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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
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

With Confidential Annexes 1, A, B, C, D and E

**Prosecution's Mid-Trial Brief submitted pursuant to Chamber's Order on the further
conduct of the proceedings (ICC-02/11-01/15-1124)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution hereby submits a Mid-Trial Brief¹ as invited by the Chamber in its Order on the further conduct of the proceedings (“Order”).²

II. CONFIDENTIALITY

2. Annexes 1, A, B, C, D and E are attached as “Confidential” under regulation 23*bis*(1) of the Regulations of the Court as they contain potentially identifying information in relation to witnesses. A public redacted version of Annex 1, without footnotes, will be provided as soon as practicable. The other Annexes will also be made available, where applicable and for some in redacted form, as soon as practicable.

III. SUBMISSIONS

3. The Prosecution submits at Confidential Annex 1 its Mid-Trial Brief illustrating its case by reference to the evidence submitted at this stage of the trial. The Prosecution has sought to provide “a detailed narrative of [the Prosecution’s case] in light of the testimonies heard and the documentary evidence submitted at trial”, while at the same time indicating evidence in support of “each of the elements of the different forms of responsibility charged”.³

A. Structure of the Mid-Trial Brief

4. The Mid-Trial Brief is structured into ten parts. Part I is this Introduction. Part II describes the Common Plan and the early stages of its development and implementation. Part III sets out the contextual elements for crimes against humanity. Part IV describes the pro-Gbagbo forces used to commit crimes. Parts V-VII contain the narratives of the crimes charged: the 16 December narrative focuses on that incident (incident 1), while the Abobo narrative covers the 3 March 2011 incident (incident 3) and the 17 March 2011 incident

¹ While the Chamber titled the document to be submitted as a trial brief, the Prosecution uses in this submission the expression Mid-Trial Brief which reflects the time, within the trial, when it is being submitted.

² ICC-02/11-01/15-1124, para. 10 and p. 8.

³ Order, para. 10.

(incident 4), and the Yopougon narrative covers the 25 February 2011 incident (incident 2) and the 12 April 2011 incident (incident 5). Part VIII deals with the elements of the crimes charged. Parts IX and X address the individual criminal responsibility of GBAGBO and BLÉ GOUDÉ, respectively.

5. The Prosecution has endeavoured to be as concise and detailed as possible, while applying the requisites of the Chamber,⁴ but the volume and wealth of evidence, the number of charges, incidents and modes of liability in this case are such that it was necessary to exceed the recommended 300 page limit.⁵ The Prosecution notes that the excess of pages will provide additional details as to the substance of the evidence as presented during the Prosecution's case and assist the Chamber in the exercise of its trial management functions.⁶

B. Annexes to the Mid-Trial Brief

6. The Mid-Trial Brief contains five groups of annexes.

i. Annex A is a list of the acronyms used throughout the Mid-Trial Brief. The Prosecution has used acronyms throughout the Brief, which it has not generally defined upon first use.

ii. Annex B is a list of the names appearing throughout the Brief, and their description.

iii. Annex C consists of six maps of Abidjan, with marked locations, as set out below. The maps used are based on the agreed map of Abidjan.⁷ These maps contain locations that have been "confirmed" by testimonial or documentary evidence, and locations that are "unconfirmed" by submitted evidence, but nonetheless are verifiable from open source material.

⁴ Order, para. 11, i), ii) and iii).

⁵ Order, para. 15.

- Annex C-1 is a map of Abidjan showing the location of military facilities; Annex C-2 provides a list of sources for the confirmed locations.
- Annex C-3 is a map of Abidjan showing the location of the DGPN and the police stations (*commissariats*); Annex C-4 provides a list of sources for the confirmed locations.
- Annex C-5 is an “overview” map of Abidjan showing various additional locations of relevance; Annex C-6 provides a list of the locations marked.
- Annex C-7 is a map of Plateau and the RTI (zoomed in from Annex C-5), mainly relevant to the 16-19 December 2010 incident.
- Annex C-8 is a map of Abobo (zoomed in from Annex C-5), relevant to the Abobo narrative (including the 3 March 2011 and 17 March 2011 incidents).
- Annex C-9 is a map of Yopougon (zoomed in from Annex C-5), relevant to the Yopougon narrative (including the 25-28 February 2011 and 12 April 2011 incidents).
- Annex C-10 provides a list of sources for the confirmed locations in Annexes C-5, C-7, C-8 and C-9.

iv. Annex D relates to the Presidential Residence visitor logbook.⁸ It lists entries for individual members of the Inner Circle, as identified in the logbook.

⁶ Order, para. 10.

⁷ See CIV-OTP-0092-0410.

⁸ CIV-OTP-0067-0402, transcribed at CIV-OTP-0088-0863.

v. Annex E consists of five victim lists for each of the five charged incidents, as set out below. In terms of methodology, the Prosecution has included individual victims where there is i) direct (eyewitness) evidence of a crime committed against the individual victim; or, ii) indirect evidence only where there are sufficient indicia of reliability and the details of the crime and/or victim are reasonably specific. An example of the latter category is where the methodology for the gathering of the indirect evidence was explained through witness testimony.

- Annex E-1 relates to the 16-19 December 2010 incident.
- Annex E-2 relates to the 25-28 February 2011 incident.
- Annex E-3 relates to the 3 March 2011 incident.
- Annex E-4 relates to the 17 March 2011 incident.
- Annex E-5 relates to the 12 April 2011 incident.

C. Approach to Evidence

7. In a case of this magnitude, and consistent with the present stage of the trial, it is not possible to recite in this Mid-Trial Brief all the relevant evidence before the Chamber. The Prosecution has therefore assessed those matters it considers of importance, and endeavoured to support them with sources deemed to be of pertinence. However, if the Chamber should find further evidence lending support to the submissions made by the Prosecution, its omission from this Brief should not be construed to mean that the Prosecution considers it less compelling.

8. Moreover, while the Prosecution was mindful of the Chamber's guidance to avoid repetition and cross-referencing,⁹ some cross-referencing was inevitable to avoid repetition, especially when reference is made to concepts: for example, instead of describing once more how the common plan developed, a reference to the section which

⁹ Order, para.11.

explains it in full detail was deemed more appropriate than repeating the content of that section.

9. Further, the Prosecution has not addressed the weight of the evidence heard and submitted to date, namely the credibility of witnesses and the reliability or authenticity of documentary evidence,¹⁰ with the exception of a few items of evidence. The Prosecution submits that this approach to the evidence is appropriate at this stage. The obligation on the Prosecution to “detail[...] the evidence in support of the charges”,¹¹ cannot be more onerous than a response to a “no case to answer” motion. As Trial Chamber V(A) in *Ruto and Sang* stated, the “no case to answer” stage “does not entail an evaluation of the strength of the evidence presented, especially as regards exhaustive questions of credibility or reliability.”¹² That Trial Chamber adopted the approach of the *ad hoc* tribunals to “take the prosecution evidence ‘at its highest’ and to ‘assume the prosecution’s evidence was entitled to credence unless incapable of belief’ on any reasonable view.”¹³

10. The Prosecution emphasises that this Mid-Trial Brief is also not a closing brief submitted at the end of the case,¹⁴ and cannot be considered as such. As stated by the Chamber in its Order, this Brief is meant to be an “auxiliary tool” for the benefit of the Chamber,¹⁵ Parties and participants.

11. At the same time, as a matter of procedural fairness, the Prosecution submits that the Mid-Trial Brief cannot itself be considered a response to a future, hypothetical “no case to answer” motion that may be filed by either or both Defence teams. Should such (a)

¹⁰ For this reason, no references are made to the evidence of certain witnesses, namely Witnesses P-0380, P-0428, P-0531, P-0532, P-0533, P-0534, P-0535, P-0541, P-0542, P-0549, P-0550, P-0594 and P-0616.

¹¹ Order, p. 8.

¹² ICC-01/09-01/11-1334, para.24

¹³ ICC-01/09-01/11-1334, para.24, citing *Prosecutor v Jelusic, Case no. IT-95-10-A*, Appeals Chamber, Judgment, 5 July 2001, para. 55.

¹⁴ See regulation 38(1)(b) of the Regulations of the Court, making a distinction between trial and closing briefs. See also: Rule 87(B) of the ICTY Rules of Procedure and Evidence, providing that “[n]o later than five days prior to presenting a closing argument, a party shall file a final trial brief.”

¹⁵ In the exercise of its obligations to ensure the fairness and expeditiousness of the proceedings, see Order, para.10.

motion(s) be made, the Prosecution must be afforded a proper response to the specific challenges raised to the sufficiency of the evidence.

D. Limited documents not submitted

12. Referenced in the Mid-Trial Brief are 24 documents¹⁶ that are on the Prosecution's List of Evidence ("LoE") but have not been submitted or sought to be submitted. The Prosecution will, by 23 March 2018, file a motion requesting the submission of these documents.

13. Also referenced are some videos of RTI broadcasts and related transcripts for which an extension of time was sought to re-disclose as incriminatory evidence and add them to the LoE as part of the Prosecution's submission of video evidence.¹⁷ The Prosecution has interpreted the Order¹⁸ as authorising the Prosecution to do so. Furthermore, the Chamber will also be in a better position to appreciate the Prosecution's pending regulation 35 request in relation to these videos.¹⁹

14. All other documents referenced have either been submitted, or pending a decision of the Chamber as to their submission.²⁰

E. Explanation of Citations

15. Citations are to the original language used by the witness, where this is French or English. In the case of Liberian English, citations are to the English version. In the case of Dioula, citations are to the French version.

¹⁶ Cited in the text of the Brief: CIV-OTP-0018-0326, CIV-OTP-0071-2290, CIV-OTP-0074-0238, CIV-OTP-0074-0244, CIV-OTP-0027-0440, CIV-OTP-0091-0465; and referred to in Annex E-1: CIV-OTP-0084-3308, CIV-OTP-0084-3290, CIV-OTP-0084-3550, CIV-OTP-0084-4015, CIV-OTP-0084-4023, CIV-OTP-0084-4025, CIV-OTP-0084-4050, CIV-OTP-0084-4053, CIV-OTP-0084-4061, CIV-OTP-0084-4066, CIV-OTP-0084-4069, CIV-OTP-0084-4071, CIV-OTP-0084-4075, CIV-OTP-0084-4079, CIV-OTP-0084-4082, CIV-OTP-0084-4094, CIV-OTP-0084-4096, CIV-OTP-0084-4100.

¹⁷ ICC-02/11-01/15-998, paras. 38-45.

¹⁸ Order, para. 12.

¹⁹ ICC-02/11-01/15-998, paras. 38-45.

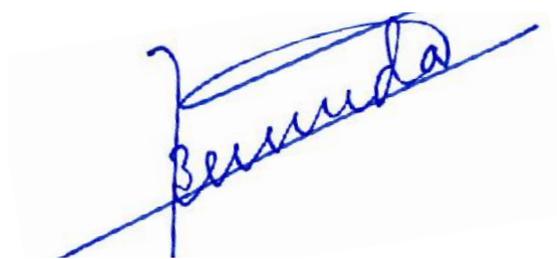
²⁰ In compliance with the Chamber's indication at Order, para. 12.

16. The transcripts of proceedings used are those that were available as at 13 February 2018. Where corrected versions have since been issued, these have not been used in this Brief.

17. The timestamps used for video evidence refer to the timestamp appearing on the face of the video. Where there is no timestamp on the face of the video, it is the timestamp appearing in the bottom right corner of the media player that is used.

IV. CONCLUSION

18. The Prosecution asks the Chamber to receive this Mid-Trial Brief, noting the matters set out in this filing.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line. The signature is stylized and cursive.

Fatou Bensouda, Prosecutor

Dated this 19th day of March 2018

At The Hague, The Netherlands