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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
with confidential Annex 1**

**Public redacted version of Prosecution's final written submissions on the
confirmation of charges proceedings, 31 March 2014, ICC-02/11-01/11-642-Conf**

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Introduction

1. The Prosecution provides its final written submissions and response to the « *Soumissions par la défense de ses observations écrites sur la preuve du Procureur et soumission par la défense de l'Inventaire amendé des éléments de preuve à décharge* ».¹
2. The Defence observations are replete with errors about the Prosecution's evidence. Given the length of the Defence's written observations and the large number of errors therein it is not possible for the Prosecution to provide a detailed response to each and every mistake or misunderstanding. The Prosecution provides focused submissions that respond to the most serious and inaccurate allegations in the Defence's written submissions in order to assist the Chamber in its consideration of the evidence. Consequently, the Prosecution stresses that the absence of a specific response to any one or more of the submissions in the Defence observations should not be taken as an agreement or acquiescence to that submission since the Prosecution cannot and does not agree with the majority of the Defence observations.
3. Additionally, the Prosecution observes that many portions of the Defence observations are submissions that have already been presented (often verbatim) in previous Defence filings. Often the issues raised by these recycled submissions have already been responded to and considered by the Chamber. The Prosecution has purposely endeavoured, when possible, to not respond to these recycled submissions as doing so would serve no practical purpose.
4. Lastly, the Prosecution submits that these final submissions are made in addition to its verbal submissions at the confirmation hearing² and its "Submission on issues discussed during the Confirmation Hearing".³ These final written submissions are intended not to replace but to complement, where applicable,

¹ ICC-02/11-01/11-637.

² The Confirmation Hearing in this case was held from 19 to 28 February 2013.

³ ICC-02/11-01/11-420-Conf.

these prior submissions. Accordingly, there are certain issues and topics that are not addressed in these final written submissions. This is not due to their lack of importance. It is simply that these issues and topics have already been addressed in prior submissions.

Relevant Prior Procedure

5. The Prosecution filed its Amended Document containing the charges on 13 January 2014, followed by corrigenda filed on 14 and 20 January 2014 (“Amended DCC”).⁴ On 17 March 2014, the Defence filed its « *Soumissions par la défense de ses observations écrites sur la preuve du Procureur et soumission par la défense de l’Inventaire amendé des éléments de preuve à décharge* ». ⁵ This Defence filing included, as Annex 2, the “*Observations écrites sur la preuve du Procureur*”;⁶ for which annex the Defence filed corrigenda on 19 March 2014⁷ and on 25 March 2014 (“Defence observations”).⁸

Request for Confidentiality

6. The Prosecution requests that this submission be received as “Confidential” because it refers to evidence and information that is confidential and it responds to the Defence’s written observations which were submitted as “Confidential”. The Prosecution will file a public redacted version of this submission.

Submissions

A further challenge to the Amended DCC

7. The Prosecution observes that the first parts of the Defence observations do not at all address the Prosecutor’s evidence.⁹ They are instead once more challenging the Amended DCC. This is a prime example of the Defence’s common practice of using recycled submissions. The first 51 paragraphs of the Defence’s written

⁴ ICC-02/11-01/11-592-Conf-Anx2-Corr2.

⁵ ICC-02/11-01/11-637.

⁶ ICC-02/11-01/11-637-Conf-Anx2-Corr2.

⁷ ICC-02/11-01/11-637-Conf-Anx2-Corr.

⁸ ICC-02/11-01/11-637-Conf-Anx2-Corr2.

⁹ Defence observations, paras.2-59.

observations are substantially a repetition of the submissions made by the defence in its *“Corrigendum de la « Requête afin que soit déclaré irrecevable au fond le Document Contenant les Charges (ICC-02/11-01/11-592-Conf-Anx2-Corr2) depose par le Procureur le 20 janvier 2014 » (“Defence filing of 31 January 2014”)*.¹⁰ It must be observed that the Chamber already considered these arguments and dismissed them.¹¹ The repetition of these arguments in the Defence observations is an inappropriate attempt to re-litigate issues that have already been decided. Consequently these portions of the Defence submissions should be rejected.

Other Legal Issues

The Defence’s incorrect approach to the evidence

8. The Prosecution notes that throughout the Defence observations it examines the evidence in a piece-meal approach and endeavours to convince the Chamber to follow their approach. The Defence invites the Chamber to examine each piece of evidence in isolation, and if there is some perceived imperfection to that item of evidence it ought to be entirely disregarded. This is not the correct approach to use in considering the evidence.
9. The Prosecution submits that the proper approach and method of analysis and appreciation is to consider the evidence in its context and in light of all other items of evidence on record. This issue was addressed by Pre-Trial Chamber I in its Decision on the confirmation of charges in the case of *The Prosecutor v. Thomas Lubanga*, when it stated that “[f]urthermore, the “substantial grounds to believe” standard must enable all the evidence admitted for the purpose of the confirmation hearing to be assessed as a whole.”¹² This principle was reaffirmed in subsequent cases.¹³

¹⁰ ICC-02/11-01/11-598-Conf-Corr.

¹¹ ICC-02/11-01/11-619, paras.11-22, and ICC-02/11-01/11-619-Anx.

¹² ICC-01/04-01/06-803-tEN, para.39.

¹³ See ICC-01/04-01/07-717, para.66 and ICC-02/05-02/09-243-Red, para.41.

The conduct of witness interviews

10. The Defence makes a number of criticisms of the Prosecution's interview of insider witnesses, accusing the Prosecution of putting pressure on witnesses.¹⁴ However, in making these criticisms the Defence takes a piecemeal approach and does not consider the full content of the interviews. For example, the Defence criticises the questioning of [REDACTED] on the subject of Liberian mercenaries¹⁵ but fails to consider that earlier in the same interview it is the witness who first refers to the presence of mercenaries¹⁶ and it is the witness who first states that these mercenaries were Liberian.¹⁷ In this context, the Prosecution asked more probing questions in the search for the truth.

The probative value of UN and NGO reports

11. The Prosecution observes that the Defence is critical of the Prosecution's continued use as evidence of various UN reports and reports produced by NGOs such as Amnesty International and Human Rights Watch ("HRW").¹⁸ The Prosecution is well aware of the concerns expressed by the Chamber in its Decision of 3 June 2013.¹⁹ However, at no point did the Chamber indicate that UN and NGO reports are without evidentiary value. The Prosecution observes that, as with any type of evidence, certain reports will have more probative value than others. Reports that include references and sources will be more valuable than those that do not. Reports that include, or are accompanied by, a description of the methodology used in acquiring the foundational information and the methodology used in writing the report, will have even more probative value. Notable examples in this regard are the HRW reports. The probative value of these reports has been dramatically increased by [REDACTED] which provides a tremendous amount of detailed information about the methodology of HRW

¹⁴ Defence observations, paras.178-182.

¹⁵ Defence observations, para.182; [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ See for example, paras.823 and 824 of the Defence observations.

¹⁹ ICC-02/11-01/11-432, paras.26-35.

investigations and the rigorous standards applied prior to information being included in their reports.

12. Other notable examples include reports by the [REDACTED] and the International Independent Commission of Inquiry. The methodology applied by both is well explained in their reports and demonstrates that their conclusions are based on primary sources of information: victims and witnesses of the incidents, with corroboration from secondary sources of information such as parents of victims and medical institutions.²⁰
13. The *Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, 1 juillet 2011*,²¹ bases its conclusions, with regards to the involvement of pro-GBAGBO forces in the commission of these crimes, on “the testimonies of hundreds of direct victims and witnesses of human rights violations” as well as testimonies from parents of the victims, information from local NGOs, information from international human rights organizations, visits to hospitals, clinics, morgues; crime scene locations, including mass graves sites, information extracted from written evidence, video and pictures submitted to the Commission.²²
14. The Prosecution notes that notwithstanding its criticisms of UN and NGO reports, the Defence itself relies on these same types of reports when it suits their arguments.²³ The probative value of reports, like any other evidence will of course be assessed by the Chamber in light of the totality of the evidence, and in the context of all the other evidence that provides similar or related information.

²⁰ [REDACTED], CIV-OTP-0044-1167 at 0399 and *Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, 1 juillet 2011*, CIV-OTP-0053-0835 at 0841.

²¹ CIV-OTP-0053-0835.

²² CIV-OTP-0053-0835 at 0840-0841.

²³ See for example paras.840-842, 847 of the Defence observations. See also ICC-02/11-01/11-596-Conf-Red, paras.11-17, ICC-02/11-01/11-446-Conf-Anx3, ICC-02/11-01/11-191-Conf, paras.13 and 17.

Corroboration

15. The Prosecution submits that an item of evidence will corroborate another piece of evidence if it in any way strengthens, adds credibility or value to the latter. *The Law Dictionary* defines corroborating evidence as “Evidence supplementary to that already given and tending to strengthen or confirm it; additional evidence of a different character to the same point.”²⁴ This approach to corroborating evidence is endorsed by the Appeals Chamber for the International Criminal Tribunal for Rwanda.²⁵
16. The Prosecution submits that the Defence is in error as to the law when it states “*La défense l’avait déjà soulevé lors de l’audience du 26 février 2013 : le témoignage d’un seul ne suffit pas pour établir en justice la vérité d’un fait. Autrement dit, « testis unus testis nullus ».*”²⁶ Notably, the Defence specifically argues the frailty of evidence provided by rape victims because it is not corroborated.²⁷ The Prosecution does not agree that there is no corroboration²⁸ but even if, *arguendo*, it was correct an absence of corroboration is not an appropriate basis or reason to disregard or discount the evidence of rape victims. As is clearly set out in Rule 63(4) there is no requirement for evidence to be corroborated, in particular for crimes of sexual violence.²⁹

²⁴ <http://thelawdictionary.org/corroborating-evidence/>.

²⁵ *Bikindi v. The Prosecutor*, ICTR-01-72-A, Appeal Judgement of 18 March 2010, para.81; Wherein the Appeals Chamber affirms its own comments from an earlier decision (*Nahimana et al.*) that “two testimonies corroborate one another when one *prima facie* credible testimony is compatible with the other *prima facie* credible testimony regarding the same fact or a sequence of linked facts. It is not necessary that both testimonies be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others. It follows that corroboration may exist even when some details differ between testimonies, provided that no credible testimony describes the facts in question in a way which is not compatible with the description given in another credible testimony”.

²⁶ Defence observations, para.799 [footnote 1325 omitted].

²⁷ Defence observations, para.418.

²⁸ The fact that multiple victims describe sexual violence that occurs in similar circumstances is in and of itself corroboration of the individual accounts.

²⁹ The ICTR rejected the applicability of the “*unus testis*” principle to its criminal process, stating that a Trial Chamber “can rule on the basis of a single testimony, provided such testimony is, in its opinion, relevant and credible”. See *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment and Sentence, 2 September 1998, para.135.

Hierarchy of modes of responsibility

17. The Prosecution does not agree with the Defence analysis as to the possible hierarchy of modes of responsibility, including the purported effect that this should have on the confirmation of charges.³⁰ In particular the Prosecution does not agree with the Defence conclusion that “[...] 25(3)(a) *est exclusif des autres modes*.”³¹
18. The Defence cites as authority for its position the Decision on the Confirmation of Charges in the *Katanga* case.³² However, the *Katanga* case is indeed a good example of why the imposition of a hierarchy of modes of responsibility is problematic, particularly at the stage of the confirmation of charges. In that case the absence of a confirmation decision from the Pre-Trial Chamber on alternative modes of liability, resulted in the majority of Trial Chamber II having to rely on Regulation 55 of the Regulations of the Court when it appeared that the evidence may support a conviction under Article 25(3)(d).³³
19. Surely, the fairest procedure for the person before the Court, is for the Pre-Trial Chamber to provide a confirmation decision as to each charge and each mode of liability. Such a procedure, assuming there is confirmation of one or more charges pursuant to one or more modes of liability, would provide the accused person with the earliest and most complete notice of the case, covering all potential angles, to be presented at trial. The Prosecution submits that while the degree of participation of a person in a crime is a factor to be considered for the determination of the applicable sentence under Rule 145(c), this does not imply any hierarchy of the modes of liability contained in Article 25(3). As set out by Judge Fulford in his Separate Opinion in the Judgment pursuant to Article 74 of

³⁰ Defence observations, paras.1207-1210.

³¹ Defence observations, para.1210.

³² Defence observations, para.1207.

³³ ICC-01/04-01/07-3319.

the Statute in the *Lubanga* case,³⁴ there is no proper basis to conclude that Article 25(3) establishes a hierarchy of charges.³⁵ He also indicates that although the concepts appearing in the subsections of Article 25(3) “[...] will often be indistinguishable in their application vis-à-vis a particular situation [...]”, the different possible modes of liability “[...] were **not** intended to be mutually exclusive.”³⁶

20. The Prosecution submits that the Chamber should adopt the same reasoning since much of the evidence is applicable to establish Laurent Gbagbo’s (“Gbagbo”) criminal responsibility pursuant to multiple modes of liability.

Article 25(3)(b)

21. The Defence expresses concern that the Prosecution does not recognise the distinctions among the modes of liability set out in Article 25(3)(b).³⁷ As set out below, the Prosecution not only recognizes that there are separate modes of liability; it relies on all of them. The Prosecution submits that, in the specific context of this case, there is sufficient evidence to establish substantial grounds to believe that Gbagbo is criminally responsible via all of them.

22. Article 25(3)(b) encompasses three distinctive modes of liability that establish criminal responsibility as “accessory before the fact”, namely ordering, soliciting and inducing.

23. The elements for the mode of liability of ordering are as follows: (a) the person is in a position of authority; (b) the person instructs another person in any form to either: (i) commit a crime which in fact occurs or is attempted or (ii) perform an act or omission in the execution of which a crime is carried out; (c) the order had

³⁴ ICC-01/04-01/06-2842, pp.594-607. Also, Judge Fulford’s comments are noted by Judge Cuno Tarfusser in his dissenting opinion in the 27 March 2013 Appeal Judgment in the *Katanga* case: ICC-01/04-01/07-3363, para. 15.

³⁵ ICC-01/04-01/06-2842, p.597 and 598, para.8, [footnote omitted].

³⁶ ICC-01/04-01/06-2842, p.597, para.7, [footnote omitted]; See also comments on this issue by the Majority in the Judgment pursuant to Article 74 in the *Katanga* case: ICC-01/04-01/07-3436, paras.1386-1389.

³⁷ Defence observations, para.1211.

a direct effect on the commission or attempted commission of the crime; and (d) the person is at least aware that the crime will be committed in the ordinary course of events as a consequence of the execution or implementation of the order. The person can give the order through an intermediary and need not give the order directly to the physical perpetrator.³⁸

24. Soliciting and inducing to some extent overlap with the mode of liability of ordering, especially regarding the requirement that the culpable conduct (act or omission) had had a direct effect on the commission or attempted commission of the crime and the objective element. However, these modes of liability do not require proof of a superior-subordinate relationship between the accused and the physical perpetrators of the crime or the intermediary.³⁹ Soliciting means to command, authorize, urge, incite, request or advise another person to commit a crime.⁴⁰ Inducing a crime means to affect, cause, influence an act or course of conduct, led by persuasion or reasoning.⁴¹

*Article 28(a) and (b)*⁴²

25. The Prosecution relies both on Article 28(a) and (b) as alternative modes of responsibility to link Gbagbo to the perpetrators of the crimes.⁴³ The Amended DCC sets out (1) the type of relationship that links Gbagbo to a specific category of subordinates; (2) the temporal scope of Gbagbo's effective control over the two

³⁸ ICC-01/04-01/12-1-Red, para.63.

³⁹ Kai Ambos, Individual Criminal Responsibility, in Otto Triffterer (ed.), Commentary on the Rome Statute of the International Criminal Court, Baden-Baden: Nomos Verlagsgesellschaft 1999 ("Ambos"), pp.480-481; Eser, p.796.

⁴⁰ Ambos, pp.480-481; Eser, p.796.

⁴¹ Ambos, pp.480-481; Eser, p.796.

⁴² Paragraphs 41 to 43 of the 'Prosecution's submission on issues discussed during the Confirmation Hearing' at ICC-02/11-01/11-420-Conf are also applicable in response to paras.1228-1239 of the Defence observations regarding Article 28.

⁴³ See paragraph 211 of the Amended DCC: « [...] Gbagbo est [...] responsable des crimes qui lui sont reprochés du fait du lien de subordination avec les forces en question, conformément aux alinéas a) et b) de l'article 28 du Statut » [emphasis added].

distinct categories of subordinates; and (3) Gbagbo's knowledge relevant to these modes of liability.⁴⁴

The legal elements of Article 28 (a) and (b)

26. Article 28 (a) covers military commanders⁴⁵ or persons effectively acting as such.⁴⁶ The latter category includes superiors with authority and control over regular government forces such as armed police units, or irregular forces such as rebel groups, armed resistance movements and militias that follow a structure of military hierarchy or a chain of command.⁴⁷ PTC II in *Bemba* found that this provision also captures situations where the superior does not carry out a military duty in an exclusive manner, such as a head of state that is *de jure* the commander in chief of the armed forces.⁴⁸

27. Article 28 (b) encompasses those superiors who are part of a superior-subordinate relationship with the direct perpetrators but are *not* covered by Article 28 (a).

28. The two modes of liability under article 28 (a) and (b) share several of the same legal elements: the suspect must have effective command and control or effective authority and control over the subordinates who committed a crime under the Statute,⁴⁹ and the suspect failed to take all necessary and reasonable measures within his powers to either prevent or repress the commission of the crimes, or failed to refer the matter to the competent authorities.⁵⁰

⁴⁴ See for (1) paragraph 226, for (2) paragraph 215 and for (3) paragraphs 223 and 228 of the Amended DCC.

⁴⁵ *Prosecutor v Jean-Pierre Bemba Gombo*, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", ICC-01/05-01/08-424 ("Bemba Decision on Confirmation of Charges"), para.408.

⁴⁶ *Bemba Decision on Confirmation of Charges*, para.409.

⁴⁷ *Bemba Decision on Confirmation of Charges*, para.410.

⁴⁸ *Bemba Decision on Confirmation of Charges*, para.408 and corresponding footnote 522.

⁴⁹ *Bemba Decision on Confirmation of Charges*, paras.415-418.

⁵⁰ *Bemba Decision on Confirmation of Charges*, paras.435-443.

29. The degree of ‘effective authority and control’ of a civilian superior under Article 28 (b) is equivalent to that of a commander under Article 28(a).⁵¹ On the temporal relation between the “effective control” and the criminal conduct, PTC II in *Bemba* found that effective control must have existed *at least* at the time the crimes by the subordinates were about to be committed.⁵² PTC II also found that there is ‘no direct causal link that needs to be established between the superior’s omission and the crime committed by his subordinates’, and this finding applies to all three duties referred to in article 28(a)(ii),⁵³ thereby also to their equivalent in 28(b)(iii). The PTC II noted that a superior’s failure to punish crimes is likely to increase the risk that further crimes will be committed in the future.⁵⁴ The Prosecution acknowledges that in particular cases, the evidence may demonstrate that a superior’s omission had an impact on the commission of further crimes in the future,⁵⁵ but it objects to it being phrased as a legal requirement as doing so creates a different standard for failure to prevent and other omissions under Article 28 that give rise to command responsibility. This is neither supported by the wording of Article 28,⁵⁶ nor by customary international law.⁵⁷

The mental element

30. The *mens rea* element in article 28(a)(i) requires either actual knowledge or that the superior “should have known” that the forces were committing or about to commit crimes.⁵⁸ The distinction in article 28(b)(i) is that the alternative to actual

⁵¹ See Guénaél Mettraux, *The Law of Command Responsibility* (Oxford University Press, 2009) p. 30; ICTR, *Prosecutor v Bagilishema*, ICTR-95-1A-A, “Appeals Chamber Judgment”, 13 December 2002, para.52.

⁵² *Bemba* Decision on Confirmation of Charges, paras.418-419.

⁵³ *Bemba* Decision on Confirmation of Charges, paras.424-425.

⁵⁴ *Bemba* Decision on Confirmation of Charges, para.424.

⁵⁵ On the facts of this case, Gbagbo’s failure to punish crimes had an impact on the commission of further crimes in the future.

⁵⁶ The terms “as a result of his or her failure to exercise control properly” in Articles 28(a) and (b) cannot have a different meaning with respect to failure to prevent and other omissions under that provision.

⁵⁷ *Prosecutor v. Delalic et al.*, IT-96-21-T, Judgment, 16 November 1998, para.398; *Prosecutor v. Kordic et al.*, IT-95-14/2-T, Judgment, 26 February 2001, para.447.

⁵⁸ *Bemba* Decision on Confirmation of Charges, paras.427, 430-431, 432-435.

knowledge is a less stringent standard of wilful blindness⁵⁹ to information that subordinates were committing or about to commit crimes. Information which clearly indicated that crimes were being committed or were about to be committed must have been available to the superior at or before the time that the crimes were committed.⁶⁰ It must be evident, or inferable, from the actions or omissions of the superior that he or she was aware that the information existed but chose not to refer to it.⁶¹

31. The element in article 28(b)(ii) has no equivalent in 28(a). Its purpose is to restrict the liability of the civilian superior to only those activities that were within his or her effective responsibility and control.⁶² In fact, this element appears to add little beyond the requirement of a superior-subordinate relationship where the superior has effective control over the subordinate already expressed in Article 28(b).

The Common Plan

32. The Defence argues that the Prosecution has not clearly defined the Common Plan.⁶³ However, the Common Plan is clearly defined in the amended DCC: « *Sachant l'élection présidentielle inévitable, GBAGBO a conçu et mis en œuvre un Plan commun, conjointement avec son entourage immédiat, en vue de se maintenir à la Présidence par tous les moyens nécessaires, y compris par le recours à la force létale.* »⁶⁴ The Common Plan is clearly stated, it is to keep GBAGBO as President by all means necessary, including the use of lethal force.

⁵⁹ Roberta Arnold, 'Article 28' in Otto Triffterer, *Commentary on the Rome Statute* (2008, 2nd ed), p.841; Greg Vetter, 'Command Responsibility of Non-Military Superiors in the International Criminal Court (ICC)' (2000) 25 *Yale Journal of International Law* 89, p.124; Mettraux, above footnote 50, p.195.

⁶⁰ See Arnold, above footnote 58, p.841; Mettraux, above footnote 50, p.217.

⁶¹ See Arnold, above footnote 58, p.841; Vetter, above footnote 58, p.124; Mettraux, above footnote 50, p.195.

⁶² See Vetter, above footnote 58, p.120.

⁶³ Defence observations, para.1062.

⁶⁴ Amended DCC, para.131.

33. The Defence also argues that the Prosecution confuses the Common Plan and the organisational Policy without distinguishing between these terms.⁶⁵ This is also incorrect. The Prosecution defines the Policy as: « *une Politique d'État ou organisationnelle qui avait pour but une attaque généralisée et systématique contre son opposant politique, OUATTARA, les membres du cercle politique de ce dernier, les civils qui s'opposaient à son régime et ceux qui étaient perçus comme étant pro-OUATTARA* ». ⁶⁶

34. The Defence also argues that the Prosecution has not defined when the Common Plan was adopted.⁶⁷ The Prosecution submits that by 27 November 2010, the Common Plan was in place and had been adopted by GBAGBO's inner circle and that it included the State or organisational Policy to conduct a widespread and systematic attack on the civilian population: « *Le Plan commun a évolué jusqu'à inclure, au plus tard le 27 novembre 2010, une politique d'État ou organisationnelle qui, tel qu'indiqué précédemment, avait pour but une attaque généralisée et systématique contre les civils considérés comme des partisans de son opposant politique Alassane OUATTARA.* » ⁶⁸

35. The Defence submits that the Prosecution cannot merely deduce from the commission of crimes that a Common Plan existed to commit those crimes.⁶⁹ This is not the Prosecution's position. Rather, the Prosecution submits that the existence of the Common Plan is clear from the totality of the evidence, which proves, amongst different elements, the organised nature of the attack against the civilian population during the post-electoral crisis, the organised structure behind the attack, and the role and responsibility of GBAGBO at the head of that structure.

⁶⁵ Defence observations, paras.1061-1064.

⁶⁶ Amended DCC, para.79.

⁶⁷ Defence observations, paras.1074-1079.

⁶⁸ Amended DCC, para.131.

⁶⁹ Defence observations, para.1072.

36. The existence of the common plan is corroborated by the evidence of coordinated actions by GBAGBO's regime and his supporters in the weeks before and after the second round of the presidential election. On 14 November 2010, GBAGBO issued a presidential decree requisitioning the armed forces (FANCI).⁷⁰ While this decree was nominally to ensure the security of the election in liaison with the *Centre de Commandement Intégré* (CCI), no such decree had been issued to requisition the armed forces for the first round. The CCI was supposed to facilitate the securing of the election process through co-operation between the FANCI, the FAFN, the UN and Licorne but the decree of 14 November was subsequently used as a justification for the continued deployment of GBAGBO's armed forces in Abidjan after the election, including the blockade of the Golf Hotel in December.⁷¹ The deployment of GBAGBO's armed forces in Abidjan continued into December under the supposed authority of this decree, despite the fact that the election process was over and that the CCI was no longer functioning as a liaison mechanism between the FANCI, the FAFN and the "*forces impartiales*" - the UN and Licorne.⁷²

37. On 26 November 2010, GBAGBO issued a presidential decree ordering a curfew which was to take effect the following day.⁷³ This was a unilateral order which had not been agreed with the other forces under the guidance of the CCI and which was opposed by the OUATTARA side.⁷⁴ Following the imposition of this curfew, the FDS carried out attacks on civilians perceived as OUATTARA supporters on 27 November and the following days, causing at least 12 civilian

⁷⁰ Journal officiel de la République de Côte d'Ivoire, Décret no. 2010-306 du 14 novembre 2010 portant réquisition des Forces Armées Nationales de la Côte d'Ivoire (FANCI), [CIV-OTP-0018-0047](#) at 0048-0049.

⁷¹ Transcribed Statement P-0010, [CIV-OTP-0051-0335-R01](#) at 0351-0358, 1.571-816. See also Amended DCC, para.198.

⁷² Transcribed Statement P-0009, [CIV-OTP-0051-0830-R01](#) at 0849-0850, 1.684-720; Transcribed Statement P-0009, [CIV-OTP-0051-0871-R01](#) at 0877-0878, 1.192-247. See also facts and evidence at Amended DCC, p.142-143, para.198.

⁷³ Décret no 2010-307 du 26 novembre 2010 instituant un couvre-feu, [CIV-OTP-0045-1183](#).

⁷⁴ Transcribed Statement P-0009, [CIV-OTP-0051-0830-R01](#) at 0844-0850, 1.485-720; Transcribed Statement P-0009, [CIV-OTP-0051-0871-R01](#) at 0877-0878, 1.192-247. See also facts and evidence at Amended DCC, para.198.

deaths.⁷⁵ The curfew was subsequently extended into the first weeks of December,⁷⁶ with the pro-GBAGBO forces carrying out further attacks on civilians during this period.⁷⁷ The decrees instigating and extending the curfew continued to make reference to GBAGBO's decree of 14 November 2010 requisitioning the armed forces, as a justification for the continued deployment of the armed forces.⁷⁸

38. The Prosecution notes that, even before the first round of the election of 31 October 2010, GBAGBO and members of his inner circle had foreseen the use of violence against those perceived as OUATTARA supporters. GBAGBO's speech to the CRS at Divo on 27 August 2010, shows his approval of the use of violence by the FDS during the forthcoming election period, with the reassurance that they will not face sanctions : « *Votre rôle est un rôle pour mater tous ceux qui sont contre la République, tous ceux qui sèment le désordre.*⁷⁹ [...] *Si un soldat, un policier, veut se mettre à réfléchir comme son chef, il n'y a plus d'armée. [...] S'il y a des erreurs qui sont commises, nous on règlera ça* ». ⁸⁰

39. Other indications that the Common Plan was already in place prior to the first round of the 2010 election include the covert recruitment of large numbers of pro-GBAGBO youth and militia into the armed forces⁸¹, as well as GBAGBO's ongoing efforts to obtain weapons in violation of the UN arms embargo.⁸² In addition, GBAGBO's speech to his generals on 7 August 2010, in which he stated,

⁷⁵ Amended DCC, para.63.

⁷⁶ Journal officiel de la République de Côte d'Ivoire, [CIV-OTP-0018-0047](#) at 0048-0050.

⁷⁷ Amended DCC, paras.63-64.

⁷⁸ Journal officiel de la République de Côte d'Ivoire, [CIV-OTP-0018-0047](#) at 0048-0050.

⁷⁹ Video of Laurent Gbagbo's speech to the police CRS in Divo, 27 August 2010, [CIV-OTP-0018-0005](#); Transcription of video [CIV-OTP-0018-0005](#), [CIV-OTP-0019-0007](#) at 0009, 1.67-69.

⁸⁰ Video of Laurent Gbagbo's speech to the police CRS in Divo, 27 August 2010, [CIV-OTP-0018-0005](#); Transcription of video [CIV-OTP-0018-0005](#), [CIV-OTP-0019-0007](#) at 0008-0009, 1.46-47 and 89-91.

⁸¹ Amended DCC, paras.152-154, 188.

⁸² Amended DCC, para.189.

« *Si je tombe, vous tombez aussi* »⁸³ is evidence of his intent to use the armed forces to stay in power.

40. For these reasons, the Prosecution submits that the Common Plan of GBAGBO and his inner circle to stay in power by all means, including the use of lethal force, had already been conceived before the first round of the election of October 2010. By 27 November 2010, the Common Plan had developed to the point where GBAGBO and his inner circle were implementing a Policy to carry out a widespread and systematic attack against the civilian population, in particular political supporters of OUATTARA and civilians perceived to be pro-OUATTARA.

Meetings, public statements and directives by GBAGBO relevant to the Common Plan

41. The Defence submits that the Prosecution has not provided clear evidence of a meeting where the Common Plan was conceived.⁸⁴ It also argues that GBAGBO's meetings, interviews and public statements during this period do not indicate that he advocated a Common Plan to attack civilians.⁸⁵ The Prosecution submits that the meetings and public statements by GBAGBO are significant, that they do not stand in isolation and that their evidential weight is corroborated by and must be considered in the context of GBAGBO's actions, the actions of his forces on the ground and the hate messages conveyed by members of GBAGBO's inner circle and broadcast on the State television channel RTI.

42. Also relevant is the fact that pro-GBAGBO forces had used violence against civilians in the past, using many of the same groups and personalities involved in

⁸³ Transcribed Statement P-0009, [CIV-OTP-0051-0770-R01](#) at 0782-0783, 1.409-469; Transcribed statement P-0010, [CIV-OTP-0051-0300-R01](#) at 0327-0328, 1.976-1025; Witness Statement P-0239, [CIV-OTP-0037-0425-R01](#) at 0433, para.46; Transcribed Statement P-0321, [CIV-OTP-0046-0839-R01](#) at 0855-0857, 585-670.

⁸⁴ Defence observations, para.1073.

⁸⁵ Defence observations, p.280-289.

the post-electoral violence of 2010 to 2011.⁸⁶ This is highly relevant to the *modus operandi* used by GBAGBO during the crisis and his prior knowledge of what would be the consequences of his actions. For example, GBAGBO knew the consequences of appointing Charles BLÉ GOUDÉ as Minister of Youth.⁸⁷ He knew the consequences of employing the GPP militia⁸⁸ and having its leader Moussa ZEGUEN TOURE on the government payroll.⁸⁹ He knew the consequences of employing Liberian and other foreign mercenaries.⁹⁰ He knew the consequences of deploying units such as the *Garde Républicaine* under the command of DOGBO BLÉ to deal with public order incidents.⁹¹ He had already used these groups and individuals in the past and he knew perfectly well that their methods resulted in violence and civilian deaths.⁹² As a result, it was not always necessary for GBAGBO to convey explicit orders to attack civilians during the post-electoral crisis, because he knew from his previous use of this *modus operandi* that violence and civilian deaths were the natural result of these methods. All of these elements have a bearing on the substance of GBAGBO's messages to the public and to his subordinates during this period, and his statements and directives should be read in that context.

43. For example, the Defence states that GBAGBO's speech to the CRS in Divo on 27 August 2010 solely concerned problems of local criminality.⁹³ However, during this speech, GBAGBO states: « *Vous avez pour ennemis, je n'ai pas dit pour adversaires, j'ai dit pour ennemis, tous ceux qui sont contre le République Vous avez*

⁸⁶ Amended DCC, paras.12-37, « CONTEXTE AYANT MENÉ À LA CONCEPTION ET MISE EN ŒUVRE DU PLAN COMMUN ».

⁸⁷ Video clip Blé Goudé, [CIV-OTP-0018-0006](#); Transcript of video [CIV-OTP-0018-0006](#), [CIV-OTP-0021-0048](#) at 0048-0052; Compte rendu des manifestations du 25 au 28 février 2011 survenus à Yopougon dans notre zone de compétence, [CIV-OTP-0046-0029](#) at 0029-0030. See also facts and evidence at Amended DCC, paras.21-23, 30-32, 85, 181-182.

⁸⁸ Amended DCC, paras.20, 28,153-155.

⁸⁹ RECU, 16 May 2009, [CIV-OTP-0025-0452](#); RECUS, 18 November 2010, [CIV-OTP-0025-0616](#); RECUS, 5 January 2011, [CIV-OTP-0025-0626](#); RECUS, 21 January 2011, [CIV-OTP-0025-0633](#); RECUS, 4 March 2011, [CIV-OTP-0025-0644](#); RECUS, 18 March 2011, [CIV-OTP-0025-0652](#).

⁹⁰ Amended DCC, paras.17-19, 59, 156-157.

⁹¹ Amended DCC, paras.28-30.

⁹² Amended DCC, paras.12-37, « CONTEXTE AYANT MENÉ À LA CONCEPTION ET MISE EN ŒUVRE DU PLAN COMMUN ».

⁹³ Defence observations, paras.1087-1091.

*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** »*⁹⁴ (emphasis added).

44. In the same speech, GBAGBO states : « *Il y en a qui sont là, ils cachent les bandits chez eux. Mais si tu caches les bandits, tu es bandit aussi.* »⁹⁵ In addition to GBAGBO's explicit messages to the CRS during this speech, his references to *bandits* and to those who are against the Republic should be read in the context of speeches by his wife Simone and other members of the inner circle, who consistently used terms such as *bandits* to refer to OUATTARA supporters, with Simone referring to OUATTARA as "*chef bandit*" and DOGBO BLÉ referring to the Golf Hotel as a "*refuge de bandits*".⁹⁶ Their use of the same inflammatory terminology in their speeches is not a coincidence. It is an example of their coordinated implementation of the Common Plan.
45. The level and intensity of coordinated hate messages from the pro-GBAGBO side escalated during the post-electoral period. These included increasingly virulent attacks by Charles BLÉ GOUDÉ and the pro-GBAGBO state television channel RTI against the UN, people from CEDEAO countries, the international community and supporters of OUATTARA at the Golf Hotel.⁹⁷ In addition to its propaganda messages, the RTI made a barely-disguised death-threat to two senior UN representatives, warning that they risked being "caught in cross-

⁹⁴ Video of Laurent Gbagbo's speech to the police CRS in Divo, 27 August 2010, [CIV-OTP-0018-0005](#); Transcription of video [CIV-OTP-0018-0005](#), [CIV-OTP-0019-0007](#) at 0008, l.34-37.

⁹⁵ Video of Laurent Gbagbo's speech to the police CRS in Divo, 27 August 2010, [CIV-OTP-0018-0005](#); Transcription of video [CIV-OTP-0018-0005](#), [CIV-OTP-0019-0007](#) at 0010, l.99-100.

⁹⁶ Simone GBAGBO video of 15 January 2011 meeting, [CIV-OTP-0012-0003](#) at 00:58-06:00; Transcript of [CIV-OTP-0012-0003](#), [CIV-OTP-0019-0018](#) at 0019, l.16-43; Connectionivoirienne.net, Gal Dogbo Blé Bruno: « Si la bataille doit avoir lieu, il faut qu'elle fasse rage », 15 December 2010, [CIV-OTP-0007-0101](#) at 0101-0102. See also facts and evidence at Amended DCC, para.191.

⁹⁷ Amended DCC, paras.190-194.

fire”.⁹⁸ In this context, the Defence submission that the RTI was politically neutral⁹⁹ during the crisis has no credibility.

46. On a number of occasions, members of GBAGBO’s inner circle incited hatred against the UN and the international community by claiming that they wanted to wage war in Côte d’Ivoire. As stated above, GBAGBO’s speeches and interviews should be read in the context of the related hate messages by his inner circle, most notably Simone GBAGBO and Charles BLÉ GOUDÉ.¹⁰⁰ The coordinated nature of these messages is clear from Charles BLÉ GOUDÉ’s own acknowledgement that his rallies were part of a wider « *mobilisation* » for GBAGBO and that they had employed similar tactics in the past.¹⁰¹ In this context, GBAGBO’s public declaration of 21 December 2010 that, by accepting OUATTARA’s election victory, « *la communauté internationale déclare la guerre à la Côte d’Ivoire* »¹⁰² had far-reaching consequences in encouraging the subsequent violence.

47. At a meeting of the *Conseil des Ministres* of 22 February 2011, GBAGBO’s ministers advocated that civilian demonstrators should be called « *rebelles* » and « *terroristes* »¹⁰³. On 24 February 2011, GBAGBO recommended at a *Conseil des Ministres* that measures be taken in Abobo to put « *hors d’état de nuire ces rebelles* »¹⁰⁴. On the same date, GBAGBO ordered the military to take control of the axis MACA-Abengourou in the N’dotre / PK-18 area of Abobo.¹⁰⁵ [REDACTED] on 24 February, [REDACTED] proposed to GBAGBO that Abobo should be declared a war-zone, so that the civilian population could flee the

⁹⁸ Video clip Blé Goudé, [CIV-OTP-0018-0006](#); Transcript of video [CIV-OTP-0018-0006](#), [CIV-OTP-0021-0048](#) at 0048-0052.

⁹⁹ Defence observations, p.98, paras.340-342.

¹⁰⁰ Amended DCC, p.136-138, paras.190-194.

¹⁰¹ Vidéo en date du 4 février 2011, « Meeting de Blé Goudé à la Sorbonne », [CIV-OTP-0052-0673](#) at 02:37-12:32; Transcript of video [CIV-OTP-0052-0673](#), [CIV-OTP-0054-0458](#).

¹⁰² Discours du Président de la République, [CIV-OTP-0018-0590](#) at 0591.

¹⁰³ Minutes du Conseil du Gouvernement du mardi 22 février 2011, [CIV-OTP-0025-0082](#) at 0084.

¹⁰⁴ Video [CIV-OTP-0026-0020](#); Transcript of [CIV-OTP-0026-0020](#), [CIV-OTP-0044-2534](#) at 2536, l.14-35.

¹⁰⁵ [REDACTED].

commune, but GBAGBO rejected this request.¹⁰⁶ After GBAGBO's directives on 24 February, the FDS shelled the neighbourhood of PK-18 in Abobo on 26 February 2011, causing civilian deaths, and this was followed by further FDS shelling of civilian areas of Abobo during March, including the shelling of areas of Abobo on 17 March which constitutes one of the four charged incidents.¹⁰⁷ The directives given by GBAGBO in his meetings and speeches have to be read in terms of the actions subsequently carried out by his forces.

48. GBAGBO's speeches during the post-electoral crisis did not acknowledge that his forces had killed civilians but instead focused on attacks by the opposing forces and blamed the international community for the crisis.¹⁰⁸ This approach was followed by GBAGBO's subordinates in their repeated denials that the FDS had killed women demonstrators in Abobo on 3 March 2011,¹⁰⁹ for instance, despite the publicly available video evidence of this incident. The Defence continues to argue that these deaths were a "*mise en scène*",¹¹⁰ despite the fact that the Prosecution has identified the 7 victims who died during this incident and has provided a large amount of evidence which corroborates the unprovoked attack by the FDS convoy on that day.¹¹¹

49. GBAGBO's statements that an "independent" commission should investigate crimes during the crisis can be seen to have had little effect in practice, as the commission appointed by GBAGBO paid little regard to crimes attributed to the pro-GBAGBO forces.¹¹²

50. While there was still a discipline procedure within the FDS during this period,¹¹³ troops who committed offences against civilians such as the charged incidents

¹⁰⁶ [REDACTED].

¹⁰⁷ Amended DCC, p.40; p.85-89, paras.122-125.

¹⁰⁸ Amended DCC, p.55-56, para.81, para. 118.

¹⁰⁹ Amended DCC, p.84-85, para.121.

¹¹⁰ Defence observations, p.161, para.158.

¹¹¹ Amended DCC, p.80-85, paras.119-121.

¹¹² Amended DCC, p.63-64, paras.94-95.

¹¹³ Amended DCC, p.119-120, para.168.

were not punished and no meaningful enquiry was led against them; instead the FDS issued blanket denials of their responsibility for civilian deaths.¹¹⁴ The political and ethnic bias within FDS units during this period, as well as GBAGBO's use of a parallel structure to subvert the official chain of command, are relevant to GBAGBO's use of the FDS to implement the Common Plan.

51. Despite the escalating loss of life and the fact that many FDS members left their positions and refused to participate in the violence, GBAGBO and his inner circle directed the forces loyal to him to continue fighting. On 29 March 2011, GBAGBO's ministers recommended the use of « *des actions de terreur en réplique* » against the OUATTARA side.¹¹⁵ By early April, the remaining FDS loyalists in Abidjan had been reinforced by large numbers of militia and mercenaries.¹¹⁶ On 9 April 2011, GBAGBO urged his supporters to continue the fight against « *OUATTARA et ses terroristes* »;¹¹⁷ an instruction which resulted in further civilian deaths, most notably in Yopougon in the days immediately following GBAGBO's arrest on 11 April 2011.

GBAGBO's Inner Circle

52. The Defence alleges that the Prosecution has not been able to identify the members of GBAGBO's inner circle and their responsibilities with regard to the Common Plan.¹¹⁸ Again, this is incorrect. The Prosecution is not obliged to name every member of a group in order to show that the group exists. The amended DCC clearly refers to the following members of GBAGBO's inner circle and their responsibilities with regard to the implementation of the Common Plan: Simone GBAGBO, Charles BLÉ GOUDÉ, Bertin KADET, Marcel GOSSIO, Pasteur Moïse

¹¹⁴ Amended DCC, p.62-63, para.93.

¹¹⁵ Minutes du Conseil de Gouvernement du mardi 29 mars 2011, [CIV-OTP-0025-0127](#) at 0129.

¹¹⁶ Amended DCC, p.27, para.49; p.127-128, para.179.

¹¹⁷ Communiqué du Gouvernement, [CIV-OTP-0018-0567](#) at 0568; Communiqué du Gouvernement, [CIV-OTP-0018-0564](#) at 0566.

¹¹⁸ Defence observations, p.278-279, paras.1065-1071.

KORÉ and Anselme SEKA YAPO.¹¹⁹ In addition to these individuals, the DCC also refers to the role of key FDS officers within the “parallel structure” that GBAGBO used, among other means, to implement the Common Plan.¹²⁰

Organised and hierarchical Structure

The organised structure

53. The Defence submits that the « *forces pro-Gbagbo* » as defined by the Prosecution does not constitute « *une structure hiérarchisée et organisée* ». ¹²¹ This is incorrect. An organised and hierarchical structure can have different components within it, each with a different role. For instance, the armed forces of a country usually include the different components of the army, navy and air-force, which form one structure under the command of a Commander-in-Chief.¹²² The Prosecution has clearly defined the pro-Gbagbo forces during the post-electoral violence as comprising (i) the *Forces de Défense et de Sécurité* (FDS), (ii) the pro-Gbagbo youth, (iii) militias, and (iv) mercenaries, and has clearly defined these groups within the overall structure.¹²³

54. The Defence argues that the Prosecution has not proven a link between the different groups which constituted the pro-Gbagbo forces.¹²⁴ This is also incorrect. The evidence shows that GBAGBO employed mercenaries, militias and pro-Gbagbo youth, in addition to the FDS, in a complex and well-organised structure.¹²⁵ The Prosecution has presented evidence of how the pro-Gbagbo forces were organised during the post-electoral crisis, including the roles of the

¹¹⁹ Amended DCC, p.50-53, paras.74-78.

¹²⁰ Amended DCC, p.120-125, paras.169-174.

¹²¹ Defence observations, para.1113.

¹²² Amended DCC, para.133.

¹²³ Amended DCC, paras.132-157.

¹²⁴ Defence Observations, para.1113.

¹²⁵ Amended DCC, paras. 147, 152-158.

different groups, the relationships between those groups and the hierarchy of the overall structure.¹²⁶

GBAGBO's authority over the FDS

55. The Defence clearly understates the importance of GBAGBO's authority as *Chef Suprême des armées*.¹²⁷ It is clear from the evidence that GBAGBO retained this authority after the 2010 election; notably, his military commanders reaffirmed their loyalty to him and his authority over them.¹²⁸ The evidence shows that GBAGBO requisitioned the armed forces, he instigated curfews, he gave direct orders to the FDS, he was kept informed of FDS actions on the field, he took decisions on military operations and on a number of occasions he overruled the advice of the *chef d'état major*.¹²⁹ All of these elements illustrate GBAGBO's exercise of authority over the FDS during the post-electoral violence.

Use of mercenaries, militia and pro-Gbagbo youth outside the FDS

56. GBAGBO also employed mercenaries, militias and pro-Gbagbo youth outside of the FDS during the post-electoral violence, in an organised and hierarchical manner.¹³⁰ Members of GBAGBO's inner circle were involved in commanding, organising and supporting the different elements within the overall structure.¹³¹ The evidence shows that GBAGBO had previously employed key members of his inner circle, such as BLÉ GOUDÉ and DOGBO BLÉ, to coordinate many of these same groups in a structured, organised manner in the past.¹³²

¹²⁶ Amended DCC, paras.132-185.

¹²⁷ Defence observations, paras.1154-1157; Amended DCC, para.159.

¹²⁸ Amended DCC, paras.161-162.

¹²⁹ Amended DCC, paras.158-189, 201-202.

¹³⁰ Amended DCC, paras.149-157, 181-185.

¹³¹ Amended DCC, paras.158-185; Charts at p.167-168.

¹³² Amended DCC, paras.12-37, « CONTEXTE AYANT MENÉ À LA CONCEPTION ET MISE EN ŒUVRE DU PLAN COMMUN ».

Resources available to the pro-GBAGBO forces

57. The Defence argues that the FDS was lacking resources and weaponry.¹³³

However the Prosecution has established that resources were not allocated evenly within the FDS and that key units were privileged in terms of the arms and munitions made available to them. It is clear from the evidence that the pro-GBAGBO forces still had large amounts of weapons and munitions under their control at the time of GBAGBO's arrest.¹³⁴

The "parallel structure"

58. The Defence contests the Prosecution's submissions on the existence of a "parallel structure" within the FDS.¹³⁵ However, the evidence confirms GBAGBO's use of this parallel structure to carry out the Common Plan and commit crimes during the post-electoral violence.¹³⁶

59. The Prosecution has presented detailed evidence of how mercenaries, militias and pro-Gbagbo youth were integrated into the FDS, and particularly into those units with close links to GBAGBO, which formed the "parallel structure".¹³⁷

60. The evidence also shows that GBAGBO bypassed the official chain of command on a number of occasions by giving orders via DOGBO BLE and other commanders who shared close ethnic or political allegiances to GBAGBO.¹³⁸ Officers such as DOGBO BLÉ, Rigobert DADI TOUHOURI (BASA) and Clément Ouandé ZADI (*Sous-groupement tactique*) are all Bété and they were known to be among the most hard-line loyalists to GBAGBO within the FDS.¹³⁹ It is highly relevant that during the crisis these officers were in charge of units which had direct access to large amounts of munitions and weapons, such as artillery under

¹³³ Defence observations, para.1153.

¹³⁴ Amended DCC, paras.171, 189.

¹³⁵ Defence observations, paras.1111, 1114, 1119-1134.

¹³⁶ Amended DCC, paras.169-174, 178-179, 182, 185, 187.

¹³⁷ Amended DCC, paras.140-158, 169-187 and Charts at p.167-168.

¹³⁸ Amended DCC, paras.135, 169-189.

¹³⁹ Amended DCC, paras.162, 169-174.

the control of DADI, and the stock of weapons at the Presidential Palace, which was under the control of DOGBO BLÉ.¹⁴⁰

61. The existence of the parallel structure is borne out by the fact that the officers most loyal to GBAGBO, such as DOGBO BLÉ, continued to fight for GBAGBO up until his arrest, when other senior officers refused to continue fighting.¹⁴¹ In addition, a number of the officers most loyal to GBAGBO, such as DADI, fled Côte d'Ivoire after the crisis and were subsequently linked to violent attacks against the OUATTARA regime from outside the country.¹⁴²

On the alleged mistakes of the Prosecution in its two Charts on the FDS structure

62. The Defence pointed at supposed mistakes that the Prosecution would have made when creating the charts on the FDS structure which were included in the DCC.¹⁴³ In particular, the Defence claims that the *Forces Aériennes* were left out of the charts. This is not accurate. The Air Force and its commander are included in both charts on the FDS structure, although they are not highlighted.¹⁴⁴ The Defence also argues that the role of the Prime Minister is missing from the chart and that all ministers were under his authority.¹⁴⁵ The Prosecution notes that this is an erroneous representation of the FDS chain of command. Article 53 of the Constitution establishes that members of the government are given power by delegation from the President.¹⁴⁶ The evidence confirms that the Prime Minister did not have a significant role in the FDS chain of command during the crisis.¹⁴⁷

¹⁴⁰ Amended DCC, paras.135, 171, 189.

¹⁴¹ Amended DCC, paras.179, 200.

¹⁴² Final report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 16 of Security Council resolution 2045 (2012), 17 April 2013, [CIV-OTP-0042-0686](#) at 0694-0697, at 0744-0745.

¹⁴³ Defence observations, para.1115.

¹⁴⁴ Amended DCC, Charts at p.167-168.

¹⁴⁵ Defence observations, para.1115.

¹⁴⁶ Amended DCC, paras.133, 158-159.

¹⁴⁷ Amended DCC, paras.133-136.

The Widespread or Systematic Attack against the civilian population

The incidents

63. The Prosecution recalls that in its Amended DCC it presented in a comprehensive manner the incidents that form the attack by classifying them in two categories: *“attaque dirigée contre les militants et sympathisants de l’opposition”* et *“attaque dirigée contre les populations civiles perçues comme soutenant l’opposition”*.¹⁴⁸ The Prosecution notes that the Defence in its final observations analyses the incidents by referring to them in a different order than in the Amended DCC.¹⁴⁹ This is confusing. It is an attempt to blur the Prosecution’s presentation of its case by fudging the two categories mentioned above.

64. The Defence is also making a distinction between incidents mentioned in the former DCC and incidents added in the Amended DCC. The Defence is complaining that the OTP has removed 23 incidents from its previous DCC and added 19 new ones to its latest DCC.¹⁵⁰ The Prosecution refers the Chamber to its position submitted in paragraph seven above. The Chamber has already ruled on the matter and rejected the Defence’s challenge of the Amended DCC.

The number of victims

65. As just stated, the Prosecution classified the presentation of the incidents under two categories. For each category, the Prosecution provided numbers of victims. Contrary to Defence’s claim, there is no confusion on the number of victims.¹⁵¹ At para 62 of its Amended DCC, the Prosecution states : *“au moins 98 membres et sympathisants de l’opposition ont été tués, au moins 244 ont été blessés dont une grande majorité par balles et au moins 86 militants de l’opposition ont été arrêtés”*. The Prosecution arrived at these numbers by calculating the total number of victims

¹⁴⁸ Amended DCC, para.60.

¹⁴⁹ Defence observations, paras.862-966.

¹⁵⁰ Defence observations, para.861.

¹⁵¹ Defence observations, paras.1000-1001, pp.260-261.

for each incident described in the category “*attaque dirigée contre les militants et sympathisants de l’opposition*”. The numbers of victims mentioned in paragraph 66 of the Amended DCC refer to the total number of victims when adding all the incidents of the second category “*attaque dirigée contre les populations civiles perçues comme soutenant l’opposition*”.

Assessment of the Prosecution sources to support the incidents

66. The Defence claims that the 39 incidents listed in the Amended DCC are mainly sourced to NGOs, UN reports, hearsay statements and non-credible witnesses.¹⁵² The Defence challenges the credibility of all sources relied upon by the Prosecution and this without any distinction and no matter the type of document relied upon by the Prosecution. Again, recourse to such absolute statements without any balanced distinction and reasoning should raise the awareness of the Chamber.

67. The Prosecution submits that 25¹⁵³ out of the 39 incidents mentioned in the amended DCC are sourced by witness statements as the primary source while NGO reports are used as a secondary source of information for only nine out of the 39 incidents. The reports [REDACTED]¹⁵⁴ [REDACTED]¹⁵⁵ are used as secondary source to support only four incidents presented by the Prosecution.¹⁵⁶

68. Moreover, although the account sometimes differs with regards to the perpetrators, documents obtained by the OTP from the Police, the Gendarmerie and the Presidential Palace corroborate, as a primary or secondary source of

¹⁵² Defence observations, paras.866, 870, 871, 879, 882, 887, 906, 911, 926, 953, 955, 962, 965, 967.

¹⁵³ See Amended DCC footnote 136 page 33; footnote 138 page 34; footnote 140 page 34; footnote 142 et 143 page 35; footnote 145 page 35, footnote 146 page 35; footnote 147 page 36; footnote 149 page 36 ; footnote 150 page 37 ; footnote 162 page 39 ; footnote 163 page 39 ; footnote 165 page 40 ; footnote 166 page 40 ; footnote 167 page 40 ; footnote 171,172,173 page 41 ; footnote 175 page 42 ; footnote 176 page 42 ; footnote 191 page 45 ; footnote 192 page 45 ; footnote 193 page 45 ; footnote 194 page 45 ; footnote 195 page 46 ; footnote 196 page 46 ; footnote 197 page 46 et footnote 204,205,206, 207 et 208 page 48.

¹⁵⁴ CIV-OTP-0052-0292.

¹⁵⁵ CIV-OTP-0052-0386.

¹⁵⁶ Amended DCC, see incident of 30 November 2010, page 39; incident of 19 March 2011, page 41, incident of 11 April 2011, page 42 ; incident of 5 January 2011, page 44.

information, at least the existence of 12¹⁵⁷ of the incidents mentioned in the Amended DCC. In other words, when the incidents are not sourced by witness statements, they are sourced by either UN investigation reports¹⁵⁸ for which the conclusions relied on direct sources or by official documents from GBAGBO's government and notably documents from the FDS themselves.

Credibility of witness [REDACTED]

69. The Defence criticises the Prosecution for relying on the statement of witness [REDACTED], since he would have a "*connaissance lointaine des faits rapportés*"¹⁵⁹ and was not in Côte d'Ivoire "*à l' époque*".¹⁶⁰ Witness [REDACTED] was in Abidjan during the post-electoral violence.¹⁶¹ He may not have been at the scene of each incident, but he had access during that period to [REDACTED] whose accounts are relevant to the Chamber's assessment of the existence and nature of the attack against the civilian population. [REDACTED],¹⁶² [REDACTED],¹⁶³ [REDACTED]¹⁶⁴ [REDACTED]¹⁶⁵. [REDACTED].¹⁶⁶

Attacks linked to the RTI demonstration (from 16 to 19 December 2010)

70. The evidence on record establishes a clear nexus between the different incidents relied upon by the Prosecution and the RTI demonstration. The crimes committed as a result of the RTI demonstration were not limited to 16 December;

¹⁵⁷ [REDACTED], CIV-OTP-0045-0527 at 0532-0533; Commissaire Principal de Police, Compte-rendu simplifié, 6 décembre 2010, CIV-OTP-0045-0751; Commissaire Principal de Police, Compte-rendu simplifié, 6 décembre 2010, CIV-OTP-0045-1535; PC Etat-major DGPN, Tableau récapitulatif chronologique des événements: période du 22/11/2010 au 07/02/2011, CIV-OTP-0045-0793 at 0850 and 0865; Première Légion Gendarmerie Départementale, Situation Post-Electorale, 19 février 2011, CIV-OTP-0043-0320; [REDACTED], CIV-OTP-0046-0099 at 0100-0101; Soit-transmis à Monsieur le Directeur Général Adjoint chargé de la sécurité publique, 21 février 2011, CIV-OTP-0045-0379 at 0381.

¹⁵⁸ [REDACTED], CIV-OTP-0044-0392; [REDACTED], CIV-OTP-0044-0310; [REDACTED], CIV-OTP-0037-0138; Rapport de la Commission d'enquête internationale indépendante sur la Côte d'Ivoire, 1 juillet 2011, CIV-OTP-0053-0835.

¹⁵⁹ Defence observations, para.967.

¹⁶⁰ Defence observations, para.422.

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ [REDACTED].

¹⁶⁶ [REDACTED].

they took place over four consecutive days in Abidjan; were committed by the same groups of perpetrators and targeted perceived Ouattara demonstrators.¹⁶⁷

71. The Defence suggests that the Prosecution would have artificially linked unrelated incidents to the alleged attack on the RTI demonstration “*pour donner l'impression que des incidents nombreux et violents auraient eu lieu*” and “inflate” the number of victims.¹⁶⁸ The Defence misrepresents the evidence. Direct witnesses of the incidents gave corroborating accounts on how unarmed civilian demonstrators gathered in several areas of Abidjan then marched towards the RTI through various routes until they were attacked.¹⁶⁹ The evidence also shows that the civilians were targeted, that same day and in following days, in retaliation for the demonstration.¹⁷⁰ For instance, on 16 December and in the following days, many women were arrested and some raped by elements of the Police.¹⁷¹ They became victims of sexual violence simply because they participated in the 16 December demonstration.¹⁷²

The incidents

72. The Prosecution did not remove incidents from its previous DCC; in some cases it revised its narrative to reflect the additional evidence collected since its previous DCC. The Defence alleges, for example, that the Prosecution would have removed the incidents that took place at Macaci and the Duncan crossroad.¹⁷³ That is not the case. These two incidents are clearly spelled out in the Amended DCC.¹⁷⁴ The defence also alleges that the Prosecution would have removed the incidents that took place in the neighbourhood of Riviera II and

¹⁶⁷ Amended DCC, paras.99 and 103-118.

¹⁶⁸ Defence observations, paras.230-231, 370 and 374.

¹⁶⁹ Amended DCC, paras.99 and 103-110.

¹⁷⁰ Amended DCC, paras.99 and 110-116.

¹⁷¹ Amended DCC, para.116.

¹⁷² Amended DCC, para.116.

¹⁷³ Defence observations, para.259, last two dashes.

¹⁷⁴ Amended DCC, para.105 a) and b).

Adjamé.¹⁷⁵ Again that is incorrect. The Chamber will note that the Prosecution continues to rely on these incidents. Firstly, the Riviera II incident has been updated to reflect more closely the geographical sequence of events. Witness P-107 was fleeing the immediate vicinity of the RTI when he was attacked by a group of youth near the *Résidence Universitaire* which is located in Cocody.¹⁷⁶ Secondly, the incident which took place in Adjamé near the Camp Agban was not removed. The Prosecution clarified that the incident took place at the Carrefour Djeni Kobina on the main road going from Abobo to the RTI.¹⁷⁷

The rapes

73. The Prosecution submits that the evidence on record clearly demonstrates that women were raped on 16 December and in the following days and that these rapes were in retribution for the demonstration. The Defence argues that the statements of all the raped victims lack credibility or details.¹⁷⁸ The Defence also seem to ignore Rule 63(4) of the statute,¹⁷⁹ and even speculates as to the nature of the rapes, stating that they were “*des crimes de droit commun*” fostered by the chaos that engulfed Abidjan on 16 December and in the following days.¹⁸⁰ The Prosecution strongly disagrees with this assertion.

74. The Prosecution recalls how witness P-0112 was raped and the reason why she was being raped “*Il a dit qu’il voulait nous faire mal car nous avions participé à la marche [...] Vous le Dioula, vous êtes très têtus. Mais vous verrez !* ». *Il disait que nous avions cherché tout ce qui allait nous arriver, si nous n’étions restés à la*

¹⁷⁵ Defence observations, para.259, first three dashes.

¹⁷⁶ Amended DCC, para.109.

¹⁷⁷ Amended DCC, para.105c).

¹⁷⁸ See for instance Defence observations, paras.67, 359-360, 372, 375, 405-420.

¹⁷⁹ Defence observations, para.418.

¹⁸⁰ Defence observations, para.420.

maison.”¹⁸¹ Witness P-0344 was raped near FILTISAC on 16 December by mercenaries; they accused her of having participated in the demonstration.¹⁸²

75. The Prosecution also submitted examples of victims being targeted in the aftermath of the demonstration because they were perceived as Ouattara supporters. For instance, on 19 December, three women were gang raped by 6 men and, after they were raped, the aggressors said that they should go and complain to Ouattara.¹⁸³

The nature of the demonstration

76. The Defence argues that the demonstration was “*insurrectionnelle*” since military rebels planned, organised and launched an attack from the Golf Hotel on that day.¹⁸⁴ The Prosecution never denied that clashes between forces stationed at the Golf Hotel and FDS forces took place on 16 December. But these clashes took place and were limited to the Carrefour Marie-Thérèse Houphouët-Boigny, where the FDS had set up a blockade.¹⁸⁵ The Defence denies the existence of this blockade,¹⁸⁶ and cites examples that supplies were brought to the hotel by helicopter and that journalists were able to go to the hotel by helicopter.¹⁸⁷ This does not refute the evidence of the blockade. The Prosecution evidence clearly shows that there was a blockade of the hotel and a number of high-level insider witnesses confirm that the blockade was already in place on 16 December 2011.¹⁸⁸

¹⁸¹ Witness Statement P-0112, [CIV-OTP-0019-0306-R01](#) at 0314-0315, paras.37, 46.

¹⁸² Witness Statement P-0344, [CIV-OTP-0044-2614-R01](#) at 2619, paras.16, 17. Other victims stated that after being raped their aggressors told them they should call Ouattara, see [REDACTED], [CIV-OTP-0022-0042](#) at 0042-0047; [REDACTED], [CIV-OTP-0022-0019](#) at 0019; Amnesty International, “They looked at his identity card and shot him dead” Six months of post-electoral violence in Côte d’Ivoire, May 2011, [CIV-OTP-0002-0647](#) at 0680.

¹⁸³ HRW, Côte d’Ivoire: “Violence Campaign by Security Forces, Militias”, 26 January 2011, [CIV-OTP-0002-0166](#) at 0170.

¹⁸⁴ Defence observations, para.281.

¹⁸⁵ Amended DCC, para.117. See also ICC-02/11-01/11-421-Conf-Anx12 and Anx16 for a map and the distances between different locations.

¹⁸⁶ Defence observations, paras.201-202, 204-205 and 221- 223.

¹⁸⁷ Defence observations, paras.202, 203, 204. French Translation of Witness Statement P-0087, [CIV-OTP-0017-0003-R01](#) at 0018, para.80.

¹⁸⁸ Amended DCC, paras.45, 177, 181, 197-198.

77. The Defence also argues that the attack of the military rebels based at the Golf Hotel would have been carried out in a concerted effort with rebels in Abobo. They allege that Abobo-based Rebels would have used women and children demonstrators as human shields in order to circumvent the barricades of the police and reach the RTI.¹⁸⁹ The Prosecution refers the Chamber to the totality of the evidence related to the 16 December incident. The Prosecution acknowledged that elements of the FDS died in PK18 neighbourhood of Abobo following clashes in Abobo.¹⁹⁰ These clashes took place after the demonstration was repressed and it is to be recalled that PK18 is some 15 km away from the RTI.¹⁹¹

Attack of 3 March 2011 on the women's demonstration in Abobo

Misleading interpretations of the Prosecution's evidence

78. The Prosecution notes that, when challenging the evidence relating to the 3 March 2011 incident, the Defence repeatedly reverts back to claims that have previously been addressed and shown to be false.¹⁹²

Allegations that the Commando Invisible had armoured vehicles

79. The Defence again alleges that, at the relevant time, the *Commando Invisible* had armoured vehicles at their disposal.¹⁹³ To substantiate this claim, the Defence relies on witnesses P-10 and D-32.¹⁹⁴ However, as has been previously demonstrated by the Prosecution,¹⁹⁵ witness P-10 does not make any reference to the *Commando Invisible* being in possession of armoured vehicles in the extract cited by the Defence or anywhere else in his statement. On the contrary, when speaking about clashes between the *Commando Invisible* and the military stationed at Abobo, P-10 specifies that the rebels were not in armoured vehicles, but on

¹⁸⁹ Defence observations, paras.281-293.

¹⁹⁰ Amended DCC, para.117.

¹⁹¹ Amended DCC, para.117; ICC-02/11-01/11-421-Conf-Anx12 and Anx16 for a map and the distances between different locations.

¹⁹² ICC-02/11-01/11-420-Conf, paras.53-54.

¹⁹³ Defence observations, paras.521, 531 and 589-590.

¹⁹⁴ Defence observations, para.521, footnote 861.

¹⁹⁵ ICC-02/11-01/11-420-Conf, para.54.

foot.¹⁹⁶ When asked to specify which entities in Abobo had armoured vehicles, witness P-10 states that they belonged to the Republican Guard, the Gendarmerie, the BAE and the army.¹⁹⁷ Additionally, D-32's statement¹⁹⁸ does not make any reference to armoured vehicles being available to the rebels.

The video of 24 February 2011 attributed to the 3 March 2011 incident

80. To support their allegation that the women's demonstration was infiltrated by heavily armed men, the Defence again relies on video CIV-OTP-0021-4087.¹⁹⁹ This video is not of the women's demonstration because it was filmed a week prior to 3 March 2011. Some 60 paragraphs after the initial allegation and reference to the video in question,²⁰⁰ the Defence eventually acknowledges that the Prosecution had disclosed, on 18 February 2013, the YouTube screen-shot of this video²⁰¹ which clearly indicates that the footage was in fact filmed on 24 February 2011²⁰².

Questions related to the origin and composition of the military convoy

Whether the convoy arrived from Camp Commando

81. The Defence states that the Prosecution relies solely on hearsay witnesses to support its claim that the convoy arrived from Camp Commando. This, again, is incorrect. The Defence fails to mention the evidence of P-117, an eye-witness to the incident, whose statement is the first source cited in the Prosecution's Amended DCC to support this fact.²⁰³ The *Rapport d'enquête* also corroborates the fact that the convoy arrived from Camp Commando.²⁰⁴ Additionally, the video

¹⁹⁶ Transcribed Statement P-0010, CIV-OTP-0016-0104, l.265.

¹⁹⁷ Transcribed Statement P-0010, CIV-OTP-0016-0104, l.617-624.

¹⁹⁸ Statement of D-32, CIV-D15-0001-6112.

¹⁹⁹ Defence observations, paras.527, 586-587.

²⁰⁰ Defence observations, paras.527 and 587.

²⁰¹ See the same video at CIV-OTP-0041-0002 and its screen-shot at CIV-OTP-0041-0003.

²⁰² This video was uploaded on YouTube on 3 March 2011, but the description of the video provided in the screen-shot reads as follows « *Cote d'Ivoire: 24 fev 2011 les rebelles paradent à Abobo au cour d'une marche qui va se solder par une attaque des Fanci à la gendarmerie et au camp commando d'Abobo!* »; ICC-02/11-01/11-T-19-CONF-ENG, p.4, l.11-p.5, l.8.

²⁰³ Amended DCC, para.120, footnote 394, which starts with "Witness Statement, P-0117, CIV-OTP-0020-0033-R01 at 0055, para.157 [...]".

²⁰⁴ CIV-OTP-0048-1574, at 1574-1575.

provided by P-189 captures images of the convoy at the Mairie roundabout,²⁰⁵ prior to shots being fired further down the road at the Banco Anador roundabout. This footage, together with P-189's commentary,²⁰⁶ provides compelling corroboration of the convoy's point of origin and direction of travel on the day of the women's demonstration.

Composition of the convoy

82. The Defence alleges that the Prosecution does not provide any evidence showing that vehicles captured in various videos belonged to military units present in Abobo on 3 March 2011.²⁰⁷ This is incorrect. In fact, insider witnesses P-321 and P-330 were shown video footages of the convoy and they each provided a detailed description of the vehicles in it, including identification of which FDS units they most probably belonged to.²⁰⁸ Moreover, P-330 specifically confirmed that the type of vehicles captured in the videos were available at Camp Commando during the relevant time.²⁰⁹ Notably, both P-321 and P-330 identified the vehicle leading the convoy as a "char" belonging to the *Garde Républicaine*, a conclusion corroborated by other Prosecution evidence.²¹⁰ Additionally, P-321 and P-330 both confirmed that the same convoy appeared in all the video footages they were shown,²¹¹ which, incidentally, also demonstrates the authenticity of these videos.

²⁰⁵ CIV-OTP-0042-0587, mins 00:06-00:40; CIV-OTP-0042-0586; The Mairie roundabout is located between Camp Commando and Banco Anador roundabout, see for example CIV-OTP-0042-0586.

²⁰⁶ Statement of P-0189, CIV-OTP-0042-0508, at 0520, para.69.

²⁰⁷ Defence observations, para.589.

²⁰⁸ Transcribed Statement P-0330, CIV-OTP-0049-2312 at 2320-2335, l.304-814; Transcribed Statement P-0321, CIV-OTP-0046-1011 at 1025-1029, l.499-656; Transcribed Statement P-0321, CIV-OTP-0046-1033 at 1034-1038, l.19-170.

²⁰⁹ Transcribed Statement P-0330, CIV-OTP-0049-2312 at 2333-2334, l.752-770.

²¹⁰ Such as CIV-OTP-0048-1574, at 1575; Transcribed Statement P-0046, CIV-OTP-0014-0326, l.455-494, 518-529, 547-623, 683-782 and 805-816.

²¹¹ Transcribed Statement P-0330, CIV-OTP-0049-2312 at 2330, l.628-640 (this witness identified the convoy captured in videos CIV-OTP-0044-0738 and CIV-OTP-0042-0587); Transcribed Statement P-0321, CIV-OTP-0046-1033 at 1036, l.72-78, at 1037, l.126-142 (this witness identified the convoy captured in videos CIV-OTP-0042-0587, CIV-OTP-0003-0716, CIV-OTP-0003-0717 and CIV-OTP-0003-0718).

Death certificates and the burial permit

83. The Defence challenges the authenticity and reliability of the death certificates²¹² and the burial permit²¹³ for the victims of the women's demonstration.²¹⁴ In relation to these documents, the Prosecution refers the Chamber to the statement of P-172, which provides a clear and detailed explanation about the origin and process followed in obtaining the documents in question.²¹⁵ The Defence's challenge of these documents is based on pure speculation since it is not supported by any evidence that would indicate that the certificates were forged, or issued to serve an illicit purpose.²¹⁶

Alleged FDS investigations into the incident

84. According to the Defence, the FDS conducted official investigations which revealed that no FDS units were implicated in the 3 March incident. Furthermore, the Defence alleges that the public communiqué denying FDS responsibility was only made upon receiving the conclusions of the investigations.²¹⁷ The Prosecution recalls that this communiqué was aired on 4 March 2011, thus only allowing for a total of one day for the pro-GBAGBO authorities to conduct an investigation. To substantiate their claim, the Defence relies on four sources,²¹⁸ examined below.

85. The Defence relies [REDACTED] that on the day of the incident [REDACTED] was informed that FDS elements were not involved in any actions on the day in

²¹² CIV-OTP-0028-0572, CIV-OTP-0028-0573, CIV-OTP-0028-0574, CIV-OTP-0028-0575, CIV-OTP-0039-0048 and CIV-OTP-0039-0055.

²¹³ CIV-OTP-0039-0044.

²¹⁴ Defence observations, paras.563-564.

²¹⁵ Statement of P-0172, CIV-OTP-0028-0550, paras.73-76.

²¹⁶ Defence observations, para.567.

²¹⁷ Defence observations, para.577.

²¹⁸ Defence observations, para.577, footnotes 946-948.

question.²¹⁹ The Defence fails to mention that [REDACTED] clarified that no thorough investigations into the incident took place.²²⁰ [REDACTED].²²¹

86. A separate enquiry, with the specific aim of determining whether CECOS elements were involved in the 3 March 2011 incident, was initiated [REDACTED]. This information is corroborated by P-100's interview transcript as relied upon by the Defence.²²² However, [REDACTED], this enquiry was not launched pursuant to an official government request.²²³ The *Rapport d'enquête* produced as a result of this enquiry,²²⁴ in fact confirms that FDS elements were involved in the incident, contrary to the Defence's assertion, but indicates that the convoy did not include any elements of CECOS.²²⁵

87. Finally, Alain Dogou's statement to the media lacks the necessary detail to conclude that any serious investigations into the incident were ever initiated by Gbagbo's government.²²⁶

Authenticity of videos of the 3 March 2011 women's demonstration

88. The Defence once again challenges the authenticity of video CIV-OTP-0003-0716, claiming it was the result of a "*montage*".²²⁷ The Defence's argument is speculative and is contradicted by the record. As previously detailed by the Prosecution,²²⁸ allegations that this video is a montage are refuted by the evidence of Prosecution witnesses, notably P-105, P-184 and P-217,²²⁹ as well as by photographs of the dead body of one of the women seen in the video.²³⁰ This

²¹⁹ [REDACTED].

²²⁰ [REDACTED].

²²¹ [REDACTED].

²²² Transcribed Statement P-0100, CIV-OTP-0020-0238 at 0249, l.415-419.

²²³ [REDACTED].

²²⁴ The *Rapport d'enquête* is dated 10 March 2011, which is six days *after* the televised communiqué denying FDS responsibility in the incident.

²²⁵ CIV-OTP-0048-1574 at 1574-1575.

²²⁶ CIV-OTP-0017-0035.

²²⁷ Defence observations, para.597.

²²⁸ ICC-02/11-01/11-T-16-ENG ET, p.35, l.5-22 and ICC-02/11-01/11-420-Conf, para.27.

²²⁹ Statement of P-0105, CIV-OTP-0019-0245, para.32; Statement of P-0184, CIV-OTP-0032-0011, para.104; Statement of P-0217, CIV-OTP-0040-0372, paras.136-139.

²³⁰ See CIV-OTP-0037-0114, CIV-OTP-0037-0116 and CIV-OTP-0037-0117.

evidence corroborates the fact that the women were indeed killed during the demonstration. The reliability and probative value of the video should therefore be evaluated in light of the totality of the Prosecution's evidence.

89. According to the Defence, none of the videos from the Prosecution's List of Evidence show the chain of events, the attack or the moment of the shooting that took place on 3 March.²³¹ The Prosecution disagrees and invites the Chamber to review videos CIV-OTP-0003-0716 (and its duplicates at CIV-OTP-0003-0717, CIV-OTP-0003-0718, CIV-OTP-0002-1059 and CIV-OTP-0041-0229) and CIV-OTP-0044-0738, which clearly demonstrate the chain of events with images of the convoy, the shooting and the victims.

90. In relation to video CIV-OTP-0032-0053,²³² the Prosecution notes that the name of its source has recently been unredacted from P-184's statement which was re-disclosed to the Defence on 12 February 2014.²³³ This source is P-217, whose statement²³⁴ was provided to the Defence on 9 August 2013.²³⁵ [REDACTED].²³⁶ P-217 also states that although he no longer has a copy of this video, P-184 does,²³⁷ which explains why the video was obtained from P-184 and not directly from P-217.

91. When challenging the authenticity of video CIV-OTP-0042-0587 provided by P-189, the Defence raises the issue that the name of his source has not been made available to them.²³⁸ However, the content of the video is authenticated by P-189 himself. P-189 explains that he was right next to the cameraman while the

²³¹ Defence observations, para.604.

²³² At para. 609 of their submission the Defence wrongly identifies the video provided by P-0184 as CIV-OTP-0043-0267. The correct ERN of this video is CIV-OTP-0032-0053. As mentioned at para. 102 of her statement, CIV-OTP-0032-0053 is Annex 11 to her statement (see CIV-OTP-0032-0011 at 0028, para.102).

²³³ ICC-02/11-01/11-618, para.2.

²³⁴ Statement of P-0217, CIV-OTP-0040-0372.

²³⁵ ICC-02/11-01/11-472.

²³⁶ Statement of P-0217, CIV-OTP-0040-0372, para.110.

²³⁷ Statement of P-0217, CIV-OTP-0040-0372, paras.132 and 134.

²³⁸ Defence observations, para.610.

demonstration was being filmed.²³⁹ P-189 describes and provides details about the content of the video in question.²⁴⁰ The fact that videos can be authenticated by witnesses who have knowledge of their content has been acknowledged by the Defence themselves when stating that «[l']authentification peut être assurée par des témoins connaissant le contenu de la vidéo».²⁴¹

The 17 March 2011 shelling of Abobo

*The location from which the mortar shells were launched (the alleged “incohérences de lieu”)*²⁴²

92. To prove its allegation that the mortar shells were fired from Camp Commando, the Prosecution not only relies on the fact that the BASA had mortars and that BASA elements were based at Camp Commando²⁴³, it also relies on the direct evidence of P-239. P-239 [REDACTED] confirms that elements of the BASA fired mortars from Camp Commando.²⁴⁴ In addition, the Prosecution relies on numerous statements of victims and eye witnesses who confirm that the shelling came from Camp Commando.²⁴⁵ Notably, P-131, [REDACTED], was able to see the shells being launched from Camp Commando.²⁴⁶

93. The Defence alleges that the Prosecution's evidence is too contradictory to be able to establish where the shells were fired from, and quotes P-217 and P-294 as witnesses who claim that the shells were fired from a “char” and not from Camp Commando.²⁴⁷ This is incorrect. P-217 does not claim that the shells were fired from the “chars”. P-217 clearly states that after the explosion of a mortar shell near Abobo hospital, “chars” passed by and fired “bullets” on them.²⁴⁸ As for P-294, a careful reading of paragraph 23 of his statement reveals that he provides

²³⁹ Statement of P-189, CIV-OTP-0042-0508 at 0526, para.106.

²⁴⁰ Statement of P-189, CIV-OTP-0042-0508 at 0525-0528, paras.103-106.

²⁴¹ Defence observations, para.107.

²⁴² Defence observations, paras.624-629.

²⁴³ See Defence observations, para.627.

²⁴⁴ See CIV-OTP-0037-0425-R01 at 0443-0444, paras.120-124 and 127-130.

²⁴⁵ See Amended DCC, footnote 409.

²⁴⁶ CIV-OTP-0046-1244-R01 at 1248, para.14.

²⁴⁷ Defence observations, paras.625-626, 629.

²⁴⁸ CIV-OTP-0040-0372-R01, paras.168-177.

hearsay evidence about the shelling. P-294 admits having heard that the shells were fired from Camp Commando, and the link he made with the “chars” was speculative and merely an expression of his own opinion.²⁴⁹

94. The Defence also contends that P-234 contradicts P-164 and P-226, because “in [P-234]’s opinion” the elements of the BASA must have fired the mortars from somewhere else in Abobo.²⁵⁰ Again, this is incorrect. The Defence omits to mention a crucial aspect of P-234’s evidence, [REDACTED].²⁵¹ P-234 was thus merely giving his “personal opinion” on how he thinks the events might have unfolded,²⁵² which does not amount to a contradiction with P-164’s evidence, as suggested by the Defence.

95. The Defence further argues that the account of witnesses P-164, P-226 and P-234 are contradicted by P-238, based on the fact that the latter [REDACTED].²⁵³ The fact that P-238 [REDACTED], does not amount to a contradiction of the evidence of the 3 witnesses named above. The Prosecution recalls that P-239 stated that [REDACTED] only after January 2011, when the situation in Abobo became more intense.²⁵⁴ Nonetheless, P-238 in fact confirms that the BASA had 120 mm mortars and that the FDS used them on numerous occasions to bomb various populated areas of Abobo, on DADI’s direct orders and in complete disregard for civilian lives.²⁵⁵

96. The Defence relies on its witness, Alain DOGOU, the former Minister of Defence, who claims that Camp Commando did not have any 120 mm mortars and did not

²⁴⁹ CIV-OTP-0041-0388-R01, para.23.

²⁵⁰ Defence observations, para.628.

²⁵¹ Statement of P-0234, CIV-OTP-0041-0534 at 0575, para.153.

²⁵² Statement of P-0234, CIV-OTP-0041-0534 at 0575, para.154.

²⁵³ Defence observations, para.629.

²⁵⁴ See CIV-OTP-0037-0425 at p.0441, paras.100, 102, 105, 118.

²⁵⁵ P-238, CIV-OTP-0048-1503, paras.117-127.

use them during the crisis.²⁵⁶ Interestingly though, Alain DOGOU does acknowledge that only the BASA had 120 mm mortars in its arsenal.²⁵⁷

The sites hit by the shells

97. The Defence alleges that the Prosecution has broadened the scope of its allegations by, among others, adding new locations that would have been shelled, whereas only 3 locations had been mentioned in its previous DCC.²⁵⁸ The Prosecution submits that it has not “*changé d’avis par rapport à la thèse soutenue [préalablement]*”,²⁵⁹ but in light of the additional evidence collected, it can now establish that at least seven sites were hit within the three areas previously identified.²⁶⁰

98. The Defence claims that the Prosecution does not specify which are the seven sites shelled.²⁶¹ The Prosecution notes that it has already identified the three geographical areas (Siaka Koné market, Village SOS and Derrière Rails) where the mortar shells exploded during the confirmation hearing of February 2013, including through the use of visual aids.²⁶² Additionally, several witnesses describe, including through the use of sketches, the precise locations within these three areas where the shells exploded, (see for example P-131,²⁶³ P-297,²⁶⁴ P-360,²⁶⁵ P-362,²⁶⁶ P-363²⁶⁷). Furthermore, the expert Report²⁶⁸ indicates the GPS coordinates of 4 sites, with numerous photographs of these sites appended in Annex F of the

²⁵⁶ Defence observations, para.629.

²⁵⁷ CIV-D15-0001-5357 at 5380.

²⁵⁸ Defence observations, paras.630–631.

²⁵⁹ Defence observations, para.631.

²⁶⁰ See Amended DCC, para.123, and Prosecution’s submissions in ICC-02/11-01/11-615-Conf, para.6.

²⁶¹ Defence observations, para.633.

²⁶² See ICC-02/11-01/11-T-16-CONF-ENG, p.39, l.17-p.40, l.2.

²⁶³ CIV-OTP-0046-1244-R01, paras.14-20.

²⁶⁴ CIV-OTP-0041-0412-R01, para.24.

²⁶⁵ CIV-OTP-0046-1203-R01, para.16.

²⁶⁶ CIV-OTP-0046-1271-R01, para.15, and a sketch at CIV-OTP-0046-1282-R01.

²⁶⁷ CIV-OTP-0046-0275-R01, paras.19, 21, and two sketches at CIV-OTP-0046-0286-R01 and CIV-OTP-0046-0287-R01.

²⁶⁸ CIV-OTP-0049-0048, CIV-OTP-0049-0056, CIV-OTP-0049-0076, CIV-OTP-0049-0078.

Report.²⁶⁹ The Defence's claim that the sites are unspecified within a 78 km square surface is therefore incorrect.

99. The Defence also claims that the "quasi-totality" of the Prosecution's witnesses never mention which market was shelled²⁷⁰ and refers to witnesses P-9, P-164 and P-107 to support this allegation.²⁷¹ The Defence's claim is a misrepresentation of the Prosecution's evidence. P-9 clearly stated that he was referring to the market that is within a few meters from the mayor's office;²⁷² P-164 referred to the shell exploding «*au niveau du grand marché d'Abobo* »;²⁷³ and P-107 specified that « *[l]e grand marché d'Abobo se trouve en face de la mairie d'Abobo, pas loin d'Abobo Gare* ». ²⁷⁴

100. In relation to the shelling in *Derrière Rails*, the Defence claims that the Prosecution only relies on the hearsay evidence of P-105.²⁷⁵ This is incorrect. The Prosecution refers the Chamber to the evidence of P-297, [REDACTED]. P-297 describes in detail the location where [REDACTED] was killed on 17 March 2011, as well as the circumstances of her death.²⁷⁶ The explosion of the shell at this location and the death of a woman are corroborated by witness P-189²⁷⁷ and the [REDACTED] registered on that day.²⁷⁸

The type of weapon(s) used

101. The Defence claims that according to P-9, Camp Commando of Abobo only had 60 mm mortars but no 120 mm mortars.²⁷⁹ This is incorrect. P-9 clearly confirms that the BASA was based at Camp Commando in March 2011 and they did have 120 mm mortars:

²⁶⁹ CIV-OTP-0049-0082.

²⁷⁰ Defence observations, para.635.

²⁷¹ Defence observations, footnote 1079, referring to P-0009, P-0164 and P-0107.

²⁷² Transcribed statement of P-0009, CIV-OTP-0051-1137, p.1140, l.91-96.

²⁷³ P-0164, CIV-OTP-0028-0481-R01, para.146.

²⁷⁴ P-0107 CIV-OTP-0020-0064-R01, para.158.

²⁷⁵ Defence observations, paras.638-639.

²⁷⁶ P-0297, CIV-OTP-0041-0412-R01, para.24.

²⁷⁷ P-0189, CIV-OTP-0042-0508-R01 at 0540, para.134.

²⁷⁸ See CIV-OTP-0044-1654 at 1664, [REDACTED].

²⁷⁹ Defence observations, para.641and footnote 1087.

« 179 [...] le BASA a des mortiers 60, [...] »
 181 Personne entendue : ... *et puis le BASA a des mortiers de 120. [...] »*²⁸⁰

102. Similarly, P-9 never claimed it was technically “impossible” to bomb the market;²⁸¹ he merely stated that it would have been difficult, not advisable,²⁸² or unreasonable.²⁸³

Responsibility for the shelling

103. The Defence questions the Prosecution’s evidence regarding who is responsible for the shelling.²⁸⁴ The Prosecution recalls that already at the confirmation hearing in February 2013 it had identified the army unit responsible and named two individuals who fired the mortars.²⁸⁵ According to the Defence, only witness P-164 [REDACTED], although he was not in Abobo on the day of the shelling,²⁸⁶ The Defence fails to mention P-239, [REDACTED] and provides direct evidence [REDACTED].²⁸⁷

The orders to shell Abobo

104. The Defence contends that the Prosecution relies only on the “contradictory” statements of P-164 and P-239 to support the fact that orders were given to fire mortars on Abobo.²⁸⁸ The Defence does not explain how these statements are contradictory. The Prosecution submits this is because the two witnesses do not contradict each other on the issue of orders given to shell Abobo.²⁸⁹ The Defence’s suggestion that the Prosecution did not rely upon the statements of these two

²⁸⁰ P-0009, CIV-OTP-0051-1137 at 1142-1143, l.170-186.

²⁸¹ Defence observations, para.642.

²⁸² P-0009, CIV-OTP-0051-1159 at 1160-1161, l.34-42, 45-63.

²⁸³ P-0009, CIV-OTP-0011-0556 at 0569-0570, l.466-471, 488-491.

²⁸⁴ Defence observations, paras.644-646.

²⁸⁵ See ICC-02/11-01/11-T-16-CONF-ENG, p.44, l.3-33.

²⁸⁶ Defence observations, para.646.

²⁸⁷ P-0239, CIV-OTP-0037-0425-R01 at 0443-0444, paras.120-124 and 127-130. See also paragraph 122, footnote 405 of the Amended DCC, where this part of the witness’s evidence is referenced.

²⁸⁸ See Defence observations, paras.649 and 651.

²⁸⁹ See P-0164, CIV-OTP-0028-0481-R01, paras.130-131, 135-138, 142, 144 and P-239, CIV-OTP-0037-0425-R01, paras.127-129. The Prosecution also notes that footnote 1105 of the Defence observations quotes the wrong references from the Amended DCC – instead of paragraph 123, footnote 404 it should be paragraph 122, footnote 405.

witnesses in January and February 2013 because it was aware of their lack of probative value²⁹⁰ is improper, misleading, and incorrect. The Prosecution did rely on both of these witnesses in its DCC of January 2013²⁹¹, and explicitly referred to this aspect of their evidence during its oral presentation at the confirmation hearing.²⁹²

105. Furthermore, the Defence contends that P-164 did not have the [REDACTED].²⁹³ This too is incorrect. The Defence ignores the references in P-164's statement where he lists all the weapons of the BASA [REDACTED], including the 120 mm mortar, [REDACTED].²⁹⁴

Time of the shelling and number of shells fired

106. The Defence alleges that the Prosecution's witnesses are inconsistent with respect to the time of the shelling²⁹⁵ and the number of shells that were fired.²⁹⁶ The Prosecution observes that it is to be expected that witnesses will recall their own experiences, from their own vantage points, which will result in understandable differences in their narratives. Considering the geographical and temporal scale of this incident, as well as the impact it may have had on victims and direct witnesses, the variations pointed out by the defence are to be expected, and do not suggest that these witnesses are inconsistent with each other. In actuality these witnesses corroborate each other on the central fact that areas of Abobo were being indiscriminately shelled on 17 March 2011.

107. The Prosecution also recalls that in addition to witness statements there is corroborating documentary evidence from independent sources, for example the

²⁹⁰ See Defence observations, para.649 *in fine*.

²⁹¹ See ICC-02/11-01/11-357-Anx1, para.55, footnotes 239 and 240.

²⁹² See ICC-02/11-01/11-T-16-CONF-ENG, p.44, l.3-p.45, l.16.

²⁹³ See para.652 and footnote 1115.

²⁹⁴ P-0164, CIV-OTP-0028-0481-R01, paras.47, 53-57, 61, 69-71, and Annex 14 to his statement at CIV-OTP-0028-0524-R01, which is [REDACTED] notebook on the use of the 120 mm mortar.

²⁹⁵ Defence observations, paras.620-623.

²⁹⁶ Defence observations, paras.654-656.

[REDACTED] and the report on [REDACTED] in the immediate aftermath of the events,²⁹⁷ as well as the Prosecution's expert report.²⁹⁸

The number of victims

108. The Defence alleges that the Prosecution did not submit any reliable evidence to establish the number of deceased victims for this incident, proposing that P-189 is not a credible witness.²⁹⁹ The Prosecution disagrees with the defence assessment of the evidence on this issue. P-189 was at the scene of the shelling, he was directly involved [REDACTED],³⁰⁰ and he is corroborated by other witnesses³⁰¹ and independent sources such as MSF and [REDACTED].³⁰² The Prosecution notes that, while it is likely that the total number of victims is greater, it has put forward the most conservative number of victims based on its review and comparison (to avoid counting any victim more than once) of the extensive credible evidence listed in footnote 410 of its Amended DCC.

The authenticity and reliability of death certificates and other documents

109. The Defence contests the authenticity of the death certificates and other documentation related to the burial of the victims of the Abobo shelling, mainly based upon the issuing date of these documents.³⁰³ The Prosecution recalls that it is only relying on the certificates provided by P-293, P-294 and P-297, and only in conjunction with the statements of these witnesses. Their statements and the documentation they provide pertain to eight victims. These witnesses confirmed that the burials of their relatives took place in exceptional circumstances, months

²⁹⁷ See CIV-OTP-0044-1654, CIV-OTP-0044-1617.

²⁹⁸ CIV-OTP-0049-0048, CIV-OTP-0049-0056, CIV-OTP-0049-0076, CIV-OTP-0049-0078.

²⁹⁹ Defence Observations, para. 658.

³⁰⁰ CIV-OTP-0042-0508-R01 at 0538-0539, paras.117–128, and at 0541-0543.

³⁰¹ P-0293, P-0294, P-0297, P-0362.

³⁰² See the evidence listed in the Amended DCC at footnote 410.

³⁰³ Defence observations, paras.111, 118, 659-672.

after their deaths, and that the documents in question were issued when they were buried.³⁰⁴

110. The probative value of the certificates should therefore be evaluated in light of the testimonial evidence on record which corroborates the content of these certificates. All three witnesses were able to identify the bodies of their relatives killed by the shelling on 17 March. P-293 was an eye witness to the death of his 5 friends.³⁰⁵ P-297 was able to subsequently identify the body [REDACTED] at the morgue.³⁰⁶ P-294 was unable to see the bodies of his relatives due to electricity cuts at the morgue; however, he identified them from photographs of their bodies taken at the scene of the market shelling,³⁰⁷ published in a newspaper.³⁰⁸ Additionally, two other witnesses, P-362 and P-189, corroborate the identity of these victims and the circumstances of their death, including by means of video footage of the scene of the shelling.³⁰⁹

Photos

111. The Defence alleges that according to the eCourt metadata of CIV-OTP-0044-0729 the photos contained in the document would have been taken on 1 March 2011, which contradicts the date of 17 March 2011 indicated in the document.³¹⁰ This is due to a mistake in the metadata. The content of the document is to be considered authoritative. The Prosecution recalls that information in the eCourt metadata fields are entered by Prosecution metadata entry clerks upon registration of the evidence in the Ringtail database. The mistake will be rectified and the correct metadata re-disclosed to the Defence in due course.

³⁰⁴ P-0293, CIV-OTP-0041-0328-R01 at 0337, para.44; P-0294, CIV-OTP-0041-0388-R01 at 0393, para.24 and at 0393, paras.28-29, 31; P-0297, CIV-OTP-0041-0412-R01 at 0418-0419, paras.32-33, 40.

³⁰⁵ P-0293, CIV-OTP-0041-0328-R01 at 0334-0336, paras.31-37.

³⁰⁶ P-0297, CIV-OTP-0041-0412-R01 at 0418, para.32.

³⁰⁷ P-0294, CIV-OTP-0041-0388-R01 at 0393, paras.24-25.

³⁰⁸ See Annex 2 of P-0294's statement at CIV-OTP-0041-0398 at 0399, second photograph.

³⁰⁹ See P-0362, CIV-OTP-0046-1271 at 1274-1278, paras.15-42; and P-0189, CIV-OTP-0042-0594 at 0541-0543.

³¹⁰ Defence observations, para.682.

Videos

112. The Defence alleges that video CIV-OTP-0042-0593 is made up of several different scenes, which amounts to a montage in the technical sense, and that the images are not dated.³¹¹ The Prosecution recalls that P-189 was present when the video was filmed³¹² and gives a very detailed description of the circumstances in which the footage of the 17 March 2011 shelling of the Siaka Koné market was filmed, scene by scene.³¹³

113. The Prosecution notes that very similar footage of the aftermath of the market shelling is also found in video CIV-OTP-0046-1283, provided by witness P-362. Witness P-362, an eyewitness to the bombing of the market, authenticated the content of the video, identifying the victims and giving a very detailed description of the events.³¹⁴ Thus, through their evidence, including their authentications of the videos, P-362 and P-189 corroborate each other.

114. Video CIV-OTP-0042-0594 contains, as indicated by P-184 in her statement, footage of another shelling incident that occurred on 23 March 2011 in Abobo.³¹⁵ The Prosecution is not relying on this video to prove the events of the 17 March 2011.

The expert's report

115. The Defence alleges that the expert's report is too vague and incomplete.³¹⁶ The Prosecution submits that the expert report has to be read, first, in the context of the "mission letter"³¹⁷ which set out the parameters for the expertise that he was to conduct, and second, in light of the challenges and limitations that the expert was faced with due, among other things, to the lapse of time and

³¹¹ Defence observations, paras.686-687.

³¹² See video CIV-OTP-0042-0593, at 00:02:48 to 00:06:13.

³¹³ P-0189, CIV-OTP-0042-0508, pp. 0541-0543.

³¹⁴ P-0362, CIV-OTP-0046-1271 at 1274-1278, paras.15- 42.

³¹⁵ See CIV-OTP-0042-0508, pp. 0544-0547.

³¹⁶ Defence observations, paras.693-705, 721-726.

³¹⁷ See CIV-OTP-0049-0051.

unavailability of certain material evidence, limitations which he clearly identified in his report. In addition, the probative value of the report must be weighed in light of the totality of the evidence on record.

116. The Defence alleges that the expert did not verify whether it is plausible that the shells could have been fired from Camp Commando.³¹⁸ This allegation is misleading. His report details factors taken into account and the technical basis for his conclusion that Camp Commando was indeed a “viable” firing point from which to launch mortar shells to the impact sites he visited.³¹⁹

117. On the alleged non-respect of the chain of custody,³²⁰ the Prosecution notes that the chain of custody of the referenced material (shrapnel pieces and a photograph) has been explained in detail in the statements of the Prosecution witnesses P-364 (in relation to the fragments PRE 06134),³²¹ P-363 (in relation to PRE 06135).³²² In relation to photograph Y74A2836, P-360 confirms he is the author of the photograph.³²³

118. The Defence also alleges that P-9 contradicts the findings of the expert in relation to the type of mortar used because P-9 would have claimed there were no 120 mm mortars in Abobo.³²⁴ The Prosecution already demonstrated above at paragraph 101 that this is a misrepresentation of P-9’s evidence, and that P-9 explicitly confirmed that 120 mm mortars were available to the BASA units in Abobo.³²⁵ Consequently, there is no contradiction between the expert’s report on the use of 120 mm mortars and the evidence of P-9.

³¹⁸ Defence observations, para.705.

³¹⁹ CIV-OTP-0049-051, p. 0050.

³²⁰ Defence observations, paras.715-718.

³²¹ CIV-OTP-0046-1254 at 1257, para.12 and 1258, para.14.

³²² CIV-OTP-0046-0275, paras.17 and 36.

³²³ CIV-OTP-0046-1203 at 1209, para.26; the photograph is contained in Annex 2 of his statement, at CIV-OTP-0046-1214.

³²⁴ Defence observations, para.730.

³²⁵ CIV-OTP-0051-1137 at 1142-1143, l.120-181.

Other shelling incidents in February – March 2011:

119. The Defence alleges that the Prosecution did not identify the dates, areas, the victims or the authors of the other shelling incidents that occurred throughout February and March 2011.³²⁶ The Prosecution notes that two other shelling incidents are detailed in the section on the widespread and systematic crimes of its Amended DCC; in both cases the date, the authors, the location and the victims are indicated, with additional information found in the sources cited in the footnotes.³²⁷ The sources cited in footnote 411 of the Amended DCC contain additional information on other shelling incidents.

The attack on Yopougon on or about 12 April 2011

Incorrect and misleading Defence submissions as to the attack on Yopougon

120. The Defence's observation as to the rapes committed in Yopougon is an example of incorrect and misleading submissions. The Defence argues that NGO report CIV-OTP-0021-0955 at paragraph 63 mentions that rapes were perpetrated by young people in the neighbourhood without any link to any of the two parties to the conflict.³²⁸ This is false. In fact, the report states the opposite: « *Certaines victimes, notamment celles de la commune de Yopougon qui a enregistré le plus fort taux de viol, déclarent avoir été violées par des miliciens, des FRCI soit pour leur appartenance politique (RHDP), (LMP) ; soit à cause de leur groupe ethnique. Selon les témoignages d'autres victimes, ce sont des jeunes de leurs quartiers qui pour se venger d'elles les auraient violées pour tirer partie d'elles ; à en croire les témoignages de quelques victimes recueillies sur le terrain.* »³²⁹ Additionally, the facts reported in the subsequent paragraphs of this report,³³⁰ clearly illustrate that victims were raped for political or ethnic reasons.

³²⁶ Defence observations, para.619.

³²⁷ Amended DCC, para.66, 7th and 12th bullet points, footnotes 167 and 175.

³²⁸ Defence observations, p.218, para.811.

³²⁹ CIV-OTP-0021-0955, para.63.

³³⁰ CIV-OTP-0021-0955, paras.65-66.

121. The Defence observations pertaining to P-369 are another example of incorrect and misleading submissions. The Defence states that P-369 cannot be relied on to identify the perpetrators of the crimes committed in Yopougon, since he admits that [REDACTED].³³¹ This is incorrect. In fact, in his statement, P-369 identified the perpetrators as being pro-GBAGBO forces and more specifically militiamen.³³² P-369 did state: « [REDACTED] »³³³ However, he is clearly referring to a single reported incident and is not referring to all perpetrators, as suggested by the Defence.

Districts where the crimes occurred:

122. The Defence argues that the Prosecution has not precisely identified the districts of Yopougon where the crimes occurred on or about 12 April 2011.³³⁴ The Prosecution submits that the evidence clearly shows that the crimes committed in Yopougon on or about 12 April 2011 occurred in the districts perceived as pro-Ouattara, such as Doukouré and Mami-Faitai,³³⁵ These were perceived as pro-Ouattara districts in the larger Yopougon commune, which was generally a pro-Gbagbo stronghold.

Victims of pro-Gbagbo forces

123. The Defence argues that the Prosecution has not sufficiently explained why pro-Gbagbo forces would have attacked the people of Yopougon as it is predominantly pro-Gbagbo,³³⁶ which is a fact the Prosecution agrees with.³³⁷ The Prosecution does not assert that pro-Gbagbo forces attacked civilians perceived as pro-Gbagbo in Yopougon. The Prosecution clearly asserts in its Amended DCC that the crimes in Yopougon attributable to pro-Gbagbo forces are actually

³³¹ Defence observations, p.214, para.791.

³³² P-0369, CIV-OTP-0049-2866 at 2927-2928, paras.255, 257-259.

³³³ P-0369, CIV-OTP-0049-2866 at 2927, para.255.

³³⁴ Defence observations, p.211, paras.772-775.

³³⁵ P-0109, CIV-OTP-0020-0335, paras.124-155; P-0185, CIV-OTP-0029-0656, paras.65-81; P-0398, CIV-OTP-0049-2842, paras.51-72 ; P-0404, CIV-OTP-0051-0236, paras.39-55 ; CIV-OTP-0002-0631 at 0642-0644.

³³⁶ Defence observations, para.856.

³³⁷ Defence observations, p.229, para.858.

limited to areas known to be mainly populated by Dioula and perceived as pro-Ouattara, such as Doukouré and Mami-Faitai.³³⁸ Moreover, the crimes committed in those areas, on or about 12 April 2011 were perpetrated by pro-GBAGBO forces. Indeed, the manner in which they attacked the civilians shows that they were targeting perceived pro-Ouattara people.³³⁹ For example, when P-398 was raped [REDACTED], the attacker told her: “[REDACTED]”.³⁴⁰

Number of victims of rape

124. The Defence raises issues regarding the sources for the number of victims of rape.³⁴¹ The Prosecution recalls that it relies on the statements of witnesses P-185, P-398 and P-404, who were themselves victims of these rapes, as well as affidavits.³⁴²

The link between GBAGBO and the Yopougon incident:

125. The Defence alleges that there is no link between GBAGBO and the crimes committed in Yopougon.³⁴³ The Prosecution submits that this is incorrect and refers the Chamber to the evidence presented in paragraphs 128 and 201 of its Amended DCC. Specifically, the Prosecution refers the Chamber to the *communiqué du gouvernement* of 9 April 2011, in which GBAGBO called on the forces loyal to him to continue the fight against “*Ouattara et ses terroristes*”, a copy of which was seized in the bedroom of the bunker where GBAGBO was arrested.³⁴⁴ The *communiqué* was disseminated via emails by Alain Toussaint,³⁴⁵ one of GBAGBO’s advisors. In this *communiqué*, GBAGBO incited “*le peuple à continuer la résistance*” and “[a] demand[é] aux populations de rester déterminées dans la lutte pour la libération de la Côte d’Ivoire et de l’Afrique ». Therefore, even though

³³⁸ Amended DCC, p.91, para.127.

³³⁹ Amended DCC, p.91-92, paras.127-128.

³⁴⁰ P-398, CIV-OTP-0049-2842 at 2859, para.63.

³⁴¹ Defence observations, p.208, para.809.

³⁴² Amended DCC, p.94, footnote 418.

³⁴³ Defence observations, p.213, para.787.

³⁴⁴ CIV-OTP-0018-0564, Investigator’s report CIV-OTP00024-0641 at 00647.

³⁴⁵ CIV-OTP-0021-6392 and CIV-OTP-0021-6393.

he was arrested on 11 April 2011, there is clear evidence of Gbagbo directing the pro-Gbagbo forces right up until his arrest, and the logical conclusion is that these forces were continuing to act on his instructions in the days following his arrest. In other words, the crimes committed by pro-Gbagbo forces in Yopougon on or about 12 April 2011 were committed as part of the continuing implementation of the common plan.

ONUCI reports on incidents of 12 April 2011

126. The Defence states that the ONUCI did not report any exactions that would have occurred on 12 April 2011 [REDACTED].³⁴⁶ The Prosecution recalls however that this issue was mentioned [REDACTED].³⁴⁷

Abobo as « zone de guerre »

Witness P-10

127. The Defence contends that the Prosecution misrepresents the statement of P-10 when stating that Gbagbo refused to declare Abobo a « zone de guerre ».³⁴⁸ This allegation is unfounded. When making their claim, the Defence fail to mention that there are two parts to the fact stated in the Amended DCC which is supported by several sources, including P-10. The Amended DCC states that « *Le 24 février 2011, GBAGBO a refusé de déclarer Abobo zone de guerre et a ordonné à ses forces de tenir et de ne pas perdre Abobo (emphasis added)* ».³⁴⁹ In fact, the portions of P-10's transcripts cited as the source for this statement³⁵⁰ are used to support its latter part, as is clear from the context (see emphasis above). In the sourced extract of P-10's statement, the witness says [REDACTED].³⁵¹

³⁴⁶ Defence observations, p.227, para.853.

³⁴⁷ CIV-OTP-0044-1270 at 1275; "[REDACTED]".

³⁴⁸ Defence observations, para.517.

³⁴⁹ Amended DCC, para.119.

³⁵⁰ See footnote 389 to para. 119, which lists the following references to P-0010's transcribed statement: "Transcribed Statement P-0010, CIV-OTP-0016-0084-R01 at 0093-0094, l.328-345, at 0097-0098, l.464-498; Transcribed Statement P-0010, CIV-OTP-0051-0434-R01 at 0450-0451, l.595-642".

³⁵¹ Transcribed Statement P-0010, CIV-OTP-0016-0084 at 0097-0098, l.483-486.

128. Various relevant sources are used throughout the Amended DCC in a similar manner in order to support different portions of specific facts.. As with the above example, based on the context and simple logic, it is easy to deduct which source is relevant to support which specific portion of an alleged fact. Therefore, the Prosecution strongly objects to the Defence's unfounded accusation that this approach is a *modus operandi* used by the Prosecution in order to multiply its references to create an impression of additional relevant evidence.³⁵²

129. Furthermore, the Defence is also wrong when alleging that the Prosecution misrepresented P-10's statement when asserting that this witness in fact confirmed that Abobo was declared a « *zone de guerre* ». ³⁵³ Contrary to the Defence's claim, P-10 clarified that Abobo was never officially declared as such. In fact, later in his statement P-10 clearly states that although the question of whether Abobo should be declared a « *zone de guerre* » was raised at the highest level, no formal decision regarding this issue was ever taken.³⁵⁴

Significance of the meeting of 24 February 2011

130. The Defence suggests that by referring to Gbagbo's refusal to declare Abobo a war zone on 24 February 2011, the Prosecution seems to consider that a Non International Armed Conflict ("NIAC") already existed in Abidjan by that date.³⁵⁵

131. The Prosecution does not argue that Abobo was a war zone, or that Gbagbo should have declared it a war zone because there was an on-going NIAC. As stated in the Amended DCC, the chief of staff of the FDS requested that Abobo be declared a war zone in order to allow the civilian population to flee the area.³⁵⁶ It is highly significant that after Gbagbo refused to declare Abobo a war zone but ordered his forces to "*tenir et de ne pas perdre Abobo*", the FDS launched an attack

³⁵² Defence observations, para.553.

³⁵³ Defence observations, para.517.

³⁵⁴ Transcribed Statement P-0010, CIV-OTP-0051-0462 at 0466-0468, l.134-228.

³⁵⁵ Defence observations, paras.734-744.

³⁵⁶ Amended DCC, para.82.

on Abobo PK 18 during which mortars were employed, causing the death of civilians and damage to civilian infrastructure.³⁵⁷ In this context, Gbagbo's discussions with his generals on the possibility of declaring Abobo a war zone and his refusal to do so establish, at a minimum, that Gbagbo: 1) knew that civilians were still present in Abobo, 2) intended to deploy his army to attack areas inhabited by civilians,³⁵⁸ and 3) was aware that by deploying the army to attack a populated area, civilians would be targeted.

Pro-Gbagbo youth and militia

The Galaxie Patriotique

132. The Defence is alleging that some groups from the Galaxie Patriotique, such as the GPP were groups close to Guillaume Soro.³⁵⁹ To support its allegation it cites a document which refers to events taking place in 2008.³⁶⁰ Contrary to the Defence contention, the document actually states : « *Le GPP est (sic) mouvements armés de soutien aux Institutions de la République et au Président Gbagbo.* »³⁶¹ The Prosecution further submits that the evidence in the Amended DCC clearly demonstrates that the GPP was a pro-GBAGBO militia.³⁶² Moreover, the Defence argues that the *Galaxie Patriotique* included political parties opposed to GBAGBO. In fact, P-118 states that under the *Alliance de la Jeunesse pour le Sursaut National* (AJSN), there was “*une portion de la jeunesse du PDCI*”, which, according to the witness, was created to request the return of Henri Konan Bédié from exile.³⁶³ P-118 also explains that: « *La Galaxie patriotique, finalement, c'est l'ensemble de toutes les organisations qui soutenaient le Président GBAGBO, que ce soit les partis politiques eux-mêmes ou/et les jeunesses, que ce soit les organisations de femmes, femmes politiques comme femmes société civile, que ce soit les organisations des jeunesses*

³⁵⁷ P-0009, CIV-OTP-0051-1045-R01 at 1064-1075, 1.656-1037.

³⁵⁸ See P-0009, CIV-OTP-0011-0529-R01 at 0569-0540, 1.352-392.

³⁵⁹ Defence observations, p.298-299, paras.1138, 1140.

³⁶⁰ CIV-OTP-0041-0241 at 0271-0272.

³⁶¹ CIV-OTP-0041-0241 at 0272, footnote 21.

³⁶² Amended DCC, paras.20, 28, 153 and 154.

³⁶³ CIV-OTP-0029-0023 at 0029.

*politiques, ou organisation des jeunes, société civile, c'était l'ensemble de tout ça, [...] ».*³⁶⁴

The pro-GBAGBO youth, as defined in the amended DCC, were violent

133. The Defence argues that the patriotic movement was not violent and that there was an ideology of being “bare handed”, without weapons.³⁶⁵ They cite witness P-9 who stated that the young patriots would organise demonstrations and meetings.³⁶⁶ But P-9 also states: « *Il y a eu aussi quelquefois des actes de violence, des actes de violence, pose de barricades, contrôle et surveillance des quartiers, ces quelques actes.* »³⁶⁷ Being “bare handed” was indeed a recurring theme in the speeches of the leader of the youth, Blé Goudé. It had a double meaning and it incited violence and hatred.³⁶⁸ For example, Blé Goudé said : « *Vous savez, je peux tout de suite vous dire : « Allons dans tel quartier, on va attaquer les gens. » Et vous allez m'applaudir. Je n'ai pas besoin d'applaudissements, j'ai besoin de vous orienter, et c'est mon devoir et c'est ma responsabilité. Dès maintenant, l'ordre que je vous donne et il doit être valable dans tous les quartiers, c'est que quand vous devez retourner dans vos quartiers, vous devez empêcher l'ONUCI de circuler. Un. Deuxièmement, en retournant dans vos quartiers, vous devez contacter les présidents des quartiers. Vous devez vous réunir pour savoir et vérifier les entrées et les sorties de vos quartiers et dénoncer toute personne étrangère qui vient dans votre quartier.* »³⁶⁹ Furthermore, despite the many crimes and exactions committed at roadblocks³⁷⁰ set up following his calls,³⁷¹ Blé Goudé never called them off. In fact, he congratulated the youth at these roadblocks³⁷² and referred to himself as the “général Blé Goudé”.³⁷³ In a letter to

³⁶⁴ CIV-OTP-0029-0107 at 0110, l.91-95.

³⁶⁵ Defence observations, p.300, para.1142.

³⁶⁶ The Prosecution notes that the Defence mentioned P-0010 in their paragraph 1142, but refers to P-0009 as a source in the footnote: P-0009, CIV-OTP-0011-0482, page 0500, l.655-658.

³⁶⁷ CIV-OTP-0011-0482 at 0501, l.659-662.

³⁶⁸ Amended DCC, p.137-139, paras.190-194.

³⁶⁹ Video CIV-OTP-0043-0269 at 00:00 to 00:50; Transcript of video CIV-OTP-0047-0611 at 0613, l.4-12.

³⁷⁰ Amended DCC, p.45, para.68 and p.111, para.155.

³⁷¹ Amended DCC, p.130, footnote 613.

³⁷² Video clip, CIV-OTP-0002-1057 at 00:02:50-00:03:13; Transcript of video, CIV-OTP-0007-0195 at 0197, l.70-73.

³⁷³ CIV-OTP-0015-0482, 01:05-01:16; CIV-OTP-0019-0204 at 0205, l.9-10.

the [REDACTED], the Police chief of Yopougon reported that exactions were being committed at roadblocks and stated: [REDACTED]. »³⁷⁴

134. Serge Koffi, one of the leaders of the *Galaxie Patriotique* who received money from GBAGBO's government,³⁷⁵ made a public speech after mid-February 2011, saying: « *Il n'y a pas de bon dedans [la population d'Abobo]. Il faut frapper dans le tas et puis Dieu sauve les innocents* ». ³⁷⁶ Furthermore, as the evidence shows, pro-Gbagbo youth at roadblocks not only had their bare hands but also bladed weapons, while towards the end of the crisis, some had firearms.³⁷⁷

135. The Defence argues that the Prosecution only relies on documents from the years 2004 and 2007 to source the fact that GBAGBO secured the loyalty of the leaders of the *Galaxie Patriotique* by providing them with money. ³⁷⁸ The Prosecution invites the Chamber to review the receipts dated from the post-electoral crisis for each of the leaders: Serge KOFFI, Youssouf FOFANA, Moussa Zégouen TOURE and Eugène DJUE.³⁷⁹ As to BLÉ GOUDÉ, the Prosecution recalls that GBAGBO made him his "*Ministre de la jeunesse, de la formation professionnelle et de l'emploi*",³⁸⁰ and he was therefore part of GBAGBO's government and remunerated as such.

³⁷⁴ CIV-OTP-0046-0029 at 0030.

³⁷⁵ Amended DCC, p.135, para.187.

³⁷⁶ CIV-OTP-0043-0269, at 00:50:30- 00:50:47; Transcript CIV-OTP-0047-0611 at 0633, 1.820-823; See also his media interview from the same day where he says: "*Nous appelons donc, à travers nos tournées, le peuple ivoirien à se lever, à se mobiliser, à rester debout autour des intérêts de la CÔTE D'IVOIRE, afin qu'on utilise l'arme la plus fatale pour circonscrire cette guérilla urbaine qui s'est implantée dans nos quartiers, dans certains quartiers d'ABIDJAN, qui est de se soulever et d'aller déloger, d'aller démasquer ces anarco-tueurs, ces anarco-putschistes pour que notre pays retrouve enfin la paix et se remette sur le chemin du développement*", CIV-OTP-0043-0269, at 00:50:51 to 00:51:21, Transcript CIV-OTP-0047-0611 at 0633, 1.825-830.

³⁷⁷ Amended DCC, para.155.

³⁷⁸ Defence observations, p.309, para.1173.

³⁷⁹ Amended DCC, para.187, footnotes 636-640.

³⁸⁰ Amended DCC, para.187.

Conclusion

136. The Prosecution submits that the evidence in support of its Amended Document Containing the Charges establishes substantial grounds to believe that Laurent Gbagbo is criminally responsible for each of the crimes charged. Consequently, the Prosecution requests the Pre-Trial Chamber to confirm the charges under each mode of responsibility as set out in the Amended Document Containing the Charges and to commit Mr Gbagbo to a Trial Chamber for trial on these charges.



Fatou Bensouda, Prosecutor

Dated this 1st day of May 2014

At The Hague, The Netherlands