witness P-69, CIV-OTP-0017-0210 at 0213-0214.

<sup>422</sup> Witness P-44, CIV-OTP-0014-0713 at 0716-0731.

<sup>423</sup> Witness P-69, CIV-OTP-0017-0144 at 0159-0161; CIV-OTP-0017-0162 at 0163-0176, 0178-0179, 0181-0182; Witness P-9, CIV-OTP-0011-0361 at 0370; CIV-OTP-0051-1247 at 1276-1278; Witness P-44, CIV-OTP-0014-0684 at 0697-0698; Email, CIV-OTP-0021-5125 at 5125. See also Agenda, CIV-OTP-0018-0309; Agenda, CIV-OTP-0018-0395 at 0397.

be taken.<sup>424</sup> According to the evidence, Simone Gbagbo also took part in meetings of the CNRD, of which she was Secretary-General.<sup>425</sup>

*b) Instructions to units on the ground through the FDS structure*

160. The evidence before the Chamber shows that during the post-election crisis, regular briefings took place at the General Staff involving all high commanders of the armed forces, especially after the military assumed command over all operations and operations were coordinated from the General Staff.<sup>426</sup> Earlier in the crisis, operations were considered to concern law enforcement only and until beginning January they were led by the Director General of the National Police, who, however, reported to the Chief of Staff.<sup>427</sup>

161. At the meetings at the General Staff, the participants were debriefed on the developments of the situation, and orders were issued as necessary.<sup>428</sup> It appears that Laurent Gbagbo was informed of the briefings and the instructions issued.<sup>429</sup>

162. Similarly, Simone Gbagbo appears to have taken an active interest in the activities of the FDS in Abobo.<sup>430</sup> The evidence also indicates that units on the

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<sup>424</sup> Witness P-69, CIV-OTP-0017-0162 at 0172, 0175.

<sup>425</sup> Diary, CIV-OTP-0018-0810 at 0817, 0830, 0832, 0836, 0840; Diary, CIV-OTP-0018-0881 at 0882-0893. See also above, para. 82.

<sup>426</sup> Witness P-9, CIV-OTP-0011-0455 at 0477; CIV-OTP-0011-0505 at 0506; CIV-OTP-0051-0556 at 0571-0575; CIV-OTP-0051-1086 at 1092-1093, 1100-1101; Witness P-11, CIV-OTP-0016-0256 at 0258; CIV-OTP-0016-0301 at 0304-0308; CIV-OTP-0016-0413 at 0419; CIV-OTP-0016-0426 at 0438-0440, 0444; Witness P-46, CIV-OTP-0014-0354 at 0379-0380; CIV-OTP-0014-0479 at 0516; Witness P-47, CIV-OTP-0015-0077 at 0095-0104; CIV-OTP-0015-0109 at 0117-0118; CIV-OTP-0015-0270 at 0273-0275; CIV-OTP-0015-0298 at 0312-0314; Witness P-321, CIV-OTP-0046-0908 at 0909-0912; Fax, CIV-OTP-0045-0308 at 0308.

<sup>427</sup> Witness P-9, CIV-OTP-0011-0341 at 0349-0351; CIV-OTP-0011-0361 at 0366-0369; Witness P-10, CIV-OTP-0051-0434 at 0449-0450.

<sup>428</sup> Witness P-11, CIV-OTP-0016-0301 at 0306-0307; CIV-OTP-0016-0426 at 0439-0440; Witness P-46, CIV-OTP-0014-0479 at 0516; Witness P-47, CIV-OTP-0015-0270 at 0273-0275.

<sup>429</sup> Witness P-9, CIV-OTP-0051-0556 at 0572-0575; Witness P-11, CIV-OTP-0016-0426 at 0440.

<sup>430</sup> Witness P-9, CIV-OTP-0011-0361 at 0370-0371; CIV-OTP-0051-1045 at 1062-1064; Witness P-11, CIV-OTP-0016-0301 at 0304-0310; CIV-OTP-0016-0321 at 0346; CIV-OTP-0016-0347 at 0348-

ground at times received orders outside their official chain of command,<sup>431</sup> including directly from Laurent Gbagbo.<sup>432</sup>

*c) Flow of information within the pro-Gbagbo forces*

163. The evidence before the Chamber indicates that Laurent Gbagbo was informed of the developments on the ground through his regular contact with the Chief of Staff or other persons in his proximity with access to pertinent information.<sup>433</sup>

164. At the same time, the evidence suggests that in addition to meetings and monitoring of units on the ground, the general communication and exchange of information within the pro-Gbagbo forces was functional during the crisis.<sup>434</sup> Regular meetings with the Minister of Defence and high FDS commanders seem to have taken place at the beginning of the crisis, while the

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0349; CIV-OTP-0016-0390 at 0411; CIV-OTP-0016-0449 at 0462-0467; Witness P-46, CIV-OTP-0014-0443 at 0453-0455; Witness P-69, CIV-OTP-0017-0210 at 0213-0214, 0216-0220; CIV-OTP-0017-0299 at 0316-0317; Witness P-321, CIV-OTP-0046-0737 at 0747-0749; CIV-OTP-0046-0908 at 0912-0917, 0930-0931; CIV-OTP-0046-0961 at 0985-0987; CIV-OTP-0046-0991 at 0992-0994.

<sup>431</sup> Witness P-54, CIV-OTP-0007-0283 at 0293, paras 84, 86; Witness P-164, CIV-OTP-0028-0481 at 0497-0499, paras 112-113, 120-123; Witness P-226, CIV-OTP-0039-0143 at 0151-0152, para. 36; at 0153, para. 39; at 0159, para. 55; at 0171, paras 91-92; Witness P-234, CIV-OTP-0041-0534 at 0560, para. 98; Witness P-238, CIV-OTP-0048-1503 at 1510-1511, paras 28-29; at 1517, paras 62-63; at 1519-1520, para. 73. See also above, para. 98.

<sup>432</sup> Witness P-226, CIV-OTP-0039-0143 at 0151-0152, paras 36, 38; at 0153, para. 39; Witness P-239, CIV-OTP-0037-0425 at 0432-0433, paras 42-45. See also above, para. 98.

<sup>433</sup> Witness P-9, CIV-OTP-0011-0395 at 0414-0417; CIV-OTP-0011-0505 at 0524-0525; CIV-OTP-0051-1086 at 1088, 1101; CIV-OTP-0051-0556 at 0572-0573, 0575; CIV-OTP-0051-0871 at 0882-0887; Witness P-11, CIV-OTP-0016-0204 at 0224; CIV-OTP-0016-0426 at 0434-0435; Witness P-46, CIV-OTP-0014-0289 at 0312-0322; Witness P-321, CIV-OTP-0046-0932 at 0949-0950; Witness Alain Dogou, CIV-D15-0001-1273 at 1298.

<sup>434</sup> Witness P-9, CIV-OTP-0011-0395 at 0406-0409; CIV-OTP-0011-0430 at 0448; CIV-OTP-0051-1045 at 1050-1051; CIV-OTP-0051-1086 at 1099-1100, 1109; Witness P-11, CIV-OTP-0016-0426 at 0430-0433; Witness P-69, CIV-OTP-0017-0210 at 0216-0218; Witness P-234, CIV-OTP-0041-0534 at 0568, para. 128; at 0569, para. 131; Witness P-238, CIV-OTP-0048-1503 at 1515, paras 54-55; at 1517, paras 60-63; at 1519, paras 70, 72-73; at 1520, para. 75; Witness P-321, CIV-OTP-0046-0839 at 0848-0850; Witness P-330, CIV-OTP-0049-2336 at 2352; CIV-OTP-0049-2359 at 2362; CIV-OTP-0049-2570 at 2581-2582; CIV-OTP-0049-2634 at 2638.

Chief of Staff continued to meet with the Minister of Defence on a regular basis throughout the crisis.<sup>435</sup>

*d) Mobilisation of the youth for violent acts*

165. The evidence shows that during the post-election crisis, Charles Blé Goudé mobilised the youth by calling on them to erect roadblocks and be suspicious of foreigners,<sup>436</sup> as well as to obstruct UNOCI.<sup>437</sup> The evidence demonstrates that youth groups acted in response to these calls.<sup>438</sup>

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<sup>435</sup> Witness P-11, CIV-OTP-0016-0321 at 0332-0334; CIV-OTP-0016-0426 at 0440-0444.

<sup>436</sup> Witness P-9, CIV-OTP-0011-0593 at 0621; CIV-OTP-0051-1195 at 1227-1229, 1238-1241; CIV-OTP-0051-1247 at 1260-1261; Witness P-44, CIV-OTP-0014-0684 at 0688-0690, 0695; Witness P-87, CIV-OTP-0011-0201 at 0209, para. 49; at 0213, paras 77-79; at 0215-0216, paras 93-95; Video, CIV-OTP-0003-0670 at 00:00:52-00:03:51, 00:05:00-00:06:44 with transcript CIV-OTP-0020-0531 at 0532-0535, 0537 (translation CIV-OTP-0020-0479 at 0481-0484, 0486); Witness P-109, CIV-OTP-0020-0335 at 0352-0353, paras 59-64; at 0355-0356, para. 76; Witness P-117, CIV-OTP-0020-0033 at 0051, para. 127; Witness P-185, CIV-OTP-0029-0656 at 0665, para. 36; Witness P-229, CIV-OTP-0039-0196 at 0209, para. 42; at 0221, para. 74; Witness P-238, CIV-OTP-0048-1503 at 1536, para. 155; Witness P-316, CIV-OTP-0043-0461 at 0479, para. 72; Witness P-321, CIV-OTP-0046-0780 at 0788; CIV-OTP-0046-1050 at 1051-1053; CIV-OTP-0046-1102 at 1106-1109; Witness P-324, CIV-OTP-0046-1545 at 1550-1552; Witness P-344, CIV-OTP-0044-2614 at 2624, para. 35; Witness P-100, CIV-OTP-0020-0283 at 0302-0303; Screening notes of Witness P-179, CIV-OTP-0029-0601 at 0603, para. 6; Video, CIV-OTP-0041-0474 with transcript CIV-OTP-0044-2485 at 2486-2490; Video, CIV-OTP-0026-0016 at 00:45:15-00:51:08 with transcript CIV-OTP-0052-0653 at 0665-0666; Video, CIV-OTP-0052-0673 with transcript CIV-OTP-0054-0458 at 0459-0463; Video, CIV-OTP-0047-0604 with transcript CIV-OTP-0051-1681 at 1682; Police report, CIV-OTP-0045-0519 at 0521; Faits saillants, CIV-OTP-0045-0543 at 0543; UN SG report, CIV-OTP-0002-0010 at 0020, para. 47; Witness P-369, CIV-OTP-0048-1396 at 1471, paras 273-274; HRW press release, CIV-OTP-0002-0173 at 0174-0175.

<sup>437</sup> Witness P-87, CIV-OTP-0011-0201 at 0210, paras 54-55; Video, CIV-OTP-0003-0670 at 00:00:52-00:03:51 with transcript CIV-OTP-0020-0531 at 0532-0535 (translation CIV-OTP-0020-0479 at 0481-0484); Witness P-226, CIV-OTP-0039-0143 at 0160, paras 57-59; Witness P-316, CIV-OTP-0043-0461 at 0480, para. 75; Police report, CIV-OTP-0046-0032 at 0032; Video, CIV-OTP-0043-0269 at 00:00:00-00:01:10, 00:06:56-00:15:08 with transcript CIV-OTP-0047-0611 at 0613, 0616-0618; HRW press release, CIV-OTP-0002-0161 at 0162; [REDACTED], CIV-OTP-0044-0882 at 0882-0883; [REDACTED], CIV-OTP-0044-1341 at 1345, paras 9-10.

<sup>438</sup> Witness P-87, CIV-OTP-0011-0201 at 0216, para. 96; at 0217, para. 105; Witness P-9, CIV-OTP-0051-1195 at 1227-1229; Witness P-106, CIV-OTP-0019-0211 at 0222, paras 58-60; Witness P-100, CIV-OTP-0020-0283 at 0302-0303; Witness P-109, CIV-OTP-0020-0335 at 0355-0356, paras 73-77; at 0365-0366, para. 123; Witness P-185, CIV-OTP-0029-0656 at 0665, para. 37; Witness P-226, CIV-OTP-0039-0143 at 0160, paras 57-59; Witness P-238, CIV-OTP-0048-1503 at 1536, paras 155-156; Witness P-239, CIV-OTP-0037-0425 at 0452, para. 192; Witness P-324, CIV-OTP-0046-1545 at 1550-1552; Witness P-398, CIV-OTP-0049-2842 at 2850, paras 30-31; Ministry of Interior report, CIV-OTP-0045-0144 at 0145-0146; Police report, CIV-OTP-0046-0032 at 0032; UN SG report, CIV-OTP-0002-0010 at 0020, para. 47; [REDACTED], CIV-OTP-



166. The evidence indicates that in addition to the active mobilisation of the youth, a connection between youth groups and the regular armed forces was specifically emphasised, for example at a rally held at Champroux which Charles Blé Goudé seems to have organised in honour of the FDS and at which the Chief of Staff spoke.<sup>439</sup>

167. In addition, it appears that the RTI was used by the Gbagbo camp<sup>440</sup> to spread messages of hate against specific groups considered to be opponents, such as perceived Ouattara supporters, foreigners or the UN.<sup>441</sup>

168. Moreover, the evidence indicates that homes of perceived Ouattara supporters were marked,<sup>442</sup> and that target lists or “black lists” recorded individuals to be targeted.<sup>443</sup>

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0044-0310 at 0310, paras 2-3; Witness P-369, CIV-OTP-0048-1396 at 1471, paras 273-274; HRW press release, CIV-OTP-0002-0173 at 0174, 0175. See also above, paras 64-72, 77.

<sup>439</sup> Witness P-9, CIV-OTP-0051-1159 at 1175-1180, 1184-1188, 1190, 1192-1193; Witness P-11, CIV-OTP-0016-0321 at 0340-0341; Witness P-46, CIV-OTP-0014-0400 at 0426-0428; Witness P-69, CIV-OTP-0017-0414 at 0415-0420; Witness P-321, CIV-OTP-0046-1102 at 1109; Video, CIV-OTP-0003-0011 with transcript CIV-OTP-0007-0227 at 0228-0229; Video, CIV-OTP-0002-0995 at 00:08:52-00:11:45 with transcript CIV-OTP-0007-0181 at 0189-0192; Video, CIV-OTP-0041-0470 with transcript CIV-OTP-0044-2597 at 2598-2602; see also Witness P-108, CIV-OTP-0013-0108 at 0116, paras 54-55.

<sup>440</sup> See also Witness P-87, CIV-OTP-0011-0201 at 0213, para. 79; Witness P-44, CIV-OTP-0014-0713 at 0728-0729.

<sup>441</sup> UN SG report, CIV-OTP-0002-0010 at 0023, para. 60; UN HCHR report, CIV-OTP-0002-0046 at 0047, para. 4; at 0057-0058, paras 28-29; Witness P-117, CIV-OTP-0020-0033 at 0037, para. 18; Witness P-330, CIV-OTP-0049-2359 at 2378-2379; Witness P-369, CIV-OTP-0048-1396 at 1439, para. 154; at 1473-1475, paras 283-286; [REDACTED], CIV-OTP-0044-0392 at 0430-0431; [REDACTED], CIV-OTP-0044-1323 at 1326, para. 7; [REDACTED], CIV-OTP-0044-1332 at 1332, para. 1; [REDACTED], CIV-OTP-0044-0337 at 0354, para. 47; [REDACTED], CIV-OTP-0025-0138 at 0139-0140.

<sup>442</sup> UN HCHR report, CIV-OTP-0002-0046 at 0055, para. 21; [REDACTED], CIV-OTP-0044-0358 at 0358, para. 1; Press article, CIV-OTP-0003-0440 at 0441-0442; Press article, CIV-OTP-0002-0267 at 0267-0268. See also Witness P-404, CIV-OTP-0051-0236 at 0243, paras 26-27.

<sup>443</sup> UN HCHR report, CIV-OTP-0002-0046 at 0055, para. 21; UN Commission of Inquiry report, CIV-OTP-0053-0835 at 0847, para. 45; Witness P-87, CIV-OTP-0011-0201 at 0217, para. 104; Witness P-108, CIV-OTP-0013-0108 at 0123, para. 114.

*e) Reaction to the evolution of the crisis*

169. In the view of the Chamber, the evidence of the reaction of Laurent Gbagbo and the inner circle to the changing situation in the crisis following the presidential election is particularly important for findings in relation to the charges.

170. In this regard, the Chamber notes the well-documented fact, undisputed by the parties, that from the second half of December 2010, armed attacks on the FDS started in Abobo.<sup>444</sup> According to the evidence, particularly violent incidents, with considerable loss of life on the part of the FDS, occurred on 11 and 12 January 2011.<sup>445</sup>

171. The evidence demonstrates that following these events, FANCI, rather than law enforcement units, had control of FDS operations in Abobo,<sup>446</sup> and instituted a curfew.<sup>447</sup> As discussed above, there is evidence that at this time, Laurent Gbagbo held a meeting with the high commanders of the FDS for the purpose of discussing these measures.<sup>448</sup> There is also specific evidence that

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<sup>444</sup> Amended DCC, para. 83; Defence Submissions, paras 520-521; Prosecutor's Final Submissions, para. 77; Witness P-9, CIV-OTP-0051-1008 at 1025; Witness P-10, CIV-OTP-0051-0462 at 0472; Witness P-11, CIV-OTP-0016-0301 at 0310; Witness P-46, CIV-OTP-0014-0135 at 0159; CIV-OTP-0014-0354 at 0356-0357; Witness P-69, CIV-OTP-0017-0124 at 0143; Witness P-238, CIV-OTP-0048-1503 at 1524, para. 94; Witness P-316, CIV-OTP-0043-0461 at 0497, para. 146; Witness P-330, CIV-OTP-0049-2676 at 2716-2717; Witness D-32, CIV-D15-0001-6112 at 6115; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1398; Ministry of Interior document, CIV-OTP-0045-0291 at 0291-0294.

<sup>445</sup> Witness P-9, CIV-OTP-0051-1008 at 1026; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1399-1400; Press articles, CIV-D15-0001-2419 at 2421; CIV-D15-0001-3436 at 3436; CIV-D15-0001-0019 at 0019; News video, CIV-D15-0001-0564; [REDACTED], CIV-OTP-0044-1341 at 1346; Report, 11 January 2011, CIV-OTP-0045-1084 at 1084; Point exhaustif, CIV-OTP-0045-0785 at 0785-0792.

<sup>446</sup> Witness P-9, CIV-OTP-0051-1045 at 1057; Witness P-10, CIV-OTP-0051-0434 at 0442-0443, 0449; Video, CIV-OTP-0047-0653; Witness P-321, CIV-OTP-0046-0814 at 0827-0828; CIV-OTP-0046-0862 at 0884; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1400.

<sup>447</sup> Witness P-9, CIV-OTP-0051-1008 at 1024; Video, CIV-OTP-0047-0653, Transcript of video, CIV-OTP-0048-1657; Witness P-10, CIV-OTP-0051-0434 at 0439-0440, 0441-0442; Witness P-69, CIV-OTP-0017-0124 at 0139-0140; [REDACTED], CIV-OTP-0044-0975 at 0976.

<sup>448</sup> See above, para. 154.

the involvement of FANCI in Abobo and the curfew were ordered directly by Laurent Gbagbo.<sup>449</sup>

172. According to the evidence, in the weeks that followed, there was an intensification of attacks on the FDS in Abobo by elements that were increasingly organised and well-equipped.<sup>450</sup>

173. The FDS responded with full-scale military intervention.<sup>451</sup> FANCI elements equipped with heavy weapons were deployed to Abobo,<sup>452</sup> and heavy weapons were in fact used in densely populated areas.<sup>453</sup> According to the evidence, FDS units in Abobo were based at Camp Commando.<sup>454</sup>

174. The evidence also indicates that, by this time, the distinction between the enemy, most commonly referred to as “rebels”, and the civilian population was blurred, if at all present.<sup>455</sup> In fact, the evidence indicates that residents of certain neighbourhoods of Abobo were, on account of their ethnic, national or

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<sup>449</sup> Witness P-9, CIV-OTP-0051-1008 at 1024-1025; CIV-OTP-0051-1045 at 1047, 1057-1058; Witness P-10, CIV-OTP-0051-0434 at 0443-0444.

<sup>450</sup> Witness P-10, CIV-OTP-0051-0434 at 0448; Witness P-189, CIV-OTP-0042-0508 at 0517, para. 54; at 0518, para. 63; Witness P-217, CIV-OTP-0040-0372 at 0403, para. 155; Witness P-316, CIV-OTP-0043-0461 at 0497, para. 148; Witness P-330, CIV-OTP-0049-2359 at 2374-2375; Witness D-26, CIV-D15-0001-5442 at 5446; Witness D-27, CIV-D15-0001-5860 at 5861-5863; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1400; UN SG report, CIV-OTP-0002-0010 at 0020, para. 45; Press article, CIV-D15-0001-2419 at 2421; Video, CIV-D15-0001-3942.

<sup>451</sup> Witness P-9, CIV-OTP-0051-0556 at 0571; CIV-OTP-0051-1045 at 1048, 1065-1066; Witness P-10, CIV-OTP-0051-0462 at 0473-0474.

<sup>452</sup> Witness P-9, CIV-OTP-0051-1045 at 1066-1067; Witness P-10, CIV-OTP-0051-0462 at 0474; Witness P-239, CIV-OTP-0037-0425 at 0442, para. 108; Witness P-330, CIV-OTP-0049-2404 at 2439-2441, 2454-2456; UN SG report, CIV-OTP-0002-0010 at 0020, para. 45.

<sup>453</sup> See above, paras 52-63, 77.

<sup>454</sup> Witness P-46, CIV-OTP-0014-0354 at 0359-0360, 0362-0363, 0381; Annex 11, CIV-OTP-0010-0035; Witness P-321, CIV-OTP-0046-0961 at 0979-0981; CIV-OTP-0046-1011 at 1012; Witness P-330, CIV-OTP-0049-2192 at 2194-2195.

<sup>455</sup> Witness P-234, CIV-OTP-0041-0534 at 0547-0548, paras 50-51; at 0573, para. 144; Witness P-164, CIV-OTP-0028-0481 at 0494, para. 90; at 0495, para. 93; Witness P-172, CIV-OTP-0028-0550 at 0564, paras 106-107; Witness P-239, CIV-OTP-0037-0425 at 0451, para. 184; Minutes, CIV-OTP-0025-0082 at 0084; Video, CIV-OTP-0043-0269 and transcript, CIV-OTP-0047-0611 at 0633.

religious affiliation, perceived as pro-Ouattara and thus targeted by the FDS intervening in Abobo at the time.<sup>456</sup>

175. As discussed above, the evidence demonstrates that a meeting was held between Laurent Gbagbo and the high commanders of the FDS in the second half of February 2011.<sup>457</sup> Indeed, there is specific evidence that Laurent Gbagbo was kept abreast of the FDS operation in Abobo and that the intervention took place following his instruction.<sup>458</sup> The evidence also demonstrates that commanders particularly close to Laurent Gbagbo led the FANCI intervention on the ground,<sup>459</sup> and that these commanders were responsible for multiple attacks on civilian-inhabited areas.<sup>460</sup> The evidence also shows that weapons and ammunition were readily available at Camp Commando, and that their distribution and use did not follow regular procedures.<sup>461</sup>

176. Additionally, the Chamber places importance on the evidence that Laurent Gbagbo, despite being fully aware, did not react to the fact that heavy weaponry was being used by forces under his command in areas densely populated by civilians.<sup>462</sup>

177. The Chamber also notes that during this period there were numerous defections from the FDS, and that the regular structure of the FDS effectively

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<sup>456</sup> Witness P-107, CIV-OTP-0020-0064 at 0085, para. 155; Witness P-169, CIV-OTP-0029-0323 at 0328-0329, paras 27-33 and at 0332, para. 52; Witness P-172, CIV-OTP-0028-0550 at 0564, paras 107-108; Witness P-330, CIV-OTP-0049-2760 at 2786; Witness P-360, CIV-OTP-0046-1203 at 1209, para. 27.

<sup>457</sup> See above, para. 155.

<sup>458</sup> Witness P-10, CIV-OTP-0051-0480 at 0500-0501; Video, CIV-OTP-0026-0020, transcript CIV-OTP-0044-2534 at 2536.

<sup>459</sup> Witness P-226, CIV-OTP-0039-0143 at 0168, para. 81; Witness P-239, CIV-OTP-0037-0425 at 0442, para. 109; Witness P-330, CIV-OTP-0049-2389 at 2393-2402.

<sup>460</sup> Witness P-238, CIV-OTP-0048-1503 at 1524, paras 96-97; Witness P-239, CIV-OTP-0037-0425 at 0442, para. 109.

<sup>461</sup> Witness P-330, CIV-OTP-0049-2404 at 2459-2465.

<sup>462</sup> Witness P-9, CIV-OTP-0051-1045 at 1079-1080.

collapsed by the end of March 2011.<sup>463</sup> However, the evidence outlined below shows that Laurent Gbagbo and the inner circle were able to reorganise the loyal forces in order to continue the fight for power, including through the commission of crimes against civilians.

178. On the one hand, the Chamber notes the evidence that persons most loyal to Laurent Gbagbo continued to fight, and took leading roles.<sup>464</sup>

179. On the other hand, a considerable amount of evidence demonstrates that Laurent Gbagbo and the inner circle increased their reliance on loyal militias, which, as stated above, occupied FDS bases,<sup>465</sup> and on the pro-Gbagbo youth.

180. In this regard, the Chamber notes that on 19 March 2011 Charles Blé Goudé publicly appealed to the youth to enrol in the army,<sup>466</sup> and that on 21 March 2011, the youth responded massively by gathering at the General Staff.<sup>467</sup> As indicated in Charles Blé Goudé's address to the youth, the purpose of the exercise was to legitimise the youth as fighters on behalf of Laurent Gbagbo, including the distribution of arms to them.<sup>468</sup> In addition, on 26

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<sup>463</sup> Witness P-9, CIV-OTP-0051-0556 at 0580-0581; Witness P-106, CIV-OTP-0019-0211 at 0225, para. 72; Witness P-321, CIV-OTP-0046-0814 at 0827; CIV-OTP-0046-0862 at 0865, 0875, 0878; Witness P-330, CIV-OTP-0049-2192 at 2201-2202; CIV-OTP-0049-2336 at 2337; Intelligence note, CIV-OTP-0045-0140 at 0142.

<sup>464</sup> Witness P-9, CIV-OTP-0051-0586 at 0591-0593; UN HCHR report, CIV-OTP-0002-0573 at 0577, para. 11; Witness P-238, CIV-OTP-0048-1503 at 1512, para. 36; at 1519, paras 72-73.

<sup>465</sup> See above, para. 103.

<sup>466</sup> Witness P-9, CIV-OTP-0011-0593 at 0603; Witness P-47, CIV-OTP-0015-0323 at 0335-0336; Witness P-87, CIV-OTP-0011-0201 at 0209-0210, paras 51-55; Witness P-106, CIV-OTP-0019-0211 at 0221, paras 53, 55; Witness P-108, CIV-OTP-0013-0108 at 0116, para. 56; Witness P-109, CIV-OTP-0020-0335 at 0356, para. 78; Witness P-185, CIV-OTP-0029-0656 at 0662, para. 31; Witness P-234, CIV-OTP-0041-0534 at 0581, para. 184; Witness P-321, CIV-OTP-0046-1102 at 1107-1108; UN SG report, CIV-OTP-0002-0010 at 0021, para. 51; HRW report, CIV-OTP-0004-0072 at 0119; Press article, CIV-OTP-0003-0632 at 0632; Video, CIV-OTP-0002-1057 with transcript CIV-OTP-0007-0195.

<sup>467</sup> Witness P-47, CIV-OTP-0015-0323 at 0340; Witness P-87, CIV-OTP-0011-0201 at 0211-0212, paras 65-69; Witness P-108, CIV-OTP-0013-0108 at 0116, para. 56; Witness P-109, CIV-OTP-0020-0335 at 0356, para. 78; Witness P-321, CIV-OTP-0046-1102 at 1107-1108; Video, CIV-OTP-0003-0010 with transcript CIV-OTP-0007-0220; Video, CIV-OTP-0002-0389 with transcript CIV-OTP-0020-0517.

<sup>468</sup> Video, CIV-OTP-0003-0880 with transcript CIV-OTP-0019-0298 at 0301-0302.

March 2011, a mass rally was held at the *Place de la République* in Plateau in order to mobilise the pro-Gbagbo youth.<sup>469</sup> Indeed, according to the evidence, following these events an increased presence of armed youth was observed in Abidjan, and the violence against perceived supporters of Alassane Ouattara, in particular at roadblocks, intensified.<sup>470</sup>

181. The Chamber observes that these activities in relation to the youth were primarily led by Charles Blé Goudé, but there is sufficient evidence to justify the conclusion that these activities were performed on behalf of Laurent Gbagbo and the inner circle, pursuant to the shared intention to take all measures necessary to preserve Laurent Gbagbo in power, including the use of force against civilians. In particular, the Chamber finds it significant that on 18 March 2011 Laurent Gbagbo issued a statement through his spokesperson in which he called on Ivorians to take greater responsibility and for stronger collaboration between citizens and security forces, so that all suspect presences could be neutralised.<sup>471</sup> On 9 April 2011, the following government *communiqué* was issued:

Le Président de la République appelle le peuple à continuer la résistance pour faire barrage à ce [sic] énième coup de force. Le Président de la République demande aux populations de rester déterminées dans la lutte pour la libération de la Côte d'Ivoire et de l'Afrique. Le Président de la République compatit à la souffrance qui leur est imposée par Alassane Dramane Ouattara et ses terroristes. [...] Le Président de la République exprime toute sa détermination à continuer la lutte.<sup>472</sup>

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<sup>469</sup> Witness P-87, CIV-OTP-0011-0201 at 0214-0216, paras 87-95.

<sup>470</sup> Witness P-106, CIV-OTP-0019-0211 at 0221-0222, paras 55-56; Witness P-87, CIV-OTP-0011-0201 at 0216, para. 96; at 0217, para. 108. See also above, para. 77(xviii)-(xxi).

<sup>471</sup> HRW report, CIV-OTP-0004-0072 at 0119.

<sup>472</sup> Communiqué, CIV-OTP-0018-0564 at 0566.

E. Lack of sanction or prevention of violence

182. The information available to the Chamber indicates that no serious inquiries were pursued with regard to allegations of possible civilian casualties in the context of the post-election crisis.<sup>473</sup>

183. The Defence submits that investigations were conducted regularly, including when FDS involvement was alleged, and that Laurent Gbagbo asked the state prosecutor to start investigations. It is further argued that inquiries were made with regard to the events on and following 16 December 2010, the women's march,<sup>474</sup> as well as the alleged shelling of Abobo in March 2011, and that Laurent Gbagbo himself sent officers of the Palace to the scene<sup>475</sup> after having heard about the women's march incident.<sup>476</sup>

184. Some information suggests that gendarmerie was sent to investigate, but was unable to do so as they were attacked on site,<sup>477</sup> while other evidence indicates that inquiries by the military prosecutor were opened starting March 2011<sup>478</sup> and that Laurent Gbagbo asked the state prosecutor to conduct investigations at the end of December 2010.<sup>479</sup> The evidence suggests that some inquiries were opened with regard to events in the context of the RTI march on 16 December 2010.<sup>480</sup> Further evidence indicates that investigations

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<sup>473</sup> Witness P-9, CIV-OTP-0051-1045 at 1072-1073, 1076-1081; CIV-OTP-0051-1086 at 1112-1119; CIV-OTP-0051-1137 at 1143-1148, 1153; Witness P-239, CIV-OTP-0037-0425 at 0442, paras 109-110, 114; at 0444-0445, paras 127, 134; Witness P-321, CIV-OTP-0046-1005 at 1006-1007; Witness P-330, CIV-OTP-0049-2312 at 2320; CIV-OTP-0049-2359 at 2377-2378; Report, CIV-OTP-0045-0127 at 0128.

<sup>474</sup> See Witness Alain Dogou, CIV-D15-0001-1273 at 1286-1288; Witness Émile Guiriéoulou, CIV-D15-0001-1396 at 1401; CECOS report, CIV-OTP-0048-1574 at 1574-1576.

<sup>475</sup> See Witness Boubakar Koné, CIV-D15-0001-3724 at 3731.

<sup>476</sup> Defence Submissions, paras 1201-1202.

<sup>477</sup> Screening notes of Witness P-68, CIV-OTP-0028-0023 at 0025, para. 11.

<sup>478</sup> Witness Alain Dogou, CIV-D15-0001-1273 at 1298.

<sup>479</sup> Euronews interview, CIV-D15-0001-0588 with transcript CIV-D15-0001-0605 at 0607.

<sup>480</sup> Police reports, CIV-OTP-0045-1413 at 1413; CIV-OTP-0045-0510 at 0510-0515.

were opened into a variety of other events during the post-election crisis.<sup>481</sup> However, there is no information as to whether such investigations had any consequences.

185. At the same time, there is evidence to suggest that accurate reporting on civilian casualties was sometimes avoided for fear of being seen as traitorous,<sup>482</sup> and that civilian casualties were considered to be normal.<sup>483</sup> There are indications that superiors may also have been afraid of the prospect, if they imposed sanctions, of being attacked by those involved.<sup>484</sup>

186. Similarly, there is evidence that suggests deliberate efforts to cover up certain activities within BASA through falsification of reports.<sup>485</sup> At least one other instance of falsification of a report within the FDS is referred to in the evidence.<sup>486</sup>

187. Further evidence suggests that despite knowing of crimes committed by pro-Gbagbo youth against Ouattara supporters in Angré, the Minister of Defence did not take any further steps to address the matter.<sup>487</sup>

188. Moreover, the evidence indicates that investigation attempts by the UN were actively obstructed by the pro-Gbagbo forces.<sup>488</sup>

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<sup>481</sup> Police compilation report, CIV-OTP-0045-0793 at 0800, 0850-0851; Police reports, CIV-OTP-0045-0527 at 0528-0529, 0531-0537; CIV-OTP-0045-0567 at 0568-0571; CIV-OTP-0045-0466 at 0467-0469; CIV-OTP-0045-0779 at 0779-0784; CIV-OTP-0046-0024 at 0024.

<sup>482</sup> Witness P-330, CIV-OTP-0049-2616 at 2628-2631.

<sup>483</sup> Witness P-330, CIV-OTP-0049-2312 at 2317.

<sup>484</sup> Witness P-330, CIV-OTP-0049-2312 at 2313-2317; CIV-OTP-0049-2359 at 2381-2382.

<sup>485</sup> Witness P-238, CIV-OTP-0048-1503 at 1516, paras 57-59.

<sup>486</sup> Witness P-330, CIV-OTP-0049-2616 at 2630-2631.

<sup>487</sup> Witness P-9, CIV-OTP-0051-1195 at 1237-1238; CIV-OTP-0051-1247 at 1252-1260.

<sup>488</sup> [REDACTED], CIV-OTP-0044-1323 at 1330-1331, para. 18; UN HCHR report, CIV-OTP-0002-0046 at 0047, para. 5; at 0056, para. 24; at 0061, paras 39-40 (same information in UN HCHR report, CIV-OTP-0003-0527 at 0536, para. 24; at 0540, paras 39-40); UN HCHR press release, CIV-OTP-0002-0131 at 0131; UN SG report, CIV-OTP-0002-0010 at 0022, para. 54.



189. In late December 2010, the UN High Commissioner for Human Rights sent letters to Laurent Gbagbo and certain high commanders of the FDS, reminding them of their obligations and informing them about allegations of human rights violations committed by members of FDS units.<sup>489</sup> While it appears that some inquiries were made in response to the letter,<sup>490</sup> the evidence also suggests that allegations against pro-Gbagbo forces were generally denied by the Gbagbo side.<sup>491</sup>

190. On 7 January 2011, Laurent Gbagbo created an international commission of inquiry which was to investigate human rights violations since the announcement of the election results.<sup>492</sup> A letter sent by the commission to the Minister of the Interior on 16 February 2011 lists only seven incidents of human rights violations imputed to the FDS.<sup>493</sup> In another letter, the Superior Commander of the National Gendarmerie rejected the allegations against the FDS brought by the commission.<sup>494</sup>

191. The Defence submits that the letter of 16 February 2011 is not the final report of the commission.<sup>495</sup> According to a witness statement, the commission investigated 26 events throughout the country between 28 November 2010 and 1 February 2011 – three in Abidjan, including events on 16 and 17 December 2010 and, at the PDCI seat, on 4 January 2011 – imputing some

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<sup>489</sup> Letter, CIV-OTP-0018-0054 at 0054-0055; Letter, CIV-OTP-0048-1570 at 1570-1571; UN HCHR press release, CIV-OTP-0002-0131 at 0131; [REDACTED], CIV-OTP-0044-0895 at 0899, para. 9; UN SG report, CIV-OTP-0002-0010 at 0022, para. 55; UN HCHR report, CIV-OTP-0002-0046 at 0048, para. 6; at 0062, para. 42 (same information in UN HCHR report, CIV-OTP-0003-0527 at 0541, para. 42); Memorandum, CIV-OTP-0001-0407 at 0426.

<sup>490</sup> Witness P-10, CIV-OTP-0051-0505 at 0508-0509.

<sup>491</sup> Witness P-9, CIV-OTP-0051-1086 at 1114-1119; Witness P-10, CIV-OTP-0051-0505 at 0506-0509; Minutes, CIV-OTP-0025-0106 at 0107.

<sup>492</sup> Decree, CIV-OTP-0045-0379 at 0383-0385; [REDACTED], CIV-OTP-0044-0975 at 0978, para. 9; [REDACTED], CIV-OTP-0044-1341 at 1348, para. 18; Press article, CIV-D15-0001-6303 at 6303-6304.

<sup>493</sup> Letter, CIV-OTP-0045-0379 at 0381-0382.

<sup>494</sup> Letter, CIV-OTP-0044-0019 at 0019.

<sup>495</sup> Defence Submissions, para. 1203.

responsibility on RHDP for all of them, as well as on The Presidential Majority (LMP) (21), FDS (8), Student and School Federation of Côte d'Ivoire (FESCI) (2), Armed Forces of the New Forces (FAFN) (3) and UNOCI (1).<sup>496</sup> According to the same witness, the commission concluded that (i) the acts of violence were rooted in the failed coup d'état of 19 September 2002; (ii) the post-election crisis and ensuing violence were in most part the responsibility of Youssouf Bakayoko and Special Representative Choi; (iii) demonstrations during this period were not peaceful; and (iv) not only pro-Gbagbo forces, but also pro-Ouattara forces committed human rights violations.<sup>497</sup>

192. The Chamber notes that the commission does not appear to have addressed any specific allegations concerning for example the events in the context of the demonstrations at the RTI building, and seems to have inquired about only three events in Abidjan for a period of over two months. Furthermore, the wholesale rejection of the allegations by the Gendarmerie commander does not appear to have prompted any further queries. Therefore, the evidence presented on the work of the commission does not disturb the conclusion of the Chamber that no serious and in-depth investigations into allegations of human rights violations were conducted.

### **SECTION 3. FINDINGS OF THE CHAMBER**

#### *I. Specific elements of the alleged crimes against humanity*

##### A. Murder under article 7(1)(a) of the Statute

193. On the basis of the analysis of evidence as laid out in the preceding section, the Chamber concludes that there are substantial grounds to believe

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<sup>496</sup> Witness D-35, CIV-D15-0001-6369 at 6372-6376; Press article, CIV-D15-0001-6297.

<sup>497</sup> Witness D-35, CIV-D15-0001-6369 at 6376-6377.

that in the course of the four incidents analysed above, the pro-Gbagbo forces killed at least 160 persons.<sup>498</sup>

194. Accordingly, the Chamber concludes that the specific elements of the crime of murder under article 7(1)(a) of the Statute are met.

**B. Rape under article 7(1)(g) of the Statute**

195. On the basis of the analysis of evidence as laid out in the preceding section, the Chamber concludes that there are substantial grounds to believe that in the course of two of the incidents as analysed above, the pro-Gbagbo forces raped at least 38 persons.<sup>499</sup>

196. Accordingly, the Chamber concludes that the specific elements of the crime of rape under article 7(1)(g) of the Statute are met.

**C. Other inhumane acts under article 7(1)(k) of the Statute or attempted murder under articles 7(1)(a) and 25(3)(f) of the Statute**

197. On the basis of the analysis of evidence as laid out in the preceding section, the Chamber concludes that there are substantial grounds to believe that in the course of the four incidents analysed above, the pro-Gbagbo forces injured at least 118 persons.<sup>500</sup>

198. Considering the modalities in which the alleged criminal acts were performed, including the kinds of weaponry used, and in light of the available information on the types of injuries suffered by the victims of the crimes charged, the Chamber is satisfied that there are substantial grounds to believe that the infliction of these acts by the pro-Gbagbo forces caused great suffering and serious injury to body.

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<sup>498</sup> See above, paras 24-72.

<sup>499</sup> See above, paras 24-41 and 64-72.

<sup>500</sup> See above, paras 24-72.

199. Accordingly, the Chamber concludes that the specific elements of the crime of other inhumane acts under article 7(1)(k) of the Statute are met.

200. The Chamber now turns to the alternative charge, with respect to the same injuries, of attempted murder under articles 7(1)(a) and 25(3)(f) of the Statute.

201. Likewise for this purpose, the Chamber takes into account the modalities of the criminal acts under consideration, including the kinds of weaponry used, and the information in relation to the types of injuries experienced by the victims. On the basis of the available evidence, the Chamber is of the view that there are substantial grounds to believe that the conduct of the pro-Gbagbo forces which led to the injuries referred to above was designed to bring about, as a consequence, the death of the victims. Further, the Chamber considers that there are substantial grounds to believe that the acts which resulted in injuries constituted a substantial step for the attainment of said consequence, and that the fact that the death of the victims eventually did not occur was independent of the perpetrators' intentions.

202. Accordingly, the Chamber concludes that the specific elements of the crime of attempted murder under articles 7(1)(a) and 25(3)(f) of the Statute are met.

203. Considering, therefore, that for the acts under consideration, the evidentiary threshold is met in relation to the constitutive elements of both other inhumane acts, under article 7(1)(k), and attempted murder, under articles 7(1)(a) and 25(3)(f) of the Statute, the Chamber considers it appropriate to confirm the charge with the alternative qualification as proposed by the Prosecutor<sup>501</sup> and leave to the Trial Chamber the final

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<sup>501</sup> Amended DCC, para. 234.

determination of the correct legal characterisation of these criminal acts, if proven to the applicable standard of proof at trial.

D. Persecution under article 7(1)(h) of the Statute

204. On the basis of the analysis of evidence as laid out in the preceding section, the Chamber considers that there are substantial grounds to believe that the at least 316 victims of the killings, rapes and injuries committed by the pro-Gbagbo forces in the course of the four incidents analysed above<sup>502</sup> were targeted by reason of their identity as perceived political supporters of Alassane Ouattara.

205. This conclusion of the Chamber is supported by the facts, outlined above, that during the four events under consideration, the pro-Gbagbo forces targeted participants at pro-Ouattara demonstrations,<sup>503</sup> or inhabitants of areas perceived as supporting Alassane Ouattara, namely Abobo and certain neighbourhoods of Yopougon (Doukouré and Mami Fatai).<sup>504</sup> Accordingly, the Chamber finds that these acts of violence constitute persecution on political grounds, as well as on ethnic (against ethnic groups originating in the north of Côte d'Ivoire, such as Dioula and Baoulé), national (against nationals of other West African countries, and Ivorians of West African descent) and religious (against Muslims) grounds, as members of these groups were as such considered as supporters of Alassane Ouattara.

206. Accordingly, the Chamber concludes that the specific elements of the crime of persecution under article 7(1)(h) of the Statute are met.

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<sup>502</sup> See above, paras 24-72.

<sup>503</sup> See above, paras 24-51.

<sup>504</sup> See above, paras 65, 165-168, 174.

## II. *Contextual elements of the alleged crimes against humanity*

207. The Chamber recalls that, in accordance with the Statute, crimes against humanity require a widespread or systematic attack against the civilian population. Therefore, the Chamber needs to establish, first, the existence of an attack directed against the civilian population and, second, the widespread or systematic character of the attack.

### A. The existence of an attack directed against a civilian population

208. The definition of “attack” under article 7(2)(a) of the Statute requires a course of conduct involving the commission of multiple acts pursuant to or in furtherance of a State or organisational policy. Therefore, this definition already involves – although to a lesser extent – quantitative and qualitative aspects that may also be relevant for the establishment of the “widespread” or “systematic” nature of the attack under article 7(1) of the Statute.

#### *a) Course of conduct involving multiple commission of acts referred to in article 7(1) of the Statute against any civilian population*

209. The expression “course of conduct” already embodies a systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts. As already recognised by the jurisprudence of the Court, it implies the existence of a certain pattern as the “attack” refers to a “campaign or operation carried out against the civilian population”,<sup>505</sup> which involves the multiple commission of acts referred to in article 7(1) of the

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<sup>505</sup> Pre-Trial Chamber II, “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, para. 75; *id.*, “Corrigendum to the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, 31 March 2010, ICC-01/09-19-Corr, para. 80; Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 31; Pre-Trial Chamber II, “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-Red2, para. 109.

Statute directed against any group distinguishable by nationality, ethnicity or other distinguishing features,<sup>506</sup> including (perceived) political affiliation.<sup>507</sup>

210. Therefore, while a course of conduct must involve multiple acts, the occurrence of those acts is not the only evidence that may be relevant to prove its existence. On the contrary, since the course of conduct requires a certain “pattern” of behaviour, evidence relevant to proving the degree of planning, direction or organisation by a group or organisation is also relevant to assessing the links and commonality of features between individual acts that demonstrate the existence of a “course of conduct” within the meaning of article 7(2)(a) of the Statute.

211. For these reasons, and on the basis of the analysis of evidence as laid out in the preceding section, the Chamber concludes that there are substantial grounds to believe that, between 27 November 2010 and on or around 12 April 2011, a series of multiple acts of violence (including killings, attempted killings, rapes, severe injuries, and arbitrary arrests) was carried out by the pro-Gbagbo forces and directed against civilians perceived to be Ouattara’s supporters.<sup>508</sup>

212. The nature of these acts, the population that was targeted, the identity of the perpetrators and the chronology of the relevant events establish that those multiple acts, viewed collectively, express a “course of conduct” within the

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<sup>506</sup> Pre-Trial Chamber I, “Decision on the confirmation of charges”, 26 September 2008, ICC-01/04-01/07-717, para. 399; Pre-Trial Chamber II, “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, para. 76; Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Red, para. 30; Pre-Trial Chamber II, “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-Red2, para. 110.

<sup>507</sup> Pre-Trial Chamber II, “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-Red2, para. 110.

<sup>508</sup> See above, paras 24-77, 123-192.

meaning of article 7(2)(a) of the Statute, as a defining element of the “attack against the civilian population”. Furthermore, there are substantial grounds to believe that the four incidents in the context of which the charged crimes were committed share common features (in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations) with the other acts forming part of the attack – thus satisfying the required nexus – and are to be also considered “as part of” the relevant course of conduct that targeted perceived Ouattara supporters, within the meaning of article 7(1) of the Statute.

*b) Course of conduct pursuant to or in furtherance of a State or organisational policy to commit such attack*

213. According to article 7(2)(a) of the Statute, the course of conduct involving the multiple commission of acts referred to in article 7(1) must be carried out “pursuant to or in furtherance of a State or organizational policy to commit such attack”.

214. As clarified by the Elements of Crimes,<sup>509</sup> the “policy”, for the purposes of the Statute, must be understood as the active promotion or encouragement of an attack against a civilian population by a State or organisation.<sup>510</sup> The Chamber observes that neither the Statute nor the Elements of Crimes include a certain rationale or motivations of the policy as a requirement of the definition.<sup>511</sup> Establishing the underlying motive may, however, be useful for the detection of common features and links between acts. Furthermore, in

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<sup>509</sup> Elements of Crimes, Article 7, Introduction, para. 3 (“[I]t is understood that ‘policy to commit such attack’ requires that the State or organization actively promote or encourage such an attack against the civilian population”). The Elements of Crimes further provide that in exceptional circumstances, the policy may also consist in a deliberate failure to take action, which is consciously aimed at encouraging such attack (Elements of Crimes, Article 7, Introduction, para. 3, footnote 6).

<sup>510</sup> See also Trial Chamber II, “*Jugement rendu en application de l’article 74 du Statut*”, 7 March 2014, ICC-01/04-01/07-3436, para. 1108.

<sup>511</sup> See also Pre-Trial Chamber II, “*Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute*”, 23 January 2012, ICC-01/09-01/11-373, para. 213.



accordance with the Statute and the Elements of Crimes, it is only necessary to establish that the person had knowledge of the attack in general terms. Indeed, the Elements of Crimes clarify that the requirement of knowledge “should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization”.<sup>512</sup>

215. The Chamber also observes that in accordance with the established jurisprudence of the Court, an attack which is planned, directed or organised – as opposed to spontaneous or isolated acts of violence – will satisfy the policy criterion,<sup>513</sup> and that there is no requirement that the policy be formally adopted.<sup>514</sup>

216. Furthermore, the Chamber is of the view, consistent with the jurisprudence of the Court,<sup>515</sup> that the concept of “policy” and that of the “systematic” nature of the attack under article 7(1) of the Statute both refer to a certain level of planning of the attack. In this sense, evidence of planning, organisation or direction by a State or organisation may be relevant to prove both the policy and the systematic nature of the attack, although the two

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<sup>512</sup> Elements of Crimes, Article 7, Introduction, para. 2.

<sup>513</sup> Pre-Trial Chamber I, “Decision on the confirmation of charges”, 26 September 2008, ICC-01/04-01/07-717, para. 396; Pre-Trial Chamber II, “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, para. 81; Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 43; Pre-Trial Chamber II, “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-Red2, para. 111.

<sup>514</sup> Pre-Trial Chamber I, “Decision on the confirmation of charges”, 26 September 2008, ICC-01/04-01/07-717, para. 396; Pre-Trial Chamber II, “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, para. 81; Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Red, para. 37.

<sup>515</sup> See above, para. 215 and below, para. 223.

concepts should not be conflated as they serve different purposes and imply different thresholds under article 7(1) and (2)(a) of the Statute.

217. Finally, in accordance with article 7(2)(a) of the Statute, the policy to carry out the attack against the civilian population must be attributed to a State or an organisation. With respect to the latter, Chambers of the Court have consistently held that the policy may be linked to groups that govern a specific territory or to an organisation that has the capability to commit a widespread or systematic attack against the civilian population.<sup>516</sup> A view has also been expressed that the organisation within the meaning of article 7(2)(a) of the Statute must partake of some characteristics of a State, which “eventually turn the private ‘organization’ into an entity which may act like a State or has quasi-State abilities”.<sup>517</sup> In the present case, the Chamber is of the view that the organisation alleged by the Prosecutor and satisfactorily established by the available evidence would meet the threshold under either interpretation and that, accordingly, it is unnecessary for the Chamber to dwell any further on this point. In any case, the Chamber considers that, regardless of the interpretation of the notion of organisation, it is important that, as part of the analysis of the facts before it, the Chamber is able to understand how the organisation operates (for instance in terms of whether a chain of command or certain internal reporting lines exist) in order to determine whether the policy to carry out the attack is attributable to the organisation.

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<sup>516</sup> Pre-Trial Chamber I, “Decision on the confirmation of charges”, 26 September 2008, ICC-01/04-01/07-717, para. 396; Pre-Trial Chamber II, “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, para. 81; Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Red, para. 37.

<sup>517</sup> “Dissenting Opinion of Judge Hans-Peter Kaul to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya’”, 31 March 2010, ICC-01/09-19-Corr, p.110, para. 51.

218. The Chamber considers that the evidence demonstrates, first, that the possibility of recourse to violence was contemplated by Laurent Gbagbo and his inner circle before the 2010 presidential election, for which purpose preparatory activities were undertaken. In this context, the Chamber refers to Laurent Gbagbo's speech at Divo as an early expression of an intention to use force if necessary,<sup>518</sup> as well as to the various preparatory activities described above.<sup>519</sup> Second, the evidence demonstrates that the course of conduct of violence against civilians perceived to be supporters of Alassane Ouattara was a planned and coordinated effort of Laurent Gbagbo and his inner circle,<sup>520</sup> carried out through the forces under their control.<sup>521</sup>

219. The Chamber notes that the Prosecutor submits that "GBAGBO and his inner circle constituted an organisation within the meaning of article 7(2) of the Statute".<sup>522</sup> The Prosecutor emphasises its control over the pro-Gbagbo forces,<sup>523</sup> which constituted an organised and hierarchical apparatus of power.<sup>524</sup> The Chamber is of the view that for the purposes of its analysis of the contextual elements, it is appropriate to focus on the entire entity to which the policy to attack a civilian population is attributed, and not only on the individual(s) who adopt the policy at the highest level on behalf of the State or organisation. Accordingly, and in light of the evidence available,<sup>525</sup> the Chamber is satisfied that the pro-Gbagbo forces, which included elements of the FDS, youth militia and mercenaries, and were led by Laurent Gbagbo and his inner circle, constituted an organisation within the terms of article 7(2)(a)

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<sup>518</sup> See above, paras 111-112.

<sup>519</sup> See above, paras 123-149.

<sup>520</sup> See above, paras 150-192.

<sup>521</sup> See above, paras 87-109.

<sup>522</sup> Amended DCC, para. 74.

<sup>523</sup> Amended DCC, paras 78, 215.

<sup>524</sup> Amended DCC, para. 216.

<sup>525</sup> See above, paras 79-109.

and that the policy may thus be attributed to an organisation in accordance with that provision.

220. The Chamber is equally of the view that the policy to be attributed to such entity, which comprised part of the State apparatus, may on this basis be also qualified as a State policy. Therefore, for the purposes of the present decision, the Chamber considers that the Prosecutor's allegation that the policy to carry out the attack on the civilian population may qualify as a State or organisational policy<sup>526</sup> also finds sufficient support in the available evidence.

221. Accordingly, the Chamber is of the view that there are substantial grounds to believe that the attack as defined above was carried out pursuant to or in furtherance of a State or organisational policy to commit such an attack.

#### B. Widespread and systematic character of the attack

222. According to the established jurisprudence of the Court, the term "widespread" connotes the large-scale nature of the attack and the number of targeted persons.<sup>527</sup> In the present case, Pre-Trial Chamber III has previously adopted the approach followed by Pre-Trial Chamber II, according to which the term "widespread" encompasses the large-scale nature of the attack, in the

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<sup>526</sup> Amended DCC, para. 212.

<sup>527</sup> Pre-Trial Chamber I, "Decision on the Prosecution Application under Article 58(7) of the Statute", 27 April 2007, ICC-02/05-01/07-1-Corr, para. 62; *id.*, "Decision on the confirmation of charges", 26 September 2008, ICC-01/04-01/07-717, para. 394; *id.* "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 4 March 2009, ICC-02/05-01/09-3, para. 81; Pre-Trial Chamber II, "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, para. 83; Pre-Trial Chamber I, "Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana", 28 September 2010, ICC-01/04-01/10-1, para. 24; Pre-Trial Chamber III, "Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo", 30 November 2011, ICC-02/11-01/11-9-Red, para. 49; Trial Chamber II, "*Jugement rendu en application de l'article 74 du Statut*", 7 March 2014, ICC-01/04-01/07-3436, para. 1123.

sense that it “should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims”,<sup>528</sup> and that this assessment is not exclusively quantitative or geographical, but must be carried out on the basis of the individual facts.<sup>529</sup>

223. The alternative requirement that the attack be “systematic” has been consistently understood in the jurisprudence of the Court as pertaining to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>530</sup> Further, according to the jurisprudence of the Court, the systematic nature of an attack can “often be expressed through patterns of

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<sup>528</sup> Pre-Trial Chamber II, “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, para. 83; *id.*, “Corrigendum to the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, 31 March 2010, ICC-01/09-19-Corr, para. 95 (with reference to ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 580; *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Appeal Judgement, 27 January 2000, para. 204); Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 53; *id.*, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 3 November 2011, ICC-02/11-01/11-9-Red, para. 49.

<sup>529</sup> Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 53.

<sup>530</sup> Pre-Trial Chamber I, “Decision on the Prosecution Application under Article 58(7) of the Statute”, 27 April 2007, ICC-02/05-01/07-1-Corr, para. 62; *id.*, “Decision on the confirmation of charges”, 26 September 2008, ICC-01/04-01/07-717, para. 394; Pre-Trial Chamber I, “Decision on the Prosecutor’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 4 March 2009, ICC-02/05-01/09-3, para. 81; Pre-Trial Chamber II, “Corrigendum to the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, 31 March 2010, ICC-01/09-19-Corr, para. 96; Pre-Trial Chamber I, “Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana”, 28 September 2010, ICC-01/04-01/10-1, para. 24; Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 54; *id.*, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Red, para. 49; Trial Chamber II, “*Jugement rendu en application de l’article 74 du Statut*”, 7 March 2014, ICC-01/04-01/07-3436, para. 1123.

crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis’’.<sup>531</sup>

224. The Chamber considers that the attack referred to above was large-scale in nature, as it: (i) involved a large number of acts; (ii) targeted and victimised a significant number of individuals; (iii) extended over a time period of more than four months; and (iv) affected the entire city of Abidjan, a metropolis of more than three million inhabitants. Considering the cumulative effect of this series of violent acts, the Chamber is of the view that there are substantial grounds to believe that the attack was “widespread” within the meaning of article 7(1) of the Statute.

225. Further, the Chamber notes the evidence demonstrating that preparations for the attack were undertaken in advance,<sup>532</sup> and that the attack was planned and coordinated.<sup>533</sup> In addition, the acts of violence analysed by the Chamber reveal a clear pattern of violence directed at pro-Ouattara demonstrators or activists,<sup>534</sup> and more generally against areas whose inhabitants were perceived to be supporters of Alassane Ouattara.<sup>535</sup> On this basis, the Chamber concludes that there are also substantial grounds to believe that the attack was “systematic”, within the meaning of article 7(1) of the Statute.

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<sup>531</sup> Pre-Trial Chamber II, “Corrigendum to the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya”, 31 March 2010, ICC-01/09-19-Corr, para. 96; Pre-Trial Chamber III, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire’”, 3 October 2011, ICC-02/11-14-Corr, para. 54; *id.*, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, 30 November 2011, ICC-02/11-01/11-9-Red, para. 49. See also Trial Chamber II, “*Jugement rendu en application de l’article 74 du Statut*”, 7 March 2014, ICC-01/04-01/07-3436, para. 1123.

<sup>532</sup> See above, paras 123-149.

<sup>533</sup> See above, paras 150-192.

<sup>534</sup> See above, paras 24-51, 75-76.

<sup>535</sup> See above, paras 52-72, 77.

### III. *Individual criminal responsibility of Laurent Gbagbo*

226. The Chamber notes that the Prosecutor alleges that Laurent Gbagbo is criminally responsible for the crimes charged under “alternately, article 25(3)(a) (indirect co-perpetration), 25(3)(b) (order, solicit and induce) and 25(3)(d), as well as article 28(a) and 28(b) of the Statute”.<sup>536</sup> Accordingly, the Prosecutor requests the Chamber to confirm the charges as presented, thereby maintaining the proposed alternative grounds of criminal responsibility, and ultimately permitting these alternatives to be presented to the Trial Chamber for its final determination.

227. The Chamber is of the view that when alternative legal characterisations of the same facts proposed by the Prosecutor are satisfactorily established by the evidence, it is appropriate that the charges be confirmed with the various available alternatives, in order for the Trial Chamber to determine whether any of those legal characterisations is established to the applicable standard of proof at trial.<sup>537</sup>

228. Taking stock of past experience of the Court, the Chamber is also of the view that confirming all applicable alternative legal characterisations on the basis of the same facts is a desirable approach as it may reduce future delays at trial, and provides early notice to the defence of the different legal characterisations that may be considered by the trial judges. This more flexible approach is, of course, without prejudice to the possibility that trial judges, following the applicable procedure, consider other alternatives as well.

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<sup>536</sup> Amended DCC, paras 232-235.

<sup>537</sup> See also Pre-Trial Chamber II, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, ICC-01/04-02/06-309, para. 100. See also Pre-Trial Chamber II, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, ICC-01/09-01/11-373, paras 284-285; *id.* “Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang”, 8 March 2011, ICC-01/09-01/11-1, para. 36.

229. Accordingly, the Chamber will hereunder provide its finding as to the alternative modes of liability proposed by the Prosecutor, and its determination on whether each of them is sufficiently supported by the available evidence.

A. Article 25(3)(a) of the Statute

230. The Chamber is of the view that the available evidence provides substantial grounds to believe that Laurent Gbagbo committed the crimes charged jointly with the members of his inner circle and through members of the pro-Gbagbo forces, within the meaning of article 25(3)(a) of the Statute. Consistent with the elements of this form of responsibility as set out in the established jurisprudence of the Court,<sup>538</sup> and as elaborated in more detail below, the Chamber's conclusion is based on the evidence establishing substantial grounds to believe that: (i) Laurent Gbagbo was part of a common plan to use force against civilians with members of his inner circle, who all shared the intent to commit the crimes; (ii) Laurent Gbagbo and his inner circle, acting in a coordinated manner, used the pro-Gbagbo forces to carry out the material elements of the crimes, and that without Laurent Gbagbo's actions, the crimes would not have been committed or would have been committed in a significantly different way; (iii) Laurent Gbagbo and his inner circle, by virtue of their control over the pro-Gbagbo forces, exercised joint control over the will of the members of these forces who were the direct perpetrators of the crimes; (iv) this joint control was possible due to the

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<sup>538</sup> Pre-Trial Chamber I, "Decision on the confirmation of charges", 30 September 2008, ICC-01/04-01/07-717, paras 500-539; *id.*, "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 4 March 2009, ICC-02/05-01/09-3, paras 209-213; Pre-Trial Chamber II, "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 350-351; *id.*, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 23 January 2012, ICC-01/09-02/11-382-Red, para. 297; *id.*, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda", 9 June 2014, ICC-01/04-02/06-309, paras 104 and 121.



organised and hierarchical nature of the pro-Gbagbo forces, which secured an almost automatic compliance with orders given by Laurent Gbagbo and his inner circle; and (v) Laurent Gbagbo committed the crimes with the requisite intent and knowledge pursuant to article 30 of the Statute and he and the members of his inner circle were aware of the factual circumstances that enabled them to exercise joint control over the commission of the crimes through members of the pro-Gbagbo forces.

231. The Chamber finds that Laurent Gbagbo, together with his inner circle, designed a common plan to retain power by all means, including through the use of force against civilians. The Chamber relies on evidence demonstrating: (i) Laurent Gbagbo's relations with a limited number of close associates who shared his objective of staying in power and coordinated with him the means to achieve this goal, including the use of force against civilians;<sup>539</sup> (ii) Laurent and Simone Gbagbo's public statements indicating an intention to hold on to power at any cost, including by use of force against civilians;<sup>540</sup> (iii) the campaign activities aimed at mobilising supporters for the possible use of violence, which began well in advance of the violence at issue in the present case;<sup>541</sup> (iv) the mobilisation of the youth for violent acts;<sup>542</sup> (v) preparatory activities in anticipation of the use of violence, such as securing the allegiance of the FDS, acquisition of weapons, recruitment into the FDS, recruitment, training and supplying of loyal militias, and recruitment and financing of mercenaries;<sup>543</sup> (vi) the interaction between Laurent Gbagbo and members of his inner circle, and the forces under their control, illustrated by the evidence of meetings and instructions to units on the ground during the crisis;<sup>544</sup> as well

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<sup>539</sup> See above, paras 79-86.

<sup>540</sup> See above, paras 111-116.

<sup>541</sup> See above, paras 117-120.

<sup>542</sup> See above, paras 165-168.

<sup>543</sup> See above, paras 123-149.

<sup>544</sup> See above, paras 150-162.

as (vii) the steps undertaken by Laurent Gbagbo and his inner circle in reaction to the evolution of the crisis.<sup>545</sup> Additional indicators supporting the existence of a common plan to maintain Laurent Gbagbo in power at any cost, including by the use of force against civilians, include the blockade of the Golf Hotel<sup>546</sup> and the lack of genuine investigations into allegations of civilian casualties.<sup>547</sup> Based on these considerations, the Chamber concludes that violence against civilians, while not in itself the ultimate goal of Laurent Gbagbo and his inner circle, was a criminal element inherent to the common plan to stay in power at any cost.

232. Further, the Chamber finds that Laurent Gbagbo and members of his inner circle contributed in a coordinated manner to the implementation of the common plan to retain presidential power at any cost, including by use of violence against civilians. The Chamber considers that Laurent Gbagbo contributed to the commission of the crimes charged within the four incidents through: (i) his order that the march on the RTI building on 16 December 2010 be prevented;<sup>548</sup> (ii) his order of and control over the intervention of FANCI in Abobo, which deployed with its regular means, including heavy weaponry;<sup>549</sup> and (iii) his support of militia and youth groups, including by way of defining a purpose for them (namely to fight for him), encouraging and endorsing their actions, in particular in Yopougon, as well as providing them with training, weapons and financial means.<sup>550</sup> For its finding, the Chamber has also taken into account evidence which demonstrates regular meetings between Laurent Gbagbo and the high commanders of the FDS, and evidence of instructions given by Laurent Gbagbo and his inner circle to pro-Gbagbo

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<sup>545</sup> See above, paras 169-181.

<sup>546</sup> See above, paras 121-122.

<sup>547</sup> See above, paras 182-192.

<sup>548</sup> See above, paras 26-27, 152.

<sup>549</sup> See above, paras 154-155, 170-176.

<sup>550</sup> See above, paras 67-70, 100-103, 105-109, 165-168.

forces.<sup>551</sup> The Chamber has also relied on the evidence regarding the activities of Laurent Gbagbo and his inner circle that were undertaken in anticipation of the use of violence, such as securing allegiance of the FDS, recruitment into the FDS, recruitment and financing of both militias and mercenaries, and the acquisition of weapons.<sup>552</sup> The Chamber is of the view that without the contribution of Laurent Gbagbo, the crimes would not have been committed or would have been committed in a significantly different way.

233. The Chamber further finds that Laurent Gbagbo had control over the pro-Gbagbo forces on the basis of the evidence analysed above which demonstrates that: (i) Laurent Gbagbo and his inner circle exercised control over the FDS through the official State hierarchy and a parallel structure which initially complemented and eventually virtually replaced the official structure;<sup>553</sup> (ii) Laurent Gbagbo and his inner circle were able to reorganise the forces loyal to them despite defections from the FDS, in particular at the end of March 2011, which enabled them to continue the fight for power, including the use of violence against civilians;<sup>554</sup> (iii) control over militias and mercenaries was also exercised through this official and parallel structure by way of their *de facto* integration into the FDS;<sup>555</sup> (iv) control over militia groups, in particular in Yopougon, was further exercised through the personal links between militia leaders and Laurent Gbagbo, as well as the provision of weapons and financial support by Laurent Gbagbo and his inner circle;<sup>556</sup> and (v) control over the pro-Gbagbo youth was ensured in the context of the

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<sup>551</sup> See above, paras 150-162.

<sup>552</sup> See above, paras 123-149.

<sup>553</sup> See above, paras 88-99.

<sup>554</sup> See above, paras 177-181.

<sup>555</sup> See above, paras 102, 138, 143.

<sup>556</sup> See above, paras 68, 102.

campaign activities and their related mobilisation to use violence, as well as later calls for their enrolment in the FDS.<sup>557</sup>

234. The Chamber finds that Laurent Gbagbo's and his inner circle's joint control over the organisation was possible due to the organised and hierarchical nature of the pro-Gbagbo forces, which ensured an almost automatic compliance with orders given by Laurent Gbagbo and his inner circle, as demonstrated by the evidence analysed above, which shows that: (i) the FDS was a functioning apparatus of State power, under responsible command, and with considerable capacity;<sup>558</sup> (ii) Laurent Gbagbo and his inner circle were able to exert authority over the FDS, including militia and mercenary elements integrated therein, through an official and a parallel chain of command which were effective and complemented each other;<sup>559</sup> (iii) despite defections, in particular at the end of March 2011, Laurent Gbagbo and the inner circle were able to reorganise loyal forces in order to continue the fight for power, including the use of violence against civilians;<sup>560</sup> (iv) the implementation of the common plan to maintain power at any cost, including through the use of violence against civilians, was coordinated and planned through meetings, instructions to units on the ground and a generally functioning communication chain;<sup>561</sup> (v) pro-Gbagbo militias, especially in Yopougon, were thoroughly organised and linked to Laurent Gbagbo and the inner circle through their leaders and by receiving assistance in training and financial support;<sup>562</sup> and (vi) the pro-Gbagbo youth, despite not being organised in a formal hierarchy, had a clearly defined leadership in the

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<sup>557</sup> See above, paras 105-109, 117-120, 165-166, 179-181.

<sup>558</sup> See above, paras 88-94.

<sup>559</sup> See above, paras 95-99.

<sup>560</sup> See above, paras 177-181.

<sup>561</sup> See above, paras 150-164.

<sup>562</sup> See above, paras 100-103.

person of Charles Blé Goudé, received systematic financial support, and were controlled primarily through manipulation at mass rallies.<sup>563</sup>

235. Pursuant to article 30 of the Statute, an individual is criminally responsible for a crime within the jurisdiction of the Court only when the material elements of that crime are committed with intent and knowledge. Article 30 specifies that the person has “intent” when he or she means to engage in the conduct, and means to cause the consequence of the conduct or is aware that the consequence will occur in the ordinary course of events. Article 30 defines knowledge as “awareness that a circumstance exists or a consequence will occur in the ordinary course of events”.

236. The Chamber finds that Laurent Gbagbo meant to engage in his activities in the post-election crisis, and to issue orders and instructions, with a view to implementing the common plan to retain power at any cost, including by the use of force against civilians. The Chamber also finds that Laurent Gbagbo meant to cause the use of violence against civilians or was aware that the violence would occur in the ordinary course of events, leading to killings, rape and acts causing serious injury to body and great suffering, and that Laurent Gbagbo intended the discriminatory use of violence against civilians known or perceived to be supporters of his political opponent Alassane Ouattara.

237. The evidence shows that: (i) Laurent Gbagbo made public statements which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>564</sup> (ii) Laurent Gbagbo and his inner circle aimed their campaign activities, which began well in advance of the violence at issue in the present case, towards mobilising supporters for the possible use of

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<sup>563</sup> See above, paras 105-108, 117-120, 165-168, 179-181.

<sup>564</sup> See above, paras 111-115.

violence;<sup>565</sup> (iii) Laurent Gbagbo and his inner circle mobilised the youth for violent acts against known or perceived supporters of Laurent Gbagbo's political opponent Alassane Ouattara;<sup>566</sup> (iv) Laurent Gbagbo and his inner circle engaged in preparatory activities in anticipation of the use of violence, such as acquisition of weapons and recruitment of FDS elements, militias and mercenaries;<sup>567</sup> (v) Laurent Gbagbo and his inner circle coordinated the implementation of the common plan through their interaction with the pro-Gbagbo forces, as illustrated by the meetings and instructions given to units on the ground during the crisis;<sup>568</sup> and (vi) Laurent Gbagbo and his inner circle reacted to the evolution of the crisis by taking specific steps to ensure continued implementation of the common plan to retain power at any cost, including by use of violence against civilians.<sup>569</sup>

238. Moreover, the evidence analysed above shows that: (i) Laurent Gbagbo was aware that his actions would cause or were causing harm;<sup>570</sup> (ii) the conduct in question stretched over the course of several months<sup>571</sup> and Laurent Gbagbo knew at least from mid-December 2010 of the consequences;<sup>572</sup> (iii) Laurent Gbagbo was aware of the deployment of FANCI to Abobo with heavy weaponry;<sup>573</sup> (iv) Laurent Gbagbo was aware that heavy weaponry was being used by forces under his command in areas densely populated by civilians;<sup>574</sup> and (v) Laurent Gbagbo knew of the nature of the pro-Gbagbo militias and youth, and exploited their allegiance with a view to committing violence against civilians known or perceived to be supporters of

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<sup>565</sup> See above, paras 117-119.

<sup>566</sup> See above, paras 165-168.

<sup>567</sup> See above, paras 123-149.

<sup>568</sup> See above, paras 150-162.

<sup>569</sup> See above, paras 169-181.

<sup>570</sup> See above, paras 111, 113, 115.

<sup>571</sup> See above, paras 24-77.

<sup>572</sup> See above, paras 41, 113, 189-190.

<sup>573</sup> See above, paras 175-176.

<sup>574</sup> See above, para. 176.

his political opponent Alassane Ouattara.<sup>575</sup> This evidence also illustrates that Laurent Gbagbo and the other co-perpetrators were mutually aware and accepted that the implementation of the common plan to maintain power at any cost would result in the use of violence against civilians.

239. In the view of the Chamber, this evidence further shows that Laurent Gbagbo was aware that the crimes committed in the context of the four charged incidents formed part of a widespread and systematic attack directed against a civilian population, namely known or perceived Ouattara supporters.

240. Finally, the Chamber finds that Laurent Gbagbo was aware that on the basis of his claim of status as President of Côte d'Ivoire, he was able to assert his authority over the entirety of the FDS, with the high commanders of the FDS recognising his leadership, receiving instructions from him, and reporting to him, directly or indirectly,<sup>576</sup> and that he exercised control over the pro-Gbagbo forces also through a parallel structure which initially complemented and eventually virtually replaced the official structure.<sup>577</sup> With regard to Laurent Gbagbo's control over the actions of the pro-Gbagbo youth in particular, the evidence demonstrates that Laurent Gbagbo was aware of his close relations with Charles Blé Goudé and the latter's major role in the mobilisation of the youth for violent acts, through which their actions were directed.<sup>578</sup>

241. In light of the above, the Chamber finds that there are substantial grounds to believe that Laurent Gbagbo is criminally responsible under article 25(3)(a) of the Statute for committing, jointly with members of his inner circle

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<sup>575</sup> See above, paras 105-109, 117-119, 165-168.

<sup>576</sup> See above, paras 96, 150-164.

<sup>577</sup> See above, paras 97-99.

<sup>578</sup> See above, paras 83-85, 165-166.

and through members of the pro-Gbagbo forces, crimes against humanity of murder, rape, other inhumane acts (serious injury to body and great suffering) or, alternatively, attempted murder, and persecution.

#### B. Article 25(3)(b) of the Statute

242. Article 25(3)(b) of the Statute provides for individual criminal responsibility if a person “orders, solicits or induces the commission” of a crime within the jurisdiction of the court which in fact occurs or is attempted.

243. The Chamber is of the view that “ordering”, “soliciting” and “inducing” in essence fall into a broader category of “instigating” or “prompting another person to commit a crime”, in the sense that they refer to a conduct by which a person is influenced by another to commit a crime. Therefore, the Chamber will consider the elements of “ordering”, as previously applied by the Court,<sup>579</sup> as equally applicable to “soliciting” and “inducing”, with the exception of the requirement of a position of authority, which is particular to “ordering” and is not a necessary element of “soliciting” or “inducing”.

244. Taking into account the elements of this form of responsibility as previously applied by the Court,<sup>580</sup> the Chamber considers that there are substantial grounds to believe that Laurent Gbagbo is criminally responsible for the crimes charged under article 25(3)(b) of the Statute, in light of the evidence demonstrating that: (i) Laurent Gbagbo was in a position of authority *vis-à-vis* the direct perpetrators of the crimes under consideration; (ii) Laurent Gbagbo instructed or otherwise instigated the pro-Gbagbo forces

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<sup>579</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-01/12-1-Red, para. 63; *id.*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, ICC-01/04-02/06-309, paras 145 and 153.

<sup>580</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Application under Article 58”, 13 July 2012, ICC-01/04-01/12-1-Red, para. 63; *id.*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, ICC-01/04-02/06-309, paras 145 and 153.



to carry out certain actions in the execution of which the crimes in the context of the four charged incidents were committed; (iii) Laurent Gbagbo's instructions or instigation had a direct effect on the commission of the crimes; and (iv) Laurent Gbagbo meant to instruct or instigate the pro-Gbagbo forces to carry out certain actions in the execution of which the crimes in the context of the four charged incidents were committed and was aware that those crimes would be committed in the ordinary course of events as a consequence of his instructions or instigation.

245. The Chamber finds that Laurent Gbagbo was in a position of authority *vis-à-vis* the direct perpetrators of the crimes under consideration based on the evidence analysed above which demonstrates that: (i) Laurent Gbagbo and his inner circle exercised control over the FDS through the official State hierarchy and a parallel structure which initially complemented and eventually virtually replaced the official structure;<sup>581</sup> (ii) Laurent Gbagbo and his inner circle were able to reorganise the forces loyal to them despite defections from the FDS, in particular at the end of March 2011, which enabled them to continue the fight for power, including the use of violence against civilians;<sup>582</sup> (iii) control over militias and mercenaries was exercised through this official and parallel structure also by way of their *de facto* integration into the FDS;<sup>583</sup> (iv) control over militia groups, in particular in Yopougon, was further exercised through the personal links between militia leaders and Laurent Gbagbo, as well as the provision of weapons and financial support by Laurent Gbagbo and his inner circle;<sup>584</sup> and (v) the pro-Gbagbo youth had a clearly defined leadership in the person of Charles Blé Goudé who was particularly

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<sup>581</sup> See above, paras 95-99, 178.

<sup>582</sup> See above, paras 177-181.

<sup>583</sup> See above, paras 103, 143.

<sup>584</sup> See above, paras 68-70, 100-103, 105-109, 117-119.

close to Laurent Gbagbo and played a major role in the mobilisation of the youth and directing their actions.<sup>585</sup>

246. The Chamber further finds that Laurent Gbagbo instructed or otherwise instigated the pro-Gbagbo forces to carry out certain actions in the execution of which the crimes in the context of the four charged incidents were committed. The evidence analysed above demonstrates that: (i) Laurent Gbagbo ordered that the march on the RTI building on 16 December 2010 be prevented;<sup>586</sup> (ii) Laurent Gbagbo ordered the intervention of FANCI in Abobo with its regular means, including heavy weaponry;<sup>587</sup> (iii) by mobilising them for his cause, Laurent Gbagbo directed the actions of the youth and militia groups in Yopougon and provided them with the purpose of their fighting, which was to retain his power by all means, including through the use of violence against civilians known or perceived to be supporters of his political opponent Alassane Ouattara;<sup>588</sup> and (iv) Laurent Gbagbo, by emphasising the goal (*i.e.* to stay in power) through statements and actions prior to and during the crisis without qualifying the means that were permissible to attain this goal, created a general situation amongst the forces under his and his inner circle's control, which justified the use of violence against the civilian population.<sup>589</sup>

247. In addition, the Chamber finds that Laurent Gbagbo's instruction or instigation had a direct effect on the commission of crimes on the basis of the analysis of evidence above which shows that: (i) the demonstration at the RTI building was suppressed because of Laurent Gbagbo's instruction to do so;<sup>590</sup> (ii) the shooting at the demonstrators in Abobo and the shelling of Abobo

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<sup>585</sup> See above, paras 83-85, 165-166.

<sup>586</sup> See above, paras 26, 152.

<sup>587</sup> See above, paras 154-155, 171, 175.

<sup>588</sup> See above, paras 68, 100-103, 117-119.

<sup>589</sup> See above, paras 111-115, 181, 185-187.

<sup>590</sup> See above, paras 26, 152.

market and its surroundings took place as part of FANCI's intervention in Abobo, which was ordered by Laurent Gbagbo;<sup>591</sup> and (iii) the attack on Doukouré and Mami Fatai in Yopougon occurred as a result of the mobilisation and manipulation of the youth and militia to fight for maintaining Laurent Gbagbo in power.<sup>592</sup>

248. The Chamber finds that Laurent Gbagbo meant to instruct or instigate the pro-Gbagbo forces to carry out certain actions in the execution of which the crimes charged within the four incidents were committed. The Chamber bases this conclusion on evidence regarding: (i) public statements by Laurent Gbagbo which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>593</sup> (ii) the campaign activities of Laurent Gbagbo and his inner circle, which began well in advance of the violence at issue in the present case, and were aimed at mobilising supporters for the possible use of violence;<sup>594</sup> (iii) the mobilisation of youth for violent acts against known or perceived supporters of Laurent Gbagbo's political opponent Alassane Ouattara by Laurent Gbagbo and the inner circle;<sup>595</sup> (iv) the activities in anticipation of the use of violence such as acquisition of weapons and recruitment of FDS elements, militias and mercenaries by Laurent Gbagbo and his inner circle;<sup>596</sup> (v) the coordination and implementation of the common plan through their interaction with the pro-Gbagbo forces, including by way of meetings and instructions given to units on the ground during the crisis;<sup>597</sup> and (vi) specific steps taken by Laurent Gbagbo and his inner circle in reaction to the evolution of the crisis with a

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<sup>591</sup> See above, paras 154-155, 171, 173, 175.

<sup>592</sup> See above, paras 68-70, 100-103, 105-109, 117-119, 165-168.

<sup>593</sup> See above, paras 111-115.

<sup>594</sup> See above, paras 117-119.

<sup>595</sup> See above, paras 165-168.

<sup>596</sup> See above, paras 123-149.

<sup>597</sup> See above, paras 150-162.

view to ensuring continued implementation of the common plan to retain power at any cost, including by use of violence against civilians.<sup>598</sup>

249. The Chamber finds that the evidence establishes that Laurent Gbagbo was aware that crimes would be committed in the ordinary course of events as a consequence of his instructions or instigation. In particular, the Chamber concludes that Laurent Gbagbo was aware that the use of violence against civilians would lead to killings, rapes and acts causing serious injury to body and great suffering, and that he knew that the civilians targeted would be those considered to be supporters of Alassane Ouattara. The Chamber also finds that Laurent Gbagbo was aware that the crimes were committed as part of a widespread and systematic attack against a civilian population, namely known or perceived supporters of his political opponent Alassane Ouattara.

250. This conclusion is based on the analysis of the evidence above which shows that: (i) Laurent Gbagbo was aware that his actions would cause or were causing harm;<sup>599</sup> (ii) Laurent Gbagbo made public statements which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>600</sup> (iii) Laurent Gbagbo's campaign activities were aimed at mobilising supporters for the possible use of violence and began well in advance of the violence at issue in the present case;<sup>601</sup> (iv) Laurent Gbagbo was aware of the mobilisation of the youth for violent acts against known or perceived supporters of his political opponent Alassane Ouattara;<sup>602</sup> (v) Laurent Gbagbo and his inner circle engaged in activities in anticipation of the use of violence such as acquisition of weapons and recruitment of FDS

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<sup>598</sup> See above, paras 150-162.

<sup>599</sup> See above, paras 111, 113, 115.

<sup>600</sup> See above, paras 111-115.

<sup>601</sup> See above, paras 117-119.

<sup>602</sup> See above, paras 165-168.

elements, militias and mercenaries;<sup>603</sup> (vi) the conduct stretched over the course of several months<sup>604</sup> and Laurent Gbagbo knew at least from mid-December 2010 of the consequences;<sup>605</sup> (vii) Laurent Gbagbo was aware of the deployment of FANCI to Abobo with heavy weaponry;<sup>606</sup> (viii) Laurent Gbagbo was aware that heavy weaponry was being used by forces under his control in areas densely populated by civilians;<sup>607</sup> and (ix) Laurent Gbagbo knew of the nature of the pro-Gbagbo militias and youth, and exploited their particular allegiance with a view to committing violence against civilians known or perceived to be supporters of his political opponent Alassane Ouattara.<sup>608</sup>

251. In light of the above, the Chamber finds that there are substantial grounds to believe that Laurent Gbagbo is criminally responsible under article 25(3)(b) of the Statute for crimes against humanity of murder, rape, other inhumane acts (serious injury to body and great suffering) or, alternatively, attempted murder, and persecution.

### C. Article 25(3)(d) of the Statute

252. The Chamber considers that Laurent Gbagbo is criminally responsible under article 25(3)(d) of the Statute for contributing, in any other way, to the commission of the crimes charged. Indeed, and taking into account the jurisprudence of the Court on this form of responsibility,<sup>609</sup> the Chamber is

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<sup>603</sup> See above, paras 123-149.

<sup>604</sup> See above, paras 24-77.

<sup>605</sup> See above, paras 41, 113, 189-190.

<sup>606</sup> See above, paras 175-176.

<sup>607</sup> See above, para. 176.

<sup>608</sup> See above, paras 105-109, 117-119, 165-168.

<sup>609</sup> Pre-Trial Chamber I, "Decision on the confirmation of charges", 16 December 2011, ICC-01/04-01/10-465-Red, paras 269 fn. 640, 271; Pre-Trial Chamber II, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 23 January 2012, ICC-01/09-01/11-373, paras 351-354; Trial Chamber II, "*Jugement rendu en application de l'article 74 du Statut*", 7 March 2014, ICC-01/04-01/07-3436, paras 1616-1642; Pre-Trial Chamber

satisfied that the available evidence establishes substantial grounds to believe that: (i) crimes against humanity of murder, rape, other inhumane acts (acts causing serious injury to body and great suffering) or alternatively attempted murder, and persecution, were perpetrated by a group, namely members of the pro-Gbagbo forces led by Laurent Gbagbo and the inner circle, which acted with the common purpose of maintaining Laurent Gbagbo in power by all means, including through the use of violence against civilians; (ii) Laurent Gbagbo contributed to the commission of the crimes; (iii) Laurent Gbagbo meant to contribute to the commission of the crimes; and (iv) Laurent Gbagbo carried out his contribution with the aim of furthering the criminal purpose of the group which involved the commission of crimes within the jurisdiction of the Court.

253. As outlined above, the Chamber finds substantial grounds to believe that such crimes were indeed committed.<sup>610</sup>

254. The Chamber concludes that the evidence analysed above shows that the crimes charged within the four incidents were perpetrated by members of pro-Gbagbo forces led by Laurent Gbagbo and his inner circle,<sup>611</sup> who acted with the common purpose of maintaining Laurent Gbagbo in power by all means, including through the use of violence against civilians. For this latter finding, the Chamber has taken into account the evidence regarding: (i) Laurent Gbagbo's relations with a limited number of close associates who shared his objective of staying in power and coordinated with him the means to achieve this goal;<sup>612</sup> (ii) Laurent and Simone Gbagbo's public statements which indicate an intention to hold on to power at any cost, including by use

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II, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda", 9 June 2014, ICC-01/04-02/06-309, para. 158.

<sup>610</sup> See above, paras 193-206.

<sup>611</sup> See above, paras 24-72.

<sup>612</sup> See above, paras 79-86.

of force against civilians;<sup>613</sup> (iii) the nature of the campaign activities which were aimed at mobilising supporters for the possible use of violence and which began well in advance of the violence at issue in the present case;<sup>614</sup> (iv) the mobilisation of the youth for violent acts;<sup>615</sup> (v) the activities in anticipation of the use of violence such as securing the allegiance of the FDS, acquisition of weapons, recruitment into the FDS, recruitment, training and supplying of loyal militias, and recruitment and financing of mercenaries;<sup>616</sup> (vi) the interaction between Laurent Gbagbo and members of his inner circle, and the forces under their control, including by way of meetings and instructions to units on the ground during the crisis;<sup>617</sup> and (vii) the steps undertaken by Laurent Gbagbo and members of his inner circle in reaction to the evolution of the crisis.<sup>618</sup> The Chamber considers that the evidence also sufficiently demonstrates that members of the pro-Gbagbo forces led by Laurent Gbagbo and the inner circle were a group within the meaning of article 25(3)(d) of the Statute,<sup>619</sup> and notes that in spite of adverse developments, the group was able to reorganise in the late stages of the crisis, and to continue the execution of its common purpose, including commission of the crimes charged, throughout the relevant period of time.<sup>620</sup>

255. The Chamber finds that Laurent Gbagbo contributed to the commission of the crimes, through any of the following: (i) his order that the march on the RTI building on 16 December 2010 be prevented;<sup>621</sup> (ii) his order of and control over the intervention of FANCI in Abobo, which deployed with its regular

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<sup>613</sup> See above, paras 111-116.

<sup>614</sup> See above, paras 117-119.

<sup>615</sup> See above, paras 165-168.

<sup>616</sup> See above, paras 123-149.

<sup>617</sup> See above, paras 150-162.

<sup>618</sup> See above, paras 150-162.

<sup>619</sup> See above, paras 79-109.

<sup>620</sup> See above, paras 177-181.

<sup>621</sup> See above, paras 26, 152.

means, including heavy weaponry;<sup>622</sup> (iii) his support of militia and youth groups, including by way of defining a purpose for them (namely to fight for him), encouraging and endorsing their actions, in particular in Yopougon, as well as providing them with training, weapons and financial means;<sup>623</sup> (iv) his role in the activities undertaken in anticipation of the use of violence, such as securing allegiance of the FDS, recruitment into the FDS, recruitment and financing of both militias and mercenaries, and the acquisition of weapons;<sup>624</sup> and (v) his participation in regular meetings with the high commanders of the FDS and his provision of instructions to pro-Gbagbo forces.<sup>625</sup>

256. The Chamber finds that Laurent Gbagbo meant to contribute to the commission of the crimes, on the basis of evidence regarding: (i) public statements by Laurent Gbagbo which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>626</sup> (ii) the campaign activities by Laurent Gbagbo and his inner circle, which began well in advance of the violence at issue in the present case, and were aimed at mobilising supporters for the possible use of violence;<sup>627</sup> (iii) the mobilisation of youth for violent acts against known or perceived supporters of Laurent Gbagbo's political opponent Alassane Ouattara by Laurent Gbagbo and his inner circle;<sup>628</sup> (iv) the activities in anticipation of the use of violence such as acquisition of weapons and recruitment of FDS elements, militias and mercenaries by Laurent Gbagbo and his inner circle;<sup>629</sup> (v) the coordination and implementation of the common plan by Laurent Gbagbo and his inner circle through their interaction with the pro-Gbagbo forces, including by way

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<sup>622</sup> See above, paras 154-155, 171, 173, 175.

<sup>623</sup> See above, paras 68-70, 100-103, 105-109, 117-119.

<sup>624</sup> See above, paras 123-149.

<sup>625</sup> See above, paras 150-162.

<sup>626</sup> See above, paras 111-115.

<sup>627</sup> See above, paras 117-119.

<sup>628</sup> See above, paras 165-168.

<sup>629</sup> See above, paras 123-149.



of meetings and instructions given to units on the ground during the crisis;<sup>630</sup> and (vi) specific steps taken by Laurent Gbagbo and his inner circle in reaction to the evolution of the crisis with a view to ensuring continued implementation of the common plan to retain power at any cost, including by use of violence against civilians.<sup>631</sup>

257. Further, the Chamber finds that Laurent Gbagbo was aware that his conduct contributed to the commission of crimes by pro-Gbagbo forces. This finding is supported by the evidence which shows that: (i) Laurent Gbagbo was aware that his actions would cause or were causing harm;<sup>632</sup> (ii) Laurent Gbagbo made public statements which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>633</sup> (iii) Laurent Gbagbo's campaign activities were aimed at mobilising supporters for the possible use of violence and began well in advance of the violence at issue in the present case;<sup>634</sup> (iv) Laurent Gbagbo was aware of the mobilisation of the youth for violent acts against known or perceived supporters of his political opponent Alassane Ouattara;<sup>635</sup> (v) Laurent Gbagbo and his inner circle engaged in activities in anticipation of the use of violence such as acquisition of weapons and recruitment of FDS elements, militias and mercenaries;<sup>636</sup> (vi) the conduct stretched over the course of several months<sup>637</sup> and Laurent Gbagbo knew at least from mid-December 2010 of the consequences;<sup>638</sup> (vii) Laurent Gbagbo was aware of the deployment of FANCI to Abobo with heavy weaponry;<sup>639</sup> (viii) Laurent Gbagbo was aware that heavy weaponry

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<sup>630</sup> See above, paras 150-162.

<sup>631</sup> See above, paras 150-162.

<sup>632</sup> See above, paras 111, 113, 115.

<sup>633</sup> See above, paras 111-115.

<sup>634</sup> See above, paras 117-119.

<sup>635</sup> See above, paras 165-168.

<sup>636</sup> See above, paras 123-149.

<sup>637</sup> See above, paras 24-77.

<sup>638</sup> See above, paras 41, 113, 189-190.

<sup>639</sup> See above, paras 175-176.

was being used by forces under his control in areas densely populated by civilians;<sup>640</sup> and (ix) Laurent Gbagbo knew of the nature of the pro-Gbagbo militias and youth, and exploited their allegiance with a view to committing violence against civilians known or perceived to be supporters of his political opponent Alassane Ouattara.<sup>641</sup>

258. The Chamber finds that Laurent Gbagbo shared the common purpose of the group which involved the commission of crimes within the jurisdiction of the Court and, therefore, carried out his contribution with the aim of furthering such criminal purpose of the group. The Chamber bases this finding on evidence regarding: (i) Laurent Gbagbo's relations with a limited number of close associates who shared his objective of staying in power and coordinated with him the means to achieve this goal;<sup>642</sup> (ii) Laurent Gbagbo's public statements which indicate an intention to hold on to power at any cost, including by use of force against civilians;<sup>643</sup> (iii) the nature of the campaign activities which were aimed at mobilising supporters for the possible use of violence and which began well in advance of the violence at issue in the present case;<sup>644</sup> (iv) the mobilisation of the youth for violent acts;<sup>645</sup> (v) the activities in anticipation of the use of violence such as securing the allegiance of the FDS, acquisition of weapons, recruitment into the FDS, recruitment, training and supplying of loyal militias, and recruitment and financing of mercenaries;<sup>646</sup> (vi) the interaction between Laurent Gbagbo and members of his inner circle, and the forces under their control, including by way of meetings and instructions to units on the ground during the crisis;<sup>647</sup> (vii) the

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<sup>640</sup> See above, para. 176.

<sup>641</sup> See above, paras 105-109, 117-119, 165-168.

<sup>642</sup> See above, paras 79-86.

<sup>643</sup> See above, paras 111-115.

<sup>644</sup> See above, paras 117-119.

<sup>645</sup> See above, paras 165-168.

<sup>646</sup> See above, paras 123-149.

<sup>647</sup> See above, paras 150-162.

steps undertaken by Laurent Gbagbo and members of his inner circle in reaction to the evolution of the crisis.<sup>648</sup> Additional indicators for the finding that Laurent Gbagbo contributed with the aim of furthering the common purpose of the group are the blockade of the Golf Hotel<sup>649</sup> and the lack of genuine investigations into allegations of civilian casualties.<sup>650</sup>

259. In light of the above, the Chamber finds that there are substantial grounds to believe that Laurent Gbagbo is criminally responsible under article 25(3)(d) of the Statute for contributing, in any other way, to the commission of the crimes against humanity of murder, rape, other inhumane acts (serious injury to body and great suffering) or, alternatively, attempted murder, and persecution.

#### D. Article 28(a) and (b) of the Statute

260. As indicated above, the Chamber considers there to be no legal impediment to the confirmation of alternative modes of liability,<sup>651</sup> and has concluded on the basis of the facts and evidence of the case that there are substantial grounds to believe that Laurent Gbagbo is individually criminally responsible for the commission of crimes against humanity under consideration, in the alternative, under article 25(3)(a), (b) or (d) of the Statute.<sup>652</sup> The Chamber recalls in particular the relevant specific findings as to the intent and knowledge of Laurent Gbagbo, within the meaning of article 30 of the Statute, under each mode of liability considered by the Chamber.<sup>653</sup>

261. In addition to these grounds of responsibility for the commission of crimes, the Chamber has considered whether the same facts may also support

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<sup>648</sup> See above, paras 150-162.

<sup>649</sup> See above, paras 121-122.

<sup>650</sup> See above, paras 182-192.

<sup>651</sup> See above, paras 227-228.

<sup>652</sup> See above, paras 230-259.

<sup>653</sup> See above, paras 236-240, 248-250, 256-258.

a finding that Laurent Gbagbo is responsible under article 28 of the Statute, as proposed by the Prosecutor.

262. As previously observed by Pre-Trial Chamber II, article 28 reflects a different form of criminal responsibility than that found in article 25(3)(a) of the Statute in the sense that a superior may be held responsible for the prohibited conduct of his subordinates for failing to fulfil his duty to prevent or repress their unlawful conduct or submit the matter to the competent authorities.<sup>654</sup> Accordingly, a fundamental difference exists between the forms of commission incriminated in article 25 of the Statute, which establish liability for one's own crimes, and article 28 of the Statute, which establishes liability for violation of duties in relation to crimes committed by others.

263. The Chamber cannot rule out the possibility that the discussion of evidence at trial may lead to a different legal characterisation of the facts, following the appropriate procedure to that effect. However, based on the knowledge that this Chamber has at the present stage of proceedings, the Chamber is not persuaded that the narrative of the facts, as established by the evidence, points to Laurent Gbagbo's criminal responsibility based on his mere failure to prevent or repress the crimes committed by others pursuant to article 28 of the Statute.

264. The Chamber takes note of the available evidence that indicates a failure on the part of Laurent Gbagbo to prevent violence or to take adequate steps to investigate and punish the authors of the crimes,<sup>655</sup> but considers that the evidence, taken as a whole, demonstrates that this failure was an inherent

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<sup>654</sup> Pre-Trial Chamber II, "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, para. 405.

<sup>655</sup> See above, paras 182-192.

component of the deliberate effort to achieve the purpose of retaining power at any cost, including through the commission of crimes.

265. Therefore, the consideration of Laurent Gbagbo's responsibility under article 28 of the Statute would require the Chamber to depart significantly from its understanding of how events unfolded in Cote d'Ivoire during the post-electoral crisis and Laurent Gbagbo's involvement therein. Accordingly, the Chamber declines to confirm the charges based on Laurent Gbagbo's alleged responsibility under article 28 of the Statute.

#### **SECTION 4. CONCLUSION: FACTS AND CIRCUMSTANCES AND THEIR LEGAL CHARACTERISATION CONFIRMED BY THE CHAMBER**

266. In light of the above, the Chamber finds that there is sufficient evidence to establish substantial grounds to believe that Laurent Gbagbo, born on 31 May 1945 in Mama, Côte d'Ivoire, is criminally responsible for the crimes against humanity of murder, rape, other inhumane acts or – in the alternative – attempted murder, and persecution in Abidjan, Côte d'Ivoire, committed between 16 and 19 December 2010 during and after a pro-Ouattara march on the RTI headquarters, on 3 March 2011 at a women's demonstration in Abobo, on 17 March 2011 by shelling a densely populated area in Abobo, and on or around 12 April 2011 in Yopougon, under article 25(3)(a) of the Statute for committing these crimes, jointly with members of his inner circle and through members of the pro-Gbagbo forces, or, in the alternative, under article 25(3)(b) of the Statute or, in the alternative, under article 25(3)(d) of the Statute for contributing in any other way to the commission of these crimes.

*I. Facts and circumstances described in the charges confirmed by the Chamber*

267. The facts and circumstances described by the Prosecutor in the charges brought against Laurent Gbagbo (Section 9 of the Amended DCC) confirmed by the Chamber under article 61(7)(a) of the Statute are as follows:

268. In advance of the presidential election of 2010, Laurent Gbagbo and his inner circle jointly designed and implemented a common plan to maintain him as President by all necessary means, including by committing the crimes charged. By 27 November 2010, the implementation of the common plan had evolved to include a State or organisational policy to launch a widespread and systematic attack against civilians perceived to support Alassane Ouattara. Pursuance of this common plan and policy was criminal in nature: implementation of the widespread or systematic attack comprised multiple criminal acts such as murder, rape, other inhumane acts and persecution of the civilian population. Hence, the crimes charged resulted from the implementation of the common plan.

269. At the relevant time, Laurent Gbagbo exercised command, control and authority over the Defence and Security Forces (FDS). At the relevant time, he also exercised control and authority, directly and through his inner circle, on pro-Gbagbo youth, militia members and mercenaries who lent their support to the FDS (jointly referred to as “pro-Gbagbo forces”).

270. The pro-Gbagbo forces constituted an organised and hierarchical apparatus of power. By virtue of their position of authority and the contributions they made to the common plan and the policy, Laurent Gbagbo and his inner circle could use these forces to implement the plan and the policy by committing the crimes charged.

271. Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces killed at least 160 persons in the following four incidents:

- (a) Between 16 and 19 December 2010, they killed at least 45 persons in Abidjan during and after a pro-Ouattara march on the RTI headquarters;

(b) On 3 March 2011, they killed seven women who had participated in a pro-Ouattara women's demonstration in Abobo commune in Abidjan;

(c) On 17 March 2011, they killed at least 40 persons in or near Abobo market by shelling a densely populated area;

(d) On or around 12 April 2011, in the Yopougon commune of Abidjan, they killed at least 68 persons hailing primarily from northern Côte d'Ivoire and neighbouring West African countries.

272. Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces raped at least 38 women and girls in the following two incidents:

(a) Between 16 and 19 December 2010, pro-Gbagbo forces raped at least 16 women and girls in Abidjan during and after a pro-Ouattara march on the RTI headquarters;

(b) On or around 12 April 2011, they raped at least 22 women in Yopougon.

273. Between 16 December 2010 and on or around 12 April 2011, pro-Gbagbo forces inflicted great suffering and serious injury to body on at least 118 persons in the following four incidents:

(a) Between 16 and 19 December 2010, they wounded at least 54 persons in Abidjan during and after a pro-Ouattara march on the RTI headquarters;

(b) On 3 March 2011, they wounded at least three persons who had participated in a pro-Ouattara women's demonstration in Abobo;

(c) On 17 March 2011, they wounded at least 60 persons in or near Abobo market by shelling a densely-populated area;

(d) On or around 12 April 2011, they wounded at least one person in Yopougon.

274. The crimes charged were committed on political, national, ethnic or religious grounds. The victims of these crimes were targeted because they were perceived to be members of Alassane Ouattara's political groups or his supporters or because they lived in

neighbourhoods of Abidjan believed to be Ouattara strongholds. Often, they were also targeted on ethnic grounds (mainly the Dioula and Baoulé), religious grounds (Muslims), or national grounds (citizens of West African countries such as Mali, Burkina Faso and Nigeria and Ivorians of West African descent). Laurent Gbagbo and other members of the common plan perceived all members of the abovementioned political, ethnic, national and religious groups as supporters of Alassane Ouattara.

275. From 27 November 2010 until on or around 12 April 2011 in Abidjan, the pro-Gbagbo forces carried out a widespread and systematic attack on the civilian population perceived as supporting Alassane Ouattara, involving the multiple commission of criminal acts, pursuant to a policy of the pro-Gbagbo forces led by Laurent Gbagbo and his inner circle. The crimes charged were committed as part of this attack.

276. Laurent Gbagbo contributed to the commission of the crimes charged as follows:

- (a) Laurent Gbagbo designed and implemented the common plan which resulted in the commission of the crimes;
- (b) Laurent Gbagbo created a structure which enabled him to implement the common plan, which resulted in the commission of the crimes, by appointing or promoting persons loyal to him to key posts in the government and the FDS, by tasking his subordinates with the recruitment of additional members, including pro-Gbagbo youth and militia men, to the FDS and by supervising their recruitment;
- (c) Laurent Gbagbo armed the forces loyal to him and which committed the crimes charged, by placing weapons which he controlled at their disposal, by tasking his subordinates with purchasing additional weapons, by providing the necessary funding and by ensuring that weapons and ammunition were supplied to these forces;
- (d) Laurent Gbagbo coordinated the implementation of the common plan which resulted in the commission of the crimes, by holding frequent meetings and regular dialogue with his inner circle and other members of his support network on the subject in order to be briefed about the situation on the ground by his commanders and to issue them with



operational instructions. Laurent Gbagbo, either directly or through members of his inner circle, tasked his subordinates with implementing, or incited them to implement, the common plan which resulted in the commission of the crimes, and (i) ordered the deployment of armed forces against demonstrators opposed to his politics; (ii) instructed the forces loyal to him to stop the pro-Ouattara march on the RTI headquarters on 16 December 2010; (iii) ordered these forces to lay siege to the Golf Hotel and its residents; (iv) directed these forces to stand fast and not to lose Abobo; (v) used pejorative and hate language against political opponents, *inter alia*, referring to them as “bandits”, “enemies” and “terrorists”; and (vi) incited the Yopougon pro-Gbagbo youth and militia members, either directly or through Charles Blé Goudé, to fight to protect the nation and not to let it fall into the hands of the enemy, and called on his supporters to continue to resist and to fight Alassane Ouattara and his “terrorists”;

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

277. In performing these actions and omissions, Laurent Gbagbo had the requisite intent and knowledge in relation to the crimes charged. He also knew that his conduct was, or intended it to be, part of a widespread or systematic attack against a civilian population pursuant to or in furtherance of the policy.

## *II. Legal characterisation of the facts*

278. The legal characterisation of the facts described by the Prosecutor in the charges brought against Laurent Gbagbo (Section 9 of the Amended DCC) confirmed by the Chamber under article 61(7)(a) of the Statute is as follows:

*Count 1 – Murder constituting a crime against humanity*

In light of the facts and circumstances set forth above, Laurent Gbagbo is liable under article 7(1)(a) and article 25(3)(a), (b) or (d) of the Statute, in the alternative, for the crime against humanity of murder of at least 160 persons, committed by pro-Gbagbo forces.

*Count 2 – Rape constituting a crime against humanity*

In light of the facts and circumstances set forth above, Laurent Gbagbo is liable under article 7(1)(g) and article 25(3)(a), (b) or (d), of the Statute, in the alternative, for the crime against humanity of rape of at least 38 persons committed by pro-Gbagbo forces.

*Count 3 – Other inhumane acts or attempted murder constituting a crime against humanity*

In light of the facts and circumstances set forth above Laurent Gbagbo is liable under article 7(1)(k) and article 25(3)(a), (b) or (d) of the Statute, in the alternative, for the crime against humanity of other inhumane acts, that is, acts causing great suffering and serious injury to body against at least 118 persons, committed by pro-Gbagbo forces, or, in the alternative, liable under articles 7(1)(a) and 25(3)(f) and article 25(3)(a), (b) or (d) of the Statute, in the alternative, for the crime against humanity of attempted murder committed by pro-Gbagbo forces.

*Count 4 – Persecution constituting a crime against humanity*

In light of the facts and circumstances set forth above, Laurent Gbagbo is liable under articles 7(1)(h) and article 25(3)(a), (b) or (d) of the Statute, in the alternative, for the crime against humanity of persecution on political, national, ethnic and religious grounds, against at least 316 persons, committed by pro-Gbagbo forces.

**FOR THESE REASONS, THE CHAMBER, BY MAJORITY,**

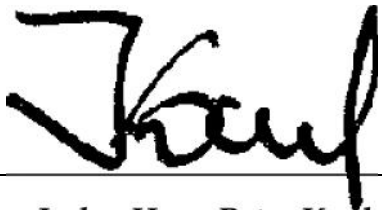
**CONFIRMS** the charges against Laurent Gbagbo as specified in Section 4 above; and **COMMITTS** Laurent Gbagbo to a Trial Chamber for trial on the charges as confirmed.

Judge Christine Van den Wyngaert appends a dissenting opinion.


Done in both English and French, the English version being authoritative.



**Judge Silvia Fernández de Gurmendi**  
**Presiding Judge**



**Judge Hans-Peter Kaul**



**Judge Christine Van den Wyngaert**

Dated this Thursday, 12 June 2014

At The Hague, The Netherlands