

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/11-01/15  
Date: 28 September 2018

**TRIAL CHAMBER I**

**Before:** Judge Cuno Tarfusser, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

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

**Public Document**

**Public redacted version of the “Response to Defence Submissions on the specific factual issues for which the evidence presented could be insufficient to reasonably support a conviction (ICC-02/11-01/15-1198-Conf and ICC-02/11-01/15-1199)”, 10 September 2018, ICC-02/11-01/15-1206-Conf**

**Source:** Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric Macdonald

**Counsel for Mr Laurent Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Counsel for Mr Blé Goudé**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'Dry

**Legal Representatives of the Victims**

Ms Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda  
Mr Enrique Carnero Rojo  
Ms Ludovica Vetrucchio  
Mr Alexis Larivière

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## TABLE OF CONTENTS

<b>I. Introduction .....</b>	<b>4</b>
<b>II. Confidentiality .....</b>	<b>7</b>
<b>III. Background .....</b>	<b>7</b>
<b>IV. Submissions .....</b>	<b>9</b>
<b>A. Preliminary issues .....</b>	<b>9</b>
<b>B. Contextual elements of crimes against humanity .....</b>	<b>10</b>
<b>C. Applicable standard and scope of evidence to be considered.....</b>	<b>14</b>
C.1. Uncorroborated and/or inconsistent evidence .....	22
C.2. Indirect evidence (hearsay) and opinion evidence .....	25
C.3. Anonymous evidence.....	27
C.4. Documentary evidence .....	28
C.5. Circumstantial evidence.....	30
C.6. Victims' application forms.....	31
<b>D. Erroneous evidentiary approach adopted by the Defence .....</b>	<b>34</b>
<b>E. Incidents .....</b>	<b>39</b>
E.1. RTI March (16-19 December 2010).....	39
E.2. Abobo incidents (3 and 17 March 2011).....	52
a. Women's demonstration (3 March 2011) .....	55
b. Abobo market shelling (17 March 2011).....	64
E.3. Yopougon incidents (25-28 February 2011).....	74
E.4. Yopougon incidents (12 April 2011).....	88
<b>V. Conclusion.....</b>	<b>97</b>

## I. Introduction

1. The Legal Representative recalls the right of victims to know the truth about what happened to them and to have justice for the crimes they have suffered and they continue to suffer from.

2. The victims contribute to the proceedings by agreeing to share and explain their sufferings, as well as the multiple consequences of the crimes on their lives, their families and their communities. They participate in the trial with the hope that justice one day will be rendered by an impartial Court of law. However, the last developments in the case have caused serious concerns to them.

3. Victims are concerned by the delay in the proceedings caused by the decision of the Chamber to entertain Defence Submissions on the possibility that the evidence presented so far may not be sufficient to pronounce a conviction. More fundamentally, they expressed to the Legal Representative their disappointment because they consider that the evidence presented by the Prosecution clearly shows that they were targeted because of their nationality, ethnicity, religion or political (real or perceived) affiliation and that the Accused put in place a plan to persecute them. Victims indicated that the evidence presented has to be read in the broad context of the political situation prevailing in Côte d'Ivoire from 2002. Indeed, they consider that the events of the post-electoral crisis of 2010-2011 are directly linked to the events of 2002 and are actually the culminating point of the gradual deterioration of the social and political atmosphere in Côte d'Ivoire that began with the death of Félix Houphouët-Boigny and finds its origins in the concept of *Ivoirité*.<sup>1</sup>

---

<sup>1</sup> The Legal Representative recalls her opening statement in this regard. See T-10-ENG-ET, 29 January 2016, p. 49, lines 7-18. See also, *idem*, p. 45, line 18 to p. 49, line 9.

4. The Legal Representative, consequently, submits that the evidence has to be considered by the Chamber in the context of the cultural and historical background specific to Côte d'Ivoire.

5. In this regard, the Legal Representative posits that the standard on the basis of which the Chamber should evaluate the Defence Submissions should be whether the case of the Prosecution has broken down or whether there is sufficient evidence *prima facie* upon which a reasonable Trial Chamber could convict the Accused.

6. Following this approach and considering that, in accordance with the Decision on the submission and admission of evidence, the evaluation of the probative value of the evidence is postponed until deliberation, the Legal Representative understands that the Chamber will not analyse in detail at the current stage of the proceedings all the evidence submitted during the trial. Instead, it will only conduct a review *prima facie* of the evidence contested by the Defence in its Submissions and the evidence referred to by the Prosecution and the Legal Representative in their responses thereto.

7. Applying this standard, the Legal Representative submits that the evidence presented by the Prosecution and the Legal Representative is not riddled with substantive flaws or other obvious special circumstances that would otherwise significantly affect the case against the Accused. Moreover, the submitted incriminatory evidence is not so manifestly or obviously incredible or unreliable that no Trial Chamber could accept its truth. On the contrary, the evidence submitted in relation to all charges and to the Accused's responsibility for all alleged crimes is multi-layered, direct and voluminous. Consequently, pursuant to article 67(1)(e) of the Rome Statute (the "Statute"), both Accused must be called on to answer all counts confirmed against them.

8. Indeed, the evidence available, taken at its best, discloses the commission of the crimes charged and points towards the existence of a common purpose to commit crimes under article 7 of the Statute. The evidence, taken at its face value, is also sufficient to show the existence of an inner circle of persons, including the Accused, with a common and well-coordinated plan to persecute members of the civilian population on the basis of their nationality, ethnicity, religion or (real or perceived) political affiliation.

9. In particular, and contrary to the Defence's contentions, it is the existence of the "attack directed against the civilian population" *itself* that must be proved, and not all the prohibited acts forming part of the attack against the civilian population. In this regard, the 34 prohibited acts listed in the Trial Brief are described with sufficient detail to prove the existence of the "*course of conduct involving the multiple commission of acts [...] against any civilian population*" referred to in article 7(2)(a) of the Statute. For each of the listed incidents, the Prosecution provides evidence of the authors of the crimes, the civilian character of the victims, and/or of their nationality, religion, ethnicity and/or political affiliation.

10. The evidence submitted so far also shows the manner in which Mr Gbagbo and Mr Blé Goudé cooperated and exercised their respective influence over other persons and points towards an intention to commit crimes within the jurisdiction of the Court or, at the very least, indicates a sufficient awareness on the part of the Accused that such crimes would be committed through their aiding, abetting or otherwise assisting in their commission.

11. The Legal Representative contests the Defence's assertions challenging the evidence submitted by the Prosecution and the Legal Representative on the grounds that it (i) lacks corroboration and/or consistency, (ii) amounts to indirect evidence (hearsay) or opinion evidence, (iii) is provided from anonymous sources, and/or is merely (iv) documentary or (v) circumstantial. Indeed, the jurisprudence of different

Trial Chambers shows that all said types of evidence may be relied upon, even in decisions at the end of a trial pursuant to article 74(2) of the Statute.

12. In addressing *infra* the incidents on which the Prosecution relies to support the liability of the Accused, the Legal Representative shows that, contrary to the Defence's assertions, the trial should proceed because there is sufficient evidence upon which a reasonable Chamber could convict the Accused.

13. In conclusion, the Legal Representative submits that the Trial Chamber should dismiss the Defence Submissions and continue the trial proceedings expeditiously.

## II. Confidentiality

14. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially following the classification chosen by the Defence and because it makes reference to submissions bearing the same level of classification. A public redacted version will be filed in due course.

## III. Background

15. On 4 June 2018, the Chamber issued the "Second Order on the further conduct of the proceedings" (the "Second Order"),<sup>2</sup> in which the Defence was authorised to make "*concise and focused submissions on the specific factual issues for which, in their view, the evidence presented is insufficient to sustain a conviction and in respect of which, accordingly, a full or partial judgment of acquittal would be warranted*", and invited to "*explain why there is insufficient evidence which could reasonably support a conviction*".<sup>3</sup>

---

<sup>2</sup> See the "Second Order on the further conduct of the proceedings" (Trial Chamber I), No. ICC-02/11-01/15-1174, 4 June 2018 (the "Second Order").

<sup>3</sup> *Idem*, para. 10.

16. On 13 June 2018, the Single Judge rejected a Prosecution's motion seeking clarification on the standard applicable of a "no case to answer" motion and stated, *inter alia*, that the Second Order is aimed at providing the Defence with an opportunity to illustrate in detail their contention that the evidence presented to date in the trial is not suitable to sustain a conviction (the "Decision on the applicable standard").<sup>4</sup>

17. On the same day, the Legal Representative expressed her regret that she was not afforded the opportunity to provide the concerns of the victims on the matter, as the Single Judge's decision was rendered before the expiration of the applicable deadline to respond to the Prosecution's motion.<sup>5</sup>

18. On 14 June 2018, the Prosecution filed the final corrected version of the trial brief (the "Trial Brief").<sup>6</sup>

19. On 23 July 2018, both Defence teams filed their submissions (respectively the "Gbagbo Submissions", the "Blé Goudé Submissions", and collectively the "Defence Submissions").<sup>7</sup>

---

<sup>4</sup> See the "Decision on 'Urgent Prosecution's motion seeking clarification on the standard of a 'no case to answer' motion'" (Single Judge), No. ICC-02/11-01/15-1182, 13 June 2016 (the "Decision on the applicable standard").

<sup>5</sup> See the email from the Principal Counsel sent on 13 June 2018 at 14:51.

<sup>6</sup> See the "Third Corrected version to Annex 1 of Prosecution's Mid-Trial Brief, 8 June 2018, ICC-02/11-01/15-1136-Conf-Anx1-Corr2", No. ICC-02/11-01/15-1136-Red-Anx1, 28 September 2018 (the "Trial Brief").

<sup>7</sup> See the "Blé Goudé Defence No Case to Answer Motion", No. ICC-02/11-01/15-1198-Red, 28 September 2018 (the "Blé Goudé Submissions"); and the "Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquiescement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée", No. ICC-02/11-01/15-1199, 23 July 2018, with confidential annexes 1, 2, 3, 4, 5, 6 and 7 (the "Gbagbo Submissions").



#### IV. Submissions

20. In accordance with her role to represent the views and concerns of the victims participating at trial, the Legal Representative will address *infra* the issues having a direct impact on the interests of her clients, leaving to the Prosecution the full analysis of the Defence Submissions. However, this approach does not entail that she agrees with any of the said Submissions, which she considers should be dismissed as totally unfounded.

21. The Legal Representative addresses, first, some preliminary issues, then various aspects of the applicable law, before discussing, on a contextual and incidental basis, some of the evidence referred to in the Defence Submissions directly linked to the interests of the victims she represents.

##### A. Preliminary issues

22. As a preliminary issue, the Legal Representative notes that the Defence of Mr Gbagbo filed its Submissions after the time limit.<sup>8</sup> Even if the delay might be considered minimal, the Legal Representative recalls that the Defence of Mr Gbagbo had already requested an extension of time at the last minute,<sup>9</sup> which was granted by the Chamber.<sup>10</sup> In these circumstances, the Legal Representative considers that the submission should be rejected *in limine* since the Defence did not provide any explanation for its non-compliance with the applicable rules of the Court.

23. The Legal Representative also submits that the Gbagbo Submissions contravene to some extent the Second Order<sup>11</sup> because they cannot be considered

---

<sup>8</sup> Mr Gbagbo's Submissions were indeed filed on 23 July 2018 at 16:04:45. See the email notifying the parties of the filing received from the Court Management Section on 23 July 2018 at 16:53.

<sup>9</sup> See the email received from Mr Gbagbo's Lead Counsel on 18 July 2018 at 15:25.

<sup>10</sup> See the email received from the Presiding Judge on 18 July 2018 at 16:22.

<sup>11</sup> See the Second Order, *supra* note 2, para. 11.

concise and focused, as they contain a significant number of arguments not properly referenced<sup>12</sup> and repetition of the same arguments.<sup>13</sup>

24. The Legal Representative also takes issue with the language and tone used by the Defence of Mr Gbagbo in some parts of the Submissions, which seem misplaced and disrespectful of the victims participating in these proceedings.<sup>14</sup> In this regard, the Legal Representative recalls the obligation of counsel under the Code of Professional Conduct to exercise their duties honourably and in a way that is respectful and courteous in their relations with the different actors in the proceedings and namely with the victims.<sup>15</sup>

## **B. Contextual elements of crimes against humanity**

25. The Defence of Mr Gbagbo argues that each and all the prohibited acts forming part of the attack against the civilian population under article 7(1) of the Statute must be proved to the required standard, and not only the five main (“*principaux*”) ones,<sup>16</sup> namely the incidents of 16-19 December 2010, 25-28 February 2011, 3 March 2011, 17 March 2011, and 12 April 2011.

26. The Legal Representative disagrees with this contention and submits that it is the existence of the “attack directed against the civilian population” *itself* that must be proved. Indeed, said “attack” is listed in the Elements of Crimes for the crimes

<sup>12</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 10, 21, 27, 29; Annex 3, paras. 8-9, 37, 43, 65, 68, 72, 79, 81, 179, 200-201, 222, 368, 372, 388, 426, 431, 450-451, 526, 532, 545, 550, 602, 614, 630, 638; Annex 5, paras. 3, 9, 13, 16-17, 23, 25-26, 36-37, 41-45, 50, 58, 71-72, 77, 82, 119-123, 128-131, 139-140, 149, 156, 158, 168, 171, 174-175, 195, 212-213, 221, 226, 285-286, 291, 310-311, 354-358, 375, 377, 392-393, 401, 427-428, 446, 458, 474, 541, 550, 622.

<sup>13</sup> See, e.g., the same arguments repeated on the credibility of P-0435 (*Idem*, Annex 2, para. 27; Annex 3, paras. 70, 117, 143, 599; Annex 5, paras. 61, 77, 97, 219, 261), and on the alleged nature of the crimes committed on 12 April 2011 (*Ibid.*, Annex 3, paras. 526-529, 532, 534, 548-550, 553, 559, 571, 597, 611).

<sup>14</sup> The Legal Representative refers as an example to the use of the term “*les violées*” to describe the women who suffered rape during the events. See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 7, 236, 252 (title), 269 (title). See also the Gbagbo Submissions, *supra* note 7, Annex 3, paras 271, 277 and 282.

<sup>15</sup> See the Code of Professional Conduct for counsel, articles 5, 7(1).

<sup>16</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 644 and 647.

against humanity of murder, rape, other inhumane acts and persecution confirmed against the Accused.<sup>17</sup>

27. For its contention that each incident underpinning said “attack” must be proved to the required standard, the Defence mistakenly relies on the Appeals Chamber’s finding that there is no difference between the so-called “main” incidents and the other incidents that have been pleaded to prove the existence of a widespread or systematic attack against the civilian population.

28. Although the Appeals Chamber indeed found that “[t]he Prosecutor did not present any information or any other factual allegations that would provide a basis for making such a distinction [in nature and purpose between the four Charged Incidents and the other 41 Incidents], or serve to explain the alleged link between the 41 Incidents and the four Charged Incidents”,<sup>18</sup> it did not state that each of said incidents should be proved to the required standard.

29. In this regard, the Appeals Chamber noted that “[t]he Prosecutor does not dispute that the facts and circumstances underpinning the contextual elements of crimes against humanity must be proven to the required standard”.<sup>19</sup> However, the details of how to reach the required standard for the contextual elements of crimes against humanity were not addressed by the Appeals Chamber.

30. In fact, the Appeals Chamber expressly clarified that “the question of how many of the incidents pleaded by the Prosecutor would suffice to prove an ‘attack’ in the present

---

<sup>17</sup> See the Elements of Crimes, article 7(1)(a), elements 2-3; article 7(1)(g)-1, elements 3-4; article 7(1)(k), elements 4-5; and article 7(1)(h), elements 5-6.

<sup>18</sup> See the “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’” (Appeals Chamber), No. ICC-02/11-01/11-572 OA5, 16 December 2013, para. 46, quoted in the Gbagbo Submissions, *supra* note 7, Annex 4, para. 643.

<sup>19</sup> See the “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”, *supra* note 18, para. 38.

case is a matter for the Pre-Trial Chamber to determine”,<sup>20</sup> and that “any determination by the Appeals Chamber of the merits of this issue [the legal requirements necessary to establish an ‘attack’ within the meaning of article 7 of the Statute] would be made in the abstract and would be premature [...]”.<sup>21</sup>

31. As a result, at this stage of the proceedings, the Prosecution properly argues that “[t]he multiple prohibited acts committed during the incidents charged against GBAGBO and BLÉ GOUDÉ, or parts thereof, are sufficient in and of themselves to constitute a course of conduct involving the multiple commission of crimes against a civilian population within the meaning of article 7(2)(a) of the Statute”.<sup>22</sup>

32. Moreover, contrary to the Defence’s arguments,<sup>23</sup> the Legal Representative submits that the Prosecution’s approach is consistent with Judge Henderson’s opinion that “[i]f, as in this case, the Prosecution attempts to prove the existence of an attack against a civilian population on the basis of a limited number of small-scale incidents that took place at different locations over a relatively extended period of time, it is imperative that the evidence for each incident meets the requisite standard of proof”.<sup>24</sup>

33. Contrary to the Defence’s contention,<sup>25</sup> the Trial Brief can only be read consistently with the legal approach explained *supra*. The 34 prohibited acts listed therein are described with sufficient detail to prove the existence of the “course of conduct involving the multiple commission of acts [...] against any civilian population” referred to in article 7(2)(a) of the Statute. For each of the listed incidents, the

---

<sup>20</sup> *Idem*, para. 47.

<sup>21</sup> *Ibid.*, para. 54.

<sup>22</sup> See the Trial Brief, *supra* note 6, para. 152 (emphasis added).

<sup>23</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 647.

<sup>24</sup> See the “Dissenting Opinion of Judge Geoffrey Henderson”, No. ICC-02/11-01/15-1188-Anx, 19 June 2018, para. 7 (emphasis added).

<sup>25</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 649-650.

Prosecution provides evidence of the authors of the crimes,<sup>26</sup> the civilian character of the victims, and/or of their nationality, religion, ethnicity and/or political affiliation.<sup>27</sup>

34. The Defence of Mr Gbagbo further argues that in order to prove the existence of an attack directed against the civilian population, all the incidents pleaded in this regard must be linked by the same organisation and the same *modus operandi* (*“Pour parvenir à une telle démonstration, [...] tous les incidents seraient liés du fait d’une même organisation à l’œuvre et d’un même modus operandi”*).<sup>28</sup>

35. The Legal Representative also disagrees with this contention and submits that article 7(2)(a) of the Statute only requires that the *“multiple commission of acts”* takes place *“in furtherance of a State or organizational policy to commit such attack”*. In other words, acts committed in a different manner by different organisations may constitute an *“attack”* provided that they are committed pursuant to the same *“policy”*.

36. As elaborated *infra*, the evidence submitted so far, taken at its highest, shows that members of different organisations perpetrated crimes in different manners (spontaneously, following orders, pursuant to planned operations, etc.) and by different means (shooting, shelling, etc.), but all of them did so pursuant to a shared policy, namely to attack civilians considered to support Mr Alassane Ouattara and targeted because of their nationality, religion, ethnicity and/or political affiliation.

37. Accordingly, the Legal Representative contends that the parts of the Gbagbo Submissions dealing with the legal requirements to prove the contextual elements of the crimes against humanity should be dismissed.<sup>29</sup>

---

<sup>26</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 765-766.

<sup>27</sup> See the Trial Brief, *supra* note 6, para. 155.

<sup>28</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 644.

<sup>29</sup> *Idem*, paras. 638-650.

### C. Applicable standard and scope of evidence to be considered

38. The Chamber invited the Defence to explain in their Submissions “*why there is insufficient evidence which could reasonably support a conviction*”,<sup>30</sup> and the Single Judge did not deem it “necessary” to define the standard applicable to the eventual contention by the Defence that the “*evidence is not suitable to sustain a conviction*”.<sup>31</sup>

39. The Legal Representative notes that the Single Judge clarified (i) that the reference in the Second Order to the decision on ‘no case to answer’ motions issued by Trial Chamber V(a) in the *Ruto and Sang* case does not mean that the Chamber will follow the steps taken in said case;<sup>32</sup> and (ii) that the standards enunciated in said ruling are the only precedent in the jurisprudence of the Court to date.<sup>33</sup> On this basis, the Legal Representative understands that the Defence Submissions should assist the Chamber on its evaluation on whether to continue the trial with the presentation of evidence by the Defence.

40. In these circumstances, the Legal Representative posits that the standard on the basis of which the Chamber should evaluate the Defence Submissions should be whether the case of the Prosecution has broken down or whether there is sufficient evidence upon which a reasonable Trial Chamber could convict the Accused.<sup>34</sup>

41. The Legal Representative’s understanding of the standard applicable at this phase of the proceedings is premised on the fact that the higher standard (“beyond reasonable doubt”) is applicable only at the end of the trial, once all evidence by both

---

<sup>30</sup> See the Second Order, *supra* note 2, para. 10.

<sup>31</sup> See the Decision on the applicable standard, *supra* note 4, paras. 12-13.

<sup>32</sup> *Idem*, para. 11.

<sup>33</sup> *Ibid.*, para. 13.

<sup>34</sup> See the “Dissenting Opinion of Judge Herrera Carbuccia”, No. ICC-01/09-01/11-2027-AnxI, 5 April 2016, para. 2.

parties, and eventually by the participants, has been heard, pursuant to articles 66(3) and 74(2) of the Statute.<sup>35</sup>

42. Moreover, since in accordance with article 21(2) of the Statute, the Chamber is not bound by the decisions issued by other Chambers, not even by those adopted by the Appeals Chamber *in other cases*, it enjoys discretion when ruling on the standard applicable to the Defence Submissions.

43. In exercising said discretion, the Chamber may seek guidance from relevant decisions adopted not only in the mentioned *Ruto and Sang* case, but also in the *Ntaganda* case. In said cases, Trial Chambers V(a) and VI, as well as the Appeals Chamber, issued rulings regarding so-called ‘no case to answer’ motions. Said rulings provide a contrasted interpretation of the legal instruments of the Court that are useful, in the Legal Representative’s contention, to determine the standard applicable to the Defence Submissions.<sup>36</sup>

44. In the *Ntaganda* case, the Appeals Chamber found that “[a] Trial Chamber is expected to exercise its discretion [on ‘no case to answer’ procedures] bearing in mind the specific circumstances of the case before it”.<sup>37</sup> In said case, the ‘no case to answer’ motion was conceived as a procedural avenue where “the presentation of evidence by the Prosecution had been severely affected by the special circumstances of [the] case”.<sup>38</sup>

---

<sup>35</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, para. 764.

<sup>36</sup> See the “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)” (Trial Chamber V(a)), No. ICC-01/09-01/11-1334, 3 June 2014; the “Decision on Defence request for leave to file a ‘no case to answer’ motion” (Trial Chamber VI), No. ICC-01/04-02/06-1931, 1 June 2017; and the “Judgment on the appeal of Mr Bosco Ntaganda against the ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’” (Appeals Chamber), No. ICC-01/04-02/06-2026 OA6, 5 September 2017.

<sup>37</sup> See the “Judgment on the appeal of Mr Bosco Ntaganda against the ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’”, *supra* note 36, para. 54.

<sup>38</sup> See the “Decision on Defence request for leave to file a ‘no case to answer’ motion”, *supra* note 36, para. 28.

45. Evidently, the circumstances of the present case are not the same as those identified for a ‘no case to answer’ procedure by the Appeals Chamber in the *Ntaganda* case, where it was found that in the *Ruto and Sang* case “critical Prosecution witnesses failed to give evidence with respect to material aspects included in their prior recorded testimonies and that the witnesses’ failure to give evidence [had] been materially influence[d] by improper interference”.<sup>39</sup> This difference notwithstanding, as in the *Ntaganda* case, the Prosecution and the Legal Representative have concluded presenting their evidence in this case<sup>40</sup> and the Chamber considers that the trial must not take longer than is needed.<sup>41</sup>

46. In turn, the Chamber has literally adopted the purpose enunciated for the ‘no case to answer’ proceedings in the *Ruto and Sang* case,<sup>42</sup> namely “[t]o contribute to a shorter and more focused trial, thereby providing a means to achieve greater judicial economy and efficiency in a manner which promotes the proper administration of justice and the rights of an accused”.<sup>43</sup>

47. Since both the circumstances and the purpose of the current procedure are sufficiently close to those behind the ‘no case to answer’ motions discussed in the *Ruto and Sang* and the *Ntaganda* cases, the Legal Representative considers said jurisprudence to be pertinent to determine the standard applicable to rule on the Defence Submissions in this case.

48. Said jurisprudence identifies the applicable standard as “whether or not, on the basis of a prima facie assessment of the evidence, there is a case, in the sense of whether there

---

<sup>39</sup> See the “Judgment on the appeal of Mr Bosco Ntaganda against the ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’”, *supra* note 36, footnote 129.

<sup>40</sup> See the transcript of the hearing held on 19 January 2018, No. ICC-02/11-01/15-T-220-Red-ENG-CT, p. 91, lines 3-6; and the Second Order, *supra* note 2, p. 7.

<sup>41</sup> Cf. the Second Order, *supra* note 2, para. 9 with the “Decision on Defence request for leave to file a ‘no case to answer’ motion”, *supra* note 36, para. 26.

<sup>42</sup> See the “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, *supra* note 36, para. 16.

<sup>43</sup> See the Second Order, *supra* note 2, para. 9.



is sufficient evidence introduced on which, if accepted, a reasonable Trial Chamber could convict the accused".<sup>44</sup> In other words, "whether there is evidence on which a reasonable Trial Chamber could convict"<sup>45</sup> or "whether the evidence presented, when taken at its highest, would require any partial acquittal".<sup>46</sup>

49. The Legal Representative emphasizes that the Chamber's determination pursuant to the standard above is theoretical in nature ("if accepted"), and based on a superficial assessment of the evidence submitted at trial up until now ("prima facie" or "on the first appearance"), as the Chamber cannot establish at this stage of the proceedings whether it "could" (with certainty) convict the accused on the basis of the evidence presented so far.

50. As stated by Judge Herrera Carbuccion in the *Ruto and Sang* case, before the final verdict on the guilt of the accused at the end of a case, the Chamber may only determine whether, on the basis of objective criteria, a Trial Chamber could draw a "sound" and "not unfounded" conclusion and convict the accused, not that a conviction would be the only reasonable conclusion of the Chamber.<sup>47</sup> Any decision on the Defence Submissions would therefore have to be proved (or disproved)<sup>48</sup> at the end of the case, and on the basis of a decision pursuant to article 74 of the Statute.<sup>49</sup>

51. The abovementioned standard was elaborated relying on the jurisprudence on 'no case to answer' motions issued by international criminal tribunals, which have

---

<sup>44</sup> See the "Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions)", *supra* note 36, para. 23 (emphasis in original).

<sup>45</sup> *Idem*, para. 32 (emphasis in original).

<sup>46</sup> See the "Decision on Defence request for leave to file a 'no case to answer' motion", *supra* note 36, para. 28.

<sup>47</sup> See the "Dissenting Opinion of Judge Herrera Carbuccion", *supra* note 34, para. 17.

<sup>48</sup> See ICTR, *Prosecutor v. Muvunyi*, "Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal Pursuant to Rule 98bis", Case No. ICTR-2000-55A-T, 13 October 2005, para. 40; SCSL, *Prosecutor v. Norman et al*, "Decision on Motions for Judgment of Acquittal pursuant to Rule 98", Case No. SCSL-04-14, 21 October 2005, para. 45.

<sup>49</sup> See the "Dissenting Opinion of Judge Herrera Carbuccion", *supra* note 34, para. 17.

stated that the Chamber is “*required to assume that the prosecution’s evidence [is] entitled to credence unless incapable of belief*” on any reasonable view and cannot “*pick and choose among parts of that evidence*” in reaching its conclusion.<sup>50</sup> The Prosecution’s case must be assessed “*as a whole, looking to the totality of the evidence*”.<sup>51</sup>

52. In this regard, the Appeals Chamber has clarified that the jurisprudence of international criminal tribunals is not binding on the Court pursuant to article 21 of the Statute.<sup>52</sup> However, the Appeals Chamber has not limited on this basis the exercise of the Chamber’s discretion under article 64(6)(f) of the Statute and rule 134(3) of the Rules of Procedure and Evidence (the “Rules”) to conduct ‘no case to answer’ procedures.<sup>53</sup> Accordingly, the standard identified by Trial Chambers V(a) and VI on the basis of the jurisprudence of *ad hoc* tribunals may be applied by the Chamber to rule on the Defence Submissions.

53. Moreover, the standard explained above is consistent with the Chamber’s Decision on the submission and admission of evidence,<sup>54</sup> whereby it postponed the assessment of the admissibility and the relevance or probative value of the evidence to the phase of deliberating the judgement pursuant to article 74(2) of the Statute.<sup>55</sup>

---

<sup>50</sup> See ICTY, *Prosecutor v. Jelisić*, Appeals Judgement, Case No. IT-95-10-A, 5 July 2001 para. 55, referred to in “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, *supra* note 36, para. 24.

<sup>51</sup> See the “Decision on Tharcisse Muvunyi’s Motion for Judgement of Acquittal Pursuant To Rule 98Bis”, *supra* note 48, para. 40. See also the “Decision on Motions for Judgment of Acquittal pursuant to Rule 98”, *supra* note 48, para. 45.

<sup>52</sup> See the “Decision on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Pre-Trial Chamber II of 23 January 2012 entitled ‘Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute’” (Appeals Chamber), No. ICC-01/09-01/11-414 OA3 OA4, 24 May 2012, para. 31; and the “Decision on the appeal of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled ‘Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute’” (Appeals Chamber), No. ICC-01/09-02/11-425 OA4, 24 May 2012, para. 37.

<sup>53</sup> See the “Judgment on the appeal of Mr Bosco Ntaganda against the ‘Decision on Defence request for leave to file a ‘no case to answer’ motion’”, *supra* note 36, paras. 44-45.

<sup>54</sup> See the “Decision on the submission and admission of evidence” (Trial Chamber I), No. ICC-02/11-01/15-405, 29 January 2016.

<sup>55</sup> *Idem*, paras. 12 and 17.

54. In line with this approach, Trial Chamber V(a) found that:

*“The Chamber recalls that the objective of the ‘no case to answer’ assessment is to ascertain whether the Prosecution has lead [sic] sufficient evidence to necessitate a defence case, failing which the accused is to be acquitted on one or more of the counts [...] The determination of a ‘no case to answer’ motion does not entail an evaluation of the strength of the evidence presented, especially as regards exhaustive questions of credibility or reliability. Such matters - which go to the strength of evidence rather than its existence - are to be weighed in the final deliberations in light of the entirety of the evidence presented [...] The Chamber will not consider questions of reliability or credibility relating to the evidence, save where the evidence in question is incapable of belief by any reasonable Trial Chamber [...] Such motions [of ‘no case to answer’] should not be pursued on a merely speculative basis or as a means of raising credibility challenges that are to be considered at the time of final deliberations. Nor should they be filed merely to shape the Chamber view as to the strength of the Prosecution case thus far presented”*.<sup>56</sup>

55. In short, “the standard [is] one of ‘existence’ rather than ‘weight’” of the evidence, taking the latter “at its highest”.<sup>57</sup> Therefore, what the Chamber must deal with at this juncture of the proceedings is the effect of the evidence *if it were to be believed, rather than whether it is believable*. Accordingly, where the Defence argues the lack of credibility or reliability of the evidence, the Legal Representative will address only the fundamental aspects of her disagreement with the Submissions to determine whether “the evidence in question is incapable of belief by any reasonable Trial Chamber”.<sup>58</sup>

<sup>56</sup> See the “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, *supra* note 36, paras. 23, 24, 32, 39 (emphasis added).

<sup>57</sup> See the “Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on ‘No Case to Answer’ Motions)”, *supra* note 36, para 24; and the “Dissenting Opinion of Judge Herrera Carbuca *supra* note 34, para. 18.

<sup>58</sup> See *supra* para. 54.

56. This approach is consistent with the position adopted by Judge Herrera Carbuccion in the *Ruto and Sang* case:

*“I do not, at this stage, analyse the totality of the evidence that could be taken into consideration in an eventual decision pursuant to Article 74 of the Rome Statute (‘Statute’). Neither do I attempt, at this stage, to come to a determination of the truth nor a decision based on a ‘beyond reasonable doubt’ standard. In essence, a ‘no case to answer’ motion should be expeditious and superficial (prima facie) in order not to preclude the judges from continuing with the trial (or be disqualified) if the Chamber decides to dismiss the ‘no case to answer’ motion and carry on with the trial [...] the Chamber determined that it should only exceptionally be obliged to consider matters of credibility and reliability: namely when the Prosecution’s case has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through examination as to the reliability and credibility of witnesses that the Prosecution is left without a case”.*<sup>59</sup>

57. Following the approach explained *supra* and pursuant to the Decision on the submission and admission of evidence,<sup>60</sup> the Legal Representative understands that the Chamber will not analyse in detail at the current stage of the proceedings all the evidence submitted during the trial, but will only review the evidence contested by the Defence in its Submissions and the evidence referred to by the Prosecution and the Legal Representative in their responses thereto.<sup>61</sup> Such review must, however, be conducted taking into consideration the totality of the evidence submitted so far.<sup>62</sup>

58. Lastly, the Legal Representative submits that in order to determine whether the “*evidence is not suitable to sustain a conviction*”,<sup>63</sup> the legal and factual components

---

<sup>59</sup> See the “Dissenting Opinion of Judge Herrera Carbuccion”, *supra* note 34, paras. 3 and 20 (emphasis added).

<sup>60</sup> See *supra* para 53.

<sup>61</sup> Cf. the Blé Goudé Submissions, *supra* note 7, para. 6.

<sup>62</sup> See *supra* para. 51.

<sup>63</sup> See the Decision on the applicable standard, *supra* note 4, paras. 12-13.

of the alleged crimes and the individual criminal responsibility of the Accused must be considered. As found by Trial Chamber V(a), and clarified by Judge Herrera Carbuccion in the *Ruto and Sang* case, said analysis concerns each count separately, as well as any of the confirmed modes of liability, as opposed to each individual incident and each mode of liability.<sup>64</sup>

59. Applying this standard, the Legal Representative submits *infra* that the evidence presented so far at trial is not riddled with substantive flaws or other obvious special circumstances that would otherwise significantly affect the case against the Accused. Moreover, the submitted incriminatory evidence is not so manifestly or obviously incredible or unreliable that no Trial Chamber could accept its truth. On the contrary, the evidence submitted in relation to all charges and to the Accused's responsibility for all alleged crimes is multi-layered, direct and voluminous. Consequently, pursuant to article 67(1)(e) of the Statute, both Accused must be called to answer all counts confirmed against them.<sup>65</sup>

60. The Legal Representative contends that the Defence Submissions are inconsistent with the applicable standard defined *supra* because mainly address the credibility and/or reliability (and hence the issue of weight or probative value) of the submitted evidence on grounds that cannot show that the evidence in question is "*incapable of belief*" by any reasonable Trial Chamber or that the Prosecution's case has "*completely broken down*"<sup>66</sup>

61. In particular, the Defence challenges the evidence submitted by the Prosecution and the Legal Representative on the grounds that said evidence (i) lacks corroboration and/or consistency, (ii) amounts to indirect evidence (hearsay) or

---

<sup>64</sup> See the "Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions)", *supra* note 36, paras. 26-30; and the "Dissenting Opinion of Judge Herrera Carbuccion", *supra* note 34, para. 19.

<sup>65</sup> See the "Judgment on the appeal of Mr Bosco Ntaganda against the 'Decision on Defence request for leave to file a 'no case to answer' motion'", *supra* note 36, para. 46.

<sup>66</sup> See *supra* paras. 54 and 56.

opinion evidence, (iii) is provided from anonymous sources, and/or is merely (iv) documentary, or (v) circumstantial. However, the jurisprudence of different Trial Chambers in the *Lubanga*,<sup>67</sup> *Katanga*,<sup>68</sup> *Ngudjolo*,<sup>69</sup> and *Bemba*<sup>70</sup> cases shows that all said types of evidence may be relied upon, even in decisions at the end of a trial pursuant to article 74(2) of the Statute. Moreover, the Defence of Mr Gbagbo challenges in general the genuineness and veracity of the crime-based witnesses who are also victims participating in the proceedings (the “dual status individuals”). Therefore, the Legal Representative will also address this matter *infra*.

### C.1. Uncorroborated and/or inconsistent evidence

62. Throughout its Submissions, the Defence argues that the evidence provided by the Prosecution’s witnesses is “*uncorroborated*”<sup>71</sup> or “*uncorroborated hearsay*”<sup>72</sup> and urges the Trial Chamber to reject said evidence. In particular, the Defence of Mr Gbagbo argues that certain testimonies are the only ones supporting an allegation and thus the Chamber should not rely on them (*testis unus, testis nullus*).<sup>73</sup>

63. At the outset, the Legal Representative submits that the issue of corroboration, being a matter of the weight to be ultimately given to a particular piece of evidence, is only relevant at the end of the presentation of evidence by the Defence rather than

---

<sup>67</sup> See the “Judgment pursuant to Article 74 of the Statute” (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012 (the “*Lubanga* Trial Judgment”); and the “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red A5, 1 December 2014 (the “*Lubanga* Appeal Judgment”).

<sup>68</sup> See the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), No. ICC-01/04-01/07-3436-tENG, 7 March 2014 (the “*Katanga* Trial Judgment”).

<sup>69</sup> See the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), No. ICC-01/04-02/12-3-tENG, 18 December 2012 (the “*Ngudjolo* Trial Judgment”); and the “Judgment on the Prosecutor’s appeal against the decision of Trial Chamber II entitled ‘Judgment pursuant to article 74 of the Statute’” (Appeals Chamber), No. ICC-01/04-02/12-271-Corr A1, 7 April 2015 (the “*Ngudjolo* Appeal Judgment”).

<sup>70</sup> See the “Judgment pursuant to Article 74 of the Statute” (Trial Chamber III), No. ICC-01/05-01/08-3343, 21 March 2016 (the “*Bemba* Trial Judgment”).

<sup>71</sup> See the Blé Goudé Submissions, *supra* note 7, para. 3.

<sup>72</sup> *Idem*, paras. 3, 187, 516, 558, 561.

<sup>73</sup> See the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 11-14.

at this stage of the proceedings.<sup>74</sup> Moreover, she reiterates that the evidence is to be looked in its totality.<sup>75</sup> Accordingly, an isolated piece of evidence in the testimony of a specific witness might not have any (or any significant) effect on the overall reliability of that witness's testimony, or when considered in relation to the totality of the Prosecution evidence.

64. Moreover, on occasion the Defence itself relies on single uncorroborated testimonies to support its contentions.<sup>76</sup>

65. In any event, rule 63(4) of the Rules provides that, without prejudice to article 66(3) of the Statute, *"a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence"*.

66. Various Chambers have given effect to rule 63 in relation to the lack of a requirement for the corroboration of witness testimony. In the *Katanga* and *Bemba* cases, Trial Chambers II and III respectively ruled that *"[t]he extent to which a single piece of evidence suffices to prove a fact at issue is entirely dependent on the issue in question and the strength of the evidence under consideration"*.<sup>77</sup>

67. And the Appeals Chamber found in the *Lubanga* case that

*"[t]here is no strict legal requirement that the video excerpts had to be corroborated by other evidence in order for the Trial Chamber to be able to rely on them. Depending on the circumstances, a single piece of evidence, such as a video image of a person, may suffice to establish a specific act. However, as recognised by the Trial Chamber, this*

---

<sup>74</sup> See *supra* paras. 48-50 and 53-56.

<sup>75</sup> See *supra* para. 57.

<sup>76</sup> See e.g. the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 123-124, 716-722.

<sup>77</sup> See the *Katanga* Trial Judgment, *supra* note 68, para. 110; and the *Bemba* Trial Judgment, *supra* note 70, para. 245. See also the *Lubanga* Trial Judgment, *supra* note 67, para. 110.

*does not mean that any piece of evidence provides a sufficient evidentiary basis for a factual finding”.*<sup>78</sup>

68. Similarly, the Defence argues that certain testimonies are internally inconsistent and thus the Chamber should not rely on them.

69. The jurisprudence of the Court, however, shows that minor inconsistencies in the accounts given by witnesses do not render the whole testimony unreliable and that it is within the discretion of Trial Chambers to consider whether the evidence taken as a whole is reliable and credible.<sup>79</sup>

70. The *ad hoc* Tribunals have also recognized that minor inconsistencies commonly occur in witness testimony, and that these inconsistencies, as well as inconsistencies between said evidence and the witness’ previous statements, do not necessarily render the evidence unreliable.<sup>80</sup>

71. Accordingly, the Legal Representative concludes that all parts of the Defence Submissions based on a piece-meal approach to the evidence (*i.e.* a single piece of incriminatory evidence)<sup>81</sup> or on alleged minor inconsistencies in the evidence<sup>82</sup>

---

<sup>78</sup> See the *Lubanga* Appeal Judgment, *supra* note 67, para. 218 (emphasis added). See also the *Ngudjolo* Appeal Judgment, *supra* note 69, para. 148.

<sup>79</sup> See the *Lubanga* Trial Judgment, *supra* note 67, paras. 102-103; the *Katanga* Trial Judgment, *supra* note 68, para. 83 (paras. 375, 992 and 994 are examples of the Chamber accepting testimonies as credible regardless of their minor inconsistencies); and the *Lubanga* Appeal Judgment, *supra* note 67, para. 23.

<sup>80</sup> See ICTY, *Prosecutor v. Lukić and Lukić*, Appeals Judgement, Case No. IT-98-32/1-A, 4 December 2012, para. 135 ; ICTY, *Prosecutor v. Kupreškić et al.*, Appeals Judgement, Case No. IT-95-16-A, 23 October 2001, para. 31 ; ICTY, *Prosecutor v. Delalić et al.*, Appeals Judgement, Case No. IT-96-21-A, 20 February 2001, para. 498 ; ICTR, *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-A, Appeals Judgement, 9 July 2004, para. 96 ; ICTR, *Prosecutor v. Nchamihigo*, Appeals Judgement, Case No. ICTR-2001-63A, 18 March 2010, para. 201.

<sup>81</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 70, 129-132, 147, 652, 681, 697, 738, 753, 755, 758; the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 248-249, 253; the Gbagbo Submissions, *supra* note 7, Annex 5, para. 253; the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 70-71, 73; and the Blé Goudé Submissions, *supra* note 7, paras. 91, 124, 187, 200, 240, 249, 264, 295, 300, 351, 384, 516, 536, 549, 551, 558, 561, 585, 658.

<sup>82</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 73, 83, 130, 157-159; and the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 8, 10.



should be rejected for not showing that the evidence relied upon is not suitable to sustain a conviction on a *prima facie* basis.

## C.2. Indirect evidence (hearsay) and opinion evidence

72. The Defence argues that the Prosecution relies largely on hearsay evidence and that the Chamber must not rely on such evidence.<sup>83</sup>

73. The Legal Representative submits that this position is, respectfully, misconceived. There is no bar whatsoever in the Statute and other statutory instruments of the Court that would prohibit the admission of hearsay evidence and prevent the Trial Chamber from relying on such evidence. Hearsay evidence is admissible and judges may rely on it *even in their decisions on conviction*.<sup>84</sup>

74. In the *Bemba* case, Trial Chamber III ruled that

*“The Chamber took a cautious approach in assessing evidence originating from hearsay. It did not rule out such evidence ab initio, instead assessing the weight to be accorded to it, taking into account the context and conditions in which such evidence was obtained, and with due consideration of the impossibility of questioning the information source in court”*.<sup>85</sup>

75. In turn, the Appeals Chamber ruled in the *Ngudjolo* case that

*“[t]he fact that evidence is hearsay does not necessarily deprive it of probative value, but does indicate that the weight or probative value afforded to it may be less,*

---

<sup>83</sup> See the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 15-16; and the Blé Goudé Submissions, *supra* note 7, para. 3.

<sup>84</sup> See the *Katanga* Trial Judgment, *supra* note 68, para. 90; and the *Ngudjolo* Trial Judgment, *supra* note 69, para. 56.

<sup>85</sup> See the *Bemba* Trial Judgment, *supra* note 70, para. 238.

*‘although even this will depend upon the infinitely variable circumstances which surround hearsay evidence’*’.<sup>86</sup>

76. As discussed *supra*,<sup>87</sup> the Chamber at this stage is required to make only a preliminary determination on the evidence, and said determination does not exhaustively involve the question of the weight to be attached to the evidence adduced so far. The conviction or acquittal of the Accused is not being determined at this stage. Therefore, the applicable standard is lower than the ‘proof beyond reasonable doubt’ required at the conviction/acquittal stage. It is submitted on this ground that, *a fortiori*, hearsay evidence can be relied upon for the purpose of determining, *at this stage of the trial*, whether there is evidence “*suitable to sustain a conviction*”.<sup>88</sup>

77. Accordingly, the Legal Representative concludes that all parts of the Submissions based on the fact that the oral or written evidence relied upon is hearsay should be rejected for not showing that the evidence relied upon is not suitable to sustain a conviction on a *prima facie* basis.<sup>89</sup>

78. Moreover, throughout its Submissions, the Defence of Mr Blé Goudé repeatedly argues that parts of the evidence constitute opinion evidence and that said evidence should be rejected by the Chamber for this reason,<sup>90</sup> because “*not admissible before the Court*”.<sup>91</sup> The Legal Representative submits that, although the

<sup>86</sup> See the *Ngudjolo* Appeal Judgment, *supra* note 69, para. 226.

<sup>87</sup> See *supra* paras. 48-50 and 53-56.

<sup>88</sup> See the Decision on the applicable standard, *supra* note 4, paras. 12-13.

<sup>89</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 71, 89, 94, 102, 105, 112-113, 120, 127, 143, 165, 256-257, 465, 470, 652, 658, 666, 679, 690, 699, 740, 742, 748, 751, 761; the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 144, 162, 192, 218, 245, 257, 265; the Gbagbo Submissions, *supra* note 7, Annex 5, paras. 61, 68, 74, 77, 79, 83, 89, 100, 115, 124, 126, 253, 258, 319, 462, 466, 468, 538, 587, 620; the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 3, 5, 14, 78, 85, 87, 90, 131, 142, 160, 162, 174, 183, 226, 260, 268, 292; and the Blé Goudé Submissions, *supra* note 7, paras. 85, 178, 187, 190, 196, 198, 221, 264, 325-326, 351, 366, 379, 387, 419, 516, 558, 560-561.

<sup>90</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 38, 94, 95, 104, 105, 110, 112, 124, 126, 129, 135, 142, 145, 151, 192, 413, 420, 440, 553, 612.

<sup>91</sup> *Idem*, paras. 142, 145.

Chamber instructed the parties to refrain from asking the witnesses to provide opinion evidence,<sup>92</sup> the statutory instruments of the Court do not prevent a Chamber from relying on so-called opinion evidence, and it is telling that the Defence of Mr Blé Goudé never refers to any provisions that would support its contentions in this regard.

79. The Defence of Mr Blé Goudé objected to *some* questions asked during the hearings that were, in its view, calling for opinion evidence.<sup>93</sup> The Legal Representative submits that the Defence should have objected during the hearings to *all* questions that were, according to it, of a similar nature. At this stage of the proceedings, the Defence cannot remedy to its failure to do so by calling for the total rejection of the evidence resulting from said questions. Furthermore, these arguments go again to the weight to be given to the evidence by the Chamber in its final deliberations, and should therefore be dismissed considering the current stage of the proceedings.

### C.3. Anonymous evidence

80. Throughout its Submissions, the Defence of Mr Gbagbo argues that some of the evidence submitted by the Prosecution is “*anonymous hearsay*” and urges the Trial Chamber to reject said evidence.<sup>94</sup>

81. The Legal Representative reiterates that this is another matter of the weight to be ultimately given to the evidence and, as such, is only relevant at the end of the presentation of evidence by the Defence rather than at this stage of the proceedings.<sup>95</sup>

---

<sup>92</sup> See the “Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-498-AnxA, 4 May 2016, para. 23.

<sup>93</sup> See e.g. P-0369, T-40-Red-ENG WT, 17 May 2016, pp. 52-53; [REDACTED]; P-0431, T-43-Red-ENG WT, 24 May 2016, p. 72; [REDACTED]; P-0048, T-54-ENG-CT, 28 June 2016, p. 42.

<sup>94</sup> See the Gbagbo Submissions, *supra* note 7, Annex 2, para. 15.

<sup>95</sup> See *supra* paras. 48-50 and 53-56.

82. In any event, the jurisprudence of the Court shows that anonymous hearsay cannot be excluded from the outset by its very nature. In the *Katanga* case, Trial Chamber II concluded that

*“The Chamber took a cautious approach in evaluating evidence from anonymous hearsay. It did not rule out such evidence immediately but evaluated its probative value on the basis of the context and conditions in which it was obtained and with due consideration of the impossibility of cross-examining the information source”.*<sup>96</sup>

83. Accordingly, the Legal Representative concludes that all parts of the Submissions based on the anonymous character of hearsay evidence must be rejected for not showing that the evidence presented so far is not suitable to sustain a conviction on a *prima facie* basis.<sup>97</sup>

#### C.4. Documentary evidence

84. The Defence of Mr Gbagbo argues that the Prosecution’s case is based on documentary evidence and that the Chamber must not rely on all said evidence.<sup>98</sup>

85. The Legal Representative submits that no statutory provision governing trial proceedings at the Court prohibits the submission of this type of evidence.<sup>99</sup> Moreover, according to the jurisprudence of the Court, there is no requirement, as a matter of law, for the Prosecution to rely mainly or exclusively on testimonial evidence in order to prove some or the totality of its allegations.

---

<sup>96</sup> See the *Katanga* Trial Judgment, *supra* note 68, para. 90. See also the *Ngudjolo* Trial Judgment, *supra* note 69, para. 56

<sup>97</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 22, 33; the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 664, 673, 694, 700, 703, 723, 727, 729, 735, 738, 741, 744-745, 750-751, 753, 755, 758, 764; the Gbagbo Submissions, *supra* note 7, Annex 4, para. 249; the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 27, 75-76, 98, 103, 139, 190, 201, 268, 273; and the Blé Goudé Submissions, *supra* note 7, paras. 16, 38, 91, 92, 103, 110-111, 134, 150-151, 153-154, 160, 264, 295, 297, 549, 561, 590.

<sup>98</sup> See the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 31-33.

<sup>99</sup> See the “Decision on the admissibility of four documents” (Trial Chamber I), No. ICC-01/04-01/06-1399, 13 June 2008, para. 24.

86. In this regard, Trial Chamber II found in the *Katanga* case that

*“This statutory provision [article 74(2) of the Statute] requires the Chamber to rely ‘only on evidence submitted and discussed before it at the trial.’ In the Chamber’s view, the phrase “discussed before it at the trial” encompasses not only oral testimonies, together with any documents and other exhibits such as video recordings which were discussed during the hearings, but also any piece of evidence “discussed” in the written submissions of the parties and participants at any stage of the trial (such as documents introduced by counsel pursuant to a prior written application). The principal consideration is that the evidence on which the Chamber’s article 74 decision is based was tendered at trial”.*<sup>100</sup>

87. Likewise, Trial Chamber III in the *Bemba* case ruled that

*“With evidence other than direct oral testimony, the Chamber made allowances for the difficulties encountered where it proves impossible to examine the individual who originally supplied the information. The degree of relevance and potential prejudice, and the weight to be attached therein, would then depend on the nature and circumstances of the particular piece of evidence”.*<sup>101</sup>

88. Thus, when entertaining the Submissions at this stage of the proceedings, the Chamber is required to assess the evidence presented by the Prosecution and the Legal Representative without treating any piece of evidence received differently on the ground that it is oral, documentary or rule 68 evidence. The Defence appears to acknowledge this fact because on occasion it challenges itself some charges on the exclusive basis of documentary evidence.<sup>102</sup>

---

<sup>100</sup> See the *Katanga* Trial Judgment, *supra* note 68, paras. 78, 91-93.

<sup>101</sup> See the *Bemba* Trial Judgment, *supra* note 70, para. 236.

<sup>102</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 125, 669-671, 676.

89. Accordingly, the Legal Representative concludes that all parts of the Submissions based on the fact that documentary evidence is mostly or exclusively relied upon (as opposed to testimonial evidence) must be rejected for not showing that the evidence presented so far is not suitable to sustain a conviction on a *prima facie* basis.<sup>103</sup>

#### C.5. Circumstantial evidence

90. The Defence of Mr Gbagbo argues that the Prosecution's case is based largely on circumstantial evidence and that the Chamber must not rely on such evidence.<sup>104</sup>

91. The Legal Representative submits that no statutory provisions governing trial proceedings at the Court prohibits the submission of this type of evidence. Moreover, according to the jurisprudence of the Court, there is no requirement, as a matter of law, for the Prosecution to provide direct or so-called "smoking gun" type of evidence. The Prosecution is allowed to present circumstantial evidence and the Chamber may rely on such evidence, provided that the rules concerning "*proof by inference*" are respected.

92. In fact, in the *Bemba* case, Trial Chamber III held that

*"[n]othing in the statutory framework prevents the Chamber from relying on circumstantial evidence. When based on the evidence available, there is only one reasonable conclusion to be drawn therein, the Chamber has concluded that particular facts have been established beyond reasonable doubt".*<sup>105</sup>

<sup>103</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 170, 172, 653-654, 659-660, 661, 664, 672, 690, 694, 700, 703, 704, 727, 729-731, 735, 739, 748, 750, 753, 755, 758, 760-761; the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 16-17, 245; and the Blé Goudé Submissions, *supra* note 7, para. 432.

<sup>104</sup> See the Gbagbo Submissions, *supra* note 7, Annex 2, paras. 37-38.

<sup>105</sup> See the *Bemba* Trial Judgment, *supra* note 70, para. 239. See also the *Lubanga* Trial Judgment, *supra* note 67, para. 111; the *Katanga* Trial Judgment, *supra* note 68, para. 109; and the *Ngudjolo* Trial Judgment, *supra* note 69, para. 239.

93. The Appeals Chamber similarly found that Trial Chamber II's reliance on circumstantial evidence in the *Ngudjolo* case was not erroneous.<sup>106</sup>

94. The Legal Representative reiterates that the Chamber is not currently deciding on the guilt or innocence of the Accused.<sup>107</sup> *A fortiori*, circumstantial evidence can be relied upon at this stage of the trial for the purpose of determining whether there is evidence suitable to sustain a conviction. Proceedings could be stopped at this stage only when there is no evidence from which a trier of fact could render a verdict of guilty.

95. Accordingly, the Legal Representative concludes that all parts of the Submissions based on the fact that the evidence is circumstantial (that is, evidence that affords a basis for a reasonable inference of the occurrence of a fact) must be rejected for not showing that the evidence presented so far is not suitable to sustain a conviction on a *prima facie* basis.<sup>108</sup>

#### C.6. Victims' application forms

96. In response to the Gbagbo's Submissions on alleged inconsistencies between the accounts of dual status individuals contained in their application forms and their statements,<sup>109</sup> the Legal Representative recalls that the process of filling an application form in order to participate as a victim has a completely different purpose and cannot be assimilated to the process of giving a witness statement.

97. In this regard, victims' applications, "[u]nlike evidence collected to support or challenge the substantive criminal charges in the case, [...] are administrative in nature and

---

<sup>106</sup> See the *Ngudjolo* Appeal Judgment, *supra* note 69, para. 117.

<sup>107</sup> See *supra* para. 76.

<sup>108</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, para. 71.

<sup>109</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, para. 130, referring to P-0513 [REDACTED].

[...] *are intended to serve a limited purpose: to provide the Chamber with a basis for determining whether individual victims should be permitted to participate in the proceedings*".<sup>110</sup> Therefore, the Chamber cannot rely on said documents when ruling on the innocence or guilt of the Accused.

98. The Legal Representative further recalls that – as general practice – victims are assisted by so-called “intermediaries” when completing their application forms. Said intermediaries are identified at the stage of the opening of a case or even before by the Victims Participation and Reparations Section (the “VPRS”) – the unit within the Registry of the Court, in charge of informing victims about their rights and assisting them should they wish to manifest themselves for the purposes of participating in the proceedings. Intermediaries are normally members of national organisations advocating for victims’ rights, known in the situation country for that reason, and assist the VPRS in approaching the affected communities and potential victims. Intermediaries receive training from the VPRS on the Court’s mandate and on how to assist victims in completing application forms – which are ultimately verified by the Section before being transmitted to the relevant Chamber.<sup>111</sup>

99. It is also worth recalling that a new system of collecting application forms was for the first time adopted by the then Single Judge in the then *Gbagbo* case.<sup>112</sup> In February 2012, she decided, *inter alia*, to “*encourage a collective approach to victims’ applications*”.<sup>113</sup> Said approach entailed

---

<sup>110</sup> See the “Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011” (Trial Chamber III), No. ICC-01/05-01/08-2012-Red, 9 February 2012, para. 100.

<sup>111</sup> See the “Second decision on issues related to the victims’ application process” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-86, 5 April 2012, para. 38.

<sup>112</sup> Group application forms were filled in by victims members of the [REDACTED]; [REDACTED] and [REDACTED].

<sup>113</sup> See the “Decision on issues related to the application process” (Pre-Trial Chamber III, Single Judge), No. ICC-02/11-01/11-33, 6 February 2012, para. 7.



*“[a] mapping exercise [to be conducted by the VPRS] [which] could serve as the foundation for a more collective approach to victims’ application that would be compatible with the existing legal framework. To this effect, such a mapping should, inter alia, be used to:*

- (i) identify main communities or groups of victims;*
- (ii) identify potential persons that could act on behalf of multiple individual victims, with their consent, in accordance with Rule 89(3) of the Rules;*
- (iii) encourage potential individual applicants to join with others and to that effect consent to a single application to be made on their behalf in accordance with Rule 89(3) of the Rules”.*<sup>114</sup>

100. In her Second decision on issues related to the victims’ applications, the then Single Judge ordered the Registry to use for the purpose of collecting victims’ applications in the *Gbagbo* case a collective application form – composed of a “Group Form” allowing for a number of individuals to provide a common narrative of the events they suffered from; and an “Individual Declaration”, connecting the individual application to the information provided in the Group Form.<sup>115</sup> Group applicants had to choose a contact person.<sup>116</sup> As shown by the application forms registered in the case, naturally the victims designated as contact person the intermediary who put the victim in contact with the representatives of the Registry and whom they trust as members of an organisation advocating for the rights of victims.<sup>117</sup>

101. In this regard, it is also important to note that the then Single Judge considered that in the specific circumstances, the direct involvement of the staff of

---

<sup>114</sup> *Idem*, para. 10.

<sup>115</sup> See the “Second Decision on issues related to victims’ application process” (Pre-Trial Chamber III, Single Judge), No. ICC-02/11-01/11-86, 5 April 2012, paras. 16-18.

<sup>116</sup> *Idem*, para. 33.

<sup>117</sup> The Legal Representative refers to question 8 of the “Group Form”, indicating: “*Nom de la personne à contacter pour le groupe*”. See, *inter alia*, collective applications a/20005/12, CIV-OTP-0091-0553; and 20085/12, CIV-OTP-0091-0668.

the VPRS from the initial stage of the application process in the field was “*essential*” for the efficient implementation of the collective application process and that “*only Registry staff can assist applicants to complete the collective form*”.<sup>118</sup>

102. The Legal Representative recalls that because of the approach adopted at the time, most of the applications forms of dual status individuals were directly filled in by Registry staff. The circumstance is confirmed by Witness P-0436, who indicated during his testimony that he put in contact the victims with the Registry representatives, but did not attend the meeting during which the application forms were filled in.<sup>119</sup>

103. Moreover, the Legal Representative submits that where inconsistencies were detected during the hearings between the application form and the witness statement of dual status individuals, said inconsistencies were either explained in a logical manner by the person concerned or are otherwise justifiable having in mind how the application forms were completed.<sup>120</sup> On these grounds, the Legal Representative contends that the allegations by the Defence of Mr Gbagbo about the veracity of the applications in general are unfounded and show total disrespect for the sufferings of the victims.

#### **D. Erroneous evidentiary approach adopted by the Defence**

104. Moreover, regardless of the standard eventually applied by the Chamber to determine “[w]hether the evidence presented by the Prosecutor suffices to warrant the continuation of the trial proceedings and hear evidence from the accused”,<sup>121</sup> the Legal Representative contends that the general evidentiary arguments advanced by the Defence of Mr Gbagbo cannot be sustained.

---

<sup>118</sup> See the “Second Decision on issues related to victims’ application process” (Pre-Trial Chamber III, Single Judge), No. ICC-02/11-01/11-86, 5 April 2012, para. 27.

<sup>119</sup> P-0436, T-148-ENG-CT, 1 May 2017, pp. 64-65. See also, [REDACTED].

<sup>120</sup> See, e.g., *infra* para. 138.

<sup>121</sup> See the Second Order, *supra* note 2, para. 13.

105. Firstly, the Defence wrongly argues that there is insufficient evidence to support a conviction for some crimes on the basis that some victims thereof are not precisely named or identified.<sup>122</sup> The Court has repeatedly stated that a victim does not need to be precisely named or identified for a crime to be considered to be proved, and that the elements of the crime of murder may be satisfied regardless of whether the victim's body has been identified.<sup>123</sup>

106. Secondly, the Defence recurrently criticises the evolution of the Prosecution's narrative of the charged incidents in the Document containing the Charges, the Pre-Trial Brief and the Trial Brief – including the number and type of victims the Prosecution refers to.<sup>124</sup> In this regard, the Legal Representative submits that the Prosecution legitimately shapes the presentation of the evidence according to the different stages of the proceedings and the relevant standards of proof. Consequently, the three said documents have different purposes and none of them is exhaustive or final.<sup>125</sup> Furthermore, the Legal Representative recalls that it is not necessary to prove an exact number of victims in order to establish that crimes were committed at a concrete place and at a concrete point in time.<sup>126</sup>

---

<sup>122</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 87, 92, 122, 271, 274-275, 279, 282, 286.

<sup>123</sup> See the Bemba Trial Judgment, *supra* note 70, para. 88; the Katanga Trial Judgment, *supra* note 68, para. 768; the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", *supra* note 126, paras. 133-134; and the "Decision on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/07-717, 30 September 2008, para. 422. See also ICTY, *Prosecutor v. Popović et al.*, Trial Judgement, Case No. IT-05-88-T, 10 June 2010, para. 789.

<sup>124</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 14-17, 227-232.

<sup>125</sup> See the Trial Brief, *supra* note 6, para. 7.

<sup>126</sup> See the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo" (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009, para. 134. See also the "Decision on confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/10-465-Red, 16 December 2011, para. 112; ICTY, *Prosecutor v. Stakić*, Trial Judgement, Case No. IT-97-24-T, 31 July 2003, para. 201; *Prosecutor v. Kvočka et al.*, Appeals Judgement, Case No. IT-98-30/1-A, 28 February 2005, para. 30; and ECCC, "Consideration on the International Co-Prosecutor's Appeal of Closing Order (Reasons)", Opinion of Judges Baik and Beauvallet, Pre-Trial Chamber, No. 004/1/07-09-2009-ECCC/OCIJ (PTC50), 28 June 2018, para. 214.

107. Thirdly, the Defence's general argument according to which all crime based witnesses would be biased and not be credible because of their political beliefs<sup>127</sup> is only relevant in so far as it is premised on the fact that being a supporter of Mr Alassane Ouattara, or being perceived as such because of nationality, religion or ethnicity, was the actual reason to become a target. This argument thus enhances the Prosecution's narrative on the persecutory nature of the crimes charged on political, national, ethnic or religious grounds.<sup>128</sup>

108. Fourthly, the Defence misinterprets the concept of direct evidence and confounds the roles played by expert, insider and fact witnesses in a trial. By its definition, direct evidence is given by a witness on the basis of his or her physical perceptions – being visual, auditory or of other kind. Inexplicably, throughout its submissions, the Defence labels as “hearsay”<sup>129</sup> the evidence provided by several fact and crime based witnesses who testified on the harm they personally suffered from the events charged. The Legal Representative stresses that testifying on being struck by a bullet or shell fragments, on having to watch the killing of relatives, or on hearing the noises of a shelling and seeing the resulting destruction, is indeed all direct evidence. It is then for experts or witnesses with insider knowledge to provide information on whether it was a bullet or a fragment, the type, shape, the exact trajectory or other characteristics of the ammunition who struck the crime based witness, killed the relatives or destroyed the house.

109. Fifthly, the Defence's approach of assessing single pieces of evidence or parts thereof in isolation to establish whether they are sufficiently probative of a given allegation<sup>130</sup> is simply erroneous. Each element of proof needs to be considered in light of the whole set of submitted evidence in a coherent and reasonable approach,<sup>131</sup>

---

<sup>127</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 130-131.

<sup>128</sup> See the Trial Brief, *supra* note 6, para. 1.

<sup>129</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 178, 189, 210, 240.

<sup>130</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 100 and 132; and the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 16-59.

<sup>131</sup> See the “Decision on the submission and admission of evidence”, *supra* note 54, para. 13.

also based on the knowledge that a given witness was able or, in the case of experts, was asked to provide.

110. For instance, the Legal Representative notes the Defence's arguments on the probative value of the documents corroborating the death of certain individuals, in particular the forensic reports signed by expert Witness P-0564,<sup>132</sup> including the [REDACTED];<sup>133</sup> the overall report on autopsies compiled by expert Witness P-0585;<sup>134</sup> various burial certificates;<sup>135</sup> documents provided by [REDACTED],<sup>136</sup> including some handwritten records,<sup>137</sup> several [REDACTED],<sup>138</sup> and pictures;<sup>139</sup> and handwritten records of the morgue of [REDACTED]<sup>140</sup> and the [REDACTED].<sup>141</sup> The Legal Representative submits that all said documents are corroborative of direct evidence provided *via* oral testimony by eyewitnesses. As such, when viewed within the totality of evidence, they are to be accorded a probative value sufficient to substantiate the relevant allegations.

111. Sixthly, the Defence attempts to discredit expert witnesses by attributing to them mandates they were not given and competencies that were not required in the performance of their duties.<sup>142</sup> As an example, expert Witnesses P-0564 and P-0585 were not required as pathologists to identify the corpses, but only to perform the autopsies to determine the possible cause(s) of death.<sup>143</sup> By the same token, [REDACTED].<sup>144</sup>

---

<sup>132</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 21-45.

<sup>133</sup> *Idem*, paras. 46-50.

<sup>134</sup> *Ibid.*, paras. 52-59. See also CIV-OTP-0077-0002.

<sup>135</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 60-64.

<sup>136</sup> *Idem*, paras. 65-67 and 80.

<sup>137</sup> *Ibid.*, paras. 80-83.

<sup>138</sup> *Ibid.*, paras. 92-95.

<sup>139</sup> *Ibid.*, paras. 102-103.

<sup>140</sup> *Ibid.*, para. 84.

<sup>141</sup> *Ibid.*, paras. 85-91.

<sup>142</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 22-24.

<sup>143</sup> CIV-OTP-0077-0049 at 0050.

<sup>144</sup> CIV-OTP-0049-0051.

112. Seventhly, the Defence's assessment of the evidence appears to be driven by an opportunistic and rather inconsistent approach. The Defence seems to pick and choose elements of evidence argued to be otherwise unreliable.<sup>145</sup> For instance, three reports of the security forces are relied upon only to point out the number of police or army officers injured or killed between 16 and 18 December 2010,<sup>146</sup> without noting or simply dismissing without further analysis, that these and other reports also indicate the number of civilians killed during some of the reported events.<sup>147</sup>

113. In the same vein, the Defence often relies only on parts of the evidence, without referring to other parts thereof. As a consequence, it often makes inaccurate submissions: for instance,

(i) for the assertion that “[l]es rumeurs qui circulaient faisaient état non d’une manifestation pacifique mais d’une opération violente”,<sup>148</sup> the Defence relies on a single document that only refers to the objective of a demonstration – “[REDACTED]” –,<sup>149</sup> and does not mention the use of violent means;

(ii) contrary to the arguments made by the Defence,<sup>150</sup> Witness P-0048 did not testify that Mr Alassane Ouattara went to the Golf Hotel just for official meetings, but that Mr Ouattara's private residence was near said hotel and that he was not familiar with Mr Ouattara's programme;<sup>151</sup> and

(iii) dual status Witness P-0513 did not testify only that [REDACTED],<sup>152</sup> but also that [REDACTED].<sup>153</sup>

<sup>145</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 753-754.

<sup>146</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 191-199.

<sup>147</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 250-251; and the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 20-21; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>148</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 41.

<sup>149</sup> See CIV-OTP-0045-0748.

<sup>150</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, para. 13.

<sup>151</sup> P-0438, T-55-ENG-CT, 29 June 2017, pp. 37-38.

<sup>152</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, para. 135.

114. Lastly, the Defence raises a number of speculative arguments<sup>154</sup> and alternative scenarios,<sup>155</sup> often referring to evidence that is not in the record of the case<sup>156</sup> or that the Prosecution should have sought.<sup>157</sup> The Legal Representative notes that this type of arguments are impermissible, clearly lacking any merit, and as such should not be taken into account.

## **E. Incidents**

115. Having discussed some relevant legal matters and the standard to be applied to the evidence presented so far at trial, the Legal Representative addresses *infra* the incidents on which the Prosecution relies upon to support the liability of the Accused and shows that, contrary to the Defence's assertion, the trial should proceed.

### **E.1. RTI March (16-19 December 2010)**

116. The Legal Representative submits that the Defence should be requested to respond to the counts related to the incident that took place between 16 and 19 December 2010. Indeed, there is sufficient evidence upon which a reasonable Chamber could convict the Accused for at least 28 killings, 11 rapes and 54 instances of great suffering and serious injury perpetrated by pro-Gbagbo forces upon civilians on political, national, ethnic or religious grounds during and after a pro-Ouattara march on the headquarters of the *Radiodiffusion-Télévision ivoirienne* (the "RTI").<sup>158</sup>

117. Contrary to the Defence Submissions, and for the reasons provided *infra*, the Prosecutor and the Legal Representative have submitted sufficient evidence on

---

<sup>153</sup> [REDACTED].

<sup>154</sup> See, e.g., *infra* paras. 161, 167(ii), 174, 180, 245, 249.

<sup>155</sup> See, e.g., *infra* paras. 158-162.

<sup>156</sup> See, e.g., *infra* para. 182.

<sup>157</sup> *Idem*.

<sup>158</sup> See the Trial Brief, *supra* note 6, para. 340.

which, if accepted, a reasonable Chamber could convict the Accused at the end of the trial for the counts arising from this incident.

118. Firstly, contrary to the arguments by the Defence of Mr Gbagbo,<sup>159</sup> the victims of this attack were not targeted as participants in armed hostilities or subject to common criminality committed in a period of chaos. The evidence presented so far could demonstrate that they were targeted because they were perceived to be members of Mr Alassane Ouattara's political groups or his supporters on political, national, ethnic or religious grounds.

119. As indicated by the Defence of Mr Gbagbo,<sup>160</sup> Witness P-0010's provided testimony on the military casualties resulting from the RTI March. However, said witness also testified that the methods used did not reveal an operation of a military nature with organised marchers, and that it was only some of the marchers who may have been armed while dressing civilian attire.<sup>161</sup> More importantly, Witness P-0010 did not contest the military reports listing civilian victims that were circulated at that time.

120. Moreover, the evidence submitted so far shows that victims of this incident were targeted after showing to the security forces that they were not armed. For instance, dual status Witness P-0547 testified that he was about to arrive to the seat of the *Rassemblement des républicains de Côte d'Ivoire* (the "RDR") in his way to the RTI march on 16 December 2010 when the CRS threw tear gas at him at a blocked intersection and eventually shot him in the leg when he was fleeing away, after he had raised his hands up and said he had nothing in them.<sup>162</sup>

---

<sup>159</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 3-5, 13 and 102; and the Gbagbo Submissions, *supra* note 7, Annex 4, para. 252.

<sup>160</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 27.

<sup>161</sup> P-0010, T-140-ENG-CT, 30 March 2017, pp. 34-35, 44, 49.

<sup>162</sup> P-0547, T-13-Red3-ENG-CT, 3 February 2016, pp. 19-20 and 39-40; P-0547, T-18-Red2-ENG-CT, 8 February 2016, p. 38. [REDACTED].



121. Dual status Witness P-0350 [REDACTED] testified that [REDACTED].<sup>163</sup> Similarly, other witnesses testified that demonstrators from Abobo who went to demonstrate before the RTI were not armed either.<sup>164</sup> In fact, the Defence concedes that only two persons marching at the Carrefour de la Vie could be carrying weapons.<sup>165</sup>

122. In turn, the evidence submitted so far shows that victims were targeted on the mere basis of their nationality, religion, ethnicity or political affiliation. For instance, dual status Witness P-0555 testified that he was on his way to the march to the RTI on 16 December 2010 when he was detained and beaten by soldiers at a roadblock in Cocody because “[n]ous, les nordistes, on se voyait mal placés dans ce pays-là. C’est-à-dire... c’est... c’est à cause de mon nom qu’ils m’ont arrêté, ils m’ont déshabillé, ils m’ont frappé [...] à cause de mon nom, parce que je porte le... je porte un nom que je... d’où je viens, tout au Nord”.<sup>166</sup> In fact, Witness P-0555 lied about his identity at the roadblock out of fear of being killed by reason of his ethnic origin.<sup>167</sup>

123. Similarly, when dual status Witness P-0513 [REDACTED],<sup>168</sup> [REDACTED],<sup>169</sup> [REDACTED].<sup>170</sup> It is obvious that the person who said those words was not in favour of pro-Ouattara supporters.<sup>171</sup> In fact, dual-status Witness P-0513’s testimony is supported by that of other witnesses [REDACTED].<sup>172</sup>

<sup>163</sup> P-0350, T-107-CONF-ENG-CT, 29 November 2016, pp. 10 and 13.

<sup>164</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, pp. 16-17 ; P-0184, T-216-Red-ENG-CT, 5 December 2017, pp. 27-28.

<sup>165</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 189.

<sup>166</sup> P-0555, T-111-Red-FRA WT, 5 December 2016, p. 74.

<sup>167</sup> P-0555, T-112-Red-FRA WT, 6 December 2016, p. 25.

<sup>168</sup> [REDACTED].

<sup>169</sup> [REDACTED].

<sup>170</sup> [REDACTED].

<sup>171</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, para. 138; and the Blé Goudé Submissions, *supra* note 7, para. 89.

<sup>172</sup> [REDACTED]; P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 26-27, 76-77.

124. Dual status Witness P-0350 testified that [REDACTED].<sup>173</sup> Other witnesses testified that wounded civilians were scared of going to hospitals for treatment for fear of being abducted and killed because perceived wounded Mr Ouattara's supporters were searched for in hospitals by pro-Gbagbo forces, including personnel from the *Centre de Commandement des Opérations de Sécurité* (the "CECOS"),<sup>174</sup> who forced medical staff not to treat perceived Ouattara supporters.<sup>175</sup>

125. Secondly, the evidence presented so far could demonstrate the peaceful character of the demonstration before the RTI, given its objectives and the way in which it was organised. Contrary to the Defence Submissions,<sup>176</sup> the evidence submitted so far does not point at all to a demonstration of a violent character.

126. In this regard, the Defence suggests that the alleged lack of an official announcement of the march shows the violent character thereof,<sup>177</sup> but does not address the fact that most Police documents submitted into evidence make reference to demonstrators and detained individuals who were suspected of taking part in the march, but do not mention weapons.<sup>178</sup> In fact, the Defence argues that said reports were produced by "[u]ne police professionnelle et neutre".<sup>179</sup>

127. Thirdly, in order to advance its arguments, the Defence mainly relies on a different reading of the testimony of a handful of witnesses and documents to challenge the allegations concerning this incident.

128. However, there is multi-layered, direct and voluminous evidence to sustain the allegations against the Accused. Not all said evidence is addressed by the Defence in the Submissions and, when addressed, the reliability thereof is not

<sup>173</sup> P-0350, T-107-CONF-ENG-CT, 29 November 2016, pp. 9-20.

<sup>174</sup> [REDACTED]; P-0106, CIV-OTP-0019-0211-PRV at 0218, para. 37; [REDACTED].

<sup>175</sup> P-0107, CIV-OTP-0020-0064-PRV at 0079, paras. 107-109 and at 0080, para. 114; [REDACTED].

<sup>176</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 43.

<sup>177</sup> Cf. the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 44-46.

<sup>178</sup> See the Trial Brief, *supra* note 6, para. 360.

<sup>179</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 77.

fundamentally challenged.<sup>180</sup> In these circumstances, following the applicable standard discussed *supra*,<sup>181</sup> the Legal Representative submits that the Accused must be called on to answer the four counts related to the 16 December 2010 incident.

129. In particular, regarding the blockade of the Golf Hotel, the incriminatory evidence before the Chamber comprises *at least* four witnesses and six documents.<sup>182</sup> The Defence contests the existence of said blockade merely on the basis of a different understanding of part of this evidence and of additional evidence.<sup>183</sup> In other words, the Defence does not claim that the key evidence submitted by the Prosecution is fundamentally unreliable or incredible. It merely draws different conclusions from it.<sup>184</sup>

130. Similarly, the Defence argues that Mr Gbagbo and the *Forces de Défense et de Sécurité* (the “FDS”) high command were not aware of the impending march to the RTI because they were not officially informed of it before it took place and there were only “rumours” thereof.<sup>185</sup> However, this is again just a different reading of the evidence submitted by the Prosecution, not more reasonable than the one presented in the Trial Brief. For instance, the Defence concedes that the *Direction Générale de la Police Nationale* (the “DGPN”) adopted preparations for the march on the RTI,<sup>186</sup> while at the same time it argues that a report of a meeting confirming the march does not amount to an announcement of said march.<sup>187</sup>

131. Along the same lines, the Defence relies *on part of* the Prosecution evidence – the testimony of P-0009 and P-0010 – to argue that it was not Mr Gbagbo who instructed the prohibition of the RTI march, but that it was the *Chef d’État-Major des*

<sup>180</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, para. 77.

<sup>181</sup> See *supra* paras. 48-50 and 53-56.

<sup>182</sup> See the Trial Brief, *supra* note 6, para. 330.

<sup>183</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 18-22 and 28-32.

<sup>184</sup> *Idem*, para. 32.

<sup>185</sup> *Ibid.*, paras. 36-39 and 45-46.

<sup>186</sup> *Ibid.*, para. 40.

<sup>187</sup> *Ibid.*, para. 46.

*Armées* (the “CEMA”) itself that requested said prohibition and that it was the DGPN that took the operational measures for this purpose.<sup>188</sup> The Defence even argues that the management of the RTI march fell upon the police alone and that Mr Gbagbo had nothing to do with it.<sup>189</sup>

132. However, the Defence does not contest that P-0009 did address various Army units in Abidjan after a meeting with Mr Gbagbo<sup>190</sup> and that, [REDACTED].<sup>191</sup> The Defence merely questions the evidentiary value of said materials as a call to commit crimes and as notice of the crimes eventually committed.<sup>192</sup> This is therefore an aspect that the Defence must be allowed to explore before the Chamber reaches a decision.

133. The same can be said on the Defence’s statement that Mr Blé Goudé’s speech on 15 December 2010 was “[u]n discours politique où il est difficile de déceler le moindre appel à la violence”<sup>193</sup> or that the police reports on the 16-19 December 2010 incidents “[d]onnent à voir un déroulé des incidents différents de ce qu’en dit le Procureur [...] donnent à voir une police professionnelle et neutre”.<sup>194</sup> The Defence does not contest the existence of all this evidence, but merely provides a different reading thereof.

134. Likewise, the Defence does not contest the existence of the following evidence, but merely draws different conclusions from it:

- (i) regarding the attack on the Route du Zoo, the Defence does not challenge the substance of Witness P-0045’s testimony, but argues that

---

<sup>188</sup> *Ibid.*, paras. 49-52, 58.

<sup>189</sup> *Ibid.*, paras. 64-67.

<sup>190</sup> See Video, CIV-OTP-0061-0542 at 00:03:20-00:07:31 (excerpt from RTI broadcast of 12 December 2010 at 20h; transcript at CIV-OTP-0087-0175 at 0176-0177, lines 1-77); Video, CIV-OTP-0061-0569 at 00:08:20-00:11:48 (excerpt from RTI broadcast of 14 December 2010 at 13h; transcript at CIV-OTP-0088-0765 at 0766-0767, lines 1-47).

<sup>191</sup> P-0117, CIV-OTP-0020-0033-R04 at 0037, paras. 21-22.

<sup>192</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 55-56 and 59-60.

<sup>193</sup> *Idem*, para. 61.

<sup>194</sup> *Ibid.*, para. 77.

the order to “*rentrer franchement dans la foule*” must be read in its proper context to conclude that it was an order for legitimate defence;<sup>195</sup>

- (ii) regarding the attack on Abobo, the Defence accepts as evidence the list of victims of the *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (the “RHDP”) march of 16 and 17 December 2010 and merely provides a different reading thereof;<sup>196</sup>
- (iii) regarding the shooting in Adjamé in the Williamsville neighbourhood and at the Djéni Kobina junction, the Defence does not challenge the reliability of the police reports relied upon by the Prosecution and simply argues that the reference therein to the use of “*moyens conventionnelles*” against demonstrators must not be understood to refer to the use of fire weapons;<sup>197</sup>
- (iv) regarding the shooting at a pedestrian overpass in Williamsville, the Defence argues that Witness P-0578, who shot videos of the scene, lied regarding the order in which he made said videos, but does not provide the reasons for this assertion and does not address further the content of this evidence;<sup>198</sup>
- (v) regarding the opening fire at demonstrators at the Carrefour de la Vie, the Defence does not contest the reliability of the submitted evidence and simply argues on the basis of different evidence that the DGPN called on the CEMA to intervene for a situation that had not been anticipated by the security forces;<sup>199</sup>

---

<sup>195</sup> *Ibid.*, para. 85.

<sup>196</sup> *Ibid.*, para. 90.

<sup>197</sup> *Ibid.*, paras. 93, 97-98. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 6, 16.

<sup>198</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 110.

<sup>199</sup> *Idem*, para. 124.

- (vi) regarding the detention of people pursuant to the 16 December 2010 march to the RTI, the Defence merely draws different conclusions from the police and UN documents submitted by the Prosecutor, and does not contest the conversation that Witness P-0117 overheard regarding the instructions they had received;<sup>200</sup>
- (vii) [REDACTED], the Defence does not dispute [REDACTED],<sup>201</sup> and merely wonders why [REDACTED];<sup>202</sup>
- (viii) [REDACTED],<sup>203</sup> the Defence does not dispute that Witness P-0573 heard that patients were refused treatment if they belonged to the RHDP and merely provides a different interpretation thereof;<sup>204</sup>
- (ix) regarding the information provided to Mr Gbagbo during the day of 16 December 2010,<sup>205</sup> the Defence reads the relevant orders, meetings and debriefings in a different manner, but does not deny their existence;<sup>206</sup> and
- (x) regarding the police reports on the crimes committed on 16 December 2010, the Defence reads them as evidence that some investigations were started and does not deny the commission of the crimes reported therein.<sup>207</sup>

---

<sup>200</sup> *Ibid.*, paras. 142 and 144-145.

<sup>201</sup> P-0350, T-107-CONF-ENG-CT, 29 November 2016, p. 12; P-0117, T-110-CONF-ENG-CT, 2 December 2016, pp. 46-47.

<sup>202</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 154.

<sup>203</sup> [REDACTED].

<sup>204</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 167-168.

<sup>205</sup> See the Trial Brief, *supra* note 6, para. 365.

<sup>206</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 174-178.

<sup>207</sup> *Idem*, paras. 215-217.

135. The same holds true regarding the Defence's arguments on the evidence relied upon by the Prosecution concerning the attack by pro-Gbagbo forces on demonstrators assembled near the RDR and PDCI headquarters in Cocody on 16 December 2010. The Defence does not challenge the testimony of dual status Witness P-0547, who testified that he was shot in the leg when he was about to arrive to the seat of the RDR.<sup>208</sup> The Defence merely argues that his testimony is not precise enough as to whether the crime was committed closer to or further from said location.<sup>209</sup>

136. By contrast, the Defence does challenge openly the reliability or credibility of the testimony of a reduced number of witnesses. However, said challenges are not factually and/or legally supported.

137. For instance, contrary to the Defence's contention,<sup>210</sup> there is no contradiction between Witnesses P-0230 and P-0184 on the presence of security forces at the PDCI on 16 December 2010. Witness P-0230 stated that there were no security forces when he arrived at the seat of the RDR at 9 am.<sup>211</sup> In turn, Witness P-0184 testified that she was told that women were beaten at the PDCI headquarters and that she decided not to continue towards the PDCI headquarters after being informed that people were being killed at the RTI.<sup>212</sup>

138. In the particular case of dual status Witness P-0513, the Defence appears to challenge [REDACTED] because her testimony is not corroborated by other witnesses and/or by the content of her application form to participate in the proceedings.<sup>213</sup> The Defence argues the same regarding [REDACTED] Witness P-

---

<sup>208</sup> See *supra* note 162.

<sup>209</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 121.

<sup>210</sup> *Idem*, para. 122.

<sup>211</sup> P-0230, CIV-OTP-0044-2628-PRV, p. 2640, para. 42.

<sup>212</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, pp. 14-15.

<sup>213</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 130-132.

0117<sup>214</sup> and dual status Witness P-0350,<sup>215</sup> although both Witnesses explained during their testimony that [REDACTED].<sup>216</sup> The Legal Representative argues that all these submissions by the Defence are inconsistent with rule 63(4) of the Rules and, as such, must be dismissed [REDACTED].<sup>217</sup>

139. The Legal Representative submits that none of the Defence's arguments *supra* shows that the evidence presented so far is so unreliable or incredible that the trial must be terminated. On the contrary, all these contentions actually show that there is enough evidence for the trial to continue, and that the trial must continue to determine whether the whole evidence submitted – including the one eventually presented by the Defence and/or requested by the Chamber – is believable and, if so, to what extent.

140. In fact, the Legal Representative notes that the Defence does not appear to challenge part of the incriminatory evidence provided by the Witnesses heard so far, including that:

- (i) Witness P-0578 saw a group of demonstrators being shot at by the FDS at a pedestrian overpass in Williamsville that crosses the Autoroute du Nord into the Quartier Latin neighbourhood;<sup>218</sup>
- (ii) Witness P-0117 saw (a) pro-Gbagbo elements opening fire and throwing fragmentation grenades at demonstrators who refused to leave on 16 December 2010, killing and wounding many at Saint-Jean junction,

<sup>214</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 161; and the Gbagbo Submissions, *supra* note 7, Annex 4, para. 254.

<sup>215</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 148-150; the Gbagbo Submissions, *supra* note 7, Annex 4, para. 254; and the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 55-57.

<sup>216</sup> P-0350, T-107-CONF-ENG-CT, 29 November 2016, p. 22; P-0117, T-110-CONF-ENG-CT, 2 December 2016, p. 79.

<sup>217</sup> See *supra* paras. 63-67.

<sup>218</sup> P-0578, CIV-OTP-0084-0142-PRV at 0148, paras. 26-29 and 0151-0158, paras. 42-110, 122-124; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See also P-0578, T-84-Red-ENG WT, 3 October 2016, pp. 12-19, 28-31.



Carrefour de la Vie junction and on the roads surrounding the RTI;<sup>219</sup>  
 (b) the pro-Gbagbo youth and CECOS personnel attacking and killing the fleeing demonstrators in the vicinity of the nearby university halls of student residence and in other areas of Cocody;<sup>220</sup> [REDACTED];<sup>221</sup>

- (iii) Witness P-0588 was told that his brother was shot near the AGRIPAC junction by uniformed individuals together with youths in civilian clothing;<sup>222</sup>
- (iv) Witness P-0589 saw the CRS shooting tear gas and live bullets at demonstrators at the Djéni Kobina junction in the Williamsville neighbourhood,<sup>223</sup> and retrieved his brother's body at Macaci;<sup>224</sup> and
- (v) Witness P-0106 was a victim of a violent offensive by pro-Gbagbo youth, mercenaries and CECOS BMO personnel on the Route du Zoo.<sup>225</sup>

141. Last but not least, the Defence puts forward arguments without referring to any evidentiary material, including that

- (i) *“tous les témoins au cours de débats ont montré que des groupes armés étaient à l'œuvre pendant cette « marche »”;*<sup>226</sup>

<sup>219</sup> P-0107, CIV-OTP-0020-0064-PRV at 0074-0076, paras. 72-87.

<sup>220</sup> P-0107, CIV-OTP-0020-0064-PRV at 0076-0078, paras. 89-99; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>221</sup> P-0117, CIV-OTP-0020-0033 at 0043-0045, paras. 71-80.

<sup>222</sup> P-0588, CIV-OTP-0084-0079-PRV at 0085-0091, paras. 26-49; [REDACTED]; [REDACTED]. See also [REDACTED].

<sup>223</sup> P-0589, CIV-OTP-0084-0105-PRV at 0113, paras. 35-36; [REDACTED].

<sup>224</sup> P-0589, CIV-OTP-0084-0105-PRV at 0114-0116, paras. 38-46; [REDACTED]; [REDACTED].

<sup>225</sup> P-0106, CIV-OTP-0019-0211-PRV at 0217-0218, paras. 30-36, 0220, paras. 38-44; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>226</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 34

- (ii) *“tous les responsables militaires et policiers qui sont venus témoigner ont expliqué que lorsqu’il s’agissait d’ordres sensibles, et de l’exécution d’opération, les radios n’étaient pas utilisées”*;<sup>227</sup>
- (iii) *“les témoins ont expliqué que par « moyens conventionnels » il fallait comprendre des moyens de police, tels que grenades lacrymogènes et matraques. Les moyens conventionnels excluent toute utilisation d’armes à feu”*;<sup>228</sup>
- (iv) *“tous les témoins militaires du Procureur ont attesté de la présence d’hommes armés dans la marche”*;<sup>229</sup> and
- (v) *“les descriptions des rebelles, leurs tenues bleues, sont souvent relevés par des témoins « crime-based »”*.<sup>230</sup>

142. In these circumstances, the Chamber must conclude that there is evidence that the case must continue so that the Chamber may hear the evidence on which the Defence relies to resist the Prosecution’s demonstration of events regarding the 16 December 2010 march on the RTI.<sup>231</sup>

143. In particular, the Legal Representative submits that the evidence heard so far regarding the 16 December 2010 incident shows that both Accused could be responsible for the crimes committed during said incident.

144. Evidence has been submitted on the fact that on 14-15 December 2010 FDS senior officers met at the Presidential Palace with Mr Gbagbo, who gave them

---

<sup>227</sup> *Idem*, para. 81.

<sup>228</sup> *Ibid.*, para. 93.

<sup>229</sup> *Ibid.*, para. 185.

<sup>230</sup> *Ibid.*, para. 199.

<sup>231</sup> See, e.g., the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 81, 147, 163, 202-204, 630-631, 638, 684, 687, 689, 691, 706-707.

instructions that the march on the RTI on 16 December 2010 was prohibited and should not take place.<sup>232</sup>

145. Evidence has also been submitted on the fact that Mr Blé Goudé told the pro-Gbagbo youth during a rally at the Palais de la Culture on 15 December 2010 that the UN and France were preparing a genocide in Côte d'Ivoire, and told them to remain ready to engage in acts of resistance should such be necessary.<sup>233</sup>

146. In turn, the evidence submitted so far has shown that Mr Gbagbo was informed of civilian deaths on the same day of the march,<sup>234</sup> that he met with the CEMA and his ministers during the course of the day of 16 December 2010, and that the DGPN was informed of civilian deaths during the march.<sup>235</sup>

147. There is also evidence that Mr Gbagbo received Mr Blé Goudé on 16 December 2010.<sup>236</sup> The latter stated on 14 December that he worked to find jobs for the youth but that, should he sense that Côte d'Ivoire was threatened or destabilised, he would take off his suit and put on his black cap to orient things.<sup>237</sup> In this regard, the evidence submitted so far shows that FESCI members took part in the repression of the 16 December 2010 march on the RTI,<sup>238</sup> and that said members had been trained by the GPP in October and November 2010 as a result of Mr Blé Goudé's request in September 2010.<sup>239</sup>

---

<sup>232</sup> P-0009, T-196-Red-ENG WT, 28 September 2017, pp. 9-13; [REDACTED].

<sup>233</sup> Video, CIV-OTP-0074-0054 at 00:25:10-00:31:21 (excerpt from RTI broadcast of 15 December 2010 at 20h; transcript at CIV-OTP-0087-0387 at 0389, lines 63-103).

<sup>234</sup> P-0009, T-196-Red-ENG WT, 28 September 2017, pp. 24-31. See also P-0046, T-125-Red-ENG WT, 17 February 2017, pp. 62-64.

<sup>235</sup> See the Trial Brief, *supra* note 6, para. 365.

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

<sup>237</sup> Video, CIV-OTP-0061-0568 at 00:23:31-00:30:02 (excerpt from RTI broadcast of 14 December 2010 at 8:00pm, transcript at CIV-OTP-0086-0818 at 0819-0821, lines 1-104).

<sup>238</sup> P-0435, T-89-Red2-ENG-CT, 20 October 2016, pp. 60-61; P-0435, T-93-ENG-CT, 27 October 2016, pp. 6-7; and P-0435, T-97-Red2-ENG-CT, 3 November 2016, pp. 68-69.

<sup>239</sup> P-0435, T-87-Red2-ENG-CT, 18 October 2016, pp. 39-44.

148. Moreover, [REDACTED].<sup>240</sup> [REDACTED].<sup>241</sup>

149. In these circumstances, the Defence should have the opportunity to explain why Mr Gbagbo failed to denounce the attacks committed against his perceived adversaries, or to take the necessary and reasonable measures within his effective powers to prevent, repress the crimes committed, or to submit the matter to the competent authorities for investigation and prosecution.

## **E.2. Abobo incidents (3 and 17 March 2011)**

150. The Legal Representative submits that the Defence should be required to respond to the counts related to the incidents which occurred in Abobo on 3 and 17 March 2011. Indeed, there is sufficient evidence upon which a reasonable Chamber could convict the Accused for the killings of at least 65 people and the injury of at least 54 individuals.

151. Contrary to the Defence Submissions and for the reasons provided *infra*, the Prosecutor and the Legal Representative have submitted sufficient evidence on which, if accepted, a reasonable Chamber could convict the Accused at the end of the trial for the counts arising from these incidents.

152. In particular, in the introductory submissions on the prevailing situation in Abobo which led to the two incidents of the 3 and 17 March 2011, the Defence of Mr Gbagbo provides an unsubstantiated and rather imaginative description of Abobo at the time of the events.

153. In fact, the Defence's narrative appears to negate the existence of any FDS military activity in the area along with all the civilian casualties resulting therefrom.

---

<sup>240</sup> P-0117, CIV-OTP-0020-0033-R04 at 0047, para. 96.

<sup>241</sup> P-0117, CIV-OTP-0020-0033-R04 at 0045, para. 82, 0047, para. 96.

The Defence does not indicate how the Prosecution evidence in this regard is not sufficient to establish that the government had the power to put into place a curfew<sup>242</sup> and to repeatedly extend it,<sup>243</sup> and that additional resources were deployed<sup>244</sup> and weapons of war allocated to the benefit of the FDS based in Abobo<sup>245</sup> with an objective increase of military operations<sup>246</sup> and losses among the civilian population.<sup>247</sup> Instead, the Defence tries to shield Mr Gbagbo from any responsibility by suggesting that both the establishment of the curfew and the requisition of the army of 5 January 2011 were decided by someone else.<sup>248</sup> The Legal Representative recalls that those decrees are of competence of the President of the Republic who is the only authority empowered to sign them.<sup>249</sup> Accordingly, the Defence theory of Mr Gbagbo being a President deprived of decisional powers, right when at stake was his tenure,<sup>250</sup> lacks of any fundament and is wholly contradicted by the evidence. Similarly, the Defence suggestion that Mr Gbagbo did not have the power to request an investigation on the incidents of 3 and 17 March 2011,<sup>251</sup> or that an investigation could not “*physically*” be carried out,<sup>252</sup> is not supported. On the contrary, the evidence shows that Mr Gbagbo and his inner circle had direct access to the FDS members involved in the two incidents but instead of inquiring, wilfully tried to cover up those incidents and when unable to do so, publicly denied the FDS involvement in the killing of civilians.<sup>253</sup>

154. In the same vein, the Defence’s denial of the cultural and ethnic composition of the Abobo area in 2011<sup>254</sup> – which counted a clear predominance of ethnic groups

---

<sup>242</sup> See the Trial Brief, *supra* note 6, paras. 427 *et seq.*

<sup>243</sup> *Idem.*, paras. 425, 433, 440, 459 and 479.

<sup>244</sup> *Ibid.*, para. 434.

<sup>245</sup> *Ibid.*, paras. 434, 456-461.

<sup>246</sup> *Ibid.*, paras. 441-461.

<sup>247</sup> *Ibid.*, paras. 441-461.

<sup>248</sup> See the Gbagbo Submissions, *supra* note 7, Annex 5, paras. 383-389.

<sup>249</sup> P-0009, T-197-Red-ENG-WT, 2 October 2017, pp. 100-101.

<sup>250</sup> See the Gbagbo Submissions, *supra* note 7, Annex 5, paras. 383-397.

<sup>251</sup> *Idem.*, paras. 576-588.

<sup>252</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 441-444.

<sup>253</sup> See the Trial Brief, *supra* note 6, paras. 469-476.

<sup>254</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 233-238.

traditionally from the north of Côte d'Ivoire and/or from neighbouring northern countries – is plainly unreasonable and in conflict with the evidence presented. The Defence also misrepresents the Prosecution's narrative as Abobo was never depicted as being "*mono ethnique*".<sup>255</sup> On the contrary, a prevalence of certain ethnicities carries in itself an acknowledgment of the multi-ethnic character of the area.

155. However, the evidence clearly shows that the vast majority of the Abobo population was indeed composed of ethnic groups traditionally belonging to the north of Côte d'Ivoire and bordering countries. The Legal Representative recalls, *inter alia*, the testimony of Witnesses P-0164<sup>256</sup> and P-0330,<sup>257</sup> as well as of those dual status individuals residing in Abobo at the time of the events, who testified on the crimes suffered personally and by their families – all Malinké, of Muslim faith, actual supporters of Ouattara or perceived as such because of their nationality, ethnicity or religion.<sup>258</sup>

156. Therefore, the Defence's representation of Abobo as an area occupied by rebels and inaccessible for the FDS – who allegedly were not in a position to commit exactions against the civilian population – is untenable, ill-conceived and disregards the dozens of persons who were targeted and in fact victimised on political, national, ethnic or religious grounds. Contrary to the Defence of Mr Blé Goudé's assertions,<sup>259</sup> the evidence in the record could be sufficient to conclude that the attacks of 3 and 17 March 2011 are examples of the targeting of Abobo neighbourhood,<sup>260</sup> mainly inhabited by perceived Ouattara supporters.<sup>261</sup>

---

<sup>255</sup> *Idem*, para. 237.

<sup>256</sup> P-1064, T-164-Red-ENG-WT, 19 June 2017, pp. 50-51.

<sup>257</sup> P-0330, T-68-Red-ENG-WT, 1 September 2016, pp. 9-10.

<sup>258</sup> See the testimony of dual status individuals P-0172, T-174-Red-ENG-WT, 7 July 2017, pp. 1-2; P-0237, T-175-Red-ENG-WT, 10 July 2017, pp. 1-2; P-0297, T-192-Red-ENG-WT, 14 September 2017, p. 2; [REDACTED]; P-0580, T-186-Red-ENG-WT, 5 September 2017, p. 50; P-0581, T-188-Red-ENG-WT, 7 September 2017, pp. 1-2; and P-0582, T-187-Red-ENG-WT, 6 September 2017, p. 40.

<sup>259</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 100-112.

<sup>260</sup> See the Trial Brief, *supra* note 6, paras. 404, 407, 463-471, 484, 490-491, 496.

<sup>261</sup> *Idem*, paras. 404. See also *supra* paras. 154-156.

157. The Legal Representative will address separately the Defence Submissions on the two charged incidents of 3 and 17 March 2011.

**a. Women's demonstration (3 March 2011)**

158. As far as the facts are concerned, in relation to the charged incident of 3 March 2011, the Defence of Mr Gbagbo provides a whole set of preposterous hypotheses on how the relevant events occurred. Instead of proceeding to a rigorous assessment of the evidence at the basis of the Prosecution's narrative, the Defence responds by offering alternative scenarios, each one exceptionally speculative and wholly unsupported.

159. The Defence starts with the suggestion that the march never took place so that the incident itself never happened;<sup>262</sup> continues alleging that the whole incident is a *mise en scene* or staging<sup>263</sup> with no victims to be found; and concludes with the claim that the march did take place but was an ambush, planned and organised to attack the FDS supply convoy.<sup>264</sup>

160. To support those scenarios, the Defence puts forward further conjectures in relation to the type and number of witnesses who testified on the events and their credibility, in particular of Witness P-0114 – [REDACTED] – as well as on the reliability of the video itself.

161. At the outset the Legal Representative notes that the general arguments by the Defence on the alleged exiguity of witnesses testifying on the 3 March incident<sup>265</sup> and the victims thereof<sup>266</sup> are inapposite and again, wholly speculative. In this regard, the

---

<sup>262</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 248-263.

<sup>263</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 266-290 and 299-362; and the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 168-170.

<sup>264</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 363-412.

<sup>265</sup> *Idem*, paras. 256, 261.

<sup>266</sup> *Ibid.*, paras. 248 and 310-311.

Legal Representative recalls her submissions on the applicable standard developed *supra*,<sup>267</sup> and submits that the evidence presented by the Prosecution is sufficient to support its narrative of the events and well-structured in so far as it includes insiders, experts and crime based witnesses.

162. As regards the testimony of insider witnesses with a military background, the Defence relies on discrete portions of Witnesses P-0607, P-0156 and P-0321's testimony to elaborate one of its many alternative theories. According to the Defence's proposed recollection, the convoy was surrounded by *numerous armed rebels*<sup>268</sup> and the soldiers on the BTR-80 had *no other choice*<sup>269</sup> but to fire back. However, the Legal Representative notes that there is not a single piece of evidence pointing to such a scenario; on the contrary, the Defence assertions remain fully unsupported and contradicted by the evidence in the record.<sup>270</sup> In the testimony of Witnesses P-0607, P-0156 and P-0321 [REDACTED]<sup>271</sup> that the FDS convoy might have suffered from an alleged attack. By the same token, the rules of engagement that were *generally* given to the FDS supply convoys<sup>272</sup> mentioned by both Witnesses P-0156<sup>273</sup> and P-0321<sup>274</sup> are not evidence of a particular conduct at the specific time of the events.

163. Instead, [REDACTED],<sup>275</sup> without any provocation;<sup>276</sup> that two of the soldiers in the BTR-80 opened fired against the demonstrators;<sup>277</sup> and that at least seven

---

<sup>267</sup> See *supra* paras. 48-50 and 53-56.

<sup>268</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 253.

<sup>269</sup> *Idem*, paras. 252-253.

<sup>270</sup> P-0364 saw a very few men and a large group of women and she did not see any Mògôbas or armed men, T-190-ENG-CT, 12 September 2017, p. 25; P-0114 [REDACTED], T-161-CONF-ENG-CT, 23 May 2017, p. 8; P-0190 saw only women at the march, T-22-Red2-ENG-CT, 12 February 2016, pp. 15-16.

<sup>271</sup> See, e.g., P-0607, T-170-CONF-ENG-CT, 3 July 2017, p. 32.

<sup>272</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 254.

<sup>273</sup> P-0156, T-172-Red-ENG-WT, 5 July 2017, p. 30.

<sup>274</sup> P-0321, T-62-Red-ENG-WT, 11 July 2016, pp. 6-7.

<sup>275</sup> P-0607, T-170-CONF-ENG-CT, p. 30.

<sup>276</sup> See the Trial Brief, *supra* note 6, para. 466. See also [REDACTED].

<sup>277</sup> *Idem*.



women died as a result.<sup>278</sup> Therefore, if the Defence strategy is a purported FDS legitimate self-defence, it would have to be argued through the presentation of its case and not at this stage of the proceedings.

164. In relation to the submissions on the testimony given by crime based witnesses,<sup>279</sup> the Defence appears to confound the concept of direct and hearsay evidence, and the different purposes of a testimony by crime based witnesses and expert or insider witnesses. Contrary to the Defence Submissions, the evidence provided by dual status Witnesses P-0172 and P-0237 is indeed far from being a mere hearsay. Around 9:45, 10 am on the day of the women's march, Witness P-0172 heard heavy gun-fire and shooting.<sup>280</sup> Once at the Banco roundabout, he saw six bodies including the one of his sister in law, Fatoumata Coulibaly<sup>281</sup> – who, as Witness P-0172 knew, was taking part in the march.<sup>282</sup> By the same token, in the morning of 3 March 2011, Witness P-0237 saw the body of her daughter Nachamy Bamba,<sup>283</sup> and was able to identify it in the video of the march.<sup>284</sup> Witnesses [REDACTED] and P-0364 took part in the march and were both, from the place where they were standing, able to hear the shooting that took place at the Banco intersection.<sup>285</sup>

165. Witnesses P-0114, P-0184 and P-0190 were all in the exact place where the incident occurred. Witness P-0114 was only a few steps from the women marching, [REDACTED].<sup>286</sup> [REDACTED],<sup>287</sup> [REDACTED].<sup>288</sup> Witness P-0184 was directly involved in the organisation of the march.<sup>289</sup> She saw a tank approaching<sup>290</sup> and heard

<sup>278</sup> See the Trial Brief, *supra* note 6, paras. 466 *et seq.*

<sup>279</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 256-263.

<sup>280</sup> P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 6.

<sup>281</sup> P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 7.

<sup>282</sup> P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 41.

<sup>283</sup> P-0237, T-175-Red-ENG-WT, 10 July 2017, p. 6.

<sup>284</sup> P-0237, CIV-OTP-0081-0380-PRV at 0388-0390, paras. 42-48. See also CIV-OTP-0077-0411, at 00:05:47:07.

<sup>285</sup> [REDACTED]; and P-0364, T-190-ENG-CT, 12 September 2017, p. 31.

<sup>286</sup> P-0114, T-161-Red-ENG-WT, 24 May 2017, p. 47.

<sup>287</sup> P-0114, T-161-Red-ENG-WT, 24 May 2017, p. 64.

<sup>288</sup> P-0114, T-161-Red-ENG-WT, 24 May 2017, p. 54.

<sup>289</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, pp. 26-28.

shooting and shell being fired.<sup>291</sup> She saw young people transporting the body of six women,<sup>292</sup> including the one of Bamba Nachamy.<sup>293</sup> Witness P-0190 confirmed the presence at the place of the incident of dual status Witness P-0172's sister in law, Fatoumata Coulibaly, as they went together to the march.<sup>294</sup> She saw the tank firing<sup>295</sup> and heard a shell falling, the ground shaking and fell to the ground together with the other women.<sup>296</sup> Just before the shell landed, Fatimata Coulibaly was standing in front of Witness P-0190.<sup>297</sup> Witness P-0190 was covered in blood,<sup>298</sup> but she was not wounded; it was the blood of the people on the ground that was sprayed all over her.<sup>299</sup> It is obvious that, contrary to the Defence's arguments,<sup>300</sup> all these eyewitnesses provided direct evidence on the events of 3 March 2011. Yet, despite all the set of direct evidence given by these crime based witnesses, the Defence pretends that there were no victims, no one was hurt and no one died at the Banco roundabout on that day.<sup>301</sup>

166. In the same vein, the Defence's arguments on the alleged contradictions between the testimony of crime based and insider witnesses<sup>302</sup> are inapposite and do not take into account the different roles that those two sets of witnesses play in a trial. [REDACTED] witnesses – P-0156, P-0321 and P-0607 – are the only kind of witnesses expected to have a knowledge of the composition of the FDS supply convoy – including the precise description of the number and type of military vehicles – as well as on the kind of weapons and ammunitions that were fired, also

---

<sup>290</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 32.

<sup>291</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 32.

<sup>292</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 34.

<sup>293</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 34.

<sup>294</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 54.

<sup>295</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 57.

<sup>296</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 57.

<sup>297</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 57.

<sup>298</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 58.

<sup>299</sup> P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 58.

<sup>300</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 256-257.

<sup>301</sup> *Idem*, para. 261 and 303.

<sup>302</sup> *Ibid.*, paras. 258-263.

relying on the type of noise heard during the shooting.<sup>303</sup> Demanding the same exercise to crime based witnesses who directly suffered from the events is simply unreasonable and of little worth.

167. Turning briefly to the Defence's arguments on video evidence CIV-OTP-0077-0411,<sup>304</sup> the Legal Representative notes the following:

- (i) the relevant images have been showed to eyewitnesses of the 3 March 2011 incident and all of them have recognised the place,<sup>305</sup> the march<sup>306</sup> and the victims;<sup>307</sup>
- (ii) the Defence's attempt to discredit [REDACTED],<sup>308</sup> Witness P-0114, is inapposite at this stage of the proceedings and in any case, based on purely speculative,<sup>309</sup> irrelevant<sup>310</sup> or simply erroneous<sup>311</sup> arguments, in some instances presented in a rather denigrating manner;<sup>312</sup>
- (iii) as rightly recalled by the Prosecution,<sup>313</sup> the video has been found by expert Witness P-0606<sup>314</sup> to be free of any manipulation and to be authentic;<sup>315</sup>

<sup>303</sup> P-0607's account on the type of ammunitions has been confirmed by expert P-0583, T-185-Red-ENG-WT, 4 September 2017, pp. 41 and 46.

<sup>304</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 264-362.

<sup>305</sup> P-0114, T-161-Red-ENG-WT, 23 May 2017, p. 4; P-0184, T-215-Red-ENG-CT, 4 December 2017, pp. 29-30; P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 21; [REDACTED].

<sup>306</sup> [REDACTED]; P-0184, T-215-Red-ENG-CT, 4 December 2017, pp. 29-30; P-0190, T-21-Red2-ENG-CT, 11 February 2016, p. 21; [REDACTED].

<sup>307</sup> P-0114, T-161-Red-ENG-WT, 23 May 2017, pp. [REDACTED] 64; P-0581, T-188-Red-ENG-WT, 7 September 2017, pp. 11-13.

<sup>308</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 272-294.

<sup>309</sup> *Idem*, paras. 279, 281, 286-290, 292-294.

<sup>310</sup> *Ibid.*, paras. 274-276, 318, 334.

<sup>311</sup> *Ibid.*, para. 284. Cf. P-0114 clearly indicated [REDACTED], T-161-CONF-ENG-CT, 23 May 2017, p. 47. See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 316. Cf. P-0114 [REDACTED], T-161-CONF-ENG-CT, 23 May 2017, p. 64.

<sup>312</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 271, 277 and 282.

<sup>313</sup> See the Trial Brief, *supra* note 6, para. 467.

- (iv) contrary to the Defence's speculations,<sup>316</sup> expert Witness P-0606 also clarified that whether the metadata related to video CIV-OTP-0077-0411 indicate a different date is not relevant, being an information given by the file structure of the support (*i.e.* the camera) and not of the video itself;<sup>317</sup> and
- (v) the woman that the Defence bluntly accused twice to be acting her own death in the video<sup>318</sup> was identified by several witnesses as being Moyamou Koné,<sup>319</sup> one of three women for which it was possible to identify the body and to establish the kinship with dual status Witness P-0582, through a DNA test.<sup>320</sup>

168. Lastly, the Defence's arguments on the open political nature of the women demonstration of 3 March 2011<sup>321</sup> are only relevant in so far as they support the persecutory nature of this FDS attack against the civilian population, based on political grounds. Moreover, contrary to the Defence Submissions,<sup>322</sup> a military attack against civilians does not need to be premeditated to constitute a crime.

---

<sup>314</sup> P-0606, T-163-ENG-CT, 30 May 2017, p. 43 ("*The result in this case is that there was no trace of any kind of manipulation*"). See also P-0583 specifically in relation to the audio assessment, T-186-Red-ENG-WT, 5 September 2017, pp. 45 and 48.

<sup>315</sup> P-0606, T-163-ENG-CT, 30 May 2017, p. 43 ("*[T]he result of this analysis is that the hypothesis more probable is the hypothesis that the video file is authentic*").

<sup>316</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 299-305; and the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 171-173.

<sup>317</sup> P-0606, T-163-ENG-CT, 30 May 2017, pp. 44-45.

<sup>318</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 304 and 349.

<sup>319</sup> P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 8; P-0237, CIV-OTP-0081-0380-PRV at 0389, para. 43; and P-0582, CIV-OTP-0081-0468-PRV at 0081-0481, para. 64.

<sup>320</sup> P-0601, T-162-ENG-CT, 29 May 2017, p. 28. See also [REDACTED].

<sup>321</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 353-362 and 372-387.

<sup>322</sup> *Idem*, paras. 388-398.

169. Concerning the victims of the events, at the outset, the Legal Representative wishes to underline that, despite the Defence's arguments,<sup>323</sup> the three victims for which it was possible to find the body – and for which the kinship with dual status Witnesses [REDACTED], P-0580 and P-0582 has been proved through a DNA test<sup>324</sup> – were all found to have *remarkably similar* injuries about the same level, the neck and the shoulder area.<sup>325</sup>

170. The Legal Representative recalls her submissions<sup>326</sup> in relation to the Defence's arguments on the death of Moyamou Koné,<sup>327</sup> daughter of dual status Witness P-0582. With specific regard to the autopsy of her body<sup>328</sup> and contrary to the Defence's allegations,<sup>329</sup> the Legal Representative notes that expert Witness P-0585 felt confident that, particularly on the shoulder blade, the fractures observed were gunshot injuries.<sup>330</sup> The clothing also showed an exit hole at the back of the right shoulder, which was remarkably similar to the hole Witness P-0585 had seen during the examination of Sylla Malon's body.<sup>331</sup>

171. By the same token, expert Witness P-0585 found that [REDACTED], daughter of [REDACTED], died of a minimum of two gunshots.<sup>332</sup> Witness P-0585 suspected there may have been more than two because of the observable extent of damage.<sup>333</sup> She had at least a clear shot to her neck and one lower down. In this case, expert

---

<sup>323</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 249; the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 213-217; and the Blé Goudé Submissions, *supra* note 7, paras. 479-485.

<sup>324</sup> P-0601, T-162-ENG-CT, 29 May 2017, p. 28. See also [REDACTED].

<sup>325</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 29.

<sup>326</sup> See *supra* para. 167(v).

<sup>327</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 159-163.

<sup>328</sup> See [REDACTED].

<sup>329</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 213-217; and the Blé Goudé Submissions, *supra* note 7, paras. 467-470.

<sup>330</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 28.

<sup>331</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 28.

<sup>332</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 25. See also [REDACTED].

<sup>333</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 25.

Witness P-0585 could actually see a hole in the skin on the left shoulder that was clearly the entrance of the projectile.<sup>334</sup>

172. Similarly, the cause of death of Sylla Malon, sister of dual status Witness P-0580, was found to be a gunshot injury of neck and left shoulder.<sup>335</sup> Moreover, *“the nature of the damage was suggestive of the use of high velocity ammunition”*.<sup>336</sup>

173. In conclusion, the wounds observed on these three victims all appear to be injuries by bullets coming from left to right – showing, as explained by expert Witness P-0585, a clear pattern within them.<sup>337</sup> Similar injuries to the head, neck and shoulders can be seen on the other women whose bodies were not recovered, but yet were identified by relatives in the video evidence and/or pictures provided.<sup>338</sup>

174. As regards the death of Nachamy Bamba, daughter of dual status Witness P-0172, the Defence presents a series of irrelevant speculations.<sup>339</sup> The Legal Representative recalls her submissions on the alleged hearsay evidence<sup>340</sup> and notes the following:

- (i) it is irrelevant whether other public services were not available on 3 March 2011 because Witness P-0237 explained in detail how the death certificate in order to bury his daughter was obtained through his

---

<sup>334</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 25.

<sup>335</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 17. See also [REDACTED].

<sup>336</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 23. See also [REDACTED].

<sup>337</sup> P-0585, T-189-ENG-ET, 11 September 2017, p. 29.

<sup>338</sup> P-0237, CIV-OTP-0081-0380-PRV at 0389, para. 44; P-0106, CIV-OTP-0019-0211-PRV at 0220; [REDACTED]; [REDACTED]; [REDACTED]; P-0581, T-188-Red-ENG-WT, 7 September 2017, pp. 13-18.

<sup>339</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 145-154.

<sup>340</sup> See *supra* paras. 164-165 and 167(ii), particularly in relation to the direct nature of the evidence provided by P-0114.

younger brother, who was working at the town hall on the day of Nachamy Bamba's killing;<sup>341</sup>

- (ii) the wounds that Witness P-0106 saw on one of the women killed at the march are compatible with the ones suffered by Nachamy Bamba, based on the photographic<sup>342</sup> and video evidence;<sup>343</sup>
- (iii) it is irrelevant whether Witness P-0237 witnessed the transport of his daughter's body or its arrival home,<sup>344</sup> and in any case the fact that Witness P-0237's brother took care of that, it is corroborated by Witness P-0184,<sup>345</sup> and
- (iv) it is equally irrelevant whether the pictures of Nachamy Bamba's body were taken by a paid professional photographer.<sup>346</sup>

175. In relation to the Defence Submissions on the death of Fatoumata Coulibaly,<sup>347</sup> sister in law of dual status Witness P-0172, the Legal Representative recalls her submissions above in relation to both the testimony of Witness P-0190<sup>348</sup> and the findings of expert Witnesses P-0606 and P-0583.<sup>349</sup>

176. Lastly, in relation to the Defence's arguments on the death of Amy Coulibaly and Adjara Touré, sister of dual status Witness P-0581, the Legal Representative recalls her submissions on the direct nature of the evidence presented by crime based

<sup>341</sup> P-0237, T-175-Red-ENG-WT, 10 July 2017, pp. 40-41, Cf. the Gbagbo Submissions, *supra* note 7, Annex 4, para. 63; and the Gbagbo Submissions, *supra* note 7, Annex 6, para. 146.

<sup>342</sup> P-0106, CIV-OTP-0019-0211-PRV at 0220; and pictures CIV-OTP-0037-0114, CIV-OTP-0037-0116, CIV-OTP-0037-0117 and CIV-OTP-0037-0118.

<sup>343</sup> CIV-OTP-0077-0411 at 00:05:47:07. See also P-0237, CIV-OTP-0081-0380-PRV at 0389, para. 44; and P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 52.

<sup>344</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 150.

<sup>345</sup> P-0184, T-215-Red-ENG-CT, 4 December 2017, p 34.

<sup>346</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 151-154.

<sup>347</sup> *Idem*, paras. 157-158.

<sup>348</sup> See *supra* para. 165.

<sup>349</sup> See *supra* para. 167(iii), (iv) and relevant notes.

Witnesses P-0106, P-0172, P-0184 and P-0237,<sup>350</sup> and on the examination of video evidence CIV-OTP-0077-0411 by expert Witnesses P-0606 and P-0583.<sup>351</sup> Dual status Witness P-0581 recognised her sister Adjara Touré in the video evidence and in the pictures of the women's demonstration of 3 March 2011.<sup>352</sup>

177. Finally, the Legal Representation notes the several attempts by the Defence of Mr Gbagbo to cast doubts on the integrity of the *Association des parents des femmes Martyres d'Abobo (APAFEMA)* and their members.<sup>353</sup> The Legal Representative recalls that dual status Witnesses P-0172, P-0237, [REDACTED] and P-0582 – all relatives of the women killed during the demonstration of 3 March 2011 – consistently testified that the purpose for the creation of the association was to provide moral and financial support, and to help the family members of the victims of said event.<sup>354</sup> The Association is therefore simply an organisation for mutual support amongst individuals having suffered from the death of their relatives and a way of remembering about what happened in Abobo on 3 March 2011.

#### **b. Abobo market shelling (17 March 2011)**

178. As far as the facts are concerned, the Legal Representative submits that, contrary to the Defence's arguments,<sup>355</sup> the evidence in the record is sufficient to support the Prosecution's narrative of the events and to establish that:

- (i) the BASA had 120mm mortars<sup>356</sup> and its personnel knew how to use them;<sup>357</sup>

<sup>350</sup> See *supra* paras. 164-165.

<sup>351</sup> See *supra* paras. 167(iii), (iv) and relevant notes.

<sup>352</sup> P-0581, T-188-Red-ENG-WT, 7 September 2017, pp. 13 and 15. See also [REDACTED].

<sup>353</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 176, 199, 221, 223-226.

<sup>354</sup> P-0172, T-174-Red-ENG-WT, 7 July 2017, p. 18; P-0237, T-175-Red-ENG-WT, 10 July 2017, p. 11; [REDACTED]; and P-0582 T-187-Red-ENG-WT, 6 September 2017, p. 51.

<sup>355</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 413-520.

<sup>356</sup> See the Trial Brief, *supra* note 6, para. 485.

<sup>357</sup> *Idem.* See in particular, P-0164, T-164-Red-ENG-WT, 19 June 2017, p. 23.



- (ii) elements of the BASA were deployed at Camp Commando before and at the time of the market shelling of 17 March 2017;<sup>358</sup>
- (iii) 120mm mortars were at Camp Commando on 17 March 2017;<sup>359</sup> and
- (iv) BASA troops based at Camp Commando fired 120mm mortars in Abobo on 17 March striking several locations, including the Siaka Koné Market.<sup>360</sup>

179. The Defence tries to deny *in toto* the incident of 17 March 2011. In relation to the unavailability of 120mm mortars, the Defence's arguments<sup>361</sup> rest solely on the contradictory testimony of Witness P-0047 – who, despite having previously indicated in his statement the presence at Camp Commando of 120mm mortars, recanted his declarations during his oral testimony.<sup>362</sup> Witness P-0009 did not say anything about the availability of 120mm mortars at Camp Commando on the specific day of the incident.<sup>363</sup> The same goes for Witness P-0156 who could only testify about the absence of that kind of mortars between 28 February and 4 March 2011 – two weeks before the shelling.<sup>364</sup>

180. On the contrary, Witnesses P-0226, P-0239 and P-0164 consistently affirmed that those mortars were indeed available at Camp Commando<sup>365</sup> and that BASA members fired shells on 17 March 2017.<sup>366</sup> In this regard, the Legal Representative recalls her submissions *supra* on the applicable standard at the present stage of the

<sup>358</sup> See the Trial Brief, *supra* note 6, para. 485 and 487.

<sup>359</sup> *Idem*, para. 485.

<sup>360</sup> *Ibid.*, para. 484-495.

<sup>361</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 414-416.

<sup>362</sup> P-0047, T-204-Red-ENG-WT, 8 November 2017, pp. 16-17. Cf. [REDACTED].

<sup>363</sup> P-0009, T-196-Red-ENG-WT, 28 September 2017, p. 41.

<sup>364</sup> P-0156, T-172-Red-ENG-WT, 5 July 2017, p. 33.

<sup>365</sup> See the Trial Brief, *supra* note 6, paras. 485 and 487.

<sup>366</sup> *Idem*, paras. 490 and 493.

proceedings,<sup>367</sup> and notes that the Defence's arguments on the credibility of those insider witnesses are inapposite and, in any case, based on mere speculations.<sup>368</sup>

181. Furthermore, the Defence's reference to Witness P-0009's statement on the alleged range of 60mm mortars<sup>369</sup> is misleading and of no use for the purposes of establishing whether fire from a 120mm mortar was capable of reaching and causing extensive damages at the Siaka Koné market.

182. Moreover, the Defence's attempts to negate the FDS shelling of 17 March 2011 by pointing to evidence which is not in the record<sup>370</sup> are irrelevant for the purposes of the present proceedings. Should the Defence wish to rely on Witness P-0597<sup>371</sup> or on some information on the use of 81mm mortars that the UNOCI could allegedly provide,<sup>372</sup> it would be free to do so during the presentation of its evidence.

183. Regarding the Defence's arguments on the timing of the shelling of Abobo<sup>373</sup> and the number of mortar shells that were fired on 17 March 2011,<sup>374</sup> the Legal Representative submits that in order to establish the occurrence of a shelling of several close locations in a defined area in the course of one day, it is not necessary – but rather irrelevant – to indicate the exact number of shells that were fired and ended up striking those locations. The act itself of shelling is indeed a concerted and persistent use of heavy fire of artillery to hit a specific target.

---

<sup>367</sup> See *supra* paras. 48-50 and 53-56.

<sup>368</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 426-428. See in particular, *idem*, paras. 432-433 in relation to P-0164, and para. 443 in relation to P-0226.

<sup>369</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 421-422; and the Blé Goudé Submissions, *supra* note 7, paras. 445-447.

<sup>370</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 418-420 and 423.

<sup>371</sup> *Idem*, paras. 418-420.

<sup>372</sup> *Ibid.*, para. 423.

<sup>373</sup> *Ibid.*, paras. 460-463.

<sup>374</sup> *Ibid.*, paras. 473-477.

184. Turning briefly to the Defence Submissions about the video evidence on the charged incident of 17 March 2011,<sup>375</sup> the Legal Representative notes the following:

- (i) despite the Defence's unfounded allegations on the reliability of video CIV-OTP-0046-1283, two eyewitnesses of the shelling recognised the marketplace just after the incident and identified some of the victims;<sup>376</sup>
- (ii) the Defence itself did not dispute that video CIV-OTP-0042-0593 contains the images of the dead body of Witness P-0536's son, killed by the shelling of 17 March 2011,<sup>377</sup> and
- (iii) as regards video evidence CIV-OTP-0043-0268 and CIV-OTP-0051-2092,<sup>378</sup> the Defence's arguments remain in the realm of mere speculation as it is not explained how the images contained in the two videos do not corroborate the oral evidence supporting the Prosecution's narrative of events that took place in Abobo on 17 March 2011.

185. Lastly, the Legal Representative notes the Defence Submissions on report CIV-OTP-0049-0048 on the shelling sites of Abobo and its author, expert Witness P-0411.<sup>379</sup> The Defence's general arguments on the expert credibility,<sup>380</sup> on how the mission was prepared<sup>381</sup> and how it unfolded<sup>382</sup> are either irrelevant or based on pure suppositions. The Legal Representative recalls her submissions on the applicable

---

<sup>375</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 479-483.

<sup>376</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 39-41; and P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 99-100.

<sup>377</sup> P-0536, T-23-Red2-ENG-CT, 15 February 2016, pp. 11-14.

<sup>378</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 482-483.

<sup>379</sup> *Idem*, paras. 484-520.

<sup>380</sup> *Ibid.*, paras. 490, 506-511, 513.

<sup>381</sup> *Ibid.*, paras. 485-490.

<sup>382</sup> *Ibid.*, paras. 512-515.

standard to the present proceedings,<sup>383</sup> and notes that the Defence does not explain how expert Witness P-0411's recollection of the identity of Prosecution's staff or of any military or authority representative is relevant to the assessment of the conclusions in his report.

186. Instead, the Defence's attempts to undermine the overall narrative of the events that took place in Abobo on 17 March 2011 by assessing report CIV-OTP-0049-0048 in isolation and attributing to expert Witness P-0411 a mandate he was not supposed to fulfil. As the Legal Representative indicated *supra*,<sup>384</sup> each element needs to be considered in light of the whole set of submitted evidence.

187. By the same token, expert Witness P-0411 looked at all the available evidence while conducting the investigation and not with the cognitive bias that it was categorically a 120mm mortar attack. He considered the physical evidence on the ground and the references quoted in the letter of mission when he looked at many different possible courses of events.<sup>385</sup> When asked about the probable shelling using the 120mm mortar weapon system, the evidence led him to the conclusions stated in his report<sup>386</sup> – e.g., the size and shape of fragmented ammunitions recovered were found to be consistent with a detonation of a 120mm Russian or Soviet mortar shell.<sup>387</sup> Similarly, contrary to the Defence's arguments,<sup>388</sup> expert Witness P-0411 could conclude that – given the minimum and maximum range of 120mm mortar shell fired from a Russian or Soviet mortar firing system<sup>389</sup> – the area of SOS village and Siaka Koné market were undoubtedly within reach from Camp Commando,<sup>390</sup>

---

<sup>383</sup> See *supra* paras. 48-50 and 53-56.

<sup>384</sup> See *supra* para. 109.

<sup>385</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, p. 42.

<sup>386</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, pp. 42-43 and 95-96.

<sup>387</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, pp. 4-5.

<sup>388</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 502-505.

<sup>389</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, p. 16.

<sup>390</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, pp. 17-20.

and there were no high rise buildings or any obstacles in the probable direction of fire that would have limited the use of 120mm mortar ammunition.<sup>391</sup>

188. Accordingly, the evidence in the record is more than sufficient to support the Prosecution's narrative of the events that took place in Abobo, to warrant the continuation of the trial proceedings and eventually hear evidence from the Accused.

189. Concerning the victims of the event, in relation to Defence's arguments on the crime based witnesses who testified on the shelling of the different areas in Abobo,<sup>392</sup> the Legal Representative recalls her submissions on the Defence's difficulty in determining the difference between hearsay and direct witnesses.<sup>393</sup>

190. In particular, on 17 March 2011:

- (i) Witness P-0105 was at the Siaka Koné market when the shelling occurred;<sup>394</sup> she was injured<sup>395</sup> and saw people being hit by the shell;<sup>396</sup>
- (ii) Witness P-0106 was in Abobo at the *Quartier Marley*, when he heard the shell hitting the Siaka Koné market;<sup>397</sup> on the next day he went to the market and saw blood, destruction, some of the injured that were still at the market and families burying their relatives;<sup>398</sup>

---

<sup>391</sup> P-0411, T-169-Red-ENG-WT, 30 June 2017, p. 80.

<sup>392</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 465-472.

<sup>393</sup> See *supra* paras. 164-165.

<sup>394</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 34-35.

<sup>395</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 36-37.

<sup>396</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 37-38. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 241-244.

<sup>397</sup> P-0106, CIV-OTP-0019-0211-PRV at 0228, para. 91.

<sup>398</sup> P-0106, CIV-OTP-0019-0211-PRV at 0228, para. 91.

- (iii) Witness P-0107 could hear the shelling on the Siaka Koné market as he was 10 minutes away at the time of the attack,<sup>399</sup> and he provided direct evidence of the continuing bombing of the area between March and April 2011;<sup>400</sup>
- (iv) Witness P-0117 [REDACTED]<sup>401</sup> [REDACTED];<sup>402</sup>
- (v) Witness P-0184 could hear the shelling of the Siaka Koné market even from the distance;<sup>403</sup>
- (vi) Witness P-0294 went to the market right after the shelling in which her brother and sister-in-law were killed, and she saw blood and rest of flesh of the victims;<sup>404</sup>
- (vii) Makaridia Doumbia was struck by a bomb on her way home from the Siaka Koné market,<sup>405</sup> and her brother, dual status Witness P-0297, provided evidence on the identification of her body at the morgue of Anyama;<sup>406</sup>
- (viii) Witness P-0360 heard the shells hitting Abobo, in particular [REDACTED], and right after saw several people dead or wounded and the damages on the surrounding areas;<sup>407</sup>

---

<sup>399</sup> P-0107, CIV-OTP-0020-0064-PRV at 0085, paras. 156-158.

<sup>400</sup> P-0107, CIV-OTP-0020-0064-PRV at 0085, paras. 156-159.

<sup>401</sup> P-0117, T-111-CONF-ENG-ET, 5 December 2016, pp. 29-30; and CIV-OTP-0020-0033-R04 at 0057, paras. 177-181.

<sup>402</sup> P-0117, CIV-OTP-0020-0033-R04 at 0057-0058, paras. 177-184.

<sup>403</sup> P-1084, T-215-Red-ENG-ET, 4 December 2017, p. 41.

<sup>404</sup> P-0294, CIV-OTP-0041-0388-PRV at 0392-0393, paras. 18-26.

<sup>405</sup> P-0297, T-192-Red-ENG-WT, 14 September 2017, p. 46.

<sup>406</sup> P-0297, CIV-OTP-0041-0412-PRV at 0417-0418, paras. 31-32.

<sup>407</sup> P-0360, CIV-OTP-0046-1203-PRV at 1208-1209, paras. 20-26.

- (ix) Witness P-0362 was close to the Siaka Koné market when the shelling started,<sup>408</sup> heard the shell falling,<sup>409</sup> and saw a number of victims in the surrounding area;<sup>410</sup>
- (x) Witness P-0363 heard the shells falling next to his place, heard people screaming and saw dead and wounded people lying on the ground;<sup>411</sup>
- (xi) Witness P-0364 was herself hit by the shelling and witnessed several people, including some of her relatives, being struck on the same occasion;<sup>412</sup>
- (xii) Witness P-0489 heard the shell falling on the Siaka Koné market<sup>413</sup> and, on the same day, was hit by another shell falling on her own property in Abobo SOS Village;<sup>414</sup>
- (xiii) Witness P-0536 and her son were struck by a shell next to the Siaka Koné market; she was wounded and her son, [REDACTED], lost his life;<sup>415</sup> and
- (xiv) dual status Witness P-0580 heard the noise of loud shelling<sup>416</sup> on the Siaka Koné market,<sup>417</sup> and once he got there, he saw people lying dead on the ground with their heads and limbs crushed.<sup>418</sup>

---

<sup>408</sup> P-0362, CIV-OTP-0046-1271-PRV at 1274, para. 15.

<sup>409</sup> P-0362, CIV-OTP-0046-1271-PRV at 1275-1276, para. 19.

<sup>410</sup> P-0362, CIV-OTP-0046-1271-PRV at 1275-1276, paras. 19-26.

<sup>411</sup> P-0363, CIV-OTP-0046-0275-PRV at 0279-0282, paras. 18-28.

<sup>412</sup> P-0364, T-190-ENG-CT, 12 September 2017, pp. 40-46. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 229-233.

<sup>413</sup> P-0489, CIV-OTP-0071-2199-PRV at 2203, para. 17.

<sup>414</sup> P-0489, CIV-OTP-0071-2199-PRV at 2203-2204, paras. 16-25. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 223-225.

<sup>415</sup> P-0536, T-23-Red2-ENG-CT, 15 February 2016, pp. 10-12. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 180-182 and 236-239.

<sup>416</sup> P-0580, T-186-Red-ENG-WT, 5 September 2017, p. 57.

<sup>417</sup> P-0580, T-186-Red-ENG-WT, 5 September 2017, p. 58.

191. In sum, the Legal Representative reiterates that, contrary to the Defence's unjustified approach,<sup>419</sup> being inside the house while the house itself is being shelled or being hit and losing consciousness during the bombing, or even arriving on the place of the incident a few minutes after a shelling took place, does not turn any of the evidence provided by those witnesses into hearsay evidence. All those crime based witnesses personally heard, saw or suffered from the shelling in Abobo on 17 March 2011.

192. Accordingly, Witnesses P-0360, P-0362, P-0363 and P-0364 provide also direct evidence:

- (i) on the death of [REDACTED] and on his friend Komo being wounded;<sup>420</sup>
- (ii) on the death of Bamba Lassina,<sup>421</sup> Bamba Daouda,<sup>422</sup> Adama, Kouakou Koffi François and N'Guessan Adjo Therese,<sup>423</sup> and on Diomandé Amara, Solo, Moussa Gana, Diomandé Sékou and Ballo Seydou being wounded;<sup>424</sup>
- (iii) on Kone Moussa having been struck by a shell;<sup>425</sup> and

---

<sup>418</sup> P-0580, T-186-Red-ENG-WT, 5 September 2017, p. 58.

<sup>419</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 465-471; and the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 265-266.

<sup>420</sup> P-0360, CIV-OTP-0046-1203-PRV at 1208-1209, paras. 20-26. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 191-193 and 235.

<sup>421</sup> P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 93-100. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 178-179.

<sup>422</sup> P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 93-100. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 207-210.

<sup>423</sup> P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 93-100. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 187-190.

<sup>424</sup> P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 93-100. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, para. 240.

<sup>425</sup> P-0363, CIV-OTP-0046-0275-PRV at 0046-0281, para. 25. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 221-222.



(iv) on Issa Bokoum, Kaboré François, Kahoum Kouassi Mathurin, Yembone Moumouni, Papiss and Isamel being struck during the shelling.<sup>426</sup>

193. Lastly, contrary to the Defence Submissions on the death of Yaya Diakité,<sup>427</sup> the Legal Representative submits that the available evidence is clearly sufficient to establish that he lost his life as a consequence of the 17 March 2011 shelling of the Siaka Koné market. The Legal Representative notes that two eyewitnesses, Witnesses P-0105 and P-0362, saw Yaya Diakité respectively at the moment he was struck by a shell<sup>428</sup> and then, when he was wounded lying on the ground at the market, with both legs broken.<sup>429</sup> The two witnesses are also consistent in affirming that Yaya Diakité did not die on the spot, but, as they were told, was brought to the hospital and died because of his injuries.<sup>430</sup>

194. Their testimony is corroborated by video evidence CIV-OTP-0046-1283,<sup>431</sup> where both Witnesses P-0105 and P-0362 were able to identify Yaya Diakité,<sup>432</sup> seated on the ground with his limbs crushed. The video shows the victim wounded but still alive and confirms the information on Yaya Diakité's death at the hospital, which both Witnesses P-0105 and P-0362 were given by Yaya Diakité's relatives.<sup>433</sup> Contrary to the Defence's arguments,<sup>434</sup> the Legal Representative underlines that the elements

---

<sup>426</sup> P-0364, T-190-ENG-CT, 12 September 2017, pp. 40-46. Cf. the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 218-220.

<sup>427</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 227-234.

<sup>428</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 34-38.

<sup>429</sup> P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 99-100.

<sup>430</sup> P-0105, T-213-Red-ENG-CT, 29 November 201, pp. 37-38; and P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 99-100.

<sup>431</sup> CIV-OTP-0046-1283 at 02.01.10 minutes.

<sup>432</sup> P-0105, T-213-Red-ENG-CT, 29 November 2017, pp. 39-41; and P-0362, T-206-Red-ENG-CT, 10 November 2017, pp. 66-68.

<sup>433</sup> See *supra* note 430.

<sup>434</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 227-234.

of the crime of murder may be satisfied independently on whether the victim's body has been identified.<sup>435</sup>

### **E.3. Yopougon incidents (25-28 February 2011)**

195. The Legal Representative submits that the Defence should be requested to respond to the counts related to the incidents which occurred in Yopougon at the end of February 2011. Indeed, there is sufficient evidence upon which a reasonable Chamber could convict the Accused for at least 19 killings and the injury of at least 13 people during the incidents in Yopougon between 25 and 28 February 2011.

196. Contrary to the Defence Submissions and for the reasons provided *infra*, the Prosecutor and the Legal Representative have submitted sufficient evidence on which, if accepted, a reasonable Chamber could convict the Accused at the end of the trial for the counts arising from this incident.

197. In particular, contrary to the arguments by the Defence of Mr Blé Goudé, there is evidence for the Chamber to conclude that there is a sufficient link between Mr Blé Goudé's different actions and speeches and the crimes that were committed between 25 and 28 February 2011.<sup>436</sup>

198. Firstly, and contrary to the Defence's arguments,<sup>437</sup> the evidence reveals that the clashes in the neighbourhood prior to the events of 25 February 2011 were completely different from those that happened on that day,<sup>438</sup> especially as firearms and grenades were used on 25 February 2011.<sup>439</sup> The fact that the youth of Doukouré

---

<sup>435</sup> See *supra* para. 105.

<sup>436</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 19-20, 269, 585-590.

<sup>437</sup> *Idem*, para. 587.

<sup>438</sup> See, e.g., P-0442, T-21-Red2-ENG-CT, 11 February 2016, pp. 16-17; P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 85-86.

<sup>439</sup> P-0459, T-152-Red-ENG-WT, 5 May 2017, pp. 70-71; P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 27-28, 77-79, 82; [REDACTED]; P-0442, T-19-Red-ENG-WT, 9 February 2016, p. 81.

threw stones to the other side<sup>440</sup> cannot reasonably justify an armed attack by the pro-Gbagbo youth, the militiamen and the police where multiple people were killed and suffered injuries by firearms and grenades.<sup>441</sup> Looking at the evidence presented so far in its entirety and read in the context of the post-electoral crisis, it could be concluded that the killings and injuries suffered from by the civilian population of Doukouré neighbourhood on 25 February 2011 were the result of an aggression which could be attributed to pro-Gbagbo youth.

199. Indeed, and contrary to the Defence's assertions,<sup>442</sup> the Chamber could conclude, based on the totality of the evidence, that the people who attacked the Doukouré neighbourhood on that day were pro-Gbagbo youth coming from Le Baron Bar. Witness P-0436 – whose evidence is not mentioned in the Blé Goudé Submissions – clearly stated that the groups that had gathered on the main road on 25 February 2011 were *“young people that Blé Goudé had called to a rally at the CP1. It was at the end of their rally that they came and took up position there”*.<sup>443</sup> Witness P-0440 also mentioned that those who burned the *gbakas* (typical mean of transportation owned by people from the north of Côte d'Ivoire) on 25 February 2011 were not making any secret that they were Young Patriots,<sup>444</sup> and that only the Young Patriots were in the street at that time.<sup>445</sup> Witness P-0459 also testified that the Young Patriots of the neighbourhood already knew on 24 February 2011 that Mr Blé Goudé would come at Le Baron Bar the next day for a meeting.<sup>446</sup>

---

<sup>440</sup> See the Blé Goudé Submissions, *supra* note 7, para. 587.

<sup>441</sup> See, e.g., the evidence cited by the Prosecution in the Trial Brief, *supra* note 6, Annex E.2.

<sup>442</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 586-589.

<sup>443</sup> P-0436, T-149-Red2-ENG-CT, 2 May 2017, p. 2. See also P-0436, T-149-Red2-ENG-CT, 2 May 2017, pp. 3-4, 9.

<sup>444</sup> P-0440, T-158-Red2-ENG-CT, 12 May 2017, pp. 47-51.

<sup>445</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, p. 19-21.

<sup>446</sup> P-0459, T-153-Red-ENG-WT, 8 May 2017, pp. 79-80.

200. Witness P-0442 also clearly mentioned that the assailants on 25 February 2011 were pro-Gbagbo supporters that were coming from the meeting at Le Baron Bar.<sup>447</sup> Mr Blé Goudé attempts to discard Witness P-0442's evidence alleging that this witness did not describe the pro-Gbagbo supporters or explain why he recognised them as Gbagbo supporters.<sup>448</sup> By doing so, Mr Blé Goudé ignores parts of Witness P-0442's evidence and erroneously looks at the evidence in isolation. Indeed, Witness P-0442 clearly mentioned that he identified the assailants on 25 February 2011 as Gbagbo supporters who had attended Mr Blé Goudé's meeting at Le Baron Bar because "*these are the people who are saying they would kill the Mossis, they would drive out the Mossi*" and that the majority of transporters, who had their *gbakas* and other vehicles burned on that day, were Dioulas.<sup>449</sup> Witness P-0442 [REDACTED].<sup>450</sup> He was therefore familiar with the Gbagbo supporters present in the neighbourhood, especially as he saw them training every day in broad daylight near the 16<sup>th</sup> arrondissement before the events of 25 February 2011.<sup>451</sup> Witness P-0442 also testified that the pro-Gbagbo supporters were saying that the foreigners had come there to grab the power from them.<sup>452</sup> The fact that the pro-Gbagbo youth were training in the neighbourhood in broad daylight and that they were not doing any secret that they were pro-Gbagbo is corroborated by the police commissioner of the 16<sup>th</sup> arrondissement (Witness P-0440).<sup>453</sup> The Defence also ignores that Witness P-0442 knew about Mr Blé Goudé's meeting at Le Baron Bar because the Gbagbo supporters themselves told him about the rally.<sup>454</sup> This circumstance shows that the witness could recognise the Gbagbo supporters and corroborates his evidence that it was the latter that attacked the neighbourhood.

<sup>447</sup> P-0442, T-19-Red-ENG-WT, 9 February 2016, p. 80; P-0442, T-20-Red-ENG-WT, 10 February 2016, pp. 2-3.

<sup>448</sup> See the Blé Goudé Submissions, *supra* note 7, para. 588.

<sup>449</sup> P-0442, T-19-Red-ENG-WT, 9 February 2016, p. 76. The fact that the *gbakas* mainly belonged to RDR members or RHDP members is also confirmed by P-0440, T-157-Red2-ENG-CT, 11 May 2017, p. 19.

<sup>450</sup> P-0442, T-19-CONF-ENG-CT, 9 February 2016, pp. 66-68.

<sup>451</sup> P-0442, T-19-Red-ENG-WT, 9 February 2016, pp. 77-79.

<sup>452</sup> P-0442, T-19-Red-ENG-WT, 9 February 2016, pp. 77-79.

<sup>453</sup> P-0440, T-155-Red2-ENG-CT2, 10 May 2017, pp. 76-78, 83-85; P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 20-21; P-0440, T-158-Red2-ENG-CT, 12 May 2017, pp. 50-52.

<sup>454</sup> P-0442, T-20-Red-ENG-WT, 10 February 2016, pp. 2-3. See also P-0442, T-19-Red-ENG-WT, 9 February 2016, p. 80.

201. As regards the time of the events, the Defence of Mr Blé Goudé mischaracterises the evidence when arguing that Witnesses P-0438, P-0433 and P-0109 testified that the violence in Doukouré started before Mr Blé Goudé's speech at Le Baron Bar was terminated or even started.<sup>455</sup> Indeed, none of these witnesses testified to that effect and the references cited in the Blé Goudé Submissions do not support said contention.<sup>456</sup> Moreover, Mr Blé Goudé wrongly asserts that Witness P-0449 testified that Mr Blé Goudé's speech did not start before 11 am and ended around 1 pm,<sup>457</sup> as Witness P-0449 rather mentioned that the meeting – and not the speech itself – started approximately at “10 heures, 11 heures, je pense bien”<sup>458</sup> and ended “aux alentours de 13 heures”, specifying that the speech itself lasted 20 to 30 minutes.<sup>459</sup>

202. Concerning the involvement of the police officers from the 16<sup>th</sup> arrondissement in the crimes committed on 25 February 2011, the Defence of Mr Blé Goudé simply cites Witness P-0109's evidence to discredit the corroborated evidence of Witnesses P-0433, P-0436 and P-0442.<sup>460</sup> This approach is misplaced, as the corroborated evidence of Witnesses P-0433, P-0436 and P-0442 could be sufficient to establish the involvement of such police officers during the events, especially at this stage of the proceedings.

203. Mr Blé Goudé again mischaracterises Witness P-0441's evidence when he alleges that the latter did not mention how he knew that Agbolo was Mr Blé Goudé's bodyguard.<sup>461</sup> In response to questions put to him by Mr Blé Goudé's counsel,

---

<sup>455</sup> See the Blé Goudé Submissions, *supra* note 7, para. 586.

<sup>456</sup> *Idem*, para. 586 (footnote 1444), citing P-0438, T-150-Red-FRA-CT, 3 May 2017, p. 8; P-0433, T-147-Red-FRA-WT, 26 April 2017, p. 20; P-0109, T-154-Red2-FRA-CT, 9 May 2017, pp. 32-33, 47.

<sup>457</sup> See the Blé Goudé Submissions, *supra* note 7, para. 586.

<sup>458</sup> P-0449, T-159-Red-FRA-WT, 22 May 2017, p. 37.

<sup>459</sup> P-0449, T-159-Red-FRA-WT, 22 May 2017, p. 37.

<sup>460</sup> See the Blé Goudé Submissions, *supra* note 7, para. 589.

<sup>461</sup> *Idem*, para. 590.

Witness P-0441 indeed explained that Agbolo himself told him that he was Mr Blé Goudé's bodyguard and the details of this occasion [REDACTED].<sup>462</sup>

204. Furthermore, the Legal Representative submits that the nature of the actions and crimes committed on 25 February 2011 and following days should be taken into account to establish the link between Mr Blé Goudé's speech and what the civilian population of Doukouré neighbourhood suffered between 25 and 28 February 2011.

205. Contrary to the arguments by the Defence of Mr Blé Goudé,<sup>463</sup> the speech at Le Baron Bar can reasonably be interpreted not as a call for peace, but rather as a *mot d'ordre* calling the Young Patriots to report any stranger or foreigner entering their neighbourhood.<sup>464</sup> This call was clearly understood by the Young Patriots as a call to target individuals supporting or perceived to support Mr Alassane Ouattara,<sup>465</sup> and the direct result of said call was that foreigners and perceived Ouattara supporters were indeed specifically targeted on that day, immediately after the end of the speech.<sup>466</sup> In this regard, the Legal Representative recalls the evidence establishing that shops in Doukouré, mainly owned by people from the north of Côte d'Ivoire, from the neighbouring countries and by Dioulas (all assimilated to the RHDP), were attacked on that day,<sup>467</sup> as were the *gbakas*, mainly owned by civilians from the neighbouring countries and Dioulas.<sup>468</sup> The Lem mosque and its occupants were also brutally attacked, and there is sufficient evidence showing that said attack was

---

<sup>462</sup> P-0441, T-37-CONF-ENG-CT, 11 May 2016, pp. 72-73.

<sup>463</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 580, 584.

<sup>464</sup> See the Trial Brief, *supra* note 6, paras. 238, 551, 781. See also the Prosecution's analysis of the speech in the filing ICC-02/11-01/15-875.

<sup>465</sup> See the Trial Brief, *supra* note 6, para. 877.

<sup>466</sup> See *supra* paras. 199-200 (where the evidence cited shows that the assailants on that day were pro-Gbagbo supporters coming from the meeting at Le Baron Bar).

<sup>467</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 19, 72-73; P-0459, T-153-Red-ENG-WT, 8 May 2017, pp. 2, 25-26, 42-43, 77-78; P-0436, [REDACTED]; T-149-Red2-ENG-CT, 2 May 2017, p. 5; P-0433, T-147-Red-ENG-WT, 26 April 2017, p. 31; P-0438, T-150-Red-ENG-WT, 3 May 2017, p. 6; [REDACTED].

<sup>468</sup> P-0442, T-19-Red-ENG-WT, 9 February 2016, p. 76; P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 18-19.

conducted on persecutory grounds against perceived Ouattara supporters who were targeted on the mere basis of their nationality, religion or political affiliation.<sup>469</sup>

206. Secondly, in order to argue that the Prosecution failed to prove that the proliferation of roadblocks after 25 February 2011 could be attributed to Mr Blé Goudé's speech at Le Baron Bar,<sup>470</sup> the Defence simply offers its own interpretation of the evidence and disregards the significant amount of evidence to the contrary. Indeed, the Defence only cites evidence that, in its opinion, supports the idea that the roadblocks were used as self-defence<sup>471</sup> and that people at roadblocks did not target specific categories of the civilian population or specific ethnic groups.<sup>472</sup>

207. In fact, the Prosecution adduced ample evidence that crimes were committed at roadblocks,<sup>473</sup> directly refuting Mr Blé Goudé's argument that the roadblocks were only used as self-defence. Moreover, the fact that Witness P-0449 mentioned that the erection of roadblocks was spontaneous,<sup>474</sup> when considered with his testimony that roadblocks were erected immediately after Mr Blé Goudé's call on 25 February 2011 and in furtherance of this call,<sup>475</sup> directly contradicts the allegation that the erection of these roadblocks cannot be attributed to Mr Blé Goudé's speech. The Defence also misstates Witness P-0449's evidence when mentioning that the latter said that the erection of roadblocks on that day was uncoordinated.<sup>476</sup> Witness P-0449 simply explained and understood the question as meaning that they created the roadblocks themselves.<sup>477</sup> Mr Blé Goudé also ignores Witness P-0459's evidence according to which the roadblocks started to go up on the day of Mr Blé Goudé's speech.<sup>478</sup>

---

<sup>469</sup> See the Trial Brief, *supra* note 6, paras. 552-555.

<sup>470</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 269, 591-599.

<sup>471</sup> *Idem*, para. 594.

<sup>472</sup> *Ibid.*, paras. 593, 595.

<sup>473</sup> See, for instance, P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 22, 33-35, 41-44, 46; P-0438, T-150-Red-ENG-WT, 3 May 2017, pp. 21-22, 36. See also [REDACTED]. See also [REDACTED].

<sup>474</sup> See the Blé Goudé Submissions, *supra* note 7, para. 593.

<sup>475</sup> P-0449, T-159-Red-FRA-WT, 22 May 2017, pp. 37-39.

<sup>476</sup> See the Blé Goudé Submissions, *supra* note 7, para. 593.

<sup>477</sup> P-0449, T-159-Red-FRA-WT, 22 May 2017, p. 103.

<sup>478</sup> P-0459, T-153-Red-ENG-WT, 8 May 2017, pp. 15-16, 49.

208. Contrary to the Defence of Mr Blé Goudé's argument of insufficient evidence of targeting neighbourhoods and religious institutions,<sup>479</sup> the evidence in the record is sufficient to conclude at this stage of the proceedings that specific categories of the civilian population or specific ethnic groups were targeted at the roadblocks that proliferated after Mr Blé Goudé's *mot d'ordre* on 25 February 2011;<sup>480</sup> and that the entire attacks of 25 February 2011 are examples of the targeting of the Doukouré and Mami Fatai neighbourhoods,<sup>481</sup> which were mainly inhabited by perceived Ouattara supporters.<sup>482</sup> The Legal Representative recalls that the Lem mosque of Yopougon was specifically targeted and attacked on 25 February 2011 and was set ablaze.<sup>483</sup> The mosque's watchman was burnt to death by pro-Gbagbo militia because he was wearing a *gris-gris*,<sup>484</sup> and Koran copies and praying rugs were burnt.<sup>485</sup> The assailants threw a Koran to P-0441 telling him "*well if the Quran can save somebody it'll be you*".<sup>486</sup> The pro-Gbagbo youth then pillaged the mosque.<sup>487</sup> Incidentally, other evidence in the record can be read as demonstrating that religious institutions were specifically targeted during the post-electoral crisis, including the Great Mosque of Koumassi, the Great Mosque in Port-Bouet 2 (Yopougon), and mosques in Grand Bassam, Abobo and Williamsville, which resulted in killings and injuries.<sup>488</sup>

<sup>479</sup> See the Blé Goudé Submissions, *supra* note 7, paras. 100-112.

<sup>480</sup> See, for instance, P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 30-31, 33-35, 41-44, 50-51; P-0442, T-20-Red-ENG-WT, 10 February 2016, pp. 19-21; P-0459, T-153-Red-ENG-WT, 8 May 2017, p. 48; P-0438, T-150-Red-ENG-WT, 3 May 2017, pp. 39-41; P-0438, T-151-Red-ENG-WT, 4 May 2017, pp. 6-10; P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 22, 44-46. See also [REDACTED].

<sup>481</sup> See the Trial Brief, *supra* note 6, paras. 552-562, 614-623. See also *supra* paras. 200, 205, 208-210, 230-237, 239-241, 245.

<sup>482</sup> See the Trial Brief, *supra* note 6, paras. 155 (xxxiv), 504, 549, 614, 632. See also, for instance, P-0568, T-209-Red-ENG-CT, 15 November 2017, p. 38; P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 6-7, 58; P-0459, T-153-Red-ENG-WT, 8 May 2017, p. 56.

<sup>483</sup> See the Trial Brief, *supra* note 6, para. 554; P-0438, T-150-Red-ENG-WT, 3 May 2017, pp. 4-6; P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 42-43; P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 22-23. See also [REDACTED]. See also [REDACTED].

<sup>484</sup> P-0441, T-35-Red-ENG-WT, 9 May 2016, pp. 63-74.

<sup>485</sup> P-0441, T-35-Red-ENG-WT, 9 May 2016, p. 72; [REDACTED].

<sup>486</sup> P-0441, T-35-Red-ENG-WT, 9 May 2016, p. 72

<sup>487</sup> P-0441, T-35-Red-ENG-WT, 9 May 2016, pp. 76-78. See also P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 32-33; [REDACTED].

<sup>488</sup> See, e.g., the Trial Brief, *supra* note 6, paras. 155 (v), 155(xxvi), 370; [REDACTED]. See also [REDACTED]; and the UN Report of 15 February 2011, CIV-OTP-0003-0527 at 0536-0537, para. 25.



209. The fact that Witness P-0087 did not see people being checked on the basis of ethnicity and weapons at the roadblock he visited on one occasion<sup>489</sup> is totally irrelevant and cannot be said to refute the substantial amount of evidence to the contrary. The same has to be said about the presence of roadblocks in Abobo,<sup>490</sup> or the erection of roadblocks by the Doukouré youth,<sup>491</sup> especially when considered with the evidence of Witness P-0440. He specified that the Young Patriots were the ones who built these roadblocks to monitor the neighbourhoods, as they were the only ones who could erect these roadblocks on public roads,<sup>492</sup> and that most of the roadblocks in Yopougon were manned by Young Patriots.<sup>493</sup>

210. The Legal Representative particularly contests the assertion according to which it is not proven that “*certain categories of the population and certain ethnic groups were targeted at roadblocks*”.<sup>494</sup> The Defence of Mr Blé Goudé bases this argument only on the testimony of one witness who had a clear interest in testifying to that effect – as he himself manned a roadblock. In so doing, the Defence blatantly ignores substantial evidence that Dioulas, people from the north of Côte d’Ivoire or from the neighbouring countries, were specifically targeted by the pro-Gbagbo forces at the roadblocks.<sup>495</sup> The evidence shows that one of the ways used by those manning the roadblocks was to check the identity cards of people, looking for northern sounding names, which would then be considered as assailants or rebels.<sup>496</sup> Moreover, the evidence shows that people wearing *gris gris* were targeted. Contrary to the Defence of Mr Blé Goudé’s assertion,<sup>497</sup> *gris gris* are a distinctive mark of individuals of

---

<sup>489</sup> See the Blé Goudé Submissions, *supra* note 7, para. 595.

<sup>490</sup> *Idem*, para. 598.

<sup>491</sup> *Ibid.*, para. 597.

<sup>492</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 20-21.

<sup>493</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 42-43, 79.

<sup>494</sup> See the Blé Goudé Submissions, *supra* note 7, para. 609.

<sup>495</sup> See *supra* para. 208.

<sup>496</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 30-31; P-0184 confirmed that the names on another list, including the names “Bakayoko, Cissé, Gaby (phon), Doumbia, Konaté, Sanogo and Touré” were all northern sounding names: P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 53.

<sup>497</sup> See Blé Goudé Submissions, *supra* note 7, para. 102.

northern origin. Indeed, the Defence solely refers to P-0625's evidence and therefore ignores a plethora of other evidence that confirms that *gris-gris* were associated with perceived Ouattara supporters and that people were specifically targeted during the relevant period because they were wearing *gris-gris*.<sup>498</sup>

211. The Defence also ignores evidence in the record that the youth manning the roadblocks specifically refused to remove the roadblocks because they said that it was Mr Blé Goudé who asked them to monitor the neighbourhood and only Mr Blé Goudé could ask them to remove the roadblocks.<sup>499</sup> Witness P-0440 added that people were listening to Mr Blé Goudé at that time and roadblocks would be seen the very next day after his calls.<sup>500</sup>

212. Furthermore, the Defence disregards the evidence according to which he thanked and congratulated those manning the roadblocks for their actions and praised the results of these roadblocks,<sup>501</sup> and his statement asking the youth to reinforce the roadblocks.<sup>502</sup>

213. Thirdly, the Legal Representative submits that the "analysis" of the Defence of Mr Gbagbo in relation to the victims of the 25 February 2011 incident contained in Annex 6 of its Submissions is partial, incomplete and baseless.

214. In relation to the death of Siaka Bakayoko,<sup>503</sup> Cissé Moustapha,<sup>504</sup> Bakayoko Salimata,<sup>505</sup> and Bamba Souleymane,<sup>506</sup> the Defence of Mr Gbagbo essentially argues

---

<sup>498</sup> See, e.g., P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 30-31; P-0547, T-13-Red3-ENG-CT, 3 February 2016, pp. 20, 41-42; P-0441, T-35-Red-ENG-WT, 9 May 2016, p. 66; P-0435, T-89-Red2-ENG-CT, 20 October 2016, pp. 26-27. See P-0106's statement, CIV-OTP-0019-0211-PRV at 0222, para. 59; P-0555, T-112-Red-ENG-WT, 6 December 2016, pp. 30-31.

<sup>499</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 22-24.

<sup>500</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 24.

<sup>501</sup> See CIV-OTP-0069-0371 at 00:11:14 to 00:11:59 (transcript at CIV-OTP-0087-0724), CIV-OTP-0064-0092 at 00:22:29 to 00:23:04 (transcript at CIV-OTP-0097-0161)

<sup>502</sup> See CIV-OTP-0047-0604 at 00:02:45 to 00:03:02 (transcript at CIV-OTP-0051-1681)

<sup>503</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 78-81.

<sup>504</sup> *Idem*, paras. 84-86.

that the proof of the killings is based on hearsay evidence. The Legal Representative recalls – as indicated *supra* – that hearsay evidence may be sufficient to prove the death of a victim.<sup>507</sup> This is especially true when such evidence is corroborated by other evidence, as in the present case. In particular, in relation to Witness P-0436's testimony on the death of Siaka Bakayoko, the fact that he did not see the latter dead is entirely irrelevant,<sup>508</sup> as no rule requires a witness to see someone dying in order to prove the death of the person. The evidence of Witness P-0436 is direct and consistent. He saw the victim being struck by a grenade fragments.<sup>509</sup> The fact that Siaka Bakayoko died later at the clinic<sup>510</sup> does not affect the reliability of Witness P-0436's evidence in that regard. Moreover, the evidence [REDACTED] corroborates Witness P-0436's evidence [REDACTED].<sup>511</sup> Moreover, Witness P-0436 also corroborated the death of Bakayoko Salimata who he knew very well and he confirmed that the mother-in-law of the victim, who is the source of the evidence, was present when Bakayoko Salimata was killed on that day.<sup>512</sup> Witness P-0436 also knew personally Bakayoko Lacina<sup>513</sup> and, even if he did not see his body after his death, Witness P-0436 saw him while he was attacked and saw his wife crying after she went to see his body.<sup>514</sup>

215. With regard to Cissé Moustapha's death,<sup>515</sup> Witness P-0433 saw Cissé Moustapha's remains on the day of the event,<sup>516</sup> and Witness P-0441 was a direct

---

<sup>505</sup> *Ibid.*, para. 90.

<sup>506</sup> *Ibid.*, paras. 91-92.

<sup>507</sup> See *supra* paras. 73-76 and 82.

<sup>508</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 79.

<sup>509</sup> P-0436, T-148-ENG-ET, 1 May 2017, pp. 24, 47.

<sup>510</sup> P-0436, T-149-Red2-ENG-CT, 2 May 2017, p. 60.

<sup>511</sup> P-0442, T-20-CONF-FRA-CT, 10 February 2016, p. 13.

<sup>512</sup> P-0436, T-148-ENG-ET, 1 May 2017, p. 33.

<sup>513</sup> P-0436, T-148-ENG-ET, 1 May 2017, p. 32.

<sup>514</sup> P-0436, T-148-ENG-ET, 1 May 2017, pp. 32-33.

<sup>515</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 84-86.

<sup>516</sup> P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 33, 82-83.

witness of the incident.<sup>517</sup> Notably, Mr Gbagbo remains silent as to Witness P-0441's evidence relating to this death<sup>518</sup>.

216. The Defence of Mr Gbagbo also advances arguments in relation to the fact that some victims are not precisely named or identified, namely Traoré<sup>519</sup> and Zanga.<sup>520</sup> The Legal Representative recalls that a victim does not need to be precisely named or identified.<sup>521</sup> The Legal Representative submits that Witness P-0433's evidence as to Traoré's murder is detailed, reliable and credible.<sup>522</sup> Even if Witness P-0433 did not see those who shot Traoré,<sup>523</sup> it is clear from the totality of the evidence that the authors were those attacking on that day, the pro-Gbagbo forces.<sup>524</sup> As far as Zanga is concerned, Witness P-0436 mentioned that Zanga was a hotel manager.<sup>525</sup>

217. In relation to the death of Ahmed,<sup>526</sup> the Defence of Mr Gbagbo mischaracterises the evidence of Witness P-0442<sup>527</sup> [REDACTED].<sup>528</sup> In any event, his testimony alone could be sufficient to establish the death of Ahmed on that day.<sup>529</sup>

218. Concerning Cissé Yaya,<sup>530</sup> Mr Gbagbo mischaracterises the evidence of Witness P-0109 who never said that he saw the victim at the hospital,<sup>531</sup> but rather

---

<sup>517</sup> P-0441, T-35-Red-FRA-WT, 9 May 2016, pp. 72-77, 83.

<sup>518</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 84-86.

<sup>519</sup> *Idem*, para. 87.

<sup>520</sup> *Ibid.*, para. 92.

<sup>521</sup> See *supra* para. 105.

<sup>522</sup> P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 33-34.

<sup>523</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 88.

<sup>524</sup> See the Trial Brief, *supra* note 6, paras. 552-556. See also, for instance, P-0433, T-147-Red-ENG-WT, 26 April 2017, pp. 23, 27, 30, 82-83.

<sup>525</sup> P-0436, T-148-ENG-ET, 1 May 2017, p. 46.

<sup>526</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 83.

<sup>527</sup> *Idem*.

<sup>528</sup> P-0442, T-20-CONF-FRA-CT, 10 February 2016, p. 14.

<sup>529</sup> See *supra* paras. 63-67.

<sup>530</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 94-95.

<sup>531</sup> *Idem*, para. 95.

near the mosque, and that he knew him.<sup>532</sup> Moreover, Witness P-0109 clearly stated that the victim was burnt to death,<sup>533</sup> contrary to Mr Gbagbo's contentions.<sup>534</sup>

219. The Legal Representative further submits that numerous UN Reports in the record of the case<sup>535</sup> and the report of the *Conseil des Maliens*<sup>536</sup> relate to these killings, and that the names of several individuals appear on the list of the *Collectif des victimes du quartier Doukouré – Yopougon* (the "CVQDY").<sup>537</sup> In this regard, the allegations about the CVQDY by the Defence of Mr Gbagbo are misplaced and unfounded.<sup>538</sup>

220. The statement by the Defence of Mr Gbagbo that "[l]e Procureur s'est donc mis dans les mains d'un Collectif qui apparaît clairement comme un outil au service des responsables du RDR"<sup>539</sup> is totally false and not supported by any evidence in the record. The evidence reveals instead that the CVQDY was created in February 2011 and collected contemporaneous information as to the victims of the post-electoral crisis in the Doukouré neighbourhood.<sup>540</sup> The purpose of the creation of the CVQDY was to identify and register all the victims and to help them in providing basic assistance and in contacting other organisations that could provide assistance to them.<sup>541</sup> In fact Witness P-0433 explained during his testimony that [REDACTED].<sup>542</sup>

221. The Legal Representative further submits that the conclusion by the Defence of Mr Gbagbo that the affiliation of some members of the CVQDY with the RDR necessarily means that the CVQDY was used to the benefit of the RDR is completely

---

<sup>532</sup> P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 42-43.

<sup>533</sup> *Idem*.

<sup>534</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 95.

<sup>535</sup> See [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

<sup>536</sup> [REDACTED].

<sup>537</sup> [REDACTED]. [REDACTED]. [REDACTED].

<sup>538</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 121-148.

<sup>539</sup> *Idem*, para. 138.

<sup>540</sup> P-0436, T-148-ENG-CT, 1 May 2017, pp. 48-49.

<sup>541</sup> P-0436, T-148-ENG-CT, 1 May 2017, pp. 50-51.

<sup>542</sup> P-0433, T-147-CONF-ENG-CT, 26 April 2017, pp. 45-46, 61-62.

misplaced and based on no evidence.<sup>543</sup> Indeed, from the fact that some of its members are also RDR supporters cannot be inferred that the CVQDY was acting for the RDR. Witness P-0436 even said that the *Collectif* was funded entirely by him and the vice-president.<sup>544</sup>

222. It is also noteworthy to recall that the CVQDY is an intermediary for the VPRS.<sup>545</sup> [REDACTED]<sup>546</sup> [REDACTED].<sup>547</sup> Contrary to what Mr Gbagbo seems to imply – without, however, making any circumstantiated argument –, this is the practice followed by any Legal Representative at this Court.

223. Concerning the Defence of Mr Gbagbo's arguments related to the methodology to constitute the CVQDY's list or to the alleged lack of information concerning the circumstances of death of the victims,<sup>548</sup> the Legal Representative recalls that the admissibility of the documents should not be discussed at this stage of the proceedings<sup>549</sup> and the Legal Representative will therefore not address these arguments in detail, but will do so in due course.

224. In relation to the persons injured during the 25-28 February 2011 incident, the Legal Representative notes that the Defence of Mr Gbagbo reiterates several arguments, namely the fact that for some individuals' proof of their injuries is provided by hearsay ([REDACTED],<sup>550</sup> [REDACTED]<sup>551</sup> and [REDACTED]<sup>552</sup>) and

---

<sup>543</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 123-138.

<sup>544</sup> P-0436, T-148-ENG-ET, 1 May 2017, p. 61.

<sup>545</sup> See *supra* para. 98.

<sup>546</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, para. 137.

<sup>547</sup> See *supra* note 112.

<sup>548</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, paras. 139-148.

<sup>549</sup> See *supra* paras. 48-50 and 53-56.

<sup>550</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 133-135.

<sup>551</sup> *Idem*, paras. 133-135.

<sup>552</sup> *Ibid.*, para. 136.

that others are not named or identified ([REDACTED]<sup>553</sup>). In this regard, the Legal Representative recalls her submissions *supra*.<sup>554</sup>

225. As for the Defence of Mr Gbagbo's arguments as to the participation of Witness P-0442 in the throwing of stones,<sup>555</sup> these are irrelevant as to the credibility and reliability of the evidence. Moreover, the Defence does not even allege that the evidence could not prove the injuries suffered by Witness P-0442 on 25 February 2011. Mr Gbagbo then mischaracterises Witness P-0436's evidence when he alleges that Witness P-0436 "*a participé aux affrontements sur la voie goudronnée*",<sup>556</sup> as Witness P-0436 clearly stated that he was simply present during the incident but that he did not throw any stones.<sup>557</sup> Moreover, the Defence's attempt to discredit Witness P-0436 because he was a leader of the youth in Doukouré is misplaced and irrelevant.<sup>558</sup> The same must to be said as to the fact that the CVQDY would have put Witness P-0442 in contact with the Prosecution.<sup>559</sup> The Defence does not explain what would be the effect or relevance of those elements and the Chamber does not have to address the arguments of a party when those are not circumstantiated.<sup>560</sup> Concerning the medical certificate of Witness P-0442, Mr Gbagbo only states the record of the case without making any arguments,<sup>561</sup> these arguments should therefore be simply disregarded. In any event, the fact that the medical certificate of Witness P-0442 mentions an "*accident ballistique*" does not affect the credibility and reliability of Witness P-0442's evidence as to his injuries.<sup>562</sup> With regard to the pictures [REDACTED],<sup>563</sup> Mr Gbagbo wrongly asserts that they do not prove anything,<sup>564</sup> as these pictures [REDACTED].<sup>565</sup>

<sup>553</sup> *Ibid.*, para. 122. [REDACTED]. See P-0442, T-20-CONF-ENG-CT, 10 February 2016, pp. 12, 14.

<sup>554</sup> See *supra* paras. 72-77 and 216.

<sup>555</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 115.

<sup>556</sup> *Idem*, para. 116.

<sup>557</sup> P-0436, T-149-Red2-ENG-CT, 2 May 2017, p. 59.

<sup>558</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 118.

<sup>559</sup> *Idem*, para. 119.

<sup>560</sup> See, for instance, ICTR, *Prosecutor v. Nyiramasuhuko et al.*, Appeals Judgement, Case No. ICTR-98-42-A, 14 December 2015, para. 35; ICTY, *Prosecutor v. Perišić*, Appeals Judgement, Case No. IT-04-81-A, 28 February 2013, para. 12.

<sup>561</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 121.

<sup>562</sup> P-0442, T-21- Red2- ENG-CT, 11 February 2016, pp. 30-31.

226. Finally, the Defence of Mr Gbagbo contests that no medical certificate has been provided for some individuals. This is the case of Witness P-0441, who was sexually assaulted.<sup>566</sup> Mr Gbagbo simply ignores the law according to which such an allegation does not need corroboration to be proven.<sup>567</sup> Moreover, the absence of a medical certificate is totally irrelevant as to the reliability or the credibility of the evidence, especially at this stage of the proceedings.

#### **E.4. Yopougon incidents (12 April 2011)**

227. The Legal Representative submits that the Defence should be required to respond to the counts related to the incidents which occurred in Yopougon on 12 April 2011. Indeed, there is sufficient evidence upon which a reasonable Chamber could convict the Accused for the killings of at least 65 people and the injury of at least 2 individuals.

228. Contrary to the Defence Submissions and for the reasons provided *infra*, the Prosecutor and the Legal Representative have submitted sufficient evidence on which, if accepted, a reasonable Chamber could convict the Accused at the end of the trial for the counts arising from this incident.

229. The Defence of Mr Gbagbo states that “[à] partir du début du mois d’avril et pendant une période assez longue le chaos et la terreur régnait à Yopougon”,<sup>568</sup> and argues that the crimes committed in Yopougon on 12 April 2011 were the result of the prevailing chaotic situation in the area and committed by random groups acting

---

<sup>563</sup> See the pictures at CIV-OTP-0062-0876, CIV-OTP-0062-0877, CIV-OTP-0062-0878, CIV-OTP-0062-0879, CIV-OTP-0062-0880, CIV-OTP-0062-0881, CIV-OTP-0062-0884.

<sup>564</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 121.

<sup>565</sup> P-0442, T-20-CONF-ENG-CT, 10 February 2016, pp. 25-28.

<sup>566</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 125.

<sup>567</sup> See *supra* paras. 62-67.

<sup>568</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 527.



solely to enrich themselves.<sup>569</sup> After its analysis of some of the testimonies relevant to the crimes committed on 12 April 2011 in the Doukouré and Mami Fatai neighbourhoods,<sup>570</sup> the Defence concludes by alleging that “[l]es faits allégués par le Procureur, pour autant qu’ils aient existé, semblent avoir été commis par toutes sortes de groupes disparates n’obéissant qu’à une logique – celle du pillage et de l’enrichissement. Certains “incidents” pourraient être le résultat d’affrontements entre groupes déterminés, d’autres encore être le résultat d’actions criminelles menées par des bandes”.<sup>571</sup> This assertion is incorrect.

230. Preliminarily, it must be noted that the single document referred to by the Defence of Mr Gbagbo in order to prove the presence of chaos and terror in Yopougon in April 2011 only generally mentions insecurity in the whole city of Abidjan.<sup>572</sup> Moreover, in relation to the general situation in Yopougon and notably in Doukouré and Mami Fatai in April 2011, the Legal Representative submits that the crimes committed in these neighbourhoods on 12 April 2011 must be seen in the context of the continuum of violence perpetrated against perceived Ouattara supporters that started after Mr Blé Goudé’s call on 25 February 2011 and that resulted, among others, in the proliferation of roadblocks and the specific targeting of certain categories of the population.<sup>573</sup>

231. In this regard, Witness P-0459, a Muslim of Malinké ethnicity,<sup>574</sup> testified that things were extremely tense before the arrest of Mr Gbagbo and he had to be extremely cautious whenever he wanted to go out of his house.<sup>575</sup> Witness P-0433, a Muslim of Tagbana ethnicity,<sup>576</sup> also had to stay in his house for security reasons before leaving Doukouré, as everyone was afraid of weapons – which were only

<sup>569</sup> *Idem*, paras. 528-531, 532, 534-536, 548-550, 553, 566, 597, 611, 626.

<sup>570</sup> *Ibid.*, paras. 553-595.

<sup>571</sup> *Ibid.*, para. 597.

<sup>572</sup> *Ibid.*, para. 527, referring to [REDACTED].

<sup>573</sup> See the Trial Brief, *supra* note 6, para. 615. See *supra* paras. 199-210.

<sup>574</sup> P-0459, T-152-Red-ENG-WT, 5 May 2017, p. 55.

<sup>575</sup> P-0459, T-153-Red-ENG-WT, 8 May 2017, p. 22.

<sup>576</sup> P-0433, T-146-CONF-ENG-CT, 25 April 2017, p. 86.

owned by the pro-Gbagbo – and of the daily gunfire.<sup>577</sup> Witness P-0567, a Muslim Dioula,<sup>578</sup> stated that upon hearing the news of the arrest of Mr Gbagbo, they were sad and afraid of the pro-Gbagbo militia's reaction, especially as these militias were constantly circulating with weapons at that time and were shouting that they would kill all the Muslims and those who voted for Mr Alassane Ouattara.<sup>579</sup> This continuum of violence against perceived Ouattara supporters was exacerbated by Mr Blé Goudé's encouragement of the use of roadblocks and by his and Mr Gbagbo's call upon the pro-Gbagbo forces to continue the fight for power.<sup>580</sup>

232. In this context, the evidence presented so far could suffice to conclude that the attack committed on 12 April 2011 specifically targeted Dioulas and perceived Ouattara supporters.

233. Indeed, many witnesses testified that the attackers asked people about their ethnicity.<sup>581</sup> Witness P-0407 – [REDACTED] –<sup>582</sup> [REDACTED].<sup>583</sup> [REDACTED].<sup>584</sup> Witness P-0404 [REDACTED].<sup>585</sup> [REDACTED].<sup>586</sup>

234. Moreover, Witness P-0185, [REDACTED],<sup>587</sup> [REDACTED];<sup>588</sup> [REDACTED].<sup>589</sup> [REDACTED].<sup>590</sup> Witness P-0568 also saw these corpses and recognised the bodies of his sons among them.<sup>591</sup> Witness P-0568 also specified that the pro-Gbagbo were

<sup>577</sup> P-0433, T-147-Red-ENG-WT, 26 April 2017, p. 53.

<sup>578</sup> P-0567, T-208-Red-ENG-CT, 14 November 2017, p. 30.

<sup>579</sup> P-0567, CIV-OTP-0069-0051-PRV at 0056, para. 17 and 0065, para. 88.

<sup>580</sup> See the Trial Brief, *supra* note 6, paras. 607-612, 615 (and the references therein).

<sup>581</sup> [REDACTED]. See also the Trial Brief, *supra* note 6, para. 618.

<sup>582</sup> P-0407, T-210-CONF-ENG-CT, 16 November 2017, p. 2.

<sup>583</sup> P-0407, T-210-CONF-ENG-CT, 16 November 2017, pp. 8-9. See P-0407, CIV-OTP-0071-2215 at 2230, para. 64.

<sup>584</sup> P-0407, CIV-OTP-0071-2215 at 2227, para. 51.

<sup>585</sup> P-0404, T-212-CONF-ENG-CT, 28 November 2017, pp. 8-12.

<sup>586</sup> P-0404, T-212-CONF-ENG-CT, 28 November 2017, pp. 8-9.

<sup>587</sup> P-0185, T-211-CONF-ENG-CT, 27 November 2017, p. 1.

<sup>588</sup> P-0185, T-211-CONF-ENG-CT, 27 November 2017, p. 27.

<sup>589</sup> P-0185, T-211-CONF-ENG-CT, 27 November 2017, p. 28.

<sup>590</sup> P-0185, T-211-CONF-ENG-CT, 27 November 2017, pp. 18-20, 51-53.

<sup>591</sup> P-0568, CIV-OTP-0069-0069-PRV at 0077-0079, paras. 30-45.

killing Dioulas at that period because they were the ones who voted for Mr Alassane Ouattara, and that it was therefore difficult to bear a name like “Doumbia”, “Traoré” or “Kone”.<sup>592</sup> Witness P-0567 also saw these corpses (she counted 18 bodies) and confirmed that they were all Dioula (they were her immediate neighbours).<sup>593</sup> A few hours before these killings, Witness P-0567 heard pro-Gbagbo youth yelling that they would kill all Muslim men and those who voted for Mr Alassane Ouattara when passing in front of her house.<sup>594</sup> Witness P-0567, again a Muslim Dioula, witnessed the murders of her relatives later on that day.<sup>595</sup> The pro-Gbagbo attackers said that they were going to kill all the Dioulas when they arrived at her house,<sup>596</sup> and they knew the number of Witness P-0567’s relatives living there and searched the house in order to kill all of them.<sup>597</sup> Later on that day, they spared someone’s life as he did not bear a Muslim’s name.<sup>598</sup>

235. Furthermore, Witness P-0109 testified that the attackers asked them for their identity cards before he and his friends were shot at, resulting in death and injuries,<sup>599</sup> and Witness P-0109 heard them saying “*no Gbagbo, no Côte d’Ivoire*” after the shooting.<sup>600</sup> [REDACTED],<sup>601</sup> the latest element being corroborated by other witnesses (including Witness P-0459 who said that they looking for pro-Ouattara in order to kill them).<sup>602</sup> Witness P-0109 saw multiple corpses on that day and heard that all those killed were Dioulas.<sup>603</sup>

---

<sup>592</sup> P-0568, CIV-OTP-0069-0069-PRV at 0082, para. 61.

<sup>593</sup> P-0567, T-208-Red-ENG-CT, 14 November 2017, pp. 34-35. See also P-0567, CIV-OTP-0069-0051-PRV at 0057, paras. 23-26.

<sup>594</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057-0058, para. 28 and 0065-0066, para. 88.

<sup>595</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057-0060, paras. 27-40.

<sup>596</sup> P-0567, CIV-OTP-0069-0051-PRV at 0065-0066, para. 88.

<sup>597</sup> P-0567, CIV-OTP-0069-0051-PRV at 0058-0060, paras. 32-40.

<sup>598</sup> P-0567, CIV-OTP-0069-0051-PRV at 0064, para. 74.

<sup>599</sup> P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 45-48; P-0109, T-155-Red2-ENG-CT2, 10 May 2017, pp. 24-25.

<sup>600</sup> P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 47-48.

<sup>601</sup> P-0109, T-154-CONF-ENG-CT, 9 May 2017, p. 53.

<sup>602</sup> P-0459, T-153-Red-ENG-WT, 8 May 2017, pp. 23-24; P-0441, T-36-Red-ENG-WT, 10 May 2016, pp. 21-22.

<sup>603</sup> P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 54-60.

236. The presence of numerous corpses and mass graves on that day is corroborated by other witnesses and documentary evidence.<sup>604</sup> The testimonies of Witnesses P-0568<sup>605</sup>, P-0567 and [REDACTED] indicate that 17 or 18 Dioula men were killed during the night between the 11 and 12 April 2011 by the attackers.<sup>606</sup>

237. Finally, the list submitted in the record of the people killed on that day also shows that most, if not all, names inscribed on it are of northern origin.<sup>607</sup>

238. Witnesses also testified that murders were committed after money or cell phones were stolen,<sup>608</sup> again refuting the argument by the Defence of Mr Gbagbo that the crimes committed were simply due to the prevailing situation of chaos in the area or to gain resources.<sup>609</sup> The fact that items were stolen during the commission of the murders is far from sufficient to prove that this was the only reason for the commission of the crimes, especially in light of the totality of the evidence<sup>610</sup> available at the present stage of the proceedings.

---

<sup>604</sup> See the Trial Brief, *supra* note 6, para. 620; P-0441, T-36-Red-ENG-WT, 10 May 2016, pp. 21-27; P-0109, T-154-Red2-ENG-CT, 9 May 2017, p. 59; [REDACTED]; P-0567, T-208-Red-ENG-CT, 14 November 2017, p. 35. See also the videos CIV-OTP-0012-0048 (transcript at CIV-OTP-0053-0003), CIV-OTP-0016-0849 and CIV-OTP-0017-0042 (transcript at CIV-OTP-0021-1014). See also the map of mass graves at CIV-OTP-0012-0037 and the photos CIV-OTP-0012-0038 and CIV-OTP-0012-0039.

<sup>605</sup> As far as the testimony of P-0568 is concerned, the Defence of Mr Gbagbo wrongly asserts that his testimony cannot be relied upon, because of a contradiction (See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 579-582). However, a contradiction does not necessarily call for the total rejection of the evidence. See *supra* paras. 69-70. In this regard, the Legal Representative recalls that P-0568 testified in Dioula and that during the trial several witnesses indicated that the interpretation in said language was unclear to them or that they were unable to understand the translation (see for instance [REDACTED]; P-0438, T-150-Red-ENG-WT, 3 May 2017, pp. 2, 27-28). It could therefore not be excluded that the contradiction resulted from a difficulty in interpretation (P-0568, T-209-Red-FRA CT, 15 November 2017, pp. 66-68; P-0568, CIV-OTP-0069-0069-PRV at 0078-0079, paras. 39-40).

<sup>606</sup> See the Trial Brief, *supra* note 6, para. 620; [REDACTED]; P-0567, T-208-Red-ENG-CT, 14 November 2017, p. 35; P-0567, CIV-OTP-0069-0051-PRV at 0057, paras. 23-25; P-0568, CIV-OTP-0069-0069-PRV at 0078-0079, paras. 39-45.

<sup>607</sup> [REDACTED]. P-0184 confirmed that the names on another list, including the names “Bakayoko, Cissé, Gaby (phon), Doumbia, Konaté, Sanogo and Touré”, were all northern sounding names. See P-0184, T-215-Red-ENG-CT, 4 December 2017, p. 53. P-0440 also mentioned that the following names were northern sounding names: Touré, Coulibaly, Camara (P-0440, T-157-Red2-ENG-CT, 11 May 2017, p. 30-31) and that ethnicity can be inferred by names.

<sup>608</sup> [REDACTED].

<sup>609</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 611.

<sup>610</sup> See *supra* para. 57.

239. The rapes committed in Yopougon on that day were also specifically perpetrated against Dioulas and perceived Ouattara supporters and cannot simplistically be characterised as “*crimes[s] de droit commun, commis par des criminels qui ont abusé du chaos généralisé pour commettre des actes répréhensibles*”<sup>611</sup> or “*actes isolés commis par des bandits abusant de la situation*”.<sup>612</sup>

240. In this regard, the account of [REDACTED] is corroborated by the testimony of [REDACTED]. [REDACTED].<sup>613</sup> [REDACTED].<sup>614</sup> [REDACTED].<sup>615</sup>

241. [REDACTED],<sup>616</sup> [REDACTED],<sup>617</sup> showing that rapes committed during the attack were coordinated and systematic.

242. Specifically in relation to the rapes, the Legal Representative recalls that in accordance with rule 63(4) of the Rules corroboration is not required in order to prove crimes of sexual violence.<sup>618</sup> Therefore, all arguments advanced by the Defence of Mr Gbagbo in relation to the lack of medical certificates<sup>619</sup> or to the absence of corroboration as to specific incidents<sup>620</sup> are irrelevant.

243. As to the authors of the crimes, the Legal Representative submits that the evidence could establish that the crimes committed on that day were committed by pro-Gbagbo forces and militia members,<sup>621</sup> contrary to what the Defence of Mr

---

<sup>611</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 553.

<sup>612</sup> *Idem*, para. 553.

<sup>613</sup> [REDACTED].

<sup>614</sup> [REDACTED].

<sup>615</sup> [REDACTED]; [REDACTED].

<sup>616</sup> [REDACTED]; [REDACTED].

<sup>617</sup> [REDACTED].

<sup>618</sup> See *supra* paras. 63-67 and 138.

<sup>619</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 563-564

<sup>620</sup> *Idem*, paras. 565, 570.

<sup>621</sup> See the Trial Brief, *supra* note 6, paras. 615, 622; P-0109, T-154-Red2-ENG-CT, 9 May 2017, pp. 45-50; [REDACTED]; [REDACTED]; P-0568, CIV-OTP-0069-0069-PRV at 0077-0078, paras. 32-33; P-0567,

Gbagbo argues.<sup>622</sup> In this regard, two examples suffice to show the Defence's erroneous approach, which mischaracterises the available evidence.

244. Firstly, while specifically recognising the existence of evidence from Witness P-0567 as to the authors of the crimes,<sup>623</sup> the Defence wrongly refers to a contradiction between Witness P-0567's statement and her testimony.<sup>624</sup> In fact, the Defence chose to not confront Witness P-0567 with the relevant part of her statement,<sup>625</sup> which was admitted under rule 68(3) of the Rules, and clearly indicates that she heard pro-Gbagbo youth yelling that they would have killed all the Muslim men who voted for Ouattara.<sup>626</sup> The Defence also wrongly asserts that Witness P-0567 never identified the attackers as pro-Gbagbo,<sup>627</sup> as Witness P-0567 provided numerous details explaining why she is convinced that they were indeed pro-Gbagbo forces.<sup>628</sup> Among others, Witness P-0567 mentioned that only the pro-Gbagbo militia had weapons in the neighbourhood<sup>629</sup> – a fact corroborated by Witness P-0440<sup>630</sup> – and that she specifically knew some of them.<sup>631</sup>

245. Secondly, the Defence mischaracterises Witness P-0407's evidence and ignores other evidence in the record when it alleges that Witness P-0407 only speculated that the authors of the crimes committed against her and the neighbourhood were pro-Gbagbo militiamen.<sup>632</sup> Indeed, Witness P-0407 clearly stated that [REDACTED].<sup>633</sup> The fact that pro-Gbagbo militiamen were training in the neighbourhood during the

---

CIV-OTP-0069-0051-PRV at 057-0058, paras. 27-28, 0059, para. 39 and 0065-0066, para. 88; P-0441, T-36-Red-ENG-WT, 10 May 2016, pp. 23-24; P-0441, T-37-Red-ENG-WT, 11 May 2016, pp. 48-49.

<sup>622</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 553, 559-561, 566, 571, 585, 598-626.

<sup>623</sup> *Idem*, para. 606.

<sup>624</sup> *Ibid.*, para. 607.

<sup>625</sup> P-0567, T-208-Red-FRA-CT, 14 November 2017, pp. 53-54.

<sup>626</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057-0058, para. 28.

<sup>627</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, para. 609.

<sup>628</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057-0058, paras. 27-28 and 0065-0066, para. 88.

<sup>629</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057, para. 27.

<sup>630</sup> P-0440, T-157-Red2-ENG-CT, 11 May 2017, pp. 19-21 (mentioning that the Young Patriots were the only ones in the street at that period).

<sup>631</sup> P-0567, CIV-OTP-0069-0051-PRV at 0057, para. 27.

<sup>632</sup> See the Gbagbo Submissions, *supra* note 7, Annex 3, paras. 616-620.

<sup>633</sup> P-0407, T-210-CONF-ENG-CT, 16 November 2017, pp. 8-10.

relevant period of the charged attack is corroborated by other witnesses.<sup>634</sup> Witness P-0554 – whose evidence on this subject is ignored by Mr Gbagbo – [REDACTED].<sup>635</sup>

246. Turning to the analysis of the victims of the incidents presented by the Defence of Mr Gbagbo, the Legal Representative notes that the Defence of Mr Gbagbo mainly argues that the evidence is hearsay,<sup>636</sup> uncorroborated,<sup>637</sup> or that the identity of the victims is unknown.<sup>638</sup> The Legal Representative therefore reiterates her arguments made *supra* according to which these arguments should be dismissed.<sup>639</sup>

247. The Defence also appears to confuse the concept of direct and hearsay evidence and therefore wrongly considers that some killings are alleged only on the basis of hearsay evidence. For example, the Defence argues that the information related to the corpses of Witness P-0567's relatives is hearsay,<sup>640</sup> while ignoring that Witness P-0567 was a direct witness of these murders, heard the gunshots and her brothers shouting while being shot at, saw their bodies with bullet wounds, and was even injured during the events.<sup>641</sup> The fact that the subsequent burning of their bodies was only told to Witness P-0567 does not affect the direct and credible evidence of Witness P-0567 as to these murders. Concerning [REDACTED],<sup>642</sup> [REDACTED],<sup>643</sup> [REDACTED].<sup>644</sup> [REDACTED].<sup>645</sup> [REDACTED].<sup>646</sup> The Defence also [REDACTED],<sup>647</sup> [REDACTED].<sup>648</sup> [REDACTED].<sup>649</sup>

---

<sup>634</sup> P-0440, T-155-Red2-ENG-CT2, 10 May 2017, pp. 83-85; [REDACTED].

<sup>635</sup> P-0554, CIV-OTP-0077-0153-R03 at 0162, paras. 51, 53.

<sup>636</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 268, 273, 274, 277, 289, 292, 294.

<sup>637</sup> *Idem*, paras. 274, 280, 292, 294, 296.

<sup>638</sup> *Ibid.*, paras. 271, 274-275, 279, 282, 286.

<sup>639</sup> See *supra* paras. 63-67, 73-76 and 105.

<sup>640</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 291-292.

<sup>641</sup> P-0567, CIV-OTP-0069-0051-PRV at 0058-060, paras. 30-40. See also P-0567, T-209-Red-ENG-CT, 15 November 2017, pp. 7-12.

<sup>642</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 268.

<sup>643</sup> P-0407, CIV-OTP-0071-2215 at 2225, para. 44.

<sup>644</sup> P-0407, CIV-OTP-0071-2215 at 2225-2226, para. 45.

<sup>645</sup> [REDACTED]; [REDACTED]; [REDACTED].

<sup>646</sup> [REDACTED].

<sup>647</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 270.

248. [REDACTED],<sup>650</sup> contrary to the Defence's arguments.<sup>651</sup> The Defence also mischaracterises [REDACTED],<sup>652</sup> [REDACTED].<sup>653</sup> Moreover, and in any event, this alleged discrepancy does not discount Witnesses P-0407 and P-0554's corroborated testimonies as to the death of this unidentified man, especially at this stage of the proceedings.

249. Concerning the injury suffered by Witness P-0567, Mr Gbagbo erroneously starts from the assumption that Witness P-0567's testimony has no value,<sup>654</sup> as he ignores that Witness P-0567 specifically said during her testimony that the injuries to her eye were a result of the events of 12 April 2011.<sup>655</sup> Mr Gbagbo therefore incorrectly argues that "[r]ien ne permet donc d'attester de ce que P-0567 aurait été blessé le 12 avril 2011".<sup>656</sup> In another section of his Submissions, Mr Gbagbo also argues that the "[p]roblème à l'œil qui semble être apparu postérieurement à l'incident sur un terreau favorable à l'apparition d'une telle pathologie que le témoin présentait depuis son enfance".<sup>657</sup> No reference is given by Mr Gbagbo to support his supposition, and the latter is purely speculative. Witness P-0567's statement is clear that she was hit on her eye by a firearm during the events when her brothers were killed,<sup>658</sup> and this evidence could prove that her eye's injury directly resulted from this event.

---

<sup>648</sup> [REDACTED]; [REDACTED].

<sup>649</sup> [REDACTED].

<sup>650</sup> P-0407, CIV-OTP-0071-2215 at 2232-2233, para. 74; and P-0554, CIV-OTP-0077-0153-R03 at 0164-0165, para. 69.

<sup>651</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 273.

<sup>652</sup> *Idem*, para. 272.

<sup>653</sup> [REDACTED].

<sup>654</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, paras. 303-307.

<sup>655</sup> P-0567, T-208-Red-ENG-CT, 14 November 2017, pp. 35-36

<sup>656</sup> See the Gbagbo Submissions, *supra* note 7, Annex 6, para. 307.

<sup>657</sup> See the Gbagbo Submissions, *supra* note 7, Annex 4, para. 268.

<sup>658</sup> P-0567, CIV-OTP-0069-0051-PRV at 0059, para. 36.



## V. Conclusion

250. For the foregoing reasons, the Legal Representative respectfully requests the Trial Chamber to dismiss the Defence Submissions and to continue the trial proceedings.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda  
Principal Counsel

Dated this 28<sup>th</sup> day of September of 2018

At The Hague, The Netherlands